





Family Friendly for All Families

Workers and caregivers need government policies that reflect today's realities

By *Ann O'Leary and Karen Kornbluh*

Four decades ago, President Richard Nixon famously declared that universal child care would have “family-weakening implications” that “would commit the vast moral authority of the federal government to the side of communal approaches to child rearing over the family-centered approach.”¹ Wielding his veto pen, he blocked what became the last best chance for decades for the federal government to support working moms and dads trying to raise their children and earn a living at the same time.

Back in the early 1970s, Nixon and Congress looked at the 52 percent of so-called “traditional” families in the country (families with children still at home consisting of a married couple in which only the husband works outside the home) and saw decidedly different social and economic forces at work.² As women entered the workforce in droves during the 1970s, the number of “traditional” families immediately began to plummet—by 1975, it was already down to 45 percent of families with children.

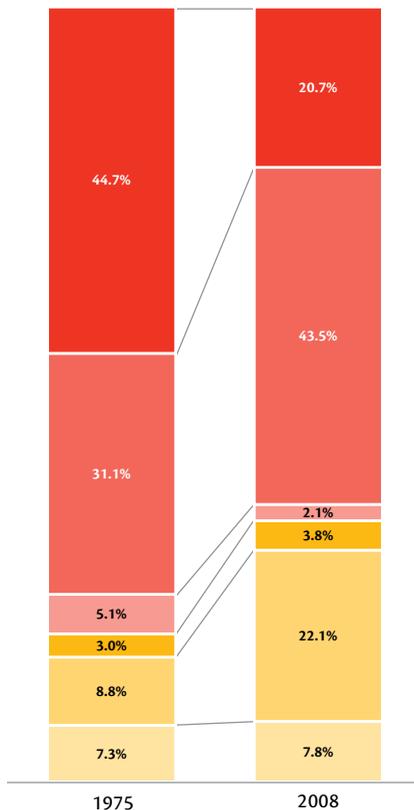
Today, there’s no mistaking the trend—only 21 percent of families with children at home are “traditional” families.³ How do the other 79 percent of families working and raising children—the so-called “juggler families”—handle child care? How do these families cope with sick children and relatives or elderly parents in need of care?

FIGURE 1

Then and now

Changes in family structure and work, families with children under age 18, 1975 and 2008

- Married, traditional (only husband employed)
- Married, dual earner
- Married, both parents unemployed
- Married, nontraditional (only wife employed)
- Single parent, employed
- Single parent, unemployed



Source: Bureau of Labor Statistics, Economic News Release: Table 4. Families with own children: Employment status of parents by age of youngest child and family type, 2007-08 annual averages; Bureau of Labor Statistics, Indicator 18: Parent's Employment, Employment status of parents with own children under 18 years old, by type of family: 1975 to 1993.

Well, ask just about any mom or dad and they will tell you they mix and match caring and earning as best they can in workplaces designed decades ago around a worker who relied on a full-time homemaker to care for the young and the infirm and had no responsibility for caring for family members. This is no way to run an economy and to care for the next generation of Americans and those who built what our country is today.

Political leaders talk about “family values,” but too often real reforms are set aside when it comes time to draw up the federal budget or do the heavy legislative lifting to ensure that women and men can raise their children, care for their elders, and continue to earn the incomes they need to survive and thrive in today’s economy. Women, of course, are no longer the sole providers of care for the family, just as men are no longer the sole providers of the family income. Yet the federal government has not updated its policies to aid families in navigating this new reality.

Too many of our government policies—from our basic labor standards to our social insurance system—are still rooted in the fundamental assumption that families typically rely on a single breadwinner and that there is someone available to care for the young, the aged, and the infirm while the breadwinner is at work. But now that there are

decidedly fewer “traditional families” and women comprise half of the workers on U.S. payrolls, we need to reevaluate the values and assumptions underlying our nation’s workplace policies to ensure that they reflect the actual—not outdated or imagined—ways that families work and care today.

Up until now, government policymakers focused on supporting women’s entry into a male-oriented workforce on par with men—a workplace where policies on hours, pay, benefits, and leave time were designed around male breadwinners with presumably no family caregiving responsibilities. Seeking equal opportunity in this workplace was critical, of course. Women could have never become half of all workers and entered previously male-dominated professions without Title VII of the Civil Rights Act of 1964, which prohibited sex discrimination in employment, and was amended by the Pregnancy Discrimination Act of 1978 to ensure that a woman couldn’t be fired simply because she was having a child. And while women still have a long way to go to receive equal pay for equal work, the Equal Pay Act of 1963 certainly helped narrow the wage gap and increase women’s economic stability.

Nearly all of our government policies—from our basic labor standards to our social insurance system—are still rooted in the fundamental assumption that families typically rely on a single breadwinner.

But allowing women to play by the same rules as the single male breadwinner worker of yore is not enough. Too many workers—especially women and low-wage workers—today simply cannot work in the way the breadwinner once worked with a steady job and lifelong marriage with a wife at home. Today, not only are half of all U.S. workers female, but our families are no longer static. The marriage rate is currently at the lowest point in its recorded history.⁴ And while the divorce rate is down, it is still significant.⁵ More than one in three families with children is headed by a single parent.⁶ There are approximately 770,000 same-sex couples living in the United States, 20 percent of whom are raising children.⁷ Yet there has been limited action at the federal level to update our workplace policies or create new policies to help working parents and their varied families—and not for lack of debate (see box “Plenty of study, few results”).

Plenty of study, few results

Real family-friendly workplace reform is long overdue

A variety of federal commissions and conferences have supported efforts to encourage family-friendly workplace reforms, but with very little success in achieving new family-friendly benefits needed by today's workers. Cases in point:

- In 1963, President John F. Kennedy's Commission on the Status of Women delivered its report to the president. The report recommended that the federal government take the lead in creating legislation to establish cash maternity benefits for women when they were pregnant; that federal, state, and local governments partner to provide child care services with a priority for children of employed women; and that states help workers limit their hours at work by extending to men the state laws limiting the maximum hours employers could require women to work.⁸ We still have no national policy of paid maternity or family leave and maximum-hour laws were never extended to all workers. Federal support for child care has been largely limited to low-income families.
- In 1980, delegates to President Jimmy Carter's White House Conference on Families called for "flexitime, job-sharing programs, flexible leave policies for both sexes, part-time jobs with prorated pay and benefits, and dependent care options, including child care centers."⁹ None of the flexibility options put forward by President Carter's commission was seriously considered by Congress or the Carter administration and a new push for universal child care fell apart in Congress during Carter's presidency.¹⁰
- In 1986, the White House Working Group on Families recommended to President Ronald Reagan that "without creating new entitlement programs, the federal government can assist parents with their child care needs by encouraging and endorsing employer efforts to adopt family-oriented policies which provide for flexibility in the workplace."¹¹ The Reagan administration spent the 1980s fighting Congressional efforts to pass federally funded child care and family leave and offered no legislation or executive action to "encourage or endorse employer efforts to promote flexibility."¹²
- And in 1991, the congressionally mandated bipartisan National Commission on Children recommended that "government and all private sector employers adopt family-oriented policies and practices—including family and medical leave policies, flexible work scheduling, and career sequencing—to enable employed mothers and fathers to meet their work and family responsibilities [and] government, communities and employers continue to improve the availability, affordability, and quality of child care services for all children and families that need them."¹³ Congress passed and President Bill Clinton signed the Family and Medical Leave Act in 1993, but it offered only unpaid leave to about half of workers in the United States.¹⁴ Child care funding increased, but again was limited almost entirely to lower-income families. And no serious effort was made to get private-sector employers to offer flexible work schedules and career sequencing.

