

## AN INTERNATIONAL COMPARISON AND ASSESSMENT OF MATERNITY LEAVE LEGISLATION

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### I. AN INTERNATIONAL PERSPECTIVE ON MATERNITY LEAVE LEGISLATION

At present, we find legal provisions for maternity leave in almost every country. Their common and central feature is that they allow young mothers to leave their workplace for a limited time around childbirth and to return to their job afterwards. However, taking a closer look at the regulations in place, it becomes clear that the provisions vary distinctly from country to country: While in the United States, mandated job-protected maternity leave amounts to 12 weeks in a 12 month period; in the United Kingdom, legal stipulations allow for a duration of job-protected leave of up to 40 weeks. In the United States, maternity leave is unpaid. In Germany and the Netherlands, it reaches up to 100% of the net wage with German employers bearing approximately 40% of gross payroll costs during maternity leave.<sup>1</sup> Legal regulations in the United States do not provide for additional parental leave after the end of maternity leave, while women in Germany are legally granted a relatively broad range of choices concerning additional leave and part-time arrangements during the first three years after childbirth.

Several papers have addressed the issue of maternity leave from an international perspective and have analyzed its impact on the labor market position of young women.<sup>2</sup> Many of these papers show that

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1. D. Alewell, *Ökonomische Analyse der Regelungen des Mutterschutzes*, 14 ZEITSCHRIFT FÜR PERSONALFORSCHUNG 312 (2000).

2. C. Ruhm & J. Teague, *Parental Leave Policies in Europe and North America*, in GENDER AND FAMILY ISSUES IN THE WORKPLACE 133 (F. Blau & R.G. Ehrenberg eds., 1997);

the total effect of maternity leave regulation on women's labor market position may well be positive resulting in higher women's wages and/or higher employment levels.<sup>3</sup> Acknowledging the merits of maternity leave provisions in general, in what follows, we concentrate on the potentially improvable aspects of maternity leave provisions in an international perspective.

Existing papers typically include a large number of countries and only briefly review the regulations in place. They typically concentrate on leave duration as a proxy for the costs of maternity leave imposed on the employer. The assumption is that longer periods of absence translate into higher costs for the employer as human capital will depreciate and additional training will become necessary once the woman returns to work. While it is generally debatable that a loss of human capital will occur for a leave duration of 12 to 16 weeks, other potentially important elements of the regulations, such as employer co-financed maternity pay or the predictability of leave duration are also left aside.<sup>4</sup>

Unlike the existing papers, we consider both direct and indirect costs of maternity leave accruing to the employer. Concerning indirect costs, we further distinguish the costs of human capital depreciation and the costs of reorganization: While the costs of human capital depreciation can be expected to increase with leave duration, we argue that the costs of reorganization may be especially high for medium leave durations. Furthermore, the predictability of leave duration will play a decisive role in our assessment of reorganization costs imposed on the employer. Regulations affecting the predictability of leave duration may well be more important for the labor market situation of young women than those affecting leave duration. We proceed as follows: In section II, we identify the determinants of the costs of maternity leave imposed on employers

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C. Ruhm, *The Economic Consequences of Parental Leave Mandates: Lessons from Europe*, 113 Q.J. ECON. 285 (1998).

3. C. Winegarden & P. Bracy, *Demographic Consequences of Maternity-Leave Programs in Industrial Countries: Evidence from Fixed-Effects Models*, 6 S. ECON. J. 1020 (1995); J. Ondrich, K. Spiess & Q. Young, *Barefoot and in a German Kitchen: Federal Parental Leave and Benefit Policy and the Return to Work After Childbirth in Germany*, 9 J. POPULATION ECON. 247 (1996); F. Blau & R. Ehrenberg, *Introduction*, in GENDER AND FAMILY ISSUES IN THE WORKPLACE 1 (F. Blau & R. Ehrenberg eds., 1997); C. Ruhm, *id.*; J. Waldfogel, *The Family Gap for Young Women in the United States and Britain: Can Maternity Leave Make a Difference?*, 16 J. LAB. ECON. 505 (1998); J. Waldfogel, Y. Higuchi & M. Abe, *Family Leave Policies and Women's Retention After Childbirth: Evidence from the United States, Britain, and Japan*, 12 J. POPULATION ECON. 523 (1999).

4. D. Alewell & K. Pull, *The International Regulation of Maternity Leave: Leave Duration, Predictability, and Employer Co-Financed Maternity Pay*, 1 INT'L BUS. & ECON. RES. J., Nr. 2 (2002).

and elaborate on the ideas developed by Dorothea Alewell and Kerstin Pull. Section III contains a detailed analysis of maternity leave regulations in six industrialized countries: the United States, Japan, Germany, the Netherlands, Denmark and the United Kingdom. Section IV reviews empirical studies on maternity leave provisions in light of our theoretical considerations. Section V contains (tentative) conclusions for the design of maternity leave provisions that are currently being discussed and revised in so many countries around the world.

## II. EMPLOYERS' COSTS OF MATERNITY LEAVE: THEORETICAL CONSIDERATIONS

### A. *The Indirect Costs of Maternity Leave: Human Capital Depreciation and Reorganizing Work*

The indirect costs of maternity leave consist of two main elements: During maternity leave, a young mother may lose part of her (specific) human capital<sup>5</sup> and need re-training upon re-entering the job. These are the costs of human capital depreciation that are well-acknowledged in the literature. In addition to that, there are also costs of having to reorganize work during maternity leave and thereafter that have to be taken into account and that may well outweigh the costs of human capital depreciation. These costs are neglected in the literature so far.

#### 1. The Costs of Human Capital Depreciation

Turning first to the costs of human capital depreciation, it is understood in the literature that these will in general rise with leave duration. However, for a very short leave duration, it can be assumed that essentially no human capital is lost and that a young mother returning to her job can start working with her previous productivity from the very day she returns. For a longer leave duration, however, this may no longer be true: The longer the leave duration, the more human capital may be lost until finally the returning mother may need just the same amount of training as a new job applicant on her position would need. Very long leave periods may even result in a loss of general human capital leading to even higher costs of re-

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5. J. Waldfogel, *The Price of Motherhood: Family Status and Women's Pay in a Young British Cohort*, 47 OXFORD ECON. PAPERS 584 (1995); Waldfogel, *supra* note 3, at 507; C. Baum, *The Effect of Work Interruptions on Women's Wages*, 16 LABOUR 1 (2002).

training. By then, it might even be less costly to hire a new job applicant with a continuous employment history. For an average maternity leave duration of 12 to 16 weeks, we expect human capital depreciation to be negligibly small. Hence, in our analysis of maternity leave regulations, we will concentrate on other cost factors apart from human capital depreciation. However, if parental leave provisions enable young mothers to extend total leave duration far beyond the end of maternity leave, then human capital depreciation might indeed become a central cost factor.

## 2. The Costs of Reorganization

Besides the potential costs of human capital depreciation, there are also costs of reorganization imposed on the employer. A woman taking maternity leave creates a problem of having to reorganize work for an employer who has to find a way to have the work done that was formerly performed by the mother on leave. The employer has different reorganization alternatives: He may choose to employ a substitute or he may arrange for work-sharing, such that the remaining employees fulfill the tasks of the mother on leave. Some workplaces may also allow for leaving the work left undone until the employee returns, but this would seem to be only feasible for cases in which the duration of absence is rather short.

