

# UNFINISHED BUSINESS

*Paid Family Leave in California and the  
Future of U.S. Work-Family Policy*

RUTH MILKMAN AND EILEEN APPELBAUM

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## INTRODUCTION

### *The Case for Paid Family Leave*

California made history on September 23, 2002, when Governor Gray Davis signed a bill into law creating the nation's first comprehensive paid family leave (PFL) program. Although nearly every other country in the world guarantees paid leave to employed mothers (and in many cases, fathers as well) when they take time off to care for a new child, the United States is famously exceptional in its failure to do so.<sup>1</sup> Since 1993, the federal Family and Medical Leave Act (FMLA) has guaranteed *unpaid* job-protected leaves for new parents of up to twelve weeks. However, it makes such leaves available to only about half of the U.S. labor force, and even those who are covered often cannot afford to take unpaid leaves.<sup>2</sup> A handful of states (including California) have temporary disability programs that provide partial wage replacement to mothers during and immediately after pregnancy.<sup>3</sup> In the rest of the country, however, paid family leave is available only to workers whose employers provide it as part of a package of fringe benefits. With the exception of union members who often obtain such benefits through collective bargaining, non-college-educated workers

and others in jobs with low pay and status often lack access even to paid sick days and paid vacation, and are even less likely to have employer-provided disability insurance or paid family leave. The growing numbers of freelancers, independent contractors, and other precarious workers who have no ongoing ties to a single employer also typically lack these basic benefits. As a result, millions of American workers are regularly forced to choose between economic security and providing vital care for their families. Against this background, California's 2002 PFL legislation was a major breakthrough, along with a similar measure that New Jersey passed into law in 2008.<sup>4</sup>

### The Need for Family Leave

As family and work patterns have shifted in the United States, demand for time off from paid work to attend to family needs has increased dramatically. Several recent social trends have contributed to this growth. The most important among them are rising female labor force participation, especially among mothers; the aging of the population and the accompanying surge in demand for eldercare; and men's increased involvement (although it remains relatively modest) in parenting and other types of unpaid caregiving.

In the past, most family care was provided on an unpaid basis by wives and mothers, who typically withdrew from the labor force entirely when their children were young or when other family members needed assistance. But over the past century, female labor force participation rates, especially among mothers of young children, have increased dramatically; by 2010, women were 47 percent of the civilian labor force. Between 1975 and 2010 alone, the participation rate for mothers with children under age three almost doubled, rising from 34 percent to 61 percent. In a sharp historical reversal, mothers are now *more* likely to be in the labor force than women generally: the overall female labor force participation rate in 2010 was 59 percent (U.S. Department of Labor 2011a, 4–5, 19). Employment during pregnancy has also become the norm: in the first decade of the twenty-first century, about two-thirds of first-time mothers in the United States were employed while pregnant, up from 44 percent in the early 1960s (Laughlin 2011, 4). Although many women still leave the labor force for brief periods

when they have children, they are far more likely than in the past to be continuously employed over the course of the life cycle. Most mothers in the twenty-first century, then, must find ways to balance the needs of their children with the demands of their jobs.

At the same time, many women today—as well as a growing number of men—are devoting considerable amounts of time to caring for elderly family members. In 2011, the U.S. Department of Labor's American Time Use Survey (ATUS) found that 19 percent of employed women and 15 percent of employed men were unpaid eldercare providers. Many of them were simultaneously engaged in parenting, making up what is popularly known as the "sandwich generation." Indeed, the ATUS found that 23 percent of adults who were providing eldercare in 2011 also had children under age eighteen in their households (U.S. Department of Labor 2012a). As the U.S. population has aged, demand for eldercare has steadily increased, and reduced family size means that the workload involved is distributed across a smaller number of children and other kin than in the past. In most families today, all adults are in the labor force, so that eldercare demands add to the challenges of balancing work and family.

Men's participation in these activities has increased somewhat in recent decades, although women continue to shoulder the bulk of unpaid childcare and eldercare alongside their paid work, a pattern Gornick and Meyers (2003) call "partial gender specialization." Historical data are fragmentary, but the ATUS found that in the 2007–11 period mothers spent 2.5 times as much time as fathers did providing physical childcare (such as feeding or bathing children) in households where the youngest child was under age six; for all childcare activities combined, the gender gap was nearly as stark: mothers spent 1.9 times as much time on childcare as fathers did (in all households with children under eighteen). Gender inequality in eldercare is less extreme but still substantial: women spent 1.5 times as much time as men did providing eldercare in 2011, according to the ATUS (U.S. Department of Labor 2012a).<sup>5</sup>

In regard to childcare, however, there is evidence of a generational shift: not only are younger men engaged in parenting to a greater extent than their fathers and grandfathers were, but many of them express a preference to become even more involved. Young men in long-term

heterosexual relationships also face growing demands from their wives or partners to participate more fully in family life (Gerson 2010). Yet even when they do contribute substantially in terms of time, fathers remain far less likely than mothers to leave the labor force or change their hours of employment to accommodate childcare demands (Raley, Bianchi, and Wang 2012). In part, this reflects the constraints imposed by employers' inflexible scheduling demands and traditional gender norms, as well as the continuing resilience of those norms in the wider society. Nevertheless, the stresses of balancing work and family have increased substantially for men. A 2008 national survey found that 60 percent of employed fathers in dual-earner families reported experiencing "some" or "a lot" of "work-life conflict," almost double the 1977 level of 35 percent (Galinsky, Aumann, and Bond 2011, 18).

