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Maternity Leave Benefits in the United States: Today's Economic Climate Underlines Deficiencies

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Maternity leave in the United States took a major and long-awaited leap forward on February 5, 1993, when the U.S. Federal Government enacted Public Law 103-3, the Family and Medical Leave Act (FMLA) of 1993 (1). Drafted by the National Partnership for Women and Families (formerly the Women's Legal Defense Fund), the purpose of the Act is to promote economic stability and preserve family integrity, to entitle employees to take leave for medical reasons to care for a child or other family member, and to provide equal employment opportunity for men and women while minimizing the risk of discrimination on the basis of sex. Specifically, covered employers are required to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for certain family and medical reasons. Employees are eligible for the benefit if they have worked for their employer for at least 1 year, and for 1,250 hours over the previous 12 months, and if there are at least 50 employees within 75 miles.

Now, 16 years later and in a declining economy, it is unclear to what degree this legislation has accomplished its original mission. The United States and Australia are the only industrialized countries that do not provide paid leave to women in connection with childbirth. This policy is in opposition to the World Health Organization recommendations for the provision of at minimum 16 weeks of leave after childbirth to ensure optimal growth of the infant, proper bonding between mother and child, and the health of both mother and infant (2).

From a global perspective, the duration of protected job leave available and how much is paid to women and their infants vary widely. For example, France and Spain offer their residents over 300 weeks of protected job leave for a two-parent family (3), but only 9 percent of this leave is paid. In contrast, Greece and Japan offer couples about 60 weeks of protected job leave, of which 45 to 50 percent is paid leave (3).

Moreover, most countries that guarantee paid maternity leave for women provide nearly 100 percent wage replacement for at least some portion of this leave (4). For instance, Sweden offers 18 months of parental leave, of which 12 months are at 80 percent of previous

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earnings (4). In Germany, women receive 14 weeks of paid maternity leave at 100 percent of previous earnings (4). Wage replacement is a critical component for an effective maternity leave benefit, and especially so for families in the United States who are now living from paycheck to paycheck.

Little information is available on the use of the leave Act in the United States. The most recent data are drawn from a 2000 U.S. Department of Labor survey of a random sample of employers and employees (5). Of the 35 million employees who used the leave from 1993 to 2000, only 26 percent indicated that they took time off to care for a new child or for maternity disability reasons. Other indications for taking leave included the individual's own serious illness (52%) or caring for a seriously ill parent (13%), child (12%), or spouse (6%).

Although the Act offers leave-takers up to 60 business days of unpaid leave, few are taking the maximum amount. As of 2000, the median length of leave reported was 10 days, and 80 percent of leaves were for 40 days or fewer. During the period of the survey, 3.5 million people reported needing leave for family and medical reasons, but were unable to take it. Moreover, 78 percent of those who needed leave but did not take it indicated that they did not take advantage of the Act because they could not afford it (5).

Additional data from the 2002 National Survey of Family Growth show that 70.2 percent of mothers who were employed at the time of their last pregnancy stated that they took maternity leave after birth (6). Advanced maternal age was positively associated with taking maternity leave after childbirth, whereas a household income of less than 100 percent of the federal poverty level or Hispanic ethnicity were sociodemographic characteristics of women who were less likely to take maternity leave after childbirth. Eighty percent of women who took maternity leave during their last pregnancy responded that they took 12 weeks or less, and nearly 30 percent reported that their full leave was unpaid.

In its current form, the leave Act may present more barriers than benefits in its application. For example, women who take maternity leave often use a combination of vacation days, sick days, personal days, and/or short-term disability time to ensure that some or all of their maternity leave is paid. However, this strategy often places women in a precarious situation when they return to work and have few vacation or sick days available to use during the ongoing postpartum period. Furthermore, this option of coordinating maternity leave is not accessible to all working women.

Although barriers remain in accessing leave benefits, recent efforts at the state level have sought to diminish their effect. Since the enactment of the Act in 1993, six states and U.S. territories (California, Hawaii, New Jersey, New York, Rhode Island, and Puerto Rico) have passed legislation to provide their residents with paid family and medical leave through temporary disability programs (7). For example, in California more than 13 million workers have been offered partial wage replacement for family leave, and legislators have expanded eligibility in the state to all workers who pay into the system.

Nevertheless, the declining state of the U.S. economy may prevent many women from using their entitled unpaid leave from their employer. It may also hinder women from taking advantage of paid leave, when offered. For instance, Guendelman et al recently reported that

even among those with paid antenatal and postpartum leave in California, most are hesitant to take full advantage of the benefit (8). The authors examined the use of California's legislation to provide paid pregnancy leave up to 4 weeks antenatally and 6 to 8 weeks postnatally for women working for public or private employers with five or more employees. In an analysis of data based on postpartum interviews, the authors found that 52 percent of women worked until the time of delivery, 32 percent took antenatal leave with the expectation to return to their job after delivery, 9 percent left their jobs, 5 percent cut back their hours, and 2 percent were fired during pregnancy. Sixty-three percent of women and 69 percent of those who took antenatal leave were offered leave by their employer. Moreover, 50 percent of leave takers, 51 percent of non-leave takers, and 15 percent of those who left returned to work by 3 months postpartum. The authors asserted that antenatal leave is used in this population as a coping response to stress and tiredness versus as a health-promoting behavior. It is also used as a protective measure against occupational stressors such as night work and when a woman has limited control over the demands of her job. Overall, the authors stressed that women seemed cautious in using antenatal leave.

Some have suggested that unlike their non-U.S. counterparts, American women are more apprehensive about taking advantage of maternity leave benefits for three key reasons (4): first, it may impede their ability to advance in their career and maintain their status with their employer; second, there may be negative effects on their wages over the long term if viewed as a 'temporary employee'; and third, offering women a longer maternity leave may indirectly impede progress toward gender equity in the labor market.

Advocacy groups, such as the National Partnership for Women, continue to urge American political leaders not only to provide paid leave for women in connection with childbirth, but also to expand eligibility to the entire work force. Eligibility criteria based on work site, number of employees, and duration of employment inherently target vulnerable populations in the labor force; low-wage workers, part-time workers, and women leaving welfare to work are especially at risk (9). Many of these workers are women.

With this in mind, it is unclear whether the third objective of the leave Act is being met: to provide equal employment opportunity for men and women while minimizing the risk of discrimination on the basis of sex. Ray et al suggest that "in the absence of paid parental leave policies, traditional gender roles, and typically lower earnings of mothers (relative to fathers) in the labor market, create strong incentives for women to reduce their employment and take on a large majority of child care responsibilities" (3, p 9). Thus, although some countries offer generous parental leave policies, they may inadvertently undermine gender equality if their policies are directed primarily to women.

We suggest that the Family and Medical Leave Act is unable to meet the needs of American families in today's struggling economy, and a policy update on this 16-year legislation is warranted. An expansion of benefit to all workers with consideration to gender equality, the opportunity for a gradual return to work beyond 12 weeks, and the addition of wage replacement would be critical components. It is not acceptable that the United States ranks 20th out of 21 high-income world economies in the amount of total protected job leave available to its people, especially when these people are new mothers and families. Health

policy makers must make efforts to greatly enhance current legislation that will elevate the United States to a comparable level with other high-income nations.

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