

5-22-2019

Family Leave: Comparing the United States' Family and Medical Leave Act with Sweden's Parental Leave Policy

Mallory Campbell

University of Notre Dame Law School

Follow this and additional works at: <https://scholarship.law.nd.edu/ndjicl>

Part of the [Comparative and Foreign Law Commons](#), and the [International Law Commons](#)

Recommended Citation

Campbell, Mallory (2019) "Family Leave: Comparing the United States' Family and Medical Leave Act with Sweden's Parental Leave Policy," *Notre Dame Journal of International & Comparative Law*: Vol. 9 : Iss. 2 , Article 7.

Available at: <https://scholarship.law.nd.edu/ndjicl/vol9/iss2/7>

This Note is brought to you for free and open access by the Notre Dame Journal of International & Comparative Law at NDLScholarship. It has been accepted for inclusion in Notre Dame Journal of International & Comparative Law by an authorized editor of NDLScholarship. For more information, please contact lawdr@nd.edu.

Family Leave: Comparing the United States' Family and Medical Leave Act with Sweden's Parental Leave Policy

Cover Page Footnote

University of Notre Dame Law School, 2019. University of Michigan, 2014.

FAMILY LEAVE: COMPARING THE UNITED STATES' FAMILY AND MEDICAL LEAVE ACT WITH SWEDEN'S PARENTAL LEAVE POLICY

MALLORY CAMPBELL*

INTRODUCTION 116

I. THE IMPORTANCE OF PAID PARENTAL LEAVE..... 119

 A. *BENEFITS FOR THE PARENTS* 120

 B. *BENEFITS FOR THE CHILD* 121

 C. *BENEFITS FOR THE EMPLOYER AND ECONOMY* 122

II. PARENTAL LEAVE IN THE UNITED STATES..... 124

 A. *HISTORY OF PARENTAL LEAVE* 124

 B. *CURRENT STATUS OF PARENTAL LEAVE* 125

 C. *STATE AND LOCAL LAWS*..... 128

 1. *Private Employers* 129

 D. *PROBLEMS WITH PARENTAL LEAVE IN THE UNITED STATES*..... 130

III. COMPARISON TO OTHER COUNTRIES 132

 A. *BRIEF OVERVIEW OF COUNTRIES' PAID PARENTAL LEAVE LAWS* 133

IV. SWEDEN'S PARENTAL LEAVE POLICY 135

 A. *HISTORY OF PARENTAL LEAVE IN SWEDEN*..... 135

 B. *CURRENT STATUS OF PARENTAL LEAVE IN SWEDEN* 136

V. COMPARISON OF SWEDEN TO UNITED STATES POLICIES 138

 A. *RECOMMENDATIONS FOR THE UNITED STATES BASED ON SWEDEN'S POLICY* 140

CONCLUSION..... 141

INTRODUCTION

Tameka Henry has four children to take care of, an eighty-seven-year-old grandfather, and her disabled husband, who has a chronic intestinal condition, diabetes, and congestive heart failure.¹ Tameka makes about \$30,000 per year and saves up all of her sick days and vacation days for when someone in her family is sick or needs help.² Because of this, Tameka states that she has been unable to take a vacation in over ten years.³ Tameka's problem, similar to the problem that many individuals in the United States face, is that she cannot afford to take time off under the Family and Medical Leave Act (FMLA),

* Juris Doctor Candidate, University of Notre Dame Law School, 2019; B.A. in Sport Management and Spanish, University of Michigan, 2014.

¹ Steven Findlay, *Paid Parental Leave May Be One of the Few Ideas that Transcends Politics*, CNN (July 29, 2017), <http://money.cnn.com/2017/07/29/news/economy/paid-leave-politics/index.html>.

² *Id.*

³ *Id.*

which only mandates unpaid leave.⁴ There are some private employers and state and local laws mandating paid parental leave, but Tameka's story is not uncommon. Paid parental leave has been recommended to the United States government since at least 1963, yet [t]he United States is the only high-income country in the world that does not mandate paid maternity leave."⁵

On the other hand, many countries offer extensive paid leave opportunities for both mothers and fathers. While many countries should be recognized and applauded for their parental leave policies, Sweden stands out as one of the best. In Sweden, both mothers and fathers receive extensive paid parental leave. Anders, a network services coordinator in Sweden, who was in the middle of taking a nine-month parental leave, discussed his company's leave policy: "It's not something strange at this workplace. There is never any talk at all if employees want to be at home . . . We want of course to be the type of workplace which facilitates people taking parental leave."⁶

According to the 2016 Global Gender Gap Report, a framework for tracking and understanding gender-based disparities around the world, Sweden far surpasses the United States in promoting equality among men and women.⁷ Within this Report, the main metric is the Global Gender Gap Index, which was first introduced in 2006 by the World Economic Forum.⁸ The Global Gender Gap Index measures national gender gaps related to health, education, economic, and political factors.⁹ The United States ranks forty-fifth out of the 144 countries included in the Report, with an index of .722/1.00.¹⁰ While the United States ranks first in educational attainment, it also ranks twenty-sixth in economic participation, sixty-second in health and survival, and seventy-third in political empowerment.¹¹ The United States ranks very low for "healthy life expectancy," as well as "women in Parliament" and "years with female head of state."¹² It is not surprising that the United States ranks low in these categories

⁴ *Id.* ("Why should some people have this benefit and not others based on where they live or the job they have, when it's clear everyone needs it? . . . Opponents of such government programs don't dispute the benefits of paid leave. Instead, they argue, it's best left as a voluntary choice by businesses, which can tailor their policies to the needs of their workforces.").

⁵ INST. FOR WOMEN'S POLICY RESEARCH, BARBARA GAULT ET AL., PAID PARENTAL LEAVE IN THE UNITED STATES: WHAT THE DATA TELL US ABOUT ACCESS, USAGE, AND ECONOMIC HEALTH BENEFITS 1 (1991) [hereinafter INST. FOR WOMEN'S POLICY RESEARCH].

⁶ Ann-Zofie Duvander et al., *Fathers on Leave Alone in Sweden: Toward More Equal Parenthood?*, in COMPARATIVE PERSPECTIVES ON WORK-LIFE BALANCE AND GENDER EQUALITY: FATHERS ON LEAVE ALONE 131–33 (Margaret O'Brien & Karin Wall eds., 2017) (omissions in original) [hereinafter Duvander et al.]. For further support, see *id.* at 130 ("Fathers described it as *taken for granted* that they would take leave. Relatively little discussion between partners had occurred. They used phrases such as 'It was obvious.' Christian (carpenter, 37) reported: 'We didn't talk so much about it really. But it just felt so natural that we each took half.'" (emphasis in original)).

⁷ See World Econ. Forum, *Insight Report: The Global Gender Gap Report 2016*, at 8 (Oct. 26, 2016), http://www3.weforum.org/docs/GGGR16/WEF_Global_Gender_Gap_Report_2016.pdf [hereinafter *Global Gender Gap Report*].

⁸ *Id.* at 24.

⁹ *Id.* at 3.

¹⁰ *Id.* at 10.

¹¹ *Id.* at 10–11.

¹² *Id.* at 356.

as the United States has never had a female president, and women made up just over twenty-four percent of all state legislators nationwide in 2016.¹³

Sweden's grades are significantly higher than the United States' in the Report's rankings. Sweden ranks fourth out of the 144 countries with an index of .815/1.00.¹⁴ Sweden ranks thirty-sixth in educational attainment, eleventh in economic participation, sixty-ninth in health and survival, and sixth in political empowerment.¹⁵ In addition, in stark contrast to the United States, Sweden ranks first in "women in ministerial positions" and fourth in "women in Parliament."¹⁶ In fact, forty-four percent of Swedish Parliament positions were held by women in 2016.¹⁷

The Report also has a specific section for each country entitled "Care." This section provides metrics regarding parental leave and whether the government supports or provides childcare. For the United States, these figures are almost completely null.¹⁸ The Report takes note that the United States provides zero days of guaranteed parental leave and that no wages are paid by the federal government during any non-guaranteed parental leave.¹⁹ However, the Report notes that the United States government does support or provide childcare.²⁰

While the United States offers zero days of guaranteed parental leave, Sweden guarantees 480 days,²¹ which may be split between the mother and father.²² In addition, while the United States pays no wages for non-guaranteed parental leave, Sweden pays at least fifty percent of the parents' current wages for its guaranteed leave.²³ Lastly, while the United States does not guarantee parental leave for any of its citizens, the Swedish government promises parental leave benefits for *all* citizens.²⁴ The large disparity between parental leave policies in the United States and Sweden demonstrates that Sweden more effectively closes the gender gap.

This Paper explores the issue of parental leave in the United States and other countries. Part I discusses the many benefits to having paid parental leave for the recipients of the benefit, their employers, their children, and society at large, respectively. Part II recounts the history of parental leave in the United States and explains the law as it currently stands, both on a national level and

¹³ *Women in State Legislatures for 2016*, NAT'L CONF. ST. LEGIS. (Sept. 20, 2016), <http://www.ncsl.org/legislators-staff/legislators/womens-legislative-network/women-in-state-legislatures-for-2016.aspx>.

¹⁴ *Global Gender Gap Report*, *supra* note 7, at 10.

¹⁵ *Id.*

¹⁶ *Id.* at 328.

¹⁷ *Id.*

¹⁸ *Id.* at 357.

¹⁹ *See id.* But see Family & Medical Leave Act of 1993, 29 U.S.C. §§ 2601–2654 (1993) (granting new parents twelve weeks of unpaid parental leave, but only if an employee works at an employer of a certain size and type—meaning that the leave is not guaranteed).

