



Western Michigan University
ScholarWorks at WMU

Honors Theses

Lee Honors College

12-1-1999

Women and Work: An Analysis of the Sociological and Historical Trends of Maternity Leave Policies in the U.S.

Gina M. Schrader

Western Michigan University, gina.schrader@gmail.com

Follow this and additional works at: https://scholarworks.wmich.edu/honors_theses



Part of the Political Science Commons

Recommended Citation

Schrader, Gina M., "Women and Work: An Analysis of the Sociological and Historical Trends of Maternity Leave Policies in the U.S." (1999). *Honors Theses*. 948.

https://scholarworks.wmich.edu/honors_theses/948

This Honors Thesis-Open Access is brought to you for free and open access by the Lee Honors College at ScholarWorks at WMU. It has been accepted for inclusion in Honors Theses by an authorized administrator of ScholarWorks at WMU. For more information, please contact wmu-scholarworks@wmich.edu.





THE CARL AND WINIFRED LEE HONORS COLLEGE

CERTIFICATE OF ORAL EXAMINATION

Gina Schrader, having been admitted to the Carl and Winifred Lee Honors College in 1995, successfully presented the Lee Honors College Thesis on December 1, 1999.

The title of the paper is:

**“Women and Work: An Analysis of the Sociological
and Historical Trends of Maternity Leave Policies in the U.S.”**

A handwritten signature in cursive script, reading "Ashlyn Kuersten", written over a horizontal line.

Dr. Ashlyn Kuersten
Political Science

A handwritten signature in cursive script, reading "Gail Landberg", written over a horizontal line.

Dr. Gail Landberg
Women's Studies

A handwritten signature in cursive script, reading "Linda Lumley", written over a horizontal line.

Ms. Linda Lumley
Women's Resources and Services

Women and Work:
An Analysis of the Sociological and Historical
Trends of Maternity Leave Policies in the U.S.

by

Gina M. Schrader

TABLE OF CONTENTS

Abstract	2
Introduction	2
The Legislation: Pregnancy Discrimination Act of 1978 and the Family Medical Leave Act of 1993	4
Historical and Sociological Changes	5
Analysis of Local Employers Maternity Policies	11
Analysis 1	12
Analysis 2	12
Analysis 3	13
Private Industry and Leave Policies	14
Table 1: Companies with Progressive Policies for New Parents	16
Problems that Continue to Occur	16
Table 2: Educational Attainment of Women	20
What Should Be Done?	21
Conclusions	23

ABSTRACT

This paper presents an analysis of maternity rights and regulations within the context of the Pregnancy Discrimination Act of 1978 and the Family Medical Leave Act of 1993. First, I will define the legislation while observing the sociological and historical significance of the legislation. Second, I will analyze maternity leave policies of the modern working environment and address the increasing involvement of women within the workforce. Finally, I will examine the needs that are unmet within current policies and the possible alternatives.

INTRODUCTION

As more women have entered the workforce throughout the twentieth century, laws have been slowly integrated into the American legal system to address workplace issues pertaining to female employees. One issue that has continually been investigated concerns maternity rights. Historically, employers made it extremely difficult for women to have job security and benefits upon motherhood. Women were often unable to return to their jobs after taking maternity leave. Other gender inequalities forced women to choose between a career and motherhood.

Two important acts have been established to remediate the problems encountered with maternity protection, the Pregnancy Discrimination Act of 1978 and the Family Medical Leave Act of 1993. These two acts contain criteria that employers are required to adhere to when their employees become parents. Although the legislation demonstrates the growing need to create a healthy balance between family and career, an

analysis of current procedures finds that the American system lacks a national maternity policy that adapts to the challenges families now face.

Historically, maternity policies have been controversial because they actually produce inequality between the sexes; in essence, maternity leave policies favor the rights of working women to working men. But not having maternity leave policies is patronizing to women; it allows society to tell women they should not be working. This was evident in the legal battles that occurred at the beginning of the century.

The two acts are actually contradictory. In essence, they protect both the right to leave the workplace and the right to stay in it. While the current policies have produced landmark resolutions for the workplace environment, they have only created adequate national regulations that companies must comply. Additional incentives and benefits need to be adopted to meet current needs. For example, policies should include paid leave, childcare incentives, intermittent job restoration, on-site nursing/lactation centers, and further paternal benefits.

