

Cato Institute Policy Analysis No. 108: Mandatory Family-Leave Legislation: The Hidden Costs

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Executive Summary

Today over half the women in the United States choose to work outside the home, representing approximately 44 percent of the labor force. Furthermore, 73.4 percent of these women are of child-bearing age, and many will, at some point, leave work to have a baby.⁽¹⁾ These facts are clear, but the social and economic issues that surround them are not. For many women pregnancy could translate into the loss of a job or, at the least, a step down the corporate ladder.

Should the United States follow the lead of most other industrialized countries and require employers to offer a family-leave benefit to their employees? Would such legislation take much of the burden off those women who are trying to juggle a career and a family? Or would the legislation instead place costly demands on employers, forcing them to decrease employment opportunities, especially for women?

This study will explore the many questions that should be answered before this country considers a national family-leave policy. As with all economic regulation, the costs and benefits are difficult to identify and can never be measured precisely. We can, however, specify many costs and benefits that often hide within the complexities of our political and economic systems. Identifying and understanding these costs and benefits is crucial to the well-being of everyone in this country.

The Legislation

Rep. Patricia Schroeder (D-Colo.) has introduced a bill (H.R. 925) that she says will protect working women.⁽²⁾ H.R. 925, the Family and Medical Leave Act, goes beyond the Pregnancy Discrimination Act of 1978 (PDA), which is the legislation now used as a guide for federal maternity benefits. The PDA, which amended Title VII of the Civil Rights Act of 1964, requires that serious pregnancy-related health conditions be treated like other serious short-term health conditions. Pregnancy itself is treated like any other disability: when a woman leaves the job to give birth, she may use the disability-leave policy of her employer. The PDA also makes it illegal for employers to terminate an employee because of pregnancy.⁽³⁾

Aside from the PDA, many states also have some form of legislation requiring employers to offer maternity leave. For example, statutes in California, Connecticut, Massachusetts, Montana, Wisconsin, and Puerto Rico guarantee maternity leave. Other states have regulations or antidiscrimination doctrines that require maternity leave. California, Hawaii, New Jersey, New York, and Rhode Island have laws that require employers to provide temporary-disability insurance, and pregnancy is treated as a disability.⁽⁴⁾

The legality of state statutes and regulations has been questioned. A recent Supreme Court decision found that state maternity-leave statutes do not constitute discrimination on the basis of sex as defined under the PDA.(5) The Supreme Court agreed with the District Court that the PDA "constructs a floor beneath which pregnancy disability benefits may not drop--not a ceiling above which they may not rise."(6) Some view this decision as the key to further state and federal legislation.

Schroeder believes that the Pregnancy Discrimination Act and individual state statutes do not adequately protect expectant females: "Unfortunately, current federal law does not require employers to offer temporary medical leave for any employee for any reason."(7) The current legislation ignores employers with fewer than 15 employees. This omission is seen as especially harmful to women, since a great number of women work in small companies. Many also work part time, making it more difficult for them to qualify for benefits.

The Family and Medical Leave Act is designed to update the current law. The bill, as originally drafted, allows employees (male or female) to take up to 18 weeks of leave over a 24-month period upon the birth, adoption, or serious health condition of a child. Employees could take the leave on a reduced-hour basis, and the leave would be "scheduled so as not to unduly disrupt the employer's operations." Upon returning to work, the employee would be guaranteed his or her previous position. The House bill covers all persons employed for three consecutive months or 500 hours, whichever comes first. The Senate bill covers all full-time and permanent, part-time employees. Employers with 15 or more employees would be subject to the legislation.(8)

Recently, however, a compromise bill has emerged that covers employers with more than 50 employees instead of the previous 15 or more. The compromise also changes the maximum family leave from 18 weeks to 10 and "excludes companies' highest-paid employees, if firms can demonstrate a business necessity."(9)

Determining a Wage

Before analyzing how this mandatory family-leave policy would affect the economy, one must first consider exactly how a wage rate or salary is determined in the labor market.

There are two sides to every market: those who want to buy and those who want to sell. Both sides affect the ultimate market outcome. In the market where labor services are bought and sold, the buyers are employers and the sellers are employees. Exchange for these services takes place because the employer values an employee's labor more than she values the wage she pays. The employee, on the other hand, values the wage more than he values his time and effort. Otherwise, exchange between the employer and employee would not take place. At the time of the exchange, both parties benefit; each has traded something of less value for something of greater value.(10)

In any voluntary exchange, the terms between the parties involved must be negotiated. An employee's salary ultimately reflects the value consumers place on the contribution the employee makes to the final product (demand for her services), as well as the scarcity of the employee's qualifications relative to the demand for these qualifications (supply of her services). Employees who contribute to the output of a good or service in high demand and who have skills, experience, and abilities that are relatively scarce will be paid relatively high wages.

