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Work-Family Legislation in the United States, Canada, and Western Europe: A Quantitative Comparison

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I. INTRODUCTION

It is beyond question that the demographics of the workforce in the United States have changed substantially over the past fifty years. In 1975, women with children under eighteen accounted for 47.4% of the civilian labor force in the United States.[1] In 2004, women with children under eighteen accounted for 70.7% of the civilian labor force.[2] The comparable percentages for women with children ages six through seventeen are 54.9%

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1. U.S. Department of Labor, Bureau of Labor Statistics, 2005, *Employment Status of Women by Presence and Age of Youngest Child, 1975-2004*, WOMEN IN THE LABOR FORCE: A DATABOOK, *available at* http://www.bls.gov/cps/wlf-table7-2005.pdf.

2. *Id.*

and 77.5%.[3] In the fifteen countries that comprised the European Union (EU) before the eastern European countries were admitted in 2005, the female employment rate increased from 24.7% in 1994 to 35.4% in 2005.[4] In Canada, the percentage of women aged twenty-five to forty-four holding full-time jobs increased from 30% in 1976 to 42.7% in 2005.[5]

This increased labor force participation of women, combined with the traditionally high labor force participation of men, has changed the dynamics of the family. Because a female taking care of the family with a male breadwinner is no longer the standard model, and women as well as men both participate in the labor force at high levels, all workers must now balance work and family responsibilities. Occasionally, these responsibilities will conflict. Thus, a substantial wealth of literature in the human resources field has developed on how this conflict is addressed.[6]

This change in demographics raises the question of the extent to which the United States, through laws, should provide support to workers attempting to strike a balance between work and family. This paper attempts to address this question by drawing on a unique data set developed by the author for research commissioned by the federal government of Canada.[7]

In 2005, under the auspices of the Federal Labour Standards Review Commission (FLSRC),[8] the federal government of Canada launched its first comprehensive review in forty years of the labor standards in the Federal Jurisdiction[9] in Part III of the Canada Labour Code.[10] Although the

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3. *Id.*

4. European Commission, *Employment Rate of Older Workers: Females* (2006), *available at* http://epp.eurostat.ec.europa.eu.

5. STATISTICS CANADA, LABOUR FORCE SURVEY – 3701, http://www.statcan.ca/english/Estat/licence.htm (accessed July 28, 2006) (entry to website available through license, data available from author on request).

6. *See, e.g.*, WORK-LIFE BALANCE: A PSYCHOLOGICAL PERSPECTIVE (Fiona Jones, Ronald J. Burke & Mina Westman eds., 2006). For an excellent updated summary of the nonlegal research in work-family conflict, see *supra*, at 71-89.

7. *See* Richard N. Block, *Labour Standards in the Canadian Federal Jurisdiction: A Comparison with Canadian Provinces and Territories, States in the United States, and Selected European Nations*, Report to the Federal Labour Standards Commission (Nov. 4, 2005) (on file with author).

8. *See* Federal Labour Standards Review Commission Homepage, http://www.fls-ntf.gc.ca/en/index.asp (last visited Oct. 11, 2006).

9. The regulation of employment in Canada is divided between the provinces/territories and the federal government. As a general rule, employment standards are promulgated by the provinces/territories for employees working within the province/territory. The federal government, however, establishes labor and employment standards for those employees in the "Federal Jurisdiction," generally those industries that operate interprovincially. The industries and firms in the Canadian federal jurisdiction include: radio and television broadcasting; chartered banks; crown corporations, including Canada Post; airports and air transportation; shipping, navigation, and longshoring; transport by road, rail, ferries, and pipelines; flour, feed mills, grain handling; and other miscellaneous industries. *See generally* RICHARD N. BLOCK, KAREN ROBERTS & R. OLIVER CLARKE, LABOR STANDARDS IN THE UNITED STATES AND CANADA (2003) [hereinafter BLOCK, ROBERTS & CLARKE]; Human Resources and Social Development Canada, Profiles of Federal

Commission was established for many reasons, a key rationale was the fundamental changes that had occurred in the Canadian labor market since the mid-1960s, most importantly, the rise of multiple forms of employment.[11] The Commission was of the view that labor standards based on a "standard employment" model of a full-time employer-employee relationship, with a male wage earner and a female who maintains the household, was not appropriate for an increasingly large segment of the Canadian workforce.[12] This is due to both the rise in two-earner families and the increased labor force participation of single women with family care responsibilities.[13] Put differently, it can no longer be assumed that women will be home to care for children or other family members.[14]

The author was asked to compare the level of labor standards in the Federal Jurisdiction and the thirteen Canadian provinces and territories with similar labor standards in the United States and Western Europe. While there is no generally accepted measure of the adequacy of labor standards, Block and Roberts,[15] and Block, Roberts, and Clarke,[16] have developed a methodology for measuring labor standards that relies on benchmarking 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.

The basic premise of the Block, Roberts, and Clarke methodology is that there is no such thing as an objectively appropriate level of labor standards

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Jurisdiction Industries, http://www.sdc.gc.ca/asp/gateway.asp?hr=/en/lp/wid/oa/32air_transport.shtml&hs=czc (last visited Oct. 11, 2006).

10. Part I of the Canada Labour Code addresses collective bargaining rights of employees in the Federal Jurisdiction. *See* Human Resources and Social Development Canada, Canada Labour Code, http://www.hrsdc.gc.ca/asp/gateway.asp?hr=en/lp/lo/fll/part1/index-fll.shtml&hs=dxs (last visited Oct. 11, 2006). Part II covers health and safety. *See* Human Resources and Social Development Canada, Canada Labour Code, Part II, http://www.hrsdc.gc.ca/asp/gateway.asp?hr=en/lp/lo/fll/part2/index-fll.shtml&hs=oxs (last visited Oct. 11, 2006). Part III establishes labor standards for all matters other than collective bargaining and health and safety, except employment discrimination. *See* Human Resources and Social Development Canada, Canada Labour Code, Part III, http://www.sdc.gc.ca/asp/gateway.asp?hr=en/lp/lo/fll/part3/index-fll.shtml&hs=lxn (last visited Oct. 11, 2006).

11. *See* Federal Labour Standards Review, *Interim Report of the Federal Labour Standards Review* (2005), *available at* http://www.fls-ntf.gc.ca/doc/int_rpt-e.pdf.