The importance of family leave addresses the need to maintain healthy and productive citizens; it offers the opportunity for parent and child to establish healthy relationships. The adoption of additional policies would eliminate inequalities and allow women to work without jeopardizing the work and family balance. I argue here that in order to fully understand the importance of producing effective family policies, it is pertinent to first analyze the historical context of the current legislation.

THE LEGISLATION:

**Pregnancy Discrimination Act of 1978 and the Family Medical
Leave Act of 1993**

On October 31, 1978, President Jimmy Carter signed the Pregnancy Discrimination Act. Once enacted, this legislation prohibited discrimination against women on the basis of their pregnancy, childbirth or related medical conditions. Furthermore, these conditions have to be treated in the same way in which physical disabilities limit one's working environment. In this way, an employer cannot refuse to hire a woman on the basis of her pregnancy or because of prejudices against pregnant workers displayed by co-workers, clients, and management.

This act attempted to alleviate inequalities within the workplace related to a woman's pregnancy. If her current job duties become impossible because of her medical state, like a condition of disability, alternative tasks must be assigned to her. The employee must also be provided with access to disability leave and also a term of leave that an employer is obligated to compensate. While on leave, the employee should not lose prior health benefits or occupational position within the company.¹

After a 10-year struggle, President Clinton signed the Family Medical Leave Act on August 5, 1993. It became the nation's first piece of legislation to address the issue of parental leave. Specifically, it provided parental leave guidelines for both male and female workers. The law protects both female and male employees who qualify under these conditions:

¹ The U.S. Equal Employment Opportunity Commission. (1997). *Facts About Pregnancy Discrimination*. (online) Available: <http://www.eeoc.gov/facts/fs-preg.html>. (January 15, 1997)

1. Work for a covered employer;
2. Work for covered employer at least 12 months prior to leave or 1,250 hours in the previous 12 month period;
3. Work at a location where at least 50 employees are employed within a 75-mile radius from work site.

This leave can be taken for the birth or adoption of a child, for the care of an immediate family member, or for the employee's own personal medical leave. It allows covered employees to be granted at least 12 work weeks of unpaid leave within a 12-month period. This leave can be taken in set blocks or utilized through a reduced employee workweek upon the preference of the employer.

Under this act, employers are obligated to provide their employees with health coverage; further, an employee's health insurance policy must remain applicable under the same criteria and circumstances prior to their leave. Employers must restore the employee's previous position upon return or an alternative position with equal pay, benefits and status must be provided. However, an exception to this regulation occurs for key employees. Key employees are the highest paid 10 percent of salaried employees within the company. An employer may decide to terminate the position of a key employee if their leave is deemed detrimental to the future of their place of employment.²

HISTORICAL AND SOCIOLOGICAL CHANGES

The continual and rapid changes of female involvement within the working world helped to enact this legislation and have placed great importance on the benefits allowed.

² United States Department of Labor. (1993). *The Family Medical Leave Act of 1993* (Fact Sheet No. ESA 93-24). Washington, DC: U.S. Government Printing Office.

At the end of the nineteenth century, women accounted for an average of 18 percent of all laborers. From this percentage, less than 5 percent of the women were married and only 19 percent of working women were mothers of children under the age of one.³ Women's involvement in the workforce has increased dramatically since this time. The United States Census Bureau reported in 1997 that women accounted for 48 percent of all wage and salary earners. This represents a 16 percent increase in the last 50 years. In that same year, 62 percent of married women were working within the labor force, and about 48 percent of these women provided at least one-half or more of their household income. On the other hand, only about 23 percent of married women were even involved in the work force in 1951.⁴

The Census Bureau data also reflect parental concerns of career-oriented mothers. In 1995, about 80 percent of women had children by the end of their childbearing years, and they averaged about two children during this time and 55 percent of women with newborns were in the labor force. Further, single mothers constitute about 9.8 million people, a 35 percent increase from 1970. Within this population, about 7.7 million mothers supported households by themselves.⁵ For these one-wage households, it would be extremely difficult to maintain a single income household under the unpaid leave provision of the FMLA.

The problems women face in achieving legislation that supports equality within the workplace stem from traditional beliefs that "their roles as wives and mothers restrict

³ Hesse-Biber, Sharlene & Gregg Lee Carter. (2000) *Working Women in America: split dreams*. New York: Oxford University Press, 1 & 38.