Taken together, these trends—increased maternal labor force participation, the aging of the population and the accompanying expansion in the need for eldercare, and increasing male involvement in caregiving—have led to rapid growth in demand for family leave in the United States in recent decades. Time off from their jobs can alleviate the pressures on workers during periods of peak family caregiving demand, like the arrival of a new child, or when serious illness strikes a family member. In addition, as a large body of research shows, the recipients of care benefit significantly when their family members have access to time off from work. One recent study found a negative effect on the frequency of well-baby visits, breastfeeding, and child immunizations among children whose mothers returned to work less than twelve weeks after childbirth, when compared to those whose mothers took longer leaves (Berger, Hill, and Waldfogel 2005; see also Human Rights Watch 2011, 45–50; Gornick and Meyers 2003, 242–45). Similarly, elderly patients who are cared for by family members have significantly shorter hospital stays and recover faster from illnesses than those who are not (Van Houtven and Norton 2004).

Access to *paid* time off is critically important in this context, especially for low-income workers who often cannot afford to take time off without some kind of wage replacement. One recent study found that parents who have access to paid sick leave or paid vacation time are five times more likely to stay home with a sick child than are those who lack such benefits. The consequences of this differential are far-reaching,

since ill children recover more quickly when their parents are present (Heymann 2000, 59; see also American Academy of Pediatrics, Committee on Hospital Care 2003; Ruhm 2000; Schuster 2009). Yet paid time off is not available to many workers who need it. As Jody Heymann (2000) showed over a decade ago, it has typically been less available to women than men, despite the fact that women are still responsible for the bulk of family caregiving.<sup>6</sup> And it is far less available to the growing numbers of low-wage and precarious workers than to their counterparts in well-paid, stable jobs—even though the latter can more easily afford to take time off even without wage replacement. In short, gender and class inequalities are inextricably intertwined with the problem of access to family leave.

### **Family Leave and Social Inequality**

A major source of gender inequality in the twenty-first century is the earnings penalty that women typically experience when they become mothers. Although outright gender discrimination in the labor market and job segregation by gender has by no means disappeared, it has been significantly reduced since the 1970s. Women's educational attainment and career aspirations have risen substantially, and gender-based wage disparities have narrowed, especially in entry-level jobs. Declining real wages for men—especially non-college-educated men—over this period also have helped to reduce the gender gap in pay. Yet that gap has by no means disappeared; indeed, it widens steadily over the typical female career, in a pattern of accumulating disadvantage (Valian 1998; Glass 2004). That motherhood is central to this process is suggested by evidence that even when they do not significantly reduce their hours of paid work, mothers' average earnings are significantly less than those of childless women (Waldfogel 1997; Budig and England 2001). The "motherhood penalty" partly reflects the persistently asymmetric gender division of housework and family care, but there is also evidence of direct employer discrimination against mothers, especially those in the managerial and professional ranks. By contrast, fathers in these occupational categories instead enjoy a wage premium (Correll, Benard, and Paik 2007).

However, even as gender inequality has lessened, class inequality has grown dramatically. The earnings gap between managers and professionals and other highly educated workers, on the one hand, and the growing ranks of low-wage workers, on the other, has widened steadily since the mid-1970s. Pay inequality has increased sharply not only among male workers but also *among women* (Bianchi 1995; McCall 2001). Endogenous marriage and mating patterns—the tendency for people to choose spouses and partners from backgrounds similar to their own—multiply these inequalities further (McCall 2010). Families are also more stable among the affluent, who typically marry at later ages and have lower divorce rates; at the other end of the economic spectrum a disproportionate number of families are headed by single mothers employed at low-wage jobs (DeParle 2012). And in dual-earner families, what were often in an earlier era “second incomes” earned by wives and mothers have become increasingly essential to meeting basic living costs (Warren and Tyagi 2003).

Inequality among women has also soared in regard to access to paid leave, as the U.S. Census Bureau (Laughlin 2011) has recently documented. As figure 1.1 shows, in the 1960s women’s access to paid maternity leave

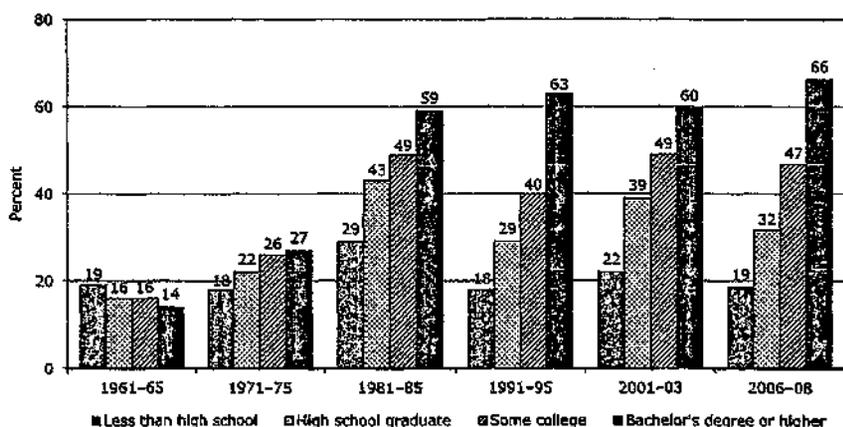


Figure 1.1. Percentage of women who received paid leave before or after their first birth, by educational attainment, selected years, 1961–65 to 2006–08. Paid leave includes all paid maternity, sick, and vacation leave, and other paid leave used before the birth and up to twelve weeks after the birth. Data from Laughlin 2011, 12.

for a first birth varied little by educational level—a reasonable proxy for social class. But that began to change in the 1970s, and the shift became increasingly apparent in the decades that followed. By the 2006–08 period, the most recent for which data are available, 66 percent of employed mothers with a bachelor’s degree or more received some form of paid maternity leave before or after their first birth, whereas only 19 percent of employed women with less than a high school degree did so.

