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# Introduction and summary

Today an increasing amount of the government's work is not performed directly by the federal workforce, but rather by a hidden workforce of employees working for government contractors. From 2000 to 2008, the federal government more than doubled its investment in contracted goods and services to $526 billion.[1] This investment represents over 3 percent of the total size of the U.S. economy, approximately equal to the economic output of the state of New Jersey.[2]

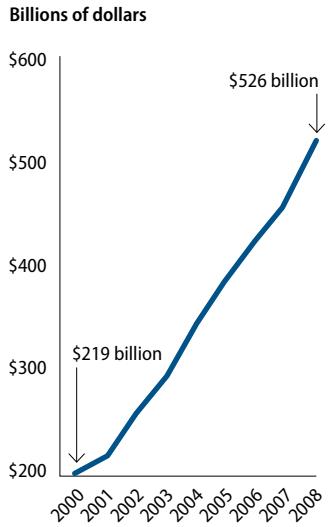
This stunning growth in federal contracting is due in large part to a gradual shift in the amount and type of work that is being contracted out by the federal government. Twenty-five years ago, the majority of the funds spent on federal contracting went to the production of supplies and equipment for the government—everything from fighter jets to ammunition and body armor. Today, by contrast, the federal government spends approximately 60 percent of its federal contracting investment on the purchase of services[3]—ranging from information technology support to food services to human resource management to security for federal buildings.[4]

Indeed, the overall growth in federal service contracting has steadily increased at a compound rate of slightly more than 6 percent each year for the past decade.[5] The Department of Defense increased its spending on services by a remarkable 66 percent from fiscal years 1999 to 2003.[6] It now spends more on services than goods and spends more than any other agency on service contractors.

Historically, the federal government has provided a standard for employment benefits and equity in employment, and government contracting has often been used as a powerful tool to improve employment benefits and equity in the private sector.[7] Specifically, Presidential Executive Order 11246—signed by President Lyndon B. Johnson in 1965, which built on similar presidential orders going back to 1941—prohibits discrimination and insists on affirmative action to assure representation of women and underrepresented minorities in the federal contracting workforce. And decades-old laws such as the Davis-Bacon Act, Walsh-Healy Public Contracts Act, and the McNamara-O'Hara Service Contracts Act all require that federal contractors pay prevailing wages and benefits.

The reach of these laws is dramatic. The protection against discrimination extends to all employees working for federal contractors receiving more than $10,000 in federal contracts in one year. It reaches nearly a quarter of the entire private-sector workforce in

**Dramatic increase in investment in federal contracting**




Source: Graphic available on USASpending.gov; Federal Procurement Data System (FPDS)

the United States.[8] The requirement for prevailing wages and benefits applies only to those workers directly supported by the federal government, but the numbers are still quite dramatic and have an outsized influence on purely private-sector wages and benefits.

Unfortunately, these laws do not adequately address the needs of today's workers. Workers face greater family responsibilities than ever before. Most workers are in families where both adults work or in single-headed households. Workers also are older than ever before, and many need to take time off to care for themselves or an elderly spouse or partner, or desire greater flexibility to enjoy life as they get older. Problem is, most jobs today don't include flexible, family-friendly policies to match the needs of today's workers.

This report documents how existing laws that protect against inequitable pay and set prevailing wages and benefits in the federal contractor workforce have failed to fully assist workers contracted by the federal government in meeting the dual demands of work and family responsibilities. The report then recommends how to fully enforce existing laws, and encourages the government to consider new ways of rewarding contractors offering family-friendly benefits at least as good as those offered by the federal government to its own workers.

How important is this to American workers? It's huge. Scholars, the media, and watchdog groups have focused attention on the problems associated with the dramatic rise in contracting, including the lack of public accountability and transparency and the question of whether certain services are inherently governmental and therefore must be performed by government employees.[9] But less attention has been paid to the inefficiencies and inequities associated with the lack of enforcement and gaps in the laws requiring equitable pay and a standard level of benefits for federal contract employees.[10]

What's more, there has been limited examination of whether federal contractors should be required or incentivized to provide work-family benefits.[11] Should the single mom who works in a cafeteria for a major federal agency be able to take a day off from work without losing pay or risking her job when her child is sick or when she needs to accompany her mother to the doctor? What about the older man who still comes in at night to clean federal offices because he can't afford to retire—should he get more flexibility to work part-time or adjust his work schedule? How about the married parent of a newborn who is working at a desk job processing reimbursement forms for the federal government, shouldn't that parent get the protection of paid family leave just after the baby is born?

President Barack Obama has committed to undertake a comprehensive review of federal contracting as well as to explore ways the federal government can better address challenges faced by women.[12] These efforts should be linked. They should include a review of how the federal government can increase its enforcement and oversight of federal contractors with regard to workplace policies supporting caregivers, a disproportionate number of whom are women.

# Recommendations

The Obama administration should take a number of immediate steps to ensure the inclusion of flexible, family-friendly benefits under existing laws requiring equitable pay and a standard level of benefits in the federal contractor workforce. The administration should also ensure that the federal requirement to do business with "responsible" contractors includes rewarding contractors for offering flexible, family-friendly benefits at least as good as those offered to federal employees.

Finally, the administration can prepare for the future by investing in research on flexible, family-friendly benefits currently offered by federal contractors and by designing a standard benefit requirement for all federal contract employees that meets the needs of the new workforce. Specifically, this can all be accomplished by enforcing existing federal contractor equity and benefits laws, doing more with existing executive authority, and preparing for the federal contract workforce of the future.

## Enforce existing federal contractor equity and benefit laws

**Enforce Executive Order 11246 to prevent pregnancy and caregiver discrimination.** Executive Order 11246 prohibits sex and race discrimination in the federal contractor workforce, but it has not been rigorously enforced to protect federal contract employees from sex discrimination on the basis of pregnancy or caregiving responsibilities. The U.S. Department of Labor should update its Executive Order 11246 compliance manual and train its enforcement officers to ensure that pregnant workers are provided with a reasonable period of leave to recover from childbirth and are reinstated upon return to work. And the department should help employers and enforcement officers understand how to prevent sex discrimination related to gender stereotyping about caregiving responsibilities by publishing guidance modeled on the Equal Employment Opportunity Commission's guidance on the unlawful treatment of workers with caregiving responsibilities.

**Educate the federal contractor workforce about their duties under the Family and Medical Leave Act.** The Secretary of Labor should do more to ensure that federal contract employers and employees know their FMLA responsibilities and rights when successor employers win federal contracts. This can be accomplished by providing guidance to federal contract employers and by including information about rights to FMLA eligibility and leave on the FMLA workplace poster.

**Include family-friendly workplace benefits in existing federal contractor prevailing wage and benefit laws.** Federal contractors, covered by the Service Contract Act, are required to provide prevailing fringe benefits to their service employees performing work under the contract. This act covers approximately one-quarter of all federal contract workers.[13] Required benefits include vacation and holiday pay, health benefits, retirement benefits, disability benefits, and sick pay. But the Service Contract Act has not been interpreted to include family leave. Yet unpaid, job-protected family and medical leave is prevalent in the United States—even in small businesses—which are not covered by the Family and Medical Leave Act. Indeed, more than seventy percent of all small businesses provide at least some job-protected family leave to their employees. Enforcement of the Service Contract Act should ensure access to such leave.

Moreover, under current policies, the calculation of prevailing benefits only examines benefits prevailing in the private sector; it does not include benefits prevailing in the federal workforce, even though many federal contract employees work side by side with federal employees. And the calculation of prevailing benefits provided by federal contractors working under a collective bargaining agreement may not capture the range of robust family-friendly policies offered under such agreements. The Secretary of Labor should update the fringe-benefit regulations covering the Service Contract Act to ensure that family-friendly benefits are included to the greatest extent possible under the law.

