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Employment Leave: Foundation for Family Policy

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Massachusetts Great and General Court

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Mary Jane Gibson

Women and men in the work force face difficult dilemmas during family crises. Can one be a responsible family member and a responsible employee when an elderly parent is ill, a spouse is disabled, a baby is born or adopted, a child is sick? Employment leave with insurance for wage replacement is a cornerstone of family policy proposed in a workable format in H. 2191 now before the Massachusetts legislature. It can be a model for other states and, someday, the nation.

The only thing constant is change.

— Old Chinese proverb

The twentieth century has brought revolutionary changes in the hopes and lives of (some) women.

A friend, a lively, still-active, eighty-year-old Boston woman was in the gallery the day the United States Senate passed the voting rights bill for women. Within her lifetime she has gained the right to vote, get credit, serve on juries, share property with her spouse, and be protected by law against violence in her own home. As a Massachusetts citizen, she is protected by a state constitution with an Equal Rights Amendment. Early in this century her likelihood of being in the work force was one in five; her counterpart today has a likelihood closer to four in five. Change in rights and opportunities for women has come quickly as social change is measured. Women's last frontier is economic equality. A woman still earns, on average, a salary two thirds of what, on average, a man earns.

The implications for American society of the numbers of women in the work force and the effects of the combined demands of women's continued responsibility for home, family, and work are the challenges of the day for those who care about the advancement of women.¹

How can women break out of the low-paying jobs in which they continue to cluster? How can women advance in the workplace to levels of responsibility commensurate with

Mary Jane Gibson, a state representative in the Massachusetts Great and General Court, is its first female majority whip.

their aspirations and abilities, achieve equality of access to economic power, and at the same time meet the demands of family? How can women and men grow to their potential professionally without neglecting the personal growth that attends full, responsible participation as family members? How can the workplace be shaped to accommodate the numbers of women being added at a dramatically rapid rate? According to Massachusetts Secretary of Labor Paul Eustace, in testimony before the Committee on Commerce and Labor, three out of five new workers entering the labor force since 1983 were women.

These questions spurred the legislative effort that this article describes.

Prohibition of child labor was crucial for the 1890s; economic protection of families is crucial for the 1980s.

— Women's Economic Justice Center, Leadership Brief, March 1989.

The American family has changed over the past twenty years at a pace that leaves institutions reeling. There has been revolutionary change in the number of two-earner families and in the diversity of roles for women. We have seen an escalation of the divorce rate, which has leveled off at nearly one out of two, and of the number of single-parent heads of households.² The real dollar value of salaries has diminished to such an extent that some observers note that today's young couples need two incomes to live as well as their parents did on one.

Until recently most women could expect to spend a good part of their adult lives as caretakers, first of their own children when they were young or ill. In addition, they were responsible for their husband's needs and on call for elderly relatives when they became frail, ill, or disabled.

A young woman in the modern work force can look forward to a lifetime of searching out and managing caretaking services that her mother or grandmother expected to provide. But adequate caretaking services are not always available. Neither day-care nor elder home-care services are adequate. They are hard to find, not always trustworthy, seldom affordable, and subject to the political winds.

Bill Moyers: What happens to a society that doesn't put children in the honored place, that doesn't care?

T. Berry Brazelton: I think you're seeing a society like that right now.³

The family of a worker who is temporarily disabled may face a period of weeks or months without income. Many families are caught in an economic bind because workplace conventions were developed in response to family patterns that no longer exist. The one-breadwinner family with a full-time homemaker represents only one out of ten families today, yet many employers perpetuate policies that conform to that model.

To create a supportive environment for families, the United States needs to make healthy, stable families a high national priority. Attitudes change slowly, and political response always lags behind social change. The attitudes of business leaders and the response of legislators at all levels haven't developed quickly enough to relieve the pressure on working families in the eighties. No doubt the "solution" will be multifaceted, but one fact seems clear: we need an employment leave policy for today's workers that enables them to be responsible family members at critical times as well as responsible employees. We think we have developed a model in the Massachusetts Employment Leave Bill, H. 2191.

Home is where the start is.

