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**Parental Leave: Comparison of International Policies to the United States Policy and a Proposal for Change**

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PARENTAL LEAVE: COMPARISON OF INTERNATIONAL POLICIES TO THE UNITED STATES POLICY AND A PROPOSAL FOR CHANGE

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ABSTRACT

The United States is far behind many other countries in providing parental leave, with no federal legislation that provides wage-replacement to parents seeking to take leave immediately before and after childbirth. In order to explain the variations of parental leave provided globally, this article discusses federal and state legislation in the United States, international organizations’ conventions and directives, and individual countries’ policies. The article argues that paid parental leave has many benefits—benefits that the United States should take into account when considering reform of its current law. Drawing on international and state-level models, the article proposes federal policy reform in the United States that would expand on what is currently provided by the Family and Medical Leave Act, including providing wage-replacement to parents seeking leave due to childbirth.

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Although parental leave in the United States improved when Congress passed federal legislation mandating reasonable unpaid leave under certain circumstances, the United States is lagging far behind other countries in requiring employers to provide paid parental leave to employees who are pregnant or have newborns. According to a study conducted by Harvard’s School of Public Health in 2004, 163 of the 168 countries studied guarantee some form of paid leave to women because of childbirth.¹ In addition, forty-five countries guarantee paid paternity or parental leave.² The United States and Australia are the only two countries of the industrialized world that do not provide parents with any form of paid leave.³

To see how far behind the United States is in providing parental leave, consider one hypothetical couple’s experiences in both the United States and Sweden. Marisol is a married woman with two school-age children living in the United States. For the past year and a half, she has worked about twenty hours a week at a community daycare. The daycare has no more than ten employees on staff. Marisol’s husband, Marco, works full-time at a commercial printing company, which employs more than 1,000 individuals. Although Marco brings home a decent salary from his full-time gig, Marisol is working part-time to contribute to the economic stability of her family. Additionally, Marisol and Marco recently found out that they were expecting their third child.

Under the Pregnancy Discrimination Act of 1978 (PDA), Marisol’s employer cannot discriminate against her on the basis of her pregnancy or the birth of her child.⁴ However, the PDA does not require that her employer provide her with any time off or leave because she is

² See id.
³ See id. Although Australia does not provide paid leave for women, it does guarantee unpaid maternity leave to women for a full year. In contrast, the United States only provides twelve weeks of unpaid leave to individuals who are eligible.
pregnant and expecting a child. The PDA only ensures that her employer provides her with equal access to the same employee benefits that men receive in her workplace.\(^5\) If the daycare does not provide temporary sickness or disability leave to other employees because of sickness or temporary disability, the daycare is not required to provide her with leave. Moreover, Marisol’s position is not protected under the PDA. If she decides to take time off, her job is not guaranteed to remain open for her and the daycare does not have to allow her to come back to work, unless the daycare does so for other similarly situated employees.

The United States does provide additional protections under the Family and Medical Leave Act of 1993 (FMLA). Under the FMLA, an employer is required to provide twelve weeks of unpaid leave to an employee if the employee has worked at least 1,250 hours in a twelve-month period and the employer has fifty or more employees.\(^6\) Marisol is not eligible for FMLA leave because she only works twenty hours a week at the daycare. Marisol has not met the minimum 1,250 hours required to qualify for leave. In fact, she is 210 hours short of that requirement. Additionally, the daycare is not required to provide leave because it has less than fifty employees. Therefore, Marisol is ineligible to receive FMLA leave from her employer and the daycare is not required to provide such leave. Marco is eligible to take twelve weeks of leave to take care of their child because he works for a company that employs over fifty employees and he has worked over the 1,250 hour requirement. However, this does not resolve the dilemma. Although Marco could take parental leave under the FMLA for up to twelve weeks, he would not be paid for the time off, unless his employer has a policy of paying fathers who take paternity leave. Moreover, if Marisol needs to take time off from work because of the birth of her child, her employer is not required to provide her with this time off. Essentially, her employer can

\(^5\) See id.

decide that it does not want her to work for it anymore when she has to take time off to give birth and take care of the newborn.

Now, consider that Marisol lives in Sweden instead of the United States. Marisol still works twenty hours a week at a community daycare. Under Sweden’s parental leave policy, Marisol would be eligible for fourteen weeks of maternity leave; regardless of how long she has worked for her employer or how many hours she has worked in the past year.\(^7\) Marco would also benefit from the Sweden’s policy because he would be guaranteed two weeks of paternity leave, regardless of his job tenure.\(^8\)

Additionally, Sweden guarantees eighteen months of parental leave to employees who have worked with their current employers for the past six months.\(^9\) Both Marco and Marisol would qualify for parental leave, providing them with the ability to take care of their newborn. The leave provided by the Swedish government is different from the United States leave because it is paid. As a two-parent family, Marisol and Marco will have an income for 480 of the total days they take as leave.\(^10\) Essentially, the paid leave provides Marco and Marisol with the opportunity to take care of their newborn without being concerned with their financial stability.

This article will add to the scholarly literature that discusses paid parental leave by providing a comparison of the United States federal policies provided under the FMLA and PDA, policies of various states that expand on the provisions of the FMLA, and international policies such as those of Denmark, Sweden, and the Netherlands. This article will discuss how other countries provide much more general benefits than to their parents. This article also adds to

\(^8\) See id.
\(^9\) See id.
\(^10\) See id.
the literature by incorporating social science studies into the legal discussion of the parental leave policies currently implemented in the United States and abroad.

This article is organized as follows. Part I will discuss the pros and cons of having a parental leave policy. Part II will focus on the current United States legislation affecting parental leave: the Pregnancy Discrimination Act and the Family and Medical Leave Act. Part II will also explore state-sponsored legislation from California, New Jersey, and Wisconsin. Part III will provide an analysis of international treaties and conventions from the European Union and United Nations. Additionally, Part III will examine the mandated policies of three countries: Denmark, The Netherlands, and Sweden. Part IV will provide a summary of the paid parental leave laws of the jurisdictions discussed in this article. Finally, Part V will provide a proposal for implementing mandated paid parental leave in the United States.

I. PROS AND CONS OF PAID PARENTAL LEAVE

Like every issue, there are positives and negatives to implementing a new policy such as paid parental leave. Advocates of paid parental leave believe that it is important for several reasons, particularly because it provides parents with an income or wage replacement while they stay at home to take care of their newborns as well as providing parents with the ability to bond with their infants, and protection of both the mother and child’s health before and after birth. Opponents of paid parental leave also have reasons for believing that paid parental leave is not beneficial for parents and employers alike. Opponents argue that paid parental leave is harmful to the careers of parents who may take it and that the costs of paid parental leave outweigh any benefits it may provide. This section will discuss the pros and cons of parental leave to provide the reader with an understanding of both sides of the debate.
Advocates of paid parental leave believe that it is important for several reasons. First, parental leave provides parents, particularly mothers, with the opportunity to bond with the child. Second, it can protect the woman’s and child’s health before and after birth. Because of paid parental leave, a parent is more likely to take leave, providing them with the opportunity to bond with the child and protect the child’s health. Third, parental leave provides job security for the parents if they wish to take leave. It provides parents with job security, wage-replacement and benefits during leave, and security from being dismissed while on parental leave.

The first year of an infant’s life is an extremely important time for the infant to develop cognitively. When a mother returns to work soon after giving birth to her child, the infant ends up spending less time with the mother. This can have a detrimental effect on the child, particularly if the arrangements made for childcare are substandard relative to the care that the mother would be providing. Child development experts believe that the absence of mothers in the lives of their children during the first four months of their life can have an impact on both the child’s psychological development and social relationships.

Because children are considered at higher risk for health problems the first few months of their life, they need a parent or primary caregiver to be constantly present to allow for their healthy physical, social and cognitive development. In fact, researchers have found that paid parental leave can reduce child mortality by allowing parents to care for their children within the

12 See id.
13 Id.
15 Id.
16 Id.
18 See id. at 344.
first few months of the child’s life. Infants, whose mothers return to work shortly after their children are born, are less likely to be breastfed, less likely to receive regular check-ups from their pediatricians, and less likely to be “caught up” on their immunizations. Fathers benefit from paid parental leave as well because paid leave provides them with the opportunity to become more involved in childrearing activities. If fathers are provided with paid leave, they are more likely to continue to be involved in childrearing activities after returning to work.

