



Human Rights Advocates

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Global Maternity Protection

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I. Introduction

Human Rights Advocates recognizes the important work that the Commission on the Status of Women has focused on women's rights worldwide while also appreciating the remaining work to be accomplished that is crucial to gender equality. Gender wage disparity is a growing concern among women all over the world. One of the integral factors that can contribute to the differences in wages between men and women is the need for women to leave the workforce for a significant amount of time to prepare for and recover from childbirth. While information about the maternity and paternity benefits offered in industrialized countries is known, additional research needs to be completed to determine the positive and negative impacts that government supported family leave can have on a woman's career.

Many modern day societies now have two parents working out side of the home. In order to have time in the home following an addition of a new child to the family through birth or adoption many countries have developed a system of paid leave. Maternity and paternity benefits are in place both through the public and private sector to financially support the family during the time period immediately proceeding and immediately following the addition of a new family member. The idea behind maternity and paternity benefits is that women should have time to prepare for birth, recover from birth and both parents should have time to bond with their baby without fearing that they will lose their employment.

Of 186 countries examined in an analysis of data in the World Policy Analysis Centre Adult Labour Database, 96 percent provide some provisions for pay to women on

maternity leave.¹ There are only eight countries in the world that do not mandate paid leave for mothers on maternity leave.² Eighty-one countries extend leave to include new fathers, by offering paternity benefits, or by offering parental leave that can be taken by either parent.³ It is critical for the stability of our global economies, the health of our children, and the advancement of women's rights for all countries to rise to the challenge to meet a minimum standard of maternity benefits. Expanding maternity coverage through legislation and, in practice, to women across industrialized nations and in developing countries is critical for the millions of women who are not adequately covered.

II. History of maternity benefits

Historically, there was often one parent in the home full-time, typically the female, who was able to care for the needs of the home, raise the children, and contribute to the running of the household. As women started to enter the workforce in large numbers, some countries immediately responded with paid maternity leave.

Many European countries started to offer paid maternity benefits during World War II.⁴ During the war, many women entered the workforce to fill job vacancies in critical industries while the large majority of males were fighting in the war. During the war there were high numbers of male casualties and the infrastructure in many countries was decimated. Countries recognized the need to continue to support the integration of women into the workforce and to encourage families to increase the population by producing

¹ *Paid Parental Leave in the United States*, Institute for Women's Policy Research, January 23, 2014.

² *Id.*

³ *Id.*

⁴ Alice-Azania Jarvis, *The Timeline: Maternity Leave*, *The Independent*, October 21, 2010, available at <http://www.independent.co.uk/life-style/health-and-families/features/the-timeline-maternity-leave-2113236.html>

children. Countries recognized that they could provide an incentive to women to remain in the workforce and to have children by offering paid maternal leave. This paid maternity leave facilitated economic growth and a rapid population increase in a short time period.⁵

III. Discussion of Family Leave in International Human Rights Instruments

A. Universal Declaration of Human Rights

Maternity benefits are included as crucial human rights in several key human rights instruments. These internationally recognized treaties, conventions and agreements are the foundation for the argument for an international standard for maternity benefits. The Universal Declaration of Human Rights (UDHR) provides for the right of women to have maternity leave in the workforce.⁶ Article 23 of the UDHR establishes the principle of the right to work. It acknowledges everyone's right to work, to free choice of employment, and to protection against discrimination. In order for all individuals to have the right to work, they should be able to work in clean and safe working conditions, earn a fair wage, and be protected from discrimination and abuse at work. The right to work is a prerequisite for the more complex employee protections under the UDHR, such as protection against discrimination, the freedom of association, and the equal treatment in the workforce. Article 25 of the UDHR recognizes that motherhood and childcare are "entitled to special care and assistance."⁷ The human rights, inclusive of the right to motherhood, that are introduced in the UDHR are further elaborated on in the International Covenant on Economic, Social, and Cultural Rights, which specifically defines maternity benefits.

