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## Parental Leave in the United States: Why the United States Should Follow France in Implementing Mandatory Paid Paternal Leave

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### Cover Page Footnote

J.D., Texas A&M University School of Law, 2020. I would like to thank Professor Susan Ayres for her encouragement and assistance through the writing of this article.

# **Parental Leave in the United States: Why the United States Should Follow France in Implementing Mandatory Paid Paternal Leave**

*Emily Bergmann\**

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## Abstract

This article addresses an issue relevant to all working parents: paid parental leave. The United States is the only industrialized nation in the world to not guarantee paid leave for parents. Substantial research and studies have documented numerous benefits correlated to paid parental leave including increased work force participation, health benefits for both children and parents, reduced gender stereotypes, and more. Unfortunately, many fathers are stigmatized when they choose to take family leave; therefore, making leave mandatory is necessary to reduce this stigma. Current paternity leave policies in the United States will be analyzed under the FMLA, individual states, and private companies compared to France and the European Union's paid paternity leave to conclude that implementing a similar policy in the United States would yield many positive benefits.

### I. INTRODUCTION

Of all the industrialized nations in the world, the United States is the only nation that does not guarantee paid parental leave.<sup>1</sup> The United States is also the only Organization for Economic Co-operation and Development (OECD) country that does not require "any paid leave for new parents."<sup>2</sup> Research has shown Americans support paid parental leave. A 2019 research study conducted by the Ethics and Public Policy Center found "Americans broadly support the offering of paid family leave benefits for both mothers and fathers."<sup>3</sup> A 2017 Pew research study suggests eighty-two percent of Americans support paid maternity leave and sixty-nine percent support paid paternity leave.<sup>4</sup> This support is not surprising considering the benefits that stem from paid parental leave.

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<sup>1</sup> Natasha Bhushan, *Work-Family Policy in the United States*, 21 CORNELL J. L. & PUB. POL'Y 677, 679 (2012).

<sup>2</sup> Gretchen Livingston & Deja Thomas, *Among 41 Countries, Only U.S. Lacks Paid Leave*, PEW RSCH. CTR. (Dec. 16, 2019), <https://www.pewresearch.org/fact-tank/2019/12/16/u-s-lacks-mandated-paid-parental-leave/>.

<sup>3</sup> Tara O'Neill Hayes & Margaret Barnhorst, *How Children Benefit from Paid Family Leave Policies*, AM. ACTION F. (June 9, 2020), <https://www.americanactionforum.org/research/how-children-benefit-from-paid-family-leave-policies/>.

<sup>4</sup> Juliana Menasce Horowitz et. al, *Americans Widely Support Paid Family and Medical Leave, but Differ Over Specific Policies: Personal Experiences with Leave Vary Sharply by Income*, PEW RSCH. CTR. (Mar. 23, 2017),

*A. Paid Parental Leave*

Paid maternity and parental leave have many known benefits. When parents receive paid leave, “infants are less likely to be late on their vaccinations.”<sup>5</sup> This yields economic benefits. On average, “it is estimated that for each dollar spent on immunization[s], there are \$44 in economic benefits.”<sup>6</sup> Research has also shown paid leave increases the likelihood and duration of breastfeeding an infant.”<sup>7</sup> According to the Centers for Disease Control (“CDC”), World Health Organizations (“WHO”), and others, breast feeding has many benefits including “strengthening an infant’s immune system, stimulating positive brain development, and decreasing the risk of infections.”<sup>8</sup> Increased duration of breastfeeding has been linked to “fewer ear infections and decreased risk of childhood obesity, respiratory illness, diabetes, and sudden infant death syndrome.”<sup>9</sup>

Paid leave also has effects on pre-term birth weight. “In a large-scale study, paid leave decreased the rate of low-birth-weight infants by 3.2 percent and decreased the likelihood of pre-term births by 6.6 percent.”<sup>10</sup> In turn, this also has an effect on medical bills since “the cost of a hospital stay for a premature baby with major problems averaged \$26,700, compared with \$10,700 for a full-term baby with major problems.”<sup>11</sup>

