

# Modernizing U.S. Labor Standards for 21st-Century Families

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## ABSTRACT

Women now make up almost half the U.S. workforce. Despite the central role women play in the U.S. economy, our labor laws and institutions do little to address the various ways in which women are held back at work. This not only hampers women's economic well-being, but also has implications for U.S. productivity, labor force participation, and economic growth. In this paper, we propose policies aimed at boosting women's economic outcomes: paid family leave, fair scheduling, and combatting wage discrimination. We show how enacting carefully designed policies in these categories will better address the challenges of today's labor force, enhance women's economic outcomes, and provide benefits for the national economy.

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## INTRODUCTION

The growing number of women in the U.S. workforce over the past 30 years has reshaped both traditional gender roles and the American economy. Since the late 1970s women have outnumbered men in U.S. college enrollment (National Center for Education Statistics 2016), allowing them to break into new occupations that had been dominated by men, and to make more-valuable contributions to the economy. Women's paid work boosted U.S. GDP by an estimated 11 percent between 1979 and 2013 (Appelbaum, Boushey, and Schmitt 2014). And as men's earnings fell by 9.5 percent over the past three decades, it was women's increased working hours that kept household income from declining in each income group (Boushey 2016; Boushey and Vaghul 2016; Glynn 2014). With women now making up close to half the nation's workforce, it is clear that their earnings are crucial for families' well-being and the nation's economic strength.

Despite the central role that women play in the U.S. economy today, federal policies and labor laws remain anchored in the past, hampering further progress. Most of the laws that govern labor standards, such as the Fair Labor Standards Act, were enacted as part of the New Deal in the 1930s. While these laws underpin employer and employee relationships, they are predicated on certain outdated premises: jobs are assumed to have predictable, standardized schedules and families are assumed to have a single breadwinner and a stay-at-home caregiver. The latter assumption is explicitly gendered, and is based on a view of the idealized upper- or middle-class white family. In reality, many women in the United States, especially low-income and racial and ethnic minority women, have historically worked to support their families (Frye 2016; Landry 2000).

The limits of federal labor laws can be partly ascribed to the fact that they were enacted at a time when the U.S. labor movement was considerably stronger. Many important labor standards were therefore not directly codified through law, but rather negotiated across the bargaining table. From the New Deal through the early 1970s, unions grew to cover about one-third of the workforce and helped mitigate exploitative labor practices for some workers. But over the past 30 years, private sector labor unions have declined, and only about 7 percent of private sector workers are now covered by union contracts (Bureau of Labor Statistics[BLS] 2016a).

Today, the United States is left with labor laws and institutions that do little to address the various ways in which women are held back at work. Policy makers' failure to implement any sort of national paid leave policy forces workers to choose between the loss of wages—or even the loss of their jobs—and taking the time to care for a new child, their own health, or an ill family member. Working hours that are too long, unpredictable, or insufficient can create work–life conflicts that make it difficult to manage a paid job with other responsibilities. On top of work–life conflicts, women are often subject to wage discrimination, and a lack of pay transparency means that this issue often goes unaddressed.

Given the failure to address these issues, it is no wonder that women's economic progress has stalled by several measures, including labor force participation and the gender wage gap.

Without policies that address work–life conflicts, many women stop working altogether. Unlike other developed countries, most of which have policies addressing these issues, the United States has seen a decline in women’s labor force participation in recent years, especially for women in their 30s and 40s (Goldin and Mitchell 2017).

These labor market outcomes are not inevitable, but are to a large extent the product of deliberate policy choices. Amending U.S. labor laws can enhance women’s economic outcomes, thus providing a boost to the national economy through increased productivity, greater labor force participation, and increased demand for goods and services. In this paper we propose design principles for three groups of policies—paid family leave, fair scheduling, and combatting wage discrimination— aimed at boosting women’s outcomes.

## The Challenge

Women continue to face a host of impediments to their full participation in the labor market. Many of these impediments have been studied over the course of decades, providing insight into their effects on women’s employment and earnings as well as other consequences for families. We classify these challenges into three categories: caregiving responsibilities, burdensome scheduling practices, and wage discrimination.

### **CAREGIVING RESPONSIBILITIES**

The United States is one of the only countries in the world without a national paid leave policy. Some U.S. workers are eligible for 12 weeks of unpaid leave through the Family and Medical Leave Act of 1993 upon the birth or adoption of a new child, serious illness, or to care for a family member. But because of the law’s eligibility requirements, only 60 percent of workers and about 20 percent of new mothers have access to legally mandated unpaid leave; those who are excluded from access are disproportionately lower income (Council of Economic Advisers 2014) and less educated (U.S. Department of Labor n.d.). Even those who are eligible for unpaid time off, however, often do not take it. A recent survey conducted by the Pew Research Center finds that one in six U.S. workers said they needed to take time off work in the past two years but were unable to do so, primarily for financial reasons (Horowitz et al. 2017).

