

Giving Mothers a Fair Chance: The New Frontier for Women's Rights in the Workplace

BY KATYA S. CRONIN

In America, we tell young girls that they can do anything when they grow up. Due to the tireless efforts of women's rights advocates, this statement becomes more and more true every day. Yet, there is one more frontier for women's rights that advocates seldom discuss, even though it has one of the greatest effects on a woman's life: motherhood. While the reticence is understandable — some advocates see child rearing as the means by which society kept women at home — it is time for that position to change.

The lack of meaningful structural support for new mothers has a dramatic negative effect on women's careers, children's health, and our economy's vitality. With something of such obvious importance at stake, society's silence on this issue is deafening. It is time for us to look at the problem, consider the solutions, and take action.

One of the greatest obstacles to a young American girl doing anything she wants when she grows up is the lack of basic structural support for pregnant women and new mothers found in virtually every other country on Earth. As of last year, there were only three nations that provided no monetary benefits to new mothers: Oman, Papua New Guinea, and the United States of America. Since that time, Oman established paid maternity leave. The U.S. has not. We are the most powerful and richest nation in the history of the world, yet we do nothing as a society to help mothers, a group responsible for birthing and raising the next generation of our citizens. This lack of a minimal safety net hurts families, endangers the health of women and children, and drains \$500 billion in GDP each year from lost productivity and female workers who are unwilling or unable to return to work. It is bad for the family, bad for business, and bad for America's competitiveness.

This problem is far from faceless. Consider this everyday scenario. A young lawyer starts a promising career. After a few years, she simultaneously hits two important milestones: her career is about to take off and she is reaching the end of a healthy biological age to have children. This juncture without a basic safety net forces her to make a devil's choice: does she risk an interruption of her career to have children or forge ahead and play the odds of infertility and other health risks with a later pregnancy? While this scenario may be sadly familiar to female attorneys or women in white-collar positions, it is actually far better than what many women face in America. Consider instead a woman who works a minimum wage job or is her family's main bread winner. Her only option for dealing with pregnancy complications or spending time with her newborn is to take *unpaid* leave (and lose her health insurance to boot). But for the average American family that is simply not a realistic option. As a result, this new mother, like millions of others in similar circumstances, will have to hurry back to work with a still-broken body and a broken heart.

The law as it stands does little to nothing to help struggling mothers in America. In 1978, after the Supreme Court held in *General Electric v. Gilbert* that pregnancy is "a voluntarily undertaken and desired condition" that cannot constitute grounds for a discrimination claim, an outraged Congress passed the Pregnancy Discrimination Act (PDA). That law provides that a company cannot fire a woman due to her pregnancy and must make reasonable accommodations. Yet, courts and companies have routinely

interpreted the PDA to allow them to force expectant mothers onto unpaid leave in order to deal with their condition. While the recent *Young v.*

UPS decision offers some help, the Supreme Court rejected both the Petitioner's and Government's position that the PDA grants pregnant women a favored and thus more protected status. That result is troubling. Since the PDA's adoption, the percentage of women who are primary wage earners has gone up from 11% to 40%. And 87% of those employed still work full time in their ninth month of pregnancy, making pregnancy-related job accommodations a key issue for the vast majority of women at some point in their lives.

The legal protections for new mothers in the U.S. are likewise practically nonexistent. The sole piece of federal legislation on the issue — the Family and Medical Leave Act of 1993 (FMLA) — currently provides only for *unpaid* leave of up to 12 weeks. Moreover, the FMLA only applies to about 60% of U.S. workers. For an employee to be eligible for FMLA benefits, she must have worked for her employer for at least 12 months, clocked in at least 1,250 hours in the past year, and the employer must have at least 50 employees. That means that women who are freelancers, contract workers, entrepreneurs, or work at small businesses are completely on their own.

Private industry has not stepped in to fill this gap. Currently, only 12% of American workers have access to any paid maternity leave in the U.S., according to the Bureau of Labor Statistics. Most employers who do offer it grant merely four to six weeks of leave. Policies vary widely across industries and pay grades. About 26% of white-collar workers get some sort of paid leave, as compared to only 6% of service workers like waitresses or sales assistants.

I am fortunate enough not to have the problems laid out in this article. My firm is on the cutting edge of maternity leave and

childcare assistance in the country — rivaled only by progressive tech employers like Google and Facebook. But the fact that my workplace is the extreme exception rather than the rule after decades of women being in the workplace speaks to the fact that we need a societal change. How do we make that change? One place to start is cultural. While writing this article, I have spoken to many women who are afraid to even take time off to care for their newborns because they believe that their colleagues and supervisors (both men and shockingly also women) will see them as lazy or not pulling their fair share. Employers should see motherhood — an event looked upon with wonder as the necessary perpetuation of the species for millennia — as a blessing to work with, not a burden to malign.

Another avenue for change is voicing your support for pending Congressional legislation. Both Democrats and Republicans have proposed bills to fix this gaping problem. In 2013, Senator Kirsten Gillibrand (D-N.Y.) introduced legislation that would make employers offer new parents three months of paid leave at 66% of their salary, up to \$1,500 a week. Senators Deb Fischer (R-Nebraska) and Angus King (I-Maine) likewise drafted a proposed tax credit for employers who voluntarily offer at least four and up to 12 weeks of paid leave. Senator and onetime presidential candidate Marco Rubio has similarly proposed a 25% nonrefundable tax credit for companies who offer four to 12 weeks of paid leave. You can inform your Congressperson and Senator that you support these bills specifically or maternity and pregnancy rights generally. You can also contact your state representatives. While Ohio has taken no steps to offer paid parental or pregnancy leave, a few other states pay new mothers

through their disability insurance programs. In 2004, California passed America's first paid parental leave law, granting new parents up to six weeks off at 55% of their current paycheck, up to \$1,000 a week. Since then, New Jersey and Rhode Island have followed suit. There is no reason that Ohio cannot do the same. Finally, raising awareness on a local level may be enough at least to prompt more employers to institute better policies and to protect the interests of pregnant workers and new mothers.

Strengthening the protections for working mothers has near universal support. Conservatives see that it protects the family. Liberals see that it protects women's rights in the workforce. Economists see that it helps the bottom line by increasing the workforce and actually reducing the chance that a mother seeks public assistance like food stamps. Researchers see that children who spend more time with their mothers as babies are healthier, have higher IQs, and are better adjusted. Even the Pentagon's new paid maternity program shows that they see that it keeps America safe. Then why does nothing happen? Because we have not yet made it a priority. It is time for us to change that. We all needed a mother to get into this world. The least we owe to them — and ourselves — is giving them a fair chance. Maybe then, when we tell young girls that they can do anything when they grow up, we would be telling the truth.



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