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## Do more with existing executive authority

**Reward responsible federal contractors offering work-family benefits.** Federal procurement laws require the government to purchase goods and services only from responsible contractors. The Center for American Progress and the National Employment Law Project have urged the government to ensure that responsible contracting includes complying with existing labor laws, as well as rewarding contractors that offer workplace benefits that provide workers with decent wages, health care benefits and paid sick days. These recommendations are a critical first step, but the government should not stop there. The development of contracting guidelines to benefit all federal contract workers—particularly low-wage workers—should reward contractors that offer a set of work-family benefits at least as good as the federal government offers its own employees or better, including:

- Job-protected unpaid family leave.
- Paid sick days to be used for one's own illness or to care for a sick child or other family member.
- Workplace schedules that are predictable and offer options for flexibility
- Child and elder care subsidies.
- Paid family leave (a benefit that is better than the federal government's current policy).

**Improve information available about work-family benefits offered by federal contracts.** There is a lack of information on the availability of family-friendly policies offered by federal contractors. The administration should work to reinstate the Equal Opportunity Survey to help the government know which contractors are struggling with women entering and advancing in the workforce. But research on family-friendly policies should go beyond the EO survey to examine federal contractor family-friendly policies offered by company size and by type of employees within these companies. The federal government should also incorporate the use and availability of family friendly benefits into its regularly conducted workforce surveys, such as the Current Population Survey, as well as conduct regular in-depth surveys of the implementation family-friendly benefit laws.

## Prepare for the federal contractor workforce of the future

**Require all federal contractors to provide work-family benefits at least as good as those offered to federal employees.** In the future, when the government is armed with greater information about the availability of such policies, Congress and the administration should consider requiring all federal contractors to offer family-friendly benefits at least as good as those offered by the federal government to its own employees. As an interim step, the government should follow the recent recommendation made by Workplace Flexibility 2010 to adopt a pilot project requiring federal contractors that have hourly workers working on federal contracts to provide at least two types of flexible, family-friendly work arrangements.[14]

These sets of recommendations make good economic sense for families, for businesses and for our nation's economic recovery. Women make up nearly half the private-sector workforce and contribute significantly to their family incomes. A job loss resulting in a loss of nearly half of the household income is devastating to family economic security and to the country's economic recovery. The same can be said for older workers, who are staying in the workforce longer but have a growing need for flexible, family-friendly policies in order to maintain their foothold and continue to support their families.

Poor treatment of workers with family responsibilities will produce an unstable, inefficient workforce. But when federal contractors train and retain the best employees, they help drive the economy forward and provide good returns on taxpayer dollars.

# Federal employees and the hidden workforce of federal contractors

The federal government is the single largest employer in the United States, employing 1.9 million civilian employees in the executive branch in 2008.[15] In many ways, the federal workforce has remained relatively steady and unchanged over the last 10 years. There has been a slight increase in the number of employees with 75,000 more federal civilian employees in 2008 than in 1998.[16] In the past 10 years, the percentage of women employees has remained steady at 44 percent of the federal employee workforce, while minorities have seen a slight increase from just under 30 percent to just over 33 percent of all federal employees.[17]

Over the past 10 years, the salaries of federal employees have risen faster than inflation. Today, the average federal employee makes $69,061.[18] All currently employed and retired federal employees and their dependents are eligible for federal health benefits and approximately 85 percent of federal employees and retirees take advantage of this benefit.[19] While health care premiums have risen for federal employees, the rise has been slower than in the private sector, and the government covers up to three-quarters of the premium.[20]

There are two important changes to the federal workforce in the last several years that merit attention in thinking about the importance of flexible, family-friendly policies. First, the federal workforce is aging—there was a striking 60-percent increase from 1998 to 2008 in the number of federal workers who are over 55.[21] As Professor Chai Feldblum of Workplace Flexibility 2010 recently noted in testimony before the Senate Committee on Aging, these older workers who are staying in the federal workforce out of economic necessity or as a way to stay engaged and active do not want to keep working the same hours in the same way.[22] Instead, they want to remain in the workforce with a more flexible work environment so they can take better care of themselves, care for a family member, or engage in their own interests as they age.

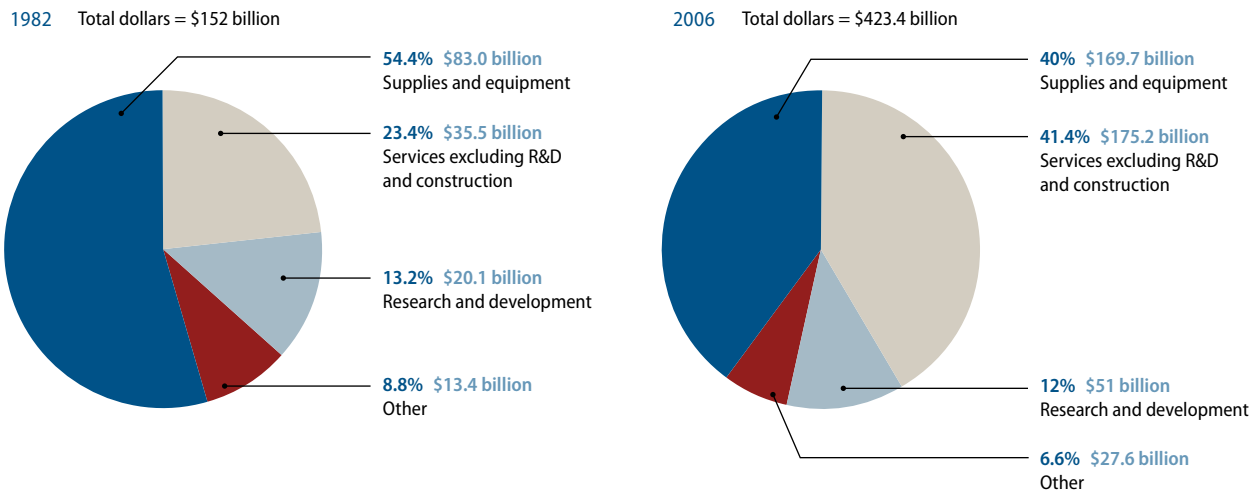
Second, federal work is increasingly being performed not by federal employees, but by employees of federal contractors. As we will document in the next section, most of these federal contractors lack the flexible, family-friendly benefits currently enjoyed by federal employees.

Most federal contractors lack the flexible, family-friendly benefits currently enjoyed by federal employees.

# Federal contract employees: The makeup of the hidden federal workforce

While there is no official government tally of the number of individuals employed by federal contractors, the number appears to be both significant and increasing. The Department of Labor estimated in 2002 that approximately 26 million workers, or 22 percent of the workforce, are covered by the antidiscrimination laws enforced by the Office of Federal Contract Compliance.[23] These employees work for federal contractors or subcontractors, which do more than $10,000 in government business in one year—and the employees are both those employees directly supported by the federal contract, as well as all employees who work for the federal contractor.[24] In terms of workers employed as a result of federal contracts, the Economic Policy Institute estimates that there are 2 million federal contract employees—up from 1.4 million in 2000.[25]

**Federal contracting by sector, 1982 compared to 2006**




Source: FPDS, FY 1983 report; FPDS, FY 2006 report.

### Women's workforce participation by sector

| Occupation | 2007 |
|---|---|
| Service | 57.2% |
| Professional and related | 56.2% |
| Production, transportation, and material moving | 23% |
| Natural resources, construction, and maintenance occupations | 4.2% |

Source: U.S. Bureau of Labor Statistics, Women in the Labor Force: A Data Book, 2008 edition.

