**Policy Options Brief**

To: New York Governor Andrew Cuomo

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RE: Paid Maternity Leave Policy

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**The Problem: Enhancing Maternity Leave Policies in New York State**

As the varied costs and needs of living continue to rise, millions of citizens are faced with an almost impossible dilemma: maintaining living standards, cash flow, and future goals as a mother gives birth and is forced to give up wages in order to care for a newborn. This dilemma results from the lack of a paid maternity leave policy in the United States. The Family Medical Leave Act (FMLA) entitles employees to take job protected leave for specific medical and family reasons, including maternity leave.[[1]](#endnote-1) But, it is not paid, forcing families – and women in particular – to make difficult decisions regarding their wellbeing after giving birth.

The United States is the only developed economy in the world that does not offer women paid maternity leave. Compared to other developed countries, America’s position is shocking: the UK guarantees 52 weeks leave for mothers, Australia offers 18 weeks, and Mexico 12 weeks; all paid.[[2]](#endnote-2) According to standards set by the UN’s International Labor Organization (an agency of which the U.S. is a part):

1) Women should receive at least 14 weeks off; 2) They should be reimbursed at least two-thirds of their previous earnings; and 3) the benefit should be paid almost entirely by the state through public funds or Social Security. The United States is the only developed country to meet none of the benchmarks.[[3]](#endnote-3)

President Obama, in his State of the Union Address, “framed paid leave as a crucial economic matter.”[[4]](#endnote-4) It has long been noted that when paid leave is offered, more low income mothers – who would have not taken time off or dropped out of the workforce entirely – take the leave they need and return to work more hours and eventually earn higher wages.[[5]](#endnote-5) Social scientists have found that the harm associated with the status quo goes far beyond a mother’s recovery and a newborn’s round-the-clock need; it manifests itself in lower household earnings.[[6]](#endnote-6) Without paid leave options, new mothers are cornered into either an inherent need to recover and bond with newborns, or earning a living wage – an unfair burden.

Offering paid leave for new mothers and fathers in the U.S. is at the discretion of employers. Often, these employers have no incentive to offer the benefit for fear of incurring in large expenses that affect their bottom line. According to the Bureau of Labor Statistics, only 12% of employees reported having parental leave coverage in 2013.[[7]](#endnote-7) Many business groups and coalitions have fiercely opposed policy or legislation mandating paid maternity leave, framing potential laws as a “job-killer” and “anti-business.”[[8]](#endnote-8)

Within the U.S., only three states - California, Rhode Island, and New Jersey – offer any paid parental leave – six weeks of paid leave to men and women that is not job-guaranteed, unless the employer is already subject to the FMLA.[[9]](#endnote-9) In addition, “paid leave” does not imply that the employee will receive his or her full wages during this period. In New Jersey, employees only get paid two-thirds of their wages, limited to $524 per week for six weeks.In California, individuals can receive up to 55 percent of their average weekly income; and in Rhode Island, they receive up to $752 per week.[[10]](#endnote-10) In New York, new mothers can access the state’s Temporary Disability Insurance (TDI) program. The program provides up to $170 per week – nowhere near the minimum required for living expenses when not receiving regular wages after delivering a baby.[[11]](#endnote-11) In New York City, average rent alone is $3,783 per month.[[12]](#endnote-12) Temporary disability insurance alone is not a viable option for new mothers.

In recent weeks, president Obama announced plans to require federal agencies to give their employees up to six weeks of paid leave after the birth or adoption of a child.[[13]](#endnote-13) The measure is a step in the right direction, but not a total victory: the president will need congressional approval to pass the requirement; also, what about the millions of employees that work for state and private employers?

The lack of paid maternity leave policies in the U.S. affects not only women, but also families and communities. Developing regulations mandating paid maternity leave will force employers to realize that caring for a baby without the burden of financial uncertainty, is a basic right that should be available to all families. The rest of the world has recognized that. It is time for the U.S. to recognize it too.