Table 1.1 exposes the main source of these disparities, namely that access to employer-provided paid time off and other fringe benefits is concentrated in the upper levels of the labor force. The data in the table are drawn from the March 2011 National Compensation Survey (NCS), a survey of employers conducted by the U.S. Department of Labor. It highlights the pattern of access to selected paid leave benefits by wage level (note that unlike figure 1.1 it includes both male and female workers). These data show that very few U.S. workers have access to paid family leave per se, although many do have access to other forms of paid time off, like paid sick leave, paid vacation, and short-term disability—which in practice are often used for wage replacement during family leaves.

TABLE 1.1 Access to selected paid leave benefits for workers in private industry and state and local government, by average wage level, March 2011 (%)

	Private industry				State and local government			
	Paid sick leave	Paid vacation	Short-term disability	Paid family leave	Paid sick leave	Paid vacation	Short-term disability	Paid family leave
All workers	63	77	38	11	89	60	23	17
Average wage in lowest 25% <sup>a</sup>	32	51	17	5	75	56	19	14
Second 25%	66	84	36	10	93	84	26	17
Third 25%	74	90	47	12	94	70	26	18
Highest 25%	85	89	58	19	96	36	23	18

Source: National Compensation Survey (U.S. Department of Labor 2011b).

<sup>a</sup> The percentile groupings are based on the average wage for each occupation surveyed in the NCS, which may include workers above and below the threshold.

The key point is that access to such benefits rises sharply with average wage levels, especially in the private sector.<sup>7</sup> For low-wage workers, employer-provided paid time off is extremely limited. Among those in occupations whose average wage was in the lowest 25 percent, two-thirds of private-sector workers lacked paid sick leave and nearly half had no access to paid vacation, while even greater majorities lacked access to short-term disability (83%) and paid family leave (95%). By contrast, those in occupations whose average wage was in the highest 25 percent had extensive access to various forms of paid time off.

The 2011 ATUS confirms this pattern of inequality. Based on workers' self-reports, it found that 50 percent of full-time workers whose usual weekly earnings were \$540 or less (roughly the bottom 25%) had access to some form of paid leave, compared to over 80 percent of full-time workers with usual weekly earnings of \$831 or more. And only 22 percent of part-time workers had access to paid leave, the ATUS found (U.S. Department of Labor 2012b).<sup>8</sup>

The need for financial support during leaves from work is increasingly acute for those in the bottom and middle layers of the income distribution, especially in light of the fact that real incomes for these workers have declined sharply in recent decades. Yet, as both figure 1.1 and table 1.1 show, these workers are far less likely to receive such support than are their better-paid counterparts. Many other data sources verify this pattern of class disparity. One recent survey, for example, found that two-thirds of low-income mothers, compared to slightly over a third of middle- and upper-income mothers, lose pay when they miss work because a child is sick (Kaiser Family Foundation 2003). Apart from lost income, missing work under such conditions often has other negative employment consequences—up to and including the risk of being fired, as Joan Williams (2010, chap. 2) has documented in detail (see also Williams and Boushey 2010).

Professional and managerial workers tend to have more flexible schedules (although they also work longer hours, on average) than low-wage workers, many of whom are not permitted to leave work to take a family member to a medical appointment, and indeed often may not even make personal telephone calls on “company time.” Similarly, pumping breast milk at work is an option available mainly to well-paid professional women, while for lower-paid mothers it is “close to impossible,” as the *New York Times* reported (Kantor 2006).<sup>9</sup>

The work-family problems of the majority of female workers, who labor at low wages in gender-stereotyped clerical, sales, and service “pink collar” jobs, remain relatively invisible both in scholarly literature and in public discourse, where the work-family pressures facing women in the elite professions and in high-level managerial roles receive a disproportionate share of attention (see, for example, Blair-Loy 2003; Mason and Ekman 2007; Correll, Benard, and Paik 2007; Stone 2007).<sup>10</sup> The media regularly feature stories about high-level female managers and professionals who have “opted out” of the workforce to devote themselves to motherhood, despite the fact that this is a minority phenomenon even within the female elite (see Williams 2010, chap. 1). A recent example that attracted extensive public attention is the 2012 article “Why Women Still Can’t Have It All,” by Anne-Marie Slaughter, who left her high-level post at the U.S. State Department after two years because the grueling hours it required precluded her from spending enough time with her teenage sons (Slaughter 2012).

Indeed, a well-documented class difference in regard to work-family balance involves the distinctive work scheduling patterns of low-wage workers and their more highly paid counterparts. As Jerry Jacobs and Kathleen Gerson (2004) have shown, managers and professionals (of both genders) typically must work far longer hours than they would prefer.<sup>11</sup> In contrast, many nonsupervisory workers seek more hours of employment than they are offered by employers, and in many cases have jobs with unpredictable, irregular, and inflexible schedules that make combining work and family extremely challenging (Lambert 2008).

Ironically, the escalating time demands on the nation’s upper-tier workers emerged just when large numbers of highly educated women first gained access to elite professional and managerial jobs. Mary Blair-Loy (2003) has poignantly exposed the hegemony of the “male model” at the highest levels of the business world, where family involvement for women (as well as men) is effectively precluded by a deeply entrenched corporate culture that demands total “24/7” commitment to the firm. A less extreme version of this phenomenon pervades the elite professions and the middle management ranks. One result is that even in companies that appear to be “family friendly,” available paid-time-off benefits often go underutilized (see Hochschild 1997; Glass 2004). As Blair-Loy notes, some women managers respond by “opting out,” abandoning their

fledgling careers (see also Stone 2007); others forgo motherhood entirely, and the rest use their abundant financial resources to hire substitute caregivers.