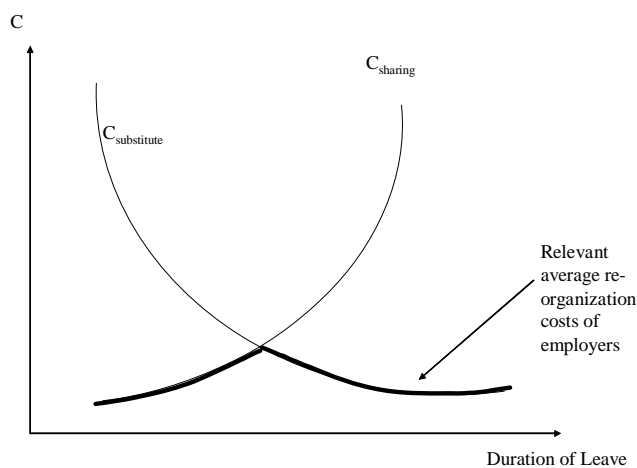
We expect the average costs of work-sharing solutions (costs per unit of time) borne by the employer to be a positive function of the duration of leave: Assuming adequate workloads per employee before reorganization, heavier workloads for co-workers will in the long run lead to dissatisfaction and increased fluctuation, more error-prone work, and lower productivity. Hence, the longer the leave, the more problematic it will generally be to shift the work to co-workers. The average costs of employing a substitute, however, will decrease with increasing maternity leave duration as recruiting a substitute gives rise to fixed costs, e.g. through advertising the job, searching for qualified candidates, selection processes, and contract writing. The fixed costs themselves may even be smaller if a substitute is to be found for a comparatively long period of time (at least if high-skill level employees are concerned). While the hiring of job leasing personnel may be a solution also for low-skill jobs, this will not be an

option in the case of high-skill jobs, as the majority of job leasing personnel has low skill levels.<sup>6</sup>

An employer who is confronted with a given duration of maternity leave and has the choice between work-sharing arrangements or employing a substitute will choose that one alternative with the lower costs: If leave duration is rather short, an employer will prefer to shift the work left undone by the young mother on leave to her co-workers. If the legal stipulations provide for a rather long period of job-protected leave, he will prefer to hire a substitute. As a result, an employer who has the choice between the two alternatives faces a situation as deployed in Figure 1, where the relevant average reorganization costs for differing leave durations are represented by  $C = \min(C_{\text{sharing}}, C_{\text{substitute}})$ , the lower bound of  $C_{\text{sharing}}$  and  $C_{\text{substitute}}$ .

**Figure 1: Average Costs of Work-Sharing and of Employing a Substitute**

(as a function of the duration of maternity leave)



Of course, one cannot in general specify that level of leave duration where work-sharing solutions cease to be optimal and

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6. For job leasing personnel in Germany, see, e.g., S. Föhr, *Flexibilisierung des Personaleinsatzes durch Arbeitnehmerüberlassung—Eine Personalökonomische Analyse, in ZWISCHEN ARBEITSLOSIGKEIT UND ÜBERSTUNDEN—PERSONALWIRTSCHAFTLICHE ÜBERLEGUNGEN ZUR VERTEILUNG VON ARBEITSVOLUMINA* 49 (D. Alewell ed., 2000).

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employing a substitute becomes the preferable alternative. This centrally depends on the specific form of the average cost functions.

The level of the average work-sharing cost function is influenced by the homogeneity of the task structures within the work groups. The task distribution in the work group determines whether co-workers are qualified to take over some of the tasks of the woman on leave. If the work formerly done by the woman on leave is of a similar kind as the work performed by the co-workers, the average costs of a work-sharing solution will be lower than if the task structures is heterogeneous. Average work-sharing costs will consequently vary between enterprises and even between different departments, hierarchical levels, and work groups. While small enterprises will typically have fewer work groups with homogeneous task structures and will in general have higher average work-sharing costs, in larger firms where homogeneous work groups are more likely to be found, work-sharing solutions will *ceteris paribus* be less costly. Furthermore, the shape of the average work-sharing cost function is influenced by provisions regarding overtime pay. A typical provision in highly skilled white-collar jobs is that there is no extra pay for overtime work, but regular wage payments are calculated to include the compensation for all extra effort. In this case, average work-sharing costs are lower as if linear or even convex overtime allowances have to be paid.

For the shape of the function of average substitution cost, the relevance of firm-specific human capital will play a major role: If the specific knowledge involved in performing job-related tasks and the costs of building these skills are high, then the absolute level of the average substitution cost function will be high. A short-term leave may not provide enough time for the substitute to acquire the skills needed or it may simply be too costly to train the substitute in light of its short time horizon. Hence, a short period of leave may in fact preclude the employment of a substitute.

The shape of the average cost functions and the resulting total cost of maternity leave determine the employer's preference for differing durations of maternity leave. Given the relevant average cost curve of reorganization as depicted in Figure 1, intermediate levels of maternity leave may well cause a local maximum of total costs, as they render work-sharing agreements difficult while not yet allowing for practicable replacement solutions. A very short and very long leave may thus result in lower reorganization costs than an intermediate duration and may therefore be preferred to intermediate levels of maternity leave by employers.

This result is much in contrast to the existing literature that only includes the costs of human capital depreciation where the costs of maternity leave steadily increase with leave duration. Adding to the costs of human capital depreciation are the costs of reorganization that may well display a maximum at medium leave durations. Assuming negligible costs of human capital depreciation for short and even medium leave durations, the sum of the costs of human capital depreciation and reorganization may display a local maximum at medium leave durations and increase again only for very long leave durations (of 40 weeks e.g., as in the United Kingdom), as well as for mothers entering long-term parental leave.

Besides leave duration, however, the predictability of leave duration will play a decisive role for the magnitude of reorganization costs. In the literature, it has been frequently argued that maternity leave does not cause any major problems to employers because of its predictability.<sup>7</sup> Employers typically know well in advance that one of their employees will be on maternity leave in the near future. However, the actual leave duration may vary widely within a given country. Besides having to observe regulations concerning a compulsory minimum leave that are prescribed in many countries, it is mainly up to the young mother if she takes advantage of the full extent of mandated job-protected leave. Additionally, and more importantly, a young mother may decide not to return to work after maternity leave and either quit her job completely or she may decide to take advantage of additional parental leave provisions offered in most countries. The shorter the relevant notice periods and the weaker the veto-rights of the employer, the more uncertainty about actual leave duration is created. The rights of young mothers introduce an important source of uncertainty into the process of reorganization faced by the employer.

Hence, and much in contrast to the assessment of maternity leave in the literature, the total duration of leave related to childbirth is in general not easily predictable for the employer. Unpredictability of total leave duration, however, has important consequences for the process of reorganization: Unexpected decisions by the woman on leave may lead to a situation where work sharing-solutions have to be stretched out into an area of sharply rising average costs, or to a situation where substitution solutions turn inefficient because the young mother returns earlier than expected, rendering the substitute

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7. See, e.g., OECD, *Long-Term Leave for Parents in OECD Countries*, in *EMPLOYMENT OUTLOOK* 171 (1995).

and his or her recruiting and training costs obsolete. Uncertainty about leave duration will in general increase the costs of reorganization and may foster employers' reluctance to employ women in the relevant age groups at the same conditions as men. The lower the predictability of leave duration, the more detrimental the expected effect on young women's labor market position. Therefore, we will include in our analysis in section III.A. those aspects of maternity and parental leave stipulations that influence the predictability of total leave duration.

*B. Direct Costs of Maternity Leave: Employer Co-Financed Maternity Pay*

Adding to the indirect costs of reorganization and human capital depreciation are the direct costs of maternity leave—the payments a woman receives during maternity leave, if co-financed by the employer. If employers have to bear some or all of the wage replacement costs during maternity leave, this is essentially the same as an employer-provided insurance of female employees against the risk of wage loss due to pregnancy and motherhood.<sup>8</sup> Like any insurer, the employer will in general not offer insurance for free, but will demand implicit or explicit insurance premiums in exchange for his services. Explicit premium payments are excluded in all countries under consideration. However, implicit premium payments are feasible: Employers may pass on maternity pay costs to the female employees in the relevant age groups via wage reductions.<sup>9</sup> Wage differentials between men and women in the relevant age groups may, therefore—besides reflecting costs of reorganization and human capital depreciation passed on to female employees—also be the result of implicit insurance premiums.