⁴ United States Census Bureau. Available: <http://www.census.gov>

⁵ *ibid*

women's abilities to participate in activities outside of the home."⁶ One way of examining these beliefs is to examine court cases decided at the beginning of the century.

The landmark case of *Muller v. Oregon* (1908) established the precedent that a woman's physiology makes her an exception within society's working environment. This particular case examined the state's interest in limiting the working hours of female employees to no more than ten hours per day. Despite the Court's judgement that women were citizens and should be entitled to liberties, the Court argued "that woman's physical structure and the performance of maternal functions place her at a disadvantage which justifies a difference in legislation in regard to some of the burdens which rest upon her."⁷ In this way, her biological well-being became the public interest of the State, but the decision left women little autonomy over their occupational interests.

During the trial, Louis Brandeis, a prominent Boston attorney, presented the infamous Brandeis Brief that revolutionized the legal process. By documenting the physical and sociological consequences of woman working, he was able to demonstrate the importance of protecting their health and thus justify the state's interest in passing legislation to protect her. The problem, of course, was that by limiting her hours, the state also limited her ability to support herself.

The results of *Muller v. Oregon* took precedence again in *Ritchie and Co. v. Wayman* (1910) in which the regulation of working hours of female employees was once again challenged. The courts, however, continued to uphold the 1908 verdict that women

⁶ Sapiro, Virginia. (1999). *Women in American Society: An introduction to Women's Studies*. 4th edition. California: Mayfield Publishing Company, 285.

⁷ *Muller v. Oregon*. 208 U.S. 412, 1908.

should be aware of physiological effects of work. They again declared limitations on hours "constitutional in all of its particulars and as an entirety."⁸

The women hurt most by limited hours were those in the workforce the most; the average female worker was young, unmarried, and working class. Most females by their mid-twenties were already married, ending their short career. However, women who attended college were a different story altogether. A 1900 study found that of female college graduates only half of them had married by the age of 50.⁹ This demonstrates that women living during the end of the century knew the detrimental effects that marriage and family could have on their career, thus they did not enter the institution at all.

At the very same time, changes in working conditions were taking place on a global scale, and the International Labor Organization (ILO) emerged. The ILO was created to address the "condition of workers, more and more numerous and exploited with no consideration for their health, their family lives and their advancement."¹⁰

A year after *Muller v. Oregon* (1908), the ILO drafted the Maternity Protection Convention (later to be revised in 1952) in Washington, D.C. Ironically, however, the U.S. never enacted it, although over 33 countries adopted it in the ninety years since its conception.¹¹ Today, the U.S. remains one of two leading industrialized nations that has failed to adopt it. The FMLA bears a striking resemblance to the Maternity Protection

⁸ *W. C. Ritchie & CO. et al. vs. John E. W. Wayman*. 244 Ill. 509, 1910.

⁹ Sapiro 453.

¹⁰ *ILO History*. In International Labour Organization (on-line). Available: <http://www.ilo.org/public/english/overview/history.htm>

¹¹ *C103 Maternity Protection Convention* (revised), 1952 (1999). ILOLEX: the ILO's database on International Labor Standards. Available: ilolex.ilo.ch/1567/scripts/convde.pl?c103

Convention yet, the most important issues of paid leave and nursing rights, which appear in the ILO proposal, are left out of the U.S. legislation.

Despite the existence of this innovative proposal during the early twentieth century, the stigma of female employees continued to place limitations on their working environment. To further complicate this issue, women were further discriminated due to the prejudices that their pregnancies subjected them. Although the public regarded "healthy mothers as essential to vigorous offspring," advocating the glorified role of mother, many employers did not want pregnant employees working for them.¹² They did not want to deal with the scandal it would cause when pregnant employees began to show signs of their pregnancy. This issue particularly concerned school officials that thought "having a pregnant woman around children was recognition that they were sexually active."¹³

Not until World War II did the country realize the necessity of women in the work force. As the men went off to war, female employees became essential to the continuation of America's economic future. With the introduction of over 4.5 million women into the American workforce, employers were forced to adopt company policies affecting this new population.¹⁴ The war actually provided a stepping stone for women's involvement within the workforce because their desire to work did not subside when the men returned. However, the legislation failed to keep pace with their increases in the workforce.