The expectation of extensive work hours that is so deeply embedded in managerial and professional culture conflicts directly with another set of class-specific expectations affecting affluent mothers, namely “intensive mothering” (Hays 1996). Upper-middle-class families, eager to reproduce their class position, seek to provide their children from infancy onward with a wide array of highly structured activities designed to maximize their social, emotional, and intellectual development—an effort that imposes extensive demands on mothers, as well as on the paid caregivers they employ. As Annette Lareau (2003) has documented, parenting takes a very different form in working-class communities.

Although long working hours are an especially serious problem among elite female professionals and managers, these women typically have far more extensive resources at their disposal for “work-family reconciliation” than their counterparts in clerical, service, sales, and other low-wage jobs. Well-paid professionals and managers are more able to afford the array of services—from prepared meals to paid domestic labor and childcare—on which families increasingly rely to reconcile work and family demands. And as we have already seen (in figure 1.1 and table 1.1) highly educated women and those with high earnings are far more likely than their less affluent counterparts to have access to some form of income support (through employer-provided benefits) during any leaves from work that they take to attend to family needs. When California’s PFL program began operating in 2004, then, those who stood to gain the most were workers in the lower echelons of the labor market. Indeed, the new program, which was available to nearly all private-sector workers in the state, held the promise of helping to level the playing field in regard to access to paid leave.

### **California’s Paid Family Leave Program**

California’s PFL program provides up to six weeks of partial wage replacement—55 percent of weekly earnings, up to a maximum benefit of \$1,011 per week in 2012—for eligible workers who take time off to bond

with a new child or to care for a seriously ill family member. Financed by a payroll tax, the program builds on California's long-standing State Disability Insurance (SDI) system, created in 1946 to assist workers suffering from temporary disabilities that require them to take time off from work. In the 1970s, SDI (along with its counterparts in the other U.S. jurisdictions with temporary disability insurance programs) was extended to cover pregnancy-related disability, in keeping with the policy linkage between disability and pregnancy established in that period (Vogel 1993). The PFL program extended SDI still further to cover "bonding" and "care" leaves, with benefits becoming available starting on July 1, 2004. New Jersey followed suit, implementing its Family Leave Insurance (FLI) program, generally similar to PFL in California, in mid-2009.

Like SDI, PFL is structured as an insurance program. There are no direct costs to employers: the wage replacement benefits are funded entirely by an employee-paid payroll tax that finances both SDI and PFL. (The combined tax in 2012 was 1.0% on the first \$95,585 in wages.) Unlike FMLA, California's PFL program does not provide job protection, nor does it guarantee the continuation of employer-provided health insurance and other fringe benefits, although many leave-takers have these protections under FMLA or the California Family Rights Act (CFRA).

Since PFL benefits became available in mid-2004, most women employed in California's private sector who give birth to a child have been able to draw on both SDI and PFL to obtain wage replacement at 55 percent of their usual earnings for a total of sixteen to eighteen weeks. Those who take advantage of both programs typically receive SDI disability benefits for four weeks before delivery, as well as for six to eight weeks after the birth (six weeks for normal births, eight for those involving a C-section); immediately following that period they receive an additional six weeks of PFL benefits for baby bonding.

Although modest by international standards, this combined benefit is by far the most extensive publicly sponsored paid leave program for new mothers in the United States. (New Jersey's FLI program is a close second, although its maximum benefit is substantially lower—\$572 per week in 2012.) California's PFL program offers wage replacement for bonding leaves not only to biological mothers but also to new fathers, domestic partners, and adoptive or foster parents, all of whom are also eligible for

up to six weeks of benefits for bonding with a new child. PFL benefits are also available to workers who take time off to care for a seriously ill spouse, parent, child, or domestic partner.

The single most important characteristic of the PFL program is that, like SDI—but in sharp contrast to FMLA—its coverage is nearly universal within the private sector. FMLA covers all public-sector workers, but in the private sector it is limited to workers employed by organizations with fifty or more employees on the payroll at or within seventy-five miles of the worksite. To be eligible for FMLA, workers must also have logged 1,250 or more hours for their current employer in the year preceding the leave, and they must have worked for that employer for at least twelve months. In practice only about half the U.S. workforce, and less than one-fifth of new mothers, meet the eligibility requirements for FMLA (Ruhm 1997, 177). Moreover, many of those who are eligible simply cannot afford to take advantage of the unpaid leaves FMLA makes available.

By contrast, apart from some self-employed persons, virtually all workers in California's private sector are eligible for SDI and PFL benefits.<sup>12</sup> The only requirement is that claimants must have earned \$300 or more in wages at a private-sector employer in the state during any quarter in the "base period" (typically five to seventeen months before filing a claim); there is no threshold for the size of the organization they work for, and they need not have worked for their current employer for any minimum period of time. Thus, under PFL and SDI paid leave is available to the growing numbers of low-wage workers, the majority of whom are female, and many of whom are precariously employed, with limited or no access to employer-sponsored benefits providing paid time off.

We have been studying the impact of PFL on California employers and workers since the bill creating the new program was signed into law in late 2002. In this book we report on the results of extensive survey research and fieldwork that we have conducted over the past decade, analyzing the ways in which the state's PFL program has benefited both workers and employers in the nation's most populous state, as well as the limitations of the program. We also explore some of the lessons that can be learned from California's pioneering PFL program—lessons that

should be helpful not only to the many other states currently considering similar programs but also to the future development of family leave policies for the nation as a whole.

One key lesson involves the policy-making process itself. Historically, and especially in recent decades, legislative proposals to create new social programs have confronted formidable political challenges. For starters, U.S. employers can be relied on to vigorously oppose any efforts to introduce new forms of labor market regulation, as they have done consistently for more than a century. In recent years, concern about budget deficits and growing mistrust of government among the wider population has compounded the challenge facing public policy advocates. Many existing social programs are under political attack and others have endured severe budget cutbacks.

