

WORK-FAMILY LEGISLATION IN SELECTED DEVELOPED COUNTRIES: A QUANTITATIVE COMPARISON

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I INTRODUCTION

The increased labor force participation of women has been a major phenomenon in developed countries over the past four decades. Since 1975, in the United States, Canada, Australia, and the European Union countries the labor force participation rate of women increased anywhere from 9 to 24 percentage points. Female labor force participation in Japan and Korea also increased, albeit at a more modest 4-5 percentage points. (United States Bureau of Labor Statistics, 2006; United States Bureau of Labor Statistics, 2008; European Commission, 2009; Statistics Canada, undated; International Labor Organization, undated).

This increased labor force participation of women in developed countries has created the potential for tension between parental and worker roles for an increasing percentage of the adult population of developed countries. In 2005, the federal government of Canada commissioned one of the authors to examine labor standards in the Canadian federal jurisdiction and to compare those labor standards with labor standards addressing similar matters in the thirteen Canadian provinces and territories, the United States, and Western Europe (Block, 2005). This work included a comparison of labor standards oriented to work and family: vacation/holidays which permit workers to spend time with their families; and family-related leave, which permits workers to take time off work to address family-related concerns.

The results from that work established that, in general, countries in Western Europe provided the greatest level of protection for workers attempting to achieve work-family balance. Of the sixteen Western European countries studied, eleven – Norway, Italy, the Netherlands, France, Spain, Ireland, Germany, Belgium, the United Kingdom, Finland, and Sweden – provided levels of support for work family balance that were above or very close to the Canadian jurisdictions that provided the best protection in Canada. Five – Austria, Luxembourg, Portugal, Denmark, and Greece – were below the Canadian jurisdictions. Fifty of the fifty-one jurisdictions in the United States (including the District of Columbia) ranked below all Western European countries and all Canadian jurisdictions. Only California, which provides employees with six months of paid family-related leave, ranked above European countries (Denmark and Greece) and a Canadian jurisdiction (Alberta). (Block, 2005).

The analysis presented in this paper will extend the work to incorporate three important, developed Pacific Rim democracies, Australia, Japan and Korea. This will provide a group of countries that in 2007 accounted for 55% of the world's volume of exports and 57.5% of the world's volume of imports (World Trade Organization, 2008).

II THE METHODOLOGY USED

There is no generally accepted method for measuring of the adequacy of labor standards; a number of methodologies have been developed (Block, 2007; Kucera, 2007). This paper uses the methodology developed in Block and Roberts, 2000 and Block, Roberts, and Clarke, 2003. This methodology relies on benchmarking a country's legislated labor standards with similar labor standards in other jurisdictions or countries that are comparable in levels of development. Using this methodology, one can obtain a measure of the level of labor standards in any political jurisdiction relative to all other jurisdictions analyzed. To the extent the political jurisdictions are comparable, the analysis will provide data on the level of labor standards in the political jurisdiction relative to comparable political jurisdictions. Policymakers then can use this analysis to determine if the level of labor standards in any of the political jurisdictions analyzed should be adjusted.

The methodology is explained in detail elsewhere (Block, Roberts, and Clarke, 2003 and Block and Roberts, 2000) and will be only briefly summarized here. For the purpose of this analysis, a labor standard is defined, per Block, Roberts, and Clarke, as a procedure, term, condition of employment, or employer requirement established by law or statute or a governmental agency or official empowered by a law or statute, that is designed to protect employees from employer decisions and workplace policies that society considers unfair or

unjust (Block, Roberts, and Clarke 2003). As such it covers almost all employees (with legislated exceptions) and is mandatory, enforced by legal sanctions for noncompliance.

Each statute or government regulation was analyzed and numerical values were assigned to each relevant statutory requirement by assigning to the absence of a provision, a score of zero (0) and the strongest provision among all the jurisdictions analyzed a score of ten (10). Provisions of intermediate strength were assigned intermediate values in accordance with the number of possible categories in the provision. In addition, each of the provisions was assigned a weight in proportion to its perceived importance to the standard.

Generally,

let s_{pdj} = the score assigned to provision p in standard d in jurisdiction j, where $0 \leq s_{pdj} \leq 10$; and

let w_{pdj} = the weight assigned to provision p in standard d in jurisdiction j, where $0 \leq w_{pdj} \leq 1$.