Thus time and again we have heard the right words, but we have seen very limited action.

The notable exception is the Family and Medical Leave Act of 1993, but even it only allows 12 weeks of unpaid job-protected family or medical leave to approximately half of all workers in the United States.¹⁵ Our federal government does not require employers to offer a minimum number of paid days off. Nor does it require or even incentivize employers to provide flexible work arrangements. Our child care assistance is mostly aimed at the poor and even that assistance reaches too few families.¹⁶ Both our basic labor standards and our social insurance system are still based on supporting “traditional” workers and families and so do not accord protection to workers who must cut back on work to care for family members.

Tackling these challenges isn't going to be easy. For some, acknowledging that most women work challenges deeply held beliefs about what it means to be family and the “appropriate” roles for men and women. In a recent congressional debate over whether the federal government should provide paid parental leave to all new parents, Representative Darrell Issa (R-CA) implied that men do not need additional paid time off for family leave and that only mothers do immediately after the birth of a child,¹⁷ even though fathers report that they want to spend more time with their children and that they are experiencing high levels of work-family conflict.¹⁸

This report demonstrates that women becoming half of all workers and mothers becoming breadwinners is not a woman's issue—it's an issue that affects our entire society. This chapter suggests that a fruitful way for government to address this new economic and social reality would be to reform our existing laws by:

- Updating our basic labor standards to include family-friendly employee benefits
- Reforming our anti-discrimination laws so that employers cannot discriminate against or disproportionately exclude women when offering workplace benefits
- Updating our social insurance system to the reality of varied families and new family responsibilities, including the need for paid family leave and social security retirement benefits that take into account time spent out of the workforce caring for children and other relatives
- Increasing support to families for child care, early education, and elder care to help working parents cope with their dual responsibilities

Updating these government policies so that they account for the reality of the overwhelming majority of today’s workers and families is the challenge we address in the pages that follow.

Needed: Family time

Helping employers provide 21st-century family-friendly benefits

The United States is the only industrialized country without any requirement that employers provide paid family leave and without nationwide government-sponsored paid family leave. The U.S. government offers no federal subsidy for employers who provide family and medical leave—unlike existing government tax subsidies for employer-provided health care and pension savings programs.¹⁹ As a result, 74 percent of all civilian workers have access to health benefits and 71 percent have access to retirement benefits, but only 9 percent of all civilian workers have access to dedicated paid family leave.²⁰

PREGNANCY LEAVE. All women should have it. {HARAZ N. GHANBARI, AP}



To a limited degree, the government has used the tax code to incentivize employers to provide assistance to employees for child care expenses and information, but these provisions do not come close to reaching the levels of support needed (the government also uses the tax code and subsidies to provide child care support directly to families, which we discuss below). The tax code allows employees to pay for health and dependent care expenses using pre-tax dollars if their employers offer Flexible Spending Accounts, but this allows working families to set aside only up to \$5,000 per year for dependent care expenses.²¹ This benefit is limited to workers whose employers choose to participate and it is worth far more to families at higher income levels. In 2006, only 30 percent of families had access to dependent care savings accounts.²² And only 2 to 6 percent of all eligible employees are using flexible spending accounts to defray child care costs.²³

The United States is the only industrialized country without any requirement that employers provide paid family leave.

Similarly, in 2001 the government began providing a federal employer tax credit for employers who either provide on-site child care, contribute to off-site care for their employees, or pay for resource and referral services that help employees locate quality child care in their community.²⁴ Despite this incentive, employers have not increased the child care subsidies or services offered to employees. From 2000 to 2008, the provision of assistance to employees for either on-site or off-site child care remained at 6 percent of all employees in the United States, and there has been a slight decrease in the provision of child care resource and referral services from 13.8 percent in June 2000 to 11 percent of employees in the United States receiving such support.²⁵

In addition, the major government subsidized benefits—health care and pensions—disadvantage workers who take part-time or temp jobs or who start their own businesses so that they can pick up their kids from child care or have the flexibility to care for an aging parent. They often sacrifice employer-provided health and pension coverage—and the tax subsidy—as well. This is a seldom-mentioned argument for health care and pension reform.

To date, however, the federal government has failed to make a serious investment to encourage employers to offer new or update existing employee benefits to keep up with the changing face of the American worker and the American family structure.

Require employers to offer employer-sponsored benefits equally to all workers

Instead of providing incentives to employers to offer updated benefits aligned with the needs of today’s families, the government has focused its effort on ensuring that all workers have “equal access” to the benefits that are provided by employers. The groundbreaking Title VII of the Civil Rights Act of 1964 is a central part of this story. Title VII made it unlawful for employers with more than 15 employees “to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s...sex.”²⁶

This is obviously important. Title VII is used today as a tool to combat discrimination against pregnant women and against men and women who are denied access to employment benefits because of gender stereotypes associated with caregiving. But Title VII is an extremely limited tool in helping employees take the leave and receive the flexibility they need to mix work with pregnancy or mix and match work and family responsibilities.

The reason: The law does not require employers to adjust to an employee’s pregnancy or caregiving needs. Rather, it requires employers to offer benefits to all employees on the same terms, even if those benefits were not designed with pregnancy or caregiving in mind.

One major set of employer benefits voluntarily offered by some employers today is paid leave benefits—sick leave, vacation leave, holidays, disability leave, and family leave. Paid sick leave and disability benefits were traditionally offered by employers to provide a level of security for breadwinners and their families if the breadwinner was temporarily ill or disabled. Vacation and holiday pay were offered to provide workers with a period of restoration and revitalization. Because there is no federal requirement that employers offer vacation, sick, or holiday leave, paid or unpaid, access to paid time off is widely unequal across groups of workers.²⁷

This means that the needs of women workers—whether for pregnancy or for family responsibilities—have to fit into leave benefits that were previously

designed to serve male breadwinners. Because only 9 percent of all employees have access to dedicated paid family leave, the vast majority of workers have to fit their family leave needs into a patchwork of sick and vacation leave, where an employer offers the time and allows it to be used for this purpose, and then forfeit the true purposes of those days off, for healing or relaxing. Pregnant workers often have to take either disability or sick leave if their employer offers it in order to receive pay while on leave to give birth. Male workers who now have more caregiving responsibilities than ever before face the same inflexible access to employer-provided leave benefits.

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This access to existing leave benefits may be equal but it is outdated, for it fails to match benefits with workers' new roles in the family or our society. Let's consider the limitations of the law with regard to pregnancy and caregiving.

