



UNITED STATES

# Failing its Families

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

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

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### *Summary Report\**

Millions of US workers—including parents of newborn or adopted children—are suffering health, financial, and career damage from weak work-family policies. US laws include virtually no guarantees of paid family leave or sick days, and largely ignore discrimination on the basis of family care-giving responsibilities.

The meager work-family laws and policies in the US are not just bad for families: they are bad for business, the economy, and society. Policies like paid family leave can boost productivity, reduce turnover costs, and promote public health. Other countries—and international treaties—have long recognized the need to support working families. Out of 185 countries covered in a 2014 International Labour Organization report, only two countries lack paid maternity leave under law: the United States and Papua New Guinea. There are now at least 70 countries that guarantee paid paternity leave.<sup>1</sup>

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### Meager Federal and State Laws

The US federal Family and Medical Leave Act (FMLA) enables workers with newborn or adopted children or family members with serious medical conditions to take unpaid job-protected leave. However, close to half the workforce is not eligible for its protections, and among those who are, many cannot afford unpaid leave.

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\* Updated January 2015. Human Rights Watch's 2011 90-page report, *Failing its Families: Lack of Paid Leave and Work-Family Supports in the US*, is available at <http://www.hrw.org/reports/2011/02/23/failing-its-families-o>. This updated summary of that report reflects new data and policy changes since the original report was issued.

**Weak policies on reconciling work and family obligations, including the lack of paid family leave laws, are at odds with the contemporary workforce.**

Federal law offers only partial protections for breastfeeding mothers. Although the 2010 health act requires employers to offer reasonable breaks and decent spaces for pumping breast milk or breastfeeding to some categories of workers, many workers are excluded. Moreover, federal law has no explicit prohibition on discrimination against workers on the basis of their family responsibilities.

At the state level, some important work-family laws have been enacted, but the vast majority of states lack paid leave and other work-family supports under law. Only California, New Jersey, and Rhode Island have state paid family leave programs, offering four to six weeks of partially paid leave to workers with new babies or ill family members. These benefits are financed exclusively through small payroll tax contributions from workers, not employers. In New Jersey, for example, employees pay a maximum of \$28 per year (as of 2015) into the paid family leave system, and are eligible for weekly leave benefits of about \$604. Six jurisdictions also have temporary disability insurance programs offering biological mothers partial pay during the “disability” of pregnancy and childbirth.

## Policies at Odds with Contemporary Workforce

The dismal state of US law on reconciling work and family obligations, including the lack of paid family leave laws, are at odds with the makeup of the contemporary workforce. Female participation in the paid labor force skyrocketed over the past century, especially among those with young children. Nearly two-thirds of mothers are the primary or co-breadwinners for their families, and 70 percent of children live in households in which all adults are in the labor force.<sup>2</sup> Married women with children under age six were almost four times more likely to be in the paid workforce in 2008 as they were in 1950.<sup>3</sup>

## Low and Disparate Access to Work-Family Supports

The idealized notion is that private markets will foster whatever work-family supports are needed as employers compete for good workers. In reality, however, huge swaths of the workforce have no such supports, and there are enormous disparities in access.

For example, leaving decisions about whether to offer paid family leave mostly up to employers has resulted in just 12 percent of private industry workers having such benefits, according to the Bureau of Labor Statistics.<sup>4</sup> Just 4 percent of the lowest-income private industry workers have paid family leave

benefits. Some workers might be able to use paid sick days to care for family, but about one-third of private industry workers have no such benefits.<sup>5</sup> Part-time workers—predominantly women—are far less likely than full-time workers to have these benefits.

## Persistent Gender Inequality at Work

The growing presence of women in the labor force has not eliminated the significant gender wage gap, especially for mothers. Women who work full-time, year-round are paid on average only 78 percent of what full-time, year-round male workers are paid.<sup>6</sup> Even when controlling for factors such as experience, education, industry, and hours, a wage gap remains. Women with children earn on average about 5-6 percent less than women without children.<sup>7</sup>

Although women are making gains in US management overall, a glass ceiling still exists at senior levels. In 2013, women constituted only 14.6 percent of executive officers and held only 15.1 percent of board seats at Fortune 500 companies.<sup>8</sup>

Women who are mothers face particularly severe hiring and promotion bias. A 2007 study found that mothers were significantly less likely than childless women to be recommended for hire, were less likely to be rated as promotable or recommended for management, and were offered significantly lower starting salaries (\$11,000 less). The study also compared ratings of fathers with childless men, and found that fathers were at an advantage.<sup>9</sup>

Recent years have also seen a sizable increase in pregnancy discrimination claims. The US Equal Employment Opportunity Commission's data on pregnancy discrimination charges filed with them and with state and local fair employment agencies show an increase from 3,977 in fiscal year 1997 to 5,797 in fiscal year 2011.<sup>10</sup>

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## Global Trends

Other countries—and international human rights treaties—have long recognized the need to support working families. These supports include paid leave for new parents, flexible scheduling, breastfeeding and pumping accommodations, paid sick days that can be used for family care, and prohibitions on workplace discrimination based on family responsibilities.