12. *Id.*

13. *Id.*

14. *Id.*

15. *See* Richard N. Block & Karen Roberts, *A Comparison of Labour Standards in the United States and Canada*, 55 RELATIONS INDUSTRIELLES/INDUSTRIAL RELATIONS 273, 273-306 [hereinafter Block & Roberts].

16. BLOCK, ROBERTS & CLARKE, *supra* note 9, at 42-43.

for a jurisdiction, but one can determine the level of labor standards provided by other, comparable jurisdictions.[17] 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 can then use this analysis to determine if the level of labor standards in any of the political jurisdictions analyzed should be adjusted.

As an aid to the Commission, the author used the Block, Roberts, and Clarke methodology to provide the Commission with a report analyzing the level of six core labor standards governed by Part III of the Canada Labour Code to workers in the Canadian Federal Jurisdiction: (1) minimum wage, (2) hours of work, (3) holidays and vacations, (4) individual termination of employment, (5) sick and family leave, and (6) group/mass terminations.[18] This paper will focus on the analysis of the provisions that are oriented toward work and family, provisions related to vacations/annual leave, and provisions for family-related leave. The rationale for considering vacations is that such standards permit employees to spend extended time with their families. The rationale for including family-related leave is that such standards permit employees to strike a balance between work and family.

The research for the Commission analyzed the Canadian jurisdictions vis-à-vis the states in the United States and vis-à-vis countries in Western Europe. The analysis presented in this paper will be a three-way analysis involving Canada, the United States, and Western Europe.

II. THE METHODOLOGY USED

The methodology was based on Block, Roberts, and Clarke,[19] and Block and Roberts,[20] 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 treatment at the workplace that society considers unfair or unjust."[21] As such, it covers almost all employees (with legislated exceptions) and is mandatory and enforced by legal sanctions for noncompliance.[22]

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17. *Id.* at 41.

18. *See* Human Resources and Social Development Canada, Canada Labour Standards Regulations §§ 1-34, http://www.sdc.gc.ca/asp/gateway.asp?hr=en/lp/lo/fll/part3/index-fll.shtml&hs=lxn (last visited Oct. 11, 2006).

19. BLOCK, ROBERTS & CLARKE, *supra* note 9, at 42-43.

20. Block & Roberts, *supra* note 15.

21. BLOCK, ROBERTS & CLARKE, *supra* note 9, at 35-40.

22. Block, *supra* note 7, at 42-43.

Each statutory provision or government regulation was analyzed and numerical values were assigned to each relevant statutory provision by assigning a score of zero (0) to the absence of a provision, and a score of ten (10) to the strongest provision among all the jurisdictions analyzed. 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 s_{pdj} 10; and
>
> let w_{pdj} = the weight assigned to provision p in standard d in jurisdiction j, where 0 w_{pdj} 1.

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

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

It is important to realize that the computed index does not include benefits provided to employees by custom, as these are not legislated. For example, as will be discussed below, states in the United States place no requirements on employers to provide a minimum vacation/annual leave for their employees.[23] In fact, the majority of full-time employees in the United States receive annual leave,[24] but the vast majority of employees who receive this leave receive it only at the discretion of the employer or if it is negotiated in a collective bargaining agreement. Thus, it can be withdrawn by the employer or negotiated away in a collective bargaining agreement, perhaps in return for another benefit.

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

23. *See infra* Table 1.
24. *See infra* note 33.

enacted such a provision. Thus, it can be presumed that such a provision is possible among the other comparable political jurisdictions.

The foregoing discussion indicates that for this methodology to be valid, the political jurisdictions analyzed must be generally comparable. For this type of analysis, "comparability" is based on the system of government, level of economic development, strength of regulatory institutions to enforce the labor standards, and the absence of evidence of a large, informal sector with "off-the-books" employment. For this paper, we analyze the level of labor standards in individual states in the United States, the provinces and territories in Canada, the Federal Jurisdiction in Canada, and sixteen countries in Western Europe including: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, and the United Kingdom. All of these countries are developed Western democracies, with the institutions to enforce labor standards and in which it is reasonable to believe that the great bulk of employment is legally recorded.[25] All standards analyzed were those in effect on December 31, 2005. While this may be an arbitrary "cut-off" date, it was necessary to use a date certain or the analysis would be constantly changing.

Data on the labor standards was obtained from multiple sources. The staff of the Federal Labour Standards Review Commission analyzed vacations and work-family-related legislation in the Canadian provinces and territories and the Federal Jurisdiction.[26] This was augmented and verified through the provincial, territorial, and Canadian federal websites.[27] The

25. Canada and the United States are generally considered sufficiently comparable regarding their labor standards based on comparable levels of economic development and trading integration. *See* BLOCK, ROBERTS & CLARKE, *supra* note 9; Block & Roberts, *supra* note 15, at 273-306. The European Union (EU) as a whole and the United States have also been considered comparable due to similar levels of economic development and similar political structures. *See* Richard N. Block, Peter Berg & Karen Roberts, *Comparing and Quantifying Labor Standards in the United States and the European Union*, 19 INT'L J. OF COMP. LAB. LAW & INDUS. REL., 441-67 (2003). Based on this, there is no reason to believe that it is unreasonable to compare the United States, Canada, individual EU member countries, and Norway.

26. *See, e.g.*, International and Intergovernmental Labour Affairs Labour Program, Human Resources and Skill Development Canada, Annual Vacations With Pay, (Sept. 1, 2004); International and Intergovernmental Labour Affairs Labour Program, Human Resources and Skill Development Canada, Compassionate Care Leave: Employment Standards Legislation in Canada, (Mar. 1, 2005); International and Intergovernmental Labour Affairs Labour Program, Human Resources and Skill Development, Family Responsibility and Sick Leave Provisions: Employment Standards Legislation in Canada (Sept. 1, 2004); International and Intergovernmental Labour Affairs Labour Program, Human Resources and Skill Development Canada, Leave for Parental Reasons: Employment Standards Legislation in Canada (Sept. 1, 2004); International and Intergovernmental Labour Affairs Labour Program, Human Resources and Skill Development Canada, Reassignment and Preventive Withdrawal from Work (Pregnant or Nursing Employees) (Sept. 1, 2004).