Then, the index score, X_{dj} for standard d for jurisdiction j is:

$$X_{dj} = \sum_{p=1}^n s_{pdj} * w_{pdj} \text{ where the index consists of } n \text{ provisions.}$$

As noted, the methodology takes as a benchmark for each provision not some hypothetical perfect provision, but the provision that provides the greatest protection to employees among the jurisdictions analyzed. Assuming that the political jurisdictions are roughly comparable, use of this relative benchmark means that at least one of the political jurisdictions has enacted such a provision. Thus, it can be presumed that such a provision is economically feasible in the other comparable political jurisdictions.

It must be observed that the level of analysis was not the country, but rather what we term the "legislating jurisdiction." That is because the responsibility for legislating on labor standards lies with different levels of government in different countries. In Europe, countries have ceded some legislative authority to the EU, as the labor standards in a country cannot be lower than required by an EU directive (Block, Roberts, Ozeki, and Roomkin, 2001). As noted, in Canada, the provinces enact labor standards except for the federal jurisdiction covering specified interprovincial industries. In the United States, the states can legislate in fields in which the federal government chooses not to regulate, or may legislate at a level above the federal minimum. In Australia, authority is shared between the states and the federal government (Australian Government, undated).

Data on the labor standards were obtained from multiple sources. The staff of the Federal Labour Standards Review analyzed vacations and work-family-related legislation in the Canadian provinces and territories and the federal jurisdiction and in the European countries. This was augmented, verified, and updated through the provincial, territorial, and Canadian federal websites and websites from the EU and various countries. The author used Bureau of National Affairs services for the states in the United States¹ except for the State of California Paid Family Leave program. The work-family labor standards in Australia, Japan, and Korea were obtained primarily from government websites, although, on occasion, it was necessary to use websites from consulting firms or law firms. Finally, we do not consider awards under the Australian industrial relations system, as these are not universal for all employees.²

¹ Bureau of National Affairs, updated-1, Individual Employment Rights Reference Manual, Washington, D.C: Bureau of National Affairs and Bureau of National Affairs, updated-2, State Laws, State Policy and Practice Series, Washington, D.C: Bureau of National Affairs..

² All websites referenced are listed in a separate section at the end of the paper.

III COMPARING LABOUR STANDARDS FOR WORK-FAMILY BALANCE

This part of the abridged paper will summarize the results of quantitative comparison of legislation on vacations and family-related leave for Canada, the United States, the EU 15, Norway, Australia, Japan, and Korea. This section of the paper will first summarize vacations/annual leave, which generates straightforward measures. The section will then summarize legislation that directly affects family matters.

Vacations/Annual Leave

The most common length of annual leave among the legislating jurisdictions is four weeks/20 days, driven by the EU directive on annual leave and the consistency across the Australian states. Given the imposed legal minimum in the EU, it is not surprising that western European countries rank highest on the vacations index; eight of the nine highest ranking legislating jurisdictions encompass the EU, with Norway, adjacent to the EU, the ninth country. Only three EU countries, Ireland, Italy, and the Netherlands, have adopted the EU minimum.

At the opposite end of the continuum is the United States; the United States ranks at the bottom of the comparator countries with respect to vacation. The federal government does not require that employees be provided vacation or annual leave, and the United States is the only country in the analysis that legislates labor standards federally that does not mandate annual leaves either at the federal or state level.

The Australian states provide leave that is roughly equivalent to that required by Directive 93/104, four weeks, although Victoria and Queensland require five weeks of vacation to “compensate” employees who work on nontraditional schedules. This suggests that Australia tends to lean toward Europe in its leave policies.

South Korea and Japan tend to provide leave at levels that are comparable to the leave provided by the most generous Canadian jurisdictions. It is also comparable to the leave provided by the least generous Western European countries and Australian states, approximately the EU minimum of four weeks. These countries, however, are still well above the United States.

All the Canadian jurisdictions require at least two weeks leave for employees with one year of service. Consistent with Norway and five EU countries, Finland, Greece, Luxembourg, Portugal, and Sweden, provide from 21-27 days of annual leave.

Taking an overview of the annual leave requirements, with the exception of the United States, the minimum annual required leave in developed countries is two weeks, with the median at about four weeks. Clearly, in terms of legislated paid vacation/annual leave, the United States lags well behind its industrialized, democratic counterparts.

Family-Matters Leave Index.