However, employer borne costs of maternity pay will often not be passed on completely to female employees. Legally or collectively set minimum wages may constitute lower bounds on wages and hamper wage reductions for women in lower income areas. Anti-discrimination rules or affirmative action programs with “equal pay for equal work” wage setting rules may have the same effect. The payment of implicit insurance premiums by female employees is then restricted. If so, the marginal costs of employing women will be

8. C. JUNGWIRTH, *BERUFLICHE EIN- UND AUFSTIEGSCHANCEN VON FRAUEN—FÖRDERWIRKUNG UND BARRIEREN DURCH MUßSCHG UND BERZGG* (1998).

9. J. Gruber, *The Incidence of Mandated Maternity Benefits*, 84 AM. ECON. REV. 622 (1994).



higher than the marginal costs of employing men, which may result in a lower employment of women as compared to the employment of men for each given wage: Like other insurers, the employer will try to influence the structure of the insured group and have as many “good risks” and as little “bad risks” as possible in his portfolio. As the maternity leave legislation in most countries explicitly bans layoffs of pregnant women and young mothers, the structure of the insured group cannot easily be changed by dismissals. Therefore, negative effects on the recruiting of female employees in the relevant age groups are to be expected.<sup>10</sup> If wage replacement costs borne by the employer are calculated as a percentage of women’s wages, then the wage differential between women and men can further be expected to increase with the wage level.

### III. A COMPARATIVE ASSESSMENT OF THE COSTS IMPOSED ON EMPLOYERS IN SIX COUNTRIES

#### A. *The Costs of Reorganization: Leave Duration and Its Predictability*

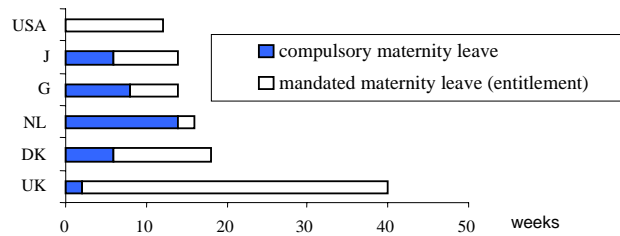
Figure 2 displays the different legally mandated<sup>11</sup> maternity leave durations in the countries under consideration, where the shaded part of each bar marks the compulsory minimum period of absence and the white part marks the legally mandated period of job-protected maternity leave women are entitled to take in case of single pregnancy.

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10. O. Mitchell, *The Effects of Mandating Benefit Packages*, in RESEARCH IN LABOR ECONOMICS 297 (L. Bassi, D. Crawford & R. Ehrenberg eds., 1990); L. Summers, *What Can Economics Contribute to Social Policy? Some Simple Economics of Mandated Benefits*, in 79 AM. ECON. REV. 177 (1989).

11. In some countries, and in some states within the countries, there are regulations on state basis or stipulations due to collective bargaining. We do not include these aspects here, but concentrate on legally mandated national provisions. For an overview about the impact of collective bargaining on the reconciliation of work and family life in the European Union, see I. Rossi & S. Demetriades, *Reconciliation of Work and Family Life and Collective Bargaining—An Analysis of EIRO Articles*, EIRO-ONLINE (2002), at <http://www.eiro/Eurofound.ie/2002>. For stipulations on state level in the United States, see J. Klerman & A. Leibowitz, *Labor Supply Effects of State Maternity Leave Legislation*, in GENDER AND FAMILY ISSUES IN THE WORKPLACE 65 (F. Blau & R. Ehrenberg eds., 1997).

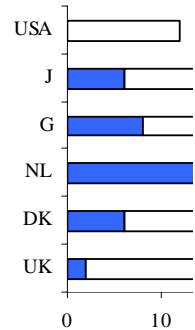
**Figure 2: Compulsory and Mandated Maternity Leave Duration in Different Countries**



With a mandated job-protected leave of 12 weeks, the United States has the shortest period of mandated job-protected leave among the countries under consideration. There is no compulsory minimum leave. Taking into account further details of the U.S. regulations (see Appendix A), we expect the U.S. employer's reorganization costs to be comparatively low. In Japan and Germany, mandated job-protected leave amounts to 14 weeks with a compulsory leave period of 6 weeks in Japan and 8 weeks in Germany. In the Netherlands, mandated job-protected leave is 16 weeks, 14 of which are compulsory. Mandated maternity leave in Denmark is again slightly longer with 18 weeks, 6 of which are compulsory (see Appendix A). In effect, there is an intermediate duration of maternity leave in these 4 countries, which is significantly longer than in the United States potentially causing higher reorganization costs. In the United Kingdom, the so-called Ordinary Maternity Leave (OML) is granted for 18 weeks, 2 of which are compulsory. Including Additional Maternity Leave (AML), which is available for young mothers after one year of continuous service, mandated job-protected leave may sum up to 40 weeks (see Appendix A). Thus, there is a wide spectrum of possible leave durations, including very short and very long durations that will cause comparatively low reorganization costs, but including intermediate durations with potentially high reorganization costs too.

Comparing the countries concerning the predictability of total leave duration, in the United States it is rather predictable: An employee is entitled to leave her workplace for up to 12 weeks in response to pregnancy and childbirth and has to give notice 30 days in advance. Leave duration in Germany, on the other hand, is rather unpredictable: An employee may leave for an initial period of 8 to 14 weeks and then decide to enter parental leave (6 weeks advance

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notice), postponing her decision to return to work for another 3 years, or she may decide not to return at all without advance notice. Japan, Denmark, the Netherlands, and the United Kingdom are placed within this spectrum, with Japan being closer to the United States and the United Kingdom being closer to Germany (see Appendix B). The extent to which a legally provided potentially large variation in leave duration, e.g. in Germany, translates into an actual unpredictability of leave duration (and as a consequence, into an aggravated labor market position of young women) is, however, an empirical question and will be tackled in section IV.B., *infra*.

### B. *Employer Contributions to Maternity Pay*

Comparing the employers' burden related to maternity pay in different countries requires a common scale for measuring the magnitude of this burden. Because the wage level varies between different countries and between individuals, absolute payments are not useful in this context. We construct such a common scale by calculating the number of weeks for which the employer has to pay full wages, even though the woman is on leave and does not work. For example, if the employer has to pay 50% of the weekly wages for a woman on leave for 14 weeks, we express this as the payment of full weekly wages for 7 weeks. If the women may choose the length of maternity leave and can influence the amount of maternity pay, or if there are different regulations for different types of employers, we base our calculation on the maximum amount an employer may have to pay. Furthermore, we include in our calculations only those payments that are due by virtue of federal laws and valid for the whole country, and all employees under consideration, thus neglecting collective agreements and state laws differing within countries (insofar, of course, regulations in the United States may be misrepresented), as well as special stipulations for certain groups of employees.

In the United States, there is no maternity pay as far as federal law is concerned. The employer does not pay for wage replacement, but has to continue health insurance benefits, which vary between employers and employees and are therefore not included. Hence, we get zero full weekly wages as the employers' share in maternity pay. In Japan, Denmark and in the Netherlands, employers don't bear any costs either, as maternity pay is provided by the social insurance institutions. Thus, we get the same result as for the United States: zero full weekly wages. In the United Kingdom, Statutory Maternity

Pay (SMP) is paid at 90% of the normal weekly wage for 6 weeks and at one-third of the average weekly wage of women for a maximum of 12 following weeks. The employer is reimbursed for a minimum of 92% of these payments. Hence, we get 0.75 full weekly wages as average employer share (6 weeks times 90%, plus one-third of average wages for 12 weeks, resulting in 9.4 weeks of full payment, of which the employer bears up to 8%). In Germany, the employer has to pay a subsidy that supplements the payment by the health insurance up to the level of the former net income of the women for 14 weeks. The subsidy equals approximately 40% of a typical woman's wage. Hence, we get 5.6 full weekly wages as the employers' burden from maternity pay (see Appendix C).