*B. Paternity Leave*

Paternity leave has many documented benefits. The Department of Labor created a policy brief discussing the positive effects of paternity leave for working families. They found paternity leave “can promote parent-child bonding, improve outcomes for children, and even increase gender equity at home and at the workplace,” especially when the leave period is longer.<sup>12</sup> Along with those benefits, economic advantages have been documented. Paid leave can “affect economic growth in various ways, such as through increased labor force participation, increased

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<https://www.pewsocialtrends.org/2017/03/23/americans-widely-support-paid-family-and-medical-leave-but-differ-over-specific-policies/>.

<sup>5</sup> Hayes, *supra* note 3.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Hayes, *supra* note 3.

<sup>12</sup> DOL Policy Brief, Paternity Leave: Why Parental Leave for Fathers is so Important for Working Families, U.S. DEP’T OF LAB. (2012), <https://www.dol.gov/sites/dolgov/files/OASP/legacy/files/PaternityBrief.pdf>.

fertility rates, and reduced spending on public assistance.”<sup>13</sup> Paid leave provides an opportunity for socioeconomically disadvantaged groups to take time off since many cannot afford to take unpaid leave, improving financial security.<sup>14</sup>

Paid paternity leave should be considered a feminist issue due to the effects it can have on gender equality. Paid leave can increase “women’s attachment to the labor force.”<sup>15</sup> This helps raise “long-term earning trajectories,” thus assisting with closing the gender-pay gap.<sup>16</sup> Increased use of paternity leave permits men to participate more with “household chores and childcare,”<sup>17</sup> helping create a more “gender balanced” household.<sup>18</sup> A gender balanced household is important because it can create “greater equality in both the home and the workplace” for mothers.<sup>19</sup> Economists view men’s involvement at home to be “one of the clearest ways to bolster women’s participation in the labor force.”<sup>20</sup> This stems from the simple concept that when women are not solely responsible for the childcare, they have more time to work “outside the home.”<sup>21</sup>

Paid paternity leave can also be viewed as a health-related issue. A direct correlation is present between mandatory paid paternity leave and “the level of support fathers provide to mothers and children from the beginning of the child’s life.”<sup>22</sup> Thus, mandatory paid leave increases this support and increases the amount of time fathers spend on childcare activities over time.<sup>23</sup> This is important because “early and shared parental involvement at the beginning stages of children’s lives also correlates with more successful child development.”<sup>24</sup> “A study of four

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<sup>13</sup> Barbara Gault et al., *Paid Parental Leave in the United States*, INST. FOR WOMEN’S POL’Y RSCH. 1, 12 (Mar. 2014), <https://iwpr.org/wp-content/uploads/2020/09/B334-Paid-Parental-Leave-in-the-United-States.pdf>.

<sup>14</sup> *The Economic Benefits of Paid Leave: Fact Sheet*, U.S. CONG. JOINT ECON. COMM. (Jan. 20, 2015), [https://www.jec.senate.gov/public/\\_cache/files/e67be3d6-91e7-4e74-8fd7-beac76da2455/jecfactsheet.pdf](https://www.jec.senate.gov/public/_cache/files/e67be3d6-91e7-4e74-8fd7-beac76da2455/jecfactsheet.pdf).

<sup>15</sup> *Id.* at 2.

<sup>16</sup> *Id.*

<sup>17</sup> Dep’t of Labor, *supra* note 12, at 3.

<sup>18</sup> *Id.*

<sup>19</sup> Monica Porter, Combating Gender Inequality at Home and at Work: Why the International Labour Organization Should Provide for Mandatory Paid Paternity Leave, 48 GEO. WASH. INT’L. L. REV. 203, 207 (2015).

<sup>20</sup> Claire Cain Miller, *Paternity Leave: The Rewards and the Remaining Stigma*, N.Y. TIMES (Nov. 7, 2014), <https://www.nytimes.com/2014/11/09/upshot/paternity-leave-the-rewards-and-the-remaining-stigma.html>.