²⁰ *Global Gender Gap Report*, *supra* note 7, at 357.

²¹ *Id.* at 329.

²² Duvander et al., *supra* note 6, at 126.

²³ *See* Lola Akinmade Åkerström, *10 Things That Make Sweden Family-Friendly*, SWED. INST. (Oct. 22, 2018), <https://sweden.se/society/10-things-that-make-sweden-family-friendly>.

²⁴ *See* Duvander et al., *supra* note 6, at 126.

on a smaller scale. This Part also discusses the insufficiency of parental leave in the United States, even to those who are able to use it. Part III compares other countries to the United States, showing that Sweden is not alone in offering a progressive parental leave policy far superior to the United States' policy. Part IV focuses on Sweden and discusses its parental leave policy. Lastly, Part V compares Sweden and the United States' policies and gives recommendations on protocols or policies that the United States should implement on a national level.

I. THE IMPORTANCE OF PAID PARENTAL LEAVE

Parental leave policies allow parents time away from work after the birth or adoption of a child. These policies can be tailored to only the mother (maternity leave), to only the father (paternity leave), or to both the mother and father (parental leave).²⁵ In many cases, a country's policy allows the parents to decide among themselves how much time away from work each should be allotted, while also establishing minimum thresholds for the mother.²⁶ Parental leave can be paid or unpaid, but in either case, it is usually job-protected.²⁷ It is essential for parental leave to be job-protected so that parents can take time off from work to care for their children without fear that their jobs will be given away in their absence.²⁸

The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), an international treaty adopted in 1979 by the United Nations General Assembly, also recognizes the importance of maternity leave and of preventing discrimination against working mothers in Article 11:

In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

- (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
- (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
- (c) To encourage the provision of the necessary supporting social services to enable parents to

²⁵ *Maternity, Paternity and Parental Leave*, EDUCALOI.QC.CA, <https://www.educaloi.qc.ca/en/capsules/maternity-paternity-and-parental-leave> (last accessed May 8, 2019) (defining what different policies exist).

²⁶ *See, e.g.*, Duvander et al., *supra* note 6, at 126.

²⁷ *See, e.g.*, U.S. Dep't of Labor, *FMLA (Family & Medical Leave)*, <https://www.dol.gov/general/topic/benefits-leave/fmla> (last accessed May 8, 2019).

²⁸ *See, e.g.*, Nick Wingfield, *Following Netflix, Microsoft Sweetens Parental Leave Benefits*, N.Y. TIMES (Aug. 5, 2015), <https://bits.blogs.nytimes.com/2015/08/05/following-netflix-microsoft-sweetens-parental-leave-benefits> (describing Microsoft's parental leave policy, which allows employees to return to their same pre-childbirth jobs at the company on a part-time basis).

combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities; (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.²⁹

Despite the strong language outlined in CEDAW for the protection of working mothers, CEDAW has never been formally ratified by the United States, and thus, it does not have legal effect in the country.³⁰

A. BENEFITS FOR THE PARENTS

Mandating paid parental leave can have significant benefits for both parents. For mothers, a study of 3,350 adults found that “women who take a longer maternity leave . . . report fewer depressive symptoms, a reduction in severe depression, and, when the leave is paid, an improvement in overall and mental health.”³¹ A similar study, using data from the National Institute of Child Health and Human Development Study on Early Child Care, found that mothers who returned to work sooner had “greater levels of depressive symptoms, stress, and self-reported poor health” when “compared with mothers who waited at least 12 weeks before going back to work after childbirth.”³² Another study “followed a sample of 817 Minnesota employed mothers [for] the first year after childbirth” and found that “the longer the duration of leave [from work after childbirth,] the lower . . . her postpartum depression scores [are] on the Edinburgh Postnatal Depression Scale.”³³ Increasing a mother’s paid leave can also increase the likelihood of breastfeeding initiation and duration.³⁴ And studies have shown “an association between the duration of breastfeeding and the reduction in a mother’s risk for breast cancer . . . and ovarian cancer and rheumatoid arthritis.”³⁵

²⁹ Convention on the Elimination of All Forms of Discrimination Against Women art. 11, *adopted* Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW].

³⁰ See Linda Lowen, *Why Won't the U.S. Ratify the CEDAW Human Rights Treaty?*, THOUGHT CO., <https://www.thoughtco.com/why-wont-u-s-ratify-cedaw-3533824> (last updated Mar. 5, 2018). Over 180 countries have ratified CEDAW, and the United States is the only democracy that has not. President Jimmy Carter signed the treaty within its first year, but the Senate has never ratified CEDAW; thus, the United States is not bound by its provisions. The main opposition to CEDAW in the United States comes “from conservative politicians and religious leaders, who argue that the treaty is at best unnecessary and at worst subjects the U.S. to the whims of an international agency.” *Id.*

³¹ INST. FOR WOMEN’S POLICY RESEARCH, *supra* note 5, at 15; see also Zoe Aitken et al., *The Maternal Health Outcomes of Paid Maternity Leave: A Systematic Review*, 130 SOC. SCI. & MED. 32, 39 (2015) (discussing how paid leave allows a mother to recover from childbirth without the mental stress of having to worry about returning to work in order to earn wages). “An American study found that having less than eight weeks paid leave was associated with a 9% increase in [instances of depression in new mothers] . . . compared with women who took eight or more weeks of paid leave.” *Id.* (citations omitted).

³² INST. FOR WOMEN’S POLICY RESEARCH, *supra* note 5, at 15.

³³ *Id.*

³⁴ *Id.* at 16.

³⁵ *Id.* (citations omitted).

The time after a child's birth is a critical time for bonding between a father and child and for the child's development.³⁶ Paid paternity leave can help foster a better father-child relationship. A study out of Bar-Ilan University in Israel found that "[f]athers who spend more time taking care of their newborn child undergo changes in brain activity," making them better qualified for parenting.³⁷

B. BENEFITS FOR THE CHILD

The benefits for paid parental leave extend beyond just the parents. Joan Williams and Heather Boushey found that as of 2010 seventy percent of American children were growing up in households in which all of the adults worked full time.³⁸ Mandating paid parental leave allows at least one parent to take time off to help raise a child without having to choose between work and family.

A study by the University of North Carolina on European leave policies and their effects on pediatric health found that parental paid leave programs can substantially reduce infant mortality rates and can better a child's overall health.³⁹ The study also found that parental leave can be a cost-effective method for bettering child health.⁴⁰ Another study found that fathers who take two or more weeks off after the birth of their child are more likely to be involved in their children's lives nine months later.⁴¹

³⁶ Kathryn Kroggel, Note, *Absent Fathers: National Paid Paternity Leave for the United States—Examination of Foreign and State-Oriented Models*, 23 PENN ST. INT'L L. REV. 439, 441 (2004).

³⁷ Dennis Thompson, *Dad's Brain Becomes More 'Maternal' When He's Primary Caregiver: Study*, HEALTH DAY (May 26, 2014), <https://consumer.healthday.com/caregiving-information-6/infant-and-child-care-health-news-410/dad-s-brain-becomes-more-maternal-when-he-s-primary-caregiver-study-688176.html>; see also Duvander et al., *supra* note 6, at 134 ("When asked what was most positive about leave, most mentioned the opportunity to get to know their children and follow their development, a finding similar to other studies . . . The most positive thing I think is connecting in another way with the child . . . When you work, then you feel that you come home in the evening and have an hour to try to catch up and hear what has happened during the day and you have perhaps not seen what progress she has made during the day. Right now I am the one who is at home and get to inform my wife with text messages and pictures, 'Look what she has done here,' and I think that is really cool." (citations and internal quotation marks omitted)).

³⁸ See Joan C. Williams & Heather Boushey, *The Three Faces of Work-Family Conflict*, CTR. FOR AM. PROGRESS (Jan. 25, 2010), <https://www.americanprogress.org/issues/economy/reports/2010/01/25/7194/the-three-faces-of-work-family-conflict/>.

³⁹ See Christopher J. Ruhm, *Parental Leave and Child Health*, 19 J. HEALTH ECON. 931, 945–49 (2000). This study looked at sixteen European countries—Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom. See *id.* at 936. The study assumed that an additional one week of paid leave can decrease neonatal mortality by .14%, post-neonatal mortality by .42%, and child mortality by .35%. See *id.* at 956; see also Megan Shepherd-Banigan & Janice F. Bell, *Paid Leave Benefits Among a National Sample of Working Mothers with Infants in the United States*, 18 MATERN CHILD HEALTH J. 286, 287 (2014) (discussing how longer leave policies have been associated with "improved maternal mental health, vitality and role functioning, higher rate of child immunizations, more well-child visits, and longer duration of breastfeeding" (citations omitted)).

⁴⁰ Ruhm, *supra* note 39, at 933.

⁴¹ U.S. DEP'T OF LABOR, POLICY BRIEF, PATERNITY LEAVE: WHY PARENTAL LEAVE FOR FATHERS IS SO IMPORTANT FOR WORKING FAMILIES 2 (June 2015).

A similar study “evaluate[d] the impact of . . . the 1993 Family and Medical Leave Act (FMLA) on children’s birth and infant health outcomes in the United States.”⁴² This study used pre-FMLA maternity leave policies and compared firms covered by FMLA provisions.⁴³ The study found “that maternity leave led to small increases in birth weight, decreases in the likelihood of a premature birth, and substantial decreases in infant mortality for children of college-educated and married mothers, who were most able to take advantage of unpaid leave.”⁴⁴ While this study shows the benefits of parents being home under unpaid leave, more parents are able to take more time off to be with their children when their leave is paid.

