



Cornell University
ILR School

Cornell University ILR School
DigitalCommons@ILR

Cornell HR Review

12-11-2012

Maternity and Paternity Leave: A Guided Approach for Employers With Employees Utilizing Surrogate Births and Other Reproductive Methods

Daniel Burns
Rutgers School of Law

Follow this and additional works at: <https://digitalcommons.ilr.cornell.edu/chrr>



Part of the [Benefits and Compensation Commons](#)

Thank you for downloading an article from DigitalCommons@ILR.

Support this valuable resource today!

This Article is brought to you for free and open access by DigitalCommons@ILR. It has been accepted for inclusion in Cornell HR Review by an authorized administrator of DigitalCommons@ILR. For more information, please contact catherwood-dig@cornell.edu.

If you have a disability and are having trouble accessing information on this website or need materials in an alternate format, contact web-accessibility@cornell.edu for assistance.

Maternity and Paternity Leave: A Guided Approach for Employers With Employees Utilizing Surrogate Births and Other Reproductive Methods

Abstract

[Excerpt] Forty-one-year-old mother Ms. Kara Krill (“Krill”) filed suit^[1] in the United States District Court for the District of Massachusetts on August 26, 2011 against her former employer, Cubist Pharmaceuticals, Inc. (Cubist), for refusing to provide Krill with certain fringe employment benefits, including “thirteen weeks of paid maternity leave for the birth and care of a child.”^[2] These employment benefits were originally stipulated in Krill’s employment contract with Cubist.^[3] Krill has suffered from Asherman’s syndrome since the birth of her first child in June 2007.^[4] According to Krill’s complaint, Asherman’s syndrome is a “reproductive disability that substantially and prematurely limits . . . [a woman’s] ability to carry a child to birth.”^[5] This debilitating disease caused, among several other negative side effects, Krill’s infertility.^[6] Due to her reproductive incapacity, Krill and her husband opted to employ the services of a gestational surrogate to give birth to their biological child.^[7] However, although the two originally planned for the birth of just one child, in September 2010, the couple was surprised to learn that the hired surrogate was actually pregnant with twins.^[8] The couple, to substantiate the twins carried by their surrogate were biologically theirs, jointly obtained a pre-birth order from a Pennsylvania judge.^[9] The pre-birth order establishes “legal and genetic parentages [of the twins] without having to institute adoption proceedings” and ensures the Krills were listed on the twins’ birth certificates.^[10] Although employers in Massachusetts “are not required to provide paid maternity leave,”^[11] Krill’s written employment contract with Cubist provided four variations of paid leave for the birth and care of a child.^[12] However, the precise issue to be litigated in Krill’s pending case focuses on the disparity between two particular internal Cubist employment policies. This conflict stems specifically from the difference between the thirteen weeks of paid maternity leave sought by Krill under Cubist’s “Maternity Leave Policy,” intended for “female employees . . . for the birth of a child,” and a mere five days of paid maternity leave sought by Cubist under its “Adoption Leave Policy” intended for “employees . . . for the adoption of a child.”^[13]

Keywords

HR Review, Human Resources, maternity leave, paternity leave, employee benefits

Disciplines

Benefits and Compensation

Comments

Suggested Citation:

Burns D. (2012, December 11). Maternity and paternity leave: A guided approach for employers with employees utilizing surrogate births and other reproductive methods. *Cornell HR Review*. Retrieved [insert date] from Cornell University, ILR School site: <http://digitalcommons.ilr.cornell.edu/chrr/58/>

CORNELL HR REVIEW

MATERNITY AND PATERNITY LEAVE: A GUIDED APPROACH FOR EMPLOYERS WITH EMPLOYEES UTILIZING SURROGATE BIRTHS AND OTHER REPRODUCTIVE METHODS

