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Abstract

"The U.S. has vastly different guarantees when it comes to legislative mandates; however, the focus on laws skews the picture in important ways."

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Why Doesn't the U.S. Mandate Paid Leave?

Donald Roth

The statistics are striking.

The vast majority of Americans believe that the United States should have some sort of paid leave policy. This holds true across virtually all demographic lines, and yet the United States remains one of the **last developed nations** not to institute some form of paid leave by legislative fiat. While it's easy to use these statistics to criticize the United States as fundamentally broken or backwards (along with one's attendant diagnosis for *why* this is true), it's worth taking the time to pick apart the assumptions at play here to try to gain a better understanding for *why* the U.S. has not created a statutory entitlement to some type of paid leave. With this understanding, we might be able to start to imagine how we can effectively tackle the root issue while playing to our strengths and identity as a nation.

Comparing Apples to Oranges

The typical media coverage of the leave issue says something like, "**The U.S. is the only Industrialized Nation with no paid leave for new parents.**" Of course, the statements can be even more dire, including calling the lack of paid maternity leave a **human rights crisis**, or even casting the issues as women having **no guaranteed leave at all**. Are these dire diagnoses correct? Is the U.S. really the **worst nation when it comes to paid leave**?

As with many things, metrics are important. This diagnosis is true if we are talking exclusively about leave that is (1) mandated by law, (2) paid, and (3) for mothers taking maternity leave. This reminds me of a baseball game, where broadcasters will pull up a stat like "this batter has a .500 average when batting on a Tuesday from the right side of the plate in 70-degree weather." The

diagnosis sounds convincing, but if we are going to really drill down into the issue, it's more meaningful to look at the whole picture than to find the one stat line that casts things most decisively in the light we prefer. So, let's look at that bigger picture by taking each of these pieces independently.

The U.S. has vastly different guarantees when it comes to legislative mandates; however, the focus on laws skews the picture in important ways:

First, if we are just talking about job-protected leave, the U.S. does mandate 12 weeks of job protected leave through the **Family and Medical Leave Act** (FMLA). There are limitations to this act in that it does not cover companies with less than 50 employees or employees who have been employed for less than a year, and this is significant. However, if we're just looking at job-protected leave, the U.S. is **in the company of countries like Mexico, Switzerland, and Israel**, but it is near the back of the pack.

Second, while the focus on legal mandates is understandable, it is only a partial picture. While only about **60% of the workforce in the U.S. is covered by FMLA requirements, 93% of the workforce has 12 weeks of maternity leave or more available to them**. This disparity between mandate and practice may be wider in the U.S. than other countries (I will talk more about this below), but given that reality is shaped by more than legal fiat, it is always more useful to try to compare reality on the ground rather than rules in the legislature.

Of course, the emphasis in this comparison is on the fact that maternity leave across this international cross-section is paid leave, so how does the U.S. stack up in this regard?

One mistake that is made is to conflate weeks of leave with how much of a mother's wages are replaced during that leave. Most countries do not offer 100% wage replacement to mothers, and most countries offer no wage replacement to fathers.¹ Based on maternity leave, however, the most useful comparison in terms of payment is looking at weeks of fully paid leave. On this metric, international comparisons vary much more widely, but the median number of fully paid weeks of maternity leave in OECD countries is 12.9.² Many countries offer additional parental leave under an even more varying and complicated set of circumstances; however, all of these comparisons are affected by the fact that most countries provide paid leave as a statutory entitlement, meaning that the government is often paying the benefit and usually places ceilings on what it will pay out. This means that, above a certain income, no one is receiving a 100% wage replacement benefit.