A special characteristic of the labor market is that each labor input is unique. No two people are exactly alike; no two people would do a particular job in exactly the same way. Every worker brings a different skill level, educational background, and experience record to the job. But also important is that each person's lifestyle affects the different desires and expectations regarding the job he chooses. Indeed, it will affect the job choice itself. This individuality can make labor-market negotiations very complicated, since the bargaining process between employers and employees becomes very personal. It also means that the wage or salary an employee receives will consist of many different types of compensation, both monetary and nonmonetary. One person may want to receive all of his salary in the form of money, while another person will choose to take a large percentage in the form of benefits or perquisites.

Two points must be emphasized. First, a salary is composed of many different parts: monetary payments, which could include commissions, tips, and bonuses; payments in kind; benefits; perquisites; and working conditions, which may include the congeniality or expertise of fellow employees and the ambience of the workplace. Second, the value of an individual's salary is subjective. The payments one receives from doing a job consist of many factors, all of which are

subjectively valued by the individual.

The relative size and mix of compensation categories employees demand will vary from person to person. The capability of employers to provide a wide range of benefits will also vary. The final outcome of the bargaining process-- the total salary and its structure--will depend upon both of these considerations. Employers who ignore their employees' needs will eventually find themselves in a very uncompetitive position in the labor market, that is, unable to attract quality workers. At the same time, however, to ignore the fact that employers operate under budget constraints is to ignore economic reality. Both must be considered.

Costs and Benefits

Without question, certain people in the economy would benefit from federal mandatory family-leave legislation. Others, however, would incur the costs arising from such legislation. Many of these benefits and costs should not be considered measurable. Economists cannot make precise quantitative predictions about any policy. However, they can make qualitative predictions about the specific effects of a policy change. The purpose of this discussion is to note that certain people will value this legislation, while others will not because of subjective benefits and costs they will encounter. And although generalizations serve a useful purpose, they are not meant as a clear-cut statement about every member in a generalized group. There can and will be exceptions to every generalization.

Will Women Benefit?

It may seem that women would be the most obvious beneficiaries of a mandatory family-leave policy. Indeed, some women may receive a net benefit from such legislation. On the other hand, many women would be made much worse off. It is not yet clear that mandatory family-leave legislation is a benefit for most women.

Those women (and their husbands) who could take employment leave to have or care for a child, and then return to the same or a comparable position in the company would benefit from this legislation. Not only would their jobs be guaranteed, but their health and medical insurance, as well as seniority and pension rights, would be protected while they are on leave.

Women are more likely to use a family-leave benefit than are men, even though men would have the same option. The Bureau of the Census notes that, of full-time workers, women are more likely than men to have had one or more work interruptions lasting six months or longer. According to the bureau's statistics, 42 percent of full-time working women have had a work interruption lasting six months or longer (only 12.1 percent of full-time working men have had an interruption of this length). Significantly, of that 42 percent, 35.8 percent gave "family reasons" as the cause for the interruption.(11) Furthermore, married women were more likely to use the family-leave policy than were single women, as is evident from the continuing difference between work force participation rates of married women and women with children, and of single women. Over 60 percent of single women and 75 percent of divorced women work, while approximately 50 percent of married women, both with and without children, work.(12) Even in today's society of two-income households, the woman is more likely than her spouse to leave a job to care for the family. Thus, family-leave legislation would directly affect far more women than men.

Family-leave legislation would probably increase female participation in the labor market by giving women an added incentive to look seriously for a job.(13) If a woman knows an employer must offer her maternity leave, she may feel better able to cope with both employment and motherhood. In fact, many women will have an incentive to look for employment when planning to have a child in order to take advantage of the benefits offered.(14) In some cases, the cost of having a child could be prohibitive without maternity-benefit insurance, especially if a woman's husband is unemployed or his employer offers lesser benefits.

Mandatory family-leave legislation, therefore, may increase the number of women willing and able to take employment outside the home. This would have two effects. First, the greater supply of females in the market will tend to drive down wage rates, especially in female-dominated occupations. The women most affected would be those with general skills and little experience or education, since these women would enter the work force feeling better able to take on employment with family-leave benefits assured. Thus, wage rates in occupations requiring little experience and general skills would decline.

Second, the greater supply of women in the labor force would allow employers to discriminate at a low cost, since they would not need to search for the kind of employee they wanted to hire.(15) This discrimination could take several forms: the employer might discriminate on the basis of experience, education, or technical training, thereby hiring only the "cream of the crop"; or the employer might discriminate on other bases, such as race, religion, or physical appearance.