C. BENEFITS FOR THE EMPLOYER AND ECONOMY

Parental leave also has beneficial impacts for the labor market. When women take leave knowing that they will have a job to return to post-leave, they are not forced to choose between caring for their newborn children or retaining their jobs. This freedom and capability reduces stress for parents, especially those concerned about maintaining a source of income post-childbirth. In addition, parents who return to their pre-childbirth jobs retain the skills and knowledge specific to their employment that enhance the productivity of the employee and employer.⁴⁵

Boston Consulting Group reviewed the policies of more than 250 companies and interviewed twenty-five HR leaders at large organizations with respect to their family leave policies.⁴⁶ Boston Consulting Group found that paid family leave is good for employees and for their employers.⁴⁷ “Research shows that paid leave increases the likelihood that workers will return to work after childbirth, improves employee morale, has positive or no effects on workplace productivity, reduces costs to employers through improved employee retention, and improves family incomes.”⁴⁸

One of the most important benefits is employee retention. Employee retention is likely a major reason why employers offer paid family leave in the first place. A study by Linda Houser and Thomas Vartanian found that women who take paid leave are ninety-three percent more likely to be in the workforce nine to twelve months after a child’s birth than women who take no leave.⁴⁹ In

⁴² Maya Rossin, *The Effects of Maternity Leave on Children’s Birth and Infant Health Outcomes in the United States*, 30 J. HEALTH ECON. 221, 221 (2011).

⁴³ *Id.*

⁴⁴ *Id.*; see also Sakiko Tanaka, *Parental Leave and Child Health Across OECD Countries*, 115 ECON. J. 20 (2005). One study found that paid leave of about forty weeks had the greatest effect in reducing child mortality rates, while unpaid leave resulted in little benefit.

⁴⁵ See INST. FOR WOMEN’S POLICY RESEARCH, *supra* note 5, at 7.

⁴⁶ TRISH STROMAN ET AL., BOSTON CONSULTING GRP., WHY PAID FAMILY LEAVE IS GOOD BUSINESS 1, 3 (2017), <https://www.bcg.com/en-us/publications/2017/human-resources-people-organization-why-paid-family-leave-is-good-business.aspx> [hereinafter STROMAN ET AL.].

⁴⁷ *See id.*

⁴⁸ INST. FOR WOMEN’S POLICY RESEARCH, *supra* note 5, at 7.

⁴⁹ See LINDA HOUSER & THOMAS P. VARTANIAN, RUTGERS CTR. FOR WOMEN AND WORK, PAY MATTERS: THE POSITIVE ECONOMIC IMPACTS OF PAID FAMILY LEAVE FOR FAMILIES, BUSINESSES AND THE PUBLIC 6 (Jan. 2012).

addition, “[w]hen Google increased its paid maternity leave program from 12 to 18 weeks, the rate of female turnover after maternity leave was reduced by 50%.”⁵⁰ These examples clearly show that offering paid family leave has an effect on retaining talent within the company. Given that, according to a recent McKinsey study, women are underrepresented at corporations in the United States at all levels, less likely to advance than men, and subject to a widening pay gap as their careers progress, it is important to retain female talent within the organization.⁵¹

Boston Consulting Group also found that when employers offer paid parental leave, they attract talent. A 2016 survey by Deloitte found that seventy-seven percent of workers with access to benefits reported that the amount of paid parental leave had some influence on their choice of employers.⁵²

Boston Consulting Group revealed that offering paid family leave improves engagement, morale, and productivity among workers.⁵³ A 2016 study by Ernst & Young of over 1,500 employers confirmed this finding and found that over eighty percent of companies that offered paid family leave reported a positive impact on employee morale, and more than seventy percent reported an increase in employee productivity.⁵⁴

Another positive impact for employers who provide paid family leave is that it enhances their brand equity.⁵⁵ When companies come out with new and improved paid leave policies, companies often see enhanced coverage from the media.

Companies that provide paid parental leave reap benefits for their companies, but if the federal government were to mandate paid parental leave, the entire economy would see a boost.⁵⁶ Having paid leave would increase women’s participation in the labor force. For example, “[i]f women in the United States had similar labor force participation rates to those in Canada, there would be 5.5 million more women in the workplace,” which would “generat[e] more than \$500 billion of additional economic activity[, or a] 3.5% GDP growth.”⁵⁷

⁵⁰ STROMAN ET AL., *supra* note 46, at 14.

⁵¹ *Women in the Workplace*, MCKINSEY & CO. (Sept. 2015), <https://www.mckinsey.com/business-functions/organization/our-insights/women-in-the-workplace>.

⁵² Deloitte, *Deloitte Survey: Less than Half of People Surveyed Feel Their Organization Helps Men Feel Comfortable Taking Parental Leave*, PR NEWswire (June 15, 2016), <https://www.prnewswire.com/news-releases/deloitte-survey-less-than-half-of-people-surveyed-feel-their-organization-helps-men-feel-comfortable-taking-parental-leave-300284822.html>.

⁵³ STROMAN ET AL., *supra* note 46, at 15.

⁵⁴ ERNST & YOUNG, *VIEWPOINTS ON PAID FAMILY MEDICAL LEAVE* 28 (Mar. 2017). The vast majority of employers reported a positive effect or no effect on morale and productivity (ninety-seven percent and ninety-three percent, respectively), suggesting that very few companies experienced any negative effect. *See id.*

⁵⁵ STROMAN ET AL., *supra* note 46, at 16.

⁵⁶ *See* PL+US: PAID LEAVE FOR THE U.S., *FORGING AHEAD OR FALLING BEHIND? PAID FAMILY LEAVE AT AMERICA'S TOP COMPANIES* 9 (2016) [hereinafter PL+US REPORT].

⁵⁷ *Id.*

II. PARENTAL LEAVE IN THE UNITED STATES

A. HISTORY OF PARENTAL LEAVE

Women were not really considered permanent members of the workforce until World War II forced many women to replace their drafted husbands.⁵⁸ When the war ended, many of these women remained in the workforce, which caused attitudes to shift towards protecting those women's rights to work.⁵⁹ In 1972, the Equal Employment Opportunity Commission drafted guidelines for employers to treat disability from pregnancy (such as miscarriage, abortion, or childbirth and recovery) in the same manner as other temporary disabilities.⁶⁰ In 1978, the Pregnancy Discrimination Act was passed which amended Title VII of the 1964 Civil Rights Act.⁶¹ The Pregnancy Discrimination Act prohibited discrimination on the basis of pregnancy, childbirth, or related medical conditions.⁶² While this Act was a step in the right direction, it still did not provide time off to care for a new child, forcing women to leave the workforce after giving birth.⁶³

The first version of legislation relating to parental leave was the Family Employment Security Act of 1984.⁶⁴ This proposed Act mandated twenty-six weeks per year of unpaid, job-protected leave to care for a new child. While this Act was never introduced in Congress, it helped facilitate discussions on this issue and prompt future bills.⁶⁵ Family leave legislation was first introduced in Congress in 1985 by Representative Patricia Schroeder without any luck.⁶⁶ Schroeder introduced the Parental and Disability Leave Act, which provided for eighteen weeks of unpaid, job-protected leave for new parents.⁶⁷ While Schroeder and other activists were actually hoping for paid leave, they were concerned that a bill mandating paid leave would not pass.⁶⁸ The next year, in 1986, a new family leave bill was introduced entitled the Parental and Medical Leave Act.⁶⁹ This Act changed the time available from twenty-six weeks in one year to thirty-six weeks over a two-year period.⁷⁰ The Parental

⁵⁸ Megan A. Sholar, *The History of Family Leave Policies in the United States*, ORG. OF AM. HISTORIANS, <http://tah.oah.org/november-2016/the-history-of-family-leave-policies-in-the-united-states/> (last accessed Apr. 1, 2019) ("In the first half of the twentieth century, women were typically treated as temporary workers, assumed to be in the workplace only until they got married and began to raise children.").

⁵⁹ *Id.* ("With more women in the labor force, employers and lawmakers were forced to address the issue of pregnancy on the job.").

⁶⁰ *Milestones: 1972*, U.S. EQUAL EMP. OPPORTUNITY COMMISSION, <https://www.eeoc.gov/eeoc/history/35th/milestones/1972.html> (last accessed May 8, 2019).

⁶¹ *The Pregnancy Discrimination Act of 1978*, U.S. EQUAL EMP. OPPORTUNITY COMMISSION, <https://www.eeoc.gov/laws/statutes/pregnancy.cfm> (last accessed May 8, 2019).

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Sholar, *supra* note 58.

⁶⁵ *Id.*

⁶⁶ See Kroggel, *supra* note 36, at 439.

⁶⁷ Sholar, *supra* note 58.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

and Medical Leave Act also included a number of limitations, such as only covering employers with five to fifteen employees and only covering employees that have worked there for at least three months.⁷¹ From 1986 to 1990, and after undergoing a name change to the Family and Medical Leave Act (FMLA), legislators continued to go back and forth on the details of the Act. In 1990, the House and Senate successfully passed the bill, only to have it vetoed by President George H.W. Bush.⁷² President Bush stated that while he supported family leave, he only supported leave if businesses could provide it voluntarily.⁷³ In 1992, while legislators were hopeful they could pressure President Bush into signing the bill into law to gain more Republican support in the upcoming election, President Bush again vetoed the bill. When President Bill Clinton took office in 1993, the FMLA was the first major piece of legislation that he signed into law.⁷⁴

B. CURRENT STATUS OF PARENTAL LEAVE

In the United States, the FMLA dictates whether an employer must give parental leave. According to the United States Department of Labor, the purpose of the FMLA is to

allow[] employees to balance their work and family life by taking reasonable unpaid leave for certain family and medical reasons. The FMLA seeks to accomplish these purposes in a manner that accommodates the legitimate interests of employers, and minimizes the potential for employment discrimination on the basis of gender, while promoting equal employment opportunity for men and women.⁷⁵

However, the FMLA only provides for *unpaid* leave. The FMLA allows eligible employees to take up to twelve work-weeks of leave in a twelve-month period for several reasons, including the birth or placement of a son or daughter.⁷⁶ An employee's job position and benefits are protected during the period of unpaid leave, and upon return, the employee is guaranteed his or her position or a comparable position.⁷⁷ The employee is also entitled to benefits during his or her leave.⁷⁸

⁷¹ See Kroggel, *supra* note 36, at 445 n.45.