⁵ Id.

⁶ *Universal Declaration of Human Rights*, Paris, France, December 10, 1948, available at <http://www.un.org/en/universal-declaration-human-rights/>

⁷ Id.

B. Rights included in the International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights (ICESCR) aims to protect economic, social and cultural rights in the countries that have ratified this treaty. The rights protected in this treaty are directly related to the right to health. Article 10 of the ICESCR ensures the right to paid leave or leave for the purposes of caring for children.⁸ This article affirms that the special protection that is offered to a mother both before and after childbirth is directly related to her social and economic rights.

C. Maternity Protection in the Convention on the Elimination of All Forms of Discrimination Against Women

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), is an international bill of rights to protect the rights of women. This Convention also outlines the necessary action needed to end discrimination against women. Included in CEDAW is the right for women to be treated equally in the workforce. Article 11 (1) (d) sets forth “[t]he right to equal remuneration, including benefits, and to equal treatment in respect to work of equal value.”⁹ CEDAW further outlines the benefits to women while on maternity leave in Article 11 (2)(a-d), by advocating for protection for women who are pregnant or on maternity leave; prohibiting employers from dismissing

⁸ *International Covenant on Economic, Cultural, and Social Rights*, New York, New York, December 16, 1966, available at

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

⁹ *Convention on the Elimination of All Forms of Discrimination Against Women*, Article 11, New York, New York, December 18, 1979, available at

<http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>

women who are pregnant or on maternity leave; and encouraging States to introduce maternity leave with pay and social services support to mother's on maternity leave.¹⁰

B. International Labour Organization standard for maternity benefits

The International Labour Organization (ILO) has developed three maternity protection conventions. These Conventions outline protective measures for pregnant women who have given birth, including the prevention of exposure to health and safety standards both during and following pregnancy, access to paid maternity leave, maternal and child healthcare, access to breast feeding space at work, protection in regards to discrimination related to maternity and the right to return to work following their maternity leave.¹¹

According to the ILO, maternity benefits should be at least 14 weeks and women should be offered at least 66.7% of their salary.¹² In the Maternity Protection Convention, 2000, No. 183 the ILO outlines what the standard for maternity benefits should be.¹³ This Convention is the most up-to-date international labor standard on maternity protection and is the standard that state parties that have ratified are expected to uphold. The Maternity Protection Convention has been ratified by 32 countries.¹⁴ This Convention is based in part on earlier relevant ILO instruments, including the Maternity Protection Convention, 1919,

¹⁰ Id.

¹¹ *Maternity and Paternity at Work: Law and Practice Across the World*, International Labour Organization, May 13, 2014.

¹² *International Labour Organization Maternity Protection Convention, 2000 (No. 183)*, Geneva, June 15, 2000, available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C183

¹³ Id.

¹⁴ *Ratification of C183- Maternity Protection Convention*, International Labour Organization, February 7, 2002, available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_

No.3, and the Maternity Protection Convention (revised), 1952, No. 103. These prior instruments are still in force in certain countries.¹⁵

The ILO Convention No. 183 provides that women, (to whom the instrument applies), should be allowed a minimum of 14 weeks of maternity leave.¹⁶ Women who are absent from work on maternity leave shall be entitled to a cash benefit which ensures that they can maintain themselves and their child in proper conditions of health and with a suitable standard of living and which shall be no less than two-thirds of her previous earnings or a comparable amount.¹⁷ The Convention also requires ratifying states to take measures to ensure that a pregnant woman or nursing mother is not obliged to perform work which has been determined to be harmful to her health or that of her child, and provides for protection from discrimination based on maternity and the need to nurse an infant.¹⁸

The standard also outlines policy for guaranteeing a return to the workforce following maternity leave. The standard prohibits employers to terminate the employment of a woman during pregnancy or absence on maternity leave, or during a period following her return to work, except on grounds unrelated to pregnancy, childbirth or nursing. Women returning to work must be returned to the same position or an equivalent position paid at the same rate. In regards to the need for provisions to support breast feeding, the standard provides a woman the right to one or more daily breaks or a daily reduction of

¹⁵ *International Labour Organization Maternity Protection Convention*, supra at note 12.