*Daniel J. Burns**

Forty-one-year-old mother Ms. Kara Krill (“Krill”) filed suit¹ in the United States District Court for the District of Massachusetts on August 26, 2011 against her former employer, Cubist Pharmaceuticals, Inc. (Cubist), for refusing to provide Krill with certain fringe employment benefits, including “thirteen weeks of paid maternity leave for the birth and care of a child.”² These employment benefits were originally stipulated in Krill’s employment contract with Cubist.³ Krill has suffered from Asherman’s syndrome since the birth of her first child in June 2007.⁴ According to Krill’s complaint, Asherman’s syndrome is a “reproductive disability that substantially and prematurely limits . . . [a woman’s] ability to carry a child to birth.”⁵ This debilitating disease caused, among several other negative side effects, Krill’s infertility.⁶ Due to her reproductive incapacity, Krill and her husband opted to employ the services of a gestational surrogate to give birth to their biological child.⁷ However, although the two originally planned for the birth of just one child, in September 2010, the couple was surprised to learn that the hired surrogate was actually pregnant with twins.⁸ The couple, to substantiate the twins carried by their surrogate were biologically theirs, jointly obtained a pre-birth order from a Pennsylvania judge.⁹ The pre-birth order establishes “legal and genetic parentages [of the twins] without having to institute adoption proceedings” and ensures the Krills were listed on the twins’ birth certificates.¹⁰ Although employers in Massachusetts “are not required to provide paid maternity leave,”¹¹ Krill’s written employment contract with Cubist provided four variations of paid leave for the birth and care of a child.¹² However, the precise issue to be litigated in Krill’s pending case focuses on the disparity between two particular internal Cubist employment policies. This conflict stems specifically from the difference between the thirteen weeks of paid maternity leave sought by Krill under Cubist’s “Maternity Leave Policy,” intended for “female employees . . . for the birth of a child,” and a mere five days of paid maternity leave sought by Cubist under its “Adoption Leave Policy” intended for “employees . . . for the adoption of a child.”¹³

In other words, each party argues for Krill’s current predicament to fall within a different policy category described above in Cubist’s written employment contract.¹⁴ Thus, the Massachusetts District Court will face the challenge of pigeonholing Krill’s scenario into one of Cubist’s employment policies, neither of which directly, appropriately, or accurately identify her and her husband’s method of begetting children.¹⁵ Krill’s complaint alleges various claims for relief including violations of M.G.L.A. ch. 151B, §§ 4(1),¹⁶ (4),¹⁷ (4A),¹⁸ (5),¹⁹ (16),²⁰ several federal discrimination violations including 42 U.S.C. §§ 12112,²¹ 2000e-2(a)(1),²² and 2000e-3(a),²³ each of

which focus primarily on Krill’s reproductive disability and sex, and breach of contract, breach of implied covenant of good faith and fair dealing, promissory estoppel, and negligent misrepresentation.²⁴ The penultimate focus of this dispute is determining the underlying purposes of federal parental leave.²⁵ Thus, this article focuses more narrowly on how employment law, specifically the current statutory construction of federal parental leave set forth in 29 U.S.C.A. §2612, will be affected by advancements in reproductive technology that will inevitably allow prospective parents to utilize external or artificial wombs to essentially “grow” children.²⁶

As may already seem apparent, Krill will likely set forth an argument that, at least in part, supports the idea that maternity leave is designed not only as a means to provide mothers with a respite for recovery due to the intense physical and biological stresses and hardships associated with actual childbirth,²⁷ but also to allocate sufficient time for mother-child bonding to take place.²⁸ If successful, this argument would support the idea that

Cubist’s

“Maternity Leave Policy.” Conversely, Cubist will likely argue that maternity leave, to the extent that it is to be paid in accordance with its employment policies, ought to be reserved exclusively for mothers who physically endure a natural childbirth, and not merely distributed to any woman who becomes a mother through other technological means of reproduction.²⁹ If successful, this argument would support Cubist’s current internal employment policies, thus justifying treatment of Krill as if she had adopted a child, rather than actually giving birth to one. As mentioned above, the next logical step in the analysis of prospective alternations to the current statutory construction of FMLA requires a deeper understanding of artificial wombs.