*C. The International Comparative Assessment of Maternity Leave Regulation: A Summary*

Summing up our argument, we get clear cut results for some of the countries under consideration. The United States has a very short duration of maternity leave and a high predictability of the total leave duration related to childbirth, and put only a small financial burden on the employer concerning maternity pay. Consequently, the problems maternity leave regulations may cause for the employer and the negative effects on the labor market position of women will be very small. Germany is, from the viewpoint of employers, to be found at the most costly end of the spectrum: An intermediate and potentially especially costly duration of maternity leave, a potentially high variation in the total leave duration related to childbirth, and the highest employer share in maternity pay all contribute to this result.

This broad variation in the maternity leave provisions may be the expression of quite different regimes of gender relations in Germany and the United States: L. Mosesdottir analyzes such different regimes of gender relations and compares Sweden, Germany and the United States.<sup>12</sup> She classifies the regime of gender relations in Germany as "ecclesiastical," whereas the regime of gender relations in the United States is described as "liberal."

The Netherlands, Japan, and Denmark all show an intermediate duration of maternity leave, which may be especially costly for employers. But while in the Netherlands, the predictability of total leave duration is comparatively high, predictability is only at an

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12. L. MOSESOTTIR, *THE INTERPLAY BETWEEN GENDER, MARKETS AND THE STATE IN SWEDEN, GERMANY AND THE UNITED STATES* (2001).

intermediate level in Japan and Denmark. In the United Kingdom, the large span of possible durations of the leave, combined with a low predictability of total leave duration and the co-financing of maternity pay by employers, may aggravate the labor market position of young women. However, the very short compulsory minimum duration and the comparatively long mandated duration of maternity leave could alleviate cost minimizing reorganization solutions if women regularly were to decide for one of the extremes, which, again, is an empirical question.

**Table 1: Maternity Leave Duration, Predictability of Total Leave Duration, and the Financing of Maternity Pay: A Summary**

Country	Compulsory/ mandated job- protected leave	Degree of predictability of total leave duration (maternity and parental leave) <sup>a</sup>	Employers' share in maternity pay (full gross weekly payments) <sup>b</sup>
United States	0 weeks/12 weeks	Very high	0 weeks <sup>c</sup>
Netherlands	14 weeks/16 weeks	Intermediate to high	0 weeks
Japan	6 weeks/14 weeks	Intermediate	0 weeks
Denmark	6 weeks/18 weeks	Intermediate	0 weeks <sup>d</sup>
United Kingdom	2 weeks /40 weeks	Low to intermediate	0.75 weeks <sup>e</sup>
Germany	8 weeks/14 weeks	Low	5.6 weeks <sup>f</sup>

a. Number and scope of decisions the women may take, notification periods, *see* section III.A. and Appendix B for the details.

b. As stipulated by federal law, calculations based on maximum possible share; *see* section III.B. and Appendix C for details.

c. Plus continued health insurance premiums. State laws may provide for different regulations.

d. Collective agreements provide for many different regulations.

e. Smaller employers bear less because their reimbursement percentage is higher.

f. Calculated for a typical woman who has a gross wage per month of €2,025 (\$1,919/DM4,000). Small enterprises of up to 20 employees pay premiums to a compulsory maternity leave insurance instead.

#### IV. EMPIRICAL STUDIES ON MATERNITY LEAVE

In what follows, we review the existing empirical evidence on maternity leave in light of our theoretical assessment of employer

costs in section II. While we find strong empirical support for the potential relevance of reorganization costs (section IV.A.), the existing empirical evidence on the mother's decision to return to work in section IV.B. hints at young mothers' decision-making problem being much more complex than typically assumed in the literature. Further assessments of maternity leave regulations are likely to profit from explicitly, including the woman's decision-making problem and its determinants. The regular assumption "provisions for a longer leave translate into longer absences from work" does not seem to be justified by the data. The (mixed) econometric evidence on the effects of maternity leave duration on labor market outcomes presented in section IV.C. further highlights the complexity of the issues involved.

*A. The Employers' View: Survey Evidence on Perceived Costs*

There is a number of empirical observations that are perfectly in line with our theoretical considerations in section II.A.: Asked for problems of reorganizing work as a consequence of maternity leave, mainly small employers and those confronted with high-skill leave takers in short supply report major problems with maternity leave provisions, whereas employers in general state only minor difficulties.<sup>13</sup> This is consistent with our theoretical analysis. While small firms can be expected to have problems finding work-sharing agreements (there might be no colleagues in the same job), employers confronted with high-skill leave takers obviously will have a hard time replacing the leave takers. If sharing arrangements are out of reach, small firms are effectively bound to employ a substitute (which is especially costly in case of a short period of maternity leave); if the replacement of a leave taker is unfeasible, employers are effectively bound to search for a work-sharing arrangement (which is especially costly in case of a long period of maternity leave). In the same line, it is the small firms and those having to replace workers in short supply that report problems with parental leave.<sup>14</sup>

If job tenure is taken to be a proxy for the amount of specific human capital acquired, the findings by Sofres would further seem to underline our suppositions on the importance of firm-specific human capital in deciding on the employment of a substitute vs. searching for

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13. See OECD, *supra* note 7, at 190.

14. F. Coré & V. Koutsogeorgopoulou, *Parental Leave: What and Where?*, THE OECD OBSERVER, 195/1995, at 15.

a work-sharing arrangement.<sup>15</sup> In his empirical study for France, 86% of employees on leave who had been with their current firm for less than 2 years were substituted during leave, whereas the corresponding figure for those employees who worked for more than 15 years in the same firm (and arguably had acquired a significant amount of specific human capital by that time) was only 57%.<sup>16</sup>

The plausibility of our argument is strengthened also by the study by Näsman<sup>17</sup> for the Swedish context (14 week compulsory maternity leave) where employers are cited to have argued for longer periods of absence. This is compatible with the proposed hump-shaped curve displaying the costs of reorganization as a function of the duration of maternity leave: While a 14 week leave period may already be too long for a work-sharing arrangement to be feasible, it may still be too short a time to hire and train a substitute for the employee on leave.

As far as empirical evidence on the reorganization costs of parental leave accruing to the employers is concerned, there are but a few empirical studies.<sup>18</sup> According to a 1991 study, the predominant way of reorganizing work during parental leave was the replacement of the leave taker (in face of the long-term character of parental leave, this would seem to be in line with our theoretical arguments). While major employers were often able to recruit the replacement staff internally, small employers were more dependent on the external labor market and also tried to increase the working hours of the remaining employees (particularly part-timers).

*B. Young Mothers and Their Return to Work: A Complex Decision-Making Problem*

How long young mothers are actually absent from work on top of compulsory maternity leave in the different countries, and how predictable the total duration of the absence is, are empirical questions. For one, the mandated duration of maternity leave may influence a woman's decision to return to her job after maternity leave or stay at home: While short provisions of maternity leave may induce women to quit the workplace altogether or take up parental leave and only return after years (i.e. result in rather long periods of

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15. SOFRES, LES CONGÉS PARENTAUX DANS LE SECTEUR PUBLIC ET DANS LE SECTEUR PRIVÉ (1993).

16. See OECD, *supra* note 7, at 190.

17. *Id.*

18. C. Schiersmann, *A Comparison of the Conditions for Reconciling Professional and Family Life in Europe—With Special Consideration of Regulations Governing Parental Leave*, in TRANSFER 36 (1996).

absence and, at times, even a complete loss of employer-financed investments in firm specific human capital), intermediate provisions might result in shorter periods of absence or higher retention rates.<sup>19</sup> The set of alternatives a young mother faces may actually be changed in such a way that the provision of maternity leave effectively shortens the period of absence. The results by Ronson & Sundstrom for Sweden and Norway are illustrative in this respect:<sup>20</sup> "In both countries, women who have the right to a paid leave are much more likely to resume employment, and they do so almost three times as fast as other women in Sweden and more than twice as fast in Norway. . . . Generally, it seems that a longer entitlement period such as the Swedish one in the 1980's will enable more mothers to re-enter before the leave expires, resulting in higher overall re-entry rates. With shorter entitlements, as in Norway, a few women will return more quickly, but a larger number will end up outside the labor force because it is more difficult to reconcile work and motherhood when the baby is very young." In the same line, Waldfogel, Higuchi & Abe infer from their empirical comparison of rates of retention of young mothers with their former employers for Japan, Britain, and the United States that the coverage with maternity leave has a positive effect on retention rates within one year after childbirth.<sup>21</sup> Hence, the empirical evidence hints at still another shortcoming of much of the existing theoretical literature on maternity leave: Very short maternity leave provisions might indeed lead to greater losses of human capital than provisions for a longer leave.