Yet paid family leave laws—along with related initiatives such as those mandating paid sick days for all workers—continue to enjoy widespread popular support, rooted in the steadily increasing pressures on families that struggle to balance work outside the home with caring for young children or seriously ill family members. As we document in detail in chapter 2, the deep reservoir of popular support for paid family leave made it possible to build a broad political coalition composed of women's groups, senior citizens' organizations, children's advocates, and labor unions to win passage of California's PFL bill in 2002.

In chapter 3 we provide an overview of the way the program has functioned over the past decade, reviewing the details of the program's operation and presenting data on the ways in which California workers have utilized PFL. One highlight of this chapter is the fact that male PFL claims for bonding with a new child have increased substantially and steadily over the years since the program began operating. This suggests that PFL may be helping to reduce gender inequality in the division of household and family responsibilities (see Lester 2005).

We then turn to the impact of the program on employers. Although California business groups did oppose and actively campaign against the PFL legislation, our research shows that their fears about the program turned out to have little basis in reality. As we show in chapter 4, companies have easily adapted to the implementation of PFL over the past decade, and their widely voiced concerns about abuse and of negative effects

on productivity and profitability have proven to be almost entirely unwarranted. Instead, our data reveal that many employers have experienced cost *savings* as a result of PFL. The new program indirectly subsidizes employers who previously provided other forms of wage replacement during family leaves, insofar as their employees draw on the state's PFL benefits instead. Only a few employers have incurred additional costs as a result of the introduction of PFL, and even they have benefited from improved worker morale and reduced turnover.

California's PFL program also benefits workers and their families in a variety of ways, as we show in chapter 5. Not only do those who draw on PFL receive much-needed income support when they take time off to attend to family needs but recipients of care—new babies and seriously ill individuals—experience substantial health-related benefits, such as greater duration of breastfeeding and faster recovery from illness, when their family members use the program. Both men and women take longer leaves than before PFL was established (Rossin-Slater, Ruhm, and Waldfogel 2013), and they are more satisfied with the length of their leaves.

However, our research also uncovered some serious limitations of the program's effectiveness. First and most important, we found that awareness of PFL remains extremely limited among Californians. Although support for the idea of paid family leave is extensive across the state's diverse population groups, most eligible residents are not even aware that the new state program exists. Moreover, awareness is lowest among those who would benefit most from the program: Latinos, low-wage workers, younger employees, and immigrants. This has substantially limited the potential of PFL to act as a social leveler by making wage replacement for family leaves universally available, rather than being largely confined to the best-paid segments of the workforce.

Those workers who are aware of PFL, our data show, most often learn about it from their employers. And the employers who provide paid leave benefits of their own are the ones with the greatest incentive to disseminate information about the program, since, as we noted above, their expenses are reduced insofar as their employees draw on PFL instead. This dynamic tends to reproduce the longstanding inequality in access to paid leave between workers—mostly professionals and managers and other well-paid employees—who have access to employer-provided benefits and

those who lack such access. Unless awareness of PFL grows among the rest of the workforce, the stark economic inequalities that characterize twenty-first century California will be reinforced more than ameliorated by the program.

We also found that some workers who *are* aware of PFL have declined to claim the benefit, even when they were eligible to use it to take time off to bond with a new child or to care for a seriously ill family member. Many of these workers reported that they feared that using PFL might have negative repercussions for them on the job, potentially reducing their chances for career advancement or even leading them to be fired. As noted earlier, PFL is structured as an insurance program, and does not include any job protection. Some workers have such protection under FMLA or CFRA, but for those who lack it and whose employers are unsympathetic to their family situations, taking advantage of PFL may indeed be risky in terms of job security. Workers' anxieties on this score have only been heightened by the high unemployment rates that California has suffered since the start of the Great Recession in 2007.

Another concern that PFL-aware workers expressed about the program, one that led some of them not to take advantage of it, is the 55 percent wage replacement level. For many workers the benefit is inadequate to meet their economic needs. For a variety of reasons, then, PFL take-up rates have been lower than expected since the program began operating in mid-2004.

At the end of this book we discuss the implications of our findings for future public policy making in the area of work-family balance, suggesting ways in which the California PFL program can be improved in the years to come. The United States has a long tradition of using states as laboratories for public policy making, in that state-level experiments often come to inform the crafting of federal legislation. With that in mind, we conclude this book with some lessons of California's experience with PFL for the rest of the country.

## THE POLITICS OF FAMILY LEAVE, PAST AND PRESENT

In November 2011, Fox News anchor Megyn Kelly publicly chastised conservative talk-show host Mike Gallagher after he lambasted her three-month maternity leave as “a racket” on the air. Although Kelly shares Gallagher’s conservative worldview and has criticized the U.S. government’s “massive entitlement programs” herself on other occasions, she was outraged by his comments regarding her use of family leave. “We’re populating the human race,” she exclaimed. “It’s not a vacation. It’s hard, important work.” Kelly added that the United States is “the only country that doesn’t require paid maternity leave,” pointing out that the FMLA provides only for unpaid leaves (Paul 2011).

As this incident suggests, attitudes about family leave do not always conform to broader political patterns. Like the underlying problem of work-family balance that it seeks to ameliorate, this is a crossover issue that elides the standard conservative denunciation of “big government.” At the elite level, to be sure, political alignments on such topics are highly predictable, with most Republican elected officials and business lobbyists

consistently opposing legislative proposals for family leave, while Democrats and organized labor tend to support such initiatives. But among the broader population there is a much weaker relationship between political identification and attitudes toward family leave. In that regard, Megyn Kelly's views are in no way anomalous, as can be seen in figure 2.1, which summarizes the results of a representative survey of adult Californians' attitudes toward paid leave that we conducted in the fall of 2003—a year after the bill creating the nation's first comprehensive PFL program became law.