Provisions that provide parental leave protect parents’ jobs and have the ability to give parents wage replacement when their child is born. This leave allows mothers to keep their employment and prevents them from having to sacrifice their economic security when having a child. Once the mother returns to work, both the quality and quantity of time the infant will spend with the mother will likely decrease, especially in situations where the mother is working long hours, and suffering from exhaustion, stress, and a large workload.

The current family leave system in the United States fails to provide any paid leave to a substantial amount of the workforce. Only a few states actually pay maternity benefits through programs that the legislature has established. Otherwise, parents have to rely on their employers providing paid leave voluntarily. The incentive for employers to provide paid leave voluntarily is to retain the employees they have invested in training and who have developed the

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20 See id.
21 See id.
22 Id.
24 Id. at 122.
25 Baum, supra note 14, at 410.
26 GORNICK & MEYERS, supra note 20, at 117.
27 Id.
28 Id. Typically, fathers have to rely on employers to provide paid leave voluntarily because the programs that states have in place to provide mothers with pay because of childbirth do not apply to fathers.
skills required for the particular positions.\textsuperscript{29} Even though there is an incentive for employers to provide paid leave to their employees, many of them do not do so.\textsuperscript{30} In fact, only about seven percent of employers offered paid leave to their employees.\textsuperscript{31} Moreover, there are a substantial number of employees who are working for employers who have less than fifty employees; more than forty percent of private-sector employees are not covered by the FMLA.\textsuperscript{32} Essentially, employees of smaller organizations have less access to health insurance, paid vacations, holidays, and child care resources.\textsuperscript{33}

Advocates believe that businesses would benefit because of paid parental leave. Requiring paid parental leave to be provided to employees would benefit businesses because it is tied to retention and improved productivity of employees.\textsuperscript{34} Research also shows that morale improves and employees tend to be more loyal towards employers that provide paid leave to their employees.\textsuperscript{35} Additionally, international studies show that paid parental leave keeps parents in the workforce and increases the likelihood that the parents will return to the jobs that they held before the birth of the child.\textsuperscript{36}

Opponents have pointed out various reasons for their discontent with paid parental leave. For instance, in cases where a mother is more likely to become withdrawn and depressed if she stays home with her child, working outside of the home may actually improve the quality of time she spends with her child.\textsuperscript{37} Furthermore, when quality childcare is being provided by another caregiver, the benefits of that childcare may actually outweigh the disadvantages of the parent

\textsuperscript{30} See GORNICK & MEYERS, supra note 20, at 117.
\textsuperscript{31} Id.
\textsuperscript{32} Id.
\textsuperscript{33} Id. at 335.
\textsuperscript{34} Id.
\textsuperscript{35} Id.
\textsuperscript{36} Id.
\textsuperscript{37} Peters, supra note 26 at 282.
being absent.\textsuperscript{38} Evidence shows that children in childcare are able to make friends easier, cooperate better, and perform better academically than children that are not in childcare.\textsuperscript{39}

When parents take parental leave, it might become difficult for them to advance in their careers when they return after taking leave.\textsuperscript{40} Because mothers mainly take leaves to take care of their children, they may suffer consequences of that decision when employers begin to view them as temporary employees.\textsuperscript{41} Employers may choose not to hire, train, or promote women within their establishments because they believe that the women will become pregnant and decide to take a length leave or quit their job altogether.\textsuperscript{42} Moreover, there is no evidence that shows a mother working after her child turns one is harmful to the child.\textsuperscript{43}

Paid parental leave does not come without a cost.\textsuperscript{44} Currently, most states do not provide paid benefits through their public systems. Because of this, the costs associated with paid parental leave are incurred privately, by the employers.\textsuperscript{45} If employers wish to provide paid parental leave to their employees, in a state that does not currently mandate it, they have to find a way to finance it out of their own budgets.\textsuperscript{46} In states that have temporary disability insurance programs to provide paid leave to employees, the costs associated with that leave are incurred by both the employers and employees.\textsuperscript{47} The temporary disability insurance programs are financed either wholly with employee contributions or they have varying amounts of contributions from

\textsuperscript{38} Scarlach, \textit{supra} note 17, at 345.
\textsuperscript{39} \textit{Id.}
\textsuperscript{40} See Jane Waldfogel, \textit{International Policies toward Parental Leave and Child Care}, 11 \textsc{The Future of Children} 98, 103 (2001).
\textsuperscript{41} See \textit{id.}
\textsuperscript{42} See \textit{id.}
\textsuperscript{43} Peters, \textit{supra} note 26, at 283.
\textsuperscript{44} See Gornick \& Meyers, \textit{supra} note 20, at 120.
\textsuperscript{45} \textit{Id.}
\textsuperscript{46} See \textit{id.} at 121.
\textsuperscript{47} See \textit{id.} at 120.
both employers and employees.\textsuperscript{48} If paid parental leave is not paid through employers or employees, taxpayer dollars may be used to contribute to providing such leave. Either way, opponents argue that paid parental leave have costs associated with it, requiring the contributions to come from somewhere to pay for it.

Socio-economic equality may become a tiebreaker in the debate for paid parental leave. Unpaid leave fails to provide any benefits or wage-replacement for parents when taking leave, making the impact of unpaid leave much different for people from a lower social-economic class because they simply cannot afford to take time off from work. Paid parental leave provides parents, particularly low-income parents with the ability to take time off from work after childbirth. Parents are able to spend time with their newborns and bond with them instead of jumping right back into their work. Providing wage replacement to the marginalized parents who are working minimum wage jobs gives them the opportunity to take leave without the threat of losing their jobs. Other countries have found that paid parental leave is appropriate to protect the health of mother and child as well as offering parents the time to spend with their infants, without being restricted by finances. It is time for the United States to consider doing the same by providing some form of paid parental leave in order to mitigate inequalities between socio-economic classes.

\textbf{II. THE CURRENT STATE OF PARENTAL LEAVE IN THE UNITED STATES}

The United States has refused to enact legislation that would provide paid leave to parents who are expecting a child or recently have had a child. Because there is no legislation requiring paid leave, employers are not required to include in their benefits packages paid parental leave to their employees. Due to the lack of paid parental leave, parents have a difficult time supporting their families when bringing home a newborn. An astounding seventy-five

\textsuperscript{48} Id. at 335.
percent of low-income employees do not receive any type of sick leave from their employers.\textsuperscript{49} In addition, forty percent of employed, low-income parents do not receive any paid leave from their employers.\textsuperscript{50}

In the 1970’s, society’s expectation that women should leave the workforce once they became pregnant began to change.\textsuperscript{51} The U.S. Census Bureau published a report in 2007 that established this shift in expectation.\textsuperscript{52} In 1961–1965, only thirty-nine percent of women worked full-time during their pregnancies.\textsuperscript{53} In 2001–2003, the U.S. Census Bureau reported that fifty-seven percent of women worked full-time during their pregnancies, an increase of eighteen percentage points.\textsuperscript{54} What is astounding about these numbers is that even though there has been an increase in the number of women working, only forty-nine percent of women in 2001–2003 actually received paid leave benefits from their employers.\textsuperscript{55}

This section of the article will explain the current status of federally mandated, unpaid leave in the United States as provided by the PDA and FMLA. In addition to discussing federal legislation, this section will explore how states have decided to deal with the issue of parental leave. It will include a detailed explanation of California, New Jersey and Wisconsin’s expansion of the parental leave already provided by the federal government.

A. Federal Legislation

\textsuperscript{49} See Ann O’Leary, \textit{How Family Leave Laws Left Out Low-Income Workers}, 28 BERKELEY J. EMP. & LAB. L. 1, 7 (2007). This information is based on a 2005 study conducted by the National Partnership for Women and Families.
\textsuperscript{50} Id.
\textsuperscript{52} See id.
\textsuperscript{53} Id.
\textsuperscript{54} See id.
\textsuperscript{55} See JOHNSON, \textit{supra} note 48, at 18.
Two major pieces of legislation have had an impact in providing individuals with temporary leave from work: the PDA and the FMLA. The PDA provides protection to workers from discrimination on account of pregnancy.\(^{56}\) The PDA was significant at the time of its enactment because state laws had not addressed issues related to pregnant women being discriminated against in the workplace.\(^{57}\) However, the PDA does not provide any leave to women because of pregnancy or childbirth; it only protects women from discrimination in the workplace because of pregnancy or childbirth.