Pregnancy leave

Upon passage and implementation of Title VII, one of the first questions for pregnant women in the workplace was whether private employers violated Title VII if they offered health insurance or disability leave that did not include pregnancy. Early on, the Equal Employment Opportunity Commission took the position that excluding maternity coverage was not discrimination.²⁸ But in the 1970s the EEOC reversed course.²⁹

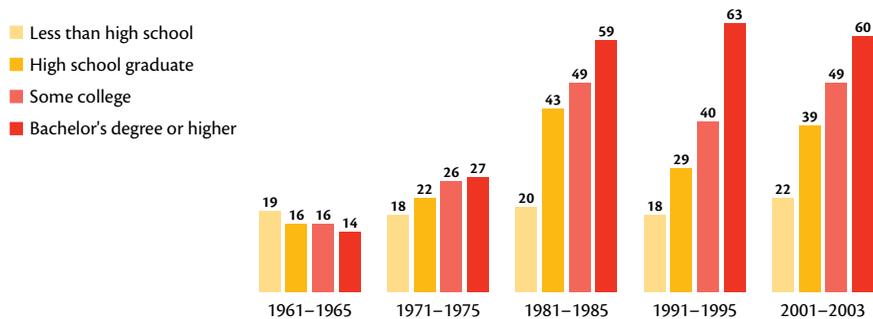
The Supreme Court, however, in 1976 ruled in *Gilbert v. General Electric Co.* that an employer's disability plan covering nonwork-related disabilities was not in violation of Title VII's prohibition against sex discrimination just because it did not cover disabilities arising from pregnancy.³⁰ Congress swiftly reacted, passing the Pregnancy Discrimination Act of 1978, which amended Title VII to clarify that the prohibition against sex discrimination in private employment included a prohibition against discrimination on the basis of pregnancy, childbirth, or related medical conditions.

The Pregnancy Discrimination Act had a tremendous impact on professional women employed in workplaces that already had disability or robust sick-leave policies on the book. The PDA meant these women would have equal access to those policies for the purposes of pregnancy and childbirth. But if a worker’s employer did not offer disability or sick-leave benefits to any workers, then the PDA would not help them gain access to these benefits. Thus, the new law disproportionately benefited workers in high-waged occupations.

For women with a college education or more, access to paid maternity leave rose from 14 percent in 1961 to 59 percent in 1981 after the passage of the PDA and continued to climb, settling at 60 percent in 2003, the last year for which complete data are available. Women with less than a high school diploma, however, experienced only a 3 percentage point increase in access to paid maternity leave over that same period, from 19 percent in 1961 to 22 percent in 2003 (see Figure 2).³¹ One of the only reasons that less-educated workers have any access to pregnancy leave is because labor unions historically and continuously have negotiated for such leave in collective bargaining agreements covering low-wage workers.

Most Americans believe it is illegal today for employers to fire a pregnant worker, but that is not the case. Unfortunately, there are many lawful reasons an

FIGURE 2
Want paid maternity leave? Then get an education or join a union
Percentage of women who received paid leave before or after their first birth by educational attainment: Selected years, 1961–1965 to 2001–2003



Note: Paid leave includes all paid maternity, sick, and vacation leave and other paid leave used before the birth and up to 12 weeks after the birth.

Source: 1961–1965 to 1971–1975: Bureau of the Census, Current Population Reports, Series P23-165 (*Work and Family Patterns of American Women*), Table B-9; 1981–1985 to 1991–1995: P70-79 (*Maternity Leave and Employment Patterns: 1961–1995*), Figure 4; and 2001–2003: Survey of Income and Program Participation, 2004 Panel, Wave 2.

employer in the United States can fire a pregnant worker and these reasons often disproportionately harm lower-wage workers. First, employers with fewer than 15 employees are not covered by Title VII and the Pregnancy Discrimination Act and are therefore under no obligation to treat all workers equally. This means 15 percent of the workforce is automatically excluded.³²

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Second, a number of federal courts have interpreted the PDA to mean that employers that do not allow workers any leave or extremely limited leave to recover from an illness or a disability are under no obligation to provide leave to pregnant workers.³³ This prohibition mainly affects low-wage workers who work for companies that offer no or limited leave to their employees for any reason. Nearly 80 percent of private-sector workers in the lowest quartile have no access to short-term paid disability leave; two-thirds have no access to paid sick days and nearly half receive no paid vacation days.³⁴ With no access to leave, women who by necessity must be away from work to give birth may lose their jobs.

Third, if a pregnant worker is told by her doctor that she should not lift heavy weights or needs to stay off her feet in order to avoid negative health consequences for herself or her baby, then her employer is under no obligation to transfer her to work to accommodate these restrictions. Instead, the employer can legally fire the pregnant worker. Sound heartless and improbable? Tell that to Amanda Reeves, a truck driver who asked to be switched to light-duty work upon instruction of her physician, only to find that her employer's policy of giving light-duty assignments only to workers injured on the job didn't violate the Pregnancy Discrimination Act.³⁵

Finally, women who are pregnant or on maternity leave certainly have no greater right to keep their jobs when layoffs occur, although if they are targeted because they are pregnant or on maternity leave that is unlawful.³⁶ In recent recessions, claims of pregnancy discrimination have consistently gone up, meaning women are filing claims at a greater rate, suggesting that they are being fired because



Well, I'm pretty sure it took two people to make each one of those kids so it's interesting to me to hear all this progress we've made and yet child care remains a uniquely female issue.

Heidi in Silicon Valley





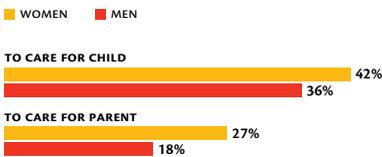
they are pregnant. These women aren't just imagining discrimination—the percentage of these cases to be found to have merit remains at approximately 50 percent during highs and lows—so more women are found to have valid pregnancy discrimination claims in recessions than at other times.³⁷

For women breadwinners, these gaps in the coverage of the Pregnancy Discrimination Act leave them vulnerable in a way that male breadwinners never were and never will be.

THE LATEST FROM THE AMERICAN PEOPLE

Q: Has there ever been a time when you wanted to take time off from work to care for your child or elderly parents but were unable to do so?

Percent answering “yes”



Source: Rockefeller/TIME poll, 2009.

Protecting those with family responsibilities

Title VII also is used to combat workplace policies that treat men and women differently based on their marital status or their status as a parent or caregiver. In fact, the first Title VII case ever to reach the Supreme Court was a case in which a woman was denied a job because the employer had a blanket policy that women (but not men) with preschool-age children were prohibited from applying.³⁸ The Supreme Court ruled that such a policy was illegal, opening up the doors for women with children who were faced with such blatant and stark prohibitions against their participation in work.

The use of Title VII to combat caregiver discrimination in more subtle forms has increased in recent years because of the work of Joan Williams at the Center for WorkLife Law. Williams coined the phrase “family responsibility discrimination” to describe differential treatment of men or women because of their caregiving responsibilities for children, elderly parents, or sick relatives. In 2007, the Equal Employment Opportunity Commission issued guidance to employers on caregiver discrimination³⁹ that focused on the prohibition against gender stereotypes related to caregiving.

But using Title VII, including the Pregnancy Discrimination Act, to create policies to aid workers in combining work and family responsibilities has serious limitations. Equal protection laws are only as good as the nature and quantity of benefits the employer provides to other workers. Too often, most low- and many moderate-wage workers cannot access even the minimum benefits provided to more highly paid workers—paid sick days and paid maternity leave, for example.

Setting a minimum floor for employer-sponsored family leave

Congress passed the Family and Medical Leave Act of 1993 in response to the failures of the Pregnancy Discrimination Act to provide full protection to pregnant workers and the inability of both men and women to access needed leave for family responsibilities.⁴⁰ Congress recognized at the time that providing access to equitable employment benefits was not enough to ensure that workers had the right to take leave from their jobs for the birth or adoption of a new child, family caregiving, or even one's own ill health. This was an important step by Congress, but as we'll demonstrate, more is needed to provide economic security to dual-income, dual-caregiving parents or single parents—especially in low- and middle-income families.