Moreover, it is not only the length of maternity leave provided that determines a woman's decision whether and when to return to work. According to a study by McRae for the United Kingdom,<sup>22</sup> a young mother's decision to return to the job is a function of her hourly pay, her educational qualifications, the provision of maternity pay, the type of employer (public vs. private), and the number of children. In an empirical study of about 250 dual earner households in the United Kingdom undertaken by Brannen & Moss, about 50% of young mothers returned to work after maternity leave (42% full-time, 9%

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19. OECD, *Balancing Work and Family Life: Helping Parents into Paid Employment*, in EMPLOYMENT OUTLOOK 146 (2001).

20. M. Ronsen & M. Sundstrom, *Maternal Employment in Scandinavia: A Comparison of the After-Birth-Employment Activity of Norwegian and Swedish Women*, 9 J. POPULATION ECON. 267 (1996).

21. See Waldfogel, Higuchi & Abe, *supra* note 3, at 536.

22. S. MCRAE, MATERNITY RIGHTS IN BRITAIN: THE EXPERIENCE OF WOMEN AND EMPLOYERS (1991).



part-time).<sup>23</sup> The availability of parental leave obviously also plays a role: In Germany in 1996, the take-up rate of parental leave following maternity leave was 96%, i.e. in almost every case, women did not return to their jobs at the end of maternity leave (fathers in parental leave only play a minor role in Germany representing an estimated 1-2% of parental leave takers). Nearly 75% of women who returned from parental leave between 1990 and 1995 had taken the maximum leave available and 66% of women on leave in 1995 planned an absence of more than two years.<sup>24</sup> For one, this alleviates the employer's uncertainty about the duration of leave: He can be almost certain that his female employee will not return to work after her 8-14 week maternity leave, but will enter parental leave instead. As a consequence, the uncertainty about total absence duration concerning maternity leave may not be as high as the isolated consideration of the legal stipulations would have suggested. However, the parental leave stipulations in Germany, taking effect in 2001, with their complicated regulations regarding parental leave and part-time work, are likely to increase significantly the employers' uncertainty concerning reorganization necessities.<sup>25</sup> In Denmark and the Netherlands, take-up rates for young mothers in 1995-1996 were 33% and 40% respectively (3% and 9% for men),<sup>26</sup> potentially creating much more uncertainty on the part of employers about whether their (female) employees will in fact take parental leave or not. Among the factors explaining the observed international differences in take-up rates, the question of compensation during parental leave and the availability of child care seem to be the most important,<sup>27</sup> but different traditions in female labor force participation and the social acceptability of working mothers may still play a role today.<sup>28</sup> The fact that in Germany in 2000, only 10% of children aged under 3 used formal child care arrangements (child care centers, residential care, child minders etc.) as opposed to 64% in Denmark in 1998, and 54% in the

23. J. BRANNEN & P. MOSS, *MANAGING MOTHERS: DUAL EARNER HOUSEHOLDS AFTER MATERNITY LEAVE* (1991).

24. G. Bruning & J. Plantenga, *Parental Leave and Equal Opportunities: Experiences in Eight European Countries*, 9 J. EUR. SOC. POL'Y 195 (1999); G. ENGELBRECH, *ERZIEHUNGSURLAUB—UND WAS DANN?—DIE SITUATION VON FRAUEN BEI IHRER RÜCKKEHR AUF DEN ARBEITSMARKT. EIN OST/WEST-VERGLEICH*, IAB-KURZBERICHT, Nr. 8 (1997).

25. See Rossi & Demetriades, *supra* note 11, at 19.

26. See Bruning & Plantenga, *supra* note 24, at 200.

27. See Coré & Koutsogeorgopoulou, *supra* note 14, at 17; G. ENGELBRECH & M. JUNGKUNST, *ERWERBSBETEILIGUNG VON FRAUEN: WIE BRINGT MAN BERUF UND KINDER UNTER EINEN HUT?*, IAB-KURZBERICHT, Nr. 7 (2001); OECD *Balancing Work and Family Life: Helping Parents into Paid Employment*, in *EMPLOYMENT OUTLOOK* 129 (2001).

28. See Schiersmann, *supra* note 18, at 52.

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United States in 1995,<sup>29</sup> combined with the “widespread belief in Germany that children in their first three years of life . . . should be cared for by their own mothers,” may well explain the high take-up rates of parental leave by female employees.<sup>30</sup> In Germany, living with a child less than 3 years of age significantly reduces female labor supply.<sup>31</sup>

Providing for parental leave, however, does not mean that a young mother will return to work afterwards. Reconciling family and work life may still be too difficult a task: Even though in a recent study, mothers were the main earners in 40% of respondents' households, they were “the chief carers on every indicator assessed. For example, more than two-thirds of mothers (68%) say they are usually called first if their child is ill, compared with 13% of men.”<sup>32</sup> There are vast international differences in the rates of return after parental leave: While in the Netherlands, apparently most of the young mothers return to their jobs after parental leave; in Germany, only half of them return to work.<sup>33</sup> Again, this may be due to a lack of public childcare in Germany where public childcare for children aged 3 to 6 is typically part-time and where the length of the school day in primary school is 4-5 hours.<sup>34</sup> However, even the German women returning to work did not necessarily return to work with their old employer. Nearly 40% of the women returning to work took up employment with other employers, the main reasons being the increased compatibility of family and work life with the new job.<sup>35</sup> Hence, employers can influence the re-entry rates by a family-friendly personnel policy, especially by their working-time arrangements.<sup>36</sup>

Hence, trying to assess the costs of maternity and parental leave resulting from the different regulations does not seem to be an easy task as the costs accruing to the employer are not only a function of the legal regulations in place, but also a function of the availability of child care that may indeed substantially affect a young mother's

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29. See OECD, *supra* note 27, at 144.

30. R. Pettinger, *Parental Leave in Germany*, in PARENTAL LEAVE: PROGRESS OR PITFALL? 123 (P. Moss & F. Deven eds., 1999).

31. V. Eberharter, *Gender Roles, Labour Market Participation and Household Income Position*, 12 STRUCTURAL CHANGE & ECON. DYNAMICS 235 (2001).

32. *Better Maternity Rights Damage Women's Prospects*, EQUAL OPPORTUNITIES REV. (EOR), No. 93, 3 (2000). See also the results reported on the gender division of unpaid work in OECD, *supra* note 27, at 140.

