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# Our Working Nation in 2013

An Updated National Agenda for Work and Family Policies

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Heather Boushey, Ann O'Leary, and Sarah Jane Glynn February 2013

Center for American Progress



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# A call to action

Three years ago the Center for American Progress laid out an agenda that put policies addressing our nation's new workplace and family dynamics at the heart of a progressive domestic and economic policy platform. This report updates that agenda, recognizing the progress we've made, as well as the work we have yet to do. Our economy cannot grow along a sustainable path if workers do not have the wherewithal to be both productive contributors to the economy and caretakers of their families.

This agenda could not be more urgent or more politically potent. In November 2012 President Barack Obama won re-election in no small part because his message was compelling to women, young voters, and people of color. In fact, women voted for President Obama by a healthy margin, with especially strong support coming from single women, young women, and mothers. At the same time, voters have sent the most diverse Congress to Washington, including 20 women in the Senate.

The administration's support for policies that help bolster working families' economic security—such as pay equity and earned sick days—along with the support from many progressive candidates around the country made a difference in the election. National polling shows that the same groups who supported President Obama most strongly and helped him win the election—young people, people of color, and women—are also the voters that show the strongest support for legislative action around work-family policies.

The “Our Working Nation” agenda addressed the reality that our nation has yet to adapt to three profound transformations in our economy. First, women now make up half of all workers in the United States—a threshold never before reached in the history of our nation. Second, mothers are now the primary breadwinners—making as much or more than their spouse, or doing it all on their own—in nearly 4 in 10 families. And third, two-thirds of mothers are either breadwinners or co-breadwinners, bringing in at least one-quarter of their family's income. While women of color and lower-income women have always worked in substantial

numbers, the past few decades have shown striking increases in women's work across racial and income groups.

But it's not only our workforce that has changed. The very makeup of our families today is dramatically different than it was in the mid-1970s, when women began entering the workforce for the first time in larger numbers. In 1975 nearly half of families with children consisted of a male breadwinner and a female homemaker. Today that number is just one in five. Moreover, in 1975 single-parent households made up only 1 in 10 of our families with children. Today, however, one in five of our families with children are single-parent households, and half of all births to women under the age of 30 are to single mothers.

These societal transformations are at the core of our economy and our families. The Great Recession has exacerbated and brought into sharp relief the important role of women's employment in family economic well-being. Over the course of the recession, the importance of women's jobs to the household budget was underscored. But even as unemployment has fallen, the sharp budget cuts at the state and local level, combined with an appetite for even more cuts at the federal level, puts family economic well-being at risk. Now more than ever we need to make sure that we have in place the basket of policies that allow mothers, fathers, daughters, sons, and spouses to know their family members are in good care while they are at work or that allow them to be home with a loved one in a time of sickness or upon the joyful arrival of a new child.

The past few years have seen enormous strides toward a progressive agenda that adapts to this new reality. In early 2010 the White House held its first-ever summit on workplace flexibility, which brought together more than 100 experts to discuss the challenges of work and family, and that same year the President's Council of Economic Advisers released a report examining the economics of workplace flexibility. In the spring of 2011, Connecticut became the first state to pass into law a bill giving workers the right to earn paid sick days. The cities of Seattle and Philadelphia followed suit, although Philadelphia's mayor vetoed the bill. There are currently active paid sick days campaigns in cities and states across the country, and President Obama has pledged his support to the Healthy Families Act, which would allow workers nationwide to earn up to seven paid sick days each year.

But there is still more to do. This report lays out a comprehensive agenda that puts family economic well-being at the core of a progressive agenda. We focus on four key areas where we believe we need to make the most important changes:

- Updating basic labor standards to account for the fact that most workers also have family responsibilities by instituting predictable and flexible workplace schedules, ensuring that workers have access to paid family and medical leave, and establishing the right to earned paid sick days for all workers
- Improving basic fairness in our workplace by ending discrimination against all workers, including pregnant women and caregivers
- Providing direct support to working families with child care and elder care needs
- Improving our knowledge about family responsive workplace policies by collecting national data on work-life policies offered by employers and analyzing the effectiveness of existing state and local policies

This is a popular and doable agenda. Men and women of all political stripes are united in their desire to see the government and business update workplace policies in response to the needs of today's workers and families. In a bipartisan poll conducted on Election Day this past November for the National Partnership for Women and Families, voters across party lines reported that they are experiencing hardship in meeting work, family, and personal responsibilities and overwhelmingly have a desire for the president and Congress to address these issues. In fact, 73 percent of Republicans, 87 percent of Independents, and 96 percent of Democrats said congressional and presidential attention to family-friendly policies is important.

These issues are at the core of our economy, as well as our nation's families. They are essential to growing our economy from the middle out and ensuring that we stake our economic future on a sustainable path. The skills and productivity of the next generation of workers hinges on the policies we have in place for today's working parent. Families are more economically stable and their children are better able to thrive when workers have access to workplace flexibility, paid family leave, and caregiving support. And these kinds of policies are good for business, as many business owners have found.

But businesses need to be nudged in the right direction, and we need to level the playing field. "Our Working Nation" provides concrete ways that government at all levels, as well as private employers, can move this agenda forward.

While the Obama administration has highlighted these issues, they can push this agenda forward by using the power of the executive branch to incorporate this

into the rules governing federal contractors. And they could do more to support Congress and the states, who need encouragement to move forward on an agenda to ensure that every worker is freed from worry about losing their job or needed income when they require time off to care for a loved one or when they or their family member is ill.

For decades, business associations have told us that implementing this agenda just isn't possible. Evidence from California has shown the positive impacts paid family and medical leave insurance has on employee retention and at little to no cost to businesses, while data from San Francisco and emerging data from Connecticut and Seattle proves that earned sick days are not the "job killer" they have been portrayed to be. Not only have we seen the proof from forward-thinking businesses, states, and localities, we have also seen new organizations of business owners—such as the Small Business Majority and Mainstreet Alliance—rise up and support this agenda. They have told us that this can be done and can be good for economic growth.

"Our Working Nation" is a call to action. It is a call to focus on the reality that to build a strong economy, we must begin at the intersection between work and home. Our families have already changed, and there is no indication that we are going to return to the days when most women stayed home full time. Our families, our workplaces, and our economy writ large depend upon us recognizing these seismic shifts and responding accordingly.

*Neera Tanden, President and CEO of the Center for American Progress*

# Introduction and summary

In October 2009 the Center for American Progress teamed up with then-First Lady of California Maria Shriver to release *The Shriver Report: A Woman's Nation Changes Everything*.<sup>1</sup> *A Woman's Nation* provided a comprehensive look at how our social institutions—from government to businesses to faith-based institutions—had responded to women's entry into the workforce at a time when women had just become half of the workers in the United States. Following on the heels of that report, in early 2010 the Center for American Progress released “*Our Working Nation: How Working Women Are Reshaping America's Families and Economy and What It Means for Policymakers*,”<sup>2</sup> which provided a road map for policymakers to address the outdated and antiquated ways in which our government and our employers treat workers.

Since the release of our report, President Barack Obama and his administration have successfully used the bully pulpit to bring attention to the need for greater workplace flexibility. The president and first lady hosted a White House Flexibility Forum in March 2010, releasing a Council of Economic Advisers report on the economics of workplace flexibility.<sup>3</sup> The Women's Bureau of the Department of Labor, together with the White House Council on Women and Girls, followed up by hosting regional forums across the country as part of a “National Dialogue on Workplace Flexibility.”<sup>4</sup> And the Senate also used its megaphone by hosting a hearing on the issue of how to help the middle class balance work and family. But apart from raising awareness and framing the issue, there has been no action at the national level to update basic labor standards or improve workplace fairness through legislative or administrative policies that would better support workers who are responsible for both earning the family income and providing care to family members.

That is why as President Obama enters his second term and as the 113th Congress convenes—with historic numbers of women members—we have decided to re-release “*Our Working Nation*.” It is a road map of how we can update our workplace policies to fully include women and men who combine work with family care. We have updated the report with new data and a fresh look at how these changes can be made.

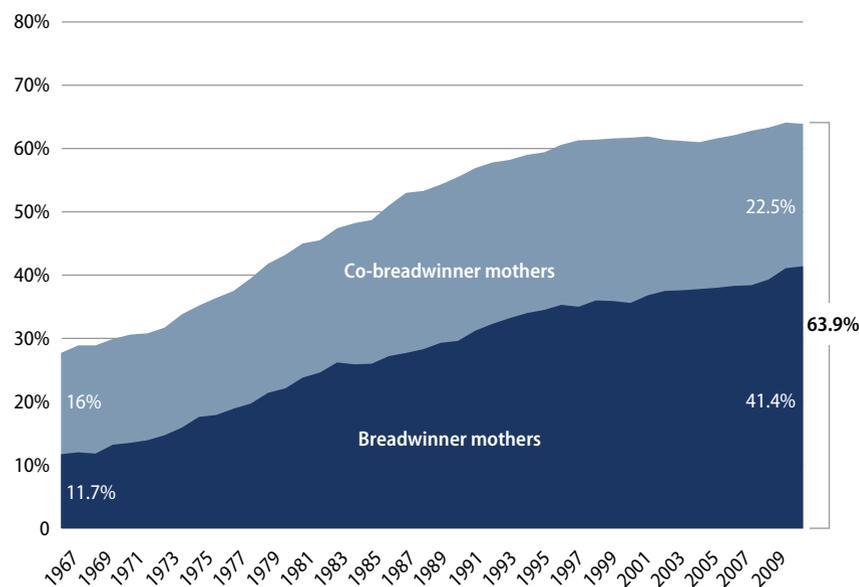
The world changed dramatically over the course of the 20th century, and the movement of women out of the home and into the paid labor force stands out as one of the most important transformations to American workers and families. Women are now half of all workers on U.S payrolls. The majority of mothers are employed outside the home. Most mothers are employed full time, and they are making significant contributions to the family income. Two-thirds of mothers are bringing home at least a quarter of the family’s earnings, and 4 in 10 mothers are either the sole breadwinner (a single, working mother) or are bringing home as much or more than their spouse.<sup>5</sup> (see Figure 1) This increase in women’s workforce participation and contribution to the family income has been dramatic across all racial and class lines, but is particularly striking among low-income women who are now primary breadwinners in approximately two-thirds of their families.<sup>6</sup>

The movement of women into paid employment has transformed how we work and live. Yet government, business, educational, and other social institutions all around us are not keeping pace. Consider these everyday realities faced by so many families across the nation:

Inside the home, the majority of families no longer have someone to deal with life’s everyday humdrum details or emergencies—from helping the kids with homework to doing the grocery shopping, or from being home for a sudden home repair emergency to picking up a sick child from school or taking an ailing parent to the doctor.

Workplaces are no longer the domain of men: Women are half (49.3 percent) of employees on employer’s payrolls.<sup>7</sup> While most men and women continue to work in different kinds of jobs, most workers under 40 today have never known a workplace without women

**FIGURE 1**  
Share of mothers who are breadwinners or co-breadwinners, 1967 to 2010



Source: Heather Boushey and Jeff Chapman’s analysis of Miriam King, Steven Ruggles, Trent Alexander, Donna Leicach, and Matthew Sobek. Integrated Public Use Microdata Series, Current Population Survey: Version 2.0. [Machine-readable database]. Minneapolis, MN: Minnesota Population Center [producer and distributor], 2009.

Notes: Breadwinner mothers include single mothers who work and married mothers who earn as much or more than their husbands. Co-breadwinners are wives who bring home at least 25 percent of the couple’s earnings, but less than half. The data only include families with a mother who is between the ages of 18 and 60 and who has children under age 18 living with her.

bosses and women colleagues. Yet the vast majority of workplaces are still structured as though all workers have a stay-at-home spouse to deal with family needs.

Schools still let children out in the afternoon long before the workday ends and close for three months during the summer—even though the majority of families with children are comprised of either a single working parent or a dual-earning couple.

Most workers—men and women—now have family responsibilities that they must negotiate with their spouses, family members, bosses, colleagues, and employees, as well as the institutions around them, such as the child care center or a doctor's office that doesn't have evening or weekend hours—even though so many people work all kinds of hours in our 24/7 economy.<sup>8</sup> These responsibilities include not only caring for children but increasingly caring for an aging generation as well. Yet many workers have little power in negotiating their schedules with their employer, especially in nonunion settings.

The federal government has not updated its policies to aid families to reflect these new realities in the workplace and in the home. And the laws we do have on the books—the provision of unpaid, job-protected leave offered by the Family and Medical Leave Act and the prohibition against sex discrimination under Title VII of the Civil Rights Act—don't fully meet the needs of today's workers, especially lower-income workers.<sup>9</sup> State and local governments have made some progress in updating their laws to address these problems. Since our previous report, one state (Connecticut) and one city (Seattle) enacted laws requiring employers to offer a minimum amount of earned sick time,<sup>10</sup> but these laws cover only approximately 3 percent of the U.S. labor force, and the progress is slow in expanding to other jurisdictions.<sup>11</sup>

Updating our nation's labor standards is one of the most significant policy challenges of the 21st century. Policymakers need to re-evaluate 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 for their loved ones today. This agenda is even more critical in this time of sustained unemployment and budget cutbacks. In order to get our economy back on track we need to make sure that workers can fully participate in the labor force, and decades of research show that policies that update labor standards can do just that.