**Countries guaranteeing leave to care for personal or family health have the highest levels of economic competitiveness.**

One of the most common work-family supports, paid maternity leave, is practically universal: a 2014 International Labour Organization report found that out of 185 countries, only the United States and Papua New Guinea lack paid leave for new mothers under law.<sup>11</sup> Paid paternity leave is also on the rise, with 70 countries guaranteeing it under law. Some countries guarantee additional paid parental leave, beyond maternity or paternity leave. An academic study by experts at McGill and Northeastern universities found that countries guaranteeing leave to care for personal or family health had the highest levels of economic competitiveness.<sup>12</sup>

Developed countries in the Organization for Economic Co-Operation and Development (OECD) provide on average 18 weeks of paid maternity leave (excluding additional paid parental leave).<sup>13</sup> Of the countries covered in the ILO report, 98 provide at least 14 weeks of paid leave for new mothers. There is a significant trend toward social insurance financing for maternity, paternity, and parental leave around the world, which eases the burden on employers.

## Real Families, Real Harms

Based on interviews with 64 parents from 17 states, Human Rights Watch documented the impacts of the US's weak work-family policies in a 90-page 2011 report. Their accounts, described in detail in that report, depict the harmful consequences of inadequate paid leave after childbirth or adoption, employer reticence to offer breastfeeding support or flexible schedules, and career fallout from becoming parents. Same-sex partners were almost all denied even unpaid FMLA leave; a proposed rule would expand FMLA coverage for LGBT spouses, but as of early 2015, many still lack this benefit.

### *Harms to Health*

Many parents described to Human Rights Watch how lack of paid leave and flexible work conditions jeopardized their health and that of their children. Parents with short and unpaid leaves described delaying immunizations and health care visits for babies; physical and mental health problems for parents; and early cessation or short periods of breastfeeding.

For example, Samantha B. returned to work eight weeks after having a Cesarean section even though she was in pain from an infected wound and had trouble walking. Her few days of sick pay were depleted and she could not afford more unpaid leave. She quit breastfeeding after returning to work because

the only place to pump was a small, heavily trafficked public restroom with no electric outlet. Hazel C. hemorrhaged due to a retained placenta and lost one-third of her blood six weeks postpartum, but was on the job one week later because she too could not afford more unpaid time off. Hazel had used her two weeks of paid sick time right after birth, and was not entitled to more. Diana T. had such severe postpartum depression that she despised her baby. But her employer threatened to fire her when she tried to use the small number of paid sick days to which she was entitled, and she never sought treatment.

Some families delayed or missed health visits and immunizations for their babies because their employers would not give them time off after maternity or paternity leaves, or because they lost health insurance during unpaid leave. Dozens of women said they wanted to continue breastfeeding for the health of their babies, but workplace conditions for pumping—often restricted to toilet stalls—were so difficult that they gave up breastfeeding.

### *Financial Harms*

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

### *Career Impacts*

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

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glowing reviews of prior years. Abigail Y.'s employer said it was imperative that no one get the impression she was taking maternity leave, and insisted that she teach all her college class hours before giving birth. Many women, including Kimberley and Abigail, consequently quit their jobs and wound up in far less senior, lucrative, or rewarding positions.

**Paid leave is also good for employee retention and avoiding turnover costs.**

## Benefits to Business and Economy of Strong Work-Family Policies

By neglecting paid family leave and other work-family supports, the US is missing out on increased productivity, reduced turnover costs, health care cost savings, and other gains seen in countries with such policies.

Studies on paid maternity, paternity, parental, and other family leave have found that these programs are good for productivity. For example, a study of 19 developed countries between 1979 and 2003 found that paid parental leave had a greater positive effect on productivity than unpaid leave.<sup>14</sup>

Paid leave is also good for employee retention and avoiding turnover costs. One study found that 94 percent of leave-takers who received full pay during family leave returned to the same employer, compared to 76 percent of those with unpaid leave. Economists estimate that the median cost of employee turnover is approximately 21 percent of the employee's annual pay.<sup>15</sup>

A 2013 book assessing the impact of the California family leave insurance program, drawing from surveys of businesses and workers, found that most businesses said it had either a positive effect or no noticeable effect on productivity, profitability, turnover, and employee morale.<sup>16</sup>

By failing to ensure that all workers can access paid family leave, the US also pays the high price that flows from childhood poverty. Paid leave can help avert family poverty spells, which often coincide with the birth of a baby. Moreover, paid leave would avoid some welfare costs, and even help avert bankruptcy in some cases.