<sup>21</sup> *Id.*

<sup>22</sup> Porter, *supra* note 19, at 207.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

OECD countries, including the United States, found evidence suggesting that longer paternity leaves and increased time fathers spent caring for their young children is associated with higher cognitive test scores for their children.”<sup>25</sup> Studies have also shown taking paternity leave correlates to increased wellbeing of fathers.<sup>26</sup> This is shown through fathers “having higher satisfaction with parenting and increased engagement in caring for their children.”<sup>27</sup> This can also be relevant to noncustodial fathers. Based on the 2018 census table data, two-thirds of noncustodial fathers had limited, in person interaction with their children in the last year.<sup>28</sup> That data further suggested that seventy-one percent of noncustodial fathers paid child support in the past year, with the average amount being \$4,908 for the whole year.<sup>29</sup> Although the census tables do not provide “employment histories of non-custodial fathers,” it can be inferred that non-custodial parents were employed “sporadically or at low wage jobs.”<sup>30</sup> If non-custodial fathers were entitled to paid leave, visitation frequency could increase, allowing for more interaction between children and their fathers. Clearly, paid paternity leave yields long lasting benefits affecting the well-being of parents as well as children.

Given the amount of research supporting the benefits of paid leave, it would seem implementing paid leave in the United States would be a slam dunk. However, the social stigma surrounding paternity leave seems to prevent fathers from taking it. Despite the increase in mens’ participation in parenthood throughout the years, “parenthood remains a highly gendered concept in our culture, with different expectations for mothers than for fathers.”<sup>31</sup> A common fear among fathers is “if they take formal paternity leave rather than use a combination of accrued discretionary leave, they will damage their career.”<sup>32</sup> The Wisconsin Maternity Leave and Mental Health Project conducted a study surveying male employees and found “[sixty-three percent] believed their employers would react negatively if they took more than one month of

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<sup>25</sup> Dep’t of Labor, *supra* note 12 at 2.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Nicholas Zill, *Facts About Custodial and Non-Custodial Fathers in the U.S.*, INST. FOR FAM. STUD. (June 16, 2020), <https://ifstudies.org/blog/facts-about-custodial-and-non-custodial-fathers-in-the-us..>

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Naomi Cahn, *The Power of Caretaking*, 12 YALE J.L. & FEMINISM 177, 188 (2000).

<sup>32</sup> Chuck Halverson, *From Here to Paternity: Why Men Are Not Taking Paternity Leave Under the Family and Medical Leave Act*, 18 WIS. WOMEN’S L.J. 257, 263 (2003).

paternity leave.”<sup>33</sup> This fear is not unfounded, as a longitudinal study conducted by Scott Coltrane of the University of Oregon supports this perception. It revealed that “when men reduced their hours for family reasons, they lost 15.5 percent in earnings over the course of their careers, on average, compared with a drop of 9.8 percent for women and 11.2 percent for men who reduced their hours for other reasons.”<sup>34</sup> Another study conducted by Joseph Vandello, author of “When Equal Isn’t Really Equal: The Masculine Dilemma of Seeking Work Flexibility,” found “men who used flexible work arrangements, whether taking temporary family leave or working from home or part time, received worse job evaluations and lower hourly raises.”<sup>35</sup> Coupled together, these studies emphasize the stigma and possible downsides that can happen when fathers choose to take paternity leave. The federal government and/or states should require paternity leave needs in order to eliminate the stigma.

Starting in July 2021, France is doubling their paid paternity leave “from 14 [to] 28 days.”<sup>36</sup> Additionally, France is implementing a requirement for fathers to “take at least a week off work after their babies are born.”<sup>37</sup> The United States should implement a paid paternity leave policy, possibly modeled after France, to produce economic, gender, and health benefits while simultaneously reducing the stigma surrounding paternity leave.