Not only do we lack an official tally of federal contract employees, we also know very little about their demographics. Federal contractors, as well as large private employers, are required to annually report to the federal government on the sex, race and ethnicity of their employees in certain job categories.[26] But this information is not publicly aggregated or published.[27]

While we do not have a breakdown for the federal contracting workforce, general trends in private-sector labor participation are likely to play out in the federal contracting workforce. In terms of women workers, we know that for the first time in our history women make up nearly half of the workers on U.S. payrolls.[28] Women's workforce participation widely varies based on the type of work being performed.

For purposes of examining federal contracts, 60 percent of which go to the purchase of services, it is important to note that women make up more than 57 percent of the jobs in service occupations.[29] Within service occupations, women typically make up an even higher percentage of the occupations most heavily contracted by the federal government—women are 89.2 percent of health care support occupations; 75.2 percent of office and administrative support workers; and 56.4 percent of food service workers.[30]

Like the official federal workforce, the private-sector workforce is also a graying workforce. From 1997 to 2007, the number of workers 65 and older more than doubled.[31] For older women, the increase was even more dramatic—147 percent. And the most interesting trend in older workers is that from 1995 to 2007, the number of workers working full-time nearly doubled. Today, 56 percent of all workers over 65 work full-time.

# The federal government as trendsetter in flexible, family-friendly benefits

The federal government has a strong history of setting workplace trends and piloting flexible, family-friendly benefits.[32] As far back as 1957, the government allowed some employees to work from home. In the 1970s, Congress passed legislation allowing the federal government to pilot flexible and compressed work schedules for full-time employees and to encourage more part-time opportunities for federal workers.

The government created leave banks and leave sharing programs in the 1980s. And in the 1990s, the government established several flexible workplace satellite offices to relieve workers of long commutes; created pilot job sharing programs; expanded the use of sick leave to allow all workers to use accrued sick leave to care for ill family members, and to allow workers leave time to accompany family members to routine health appointments and to participate in children's school activities.

Today, the federal government has a solid footprint of flexible, family-friendly policies enjoyed by many federal employees. These policies can serve both as a model for the private sector and a base on which the federal government can expand:

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## Time off for sickness or family responsibilities

The federal government has an expansive paid sick leave policy. It allows employees to accrue paid sick leave, which can be fully used for one's own personal illness, including pregnancy, child birth and recovery.[33] Thirteen days per year may be used to care for a family member with a minor illness or injury—including providing care after child birth—to attend to the death of a family member, or to accompany family members to routine medical appointments.[34] And adoptive parents may use accrued sick leave for purposes related to the adoption of a child.[35]

The federal government is also required to offer eligible employees leave under the Family and Medical Leave Act. The FMLA requires 12 weeks of unpaid, job-protected leave to allow employees to attend to the employee's own serious health condition, recover from childbirth, care for a newborn or newly-adopted child, or care for a seriously ill child, spouse or parent.[36] Federal employees are permitted to use up to 12 weeks of their paid annual leave for FMLA purposes, including recovery from childbirth and bonding and caring for a newborn or newly adopted child.[37]

Some federal employees are also eligible for an additional 24 hours of job-protected leave to participate in child care or school activities related to the educational advancement of their child, or to participate in volunteer activities for a child who is not their own.[38] This policy, however, is left to the discretion of individual agencies and supervisors.

Congress may allow the federal government to go further soon. Just last month, the House of Representatives passed the Federal Employee Paid Parental Leave Act of 2009, which would provide four weeks of paid leave after the birth or recent adoption of a child to all federal employees eligible for the FMLA. It would also provide discretion to the Office of Personnel Management to increase the amount of paid leave up to eight weeks.[39]

## Flexibility and control over work hours and place

The federal government offers a comprehensive set of workplace policies that allow workers flexibility and predictability in their schedules, including flexible and compressed work schedules, telecommuting, and part-time options to at least some federal employees.[40] In general, these flexibility policies are left to the discretion of the federal agency and the individual supervisor. As a result, federal employees often do not have access to these benefits.

Just under one third of federal workers have access to flexible schedules, which is equivalent to the private sector workforce. More federal workers—56 percent—have the ability to telework, but just over 6 percent of federal employees do so. And very few—just under 4 percent—of federal workers are on a part-time schedule, although, 80 percent of these workers are taking advantage of part-time schedules voluntarily.[41]

## Child care and elder care assistance

The federal government offers child care support for its workers in three ways:

- The provision of high-quality on-site federal childcare centers.
- Child care subsidies to lower-income federal employees.[42]
- The availability of tax-free dependent care flexible spending accounts, which can be used to provide care to children or to an elder or other adult dependent.

These benefits, however, are not universally available to all federal employees and, in the case of the child care subsidies, not well publicized or fully used.

Although federal agencies have the discretion to use their funds for salary and expenses to provide child care subsidies to low-wage workers, only 37 percent of agencies do so.[43] The federal government also offers long-term care insurance for its employees for purchase at a group rate and provides several model elder care programs in federal agencies.[44]

## Prohibitions against discrimination

Executive Order 11478 prohibits discrimination in the federal workforce on the basis of sex, age and parental status among other categories.[45] The prohibition against both sex and parental status discrimination require the federal government to ensure that workers are not discriminated against based on gender stereotypes related to care giving or denied real opportunities as a result of pregnancy or parental responsibilities. The prohibition against age discrimination protects older workers from being discriminated against for using flexible workplace policies as a way to stay in the workforce and also meet the demands and interests in approaching retirement.

Altogether, these federal policies help to attract and retain workers and foster a more productive federal workforce. Seventy-three percent of federal employees today have a child or dependent-care responsibilities or expect to have one in the future.[46] Policies that allow workers to meet the demands of such family responsibilities are critical for both the worker and the efficiency of the federal government. According to a recent Government Accountability Office study based on interviews of federal agency officials and federal employee union representatives:

> *Work-life policies and programs, such as alternative and flexible work schedules, transit subsidies, child care assistance, and employee assistance programs, are among the most effective human capital flexibilities available in federal agencies for managing the workforce to achieve agency missions and accomplish agency goals. These flexibilities are effective because they serve as important recruitment and retention tools as employees weigh the balance between their work life and leisure time.*[47]

In a separate study of the dependent-care needs of federal employees, the GAO found that workplace flexibility policies were critical in employees' decisions to take a job in the federal government and even more critical in the employees' decision to stay.[48]

The federal government still has much work to do in ensuring the uniformity of its family leave, child and elder care, and flexibility policies across federal agencies and within agencies. And the government still needs to catch up with the private sector by encouraging the use of part-time options.[49] But the federal government has put in place critical policies for workers with family responsibilities. These policies can be expanded upon by the federal government and can serve as model policies for the private sector—particularly the federal contractor workforce.

# Many federal contract employers lag behind the policies set by the federal government

Flexible, family-friendly benefits help the government retain productive employees. In the private sector, flexible, family-friendly workplace policies are also critical tools in ensuring worker productivity, family economic security, stable workforces, and a strong economy.

What's more, family economic security depends on women's contribution to the family income—now averaging 35.6 percent of the family income in dual-earner couples.[50] The wages of working mothers who worked prior to the birth of their child and received paid maternity leave are 9 percent higher than women who did not have access to such leave.[51] And, more and more, families are depending on the working income of older workers.

Flexible, family-friendly policies can have a real impact on employee satisfaction and productivity. Case in point: A 2001 study of which family-friendly policies maximized profits found that having in place a paid sick-leave policy has a significant positive effect on profits due to increased job contentment, reduced worker stress and the employer's enhanced labor market reputation.[52] FMLA leave has been shown to improve employee satisfaction and to have no negative effects on business productivity or profitability.[53]

Despite the promise of these policies for greater productivity—which, in the case of federal contractors would benefit not just the contractor, and the government, but taxpayers and the economy as well—federal contractors seem to be lagging behind. So let's examine just where federal contractors are failing to deliver productivity gains to the government, taxpayers and the economy alike.