Most probably, employers would discriminate on the bases of marital status and age, as the employers would incur many costs by offering family leave. When a woman (or man) leaves a job, the employer must cope with that absence. The employer may hire temporary help to cover the position or require other staff to work longer hours and/or absorb the duties of the absent employee. The organizational position of the woman on leave may affect how the employer deals with her absence. The employer may choose not to replace a woman in a management position while she is on leave, because of her specialized knowledge. In this case, however, the employer would still absorb the cost of lost productivity resulting from her absence. On the other hand, lower-level positions requiring more general knowledge are easier to fill. In replacing women in these positions, the employer could incur the costs of paying temporary employees higher wages during the leave than would have been paid to the regular employees, as well as productivity lost while training the temporaries. Temporary employees could prove even more costly if the employer must pay charges for state unemployment insurance because of the increase in the number of the firm's employees. According to the National Federation of Independent Business, "Unless a temporary employee has unemployment insurance coverage through an employment agency, the unemployment insurance coverage is the responsibility of the individual employer."(16) To avoid these added costs, employers might find it cost-effective to discriminate against married women of childbearing age, since these women could end up costing a firm more than they contribute to its worth.

In summary, the presence of more women in the labor market could bring about more employer discrimination against women. Women with education, experience, and training would fare better than those without. Women beyond child-bearing age would fare better than younger women. And single women would benefit at the expense of married women.

Will the Disabled Benefit?

The Family and Medical Leave Act would also allow employees to take up to 26 weeks of leave over a 12-month period when unable to perform their jobs because of serious health conditions. The previous analysis regarding the possible effects on women of a mandatory family-leave policy could also apply to disabled workers or workers with a history of illness.

Employers would avoid hiring workers they expect to take advantage of the leave. Employees with progressively worsening disabilities will find it very hard to get jobs, as will persons with a history of illness. Discrimination against older workers, who are more likely to become sick or disabled, will increase. Again, this legislation will hurt the very people it seeks to help.

Will Men Benefit?

An employer may find that discriminating on the basis of education, skill, experience, age, or marital status is not cost-effective. The employer's safest route would be to discriminate on the basis of sex. Mandatory family-leave legislation would increase sex discrimination in the work force. Men would benefit from this legislation, as they would appear relatively less risky to an employer. Since some men would take advantage of the leave themselves, single men without children would appear to be in an even better position to be hired than married men or single men with children.

Employers already find reasons for discriminating on the basis of sex. Most of these reasons are based on economic grounds. For example, women are more likely than men to have periods of unemployment, and this translates into relatively less experience for women.(17) Sex-specific illnesses or conditions, apart from pregnancy, occur more often for women than for men. According to the National Center for Health Statistics, the hospital-discharge and office-visit rates for these conditions are approximately three-and-one-half times greater for women than for men.(18) Women also have higher turnover rates than do men. In addition, male and female college graduates differ greatly in their fields of study. A Bureau of the Census study found that 57 percent of males had majored in law, medicine, dentistry,

science, mathematics, business, economics, or engineering, whereas only 28 percent of females had majored in one of these more marketable fields.(19) Increasing employers' costs of hiring women by legislating family leave would only contribute to these other economic reasons for discrimination.

Will Employers Benefit?

Several groups have estimated the total costs of a mandatory family-leave policy. In February 1987, the Chamber of Commerce of the United States projected the potential cost of parental leave at \$16.2 billion as a worst-case scenario.(20) In March 1987, the Chamber estimated that the leave policy would cost \$2.6 billion if half of all employees used the benefit.(21) The General Accounting Office, on the other hand, estimated in October 1987 that the total cost "will be less than \$500 million."(22) These estimates are crude and probably understate the total costs that mandatory family-leave legislation would impose on the economy.

Many of these costs will fall on employers who may not be able to absorb the expense. The costs of lost productivity, additional training, and state unemployment insurance associated with temporary employees have already been discussed. Employers would also have to pay additional administrative costs, as well as covering the actual costs of providing the benefit.

The firm may try to absorb the costs of the benefit by increasing the total wage (monetary wages plus benefits) paid to employees who take advantage of the benefit. However, if the firm could not afford to do this, those employees who simply are not worth the higher wage (which would now include the leave benefit)--many of whom would be women--would be laid off. If the firm had a large number of employees who took the leave benefit, the firm could even have to close its doors. In this case, a mandatory family-leave policy would actually decrease the number of jobs in the economy. Destroyed job opportunities and reduced productivity would affect everyone.

If, on the other hand, employers did not increase the total wage with the addition of the leave benefit, they would have to decrease the monetary portion of the wage or eliminate other benefits, such as pension coverage. If the firm could change wage structures so that all costs associated with the benefit were balanced by decreasing other forms of compensation, those who used the benefit would bear its costs.

However, this scenario is doubtful for two reasons. First, the firm would not know beforehand the total costs associated with the benefit. Other questions also arise: which employees, and how many, would actually use the benefit? How long would their leave periods be? What wage rates would the firm pay its future temporary employees? Answers to such questions can, at best, only be estimated. Second, if the benefit costs are high, employers may find it difficult to attract specialized employees (and offer these employees the leave benefit), without spreading the benefit costs over all employees. This would translate into lower wages for those employees who did not take advantage of the benefit; those who did would gain at the expense of their fellow employees.