¹² *Muller v. Oregon* 1908

¹³ Sturgeon, Jeff. (1998, October 12). "General Electric Worker' Suit Paved Way for Paid Maternity Leave." *Roanoke Times* (online), Available: <http://web.lexis-nexis.com/universe/docu...89837530b5ofldbda0e3&taggedDocs=z23,4237>,

¹⁴ Kamerman, Sheila B., Alfred J. Kahn & Paul Kingston (1983) *Maternity Policies and Working Women*. New York: Columbia University Press, 34.

The enactment of Title VII of the Civil Rights Act of 1964, forbidding discrimination on the basis of race, color, religion, and sex, was a crucial piece of legislation for the working women. Actually, the addition of sex was added in hopes that it would help the act be rejected; it was absurd to include sex in anti-discrimination legislation, opponents argued. However, the act passed and became the greatest ally for women's equality within the workplace. But it remained unclear whether pregnancy discrimination violated this act.

Due to the ambiguous nature of the act's effect on pregnancy discrimination, subsequent cases addressed whether the Civil Rights Act of 1964 adequately defined an employee's right, and an employer's obligation, toward pregnant employees. In 1976, several women at the General Electric Company in Virginia were denied disability benefits for their medical conditions linked to pregnancy and they charged the company with sex discrimination. However, the U. S. Supreme Court concurred that the policy could not be regarded as sex discrimination for a condition that was "unique" to only one gender.¹⁵ Though not a legal victory, this case was a stepping stone in addressing the need for legislation pertaining to pregnancy.

The issue was further addressed in 1977 after an employee was required to take leave without pay for her pregnant condition and was not restored to her position upon return from leave. *Nashville Gas Co. v. Satty* (1977) raised the issue of addressing pregnancy as a legitimate disability and ultimately led to passage of the Pregnancy Discrimination Act of 1978, which declared pregnancy discrimination "unlawful sex discrimination."¹⁶

¹⁵ *General Electric v. Gilbert*. 429 U.S. 1079, 1977.

¹⁶ *Nashville Gas v. Satty*. 434 U.S. 136, 1977.

This law finally accorded women autonomy within their place of employment. Employment policies were forced to view pregnancy as equivalent to other physical disabilities, and became an important element of equality within the workplace. Yet, this act failed to address the context of father and family within the picture. Despite the fact that this issue was not directly addressed in *California Federal Savings and Loan v. Guerra* (1987), from this case originated our first national legislation on family leave policies. The concurring opinion stated that the employer did not violate the Pregnancy Discrimination Act of 1978 because the company did not offer disability leave to any of its employees.¹⁷ Therefore, pregnant employees were not discriminated from other employees and were not obligated to receive guarantees. The Pregnancy Discrimination Act could not be utilized because it would then discriminate against male employees by violating the Civil Rights Amendment. Ironically, the case that began as a complaint against the Pregnancy Discrimination Act of 1978, ultimately gave direction for the future Family Medical Leave Act of 1993.

ANALYSIS OF LOCAL EMPLOYERS MATERNITY POLICIES

With the passage of the Family Medical Leave Act, employers with more than 50 employees are required to adhere to the new guidelines. However, some employers have already established similar policies within their short-term disability policies. In order to understand the policies of different types of employers in handling maternity rights, I will examine the maternity policies of three separate entities within the Kalamazoo area--non-profit organizations, university faculty, and private industry. I

¹⁷ *California Fed. S&L Assn. v. Guerra*. 479 U.S. 272, 1987.

found that most companies have similar policies that deviate little from the FMLA guidelines.

Analysis 1: Non-Profit Organization Kalamazoo Foundation

A community foundation that focuses on several areas of the community, particularly education, health, economic development, housing and environment. The foundation holds money in a trust for the community to use.

This particular entity has fewer than 50 employees, thus not obligating the company to comply with the FMLA guidelines. Instead, the Foundation applies their short-term disability leave to maternity leave. An employee is eligible for such leave if they are regular full-time employees who have worked at least six consecutive months prior to leave. Leave may be taken if an employee is unable to perform job duties for eight consecutive days with provided evidence of disability. Under this policy, employees are eligible for a maximum of twelve weeks of short-term disability leave with 66 2/3 percent of an employee's regular full-time wages payable for the first six weeks of leave. Employees may also apply all earned unused sick days, vacation time and personal leave in order to receive full compensation.¹⁸

Analysis 2: University Faculty Western Michigan University

A nationally recognized research institution with an enrollment of more than 27,500.