# Provision of family-friendly policies by federal contractors

The federal government does not collect information on the availability, use and benefit of family-friendly policies by federal contractors, despite a recommendation in the 1990s by the bipartisan Glass Ceiling Commission to do so.[54] In fact, the federal government does not collect comprehensive information on the availability, use or benefit of flexible, family-friendly workplace policies for the private sector as a whole. What information is available is not broken down by industry, employer size or employee status.

We know that the private sector as a whole—and by extension federal contract employers—have not kept pace with the federal government in offering a comprehensive set of flexible, family-friendly workplace policies.[55]While there are positive examples of leaders in the provision of flexible, family-friendly practices among federal contractors—five of the top 100 federal contractors were recognized by the 2008 *Working Mother* Magazine's 100 Best Companies—these companies appear to be the exception.[56]

## Time off for sickness and family responsibilities

Employer size and industry type can be used as a gauge of what types of leave policies federal contractors are likely to have in place. For instance, only about half of all private-sector employees have access to designated paid sick leave and less than one third of workers have access to designated paid sick leave that can be used to care for a family member.[57] For service workers, the type of industry primarily employed under federal contractors, only 22 percent of accommodation and food service workers have access to designated paid sick days, and only 31 percent of administration and waste service workers have access to designated paid sick days.[58]

The top 100 contract awards made in 2008—amounting to approximately 60 percent of the federal funds spent on contracts—were made exclusively to large employers,[59] companies such as The Boeing Company, research universities such as the Massachusetts Institute of Technology, and state governments, including the State of California.[60] Because most federal contracts are made with employers with more than 50 employees, they must offer job-protected, caregiving leave under the Family and Medical Leave Act.

But a significant percentage of employers in the private sector—at least 18-to-21 percent—fail to comply with the FMLA.[61] And approximately 18 percent of federal contracting dollars go to small businesses, some of which are under 50 employees and thus not covered by the FMLA.[62] The majority of establishments not covered by the FMLA are in the service industry or other non-manufacturing, non-retail industries.[63]

While 71 percent of employers not covered by the FMLA because they employ fewer than 50 employees report offering some unpaid, job-protected family leave, they are less likely to offer the full-range of family and medical leave benefits. Only 33 percent of non-covered establishments offer leave for all five reasons covered by the FMLA.[64]

Janitorial services are frequently contracted out by the federal government.

Paid family leave, defined broadly to include access to any replacement pay when taking family leave, such as access to paid sick leave and paid annual leave, differs based on firm size and gender. Women working in large companies have the greatest access to paid leave for maternity purposes—76 percent of women working in large companies have access to such leave compared to 48 percent of women working in small businesses.[65]

But the length of the maternity leave offered is often limited. Of the best employers for working mothers—as recognized by *Working Mother Magazine*—52 percent offer six or fewer weeks of paid maternity leave.[66] Only 17 percent of men have access to paternity leave,[67] and this leave is generally quite short—35 percent of the best employers offer 1-to-2 weeks of paid paternity leave and none offers six or more weeks.[68] Many workers have no access to paid sick leave and annual leave to provide care for family members—40 percent of working mothers lack sick and annual vacation leave and 30 percent of fathers lack such leave.[69] And access to paid family leave differs significantly by sector. In the service sector, only 5 percent of workers have access to paid family leave.[70]

It is important to note that even where the private sector appears to have access to family leave and sick leave policies, it is often low-wage workers who are disproportionately left out of access to such leave.[71]

## Flexibility and control over work hours and place

At first glance, the private sector appears to do better than the federal government in the area of workplace flexibility. According to Bureau of Labor Statistics data, federal government workers and private sector workers have equal access to flexible schedules—just under one-third of each sector—but the private sector outshines the federal government in both the percentage of the workforce that telecommutes (6 percent of federal employees compared to 15 percent of the private sector) and the percentage of the workforce working part-time (just under 4 percent of the federal workforce compared to over 16 percent of the private sector workforce).[72]

But it is important to note that the majority of both private-sector workers and federal employees still have no ability to control the time that they start and end their work days, no ability to work from a different location, and no ability to reduce the hours they work.[73] Those with the least access to flexible and predictable work schedules include low-wage workers and women working full-time below the poverty-line.[74]

In fact, it is just the type of workers who work for federal service contractors—low-wage service workers—who are least likely to have the ability to control their schedules or to set flexible work arrangements. One study found that higher earning employees have access to flexible schedules at more than double the rate of low-wage workers.[75]

## Child care and elder care assistance

Only 9 percent of all employers (and 21 percent of larger employers) offer child care at or near the worksite and far fewer offer child care subsidies to any of their workers—5 percent of all employers, 13 percent of large employers.[76] Moreover, only 1 percent offer subsidies for the provision of elder care.[77] While pre-tax savings for dependent-care needs is the most common benefit to aid workers in providing child care—with 46 percent of employers offering this service—the availability of this benefit varies widely depending on employer size (76 percent of large employers compared to 37 percent of small employers).[78]

## Prohibitions against discrimination

Executive Order 11246 prohibits federal contractors from discriminating on the basis of sex if the contractor receives $10,000 or more in federal contracts within one year, regardless of the size of the employer. This prohibition applies not only to employees directly supported by the federal contract, but also to all employees of the entity receiving federal contract dollars.

While the prohibition against parental discrimination by federal agencies is not included in the prohibition for federal contractors, EO 11246 regulations make clear that sex discrimination includes discrimination on the basis of pregnancy, marital status, and care of young children.[79] In the next section, this report will detail the weak enforcement of EO 11246 with regard to pregnancy and caregiving discrimination. In addition, it is important to note the EO 11246 prohibits discrimination on the basis of race, color, gender, religion and national origin, but does not prohibit age discrimination.

The upshot: Employees working for private-sector employers are much less likely to benefit from a comprehensive set of family-friendly policies than the federal workforce. This problem is most acute for low-wage workers, who if they were working as federal employees would have access to important family-friendly policies—often on the same terms as higher-earning professionals in the federal workforce. To address this inequity, the federal government could start by taking some concrete steps to enforce existing laws.

# The federal government's history and role in promoting equity in the federal contractor workforce

The U.S. government has a long history of enforcing racial equity in the federal contracting workforce, starting in World War II and expanding to all federal contractors in 1953. In the 1960s, Presidents John F. Kennedy and Lyndon Baines Johnson gave teeth to the prohibition against race discrimination in the federal contractor workforce by adding enforcement mechanisms and requiring affirmative action for minority workers. But a prohibition against sex discrimination by federal contractors was not added until 1967, when President Johnson amended Executive Order 11246 to prohibit sex discrimination and require affirmative action for women.[80]

Ironically, it was a reluctance to accommodate women's traditional responsibilities as mothers and caretakers in the workplace that kept President Kennedy and initially President Johnson from prohibiting sex discrimination in the federal contracting workforce. In 1961 when President Kennedy expanded the reach of previous executive orders prohibiting federal contractors from discriminating against minorities, he chose not to include a prohibition against sex discrimination.

President Kennedy expanded the reach of previous executive orders prohibiting federal contractors from discriminating against minorities, but he chose not to include a prohibition against sex discrimination.