Although there is some variation in the level of support by political orientation—as well as by gender, race and ethnicity, nativity, age, and geographical location—what is most striking is the high degree of popular consensus on this issue. That more than three-fourths of respondents who described themselves as “conservative” favored paid leave is particularly telling. These findings are consistent with those of other surveys and polls on the issue. In a 2007 nationwide poll, for example, 76 percent

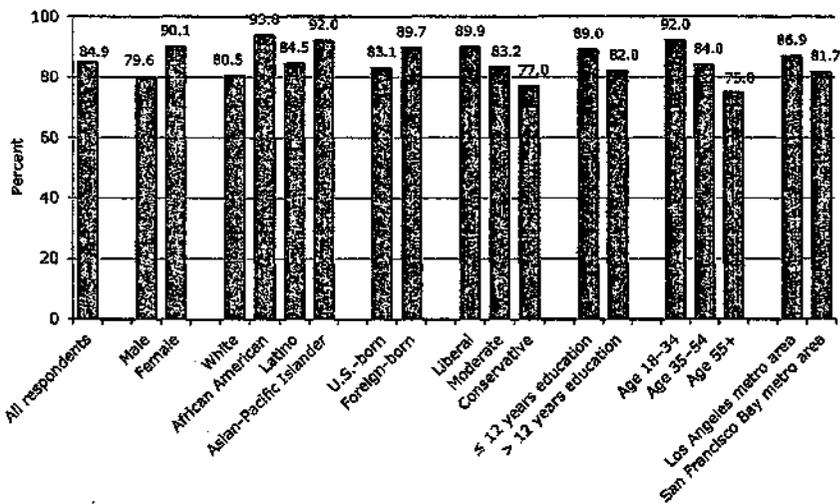


Figure 2.1. Support for paid leave among California adults, by selected characteristics, fall 2003. N = 1050. The figure shows the proportion of respondents in each subgroup who responded “favor” to the question: “Do you favor or oppose the idea of a law that guarantees that eligible workers receive a certain portion of their pay when they take family or medical leave?” For more details on the survey methodology, see Milkman and Appelbaum 2004. Data from Golden Bear Omnibus Survey, University of California Berkeley Survey Research Center.

of respondents favored expanding FMLA to guarantee paid leave (Ness 2008). Similarly, 76 percent of respondents to a 2010 national survey of registered voters indicated that they supported paid family leave laws for childbirth and family care, and 69 percent of them supported paid sick days legislation (Institute for Women's Policy Research 2010). And in a November 2012 national election night poll, 86 percent of voters nationwide said they thought it was important for Congress and the president to consider new laws like paid sick days and paid family and medical leave insurance. This poll found strong support across party lines, with 73 percent of Republicans, 87 percent of independents, and 96 percent of Democrats saying they thought this was important (National Partnership for Women and Families 2012).

This pattern of broad public support for PFL may appear paradoxical, given the political ascendancy in the late twentieth century of market fundamentalism, or "the idea that society as a whole should be subordinated to a system of self-regulated markets" (Somers and Block 2005, 261). As many commentators have noted, this perspective is especially influential in the United States, which has a long tradition of popular mistrust of the state, and indeed market fundamentalist rhetoric has contributed to the declining support for many government-sponsored social programs in recent years. Nevertheless, not only did California successfully establish its PFL program in 2002 but several other jurisdictions around the country have followed suit in the years since. In 2007, Washington State passed a paid family leave law (although funding has yet to be provided to begin operating it). The following year, New Jersey passed a law creating a family leave insurance program similar to the California PFL program, which began paying out benefits in mid-2009. In addition, paid sick days legislation was passed in three U.S. cities (Milwaukee, San Francisco, and Washington, D.C.) during the first decade of the twenty-first century, and Connecticut passed the first statewide paid sick days law in 2011. That same year, Seattle passed a paid sick days ordinance as well. Building on this momentum, in 2013 the city councils of Portland, Oregon, and New York City both passed paid sick days legislation. At this writing, campaigns for paid family leave and paid sick days legislation are under way in several other states and cities as well.<sup>1</sup> Could work-family legislation

be an exception to the general rule that government-sponsored social programs are anathema to the majority of Americans in the twenty-first century?

The record of successful advocacy on this issue cannot be explained simply by reference to the strong public support for paid leave evident in polls and surveys like the one depicted in figure 2.1. Indeed, even a broad consensus in favor of an idea is no guarantee of its political success, especially if powerful interest groups oppose it. As we document below, the California PFL bill faced serious, organized opposition when it was proposed in 2002, led by the California Chamber of Commerce and its local affiliates. The business lobby strongly denounced the measure, claiming that PFL would impose great hardship on employers (especially small businesses), invite abuse from workers, and inflict severe economic damage on the state as a "job killer." Opponents advanced similar arguments in the other jurisdictions that passed or considered passing paid family leave and paid sick days laws in recent years.

Although the business community's countercampaign failed to prevent passage of California's PFL law, it did win some significant modifications in the configuration of the program. Whereas the original proposal included twelve weeks of paid family leave, with costs evenly split between a payroll tax on employers and one on workers, business lobbying led to elimination of the employer tax, which in turn reduced the maximum benefit to six weeks. Ultimately workers alone were required to pay the full costs of the program.<sup>2</sup> Pressure from business groups also resulted in an amendment providing that employers could require workers to use up to two weeks of paid vacation time before drawing on the PFL benefit (Koss 2003; Labor Project for Working Families 2003). With these modifications, the bill was passed by the California state legislature in August 2002, and signed into law by the governor a month later.