Decades ago, the most common family consisted of a breadwinner husband and a stay-at-home wife. (see Figure 2) While even then that did not describe the

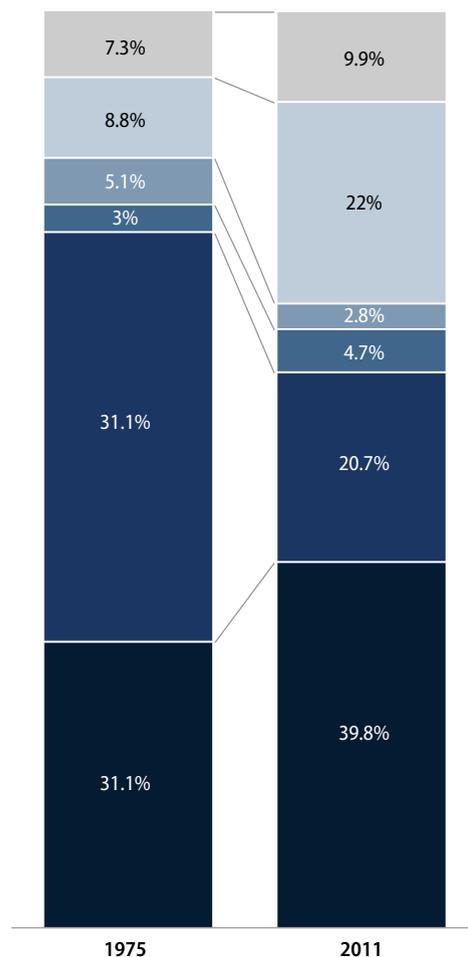
majority of families—and families of color have long been more likely to have working mothers—now, this is not even the most common type of family. Instead, there is a flowering of a variety of kinds of families. The marriage rate is currently at the lowest point in its recorded history; women and men who do marry are doing so later in life than ever before; and divorce remains a steady presence in the lives of many families.<sup>12</sup> Single parents head more than one in five families with children, and more than half of births to women under age 30 are to single mothers.<sup>13</sup> This poses challenges for policymakers who must craft policies that meet the needs of all these kinds of families, not only the minority of families that look like “traditional” families.

Perhaps one of the biggest underreported implications of this transformation is the impact on men. While the foretelling of the “end of men” is attention grabbing and thought provoking, the truth is that while gender roles have changed dramatically over the course of the past 40 years, the institutions around us continue to presume that most workers have a stay-at-home caregiver.<sup>14</sup> Men’s lives today do not look like the lives of their fathers, but this does not mean that women are now the ones on top. No longer do men always bear the full burden of earning the majority of the family’s finances, but they are now more likely to have—and want—to take time off work to attend to their family. With most mothers contributing to the family’s budget, there are relatively few families with a full-time stay-at-home wife. Men and women are now left to negotiate the challenges of work-family conflict, such as who will go in to work late to take an elderly family member to the doctor or stay home with a sick child. Given this, it comes as no surprise that men in dual-earner couples today are more likely than women to report experiencing work-family conflict.<sup>15</sup>

In the United States our policies more often than not implicitly assume that families have someone at home that provides care and can deal with school hours that are inconsistent with work-day patterns or hospitals that send home recovering patients who need assistance. Many of our workplaces put no limits on mandatory overtime, do not require employers to provide predictable

**FIGURE 2**  
**Changes in family structure and work, families with children under age 18, 1975 and 2011**

- Married, dual earner
- Married, traditional (only husband employed)
- Married, non-traditional (only wife employed)
- Married, both parents unemployed
- 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, 2010-11 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.

schedules, and discipline employees for even asking to talk with their employer about the kinds of workplace flexibility they need to cope with the complexities of modern family life. This is no way to run an economy and care for the next generation of Americans.

Americans are hungry for change. In a bipartisan poll conducted on Election Day in November for the National Partnership for Women and Families, voters across party lines reported that they are experiencing hardship in meeting work, family, and personal responsibilities, and overwhelmingly have a desire for the president and Congress to address these issues. In fact, 73 percent of Republicans, 87 percent of Independents, and 96 percent of Democrats said congressional and presidential attention to family-friendly policies is important.<sup>16</sup>

This report outlines a policy agenda that addresses the needs of today's workers and families as they really are, not as we imagine them to be. The agenda is inclusive and focuses on policies that we believe have the most political saliency and for which advocates can build a broad coalition of support. The policy agenda laid out here explicitly focuses on ensuring that workers from across the income strata and in all kinds of families can make use of these policies and that the agenda will lead to a marked improvement in the ability of families to manage work-family conflict.<sup>17</sup> But while this report outlines key policies, it is not an exhaustive list. We focus on four key areas where we believe we need to make the most important changes:

- Updating basic labor standards to account for the fact that most workers also have family responsibilities by instituting predictable and flexible workplace schedules, ensuring that workers have access to paid family and medical leave, and establishing the right to earned sick time days for all workers
- Improving basic fairness in our workplace by ending discrimination against all workers, including pregnant women and caregivers
- Providing direct support to working families with child care and elder care needs
- Improving our knowledge about family responsive workplace policies by collecting national data on work-life policies offered by employers and analyzing the effectiveness of existing state and local policies

These recommendations are not just good policy; they are good politics. They have a broad, cross-cutting base of support and can be crafted to work for work-

ers in all kinds of families—single and married parents, as well as those workers without children who have other family responsibilities such as caring for aging parents—and would benefit not only professional workers but middle- and low-income workers as well.

Voters in Connecticut elected Gov. Dan Malloy (D) partly based on his support of earned sick time legislation—legislation that he signed into law in 2011—and national candidates seem to believe these issues will garner them votes as well.<sup>18</sup> In an internal analysis of the 2012 elections, the Center for American Progress looked at which candidates focused on policies to address work-family conflict in their campaigns, as measured by voicing support for such policies on their campaign website. We found among candidates in races defined as “competitive” by the Cook Political Report, that those who voiced support for these issues were more likely to win their race, although the result was not statistically significant.<sup>19</sup> Combined with polling on the public’s support for these issues, this shows that support for an agenda that helps families in their daily lives could be compelling at the ballot box.

Some will question whether this is the right time to address these issues, given that the U.S. unemployment rate continues to hover at just below 8 percent. For employers, one of the key findings from research over the past few decades has been that failing to address work-family conflict hampers productivity, primarily through increasing costly employee turnover. Higher employment rates can help boost tax revenues, which in turn can help pay for the kinds of supports that working families need to care for their families. What employers need to recognize is that the worker with care responsibilities or the need for flexibility is no longer the exception, but is now the rule. Management styles that can rise to the challenge of finding workable solutions to this problem will see the benefits in the bottom line.

This agenda lays out a vision that addresses a challenge that has been a half-century in the making. We hope these progressive recommendations will help policymakers see the wisdom and political saliency of enacting reforms that match the needs of our workplaces with the needs of our families. We can improve our economy’s productivity, our businesses’ global economic competitiveness, and our society’s ability to care for our children, our sick, and our elderly. These are 21st-century reforms that simply must be enacted.

# Improving basic labor standards

Today's basic labor standards and government incentives for private-sector employers to offer good benefits are not yet adequate to meet the needs of today's workers who must, most often by necessity, combine work and family responsibilities in so many different—sometimes impossible—ways. It says something about our particular cultural moment when a magazine article about whether or not women can “have it all” touches off a media firestorm.<sup>20</sup> While having conversations about the difficulties of managing the dual responsibilities of work and caregiving is an important first step, these are, in fact, not personal troubles that each family must find a way to manage on its own. Rather they are public issues that affect our entire society and economy.

Workplace labor standards and benefits were built around the assumption that workers were breadwinners who had someone at home to take care of any matters related to the family. That simply isn't the case today, as all of the adults work in four out of five families with children, and many families also have responsibilities for ailing or elderly family members. This means that workers are left with limited capabilities to control their work schedules or to take paid and job-protected time away from work to respond to family needs. Only about half (55.8 percent) of all workers age 18 and older have the ability to alter the hours, days, or location of their work, according to data collected by the Bureau of Labor Statistics as part of the American Time Use Survey.<sup>21</sup> Workers who lack access to flexible and predictable work schedules are disproportionately low-wage workers, female workers, and workers of color.

These standards were also constructed around a workforce that was more likely to be covered by a collective bargaining agreement. Unions have historically improved the pay and benefits for workers, including those around work-family conflict. The Labor Project for Working Families, for example, documents how collective bargaining agreements have included language to help workers meet their care responsibilities.<sup>22</sup> But with unionization rates decreasing over the past quarter century—down to 11.8 percent in 2011 from 20.1 percent in 1983—most workers cannot rely on unions to help them with their work-family conflict.<sup>23</sup>

Further, even when the government offers private-sector employers incentives to provide good benefits, the benefits have too-often gone disproportionately to professional, higher-wage workers than to low-wage workers.<sup>24</sup> Low-wage workers are left with very limited access even to the basic package of benefits expected by higher-wage workers.<sup>25</sup> Take the example of earned sick time, which became prevalent during World War II when the federal government was trying to control wages. Wage controls were in place, but the government allowed employers to attract workers with benefits that would not count toward the wage caps, including health insurance, pensions, and paid days off for vacation and for illness.<sup>26</sup> The historic remnant of this government incentive, however, is not spread equally across the workforce. Today nearly four in five (78.5 percent) of the highest-paid workers have access to earned sick time, compared to only 15.2 percent of the lowest-paid workers.<sup>27</sup>

So what should the government do? This section of our report will offer some concrete recommendations for improving basic labor standards offered to employees in the United States by both private employers and the federal government; later in this report, we address child care and elder care support.

At a minimum, basic labor standards should provide workers with the ability to control their work schedules and access needed flexibility and should include paid family and medical leave and earned sick leave for all workers, regardless of whether they are at the top or the bottom of the pay scale. These issues are not new, but with the rise in mothers as breadwinners, the percentage of our workforce needing these basic standards is increasing. Earned sick time, paid family and medical leave, and greater predictability and flexibility are not luxuries, but in fact are key to controlling costs by increasing worker productivity, reducing absenteeism, and cutting overhead costs.<sup>28</sup> They are good for the bottom line and make sense, even in the midst of our ongoing economic recovery.

In this section we discuss how to make progress on these goals. We will focus in this report on the specific components that should be part of our basic labor standards:

- Making the case for the right of workers to request predictable and flexible work schedules as part of our country's basic labor standards and future economic competitiveness

- Moving toward a universal, national paid family and medical leave to provide all workers with the ability to take time off to help families manage their lives better and help employers retain workers with 21st century needs<sup>29</sup>
- National earned sick time that allows workers to have paid time off for their own illness, to care for an ill family member, or to cope with a domestic violence situation

Each of these policy initiatives helps workers meet their unique family needs. Workplace flexibility and predictability allow workers to manage the day-to-day business of working and managing family responsibilities. Paid family and medical leave allows workers to plan for longer-term leave to recover from a serious illness or to care for a newborn or newly adopted child or care for a family member with a serious illness. Earned sick time allows workers to take time off to deal with their own or a family member's short-term, unplanned illnesses. In each case, these policies can be crafted to address the needs of workers at the top, middle, and the bottom of the wage distribution.

We focus on these goals because they are important for meeting the needs of families, reforming outdated labor standards, and improving our economy's long-term economic growth prospects. But we also do so because there are identifiable—and politically salient—short- and medium-term steps we can take to meeting these long-term goals that will benefit workers across the income distribution and which will draw a broad coalition of support from both men and women and those who care about the well-being of America's families.

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## Flexible and predictable work schedules

In recent years our 24/7 economy has led to an increase in the problem of uncontrollable schedules for employees. As employers set up systems to ensure efficiency in production and service, too often the needs of employees are left out of the equation.

This means that for low-wage workers, they can be faced with constantly changing work schedules, which make arranging consistent child or elder care nearly impossible. For blue and pink collar workers, employers' belt tightening coupled with meeting service demands too often means that workers are required, often with no notice, to work mandatory overtime hours even if they have an obligation

to be at home to relieve a babysitter, pick up the kids at the end of the school day, or take an aging relative to the doctor. For professional workers, even the ordinary nine-to-five workday often no longer works because schools still close the doors in the middle of the afternoon, and there is no one left at home to provide care and there are too few quality, affordable afterschool options.<sup>30</sup>

Workplace flexibility allows workers to alter their schedules at work, the location of their workplace, or both, enabling them to meet their responsibilities at work and address their family and caring responsibilities. Workplace predictability ensures that, at a minimum, workers will know their work schedules in advance from day to day and week to week so that they can make arrangements for their children or other family members who need care.

Work schedules that are flexible and predictable help workers sustain their family responsibilities over a lifetime—from coordinating with school schedules and arranging infant and child care in the early years to carving out caregiving time for an elderly, ailing parent or spouse in later years.

Since we first released this report in 2010, there has been a steady increase in awareness and a call to action on the issue of both more workplace flexibility and predictability. The president and first lady hosted a White House Flexibility Forum in March 2010, releasing a Council of Economic Advisers report on the economics of workplace flexibility and a Work-Flex Event Starter Kit in order to help bring about action at the community level.<sup>31</sup> The Women’s Bureau of the Department of Labor, together with the White House Council on Women and Girls, followed up by hosting regional forums across the country as part of a “National Dialogue on Workplace Flexibility.”<sup>32</sup>

Workplace predictability has become a rallying call for organized and unorganized workers. “Our WalMart”—a coalition of Walmart workers calling for fair workplace practices—has made creating “dependable, predictable schedules” a main tenet of their campaign. And the Retail Action Project—a coalition of community-based organizations, unions, faith-based organizations, and elected officials—recently launched a “Sustainable Scheduling Campaign” calling for the guarantee of minimum hours and more predictable schedules.<sup>33</sup>

This awareness about workplace flexibility and predictability has arisen after many years of steady, important research, advocacy, and business and labor leadership.