33. See Coré & Koutsogeorgopoulou, *supra* note 14, at 17; ENGELBRECH, *supra* note 24, at 2.

34. See Schiersmann, *supra* note 18, at 46; OECD, *supra* note 27, at 144.

35. See ENGELBRECH, *supra* note 24, at 2.

36. See OECD, *supra* note 27, at 146ff.

decision to return to work after maternity or parental leave.<sup>37</sup> However, comparing the situation in different countries still shows some clear cut differences: Whereas an employer faced with a pregnant employee in Germany will not only have to co-finance maternity pay, but with almost certainty (96%) he will also have to encounter a 3-year leave period and still faces a considerable risk of permanently losing the employee afterwards (50%), an employer in the United States is confronted with a mandated leave duration of up to 12 weeks per year and will then know for sure if his employee will return or not. While he may also face a high risk of permanently losing the employee (in the light of no specific provisions for parental leave and a very short duration of an unpaid maternity leave), employers in the Netherlands seemingly profit to a large extent from returning mothers and retaining their firm-specific investments. However, whereas in 1994 in the United States, 44.5% of young mothers with a child between 2 and 4 years of age were not in the labor force; the corresponding figure for the Netherlands was 73.2%, hinting at non-negligible rates of return in the United States.<sup>38</sup>

*C. The Labor Market Position of Young Women: Econometric Evidence of Costs Shifted on to Female Employees*

Besides causing direct and indirect costs for employers, maternity leave regulations may also have further indirect effects that should be recognized: If the mandated benefit “paid maternity leave” (or even maternity leave in general) is valued positively by women, their labor supply will rise, eventually decreasing wages. If, on the other hand, maternity leave legislation safeguards a woman’s opportunity to return to her old job after taking leave, this may motivate higher investments in firm-specific human capital and lead to a higher seniority and better employer-employee matches. Hence, the total effect of maternity leave on women’s income could also be positive. A potential wage increase may then again trigger an increased female labor supply and higher employment and re-entry rates. More women returning to work after taking leave will further decrease the recruiting and training costs for female employees.<sup>39</sup> As a consequence, the net effect of maternity leave regulations on women’s labor market position may well be positive, even if at first sight

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37. *Id.* at 152.

38. R. Blank, *Does a Larger Social Safety Net Mean Less Economic Flexibility?*, in *WORKING UNDER DIFFERENT RULES* 179 (R. Freeman ed., 1994).

39. See Ondrich, Spiess & Young, *supra* note 3, at 248.

maternity leave would seem to simply increase the employment costs of female employees and reduce women's wages and/or worsen their employment chances.<sup>40</sup>

Concerning the effects on employment, Ruhm<sup>41</sup> estimates that the overall effect of maternity and parental leave in the nine European countries under consideration was an increase in women's labor market participation of 4% and more in the relevant age groups. Ondrich, Spiess, & Yang summarize empirical studies for the United States and conclude that (the coverage with) leave regulations increases the labor market participation of women.<sup>42</sup> These results are confirmed by other studies for the United States,<sup>43</sup> as well as in a comparative analysis of the United States, Japan, and the United Kingdom.<sup>44</sup>

Concerning the effect of leave duration on remuneration, in his analysis of nine European countries, Ruhm finds that maternity and parental leave provisions of up to 12 weeks result in wage reductions for female employees of up to 1%, while longer leave periods of up to 40 weeks result in income losses of up to 4%.<sup>45</sup> His review of existing studies, however, reveals mixed and ambiguous effects of leave duration on remuneration, which could well be the result of a non-linear relationship between leave duration and the costs of reorganization accruing to the employer. It may also be the result of his failing to include the direct costs of employers having to contribute to the financing of maternity pay. Mitchell, e.g., finds that the costs of mandated benefits that are borne by employers indeed are partially shifted on to the relevant groups of employees in the form of lower wages.<sup>46</sup> Gruber argues that in the United States, health insurance, which is partially employer-financed, the mandated inclusion of pregnancy, and motherhood-related health risks resulted in wage reductions for female employees.<sup>47</sup> Baum reviews the existing evidence concerning the effects of diverse work interruptions on wages and compares them with work interruptions to give birth.<sup>48</sup> In his own empirical studies, he finds for the United States that work

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40. See Blau & Ehrenberg, *supra* note 3, at 4; Waldfogel, *supra* note 3, at 510; Waldfogel, Higuchi & Abe, *supra* note 3, at 531.

41. See Ruhm, *supra* note 2, at 286f.

42. See Ondrich, Spiess & Young, *supra* note 3, at 248ff.

43. See Waldfogel, *supra* note 3; Winegarden & Bracy, *supra* note 3.

44. See Waldfogel, Higuchi & Abe, *supra* note 3, at 541.

45. See Ruhm, *supra* note 2.

46. See Mitchell, *supra* note 10, at 309.

47. See Gruber, *supra* note 9, at 622, 639.

48. See Baum, *supra* note 5, at 4ff.

interruptions—both in general and for giving birth—reduce wages by an average of 2-3% per year of interruption.<sup>49</sup> However, the negative effects diminish over time, and if the women return to their old jobs after giving birth, the negative effect is reduced. Taking into account the different demand and supply effects of maternity leave provisions as discussed in section II.C., Waldfogel, who analyzes gender-specific wage differentials in the United States and in the United Kingdom, comes to the conclusion that expanding maternity leave provisions would decrease wage differentials.<sup>50</sup> In the same line, Dex, Joshi & Macran infer from their empirical study of the United Kingdom that widening the scope of maternity leave regulations would improve women's labor market position,<sup>51</sup> and Joshi, Paci & Waldfogel conclude that the introduction of statutory maternity leave in the United Kingdom helped women to forego career interruptions and decrease the wage gap relative to non-mothers and men by maintaining continuous employment histories.<sup>52</sup> Waldfogel shows, again with data from the United Kingdom, that from the women's perspective, the coverage with maternity leave makes up for the wage penalty associated with having one child and more than half of the negative wage effect associated with having two or more children.<sup>53</sup> Phipps, Burton & Lethbridge test the hypothesis that human capital depreciation due to child-related work interruptions on the one hand, and higher levels of women's unpaid, family, and household related work, together explain the wage gap between Canadian women with and without children and conclude that the two hypotheses together can reduce, but not eliminate, the unexplained wage gap.<sup>54</sup>

## V. CONCLUSIONS

Firstly, it is not unambiguously true that a long maternity leave causes the biggest problems for employers, but for many firms an intermediate duration of maternity leave may be especially costly and

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49. *Id.* at 29.

50. J. Waldfogel, *Working Mothers Now and Then: A Cross Cohort Analyses of the Effects of Maternity Leave on Women's Pay*, in GENDER AND FAMILY ISSUES IN THE WORKPLACE 92 (F. Blau & R. Ehrenberg eds., 1997); Waldfogel, *supra* note 3, at 534.

51. S. Dex, H. Joshi & S. Macran, *A Widening Gulf Among Britain's Mothers*, 12 OXFORD REV. ECON. POL'Y 65 (1996).

52. H. Joshi, P. Paci & J. Waldfogel, *The Wages of Motherhood: Better or Worse?*, 23 CAMBRIDGE J. ECON. 543 (1999).

53. See Waldfogel, *supra* note 5.

54. S. Phipps, P. Burton & L. Lethbridge, *In and Out of the Labor Market: Long-Term Income Consequences of Child-Related Interruptions To Women's Paid Work*, 34 CANADIAN J. ECON. 411 (2001).

may have the largest negative impact on women's labor market position because it renders work-sharing-solutions inefficient without allowing for substitution solutions. However, differences in the structure of reorganization costs between small and large employers and between jobs with differing skill levels are to be expected. Hence, policymakers may want to think about differentiating for employer size (as is the case in Germany and the United States), or even between different types of jobs (as is the case in the United States).

Secondly, what is especially problematic for employers is the uncertainty about total leave duration associated with childbirth as unpredictability presents one major obstacle in reaching the cost minimizing reorganizing solution. Thus, it may well be possible to improve the labor market position of women via alleviating the problems of reorganization by increasing the predictability of the total duration of the leave. This could, for example, be achieved by reducing the number of decisions and narrowing the span of possible decision outcomes the women may take without the consent of the employer, while the duration of maternity leave does not necessarily have to be shortened. At first sight, perhaps worsening the situation for working mothers, this measure may well improve their labor market situation in the middle or long run. On the other hand, policymakers who currently think about increasing the length of maternity leave in order to stimulate birth rates, as in the United Kingdom<sup>55</sup> or Japan, do not have to fear that this plan will automatically aggravate the labor market situation of women. Under some conditions, the costs for employers will decrease. However, as there will always be some employers of departments or groups of jobs where reorganization costs will rise due to short supply of skilled substitution personnel, they should take care to increase or at least not to simultaneously decrease the predictability of leave duration in order to safeguard women's labor market position in the long run. However, legal stipulations are only one factor in determining the re-entry decision of women, social acceptability of young mothers working, and the availability and attractiveness of child care arrangements being other potentially important determinants.