Access to paid time off is even more limited. In 2016 only 14 percent of the private sector workforce and 4 percent of workers in the bottom tenth of the wage distribution received paid leave through their employer (BLS 2016b, table 32a). A larger fraction have some other access to paid time off: 38 percent of workers in the United States have access to temporary disability insurance to deal with a personal medical condition without losing pay, but most disability insurance does not cover the care of a family member (BLS 2016b, table 16a).

For many families, the birth of a child is associated with a significant decline in financial well-being (Stanczyk 2016). To cope, many families—especially low-income families— go into debt, put off paying their bills, or return to work too early, with negative consequences for mothers and children (Horowitz et al. 2017). Even if parents do not return to work right away, the fall in income around the time of the birth can harm children. Money matters for kids, especially young kids, even when controlling for other family parental characteristics (Sandstrom and Huerta 2013). Furthermore, in other economies, paid maternity leave has a profound effect both on children’s long-term development and on their future productivity (Carneiro, Loken, and Salvanes 2015).

### *The Need for Comprehensive Paid Leave*

Discussions of paid leave policy often focus on the needs of new parents, but parental leave is not the only valuable use of paid leave: others include dealing with a personal health problem, caring for a family member with a serious health condition, or addressing needs associated with a family member's military deployment. With an aging population and fewer stay-at-home caregivers, an increasing number of workers need time off to care for a family member or for self-care. In fact, those who take leave are more likely to do so for personal medical reasons or to care for a family member than to care for a newborn child (Horowitz et al. 2017).

Workers who are dealing with a personal or family illness face a unique set of challenges. Caring for an ailing family member often requires intermittent leave, taken in small time increments to, for example, take someone to the doctor or spend an afternoon providing care. While more research is needed to determine how differing lengths of family and medical leaves affect individual and economic outcomes, the limited evidence that does exist shows that giving workers some leave for nonparental factors can positively affect both health and labor market outcomes. For example, Earle, Ayanian, and Heymann (2006) observed nurses who had experienced a heart attack: those with paid leave were much more likely to return to work compared to those without this benefit. A study of paid leave in California found that giving workers some time off increases the likelihood that workers—particularly low-income workers—will stay in the labor force following personal and family health events (Appelbaum and Milkman 2011).

Without a comprehensive paid leave program that covers all family care needs, families struggle to address work–life conflicts, and that struggle in turn generates social and economic costs. Half of workers who need leave, but do not have access to it, postpone or never receive critical medical treatment, which has costs for our health-care system as well (U.S. Department of Labor 2015). With the aging of the baby boomer population, a growing number of workers are providing care for an elderly relative. Of these caregivers, seven in ten have had to make work accommodations such as cutting back on hours (and therefore wages) or dropping out of the workforce altogether (Feinberg and Choula 2012). Every worker at some point in their life will need to take time off work for family or health reasons, making this an issue that affects all workers. But women continue to take on the bulk of caregiving responsibilities for children and ill family members, making paid leave particularly consequential for women's participation and success in the labor force.

Although paid leave is especially valuable for many women, its predominate usage by women can negatively affect pay equity. Policies targeted exclusively to women can lead employers to discriminate against young women—even those without children—if employers expect them to use maternity leave (Thomas 2016). In contrast, countries that have more gender-neutral paid leave programs have made bigger strides toward closing the gender pay gap (World Economic Forum 2013). This is partially because men's use of leave frees up women to engage in paid work. For example, In Iceland fathers are given three months of nontransferable paternity leave following the birth of a child. An evaluation of the policy revealed that “the division of care between parents . . . has changed in the intended direction and that is mainly due to the law” (Arnalds, Eydal, and Gíslason 2013, 323). In addition, a positive association was discovered between the length of leave that men take and their involvement in care once the leave period is over (Arnalds, Eydal, and Gíslason 2013).

These outcomes aren't specific to Iceland. Quebec's paid paternity leave program had a “large and persistent impact on gender dynamics within households even years after the leave period ended,” with fathers taking on a larger share of domestic work and child care, allowing more time

for women to participate in the labor market (Patnaik 2015).

### **BURDENSOME SCHEDULING PRACTICES**

Long but irregular work schedules, as well as just-in-time scheduling practices, are a problem for a growing number of workers as they seek to balance work and life commitments. The Fair Labor Standards Act sought to check overwork, yet the failure to update the overtime salary threshold makes the law increasingly ineffective at curtailing long work hours for the vast majority of U.S. workers. While some workers are logging more time at work than ever before, others struggle to get enough work hours to make ends meet (Jacobs and Gerson 2004).