In 2003 the Alfred P. Sloan Foundation launched the National Workplace Flexibility Initiative, which supported the critical work of building up the scholarship and developing policy recommendations in this area through university-based research as well as through key organizations including Corporate Voices for Working Families, the Families and Work Institute, and Workplace Flexibility 2010 at Georgetown University Law Center.<sup>34</sup>

And, notably, this body of work has often addressed the specific issues facing low- and moderate-wage workers in achieving workplace flexibility.<sup>35</sup> This critical groundwork can be used to build the case for flexible and predictable work schedules and to bring greater attention in Washington, D.C., and in states and communities around the country to the need for policy action.<sup>36</sup>

In an economic climate where furloughs are still commonplace, involuntary part-time employment is steadily increasing, and many workers feel lucky to have any job at all, discussions of predictable and flexible work arrangements may seem like a luxury. Yet providing employees with flexible and predictable workplaces is a proven strategy to increase worker productivity, reduce absenteeism, and cut overhead costs.<sup>37</sup> This is true even for low- and moderate-wage workers, where reducing turnover saves firms money.<sup>38</sup> On average, it costs about one-fifth of an employee's salary to replace her or him—far more than the minimal costs of offering workplace flexibility.<sup>39</sup>

That is why we discuss below what we mean by flexible and predictable workplace policies and benefits.

## Workplace flexibility

The key to workplace flexibility is that participation is at the worker's discretion and it does not entail pay or promotion penalties—it may entail pay cuts commensurate with reduced hours, but not penalties over time. This kind of flexibility must be worked out in close consultation between workers and management. Firms that have experimented with this kind of flexibility often allow employees to make requests for flexibility, which begins a process of negotiation that includes not only how the schedule will aid the employee in meeting needs outside of work, but also how the new schedule will ensure that the needs of the employer continue to be met.

Businesses have a range of options to choose from to implement this kind of flexibility. Employers could allow workers to set hours around a “core” set of hours when everyone must be at work, such as putting in an eight-hour day as long as the worker is at the office between the hours of 10 a.m. and 4 p.m., or allowing workers to set a regular shift, starting at 8 a.m. instead at 9 a.m. in order to leave an hour earlier. Alternatively, businesses could allow employees to work at a satellite office closer to home, to work at home, or to telecommute regularly. Implementing any of these kinds of flexibility requires regular communication between the worker and management to ensure the effectiveness and to set up a process to make changes in the schedule.

For employers, providing workplace flexibility is cost efficient. Instituting these policies can allow a business to have a nimble workforce consisting of loyal employees. Flexibility in work location, for example, is an environmentally friendly, cost-saving feature for many businesses, allowing them to save costs on office space while contributing to the reduction in congestion and pollution.<sup>40</sup> Allowing workers flexibility is also a proven way to reduce absenteeism and reduce costly employee turnover, which, on average, costs about one-fifth of an employee’s annual salary to replace that worker.<sup>41</sup> Already, one-third of private sector employers recognize the benefits of these policies and offer flexible workplace policies.<sup>42</sup>

Many companies are already doing these kinds of things. Take Hewlett-Packard Co., one of the world’s leading technology companies. It has offered flexible hours to almost all of its employees for nearly forty years. And IBM Corp., the second largest private-sector employer in the United States, has 40 percent of its 330,000 workers work virtually, from client sites or homes.<sup>43</sup>

An example of what we are not proposing is the “comp time” legislation introduced since the early 2000s. That legislation would amend the Fair Labor Standards Act to allow employees to receive time off in lieu of overtime pay for hours worked beyond the standard 40-hour workweek. But this legislation allows the employer to determine when that time off would occur, rather than the employee, so that the flexibility could be entirely to the employer and not to the employee’s benefit.<sup>44</sup> Advocates and economists expressed grave concerns that this legislation would likely lead to an increase in involuntary overtime.<sup>45</sup>

Of course, there is no “one size fits all” policy solution: Policymakers should not mandate that every employer offer a particular or specific kind of flexibility because that would interfere with true business needs. There are, however, a vari-

ety of policy options on the table that would encourage employers to work with their employees to find schedules that work for everyone. This brings us to our first family-friendly public policy goal.

*The goal: Increase access to fair workplace flexibility*

Employees and employers need a structure to work together to establish workplace flexibility and predictability. One of the biggest challenges with legislating around workplace flexibility is that success requires a change in business culture and a willingness to rethink how businesses can be most effectively run. At its core, meeting the goal of increasing access to fair workplace flexibility requires that employees have greater leeway to ask for and get flexibility or predictability in terms of hours or location of work, and that workers who choose reduced hours still get fair pay and benefits and are not subject to retaliation.

Changing corporate culture is a heavy lift, but many U.S. firms have already begun to move along this path. In *A Woman's Nation*, Brad Harrington and Jamie Ladge cite a number of studies showing that when corporate climates allow workers flexibility, the benefits are considerable.<sup>46</sup> They note that Deloitte Touche Tushmatsu, a professional services consulting business, estimated a cost savings of \$41.5 million in 2003 in reduced turnover costs by retaining employees who would have left if they did not have a flexible work arrangement.<sup>47</sup>

One idea to encourage a change in mindset is to follow the model set out in the United Kingdom, New Zealand, and Australia by implementing “right to request” laws and policies.<sup>48</sup> These right-to-request laws do not mandate that employers provide every worker with the schedule they desire, but the laws do require that employers set up a process to discuss and negotiate workplace flexibility and only allow the employer to turn down the requests for certain business reasons. And this has the potential to be a win-win policy, as flexible schedules and working locations reduce employee turnover, which helps employers cut costs and retain valuable employees.<sup>49</sup>

This would be an improvement over the current situation in the United States, where an employee could be disciplined for even asking about flexibility or predictability. Putting in place a “right to request flexibility and predictability” would provide workers with the ability to make these requests without the fear of retaliation in the workplace. Asking for a flexible or predictable schedule would become a protected right.

In the United Kingdom the path toward the right to request flexibility actually began with a national conversation about workplace flexibility and the need for fair compensation for workers with reduced hours. In 2000 the U.K. government formed a Work and Parents Taskforce, consisting of business and labor leaders to promote innovative and competitive business practices along with the fair treatment of employees. In 2002, as a result of the work of the taskforce—and a push from the businesses community to convert a proposed entitlement for workers to receive reduced work schedules into a right to request an alternative schedule—Parliament passed the “Right to Request Flexibility” law.<sup>50</sup> Employers may refuse the request for flexibility only for certain business reasons, including the burden of additional costs, detrimental effect on meeting customer demand or on the quality and performance of the business, or inability to reorganize the existing staff to make it work.<sup>51</sup>

This “soft touch” legislation has been effective in increasing the number of workers in the United Kingdom with flexible schedules, and business have been at the forefront to expand the law. Even though employers had fairly broad discretion to deny the requests, only 10 percent of requests have been turned down since the law was enacted. Further, while initially the law covered only workers with young children under age 6, workers with disabled children under age 18, and workers caring for an adult relative, Parliament passed legislation in 2009 to cover all workers with children under the age of 16.<sup>52</sup>

Currently, the Chartered Institute of Personnel and Development, or CIPD—the world’s largest chartered HR and development professional body—is urging the U.K. government to extend the right to request flexibility to all employees.<sup>53</sup> The organization cites “Flexible Working: Provision and Uptake,” a study that found that 70 percent of employers surveyed said flexibility helped recruit better workers and kept employees engaged and motivated. Moreover, less than 5 percent of businesses surveyed had reported problems complying with the current right-to-request-flexibility law.<sup>54</sup>

Of course, there is no “one size fits all” policy solution: Policymakers should not mandate that every employer offer a particular or specific kind of flexibility. In addition to lacking flexibility, many workers are required to work overtime with little or no warning or have schedules that change often. These workers do not have scheduling predictability.

For this model to work in the United States, it would require the kind of “national conversation” that happened in the United Kingdom, as well as thinking through

the ability of our legal and institutional structure to incorporate this kind of mandate and crafting the legislation to ensure that workers across the income distribution would be able to take advantage of this kind of proposal. The legislation would need to set up a structure to ensure that employees have a true right to request a schedule that works for them, as well as their employer, even in the absence of a union setting.

The consideration of adopting the U.K. model in the United States should also take into account whether a “right to request” provides enough of a right to employees to ensure that they can indeed attain flexible or predictable schedules. An alternative, stronger model can be found in the Australian state of New South Wales where employees are protected against discrimination based on care responsibilities, and employers are required to affirmatively provide reasonable, flexible work schedules unless doing so would cause the employer undue hardship.<sup>55</sup>

Further, in order for right to request to work effectively in the United States, it should also be used to help workers who do not want (or cannot work) overtime, who want to place limits on their hours, and who need help in addressing the issue of scheduling predictability.

The second part of this goal is that access to workplace flexibility should not lead unfairly to lower wages or benefits. Part-time workers are paid less for doing the same job.<sup>56</sup> Flexible schedules can “mommy track” workers, leading to pay and promotion penalties.<sup>57</sup> These results can be avoided through legislation requiring part-time parity in wages and benefits or by requiring that such principles be taken into account as employers consider requests for flexible work arrangements.

### Predictability in work schedules

Many workers are required to work overtime with little or no warning or have schedules that change often. These workers do not have scheduling predictability. This kind of workplace may provide the employer with the flexibility to base staff levels on immediate needs, but it gives the employee little scope to cope with finding child care or addressing other personal or family needs and leads to higher turnover as employees are faced with impossible choices between their work and family responsibilities. These issues are common for low-wage workers, but middle- and higher-income workers face challenges with scheduling predictability as well—although it more often takes the form of mandatory overtime or extremely long workweeks.

A lack of scheduling predictability can lead to significant conflict between work and family. Researchers have found that low-wage jobs in retail and hourly jobs often have schedules that are not available until a few days before a worker's shift, yet child care centers, who need to meet their bottom line as well, often require parents to pay for care or a full week regardless of whether the child needs care that week and many providers do not offer nontraditional hours.<sup>58</sup>

Without predictability or flexibility, workers not only fear being fired or passed over for promotion if they do not accept the hours they are assigned, but many are forced out to quit entirely. Unstable schedules can wreak havoc on the day-to-day lives of families who are trying to manage care for children or the elderly—or attend school or hold down a second job—and when those challenges become too much, many workers simply quit.<sup>59</sup> Consider the retail worker Kenya, who was interviewed by researchers Julie R. Henly, H. Luke Shaefer, and Elaine Waxman. Kenya put it this way, “[d]on’t too many people get fired a lot. Basically ... most of ‘em leave because the schedule doesn’t work around their schedule.”<sup>60</sup> This is not just bad for the worker, it’s bad for business and hampers productivity as turnover exacts a costly toll on businesses.<sup>61</sup>

Many workers also experience demands for mandatory overtime or alternatively, may be sent home from work because there is not enough business. Again, these practices can wreak havoc on complicated family schedules and can cause major problems for family incomes. Workers may need to get home after work to care for a family member or may be charged by the minute if they pick up their child late from afterschool care. Yet workers who are sent home may have already paid out for child care or refused hours on their second job.<sup>62</sup>

On top of this, as the economy continues to struggle, we are seeing an increase in practices and policies that promote maximum flexibility for employers, but which often leaves workers with less control, less predictability, and less stability.<sup>63</sup> This means workers—particularly low-wage workers working in the retail and food service industries, but this happens to workers across the income spectrum—are now experiencing a greater likelihood of reduced hours, sudden changes in work schedules, or requirements for great levels of availability with no guarantee of core hours to be worked.<sup>64</sup>

So here is our second public policy goal.

*The goal: Require employers to limit mandatory overtime and provide predictable schedules*

This is a long-term goal and, in the interim, we should encourage, rather than require, employers to limit mandatory overtime and provide predictable schedules. The government can then work to highlight the best ways employers have found to do so. There are a variety of ways forward to encourage employers to work with their employees to find schedules that work for both. Without compromising the need of employers to be responsive to the changing demands of the market, employers can institute policies that provide workers with greater control over their work schedules, including:

- More advance notice of work schedules
- Work schedule stability from week to week with a core set of hours to be worked at the same time, such as 70 percent to 80 percent of hours to be worked at the same time each week<sup>65</sup>
- Worker input into schedules, including implementing scheduling systems that allow workers to self-schedule, bid for desired shifts, and swap shifts with each other without prior approval from the employer<sup>66</sup>
- Commitment to no mandatory overtime for workers or, at a minimum, commitment to advanced notice of any mandatory overtime required of employees and commitment to seek volunteers for overtime first without retribution, in addition to limiting excessive work hours for salaried employees

These simple policies would provide all workers, including low-wage workers, with more predictable schedules. This would, in turn, allow families to better coordinate care, including child care, elder care, and care for a sick family member, as well as other aspects of daily life with their jobs. Even without new laws, employers can and should implement these solutions on their own.

Recommendations for concrete action: Congress

*Require the right to request flexibility and predictability*

Rep. Carolyn Maloney (D-NY) has introduced the Working Families' Flexibility Act, most recently in early 2012 as H.R. 4106, which would allow an employee to request a change in number of hours worked, times when the employee is required to work, and location of work from their employer. The bill establishes certain employer duties regarding the consideration of such requests, including establishing

a process for negotiating the request and providing the employee with an explanation when rejecting the request. Perhaps most importantly, this bill also provides job protection and prohibits retaliation against employees who make flexibility requests.

This bill may also be able to help employees gain more predictability. For instance, if employees can effectively use the law to request a certain schedule or to provide boundaries for their hours, without penalty, then this could help push employers to offer greater predictability. But the commitment to predictability should be made explicit in the bill.

Rep. Maloney introduced her bill in the 110th, 111th, and 112th Congress, but it has not received serious attention by any of the committees of jurisdiction such as the House Committee on Education and the Workforce. On the other side of Capitol Hill, the late Sen. Edward Kennedy (D-MA) introduced a Senate companion bill in the 110th Congress, and Sen. Robert Casey (D-PA) introduced the Senate version in the 112th Congress.

These ideas deserve serious consideration by the leaders of Congress, who should commit to move these bills through the committees of jurisdiction in both the House and the Senate. At the same time, we hope the flexibility bills will be amended to explicitly include workplace predictability and ensure that workers across the wage distribution would be able to take advantage of this policy, not just the higher-paid professional workers.

In addition, we believe that this bill should be strengthened to limit the reasons by which employers may deny an employee an alternative flexible or predictable schedule. Employers should be limited to business reasons in denying requests for flexible and predictable schedules and should be required to establish that making the change would cause undue hardship to the business.