The terms “artificial womb” and “ectogenesis”³⁰ are inextricably linked, as “ectogenesis” refers generally to “the process of the embryo or fetus developing in the device outside the body,” while “artificial womb” applies more specifically as “the actual device that holds the embryo or fetus.”³¹ In other words, an artificial womb, which has yet to be fully developed for humans, is a medical instrument substitute for a woman’s womb and operates to allow an egg and sperm to gestate outside a woman’s body. The development of the artificial womb itself, as discussed throughout this article, will have a substantial impact on the realm of employment law within the context of federal parental leave. According to George Washington University Law Professor Naomi Cahn, author of several law review articles focusing on family law, feminist jurisprudence, and reproductive technology, “[Krill’s case] is certainly one of the first federal cases involving a claim to benefits for paid leave by a woman who has had children through a surrogate. It raises complex issues about parental leave, assisted reproductive, [sic] technology and employment discrimination.”³² Professor Cahn believes that “cases like Krill’s will become more common as surrogate births increase.”³³ Although Krill’s complaint alleges a variety of claims brought under many state-specific statutes,³⁴ as well as federal status based on various claims of discrimination,³⁵ this article focuses on how under the FMLA,³⁶ an employee, assuming he or she complies with the requisite notice to his or her employer,³⁷ is entitled to at least twelve weeks of unpaid leave for any of the following reasons:

- (A) Because of the birth of a son or daughter of the employee and in order to care for such son daughter. (B) Because of the placement of a son or

daughter with the employee for adoption or foster care. (C) In order to care for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition. (D) Because of a serious health condition that makes the employee unable to perform the functions of the position of such employee. (E) Because of any qualifying exigency (as the Secretary shall, by regulation, determine) arising out of the fact the spouse, or a son, daughter, or parent of the employee is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces.³⁸

The particular wording of this statute will likely become the eventual catalyst for a significant legislative dilemma: what exactly does “birth” mean? Although 29 U.S.C.A. § 2611 provides definitions of other relevant terms as applied throughout the language of this statute, it lacks any definition for the term “birth.” With consideration given to the development of alternative, non-coital reproductive means, how should “birth” be defined in our society? Should Congress rewrite legislation so the language of the FMLA becomes more cognizant of and responsive to parents of children eventually being “born” using these wholly new, scientific, and technologically advanced means? If so, how?

Currently, according to Black’s Law Dictionary, “birth” is defined as “[t]he complete extrusion of a newborn baby from the mother’s body.”³⁹ Furthermore, Merriam-Webster Dictionary defines “birth” as either “the emergence of a new individual from the body of its parent,” or, “the act or process of bringing forth young from the womb.”⁴⁰ However, each of these definitions clearly fails to account for babies externally gestated through artificial wombs, as this particular baby would not have “extrud[ed] . . . from [a] mother’s body,” “emerge[d] from the body of its parent,” or be the “young from [a mother’s] womb” Thus, a child gestated externally would not coincide, or fall within the realm of, any of these above definitions. When the FMLA was originally drafted and passed in 1993, it seems that legislators did not (and perhaps could not) consider the possibility that the term “birth” may need to be definitionally expanded and eventually carry with it such vagueness and indefiniteness. As advancements in reproductive technology continue, redefining “birth” seems inevitable (and necessary) if federal legislation is to properly address how parents seeking leave under the FMLA are to be treated. More commonly and informally, “birth” seems fairly straightforward; the act of a mother extruding an internally gestated fetus. However, the current capacity of surrogacy, the eventual development of ectogenesis, and other reproductive technologies may necessitate the redefining of exactly what it means to be “born.”

From an analytical perspective, the five explicitly listed reasons for the issuance of federal entitlement to unpaid parental leave in accordance with the FMLA seem to suggest, generally, that the FMLA’s primary purpose is to provide an employee with twelve weeks of leave to care for a family member.⁴¹ Applying this rationale to the artificial womb scenario (which is one step further removed from the surrogate birth situation used by Krill), it is logical to assert that the FMLA, even without textual amendment, could encompass these types of parents. The underlying intent of the FMLA overall is to provide an employee the opportunity for leave in order to take care for someone else. Assuming this intent is appropriately inferred, it seems reasonable to

conclude that federal legislation, upon further reproductive technology development, must change to benefit parents who decide to utilize artificial wombs.

Currently, women are traditionally entitled to maternity leave for two main reasons: (1) to provide women with time to recuperate and rest from the physical, mental, and psychological hardship associated with giving birth, and (2) provide them with bonding time to spend with the newborn child. Although parents who decide to utilize artificial wombs do not need maternity leave for the first reason stated above, they still undoubtedly need maternity leave for the second reason. The second reason, in and of itself, justifies parental leave.⁴² For example, adoptive parents are provided parental leave based on this second reason alone and it is illogical to deny parents who utilize surrogacy (such as the Krills) of the same opportunity. Along this line of reason, parents who eventually utilize artificial wombs should be entitled to the same leave, as they also need time to bond with their newborn child.