27. *See* Alberta Government, Employment Standards, http://www.hre.gov.ab.ca/cps/rde/xchg/hre/hs.xsl/62.html; Government of British Columbia, A Guide to the Employment Standards Act, http://www.labour.gov.bc.ca/esb/esaguide/; Government of New Brunswick, Employment Standards Act, http://www.gnb.ca/acts/acts/e-07-2.htm; Government of Newfoundland and Labrador, Labour

staff also analyzed vacation provisions in the European countries, although their research was augmented by examining data on the individual countries.[28] The author used Bureau of National Affairs services for the

Standards Frequently Asked Questions, http://www.hrle.gov.nl.ca/lra/labourstandards/faq.htm; Government of Nova Scotia, Employment Rights, http://www.gov.ns.ca/enla/employmentrights; Human Resources and Social Development Canada, Employment Standards Legislation in Canada, http://www.hrsdc.gc.ca/asp/gateway.asp?hr=en/lp/spila/clli/eslc/01Employment_Standards_Legislation_in_Canada.shtml&hs=lzl; Manitoba Labour and Immigration, A Guide to Employment Standards: Working Together, http://www.gov.mb.ca/labour/standards/pdf/manual.pdf; Northwest Territories, Labor Standards Act, http://www.justice.gov.nt.ca/Legislation/..%5CPDF%5CACTS%5CLabour_Standards.pdf; Nunavut Court of Justice, Consolidation of Labour Standards Act, http://action.attavik.ca/home/justice-gn/attach-en_conlaw_prediv/Type1061.pdf; Ontario Ministry of Labour, Employment Standards, http://www.labour.gov.on.ca/english/es/; Prince Edward Island, 2004 Guide to Employment Standards, http://www.gov.pe.ca/photos/original/cca_emp_guide.pdf; Quebec Commission de Normes du Travail, Labor Standards in Quebec, http://www.cnt.gouv.qc.ca/en/index.asp; Saskatchewan Labour, Labour Standards, http://www.labour.gov.sk.ca/standards/; and Government of Yukon, Employment Standards Act, http://www.gov.yk.ca/legislation/acts/emst.pdf (all sites last visited Oct. 9, 2006).

28. *See* European Foundation for Employment and Living Conditions, Annual Holiday: Belgium, http://www.eurofound.eu.int/emire/BELGIUM/ANNUALHOLIDAY-BE.html (last visited July 28, 2006); European Foundation for Employment and Living Conditions, Annual Holidays: Denmark, http://www.eurofound.eu.int/emire/DENMARK/ANNUALHOLIDAYS-DN.html (last visited Dec. 28, 2005); European Foundation for Employment and Living Conditions, Annual Holiday: Finland, http://www.eurofound.eu.int/emire/FINLAND/ANCHOR-VUOSILOMASEMESTER-FI.html (last visited July 28, 2006); European Foundation for Employment and Living Conditions, Annual Holiday: France, http://www.eurofound.eu.int/emire/FRANCE/ANNUALHOLIDAY-FR.html (last visited July 28, 2006); European Foundation for Employment and Living Conditions, Annual Holiday: Germany, http://www.eurofound.eu.int/emire/GERMANY/ANNUALHOLIDAY-DE.html (last visited Dec. 30, 2005); European Foundation for Employment and Living Conditions, Annual Holiday Entitlement: Greece, http://www.eurofound.eu.int/emire/GREECE/ANNUALHOLIDAY ENTITLEMENT-GR.html (last visited Dec. 30, 2005); European Foundation for Employment and Living Conditions, Annual Holiday: Luxembourg, http://www.eurofound.eu.int/emire/LUXEMBOURG/ANNUALHOLIDAY-LX.html (last visited Dec. 30, 2005); European Foundation for Employment and Living Conditions, Annual Holiday: Netherlands (Vakantie), http://www.eurofound.eu.int/emire/NETHERLANDS/ANNUALHOLIDAYS-NL.html (last visited Dec. 30, 2005); European Foundation for Employment and Living Conditions, Annual Holidays: Portugal, http://www.eurofound.eu.int/emire/PORTUGAL/ANNUALHOLIDAYS-PT.html (last visited Dec. 30, 2005); European Foundation for Employment and Living Conditions, Annual Holiday: Spain, http://www.eurofound.eu.int/emire/SPAIN/ANNUALHOLIDAY-ES.html (last visited July 28, 2006); European Foundation for Employment and Living Conditions, Annual Holiday: Sweden, http://www.eurofound.eu.int/emire/SWEDEN/ANCHOR-SEMESTER-SE.html (last visited Dec. 30, 2005); European Foundation for Employment and Living Conditions, Austria: Leave (Urlaub), http://www.eurofound.eu.int/emire/AUSTRIA/ANCHOR-URLAUB-AT.html (last visited Dec. 30, 2005); Royal Norwegian Ministry of Local Government, Act Relating to Holidays: Information Series 4, http://www.ub.uio.no/ujur/ulovdata/lov-19880429-021-eng.pdf (last visited July 28, 2006); *see also* International and Intergovernmental Labour Affairs Labour Program, Human Resources and Skills Development Canada, Statutory Caregiver's Leave (Aug. 25, 2005); International and Intergovernmental Labour Affairs Labour Program, Human Resources and Skills Development Canada, Statutory Maternity Leave (Aug. 18, 2005); International and Intergovernmental Labour Affairs Labour Program, Human Resources and Skills Development Canada, Statutory Parental

states in the United States,[29] except for the State of California Paid Family Leave program.[30]

III. COMPARING LABOR STANDARDS FOR WORK-FAMILY BALANCE AMONG THE UNITED STATES, CANADIAN JURISDICTIONS, AND EUROPEAN COUNTRIES

As noted above, this part of the paper will quantitatively compare legislation on vacations and family-related leave for Canada, the United States, and Western Europe. This section of the paper will first analyze vacations, which generates straightforward measures. This section will then analyze family leave.

A. Vacations

Table 1 presents the coding for legally mandated vacations, often called annual leave in Canada and Europe, or annual holiday in Europe. Vacations were coded based on the minimum length of vacations and, where appropriate, the number of years with a single employer that triggers an increase; the fewer years needed to trigger the increase, the greater the index value. Mandated vacation lengths vary widely among the jurisdictions studied, from thirty days to no required annual vacation. It must be noted that legally mandated vacation in Europe is affected by the European Union Directive 93/104, which requires at least four weeks of annual leave for employees in EU member countries.[31]

Leave (Aug. 18, 2005); International and Intergovernmental Labour Affairs Labour Program, Human Resources and Skills Development Canada, Statutory Parental Leave: Summary (Aug. 18, 2005); International and Intergovernmental Labour Affairs Labour Program, Human Resources and Skills Development Canada, Time off for Prenatal Care and Breastfeeding; Modification of Working Conditions, Reassignment and Suspension from Work of Pregnant and Breastfeeding Employees (Sept. 2, 2005).

