



## Research

# Menu of Women and Family Friendly Work Options

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Over the past decade, we have witnessed significant shifts in the United States workforce. For instance, computers and the Internet have been largely responsible for the distinct rise in a nontraditional workforce, where an independent worker is able to make a living from home by selling individuals and companies his or her unique services. Meanwhile for the traditional salaried white collar worker, the line between work and leisure is becoming increasingly unclear as many now have the ability to work from home and can get late night emails from their bosses. The modern workweek is far more flexible than the rigid time sheets of the past.

Lost in these changes, however, is ensuring that working families maintain the flexibility necessary to have children and raise a family. In particular, in a competitive marketplace, how can we ensure that those who decide to go on maternity or paternity leave do not get left behind? The Family and Medical Leave Act of 1993 (FMLA) allows for up to 12 weeks of unpaid, job-protected leave for the birth of a child or a serious medical condition. Some have argued for expanding the number of people covered under FMLA and mandating *paid* leave for working mothers with newborn babies. While requiring paid leave may benefit some families, it would be harmful to those who lose their jobs because of the cost to employers. Rather than imposing a costly burden on all employers, it is important that policy keeps pace with the evolving modern workforce by embracing work/life flexibility and expanding it to working mothers and fathers.

This paper discusses a range of policy options that aim to enhance workplace flexibility for working families. We find that there is a crucial need to ensure that pregnant women have certain workplace protections, and that there are several incremental options for policymakers that do not constitute a costly federal mandate on paid leave for all employers.

# PREGNANT WOMEN IN THE LABOR FORCE

While the labor force continues to transition into a more flexible system, it appears that pregnant women are being left behind. [AAF previously](#) examined labor market data and found significant discrepancies between pregnant and non-pregnant workers.

First, we found that pregnant women are more likely to be let go from their job than other workers. According to a Census Bureau report, from 2006 to 2008 4.7 percent of working women who were pregnant with their first child were fired.<sup>[1]</sup> That is drastically higher than the economy wide average. Job Openings and Labor Turnover Survey (JOLTS) data reveal that during the same time period only 1.4 percent of all employees in the country were let go from work. Even more striking is that while the firing rate of all workers remained flat from 1996 to 2008, for first time pregnant women it more than doubled.<sup>[2]</sup>



Second, those who desire to return to the labor force soon after giving birth have a more difficult time securing a job. A separate Census Bureau report found that in 2012, women who had just given birth in the last year had an unemployment rate of 14.1 percent.<sup>[3]</sup> That was significantly higher than the 8.1 percent unemployment rate for the entire labor market in 2012.<sup>[4]</sup>

These labor market trends may contribute to the fact that women who had just given birth in 2012 were almost twice as likely to be in poverty as the entire United States. In 2012, 27.9 percent of all women who gave birth within the previous 12 months were in poverty.<sup>[5]</sup> That is almost double the percentage of all Americans (15 percent) who were in poverty in 2012.<sup>[6]</sup>

While mandating paid leave would increase the income for pregnant women who take time off and stay employed, it would reduce the income for the thousands of workers who would lose their jobs because of the mandate. Just like raising the minimum wage and expanding overtime pay coverage, mandating paid family leave would add a significant cost to the labor market. Table 1 shows the estimated annual costs of a range of mandated paid family leave options.

**Table 1: Cost of Paid Leave<sup>[7]</sup>**

Leave Length	Pay Replacement	Cost	FTE
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**Table 1: Cost of Paid Leave<sup>[7]</sup>**

<i>All Workers</i>			
6 weeks	100%	\$7.1 billion	146,684
6 weeks	50%	\$3.6 billion	73,342
12 weeks	100%	\$14.2 billion	293,368
12 weeks	50%	\$7.1 billion	146,684
<i>Full-Time Workers</i>			
6 weeks	100%	\$5.9 billion	121,505
6 weeks	50%	\$2.9 billion	60,753
12 weeks	100%	\$11.8 billion	243,011
12 weeks	50%	\$5.9 billion	121,505

If the federal government mandated that all female workers who give birth receive six weeks of paid time off and that their pay while on leave equal their regular weekly pay, we estimate it would cost businesses \$7.1 billion per year. That is equivalent to the annual pay for about 147,000 full-time workers. In other terms, mandating six weeks of paid family leave could cost almost 147,000 full-time equivalents.