According to Seton Hall University School of Law Professor Gaia Bernstein, [w]hen surrogacy agreements are enforced[,] the law treats the intended mother as the mother in all respects. The purpose of a maternity leave is not just to enable the mother to recuperate from giving birth but to [also] enable her to bond with they baby. This is even more important for a mother who did not bond through pregnancy.⁴³

The importance of parents bonding with their newborn cannot be overstated,⁴⁴ and thus, no parent, regardless of the manner in which they entered parenthood, should be denied that same bonding opportunity without the assurance that their employment will not be jeopardized. Aside from the normative and emotional appeal of bonding between child and parent, substantial medical, psychological, and sociological studies reveal that this bonding period serves as a paramount concern for both the child and the parent alike.⁴⁵

Fully grasping the importance of parent-child bonding, it would be wise for employers to preemptively alter their own internal employment policies to accommodate parents that have had children in different ways, whether it is through adoption, traditional surrogacy, ectogenesis, or any other means of reproductive technology. Krill's employer, Cubist, by providing differing leave benefits of an adoptive parent and a surrogate parent makes little to no sense, as both types of parents require time to bond with their child, regardless of the manner in which parents begot a child. Thus, for the numerous reasons described above, Krill should prevail in her pending litigation against Cubist.

Employers, as a precautionary measure, ought to change their employment policies earlier rather than later. There are countless reasons for employers to make such changes. Employers benefit financially by enacting these recommended policy alterations because keeping employees satisfied and content has shown to increase workplace productivity. Similarly, an employer can avoid incurring additional expenses by providing parents with such leave, since the potential ramifications of denying such parental leave could result in astronomical litigation expenses. Also, these changes will alter society's perception of the employer in an advantageous way. The employer will be considered progressive and as such, could lead to an employer attracting more capable

and talented employees. In conclusion, it makes sense from an economic, sociological, and societal perspective for employers to alter their current parental leave policies to not only include parents who utilize surrogacy, such as Krill, but also include parents who will eventually utilize ectogenesis as a means of begetting children. ¶

Daniel J. Burns is a student at the Rutgers School of Law in Newark, New Jersey. He is current a research assistant at the Rutgers School of Law and serves as the managing editor of the Rutgers Computer and Technology Law Journal.

*J.D. Candidate, 2013, Rutgers, The State University of New Jersey, School of Law | Newark

¹ Kara Krill v. Cubist Pharmaceuticals, Inc. and Caroline Chevalier (US Dist. of Mass.) “Complaint and Demand for Jury Trial” filed August 26, 2011 [hereinafter *Complaint*].

² *Id.* at 2-3.

³ *Id.*

⁴ Susanna Kim, *New York Mom of Twins Born Through Surrogate Sues Employer for Denying Maternity Leave*, ABC NEWS, Sept. 2, 2011, available at <http://abcnews.go.com/Business/mom-surrogate-twins-sues-employer-refusing-paid-maternity/story?id=14430717>.

⁵ Julia Filip, *Science Gives Birth to Odd Maternity Lawsuit*, COURTHOUSE NEWS SERVICE, Sept. 1, 2011, available at <http://www.courthousenews.com/2011/09/01/39456.html>; See *Complaint*, *supra* note 1, at 3.

⁶ Kim, *supra* note 4.

⁷ Kim, *supra* note 4; See generally Weldon E. Havins & James J. Dalessio, *Reproductive Surrogacy at the Millenium: Proposed Model Legislation Regulating “Non-Traditional” Gestational Surrogacy Contracts*, 31 MCGEORGE L. REV. 673, 675-86 (Spring 2000) (distinguishing between traditional and gestational surrogacy methods).

⁸ *Complaint*, *supra* note 1, at 3; See generally Johnson v. Calvert, 851 P.2d 776, 778 (Cal. 1993) (affirming the California Court of Appeals’ decision which held that a husband and wife who implemented the services of a gestational surrogate mother were in fact still the “genetic, biological[,] natural” and legal parents of the child born from the fertilized egg that had been previously implanted within the surrogate mother). The Johnson court explained that such surrogacy contracts do not “offend the state or federal Constitution or public policy.” *Id.* at 778.