Leave policy of bargaining unit member

WMU also uses FMLA guidelines that are adjusted to fit the profile of faculty. To be eligible, a faculty member must be employed by WMU for the equivalent of one

¹⁸ Employee Handbook: Kalamazoo Foundation, 1994.

academic year (a calendar year ranging from August to April) or 1200 hours in the 12 months prior to leave. Criteria that differ from the national legislation include:

1. They are required to use their available paid annual leave and necessity leave;
2. The period of eligibility begins upon the birth or placement of the child and only last for the following 12 months;
3. Spouses are limited to a combined total of 12 weeks in a 12 month period;
4. Due to the nature of employment, intermittent leave or a reduced hourly workweek is not available to employees;
5. Employees may use up to 30 days of paid sick leave in addition to 12 workweeks of unpaid FMLA leave;
6. Modified duties are available, but cannot exceed one semester, which lasts approximately 4 months.¹⁹

However, this policy does not correlate with most faculty member's contracts that do not meet FMLA conditions. Due to the makeup of faculty contracts, FMLA provisions are virtually useless to faculty employees. Rather, the policy works much better for administrative or staff employees who have employment contracts that fit FMLA standards.

Analysis 3: Private Industry Pharmacia & Upjohn

A global, innovation-driven pharmaceutical company of 30,000 employees operating in more than 100 countries.

As a private entity, Pharmacia and Upjohn offers a slightly different leave policy. The maximum leave time an employee can receive is 22 weeks. Pregnant employees

¹⁹ Article 27: Leaves of Absence. Employee Handbook: Western Michigan University, 1999.

receive mandatory leave three weeks prior to delivery and are compensated for 100 percent of their normal salary. An employee's leave after childbirth is dependent upon each individual employee's time of service within the company and can range from six to eight weeks, in which 100 percent of their pay will be continued. However, after the first 3 months of leave, pay is reduced to 75 percent of normal pay. The company also offers a flexible schedule upon return from leave, with intermittent and shorter workweek schedules available.²⁰

PRIVATE INDUSTRY AND LEAVE POLICIES

From this study, we can conclude that larger corporations and companies are more likely to offer better benefits to employees. This conclusion is supported by *Working Mother* magazine's annual survey of the "100 Best Companies for Working Mothers." This survey offers an extensive analysis of several issues pertaining to leave for new parents, including job guaranteed leave, pay policy, phase back policy, lactation programs, paternal leave and adoption aid policies. From this survey, I have analyzed the ways in which the five highest rated companies within the category of Leave for New Parents offer attractive incentives that entice women to work for them.

These companies' Job Guaranteed Time Off policies show that these employers support leave past the standard twelve weeks. They offer leave programs ranging from fifty-eight weeks to IBM's generous 156-week leave. These plans apply exclusively to mothers and promise job renewal or comparable job transfer. All five companies offer a medically necessary short-term disability leave that provides either partial pay for a period of leave or full pay for a duration of time.

²⁰ Carol Smith, Pharmacia & Upjohn, Employee Health Management (personal communication), November 19, 1999.

An excellent addition to all five of these companies' policies is a Phase-Back Policy for mothers who are returning from leave. Through this policy, mothers are able to take advantage of today's technological conveniences and work from the convenience of their own homes. Therefore, they have continued personal contact and care for their child without losing contact with the working world.

The new concept of companies offering lactation programs within the workplace allows new mothers to continue to breastfeed children. The plus (+) addition in Table 1 denotes the programs that provide additional access to professional lactation consultants who can advise new mothers about breastfeeding while continuing a normal career.

In the category of Paternity Leave, the policies differ drastically. Male employees are rarely granted any type of paid leave. Even within this group of family friendly companies, only two offer any type of paternal leave. In comparison to leave for female employees, none of the companies provide any exceptional policies for the new father. Men who take leave are forced to experience high economic costs to their family's budget because leave is rarely compensated.²¹

The final component of adoption aid reflects the company's attitude toward helping their employees offset the expense of adopting a child. All five of the companies further help employees by offering a resource and referral service.