As mentioned before, the situation looks very different in the United States. While there is no mandatory payment scheme, most employees are covered to

some degree by the private sector. The average working mother taking leave in the United States **will be covered by Temporary Disability Insurance** (which **typically covers 6-8 weeks at 40-60% wage replacement**) and can draw down on her **average paid time off of 3-4 weeks.**³ As a result, the reality is that the average American mother is not completely without paid leave during the 12 weeks of protected leave that she can take. In fact, she will usually have somewhere around 6-8 weeks work of full wage replacement (counting Temporary Disability Insurance and vacation). This still lags behind the rest of the world but not as radically and not consistently across the workforce.

Lastly, the most significant qualification of the “America sucks” diagnosis is that it’s tied almost exclusively to maternity leave. When it comes to paternity leave, **most OECD countries** offer little to no paid leave, specifically for fathers. There is substantial variation in terms of how much paternal leave is available, how well that leave is paid, and how long it is available. It’s still fair to put the U.S. near the back of the back, but a statutory entitlement to 12 weeks of job-protected leave through the FMLA is far less of an outlier here. Further, if we’re talking leave in general, while the U.S. again does not mandate a minimum amount of vacation time by statute, the average of 3-4 weeks is **not that far off of the Eurozone**, which mandates four weeks with holidays added on.⁴ When it comes to overall leave programs, the U.S. is still definitely toward the back of the pack, but it’s not lagging behind the group in the same ways that could be said for maternity leave.

Taking into account all of the above, it should be clear that it is exceptionally difficult to compare apples to apples in terms of paid leave, but let me offer my best attempt. The chart below is a rough approximation of the benefits available to an average U.S. household making the median income of \$59,000 if they were magically teleported to several countries around the world and still paid in USD.

Comparing Paid Parental Leave*						
	United States**	Canada	Australia	UK	Germany	Norway
Weeks of Protected Maternity Leave	12	17	18	52 (39 paid)	14	10
Income During this Period	\$3,833	\$4,804	\$9,038	\$9,265	\$7,942	\$5,807
Weeks of Protected Paternity Leave	12	0	2	2	0	10
Income During this Period	\$2,091	\$0	\$1,004	\$1,135	\$0	\$5,807
Weeks of Supplemental Parental Leave^	12 (renews annually)	35 (shared allocation)	52	18	52 (if both parents claim 2 months)	26
Income During this Leave	\$0	\$11,208	\$0	0	\$19,765	\$15,098
Total	\$5,924	\$16,012	\$10,042	\$10,400	\$27,707	\$26,712

**In generating this data, I'm assuming that parents will make use of all of the paid leave available to them. I'm not assuming that parents in other countries will earn/use paid vacation during their leave because of the variance in regulations which in many cases treat vacation time and pay differently or are structured to avoid providing a double benefit of guaranteed vacation and guaranteed leave at the same time. Caps on leave/payment have been applied. Most data pulled from OECD.*

*** For U.S. data, I am assuming that both spouses equally contribute to their household income of \$59,000. I am also assuming that they each have 18 days of PTO and that the mother's Short-Term Disability coverage is 50% of wages for 6 weeks following an uncomplicated delivery.*

^Comparing supplemental parental leave is complicated by the fact that many supplemental leave entitlements are spread out over the first several years of a child's life (up to 18 for the UK).

Reflecting on this chart gets us at least a little closer to comparing apples to apples, and we can start to see that the benefits available in the U.S. do indeed lag substantially behind other nations. However, even this comparison is complicated by trying to make complex bureaucratic schemes uniform, and parental leave itself is often spread out over multiple years of eligibility, which only further complicates things.

The last wrench I'll throw at this is that using these benefits is always in place of getting paid for work, and this means that anytime benefits are substantially below a person's salary, they may choose to work rather than stay home. Further, even when benefits are quite good, cultural pressures may drive low utilization of

these benefits. Despite the apparent generosity of the German system above, only 32% of fathers took any leave to care for their children born in 2013, and average utilization of benefits (especially by men) **falls well below what's available** in almost every case. In other words, even if the grass is greener outside of the United States, the median couple that went over to the other side might very well find that grass less appealing than it first seemed once they get there.