#### *Encourage employers to offer predictable schedules*

The right-to-request-flexibility legislation does not get at some of the major systems and culture shifts that need to happen on the part of employers to provide workers with greater control to manage the predictability of their work hours. Congress should explore how best to increase scheduling predictability for low-wage workers.

A first step would be for Congress to hold hearings on the practice of mandatory overtime to determine whether the Fair Labor Standards Act should be amended to prohibit the practice outright. Over the past several years, members

of Congress have consistently put forward bills prohibiting mandatory overtime by nurses and health professionals, but there is evidence that the problem goes beyond the health sector.<sup>67</sup> Some companies' business models are to survive on a skeletal workforce and then force employees to work mandatory overtime shifts rather than first seeking workers who wish to accept voluntary overtime assignments.<sup>68</sup> This is not good for workers or our economy.

In addition, the House Education and the Workforce Committee and the Senate Health, Education, Labor, and Pensions Committee should hold exploratory hearings on how best to incentivize the private sector to implement predictable scheduling for employees, including developing and implementing scheduling systems that allow workers to gain control over their own schedules and receive advance notice of their schedules.

### Recommendations for concrete action: The executive branch

The president and his administration have effectively used the bully pulpit to raise awareness about the need for workplace flexibility. Making workplace flexibility and predictability a new workplace standard will take continued leadership from the president and his administration, but using the bully pulpit simply is not enough.

In addition to using his megaphone, the president has a number of other tools available to him that he should use to demonstrate effective workplace flexibility and predictability in the federal workforce and to encourage such actions in the private sector.

#### **Make the federal government a model employer for workplace flexibility<sup>69</sup>**

The federal government has a strong history of setting workplace trends and piloting flexible, family-friendly benefits.<sup>70</sup> As far back as 1957, the government allowed some employees to work from home. In the 1970s Congress passed legislation allowing the federal government to pilot flexible and compressed work schedules for full-time employees and to encourage more part-time opportunities for federal workers. In the 1980s the government created leave banks and leave-sharing programs. And in the 1990s the government established several flexible workplace satellite offices to relieve workers of long commutes, created pilot job-sharing programs, and expanded the use of sick leave to allow all workers to use accrued sick leave to care for ill family members, and to allow workers leave time to accompany family members to routine health appointments and to participate in children's school activities.

At this time, however, the federal government is not outperforming the private sector. Currently just less than one-third of federal workers have access to flexible schedules. The private sector outshines the federal government in both the percentage of the workforce that telecommutes—6 percent of federal employees, compared to 15 percent of private-sector workers—and the percentage of the workforce working part time. Approximately 3 percent of federal workers are working part time for noneconomic reasons, meaning they are generally voluntarily working as part-time employees, compared to just more than 8 percent of private-sector workers who are working part time for noneconomic reasons.<sup>71</sup>

Currently the federal government offers a set of workplace policies that allow workers flexibility and predictability in their schedules, including flexible and compressed work schedules, telecommuting, and part-time options to at least some federal employees.<sup>72</sup> These flexibility policies, however, are left to the discretion of the federal agency and the individual supervisor. As a result, many federal employees do not have access to these benefits. Case in point: Fifty-six percent of federal employees qualify for telecommuting, but in order to be able to take advantage of telecommuting, federal employees must get the approval of their supervisors often with no right to appeal this decision, which may be one reason that only 6 percent of employees actually take advantage of the federal telecommuting program.

The Obama administration took a step toward considering a more comprehensive approach to workplace flexibility by piloting a “Results Only Work Environment,” or ROWE, at the Office of Personnel Management, or OPM, allowing more than 400 employees to decide when and where they would work as long as their work got done. There were great hopes that this experiment would lead to a systemwide change in workplace flexibility policy across federal agencies, but the program was stopped in March 2012 with “mixed results.”<sup>73</sup> The Obama administration should release the final report on lessons learned from the ROWE pilot and consider how to improve the program in a way that could be replicated throughout the federal workforce.

The federal government could do even more by giving federal employees the right to request flexibility and access these benefits. Through an executive order or presidential memorandum, President Obama could direct the Office of Personnel Management to develop a fair and uniform process in the federal government to allow federal workers the right to request flexibility, ensure that the request is seriously considered and that employees are not retaliated against for asking.

The federal government still has much work to do in ensuring the uniformity of its flexibility policies across federal agencies and within agencies. And there is good reason to do it: In a study of the dependent-care needs of federal employees, the Government Accountability Office found that workplace flexibility policies were critical in employees' decisions to take a job in the federal government and even more critical in the employees' decision to stay.<sup>74</sup>

#### *Study innovations in flexibility and predictability*

The U.S. Department of Labor should study innovations in workplace policies implemented as a result of the Great Recession in both the public and private sector. There has been a tremendous rise in workers who are now working part time for economic reasons. Overall, as of October 2012, 8.3 million people were working part time for economic reasons—an increase of 3.7 million workers from when the recession began in December 2007.<sup>75</sup>

Over the course of the Great Recession, most of this increase—nearly three-quarters—was attributable to “slack work or business concerns” rather than only being able to find part-time employment. This means employers are instituting a variety of policies and practices to limit the hours their employees are working. We know that some employers embraced practices to give workers some control and decision making over reduced hours or altered schedules.<sup>76</sup>

In 2008, for example, the state government of Utah mandated a four-day workweek for its employees. The state didn't cut hours or wages but did find that compressing the workweek into four days saved the state on its energy bills, with a 13 percent reduction in energy costs, and saved workers as much as \$6 million in gasoline costs by avoiding an extra day of commuting.<sup>77</sup> Both surveys of HR directors and employees in the state government showed overwhelming agreement that the new schedule helped alleviate work-family conflict. And, most telling, 82 percent of state employees said that they'd like to continue working the 4/10 schedule—four days a week, 10 hours a day.<sup>78</sup>

Employees who didn't like the Utah experiment, however, are an important part of the story—they are largely workers with young children who had difficulty finding extended child care.<sup>79</sup> The problem with the Utah experiment is that it lacks one essential element of the type of workplace flexibility we are promoting: Workers must have input into the flexible or alternative work schedule so that they can arrange care for family members to match their work schedule.

To study these kinds of experiments in reducing and altering work schedules, the Department of Labor should study the policies and practices, and disseminate “best practices” and innovations—including how these policies play out differently for workers across the income distribution and in different kinds of occupations.

### **Encourage innovation in the federal contracting workforce**

Private-sector businesses with federal contracts make up nearly one-quarter of all private-sector employees in the United States.<sup>80</sup> Historically, the federal government has used its contracting power to require or encourage workplace policies that are fair, equitable, and best utilize the full potential of our workforce. The federal government should use this power to reward those companies bidding for federal contracts that offer workplace benefits for today’s workforce, including workplace schedules that are predictable and offer options for flexibility.<sup>81</sup>

### Recommendations for concrete action: The states

#### *Initiate flexibility-predictability taskforces*

State governments do not need to wait for federal action. Governors and state legislators could initiate a taskforce to examine barriers to flexibility and predictability in their states, as well as study innovative policies and practices for flexibility and predictability within their state. These taskforces could be charged with completing a report to their governors on the policy recommendations for improving workplace flexibility and predictability.

Like in the United Kingdom, these taskforces should include representatives from both business and labor. But the state task forces should be tailored to the industries and unique needs of workers in their states. Each industry will have varying needs for employees, which will affect flexibility and predictability. These concerns and issues should be brought to the state taskforces.

#### *Introduce the right to request flexibility and incentives for predictability*

To date, only a handful of states—New Hampshire, California, Pennsylvania, New York, Alaska, Delaware, Maine, and Maryland—have introduced state legislation that would allow employees the right to request flexibility, but this legislation has not moved out of committee in any of the states.<sup>82</sup> Other states could begin consideration of how to improve workplace flexibility and predictability through the introduction of state legislation.

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## Family and medical leave insurance: Reforming and updating our social insurance system

The foundations for our nation’s social insurance infrastructure was set out in the Social Security Act signed into law by President Franklin D. Roosevelt in 1935. The various policies implemented as a part of the Social Security Act focused on ensuring that the breadwinner’s wage would be replaced if he (as it was most often a he) became disabled, was deceased, was unable to find work through no fault of his own, or was in retirement. Widows with children were provided with a nominal benefit because it was assumed that they could not support themselves otherwise.

While this system has many enduring features that have stood the test of time—such as the notion that social insurance should cover every worker—the presumptions inherent in the system involving work and family are outdated. Because there are fewer stay-at-home parents, the risk of family caregiving needs and medical situations turning into livelihood-threatening events is much higher today than it was in 1935 when Social Security was established.

As Ann O’Leary and Karen Kornbluh note in *The Shriver Report: A Woman’s Nation Changes Everything*, the basic problem is that “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 sick or elderly relative.”<sup>83</sup> As one of the key foundations of our basic labor standards, our social insurance system should be updated to reflect the realities of today’s workforce.

Being able to take time off to provide for family care responsibilities is an important benefit that our social insurance system should include. Paid family and medical leave is critical for family well-being as well as job security. That’s why adding paid family and medical leave to our system of social insurance should be the next goal.

### The current state of play: Unpaid family and medical leave

Currently some U.S. workers have the right to 12 weeks of job-provided unpaid leave for their own illness, to care for a new child (adopted, foster, or birth), or to care for a sick family member under the Family and Medical Leave Act, or FMLA. According to the most recent Department of Labor report in 2000, only about half of U.S. workers are covered because the law excludes workers who have been with

their employer for less than a year, have worked fewer than 1,200 hours over the past year at their firm, or work for a firm that employs fewer than 50 employees.<sup>84</sup>

Upon passage the act quickly became a critical linchpin in meeting the family care needs of workers, who previously had no guarantee of time off to care for their families' needs. For those workers who qualified for FMLA coverage, it was a significant step in solving the problem of care brought on by the widespread employment of mothers. But the restrictions in the Family and Medical Leave Act make it hard for many women and low-wage workers to qualify since they are more likely to work part time and at small businesses. Further, because this leave is unpaid leave, many workers cannot afford to use it, especially among low-and middle-income families.<sup>85</sup>

Beyond the Family and Medical Leave Act, only 40 percent of employees have access to even a single day of paid leave that can be taken to care for a newborn, newly adopted child or care for a seriously ill family member.<sup>86</sup> About 36 percent of U.S. workers are covered by an employer-provided paid short-term disability program that provides income replacement when an employee is ill or temporarily disabled (including for pregnancy-related reasons or childbirth, but not for family caregiving purposes).<sup>87</sup> Businesses report that the Family and Medical Leave Act often works to their benefit. According to the most recent survey of the law, conducted in 2000, a large majority of employers who are currently required to comply with the law report that it has had no noticeable effects on their establishments' productivity, profitability, or growth, and has had a positive or neutral effect on employee productivity, absences, turnover, career advancement, or morale.<sup>88</sup>

Paid family and medical leave, if implemented in a way that makes sense, is likely to offer businesses even more benefits. Women who have access to paid maternity leave are more likely than those with unpaid leave to return to work after they have a child, improving their lifetime earnings profile.<sup>89</sup> Workers who have time off for a serious illness recover quicker, as do ill family members who have the care of a loved one.<sup>90</sup> At least some portion of these workers will likely remain healthy enough to work longer than otherwise.

It is in the interest of employers to finance paid family and medical leave through social insurance, not individual companies.<sup>91</sup> With a social insurance system, employers need to provide the job or an equivalent job to the employee who needs to take such a leave if that worker is covered by the Family and Medical Leave Act, but they do bear the burden of paying employees during these critical

periods of leave. If employers must each provide paid family and medical leave, then those who have disproportionately young or female staff (who are most likely to need parental leave) or older staff (who are more likely to need leave for their own or a family member's illness), will bear an undue burden for these costs, which is exactly what a national social insurance program will avoid.

## The way forward

Even though very few workers have paid family and medical leave, this policy is widely desired by the majority of the public. Nationwide, 86 percent of voters believe that it is important, and nearly two-thirds believe it is “very important” for Congress and the president to consider new laws that would help working families—such as earned sick time and family and medical leave insurance legislation. And this support for true family values cuts across the political spectrum: Seventy-three percent of Republicans, 87 percent of Independents, and 96 percent of Democrats agree that it is important for Congress and the president to devote time and attention to family-friendly workplace policies.<sup>92</sup>

Most recently, the momentum toward paid family and medical leave has been happening at the state level. Two states, California and New Jersey, boast paid family and medical leave programs that build on longstanding Temporary or Short-Term Disability Insurance programs, and in Washington state the legislature passed a standalone paid parental leave program, but they have yet to fund it.<sup>93</sup> Both California's and New Jersey's programs provide near-universal coverage to workers in the state for a disability or illness occurring off the job that limits one's ability to work, including pregnancy disability (excluding only certain public employees).<sup>94</sup> In 2002 California extended their Disability Insurance program to offer six weeks of partial wage replacement for family caregiving leave. New Jersey passed similar legislation in 2008.<sup>95</sup>

Moving forward, there are only three other states with Temporary Disability Insurance—New York, Rhode Island, and Hawaii—and New York and Rhode Island are actively considering expansion of their programs to include family leave. The potential for passage in the states without such programs may be limited, although Arizona, Iowa, Massachusetts, New Hampshire, Oregon, and Vermont are actively looking into paid family and medical leave, with legislation introduced in the past three years.<sup>96</sup> In addition, the Family Income to Respond to Significant Transitions Act, H.R. 2339—which had been sponsored by Congresswoman

Lynn Woolsey (D-CA), who did not run for the 113th Congress—could help spur more action in the states if reintroduced and passed. A positive sign is that President Obama’s budget requests each year have included funds to help states set up their own paid family and medical leave programs.

*The goal: Paid family and medical leave for all workers nationwide*

It makes the most sense to establish a national paid family and medical leave program alongside our Social Security system for retirement and long-term disability. Setting up a new standalone, social insurance program for paid family and medical leave would be more costly and less efficient than adding this to Social Security. This is even more true if each state does this on its own.