Employers could attempt to pass the benefit costs on to consumers by increasing the prices of their goods. In that event, consumers would bear the cost of the leave legislation. Since those who used the benefit would also be consumers, they would have to pay higher prices for their goods. Thus, it is unclear whether the employees who would actually take a leave would have a net benefit from the legislation.

Industries employing more women would see a higher increase in prices because the cost of implementing the benefit would be higher in those industries. Since many retail and service industries employ large numbers of women, these industries should experience the greatest increase in consumer prices. For example, almost 80 percent of full-time cashiers are women, 99 percent of full-time secretaries are women, and approximately 84 percent of full-time hairdressers and cosmetologists are women.(23) When faced with higher prices, consumers would demand fewer goods and services in those industries. With decreased demand, many firms would eventually have to lay off workers (the majority being women) or even go out of business. Again, job opportunities would be lost, not created, by this legislation.

In summary, if employers absorbed the cost of the mandatory family-leave policy, they would lose at the expense of those employees who made use of the benefit. Those firms that could not afford to absorb the costs would lay off employees or be forced to close their doors. Job opportunities would be lost. If employers spread the costs to all

employees, those employees who did not use the benefit would lose, while those who used it would gain. Finally, if employers passed the additional costs on to consumers through higher prices, all consumers would bear the cost of the policy. Higher consumer prices would lead to lower consumer demand and, eventually, fewer jobs.

Will the Economy Benefit?

Finally, an often overlooked cost, the opportunity cost of the legislation, is worth noting. Whenever resources are used to produce or pay for one thing (in this case the implementation of a mandatory family-leave program), they are taken away from another. To bear the costs of a mandatory leave policy, we must forgo the goods or services that would have been produced with the resources now used to fund the leave policy. Those who would receive a net benefit from the legislation probably will think resources should go into the funding of such legislation. On the other hand, those who would experience a net subjective loss may want the resources used for a different purpose.(24) It is clear that, since the legislation would hinder mutually advantageous exchange in the economy--by forcing companies to decrease output, go out of business, or increase consumer prices--the economy's efficiency, as measured by the number of exchanges made (including labor-market exchanges), would decrease.

Proponents

The proponents of mandatory family leave desire this legislation for several reasons. Paternity policies are seen as a means to "equalize" men and women in the work force:

The persistent difference in income levels between men and women may be attributed in part to the disruption of employment due to inadequate maternity leave policies. Furthermore, to the extent the income difference reflects the occupational segregation of women in low paying, dead end jobs, that segregation may reflect a "choice" dictated in part by the lasting effects of career disruption due to inadequate maternity policies.(25)

In other words, according to mandatory leave advocates, forcing employers to give paternity leave and to reinstate employees after the leave would allow women to be more competitive with men in the marketplace and, consequently, to command relatively higher wages. Furthermore, the leave time is considered necessary for the well-being of all family members. Yale University's Bush Center in Child Development and Social Policy, for example, recommends a leave period of at least six months with partial income replacement (75 percent of salary) because both parents and child need time to adjust to a birth or adoption.(26)

Proponents argue that, since leave time is necessary for the well-being of the family, legislation is needed to adjust for the fact that women are most likely to take leave. In other words, legislation "requires that real differences between the sexes, such as pregnancy, be taken into account in order to achieve actual equality of opportunity."(27)

Problems with Mandatory Leave

It is not an economist's task to tell people what they should or should not value. People's goals are not at issue here. What is at issue is the means-and-ends framework suggested for achieving the goals desired, as explained by Ludwig von Mises:

It is not its [the science of economics] task to tell people what ends they should aim at. It is a science of the means to be applied for the attainment of ends chosen, not, to be sure, a science of the choosing of ends.(28)

The questions then become these: Would mandatory paternity-leave legislation increase equal employment opportunities for women? Would this legislation enable parents to stay home with their newborn, adopted, or sick children? The answer to both questions is no. The economic analysis given above clearly demonstrates that women would not necessarily benefit (on net) from family-leave legislation; many, in fact, would incur a substantial cost. Married women of child-bearing age, the very women this legislation is designed to help, would be driven from the labor market or would fail to climb the corporate ladder. These women's employment opportunities would actually decrease.

For those parents who believe that children need a parent at home for a time, this decrease in employment

opportunities would also mean a decrease in their ability to provide financial support for the birth or adoption of a child. Parents need an economic environment that fosters growth and creates opportunities for financial stability, an environment that gives parents the choice of working inside or outside the home. A national family-leave policy would foster economic stagnation and destroy opportunities for financial stability. In other words, such a policy would take choices away from parents.