⁷² Steven A. Holmes, *Bush Vetoes Bill on Family Leave*, N.Y. TIMES (June 30, 1990), <https://www.nytimes.com/1990/06/30/us/bush-vetoes-bill-on-family-leave.html>.

⁷³ *Id.*

⁷⁴ Liz Ben-Ishai, *On FMLA Anniversary, Bill Clinton's Words Ring More True Than Ever*, CLASP (Feb. 5, 2019), <https://www.clasp.org/blog/fmla-anniversary-bill-clinton's-words-ring-more-true-ever>.

⁷⁵ Wage and Hour Division, *Appendix F FMLA Compliance Guide*, U.S. DEP'T LABOR, <https://www.dol.gov/whd/fmla/appendixf.htm> (last visited Apr. 1, 2019) [hereinafter *Appendix F*]. See generally Family & Medical Leave Act, 29 U.S.C. §§ 2601–2654 (2018).

⁷⁶ *Appendix F*, *supra* note 75.

⁷⁷ Kroggel, *supra* note 36, at 443–44.

⁷⁸ *Id.* at 444.

In addition, the FMLA only applies to certain employers and certain employees. The FMLA applies to private-sector employers with fifty or more employees, public or federal government agencies (regardless of the total number of employees), and to public or private elementary or secondary schools (again, regardless of the total number of employees).⁷⁹ The FMLA coverage is further limited because employees must meet certain prerequisites. An employee must have worked for a “covered” employer for at least twelve months; an employee must have worked at least 1,250 hours of service for the covered employer during the twelve-month period immediately preceding the leave; and the employee must work at a location where the employer has at least fifty employees within seventy-five miles.⁸⁰ The employer can also require employees “to substitute accrued paid leave, such as vacation days . . . for part or all of the twelve weeks allowed under the FMLA.”⁸¹ Another limitation of the FMLA is that “if a husband and wife are employed by the same employer, they are required to share the twelve available weeks of unpaid leave.”⁸²

While many hoped that after the passage of the FMLA, coverage would be expanded over time, it was not until 2008 that the FMLA was first amended. Since its passage, the FMLA has been amended to expand coverage to workers who have a family member in the military, to better assess eligibility for airline pilots and crew members, and to redefine the definition of “spouse” to include same-sex marriages.⁸³ “Same-sex spouses gained coverage after the 2013 Supreme Court decision in *United States v. Windsor*”:⁸⁴

[Defense of Marriage Act (DOMA)] divests married same-sex couples of the duties and responsibilities that are an essential part of married life and that they in most cases would be honored to accept were DOMA not in force. For instance, because it is expected that spouses will support each other as they pursue educational opportunities, federal law takes into consideration a spouse’s income in calculating a student’s federal financial aid eligibility. Same-sex married couples are exempt from this requirement.⁸⁵

Windsor struck down as unconstitutional Section Three of the Defense of Marriage Act.⁸⁶ That section of DOMA restricted the definition of marriage to

⁷⁹ Appendix F, *supra* note 75.

⁸⁰ Family & Medical Leave Act, 29 U.S.C. §§ 2611(2)(A)–(B) (2018). See generally Wage and Hour Division, *The Family and Medical Leave Act Employer Guide*, U.S. DEP’T LABOR, <https://www.dol.gov/whd/regs/compliance/1421.htm> (last accessed May 8, 2019).

⁸¹ Kroggel, *supra* note 36, at 443.

⁸² *Id.*

⁸³ 29 U.S.C. §§ 2611(2)(D), (13), (15) (2018).

⁸⁴ Megan A. Sholar, *Donald Trump and Hillary Clinton Both Support Paid Family Leave. That’s a Breakthrough.*, WASH. POST (Sept. 22, 2016), https://www.washingtonpost.com/news/monkey-cage/wp/2016/09/22/donald-trump-and-hillary-clinton-both-support-paid-family-leave-thats-a-breakthrough/?utm_term=.1a51087e5ba7 [hereinafter *That’s a Breakthrough*].

⁸⁵ *United States v. Windsor*, 570 U.S. 744, 773 (2013).

⁸⁶ *Id.* at 774.

opposite-sex marriages for the purposes of federal law.⁸⁷ The ruling in *Windsor* effectively extended FMLA rights to same-sex married couples.⁸⁸

While attempts to amend the FMLA to provide further coverage and benefits have mostly failed, legislators and politicians have made attempts to introduce new laws relating to parental leave. For example, “[t]he [Family and Medical Insurance Act (the FAMILY Act)] was first introduced by Senator Gillibrand and Representative DeLauro in 2013, and then again in 2015, but it has never made it out of committee. If passed, the FAMILY Act would [mandate] up to 12 weeks of benefit payments to eligible employees who take time for ‘qualified caregiving.’”⁸⁹ Under the proposed FAMILY Act, eligible employees could “earn up to 66% of their monthly wages (up to a capped amount),” and the FAMILY Act would apply “to all employers, regardless of size.”⁹⁰ The FAMILY Act “would be funded by employee and employer payroll deductions.”⁹¹ Further, in 2015, President Obama called for paid family leave in his State of the Union address, and was the first United States President to do so.⁹² Paid parental leave was also a major issue in the 2016 presidential election between Donald Trump and Hillary Clinton. During the campaign, both major-party nominees released their plans for enacting paid parental leave.⁹³ This “marked the first time in U.S. history that both major-party candidates have put forward paid family leave policies.”⁹⁴

While both candidates announced paid parental leave plans, there were important differences between the two plans that should have been taken into consideration. Current-President Trump’s plan called for six weeks of paid maternity leave following childbirth—meaning that it did not cover fathers, and it did not cover mothers who became parents after surrogacy or adoption.⁹⁵ In contrast, Hillary Clinton’s plan called for twelve weeks of paid leave for mothers or fathers to be used in certain circumstances, including care for newborns, sick children, or sick or elderly parents.⁹⁶ The amount of pay during leave also differed between the two plans. While the details of President Trump’s plan were unclear, his plan specified six weeks of leave “through unemployment benefits.”⁹⁷ If this means that mothers will simply receive unemployment payments for their leave, then the maximum amount they could

⁸⁷ See *id.* at 752.

⁸⁸ See *That’s a Breakthrough*, *supra* note 84.

⁸⁹ Susan L. Nardone, *Federally Mandated Paid Parental Leave in the US: Is the Wait Over?*, N.J. L.J. (Apr. 17, 2017), <https://www.law.com/njljournal/almID/1202783664721/federally-mandated-paid-parental-leave-in-the-us-is-the-wait-over/>.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² See *That’s a Breakthrough*, *supra* note 84.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ See Theo Keith, *Side-by-Side Comparison: Trump, Clinton Unveil Plans for Paid Maternity Leave, Child Care Costs*, FOX 6 NOW (Sept. 18, 2016), <http://fox6now.com/2016/09/18/side-by-side-comparison-donald-trump-hillary-clinton-unveil-plans-for-paid-maternity-leave-childcare-costs/>; see also *That’s a Breakthrough*, *supra* note 84.

⁹⁶ Jennifer Gerson Uffalussy, *Trump and Clinton on Paid Leave: Key Differences Everyone Needs to Know*, YAHOO! (Sept. 14, 2016), <https://www.yahoo.com/lifestyle/trump-and-clinton-on-paid-leave-key-differences-165554506.html>.

⁹⁷ *Id.*

earn is \$450 a week, about half of what the average American worker makes.⁹⁸ On the other hand, under Clinton's plan, eligible employees earn a minimum of two-thirds of their pay.⁹⁹

C. STATE AND LOCAL LAWS

While the FMLA is the only federal law that governs parental leave, many states have taken their own initiatives and enacted laws regarding this issue. The FMLA does not supersede any provision of a state or local law that provides greater family leave rights than the FMLA provides.¹⁰⁰ State and local laws can differ from the FMLA in several respects.¹⁰¹ First of all, the state coverage may extend to smaller employers.¹⁰² Second of all, the amount of leave required may be different between the federal and state laws. Lastly, eligibility requirements may differ.¹⁰³ Prior to the enactment of the FMLA, nearly forty states had already adopted some type of family leave law.¹⁰⁴ Illinois, Ohio, and Virginia provide for paid parental leave for state employees.¹⁰⁵ California, New Jersey, Rhode Island, and New York provide employee-funded paid leave policies for virtually all workers.¹⁰⁶

California, in particular, passed the California Family Rights Act in 1991. This Act provides that employers with at least fifty employees must allow eligible employees to take up to twelve weeks of leave in a twelve-month period.¹⁰⁷ The California Family Rights Act and the FMLA are similar in most regards, but the California Family Rights Act extends to domestic partnerships, while the FMLA does not.¹⁰⁸ California has also enacted a Small Necessities Law.¹⁰⁹ This law requires employers with at least twenty-five employees to give up to forty hours of unpaid leave in any twelve-month period to participate in activities at a child's school or day care.¹¹⁰ California has also enacted the California Paid Family Leave Act, which "provides up to [six] weeks of partial pay to employees who take time off from work to care for a seriously ill family member . . . or to bond with a new child."¹¹¹

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ Jennifer K. Wilson, *Validity, Construction, and Application of State Family-, Parental-, or Medical-Leave Acts*, 57 A.L.R. 5th 477 (1998).