CAREGIVING FOR VETERANS COULD BE A CAREER. Tracy Keil and her husband, Matt, at home in Parker, Colorado. Staff Sgt. Keil was shot in the neck while on patrol in Ramadi, Iraq, and rendered a quadriplegic. While there is no program in place to pay family caregivers of wounded soldiers, the Family and Medical Leave Act was expanded in 2008 to provide greater job-protected leave for military family members. {KEVIN MOLONEY, THE NEW YORK TIMES}

The Family and Medical Leave Act amended the Fair Labor Standards Act to guarantee unpaid leave for at least some workers, regardless of gender, to care for family or medical needs. FMLA provides qualified employees with the right to take up to 12 weeks each year of job-protected unpaid leave for the birth or care of the employee’s child, care of an immediate family member with a serious health condition, or for an employee’s own serious health condition.⁴¹

Thanks to FMLA, millions of workers now have legal protections ensuring that they no longer have to fear losing their jobs and employer-provided health insurance during family or medical leave.

This law was the first of its kind—a law providing accommodation to workers based on the real needs of workers as caregivers regardless of gender. Thanks to FMLA, millions of workers now have legal protections ensuring that they no longer have to fear losing their jobs and employer-provided health insurance during family or medical leave. A low-wage pregnant woman who is covered by FMLA but cannot afford to take 12 weeks of leave can at least be assured that if she needs to take leave from work to give birth, she will still have her job when she is able to return.⁴² The same can be said of a man or woman who needs time away to care for a seriously ill family member.

While applicable only to employers with 50 or more employees, an increasing number of employers not covered by FMLA have changed their practices to provide family and medical leave to their employees.⁴³ What’s more, the new law provides guaranteed unpaid leave to men who wish to take paternity leave, a job benefit often not provided to men prior to the passage of FMLA.⁴⁴

Despite these positive changes, about half of all workers are not covered by FMLA because they work for a small business with fewer than 50 employees, haven’t worked for their employer for a year, or haven’t worked enough hours to qualify for protection under the act.⁴⁵ These exemptions disproportionately exclude low-wage and younger workers who are less likely to remain employed by the same employer for a year, who are more likely to work for a small business, and who are more likely to work part time.⁴⁶

But the biggest problem, of course, is that any leave granted under FMLA is unpaid, which means many workers cannot afford to take advantage of it because they cannot afford the loss of family income. In practice, the law favors families with one parent who makes less money (still more often the woman) providing care while the other higher-paid parent continues to support the family at work.

FMLA was a step in the right direction, but workers in our country today have extremely limited protections against the day-to-day stresses and strains of combining work with family care.

Needed: Flexibility and compensation

Workers' time and overtime should reflect caregiving needs

Our federal and state labor-law requirements on employers' ability to dictate their employees' working hours have not been updated to allow workers to effectively combine work and care. Many Americans may presume that workers are protected from being overworked by their employers because of 40-hour workweeks and overtime pay requirements. The Fair Labor Standards Act requires employers to pay covered workers one and a half times their regular pay for hours worked in excess of 40 hours,⁴⁷ but the law does not put an actual limit on the number of hours an employer can require an employee to work. Nor does it prohibit mandatory overtime or unpredictable, constantly changing workplace schedules.

Americans are not protected from being overworked by their employers because of 40-hour workweeks and overtime pay requirements.

To be sure, premium pay for overtime provides greater economic security to workers able to work overtime, but even the existing requirement leaves out many workers. First, the law excludes a disproportionate number of women of color who provide care to the "aged or infirm" or who work as a live-in domestic workers.⁴⁸ Second, salaried workers are exempt from the overtime provisions and, in 2004, federal regulatory changes greatly expanded the definition of "executive, administrative, and professional" workers. At the time, analysts estimated this



OVERWORKED, UNDERPAID. Hospitals often require the nurses they employ to work mandatory overtime—never mind whether those workers have caregiving responsibilities at home. {ED KASHI, AURORA}

redefinition would remove an added 8 million workers (about 6 percent of the total employed workforce) from eligibility for overtime pay.⁴⁹

The upshot: While they do provide some added economic security, our wage and hour laws leave workers with little control over how many hours they can be required to work and when they can be required to put in those hours.

In addition, mandatory overtime is a problem for workers with family responsibilities, particularly for registered nurses (92 percent of whom are women), and, more recently, for state and local government workers (more than 50 percent

of whom are women).⁵⁰ Registered nurses are in short supply, which prompts employers to require the nurses they employ to work mandatory overtime—never mind whether these workers have caregiving responsibilities at home.⁵¹

Similarly, state and local governments today are instituting widespread hiring freezes to cope with falling tax revenues due to the Great Recession and falling real estate values, which means existing workers are being required to make up the work through mandatory overtime.⁵² Labor unions have had some success in passing state laws (12 to date) restricting mandatory overtime for nurses, and bills continue to be introduced in Congress to address the impact on the nursing profession, but there has been no broader push for restrictions on mandatory (and often unscheduled) overtime for government employees or private-sector workers.⁵³

A majority of workers have no ability to control the time that they start and end their workdays, no ability to work from a different location, and no ability to reduce the hours they work.

The Fair Labor Standards Act also does not address flexible, predictable work schedules. The law currently allows for flexibility within the context of a 40-hour workweek, such as a compressed workweek or daily schedules with differing work hours, but this flexibility is left at the discretion and is in the sole control of the employer.⁵⁴ The result is that a majority of workers have no ability to control the time that they start and end their workdays, no ability to work from a different location, and no ability to reduce the hours they work.⁵⁵

Only about a quarter of employees report that they have some kind of flexibility, though a much larger share of employers, anywhere from about half to most of them, report offering some kind of flexibility.⁵⁶ Whatever the case, workers with the least access to flexible and predictable work schedules are low-wage workers.⁵⁷ One study found that higher-earning employees have access to flexible daily schedules at more than double the rate of low-wage workers.⁵⁸ And as Heather Boushey points out in her chapter, the weight of the 24-hour economy often falls on the backs of our low-skilled, immigrant workers who have the least control over their schedules.

Needed: Social insurance that protects caregivers

“We can never insure one hundred percent of the population against one hundred percent of the hazards and vicissitudes of life, but we have tried to frame a law which will give some measure of protection to the average citizen and to his family against the loss of a job and against poverty-stricken old age.”

- President Franklin D. Roosevelt, August 14, 1935, upon signing the Social Security Act of 1935

In the first half of the 20th century, the government created the backbone of the U.S. social insurance system by enacting the Social Security Act of 1935, which included retirement benefits, unemployment insurance, and aid to dependent children. Over the years it was expanded to include disability insurance, as well as Medicare and Medicaid. The aim of the combined programs in the Social Security Act is to protect workers and families against drops in family income resulting from old age, disability resulting in the inability to work, death of the breadwinner, or cyclical downturns in the economy.

The problem: Our national system of social insurance has never been updated to provide financial support to families who have a drop in income because a worker cuts back on work or needs to temporarily leave the workforce to provide care to a child or a sick or elderly relative. In recent years, there have been positive steps to update state social insurance systems to meet the needs of today’s workers: California and New Jersey have enacted paid family leave as part of their state’s temporary disability insurance program.⁵⁹

But at the national level, social insurance reform is needed. We are in the process of debating health insurance reform—and the president has proposed pension reform—which would increase family economic security. With only 21 percent of families consisting of mothers still at home,⁶⁰ additional reform is needed to meet the needs of today’s families.