Both of these trends harm women's economic outcomes in particular and family incomes overall. In jobs that require long hours, workers might not be able to address conflicts between their outside and family commitments. On the other end of the spectrum, part-time jobs that do not provide enough hours can hurt women's ability to provide for their families, especially because workers are likely paid a lower hourly rate than they would be paid in a comparable full-time job. In addition, the rise in unpredictable and nonstandard work hours makes it more difficult to arrange childcare or pursue the education necessary for upward mobility.

#### *Overwork and the Overtime Threshold*

Shifts in the way firms organize work over the past 40 years have generated highly demanding jobs characterized by long hours and little flexibility, at least within certain occupations. This trend has created disproportionate difficulties for women, leading them to scale back career aspirations or drop out of the labor force entirely. Stone and Lovejoy (2004) surveyed women who either quit or cut back on hours at their professional or managerial jobs. One-third of those who quit and nearly two-thirds of those who scaled back to part-time work cited long, inflexible hours as the reason (Stone and Hernandez 2013; Stone and Lovejoy 2004).

While some employers pay workers overtime when they ask them to work long hours, that number has dwindled over the past 40 years as the Fair Labor Standards Act's overtime threshold has declined in inflation-adjusted terms. Today, many salaried workers will not earn overtime pay unless they earn \$23,660 or less a year. This threshold, which is below the federal poverty level for a family of four, covers only 8 percent of salaried workers, leaving millions of employees without overtime protections.

Overwork has implications for pay equity, increasing the gender wage gap by about 10 percent (Cha and Weeden 2014). Harvard University economist Claudia Goldin cites long hours and the emphasis on office "facetime" as the "last chapter" in attaining gender equality (Goldin 2014).

#### *Underwork and Unpredictable Schedules*

While one segment of the working population is spending more time in paid employment, another is having trouble getting enough work to make ends meet. An estimated 5.2 million workers are currently working part time, as shown in figure 1, but are available for and would prefer full-time employment. Part-time jobs are most prevalent within the low-wage retail and hospitality industries and are disproportionately filled with Hispanic and African-American women. The schedules and hours for many of these jobs are also unpredictable, compounding the financial and emotional burdens that these workers face. Research shows that part-time workers often do not receive benefits and tend to have lower wages than their full-time counterparts, even if they are doing the same job (Golden 2015). A number of cities are considering policies to address this problem: for example, San Jose, California, recently implemented a law aimed at giving part-time workers access to more hours, but it is too soon to fully evaluate the law's effect (GovDocs 2017).

FIGURE 1.

Number of People Employed Part-Time for Economic Reasons, 2000–17



Source: Current Population Survey 2000–17.  
 Note: Monthly values are seasonally adjusted.

A growing number of U.S. workers are grappling with unpredictable, constantly shifting schedules. Often aided by “just-in-time” scheduling software, many companies try to generate work schedules based on predictions of consumer demand. But in doing so, they may give their employees only a few days’ notice of their schedule for the coming week and require them to remain on call and wait to see if they are needed to work; if sales are slow, employers might send workers home without pay (Boushey and Ansel 2016b).

About 17 percent of workers nationally have unpredictable schedules (Golden 2015). While this is a problem for workers of all incomes, jobs with erratic schedules are more heavily concentrated among low-income workers, especially in the retail and service industries (Boushey and Ansel 2016b). See table 1 for information about irregular scheduling by occupation. Research also shows that women, especially women of color, tend to be most affected by these schedules.<sup>1</sup> In fact, more than one-third of female hourly workers in their prime childbearing years receive their schedules a week or less ahead of time (Economic Policy Institute 2017).

Unsurprisingly, schedules that are unpredictable wreak havoc on workers and their families. Earnings fluctuate week to week depending on how many hours employers assign to their employees, making it impossible for workers to predict whether they will earn enough to make ends meet. Unpredictable work schedules are associated with household financial insecurity, even after adjusting for hourly wages and overall income (Schneider and Harknett 2016). Scheduling instability has also been found to be a key driver of the rise of income volatility (Mitchell 2017).

TABLE 1.

**Share of U.S. Workers by Shift Type and Occupation, Pooled Years 2002, 2006, and 2010**

	Irregular	Split/rotating	Regular
All (n=4,641)	10%	7%	83%
Type of occupation (share of total)			
Executive/admin/management (15%)	9	4	87
Professional specialty (19%)	11	5	84
Technicians (4%)	8	11	81
Sales occupations (11%)	15	10	75
Admin support (clerical) (13%)	4	5	91
Service occupations (16%)	10	14	76
Farming/precision production (11%)	8	3	89
Operators/laborers (11%)	10	9	81

Source: Golden 2015.