⁹ Julie M. Donnelly, *Mother Sues Lexington Company Over Paid Maternity Leave*, CBS BOSTON, Sept. 7, 2011, available at <http://boston.cbslocal.com/2011/09/07/mother-sues-lexington-company-over-paid-maternity-leave/>; *Complaint*, *supra* note 1, at 4.

¹⁰ Kim, *supra* note 4.

¹¹ Donnelly, *supra* note 9; See M.G.L.A. 149 § 105D (describing female employees’ entitlement to various rights and benefits).

¹² *Complaint*, *supra* note 1, at 3-4.

¹³ *Id.*

¹⁴ See also *Complaint*, *supra* note 1, at 2-3 (describing Cubist’s “paternity leave policy,” which provides male employees with five days of paid leave for the birth of a child).

¹⁵ See generally Eisenstadt v. Baird, 405 U.S. 438, 453-455 (1972) (holding that there is a constitutional right to “beget” a child).

¹⁶ Stating, in relevant part, that it is unlawful “[f]or an employer, by himself or his agent, because of the . . . sex . . . of any individual to . . . discriminate against such individual in compensation or in terms, conditions or privileges of employment, unless based upon a bona fide occupational qualification.” See *Complaint*, *supra* note 1, at 11-12.

¹⁷ Stating, in relevant part, that it is unlawful “[f]or any person, employer, labor organization or employment agency to discharge, expel, or otherwise discriminate against any person because he has opposed any practices forbidden under [Chapter 151B].” See *Complaint*, *supra* note 1, at 12.

¹⁸ Stating, in relevant part, that it is unlawful “[f]or any person to coerce, intimidate, threaten, or interfere with another person in the exercise of enjoyment of any right granted or protected [under Chapter 151B].” See *Complaint*, *supra* note 1, at 13.

¹⁹ Stating, in relevant part, that it is unlawful “[f]or any person, whether an employer or an employee or not, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under [Chapter 151B] or to attempt to do so.” See *Complaint, supra* note 1, at 13-14.

²⁰ Stating, in relevant part, that it is unlawful

[f]or any employer, personally or through an agent, to . . . discriminate against . . . any person alleging to be a qualified handicap person, capable of performing the essential functions of the position involved with reasonable accommodation, unless the employer can demonstrate that the accommodation required to be made to the physical or mental limitations of the person would impose an undue hardship to the employer’s business.

See *Complaint, supra* note 1, at 10-11.

²¹ Stating, in relevant part, that it is unlawful for an employer to “discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.” See *Complaint, supra* note 1, at 14.

²² Stating, in relevant part, that it is unlawful for an employer to “[d]iscriminate against any individual with respect to . . . compensation, terms, conditions, or privileges of employment, because of such individual’s . . . sex.” The statute uses the term “because of sex” to include “pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions.” See *Complaint, supra* note 1, at 15.

²³ Stating, in relevant part, that it is unlawful “for an employer to discriminate against any of his employees or applicants for employment . . . because [s]he has opposed any practice made an unlawful employment practice by this subchapter.” See *Complaint, supra* note 1, at 16.

²⁴ See *Complaint, supra* note 1, at 17-19.

²⁵ The ultimate focus is determining which party, Krill or Cubist, will prevail in this case.

²⁶ ALDOUS HUXLEY, *BRAVE NEW WORLD*, PG. 6,15 (1932) (setting forth a rather novel and futuristic idea of babies “growing” in test tubes).

²⁷ Nikki Olsen & Hank Pellisier, *Artificial Wombs Will Spawn New Freedoms*, INSTITUTE FOR ETHICS AND EMERGING TECHNOLOGIES (Mar. 26, 2011), available at <http://ieet.org/index.php/IEET/more/olson20110526> (describing how artificial womb development will significantly change the way both men and women live and explaining some feminist views that are against pregnancy altogether because it causes women to suffer through “nausea, vomiting, weight gain of up to [over] 40[] pounds, fatigue and pain, with a torturous pushing culmination that can leave the mother dead, wounded with a c-section, with pelvic floor injuries, postpartum hemorrhage, pre-eclampsia, hospital infections, or post-traumatic stress disorder”); See generally Lois N. Magner, *Women and the Scientific Idiom: Textual Episodes from Wollstonecraft, Fuller, Gilman, and Firestone*, Vol. 4, No. 1, WOMEN, SCIENCE, AND SOCIETY 61, 77-80. (Autumn, 1978).