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *That's a Breakthrough*, *supra* note 84.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ Lisa Guerin, *Family and Medical Leave in California*, NOLO, <https://www.nolo.com/legal-encyclopedia/family-medical-leave-california.html> (last accessed May 8, 2019).

¹⁰⁸ *Id.*; see *California Family and Medical Leave*, SOC'Y FOR HUM. RESOURCE MGMT., <https://www.shrm.org/resourcesandtools/tools-and-samples/hr-qa/pages/californiadifferencecfrafmfla.aspx> (last accessed Dec. 22, 2017).

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *About Paid Family Leave (PFL)*, ST. CAL. EMP. DEV. DEP'T, http://www.edd.ca.gov/Disability/About_PFL.htm (last accessed May 8, 2019).

In Rhode Island, the state has implemented a temporary disability insurance program.¹¹² This program is funded by withholdings from employees' paychecks.¹¹³ If eligible, "employees who are unable to work due to a temporary disability . . . can receive partial wage replacement for up to [thirty] weeks."¹¹⁴ Pregnancy is included in the definition of temporary disability.¹¹⁵ More recently, Rhode Island has expanded their program "to include paid leave for employees who need time off to bond with a new child."¹¹⁶

As of January 1, 2018, New York, through the Paid Family Leave Benefits Law, "provide[s] eight weeks of job-protected, paid family leave . . . with the number of weeks increasing in subsequent years to a maximum of twelve weeks beginning on Jan. 1, 2021."¹¹⁷

In addition to state laws, there are also local laws that govern family leave. Dozens of cities and counties have implemented paid parental leave for government employees.¹¹⁸ For example, San Francisco has adopted a city-wide paid parental leave law.¹¹⁹

1. *Private Employers*

If employers are not covered by federal or state laws, private employers can sometimes fill the void. However, only fourteen percent of the United States workforce has access to paid family leave through their employers.¹²⁰ This is an increase of just three percentage points (from eleven percent) since 2010.¹²¹ "Workers in the highest income quartile are three and a half times more likely to have access to paid family leave [through their employers] than those in the lowest income quartile."¹²² In addition, "coverage is three times greater for full-time workers than for part-time workers."¹²³

PL+US: Paid Leave for the United States conducted research on the top sixty employers in the country to understand which companies offer the best access to family leave.¹²⁴ Those sixty employers employ about fourteen million people in the United States.¹²⁵ Of the sixty employers, only twenty-nine agreed to disclose their parental leave policies.¹²⁶ Of those twenty-nine, Deloitte, Bank of America, and Ernst & Young stood out by offering sixteen weeks of "fully

¹¹² Lisa Guerin, *Rhode Island Family and Medical Leave*, NOLO, <https://www.nolo.com/legal-encyclopedia/rhode-island-family-medical-leave.html> (last accessed May 8, 2019).

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ Nardone, *supra* note 89.

¹¹⁸ *That's a Breakthrough*, *supra* note 84.

¹¹⁹ *Id.*

¹²⁰ STROMAN ET AL., *supra* note 46, at 8.

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ PL+US REPORT, *supra* note 56, at 2.

¹²⁵ *Id.*

¹²⁶ *Id.* at 3.

paid parental leave for mothers, fathers, and adoptive parents.”¹²⁷ While these companies stand out as an example to others, “the majority of U.S. top employers offer far less, if any, paid leave to all employees.”¹²⁸ Of the twenty-nine companies willing to disclose their parental leave policies, twenty-two showed unequal leave policies “with fathers receiving significantly less time than mothers,” or none at all, and “adoptive parents receiving significantly less time than birth parents,” or none at all.¹²⁹ For example, major companies like AT&T, CVS, General Motors, Ford, Starbucks, and Verizon offer no paternity leave at all.¹³⁰ In addition to finding unequal policies for fathers and adoptive parents, PL+US found that low-wage employees are disadvantaged by companies’ parental leave policies.¹³¹ Several companies, such as Walmart, only offer paid leave to their salaried employees and not to hourly employees.¹³²

D. PROBLEMS WITH PARENTAL LEAVE IN THE UNITED STATES

The FMLA has many limitations that have yet to be addressed:

[W]hile the act did effect change in that it provided leave to both men and women, overall, the act did little more than require what was already provided: unpaid leave to employees of large employers. In short, the FMLA only reaches goals of job security and work-family balance for a limited group of employees: those who work for large employers and whose families can afford to lose one income for up to twelve weeks.¹³³

One of the biggest problems with the FMLA is the fact that the leave offered is unpaid:

[T]he FMLA’s effects on maternity and especially paternity leave call the effectiveness of the act into question . . . While the FLMA provides for twelve weeks of unpaid leave time, many workers do not take advantage of the law because it would be impossible for the family to survive without the worker’s income.¹³⁴

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.* (noting that some of these companies have since implemented revised policies adding paternity leave after PL+US’s report came to light)

¹³¹ *Id.*

¹³² *Id.*

¹³³ Kroggel, *supra* note 36, at 447–48 (citations omitted).

¹³⁴ *Id.* at 440 (citations omitted).

The FMLA only benefits those who are able to afford to take time off without being paid. The Commission on Leave, through the Department of Labor, found that the utilization of family leave under the FMLA is relatively low, and “not everyone who needs to take family leave is able or willing to do so.”¹³⁵ According to a 2000 report by the Commission on Leave, there are about 3,520,000 “leave-needers” (people who need, but do not take, FMLA leave).¹³⁶

Providing paid leave would alleviate many of the problems associated with the FMLA, and is generally supported by the public.¹³⁷ According to a Pew Research Center survey of 2,029 adults, “82% support paid maternity leave, [and] 69% support paid paternity leave.”¹³⁸

The FMLA is also severely limited in the number of people that it covers. The eligibility requirement under the FMLA to only cover full-time employees who have been with the company for more than a year applies to only about sixty percent of workers in the United States.¹³⁹ The Commission on Leave, through the Department of Labor, found that “only one tenth of private sector employers are covered by the FMLA” and that “those employers employ about half of the private sector employees in the United States.”¹⁴⁰ Of the employers that are not covered by the FMLA, only 32.3 percent offer some sort of parental leave on their own.¹⁴¹ This only pertains to unpaid family leave; when it comes to paid parental leave, the results are much worse. Since there is no federal mandate for paid parental leave, employees are only able to receive this benefit through state or local laws or through their employers. A study by PL+US: Paid Leave for the United States describes paid leave in the United States as being an “elite” privilege with only thirteen percent of private sector workers in the United States having any paid family leave, and only six percent of people working low-wage jobs having access to any kind of paid family leave.¹⁴²

“[L]ow-income women are less likely to be eligible for legally mandated parental leave, less likely to have employer-provided paid and unpaid leave, and less likely to utilize their leave even if they are eligible.”¹⁴³ This issue is directly correlated with the FMLA requirements for job tenure and hours worked. A study found that if the required number of employees was reduced from fifty to ten employees, “the legal eligibility of women in the lowest family income quartile to take leave would increase from 32 percent to 48 percent.”¹⁴⁴ In addition, if the requirement to work for a covered employer for

¹³⁵ *Id.* at 449.

¹³⁶ *Id.* at 450.

¹³⁷ Findlay, *supra* note 1.

¹³⁸ *Id.*

¹³⁹ Rachel Gillet, *The Science Behind Why Paid Parental Leave Is Good for Everyone*, BUS. INSIDER (Aug. 5, 2015), <http://www.businessinsider.com/scientific-proof-paid-parental-leave-is-good-for-everyone>.

¹⁴⁰ Kroggel, *supra* note 36, at 448 (citations omitted).

¹⁴¹ *Id.*

¹⁴² See PL+US REPORT, *supra* note 56, at 2.

¹⁴³ Sari Pekkala Kerr, *Parental Leave Legislation and Women's Work: A Story of Unequal Opportunities*, 35 J. POL'Y ANALYSIS & MGMT. 117, 138 (2015).

¹⁴⁴ *Id.* at 139.

twelve months was reduced to six months, legal eligibility to take leave would further increase to 52 percent.¹⁴⁵ Lastly, if the required number of annual hours worked was reduced from 1,250 hours to 600 hours, 63 percent of women in the lowest family income quartile would be eligible to take leave.¹⁴⁶

III. COMPARISON TO OTHER COUNTRIES

The United States is drastically far behind other countries when it comes to parental leave, and particularly paid parental leave. A 2017 survey by the Organization for Economic Cooperation and Development found that out of forty-one developed countries, the United States is the only one without federal laws mandating paid maternity leave.¹⁴⁷ Overall, the United States is “one of just eight countries . . . with no national policy mandating paid maternity leave for workers” and the only industrialized nation on the list of eight.¹⁴⁸ In addition, of the forty-one countries, many “have paid leave laws that apply to both male and female parents.”¹⁴⁹

Out of 193 countries in the United Nations, the United States is the only high-income country that does not have paid maternal leave.¹⁵⁰ Eighty-two countries offer less than fourteen weeks of paid maternal leave.¹⁵¹ Fifty-three countries offer fourteen to 25.9 weeks of paid maternal leave.¹⁵² Seventeen countries offer twenty-six to 51.9 weeks of paid maternal leave.¹⁵³ Lastly, thirty-three countries offer fifty-two weeks or more of paid maternal leave.¹⁵⁴ While the statistics for paid paternal leave are not as staggering, the United States is still left behind by many countries throughout the world. Ninety-nine countries (including the United States) do not offer any paid paternal leave.¹⁵⁵ Forty-six countries offer less than three weeks of paid paternal leave.¹⁵⁶ Five countries offer three to thirteen weeks of paid paternal leave.¹⁵⁷ Lastly, forty-three countries offer fourteen weeks or more of paid paternal leave.¹⁵⁸

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ Nardone, *supra* note 89.