Take basic Social Security, the retirement benefits that workers and their spouses receive in old age. Eligibility for Social Security benefits is based on an individual’s work history, specifically how many “credits” a worker earns over his or her lifetime. Workers can earn a maximum of four credits per year; in 2009 a worker earned one credit for each \$1,090 of earnings.⁶¹ To qualify for retirement benefits, workers need at least 40 credits (10 years of work) over

their lifetimes, meaning that any workers with 10 years in which they earned at least \$4,360 qualify for retirement benefits in their own names.⁶²

Back in the 1930s, however, President Franklin D. Roosevelt insisted that the Social Security Act protect the worker *and his family*. As a result, wives and widows were granted the right to collect retirement benefits based on their husbands' earnings. Spousal benefits allow dependent spouses (now wives or husbands) to collect 50 percent of the retirement benefits earned by the breadwinning spouse—on top of his benefit—so that married couples receive 150 percent of the benefits of a single worker with the same earnings. If both spouses work, then the lower-earning spouse can choose between receiving her own benefit based on her own work history or the spousal benefit, whichever is higher.

In 2005, 51 percent of women received benefits based on their husbands' earnings (nearly 36 percent of women in retirement choose receipt of their spousal benefit over their own earnings record and another 15 percent qualified only for a spousal benefit, having no earnings record of their own).⁶³ Even with an increasing percentage of women currently carrying the title of breadwinner in their family, in 2008, an overwhelming 98 percent of spousal benefits were collected by women.⁶⁴

These family-friendly provisions of Social Security are clearly laudable, but as the portion of traditional families has diminished the inequities in the system have become more apparent. When most families were married-for-life couples with a breadwinner and homemaker, basing benefits on one earner's employment history but providing benefits to the

THE LATEST FROM THE AMERICAN PEOPLE

Q: Are you the primary breadwinner in your household?

Percent answering "yes"



Source: Rockefeller/TIME poll, 2009.



THE SANDWICH GENERATION. Herbert Winokur, 83, suffers from dementia and has recently moved into his daughter's house in Montclair, NJ. His daughter, Julie Winokur, moved with her husband, Ed Kashi, and their two children, Eli, 11, and Isabel, 8, from San Francisco to help care for him. [ED KASHI]





breadwinner’s “dependents” might have made sense. But today the basic structure of the Social Security retirement program leads certain families to lose out. These are usually “juggler families” in which both workers combine work and caregiving—with women more likely to dip in and out of the labor market depending on family needs—and families headed by single parents (most often single mothers, whether never married or divorced).

Workers who take time out of the workplace to care for family members not only sacrifice earnings and job security, but also Social Security retirement savings.

In short, workers who take time out of the workplace to care for family members not only sacrifice earnings and job security, but also Social Security retirement savings.

There are three main problems with Social Security’s underlying design for today’s varied families. First, a worker is expected to have a continuous record of full-time employment throughout his or her life, which is just not the case for all workers that combine work and caregiving. Many will take extended time off—while others will work part time or turn down a full-time job, sacrificing earnings and future benefits.

Second, there is no minimum retirement benefit that all Americans receive based on reaching retirement. It is all tied to work history—either your own or your spouse’s. This means that there is no basic level of security for all individuals regardless of marriage or work history.

Third, the spousal benefit is based purely on marriage, not on an individual’s caregiving responsibilities. This means caregivers who take time out of the workplace or limit their hours (and therefore earnings) to care for family members get no credit toward retirement for their caregiving directly but only as a derivative of their spouse’s earnings. This is not only demeaning, it means they lose out if they divorce, are widowed before age 60, or are otherwise single parents. These rules play out differently for varying family types.

Even for traditional families, the benefits are not all that they seem. If the breadwinning spouse dies after the children are grown but before the wife reaches age 60, then the homemaker receives no survivors' benefits until she turns 60, and then she receives only partial benefits until she reaches the full retirement age of 66.⁶⁵ This "widow's gap" leaves homemakers, who often have few labor market skills, with little support in the intervening years before they reach retirement age.

Divorce—so common in our country today, even if the rate is falling—reveals the problem with making caregivers' benefits derivative of a spouse's benefits. If a couple divorces before 10 years of marriage, then the lower earner is entitled to no spousal benefits. This predominantly affects women since they are far more likely to be earning less in those first 10 years due to pregnancy and child-raising, and may certainly earn less as single parents. If a couple divorces after 10 years of marriage, then the lower-earning spouse (if she needs to elect to take a spousal benefit because her own earnings were so low) receives only the incremental spousal benefit, or half of what her former spouse receives.

Divorce—so common in our country today, even if the rate is falling—reveals the problem with making caregivers' benefits derivative of a spouse's benefits.

The structure of benefits is not entirely an accident; they reflect the realities and the biases of the time in which the program was created. Participants in the debate at the time argued that a woman living alone could survive on less than a man, with one participant declaring that a woman could do her own housekeeping while a man would have to eat in restaurants.⁶⁶ Sadly, this outdated notion remains in today's payout of benefits. Consider what these rules mean for dual-earner families. Both spouses must pay payroll taxes, yet the combination of the two benefits may be less than what a single-earner family receives. Eugene Steuerle, vice president of the Peter G. Peterson Foundation and one of the nation's foremost Social Security and tax experts, estimates that a couple with a single earner who earns twice the average wage would take home \$100,000 more in Social Security benefits over a lifetime than a couple with dual earners who both earn the average wage.⁶⁷



PARTNERS FOR LIFE, NO BENEFITS. For same-sex couples, Social Security provides no benefit at all to the family unit, only to each individual as though they were single. {MATT HOUSTON, AP}

For same-sex couples, Social Security provides no benefit at all to the family unit, only to each individual as though he or she were single. The Defense of Marriage Act of 1996 explicitly prohibits the recognition of same-sex couples as married for the purposes of Social Security even if states recognize the marriage.⁶⁸ Thus a lesbian mother who dedicates several years to care for her child not only forgoes building up credits to her own Social Security, but also will receive no spousal benefit for the work her breadwinning partner contributes to the family.

For unmarried women, the difficulty is twofold. Single women with children have the lowest annual earnings in our country and thus can save less for retirement. In addition, they earn less in Social Security benefits. For single moms, this double whammy at retirement threatens a life of poverty in old age.

Half of today's workers are female, divorce is common, more than one in three families with children is headed by a single mother, and more than a quarter of a million children are being raised by gay or lesbian parents who have no legal right to marry under the law of the federal government. How do we structure a system that is fair to all of these family types? How do we revise and update our Social Security system to value and reward taking time away from paid employment to rear children and care for aging parents, and still recognize that women are in the workforce to stay?

Changing the rules is more complicated than it seems. While the Social Security spousal benefit is overly broad in assuming that all spouses are mothers and overly narrow in assuming that all mothers are spouses, it keeps millions of women out of poverty in their retirement years and does act as a proxy, albeit a far from perfect proxy, for the unpaid work many married women invest in their families and our economy. Today, more than half of all female beneficiaries still receive retirement benefits on the basis of the spousal benefit.

But with more women as breadwinners, fewer women will collect spousal benefits in the future, relying instead on their own earnings. With more women in the labor force and more women as breadwinners, some may say that the simple answer would be to eliminate the spousal benefit and transform the benefit to one solely based on workforce attachment. But this cannot be done without addressing the different ways men and women work.

Needed: Time to care

Direct support to families for child care and elder care

This chapter focuses primarily on the government’s role in encouraging or requiring employers to offer some basic labor standards, and in updating our social insurance system. But the government has other critical roles to play—providing direct subsidies to families to hire child care and elder care providers, and encouraging equity not only in the workplace, but also in the home.