29. *See Individual Employment Rights Reference Manual*, LABOR RELATIONS REPORTER, (Bureau of National Affairs, Washington, D.C.); *State Labor Laws*, LABOR RELATIONS REPORTER, (Bureau of National Affairs, Washington, D.C.).

30. *See* Welcome to California Homepage, Employment Development Department, Frequently Asked Questions - Paid Family Leave Insurance: Employees, http://www.edd.ca.gov/direp/pfl faq1.asp (last visited Oct. 11, 2006).

31. *See* European Council, Directive 93/104/EC of 23 November 1993 Concerning Certain Aspects of the Organization of Working Time, http://europa.eu.int/smartapi/cgi/sga_doc?smartapi! celexapi!prod!CELEXnumdoc&lg=EN&numdoc=31993L0104&model=guichett (last visited July 25, 2006). EU directives are mandatory for all EU members and national laws and the European Court of Justice may overturn national laws that are inconsistent with EU directives. *Id.* For a short summary of the relationship between EU law and national law, albeit in the context of Great Britain, a member state, see GWYNETH PITT, EMPLOYMENT LAW 22-25 (4th ed. 2000). For a general overview of the EU legal system, see Dr. Klaus-Dieter Borchardt, *The ABC of Community Law* (2000), *available at* http://europa.eu.int/eur-lex/en/about/abc_en.pdf. The full text of all EU directives is available through Eur-Lex at http://europa.eu.int/eur-lex/en/search/search_lif.html.

TABLE 1

VACATION/ANNUAL LEAVE:

PROVISIONS, WEIGHTS, SUBINDEX VALUES, CANADIAN JURISDICTIONS, UNITED STATES, AND EUROPEAN COUNTRIES COMPARISON

PROVISION	WEIGHT	VALUE
	1	
30 Days		10
25 Days plus one additional week For employees over 60 years old		9
21 - 25 Days		8
20 Days		7
3 Weeks Generally, 4 Weeks After 10 Years with Employer		6
2 Weeks Generally, 3 Weeks After 5 Years with Employer		5
2 Weeks Generally, 3 Weeks After 6 Years with Employer		4
2 Weeks Generally, 3 Weeks After 8 Years with Employer		3
2 Weeks Generally, 3 Weeks After 15 Years with Employer		2
2 Weeks Maximum		1
No Required Vacation		0

The results for the vacation index for the Canadian jurisdictions, the United States, and the European countries are shown in Table 2. As can be clearly seen, the United States ranks at the bottom of the comparator countries with respect to vacation. Neither the state governments nor the federal government require that employees be provided vacation or annual leave. On the other hand, all the Canadian jurisdictions require at least two weeks leave for employees with one year of service. Consistent with EU Directive 93/104,[32] all the EU countries in the analysis provide at least twenty days (four weeks) of leave. Norway and five EU countries—Finland, Greece, Luxembourg, Portugal, and Sweden—provide from twenty-one to twenty-seven days of annual leave. Four EU countries—Austria, Denmark,

32. *See* European Council, Directive 93/104/EC of 23 November 1993 Concerning Certain Aspects of the Organization of Working Time, http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=31993L0104&model=guichett (last visited July 25, 2006).

France, and Spain—provide a minimum of thirty days of vacation/annual leave. Clearly, in terms of legislated paid vacation/annual leave, the United States lags well behind Canada and the EU.[33]

TABLE 2

VACATIONS INDICES, CANADIAN JURISDICTIONS, UNITED STATES, AND EUROPEAN COUNTRIES

Jurisdiction	Maximum Vacation Duration, in Days or Weeks	Maximum Vacation Duration Code	Ranking	HIGHER LEVEL POLITICAL JURISDICTION
Weight		1		
Austria	30 Days	10	1	EU
Denmark	30 Days	10	1	EU
France	30 Days	10	1	EU
Spain	30 Days	10	1	EU
Norway	25 Days + 1 Week for employees over 60 Years Old	9	5	
Finland	21-25 Days	8	6	EU
Greece	21-25 Days	8	6	EU
Luxembourg	21-25 Days	8	6	EU
Portugal	21-25 Days	8	6	EU
Sweden	21-25 Days	8	6	EU
Belgium	20 Days (EU Min.)	7	11	EU
Germany	20 Days (EU Min.)	7	11	EU
Ireland	20 Days (EU Min.)	7	11	EU

33. Although not required, a large majority of employees in the United States receive paid vacation. The United States Bureau of Labor Statistics estimates that in 2005, 77% of all workers and 90% of full-time workers in private industry had access to paid vacations. U.S. Department of Labor, Bureau of Labor Statistics, *National Compensation Survey: Employee Benefits in Private Industry in the United States, March 2006*, at 24, *available at* http://www.bls.gov/ncs/ebs/sp/ebsm 0004.pdf. On the other hand, only 36% of part-time workers in private industry had access to paid vacations in 2005. U.S. Department of Labor, Bureau of Labor Statistics, *National Compensation Survey: Employee Benefits in Private Industry in the United States, March 2005*, at 22, *available at* http://www.bls.gov/ncs/ebs/sp/ebsm0003.pdf. Access also differed between nonunion and union workers (not distinguishing between full and part-time employment). *Id.* Seventy-seven percent of private industry nonunion workers and 86% of private industry unionized workers had access to vacations in 2005. *Id.* In 1997, the most recent year available, employees with ten years of service in medium and large private establishments received, on average, 16.9 days of vacation. Medium and large establishments are establishments with at least 100 workers. U.S. Department of Labor, Bureau of Labor Statistics, *National Compensation Survey Employee Results in Private Industry in the United States, March 2004*, at 2, *available at* http://www.bls.gov/ncs/ebs/sp/ebsm0002.pdf.