In 1993, the FMLA was passed by Congress to guarantee employees the ability to take unpaid leave in order to take care of their family and medical issues.\(^{58}\) Congress recognized that employers did not have policies that accommodated parents in the workplace, and parents were being forced to choose between their jobs or taking care of their families.\(^{59}\) The FMLA provides more protection than the PDA, but still falls short. The FMLA does not cover all employees and employers, and it does not provide employees with any paid benefits during leave. The next two sub-sections will delve into the PDA and FMLA to expand upon the benefits of the Acts and their shortcomings.

1. **Pregnancy Discrimination Act of 1978**

Enacted in 1978, the PDA was Congress’s response to the United States Supreme Court opinion in *General Electric Co. v. Gilbert*.\(^{60}\) In *Gilbert*, several female employees filed suit against their employer because it provided employees with a plan that paid sickness and accident benefits, but did not include benefits for disabilities arising from pregnancy.\(^{61}\) The female

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\(^{57}\) Id.

\(^{58}\) See O’Leary, *supra* note 46, at 38.

\(^{59}\) See 29 U.S.C.A. § 2601(a) (West 2011).

\(^{60}\) Shiu & Wildman, *supra* note 53, at 126.

employees alleged that the exclusion of disabilities related to pregnancy from the plan was sex discrimination and violated Title VII of the Civil Rights Act of 1964. The Court concluded otherwise, stating that the plan was similar to an insurance package, which may cover some things while excluding others. The Court determined that it was impossible to find a discriminatory effect just because the employer’s plan to offer sickness or temporary disability benefits was less than inclusive by not offering the same benefits to women who become disabled due to pregnancy. Therefore, the United States Supreme Court held that the exclusion of disabilities arising from pregnancy from the employer’s plan did not violate Title VII.

Congress enacted the PDA to clarify Title VII and to ensure that women have equal access to the same employee benefits that are provided to men. The PDA expanded the definitions of the terms in Title VII “because of sex” or “on the basis of sex” to include “because of or on the basis of pregnancy, childbirth, or related medical conditions.” This amendment to Title VII forbids employers from discriminating against women who are pregnant and requires that employers do not treat pregnant women differently than other employees who become sick or temporarily disabled.

The PDA is not perfect; it does not address all the issues related to working women who are pregnant or have children. The PDA does not mandate that employers give pregnant women preferential treatment with respect to hiring, firing, providing sick leave, or supplying medical or disability benefits. Another downfall of the PDA is that it does not guarantee that the pregnant

62 Id.
63 Id.
64 Id. at 138.
65 Id. at 145-46.
66 O’Leary, supra note 46, at 28.
68 Id.
69 O’Leary, supra note 46, at 29.
woman’s position will be protected until she returns to work after leave.\textsuperscript{70} The PDA only requires that employers treat pregnant employees the same as other similarly situated employees who are sick or temporarily disabled.\textsuperscript{71}

2. Family Medical and Leave Act

Congress passed the FMLA after recognizing the limits of Title VII and the PDA. Congress intended to guarantee employees unpaid leave to care for their families and their medical needs.\textsuperscript{72} The primary purpose of Congress in creating the FMLA was to balance the demands of the workplace and the legitimate business interests of employers with the needs of families by entitling employees to reasonable leave for specific reasons.\textsuperscript{73} Congress found that employers lacked policies accommodating parents in the workplace and because of the lack of the policies, parents were being forced to choose between having a job and parenting or taking care of a sick family member.\textsuperscript{74} Congress anticipated that the FMLA would promote equal employment opportunities for men and women by requiring eligible employers to provide employees with the ability to take reasonable leave.\textsuperscript{75}

Under the FMLA, employers are required to provide employees with twelve weeks of unpaid leave in a twelve-month period.\textsuperscript{76} However, not every employer in the country is required to provide this leave to its employees. Only employers with fifty or more employees are required to provide unpaid leave under the FMLA.\textsuperscript{77} Furthermore, not every employee qualifies for unpaid leave. An employee has to work at least 1,250 hours within the past twelve months to be

\textsuperscript{70} Id.
\textsuperscript{71} Id.
\textsuperscript{72} Id. at 38.
\textsuperscript{73} 29 U.S.C.A. § 2601(b).
\textsuperscript{74} 29 U.S.C.A. § 2601(a).
\textsuperscript{75} 29 U.S.C.A. § 2601(b)(5).
\textsuperscript{76} 29 U.S.C.A. § 2612.
\textsuperscript{77} 29 U.S.C.A. §2611(4).
considered eligible to qualify for FMLA leave.\textsuperscript{78} If an employee is eligible to take unpaid leave under the FMLA, the employee may do so because of the birth of an employee’s child in order to take care of that child.\textsuperscript{79}

The FMLA does provide protections to all employees—no matter their gender—and ensures that employees do not have to worry about losing their jobs and their health insurance if they become pregnant or need to take care of a child or a family member.\textsuperscript{80} A woman who may not be able to afford to take the whole twelve weeks of leave can still feel secure because she will still have a job when she returns from giving birth. Additionally, the passage of the FMLA has influenced employers to make changes, even if there is no requirement to do so.\textsuperscript{81}

Although there are many benefits to the FMLA, the FMLA seems to favor women who benefit from higher education and higher incomes.\textsuperscript{82} This is evidenced by the fact that the FMLA does not require the leave to be paid. Additionally, under the FMLA, certain employers are not required to provide unpaid leave to their employees. Individuals who work less than 1,250 hours a year (which is an average of twenty-four to twenty-five hours a week) or those individuals who do not work for eligible employers (an employer with fifty or more employees) are not covered under the FMLA and are not guaranteed leave.\textsuperscript{83}

\textbf{B. State Legislation}

\textsuperscript{78} 29 U.S.C.A. § 2611(2) (West 2011).
\textsuperscript{79} 29 U.S.C.A. § 2612. An eligible employee make take leave under the FMLA for various reasons. These reasons are (1) because of the birth of the employee’s child in order to take care of that child, (2) the employee receives placement of a child for adoption or foster care, (3) the employee has to take care of a spouse, son, daughter, or parent who has a serious health condition, (4) the employee is unable to perform the functions of his or her position due to a serious health condition, or (5) because of any qualifying emergency due to the fact that the employee’s spouse, son, daughter, or parent is on active duty in the Armed Forces.
\textsuperscript{80} O’Leary, \textit{supra} note 46, at 38.
\textsuperscript{81} \textit{Id.}
\textsuperscript{82} \textit{Id. at 39.}
\textsuperscript{83} \textit{Id.}
Several states have responded to the limitations of the FMLA. Although the FMLA provides parents only with unpaid leave, some states have recognized the need to extend FMLA benefits or compensate parents taking leave. The District of Columbia expands the coverage of the FMLA to employers that have twenty or more employees and provides leave to employees who have worked for 1,000 hours (instead of the 1,250 hours required by the FMLA). In addition to the District of Columbia, Maine extends FMLA coverage to employees working for employers with at least fifteen employees. However, Maine grants only ten weeks of leave for those employees. As of 2009, the state of Washington approved partially-paid parental leave to parents to care for a newborn. Washington’s leave provides parents with a benefit of $250 per week, for up to five weeks of leave.

1. California

In 2002, California passed the Paid Family Leave program (PFL) and became the first state to provide its residents with paid parental leave. In order to be able to provide its residents with paid leave, California expanded its State Disability Insurance program. The legislature amended the definition of disability to include conditions relating to pregnancy and childbirth. This change provides California residents with up to six weeks of compensation if they take time

86 Id.
87 Id.
88 Id. at 32.
89 Id.
90 Id. at 33.
92 Id.
93 CAL. UNEMP. INS. CODE § 2626 (West 2011).
off from work due to pregnancy or childbirth.\textsuperscript{94} The compensation provided to employees who qualify is fully funded by employee contributions, meaning there are no direct costs for employers.\textsuperscript{95}

Although the PFL program does not protect individuals from losing their jobs, additional protections are afforded under the California Family Rights Act (CFRA).\textsuperscript{96} The CFRA provides that an employer may not refuse a female employee who is pregnant or suffering from a related medical condition from taking a reasonable amount of leave.\textsuperscript{97} The period of leave should not be more than four months.\textsuperscript{98} If the employee chooses to take leave, the employer cannot prohibit the employee from taking any accrued vacation time during the leave.\textsuperscript{99}

In 2009–2010, a survey was conducted by Eileen Appelbaum and Ruth Milkman questioning 500 individuals in California who encountered an event in the past four years that would have triggered paid family leave.\textsuperscript{100} Most individuals, who knew about the leave program and took time off, found that the California program was easy to use and that they received the paid leave in a timely manner.\textsuperscript{101} Among respondents who actually took leave, ninety-one percent of them found that the use of the program positively affected their ability to care for their newborn.\textsuperscript{102} Over seventy-five percent of respondents indicated they were either very or

\textsuperscript{94} Collins, supra note 82, at 310. Individuals may receive up to six weeks, per year of partial pay for leave to take care of a newborn, adopted baby, foster baby, or seriously ill family member.