— Mary Montgomery⁴

If a young mother, whether by choice or necessity, is to be in the work force and not with her baby for its preschool years, common sense dictates that she must, at a minimum, have adequate leave from work to get the baby settled in the family and off to a good start. The entire family benefits when fathers also participate responsibly in the care of newly born or adopted children, therefore leave must be provided for both parents equally. From experience we know that only a few fathers take such leave when it is first offered and then for only a short time. Still, the option is important and constitutionally necessary.⁵

The Swedish experience is instructive. A 1971 Swedish law ratified that country's workplace policy that women should work and be economically on a par with men, and the country's social policy is designed to make this possible. Leave time is generous. Each parent has six months' leave when a child is born and 240 more days to use in the first four years, all at 90 percent of pay. Allowances for sick care, shortened workdays, and vacations continue, and the government subsidizes excellent and inexpensive day care. The result is that few babies under six months old are in day care, no children are left alone or poorly cared for, and working parents are not distracted by worry over child care management. For Swedes, this is worth the extra tax burden.⁶

While Sweden is the country most committed to supporting families, the United States stands at the other extreme. Our federal government requires no maternity or other family-related leave, provides no job security during a family-related absence from work, and no child care or financial support for children except as crisis intervention. We pay taxes, ironically, for services such as remedial education, welfare, corrections, and drug treatment, which are made necessary in part by the results of family breakdown.

“Can you imagine what will happen to the *fabric* of a *nation* where everybody is thinking about their *families*?”

— *Boston Globe* cartoon, January 27, 1987

In 1986, after the Massachusetts statewide referendum on the question of reproductive rights, Phyllis Segal and I, two middle-aged feminists tired of abortion politics, discussed ways to champion other issues that affected women's daily lives. With most women in the work force, it seemed likely that the need for job-protected leave at the birth or adoption of a child would be an issue paramount to them. Segal and I decided to initiate a bill to establish a special legislative commission to study parental leave. The commission would include representatives from business, labor, pediatric medicine, the law, family psychotherapy, and academia.

To avoid delay and minimize political risk, we decided not to request funding or staff. Who could deny a proposal for a cost-free study on an apple-pie-and-motherhood issue like parenting leave? A great many people, as it turned out. It took a full calendar year to nurture the bill through the Massachusetts legislature. The resistance, which came in the state Senate, was based largely on the familiar fear that if you “give 'em an inch, they'll take a mile.” The fear was well founded: that's exactly what we've tried to do.

A consensus developed rapidly in the study commission about the need to support young families with both parents in the work force. In public hearings throughout the state, all testimony documented our original assumption that many families are in distress. Unable to afford housing otherwise, most depend on two salaries.

The Massachusetts maternity leave statute protects a woman's job for eight weeks when she leaves to have a baby, and it guarantees continuing health benefits only if that is the employer's policy for leaves of absence. We discovered that even this minimal protection

is not widely known or adhered to. Many workers aren't aware of the law or can't afford to take eight weeks without pay. A customary practice for those planning to have a baby is to save up paid sick leave and vacation time for use at the critical time.

T. Berry Brazelton, Harvard pediatrician and author for a generation of working parents, brought his thirty years of experience serving an estimated 25,000 young families to bear on the commission's work.⁷ He made it plain that eight weeks' leave is inadequate for nurturing a new baby.

He made an additional provocative point about parents: eight weeks is also not enough time to allow parents the chance to grow as human beings in their new roles; their own development is thwarted when it is subjugated to the need to find "arrangements" for their baby. According to Dr. Brazelton, there has been a notable shift from the attitudes and interests of expectant parents of an earlier generation, who focused primarily on the baby's health and learning to be parents. Instead, a contemporary couple's focus is too often on leave and day-care arrangements.

The payoff in human terms of an enlightened leave policy was easily established. No one on the commission seems to doubt it. Spokespersons from the business community had some reservations, however. They concentrated their opposition on three points: their dislike of government mandates of any kind; their expectation of the problems of small businesses with few employees when one or more is on leave; and the imbalance for multistate corporations that offer some benefits in one state and not in another.

"Why give employees a benefit they are not asking for?" said Loretta Harrington, the Associated Industries of Massachusetts representative on the commission. "Let each business assess its own employees' needs and meet them in the privacy of their own negotiations." The answer to that question was crystal clear in the data the commission collected. Most businesses do not, in fact, meet those needs currently, and most employers do not make adequate leave provisions. It just isn't happening.