Thirdly, some countries like Germany, and to a much lesser extent the United Kingdom, still burden employers with the (partial) financing of maternity pay. They could alleviate the costs of maternity leave for employers, decrease female-male wage

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55. DEPARTMENT OF TRADE AND INDUSTRY (DTI), WORK AND PARENTS: COMPETITIVENESS AND CHOICE (2000) (discussion paper).

differentials, and improve the labor market situation of young women by looking for other ways of financing maternity pay. The international comparison of maternity pay shows some solutions, which may serve as examples.

#### APPENDIX A: MATERNITY LEAVE DURATION

The United States has the shortest period of maternity leave among the countries under consideration. The 1993 Family and Medical Leave Act (FMLA) provides for a 12 week absence from work (in a 12 months period). However, as these 12 weeks include possible absences because of health problems or that of close family members and as there is no compulsory minimum duration of maternity leave, the temporary absence of young mothers may be much shorter than 12 weeks. Only employees that have been with their current employer for at least 12 months or for 1,250 hours are covered by the FMLA. Private firms with less than 50 employees are exempt from the FMLA.<sup>56</sup> Further, the employer may refuse to reinstate "highly compensated employees . . . if . . . such denial is necessary to prevent substantial and grievous economic injury to the operations of the employer."<sup>57</sup> As a result of these exemptions and qualifications, it is estimated that only 55% of employees and 19% of new mothers are in fact covered by the FMLA provision.<sup>58</sup> There are, however, a number of maternity leave statutes on state level, increasing the number of employees being covered by maternity leave provisions.<sup>59</sup> Medium-sized and large employers who are covered by FMLA provisions will probably have only minor problems in arranging for viable work-sharing arrangements for the comparatively short maternity leave. Smaller employers who might have problems with work sharing solutions due to heterogeneous task structures are exempted. Hence, we expect U.S. employers' reorganization costs to be comparatively low.

The Labor Standards Law in Japan and the Law for the Protection of Mothers in Germany both provide for a maternity leave duration of 14 weeks. Both countries provide for a compulsory period of leave (6 weeks in Japan, 8 weeks in Germany). In the Netherlands,

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56. J. O'CONNOR, S. ORLOFF & S. SHAVER, *STATES, MARKETS AND FAMILIES: GENDER, LIBERALISM AND SOCIAL POLICY IN AUSTRALIA, CANADA, GREAT BRITAIN AND THE U.S.* (1999).

57. *Perspectives: Parental Leave*, 136 INT'L LAB. REV. 109 (1997).

58. C. Ruhm, *Policy Watch: The Family and Medical Leave Act*, 11 J. ECON. PERSP. 175 (1997).

59. For an overview, see Klerman & Leibowitz, *supra* note 11, at 66.

the Sickness Benefit Act provides for 16 weeks of maternity leave, 14 of which are compulsory. In all three countries, the leave is granted independently from sickness-related absences from work. Maternity leave in Denmark is slightly longer with 18 weeks, of which 6 weeks are compulsory and 14 are available after birth.<sup>60</sup> In effect, the duration of maternity leave will indeed be significantly longer in these four countries than in the United States. This will in general make work-sharing arrangements more costly and the employment of substitutes more attractive. In face of specific skill requirements, a 14 or 18 weeks leave period may, however, still be too short to allow for the replacement of the worker on leave, rendering (potentially costly) work-sharing arrangements the only practicable solution. Hence, we expect the employers in these countries to bear higher reorganization costs than in the United States.

Since the Employment Relations Act of 1999, maternity leave in the United Kingdom is granted for 18 weeks (ordinary maternity leave—OML), two of which are compulsory. After one year of continuous service, leave takers are further entitled to additional maternity leave (AML) up to the 29th week after confinement. As the woman is free to decide to start her OML from the 11th week before expected confinement, maternity leave may sum up to 40 weeks in total.<sup>61</sup> When she returns to work, her job package, pay, seniority, and pension rights have to be at least as favorable as when she left.<sup>62</sup> Whereas the 18 week OML period would already seem to render work-sharing agreements problematic, a 40 week leave period clearly seems to speak in favor of employing a substitute. However, firms with leave takers in short supply will suffer the most from these long-term leave provisions.

#### APPENDIX B: PREDICTABILITY OF TOTAL LEAVE DURATION

Among the countries under consideration, the United States does not grant additional parental leave. The FMLA leave provisions of 12 weeks of leave per year cover a wide range of care needs, including maternity and parental leave, as well as leave for family and medical reasons. They equally apply to women and men. The short average duration of leave actually taken and the reasons given reveal that “in practice it serves more as leave for family and medical reasons . . .

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60. T. Rostgaard, M. Christoffersen & H. Weise, *Parental Leave in Denmark*, in PARENTAL LEAVE: PROGRESS OR PITFALL? 25 (P. Moss & F. Deven eds., 1999).

61. E. SLADE, *TOLLEY EMPLOYMENT HANDBOOK* (13th ed. 1999).

62. J. BOWEIS & S. HONEYBALL, *LABOUR LAW* (5th ed. 2000).



than as parental leave.”<sup>63</sup> Concerning advance notice, the employer has the right to be informed of an intended family leave 30 days in advance.<sup>64</sup> The leave is to be taken by the week.

In Japan, leaves for child- and family-care are provided for by the “Law Concerning the Welfare of Workers Who Take Care of Children or Other Family Members Including Child Care and Family Care Leave” from 1999. When a worker who has been with an employer for at least a year applies to the employer for leave to take care of her or his less than one-year-old child, the law prescribes that the employer must give her or him leave for child care. Child care leave can only be taken once per child. It has to be announced one month in advance, otherwise the employer may postpone its beginning such that there is one month between the application and the beginning of child care leave. If the worker decides to withdraw from the application to take child care leave, (s)he may do so until the day preceding the day where child care leave was supposed to begin, but (s)he may not apply for child care leave with regard to the same child again. Concerning the end of the leave period, the worker may decide to postpone her or his return, but (s)he may do so only once. At the latest, child care leave ends with the first birthday of the child. In addition to child care leave, employees may take “family care leave” in order to take care of a sick child or other family member (spouse, parent) for a maximum of 3 months for each family member.<sup>65</sup>

In Germany, according to the recently revised Federal Childcare Allowance Act, either parent may take parental leave up to the third birthday of the child. If the employer approves, one year of the parental leave provision can be postponed until the child’s eighth birthday. Young parents may also work part-time (up to 30 hours a week) while being on parental leave. If the parties of the employment contract do not find a mutually agreeable part-time arrangement within 4 weeks, the law prescribes a fallback position for workers that have been with their current employer for at least half a year and are employed in a firm with more than 15 employees: If there are no important obstacles from the part of the firm, young parents have the right to shift to a part-time contract (15-30 hours a week) twice for a period of 3 months each. Six weeks before the beginning of the parental leave, the young mother has to declare for which periods of

63. See ILR, *supra* note 57, at 124; OECD, *supra* note 7, at 186.

64. S. KOHLHAAS, *DAS ARBEITSRECHT IN DEN USA* (1998).

65. T. Hanami, A. Tadashi & F. Koniya, *Japan*, in 8 *INTERNATIONAL ENCYCLOPEDIA FOR LABOUR LAW AND INDUSTRIAL RELATIONS* (R. Blanpain ed., 1999).

time in the next two years she intends to be on parental leave. However, if the employee does not enter parental leave after the end of maternity leave, but decides not to return to work at all, she may terminate the employment contract without any notice requirement.<sup>66</sup> Advance notice of part-time parental leave has to be given 8 weeks ahead. The employer has to approve if parents want to return early or remain on leave for longer periods than initially declared.<sup>67</sup>