If the federal government mandated 12 weeks of paid family leave for every pregnant worker, it would cost employers roughly \$14.2 billion. That translates to a reduction of about 293,000 full-time equivalents to afford paid family leave.

Moreover, it is possible that mandating paid leave could make these firing and unemployment trends even worse. Many of those who would be subject to the negative labor market consequences would likely be the very women that the policy is intended to help.

A better way to address these issues is through a combination of policies that enhance workplace protections for pregnant workers, increase workplace flexibility and leave options for new mothers and fathers (without burdening employers), and incentivize merit based workforce practices. Here are nine options for accomplishing these goals.

## 1. STRENGTHEN WORKPLACE PROTECTIONS FOR PREGNANT WOMEN

An important way to help working families is to ensure that pregnant and non-pregnant workers are treated equally. The statistics discussed above suggest that despite existing protections in the Pregnancy Discrimination Act, pregnant workers may continue to face discrimination in today's workplace. In particular, significant discrepancies between pregnant and non-pregnant workers are found when examining firing and unemployment rates.

One approach to address concerns of discrimination in the labor market is to amend the Pregnancy Discrimination Act to more clearly state that pregnant women in the labor market must be treated the same as other workers in their *temporary* ability or inability to work. This type of a clarification could help reduce the rate at which pregnant workers lose their jobs. The standard should apply to both employees and applicants of a business so that pregnant women are also protected from discrimination in the hiring process.

## 2. WORKING OVERTIME TO ACCRUE TIME OFF RATHER THAN EARN ADDITIONAL PAY.

Another way to help working families is a proposal is to allow workers to accrue paid time off from working overtime in lieu of additional pay.

Proposed legislation would allow businesses to offer their employees the option to take additional paid time off instead of time-and-a-half wages for working overtime. This approach does not force employees to take paid time off instead of cash wages. Instead it would provide them with the option. With this option, workers who plan to take leave for a newborn (or for any other reason) would be able to accrue paid time off at a rate of 1.5 hours for each hour of overtime. The bill would allow employees to accrue up to 160 hours or four 40 hour weeks of paid time off. As a result, working families would be able to take advantage of paid leave while their employer would not be burdened with additional costs. This bill could be particularly helpful for hourly employees, who likely have the least access to paid family leave.

## 3. TAX CREDITS FOR EMPLOYERS OFFERING AT LEAST 4 WEEKS OF PAID FAMILY LEAVE.

Another legislative proposal would allow for a refundable federal tax credit for businesses

that provides at least four weeks for paid leave at 25 percent for every hour of paid leave. This proposal would come at a significant cost to the federal government, but would encourage the provision of paid family leave without mandating it nationally.

#### 4. GENERAL LEAVE BANK: EMPLOYERS ENCOURAGED TO ALLOW WORKERS TO BANK ALL UNUSED PERSONAL AND SICK DAYS, TO BE REDEEMED FOR PAID LEAVE.

In today's labor market, many working men and women obtain paid leave to care for newborns through a combination of sick days, vacation days, and paid maternity (or paternity) leave. From 2006 to 2008, 50.8 percent of working women who became pregnant with their first child received some form of paid time off through a combination of maternity, sick, and vacation leave. In particular, 40.7 percent received paid maternity leave, 9.8 percent used sick leave, and 10.8 percent used paid vacation days.[8]

An effective way to expand access to paid family leave could be to formalize this process. In particular, the federal government can encourage employers to allow workers to bank all unused personal, vacation, and sick days to be used at a later date for paid family leave. In fact, [Oxford Economics](#) has found that \$52.4 billion worth of paid vacations days go unused every year. For some workers, perhaps the best way to utilize those unused vacation days would be to save them for paid family leave. This system could apply to both salaried and hourly workers.