The United States does not currently require any paid parental leave. This article analyzes current paternity leave policies in the United States under the Family Medical Leave Act (“FMLA”), individual states, and private companies compared to France and the European Union’s paid paternity leave to conclude that implementing a similar policy in the United States would yield many positive benefits.

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<sup>33</sup> *Id.*

<sup>34</sup> Miller, *supra* note 20.

<sup>35</sup> *Id.*

<sup>36</sup> Elian Peltier, *France Doubles Paid Paternity Leave to 28 Days, One of Europe’s Most Generous Plans*, N.Y. TIMES (Sept. 24, 2020), [https://www.nytimes.com/2020/09/24/world/europe/france-paternity-leave.html?campaign\\_id=9&emc=edit\\_nn\\_20200925&instance\\_id=22519&nl=the-morning&regi\\_id=21885994&section\\_index=2&section\\_name=three\\_more\\_big\\_stories&segment\\_id=39026&te=1&user\\_id=32657f13c22713f3111ae65daf561150](https://www.nytimes.com/2020/09/24/world/europe/france-paternity-leave.html?campaign_id=9&emc=edit_nn_20200925&instance_id=22519&nl=the-morning&regi_id=21885994&section_index=2&section_name=three_more_big_stories&segment_id=39026&te=1&user_id=32657f13c22713f3111ae65daf561150).

<sup>37</sup> *Id.*



## II. PARENTAL LEAVE IN THE UNITED STATES

A. *The Family and Medical Leave Act*

The United States does not require any paid parental leave. In 1993, the Family and Medical Leave Act (“FMLA”) was created.<sup>38</sup> The FMLA permits eligible employees to “take up to twelve weeks of unpaid leave due to a new child or serious illness.”<sup>39</sup> The FMLA has strict requirements for both employees and employers. Private-sector employers meet the criteria if they have “[fifty] or more employees in [twenty] or more workweeks in the current or preceding calendar year, including a joint employer or successor in interest to a covered employer.”<sup>40</sup> Any public agency meets the requirements regardless of the number of employees it employs.<sup>41</sup> “Public or private elementary or secondary school, regardless of the number of employees it employs,” also fit the criteria under the FMLA.<sup>42</sup>

For employees to qualify for unpaid leave under FMLA, employees must (1) work for a covered employer; (2) have worked for the employer for at least twelve months; (3) have at least 1,250 hours of service for the employer during the twelve month period immediately preceding the leave; and (4) work at a location where the employer has at least fifty employees within seventy-five miles.<sup>43</sup> Therefore, if an employee does not meet all the above requirements, they do not qualify for unpaid leave under the FMLA, showcasing how strict the limitations are. Unsurprisingly, these strict requirements “disproportionately affect the poor, who are more likely to work for small employers, part-time, and in positions offering little job security.”<sup>44</sup> Employees who are not protected under the FMLA are then left with “no remedies to “rectify their situation unless the state in which they live or the employer for whom they work offers less onerous standards of job protection.”<sup>45</sup>

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<sup>38</sup> Natasha Bhushan, *Work-Family Policy in the United States*, 21 CORNELL J.L. & PUB. POL’Y 677 (2012).

<sup>39</sup> *Id.*

<sup>40</sup> Fact Sheet 28: The Family and Medical Leave Act, U.S. DEP’T LAB. WAGE AND HOUR DIV. (2012), <https://www.dol.gov/sites/dolgov/files/WHd/legacy/files/whdfs28.pdf>.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> Bhushan, *supra* note 38 at 688.

<sup>45</sup> Sara Cohen, Have Your Cake and Eat It Too: How Paid Maternity Leave in the United States Could End the Choice Between Career & Motherhood, 36 WOMEN’S RTS. L. REP. 1, 9 (2014).