It was not possible to be responsible to the plight of young families and at the same time satisfy the objections raised by business spokespersons. Business wanted a voluntary plan; the majority of the commissioners urged a mandated period of leave that a worker could take at his or her option. Business wanted small companies exempted; the commission majority was unwilling to accept less than the existing maternity leave. Business wanted a shorter leave period; the commission chose a longer one.

The commission, with its business representative dissenting, came down on the side of an eighteen-week leave. However, to respond to the problems of business, we wrote the bill to require a minimum period of employment before the benefits were applicable, as well as including a provision requiring adequate notice of expected leave time.

We believe that the more generous leave policy for new parents will relieve businesses of one problem: after taking the usual eight weeks of maternity leave, significant numbers of women simply do not return to work, leaving employers in uncertainty and with the major expense of training new workers. It seems clear that, in the employers' own interest, the longer leave may contribute to a more stable work force with better morale.

Some commission members had a problem with the proposal to this point. While our bill covers more workers and gives more generous leave than the Family and Medical Leave Act pending in Congress, it would leave many families with something of a cruel joke. Unless a wage replacement provision was included, they would have time to spend with a new baby and be assured of a job waiting when the time was up, but would have no paycheck during the leave. The commissioners calculated that four out of five families

could not afford to take the time off without pay. We decided that a second commission was necessary to look for a workable wage-replacement mechanism.

This time we found a title less threatening to the legislative leadership: a Commission to Study Temporary Disability Insurance (TDI). During the process for passage, the words “Dependent Care” were added to the title. The commission therefore became the Temporary Disability and Dependent Care Insurance Commission. Predictably, with such a dry and technical topic, this bill found smoother sailing through the legislative process. The new commission began its work in June 1988 with a charge to examine the TDI systems of the five states which now have them as well as to investigate the possibility of developing a state-wide temporary disability insurance plan that includes parental leave and dependent care.

New York, New Jersey, Rhode Island, and California all have temporary disability insurance plans dating from the 1940s; Hawaii instituted a plan in 1960. All these TDIs are well accepted by business and labor and are operating comfortably in the black. Under the plans disabled workers receive modest sustaining incomes, and maternity is generally considered to be an eight-week disability (see Table 1). The commission staff analyzed these systems and extrapolated from their experience the estimated costs of adding parental leave and dependent-care leave to the list of benefits they typically provide. It turned out that, all in all, the disability insurance would cost under \$150 annually, or \$13 per month, a very conservative estimate. It is predicted that this amount will decrease shortly, once the legal requirement to “front load” the costs at 140 percent of projected claims is satisfied.

Next the commission struggled with the question of who should pay. Labor representatives urged a system paid in full by employers, citing the number of workers earning under \$20,000 per year for whom any additional weekly cost would be burdensome. Business representatives cited the financial burden on them of the Massachusetts universal health care insurance passed in 1988, scheduled to go into effect in 1992. They noted also that for small businesses especially, the costs of health insurance together with those of TDI might be too much.

Taking both sets of concerns into consideration, the commission recommended a straight fifty-fifty split between employer and employee, an average of \$75 per year each, and included some progressive features. Essentially, the first \$10,000 of income is exempted from the calculation of costs, so that those earning \$10,000 or less are not affected. In short, the costs are calculated on \$10,000 to \$40,000 of income.

The decision to fund through shared pay-in was the result of an effort to be equitable. The commission appreciated the fact that some businesses would have to employ temporary workers to replace those on leave. In consideration of those costs, though they are generally lower than the salary of the worker on leave, we decided not to recommend a system funded solely by employers.

We proposed that benefits be adjusted according to the number of an employee’s dependents and capped at 60 percent of the state average weekly wage. The wage replacement for parenting leave (sixteen weeks) and dependent care (up to twenty-six weeks) is meant to be subsistence pay, not generous enough to be attractive for its own sake. At present salary levels the upper limit would be \$266 per week.

The commission is satisfied that the models we examined in the five states with TDI work well, pay for themselves, serve a real need, and are accepted as normal and valid workplace protections. We have made simple adaptations to those tried-and-true working mechanisms to arrive at our proposed bill.