¹⁶ *International Labour Organization Maternity Protection Convention*, supra at note 12.

¹⁷ *International Labour Organization Maternity Protection Convention*, supra at note 12.

¹⁸ *International Labour Organization Maternity Protection Convention*, supra at note 12.

hours of work to breastfeed her child.¹⁹ The ILO indicates that 34% of the 185 countries that collect information on are fully meeting the requirements of the ILO Maternity Protection Convention.²⁰

IV. Benefits and consequences of Maternity Protections

A. Benefits of Providing Maternity Protections

There are numerous benefits for women, infants, and society as a whole of offering maternity protections. Paid parental leave allows parents to bond with their children, reduces infant death and allows women to stay in the workforce. For example, a study from 2011 based on information gathered in 141 countries found that an increase of 10 weeks paid maternity leave was associated with a 10 percent lower infant mortality rate.²¹

When a woman is allowed significant time to recover from childbirth she can form a healthy bond with her child and be afforded the luxury of breastfeeding for a longer period of time because they do not have to return to work. Women who are employed who are offered 12 weeks or more of paid maternity leave are more likely to breastfeed their infant and continue to breastfeed for at least 6 months, as compared to employed women with no paid maternity benefit.²²

Throughout the world the maternity leave is seen as an essential benefit to the health of the population and the economy. According to experts, offering maternity benefits to

¹⁹ *Maternity and Paternity at Work: Law and Practice Across the World*, supra at Note 11.

²⁰ *Id.*

²¹ Maya Dusenbery, *How America's Lack of Paid Maternity Leave Worsens Inequality*, Pacific Standard Magazine, September 16, 2015, <https://psmag.com/how-america-s-lack-of-paid-maternity-leave-worsens-inequality-4519f94a3f38#.ski9i5q3r>

²² Rita Rubin, *US Dead Last Among Developed Countries When It Comes To Paid Maternity Leave*, Forbes Magazine April 6, 2016, available at <https://www.forbes.com/sites/ritarubin/2016/04/06/united-states-lags-behind-all-other-developed-countries-when-it-comes-to-paid-maternity-leave/>

women can actually boost economic growth.²³ European countries that offer paid maternity benefits view this as an investment, and it is a critical component of their economy. Having these paid maternity benefits allows women to continue participating in the workforce.²⁴ Countries have recognized that providing this support in the short-term to women will allow them to continue to participate in the economy and ultimately contribute to economic growth.²⁵ Women who return to the workforce following paid maternity leave have improved productivity over those who must return to work early. A study conducted by the United States Department of Labor in 2012 found that of the workers it polled, 23 percent of the women who had left the workforce to care for a newborn infant took less than two weeks off, increasing health risks for both the mothers and the children.²⁶ Women who are forced to return to work are distracted and have many more absences to care for their infant when they are ill or they do not have childcare available.

B. Negative consequences of not offering maternity protections

One of the main consequences of not offering paid maternity leave for individuals is an inadequate time to form a bond between the infant and the parents. Taking a very brief leave from work following childbirth can have negative consequences for the health of the mother and the baby. A study found that women who had fewer than 12 weeks of maternity leave and eight weeks of paid leave were more likely to have post-partum depression.²⁷

²³ Melissa Etehad, *The world is getting better at paid maternity leave, The U.S. is not.* The Washington Post, August 13, 2016

²⁴ Id.

²⁵ Id.

²⁶ Id.

²⁷ Rita Rubin, *supra* at note 21.

