Equalizing Parental Leave for Sole-Parent Families in the United States

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Multiple “equality” principles

• Sex-based equality – sharing of caretaking responsibilities between mothers and fathers
  • Assuming and facilitating mothers will take longer leaves – reflecting both biological and social differences
    • Now sometimes with modifications to encourage fathers to take more leave
  • “formal” equality structure

• Family-based equality—equal treatment of single-parent versus two-parent families
Assumes mothers will use any portion not specifically reserved for fathers

Extent fathers actually use “saved” days depends on norms, protections, pay
U.S. Legally-Mandated Parental Leave Schemes

Unpaid Parental (and Family) Leave – FMLA (1993)

- Each parent has a right to 12 weeks; individual & nontransferable
- BUT only if work for a relatively large employer; meet hour and longevity requirements that exclude 40% of private EEs

Paid Parental (and Family) Leave – No federal law

- 8 U.S. states + DC – more than 25% of U.S. population
- 60-100% of regular pay, up to a cap around median wage
- Each parent – 4-12 weeks (recent states – 12 weeks)
- Birth mother also usually 6-8 more weeks for medical effects of pregnancy and child birth
California – bonding claims

Rhode Island – bonding claims

Source: Data from Rhode Island Dep’t of Labor and Training – Annual TCI reports; data from agency
% of total recipients of publicly-administered paid parental leave who are men


Source for chart: WGEA, Towards a gender balanced parental leave

Note: does not include DAPP
California PFL – duration of benefits

Rhode Island – Duration of Men’s Bonding Claims

Source: Data from Rhode Island Dep’t of Labor and Training – Annual TCI reports; data from agency
Multiple “equality” principles

• Sex-based equality – sharing of caretaking responsibilities between mothers and fathers
  • Promising beginning for the US laws
• Family-based equality—equal treatment of single-parent versus two-parent families
Rapid rise in non-marital birthrate

Has stayed at about 40% for the past decade

Source: U.S. Government, U.S. Census Bureau, and National Center for Health Statistics.

SR 117 heritage.org
Implications for single-parent families?

Data from OECD; graphics from Chamie, Out-of-Wedlock births Rise Worldwide; Child Trends, Data Bank, Births to Unmarried Women (2014)

At birth (2006-10): About 58% of total cohabiting
Large disparities by education & income

Percent of Total Births that Are Non-Marital

by Household Income (2011)

American Community Survey Reports, Social and Economic Characteristics of Currently Unmarried Women With a Recent Birth
And large disparities by race

Data from US Nat’l Center for Health Statistics; graphics from Chamie, Out-of-Wedlock births Rise Worldwide
And (different) sex discrimination

Children Under 1 Not Living With Both Married Parents

Default under most US custody law – Unmarried mother will have sole custody

32% Mother only
8% Father only
10% Neither Parent
50% Both parents - unmarried

US Census Data – 2018, Table C-3
Better equalizing leave

• Where two involved parents, want to encourage sharing newborn and infant care
• But, where only one involved/custodial parent, allow extended benefits period? And/or transfer to a different family member providing care?
  • 1/3 of children under 1 living with “mother only” are in a home that includes one or both grandparents
• Consider how it interacts with leave policy – FMLA currently capped at 12 weeks
• Examples from other countries on modifications for single-parent families?
Questions, comments, suggestions?

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Living arrangements – Children under 1

- 67% Neither parent
- 13% Both parents - Married
- 10% Both parents - unmarried
- 3% Father - married, divorced, widowed, separated
- 3% Mother - married, divorced, widowed, separated
- 4% Father - never married
- 3% Mother - never married

US Census Data – 2018, Table C-3
Weeks (or days) of paid parental leave that can be taken only by fathers, 2015

<table>
<thead>
<tr>
<th>Country</th>
<th>Weeks or Days</th>
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<tbody>
<tr>
<td>Korea</td>
<td>53 Weeks</td>
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<tr>
<td>Japan</td>
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<td>France</td>
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<td>Austria</td>
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<td>OECD average</td>
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<td>Spain</td>
<td>2 Weeks</td>
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<td>UK</td>
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<td>Poland</td>
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Source: OECD Family Database; graphic from: OECD Policy Brief, Parental Leave: Where Are the Fathers?
Access to employer-provided leave

17% of all civilian workers have paid family leave

• Lowest 10% of wage earners: 5%
• Lowest 25% of wage earners: 8%
• 2d 25% of wage earners: 16%
• 3rd 25% of wage earners: 20%
• 4th 25% of wage earners: 28%
• Highest 10% of wage earners: 30%

• 89% of all civilian workers have unpaid family leave
• 42% of workers have short-term disability benefits
  • Ranges from 33% for lowest decile to 47% for highest
• Paid leave – most commonly 5-8 weeks

Sources: US Dep’t of Labor, Comp. Survey; Listening to Mothers III survey
Figure 4. Percentage Distribution of Nonmarital Births, by Age of Mother, 2013

Men challenging unequal leave policies

Attitudes Shift on Paid Leave: Dads Sue, Too

Josh and Abbie Levs, Mr. Levs and CNN settled his against fathers. Bryan Mezito for The New York Times

U.S. sues Estée Lauder for allegedly discriminating against new dads

by Julia Horowitz  @juliakhorowitz

August 31, 2017: 1:25 PM ET
And large disparities by race

Of unmarried women, % cohabiting at birth:

Total: 58%
White, non-Hispanic: 68%
Hispanic: 68%
Asian: 45%
Black, non-Hispanic: 35%

Child Trends, Data Bank, Births to Unmarried Women (2014)
Factors to design

• Who is eligible?
  • Distinct standards for mothers versus fathers?
  • Distinct standards for primary carer versus secondary carer?
  • Different rules for single-parent families? Adoptive? Same-sex?
  • Category or tenure of prior employment?

• Length of leave? Intermittent? Simultaneous permitted?

• Rate of income replacement?
  • Portions paid at lower rate or unpaid?

• Extent of job-security?
  • Guarantee of prior or comparable position?
  • Ability to effectively enforce any such guarantee? Address discrimination more generally?

• Financing mechanism? Who bears costs?
• Administrative mechanism?
“The prohibition against sex discrimination is especially difficult to apply with respect to the female employees who become pregnant. In all other questions involving sex discrimination, the underlying principle is the essential equality of treatment.... The pregnant female, however, has no analogous male counterpart and pregnancy necessarily must be treated uniquely.”

• Could it be treated worse? Exclusion from disability policies? Or grounds for termination?
• Could it be treated better? Maternity leaves where general disability leaves were not provided?
Treated worse?

Gilbert v. GE (1976) – leads to two different legislative responses

• California (1978) – 4 month maternity leave (for period where woman is “disabled on account of pregnancy, childbirth, or related medical conditions”)

  • Defines sex discrimination to include pregnancy, childbirth and related medical conditions, and
  • “women affected by pregnancy shall be treated the same for all employment related purposes, including receipt of benefits under fringe benefits programs, as other persons not so affected but similar in their ability or inability to work...”
Treated better?


Lillian Garland lost her job after maternity leave
- Sued under the California law that provided 4-month maternity leave
- Employer defense – California law was pre-empted by PDA

Supreme Court permits – BUT FMLA takes a purposefully different approach
Now followed by the states