\textsuperscript{96} \textit{APPELBAUM \& MILKMAN}, supra note 88, at 4.

\textsuperscript{97} \textit{CAL. GOV’T CODE} § 12945(a) (West 2011).

\textsuperscript{98} \textit{Id.}

\textsuperscript{99} \textit{Id.}

\textsuperscript{100} \textit{APPELBAUM \& MILKMAN}, supra note 88, at 3.

\textsuperscript{101} \textit{Id.} at 5.

\textsuperscript{102} \textit{Id.}
somewhat satisfied with the length of time provided for their family leave. More than ninety-five percent of respondents who took leave returned to work after leave.

Based on the 2009–2010 survey, the PFL program is not perfect and has some downfalls. First, more than half of individuals who experienced an event that the program would have covered were not aware that the program even existed. Additionally, thirty-seven percent of individuals who were aware of the paid leave and needed leave did not apply for the leave because they were afraid of negative consequences, such as their employer being unhappy with their decision to take leave or actually being fired from their job. Moreover, about thirteen percent of employers indicated that they incurred an increase in costs because they had to hire and/or train employees to replace those employees that were out on leave.

Although the PFL program has not been able to increase the awareness of the program among its residents, it has been an overall successful program. There has been a substantial increase in the number of fathers who have taken leave because PFL provides leave equally to men and women. Over eighty-six percent of employers who responded to the survey indicated that there were no cost increases for them in the implementation of the program. There were even a minority of employers who indicated that the implementation of the program had resulted in savings for their companies. Additionally, over seventy-five percent of the employees stated

103 Id. at 24.
104 Id. at 25.
105 See id. at 4. Groups of individuals that were least likely to have heard about the program were low-wage workers, immigrants, and Latinos.
106 See id. at 4-5.
107 Id. at 8.
108 Appelbaum & Milkman, supra note 92.
109 APPELBAUM & MILKMAN, supra note 88, at 8.
110 Id.
that they were satisfied with the length of leave provided by the statute and ninety-five percent of employees found that the program positively affected their ability to care for their newborns.¹¹¹

However, there is still room for the government of California to improve the success of its program. Some of the improvements should include increased advertising or publicizing in order to spread information of the program to individuals who may not be aware of it (including immigrants, low-income workers, and Latinos), increasing the amount of wage replacement from fifty-five percent to two-thirds of an employee’s wages, and extending job protection to individuals who take leave.¹¹²

2. New Jersey

The New Jersey legislature enacted the New Jersey Family Leave Act (NJFLA) upon finding that the number of families with both parents or a single parent working outside of the home substantially increased.¹¹³ The legislature also found that, as a result of the lack of employment policies that accommodate working parents, many individuals have to choose between their jobs and parenting.¹¹⁴ The legislature enacted NJFLA because it found it necessary to guarantee jobs to employees who wish to take leave after the birth or placement of a child.¹¹⁵ It is a New Jersey state policy to protect and encourage stability and economic security of families.¹¹⁶

New Jersey provides that an employee is entitled to family leave of twelve weeks in a twenty-four month period.¹¹⁷ If an employee chooses to exercise his right to family leave, the employee is entitled to return to the position that the employee held before the leave, or be

¹¹¹ See id. at 5, 24.
¹¹² See id. at 30.
¹¹⁴ Id.
¹¹⁵ See id. Additionally, the New Jersey Family Leave Act guarantees leave to individuals who wish to take leave due to the illness of a family member.
¹¹⁶ Id.
placed in a position equal to the previous position with the same seniority, employment benefits, and pay as before.\textsuperscript{118} In order for an employee to be qualified to receive leave, the employee has to have worked for at least twelve months with an employer and for at least 1,000 hours in the twelve months immediately prior to the leave.\textsuperscript{119}

Also, New Jersey entitles employees who are unable to work because of sickness, pregnancy, or childbirth to short-term disability benefits of up to twenty-six weeks.\textsuperscript{120} New Jersey included family temporary disability insurance as an avenue for an individual to receive disability benefits under the NJFLA.\textsuperscript{121}

The NJFLA is an effective program because it provides employees with the ability to take leave and to receive compensation under its temporary disability insurance.\textsuperscript{122} Additionally, New Jersey provides job security to employees who wish to take leave.\textsuperscript{123} Finally, the NJFLA expands the leave already provided by the FMLA to individuals who have worked only 1,000 hours in the past twelve months, giving those individuals who are not covered under the federal program the opportunity to take parental leave.\textsuperscript{124}

3. \textit{Wisconsin}

Wisconsin is an example of a state that expands on the benefits of the FMLA but fails to provide paid leave. Wisconsin provides unpaid family leave to an employee who has worked for


\textsuperscript{120} \textit{JOI DI GRANT, TAYLOR HATCHER & NIRALI PATEL, NATIONAL PARTNERSHIP FOR WOMEN & FAMILIES, EXPECTING BETTER: A STATE-BY-STATE ANALYSIS OF PARENTAL LEAVE PROGRAMS 31 (2005), available at} http://www.nationalpartnership.org/ site/DocServer/ParentalLeaveReportMay05.pdf?docID=1052.

\textsuperscript{121} See \textit{N.J. Stat. Ann.} § 43:21-27(o) (West 2011). The parent is considered covered for purposes of receiving the disability benefits if the parent is taking leave to take care of a family member due to a serious health condition or because of childbirth or adoption of a child.

\textsuperscript{122} \textit{GRANT, HATCHER, & PATEL, supra} note 117, at 31.


the same employer for more than one year and has worked for at least 1,000 hours in that year.125 According to the statute, an employer may take up to six weeks of family leave in a twelve-week period due to the birth of the employee’s child, as long as the leave begins within the first sixteen weeks after the child’s birth.126 However, employees who take family leave are not entitled to receive salary, wages, or compensation.127

Wisconsin also requires that the employer immediately place the employee in an employment position once the employee returns from leave.128 Similar to New Jersey law, Wisconsin’s expansion of FMLA leave requires employers to provide leave to employees if they have worked 1,000 hours in the past year, averaging to about 20 hours per week.129 Although Wisconsin currently does not provide paid leave to parents, it does reduce the number of hours required to work by an employee in order to qualify for unpaid leave, providing more parents with the ability to take time off from work due to childbirth or pregnancy.130

III. PARENTAL LEAVE INTERNATIONALLY

The international community provides more benefits to individuals in relation to parental leave, than the United States does. The United States should revamp the leave it already provides under FMLA to take some of the characteristics that other countries have found essential to their parental leave policies. An overhaul of the FMLA becomes more imperative because more women than ever before are working during their childbearing years and families are becoming

126 Wis. Stat. Ann. § 103.10(3). (The statute also provides for a qualified employee to take leave because of the adoption of a child if it occurs within sixteen weeks of the placement of the child and for the care of an employee’s spouse, child, partner, or parent if the spouse, child, partner or parent has a serious health condition. However, the statute restricts the amount of time of unpaid leave an employee can only to take care of a spouse, child, partner or parent to only two weeks).
128 Wis. Stat. Ann. § 103.10(8). Similarly to the FMLA, Wisconsin law requires that the employer must place the employee in his or her original position if it is vacant when the employee returns, or an equal position which has equal compensation, benefits, shift, and hours of employment as the position the employee held before leave.
130 See id.
reliant on the income from both parents. However, there are some flaws to the international parental leave policies. Women are still subject to unequal treatment in the workforce because of their gender and their ability to have children. Additionally, even though some countries have mandated paid maternity leave, there is a gap between what the law requires and what is actually being done in practice.

This section of the article will discuss the status of parental leave internationally. First, the article will elaborate on the conventions and treaties of the International Labour Organization and the European Union. Second, this section will delve into the parental leave policies of three countries, Denmark, The Netherlands, and Sweden. Third, it will investigate how the policies are affecting the population and discuss potential issues with the policies.

A. International Organizations

The International Labour Organization (ILO) and the European Union have both instituted conventions and directives that provide for paid maternity leave. The ILO requires that its member states provide maternity leave under its Maternity Protection Convention. The Maternity Protection Convention states that all employed women are entitled to maternity leave and provides them with fourteen weeks of paid leave. The Convention also protects against dismissal because of pregnancy or absence related to childbirth.