In considering the family matters index, for the reasons discussed below, it is useful to start with a comparison of the Canadian jurisdictions, the European countries, Australia, and Korea. Following that, this section will incorporate the United States, demonstrating differences among the legislating jurisdictions through a revised coding scheme.

Canadian Jurisdictions, European Countries, Australia, Korea, and Japan All of the countries studied with the exception of the United States subdivide family-related leave into leave for different purposes. These include compassionate care/caregiver leave (to care for a seriously ill or dying family member), maternity leave (associated with childbirth), parental leave, the right of both working parents to combine parental leaves, and the right of reassignment during pregnancy. To simplify the analysis, we don't consider the source of funding for these

benefits, although they generally come from social insurance funds (Social Development Canada undated).^{3 4}

. In general, Japan, countries in Europe, and the provinces and territories in Canada are ranked the highest, with Australia and Korea ranked toward the bottom. The seven highest ranked countries. All of the Australian jurisdictions rank in the lower half of the distribution. As all the countries provide some maternity leave and some parental leave, the major determinant of ranking on this index is the generosity of compassionate care/caregiver leave, leave that is provided to care for an ill family member. Thus, those countries that have expanded the principle of work-family balance beyond maternity and early childhood are the countries that rank the highest.

Canadian Jurisdictions, European Countries, Australia, Korea, Japan, And the United States. In order to compare family leave in the United States with family leave in the other countries studied, it was necessary to create a revised index to account for the fact that the U.S. Family and Medical Leave Act (FMLA), the main U.S. legislation in this area, provides for leave for a range of family-related purposes (United States Department of Labor, undated). The FMLA does not subdivide the leave as is done in the other countries studied. Therefore, the revised index combined all the relevant leaves in each legislating jurisdiction into weeks of leave, essentially reconfiguring the non-U.S. leaves so they would match the leave configuration created by the FMLA. Thus, weeks of compassionate care/caregivers leave, parental leave, maternity leave in the non-U.S. legislating jurisdictions were totaled. Subindices were also added for pay for leave and for the right of reassignment during pregnancy.

There is quite a bit of geographical bunching in this index, with the EU countries at the top, followed by Canada, and Australia. Korea and Japan also rank fairly high. The U.S. states, with the exception of California, are all coded at the FMLA level. They are at the bottom of the rankings. California, with its provision for six weeks of paid leave, is the highest ranked U.S. state, and ranks higher than the Denmark, Greece, and the province of Alberta.⁵

VI SUMMARY AND CONCLUSIONS

Labor standards, including those related to work and family, are theorized to affect a country's competitiveness and ability to successfully compete in international trade (Block, Roberts, Ozeki, and Roomkin, 2001). At the same time, such protections support a country's citizenry in balancing work and family responsibilities. Understanding how developed democracies legislatively address issues regarding work and family will provide a baseline to learn countries resolve this tension and the effect of the resolution on economic competitiveness and family support.

The analysis of annual leave demonstrated that the median leave length is approximately four weeks, patterned after countries in Continental Europe as established in the relevant EU directive. Australia and Korea have generally adopted the European model of four

³ For example, employees receive payment for compassionate care leave from the Employment Insurance fund administered by the Federal government. See Social Development Canada, 2006.

⁴ In contrast with other countries and jurisdictions, the Australian jurisdictions uniformly provide employee with 52 weeks of unpaid parental leave which may be used for both maternity and parental purposes. In order to create consistency between the Australian jurisdictions and other jurisdictions, we divide the leave in Australia between a maternity component and a parental component. Somewhat arbitrarily, we assume the maternity component is 16 weeks, the modal maternity leave in the other jurisdictions studied. The parental leave component is assumed to be the residual from 52 weeks, 36 weeks.

⁵ On December 31, 2008, only California had a paid family leave law that was in effect. A law in New Jersey began payroll deductions on January 1, 2009, with benefits scheduled to begin on July 1, 2009 (Livio, 2008). The paid family leave law in the State of Washington was scheduled to be effective in October, 2009, but has been delayed until October, 2012 (Geisel, 2009).

weeks. The United States is an anomaly internationally, as the United States federal government and the states are the only legislating jurisdictions studied that do not require employers to provide vacation/annual leave. While a majority of employees in the United States receive paid vacation, this is at the discretion of the employer or through collective bargaining agreements. Canada falls between the United States and the EU minimum, with two weeks leave. Japan requires from two to four weeks.