Child care and elder care expenses take both an emotional and economic toll on today’s single-parent and dual-earner families. Child care represents the second greatest expense after housing for married-couple families with children between ages 3 and 5.⁶⁹ Families providing informal care to aging parents or other sick relatives spend on average \$200 per month and must make adjustments to their work schedules, which often means forgoing income.⁷⁰ The emotional and financial toll can be even greater for adult children who are helping a parent or other loved one suffering from Alzheimer’s disease. Of those providing support to a relative with Alzheimer’s, the vast majority (88 percent) provide emotional support, while more than half (52 percent) provide caregiving, averaging 16 hours a month, and more than 1 in 10 caregivers (14 percent) is providing financial support.⁷¹

The federal government has played only a modest role in supporting families with child care expenses and almost no role at all in supporting families with elder care responsibilities.

Yet the federal government has played only a modest role in supporting families with child care expenses and almost no role at all in supporting families with elder care responsibilities. The government provides some relief on child care expenses through the Dependent Care Tax Credit, which allows taxpayers to take a credit for employment-related child care expenses, but only up to \$3,000 per year for one child and \$6,000 per year for two. With child care expenses often averaging more than the tuition at a state college, this relief is incredibly modest.

And the tax relief, while designed to aid lower-income families by allowing them to cover a greater percentage of their child care expenses, doesn't reach our lowest-income families because it is not available to low-income families who owe no federal taxes because they make so little income. The government supports our lowest-income families by providing direct child care aid through welfare funding, the Child Care and Development Block Grant, and through publicly funded early education and preschool programs such as Head Start. But even these investments reach only a fraction of those eligible for the assistance.

President Obama's economic recovery package included a serious investment in child care and early education, targeting funding to low-income families. It provided more than \$5 billion in child care and early-education funding that went directly into the hands of families to purchase child care, and directly to communities to improve their child care and preschool programs. Nonetheless, child care and early-education funding are still far from universally available, even to the families who need it the most. To meet the needs of all low- and middle-income families, the government would have to invest even more and rededicate itself to solving the child care problem that Nixon swept under the rug with the stroke of a pen back in 1971.

Finally, there are no dedicated federal programs to help working families deal with care for the elderly. States offer some support in the form of in-home caregivers, but recent state budget cuts have seen these programs take massive hits. Once again, the main problem is a lack of recognition that there is no longer anyone at home who can care for free for our children, our ill family members, and our elders.

THE LATEST FROM THE AMERICAN PEOPLE

Q: Do your children currently receive supervised care by someone other than you and/or your spouse?

Percent answering "yes"



Source: Rockefeller/TIME poll, 2009.

In addition, we as a nation must address the fact that reducing the penalty workers pay (in lost salary, benefits, child care costs, and government payments) for caregiving would not only increase women’s economic security but also reduce the disincentive on men to take on more of the caregiving responsibilities. Updating government programs can help encourage more equitable sharing of responsibility at home—which is necessary if women and men are going to successfully mix and match work and family responsibilities.

Where do we go from here?

Our current laws and government programs are woefully out of date to help families cope with the rapidly changing economic and social realities of the 21st century. Programs that seem “neutral” between men and women actually cater to traditional male working patterns, which today are represented in the overwhelming minority of today’s families. With women as half of workers in the United States and making vital contributions to the family income, the government needs to reform its incentives for employers to help their employees cope with work and family responsibilities as well as the requirements employers must meet in support of their employees in these dual responsibilities.

To do so, government policymakers should start a national conversation on how best to:

- **Update our basic labor standards to include family-friendly employee benefits.** It is possible to spur businesses to update their social benefits to support the new workforce without increasing burdens on them. Requiring paid sick days would ensure a healthy and productive workforce. Expanding the percentage of the workforce covered by the Family and Medical Leave Act would help employers reduce expensive turnover rates. And a “Right to Request Flexibility” law would help spark conversations in workplaces across the country about how employers and employees can better meet each other’s needs.⁷²
- **Reform our antidiscrimination laws so that employers cannot discriminate or disproportionately exclude women when offering workplace benefits.** Our antidiscrimination laws are long overdue for an overhaul to ensure that policies that disproportionately exclude women are considered illegal, including policies allowing employers to have a no-leave policy even when that means

pregnant women will surely lose their jobs. There is still no way to be at work when you are in labor.

- **Update our social insurance system to reflect the reality of varied families and new family responsibilities.** In addition to health insurance and pension reform, this update should include the need for paid family leave and social security retirement benefits that take into account time spent out of the workforce caring for children and other relatives. If Social Security reform is debated, it will be essential that the reforms account for the new realities of a workplace and a nation in which women are now breadwinners.
- **Increase support to families for child care, early education and elder care to help working parents cope with their multiple responsibilities.** The efforts in the 1970s to enact universal child care should not be forgotten. All families need real support when there is no longer a wife at home to provide these services free of charge. And our government should not stop at solving the child care crisis: Families also need real support and aid in providing elder care.
- **Ensure that workforce and child care policies fully include men and respect their desire to be more involved in family life.** More and more, men are expressing a frustration with a lack of support of work-life demands on men. Our policies should be structured to fully support men's abilities to take time away from the labor force to provide care and support for their families.

Understanding that men and women work differently when women—and men—are breadwinners as well as caregivers requires a shift in thinking. But such a shift is necessary if policies, business practices, and community attitudes are to be changed. In fact, it is necessary in the daily negotiations among workers and employers, between spouses, and among parents and community institutions.

Public leaders can help increase understanding as well as respond to it. In addition to speeches and events, they can take a number of steps, including ensuring government serves as a role model. It can do this by improving its own policies and the policies of federal contractors, working with private sector leaders to encourage a new appreciation of the new challenges facing the workforce, and collecting and disseminating relevant data to highlight just how different the American workforce is today. It's time for family-friendly policies that meet the challenges of the 21st century.