**Policy Option: Standard 12-week Paid Option**

“The benefits of paid leave go well beyond the fact that newborns need round-the-clock care and mothers need time to recover from childbirth.”[[14]](#endnote-14)

Paid leave policies allow women to remain in the workforce, guarantee their mental and physical health after childbirth, and allow them adequate time to bond with a newborn. For this reason, the state of New York must guarantee women a minimum of twelve weeks paid maternity leave. Under the New York State Maternity Leave Act (NYSMLA), women making up to $150,000 a year will be guaranteed 100 percent of their current wages during a 12-week period, or a weekly minimum of $150.00, whichever is greater. Wages are calculated based on different factors:

1- For salaried or hourly workers, pay is calculated based on weekly earnings at the time of leave.

2- Service industry workers that rely on tips or commission receive their base pay plus an average of tips and commission received during the previous quarter.

The program will be funded primarily from one source: A payroll tax to be from workers and employers. The tax rate will be dependent on each individual’s income and will be equally split between the employer and the employees. This tax model has successfully been implemented in California, New Jersey, and Rhode Island, three states that have already passed paid leave policies.[[15]](#endnote-15)

It is important that the policy guarantees the rights of pregnant women above all. Some additional provisions are necessary in order to ensure that employers will not take any measures that will go against the wellbeing of mothers or babies. First, the twelve-week period does not necessarily begin at the time of delivery. Women who are not in a condition to continue working at any stage of their pregnancy, for physical or medical reasons, are eligible to begin paid leave when necessary or recommended by a physician. Additionally, health insurance coverage should remain in place during the maternity leave period, at the same rates, and with the same benefits that the individual had while working regularly.

This option is intended to serve as a complement to the Federal Medical Leave Act (FMLA). In addition to guaranteeing a 12-week, job protected leave, the NYSMLA will guarantee that women do not stop receiving wages when expecting and delivering a newborn. Through the NYSMLA, women can be entitled to their full wages while recovering after childbirth, and will be able to enjoy bonding time with their babies, without the financial burden that results from not receiving regular wages.

**Policy Option: Flexible Scheduling**

The promotion of traditional values like free enterprise and individualism has resulted in keeping family initiatives out of the political forefront. Such laissez faire principles in American society have most often served to grant economic interests precedence over anything else, including the welfare of the family.[[16]](#endnote-16)

In the absence of paid leave policies that integrate the family unit, traditional gender roles in caregiving prevail. Fathers work to support the family and mothers either exit the workforce entirely, or climb a few steps down the economic ladder as an expense of motherhood. The lack of vision with respect to policy options further widens the gap in defining roles as caregiver and provider. “The most obvious problems associated with such outcomes are that women bear a disproportionate burden of child care responsibilities and pay both a short- and a long-term penalty in the labor market.”[[17]](#endnote-17)

To address these concerns, a “gender-egalitarian and flexible parental paid leave policy” is required.[[18]](#endnote-18) The current opportunities under FMLA do little to help the situation, with a strict non-transferable and unpaid leave option that is supplemented by New York’s Temporary Disability Insurance program at a substandard rate. A policy option that is equitable and affordable while limiting the burden on employers is preferred.

Studies suggest that too much time off can have diminishing economic and professional effects on parents, and a neutral effect on newborns.Developmentally, newborns with parents who returned to work within 12 weeks are “likely to have more behavioral problems and lower cognitive test scores at age 4.”[[19]](#endnote-19) A balanced approach is in the interest of future generations. It is reasonable to offer 6 weeks of leave for mothers, in order to recover and bond with newborns, and another 6 weeks of leave for fathers. This option mitigates a developmental argument while considering the deleterious effect of extended leave on any single parent’s career.

This option is within keeping of FMLA’s proposed 12-week guideline while seeking to remedy traditional gender roles hindering new families. Furthermore, employers would be burdened with less financial responsibility if lesser leave times were split among earners.

Under New York’s existing TDI program mothers are eligible for 50% of their average weekly rate, up to $170 per week during their leave period. The other 50% pay at regular pay schedules consists of funds secured through special payroll taxes. Under the new proposal, a father’s paid leave could be taken concurrently or at the expiration of the mother’s paid leave period. Similarly, the father would be eligible for 50% pay through special payroll taxes and at regular schedules for another 6 weeks.