The pattern of the U.S. being at the bottom of the rankings repeats itself when examining family-related leave. The Family Medical Leave Act in the United States requires that employees receive 12 weeks of unpaid leave for family purposes during any 12-month period. None of the other political jurisdictions provides less than 32 weeks, with France and Spain providing over 200 weeks of leave. The revised index including the United States demonstrates a bunching of legislating jurisdictions. In rough descending order, the ranking is Europe, Japan, Korea, Canada, Australia, and the United States. Overall, a statutory framework such as is found in the United States makes it more difficult than otherwise for workers to balance work and family, with a potential result that both may be neglected.

It should also be pointed that vacations and family-related leave are not the only labor standards for which the United States is behind other countries. Block, Roberts, and Clarke (2003) found that, as of December 31, 1998, the United States lagged behind Canada on an index composed of ten labor standards: minimum wage, paid time off, overtime, workers' compensation, unemployment insurance, collective bargaining, equal employment opportunity, unjust dismissal, occupational safety and health, and advance notice of large-scale/mass layoffs. Although at that time, the United States ranked above the Canadian jurisdictions on the individual standards of minimum wage, overtime, and occupational safety and health, the FLSR analysis indicated that, by December 31, 2005, the United States lagged behind Canada in minimum wages (Block, 2005). The mean index score for the Canadian jurisdictions in the FSLR study was 5.77 and for the United States it was 3.44.

Similarly, Block, Roberts, and Berg (2003) found that the United States lagged behind the EU at the community level on an index of 10 labor standards: minimum wages, overtime and working time, paid time off, collective bargaining, discrimination, occupational safety and health, advance notice of large-scale layoffs, employee involvement, parental/family leave, and ownership changes. In the Block-Berg-Roberts study, the United States was higher than the EU on only minimum wages and collective bargaining, and they discounted the latter finding because the EU does not regulate collective bargaining at the community level.

What is the reason for this consistent pattern? Although the countries studied are broadly similar politically, there are differences among the countries in how these countries view labor markets and employment. Block, Berg, and Belman (2004) have observed that the two fundamentally different conceptions of the employment relationship can be found in the United States and Western Europe. There is a belief in the United States that unregulated product and labor markets allocate resources most efficiently and will, over the long run, create the most wealth for society. Thus, the United States starts with a presumption that markets work, that there is competition, and that all economic actors have equal market power and are "price takers." Under this conception of the labor market, neither employers nor employees have sufficient market power to influence the wages and terms and conditions of employment – these conditions are generally set through the impersonal market. Those who advocate regulation must bear the burden of establishing that the market for which regulation is advocated does not function properly. This conception of the labor market with the resulting absence of regulation contributes to the persistence of low wage work (and low incomes) among large segments of the labor force in the United States (Baird, Cooper, and Ellem, 2009).

The EU, on the other hand, presumes an imbalance of power between the employer and the employee. The EU system assumes that employers have labor market power, and some are primarily price setters in the labor market rather than price takers. As such, government

must actively regulate the labor market to equalize power between employers and employees (Block, Berg, and Belman, 2004).

Although Canada demonstrates some variation because of the provincial autonomy over labor standards, Canada is also ahead of the United States in providing labor standards protection to employees. Although heavily influenced by its larger neighbor to the south, Canada is generally seen as more collectivistic and statist than the United States (Lipset, 1989) and this is reflected in its relatively high labor standards vis-à-vis the United States. One might speculate that its proximity to the United States is the reason that Canadian labor standards are somewhat lower than the standards in Western Europe.

Japan and Korea have created employment systems that are based on Confucian principles of obligations from the more privileged in society to the less privileged. In practice, these two Asian countries have created employment systems in which the government supports corporations who, in turn provide employment (Lee, 1997). Yet this government-employer arrangement has not prevented both countries from enacting legislation to require work-family balance. But it is also the case that labor market policies can be used to address other societal needs. In 2005, for example, Korea increased the amount of maternity and parental leave provided to employees in order to encourage an increase in the national fertility rate (Kim, 2005).

While there is some variation in the levels of protection and support provided to work and family, it is clear that there is a consensus among developed democracies that government and legislation should provide support for balancing work and family obligation. But consensus is not unanimity, and the minimal support that the United States provides for work and family establishes that the United States continues to be exceptional in its low levels of legislative protection for workers.

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