Italy	20 Days (EU Min.)	7	11	EU
Netherlands	20 Days (EU Min.)	7	11	EU
UK	20 Days (EU Min.)	7	11	EU
Sask	3 Wks; 4 Wks at 10 Yrs.	6	17	Canada
Alta	2 Wks; 3 Wks at 5 Yrs.	5	18	Canada
BC	2 Wks; 3 Wks at 5 Yrs.	5	18	Canada
Man	2 Wks; 3 Wks at 5 Yrs.	5	18	Canada
Que	2 Wks; 3 Wks at 5 Yrs.	5	18	Canada
Federal	2 Wks; 3 at 6 Yrs.	4	22	Canada
NS	2 Wks; 3 at 6 Yrs.	4	22	Canada
NWT	2 Wks; 3 at 6 Yrs.	4	22	Canada
NB	2 Wks; 3 at 8 Yrs.	3	25	Canada
NUN	2 Wks; 3 at 8 Yrs.	3	25	Canada
NFL/LAB	2 Wks; 3 at 15 Yrs.	2	27	Canada
Ont	2 Weeks Maximum	1	28	Canada
PEI	2 Weeks Maximum	1	28	Canada
Yukon	2 Weeks Maximum	1	28	Canada
50 States Plus DC	No Required Vacation	0	29-79	United States

SOURCES: Federal Jurisdiction, Provincial, and Territorial Websites; Human Resources and Skill Development Canada Data; Bureau of National Affairs; Staff Analyses.

B. Family Matters Leave Index

In considering the Family Matters Index to be discussed below, it is useful to start with a comparison of the Canadian jurisdictions and the European countries. Following that, this section will incorporate the United States on the other and demonstrate these differences through the coding scheme.

1. Canadian Jurisdictions and European Countries

The Canadian jurisdictions subdivide family-related leave into leave for different purposes. These include compassionate care leave (to care for a dying relative), maternity leave (associated with childbirth), parental leave and the right of both working parents to combine parental leaves,

reassignment during pregnancy, bereavement leave, and family responsibility leave (to care for a family member with a serious, nonfatal illness).[34]

Table 3, taken directly from the FLSRC report, presents the coding for family-related leave in Canada. Although the coding for most of these provisions is self-explanatory, the coding for sick leave and family responsibility leave requires some explanation. In general, the greater number of days of each leave permitted by the jurisdiction, the higher the value. Coding for these sick leave and family responsibility leave provisions was complicated, however, by the fact that three jurisdictions—Newfoundland/Labrador, Nova Scotia, and Ontario—combine sick leave and family responsibility leave. For coding purposes, and to permit comparability with those jurisdictions that did not combine the two leaves, the total amount of combined leave for these three jurisdictions was divided in half, with one half "allocated" to sick leave, and one half "allocated" to family responsibility leave. To account for the flexibility allowed by combined leave jurisdictions, which benefits employees, Canadian jurisdictions with this flexibility were assigned a higher value than Canadian jurisdictions without such flexibility. For example, Ontario permits ten days of "emergency leave." Five of the days were assigned to sick leave for Ontario, and five were assigned to family responsibility leave. Because workers in Ontario could have more than five days of family responsibility leave by using emergency leave that they could not use for illness, Ontario was assigned a higher value (7.14) for family responsibility leave than was British Columbia (5.39), which also provides five days of family responsibility leave.

34. Employees receive payment for compassionate care leave from the Employment Insurance fund administered by the federal government. *See* Human Resources and Social Development Canada, Employment Insurance (EI) Compassionate Care Benefits, http://www.sdc.gc.ca/en/ei/types/compassionate_care.shtml (last visited Oct. 11, 2006).

TABLE 3

FAMILY-RELATED MATTERS LEAVE: PROVISIONS, WEIGHTS, SUBINDEX VALUES, CANADIAN JURISDICTION COMPARISON

PROVISION/LANGUAGE	PROVISION WEIGHT	SUB-INDEX VALUE
Compassionate Care Leave	**.15**	
8 Weeks in 26 Weeks if ill relative has a significant risk of death		10
12 Weeks in 1 Year for a serious illness, significant risk of death not required		5
No Provision		0
Bereavement Leave	**.025**	
3 Days with Pay		10
1 Day with Pay and 4 Days Unpaid		8.33
1 Day with Pay and 2 Days Unpaid		6.67
5 Days Unpaid		5
May be taken as Emergency Leave, Up to 10 Days Per Year		3.33
3 Days Unpaid		1.67
No Provision		0
Maternity Leave	**.1875**	
15-17 Weeks		10
No Provision		0
Parental Leave	**.1625**	
52 Weeks		10
35-37 Weeks		5
No Provision		0
Right of Both Parents to Take Parental Leave Concurrently	**.025**	
Right Exists		10
Leave Must Be Shared		0
Right of Reassignment During Pregnancy	**.05**	
Statutory Right		10
No Provision		0
Sick Leave	**.20**	
182 Days/Year		10
12 Days Per Occurrence		8.75
12 Days/Year		7.5
5 Days/Year Combined with Family Responsibility Leave		6.25

5 Days/Year		5.0
3.5 Days Combined with Family Responsibility Leave		3.75
3 Days/Year		2.5
1.5 Days Combined with Family Responsibility Leave		1.25
No Provision		0
Family Responsibility Leave	**.20**	
12 Days/Year		10
10 Days/Year		8.57
5 Days/Year Combined with Sick Leave		7.14
5 Days/Year		5.71
3.5 Days/Year Combined with Sick Leave		4.28
3 Days/Year		2.86
1.5 Days/Year		1.42
No Provision		0

The results for Canada's family-related labor standards are presented in Table 4, reproduced from the FSLRC report. As can be seen, all the jurisdictions provide for fifteen to seventeen weeks of maternity leave. All but one jurisdiction, Quebec, provides for an additional thirty-five to thirty-seven weeks of parental leave; Quebec provides a full year of parental leave. Most of the jurisdictions also provide for mandatory sick leave, family responsibility leave, and compassionate care leave.

TABLE 4

FAMILY-RELATED LEAVE INDICES AND RANKINGS, CANADIAN JURISDICTIONS DECEMBER 31, 2005

	Compassionate Care Benefits	Bereavement Leave	Maternity Leave	Parental Leave	Right of Both Parents to Take Parental Leave Concurrently	Right of Reassignment During Pregnancy	Sick Leave Index	Family Responsibility Leave Index	Sick Leave and Family Matters Index	Ranking
Weight	0.15	0.025	0.1875	0.1625	0.025	0.05	0.2	0.2	1	
QUE	5	8.33	10	10	10	10	10	8.57	8.92225	1
SASK	5	5	10	5	10	0	7.5	10	7.8125	2
ONT	10	3.33	10	5	10	0	6.25	7.14	7.94875	3
Federal	10	10	10	5	0	10	8.75	0	6.94	4
NFL	10	6.67	10	5	10	0	3.75	4.28	7.46025	5
NB	10	5	10	5	0	0	5	2.86	6.8845	6
YUKON	10	5	10	5	0	0	7.5	0	6.3125	7
PEI	10	1.67	10	5	0	0	2.5	2.86	6.80125	8
NS	10	1.67	10	5	10	0	1.25	1.42	6.76325	9
Man	10	0	10	5	10	0	0	0	6.4375	10
NUN	10	0	10	5	10	0	0	0	6.4375	10
BC	0	1.67	10	5	10	0	0	5.71	6.12125	12
NWT	0	0	10	5	10	0	0	0	4.9375	13
Alta	0	0	10	5	0	0	0	0	4.6875	14

SOURCES: Federal Jurisdiction, Provincial, and Territorial Websites; Human Resources and Skill Development Canada Data.