These limitations leave “slightly less than [sixty] percent of the workforce” with access to unpaid leave through the FMLA.<sup>46</sup> Even when eligible to take leave under the FMLA, many workers do not.<sup>47</sup> The main reason for this is workers not being able to afford “to take leave without pay.”<sup>48</sup>

The FMLA is often the basis for litigation against employers in the United States. The FMLA “provides a private right of action to employees to protect their rights” to leave under two distinct theories.<sup>49</sup> Under the “interference” or “entitlement” theory, employers are prohibited from interfering with employees FMLA rights.<sup>50</sup> Under the “retaliation” or “discrimination theory,” employers may not “discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by the FMLA.”<sup>51</sup> To establish a prima facie claim of FMLA interference, a plaintiff must show: (1) they were an eligible employee; (2) the defendant was an employer as defined under the FMLA; (3) the employee was entitled to leave under the FMLA; (4) the employee gave the employer notice of their intention to take leave; and (5) the employer denied the employee FMLA benefits to which they were entitled.<sup>52</sup> For an FMLA retaliation claim, a plaintiff must show (1) they were engaged in an activity protected by the FMLA; (2) the employer knew that they were exercising their rights under the FMLA; (3) after learning of the employee’s exercise of FMLA rights, the employer took an employment action adverse to them; and (4) there was a causal connection between the protected FMLA activity and the adverse employment action.<sup>53</sup>

### *B. Individual States*

To make up for the apparent failures of the FMLA, some states have implemented parental leave policies with more lenient requirements. According to a March of Dimes research study, states that have “implemented paid-leave policies found a [twenty] percent reduction in the number of female employees leaving their jobs in the

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<sup>46</sup> *Children Benefit When Parents Have Access to Paid Leave*, NAT’L P’SHP FOR WOMEN AND FAMILIES 1, 2 (Mar. 2015), <https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-leave/children-benefit-when-parents.pdf>.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Sullivan v. Ikea*, 2020-Ohio-6661, ¶ 55 (Ct. App.).

<sup>50</sup> *Hull v. Astro Shapes, Inc.*, 2011-Ohio-1656, ¶ 40 (Ct. App.).

<sup>51</sup> *Id.*

<sup>52</sup> *Walton v. Ford Motor Co.*, 424 F.3d 481, 485 (6th Cir. 2005).

<sup>53</sup> *Arban v. W. Publ’g Corp.*, 345 F.3d 390 (6th Cir. 2003).

first year after giving birth—and up to a [fifty] percent reduction after five years.”<sup>54</sup>

In 2004, “California became the first state to enact a comprehensive paid family leave law.”<sup>55</sup> Their policy offers paid maternity leave “through both State Disability Insurance (“SDI”) and Paid Family Leave (“PFL”).”<sup>56</sup> Similar to the FMLA, California’s policy allows employees to take twelve weeks unpaid leave “to bond with a newborn child,” and for other medical reasons.”<sup>57</sup> More importantly, “an employee may receive up to six weeks of paid leave and the amount of leave is approximately equivalent to fifty-five percent of the employee’s wages.”<sup>58</sup> Although it seems employees are not able to receive their full pay during their time off, the pro-rated amount of approximately 55% is better than not being able to receive any payment at all. California has observed positive benefits since implementing this policy. Since implementation, the “average length of leave for new mothers has doubled.”<sup>59</sup> This has had the “greatest impact among Latina and African American women and women in lower-wage jobs.”<sup>60</sup>

In 2008, New Jersey enacted the “Family Leave Insurance Program” which went into effect in 2009.<sup>61</sup> The New Jersey plan allows for parents to take up to “a maximum of six weeks of paid leave” to “care for and bond with their children.”<sup>62</sup> Eligible employees are compensated approximately “two-thirds of their salary,” with the maximum compensation limited to \$548 per week.<sup>63</sup> Instead of employers funding the paid leave, employees fund the program through minor tax contributions.<sup>64</sup> In 2013, the tax deduction was 0.01% with a maximum yearly reduction of \$30.90.<sup>65</sup> This program has been “widely

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<sup>54</sup> Stephen Miller, *Paid Family Leave on the Rise, Helps Women Stay in Workforce*, SOC’Y FOR HUM. RES. MGMT. (Jan. 15, 2020), <https://www.shrm.org/resourcesandtools/hr-topics/benefits/pages/paid-family-leave-helps-women-stay-in-the-workforce.aspx>.