The European Union also requires that its member states provide fourteen weeks of maternity leave, with compensation. The European Union’s European Council has also established a directive to protect women from being discharged due to absence in relation to

131 See LANDAU & BEIGBEDER, supra note 11, at 133.
132 Id.
133 Id.
135 Id. at art. 4 & 6.
136 Id. at art. 7.
pregnancy and protection against discrimination on the basis of sex. Individuals who take maternity or paternity leave are entitled to return to their original positions or an equivalent once they return to their jobs after taking leave.

1. International Labour Organization

In 2000, the ILO revised the Maternity Protection Convention (Convention) of 1952. The Convention was revised because the ILO wanted to further encourage equality of all women in the workplace as well as promote the health and safety of mother and child. The changes to the Convention require that all employed women be covered by maternity leave and increased the minimum length of maternity leave from twelve to fourteen weeks. The Convention thus provides that women are entitled to no less than fourteen weeks of maternity leave. According to the Convention, the leave must include six weeks of mandatory leave, requiring the mother to take the leave after the birth of the child. The mandatory leave is in order to protect the health

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140 Created in 1919, the ILO was established to reflect the ideal that peace could be accomplished only through social justice. The ILO was created in the Treaty of Versailles, which ended World War I. The first International Labour Conference adopted several conventions related to labor issues, including a convention establishing maternity protection. There six international conventions adopted at the first conference dealt with restricting the hours of work, unemployment, maternity protection, working at night, and a minimum age restriction. See International Labour Organization, Origins and History, http://www.ilo.org/global/about-the-ilo/history/lang--en/index.htm, (last visited May 5, 2011). In 1946, the ILO became the first specialized agency of the newly created United Nations. INTERNATIONAL LABOUR ORGANIZATION, THE ILO AT A GLANCE 4 (2007) available at http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@webdev/documents/publication/wcms_082367.pdf. The ILO is the agency that oversees the creation and implementation of international labor standards. Id. at 3. The policies of the ILO are created at the International Labour Conference, which occurs once a year and brings together its governing body. The ILO is unique because its governing body is comprised of not only government members from various countries, but employer and worker members as well. Id. at 9.
141 Convention Concerning the Revision of the Maternity Protection Convention (revised), 1952, supra note 131, at preamble.
142 Id.
143 LANDAU & BEIGBEDER, supra note 11, at 136. However, the Convention allows countries to exclude certain categories of workers when there would be problems with providing them with maternity leave.
144 Convention Concerning the Revision of the Maternity Protection Convention (revised), 1952, supra note 131, at art. 4.
145 See id.
of mother and child. The twenty countries that ratified the Convention must provide cash benefits to women who are taking leave to ensure that they will be able to sustain themselves and their children in suitable conditions of health and standard of living. The United States has not ratified the Convention, and thus is not required to follow the provisions of the Convention.

Additionally, the Convention provides that it is unlawful for the employment of a woman who is pregnant or absent on leave to be terminated by her employer. The burden lies with the employer to show that its reasons for dismissal had nothing to do with the woman’s pregnancy or childbirth. At the end of the woman’s maternity leave, the Convention provides her with the right to return to her previous position or an equal position at the same pay.

2. European Union

The European Council has passed a series of Directives that have clarified its policy on pregnancy and maternity protection. The first Directive, 76/207/EEC of 1976, was adopted to ensure the equal treatment of men and women in employment. When guaranteeing equal treatment in the workplace, the Directive clarified that no discrimination shall take place because of sex, either directly or indirectly. Also, the Directive ensures that although there shall be no

146 Id.
147 See id. at art. 6.
148 Id. at art. 7.
149 Id.
150 Id.
151 The European Council was established in 1974 as an informal forum to facilitate discussion between governments. Since its creation, the European Council has become a body of the European Union that institutes goals for the organization and tries to set forth the path to accomplish them. In 2009, the European Council formally became one of the seven institutions of the European Union. Today, the role of the European Council is to define the direction and priorities of the European Union. The Council consists of heads of government and they meet twice every six months. Decisions are made by consensus unless a treaty specifies that a decision can be made by unanimity or a majority of the Council. Europa, European Council – an Official Institute of the EU, http://www.european-council.europa.eu/the-institution.aspx, (last visited May 5, 2011).
152 LANDAU & BEIGBEDER, supra note 11, at 138.
154 Id. at art. 2.
discrimination on the basis of sex, it is without prejudice to legislation that provides for pregnancy and maternity protection for women.\textsuperscript{155}

Council Directive 92/85/EEC was executed in 1994 to set specific guidelines for the rights of working women concerning childbirth.\textsuperscript{156} The Directive provides that a minimum of fourteen weeks of maternity leave be provided by the member states of the European Union.\textsuperscript{157} Additionally, the Directive requires that all women receive compensation.\textsuperscript{158} The compensation has to be at least the amount of pay that the woman would be entitled to if she were on sick leave.\textsuperscript{159} The Directive also provides that women cannot be discharged if they are absent for long periods of time due to pregnancy.\textsuperscript{160} From the beginning of their pregnancy to the conclusion of their maternity leave, employers cannot fire women who are protected under the Directive.\textsuperscript{161}

Council Directive 2002/73/EC of 2002 was adopted to amend Directive 76/207/EEC.\textsuperscript{162} It amends equal treatment to mean that there shall be no discrimination based on sex, either directly or indirectly.\textsuperscript{163} Also, the Directive expands on the idea of maternity leave and states that a woman on maternity leave shall be entitled to return to her job or an equivalent position after leave.\textsuperscript{164} If a woman is treated less favorably because of pregnancy or maternity leave, the Directive makes it clear that the treatment will constitute discrimination.\textsuperscript{165} Under the Directive, if a country provides paternity leave, it must take steps necessary to protect individuals who take

\textsuperscript{155} \textit{Id.} at art 2(3).
\textsuperscript{156} \textit{RAISNER, supra} note 135, at 533.
\textsuperscript{157} \textit{Id.} at 534.
\textsuperscript{158} \textit{Id.}
\textsuperscript{159} \textit{Id.}
\textsuperscript{160} \textit{Id.}
\textsuperscript{161} \textit{Id.}
\textsuperscript{163} \textit{Id.} The Directive also defines direct discrimination as being an instance when a person is treated less favorably because of sex than another in a comparable situation. Indirect discrimination is defined as where a neutral practice would put a person of a particular sex at a disadvantage compared to a person of the other sex, unless the practice had a legitimate aim and was appropriate and necessary.
\textsuperscript{164} \textit{Id.}
\textsuperscript{165} \textit{Id.}
the leave from dismissal. Individuals who take paternity leave shall be entitled to return to their original position or one that is equivalent to the one that they held previously.

**B. Individual Countries**

The length and time of parental leave provided by individual countries differs substantially. Some countries (such as Belgium, Portugal, and The Netherlands) follow the minimum period of leave required by the European Council’s Directive of three months per parent. Other countries (such as France, Spain, and Austria) increase the period of leave to when the child reaches the age of three. Countries also provide that the leave can be individual, meaning that each parent is entitled to a period of leave that may be transferred to the other parent, while other countries allow the leave to be family-based, meaning that the leave may be shared by both parents of the child. The rest of the countries tend to mix both the individual rights and family-based rights. In addition to differences between the length and time of parental leave, individual countries have varying policies on the wage replacement of individuals who take leave. There are some countries (such as Greece, Spain, and Ireland) that do not grant any replacement income while an individual is on leave. However, most of the countries do pay a flat rate to an individual on leave.

**1. Denmark**

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166 Id. These rights also extend to countries that provide adoption leave and the individuals that decide to take that leave.
167 Id.
169 Id.
170 Id.
171 Id. at 73.
172 Id.
173 Id.
174 Id.
The Danish are currently considered among the happiest Europeans in relation to their family lives. Elements of Denmark’s policy that aim to support families include flexible working hours, extensive leave, and universal childcare. Denmark’s family leave system is considered one of the most generous and flexible systems of the European Union.

Denmark’s family leave system entitles parents to a total of fifty-two weeks of family leave. Eighteen of the weeks are considered maternity leave, two weeks are paternity leave, and an additional thirty-two weeks of leave may be split between the two parents. Parents eligible for the fifty-two weeks of leave are provided with a cash benefit of thirty to ninety percent of their salary, paid by their local government. Parents are considered eligible for the leave if they have worked 120 hours in the thirteen weeks prior to the leave. Four weeks of maternity leave are required to be taken before the child is born. Mothers are required to take two weeks of leave immediately after the birth of the child, but may return to work before the end of the remaining twelve weeks of leave.