The American Way

If you've been skimming through the wonky bits above, the main upshot is that the U.S. does lag behind other nations in terms of the benefits mandated by law, especially for mothers. Perhaps this is something to be fixed by statute, but one of the biggest reasons that the United States differs from the rest of the developed world on this issue is its strong reticence about directly regulating the free market. Americans value their freedom and their individualism in ways that are different from much of the rest of the First World.

While Europe tends to favor heavier tax burdens and bureaucratic mechanisms to both control markets and provide benefits, Americans favor the private sector and public/private partnerships. It's virtually a truism in America that the private sector is better or more efficient than the government in providing services even when the **data on that front is mixed**. A massive portion of our **substantial social safety net** is provided through tax deductions and credits rather than institutional programming, and the provision of employee benefits largely follows that pattern. Health insurance for **most Americans** comes through their employers, unlike most of the rest of the world. We also reflect individualism in a **low rate of unionization** compared to most developed countries.

There are more things that could be said on this point, but it's hardly a novel claim to say that Americans value their uniqueness. Part of the difficulty of making the apples to oranges comparison above is that we are proud oranges. If making some of the translations and comparisons show that we're not measuring up, **as the vast majority of Americans believe**, then one of the telling reasons for why we haven't acted on this consensus is that we don't agree on what we should do.

When I was in law school, I did some work with a group that was advocating for workplace flexibility; however, as a policy-oriented group, the organization was fixated on developing a social welfare program similar to Social Security in order to fund and administrate the funding of extended time off. We could get a broad group of organizations around the table to agree on details about the need in the industry and some of the big picture goals, but we totally lost a huge section of support by anchoring our specific advocacy in how much more we should be like Europe. Finding ourselves wanting, we looked for apple-ish solutions.

I think the way forward on this issue is to lean in to what is distinctive about the American consensus on the role of the government. At the root, if we had a mechanism to better fund FMLA leave, we would be more comparable to the rest of the world, especially with respect to paternity leave. For those with low incomes, it may be worth adapting our traditional programs to better interface with maternity leave, including working to lower the stigma on existing benefits like WIC. Hybrid, insurance-oriented approaches like modifying unemployment insurance or beefing up short-term disability insurance policies could also go a long way to closing the income gap.

Perhaps the most orangey solution of all would be to take a page from successful programs used with health and retirement income and create a tax-advantaged savings plan that banked up employee time off much like the compensation that gets banked in employee HSA's and 401(k)'s. This sort of thing wouldn't work for everyone, but if the popularity of those other two types of benefits are any indication, some sort of "Time Off Savings Account" could be a powerful way for middle and higher income workers to self-fund their parental leave.

Of course, even this is no silver bullet, or surely someone else would have thought of it and implemented it by now. However, the big drawback of legislative mandate is that it must paint with a broad brush, and Americans tend to hate that. So, until either the American mood shifts on that point or we find an orangey solution, we're going to keep comparing ourselves to the apples all around us and wondering why the United States is so backward when it comes to paid time off.

FOOTNOTES

1. International comparisons related to family leave in this article are drawn from [OECD data](#).
2. As a sampling, [Australia](#) pays out 18 weeks of leave, but at the national minimum wage. The [United Kingdom](#) pays six weeks of maternity leave at 90% of wages, but then the remaining 33 weeks of leave are paid at the equivalent of just under \$200 USD/week. [Germany](#) mandates that mothers take 14 weeks of leave paid at 100% of wages up to the equivalent of \$2,000 USD/month, then allows for nearly two years of paid parental leave during the following eight years under a complicated system that pays 65% of wages, up to the same limit.
3. However, when the employers offer a paid benefit specifically for maternity (not a majority), they offer an average of eight paid weeks off.

4. While the FastCompany article cites the U.S. average number of days off at 10, this is for vacation-only plans, not the paid time off arrangements **which are more common.**