The reasoning of those who believe this legislation would increase equal employment opportunities for women has a basic flaw: by focusing on the desired end, proponents do not take the time to understand the process involved in achieving it. The market economy is not an end state, it is a process--a dynamic process that never reaches an end. To ignore the incentives and decisions of the actors involved in the process is to ignore the fact that the process itself will react to a restructuring of the framework within which it operates.

If employers were required to offer family leave, for example, they would not behave in the same manner as they did before the legislative requirement was put in place. Their incentive to hire women would decrease, a change in the market process that the proponents of family-leave legislation overlook. Many women would also change their behavior. The legislation would increase their incentive to enter the work force, thereby decreasing wages in some industries--a second change that proponents overlook. These behavioral changes would decrease, not increase, equal employment opportunity for women.

The precise outcomes of legislating mandatory family leave cannot be known in advance. But an attempt can be made to guess some of the outcomes by delving into the market process. An attempt to understand that process may yield clues as to the actual effects of a mandatory family-leave policy. Advocates of the policy as a means to equal employment opportunity for women, or as an end to discriminatory hiring practices, may find the actual result to be the reverse of what they hoped to achieve. The economic analysis presented earlier clearly demonstrates that, by grouping women together and taking choices away from employers, a mandatory family-leave policy would increase discriminatory hiring practices, not decrease them.

The Alternative: Freedom of Contract

Freedom of contract may seem a simple answer to a complex problem. In fact, however, freedom of contract provides far more subtle and complex answers to society's needs than does a legislated solution. There are reasons why women and minorities have reached the relatively good market status they enjoy in the United States; freedom of contract is one. The liberty of an employer and employee to bargain without interference from the state allows individuals to separate from a group and be judged on their individual merits. It cannot be denied that sometimes an employer will prejudge a potential employee and form an opinion about that person based upon a group average. This is often called "statistical discrimination" and is practiced because it is a cost-effective way of screening potential employees. The only way to decrease statistical discrimination is to change the statistical averages. As long as women, in general, continue to represent high costs to employers, individual women will find it hard to prove that they are not "average."

Freedom of contract within the market is the best means for an individual woman to prove herself and change the statistical averages, because success in the market comes from providing people with what they demand. Consumers rarely care who provides what they demand, only that they are satisfied as consumers. The market creates endless opportunities. For example, more and more women are opting for self-employment, an indication that women know they are more productive than employers perceive them to be.(29) Therefore, since women have this self-knowledge that employers lack, the freedom of the market allows them to create their own opportunities and perhaps compete with those very employers who failed to hire or promote them.(30) When enough women prove their abilities in the market, employers will find it cost-effective to change their perception of the statistical average and hire more women.

If firms were forced to provide family leave, employers would naturally view those job candidates who appeared most likely to use the benefit as potentially more costly than others. Women, all women of child-bearing age, could fall into this high-risk category. The woman who does not want children, who cannot have them, or who feels she can have a child without taking a lengthy job leave, would find it more difficult to be hired or promoted.

If employers and employees are left to decide their own contract terms, each woman can negotiate without bearing the additional costs other women may impose on employers. In this way, those who use the benefits are more likely to pay

for them. Indeed, if women desire maternity benefits as part of their salaries, employers will offer the benefits in order to remain competitive in the labor market. In fact, many firms already offer maternity-leave benefits. Examples include the IBM Corporation, which offers employees a year of unpaid leave with the option of part-time work for an additional year; Merck and Co., which offers both men and women up to 18 months of unpaid parental leave and has established a child-care center near its headquarters; and the Campbell Soup Co., which operates a child-care facility at its headquarters (and subsidizes 60 percent of its cost) and also offers up to three months of unpaid leave to mothers and fathers.(31)

The National Chamber Foundation surveyed 700 firms and found that 77 percent have formal or informal parental-leave policies. "Recruitment and retention" are the reasons most often cited for offering a parental-leave policy.(32)

In addition, an overview of a few studies found an increase in the 1970s in the number of companies offering a short leave period, with seniority and pension rights protection, and some assurance that the woman would retain the same or a comparable job. "Some three-quarters of women working at least twenty hours a week are eligible for such a leave, though eligibility is much lower in small firms."(33) However, the study also suggests that the figures may be misleading, because most studies have been heavily weighted toward large employers, who are more likely to offer benefits.(34)

This overview suggests that working women are demanding a leave benefit. Larger companies may include the benefit in their bargaining process with employees, although many smaller firms cannot yet afford to do so.

The popularity of "cafeteria-style" benefit programs, which allow employees to choose among a wide variety of benefits, has been growing. The choice of benefits allows those women who do not plan to have children to signal that fact to employers, and at the same time, to choose benefits that they find more valuable. Again, however, the cost of offering benefits must be considered. Smaller firms, with more limited budgets, will not be able to offer the variety of benefits that larger companies can provide.