Although Denmark’s parental leave system is considered one of the most generous in the world, the government continues to place the work-life balance of families high on the political agenda. In recognition of how important family issues are, Denmark established the Family

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176 Id.
177 RAY, supra note 7, at 9.
178 Id. Fathers may take their two weeks of paternity leave anytime during the mother’s maternity leave, after the child is born.
179 Id.
180 Id. If the parent has an agreement with the employer that the employer will pay full wages during leave, then the government will pay the usual benefit to the employer as a partial reimbursement. Parents are also eligible for leave if they are “self-employed, receiving unemployment benefits, or in a vocational training program”.
181 Id.
182 Id.
183 Id.
184 See Europa: European Alliance for Families, Denmark: Toward Ideal Conditions for Balancing Family and Work, supra note 171.
and Working Life Commission (Commission).\textsuperscript{185} The Commission was established to identify difficulties that exist between balancing work and life outside of work and to come up with solutions to eliminate those difficulties.\textsuperscript{186} Even though Denmark’s system may be too progressive to establish in the United States at this time, there are parts of its policy that the United States can incorporate into its legislation such as a Commission similar to Denmark’s.

2. The Netherlands

The Netherlands is considered a country that provides its people with a high degree of satisfaction in relation to their family life.\textsuperscript{187} Although the Netherlands does not have the most generous scheme of parental leave among the countries that provide paid leave, the government has introduced a number of policies to encourage individuals to strike a balance between professional and family responsibilities.\textsuperscript{188} Some of the policies include a commitment to flexible childcare, providing parenting skills, and an increase of parental leave from thirteen weeks to twenty-six weeks.\textsuperscript{189}

In the Netherlands, women are entitled to sixteen weeks of maternity leave.\textsuperscript{190} Women are required to take at least ten weeks of maternity leave, four weeks before the birth of the child and six after the birth of the child.\textsuperscript{191} Fathers are guaranteed two days of paternity leave.\textsuperscript{192} The Netherlands’ national unemployment insurance fund pays women 100 percent of their salary,

\begin{itemize}
\item \textsuperscript{185} See id.
\item \textsuperscript{186} See MINISTRY OF FAMILY AND CONSUMER AFFAIRS, FAMILY POLICY REPORT 18 (Nov. 2005), available at http://www.sm.dk/data/Lists/Publikationer/Attachments/322/Family_policy_report.pdf.
\item \textsuperscript{188} See id.
\item \textsuperscript{189} See id.
\item \textsuperscript{190} RAY, supra note 7, at 20.
\item \textsuperscript{191} Id.
\item \textsuperscript{192} Id.
\end{itemize}
capping it at an amount that is slightly higher than the national average earnings.\textsuperscript{193} Additionally, employers are required to save the individuals’ jobs for them while they are taking maternity leave.\textsuperscript{194}

The Netherlands also provides parental leave for an employee taking care of a child under eight years old.\textsuperscript{195} In order for an employee to be entitled to parental leave, it is required that the employee worked for an employer for one year or more.\textsuperscript{196} Both the mother and the father of a child are entitled to take up to twenty-six weeks of parental leave.\textsuperscript{197} It is considered normal for a parent to work half of his or her normal working hours to be able to take leave for a total of one year.\textsuperscript{198} This means that if the parent normally worked forty hours a week, he or she could cut down his or her hours to half of those hours, working only twenty hours a week to make the parental leave last for an entire year. For a mother, the parental leave may directly follow the maternity leave that she takes.\textsuperscript{199} If an employee requests parental leave, an employer cannot refuse to grant the request.\textsuperscript{200}

The Netherlands parental leave policy is not as generous as the policies provided by Denmark but they have some great initiatives. The Netherlands provides its parents with a reduction in hours in order to take care of their newborns. The Netherlands finances their

\textsuperscript{193} Id. Women who are self-employed may also receive the benefit, as long as they commit to continuing their business after their child is born. Also, women who are receiving unemployment benefits and women who lost their job ten weeks before the birth of their child are entitled to receive the benefit.
\textsuperscript{194} Id.
\textsuperscript{196} Id.
\textsuperscript{197} Id.
\textsuperscript{198} See id.
\textsuperscript{199} Id.
\textsuperscript{200} Id.
parental leave policy is paid by the national unemployment insurance fund, something that seems to be popular internationally. 201

3. Sweden

Sweden’s parental leave policy is considered the most generous policy in the world. 202 Its Parental Leave Act provides unpaid maternity leave to female employees in connection to the birth of a child or breastfeeding. 203 In addition, the paid parental leave is available to employees who are mothers and fathers. 204 Although the maternity leave is not required to be paid, mothers often take the maternity leave at the same time that they take the parental leave, providing them with the paid parental benefit. 205

Sweden grants five different types of leave for employees to care for their children. 206 The first type of leave Sweden provides is maternity leave for a female employee who gives birth to a child. 207 A mother is entitled to fourteen weeks of leave in relation to the birth of her child; seven weeks can be taken before the birth of the child and seven weeks after the child’s birth. 208 Second, Sweden provides paid leave for a parent until the child turns eighteen months old. 209 The parent who takes this leave is entitled to receive the full parental benefit under Sweden’s National Insurance Act. 210 The third type of leave Sweden offers is paid leave that results in a

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201 See RAY, supra note 7, at 21.
203 Id.
204 Id.
205 Id.
207 Id.
reduction of the parent’s normal working hours. If a parent wishes to take partial leave, he or she may receive the parental benefit in relation to the reduction of hours that the parent takes. Last but not least, Sweden provides general leave for a parent to take care of a child. However, if a parent wishes to reduce the number of hours he or she works to take care of the child after the child reaches the age of eight, there is no paid leave provided.

Additionally, fathers are guaranteed two weeks of paternity leave. The maternity and paternity leave are provided to parents without regard to their job tenure. However, if an employee wishes to take the eighteen months of parental leave, he or she is required to have worked with his or her current employer for at least six months in the past year or twelve months in the past two years. The number of paid days that can be taken by a two-parent family is 480 days. If parents have multiple births, they will receive an additional 180 days of paid leave for each additional child.

Sweden provides some additional protections for employees who have taken leave in connection with childbirth. The statute requires that an employer does not discriminate against a person applying for a job or an employee because of reasons that are related to parental leave.

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212 Id.
216 RAY, supra note 7, at 27.
217 Id.
218 Id.
219 Id.
220 Id.
An employer cannot discriminate against an employee because of leave when deciding employment issues like promotions, training, vocational training, pay, management or distribution of work, or termination.\textsuperscript{222} Sweden also provides protection from an employee being terminated or dismissed by an employer for reasons related to leave.\textsuperscript{223}

There are benefits to the Swedish model of parental leave. Sweden is an example of a country that has separated the expansion of its parental leave policies from the expansion of its sick leave benefits.\textsuperscript{224} Sweden shows that it is possible to expand parental leave benefits without necessarily expanding the sick leave benefits the same.\textsuperscript{225} Because of Sweden’s separation of the two types of benefits, the overuse and abuse of the Swedish sick leave benefits does not detract from the parental leave policy.\textsuperscript{226} Incorporation of the separation of the sick leave benefits and that parental leave policy might be a substantial benefit to the policies that the United States already has in place.

\textbf{IV. \textit{Summary}}

As indicated in Table 1, there are significant variations in the type of leave provided among the various jurisdictions that have been discussed in this article. Not only are their variations in the leave policies between the United States and other countries, but the United States has varying leave policies within its own country, because certain states have expanded the leave benefits that the FMLA provides to employees. Some of the variations among jurisdictions include: the length of time provided to employees for leave, the length of leave that a parent is required to take, the differentiations between leave benefits provided to fathers as

\begin{itemize}
\item \textsuperscript{222} Id.
\item \textsuperscript{224} See Suk, supra note 197, at 40.
\item \textsuperscript{225} See id.
\item \textsuperscript{226} See id.
\end{itemize}
opposed to mothers, the amount of hours worked by an employee to qualify for leave, and the amount of wage replacement provided to employees while they are on leave.