Without the time and work predictability required to manage their nonwork commitments, women in particular sometimes have to limit their time engaging in paid work, which results in less income for the family. Some women drop out of the labor force altogether, contributing to a declining female labor force participation rate (Boushey and Ansel 2016a, 2016b). Constantly shifting schedules can also mean that workers are unable to get a second job or go back to school, jeopardizing their longer-term economic stability as well. These kinds of jobs are especially onerous for parents, who can find it difficult to find and keep reliable child care. It is no wonder that the stress from unpredictable schedules takes a physical toll: Schneider and Harknett also found that those with an unpredictable schedule were more likely to have poorer physical health and to suffer from “serious psychological distress” (Schneider and Harknett 2016, 13). While some cities have begun passing legislation to limit unpredictable schedules, there is no federal law that prevents employers from requiring employees to work with little advanced notice.<sup>2</sup> That means, for most workers, that the cost of doing business is being pushed onto workers and their families.

## WAGE DISCRIMINATION

Much of the disadvantage suffered by women in the labor market would be addressed by well-designed work–family policies such as paid family leave and fair scheduling. However, wage discrimination still plays an important role in driving gender and racial wage gaps, and would likely continue to do so even after work–family challenges were met. After adjusting for factors like labor force experience, union status, race and ethnicity, and occupation, one recent study finds that 38 percent of the gender wage gap remains unexplained, suggesting that labor market discrimination plays an important role (Blau and Kahn 2017).

This means that even after accounting for observable differences between male and female workers, and white workers versus minority workers, women and people of color still face pay disparities (Schneider and Gould 2016). In fact, almost 60 percent of women would earn more if they were paid the same as men with equivalent levels of education and work hours (Milli et al. 2017). Eliminating pay discrimination through a boost to women’s wages would help families and the economy alike: the number of children living in poverty with working mothers would be reduced by 2.5 million and GDP would be higher by \$512.6 billion in 2016, a 2.8 percent increase (Milli et al. 2017).

Gender and racial wage discrimination has also been demonstrated in field experiments. Science professors who were given employment applications for a laboratory manager position that were

identical except for one part—the candidate’s name was shown as either Jennifer or John—made an average starting salary offer to John of \$30,000 compared to Jennifer’s \$26,500 (Moss-Racusin et al. 2012). Similarly, there is the much-cited study where researchers sent out identical resumes and found that applicants with “black sounding” names such as Lakisha or Jamal were less likely to get call backs than applicants with names such as Emily or Greg (Bertand and Mullainathan 2003). Other research analyzing the job searches of nearly 5200 unemployed people in New Jersey found that potential employers offered black job applicants significantly less compensation than white job applicants (Fryer, Pager, and Spenkuch 2011).

Even a single instance of this kind of pay inequity can reduce workers’ wages throughout their careers. Wage negotiation later in women’s careers is unlikely to be of much help, given that women are disproportionately likely to experience negative consequences when they do negotiate, and are consequently unwilling to do so. Men—especially white men-- negotiate higher salaries on average without negative effects (Bowles, Babcock, and Lai 2007).

### *The Persistent Impact of Salary History*

Compounding the effects of discrimination is employer usage of salary history. Employers often evaluate candidates and make offers based on what they earned at previous jobs; half of all workers report that their current employer learned at least some of their wage history (Hall and Krueger 2012). To the extent that women and people of color are discriminated against early in their careers, this wage history information can allow past discrimination to follow workers throughout their careers. Because employers sometimes think that salary history is a means to evaluate a worker’s productivity, a previous salary that is too low—regardless of whether the low salary level was due to ability or discrimination—could deter employers from making a job offer (Barach and Horton 2017). On the other hand, salary disclosure requirements could also harm older workers who have been laid off or who took time out of the workforce because employers might view them as too expensive.

A number of state and local governments, including those of Massachusetts, New York, and Philadelphia, have responded by banning the employer practice of requiring workers to disclose salary information during the hiring process. While the full effects of these relatively recent bans have yet to be evaluated, the results of a recent field experiment suggest that they might confer benefits (Barach and Horton 2017). Employers who could not see a job applicant’s salary history responded by evaluating more applicants overall, asking more questions, and arranging more face-to-face interviews to evaluate an applicant’s fit for the job. Employers without access to applicants’ salary history also interviewed and hired workers with relatively lower past wages compared to employers who did have access to this information. Not having to disclose their previous salaries also gave applicants more bargaining power; these workers were able to secure higher pay compared to applicants who were required to divulge their pay history (Barach and Horton 2017). Without an applicant’s salary history, employers must evaluate and make job offers based on an applicant’s tangible skills and experience.