²¹ Cartwright, Catherine. (October 26, 1999). "100 Best Companies for Working Mothers." In *Working Mother* (online). Available: <http://www.workingmother.com/100best>

Table 1

Companies with Progressive Policies for New Parents

	Job guaranteed time off for childbirth	Pay Policy During leave	Phase-back for new moms	Lactation Program	Paternity Leave	Adoption aid
AT&T	58 weeks	Full pay/std	Yes	Yes	No	\$3,000 R&R
Eli Lilly	68 weeks	Full pay/std	Yes	Yes+	1 week paid	\$10,000, R&R, 1 week paid
Ernst & Young	76 weeks	Part pay/std	Yes	Yes+	No	\$5,000 R&R
IBM	156 weeks	Full pay/std	Yes	Yes	2 weeks paid	\$2,500, R&R, 2 weeks paid
Lucent Technologies	58 weeks	Full pay/std	Yes	Yes	No	\$3,500 R&R

Note: From "100 Best Companies for Working Mothers" by Catherine Cartwright, 1999, *Working Mother*. Std = standard disability pay. R&R = resource and referral programs offered for adoption. Plus sign (+) denotes added services for mothers that breastfeed.

These policies reflect the employers' awareness that existing legislation is not sufficiently addressing employees' needs. There is strong evidence that problems continue to exist under our system; each year, the Equal Employment Opportunity Commission receives thousands of pregnancy discrimination complaints. In 1998, for example, 4,219 cases of pregnancy discrimination were filed. Of these charges, approximately 20 percent were resolved in favor of the charging parties.²²

PROBLEMS THAT CONTINUE TO OCCUR

The actual importance of the FMLA lies not in the real policies it has enacted, but rather in its symbolic significance. It reflects society's recognition of women's increased involvement within the workplace. While the act addresses basic concerns protecting the

²² Pregnancy Discrimination Charges: EEOC and FEPA's combined FY 1992-FY1998. <http://www.eeoc.gov/stats/pregnanc.html>

right to leave and to retain one's occupational position, several issues have been ignored in the legislation.

The traditional image of a woman as primarily wife and mother continues to exist within this country; however, the traditional nuclear family is disappearing rapidly. The image of the breadwinner father and stay-at-home mother is extremely exaggerated. Dual earner households are predominant today, with 62 percent of mothers with children under the age of six occupying full-time jobs.²³ The growing demands of various occupations have also placed greater stress on the worker. The 1997 National Study of the Changing Workforce found the average number of hours worked at jobs has steadily increased from 43.6 hours in 1977, to 47.1 hours in 1997 for paid and non-paid employees working 20 or more hours per week.²⁴

We must also look at the payment policy of the FMLA. While the legislation provides up to 12 weeks of leave, the law does not require any pay to be provided. While the companies included within this study and that of the *Working Mother's* magazine survey do offer compensation for leave, they only offer compensation for the physical limitations related to pregnancy. I found that most policies also provided employees the opportunity to exhaust any other leave benefits they had accrued. However, both policies leave all of the responsibility of salary on the individual.

The lack of paid leave primarily affects women and employees with family incomes of less than \$20,000. Due to the loss in annual income from such leave, 11.6

²³ Shore, Rima. (1998) *Ahead of the Curve: Why America's Leading Employees are Addressing the Needs of New and Expectant Parents* (online). In Families and Work Institute. Available: <http://swww.igc.apc.org/fwi/pubs/curve.pdf>

²⁴ *ibid*

percent of women who took advantage of FMLA regulations were forced to depend upon public assistance in order to maintain a healthy living standard.²⁵

Even in our modern society, debates have ensued over the issue of pay equity between the genders. Women continue to be paid less than men regardless if they possess identical qualifications or educational background. The Bureau of Labor Statistics in 1998 reported that women working full-time earned a median of \$.76 for every dollar a man earned.²⁶ Therefore, a national policy that requires paid parental leave is an important asset in alleviating the concerns of equality of pay.

The 1909 ILO proposal called for compensatory benefits upon leave. Compensation would be accrued through national social policy in the form of social insurance or public funding at a rate of “not less than two thirds of the woman’s previous earnings.”²⁷ A 1995 sample of developed countries and developing nations revealed the unsettling fact that the U.S. and New Zealand are the only countries within this category that do not provide paid maternity leave.²⁸

While our fellow developed countries have found the means to apply social policy to maternity leave in order to finance leave, the U.S. continues to falter in its ability to provide monetary compensation. While most Americans agree with the importance of maternity leave for childcare and the health of the mother, they are typically reluctant to take the responsibility of paying for the benefits.