A political context where Democrats hold power may be a necessary condition of success for these types of campaigns. In California in 2002 Democrats had majorities in both houses of the legislature as well as the governorship. But this is not a sufficient condition for winning passage of laws like the one that created PFL. Two additional key elements contributed to paid leave advocates' legislative success in California and elsewhere: (a) outflanking the business lobby by organizing a wide

variety of interest groups into a broad coalition in support of PFL, and (b) framing the issue with a narrative highlighting the compelling human needs addressed by paid leave, especially its positive effects on children and families. To pass California's landmark law, the advocates built a broad coalition that included women's organizations, advocates for children, senior citizens' groups, medical practitioners, organized labor, and others, capitalizing on the popular support for paid leave. The campaign leaders were also skilled at framing the issue, focusing public and media attention on the ways in which PFL would help families provide care for seriously ill loved ones and allow parents to bond with newborn babies. They also hammered home the compelling point that workers should not be forced to choose between their families and their jobs (Dorfman and Lingas 2003).

Although each of the partners in the coalition backing PFL contributed to the campaign's success, by all accounts the strong support provided by organized labor was especially critical. Labor's political influence in California was at a high point in 2002, and the California Labor Federation (the statewide AFL-CIO body) in particular had extensive lobbying experience and detailed knowledge of the legislative process. Unions not only had a long track record of winning paid leave benefits for their members through the collective bargaining process (see Gerstel and Clawson 2001) but they also had consistently supported legislation to expand such benefits for workers generally. And, crucially, the leadership of the state Federation was strongly committed to the PFL bill.

Another factor that worked in favor of PFL advocates was the fact that the proposed program was relatively simple and inexpensive to administer. The fact that it could be funded by a modest payroll tax with little or no fiscal impact immediately removed one of the standard conservative arguments from debate. In this regard it was also helpful that in California (and later in New Jersey), the bureaucratic machinery to provide temporary disability benefits was already in place, and the administration of PFL benefits could be incorporated into the existing agency's responsibilities at minimal expense. Although that particular approach is feasible only in the handful of states that already have temporary disability insurance programs, paid leave advocates have developed alternative mechanisms to administer paid leave programs in other states and nationally that similarly build on existing bureaucratic capacity—for example, by

linking paid leave benefits to existing state unemployment insurance programs or to the federal Social Security system (see Workplace Flexibility 2010 and CHEFS 2010).

The political dynamics that shaped the successful campaigns for paid family leave in the states of Washington and New Jersey, and in the various jurisdictions around the country that enacted paid sick days laws in the early twenty-first century, were generally similar to those that led to PFL's successful passage in California in 2002. In each case business and employer organizations vigorously opposed the enabling legislation, yet ultimately the advocates prevailed. Passing social legislation is never easy, especially in the twenty-first century's intensely antigovernment climate. But in the nation's "blue" cities and states it can be done with a strong and well-organized coalition, including vital support from organized labor—which cannot be taken for granted, since some labor leaders, most of whom are still male, may not see this issue as a high priority—and a campaign narrative that highlights the growing pressures on workers struggling to reconcile family responsibilities with employment. Framing the issue in stark human terms, as these campaigns have demonstrated, can trump market fundamentalist rhetoric that constructs paid leave as a "job killer."

### **The Politics of Paid Family Leave in Historical Perspective**

Employer opposition to social insurance proposals has a long history, stretching back long before the recent ascendancy of market fundamentalism. Nor is such opposition limited to the United States. As Gosta Esping-Andersen (1990, 22) pointed out in his classic comparative study of welfare capitalism, throughout the capitalist world "employers have always opposed de-commodification," defined as any service "rendered as a matter of right . . . [that allows individuals] to maintain a livelihood without reliance on the market." He classifies the United States among the "liberal" (that is, market-oriented) countries where such opposition is especially strong.<sup>3</sup> Indeed, for more than a century, U.S. employers have mobilized consistently to oppose not only decommodification proposals but also a variety of other basic labor regulations, ranging from minimum wage and maximum hours legislation to occupational health and safety standards.

As historians Sanford Jacoby (1997) and Jennifer Klein (2003) have shown, the result has been a nation with extremely underdeveloped state social provision alongside a "public-private welfare state" (Klein 2003) in which employer-provided health insurance and other "fringe benefits" are made available to some workers, with far more meager provision for the population as a whole.

Indeed, except in California, New Jersey, and the few other jurisdictions with temporary disability insurance programs, U.S. workers who have paid leave benefits receive them directly from employers. As a result, access to paid leave is unequally distributed across the workforce. The basic pattern is similar to that of health insurance coverage: well-paid managers and professionals are more likely than low-wage workers to have access to paid-time-off benefits; those who work for large companies are more likely to have access than those employed by small businesses or the self-employed; unionized workers are more likely to have access than their nonunion counterparts; and public-sector workers are more likely to have access than those in the private sector.

This reflects both employers' greater interest in retaining highly trained employees with firm-specific skills and the variation in bargaining leverage between union and nonunion workers, on the one hand, and between private- and public-sector workers, on the other (the latter are not only far more likely to be unionized but their employers are not seeking profit-maximization). Moreover, the costs associated with employer-provided paid family leave—unlike those for many basic labor standards such as maximum hours or paid vacation—vary enormously depending on the size of the business as well as the demographic composition of the workforce. A company whose workforce is made up primarily of women of childbearing age would have much higher costs than one with a largely male workforce, for example. The same general point applies to employer-provided health insurance, although in that case an older workforce tends to increase costs.