One point of differentiation among jurisdictions is the length of time provided to employees for leave. Under the FMLA, the United States provides employees, both male and female, with a total of twelve weeks of unpaid leave per year. This length of time is the shortest among all the jurisdictions discussed in this article. New Jersey has expanded that length of time by providing employees with the option to take up to twenty-six weeks of leave. Internationally, employees are much better off. Denmark generously provides its parents eighteen weeks of maternity leave, two weeks of paternity and an additional thirty-two weeks to be split between the parents, totaling fifty-two weeks of leave. The Netherlands entitles mothers to sixteen weeks of maternity leave and fathers to two days of paternity leave, with an additional twenty-six weeks of parental leave. Sweden is a little more complicated, providing fourteen weeks of maternity leave, two weeks of paternity leave and the ability for one parent to take full leave until the child is eighteen months old.

There are some jurisdictions, as discussed in this article that require parents to take a certain amount of leave. Currently, the United States does not have anything in place that makes it mandatory for a mother or father to take time off immediately before or after the birth of the child. In Denmark, mothers are required to take four weeks of maternity leave before the child is born and two weeks of leave immediately after the child is born. In the Netherlands, mothers are required to take at least ten weeks of maternity leave, four weeks before the birth of the child

\[228\] See GRANT, HATCHER & PATEL, supra note 117, at 31.
\[229\] RAY, supra note 7, at 9.
\[230\] Id. at 20.
\[232\] RAY, supra note 7, at 9.
and six weeks immediately after the birth of the child and fathers are guaranteed two days of leave.\textsuperscript{233} Much like the United States, Sweden does not require a minimum amount of leave to be taken by parents.

In all jurisdictions discussed in this article, the fathers of children are provided with less time of leave than mothers are. However, some jurisdictions do provide leave specifically to fathers. In the United States, there are no amounts of leave provided specifically for fathers, but the statutes are gender neutral and either mothers or fathers can take the leave. Denmark provides fathers with two weeks of paternity leave with the ability to split thirty-two weeks with the mothers.\textsuperscript{234} The Netherlands provides fathers with two days of paternity leave and the ability to take an additional twenty-six weeks of parental leave.\textsuperscript{235} In Sweden, fathers are able to take two weeks of paternity leave with the option to take parental leave until the child is eighteen months old, if the mother does not opt to take the parental leave.\textsuperscript{236}

The jurisdictions vary on the amount of hours it is required for an employee to work in order to qualify for leave. Under the FMLA, an individual has to work 1,250 hours in the past twelve months in order to qualify for unpaid leave.\textsuperscript{237} Wisconsin and New Jersey both reduce the amount of hours required to qualify for leave to 1,000 hours, or roughly twenty hours a week.\textsuperscript{238} In Denmark, parents are considered eligible for leave if they have worked just 120 hours in the past thirteen weeks, averaging to about nine hours a week.\textsuperscript{239} In the Netherlands, parents taking parental leave are required to work for an employer or one year or more, but there is no

\textsuperscript{233} Id. at 20.
\textsuperscript{234} RAY, supra note 7, at 9.
\textsuperscript{235} Ministry of Social Affairs and Employment, supra note 191.
\textsuperscript{237} 29 U.S.C.A. § 2611 (2).
\textsuperscript{238} See Wis. STAT. ANN. § 103.10(2)(c); N.J. STAT. ANN. § 34:11B-3(e).
\textsuperscript{239} See RAY, supra note 7, at 9.
minimum amount of hours required.\textsuperscript{240} Also, in the Netherlands, parents taking maternity and paternity leave, do not have to work a minimum amount of hours with their employer, but in order for them to take parental leave, it is required that they worked six months in the past year with the same employer.\textsuperscript{241}

The amount of wage replacement provided to parents by the jurisdictions discussed in this article fluctuates. Under the FMLA, the United States requires no wage replacement for parents when they take leave. Some of the states, such as New Jersey and California, have tried to expand this by providing compensation to parents. California provides up to six weeks of compensation to residents who take time off from work due to pregnancy or childbirth.\textsuperscript{242} New Jersey entitles employees to up to twenty-six weeks of disability benefits.\textsuperscript{243} Denmark provides a cash benefit to parents for up to fifty-two weeks of leave of up thirty to ninety percent of their salary.\textsuperscript{244} In the Netherlands, mothers are paid 100 percent of their salary through an unemployment insurance fund for the sixteen weeks of maternity leave they are required to take.\textsuperscript{245} Sweden provides its parents with full parental benefits under its National Insurance Act.\textsuperscript{246}

In summarizing the laws, it is important to point out that all of the jurisdictions discussed in this article have better benefits than the FMLA. As mentioned previously, 163 out of 168 countries studied in 2004 had provided some form of paid leave due to childbirth.\textsuperscript{247} However, the United States has not moved to providing paid parental leave. It has been implemented by

\begin{thebibliography}{1}
\bibitem{240} See Ministry of Social Affairs and Employment, \textit{supra} note 191.
\bibitem{241} RAY, \textit{supra} note 7, at 27.
\bibitem{242} See Collins, \textit{supra} note 82, at 310.
\bibitem{243} GRANT, HATCHER & PATEL, \textit{supra} note 117, at 31.
\bibitem{244} RAY, \textit{supra} note 7, at 9.
\bibitem{245} Id. at 20.
\bibitem{247} See HEYMANN ET AL, \textit{supra} note 1, at 1.
\end{thebibliography}
governments all over the world, but the United States does not do so. It is time to learn from the others that have experimented and found it worked. It is time for the United States to move forward and provide paid leave benefits to its parents.

V. A PROPOSAL FOR CHANGE OF PARENTAL LEAVE IN THE UNITED STATES

As evidenced by the current policies of other countries, it is time for the United States to make substantial changes to the FMLA, or enact new legislation to ensure all employed parents

TABLE 1

<table>
<thead>
<tr>
<th>Length of Leave Provided</th>
<th>United States</th>
<th>California</th>
<th>New Jersey</th>
<th>Wisconsin</th>
<th>Denmark</th>
<th>The Netherlands</th>
<th>Sweden</th>
</tr>
</thead>
<tbody>
<tr>
<td>Length of Leave Provided</td>
<td>12 weeks.</td>
<td>4 months.</td>
<td>26 weeks.</td>
<td>6 weeks.</td>
<td>18 weeks of maternity leave, 2 weeks of paternity leave and additional 32 weeks to be split between the parents, totaling 52 weeks.</td>
<td>16 weeks of maternity leave, 2 days of paternity leave. 26 weeks of parental leave.</td>
<td>14 weeks of maternity leave, 2 weeks of paternity leave. Parental leave until the child is eighteen months old.</td>
</tr>
</tbody>
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<table>
<thead>
<tr>
<th>Mandatory Length of Leave for Mothers</th>
<th>None.</th>
<th>None.</th>
<th>None.</th>
<th>None.</th>
<th>6 weeks.</th>
<th>10 weeks.</th>
<th>None.</th>
</tr>
</thead>
</table>

| Length of Leave Provided to Fathers | 12 weeks. | 4 months. | 26 weeks. | 6 weeks. | 2 weeks with the option to split an additional 32 weeks with the mother. | 2 days of paternity leave with an additional 26 weeks of parental leave. | 2 weeks of paternity leave with the ability to take parental leave until the child is eighteen months old. |

| Amount of Hours Required to Qualify for Leave | 1,250 hours in the previous 12 months. | 1,000 hours in the previous 12 months. | 1,000 hours in the previous 12 months. | 120 hours in the previous 13 weeks. | No minimum hours. Requires that the employee worked for one year or more with the employer. | Maternity and paternity leave require no minimum hours. Parental leave requires six months of employment with the same employer in the past year. |

| Amount of Pay Provided to Parents | None. | 6 weeks of compensation. | 26 weeks of disability benefits. | None. | 52 weeks of 30% -90% of salary. | Mothers can receive 100% of salary for 16 weeks. | 100% of salary for 18 months. |
the right to paid parental leave. It is important to note that Americans are supportive of stronger leave policies as well. Studies show that over eighty percent of individuals support the expansion of disability or unemployment insurance to provide paid family and medical leave. This section will discuss improvements that the United States government should make in order to protect families by providing paid parental leave. The proposal will consider several principles that are important in the discussion of paid parental leave. It will also consider various elements from international sources mentioned above to expand the unpaid leave the United States currently provides and make paid leave available to more individuals.