The consequences of not supporting paid maternity leave extend beyond individuals and impact our economies. Women may face the choice between working and having a family. Having more women in the workforce increases the workforce to fuel a growing economy. The gender inequality between the impact that child bearing has on women can negatively impact a woman's career and undermines their access to equal opportunities at work.²⁸ If both women and men are offered paid family leave it can help eliminate wage and promotion gap between men and women.

Women who are in the workforce and decide to have a child often must take an extended leave from their position. These extended periods of leave or unemployment have a negative impact on a woman's earning potential and her ability to be considered for promotions. Women who do not have the option of taking a paid maternity leave with security in their work position are faced with the dilemma of not taking adequate time to recover from childbirth and care for their infant, or losing their job. Even when an employer does offer a woman the option to take an extended unpaid leave, she is not guaranteed to return to her same job. In a number of instances, she returns to a lower paying job, or begins at the bottom of her career path and must work for a significant amount of time until she is considered for promotions.²⁹

The lack of job security and low pay offered to women who are returning from maternity leave is especially visible in lower socioeconomic classes.³⁰ These women do not have the option of not working and take some leave to recover from childbirth and then

²⁸ Oxfam, *Women and the 1%*, (April 2016), https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp-women-and-the-one-percent-110416-summ-en_0.pdf

²⁹Id.

³⁰ Id.

must secure another job. These periods of leave from the workforce, without job protection, negatively impact a women's integration into to the workforce, her ability to advance in her careers and may result in penalties in her wages.³¹

V. Maternity benefits in place in the present day

More than 160 countries offer maternity benefits to their citizens. Most of the countries that meet the standard laid out by the ILO are in both Eastern and Western Europe.³² As of 2014, the United States is the only high-income country, and one of only eight countries in the world, that does not mandate paid leave for mothers of newborns.³³ Nearly every member country of the European Union provides at least 14 weeks of job-guaranteed paid maternity leave, during which workers receive at least two-thirds of their regular earnings.³⁴ According to the ILO, parental leave is paid in more than half the countries where it is provided, 36 out of 66, all of which are among the Developed Economies, Eastern Europe and Central Asia, except Chile and Cuba.³⁵ Only 18 of these countries offer cash benefits equivalent to two-thirds or more of a worker's wages, while the remaining countries offer lower levels of support, including flat rate compensation.³⁶

A. Examples of benefits offered in various countries

Several countries that are recognized for having adequate, and even in some cases superior, maternity benefits. The ILO's study of 185 countries in 2014, found that 98 countries meet the ILO standard of at least 14 weeks leave; 42 of those 98 countries meet

³¹ *Maternity and Paternity at Work: Law and Practice Across the World*, supra at note 11.

³² *International Labour Organization Maternity Protection Convention*, supra at note 8.

³³ *Paid Parental Leave in the United States*, supra at Note 1.

³⁴ *Id.*

³⁵ *Maternity and Paternity at Work: Law and Practice Across the World*, supra at note 11.

³⁶ *Id.*

or exceed the suggested 18 weeks' leave; 60 countries provide 12 to 13 weeks' leave – less than the duration in Convention No. 183, but consistent with previous Conventions; only 27 countries provide less than 12 weeks.³⁷ There are many countries with strong maternity protections, including, but not limited to the countries discussed below.

In Bulgaria mothers are given up to 410 days for maternity leave, 45 of which come before the birth. Fathers get 1 day.³⁸ The parents are paid 90% of their pay during this leave. After 6 months, the mother can pass the leave over to the father. At the end of the 410 days, the parents can choose to continue taking paid leave until the child turns 2 and split the remaining days of leave. During the remaining leave the parent on leave gets paid the minimum monthly wage of \$200.³⁹

In Serbia, mothers are able to take 20 weeks of fully paid maternity leave following the birth of a child. After these 20 weeks, the mother can take additional year of paid time off, but the amount of financial support for this leave diminishes over time. For the first additional 26 weeks, they receive 100% of pay, then for the next twelve weeks they receive 60 percent of their pay, and for the last twelve weeks they receive 30 percent of their pay. In addition to these benefits that are offered to new mothers, fathers receive one week of fully paid leave.⁴⁰

In Denmark women are afforded 18 weeks of paid maternity leave. Of this leave, 4 weeks is offered before the birth and 14 after, at full pay. The father can also have 2 consecutive weeks off during the 14 weeks. After the 14 weeks the parents can split 32

³⁷ Id.