Family-related leave in the European countries is structured similarly to family-related leave in Canada, e.g., it is subdivided into leaves for specific purposes. Table 5, reproduced from the FSLRC report, presents the coding for the Canada-Europe analysis, an extension of the Canada-only coding presented in Table 3. Included in this index are maternity leave, parental leave, reassignment during pregnancy, length of compassionate care/caregivers leave, ill-person coverage of compassionate care/caregivers leave, flexibility associated with full-time and part-time employment in compassionate care/caregivers leave, and payment for compassionate care/caregivers leave. The major difference between the Canada-only

analysis and the Canada-Europe analysis was associated with provisions in Europe that permit employees to lengthen their maximum leave if they reduce their working hours.

TABLE 5

FAMILY MATTERS LEAVE INDEX:

PROVISIONS, WEIGHTS, SUBINDEX VALUES, CANADIAN JURISDICTION AND EUROPEAN COUNTRIES COMPARISON

PROVISION/LANGUAGE	PROVISION WEIGHT	SUBINDEX VALUE
Maternity Leave	**.25**	
52 Weeks		10
43 Weeks		8.33
26 Weeks		6.67
21 Weeks		5.0
15-17 Weeks		3.33
14 Weeks		1.66
No Provision		0
Parental Leave	**.25**	
156 Weeks		10
78 Weeks		8.57
52 Weeks		7.14
45-47 Weeks		5.71
34-37 Weeks		4.29
26-27 Weeks		2.86
13-15 Weeks		1.43
No Provision		0
Right of Reassignment During Pregnancy	**.05**	
Yes		10
No		0
Compassionate Care/Caregivers Leave	**.2**	
As Needed		10
65 Weeks		8.75
52 Weeks		7.5
24-26 Weeks		6.25
8 Weeks in 26 Weeks		5.0
12 Weeks in 1 Year		3.75
2 to 6 Weeks Per Year		2.5
1 Week or Less		1.25
No Provision or Leave		0
Ill Persons Covered at Maximum Compassionate Care/Caregivers Leave	**.05**	
Any Family Member		10

Child Only		5
No Coverage		0
Longer Leave with Reduction in Working Hours	**.05**	
Yes		10
No		0
Paid Compassionate Care/Caregivers Leave	**.15**	
Yes		10
No		0

The Canada-Europe results, taken directly from FSLRC study, are presented in Table 6. As can be seen, the European countries generally rank higher than the Canadian jurisdictions, indicating that, as a whole, the European countries have more generous leave provisions than the Canadian jurisdictions. The mean rank for the European countries is 13.2 and the mean rank for the Canadian countries is 18.1.

TABLE 6

FAMILY-RELATED LEAVE INDICES AND RANKINGS, CANADIAN JURISDICTIONS AND WESTERN EUROPEAN COUNTRIES DECEMBER 31, 2005

	Maternity Leave	Parental Leave	Right of Reassignment During Pregnancy	Compassionate Care Benefits/ Caregiver's Leave	Ill Persons Covered at Maximum	Longer Leave with Reduction In Working Hours	Paid	Index	Ranking	HIGHER LEVEL POLITICAL JURISDICTION
Weight	0.25	0.25	0.05	0.2	0.05	0.05	0.15	1		
Norway	8.33	5.71	10	10	5	0	10	7.76	1	
Italy	5	5.71	10	10	5	0	10	6.93	2	EU
Ireland	6.67	1.43	10	8.75	10	0	10	6.28	3	EU
Netherlands	3.33	2.86	10	10	10	0	10	6.05	4	EU
France	5	10	10	7.5	5	0	0	6.00	5	EU
UK	10	1.43	10	10	10	0	0	5.86	6	EU
Spain	3.33	10	10	7.5	10	0	0	5.83	7	EU
Belgium	3.33	1.43	10	7.5	10	10	10	5.69	8	EU
Federal Jur.	3.33	4.29	10	5	10	0	10	5.41	9	Canada
Germany	1.66	8.57	10	2.5	5	0	10	5.31	10	EU
Sweden	1.67	4.29	10	6.25	5	0	10	4.99	11	EU
QUE	3.33	4.29	10	2.75	10	0	10	4.96	12	Canada
MAN	3.33	4.29	0	5	10	0	10	4.91	13	Canada
NB	3.33	4.29	0	5	10	0	10	4.91	14	Canada
NFL/LAB	3.33	4.29	0	5	10	0	10	4.91	15	Canada
NWT	3.33	4.29	0	5	10	0	10	4.91	16	Canada
NS	3.33	4.29	0	5	10	0	10	4.91	17	Canada
NUN	3.33	4.29	0	5	10	0	10	4.91	18	Canada
ONT	3.33	4.29	0	5	10	0	10	4.91	19	Canada
PEI	3.33	4.29	0	5	10	0	10	4.91	20	Canada
YUK	3.33	4.29	0	5	10	0	10	4.91	21	Canada
Austria	3.33	7.14	10	6.25	10	0	0	4.87	22	EU
Finland	3.33	2.86	10	10	10	0	0	4.55	23	EU
SAS	3.33	4.29	0	2.75	10	0	10	4.46	24	Canada
BC	3.33	4.29	0	1.25	10	0	10	4.16	25	Canada
Luxembourg	3.33	2.86	10	1.25	5	0	10	4.05	26	EU
Portugal	1.67	1.43	10	2.5	5	0	10	3.53	27	EU
Denmark	6.67	2.86	10	0	0	0	0	2.88	28	EU
Greece	3.33	1.43	0	2.5	5	0	0	1.94	29	EU
Alberta	3.33	4.29	0	0	0	0	0	1.91	30	Canada

SOURCES: Federal Jurisdiction, Provincial, and Territorial Websites; Human Resources and Skill Development Canada Data

2. Canadian Jurisdictions, European Countries, and the United States

In order to create comparability between the two countries, this index was constructed to take into account 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.[35] The FMLA does not subdivide the leave as is done in the Canadian jurisdictions and in the European countries. Therefore, the index totaled all the relevant Canadian and European country leaves into weeks of leave, essentially reconfiguring the Canadian leaves so they would match the leave configuration as created by the FMLA. Thus, weeks of compassionate care/caregivers leave, parental leave, maternity leave, bereavement leave, and family responsibility leave in the Canadian and European jurisdictions were totaled (the parental leave component did not "double count" for those jurisdictions that permitted both parents to take concurrent parental leave). Subindices were also added for pay for leave and for the right of reassignment during pregnancy. Sick leave was excluded to maintain comparability among all the countries, as the FMLA does not permit use for personal sick leave.[36] Table 7 presents the coding for the Canada-Europe-United States.