The "International" Argument

Critics often suggest that the United States lags behind other industrialized countries in the area of national family policy. For example, Sweden offers nine months of paid parental leave with the same or a comparable job guaranteed upon returning to the company, and West Germany offers 26 weeks of paid maternity leave with the same or a comparable job guaranteed upon return.(35) Because many countries have national health insurance, parental leave is provided as part of this insurance. But many countries provide parental benefits even when no national health-insurance policy exists.

The fact that most industrialized countries, and even some developing countries, have some form of national family policy has been construed as evidence of just "how strangely unaccommodating American attitudes and commitments have been" toward the working woman.(36) The United States can, indeed, learn a great deal from the effects of these programs on the overall economic conditions of these countries and on women there. In many of these countries, government plays a large role in all aspects of personal and economic life. The costs of this massive intervention should not be overlooked.

When participation rates and unemployment rates are compared in the United States, Sweden, and West Germany, some interesting results become clear. Between 1975 and 1984, all three countries showed increased female labor-force participation rates (the United States showed approximately 7 percent, Sweden approximately 8 percent, and West Germany about 2 percent). However, the only country that reduced the ratio of unemployment to working-age female population was the United States. West Germany and Sweden, on the other hand, experienced substantial and moderate increases in female unemployment, respectively.(37)

The National Federation of Independent Business compared several countries on the bases of proportion of benefits to wages, employment growth, unemployment, and duration of unemployment. The comparison suggested the following:

Those nations with the lowest proportion of benefits to wages--Australia, USA, and Japan --also have the highest levels of employment growth. These same nations exhibit lower levels of unemployment and duration of

unemployment.(38)

Many developing countries have also instituted a family policy. A recent study of women in developing countries found that

many developing countries have adopted the principle of paying equal wages to men and women doing identical jobs. If, in addition, women get special benefits, such as the right to maternity-leave, creches for their children, the right of exemption from night work and underground work in mines, etc., the result may indeed be to make it more profitable to employ men than women workers.(39)

The study also concludes that when labor unions or government endorses special benefits for women workers,

it could be that these authorities feel that it is a small disadvantage, or even an advantage, if the application of these principles leads to preferential recruitment of male labour in industry, so that only those jobs which no men care to apply for are given to women.(40)

We can only conclude that regardless of the country analyzed, legislation effectively decreases the competitiveness of women in the labor market. Those who endorse such legislation are, in many cases, well aware of the negative consequences it has for women. In many countries male workers lobby for protective labor legislation for women. They are asking the government to protect them from competitors. As in most cases of regulation, there are far more losers than winners when these groups' lobbying efforts succeed, as, unfortunately, they have.

Regulations against women working at night, in mines, and in establishments that serve alcohol have existed for many years.(41) Of the most concern here, however, are the regulations that especially hurt those women who choose to have a family and career. Many women would like to work at home so they can care for their children while they work. Unfortunately, many women are unable to do so because of restrictions on industrial homework, especially in the craft and apparel industries. A major justification for such restrictions is to "protect" women in one form or another. But, as economist David Henderson has pointed out,

The homework restrictions, whose only justification under the Fair Labor Standards Act is to "safeguard the minimum wage rate," end up achieving the opposite of their intended effect by lowering her [a Vermont home- worker's] wage rate--to zero.(42)

The restrictions on would-be working mothers do not stop there, however. If women choose to work outside the home, they may want to put their children in a day-care center and then find these centers in short supply. Many requirements govern the operation of day-care centers; all are designed to protect the safety of children and guarantee adequate day care. However,

many requirements do little to achieve these aims, while a major effect of regulation has been to raise the cost of daycare services, driving providers underground and limiting the number of children who can benefit. Unnecessary regulations are stifling the supply of day care at a time when the need has never been greater and shows every sign of continuing to surge.(43)

Some state laws have been especially harmful to pregnant women. Until the 1970s, six states and Puerto Rico prohibited the employment of women for periods before and after childbirth. Many regulations have come about because pregnant women are viewed as unproductive and in need of protection. But these laws do not protect pregnant women; they take choices away from them and decrease their relative competitiveness in the labor market.

Conclusion

Mandatory family-leave legislation, like all other regulations designed to "protect" or "help" women in the labor market, would not achieve its intended purpose. In fact, mandatory family-leave legislation would increase, not decrease, sex discrimination in the labor market. Because leave benefits are an added cost, employers would avoid hiring candidates who appeared most likely to use them. Older and single women would gain at the expense of married women of child-bearing age, as employers would consider the latter group a higher risk. If employers pass on the costs

of the benefit to all employees, working women who had children and used the leave would gain at the expense of their fellow employees. If more women entered the labor market because of the legislation, wage rates in female-dominated occupations would go down, If employers attempted to bear the costs of the legislation, they might be forced to decrease output, or even close their doors--both of which translate into fewer jobs. This would most likely happen in industries with a great number of female workers. Job opportunities for women would decrease, not increase. Or, if employers passed the added costs to consumers through higher prices, consumers would subsidize working women who have children.