#### 5. PAID LEAVE SAVINGS FUND

Similar to the General Leave Bank, the federal government could enable businesses to offer workers the option to divert a portion of their pretax earnings to a paid leave savings account. This would be similar to a standard 401(k) retirement savings account, in which employees are able to invest a portion of their pretax earnings in a retirement savings fund that they can access upon retirement. For the paid leave savings fund, instead of accessing the savings during retirement, workers would be able to draw from them whenever they decide to take leave.

The benefit to the paid leave savings fund is that it would be no cost to an employer, unless the employer offers a matching program. Those who contribute to the fund as personal insurance but never end up taking family leave could simply cash out after a certain age or roll the savings account into their retirement plan.

## 6. LIABILITY COVERAGE IN EXCHANGE FOR MEETING NATIONAL BEST PRACTICES

Due to federal protections under a number of laws (such as the Fair Labor Standards Act (FLSA), National Labor Relation Act (NLRA), Family and Medical Leave Act (FMLA), and Pregnancy Discrimination Act (PDA)), employers are at risk of being sued by their workers for countless reasons. Due to these liability risks, businesses face significant litigation, legal insurance costs, and employment law attorney fees.

The establishment of national best practice standards and implementation guidelines that incorporate paid family leave policies, parental time, and other personnel policies could be useful. If the employer embraces these standards, the federal government could award a certain degree of labor liability coverage. The standards would be completely voluntary and the decisions for which employers would be awarded coverage could be determined by a national trade association or an experienced board of professionals in the Department of Labor. The employers who embrace these standards would benefit from increased liability coverage (and hopefully lower litigation costs) and their workers would benefit from better family workplace policies, such as paid family leave with clear and consistent protocols.

## 7. RECOGNIZE FAMILY-FRIENDLY EMPLOYERS NATIONALLY

To promote and encourage employers of all sizes and industries who have established consistent family-friendly policies, the Department of Labor could work with experienced ranking publications or consultants to recognize companies with exceptional leave policies. By recognizing companies in various sectors who provide helpful policies for all employees, competitors may have an incentive to increase their own standards and achieve similar recognition. Short of a mandate, tax credit, or liability waiver, this is a simple way to acknowledge the efforts of employers and raise the standard in a voluntary and competitive way.

## 8. FEDERAL WORKFORCE FOCUS: PAY FOR PERFORMANCE, PROMOTION BASED ON MERIT

The federal government could improve the workplace environment for working women and parents by promoting a performance based system that determines pay and promotions based on merit, not seniority. And the government could do this by shaking up their own workplace policies. With [4.2 million workers](#), the federal government is the nation's largest employer. However the government does not often make hiring, promotion, and pay

decisions based on skills, contributions, and experiences. Rather it uses a rigid bureaucratic GS-level system, in which workers get promotions based on how long they have been working for the government, not the quality of their work. As a result, the federal government is rife with a “jobs for life” mentality that results in only **0.18 percent** of the federal workers being let go every year and makes it extraordinarily difficult for a young working professional to move up the organization, regardless of his or her talents.

Perhaps the best way to increase female pay within the federal government would be to instill a competitive system that promotes workers based on merit and applies equally to men and women. In this system, pay increases would not be automatic and based on time spent in service. Instead, pay hikes would be based on actual contributions to the government and public. Promoting based on performance will help even out opportunity for men and women in the government and bring accountability and integrity back to federal hiring and personnel practices. Policies that promote the professional advancement of qualified employees—be they for women or men—benefit families, promote value to the taxpayer, and keep quality employees in the federal system.

## 9. CHANGES TO HOUSE AND SENATE STAFF LEAVE POLICIES

Finally, if federal policymakers desire to increase workplace flexibility and access to paid family leave, then our elected members of Congress should lead by example. Congress has a long history of ad hoc leave policies for their own staffers, which has created a wide disparity among offices. Before enforcing further leave requirements on private sector employers, Members should consider applying the same standard to Capitol Hill employees who are not federal GS-level workers. Step one would be setting a paid leave “floor” or an otherwise consistent vacation and sick leave transfer policy for Capitol Hill staff, so that all Legislative Branch staffers have access to a consistent, minimum length of paid family leave.

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[1] “Maternity Leave and Employment Patterns of First-Time Mothers: 1961-2008,” Census Bureau, October 2011, <https://www.census.gov/prod/2011pubs/p70-128.pdf>