<sup>55</sup> Abraham Z. Melamed, *Daddy Warriors the Battle to Equalize Paternity Leave in the United States by Breaking Gender Stereotypes: A Fourteenth Amendment Equal Protection Analysis*, 21 *UCLA Women’s L.J.* 53, 69 (2014).

<sup>56</sup> Cohen, *supra* note 45, at 6.

<sup>57</sup> *Id.* at 7.

<sup>58</sup> *Id.*

<sup>59</sup> Nat’l P’ship for Women and Families, *supra* note 46.

<sup>60</sup> *Id.*

<sup>61</sup> Melamed, *supra* note 55, at 73.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

accepted throughout the state,” since the mechanism for payment provides “long-term funding.”<sup>66</sup>

### C. Private Companies

Another way employees can take family leave is through individual company policies. Unfortunately, it is uncommon for companies to offer paid leave. Rob Wilson, the president of Employco USA (a national employment solutions firm) stated more than “[eighty percent] of U.S. employees do not have paid parental leave.”<sup>67</sup> When it comes to employers, “the percentage of employers offering fully paid maternity leave has declined substantially in recent years, dropping from [seventeen] percent in 2005 to nine percent in 2014.”<sup>68</sup> Options for paid paternity leave are fewer than maternity leave options. According to the White House Council of Economic Advisers, “nearly a third of men report that they had no option to take leave, paid or not, for the birth of a child.”<sup>69</sup> Combined with the lack of paid leave the FMLA offers, men face substantial issues when it comes to obtaining paid paternity leave.

### D. The Federal Government

In 2019, the Trump administration put forth new legislation that allows eligible “civilian federal government employees access to paid parental leave.”<sup>70</sup> This new law will grant “[twelve] weeks of paid parental leave to eligible civilian government employees who welcome a new child in their homes through birth, adoption or foster care.”<sup>71</sup> To receive this benefit, employees must be in their position for “at least one year.”<sup>72</sup> With the U.S. government being the country’s largest employer, this legislation may encourage more private employers to follow suit.

### E. The Military

In 2009, the National Defense Authorization Act “created the first codification of a uniform military paternity leave policy in the United States through its adoption of 10 U.S.C. § 701(j).”<sup>73</sup> This is a progressive

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<sup>66</sup> Ashleigh Garvey & Claire Mitchell, *Who’s Your Daddy? A Proposal for Paid Family Leave to Promote the Growth of Families*, 27 Hofstra Lab. & Emp. L.J. 199, 219 (2009).

<sup>67</sup> Miller, *supra* note 54.

<sup>68</sup> Nat’l P’ship for Women and Families, *supra* note 46.

<sup>69</sup> Cain Miller, *supra* note 20.

<sup>70</sup> Miller, *supra* note 54.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> T.J. Keefe, *Leave and Marriage: The Flawed Progress of Paternity Leave in the U.S. Military*, 58 Wm. & Mary L. Rev. 609, 612 (2016).

law because it allows military men to take “up to ten days” of paid paternity leave with permission of their supervisor for the birth or adoption of a child.<sup>74</sup> However, its major downfall is this paid leave is available *only* to “married servicemen.”<sup>75</sup> By limiting this policy to only those who are married, it fails to provide paid leave for unmarried men whose partners are giving birth.<sup>76</sup>

It is apparent that the United States fails to offer paid paternity and maternity leave to many citizens. Although progress is being made through state legislatures and new federal legislation that affects government employees, many are still left with little to no options for caring for their newborns or adopted children.