Men would gain at the expense of women. An employer would prefer to hire a man over a woman because of the added risk that she would eventually increase costs to the company by taking an extended family leave. Furthermore, older people, who are more likely to become sick or disabled, individuals with a history of illness, and disabled persons would find it harder to get jobs since employers would also consider them higher risks.

On the other hand, freedom of contract between individual employers and employees will allow women to express their individuality. Women who plan never to have children will be able to signal that intention to employers by not taking part of their salary in the form of maternity benefits. Employers who can afford to offer these benefits will do so, for women who demand them. However, for individual women to remain competitive in the labor market, those who use the benefits should pay for them. All women should not have to pay a price, either in the form of lower wages, fewer promotions, fewer employment opportunities, or all three, because some women choose to have children and take extended periods of leave from their jobs.

Finally, one group that has yet to be mentioned in this paper is children. It has been said that children suffer most from not having a national family-leave policy. Whether children, in general, require their mothers or fathers to be at home with them during certain periods of their lives cannot be addressed in this paper. What can be said, however, is that the choice should be left to the parents, not mandated by the state. Every child is different, and it is the parents, not the state, who know what is best for their child. Each time a new government policy, such as mandatory family leave, is passed into law, individual liberty suffers. Some gain, but only at the expense of others. The greatest gift parents can give their children is freedom. Along with economic freedom, as history has shown, come more job opportunities and a higher standard of living, which allow parents to work at home if they so choose. For this reason, women and mothers should oppose mandatory family-leave legislation. The soundest advice for all women was given by Lysander Spooner:

If the women, instead of petitioning to be admitted to a participation in the power of making more laws, will give notice to the present lawmakers that they are going up to the State House, and are going to throw all the existing statute books in the fire, they will do a very sensible thing.(44)

FOOTNOTES

The author would like to thank Nicole Brophy, Beth Starr, Karen Guagliardo, and Susan Gilbert Locascio for helpful comments.

(1) Bureau of Labor Statistics, Employment and Earnings, June 1987, pp. 25, 27. Child-bearing age is defined as ages 16-44. According to the U.S. Bureau of the Census, ages 18- 29 are the prime child-bearing years, as measured by the greatest number of children born to women of particular ages. Ages 30-44 are the next-highest category.

(2) This bill was first introduced as H.R. 4300 on March 4, 1986, by Reps. William L. Clay (D-Mo.) and Patricia Schroeder (D-Colo.). Similar legislation, S. 2278, was introduced in the Senate by Sen. Christopher Dodd (D-Conn.) in April 1986. The Family and Medical Leave Act has now been introduced as H.R. 925 and S. 249. A second bill, the Family and Medical Leave Job Security Act of 1987, was introduced on January 6, 1987, by Rep. Marge Roukema (R-N.J.).

(3) P.L. 95-555, 92 Stat. 2076 (codified as amended at 42 U.S.C. sec. 2000e [k] [1982]).

(4) Nancy E. Dowd, "Maternity Leave: Taking Sex Differences Into Account," Fordham Law Review 54, no. 5 (April 1986): 720-21. See this source for a good overview of state statutes and regulations.