¹⁴⁸ STROMAN ET AL., *supra* note 46, at 3; *see also* Nardone, *supra* note 89.

¹⁴⁹ Nardone, *supra* note 89.

¹⁵⁰ *See* Jessica Deahl, *Countries Around the World Beat the U.S. on Paid Parental Leave*, NAT'L PUB. RADIO (Oct. 6, 2016), <https://www.npr.org/2016/10/06/495839588/countries-around-the-world-beat-the-u-s-on-paid-parental-leave>.

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

A. BRIEF OVERVIEW OF COUNTRIES' PAID PARENTAL LEAVE LAWS

Before focusing on comparing the United States to Sweden, it is important to note that Sweden is not alone in offering a progressive parental leave policy. In Norway, parents can choose between receiving one hundred percent of their regular salary for forty-nine weeks or eighty percent of their salary for fifty-nine weeks.¹⁵⁹ This is the longest parental leave allowance at full pay in the world.¹⁶⁰

In Denmark, new mothers receive eighteen weeks of maternity leave—four weeks before the birth and fourteen weeks after the birth.¹⁶¹ Significantly, these mothers receive full pay throughout their leave. The father can also take two consecutive weeks off during the fourteen-week period.¹⁶² If the child or a parent gets sick, the fourteen-week period can be extended for another fourteen weeks. Once the initial leave period is over, parents have thirty-two weeks of additional leave to use however the parents see fit.

In Serbia, mothers will receive twenty weeks off with full pay after giving birth.¹⁶³ After that leave period, mothers can get an additional full year of leave, but with a different compensation scheme: mothers receive one hundred percent of their pay for the first twenty-six weeks, sixty percent pay for weeks twenty-seven to thirty-nine, and thirty percent pay for weeks forty to fifty-two.¹⁶⁴ Fathers in Serbia receive one week of fully paid leave.¹⁶⁵

In Finland, mothers can begin their maternity leave seven weeks prior to their due date¹⁶⁶. After birth, the government covers sixteen additional weeks of paid leave, funded through a maternity grant.¹⁶⁷ Finnish mothers are eligible for paid leave regardless of whether they are employed, a student, unemployed, or self-employed.¹⁶⁸ For fathers, Finland offers eight weeks of paid paternity leave.¹⁶⁹

Belgium offers up to fifteen weeks of maternity leave to a mother or even nineteen weeks after multiple births.¹⁷⁰ For the first thirty days of the fifteen

¹⁵⁹ Roslyn Costanzo, *Best Maternity Leave: 4 Best Countries in the World for New Mamas*, HUFF. POST: CAN. (Oct. 17, 2016), http://www.huffingtonpost.ca/2016/10/17/best-maternity-leave_n_12524442.html.

¹⁶⁰ *Id.* (In addition to paid maternal leave, Norway also boasts other impressive and progressive family benefits. Norway provides for both a maternal quota and a paternal quota, nursing breaks, and universal daycare with 90% of the cost of daycare subsidized for children ages one to five.).

¹⁶¹ Chris Weller, *These 12 Countries Have the Best Parental Leave Policies in the World*, BUS. INSIDER (Nov. 7, 2016), [https://www.businessinsider.com/countries-with-best-parental-leave-2016-11/?r=UK#finland-1%20\(last%20visited%20Dec.%208,%202017](https://www.businessinsider.com/countries-with-best-parental-leave-2016-11/?r=UK#finland-1%20(last%20visited%20Dec.%208,%202017).

¹⁶² *Maternity Leave Around the World*, INSTANT OFFICES, <https://www.instantoffices.com/blog/instant-offices-news/maternity-leave-around-world/> (last accessed Apr. 15, 2019).

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ Weller, *supra* note 161.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Having a Baby in Belgium*, EXPATICA, <https://www.expatica.com/be/healthcare/womens-health/having-a-baby-in-belgium-100241/-maternity> (last accessed May 8, 2019).

weeks, mothers are paid eighty-two percent of their salary.¹⁷¹ After that, mothers receive seventy-five percent of their salary for the remainder of the fifteen weeks. On the other hand, fathers are given ten days of paid leave.¹⁷² For three of the ten days, fathers receive one hundred percent of their salary.¹⁷³ For the remaining seven days, fathers receive eighty-two percent of their salary.¹⁷⁴

In Iceland, parents receive nine months of paid parental leave.¹⁷⁵ New mothers receive three months; new fathers receive three months; and the couple can decide how to split up the remaining three months.¹⁷⁶ Each parent receives eighty percent of their salary while on leave.¹⁷⁷

In Hungary, mothers get twenty-four paid weeks of leave, during which they receive seventy percent of their salary.¹⁷⁸ This leave can start up to four weeks before the expected delivery.¹⁷⁹ Fathers in Hungary receive one week paid in full.¹⁸⁰ After twenty-four weeks of paid maternity leave, parents receive an additional 156 weeks that they can split between them.¹⁸¹ The additional 156 weeks is paid at seventy percent of their salary for 104 weeks and at a flat rate to cover the rest.¹⁸²

In Estonia, mothers receive 140 days of fully paid leave which can begin seventy days before their due date.¹⁸³ On the other hand, fathers receive ten days of paid paternal leave in order to promote bonding with their child. After the 140 days of paid maternity leave ends, parents receive an additional 435 days off to share, with compensation calculated at the average of their two earnings.¹⁸⁴

In Lithuania, mothers receive eighteen weeks of fully paid leave while fathers receive four weeks.¹⁸⁵ After this original allotment, parents get an additional 156 weeks to share among themselves. For the additional 156 weeks, parents can choose to receive one hundred percent of their pay for the first fifty-two weeks or seventy percent for the first 104 weeks; after that, the remaining weeks are unpaid.¹⁸⁶

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ Björn T. Arnarson & Aparna Mitra, *The Paternity Leave Act in Iceland: Implications for Gender Equality in the Labour Market*, 17 J. APPLIED ECON. LETTERS 677, 677 (2010).

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ See Weller, *supra* note 161.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Why Estonia is One of the Best Countries to be a Parent?*, MEDIUM (Jan. 26, 2018), https://medium.com/@happy_traveller/why-estonia-is-one-of-the-best-countries-to-be-a-parent-4dfdae874984.

¹⁸⁴ *Id.*

¹⁸⁵ INT'L NETWORK ON LEAVE POLICY AND RESEARCH, 14TH INTERNATIONAL REVIEW OF LEAVE POLICIES AND RELATED RESEARCH 2018 264-266 (Sonja Blum et al. eds., 2018).

¹⁸⁶ *Id.* 265-66.

In Bulgaria, mothers receive forty-five days of leave prior to birth and a total of 410 days of maternity leave.¹⁸⁷ Fathers in Bulgaria receive fifteen days.¹⁸⁸ The country's National Health Insurance Fund pays ninety percent of both parents' salaries.¹⁸⁹ Even after the maternity leave ends, parents can choose to continue to take paid leave until the child turns two.¹⁹⁰ During that time, the parent on leave gets paid the minimum monthly wage.¹⁹¹

In Slovenia, mothers can take their maternity leave twenty-eight days prior to the mother's due date.¹⁹² Mothers get 105 days of paid leave, with one hundred percent of the average wage in the twelve months prior to their submission for benefits.¹⁹³ Fathers, on the other hand, receive ninety days at ninety percent of their average wage. After the paid leave runs out, each parent can take off up to 130 more days, paid out at ninety percent for both.¹⁹⁴ The mother can give up to one hundred days to their husband to give him 230 days, or fathers can give all 130 days to the mothers to give her 260 days.¹⁹⁵

IV. SWEDEN'S PARENTAL LEAVE POLICY

While it is clear that many countries have progressive and impressive parental leave policies, the focus of this Paper is on comparing Sweden's policy to the United States. The United States should take note of many countries' parental leave policies, but should particularly learn from Sweden's parental leave policy, also known as *Föräldradighet*. As mentioned previously, Sweden does a remarkable job of narrowing the gender gap. Much of the reason for this is due to its progressive parental leave policy.

A. HISTORY OF PARENTAL LEAVE IN SWEDEN

Sweden was the first country to offer fathers paid leave.¹⁹⁶ In 1972, the former Prime Minister of Sweden, Olof Palme, established the Advisory Council for Equality Between Men and Women.¹⁹⁷ One of the goals of this Advisory Council was to promote "changes not only in the conditions of women but also in the conditions of men. One purpose of such changes [was]

¹⁸⁷ Bryan Nelson, *10 of the Best Countries to Work In*, MOTHER NATURE NETWORK (Dec. 9, 2011), <https://www.mnn.com/money/green-workplace/photos/the-10-best-countries-to-work-in/bulgaria>.

¹⁸⁸ Weller, *supra* note 161.

¹⁸⁹ *Id.*

¹⁹⁰ Nelson, *supra* note 187.

¹⁹¹ *Id.*

¹⁹² Weller, *supra* note 161.

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ See Duvander et al., *supra* note 6, at 5.