### III. PARENTAL LEAVE OUTSIDE THE UNITED STATES

#### *A. The European Union*

Throughout the European Union (“E.U.”), many forms of leave are offered to parents following the birth of a child including maternity leave, parental leave, and home care leave.<sup>77</sup> “Eighteen of the EU-28 countries offer paternity leave” with an average leave time of 12.5 days.<sup>78</sup> Additionally, all cases where the duration of paternity leave is seven days or shorter, the compensation is [one hundred] percent of previous income.<sup>79</sup> Thirteen E.U. countries offer “ten days or more.”<sup>80</sup> Portugal, Estonia, France, Lithuania, Denmark, Spain, and Poland provide “[one hundred percent] compensation” while the others provide less than [one hundred percent].<sup>81</sup>

Despite the E.U. being at the forefront of progressive leave policies, the majority of leave is still taken by women—“of the leave that can be shared between parents, about [forty] percent is taken by women and only [two] percent by men.”<sup>82</sup> One of the strongest predictors of paternity and parental leave uptake by fathers is the level of compensation.<sup>83</sup>

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<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> Servicewomen, or primary caregivers, are permitted to take leave for the birth or adoption of a child under 10 U.S.C. § 701(i)(1)(A)-(B).

<sup>77</sup> Jana van Belle, RAND Europe. *Paternity and Parental Leave Policies Across the European Union*, 5 (2016).

<sup>78</sup> *Id.* at 7.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.* at 8. (The 13 countries are: Portugal, Sweden, Slovenia, Belgium, Estonia, France, Finland, Lithuania, Denmark, Spain, Poland, United Kingdom, and Bulgaria).

<sup>81</sup> *Id.* at 7.

<sup>82</sup> *Id.* at 3.

<sup>83</sup> *Id.* at 14.

“Countries with the highest compensation rates have the highest proportion of companies with employees taking leave.”<sup>84</sup> The E.U. believes increasing uptake of paternity and parental leave by fathers is important “because it is thought to enhance gender equality at home, may reduce the barriers to parenthood and can have positive effects on a child’s development.”<sup>85</sup> Low birth rates in E.U. countries may also be an underlying factor that supports paid leave policies. In recent decades, Europeans have been having fewer children; this “partly explains the slowdown” in the E.U.’s population growth.<sup>86</sup> To keep population constant, an average of “2.1 live births per woman” is required in developed countries; in 2018, the E.U.’s fertility rate was 1.55.<sup>87</sup>

A policy brief prepared by RAND Europe explored the positive effects parental leave generates. Among the economic benefits are reduced labor market inequality, reduction of the gender pay gap, and a lower female pension gap.<sup>88</sup> Studies have shown “the uptake of leave by fathers can reduce the motherhood penalty by enabling mothers to return to the labor market.”<sup>89</sup> Additionally, this increase in uptake may “equalize the effect of the child penalty<sup>90</sup> between parents, thereby mediating the long-term effects of the child penalty on” the gender pay gap.<sup>91</sup>

The social benefits discussed include improved equality in the division of paid employment and unpaid care and housework, and improved child development.<sup>92</sup> Evidence shows increased uptake of leave by fathers “positively affects equality at home, leading to an improved work–life balance.”<sup>93</sup> A father’s involvement in early-childhood is correlated to “improved cognitive outcomes” and “increased father-child bonding.”<sup>94</sup>

“The involvement of fathers in childcare has been linked to women’s decisions to have children, with higher involvement having a

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<sup>84</sup> *Id.*

<sup>85</sup> *Id.* at 3.

<sup>86</sup> *Fertility Statistics*, EUROSTAT (May 15, 2020), [https://ec.europa.eu/eurostat/statistics-explained/index.php/Fertility\\_statistics#The\\_birth\\_rate\\_in\\_the\\_EU\\_decreased\\_at\\_a\\_slower\\_pace\\_between\\_2000\\_and\\_2017\\_than\\_before](https://ec.europa.eu/eurostat/statistics-explained/index.php/Fertility_statistics#The_birth_rate_in_the_EU_decreased_at_a_slower_pace_between_2000_and_2017_than_before).