³⁸ Id.

³⁹ Id.

⁴⁰ Id.

additional weeks of leave. By law the government covers 52 weeks of pay, though not always at a full pay rate.⁴¹

In Sweden, mothers receive 18 weeks of paid leave. In addition to this, parents received 480 days of leave at 80 percent of their regular pay. Sweden also recognizes the importance of fathers bonding with their children and allocates 90 paid days of paternity to leave to fathers.⁴²

B. Examples of countries who offer little to no supported maternity benefit

Although throughout the world maternity benefits have improved, there are several industrialized countries that fall extremely short of the standards laid out by the ILO. According to the ILO, the large majority of women workers around the world, approximately 830 million women, do not have adequate maternity protections.⁴³ Almost 80 percent of these women without adequate maternity protections are in African and Asia.⁴⁴ In the United States, the federal government offers no **PAID** maternity leave.⁴⁵ Individual States do offer some support in the form of family leave, and these vary greatly between states.⁴⁶ In the United States, the cost of bearing a child comes at a very high cost to women, in regards to their ability to earn money to support the family and their ability to continue advancing their careers.

The Family Medical Leave Act is the federal benefit that allows 12 weeks annual unpaid leave to individuals for maternity leave or to care for sick family members. In order to be entitled to this benefit you must work at a company with at least 50 employees or a

⁴¹ Id.

⁴² Id.

⁴³ Id.

⁴⁴ Id.

⁴⁵ Id.

⁴⁶ Id.

public agency. Additionally, in order to receive these benefits you have to have worked for your employer for the last year for a minimum of 1,250 hours.⁴⁷

Since the United States federal government does not offer a national paid maternity leave benefit to its citizens, states and smaller municipalities are taking action to offer paid maternity benefits. California and other states have passed state legislation to offer some minimal level of pay to workers on maternity leave.⁴⁸ California offers a Paid Family program that offers a partial payment of a woman's wages for up to 6 weeks while they bond and care for their new child.⁴⁹ In addition to paid family leave, women in California are eligible to receive state disability insurance while they are temporarily unable to work due to pregnancy and childbirth.⁵⁰

San Francisco, California is the first city to mandate full pay maternity leave and pays the remaining amount of a mother's pay that the state benefit does not cover. Beginning in 2017, with a gradual roll-out to varying sizes of employers, the City and County of San Francisco placed the Paid Parental Leave Ordinance into effect. The San Francisco parental leave ordinance requires that employers provide supplemental compensation to employees who are receiving California Paid Family Leave for purposes of bonding with a new child.⁵¹ This benefit is offered to employees who have been

⁴⁷ United States Department of Labor, Family & Medical Leave, available at <https://www.dol.gov/general/topic/benefits-leave/fmla>

⁴⁸ Reuters, *San Francisco Is First City to Require Fully Paid Parental Leave*, Fortune Magazine, April 5, 2016, <http://fortune.com/2016/04/05/san-francisco-fully-paid-parental-leave/>

⁴⁹ Disability Insurance and Paid Family Leave Benefits, State of California Employment Development Department, available at <http://www.edd.ca.gov/Disability/>

⁵⁰ Id.