¹⁹⁷ Linda Haas & C. Philip Hwang, *The Impact of Taking Parental Leave on Fathers' Participation in Childcare and Relationships With Children: Lessons from Sweden*, 11 COMMUNITY, WORK & FAM. 85, 88 (2008).

to give women an increased opportunity for gainful employment and to give men an increased responsibility for care of the children.”¹⁹⁸ The Prime Minister’s mentality behind the Advisory Council was that in order to promote perfect gender equality, both the father and mother must be involved in child-rearing responsibilities.¹⁹⁹ In 1974, Sweden’s Parliament replaced maternity leave benefits with a parental leave program, allowing fathers to receive paid leave after the birth or adoption of a child.²⁰⁰ In 1995, Sweden “introduced a first month reserved specifically for fathers under a ‘use it or lose it’ system.”²⁰¹ Sweden added a second month in 2002 and a third month in 2016.²⁰² Sweden wanted to encourage more fathers to use the available parental leave.

B. CURRENT STATUS OF PARENTAL LEAVE IN SWEDEN

Sweden’s parental leave policy consists of 480 days (sixteen months) of guaranteed paid parental leave.²⁰³ Each parent must take at least twelve weeks (three months) of leave, and parents are able to share the remaining leave as they see fit. For a majority of the leave (390 days), parents are entitled to nearly eighty percent of their normal wages, with a maximum monthly income of SEK 37,083 and a minimum monthly income of around SEK 7,500.²⁰⁴ In 2010, only one-fifth of men and less than one-tenth of women had incomes above this ceiling.²⁰⁵ For the remaining ninety days, parents are paid at a flat rate of around SEK 180 per day.²⁰⁶

Sweden does not have strict requirements to receive paid leave to care for a child. In Sweden, virtually all parents receive paid leave. Anyone registered in Sweden is entitled to paid parental leave regardless of whether the child was born outside of Sweden and whether the parent is working in Sweden.²⁰⁷ In order to receive eighty percent of normal wages, a parent must have had an annual income of at least SEK 82,100 for at least 240 consecutive days before

¹⁹⁸ *Id.*

¹⁹⁹ *See id.*; *see also* CEDAW, *supra* note 29, at art. 16. Although CEDAW was adopted several years after the Prime Minister’s statements, Article 16 of CEDAW is consistent with his words in that it also strives to eliminate gender-stereotyped roles for men and women by involving all genders in the child-rearing process.

²⁰⁰ *Gender Equality in Sweden*, SWED., <https://sweden.se/society/gender-equality-in-sweden/> (last accessed May 9, 2019).

²⁰¹ Agence France-Presse, *Swedish Fathers to Get Third Month of Paid Paternity Leave*, *GUARDIAN* (May 28, 2015), <https://www.theguardian.com/world/2015/may/28/swedish-fathers-paid-paternity-parental-leave>.

²⁰² *Id.*

²⁰³ *See* Daniel Reed, *Parental Leave in Sweden*, *EVERYTHING SWED.* (Apr. 17, 2016), <http://everythingsweden.com/parental-leave-in-sweden>.

²⁰⁴ *See* Akinmade Åkerström, *supra* note 23; Swedish Social Insurance Agency, *Föräldrapenning [Parental Allowance]*, FÖRSÄKRINGSKASSAN, https://www.forsakringskassan.se/privatpers/foralder/nar_barnet_ar_fott/foraldrapenning (last accessed May 9, 2019) [hereinafter SSIA Website]. As of April 2, 2019, 37,083 SEK is equivalent to 3,971.40 USD.

²⁰⁵ *See* Duvander et al., *supra* note 6, at 126.

²⁰⁶ SSIA Website, *supra* note 204.

²⁰⁷ *See* Swedish Social Insurance Agency, *Parental Benefit*, FÖRSÄKRINGSKASSAN, <https://www.forsakringskassan.se/> (last accessed May 9, 2019).

the estimated delivery date.²⁰⁸ However, this does not need to be at the same workplace or with the same income the entire time, but rather, the number of days with income is what is important.²⁰⁹ For parents who do not meet this requirement, Sweden still provides paid leave at a minimum of SEK 250 per day (about SEK 7,500 per month) for the first 180 days taken out per child.²¹⁰ After 180 total days have been taken, a parent receives parental benefits based on his or her income, with a minimum of SEK 250 per day.²¹¹ Parents who are job seekers are entitled to parental benefits based on their jobs before becoming job seekers, provided that they register with the Public Employment Service.²¹² For job seekers who cannot receive parental benefits based on their previous income, they will still be entitled to SEK 250 per day.²¹³ Students are also entitled to SEK 250 per day.²¹⁴

In order to fund parental leave, “[e]mployers in Sweden pay a fee to the government that corresponds to 25% of each employees’ [sic] salary.”²¹⁵ The employers’ fee covers the cost of “pension, unemployment, sick leave, widow survival, work injury, and parental benefits.”²¹⁶ “[P]arental benefits account for 2.2% of the 25% fee employers pay to the government.”²¹⁷ Employers’ fees make up two-thirds of parental benefits; the remaining third is funded by taxes.²¹⁸

In Sweden, parental leave can be taken per child at any time until the child turns twelve years old.²¹⁹ Other features of Sweden’s parental leave policy include the legal right of parents to reduce their normal working hours by up to twenty-five percent until the child turns eight years old, and a financial gender equality bonus that is obtained by dividing leave equally amongst mother and father.²²⁰ Finally, about ten percent of mothers and eleven percent of fathers receive even more parental leave pay from their employers as an outgrowth of collective bargaining.²²¹

Sweden’s dedication to encouraging fathers to take paid parental leave has paid off. Today, paternity leave is seen as the norm, with almost nine out of ten Swedish fathers taking parental leave.²²² In 1993, only fifty-one percent of Swedish fathers took leave, but by 1998, ninety percent of fathers took

²⁰⁸ SSIA Website, *supra* note 204.

²⁰⁹ *Id.*

²¹⁰ *Id.* (this amounts to about 850 USD per month).

²¹¹ *Id.*

²¹² *Id.*

²¹³ SSIA Website, *supra* note 204.

²¹⁴ *Id.*

²¹⁵ Gabe Stein, *How Sweden Affords the World’s Best Paid Parental Leave*, MUCH IS SAID IN JEST (Nov. 4, 2010), <http://www.muchissaidinjest.com/2010/11/04/how-sweden-affords-the-best-paid-paternity-leave-in-the-world/>.

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ GOV’T OFFICES OF SWED., MINISTRY OF HEALTH AND SOC. AFFAIRS, SOCIAL INSURANCE IN SWEDEN 4 (Aug. 2016).

²²⁰ Duvander et al., *supra* note 6, at 126.

²²¹ Haas & Hwang, *supra* note 197, at 89.

²²² Duvander, *supra* note 6, at 126.

leave.²²³ When paid parental leave was first introduced in 1974, women claimed about 99.5 percent of paid parental leave, but in 2015, women claimed about 75 percent of parental leave.²²⁴ Even with this progress, Sweden is not satisfied. In theory, in order to achieve perfect gender equality, the father and mother should each take fifty percent of available leave time. In order to come closer to achieving this goal, the Swedish government has increased the income ceiling for wage benefits, due to research that has shown that couples are more likely to share parental leave when fathers' compensation levels during leave are higher.²²⁵

V. COMPARISON OF SWEDEN TO UNITED STATES POLICIES

According to Mathias Siems, there are three main objectives of comparative law.²²⁶ The first is knowledge and understanding.²²⁷ By understanding foreign experiences and foreign laws, one can more critically examine his or her own laws and the choices legislators in his or her home country have made. The second objective is practical use at a domestic level.²²⁸ Comparative law can be used to aid legislators. Legislators can use foreign laws as a model of how well the foreign law addresses a particular problem. The last objective is practical use at an international level.²²⁹ This objective deals with whether and how unification of law can be achieved.²³⁰ The unification of law could be sought for the basis of an international treaty, a supranational act, or a form of "soft law."²³¹ This Paper's focus is on the first two objectives—knowledge and understanding, and practical use at a domestic level in order to improve parental leave in the United States. By understanding other countries' laws relating to parental leave—in particular, Sweden—one can better understand the limitations of the FMLA. In addition, Swedish parental leave law can be used as a guideline or model for how the United States can implement new legislation to tackle issues related to parental leave.

Many of the problems associated with the FMLA are alleviated in Sweden's system. The most obvious difference is that Sweden's federally mandated parental leave policy is paid while the FMLA only provides for unpaid leave.²³² Providing paid leave allows workers to take time off to care for their children without worrying about how it will affect them financially. Without pay, many employees in the United States are unable to take advantage of their FMLA leave. Many workers are unable to afford time off

²²³ Haas & Hwang, *supra* note 197, at 90.

²²⁴ *See id.*

²²⁵ See Haas & Hwang, *supra* note 197, at 91.

²²⁶ MATHIAS SIEMS, *COMPARATIVE LAW* 4–5 (2014).

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ *Id.*

²³² *See supra* Part II, IV.

without pay and are then forced to choose between making money and caring for their newborn.²³³ Only those who have money saved and can afford to take an unpaid leave are able to use their FMLA leave. In Sweden, parents are entitled to eighty percent of their salary for the first 390 days per child (with a cap of SEK 967 per day).²³⁴ After the 390 days, parents receive a flat rate for the last 90 days.²³⁵ Sweden's policy allows employees to comfortably take time off to care for their families without worrying about how it will affect them financially. Because of this, people in Sweden are more willing and able to take advantage of parental leave.