Table 1

State Non-Occupational Disability Laws

Pregnancy and childbirth covered the same as any other disability.
1985

	Permissible Plans	Employee/Employer Contributions	Benefit Duration & Benefit Levels ²
California¹ Unemployment Compensation Disability Benefits (UCD). Employment Development Dept. Sacramento, CA 95814	1 State Plan or 2 Private Voluntary Plan may be insured or self-insured, but needs majority consent of employees to be set up. These plans must meet all State Plan requirements, and exceed at least one of the requirements.	Employee contributions consist of .9% of first \$21,900 annual earnings. No employer contributions are mandated; however, employers are permitted to make contributions on behalf of the employee.	Benefits are based on schedule using quarterly earnings figures. Maximum \$224, minimum \$50, 39-week benefit duration.
Hawaii¹ Temporary Disability Insurance Law (TDI). Dept. of Labor and Industrial Relations, P.O. Box 3769, Honolulu, HI 96812	1 No State Plan 2 Private Plan may be insured or self-insured and must equal or exceed statutory requirements. No employee consent necessary.	Employees must contribute the lesser of ½ of 1% of statewide average weekly wage or ½ the cost subject to a maximum of \$1.76 weekly. Employers must pay the balance of costs incurred.	Benefits consist of 55% of average weekly wage rounded to next higher dollar, maximum \$194. For average weekly wage less than \$26, benefit equal to average weekly wage, with \$14 maximum.
New Jersey¹ Temporary Disability Benefits (TDI). Dept. of Labor and Industry, P.O. Box 825, Trenton, NJ 08625	1 State Plan or 2 Private Plan may be insured or self-insured and must equal or exceed State Plan requirements. If plan is contributory, majority consent of employees is necessary.	For both employers and employees, the contribution level is ½ of 1% of first \$10,100 annual earnings. Employers who have contributed to the Fund during the three prior years are subject to "experience rating." Their contributions may vary from .1% to 1.1%.	Benefits consist of 66⅔% of average weekly earnings to next higher \$1, maximum \$185, minimum \$10.
New York¹ Disability Benefits Law (DBL). Workers' Compensation Board, 2 World Trade Center, New York, NY 10047	1 State Plan or 2 Private Plan may be insured or self-insured and must equal or exceed State Plan requirements. No employee consent necessary.	Employee contributions are ½ of 1% of weekly wages, but not more than 60¢ per week. Employers must pay the balance of costs for "standard" plans.	Benefits are 50% of average weekly earnings, maximum \$145, minimum \$20 or employee's average weekly wage if less.
Rhode Island Temporary Disability Insurance Benefits (TDI). Dept. of Labor, Bureau of Employment Security, 24 Mason Street, Providence, RI 02903	1 State Plan only: No Private Plans allowed, except where Private Plan is a supplement to the State Plan.	Employees contribute 1.2% of first \$10,400 annual earnings. No employer contributions are mandated.	Benefit based on 55% of individual average weekly earnings: maximum \$171, minimum \$37; plus \$5 per dependent child (up to age 18) up to \$20. (This maximum is recomputed annually and is equal to 60% of the average weekly wage of all workers covered by TDI.)

Please note: All programs cover employers of one or more employees. In some cases, exceptions are made for domestic employees or employers with payrolls under \$1,000.

Benefits for Puerto Rico not shown.

¹Recipients of unemployment benefits can intermit or obtain additional protection if they become disabled while employed.

²Benefits begin on 8th day for disabilities due to accidents and on 8th day for disabilities due to sickness with a 26-week maximum duration for all state except California. Benefits are tax-free.

Source: Johnson & Higgins, *Comparative Analysis of Non-Occupational Disability Laws*, updated to 1985. Reprinted with permission.

The Coalition: The more we get together the sooner we'll win.

Our efforts became more professional when the TDI Commission acquired Mary Shannon as staff director. She brought with her experience from lobbying in Washington and association with civil rights and women's groups and effectively used this in her work with advocate groups supporting H. 2191. In the six months after the bill was formally filed in December 1988, she spent many hours after work meeting with interested organizations and building a network of informed advocates.

First there were the "usual suspects": women's and civil rights groups, labor associations with predominately female membership, the Massachusetts Business and Professional Women, nurses and teachers, and, of course, organizations representing the elderly. Senior citizens are keenly aware of the importance of providing leave for adult sons and daughters who need time to care for sick or disabled elderly relatives or to manage their care or settle them in long-term facilities.