²⁵ United States Department of Labor. (no date) Executive Summary (online). Available: <http://www.dol.gov/dol/esa/public/regs/compliance/whd/fmla/summary.htm> (October 27, 1999)

²⁶ U.S. Bureau of Labor Statistics Available: <http://www.bls.gov>

²⁷ C103 Maternity Protection Convention (Revised), 1952 (1999). ILOLEX: the ILO’s database on International Labour Standards. In International Labour Organization. Available:

<http://ilolex.ilo.ch1567/scripts/convde.pl?C103>

²⁸ Sapiro 45.

In a large proportion of the sample population in a survey by the National Partnership for Women and Families, 76 percent favor changing regulations forcing companies with twenty-five or more workers to comply to paid maternity leave policies. But a surprising finding was that 41 percent of the population are unfamiliar with the legislation.²⁹ The Commission on Leave's Employee Survey also found that a similar proportion of employees working for covered employers did not have any knowledge of the FMLA. They also found that while employee groups found out about the law through the media, employees making higher wages were much more likely to learn of the law from their employers.³⁰ This unfamiliarity with the FMLA may reflect a population that does not require such leave. However, it is imperative that in order to sustain the protection of equal rights, the public is informed of their rights and takes advantage of them.

Current legislation holds that compliance must be generated from all employers of 50 or more employees. However, this means that the FMLA only affects approximately 66 percent of all U.S. employees this leaves out a large percentage of the population.³¹ In fact, of these non-covered work sites, only 32 percent offer any type of parental leave.³²

The difficulties that smaller employers face if they are found to comply with the FMLA are noted; the loss of an employee on extended leave might seriously damage their company's ability to function. Yet, if they implemented or allowed more flexible

²⁹ National Partnership: Family Matters Survey. (February 1, 1998). Family, Work, Health, Information. (online). Available: <http://www.lexis-nexus.com/universe/doclist> (November 12, 1999).

³⁰ U.S. Department of Labor. <http://www.dol.gov/dol/esa/public/regs/compliance/whd/fmla/summary.htm>

³¹ *ibid*

³² *ibid*

work hours, many employees would be able to return to their position. In this way, employers would recover costs by retaining employees.

Another problem lies in the “key employee” provision of FMLA. Under this concept, the top highest earners within a place of employment may be denied leave benefits if their leave would create irreversible harm to the vitality of the employer. As the Census Bureau data reflected, women are working more and obtaining higher levels of education and position. The *Catalyst Census of Women Corporate Officers and Top Earners* found that women comprise about 11.2 percent of corporate officer positions in the Fortune 500 and 2.7 percent of top earning positions.³³

While the percentage of women who would be considered key employees within the corporate arena are relatively small, the numbers do reveal the appearance of women within these higher paying roles. The status of women entering these positions continually rises and should increase dramatically as educational attainments continue to rise (see Table 2). Among the women with at least a bachelor’s degree, 68 percent with a newborn are in the labor force.³⁴

Table 2
Educational Attainment of Women

	Bachelor Degrees	Masters Degrees	Doctoral Degrees	M.D.	Law Degrees
Percent of degrees awarded to women in 1995	55	55	39	39	43
Percent of degrees awarded to women in 1970	43	40	14	8	5

Notes: From United States Census Bureau. Available: <http://www.census.gov>

³³ Blaizgis, Monica. (November 9, 1998) “Equal Pay and highest executive ranks still elude women” (online). Available: <http://www.catalystwoman.org/press/release110998.htm>

³⁴ U.S. Census Bureau. (1995) Available: <http://www.census.gov>

WHAT SHOULD BE DONE?

What should be offered? Who should offer benefits? The changing trends of the working environment prove that more benefits should be granted within our system. Governmental figures and employers need to work together to establish future policies that will address the concerns of working Americans.

Today, employees are completely immersed in their careers. With employers that require longer working hours and productivity demands, it is extremely important to address effective methods that can establish an enjoyable workplace. Future national policies need to work on maintaining satisfactory working environments. In order to produce such an environment, future policy needs to address issues of child care assistance, job flexibility, paid leave, and smaller work environments.