Expectant mothers, expectant fathers, and their respective employers evenly split the cost of this portion of funding. Flexible scheduling in this way ensures financial stability for new families. Potential income disparity between parents would be offset with the amount of payroll contributions of both earners and supplemented by employers. In addition, families would be eligible to draw TDI through New York’s existing program. This option fully addresses the rising cost of living in New York.

In single-parent situations, further schedule flexibility is required. In this scenario, mothers would be eligible for New York’s existing TDI program and 6 weeks of 50% average weekly earnings through a special payroll tax. After the mandatory 6 week paid time off, the single parent would become eligible for full-time pay with an option for flexible part-time scheduling for another 6 week period.

Today’s economic and social climate is vastly different than ever before. Women now make up almost half of the American workforce, and with the rising costs of living, most families require multiple sources of income. “Many children have paid a price for the rise of the two-income household. Many women—and indeed many men—feel that they are caught in an ever-tightening tangle of commitments.”[[20]](#endnote-20) With this great economic shift, it’s imperative that our social arrangements keep up with the times.

This option recognizes that a failing emphasis on the family unit has led to an uneven and unequal burden on women, while allowing men in our country to consistently earn higher salaries.[[21]](#endnote-21) Flexible scheduling and a multifaceted paid leave options ensure families receive the maximum financial benefit per household while helping to redefine gender roles in a way that puts value back in childcare.

**Policy Option: Flexible Spending Account**

The *Investing in Children (INC)* Fund.

Flexible accounts for employees are not a new concept. But what about a fund that allows future parents to put money aside in an account specific to paternity leave? An employee-optional flexible spending account with mandated time off.

There are two traditional alternatives to the issue of leave: A government mandate, or an employer choice system. Setting up a fund similar to a 401k or even an IRA would include participation from both parties.

This fund would be complete with tax benefits, available to all employees. A yearly capped account, somewhere between the current $5,500 limit for IRAs and $18,000 for current 401(k) programs.[[22]](#endnote-22), [[23]](#endnote-23)

If an employer chooses to match funding (a moderate 5% matching cap would be a sensible start), the money put into the account can be written off as an expense. Fund limits would be tied into annual income – if possible, lower income families should be allowed to contribute a larger portion of salary.

The advantages for the worker are clear: lowering taxable income (contributions take away from income); pre-tax contribution; tax deductibility; and of course, availability of funds for when a parent is at home caring for a newborn.

If not utilized, the money from the fund can still be accessed, preferably through a rollover to or creation of a retirement account – but with all tax benefits removed. Money earned as a result of tax breaks given with the account will be deducted when the fund is rolled over into a retirement package, and interest gained will have to be surrendered as a tax.

This account does not require mandatory paid leave, so it can be formed under the current FMLA policy.[[24]](#endnote-24) It allows flexibility for the employer, and financial security for the employee. Employee contribution to the fund, paired with guaranteed leave under the FMLA (not necessarily paid) presents minimal issues for employers, and at the very least minimum financial security for employees.

The only government guarantee required would be mandated protections for the fund. Even though the person on leave is not currently contributing to company profit, they worked and saved toward the fund.

Extension of “parenthood” as a permissible withdrawal from 401k benefits is an option as well, but new parents deserve more. Essentially, by allowing an additional fund to be deducted from annual income, potential parents will have a protection. Also, it may be unfair to use critical retirement savings money for other expenses, regardless of how important they are.

It is not reasonable to say that parenthood is a choice. Having and raising a child is a choice by definition, but rearing a child is the responsibility of an entire society. What profit will a corporation bring in, if it will not have new workers for the future?

Yes, historically somehow we have made due as a society. The traditional assumption was that men were the ones working – women stayed at home to raise children. Women are now working to an equal degree – how does the new arrangement fit in with the necessity of raising children?

All of these policies are designed to address the main issue that many women face when taking maternity leave: how to support themselves and their families. Additionally, these policies have been developed with the expectation that upon expiration of leave, women will be allowed to return to their jobs. No penalties will be imposed, and full guarantees of job protection – regardless of time worked, type of job, or type of employment organization. The “good” burden must be shared amongst us all.

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