TABLE 7

SICK LEAVE AND FAMILY MATTERS LEAVE INDEX:

PROVISIONS, WEIGHTS, SUBINDEX VALUES, CANADIAN JURISDICTION, EUROPEAN COUNTRIES, AND UNITED STATES COMPARISON

PROVISION/LANGUAGE	PROVISION WEIGHT	SUB-INDEX VALUE
Total Maximum Weeks of Compassionate Care, Bereavement, Maternity, and Parental Leave	**.75**	
224-29 Weeks		10
167 Weeks		9.23
144–45 Weeks		8.46
120.5 Weeks		7.69
105 Weeks		6.92
93-96 Weeks		6.15
82 Weeks		5.38
74.5 Weeks		4.62
63.5-67.5 Weeks		3.85
51.5-52.5 Weeks		3.08
43.5 Weeks		2.31

35. *See* Family and Medical Leave Act of 1993, Pub. L. No. 103-3, 107 Stat. 6 (codified as amended at 29 U.S.C. § 2601 (2000)).

36. *See* 29 U.S.C. §§ 2612(a)(1)(A)-(D) (2006).

32-34 Weeks		1.54
12 Weeks		.770
No Weeks		0
Weeks of Paid Leave	**.2**	
Yes		10
No Provision		0
Right of Reassignment During Pregnancy	**.05**	
Provision		10
No Provision		0

Table 8 presents the results for the Canada-Europe-U.S. comparison. As can be seen, forty-nine of the fifty states and the District of Columbia are at the bottom of the rankings, due primarily to the fact that the FMLA provides only twelve weeks of leave, as length of leave is assigned the greatest weight in the index.[37] California, with its provision for six weeks of paid leave, is the highest ranked U.S. state, and ranks higher than Denmark, Greece, and the province of Alberta.

TABLE 8

FAMILY-RELATED LEAVE INDICES AND RANKINGS, CANADIAN JURISDICTIONS, WESTERN EUROPE, AND UNITED STATES DECEMBER 31, 2005

Legislating Jurisdiction	Weeks Leave Code	Longer Leave with Reduction in Working Hours	All or Part of Leave Paid	Family Matters Index	Ranking	HIGHER LEVEL POLITICAL JURISDICTION
Weight	**0.75**	**0.05**	**0.2**	**1**		
Norway	**9.23**	**0**	**10**	**8.92**	**1**	
Italy	**8.46**	**0**	**10**	**8.35**	**2**	**EU**
Netherlands	**7.69**	**0**	**10**	**7.77**	**3**	**EU**
France	**10**	**0**	**0**	**7.50**	**4**	**EU**
Spain	**10**	**0**	**0**	**7.50**	**4**	**EU**
Ireland	**6.92**	**0**	**10**	**7.19**	**6**	**EU**
Germany	**6.15**	**0**	**10**	**6.61**	**7**	**EU**

37. *Id.* § 2612(a)(1) ("[A]n eligible employee shall be entitled to a total of 12 workweeks of leave during any 12-month period . . . .").

Belgium	5.38	10	10	6.54	8	EU
UK	8.46	0	0	6.35	9	EU
Finland	7.69	0	0	5.77	10	EU
Sweden	4.62	0	10	5.47	11	EU
Federal	3.85	0	10	4.89	12	CANADA
MAN	3.85	0	10	4.89	12	CANADA
NB	3.85	0	10	4.89	12	CANADA
NFL/LAB	3.85	0	10	4.89	12	CANADA
NWT	3.85	0	10	4.89	12	CANADA
NS	3.85	0	10	4.89	12	CANADA
NUN	3.85	0	10	4.89	12	CANADA
ONT	3.85	0	10	4.89	12	CANADA
PEI	3.85	0	10	4.89	12	CANADA
QUE	3.85	0	10	4.89	12	CANADA
SAS	3.85	0	10	4.89	12	CANADA
YUK	3.85	0	10	4.89	12	CANADA
Austria	6.15	0	0	4.61	24	EU
BC	3.08	0	10	4.31	25	CANADA
Luxembourg	2.31	0	10	3.73	26	EU
Portugal	1.54	0	10	3.16	27	EU
CA	0.77	0	10	2.58	28	US
Alberta	3.08	0	0	2.31	29	CANADA
Denmark	3.08	0	0	2.31	29	EU
Greece	1.54	0	0	1.16	31	EU
AL	0.77	0	0	0.58	32	US
AK	0.77	0	0	0.58	32	US
AZ	0.77	0	0	0.58	32	US
AR	0.77	0	0	0.58	32	US
CO	0.77	0	0	0.58	32	US
CT	0.77	0	0	0.58	32	US
DE	0.77	0	0	0.58	32	US
DC	0.77	0	0	0.58	32	US
FL	0.77	0	0	0.58	32	US
GA	0.77	0	0	0.58	32	US