### *Pay Secrecy and Worker Bargaining Power*

When wage discrimination occurs, many women are unaware of the problem due to formal or informal prohibitions of employee discussions about pay. The result is that employers may purposely or inadvertently pay their workers different amounts for the same kind of work. Bans of employee pay discussion appear to be effective at preventing workers from demanding higher pay and wage equality (see box 2). Even if an employee suspects pay inequity, it is difficult to prove pay discrimination without a disclosure or an employment discrimination charge (Rosenfeld and Denice 2015).

Pay secrecy remains common in many U.S. workplaces, and about half of all workers—and more than 60 percent of private sector workers—report that their workplace formally or informally bans workers from discussing their salaries (Institute for Women’s Policy Research 2014). Such is the case with Lilly Ledbetter, one of the few female supervisors for Goodyear Tire in Alabama when she worked for the company in the 1980s and 1990s. Ledbetter, who worked at Goodyear for almost two decades, was unaware that she earned less than the other 16 male supervisors because Goodyear prohibited employees from discussing pay. She realized that she was underpaid only after receiving an anonymous note (National Women’s Law Center 2013).

Ledbetter’s subsequent lawsuit and the action taken by Congress and signed into law by President Obama in January 2009 (The Lilly Ledbetter Fair Pay Act) extended the statute of limitations for filing an equal pay lawsuit. Previously, workers filing a pay discrimination complaint were required to do so within 180 days of the first time they are paid less than their peers. Obviously, this is impossible if employees do not know they are being discriminated against; the statute of limitations now resets with every new paycheck affected by the original discriminatory action. While this is a step in the right direction, the law does not directly address pay secrecy.

The widespread nature of pay secrecy is surprising given that, excluding supervisors and managers, it is illegal under the National Labor Relations Act (NLRA) to prohibit discussions of pay, even informally (Bierman and Gely 2004; Gely and Bierman 2003). However, most employees do not know that pay secrecy is illegal; because there are few penalties for violating the NLRA, employers have little incentive to adhere to the law (Gely and Bierman 2003). Even if the penalties were stronger, the existing exclusion of managers and supervisors is a problem considering that women and people of color are underrepresented in these positions (Warner 2014). Had Ledbetter found out that she was underpaid through discussions with her male colleagues, she would have been violating her company’s policy and could have been legally fired (due to her status as a supervisor).

By contrast, employer disclosures of pay information can level the playing field between employers and employees, and help reduce unjustifiable pay gaps. In a recent study of British workplaces, employees who report that their managers are “very good” at disclosing financial information and pay earn 8 to 12 percent more than those who report that their managers are “very poor” at sharing this kind of information (Rosenfeld and Denice 2015). In the United States, publishing the salaries of California public employees online compressed the pay of managers by 8 percent, suggesting that pay transparency helped expose and remedy difficult-to-rationalize differences in pay (Mas 2014). Other research shows that within-establishment pay disparities between men and women are smaller in gender-balanced unionized industries, in part because unions often have access to a company’s financial information (Elvira and Saporta 2001).

Pay transparency is valuable in part because it motivates employers to create fair pay systems, while also allowing employees to monitor and speak up about discriminatory salary practices. It is also effective in adding legitimacy to workers’ salary requests, and makes it difficult for employers to justify differing salaries for men and women doing equivalent work (Rosenfeld and Denice 2015). Salary transparency has an upside for employers as well, reducing worker distrust and boosting productivity. Pay transparency has been shown to help employees collaborate more productively—most likely because workers could more accurately judge their colleagues’ skill level by how much they were getting paid (Belogolovsky et al 2016). In addition, workers who know their colleagues’ salaries could be motivated to work harder, boosting their output by 10 percent (Huet-Vaughn 2015). By contrast, pay secrecy can actually decrease performance because it takes “a toll on the ability of the firm to retain its best performers” (Belogolovsky and Bamberger 2014,37).

## **A New Approach**

In order to address the challenges posed by caregiving responsibilities, burdensome scheduling practices, and wage discrimination, we propose a number of reforms. The details of these proposed reforms are motivated in part by the evidence regarding their effects on women's labor market outcomes; much of that evidence has been generated by the experiences of state and local communities.

### **PAID FAMILY LEAVE**

Paid family leave benefits families and the overall economy (see, e.g., Baum and Ruhm 2013; Blau and Kahn 2013; Houser and Vartanian 2012; Rossin-Slater, Ruhm, and Waldfogel 2013). In light of the challenges facing workers who experience personal illness or caregiving demands—and given the importance of retaining those workers in the labor market—policies regarding paid leave must:

- Cover the range of family and medical needs that require time away from work;
- Be available to all workers, men and women equally;
- Provide adequate length of leave to address care needs; and
- Have a sufficiently high wage replacement rate to make a difference in people's lives.