<sup>87</sup> *Id.*

<sup>88</sup> Belle, *supra* note 77.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.* at 12. (The “child penalty” reflects the concept that when women return to the workforce after having children, they often return to part-time jobs which often have lower pay and fewer options for career progression.”).

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> Belle, *supra* note 77.

positive effect on fertility.”<sup>95</sup> This is important because it can assist with children health and mortality rates. International analyses, similar to the RAND E.U. study, show “where parents are entitled to leave, children experience better health outcomes and lower rates of mortality.”<sup>96</sup>

#### *B. France*

Prior to 2019, France allowed two weeks of non-mandatory paid paternity leave and “eight months, four months for each parent” of parental leave.<sup>97</sup> Since 2002, it has been estimated that [seventy percent] of fathers have taken paternity leave.<sup>98</sup> “Those who do not have stable jobs or long-term employment contracts tend to forgo” paternity leave.<sup>99</sup> To increase uptake of paternity leave, “Mr. Macron’s government said it hoped to reduce that inequality by introducing a compulsory week of paid paternal leave for every new father.”<sup>100</sup> This new policy brings France “closer in line with a directive passed last year by the European Commission requiring E.U. member states to extend their parental leave to four months, two of which cannot be transferred from one parent to another.”<sup>101</sup>

### IV. PROPOSING LEGISLATION

#### *A. Expanding the FMLA*

One possibility of implementing paid paternity leave would be to expand the FMLA to include paid time off. Under this regime, paternity leave and maternity leave would be separate plans. Separation is preferable because it would allow fathers to have a specified amount of leave allocated for them, as opposed to parental leave in general which fathers and mothers take. This would correlate with the research done discussing the positive outcomes associated with an uptake in paternity leave. If paternity leave was not specifically carved out, these benefits might not be produced.

A downside to this proposal is the strict classifications of who qualifies as an employer and employee; many workers would still be ineligible for leave under the FMLA. To combat this, the classifications could be amended to require small businesses to offer paid leave.

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<sup>95</sup> *Id.*

<sup>96</sup> Nat’l P’ship for Women and Families, *supra* note 46.

<sup>97</sup> Belle, *supra* note 77.

<sup>98</sup> Peltier, *supra* note 36.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

However, it is likely many small businesses may not be able to fund paid leave, posing another downside to this option. If that was the case, small businesses could be provided the option to fund paid leave through employee taxes, similar to New Jersey.

### *B. New Legislation*

Another possibility is proposing new legislation. This legislation could be modeled after France's new policy. France's policy is both progressive and conservative: any amount of required paid leave would be seen as progressive in the United States, but when compared to other countries in the European Union, France offers less leave, making it one of the more conservative policies.

The key component of what makes France's policy ideal is that the paid leave is required. By making the paid leave mandatory, the benefits that stem from paternity and maternity leave both would almost be guaranteed. Additionally, mandatory leave would reduce the stigma surrounding fathers who take leave. Extending leave to non-marital fathers who assume legal and social responsibility for their offspring ought to be considered. About forty percent of children are born out of wedlock.<sup>102</sup> This extension would encourage non-marital fathers to assume legal and social responsibility of their children, which public policy favors.

## V. CONCLUSION

The United States is far behind other developed countries when it comes to paid parental leave. The FMLA has many shortcomings and disproportionately affects lower-income families. A majority of Americans are in favor of paid parental leave. Negative stigma and gendered stereotypes surround paternity leave. Multiple research studies have shown the numerous social and economic benefits that come from paid paternity and maternity leave. Mandatory paid paternity leave would reduce stigma and the gender gap. Therefore, the United States should implement mandatory paid paternity and maternity leave, such as France, to reap the benefits of paid leave while simultaneously combating gendered stereotypes and the decreasing U.S. birth rate.

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<sup>102</sup> Robert VerBruggen, *How We Ended up With 40 Percent of Children Born Out of Wedlock*, INST. FAM. STUD. (Dec. 18, 2017), <https://ifstudies.org/blog/how-we-ended-up-with-40-percent-of-children-born-out-of-wedlock>.