It is clear that more people are able to take advantage of parental leave in Sweden than in the United States. Much of this is, as mentioned, is due to the fact that Sweden provides for paid leave while the United States only provides for unpaid leave. However, public attitudes towards taking leave also hinder employees in the United States from taking leave. In Sweden, parental leave is encouraged, and it is even frowned upon when it is not used.²³⁶ On the other hand, in the United States, many employers do not support their employees' use of leave and discourage their employees from using it.²³⁷ In addition, those who use leave in the United States worry about the status of their position upon their return and how taking leave will affect their career. "Employees who make use of flexible work policies are often penalized and seen as less committed than their peers."²³⁸ For example, female attorneys who took maternity leave often were denied "the more coveted work and case assignments" upon their return.²³⁹ These women were also frequently either discouraged or removed from the partnership track.²⁴⁰

Another glaring difference between the two policies is the amount of time offered for leave. Regardless of whether leave is paid, Sweden offers significantly more time for parents to care for their families. Sweden's parental leave policy provides for 480 days.²⁴¹ On the other hand, the FMLA allows up to twelve weeks of leave in a twelve-month period.²⁴² While the amount of time the United States offers is significantly less, the amount of time is not much of an issue. Twelve weeks of leave would be a fair amount of time for parental leave; however, the fact that leave is unpaid causes employees to either use as little FMLA leave as possible or not use it at all.

Moreover, another problem with the FMLA that does not plague Sweden is the accessibility of leave. The FMLA has strict eligibility requirements that limit who is entitled to FMLA leave. In the United States, the FMLA only

²³³ See JoNel Aleccia, *Two Weeks After Baby? More New Moms Cut Maternity Leave Short*, TODAY (Sept. 27, 2013), <https://www.today.com/health/two-weeks-after-baby-more-new-moms-cut-maternity-leave-4B11229443>.

²³⁴ See *supra* Part IV.

²³⁵ *Id.*

²³⁶ See Akinmade Åkerström, *supra* note 23.

²³⁷ See Aleccia, *supra* note 233.

²³⁸ SHERYL SANDBERG, *LEAN IN: WOMEN, WORK, AND THE WILL TO LEAD* 130 (2013).

²³⁹ RAYMOND F. GREGORY, *WOMEN AND WORKPLACE DISCRIMINATION: OVERCOMING BARRIERS TO GENDER EQUALITY* 74 (2003).

²⁴⁰ *Id.*

²⁴¹ See *supra* Part IV n.203 and accompanying text.

²⁴² See *supra* Part II n.76 and accompanying text.

covers full-time employees who worked at least 1,250 hours during the twelve months prior to the start of FMLA leave, who have been with the same company for more than a year, and who work for a company that employs at least fifty or more employees within a seventy-five-mile radius of the worksite.²⁴³ On the other hand, Sweden does not have strict eligibility requirements for providing parental leave because “[p]arental leave is a legal right for all parents in Sweden.”²⁴⁴ Parents in Sweden are entitled to paid parental leave even if they were not earning money in Sweden prior to their child’s birth.²⁴⁵

A. RECOMMENDATIONS FOR THE UNITED STATES BASED ON SWEDEN’S POLICY

American policymakers should take note of the strengths of the Swedish model of parental leave to help rectify the current issues and limitations of the United States’ parental leave policy. The United States needs a policy update to the twenty-five-year-old FMLA to promote gender equality and to provide for low-income families. National paid parental leave legislation, based on a social insurance model similar to that existing in Sweden, is paramount to guaranteeing that this necessary social benefit is available to all citizens in the United States. FMLA leave should be paid, and its eligibility requirements should be relaxed to cover more expecting parents.

Such legislation is not easy to come by. Kirsten Gillibrand, United States Senator for New York, has noted that Congress does not consider the issue of parental leave to be particularly pressing.²⁴⁶ Many of the members of Congress have never been affected by parental leave policies, as “[eighty] percent of Congress is older and male.”²⁴⁷ There are also longstanding ideologies present in the United States that will make guaranteed paid parental leave policy difficult to enact. Americans tend to distrust federal government mandates in general. Additionally, many Americans believe in traditional gender roles in the home, where mothers stay at home as caretakers, and fathers are breadwinners.²⁴⁸ The thought that policies that encourage women to be in the workforce are detrimental to society seems to be particularly pervasive amongst Republicans.²⁴⁹

However, a recent Pew Research Center survey of Americans found that “[n]inety-four percent of respondents [felt that] paid leave would help families,

²⁴³ Gillet, *supra* note 139.

²⁴⁴ James Savage, *How Does Swedish Parental Leave Work?*, LOCAL (Aug. 29, 2008), <https://www.thelocal.se/20080829/14022>.

²⁴⁵ *See id.*

²⁴⁶ Claire Suddath, *Can the U.S. Ever Fix Its Messed-Up Maternity Leave System?*, BLOOMBERG (Jan. 27, 2015), <https://www.bloomberg.com/news/features/2015-01-28/maternity-leave-u-s-policies-still-fail-workers>.

²⁴⁷ *Id.*

²⁴⁸ See Claire Cain Miller, *Americans Agree on Paid Leave, But Not on Who Should Pay*, N.Y. TIMES (Mar. 22, 2017), <https://www.nytimes.com/2017/03/23/upshot/americans-agree-on-paid-leave-but-not-on-who-should-pay.html>.

²⁴⁹ *Id.*

and [sixty-five] percent [felt that paid leave] would help the economy.”²⁵⁰ Sixty-two percent of respondents at least somewhat supported a government allocation fund that employers and employees would pay into for use as a parental leave fund, which is the model currently used in California, New Jersey, and Rhode Island.²⁵¹ This study highlights the fact that the majority of Americans desire a governmental parental leave policy that accomplishes more than the current FMLA.

A strong national policy of guaranteed, job-protected, paid parental leave must be adopted in the United States. This policy should be based off of the models currently existing in Sweden, California, New Jersey, and Rhode Island.²⁵² While Sweden’s parental leave policy should be applauded, it is extremely unlikely that the United States would pass similar legislation that would increase the paid leave available from zero days to 480 days. A policy that calls for leave for a period as long as that available in Sweden would likely go underutilized in the United States, as it would represent a huge departure from the current policy. However, legislators in the United States should look to the implementation of Sweden’s policy, along with the benefits of parental leave, to start the conversation of how much paid leave should be given in the United States. It is clear that paid leave available to mothers and fathers has had enormous success in Sweden in reducing the gender gap. Research from Sweden has suggested that parental leave that is equal, paid, and nontransferable is most likely to induce fathers to take parental leave.²⁵³ Thus, a federally mandated policy of paid leave with job security and at least a few weeks of nontransferable leave should be enacted in the United States. With such a policy, the current limitations of the FMLA would be addressed. Both men and women would be encouraged to take parental leave (thus furthering gender equality), and such leave would be available to all citizens, even those with lower incomes. The fact that leave would be paid would allow lower-income families to actually use the leave.

CONCLUSION

To summarize, there are significant differences between parental leave policies in Sweden and the United States. While Sweden’s policy involves paid leave and emphasizes gender equality, the United States’ policy is unpaid, and this—along with the strict eligibility requirements—seems to discriminate

²⁵⁰ *Id.*

²⁵¹ *Id.*

²⁵² See generally Ellen Bravo, *Paid Parental Leave Should Be U.S. Law—Not Just a Company Perk*, FORTUNE (Aug. 10, 2015), <http://fortune.com/2015/08/10/paid-parental-leave-netflix-microsoft> (describing the FMLA—introduced by Senator Gillibrand for the first time in 2013—which would create a social insurance fund that employees and employers contribute to so that both fathers and mothers can withdraw portions of their pay while on twelve weeks of guaranteed leave. This is the exact type of legislation that this Paper advocates for.).

²⁵³ See Carmen Castro-García & Maria Pazos-Moran, *Parental Leave Policy and Gender Equality in Europe*, 22 FEMINIST ECON. 51, 54 (2016).

against lower-income families, and make parental leave less accessible overall. The limitations of the American model are shameful given the plethora of benefits that stem from parental leave for parents, children, employers, and society at large.

Despite a lack of national policy in the United States mandating parental leave, many state and local governments have stepped up to provide parental leave to their constituents. Furthermore, private corporations have also taken note of the benefits of parental leave and provided policies of their own. While this is laudable on behalf of private corporations, this mostly applies to employees working for tech companies and to full-time, salaried employees. Thus, the issue of accessibility for low-income parents is still a problem: “The problem with relying on the private sector to provide paid family leave is that the justification for doing so—a business case based largely on the need to compete for and retain top talent—confers no protection to the portion of the workforce that is low-skilled and highly replaceable.”²⁵⁴

Clearly, the United States has a long way to go with respect to its parental leave policies. The system used by the United States is flawed and does not encourage or allow many workers to take leave. The current system implemented in the United States disfavors lower-class citizens who are unable to take time off to care for their children without being paid. These workers are forced to make the decision between caring for their children and making money.

While President Trump made campaign promises towards paid parental leave in the United States, nothing of note has been passed. It is unclear whether the current administration in the United States will follow through on its promises. Meanwhile, legislators continue to introduce bills into Congress relating to paid parental leave while stressing the importance of implementing a paid parental leave plan in the United States to be more on par with other democratic nations.

²⁵⁴ Judith Warner & Danielle Corley, *In the Absence of U.S. Action on Paid Leave, Multinationals Make Their Own Policies*, CTR. FOR AM. PROGRESS 1, 7 (Nov. 17, 2016), <https://www.americanprogress.org/issues/women/reports/2016/11/17/292501/in-the-absence-of-u-s-action-on-paid-leave-multinationals-make-their-own-policies>.