In addition to young families and the elderly, there is a new group of advocates for whom this bill is a ray of hope and who infuse the coalition with energy and perspective. They are the organizations whose constituents are victims or families of people with diseases such as multiple sclerosis and Alzheimer's, which cause major disabilities. Advocacy groups for the disabled are enthusiastic supporters because disabled people or their caregivers may be able to hold jobs if leave is available for occasional medical emergencies. The March of Dimes supports the bill, and the Massachusetts Council of Churches has made it a legislative priority.

Women labor union organizers are taking responsibility for educating their memberships. Women members of the Coalition of Labor Union Women, the Service Employees International Union Local 285, and nurses, teachers, and hotel workers are active advocates. The coalition stands at thirty organizations, and the bill has thirty-four sponsors.

On the National Level

The Family and Medical Leave Act of 1993 is the corresponding effort at the federal level that attempts to address the changing demographics of the American work force and family. The Act has been proposed in both the House and the Senate. Democratic Senators Christopher Dodd of Connecticut and Edward M. Kennedy of Massachusetts and Republican Senator Robert Packwood of Oregon are the major Senate sponsors of S. 345. Democratic Congresswoman Patricia Schroeder of Colorado and Congressman William L. Clay of Missouri and Republican Congresswoman Marge Roukema of New Jersey are the cosponsors of H.R. 770 in the House of Representatives.

The Family and Medical Leave Act, sometimes referred to as Parental Leave, guarantees job security, seniority, and health benefits for any worker who needs leave. This can be to care for a newborn or newly adopted child, a seriously ill child or elderly parent, or for the worker's own medical condition. H.R. 770 offers fifteen weeks' unpaid leave over a twelve-month period when the employee is unable to perform his or her job; the Senate version, S. 345, offers thirteen weeks.

Employers with fifty or more employees (this ceiling automatically lowers to thirty-five or more three years after enactment) will be required to provide unpaid family and medical leave to their employees under H.R. 770. The Senate version exempts only those employers with fewer than twenty workers.

According to a national survey, only half of all large companies offer unpaid, job-protected maternity leave for women after childbirth. At present no federal policy operates to guarantee family or medical leave policy. The United States is the only industrialized nation except South Africa that guarantees no parental leave benefits, no national health insurance, no minimum maternity benefits, and no job-protected leave for serious health conditions.

Both S. 345 and H.R. 770, introduced on February 2, 1989, have passed out of the Senate and House committees and are ready for floor debate. While the exemption for smaller businesses means that the federal bill would not significantly help many families in Massachusetts, where few companies have more than fifty employees, it remains an important effort for its symbolic value. It would be the first national statement about working families and the first formulation of a family policy. Unlike the proposed federal legislation, the stronger Massachusetts bill would affect every working family at one time or another.

Louis Brandeis said that the states should act as laboratories for the nation. My hope is that our work in Massachusetts on H. 2191 will be a useful model for other states and someday the nation. ♪

Notes

1. Edward Zigler and Meryl Frank, eds. *The Parental Leave Crisis: Toward a National Policy* (New Haven: Yale University Press, 1988), 23–35.
2. Ibid.
3. Bill Moyers, *A World of Ideas* (New York: Doubleday, 1989).
4. Mary Montgomery, *Ideas to Help Families Grow in Love and Faith* (New York: Harper Religious Books, March 1985), 132.
5. Even maternity leave laws, because they have a component of child nurturing as well as physical disability, may be vulnerable to the challenge of gender-biased discrimination. See Nancy E. Down, "Maternity Leave: Taking Sex Differences into Account," *Fordham Law Review* 54, 5 (April 1986).
6. Sheila B. Kamerman and Alfred Kahn, *Family Policy: Government and Families in Fourteen Countries* (New York: Columbia University Press, 1978).
7. T. Berry Brazelton, *Working and Caring* (Reading, Mass.: Addison-Wesley, 1985).
8. Family Work and Health, A Survey Report, Women's Health Unit, Department of Public Health, Commonwealth of Massachusetts, November 1988.
9. Sheila B. Kamerman and Alfred Kahn, *The Responsive Workplace: Employers in a Changing Workforce* (New York: Columbia University Press, 1987).

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