²⁸ Olsen & Pellisier, *supra* note 27.

²⁹ Diane E. Eyer, *Mother-infant bonding: A scientific fiction*, HUMAN NATURE, Vol. 5, Number 1, 69-94 (hypothesizing that the longstanding ideology of the necessity for mother-infant bonding was actually promulgated for a variety of politically useful reasons, and is ultimately unwarranted and undeserved of such acceptance and preeminence); See also Lindsay Cross, *It Doesn’t Matter How You Have a Baby, You Deserve Maternity Leave*, THE GRINDSTONE, <http://the grindstone.com/career-management/it-doesnt-matter-how-you-have-a-baby-you-deserve-maternity-leave-357/> (exclaiming that many legal experts believe the outcome will depend on plaintiff Krill’s employment contract with Cubist).

³⁰ “Ectogenesis,” a term coined by British Scientist J.B.S. Haldane in 1924, describes how human pregnancy would eventually lead to the development of artificial wombs; See also Frida Simonstein, *Artificial Reproduction Technologies (RTs)-- All the Way to the Artificial Womb?*, 9 MED. HEALTH CARE & PHIL. 359, 359 (2006); See generally Jessica H. Schultz, a1, *Development of Ectogenesis: How Will Artificial Wombs Affect the Legal Status of a Fetus or Embryo?*, 84 CHI.-KENT L. REV. 877 (2010).

³¹ Schultz, *supra* note 30, n.5; See also Irina Aristarkhova, *Ectogenesis and Mother as Machine*, 3 BODY & SOC’Y 43 (2005).

³² Kim, *supra* note 4.

³³ *Id.* See generally June Carbone & Naomi Cahn, *Embryo Fundamentalism*, 18 WM. & MARY BILL RTS. J. 1015, at 1018 (“The demand for fertility services is growing.”); See also, Ainsely Newson, *The Nature and*

Significance of Behavioral Genetic Information, 25 THEORETICAL MED. 89 (2004) (discussing how behavioral genetic information is distinguished from other genetic information).

³⁴ Complaint, *supra* note 1.

³⁵ Pregnancy Discrimination Act (PDA, Civil Rights Act of 1964, Title VII, Sec. 701 (k) and the American's with Disabilities Act (ADA, 42 U.S.C.A. § 12101).

³⁶ See generally William D. Goren, J.D., L.L.M., *Who is Eligible Employee Under § 101(2) of Family and Medical Leave Act* (29 U.S.C.A. § 2611(2)), 166 A.L.R. FED. 569 (2000).

³⁷ 29 U.S.C.A. § 2612 (e)(1) states that when employee leave is foreseeable, such as a case in which a child would be born, including through surrogacy or external gestation,

[t]he employee shall provide the employer with not less than 30 days' notice, before the date the leave is to begin, of the employee's intention to take leave under such subparagraph, except that if the date of the birth or placement requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable;

See also Kurtis A. Kemper, J.D., Requirement That Employers Notify Employees of Their Method of FMLA Leave Calculation Under Family and Medical Leave Act, 29 U.S.C.A. §§ 2601 et seq. 35 A.L.R. FED. 2d 293 (2009).

³⁸ 29 U.S.C.A § 2612 (a)(1).

³⁹ BLACK'S LAW DICTIONARY 179 (8th ed. 2004).

⁴⁰ MERRIAM-WEBSTER ONLINE DICTIONARY.

⁴¹ 29 U.S.C.A. § 2612; 29 C.F.R. § 825.200.

⁴² *Decades of Data: Landmark NICHD Study Releases Another Finding, Expanding Its Productive Legacy*, NATIONAL INSTITUTE OF CHILD HEALTH AND DEVELOPMENT (July 17, 2008), available at http://www.nichd.nih.gov/news/resources/spotlight/071708_Decades_of_Data.cfm.; See also Meredith Melnick, *Study: Why Maternity Leave is Important*, TIME HEALTHLAND (July 21, 2011), available at <http://healthland.time.com/2011/07/21/study-why-maternity-leave-is-important/>.

⁴³ Kim, *supra* note 4.

⁴⁴ KIDSHEALTH, *Bonding With Your Baby*, available at http://kidshealth.org/parent/pregnancy_newborn/communicating/bonding.html.

⁴⁵ *Id.*