ENDNOTES

- 1 President Richard Nixon, "Veto of the Economic Opportunity Amendments of 1971" (December 9, 1971), available at <http://www.presidency.ucsb.edu/ws/index.php?pid=3251>.
- 2 Bureau of Labor Statistics, "Number and Percent of Households Headed by a Married Couple with One or More Own Kids, in Which the Husband is in the Labor Force but the Wife is Not ('Traditional' Households), 1970–2002" (2003), available at http://www.prb.org/Source/a-MARR_Traditional_Families1.xls; U.S. Census Bureau, "Statistical Abstract of the United States: 1971" (1971), table 48, p. 39, available at <http://www2.census.gov/prod2/statcomp/documents/1971-02.pdf>.
- 3 Bureau of Labor Statistics, "Employment Characteristics of Families in 2008" (2009), available at <http://www.bls.gov/news.release/pdf/famee.pdf>.
- 4 Betsey Stevenson and Justin Wolfers, "Marriage and Divorce: Changes and their Driving Forces," *Journal of Economic Perspectives* 21(2) (2007): 29.
- 5 See chapter by Coontz, p. 370.
- 6 Bureau of Labor Statistics, "Employment Characteristics of Families in 2008" (2009), available at <http://www.bls.gov/news.release/pdf/famee.pdf>.
- 7 Adam Romero and others, "Census Snapshot, United States" (Los Angeles: The Williams Institute, December 2007), available at <http://www.law.ucla.edu/williamsinstitute/publications/USCensusSnapshot.pdf>.
- 8 President's Commission on the Status of Women, "American Women" (Washington: Government Printing Office, 1963).
- 9 White House Conference on Families, "Listening to America's Families: Action for the 80's" (October 1980), available at http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/37/b0/bf.pdf.
- 10 Steven K. Wisensale, "The White House and Congress on Child Care and Family Leave Policy: From Carter to Clinton," *Policy Studies Journal* 25 (1) (1997): 75–86.
- 11 White House Working Group on the Family, "The Family: Preserving America's Future, A Report to the President from the White House Working Group on the Family" (December 1986), p. 32, available at http://www.eric.ed.gov/ERIC-Docs/data/ericdocs2sql/content_storage_01/0000019b/80/20/03/b8.pdf.
- 12 Wisensale, "The White House and Congress on Child Care and Family Leave Policy," pp. 78–80.
- 13 National Commission on Children, "Beyond Rhetoric: A New American Agenda for Children and Families, Final Report of the National Commission on Children" (1991), available at http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/23/24/71.pdf.
- 14 Jane Waldfogel, "Family and Medical Leave: Evidence from the 2000 Surveys," *Monthly Labor Review* 124 (9) (2001): 19–20.
- 15 Ibid.
- 16 See Randy Albelda and Heather Boushey, "Bridging the Gaps: A Study of How Work Supports Work in Ten States" (Washington and Boston: Center for Economic Policy Research and Center for Social Policy, University of Massachusetts Boston, October 2007), p. 1, available at <http://www.bridgingthegaps.org/publications/nationalreport.pdf>. Fewer than 25 percent of those eligible for child care and housing assistance actually receive it.
- 17 *Congressional Record*, daily ed. June 4, 2009, pp. H6223–H6240.
- 18 Ellen Galinsky, Kerstin Aumann, and James T. Bond, "Times are Changing: Gender and Generation at Work and at Home" (New York: Families and Work Institute, 2008), pp. 18–20.
- 19 Rebecca Ray, Janet Gornick, and John Schmitt, "Parental Leave Policies in 21 Countries: Assessing Generosity and Gender Equality" (Washington: Center for Economic and Policy Research, September 2008), available at <http://www.cepr.net/index.php/publications/reports/parental-leave-policies-in-21-countries-assessing-generosity-and-gender-equality>.
- 20 U.S. Bureau of Labor Statistics, "Employee Benefits in the United States, March 2009," Tables 1 & 2, National Compensation Survey, U.S. Department of Labor (March 2009), available at <http://www.bls.gov/news.release/pdf/ebs2.pdf>; U.S. Bureau of Labor Statistics, "Employee Benefits Survey," Table 21, National Compensation Survey, U.S. Department of Labor (March 2008), available at <http://www.bls.gov/ncs/ebs/benefits/2008/ownership/civilian/table21a.htm>.

- 21 26 U.S.C. §§ 106, 125 (2006); "Information About Your FSAFEDS Choices," available at <https://www.fsafeds.com/FSAFEDS/Popup/OpenSeason.asp>.
- 22 Eli Stoltzfus, "Pretax Benefits: Access to Section 125 Cafeteria Benefits and Health Savings Accounts in the United States, Private Industry" (Washington: Bureau of Labor Statistics, March 2007), available at <http://www.bls.gov/opub/cwc/cm20070321ar01p1.htm>.
- 23 Paula A. Calimafde and Deborah A. Cohn, "Small Business and the Cafeteria Plan." In *New York University Review of Employee Benefits and Executive Compensation* (New York: New York University and Matthew Bender & Co., 2002).
- 24 U.S. Economic Growth and Reconciliation Act of 2001, 26 U.S.C. § 45F (2006).
- 25 Jerome E. King and Cathy A. Baker, "Childcare Benefits Continue to Evolve" (Washington: U.S. Bureau of Labor Statistics, 2001), table 1, available at <http://www.bls.gov/opub/cwc/archive/summer2001art1.pdf>; Bureau of Labor Statistics, "Quality of Life Benefits: Access, Civilian Workers" (March 2008), available at <http://www.bls.gov/ncs/eps/benefits/2008/ownership/civilian/table24a.pdf>.
- 26 Civil Rights Act of 1964, 42 U.S.C. § 2000e-2 (2006).
- 27 Vicky Lovell, "No Time to Be Sick: Who Suffers When Workers Don't Have Sick Leave" (Washington: Institute for Women's Policy Research, 2004).
- 28 *General Electric Company v. Gilbert*, 429 U.S. 125, 142-43 (1976), which cites two opinion letters issued by the General Counsel of the Equal Employment Opportunity Commission in 1966 stating that pregnancy could be excluded from an employer's long-term salary continuation plan and that an insurance or other benefit may simply exclude pregnancy as a covered risk.
- 29 Ann O'Leary, "How Family Leave Laws Left Out Low-Wage Workers," *Berkeley Journal of Employment and Labor Law* 28 (1) (2007): 20-21 (citing EEOC opinions reversing course).
- 30 *General Electric Company v. Gilbert*, 429 U.S. 125 (1976).
- 31 Tallese D. Johnson, "Maternity Leave and Employment Patterns of First-Time Mothers: 1961-2003" (Washington: Department of Commerce, Census Bureau, 2008).
- 32 U.S. Small Business Administration, "Employer Firms, Establishments, Employment, and Annual Payroll, Small Firm Size Classes, 2006" (2006), available at http://www.sba.gov/advo/research/data_uspdf.xls.
- 33 For a description of courts' interpretation of the Pregnancy Discrimination Act and the circuit split on the issue of whether a no-leave policy creates a disparate impact, see Ann O'Leary, "How Family Leave Laws Left Out Low-Wage Workers," *Berkeley Journal of Employment and Labor Law* 28 (1) (2007): 30-35.
- 34 Bureau of Labor Statistics, "Life, Short-Term Disability, and Long-Term Disability Insurance Benefits, March 2008" (2008), table 12, available at <http://www.bls.gov/ncs/eps/benefits/2008/ownership/private/table12a.pdf>; Bureau of Labor Statistics, "Selected Paid Leave Benefits: Access" (July 2009), available at <http://www.bls.gov/news.release/eps2.t06.htm>.
- 35 *Reeves v. Swift Transportation Co.*, 446 F. 3d 637 (6th Cir., 2006).
- 36 Lesley Alderman, "When the Stork Carries a Pink Slip," *The New York Times*, March 27, 2009, available at <http://www.nytimes.com/2009/03/28/health/28patient.html>.
- 37 U.S. Equal Employment Opportunity Commission, "Pregnancy Discrimination Charges EEOC & FEPA's Combined: FY 1997-FY 2008," available at <http://www.eeoc.gov/stats/pregnanc.html>.
- 38 *Phillips v. Martin Marietta Corporation*, 400 U.S. 542 (1971).
- 39 "Enforcement Guidance: Unlawful Disparate Treatment of Workers with Caregiving Responsibilities," available at <http://www.eeoc.gov/policy/docs/caregiving.html>.
- 40 Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601-2654 (2006).
- 41 *Ibid.*
- 42 See U.S. Department of Labor, "Balancing the Needs of Families and Employers: The Family and Medical Leave Surveys, 2000 Update" (2001), tables A2-2.6, A2-2.15. In fact, a significantly greater percentage of women (17.7 percent) with a family income of less than \$20,000 reported that maternity leave was the primary reason they used the FMLA than did women in the higher income categories (8.8 percent of women with an annual family income of \$75,000 to \$100,000 reported maternity leave as the primary reason).