The Center for American Progress proposes that policymakers build on the efficiencies of the Social Security program by adding benefits for three “life events” currently covered by the Family Medical Leave Act—one’s own serious illness, care of a seriously ill family member, and care for a newborn or newly adopted child—for the same amount of leave time as the Family and Medical Leave Act, which is a maximum of 12 weeks per year. We call this proposed program Social Security Cares.<sup>97</sup>

Social Security Cares would cover every worker currently covered by Social Security, which is nearly every U.S. worker, even those who do not receive unpaid job-protected leave from the Family and Medical Leave Act. Eligibility for the program should be based on a worker’s lifetime employment history and would use reasonable terms, such as those already established for disability benefits, which allow young, part-time, and low-wage workers to qualify for benefits, even when they are early in their careers.

Adding family and medical leave to Social Security is the best available way to administer paid family and medical leave insurance and provide universal coverage at the lowest cost possible. The bureaucracy is already set up to administer the system. The addition of paid family and medical leave must address the issue of timeliness of benefit payments, but holding the bureaucracy accountable to the program’s goals will be necessary whether we set up a new system or work with the Social Security Administration. Because the Social Security Administration already administers benefits to workers who become disabled and a worker’s surviving family members, there is a structure in place to establish the criteria for eligibility and benefits that takes into account a variety of life circumstances and employment histories.<sup>98</sup>

Paying benefits during family and medical leaves is not terribly expensive. Estimates from a Massachusetts study show that covering 100 percent of salaries for all workers would cost about \$120 per worker per year. Covering less than 100 percent of salaries would cost considerably less.<sup>99</sup>

There is every reason to believe Social Security Cares would strengthen, not weaken, the Social Security program overall. Some workers will increase their lifetime employment because this policy encourages them to stay employed through periods when they needed family or medical leave, so they will pay into Social Security for more years than they would have otherwise, boosting the resources for the system overall.<sup>100</sup>

Adding paid family and medical leave to the Social Security system would improve our basic labor standards and acknowledge that we live in a world where most families no longer have a stay-at-home parent. It would complement other proposals, such as Social Security Caregiving Credits, to help caregivers establish sufficient social security credits to qualify for retirement benefits.<sup>101</sup> Further, it would strengthen the intergenerational compact between young workers—who could then access the benefits of social insurance when they need it while they’re working—and older workers who will maintain access to Social Security’s retirement benefits and now should be able to have the benefit of an adult child who can afford to take time off work to help care for them if they need it.

*The goal: Expand job-protected leave to cover more workers and ensure that the definition of family is more inclusive*

Finding a way to provide paid family and medical leave is not enough. More workers need to have the security of job protection during their leave. The Family and Medical Leave Act’s job protection coverage should be expanded beyond workers in large businesses and to part-time workers. Part-time workers need job protection for family and medical leave just like full-time workers, and there’s no reason to exclude them from coverage. The law’s tenure exclusions mean that many young workers with young children are not covered, and a disproportionate share of those left out are workers of color.<sup>102</sup>

Twenty-eight percent of U.S. employees work for employers with fewer than 50 employees, and smaller businesses should be included under the Family and Medical Leave Act as a basic labor standard, like they are included in other standards, such as the minimum wage or overtime provisions.<sup>103</sup> Not covering small businesses does not eliminate the challenges facing the majority of small employ-

ers who have employees with care responsibilities; it only masks the reality that these employees also have illnesses in their family and have children. Paid family and medical leave administered through a social insurance program would help small employers pay for these kinds of leaves.

Furthermore, currently under the Family and Medical Leave Act, employees are entitled to take leave only to care for a spouse, son, daughter, or parent of the employee, but this narrow scope does not allow for family breadwinners to take care of relatives who may be helping them with child care or who are reliant on their extended family because of shifting employment patterns in the U.S. economy. Workers should be able to take leave to care for their domestic partner or to care for a close relative who is not an immediate family member, such as an ailing grandparent or aunt or uncle, without fear of job loss. The law should be amended to give employees this right.

During the course of the first Obama administration, the Family and Medical Leave Act was amended to expand the leave provisions for military families and airline flight crews.<sup>104</sup> These changes by the Department of Labor were much needed and appreciated, but there is additional legislative action that should be taken.

## Recommendations for concrete action: Congress

### *Paid family and medical leave*

Paid family and medical leave bills should be introduced in the House and the Senate. These bills can be fashioned on the Social Security Cares model outlined above.<sup>105</sup> The legislation would need to ensure adequate funds for the administration of the new benefits, as workers would need to be paid in a timely manner and waiting times should be kept to a minimum.

In the 111th Congress former Rep. Pete Stark (D-CA) introduced the Family Leave Insurance Act of 2009, H.R. 1723. The bill would require the secretary of labor to establish a national paid family and medical leave insurance program. The bill allows the secretary to do so by contracting with states to establish or expand a state program or for the governor of a state to enter into an agreement with the commissioner of Social Security to establish a program in that state.

In the 110th Congress former Sen. Chris Dodd (D-CT) introduced a similar bill in the Senate, co-sponsored by former Sen. Ted Stevens (R-AK). This bill directs

the secretary of labor to create a national paid family and medical leave insurance program, but does not provide direction on the mechanism by which to do so.

There were no congressional hearings or movement on these bills, however. We recommend that both the House and the Senate begin a dialogue about the importance of paid family and medical leave. The House Education and the Workforce Committee and the Senate Health, Education, Labor, and Pensions Committee should hold hearings on these bills to explore how best to construct a national paid family and medical leave insurance program.

In June 2009 in the 111th Congress, the House of Representatives passed the Federal Employee Paid Parental Leave Act of 2009, H.R. 626, which would provide dedicated paid parental leave to federal employees. The House bill passed with bipartisan support, with 233 Democrats and 25 Republicans voting in its favor.<sup>106</sup> The companion bill in the Senate, S. 354, was introduced by Sen. Jim Webb (D-VA) but was never brought to a vote. The bill was reintroduced in the 112th Congress but failed to move. Moving forward on this would be a good next step.

In addition, the U.S. Congress should encourage more states to experiment with establishing paid family and medical leave, as well as take similar steps at the federal level. Legislation introduced by former Rep. Lynn Woolsey (D-CA)—the Family Income to Respond to Significant Transitions Act, H.R. 2339—would provide funds for states that establish a system of partial or full paid leave for a minimum of six weeks to care for a newborn or newly adopted child, to recover from a serious health condition or to care for a seriously ill family member. No comparable bills were introduced in the Senate in the 111th or 112th Congress.

#### *Expand the Family and Medical Leave Act to cover all workers*

Congress should work to expand family and medical leave coverage within the Family and Medical Leave Act. Several bills previously introduced in Congress would expand the definition of family or what kinds of leaves are covered by the the law.

Rep. Maloney's Family and Medical Leave Inclusion Act, H.R. 2364, for example, would expand the definition of family so that an employee could take leave to care for his or her same-sex spouse (as determined under applicable state law), domestic partner, parent-in-law, adult child, sibling, grandchild, or grandparent who has a serious health condition. Former Rep. Lynn Woolsey (D-CA) reintroduced her Domestic Violence Leave Act, H.R. 3151, in the 112th Congress, which would allow workers to use FMLA leave to care for oneself or a family member

who is suffering the effects of domestic violence, sexual assault, or stalking. And Sen. Jon Tester's (D-MT) Parental Bereavement Act of 2011, S. 1358, in the 112th Congress would amend the Family and Medical Leave Act to include leave for parents after the death of a child.

Another set of bills broadens the coverage of the Family and Medical Leave Act to include more businesses or more types of workers:

- Rep. Maloney's Family and Medical Leave Enhancement Act, H.R. 1440, introduced in the 112th Congress, would extend FMLA coverage to workplaces with 25 employees to 50 employees and would allow workers 24 hours of leave per year to allow more parental involvement in their children's school or activities, as well as routine family medical needs.
- A similar bill, the Family and Medical Leave Expansion Act, was introduced on the Senate side by Sen. Dodd in previous Congresses (S. 282 in the 109th Congress and S. 304 in the 108th Congress), but no Senate version has been introduced since then.
- The Family Fairness Act, H.R. 389, in the 111th Congress, sponsored by Rep. Tammy Baldwin (D-WI), eliminates the minimum-hours requirements for the Family and Medical Leave Act so that part-time workers would become eligible for qualified leaves at covered establishments. There was no companion bill in the Senate.

With one-half of the workforce excluded from FMLA coverage and many more workers who cannot access leave to care for the family members closest to them, these bills should be introduced in the Senate and both chambers should work together to move forward on the expansion of the Family and Medical Leave Act.

Congress and the Obama administration recently showed their leadership on expanding the law by passing the Airline Flight Crew Technical Corrections Act, which amends the so-called hours-of-service requirement of the Family and Medical Leave Act specifically to include flight crews, whose hours are calculated in a unique manner and as a result were not covered by the original law. This bill was signed into law on December 21, 2009, by President Obama.

## Recommendations for concrete action: The executive branch

### *Encourage federal contractors to offer paid family leave*

Executive Order 11246 prohibits sex and race discrimination in the federal contractor workforce and requires federal contractors to put in place affirmative action programs to improve the recruitment and retention of minorities and women.<sup>107</sup> To date, the federal government has not advised federal contractors to consider the implications of the lack of family leave and workplace flexibility on its workers, particularly women.

The federal government could do much more to help federal contractors fight sex discrimination and reach their affirmative action goals for women. First, the Office of Federal Contract Compliance Programs could more rigorously investigate whether pregnancy and family caregiving discrimination is occurring when it conducts audits of federal contractors. Second, the office could provide technical assistance to federal contractors on meeting their affirmative action goals by encouraging federal contractors to examine their workplace policies and practices with regard to workplace flexibility and family leave. Finally, the federal government could reward potential contractors in competitively bid contracts by providing additional points to those employers who provide paid family leave to their employees.<sup>108</sup>

### *Work with Congress to pass the Federal Employee Paid Parental Leave Act*

A strong push by President Obama in support of the Federal Employee Paid Parental Leave Act, H.R. 616, would help ensure the federal government provides a minimum of four weeks of paid parental leave to its employees, which could be extended up to six weeks based on the Office of Personnel Management's recommendation. The act passed the House in 2009 with bipartisan support, and there is no reason why it should not be brought up for a vote again.

Public health research shows that six weeks of paid parental leave is not enough time for baby bonding with a new infant, but this bill is an important first step. Furthermore, federal employees will still be able to use their accrued paid vacation leave during their 12 weeks of job-protected leave afforded under the Family and Medical Leave Act for the purposes of baby bonding.

The federal government already has a solid set of policies on unpaid family and medical leave and earned sick leave. But the federal government could do more to raise awareness about these policies and to ensure that they are being uniformly enforced across agencies.<sup>109</sup>

The federal government is required to offer eligible employees leave under the Family and Medical Leave Act. The Family and Medical Leave Act requires 12 weeks of unpaid, job-protected leave to allow employees to attend to the employee's own serious health condition, recover from childbirth, care for a newborn or newly adopted child, or care for a seriously ill child, spouse, or parent. Federal employees are permitted to use up to 12 weeks of their accrued paid annual leave (including earned sick time) for FMLA purposes.

Some federal employees are also eligible for an additional 24 hours of job-protected, unpaid leave to participate in child care or school activities related to their child's educational advancement, or to participate in volunteer activities for a child who is not their own. This policy, however, is left to the discretion of individual agencies and supervisors.

The federal government, however, does not collect any comprehensive data on the use of family and medical leave policies. Collecting this data would help determine which employees are accessing the leave policies and whether agencies are equally and uniformly enforcing them. The president should direct all federal agencies to report to the Office of Personnel Management on whether and how their employees are using these policies, including a study on the percentage of employees who are able to use accrued paid leave during FMLA leaves. OPM could then use this information to encourage agencies to do more in enforcing these laws where there are low levels of take-up.

## Recommendations for concrete action: The states

### *Expand existing programs or create new programs for paid family leave*

California and New Jersey should be applauded for ensuring families in those states have paid time off for caregiving through their longstanding Short-Term and Temporary Disability Insurance programs. There are three other states that have these programs—New York, Rhode Island, and Hawaii—that also could expand them to provide paid family and medical leave. As noted above, New York is the only state actively considering legislation to do so. New York should act on this legislation and the others should begin the process of evaluating similar expansions.

The president included \$5 million in his FY 2013 budget, down from \$50 million in FY 2011, to help states set up new paid family and medical leave programs. Former Rep. Woolsey introduced the Family Income to Respond to Significant

Transitions, or FIRST Act, H.R. 2339, in the 111th Congress, which would have made funding available to allow states to start and sustain paid family leave programs. The bill would have provided grants to states to administer full or partial wage replacement for all conditions covered by the Family and Medical Leave Act. States could also contribute by extending this benefit to state employees. The bill has not been reintroduced.

#### *States with paid family leave programs should raise awareness*

California was the first state in the nation to pass a paid family leave law in 2002, building on its State Disability Insurance system, which already provided paid leave for disabilities related to pregnancy and childbirth. The law provides workers with six weeks of partial pay for workers to take leave to care for and bond with a newborn or newly adopted child or to provide care for a seriously ill family member.