At the time, the women's advocacy community disagreed about how best to achieve women's inclusion and advancement in the paid labor market—whether to push for equal access to work and its benefits on the same terms as men or to advocate for policies to aid working mothers in their dual roles of workers and caregivers, such as limitations on maximum hours worked and paid maternity leave. To address these issues, President Kennedy set up a Presidential Commission on a Status of Women.[81] The commission debated whether to recommend the prohibition against sex discrimination in the federal contracting workforce and ultimately voted against such a recommendation.[82] Historian Cynthia Harrison, who carefully documented this debate, concluded:

> *The commission would not accept [the] proposal to add the word sex to [the executive order], which it believed meant ignoring the impact of family responsibilities on women workers and their employers, nor could it envision forcing private employers to share with women the costs of taking time off from work to raise families.*[83]

Even after Title VII of the Civil Rights Act of 1964 made sex discrimination unlawful in the private sector, it took three more years for President Johnson to amend Executive Order 11246 to prohibit sex discrimination and require affirmative action for women by federal contractors.

# Executive Order 11246's use and effectiveness as a tool to increase women's workforce participation

The enforcement strength of the Office of Federal Contract Compliance Programs at the U.S. Department of Labor, which is charged with enforcing EO 11246, has varied with administrations. During the 1970s under Presidents Richard Nixon and Jimmy Carter, OFCCP began to robustly enforce the nondiscrimination and affirmative action requirements for women. These efforts paid off. According to an early study conducted by OFCCP, between 1974 and 1980, employment of women by federal contractors increased by 15 percent, while noncontractors showed an increase of only 2 percent.[84]

Furthermore, targeted efforts by the Carter administration to increase women's workforce participation in the coal and banking industries showed positive effects for women.[85] In the 1980s, however, enforcement came to a standstill under the Reagan administration,[86] and the studies from this time period showed that women working for federal contractors made no more progress in increasing workforce participation than women working for noncontractors.[87]

In more recent years, under the first Bush administration and the Clinton administration, OFCCP focused its efforts to combat sex discrimination on closing the wage gap between women and men, reviewing opportunities for women in management and executive jobs under the "glass ceiling" initiative, and combating persistent systemic discrimination.[88] But the strategies for how to meet these goals have differed dramatically. Both the first and more recent Bush administrations focused on voluntary compliance, while the Clinton administration focused on strong enforcement.[89]

The Center for Corporate Equality recently documented the difficulty in gauging the success of OFCCP enforcement efforts, which is due in large part to the lack of transparency and analysis of enforcement results.[90] In recent years, for example, OFCCP claimed record accomplishments in conducing compliance audits and collecting financial remedies from federal contractors violating EO 11246.

Yet no information has been provided on the federal contractor industries covered by the settlements, the basis on which the contractors discriminated, the types of personnel practices involved, or the portion of the financial remedies collected by the government and actually distributed to workers covered under the OFCCP settlements.[91] In fact, the Government Accountability Office recently reported that OFCCP does not monitor performance by specific types of discrimination.[92]

Instead of building up systems to increase information and transparency, the most recent Bush administration spent much of its energy undermining a critical tool for future OFCCP enforcement, the Equal Opportunity Survey. This survey, finalized through regulation at the end of the Clinton administration, required OFCCP to annually survey a substantial portion of all nonconstruction federal contractors to collect detailed data on hiring, promotions, terminations, compensation, and tenure broken down by race and gender.[93] The Bush administration never used the data collected for enforcement purposes, and instead used the data to create a case for why the survey was unnecessary and ultimately overturned the survey by regulation.[94] The Paycheck Fairness Act, which passed the House of Representatives in January this year and is pending in the Senate, would reinstate this survey.[95]

In addition to the lack of transparency, OFCCP also appears to limit its systemic discrimination reviews. In reviewing OFCCP settlements from 2007, the Center for Corporate Equality found that 95 percent of the settlements involved allegations of systemic discrimination in hiring and only 5 percent involved systemic compensation discrimination.[96] They found no settlements at all focusing on promotion or termination cases.[97] The signal this sends to the federal contractor community is that they need only worry about these limited actions.

## Availability and use of EO 11246 to combat pregnancy discrimination

The regulations implementing the prohibition against sex discrimination under EO 11246 include strong and clear language prohibiting pregnancy discrimination with regard to employer leave policies. First, the regulations implementing the executive order unequivocally state that where an employer has no leave policy for any of its employees or a leave policy that is too short to accommodate pregnant workers, pregnant employees must nonetheless be provided with a "reasonable period of leave time."[98] Second, the regulations implementing the executive order require that after the reasonable period of leave, the "employee shall be reinstated to her original job or to a position of like status and pay, without loss of service credits."[99]

These regulations are more demanding than the Pregnancy Discrimination Act under Title VII of the Civil Rights Act. The PDA prohibits termination of a pregnant employee when an employer's leave policy (or lack thereof) has a disparate impact on one sex and cannot be justified by business necessity.[100] Federal courts of appeals have split as to whether the PDA requires a reasonable period of leave when an employer has no leave policy for all employees.[101]

In addition, the guidance implementing the PDA merely requires that policies and practices regarding reinstatement be enforced with regard to pregnancy as they are with regard to other disabilities.[102] If there is no reinstatement policy for any worker, pregnant workers have no access to such reinstatement under the PDA.

Despite the clear regulatory guidance against pregnancy discrimination by federal contractors under EO 11246, the U.S. Department of Labor manual used by its enforcement officers—the Federal Contract Compliance Manual—contends that "[t]he passage of the PDA raised questions as to the continued viability of those portions of the OFCCP regulations which go beyond the PDA (i.e. require more of contractors than does the PDA)."[103] Observing that the question "ha[s] not been finally resolved," the manual states that it is the policy of the OFCCP to follow the more narrow PDA guidance.[104]

But the Department of Labor's ability to enforce the EO 11246 regulations and thus provide greater protection than the PDA was not an open question at the time the manual was updated 20 years ago and certainly is not today. As an initial matter, courts have made clear that the prohibition against discrimination under Title VII of the Civil Rights Act (which includes the Pregnancy Discrimination Act) does not limit the remedies against discrimination put forward under EO 11246.[105] In fact, the OFCCP has issued guidance in other areas clarifying that EO 11246 is not limited by Title VII.

Furthermore, the Federal Contract Compliance Manual cites the 1987 Supreme Court decision in *California Federal Savings & Loan Association v. Guerra* as a factor that purportedly "complicate[s]" how to harmonize the EO 11246 regulations with the PDA.[106] But the Court in *Guerra* held that the PDA does not prohibit states from offering more generous leave policies to pregnant women disabled by pregnancy and childbirth. If anything, this case supports the notion that Executive Order 11246 may provide greater protection for pregnant workers than the protection offered under the PDA.

The ability of employees to access reasonable periods of leave time after childbirth remains crucial even after the passage of the Family and Medical Leave Act, which guarantees 12 weeks of unpaid, job-protected family and medical leave. While an important step, the FMLA excludes nearly half the workforce either because employees don't work for covered firms or have not worked for an employer for the requisite amount of time to qualify for FMLA benefits. Executive Order 11246 has no such limitations.

The ability of employees to access reasonable periods of leave time after childbirth remains crucial even after the passage of the Family and Medical Leave Act.

## Availability and use of EO 11246 to combat caregiver discrimination

The regulations implementing EO 11246 also clearly prohibit sex discrimination on the basis of marital status and care of a young child.[107] In 2007, the Equal Employment Opportunity Commission issued detailed enforcement guidance on caregiver discrimination, *Unlawful Disparate Treatment of Workers with Caregiving Responsibilities*.[108] The guidance is intended for use by investigators, employees, and employers in assessing whether a particular employment decision affecting a caregiver unlawfully discriminates on the basis of Title VII of the Civil Rights Act of 1964 or the Americans with Disabilities Act of 1990.