- 43 See U.S. Department of Labor, “Balancing the Needs of Families and Employers: The Family and Medical Leave Surveys, 2000 Update” (2001), section 5-5. The proportion of all establishments reporting policies consistent with the FMLA’s leave provisions has increased from 27.9 percent in the 1995 survey to 39.1 percent in the 2000 survey.
- 44 See U.S. Department of Labor, “Balancing the Needs of Families and Employers: The Family and Medical Leave Surveys, 2000 Update” (2001), section 4-16. Approximately 34 percent of men with young children took leave under the FMLA, and of these male leave-takers, 75 percent took leave to care for a newborn or newly adopted child. Also see Nevada Department of Human Resources. v. Hibbs, 538 U.S. 721 (2003), which documents the gender gap in the provision of family leave prior to the passage of the FMLA.
- 45 Jane Waldfogel, “Family and Medical Leave: Evidence from the 2000 Surveys,” *Monthly Labor Review* 124 (9) (2001): 19–20.
- 46 Ann O’Leary, “How Family Leave Laws Left Out Low-Wage Workers,” *Berkeley Journal of Employment and Labor Law* 28 (1) (2007): 1–62.
- 47 Fair Labor Standards Act, 29 U.S.C. §207 (2006).
- 48 29 U.S.C. § 213(a)(15) (2006) *Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158, 162 (2007).
- 49 Heather Boushey and Chris Tilly, “The Limits of Work-Based Social Support in the United States,” *Challenge* 52 (2) (March/April 2009), p. 90.
- 50 Bureau of Labor Statistics, “Employed Persons by Detailed Occupation and Sex, 2007 Annual Averages” (2008), available at <http://www.bls.gov/cps/wlf-table11-2008.pdf>; Bureau of Labor Statistics, “Table 16: Employed and Unemployed Full- and Part-time Workers by Class of Workers, Sex, Race, and Hispanic or Latino Ethnicity, Annual Average 2008” (2009), unpublished analysis, Current Population Survey 2008, Bureau of Labor Statistics, U.S. Department of Labor (available by request from author).
- 51 Katherine Kany, “Mandatory Overtime: New Developments in the Campaign,” *American Journal of Nursing* 101 (5) (2001): 67–70, available at http://journals.lww.com/ajnonline/Fulltext/2001/05000/Mandatory_Overtime__New_developments_in_the.26.aspx.
- 52 Examples from Colorado and Illinois: Ed Sealover, “Colorado State Employees Make Pitch for Pay,” *Denver Business Journal*, June 22, 2009, available at <http://denver.bizjournals.com/denver/stories/2009/06/22/daily11.html>; Dan Carden, “Would Massive State Layoffs Make Recession Worse?” *Daily Herald*, June 17, 2009, available at <http://www.dailyherald.com/story/?id=300857>.
- 53 Gregg Blesch, “Doing More with More? Hospitals Face Renewed Calls for Staffing Mandates While Dealing with Recession-Related Workforce Cuts,” *Modern Healthcare* 39 (21) (May 2009): 26–7, 30.
- 54 William G. Whittaker, “The Fair Labor Standards Act: Overtime Pay Issues in the 108th Congress” (Washington: Congressional Research Service, 2005); Workplace Flexibility 2010, “Public Policy Platform on Flexible Work Arrangements” (2009), available at <http://www.law.georgetown.edu/workplaceflexibility2010/definition/documents/PublicPolicyPlatformonFlexibleWorkArrangements.pdf>.
- 55 Jodie Levin-Epstein, “Getting Punched: The Job and Family Clock ... It’s Time for Flexible Work for Workers of All Wages” (Washington: Center for Law and Social Policy, 2006).
- 56 Lonnie Golden, “Flexibility Gaps: Differential Access to Flexible Work Schedules and Location in the U.S.” Paper presented at: ISWT 2004. Proceedings of the 9th International Symposium on Working Time, 2004 Feb 26-28; Paris, France; Also see Ellen Galinsky, James T. Bond and E. Jeffrey Hill, “When Work Works: A Status Report on Workplace Flexibility” (New York: Families and Work Institute, 2004), p. 5.
- 57 Galinsky, Bond, and Hill, “When Work Works”; Urban Institute, “Lower-Wage Workers and Flexible Work Arrangements,” available at <http://www.law.georgetown.edu/workplaceflexibility2010/definition/documents/Lower-Wage-WorkersandFWAs.pdf>.
- 58 James T. Bond and Ellen Galinsky, “What Workplace Flexibility is Available to Entry-Level, Hourly Employees?” Table 1, Research Brief No. 3 (New York: Families and Work Institute, 2006), available at <http://familiesandwork.org/site/research/reports/brief3.pdf>.
- 59 *California Paid Family Leave Act*, S.B. 1661, 2002 Cal. Stat. Ch. 901 (Cal. 2002) (effective July 1, 2004); New Jersey Family Leave Act, N.J.S.A. 34:11B-1, et seq. (law became effective January 1, 2009 and beneficiaries could begin collective benefits on July 1, 2009).

- 60 Bureau of Labor Statistics, "Employment Characteristics of Families in 2008" (May 27, 2009), available at <http://www.bls.gov/news.release/pdf/famee.pdf>.
- 61 Social Security Administration, "How You Earn Credits" (2009), available at <http://www.ssa.gov/pubs/10072.pdf>.
- 62 Ibid.
- 63 Institute for Women's Policy Research, "Women and Social Security: Benefit Types and Eligibility" (June 2005), available at <http://www.iwpr.org/pdf/D463.pdf>.
- 64 Social Security Administration, "Annual Statistical Supplement to the Social Security Bulletin, 2008," table 5.G1, (2009), available at <http://www.ssa.gov/policy/docs/statcomps/supplement/2008/supplement08.pdf>.
- 65 Goodwin Liu, "Social Security and the Treatment of Marriage: Spousal Benefits, Earnings Sharing, and The Challenge Of Reform," *Wisconsin Law Review* 1 (1999): 17–18.
- 66 Alice Kessler-Harris, *In Pursuit of Equity: Women, Men, and the Quest for Economic Citizenship in Twentieth-Century America* (New York: Oxford University Press, 2001), p. 137.
- 67 Eugene Steuerle, Christopher Spiro, and Adam Carasso, "Does Social Security Treat Spouses Fairly?" (Washington: Urban Institute, November 1999), available at <http://www.urban.org/UploadedPDF/Straight12.pdf>.
- 68 1 U.S.C § 7 (2006); 28 U.S.C § 1738C (2006).
- 69 Mark Lino, "Expenditures on Children by Families, 2006" (Department of Agriculture, Center for Nutrition Policy and Promotion, 2007), p.18, available at <http://www.cnpp.usda.gov/Publications/CRC/crc2006.pdf>.
- 70 The MetLife Foundation and Schmieding Center, "Caregiving in America" (2007), p. 21, available at http://www.schmiedingcenter.org/pdf/caregiving_in_america.pdf.
- 71 Harris Interactive, "HBO Alzheimer's Project/Harris Interactive Census: Examining the Impact of Alzheimer's Disease in America" (2009), p. 2, available at <http://www.hbo.com/events/alzheimers/documents/Census.pdf>.
- 72 Karen Kornbluh, "The Joy of Flex," *Washington Monthly*, December 2005, available at <http://www.washingtonmonthly.com/features/2005/0512.kornbluh.html>.