In contrast to health insurance coverage, however, employer-provided paid leave benefits (typically cobbled together from some combination of paid vacation, sick leave, disability insurance, and parental leave) are virtually *never* extended to workers' spouses or domestic partners—a serious limitation given the fact that men are more likely than women to have access to all types of paid-time-off benefits, even as women continue to

provide the bulk of child and family caregiving. Yet, whereas a growing number of employers—faced with the huge and rapidly rising costs of providing health coverage—have lent their political support to national health insurance legislation, almost none openly support publicly sponsored paid leave programs like California's PFL—despite the fact that such programs would provide many of them with significant cost savings, as we show in chapter 4. The widely varying costs of paid family leave for different types of employers make government-sponsored social insurance, such as the California PFL program, a particularly viable approach to meeting the work-family reconciliation needs of workers, a point we discuss further in chapter 6. Nevertheless, the political reality on the ground is that the business lobby consistently opposes all decommodification legislation, whether it takes the form of social insurance or not.

The history of previous U.S. work-family legislation is instructive in this regard. Popular support for national family leave legislation gained increasing traction in the late 1970s, as more and more mothers entered the labor force. Yet even the minimalist (by international standards) FMLA became law in the face of unrelenting opposition from business interests. Fifteen years earlier, business had also opposed the Pregnancy Discrimination Act (PDA), which outlawed employment discrimination on the basis of pregnancy; with support from a coalition led by organized labor and feminist organizations it nevertheless became law in 1978 (Vogel 1993, 71). Passing national legislation on such issues became more difficult in the period of conservative ascendancy that followed the 1980 election, but advocates nevertheless began campaigning for a family and medical leave law in 1985. During the presidency of George H. W. Bush, Congress voted to approve bills similar to the 1993 FMLA twice, with significant bipartisan support, but Bush vetoed both bills. The issue was then debated in the 1992 presidential election campaign, and immediately afterward, in January 1993, Congress passed a modified version of the legislation. A month later, FMLA was signed into law by President Clinton—the very first bill he signed after taking office (Martin 2000; Bernstein 2001).

The seven-year campaign for FMLA is in many respects the prototypical case of political contestation over work-family policy in the United States. The national Chamber of Commerce and small-business groups vigorously opposed the bill, while organized labor and the women's

movement led the coalition lobbying for it. As Taylor Dark (1999, 166) has documented, two key unions, the Service Employees International Union and the American Federation of State, County and Municipal Employees, both of which have large female memberships, were "key proponents of the legislation, providing financial resources, interest group coordination, and personnel for the lobbying drive." The FMLA campaign, however, was a broader coalition effort, with strong backing from the National Organization for Women and other feminist organizations that had previously worked to win passage of the PDA, along with children's advocates and others (see Bernstein 2001, chap. 5), who joined forces against the business lobby.

Cathie Jo Martin succinctly summarizes the arguments of FMLA's opponents:

Small business predicted dire economic impacts to companies from the high costs of hiring replacement workers . . . [and] also argued that the new benefit would constrict the creation of jobs and hurt female workers by motivating employers to discriminate against women in hiring . . . and reduce the flexibility with which managers and workers could negotiate compensation packages. (Martin 2000, 221–22)

It was perfectly acceptable for companies to offer such benefits voluntarily (as many already did, especially for professional and managerial employees), but the business lobby passionately opposed any employer "mandate" in this area. As Martin rendered the business view: "Although parental and disability leaves are excellent employee benefits, Congress should not dictate benefits. Doing so is contrary to the voluntary, flexible and comprehensive benefits system that the private sector has developed." (Martin 2000, 221)

The claims that leave legislation would have negative effects on companies are largely unsupported (as we show in chapter 4 for the California PFL case), but they are an integral component of the market fundamentalism that underlies the worldview of the business lobby. That ideological orientation has proven impervious thus far to the energetic efforts of work-family advocates to articulate the "business case" for family leave—a case built around evidence that providing workers with access to leave reduces turnover, offering substantial cost savings

to employers, and that such access also boosts employee morale and reduces “presenteeism,” or going to work while sick (see Williams 2010, 65–71). The problem is that business opposition to family leave legislation is not rooted in evidence-based cost-benefit analysis, but rather reflects a broader animus against all types of “employer mandates,” including even minimum- and living-wage laws. In the neoliberal era that began in the mid-1970s, all such proposals are routinely denounced as “job killers.”

Among employers, the New Deal system of social provision has lost the limited legitimacy it once enjoyed, so that business opposition to virtually any proposal for paid leave—which is simultaneously a form of decommodification and a type of labor regulation—is a foregone conclusion. In our fieldwork we have even encountered corporate managers who, blissfully ignorant of practices in the rest of the world, go so far as to assert that the introduction of paid family leave in the United States would endanger the nation’s global competitiveness. One high-level California corporate manager, in expressing her chagrin about the state’s PFL law shortly after its passage, suggested that it would hurt the state economically. “That’s why we moved our call center to Ireland!” she exclaimed, evidently unaware that paid leave had existed in Ireland for half a century. On the other hand, frontline and middle managers who regularly witness the challenges of work–family balance on the ground tend to be more supportive. Indeed, as Frank Dobbin has shown, in many cases human resource managers (a majority of whom are female) helped to institutionalize maternity leave in their companies in the 1970s and 1980s (Dobbin 2009, 170–75).<sup>4</sup>

Their market fundamentalist orientation notwithstanding, employers are able to rapidly adjust to political defeat on these issues. Thus, only a few years after the business lobby lost the battle to prevent the passage of FMLA, most companies had adapted with little difficulty to its requirements. Although there has been some concern about the extent to which FMLA’s requirements are enforced (see Gerstel and Armenia 2009), a U.S. Department of Labor survey of employers conducted in 2000 found that about two-thirds (64%) of respondents found it “very easy” or “somewhat easy” to comply with FMLA rules. Moreover, 84 percent of employer respondents reported that the new law had “no noticeable effect” or a “positive effect” on their companies’ productivity, while 90 percent said it had “no