Childcare assistance is an extremely important component of family leave that the FMLA fails to address. Findings from the 1997 National Study of the Changing Workforce found that 45 percent of dual-employed parents need childcare from persons unrelated to them.³⁵ Many forms of assistance should be readily available to employees. Available childcare services would not only benefit the working parent, but would also facilitate the employer. Employees would subsequently require shorter periods of leave. Childcare assistance can take several forms, including help in finding childcare within the community, on-site childcare facilities, and financial aid to help fund childcare yet despite the importance of offering this service, the 1998 Business Work-Life Study found that only 9 percent of companies with 100 or more employees offered any type of

³⁵ Bond, James T., and Ellen Galinsky & Jennifer E. Swanberg. (1998) *1997 National Study of the Changing Workforce* (online). In Families and Work Institute. Available: www.igc.apc.org/fwi/pubs/worklife.pdf

childcare at or near the worksite. Only 36 percent of the sample worked for companies that offered information about childcare within the community.³⁶

Some provision for paid leave should also be included within future legislation. The fact that anyone would have to rely on public assistance for taking family medical leave shows the importance of providing monetary compensation. The 1998 Business Work-Life Study survey also found that about 53 percent of employers offer paid maternity leave. However, paid paternity leave and paid parental leave for adoptive parents were only offered by approximately 13 percent of employers.³⁷

Public assistance dependency could be alleviated with future provisions that combine both a type of social insurance and employment fund. Both types of funding could work with one another in order to accumulate funds so that parents would be able to partake in the important early childhood of their children. The two types of funding would also be important so that wage replacement would not be the primary responsibility of the employer.

A larger percentage of employers should be included under future family leave policies. The government needs to advocate policy changes that will keep in step with changing trends, primarily with a required paid leave and closing of the gap between covered and non-covered employees. The current policy excludes such a large percentage of employers that this needs to be ultimately addressed. Ninety percent of employers that are already covered by FMLA standards found that the regulations were relatively easy to administer. The problems that companies with fewer than 50

³⁶ James T. bond and Ellen Galinsky. (1998) *1998 Business Work-Life Study: A Sourcebook* (online). In Families and Work Institute. Available: [swww.igc.apc.org/fwi/pubs/worklife.pdf](http://www.igc.apc.org/fwi/pubs/worklife.pdf)

³⁷ *ibid*

employees may encounter may result in the enactment of legislation that almost exclusively addresses these smaller employers. This type of legislation would have to incorporate the same ideas of paid leave and benefits. However, funding of such benefits should not solely be placed on the employer.

On the other hand, the weight of the benefits should not be limited to governmental regulations. Employers should readily provide further provisions. Employers need to reevaluate the way their policies fulfill employee satisfaction with their work and family balance. Flexible working environments should be encouraged within the workforce by taking advantage of technological advances available in today's society. Employers need to be supportive of leave policies so that their employees can take advantage of leave without the anxiety of losing their position within the company. The establishment of lactation facilities within or near the worksite would help to cut down on absenteeism. It would also allow working mothers to continue to breastfeed longer. Statistically, only 10 percent of working mothers nurse for 6 months compared to 24 percent of at-home mothers that nurse for the same amount of time.³⁸

CONCLUSIONS

Ultimately, the administration of these provisions will aid to further equality for women within the workplace. The changes will have important consequences for employees, employers, and the general public. The rights of employees will be addressed with the development of improved paternity leave policies. Improvements on legislation will help family relationships. The corrections will reduce the stress associated with parents forced to work more than spend time with other family members. The adoption

³⁸ Shore <http://swww.igc.apc.org/fwi/pubs/curve.pdf>

of these procedures within our national regulations and individual employee working environments will result in employee loyalty and job retention. Job retention is extremely important to employers who find it difficult to fill vacancies for highly skilled jobs and filling entry-level positions.³⁹ Ultimately, these acts would help to increase production and profits as employees accept the balance within their lives.

Some may view that these steps are just a way for women to try to get the best of both worlds; both active involvement in the traditional role of mother, and the modern role of bread winner. Yet, it is the right of every human being whether man or woman, to be able to partake in familial interactions without risking one's career attainment. It is a waste of talent if a woman is forced to choose between a family and career. It is important to understand that this dual role of mother and breadwinner does not stigmatize the role of a mother or degrade the qualities of an at-home mother; but rather it recognizes that a balance of work-life issues is imperative in order to achieve equality within the workplace. It also ensures a strong economic future for our country; utilizing 100 percent of available talent is much more successful than utilizing 50 percent.

³⁹ *ibid*