As federal policy makers consider their options, they can learn from the experiences of three states—California, New Jersey, and Rhode Island—that have enacted statewide paid leave programs. These states provide important lessons about how to create successful paid family leave policies at the national level.

#### *Cover the range of family and medical needs that require time away from work*

An effective paid family and medical leave proposal must cover all the major reasons people need time away from their work. Family and medical leave is not exclusively about parental leave. As the population ages and women's labor force participation increases, more workers need time off to address either their own illness or that of a family member. Excluding any of these reasons from a paid leave policy would miss an opportunity to support both families' economic security and their labor force participation.

#### *Be available to all workers, men and women equally*

Paid leave should cover all workers regardless of employer identity or size, or the worker's full-time or part-time status. It should also use an inclusive definition of family.

An effective paid leave program should be available to all workers, including those who are self-employed and those who work for small businesses. Placing boundaries on the availability of mandated paid leave negatively affects the labor market opportunities available to employed caregivers and others who require leave.

Paid leave also should be gender neutral, following the example of the Family and Medical Leave Act in providing eligible men and women with the same amount of leave. A mother-only policy assumes that only women do caregiving—in fact, women are breadwinners in 40 percent of families and men are taking on a growing share of the caregiving and other domestic responsibilities at home (Wang, Parker, and Taylor 2013).

#### *Provide adequate length of leave to address care needs*

Paid leave should entail at least 12 weeks of leave, allowing families enough time to deal with a serious illness or to care for a new child. Although 12 weeks falls short of the one year of parental

care thought to ensure the best outcome for infants' development (and the six months of leave that is ideal for mothers' physical and mental health), it is more generous than the leave currently available, and will provide important benefits for parents and children alike (Schulte et al. 2017). It is also consistent with the level of generosity provided by states that have implemented paid leave programs, giving federal policy makers a better sense of how the proposal would work (National Conference of State Legislatures 2016). Furthermore, a 12-week leave allowance means that children born to two-parent families will have up to 24 weeks—or six months—of parental care if both parents use their full 12 weeks and schedule their leave periods sequentially.

### *Have a sufficiently high wage replacement rate to make a difference in people's lives*

Wages should be replaced at a level sufficient to protect families at a time when household expenses rise. A national paid leave program must replace enough of workers' wages to be economically meaningful and keep families afloat when they need time off for caregiving or for their own illness. It is important to provide a sufficient wage replacement rate considering that having a new child in the home, coping with a personal illness, or caring for a loved one often requires employees to cut back time spent at work during a period in which household expenses often rise.

Providing an economically meaningful replacement rate can also have benefits for businesses. A study of California's paid leave program found that employers in that state experienced greater worker retention following the enactment of paid leave, especially among those who employ low-income workers (Appelbaum and Milkman 2011; Horowitz et al. 2017).

Relatively generous wage replacement will also produce benefits in the form of reduced reliance on government benefits. In Rhode Island, where paid leave provides wage replacement between 55 percent and 66 percent, reduced use of government assistance was observed after paid leave was enacted (Houser and Vartanian 2012). Robust wage replacement plays an important role in realizing these benefits: Bernal and Fruttero (2008) found that, compared with unpaid leave, paid parental leave had a much bigger impact on long-term household incomes and labor participation for men and women alike.

National paid leave should therefore mimic New Jersey's 66 percent wage replacement, but with a cap that prevents benefits from being overly generous to high-income families. Wage replacement below this level would increase the likelihood that low-wage workers experience substantial economic hardship. This detail is consistent with Christopher Ruhm's Hamilton Project proposal. Ruhm recommends a replacement rate of 75 percent for low-wage workers, up to a ceiling of \$1,323 per week.

## **FAIR SCHEDULING**

To ensure better economic outcomes for women, policies must address the way work and home lives are intertwined. Many individuals struggle to obtain enough work hours to make ends meet while also lacking the control over their schedules that would help them address their other obligations. Federal policy makers should ensure that workers can create boundaries between time for work and time for everything else by imposing fair scheduling. Policies to promote fair scheduling should:

- Require employers to bear costs associated with their last-minute decisions;
- Mitigate involuntary overwork and underwork; and
- Give workers the right to talk to their employer about flexible schedules without fear of reprisal.

### *Require employers to bear costs associated with their last-minute decisions*

Employers should be required to provide advance notice of schedules, predictability pay for last-minute schedule changes, and reporting pay for shortened or on-call shifts to ensure that employees are able to balance their out-of-work responsibilities.