⁵¹ City and County of San Francisco Paid Parental Leave Ordinance, 2017, available at <http://sfgov.org/olse/paid-parental-leave-ordinance>

employed with the Covered Employer for at least 180 days prior to the start of the leave period, who perform at least 8 hours of work per week for the employer in San Francisco, who work 40 percent of their total weekly hours for the employer in San Francisco, and who is eligible to receive paid family leave compensation through the State of California.⁵² During the period of family leave, the employer is required to pay the employee a supplemental compensation amount in the amount such that the supplemental compensation plus the State of California paid family leave compensation equals 100 percent of the employee's gross weekly wages during the 6 week leave, up to a cap.⁵³

Another alternative to government sponsored paid maternity leave is the trend towards employers offering paid maternity and paternity benefits to their employees. The trend towards fully paid and long-term maternity benefits started with the tech industry. Big tech firms such as Facebook, Google and Netflix offer their employees substantial maternity leave benefits.⁵⁴ Even though employer sponsored leave programs are rising in popularity, data shows that these benefits only cover a very small percentage of the workforce.⁵⁵ Even when companies do offer paid maternity benefits, often these only benefit higher paid, skilled employees. One United States company, Netflix, has a two-tiered parental leave policy: 12 months of compensated leave for salaried higher level technology employees and only 12 weeks partially compensated leave for hourly employees who work in their shipping departments.⁵⁶ This policy demonstrates that the

⁵² Id.

⁵³ Id.

⁵⁴ Alicia Adamczyk, *These Are The Companies With The Best Parental Leave Policies*, Time, November 4, 2015, <http://time.com/money/4098469/paid-parental-leave-google-amazon-apple-facebook/>

⁵⁵ Id.

⁵⁶ Id.

lack of government subsidized paid maternity leave does not have an equitable impact on all women. Low income workers who often must work to live are much less likely to be offered maternity benefits and are also less likely to be able to live without being paid.

Not offering paid maternity benefits in the United States has an impact on the pay discrepancy between men and women. In the United States, the job interruptions associated with maternity leave reduce a women's work hours, make women less likely to be considered for promotions and make them more likely to move into fields with flexible work hours which are typically paid at a lower rate.⁵⁷ According to a report by the Women's Policy Research (IWPR) in the United States, female full-time workers earn only 81 cents or every dollar earned by men, a gender wage gap of 19 percent.⁵⁸ Although this gap has narrowed as anti-discrimination policies are put into place, more women obtain advanced degrees, and with the increase in the number of two parent working families, there is still a large amount of work to be done in this area. One of the biggest factors in the continued wage gap in the United States is the impact of motherhood and maternity leave on a woman's career.⁵⁹ Without the safety net of aid maternity leave, many women must leave the workforce to care for their children and although many return to the workforce following this absence, it is often with a significant setback in their earning potential.

⁵⁷ Id.

⁵⁸ Maria D. Tito, *Maternity Leave and the Gender Wage Gap: An Analysis of New Jersey Family Leave Insurance*, August 17, 2016, available at <https://www.federalreserve.gov/econresdata/notes/feds-notes/2016/maternity-leave-and-the-gender-wage-gap-an-analysis-of-new-jersey-family-leave-insurance-20160817.html>

⁵⁹ *Paid Parental Leave in the United States*, supra at note 1.

IV. Recommendations/Suggestions

To ensure the health and well-being of women and children worldwide, it is important to offer paid leave to women. To further this goal, Human Rights Advocates, urges the CSW to include the following in the agreed conclusions:

1. Recommends that ECOSOC:
 - a. Conduct a global survey of benefit and supports offered to new families;
 - b. Develop a broadly accepted international maternity benefit standard that offers paid maternity benefits. This standard would assist in the cultural shift from seeing parenthood as a burden that negatively impacts a career to placing a high value on the critical role of caregivers in the economic security of each country.
2. Recommends that States:
 - a. Enact programs to promote maternity and paternity leave and require support programs for new families;
 - b. Impose penalties for companies who do not adhere to maternity benefit standards or penalize workers who take family leave;
 - c. Offer incentives to companies who develop programs to support women and working mothers in employment;
 - d. Expand the scope of maternity protections to cover non-standard work situations; and
 - e. Equality of benefits for men and women, which will allow women to participate in the workforce and men to participate in the home setting.