Over the past eight years, the law allowed hundreds of thousands of Californians to take leave to bond with a newborn or care for a seriously ill family member.<sup>110</sup> But awareness of the program still remains extremely low, especially among low-income workers. A 2007 survey demonstrated that only 28 percent of Californians were aware of the California Paid Family Leave Program, compared to 69 percent who were aware of the longstanding State Disability Insurance Program. Only 14 percent of workers making less than \$25,000 were aware of the program, compared to 36 percent of workers making more than \$75,000.<sup>111</sup>

New Jersey, only the second state to enact and implement paid family leave, began implementing its new paid family leave law in 2009. The numbers of claims filed and approved was lower than anticipated for the first year of the program, and by mid-2012 only about 40 percent of New Jersey residents claimed to be aware of their state's family leave insurance system.<sup>112</sup> Women were more likely to know of the program than men, and the most vulnerable working populations—people of color, young adults, single adults, and those earning less than \$50,000 annually—were among the least likely to know about family leave insurance. Importantly, 16.8 percent of those who were aware of the program did not know that it could be taken to provide care for a seriously ill family member other than a new child.<sup>113</sup> Extensive outreach was not implemented in the first year of the program, but advocacy groups have urged the state's labor commissioner to raise awareness in the ensuing years. The legislation specifically allots administrative costs for outreach, conducting surveys and research.

California and New Jersey need to do more to raise the awareness of these programs among their citizens. Both states have the ability to do so by using funds in their disability trust funds to improve education and awareness about the program. A major public education campaign could be conducted without needing to dedicate general funds.

These public education campaigns could include efforts to reach new parents through their obstetricians, gynecologists and pediatricians and through new media, and it could reach the elderly (who also are in need of caregiving) through AARP and other senior groups. In addition, the campaign could be directed at low-income communities and workplaces to try to reach those employees who are least likely to be aware of the program, as well as non-English language media.

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## Earned sick time

A robust campaign in Washington, D.C., and in the states is fighting for the right for all workers to have a minimum level of earned sick time. Victories have been achieved at both the state and local level. Since our previous report, the state of Connecticut and the cities of Seattle and Philadelphia have passed earned sick time legislation, though Philadelphia Mayor Michael Nutter (D) vetoed the bill.<sup>114</sup> Earned sick time is a critical component of updating our basic labor standards. It allows workers to take short, unplanned leave when the worker or a family member is ill with an everyday illness.

The need for earned sick time is not an everyday occurrence, but when needed, it is urgently important for working families. Workers who are afraid of losing their jobs will have to choose the risk of staying home with a child, and more children will go to school or daycare ill or be left home alone. Or instead, workers will stay home when their children are seriously ill, choosing family over work but endangering the livelihood of the family. The public health and the economic well-being of our families should not be threatened simply because a worker or a child has the flu.

In early 2013 the United States experienced an especially bad outbreak of the flu.<sup>115</sup> In New York City, deaths from the flu reached epidemic levels, causing Gov. Andrew M. Cuomo (D) to declare a public health emergency.<sup>116</sup> Across the nation, thousands of workers were forced to choose between risking their livelihood, income, and employment, or risking infecting their co-workers, customers, patients, or students. This outbreak highlighted the need for earned sick time for

all workers, including those in low-income jobs and service occupations who disproportionately lack access.<sup>117</sup>

*The goal: Every worker should be able to take paid time off to recover from an illness*

There are times when a person is simply too ill to be at work, especially if they have a contagious disease, or when they need to stay home from work to care for an ill family member. For this time off to be effective at helping ill workers, they need to be able to use it without prior notice to their employer. Some have argued that workers who have paid vacation or other personal leave are really “covered” for sick time, but many workers cannot take this kind of leave without giving their employer advance notice, making it unusable when a child wakes up with the flu or other urgent care needs arise so this is not a viable policy strategy.<sup>118</sup>

Yet to date, there are only a handful of places in the United States where workers have the right to job-protected leave if they are sick: San Francisco as of 2007; Washington, D.C., as of 2008; and Connecticut and Seattle as of 2011. Voters in Milwaukee passed an earned sick time ballot initiative in 2008, but it is being held up by a court injunction. And the Philadelphia City Council passed earned sick time legislation in 2011 that was vetoed by the mayor, although an earned sick time provision was included and enacted in a later living wage bill that applies to city contractors.<sup>119</sup>

### Recommendations for concrete action: Congress

Congress should move forward with the Healthy Families Act, introduced as H.R. 1876 and S. 984 in the 112th Congress, which would allow workers to earn one hour of sick leave for every 30 hours worked, up to seven days of earned sick time per year. The law excludes workers in firms with 15 or fewer employees.<sup>120</sup>

The House bill is being spearheaded by Rep. Rosa DeLauro (D-CT), who has introduced the bill in every Congress since the 108th session.<sup>121</sup> The Senate bill was first introduced in the Senate by the late Sen. Edward Kennedy (D-MA) and was reintroduced in the 112th Congress by Sen. Tom Harkin (D-CA).<sup>122</sup>

## Recommendations for concrete action: The executive branch

*The federal government should lead the way by rewarding federal contractors that provide their employees with a minimum level of earned sick time*<sup>123</sup>

The federal government is already a model employer when it comes to its own employees. The federal government allows its employees to accrue earned sick leave at a rate of 13 days per year, which can be fully used for one's own personal illness, including pregnancy, childbirth and recovery, to care for a family member with a minor illness or injury, to attend to the death of a family member, or to accompany family members to routine medical appointments. And adoptive parents may use accrued sick leave for purposes related to the adoption of a child.

Like the rest of the private sector, federal contractors are much more likely to offer earned sick time to their higher-wage employees. The federal government could make a real impact if it rewarded federal contractors by providing additional points during the review of competitively bid contracts for offering a minimum level of earned sick time to its employees.<sup>124</sup>

## Recommendations for concrete action: The states

States and localities should follow the lead of San Francisco, Washington, D.C., Milwaukee, Connecticut, Seattle, and Philadelphia, who have all passed earned sick time legislation. Three states—California, Minnesota, and Oregon—have already passed laws requiring private-sector employers providing earned sick time to allow employees to use their earned sick leave to care for an ill family member.<sup>125</sup> But states should go further and require a minimum level of earned sick time to be offered to all employees. More than 15 states have pending legislation.<sup>126</sup>

# Improving basic family-friendly fairness in the workplace

Our country has a set of employment nondiscrimination laws at the federal, state and local levels that require workers to be treated fairly with regard to hiring, retention and promotion on the job. At the federal level, Title VII of the Civil Rights Act of 1964 makes it unlawful for employers to provide unequal treatment to employees on the basis of race, religion, color, national origin, or sex. In 1978, Title VII was amended by the Pregnancy Discrimination Act to make clear that sex discrimination includes discrimination on the basis of pregnancy, childbirth, or related medical conditions.

In addition, the Family and Medical Leave Act of 1993 makes it unlawful to fire a worker who needs to take unpaid leave to recover from one's own serious illness, disability, or medical condition (including childbirth), care for a newborn or newly adopted child, or care for a seriously ill family member, provided that the worker meets the eligibility requirements of the law. While these laws help millions of workers gain access to and keep good jobs, they fall short in fully covering all workers against discrimination based on pregnancy and family responsibilities.

First of all, large swaths of our workforce are not covered by our antidiscrimination and family and medical leave laws. The Family and Medical Leave Act alone excludes half of all workers in the United States either because they don't work for a covered employer (with 50 or more employees) or they haven't met the threshold workforce attachment requirements (one year working for the same employer at least 1,250 hours).<sup>127</sup> Title VII, including the Pregnancy Discrimination Act, excludes employers with fewer than 15 employees, which means 15 percent of the workforce is automatically excluded.<sup>128</sup>

What's more, our courts have weakened pregnancy discrimination protections offered over time, and this has a disparate impact on low-wage workers. Even for workers who are covered by the Pregnancy Discrimination Act, they may lack the protection they need to take time away to give birth and recover from it. A number of federal courts have interpreted the Pregnancy Discrimination Act to

mean 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.<sup>129</sup>

This gap in anti-discrimination protections affects the half of the workforce that is not covered by the Family and Medical Leave Act and most acutely 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 earnings quartile have no access to short-term paid disability leave. Two-thirds of these low-income workers have no access to earned sick time, and nearly half receive no paid vacation days.<sup>130</sup> With no access to leave, women who by necessity must be away from work to give birth may lose their jobs.

Furthermore, a pregnant woman is offered no protection under the Pregnancy Discrimination Act if she needs physical accommodations during her pregnancy. If she is standing on her feet or lifting heavy items as part of her job, for example, and her doctor has told her to avoid these activities, her employer is under no obligation to transfer her to work that accommodates these restrictions. Instead, the employer can legally fire the pregnant worker.<sup>131</sup> This failure to accommodate means that many workers suffering from pregnancy-related, temporary disabilities are without any protection in the workforce.

Nor are workers with family responsibilities explicitly covered under federal law. In recent years, there has been a movement, led by Joan C. Williams at the Center for WorkLife Law, to fully utilize existing antidiscrimination laws to protect workers against discrimination on the basis of family responsibilities and to expand these laws to explicitly cover family responsibilities discrimination. This work led to critical policy guidance issued by the Equal Employment Opportunity Commission in 2007, which provides guidance to employers on using laws, including Title VII, to combat discrimination against workers with caregiving responsibilities.<sup>132</sup>

Using federal law and with the aid of this guidance from the Equal Employment Opportunity Commission, workers have had some success fighting discrimination on the basis of gender stereotypes—that mothers should do all the child rearing, and men should bring home all the bacon—but all workers would be more fully protected with an explicit prohibition against caregiving discrimination.

Federal law currently does not explicitly prohibit discrimination on the basis of family responsibilities, but the Center for WorkLife Law released a report in 2010

that documents a growing number of state and local laws explicitly prohibiting family responsibilities discrimination.<sup>133</sup> Many of these laws focus exclusively on discrimination aimed at parents of dependent children, but a handful go further and allow protection for workers caring for other dependents such as a disabled adult child or a dependent elderly relative.<sup>134</sup> Still most workers in the United States are without protection against family discrimination.

All of these types of family responsibilities discrimination are on the increase. A 2006 report documented a 400 percent increase in cases involving family responsibilities discrimination.<sup>135</sup> Pregnancy discrimination in the United States has long been on the rise, particularly among women of color, which has been carefully documented by the National Partnership for Women and Families on the 30th anniversary of the Pregnancy Discrimination Act.<sup>136</sup> The filing of pregnancy discrimination complaints has fluctuated over the years, but there appears to be a pattern of increased claims of pregnancy discrimination during times of recession.<sup>137</sup>

This makes sense because during recessions many more people are laid off—this was especially the case during the Great Recession—leading to more pregnant women who were fired under circumstances that could lead to discrimination claim filings. Because statistics from the Equal Employment Opportunity Commission show that cases found to have merit remain at approximately 50 percent whether the economy is shrinking or growing and we know more claims are made during times of downturn, there are greater actual numbers of women with real claims of pregnancy discrimination in times of recession than at other times.

The Center for WorkLife Law maintains a database of published cases and settlements involving discrimination against pregnant women and caregivers. While there is no national data kept on complaints of family responsibilities discrimination, there is anecdotal evidence from the Center for WorkLife Law that suggests that such discrimination also increased during the recent recession.<sup>138</sup> The Center for WorkLife Law, for example, has seen a rise in the phone calls to their hotline by workers claiming pregnancy and caregiving discrimination.<sup>139</sup>

The kinds of discrimination cases cited by the Center for WorkLife Law are apparently being reported more frequently to the Equal Employment Opportunity Commission. The commission's backlog of discrimination cases has increased dramatically, with a 35 percent jump from the end of 2007 to the end of 2008.<sup>140</sup> Fortunately, Congress intervened in 2010 to give the commission additional funding to deal with this backlog, although the budget has decreased in subsequent years.<sup>141</sup>

The Equal Employment Opportunity Commission has been persistently underfunded and unable to fully enforce the existing laws protecting workers against pregnancy and caregiver discrimination. Reports produced by the U.S. Commission on Civil Rights have consistently found that low levels of funding and reductions in staff are undermining our civil rights laws.<sup>142</sup> Even before fighting for new antidiscrimination and anti-retaliation laws, Congress needs to continue to increase funding so the EEOC can enforce these laws.

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## Antidiscrimination laws should provide for more robust family-friendly workplace policies

There is a critical role for antidiscrimination laws that underpin the implementation of the work-family policies we recommend. If employers are allowed to discriminate against workers with caregiving responsibilities, then the mere act of taking advantage of paid family and medical leave or asking for workplace flexibility could lead to discrimination against those workers. Currently, our antidiscrimination framework only tangentially recognizes “caregiver discrimination” as a distinct issue. That must change.

Here we have two public policy goals:

*The goals: Enforce current antidiscrimination and anti-retaliation provisions and broaden antidiscrimination laws to fully protect workers against family responsibilities and pregnancy discrimination*

Any new set of family-friendly policies need to provide strong antidiscrimination and anti-retaliation provisions, and existing antidiscrimination laws need to be improved as well. The focus must be to improve benefits for all workers to ensure greater workplace flexibility, paid family and medical leave, and greater support for child and elder caregiving through new legislation, as detailed in the previous sections of this report. But existing and new benefits must be backed up with prohibitions against discrimination and retaliation.

We believe there are a number of steps that can be taken now to improve on and increase the enforcement of our existing antidiscrimination and antiretaliation laws. We argue that the recommendations we detail below could work to protect workers now from family discrimination while Congress works to ensure that as new benefits and polices are developed it develops robust enforcement mechanisms and provisions against retaliation for accessing these new benefits.

## Recommendations for concrete action: Congress

### *Improve enforcement of our pregnancy and caregiving discrimination laws*

The Judiciary Committees in both the House and the Senate should hold hearings to better understand the lack of protection faced by pregnant workers and workers with care-giving responsibilities under our existing civil rights laws. These hearings should focus on how best to improve enforcement of existing laws and should include recommendations for amending the existing laws to more fully protect workers.

### *Appropriate more funding for antidiscrimination enforcement*

Congress passed a fiscal year 2010 budget that included a \$23 million increase in enforcement funds for the Equal Employment Opportunity Commission to address the 70,000 backlogged discrimination cases.<sup>143</sup> This increase was necessary but not sufficient—and since then the budget has been decreased each year. From 2000 to 2010 the commission faced a 25 percent reduction in staffing and in the last year alone, the agency faced a 20 percent increase in discrimination cases.