Much of this guidance is directly applicable to unlawful discrimination under EO 11246. The only part that is not directly applicable is that which pertains to disability discrimination because disability is not covered under EO 11246. The portions of the guidance that are focused on sex-based caregiver discrimination or sex and race-based discrimination is directly applicable to compliance with EO 11246. The guidance thus covers sex-based disparate treatment of female caregivers, pregnant workers, male caregivers, and women of color with caregiving responsibility.

While the new Title VII guidance on caregiver discrimination is clear and strong, OFCCP's manual has not been updated to incorporate this important guidance, nor is there any indication that enforcement officers have been trained to implement the new caregiving guidance in enforcing EO 11246. Currently, OFCCP's manual merely repeats the EO 11246 regulations stating that distinctions based on marital status must apply equally to men and women and that a "contractor cannot refuse to hire women with young children unless it applies the same exclusionary policies to men."[109]

# The federal government's role in ensuring family and medical leave for federal contract employees

Federal contractors have the same legal obligation to abide by the Family and Medical Leave Act as other covered employers. Employees of federal contractors could be unnecessarily denied access to FMLA leave if the federal government does not educate the federal contractor community on the FMLA obligations of successor contractors. Federal contracts are often awarded to different contractors from year to year, each employing the same federal contract employees as the prior federal contractors. The Family and Medical Leave Act has clear regulations in place to ensure that workers who work for successor employers have the continued ability to become eligible for FMLA leave and access leave approved by the prior employer.

Enacted in 1993, the Family and Medical Leave Act requires private-sector employers with 50 or more employees and all public-sector employers to provide eligible employees up to 12 weeks of job-protected, unpaid leave for the birth or adoption of a child; to care for a seriously ill family member; or when the employee is unable to work due to the employee's own serious health condition.[110] The FMLA was amended in 2008 to allow family members of active duty service members to take FMLA leave for reasons arising from the active duty of their spouse, child, or parent, and to allow family members caring for an active duty service member to take up to 26 weeks of job-protected, unpaid leave.[111]

FMLA was originally passed to address the gaps in the Pregnancy Discrimination Act, which provides access to leave for pregnancy, childbirth, and recovery only on the same basis as disability leave is provided to any disabled worker. Congress passed FMLA to ensure that all workers had equal access to:

- Needed leave for childbirth.
- Recovery time from childbirth.
- Caregiving of newborns and newly adopted children.
- Provide care to seriously ill elderly parents and other immediate family.

As the Supreme Court recently noted in upholding FMLA's applicability to state employers, "[b]y creating an across-the-board, routine employment benefit for all eligible employees, Congress sought to ensure that family-care leave would no longer be stigmatized as an inordinate drain on the workplace caused by female employees, and that employers could not evade leave obligations simply by hiring men."[112]

To be eligible for FMLA benefits, an employee must work for a covered employer for 12 months and must work at least 1,250 hours, which amounts to 25 hours per week for 50 weeks. For successor employers covered under FMLA, the successor "must count periods of employment and hours worked for the predecessor for purposes of determining employee eligibility for FMLA leave."[113] In other words, an employee's FMLA clock does not restart if the worker is employed by another employer; the hours and months of service from the prior employer must be counted toward FMLA eligibility. Even if the successor employer is not covered by FMLA due to the size of the company, that new employer must comply with FMLA "to grant leave for eligible employees who had provided appropriate notice to the predecessor, or continue leave begun while employed by the predecessor, including health benefits during the leave and job restoration at the end of the leave."[114]

To be clear, these employees are continuing the same work on the same work site. The only switch is the employer. It is very common practice in federal contracting for federal contract employers to win new awards and take over the workforce of the prior federal contract employer. FMLA says the new contractor must abide by the family and medical leave promises made by the prior employer even if the federal contract switches in the middle of an employee's leave or as an employee is about to take a granted FMLA leave.

The FMLA provides a critical benefit for workers with dual responsibilities at home and at work. With the recent FMLA amendments allowing greater protection for family members of active duty service men and women, ensuring that federal contract employees have access to the rights and benefits under the act is even more essential.

The FMLA provides a critical benefit for workers with dual responsibilities at home and at work.

Currently, there is no guidance provided in the Federal Acquisition Regulations or elsewhere to ensure that federal contractors are aware of their responsibilities under the FMLA successor requirements. The Labor Department also does not include any information about successor requirements in the poster of "Employee Rights and Responsibilities Under the Family and Medical Leave Act," which must be posted in all workplaces covered by the FMLA.[115]

In short, much more can be done to ensure that federal contractors know their responsibilities and contractor employees know their basic rights under the FMLA, including the continued entitlement to leave when a successor employer takes over a federal contract.

# The federal government's role in ensuring prevailing benefits for federal contract employees

In addition to the antidiscrimination principles set forth in EO 11246 and the FMLA requirements by which certain private-sector employers must comply, the federal government has long set a standard for pay and benefits in the federal contracting workforce. In response to concerns that federal funds spent during the Great Depression were not adequately refueling the economy because of low wages offered to construction workers, Congress passed the Davis-Bacon Act of 1931 requiring that the local prevailing wage be paid to construction workers supported by federal contracts.[116] The Walsh-Healy Public Contracts Act of 1936 extended the concept of prevailing wages to public contracts.[117]

In 1964 the Davis-Bacon Act was amended to require the payment of not only prevailing wages, but also fringe benefits. And in 1965 the McNamara-O'Hara Service Contract Act was enacted to require federal contractors primarily performing services for the federal government through service employees to pay prevailing wages and fringe benefits.

Because of the dramatic increase in service contracts—a sector dominated by women—the guarantee of prevailing fringe benefits under the Service Contract Act deserves close attention. The Service Contract Act, or SCA, applies to every federal contract in excess of $2,500 in which the principal purpose of the contract is to furnish services to the United States through the use of service employees.[118] SCA covers approximately one-quarter of all federal contract workers.[119]

The requirement to provide prevailing fringe benefits adopted under Davis-Bacon and then mirrored in the SCA was based on the male breadwinner model of workplace benefits and, as such, does not explicitly provide for the inclusion of family leave or maternity leave benefits in the calculation of prevailing fringe benefits. Instead, both laws require the calculation of prevailing fringe benefits based on:

- Medical or hospital care.
- Pensions on retirement or death.
- Compensation for injuries resulting from occupational activity.
- Insurance to provide any of the foregoing—unemployment benefits, life insurance, disability and sickness insurance, accident insurance, vacation and holiday pay, costs of apprenticeship, or other similar programs.
- Other bona fide fringe benefits not otherwise required by federal, state, or local law.[120]

The determination of prevailing fringe benefits depends on whether the contractor is a successor to a contract previously covered by a collective bargaining agreement. If the contracting company is not a successor contractor, then it must pay or provide fringe benefits equal to a standard benefit level set by the secretary of labor.

Because data regarding prevailing fringe benefits is not available separately for classes of employees and localities, the secretary of labor issues a prevailing benefit determination on a nationwide level.[121] This standard fringe benefit determination is based on the sum of the benefits contained in the U.S. Bureau of Labor Statics' National Compensation Survey.[122] The benefits included in this determination are:

- Life insurance.
- Health insurance.
- Disability insurance.
- Sick leave.
- Personal leave.
- Retirement benefits.[123]

Vacation and holiday pay are not included in the nationwide determination, but are required to be provided by prevailing benefits in the locality.[124] If the contracting company is a successor contractor, then it must provide fringe benefits at a rate at least equal to the fringe benefits offered under the collective bargaining agreement.[125]

## Availability and use of the Service Contract Act to ensure provision of prevailing family leave benefits

While the fringe benefits listed in SCA are traditional benefits developed with the male breadwinner in mind, the statute is flexible enough to allow for the inclusion of prevailing paid leave benefits in the calculation of the standard nationwide fringe benefit level. Currently, the paid leave captured in the standard nationwide fringe benefit determination includes paid sick leave and personal leave, and as mentioned above, vacation and holiday leave are also required based on locality.