To address the unpredictable schedules faced by millions of workers, a national policy must ensure that workers have advance notice of their upcoming work schedule and relieve workers of the burden of last-minute scheduling changes when employers deem them necessary. This would be accomplished by requiring businesses to provide predictability pay when they alter a worker's schedule with less than seven days of notice. Workers would receive one hour of pay for each scheduling change made with less than seven days of notice. In addition, businesses would provide reporting pay in the form of two to four hours of wages when a shift is cancelled less than 24 hours in advance, as is required in San Francisco (American Legal Publishing n.d.) and Seattle (Municipal Code Corporation n.d.).

#### *Mitigate involuntary overwork and underwork*

The Fair Labor Standards Act's overtime income threshold should be raised to further deter employers from requiring their employees to work long hours. A complementary policy to address excessive employer reliance on part-time workers would be to require employers to offer additional work hours to qualified part-time employees before hiring new employees.

The Fair Labor Standards Act provides some protection against overwork, increasing the cost for employers when they require certain employees to work more than 40 hours a week. While the law was intended to cover all hourly employees and a large share of salaried employees—excluding only those with earnings above a threshold—that threshold has not been significantly updated since 1975. To start, legislators should update the earnings threshold to keep pace with inflation. Second, with more workers being categorized as exempt from the overtime rule, policy makers need to consider whether the current definitions fit the modern workplace and provide sufficient worker protections.<sup>3</sup>

The Obama administration updated these overtime policies in 2015, raising the overtime earnings threshold to \$47,476, just below the inflation-adjusted 1975 level. In November of 2015, however, a federal judge issued a temporary injunction blocking implementation of the reform. In blocking the rule, the Federal district court judged questioned the legality of any salary threshold.

The Trump administration's Department of Labor dropped the defense of the rule, but they did ask the 5<sup>th</sup> Circuit to approve the use of some (probably lower) threshold, arguing that there was "no basis to call into question a regulatory test that has been in place since the FLSA's inception." The appeal is tied to the department's plan to move forward with a lower threshold, possibly in the \$32,000 to \$35,000 range. EPI finds that this could leave 9.1 million fewer workers without overtime pay. (EPI 2017)

According to employer surveys, 50 percent or more of national companies have already implemented higher overtime standards and adjusted pay scales. This shows that the Obama overtime expansion would not be overly burdensome for businesses. Furthermore, New York and California have also acted to raise their OT standards even higher than the \$47,476 level.

#### *Give workers the right to talk to their employer about flexible schedules without fear of reprisal*

Workers should have the right to negotiate work schedules with their employers without fear of reprisal, and require that employers listen and act where possible. Work schedules are an important concern for employees and their families, yet many U.S. workers are subject to

disciplinary action or retaliation when asking for schedule changes. Union representation provides routes to engage in a conversation with employers about schedules, but with about 7 percent of private sector workers covered by a union contract, the large majority of workers need additional protection (BLS 2016a).

A right-to-request law establishes a process that gives employees the right to discuss their schedules or ask about scheduling flexibility without fear of negative consequences. Employees could ask to adjust their start or end times, switch a shift around, or even work remotely one day a week. Employers do not have to grant the request if it imposes undue hardship, but the right-to-request law requires that they have a compelling business reason for denying a request.

There is some evidence that this kind of policy improves labor market outcomes. Research on right-to-request laws in Australia, Germany, the Netherlands, New Zealand, and the United Kingdom shows that these policies are effective in limiting workers' work-life conflicts (Hegewisch and Gornick 2011; Lyness et al. 2012). These studies are not completely transferable to the United States, however, because these countries all have greater union coverage, which can help workers navigate a request process with their supervisor. In the United States most workers would have to learn about the law on their own and feel comfortable enough with their supervisor to take advantage of it. San Francisco and Vermont have recently passed and implemented right-to-request laws, but there is no research fully evaluating the effects of this legislation (Ludden 2014).

## **COMBATTING WAGE DISCRIMINATION**

To ensure equal pay for women, policy must combat wage discrimination. Three principles that redefine the power of knowledge about pay should be front and center in this effort:

- Prohibit employers from inquiring about a worker's salary history during the interview and hiring process;
- Ensure workers have the right to discuss pay; and
- Require employers to adopt pay transparency practices.