If the Equal Employment Opportunity Commission is going to effectively tackle pregnancy and caregiving discrimination, Congress must give it the sufficient appropriations to hire enforcement staff and focus on the necessary enforcement of existing laws.

## Recommendations for concrete action: The executive branch

### *Conduct a coordinated, nationwide enforcement campaign*

With greater numbers of women in the workforce and pregnancy and caregiving discrimination on the rise, the Equal Employment Opportunity Commission and the Office of Federal Contract Compliance Programs at the Department of Labor should work together on a coordinated public education and enforcement campaign to ensure pregnancy discrimination and family responsibilities discrimination are fully enforced. Specifically, Title VII of the Civil Rights Act prohibits sex discrimination in the workplace, which includes a prohibition against employment actions taken based on stereotypes, such as denying family leave to a man who is providing care because of an assumption that men should leave this job to women.

The National Partnership for Women and Families recommended that the Equal Employment Opportunity Commission conduct such a campaign after

investigating the rise in pregnancy discrimination cases, particularly among women of color.<sup>144</sup>

The commission and the Office of Federal Contract Compliance Programs already have the authority to work together to have a larger impact and to ensure that both pregnancy and caregiver discrimination are addressed. Together, they should develop a coordinated campaign to raise awareness about these types of discrimination and to ensure that workers understand the full range of tools available to them to combat such discrimination.

#### *Require federal contractors to prevent pregnancy and caregiver discrimination*

As Ann O’Leary noted in her 2009 report, “Making Government Work for Families,” the federal government can do much more to ensure that the federal contracting workforce combats pregnancy and caregiver discrimination.<sup>145</sup> Executive Order 11246 prohibits sex and race discrimination in the federal contractor workforce, but it has not been rigorously enforced to protect federal contract employees from sex discrimination on the basis of pregnancy or caregiving responsibilities. Part of the reason for this lack of enforcement is that the Office of Federal Contract Compliance Programs has largely focused on systemic discrimination cases, which are harder to find in the case of pregnancy and caregiving discrimination.

The current head of this office, Patricia Shiu, has previously indicated a strong willingness to revamp operations to fully meet its mission of prohibiting discrimination broadly and even in individual cases, though this has not yet taken place. This revamp should include greater education of employers and enforcement officers on the issues of pregnancy and caregiving discrimination—both through the coordinated campaign recommended above and through more routine updates such as updating compliance manuals and training its enforcement officers on these issues, including enforcing the EEOC guidance on the unlawful treatment of workers with caregiving responsibilities and the strong Office of Federal Compliance Programs regulations prohibiting pregnancy discrimination.<sup>146</sup>

#### *Assess effectiveness of executive order prohibiting parental discrimination*

In 1999 then-President Bill Clinton prohibited parental discrimination in the federal workforce, but there is little indication that this executive order was enforced during the Bush administration. The Obama administration could assess the effectiveness of this executive order, determine whether it needs to be more robustly

enforced, and consider whether the scope should be broadened to prohibit family responsibilities discrimination.

The Office of Personnel Management should make this part of their systemwide review of how to improve the family-friendly policies already on the books. As part of this effort, Office of Personnel Management should focus on whether and how this executive order is working and whether federal employees need additional tools to combat parental or family caregiving discrimination in the federal workforce.

## Recommendations for concrete action: The states

### *Strengthen pregnancy discrimination laws*

Only 10 states provide better protection than the federal Pregnancy Discrimination Act, either by state law or regulation, by prohibiting termination of employment based on pregnancy where an employer offers no leave or inadequate leave.<sup>147</sup> Those states are California, Connecticut, Iowa, Louisiana, Massachusetts, Montana, New Hampshire, Hawaii, Ohio, and Washington.<sup>148</sup>

While four states—Vermont, Maine, Minnesota, and Oregon—and the District of Columbia provide greater protection for all workers by providing state family and medical leave protection that covers more of the workforce,<sup>149</sup> there are still many women in many other states who have no access to job-protected family and medical leave and work for employers who provide them with no leave. All states should evaluate the scope of the lack of coverage in their state and either extend state family and medical leave laws to cover more workers or, at a minimum, ensure that pregnant women will not be fired for taking a leave to give birth and recover.

### *Adopt family-friendly antidiscrimination statutes*

Only Alaska and the District of Columbia prohibit discrimination on the basis of parenthood or family responsibilities.<sup>150</sup> More states should follow their lead. Indeed, there are 63 local jurisdictions in 22 states other than Alaska and the District of Columbia that prohibit this type of discrimination. Among them are Cook County, Illinois; Atlanta; Tampa; and Milwaukee.<sup>151</sup> These local laws should serve as a lesson for states to consider what is needed and what works. At the federal level, an executive order protects federal government employees from parental discrimination.<sup>152</sup>

# Direct support for caregiving

Ensuring parents and other family members have the ability to take time away from work or schedule their work around their family obligations is critical for most Americans in the workforce. Workplace policies alone, however, are inadequate to ensure that our children, our elders, and our ill or disabled family members receive the care they need during the hours in which family members, who would otherwise provide care, are at work helping to sustain the family economically.

Workplace policies must be constructed in a way that meets the diverse caring needs of families. And these policies also must be coupled with the development of policies that allow paid caregivers to substitute for the unpaid family care when family members are at work. Further, these policies must be construed to ensure that paid caregivers receive livable wages and benefits are covered by the basic labor standards other workers receive, such as minimum wage and overtime provisions, along with the policies outlined here. Caregivers are disproportionately women and women of color and ensuring basic labor standards for these jobs is key to ensuring basic fairness in our workplaces.<sup>153</sup>

Today, there are more than 15 million children under the age of 6 in the United States who need care while their parents are at work.<sup>154</sup> In addition, this year approximately 9 million Americans over the age of 65 need long-term care, a number that is projected to increase to 12 million by 2020.<sup>155</sup> Our government has left the responsibility of care for these millions of children and elders—both in terms of financing and the time away from work needed to care—largely up to families. That also needs to change. Here's our vision.

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## Increase government support for child care and elder care

At one time, our country and our political leaders envisioned a national, universal child care system, which would have created federally financed child care centers, and provided child care for free to parents below a certain income level and tiered

subsidies to aid the middle class in affording child care.<sup>156</sup> This universal child care bill passed the Congress in 1971, but the vision ended when President Richard Nixon vetoed it that same year.

Since then, our government has expanded and added to a mix of programs aimed at providing child care assistance to low-income families, including Head Start and the Child Care Development Block Grant program, alongside child care tax breaks aimed at middle-class families, including the Child and Dependent Care Tax Credit. These programs provide the federal backdrop and support for states and communities, which add their own funding to build on and expand child care and preschool in the states.

Still, these programs only begin to meet the financial needs of assistance by low-income and middle-class families for child care. In fact, only one in seven children eligible for direct child care assistance receives it.<sup>157</sup> And in the vast majority of states, the annual price for child care for an infant in a child care center was higher than a year's tuition at a four-year public college.<sup>158</sup>

Today, there is a strong coalition of advocates for working families and children, including the National Women's Law Center, which is leading a coalition of children and family advocates to push for affordable, high-quality child care.<sup>159</sup> The coalition's agenda includes a goal of doubling the number of families receiving child care assistance nationwide. Achievement of this goal is the first step in recommitting to the goal of universal, nationwide support for child care.

The coalition already can boast about some success, but it has been fleeting and may be undone by upcoming budget negotiations. President Obama included nearly \$5 billion in additional Head Start and child care funding in the \$787 billion economic stimulus and recovery package passed by Congress in March 2009, but much of these federal funds provided a backstop to states that have cut their funds amid dire state budget deficits. Thus, the number of families receiving child care support has not increased dramatically. In fact, initial indications are that there was a decline in the number of families receiving support.<sup>160</sup>

President Obama's FY 2011 budget proposal offered more hope and commitment to families with child care responsibilities by making the largest one-year investment in the Child Care Development Block Grant in the past 20 years—an increase of \$1.6 billion—and expanding the child and dependent care tax credit to provide greater relief to middle-class families. The president's FY 2013 budget

includes an additional \$300 million for the Child Care Development Block Grant, and he has proposed expanding eligibility for the child and dependent care tax credit while increasing the percentage of expenses that can be claimed for families with an adjusted gross annual income between \$15,000 and \$75,000. In the upcoming budget negotiations, it should remain a key goal to ensure that families can afford quality care, especially since this supports our economy by making long-term investments in our nation's human capital, as well as supporting labor force attachment.

In addition, bills have been introduced by Sen. Barbara Boxer (D-CA) and former Sens. Blanche Lincoln (D-AR) and Olympia Snowe (R-ME) as well as Rep. Dutch Ruppersberger (D-MD) that would expand the Child and Dependent Care Tax Credit to make it refundable for our lowest-income families.<sup>161</sup>

The federal government needs to make a continued investment in improving access to child care, which will lead to greater workplace stability for parents and, with a focus on quality, lead to better jobs for child care workers, the vast majority of whom are women. The Center for American Progress also wants government to focus on the increasing problem of providing care to aging relatives. So here is our policy goal:

*The goal: Support paid and unpaid caregivers through increased government funding, job-protected paid family leave, and workplace flexibility*

How our society will provide care to an ever-growing population of elders is one that has received limited policy attention. We believe the problem will continue to grow in magnitude in the years ahead and thus offer some policy solutions for elder care as well in this section of the report.

## Supporting caregiving for our aging relatives

The need for family or home-based care for elders is more acute today than ever before. Americans are living longer and longer. By the year 2050 one in five Americans will be over the age of 65. More Americans desire the ability to age in place—to stay in their homes and communities and receive support to maintain their independence—yet families and communities are not set up to provide this support.<sup>162</sup> Even worse, over the past 10 years federal and state governments worked to rein in the high costs of institutionalized, nursing home care, shifting expenses to paid home-based care but also onto the unpaid support provided by families.<sup>163</sup>

The vast majority of unpaid caregivers and the paid caregiving workforce are women. In fact, two-thirds of unpaid caregivers to the elderly are women, mostly wives and adult daughters.<sup>164</sup> And among the paid care providers—consisting of nursing aides, orderlies, and home health aides—approximately 90 percent are women, half of whom are members of racial and ethnic minority groups.<sup>165</sup>

The economic rationale for providing greater support for both unpaid and paid caregivers is clear. For unpaid workers, the support is critical to keep them attached to the workforce in the short and long run so that they can contribute over their lives to their family's income and contribute to their own retirement savings. For paid workers, the workforce is one of the few growing sectors in our economy, and it is projected to be among the fastest growing in the years to come.<sup>166</sup> These workers will contribute to their own family incomes and be the engine behind our larger economy if we keep them working at a livable wage.

### Unpaid family caregiving for our elderly and disabled relatives

Today there are 44 million family caregivers in the United States providing unpaid care to their aging relatives and to their relatives with disabilities.<sup>167</sup> Yet family caregivers have few tools provided by the government to aid them in taking time away from work or affording the expenses associated with caregiving.

For time away from work, family caregivers must rely on the Family and Medical Leave Act, which provides 12 weeks of unpaid, job-protected leave to care for seriously ill family members. But, as we've noted previously, the law covers only half the workforce. Even for those the law does cover, the definition of serious illness often excludes the day-to-day care needs of our aging relatives, and the recent regulatory restrictions on the use of intermittent leave may make the law even more difficult to access.

Families also receive little to no financial assistance when it comes to providing unpaid care to aging or disabled relatives. A full 80 percent of individuals needing long-term care receive their care solely from families and friends, which means families providing this care incur tremendous expenses—both in lost income and benefits—as well as expenses paid for caregiving.<sup>168</sup> In fact, the AARP estimates that families provide approximately \$375 billion in unpaid care each year to care for their elders.<sup>169</sup>

Unless a family member needing care is a dependent, the federal government provides no direct financial support for families providing unpaid care.<sup>170</sup> The federal government does provide some minimal support to family caregivers in need of information, assistance, caregiver training and respite care (temporary relief provided to family caregivers whereby the caregiver is provided with a break or respite from caring for the ill family member) through two programs: the National Family Caregiver Support Program and the Lifespan Respite Care Program. But the reach of these programs is limited due to the very low federal investment in these programs (\$154 million for the National Family Caregiver programs and \$2.5 million in the Lifespan Respite Care program for each of the last two fiscal years).<sup>171</sup> A step forward is that President Obama announced an increase of more than \$100 million to help people care for their elderly parents and get support for themselves as a part of his agenda for the middle class.

### [Paid care for elders and relatives with disabilities](#)

The federal government provides limited, but important, financial support for home and community-based paid caregiving. Under Medicare, the health insurance provided to Americans aged 65 and older regardless of income, support for long-term home and community-based care needs is extremely limited. Home health services are provided only for a limited period of time for individuals who need skilled nursing care or rehabilitation care after being discharged from a hospital or nursing home.<sup>172</sup>

For most of the middle class, there is no federal financial support for paid caregiving services to aid the elderly with activities of daily living. Instead, middle-class elders whose families cannot provide unpaid care must rely on their own savings to pay for such services, or they must have purchased long-term care insurance to aid in the payment of such services. Unfortunately, only approximately 10 percent of individuals 55 and older have purchased long-term care insurance.<sup>173</sup>

The largest form of home and community based support for individuals with long-term care needs is provided under Medicaid, the health insurance provided to very low-income and disabled Americans and jointly funded by state and federal governments. Under Medicaid, states may receive funds under the Home and Community Based Services waiver program to use Medicaid dollars to pay for community-based long-term care services for individuals who would otherwise be cared for in an institutional setting.<sup>174</sup>

But these programs are threatened by state budget cuts because states contribute funds to the program that are then matched by federal dollars. In California, for example, the state government in 2009 attempted to slash its in-home support services program, only 60 percent of which is funded by federal Medicaid funds, by reducing the maximum reimbursable wage for paid caregivers by \$2 from \$12.10 an hour to \$10.10 an hour, cutting services to 36,000 people and reducing services to another 97,000.<sup>175</sup>

These cuts in wages for caregivers are significant for the low-wage workers, mostly women and workers of color, who provide these much-needed services. This program allows the disabled and the elderly to receive care in their home by paid caregivers, thus providing relief both to those in need and to family member who may otherwise need to take time away from work to care for their family members.