- (5) California Federal Savings & Loan Association v. Guerra, 479 U.S. 107 S.Ct. 683, 93 L.Ed. 2d 613 (1987).
- (6) California Federal Savings & Loan Association v. Guerra, 758 F.2d 390, 396 (9th Cir. 1985); cert. granted, 106 S.Ct. 783 (1986).
- (7) The Family and Medical Leave Act H.R. 925/S. 249, Briefing Paper, prepared by the congressional staffs of Rep. William Clay, Rep. Patricia Schroeder, and Sen. Christopher Dodd, May 22, 1987, Washington, D.C., p. 4. (Emphasis in original.)
- (8) The Family and Medical Leave Act, pp. 2-3.
- (9) "Laws on Parental-Leave Benefits Draw Opposition from Employers," Wall Street Journal, October 12, 1987, sec. 2, p. 19. The compromise was negotiated by Reps. Marge Roukema (R-N.J.), William Clay (D-Mo.), and James Jeffords (R-Vt.).
- (10) Deborah Walker, "Value and Opportunity: The Issue of Comparable Pay for Comparable Worth," Cato Institute Policy Analysis, no. 38, May 31, 1984.
- (11) Bureau of the Census, Male-Female Differences in Work Experience, Occupation, and Earnings: 1984, Household Economic Studies Series P-70, no. 10 (August 1987), p. 14.
- (12) Department of Labor, Women's Bureau, Time of Change: 1983 Handbook of Women Workers, Bulletin no. 298 (1983), pp. 12-15.
- (13) An increase in participation does not necessarily mean an increase in actual employment. A person participates in the labor force if he or she is employed or actively seeking employment.
- (14) In many cases, these benefits contain a provision that the employee plans to return to the employer after the leave period. This provision allows employers to offer the benefits more cost-effectively since new employees would not need to be hired or trained. The provision would be especially helpful with respect to positions requiring job- or firm-specific training. Unfortunately, costs of the leave benefits have been greater than expected because women sometimes do not return to the company as promised. Their behavior adversely affects all women by increasing an employer's risk when hiring women of child-bearing age.
- (15) Thomas Sowell, Markets and Minorities (New York: Basic Books, 1981), p. 42.
- (16) National Federation of Independent Business, letter to the House, March 27, 1987. The letter also states, "Even if, while substituting for someone taking parental leave, the temporary employee did not acquire enough wage credits to qualify for U.C. [unemployment compensation] benefits, he or she may have accumulated additional wage credits from other employment sufficient to meet qualifying requirements." A temporary employee who worked an 18-week leave period for 40 hours per week at the minimum wage of \$3.35 per hour would qualify for unemployment benefits in most states.
- (17) Bureau of the Census, p. 1.
- (18) U.S. Department of Health and Human Services, National Center for Health Statistics, "Office Visits for Male Genitourinary Conditions: National Ambulatory Medical Case Survey: United States, 1977-1978," Advancedata (November 1980), p. 1.
- (19) Bureau of the Census, p. 10.
- (20) U.S. Chamber of Commerce, "Statement of the Chamber of Commerce of the United States on S.249, the 'Parental and Medical Leave Act of 1987,'" enclosure, p. 1.
- (21) U.S. Chamber of Commerce, letter to the Honorable William Clay from Virginia B. Lamp, Labor Relations

Attorney, March 19, 1987, enclosure, p. 1.

(22) U.S. General Accounting Office, GAO's Estimate of the Costs of the "Parental and Medical Leave Act of 1987" (S. 249), October 29, 1987, p. 8.

(23) Bureau of the Census, p. 23.

(24) This loss includes the loss of individual liberty, which is an extremely high cost to pay. By using coercive action against employers, the government essentially deprives the employers of the basic right to use their property in the manner they so choose.

(25) Dowd, p. 706.

(26) Advisory Committee on Infant Care Leave, Statement and Recommendations, Yale Bush Center in Child Development and Social Policy, November 26, 1985, p. 3.

(27) Dowd, p. 718.

(28) Ludwig von Mises, *Human Action*, 3d ed. (Chicago: Henry Regnery Company, 1963), p. 10.

(29) Steven P. Galante, "Venturing Out on Their Own," *Wall Street Journal*, March 24, 1986, sec. 4, p. 4D.

(30) Sowell, p. 28.

(31) Cathy Trost, "Best Employers for Women and Parents," *Wall Street Journal*, November 30, 1987, sec. 2, p. 21.

(32) U.S. Chamber of Commerce, "Statement of the Chamber of Commerce of the United States," p. 6. (33) Sheila B. Kamerman, Alfred J. Kahn, and Paul Kingston,

Maternity Policies and Working Women (New York: Columbia University Press, 1983), p. 75.

(34) *Ibid.*, p. 49.

(35) *Ibid.*, pp. 20, 22. Sweden's benefit includes 90 percent of the worker's wage up to the maximum insured wage. The employer pays 7 percent of the wage, up to the maximum. The government pays 25 percent of the costs. West Germany's benefit includes the full net wage up to the maximum insured wage. Both the employer and the employee pay 10 percent of the wage.

(36) *Ibid.*, p. 24.

(37) Patrick J. McMahon, "An International Comparison of Labor Force Participation, 1977-84," *Monthly Labor Review* 109, no. 5 (May 1986): 6-7.

(38) John Sloan, "Response to Introduction of Parental Leave Legislation," *National Federation of Independent Business*, February 3, 1987, p. 2. The countries in the study included Italy, Germany, France, Netherlands, Sweden, Australia, USA, Japan, and the United Kingdom.

(39) Ester Boserup, *Women's Role in Economic Development*, 2d ed. (Aldershot, England: Gower Publishing Company, 1986), p. 113.

(40) *Ibid.*, p. 114.

(41) Joan Kennedy Taylor, "Protective Labor Legislation," in *Freedom, Feminism and the State*, ed. Wendy L. McElroy (Washington: Cato Institute, 1982).

(42) David R. Henderson, "Free the Women," *Policy Report* 3, no. 11 (November 1981): 9.

(43) Karen Lehrman and Jana Pace, "Day-Care Regulation: Serving Children or Bureaucrats?" Cato Institute Policy Analysis, no. 59, September 25, 1985, p. 1.

(44) Lysander Spooner, in *Liberty*, vol. 1, June 10, 1882, p. 4, cited in McElroy, p. 24.