HA	0.77	0	0	0.58	32	US
ID	0.77	0	0	0.58	32	US
IL	0.77	0	0	0.58	32	US
IN	0.77	0	0	0.58	32	US
IA	0.77	0	0	0.58	32	US
KS	0.77	0	0	0.58	32	US
KY	0.77	0	0	0.58	32	US
LA	0.77	0	0	0.58	32	US
ME	0.77	0	0	0.58	32	US
MD	0.77	0	0	0.58	32	US
MA	0.77	0	0	0.58	32	US
MI	0.77	0	0	0.58	32	US
MN	0.77	0	0	0.58	32	US
MS	0.77	0	0	0.58	32	US
MO	0.77	0	0	0.58	32	US
MT	0.77	0	0	0.58	32	US
NE	0.77	0	0	0.58	32	US
NV	0.77	0	0	0.58	32	US
NH	0.77	0	0	0.58	32	US
NJ	0.77	0	0	0.58	32	US
NM	0.77	0	0	0.58	32	US
NY	0.77	0	0	0.58	32	US
NC	0.77	0	0	0.58	32	US
ND	0.77	0	0	0.58	32	US
OH	0.77	0	0	0.58	32	US
OK	0.77	0	0	0.58	32	US
OR	0.77	0	0	0.58	32	US
PA	0.77	0	0	0.58	32	US
RI	0.77	0	0	0.58	32	US
SC	0.77	0	0	0.58	32	US
SD	0.77	0	0	0.58	32	US
TN	0.77	0	0	0.58	32	US
TX	0.77	0	0	0.58	32	US
UT	0.77	0	0	0.58	32	US
VT	0.77	0	0	0.58	32	US
VA	0.77	0	0	0.58	32	US

WA	0.77	0	0	0.58	32	US
WV	0.77	0	0	0.58	32	US
WI	0.77	0	0	0.58	32	US
WY	0.77	0	0	0.58	32	US

SOURCES: Federal Jurisdiction, Provincial, and Territorial Websites; Human Resources and Skill Development Canada Data; State of California, Employment Development Department.

III. SUMMARY AND CONCLUSIONS

The foregoing analysis demonstrates that the United States is behind Canada and Europe in the extent to which it provides legal protection and support for employees attempting to balance work and family obligations. If one views vacations as time spent with family, it must be observed that none of the states in the United States require that an employee receive paid vacation. While a majority of employees receive paid vacation, this is almost always at the discretion of the employer or through collective bargaining agreements. On the other hand, no Canadian jurisdiction provides less than two weeks of vacation after one year.[38] Furthermore, pursuant to EU Directive 93/104, no EU member may provide less than four weeks (twenty days) of vacation per year.[39] Norway, a country that is not a member of the EU, provides employees under sixty years of age with five weeks of vacation per year, or six weeks if the employee is over sixty years of age.[40] The pattern repeats itself with respect to family-related leave. The Family and Medical Leave Act requires employees receive twelve work weeks of unpaid leave for family purposes during a twelve-month period.[41] None of the other political jurisdictions provide less than thirty-two weeks. Again, the United States lags well behind other Western democracies. Overall, a statutory framework like the one the United States has makes it more difficult for workers to balance work and family.

38. BLOCK, ROBERTS & CLARKE, *supra* note 9.

39. *See* European Council, Directive 93/104/EC of 23 November 1993 Concerning Certain Aspects of the Organization of Working Time, http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=31993L0104&model=guichett (last visited July 25, 2006).

40. *See* Royal Norwegian Ministry of Local Government, Act Relating to Holidays: Information Series 4, http://www.ub.uio.no/ujur/ulovdata/lov-19880429-021-eng.pdf (last visited July 28, 2006).

41. *See supra* note 37.

It should also be noted that vacations and family-related leave are not the only labor standards for which the United States is lacking. Block, Roberts, and Clarke found that, as of December 31, 1998, the United States ranked lower than 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.[42] 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 FLSRC analysis indicated that, by December 31, 2005, the United States lagged behind Canada in minimum wages.[43] The mean index score for the Canadian jurisdictions in the FLSRC study was 5.77, whereas the score for the United States was 3.44.[44]

Similarly, Block, Berg, and Roberts found that the United States lagged behind the EU at the community level on an index of the following ten 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.[45] In the Block, Berg, and Roberts study, the United States was higher than the EU on only minimum wages and collective bargaining.[46] However, the latter finding was discounted because the EU does not regulate collective bargaining at the community level.[47]

What is the reason for this consistent pattern? Block, Berg, and Roberts have observed that the two fundamentally different conceptions of the employment relationship can be found in the United States and Western Europe.[48] 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.[49] Thus, the United States starts with a presumption that markets work, that there is competition, and that all

42. BLOCK, ROBERTS & CLARKE, *supra* note 9.

43. *See* Block, *supra* note 7.

44. *Id.*

45. Block, Berg & Roberts, *supra* note 25, at 450-51.

46. *Id.* at 453, 455.

47. *Id.* The United States has one of the lowest unionization rates of any western industrial democracy. *See* Richard N. Block, *Industrial Relations in the United States and Canada*, *in* GLOBAL INDUSTRIAL RELATIONS 35 (Michael J. Morley, Patrick Gunnigle & David G. Collings, eds., 2006). In 2003, the median unionization rate range for fifteen European countries, the United States, and Canada was 30-39%. *Id.* The United States unionization rate in 2003 was in the range of 10-19%. *Id.*

48. Block, Berg & Roberts, *supra* note 25, at 465-66.

49. *Id.*

economic actors have equal market power and are "price takers."[50] 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.[51] Those who advocate regulation must bear the burden of establishing that the market for which regulation is advocated does not function properly.[52]

The EU, on the other hand, presumes an imbalance of power between the employer and the employee.[53] The EU system assumes that employers have labor market power, and some are primarily price setters in the labor market rather than price takers.[54] As such, the government must actively regulate the labor market to equalize power between employers and employees.[55]

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.[56] Although heavily influenced by its larger neighbor to the south, Canada is generally seen as more collectivistic and statist than the United States.[57] 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.

While economic and efficiency arguments may be used to justify the relatively low levels of employee protection in the United States, these arguments are based more on assumptions about markets than on the actual functioning of markets. As evidenced, different assumptions about the nature of labor markets across political jurisdictions can and do generate different responses to questions of employee protection.

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50. *Id.*

51. *Id.*

52. *Id.*

53. *See* Richard N. Block, Peter Berg & Dale Belman, *The Economic Dimension of the Employment Relationship, in* THE EMPLOYMENT RELATIONSHIP: EXAMINING PSYCHOLOGICAL AND CONTEXTUAL PERSPECTIVES 94-118 (Jacqueline A-M. Coyle-Shapiro et al. eds., Oxford University Press 2004).

54. *Id.*

55. *Id.*

56. *See* BLOCK, ROBERTS & CLARKE, *supra* note 9; Block, *supra* note 7; *see also* SEYMOUR MARTIN LIPSET, CONTINENTAL DIVIDE: THE VALUES AND INSTITUTIONS OF THE UNITED STATES AND CANADA (1990).

57. *Id.*