Prior to June 2008 the nationwide fringe benefit determination also included paid family leave, but the Department of Labor stopped collecting information on the costs of paid family leave because the average cost per hour worked was too low to justify the collection burden on the respondents. In other words, paid family leave is not prevalent enough nationally to add much to the standard benefit.[126] If paid leave were to become more prevalent in the private sector, then it could be captured by the current standard benefit, as could other paid family-friendly benefits, such as child or elder care subsidies.

But there is an overarching weakness in the calculation of this national prevailing fringe benefit determination: It captures the prevailing fringe benefits only in the private sector. In many instances, federal contractors work side-by-side with federal employees who have much more robust family-friendly benefits. Because the prevailing benefit calculation only includes the private sector, federal contract employees working in federal agencies alongside federal employees do not truly receive the benefit level that prevails in their workplace.

Almost all federal cafeterias employ contract labor under the Service Contract Act.

In 1996, the last time SCA fringe benefit regulations were amended, a number of labor unions recommended that the SCA standard fringe benefit calculation capture the prevailing fringe benefits offered to federal employees.[127] The Labor Department rejected the inclusion of federal employee fringe benefit data, concluding that it did not have cost data of federal employee benefits comparable to the private industry data.[128] The Labor Department's rejection stated that including such benefits would likely have little impact, noting that federal health insurance would only add a few cents more per hour.[129]

This exclusion of federal employees from the fringe benefits calculation should be revisited. The Labor Department did not take into consideration the trajectory of the ever-widening gap between benefits provided to federal employees versus those offered to private-sector employees. For instance, employer-provided health benefits, historically a mainstay in the benefits package offered in the private sector, dropped by more than 5 percent from 2000 to 2007.[130] The Labor Department also did not consider the role the federal government plays in modeling fringe benefits needed by today's workers.

The federal government has always been at the forefront of offering family-friendly benefits, where the private sector still lags behind. Capturing these federal employee benefits in a prevailing benefit calculation could help federal contractors understand why it's important to offer the same fringe benefits to their employees who work alongside federal employees. Indeed, it would help federal contractors maintain greater job stability and economic security as a result.

The enforcement of the prevailing fringe benefit provision under the SCA also falls short in ensuring that federal contractors are providing the one family-friendly benefit that does prevail in our country: unpaid, job-protected family and medical leave. Nationally, 83 percent of all private-sector workers have access to unpaid family leave.[131] Even at companies with fewer than 50 employees, which are not covered by the FMLA, 71 percent of these companies provide their workers access to unpaid, job-protected family leave.[132]

In fact, more than one-third of all small businesses offer family and medical leave benefits at least as good as those required by the FMLA, and approximately two-thirds of non-covered establishments provide leave for mothers' maternity-related reasons and for an employee's own serious health condition.[133] Fringe benefits required under the SCA do not include benefits otherwise required by federal, state, or local law to be provided by the contractor.[134] This means that those companies that must comply with the FMLA cannot count such compliance toward the provision of prevailing fringe benefits.

For the federal service contractors that are not covered by FMLA—companies with fewer than 50 employees—there should be a way of capturing the prevailing benefit of unpaid, job-protected family leave and ensuring that federal contract workers have access to it. The Labor Department could do so by treating unpaid family leave in the same way that it treats vacation and holiday pay. When making wage and benefit determinations, the secretary of labor singles out vacation and holiday pay and determines the amount of such paid leave that is prevailing in the locality.[135]

The rationale for doing so is that many federal contracts are performed at federal facilities using the same employees employed by prior contractors. The SCA regulations state:

> *If prospective contractors were not required to furnish these employees with the same prevailing vacation benefits, it would place the incumbent contractor at a distinct competitive disadvantage as well as denying such employees entitlement to prevailing vacation benefits.*[136]

The same theory holds true for holiday pay and should hold true with regard to the prevailing benefit of unpaid, job-protected family leave. The secretary could calculate prevailing unpaid, job-protected family leave, and require that all federal service contractors provide it, in the same way that a minimum number of days are now provided for vacations and holidays.

### Availability and use of the Service Contract Act to ensure the inclusion of family-friendly benefits provided under a prior collective bargaining agreement

Different rules apply for calculating prevailing fringe benefits if a contractor is a successor to a contract previously covered by a collective bargaining agreement. Instead of following the standard fringe benefit calculation discussed above, the successor contractor's "sole obligation is to insure that all service employees are paid no less than the wages and fringe benefits to which such employees would have been entitled if employed under the predecessor's collective bargaining agreement."[137]

The Department of Labor is required to issue a wage determination that captures the wages and fringe benefits offered by the predecessor contractor's collective bargaining agreement.

But it is not clear whether the department captures the range of family-friendly fringe benefits provided under collective bargaining agreements when making this determination.

Labor unions have been at the forefront of securing family-friendly fringe benefits, including paid family leave and child care subsidies. In 1992, the last time the Department of Labor conducted a major study of the work-family benefits in collective bargained agreements, over half of the agreements contained one or more work-family benefit such as maternity or parental leave, child care assistance, or nondiscrimination due to marital status.[138]

The Labor Project for Working Families, a nonprofit organization offering resources for labor unions and policymakers on how to improve family-friendly practices in the workplace, has tracked model collective bargaining agreements and found the following benefits that could be and should be easily captured in calculating the amount of fringe benefits offered under a collective bargaining agreement:

- Subsidies for child and elder care.
- Adoption subsidies.
- Paid maternity leave.
- Paid parental leave.
- Paid family leave.
- Paid time off.
- Paid sick leave.
- Monthly payments for parents of newborns during the baby's first year.
- Monthly payments for parents of children with special needs.
- Tuition assistance for children of employees.
- Long-term care insurance.[139]

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To ensure the inclusion of family-friendly benefits in the wage determination for successor contractors, the secretary should provide clear guidance to the Department of Labor's enforcement officers and to federal contractors that such benefits fall with the Service Contract Act's requirements. The secretary should also update its research on the availability of family-friendly benefits in existing collective bargaining agreements and initiate a focused study of collective bargaining agreements covering the federal contractor workforce.

### Reward federal contractors offering flexible, family-friendly benefits

Even if the Obama administration were to improve enforcement of existing laws in the ways suggested above, it would still fall short of ensuring that federal contract employees have the same access to family-friendly benefits as their counterparts employed by the federal government. The reach of Executive Order 11246 is limited because, although it requires access to family-friendly benefits on an equitable basis as other workers, too

many workplaces offer benefits structured to serve the male breadwinner of the 1950s and access to these benefits often does not go far enough to provide the family leave, workplace flexibility, and assistance with child and elder care needed by today's workers.

Proper enforcement of the FMLA could ensure greater protection for federal contract workers whose employer changes with the award of a federal contract to a new employer, but the reach of the law is limited. Successor contractors do not need to continue to comply with FMLA once previously granted leave is completed. Moreover, nearly half of all private-sector employers are not required to abide by the FMLA.

Finally, even if enforcement of the SCA could extend family and medical leave to federal contract employers currently not required to comply with FMLA, the act only covers one quarter of all federal contract employees and prevailing wages and benefits are measured against the private sector, not the federal workforce.[140]

Even without new legislation to fix these legislative shortfalls, the federal government could use its existing executive authority under the Procurement Act to encourage federal contractors to offer family-leave policies at least as good, if not better, than those currently offered to federal employees, including:

- Job-protected unpaid family leave.
- Paid sick days to be used for one's own illness or to care for a sick child or other family member.
- Workplace schedules that are predictable and offer options for flexibility.
- Child and elder care subsidies.
- Paid family leave (a benefit that is better that the federal government's current policy).