## Health Benefits of Paid Leave

Paid leave is associated with better health. Paid and sufficiently long leaves for new parents are associated with lower infant mortality, lower risk of

postpartum depression, higher rates of immunization for babies, and higher breastfeeding rates.<sup>17</sup> In fact, the California paid family leave program doubled breastfeeding duration for participating mothers.<sup>18</sup>

## Human Rights at Stake

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

Several international human rights and labor treaties explicitly call for paid maternity leave. In the decades since these treaties were adopted, expert bodies have interpreted these provisions as also calling for paternity and parental leave, and for them to cover leave for adoption. For example:

- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) provides in article 11(2)(b) that states parties “shall take appropriate measures ... [t]o introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances.”
- The International Covenant on Economic, Social and Cultural Rights (ICESCR) states in article 10(2) that, “Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.”
- International Labour Organization (ILO) Convention No. 183 concerning Maternity Protection (revised) requires that member states ensure that employed women are entitled to at least 14 weeks of maternity leave with adequate social assistance funds or cash benefits of not less than two-thirds of their previous earnings, that they receive medical benefits during that period, and that they be entitled to return to the same or an equivalent position at the end of the leave. A non-binding ILO recommendation urges states to extend maternity leave to at least 18 weeks, to raise cash benefits to the full amount of previous earn-

**International treaties contain concrete provisions on protections for workers with family care-giving responsibilities, and call for an array of work-family policies, including paid leave.**



ings, and to grant fathers or mothers parental leave after the expiry of maternity leave.

- The rights to nondiscrimination and equal protection of the law are central to international human rights law and relevant to paid leave. Some treaties include specific provisions on non-discrimination against workers with family responsibilities. For example, the ILO Workers with Family Responsibilities Convention requires national policies to enable workers with family responsibilities to work without being subject to discrimination and, to the extent possible, without conflict between their employment and family responsibilities. The convention calls for measures to take the needs of workers with family responsibilities into account in terms and conditions of employment and social security.

## Conclusion

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

# Key Recommendations

Our full-length report includes detailed recommendations. Key recommendations include:

- Congress and state legislatures should enact legislation to guarantee paid family leave. At the federal level, Congress should enact the FAMILY Act, which would establish a national paid family and medical leave program. The legislation should establish wage replacement for at least the period of leave allowed under the FMLA, offer sufficient wage replacement to make leave a realistic possibility for men and women, prohibit discrimination against workers requesting leave, cover all employees, enable self-employed individuals to opt in, and include meaningful penalties for employer non-compliance. Financing should be through a public family leave insurance mechanism, most likely funded through payroll deductions.
- In the interim, Congress should expand access to unpaid FMLA leave, including by decreasing the firm size for FMLA coverage and expanding worker eligibility. Also extend eligibility to reflect the care-giving needs of extended families and families with same-sex partners.
- Congress should appropriate funds for the Department of Labor to establish a grant program to help states provide paid family leave.
- Amend federal and state anti-discrimination legislation to explicitly make it illegal for employers to discriminate on the basis of family care-giving responsibilities.
- Enact other bills to support working families and promote gender equality, including bills on workplace flexibility, paid sick days (including the Healthy Families Act at the federal level), and the gender wage gap. Increase coverage of laws enabling mothers to pump or breastfeed at work.

# Profiles of Parents Lacking Work-Family Supports

## *Diana T.*

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Diana T. was 18 and worked full-time at a large retail store when her first daughter was born. Her manager was unhappy about her pregnancy and forced Diana to pick up items off the floor late in her pregnancy, even if other staff was available. Diana took a six-week leave without pay when her first daughter was born since her employer did not allow her to use accrued sick pay. When her second daughter was born and she worked for another employer, Diana had a nine-week leave: six weeks paid at 60 percent of her salary (of less than \$30,000 per year) and one paid in full through accrued leave. Diana fell into credit card debt and had trouble paying rent during her unpaid leave. She also needed surgery twice shortly after the second birth. She requested, but was denied, a week off to heal and returned to work three days after surgery. Lacking space at work to pump breast milk, Diana breastfed her first baby for two months—well short of what she had originally planned. Diana had post-partum depression after both children, but especially after her first baby, who was ill. Diana’s employer regularly threatened to replace her if she took time off for the baby’s frequent medical appointments and often switched her to night work, which was difficult for her as a single parent. Diana went without health insurance for more than a year and was therefore never treated for her depression.

## *Samantha B.*

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

## *Anita R.*

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

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## Failing its Families

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

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

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

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

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

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



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