The Program of All-Inclusive Care for the Elderly also provides long-term health services to people over the age of 55 and those who are both eligible to receive nursing home care and are also able to safely remain in the community rather than an institutional setting.<sup>176</sup> As of 2012, however, there were only 88 Program of All-Inclusive Care programs operating in 29 states.<sup>177</sup> Enrollees who are not eligible for Medicaid face out-of-pocket costs that prevent many otherwise-qualified middle-class individuals from enrolling because they cannot afford to pay the Medicaid contribution themselves.<sup>178</sup>

The Program of All-Inclusive Care, rather than offer reimbursement for services rendered, pays a fixed rate per enrollee, which covers all services. In addition to the 21 states that do not currently have programs because the majority of funding comes from Medicaid, some state governments have placed caps on enrollment as a way to manage budgetary concerns.<sup>179</sup>

## Recommendations for concrete action: Congress

### *Support family caregivers*

This report includes a number of recommendations that would aid workers who are providing care to their aging and infirm relatives, including the creation of a national paid family leave program, the provision of a caregiving credit under Social Security, and the expansion of the Family and Medical Leave Act to cover all workers. In addition, Congress should expand its investment in the National

Family Caregiver Program and the Lifespan Respite Care Program as proposed in President Obama's fiscal year 2011 budget.

Congress should also consider expanding the Child and Dependent Tax Credit, or creating an independent caregiving credit, to allow workers to receive credits for caregiving expenses even where the relative does not live with and is not fully financially dependent upon the taxpayer if the taxpayer is expending resources on the care of a relative. In the 112th Congress Sen. Amy Klobuchar (D-MN) and Sen. Barbara Mikulski (D-MD) put forward such a proposal in their bill Americans Giving Care to Elders Act, S. 3226, which would provide a tax credit of up to \$6,000 for elder care expenses related to the care of their parents.

#### *Increase access and affordability of long-term care insurance*

As part of the Patient Protection and Affordable Care Act of 2010, Congress passed the Community Living Assistance Services and Supports Act, or CLASS Act. This section of the Affordable Care Act would have provided a government alternative to private long-term care insurance plans, allowing more elderly Americans to receive financial assistance for long-term care. The Obama administration announced, however, that it would abandon its proposed insurance program, citing financing concerns. Since the CLASS program was strictly voluntary, and younger healthy people were less likely to sign up, premiums would have been too high to make the program sustainable.<sup>180</sup>

In theory the CLASS Act would have gone a long way toward providing Americans with necessary long-term insurance coverage, but in reality it was poorly planned and thus unsustainable. But the fact that this program was not a viable option does not mean that there are no potential solutions to be had. The same legislation that repealed the CLASS Act calls for the creation of a bipartisan National Commission on Long-Term Care, a concept championed by Sen. Jay Rockefeller (D-WV). This commission will be tasked with developing a plan to meet the needs of our aging population that is mindful of costs while still keeping quality of care and the long-term care needs of our nation's seniors at the forefront of policy development.

#### *Provide greater financial support to states to provide in-home support services*

Congress should reintroduce legislation that Sen. Maria Cantwell (D-WA) introduced in the 111th Congress to increase federal financing of home-based care services. Her Home and Community Balanced Incentives Act, S. 1256, would have increased the Federal Medical Assistance Percentages for home and commu-

nity-based services, providing greater incentives for states to offer such programs and providing greater protection against state cuts to such programs, such as California's In-Home Support Services program.

This program, like many other state programs, allows the low-income disabled and elderly to stay in their homes and receive care from a paid caregiver, which relieves family members from having to provide unpaid care and forgo paid opportunities in the labor market.

## Recommendations for concrete action: The executive branch

### *Commission a major study on our aging population and caregiving needs*

As the Obama administration moves forward with the development of the National Commission on Long-Term Care, it should involve in its planning a major study on our nation's elders and their long-term care needs. The National Family Caregivers alliance, a community-based nonprofit organization working to address the needs of families and friends providing long-term care at home, has recommended the development of a study and policy blueprint on family caregiving in the United States. There has never been a nationwide government study of the provision of unpaid, family care in the United States. This study should consider the impact of this care on the economy and on the health and well-being of those providing care and those receiving the care.

A study conducted on behalf of the National Commission on Long-Term Care should not be limited to family caregivers. Instead, it should be a comprehensive assessment of how at-home care is currently provided, the supports needed for both unpaid and paid caregivers, and policy recommendations for improving national, state, and local supports for caregivers.

# Improving information on family-friendly workplace policies

Work-family conflict is widespread and threatens our nation's economic competitiveness. Yet, even though Americans of all incomes struggle with these issues every day, the challenges that employers and families face are little understood by policymakers.

Therefore, here is our goal:

*The goal: Improve our data infrastructure to encompass the issues around work-family conflict and its effects on the economy*

Here, we provide a starting place for understanding the range of issues that the federal government should focus on in data collection and analysis. Our recommendations are four-fold:

- Undertake a review of our data infrastructure to evaluate how to better include a focus on work-family issues
- Update our key federal labor market and household surveys to provide better data on work-family issues
- Maintain funding for currently existing surveys that focus on work-family issues
- Conduct new surveys to address specific work-family issues

Here's how the federal government could begin all four tasks.

Recommendations for concrete action: The executive branch

*Evaluate our nation's data infrastructure to ensure inclusion of work-life issues*

The Obama administration should undertake a full review, spanning involved agencies including the Department of Labor's Bureau of Labor Statistics and the

Commerce Department's Bureau of Economic Analysis, and the U.S. Census Bureau to ensure that our data systems reflect current realities. In particular, the Bureau of Labor Statistics should establish a women's advisory committee to study and monitor the research and surveys to ensure that they include work-family issues.

*Improve our regularly conducted surveys to provide data on work-family issues*

Many of the data series that we rely on for understanding our economy our labor markets have not been updated to include issues surrounding work-family conflict. The current survey methods and survey questions often do not take into account the transformation in family-work relationships or the changes in policy that have followed this transformation.

Our key policy recommendations in this arena are:

- **Encourage the addition of questions on earned sick days and paid leave into more Centers for Disease Control surveys.** The administration should include funding in its fiscal year 2014 Health Resources and Services Administration budget to insert additional questions to the National Study of Children with Special Health Care Needs that would include access to and coverage of earned sick days and paid leave for caregivers. Funding should also be included in the fiscal year 2014 Centers for Disease Control budget to insert additional questions that include access to and coverage of earned sick days and paid leave for caregivers in their Behavioral Risk Factor Surveillance System—a state-based system of health surveys that collects information on health risk behaviors, preventive health practices, and health care access primarily related to chronic disease and injury. This funding would also cover the cost of including questions on adult caregiver access to paid leave in the Youth Risk Behavior Survey.
- **Include in the ongoing analysis of Department of Labor data from the National Compensation Survey, the Family and Medical Leave Act survey, and other sources the percentage of firms that provide wage replacement to all employees versus only to some employees.** Currently the Bureau of Labor Statistics reports the percentage of full-time and part-time workers that receive access to leave benefits but does not report the percentage of firms that provide access to benefits to all—versus only some of—their workers.
- **To clarify the inextricable link between health outcomes and access to leave, convene a working group to identify how various surveys, as well as health and labor research grant proposals, can be crafted to make sure that this link is**

**clearly articulated and evaluated.** The earned sick leave questions asked in the National Health Interview Survey and the Medical Expenditure Panel Survey should be expanded to determine whether respondents have access to earned sick leave that they can use to care for a child or another family member and determine whether respondents have lost a job, been threatened with job loss, or faced discipline or punishment on the job for taking sick time to care for themselves or a family member in their current job and in the job they held the longest.

- **Update the Federal Employee Viewpoint Survey to examine workplace flexibility in more detail.** The survey should: augment its efforts to collect and analyze data on federal workers' access to, use of, and satisfaction with the full range of flexible work arrangements at all pay grades and seniority levels among full-time, part-time, and hourly workers; and collect and analyze data on management perspectives on flexible work arrangements. The survey should measure employee input into scheduling, the availability of part-time work, alternative start and end times, and job sharing, as well as employee concerns about using flexible work arrangements. Part-time and hourly workers should be included in the survey's sampling frame. Finally, managers should be asked about their views on workplace flexibility and the extent to which they see workplace flexibility as an aid to achieving management goals such as improving employee recruitment, retention, and productivity.
- **Increase demographic data collection to include detailed race/ethnicity and gender questions.** Where logical in the National Compensation Survey, American Time Use Survey, and future Federal Contracting Surveys, include questions about affiliations and unions.
- **Make leave and flexibility questions in the American Time Use Survey a permanent component of the survey.** We applaud the administration for including questions on paid leave and workplace flexibility in a 2011 module of the American Time Use Survey. Those data, released in 2012, provided an important snapshot of how families cope with work-family issues and how caregiving is allocated among family members. We ask that the administration make the questions on this module a permanent component of the survey so that policymakers, experts, and the private sector have access to longitudinal questions on these issues.
- **Improve information on earned sick days that the Bureau of Labor Statistics collects from employers in the National Compensation Survey.** The National

Compensation Survey provides annual data on employer-provided benefits, including earned sick days, paid family leave, and short-term disability insurance. That data, however, is not collected with respect to the race and gender of employees. It is thus impossible to know whether access to earned sick days or other workplace flexibility policies are different based on the employee's race or gender. Collecting and releasing that data would help experts to understand with more nuance the disparities in workers' access to leave.

- **Direct the Office of Federal Contract Compliance Programs at the Department of Labor to develop and field a survey to analyze the family-friendly benefits offered by federal contractors.** Our country invests billions of dollars each year in federal contracting, yet we know very little about the type of work environment that federal contractors offer their employees. A comprehensive study of work-family policies of federal contractors would aid in enforcing our existing federal contractor requirements and would provide a snapshot of the private-sector workforce.

## Conclusion

One of the most profound changes of the past half-century is how we work and live. Girls and boys today have very different expectations of what their lives will be like—girls no longer assume they’ll be a stay-at-home mother for most of their adult life, and boys no longer assume they’ll be the only breadwinner. Even though this cultural transformation is evident everywhere in our society, many of the private sector and government institutions around us have not kept pace.

The good news is the public is aware of this gap and wants to see policymakers move forward. The poll conducted as a part of The Shriver Report found that an overwhelming majority of both men and women agree—“businesses that fail to adapt to the needs of modern families risk losing good workers.”<sup>181</sup> Men and women understand that we are not going back to the fictional days of Ozzie and Harriet—and most agree that women working outside the home is good for society and the economy.<sup>182</sup>

But there is a lingering concern about how we are caring for families. With inflexible jobs, a lack of paid leave, and the potential for discrimination on the basis of pregnancy or family responsibilities, those with care responsibilities (which is now the norm) are stuck in a terrible dilemma between their economic security and their family’s well-being. This is not the way it should be.

The United States, even after the Great Recession, remains one of the wealthiest nations in the world. We simply cannot afford to squander the opportunity before us today to rework our labor laws and social insurance programs to ensure the skills and talents of a new generation of workers improves our nation’s economic competitiveness and common well-being.

Adapting government policies to the realities facing today’s workers and their families is the next big policy agenda of the 21st century. Moving our businesses and government institutions toward laws and programs that match our lived reality requires rethinking what we mean by basic labor standards, updating and mod-

ernizing our social insurance system, defining discrimination in ways that reflects what happens in today's workplaces, and ensuring that when caregivers are at work, they know that their loved ones are being cared for. In doing so, we will be able to make use of the talents of all our workers, while ensuring that we continue to uphold our core values about the importance of family.

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**Heather Boushey** is Senior Economist at the Center for American Progress where her research focuses on U.S. employment, social policy, and family economic well-being. She is also currently a visiting fellow at the Institute for Public Policy Research in London. She co-edited *The Shriver Report: A Woman's Nation Changes Everything* (Simon & Schuster ebook, 2009) and was a lead author of "Bridging the Gaps," a 10-state study about how low- and moderate-income working families are left out of work support programs. Her research has been published in academic journals and has been covered widely in the media, including regular appearances on "PBS NewsHour" and in *The New York Times*, where she was called one of the "most vibrant voices in the field." She also spearheaded a successful campaign to save the Census Bureau's Survey of Income and Program Participation from devastating budget cuts.

Boushey received her Ph.D. in economics from the New School for Social Research and her B.A. from Hampshire College. She has held an economist position with the Joint Economic Committee of the U.S. Congress, the Center for Economic and Policy Research, and the Economic Policy Institute, where she was a co-author of their flagship publication, *The State of Working America 2002/3*. She grew up in a union family in Mukilteo, Washington, and now lives with her husband, Todd Tucker, in Washington, D.C.

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## Acknowledgements

The authors wish to thank the following people for their helpful comments on the 2010 version of this paper: Ellen Bravo, Angela Clements, Katie Corrigan, Mary Beth Maxwell, Sharyn Tejani, Joan C. Williams, and especially our colleagues at the Center for American Progress, Jessica Arons,

Vanessa Cardenas, Alexandra Cawthorne, Michael Ettlinger, Jeff Healy, Joy Moses, John Podesta, and Sarah Rosen Wartell.

Lauren Smith provided fabulous research assistance and we are indebted to Ed Paisley for his fine editing of the original report. John Schmitt provided helpful commentary on the ideas in the 2010 version, and Isha Vij provided valuable data support.

Thank you to everyone who provided feedback and support on this most recent update of the report, including Maura Calsyn and Topher Spiro at the Center for American Progress. Thanks to Jane Farrell for additional research assistance, Carl Chancellor and David Hudson for editing the report, and Alissa Scheller for a lovely layout.

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