### *Prohibit employers from inquiring about a worker's salary history during the interview and hiring process*

Employers should be prohibited from asking about salary history during the interview or hiring process and relying on that information to set compensation. Federal lawmakers should consider the example set by Massachusetts, and since followed by several cities and states, in passing a measure banning employers from asking about salary histories during the job application process (Cunningham 2017). The state and local policies prohibit employers from screening job applications based on salary history, relying on past compensation to set pay, and asking workers about their salary history, including benefits and other compensation. Employers can confirm a prospective employee's compensation history, but only after an employment offer and compensation terms have been negotiated and extended. (Cowley 2016; McGovern Tornone 2017; National Law Review 2017).<sup>4</sup>

### *Ensure workers have the right to discuss pay*

Legislation should ban and create penalties sufficient to deter employers from retaliating against workers for discussing pay with their colleagues. We propose that all workers, including managers and supervisors, be included in a blanket prohibition of employer retaliation. The federal Paycheck Fairness Act, introduced first in 1997 and again this year, includes a provision that protects workers who disclose their pay to their colleagues. While this bill has not passed,

policy makers can look to other examples: the Obama administration's 2014 executive order that banned federal contractors from retaliating against employees and job applicants "because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant" (White House 2014). Certain states have also passed laws addressing pay secrecy, differing in terms of what employees are covered and in which instances. Some states, for example, exclude public sector workers or managers and supervisors. Other states cover all workers, but only if those employees have instigated unequal pay claims (Kim 2015).

### *Require firms to adopt pay transparency practices*

Policy should incentivize employers to make disclosures of pay ranges and pay practices to employees and the government. U.S. employers with 100 or more employees are currently required to file an Employer Information Report EEO-1, or EEO-1 report, which provides a demographic breakdown of their workforce. The EEO-1 was updated in 2016 to require the separate reporting of pay data by sex, race, ethnicity, and job categories (U.S. Equal Employment Opportunity Commission [EEOC] n.d.). Beginning in the spring of 2018, businesses with 100 or more employees would be required to add salary information to their EEO-1 reporting. The Trump Administration, however, issued a "review and stay" of the rule in August 2017, meaning that businesses will not be required to report salary information. This serves as a substantial setback to efforts aimed at lessening pay inequality. The rule would have improved the EEOC's ability to investigate and address pay discrimination with individual employers and across industries and regions, encouraged employers to conduct voluntary pay audits, and provided some insight into the wage gap for employers that have not yet conducted pay audits. While the data gathered would have been limited and not made widely available to employees, it would serve as an important first step in the effort to better identify and end pay discrimination.

Prohibiting employer retaliation against workers who discuss pay is also not sufficient. Underpaid workers must still talk to their colleagues and raise the issue with their supervisor. This is often unlikely due to the taboo against salary discussions (Bierman and Gely 2004; Colella et al. 2007). Policy makers should therefore encourage employers to make affirmative disclosures of pay ranges and pay practices to employees and the government.

Many legal scholars have called for this kind of pay transparency to be mandatory, with University of Maryland School of Law's Deborah Thompson Eisenberg arguing for it on the grounds that pay discrimination is a "market failure caused by insufficient and asymmetric information about the value of work" (Eisenberg 2011, 951). Requiring companies to report pay information would be a further step toward ensuring that firms are properly valuing and rewarding employees, leading to a more efficient labor market (Eisenberg 2011).

Yet another approach has been proposed in Iceland, where recently introduced legislation would require employers to conduct audits on whether men and women are being paid fairly on a regular basis, and would impose fines on companies that do not take steps to ensure men and women are paid equally (Alderman 2017).

## CONCLUSION

The proposed federal policies detailed in this paper would go a long way toward improving outcomes for women and all workers, thereby boosting the economy as well. Importantly, the policies must contain provisions for strict enforcement. Many labor laws rely on workers themselves to report violations, and private lawsuits are much more common than government

investigations. This bottom-up enforcement is often insufficient given that many workers have well-founded fears about retaliation and are not willing to participate (Alexander and Prasad 2014).

The Obama administration outlined an agenda to improve labor law enforcement, which included a top-down approach of reaching out to industries or regions in which violations frequently occur, improving deterrence in those sectors, and clarifying boundaries of employment responsibility. The administration also ramped up outreach efforts around compliance and workers' rights and increased the number of investigators. And the EEOC's finalized initiative to collect pay data by race and gender will allow the EEOC to determine whether there are certain pay patterns for an employer, industry, or geographic region and potentially reveal where there is the need for enhanced scrutiny (U.S. EEOC 2016). The Trump administration is paring back these efforts (Meier and Ivory 2017).

In addition to strong enforcement, publicity and outreach campaigns are vital to the success of the proposals detailed in this paper. Evidence from state and local policies suggests that large groups of the population are unaware of worker protections, reducing their effectiveness (Appelbaum and Milkman 2011). Ensuring that these policies reach those they are intended to benefit is essential to producing better outcomes.

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