On March 4, 2009, President Obama directed the Office of Management and Budget to develop government-wide guidance to improve federal contracting. As one part of this memorandum, the president directed OMB to provide guidance "to govern the appropriate use and oversight of all contract types, in full consideration of the agency's needs, and to minimize risk and maximize the value of government contracts."[141]

The Center for American Progress and the National Employment Law Project have already recommended that as part of the reform of federal contracting, the government should establish clear, objective measures for evaluating and scoring prospective contractors on key employment practices, and should assign a weight to workplace salaries and benefits as part of the evaluation of bids.[142] NELP also recommends that these reform efforts include more rigorous screening of prospective contractors to ensure that these contractors are complying with existing labor laws, as well as a preference in the bid selection process for employers that provide good jobs, defined to include living wages, health benefits, and paid sick days.[143]

On March 4, 2009, President Obama directed the Office of Management and Budget to develop government-wide guidance to improve federal contracting.

If the government adopts these recommendations, then critical mechanisms would be established to reward contractors for providing benefits that are good for employers and good for the contractor's bottom line and the government's value in procurement. But the government should ensure that these rewards include workplace policies and benefits that match the needs of today's workers: time off for sickness or family needs, flexible and predictable schedules and places of work, and child and elder care supports.

Screening for labor laws should at a minimum include compliance with the FMLA and the PDA. And any point system created to reward workplace wages and benefits should include a scale of points for basic to more robust flexible, family-friendly policies.

One way to do so would be to include points for the provision of the basic family-friendly policies of unpaid, job-protected leave even if the contractor isn't covered by FMLA, as well as paid sick days that could be used for the employer or to care for a family member. Additional points could be assigned for the standard-level benefit package to reward those employers that offer time off, flexibility, and child- and elder-care benefits at least as good as those offered to federal employees. And yet more points could be provided for contractors that offer gold-standard family-friendly benefits: a package that exceeds what is offered to federal employees.

# Concluding recommendations

With an increase in federal contracting and a changed workforce in which most men and women work and have caregiving responsibilities and workers are older than ever before, anti-discrimination laws and labor laws requiring certain standards and benefits in the federal contracting workforce need to be enforced with these new realities in mind. The federal government needs to do more to incentivize federal contractors to provide flexible, family-friendly benefits at least as good as those provided to federal employees.

Finally, the federal government can play an important role in better understanding the family-friendly workplace policies currently offered by federal contractors and setting the stage for requiring a minimum level of family-friendly benefits to be offered by all federal contractors.

## Enforce existing federal contractor equitable pay and benefit laws

The federal government could take several steps to ensure that existing laws on pregnancy and family leave that prohibit discrimination and require federal contractors to offer standard benefits are vigorously enforced.

### Enforce equitable pay laws applicable to federal contractors to prevent pregnancy and caregiver discrimination

Workers in businesses receiving federal contracts should not have to worry about losing their jobs or losing income when they become pregnant or face caregiving responsibilities. Although Executive Order 11246 protects workers by prohibiting sex discrimination by federal contractors, this law has been narrowly interpreted with regard to pregnancy discrimination and not enforced with regard to family caregiving discrimination. Executive Order 11246 is a powerful tool: It covers nearly a quarter of the entire private-sector workforce in the Untied States.

The U.S. Department of Labor should update its compliance manual and train its enforcement officers to ensure that pregnant workers are provided with a reasonable period of leave and reinstated upon return to work. The department should help employers and enforcement officers understand how to prevent sex discrimination related to gender ste-

reotyping about caregiving responsibilities by publishing guidance modeled on the Equal Employment Opportunity Commission's guidance on the unlawful treatment of workers with caregiving responsibilities.

### Ensure federal contractors comply with the Family and Medical Leave Act

Federal contracts are often awarded to different contractors from year to year, each employing the same federal contract employees as the prior federal contractors. Under FMLA regulations workers who work for successor employers have the continued ability to become eligible for FMLA leave and access leave approved by the prior employer. The secretary of labor should provide guidance to federal contract employers and provide information on the FMLA workplace poster about employees' rights to FMLA leave under successor employers.

### Include family-friendly workplace policies in the existing federal contractor prevailing wage and benefit laws

The Service Contract Act's requirement that federal contractors offer prevailing wages is in serious need of updating with regard to prevailing family leave policies. Ultimately, the fringe benefit regulations should be amended to include the benefits offered to federal employees in the calculation of the nationwide prevailing benefit standards.

In the interim, the secretary should ensure that the prevailing benefit of unpaid, job-protected leave—in businesses not covered by the FMLA—is included in the requirement of prevailing fringe benefits in the same way that vacation and holiday leave is currently included. The secretary should also collect better information on family-friendly benefits provided under collective bargaining agreements and ensure that these benefits are captured in the calculation of successor fringe benefits.

## Do more with existing executive branch authority

### Reward responsible federal contractors offering work-family benefits

Federal procurement laws require the government to purchase goods and services only from responsible contractors. The Center for American Progress and the National Employment Law Project recently issued a series of reports calling on the federal government to prescreen prospective contractors to ensure that they offer basic benefits and comply with existing labor laws and to evaluate whether contracting companies offer workplace benefits that provide workers with decent wages and living standards in order to retain a healthy and steady federal contracting workforce. NELP specifically recommends that the federal government consider whether contractors offer the following benefits when awarding contracts to responsible contractors: living wages, health benefits, and paid sick days.

These recommendations are a good start for workers that need stable wages and benefits in place, but the federal government should not stop there. To ensure that our workplace benefits truly respond to the federal contracting workforce of today, the federal government should also reward contractors that offer:

- Paid sick days to care for an ill family member.
- Job-protected unpaid leave for contractors not covered by the FMLA.
- Paid family leave.
- Child and elder care subsidies.
- Flexible and predictable work schedules.

### Improve information available about work-family benefits in federal contractors

Far too little is known about the federal contractor workforce. The federal government does not collect the most basic information on the number of employees supported by federal contracts. And the government currently does not make public the basic information collected from federal contractors about the racial and gender breakdown of their workforce.

The federal government needs to begin to collect and make public these essential data. It should start by reinstating the Equal Opportunity Survey to help the government know which contractors are struggling with women entering and advancing in the workforce. But research on family-friendly policies should go beyond the EO survey to examine federal contractor family-friendly policies offered by company size and type and by employees within these companies. And the government should investigate the availability and efficacy of the family-friendly benefits offered by federal contractors.

## Prepare for the future

Without incentivizing and encouraging federal contractor workplaces that support workers with family and caregiving responsibilities, our families and our economy will suffer. The federal government should create tools to ensure that the federal contractor workforce has access to flexible, family-friendly benefits at least as good as those offered to federal employees.

### Require all federal contractors to provide work-family benefits at least as good as those offered to federal employees

When the federal government has greater information about the availability of family-friendly policies, Congress and the administration should explore requiring all federal contractors to offer benefits at least as good as those offered to federal government employees. In the interim, the government should follow the recent recommendation

made by Workplace Flexibility 2010 to adopt a pilot project requiring federal contractors that have hourly workers working on federal contracts to provide at least two types of flexible, family-friendly work arrangements.

This final set of concluding recommendations would ensure that family-friendly workplace policies are incorporated into our federal contracting workforce. President Obama's commitment to reviewing and updating the federal contractor process and improving policies for women and girls provides an important opportunity to achieve these long-term goals. Doing so will mean greater stability for our families and our economy and a greater return on our investment in federally contracted goods and services.

# Endnotes

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