There are several principles that should guide parental leave reform in the United States. One principle, previously discussed in an early section of the article, is that unpaid leave although currently a great benefit for married, middle-class women, it does little to nothing to everyone else. Low-income parents struggle to make ends meet so taking unpaid parental leave would be unrealistic for them if they do not have any income coming in. Also, low-income parents are less likely than middle-income parents to receive benefits from their employers such as paid vacation or sick leave. Paid parental leave would help supplement the incomes of low-income parents just before and after childbirth. It will provide low-income parents with the opportunity to take parental leave to take care of and bond with their newborns when they may not had the ability to do so before. Additionally, the definitions of employees and employers who qualify to take and provide leave should be broadened in order to provide parental leave to more individuals. Under the current system, employees are not eligible to take unpaid leave because of the amount of hours they work or because their employer is too small. For instance, for a mother to even qualify to take unpaid leave under the FMLA, it is required that she work a minimum of

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248 GRANT, HATCHER & PATEL, supra note 117, at 9.
1,250 hours in a twelve month period, equaling to 31.25 hours a week.\textsuperscript{250} Moreover, it is clear based on the international and state policies currently being implemented that paid parental leave does work.

Congress should be willing to look at states that have already experimented with providing some form of paid parental leave. A handful of states have already opted to provide wage replacement for leave due to pregnancy or childbirth.\textsuperscript{251} In 2002, California was the first state to pass paid parental leave and the leave is still in place ten years later.\textsuperscript{252} Reform in this area should be based on what has been shown to work in other jurisdictions. By turning to California, New Jersey, and international policies, Congress can see that paid parental leave can work and should be willing to replicate parts of the policies currently being used by these jurisdictions.

\section*{A. Policy Recommendations}

Paid parental leave provides financial support to parents who need the ability to take off time from work to care for their newborns.\textsuperscript{253} This financial support is especially important for low-income parents who are less likely to have paid leave or sick days through their employers.\textsuperscript{254} The support is also important for low-income parents because they are in dire need of some wage replacement while they take time off work.\textsuperscript{255} Because of how important paid parental leave can be, particularly to low-income parents, Congress should pass legislation that provides wage replacement to parents taking leave. The legislation will provide parents with the ability to afford to take leave due to pregnancy, the birth of a child, or the adoption of a child.

\footnotesize{\textsuperscript{250} See 29 U.S.C.A. § 2612.  
\textsuperscript{251} See O'Leary, supra note 46, at 61.  
\textsuperscript{252} FASS, supra note 19, at 6.  
\textsuperscript{253} See id. at 10.  
\textsuperscript{254} See id.  
\textsuperscript{255} See id.}
The wage replacement provided by the paid leave law to parents who take leave could be provided through the Federal-State Unemployment Insurance Program.\textsuperscript{256}

Currently, the Unemployment Insurance Program provides unemployment benefits to employees who are eligible. In order for an employee to be eligible for benefits they cannot be employed because of their own fault.\textsuperscript{257} States also have additional eligibility requirements that may be required of the employee.\textsuperscript{258} Each state has their own unemployment insurance program that has to fall under the guise of the federal requirements, but the amount of benefits and length of time is determined by the individual states.\textsuperscript{259} The majority of states receive funding through a tax that is imposed on the employers.\textsuperscript{260} However, three states do require employee contributions.\textsuperscript{261}

One of the major benefits of using the states’ current unemployment insurance programs is that they are already in place. Each state has a system set up to provide financial assistance to individuals who are not working due to unemployment. The programs are already in existence and already are funded. However, the taxes would have to be raised in order to account for the additional individuals who will request compensation due to pregnancy or childbirth. In order to account for this increase in taxes, the Congress should consider requiring employees to put in a minimum contribution towards their states’ unemployment insurance programs. Employers should not be directly responsible for financing paid parental leave. A major reason for this is that if employers were required to pay for it directly, it might give them incentives to not hire women who they believe are more likely to have children in the near future or who are pregnant.

\textsuperscript{256} See O’Leary, \textit{supra} note 46, at 61.
\textsuperscript{258} \textit{Id}.
\textsuperscript{259} \textit{Id}.
\textsuperscript{260} \textit{Id}.
\textsuperscript{261} \textit{Id}.
States would have the ability to manipulate the eligibility requirements for their states’ unemployment insurance programs to their liking, as long as they complied with federal law.

Next, Congress would have to make some modifications to set a minimum standard that it expects the states to comply with. One of these modifications would be to require that the compensation provided through the unemployment insurance programs to parents would be at least seventy-five percent of the parent’s income. However, the law should provide for a cap that would limit the amount a parent could receive in a week. The cap would have to be well over the poverty line but should be low enough that when a parent from the upper-class seeks compensation while on parental leave it does not drain the budget provided for the paid leave program. Of course, if states wanted to provide more compensation than the seventy-five percent, that is within their authority to do so.

Congress should establish a length of time for paid parental leave that allows parents to take time off from work and receive pay. Twelve weeks seems to be an appropriate amount of time to provide paid leave for parents because twelve weeks of leave is what is expected under the FMLA. However, Congress should pass a policy similar to that of the Netherlands and permit parents to reduce their work schedule by half and receive compensation for the half of the hours they are not working. The policy would limit the period of time that a parent can receive paid leave for reducing their schedule to an additional twelve weeks. This would mean, that for an additional twelve weeks, parents could work twenty hours a week instead of forty hours a week and receive a wage replacement. Then, low-income parents would have the opportunity to spend time with their newborn for the first six months after the child is born.

Another change Congress should make is to expand the employers who are considered “covered” in order for their employees to be eligible for parental leave. Under the FMLA, a
covered employer is considered an employer with over fifty employees. This should be amended to lower the size of the covered employer to twenty-five employees. This amendment would require employers that have smaller businesses to cover employees that have not been previously covered under the FMLA. It is likely that members of Congress would be willing to consider modifying the covered employer definition to be twenty-five employers. This is because in the past, bills have been introduced in Congress to expand coverage of the FMLA by lowering the size of employers to those that employ twenty-five employees.²⁶² If states want to require all employers to provide parental leave to its employees, they can choose to do so. The federal laws should prove to be a guideline, not a restriction on the benefits that states can provide.

The FMLA’s definition of “eligible employee” should also be amended to reduce the amount of hours worked by the employee in the past twelve months to less than 1,250 hours. The 1,250 hour requirement in place under the FMLA requires that the employee, seeking leave due to childbirth, work an average of twenty-four hours a week in order to be eligible for FMLA leave. The amendment would reduce the amount of hours required to work by the employee, in order to be eligible for leave to 1,000 hours, which on average, is twenty hours a week. Reducing the number of hours to 1,000 would mirror the hours that Wisconsin and New Jersey require for their employees to qualify for leave. It works for those states and provides additional people with parental leave who otherwise did not qualify. States would be able to reduce the amount of hours they require from 1,000 hours to something lower if they find it is beneficial for their program.

Finally, the United States should institute a Family and Working Life Commission similar to Denmark’s. The Commission would work to eliminate the difficulties that currently exist between work and family. The Commission would study the international community’s

²⁶²Id. at 59.
policies that deal with eliminating barriers and determine which policies would help the United States show that families really matter and need to be protected.

The United States needs to change its current temporary leave program. It has fallen behind other countries around the world in providing its citizens with parental leave that gives them the opportunity to raise their families without inhibiting their ability to support their family. Congress needs to amend the FMLA to allow more employees to take leave if they wish to. By reducing the number of employees required for an employer to qualify and reducing the number of hours an employee is required to work in order to qualify, more employees will be able to take leave. Additionally, providing employees with the ability to take an additional twelve weeks of part-time leave will give them the opportunity to get back in the swing of working while continuing to take care of their newborns. Finally, paid leave is important for employees to take leave because they will be able to support their families and pay their bills while on leave.

VI. CONCLUSION

For the foregoing reasons, the United States should amend the FMLA and create a law that compensates parents while on leave in order to fulfill their goals of ensuring that employers have policies that accommodate parents in the workplace.\textsuperscript{263} Congress’s purpose in enacting the FMLA was to balance the needs of families with the demands of the workplace. Right now, the FMLA does not protect nearly enough employees. Additionally, individuals who are not receiving paid leave benefits from their employer have to choose between working and staying at home to take care of their newborns. If the employee stays at home, that employee is faced with the daunting realization that he or she does not have a source of income to pay for the things that his or her family needs to survive. This article is not asking for the United States to completely overhaul its program and make it as generous as the parental leave program in Sweden. All this

\textsuperscript{263} See 29 U.S.C.A. §2601(a).
article is asking for is Congress to take incremental steps to provide all parents with some form of paid parental leave which will benefit Americans as a whole.