In the Netherlands, the Parental Leave Act provides for a 6-months' leave entitlement for each of the two parents if they continue working part-time and a 3-months entitlement in case of full-time leave. The employer has to approve of this. If he agrees, the leave may also be spread over a period of more than 6 months.<sup>68</sup> Parental leave may be taken until the child's eighth birthday. Only employees that have worked with their current employer for at least 12 months are eligible.<sup>69</sup> Employees are to give notice of intended parental leave at least 2 months before its beginning. The statement should include the duration of leave, the number of hours worked, and their distribution over the week. If the employee wants to return to work early and has "good reasons," the employer must allow this; the distribution of hours worked may be altered by mutual consent. Employers may not refuse the request for parental leave, only hour arrangements may be altered "with good reason" up until 4 weeks before the beginning of parental leave.<sup>70</sup>

In Denmark, there is a basic family entitlement of 10 weeks of parental leave for parents of children up to 8 years old, which may be taken by either parent. The Act on Leave Schemes further entitles the parents to an additional uninterrupted period of childcare leave of another 13 weeks (26 weeks if the child is less than 1 year old or adopted),<sup>71</sup> and uninterrupted periods of leave of at least 13 and, at most, 52 weeks may also be agreed voluntarily with the employer. The total duration of all such leave must not exceed 52 weeks. The duration of leave counts towards the employee's continuous length of service.<sup>72</sup> Concerning notice periods, the employee has to request

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66. M. Schlachter, *Kommentar zum Mutterschutzgesetz*, in ERFURTER KOMMENTAR ZUM ARBEITSRECHT 2348 (1999).

67. P. Gola, *Vertragsfreiheit und Teilzeitbeschäftigung—neue Rechtsansprüche auf Teilzeitarbeit*, 8 LOHN UND GEHALT 35 (2000); H. Hungenberg, *Änderung des Bundeserziehungsgeldgesetzes*, 8 LOHN UND GEHALT 38 (2000).

68. See Bruning & Plantenga, *supra* note 24, at 197.

69. Parental Leave in the U.K., EOR No. 92, at 12 (2000).

70. Parental Leave in Europe, EIRR, No. 262, at 14 (1995).

71. See Rostgaard, Christoffersen & Weise, *supra* note 60, at 28; EOR, *supra* note 69, at 15.

72. P. Jacobsen & O. Hasselbach, *Denmark*, in 5 INTERNATIONAL ENCYCLOPEDIA FOR LABOR LAW AND INDUSTRIAL RELATIONS (R. Blanpain ed., 1998).

parental leave in written form at least 4 weeks before its beginning. If the duration of leave is not stated, the employee must give notice of return to work at least 8 weeks in advance. Employers may not refuse the request for parental leave, but if they cannot find a substitute, they may postpone it for up to 26 weeks.<sup>73</sup>

In the United Kingdom, the Maternity and Parental Leave Regulations of 1999 specify a fallback scheme, which takes effect if employer and employee do not agree on arrangements for parental leave that reflect their own particular needs. However, the Employment Relations Act (ERA) of 1999 explicitly encourages employers and employees to look for such solutions. The fallback scheme provides that qualifying employees are entitled to 13 weeks of parental leave for each child up to its fifth birthday. The leave may be taken in blocks of one week or multiples of one week up to a maximum of 4 weeks during any one year. The employer has the right to postpone a period of parental leave where work is of a seasonal nature, where a replacement cannot be found within the notice period (21 days), where a significant proportion of the workforce applies for parental leave at the same time, or where a specific function is of strategic importance. Furthermore, the employer can weaken the provisions of the fallback or "default scheme" by way of a workforce or collective agreement.<sup>74</sup> If employee and employer don't agree on the terms of the parental leave, the employer has to guarantee that the employee can take the leave within the next 6 months at a time that best fits the needs of the firm and of the employee. At the end of parental leave, the employee has the right to return to the same or, if not possible, to an equivalent or similar job consistent with the employment contract.<sup>75</sup> Apparently, the majority of organizations indeed keep to the minimum requirement of 13 weeks leave, but nearly half of them introduce more flexibility in terms of allowing longer periods of absence in any one year and many offer more generous notice periods.<sup>76</sup> Thus, the fallback scheme seems to be of quite some importance. As for the right to return to the previous job after maternity leave, an employee must inform her employer at least 21 days before her absence that she wants to return afterwards and must indicate the expected week of confinement.<sup>77</sup> If she wishes to

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73. See EIRR, *supra* note 70.

74. IDS (INCOME DATA SERVICES), MATERNITY AND PARENTAL RIGHTS: EMPLOYMENT LAW HANDBOOK (2000).

75. *Maternity and Parental Leave*, INDUS. REL. L. BULL. No. 631, at 4 (1999).

76. See EOR, *supra* note 69.

77. See SLADE, *supra* note 61, at 328.

return right after OML, she then "simply presents herself for work"; if she wishes to return earlier than that, she must give notice at least 21 days in advance. In order for a woman to return to work after AML, there are no notice requirements.<sup>78</sup> However, if the employer requests, the woman on leave has to give written confirmation of her intention to return to work, but not earlier than 21 days after the end of OML. If the confirmation is not given within 14 days of receiving the request, "or as soon thereafter as is reasonably practicable," the right to return to work will be lost. Provided she informed her employer about her intention to return to work, the employee has the right to return any time during additional maternity leave.<sup>79</sup>

#### APPENDIX C: MATERNITY PAY

In the United States, no maternity pay as a wage replacement is stipulated by the FMLA. Women regularly do not get any wage replacement from other institutions either. Employers are not obliged to pay any wages during leave. However, they must continue health insurance benefits on the same terms as if the worker had not taken leave.

In Japan too, employers are not legally obliged to pay wages to a worker on maternity leave. However, wage payments during maternity leave are sometimes stipulated in company specific work regulations. In contrast to the United States, women do get some payments under certain conditions: The Health Insurance Law stipulates delivery expenses and birth allowances for insured persons, mainly for employees in private enterprises (Art. 50, II Health Insurance Law). After giving birth to a child, the insured person receives a lump sum payment of €2,740.2 (\$2,597.16/YEN 300,000).<sup>80</sup> For the period during which the insured is unable to work (within 6 weeks prior to and 8 weeks after the day of delivery), an additional 60% of the daily amount of the standard remuneration is paid as birth allowance (Art. 50, II Health Insurance Law). If the employer pays wages to the insured during maternity leave, the amount of the birth allowance will be reduced accordingly.

In the United Kingdom, women on maternity leave are entitled to receive statutory maternity pay (SMP) from their employer under certain conditions. It is payable if the woman has been employed

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78. J. BOWEIS, EMPLOYMENT LAW (5th ed. 2000).

79. See SLADE, *supra* note 61, at 328.

80. YEN 1 = €0.009134 (exchange rate of June 7, 2002); €1 = \$0.94780 (exchange rate of June 7, 2002).

continuously by her employer since the very beginning of her pregnancy and if she earns at least €108.3 (\$102.6/£67) a week on average. SMP is payable up to 18 weeks and only in weeks in which the recipient doesn't work. It is paid at 90% of the woman's average weekly earnings for the first 6 weeks and €7.32 (\$92.23/£60.20; updated yearly in April)<sup>81</sup> for the remaining 12 weeks. The amount is equivalent to approximately one-third of the average weekly wage for women.<sup>82</sup> The state reimburses employers for 92% of the SMP they have paid out (or 105% if their national insurance liability in the previous tax year was €2,331 (\$30,643/£20,000) a year or less. If a woman is not entitled to receive SMP, she gets maternity allowance (MA) from the Department of Social Security. Just like SMP, MA is payable up to 18 weeks and only in weeks in which the recipient doesn't work. In order to receive MA, a woman must have been employed or registered as self-employed for at least 26 weeks during the last 15 months before confinement. She must also earn at least €48.49 (\$45.95/£30) a week on average. MA is paid at €7.32 (\$92.23/£60.20) a week or 90% of the woman's average earnings if she earns less than €108.3 (\$102.6/£67) a week.<sup>83</sup>

In the Netherlands, women on maternity leave receive 100% of their daily wage up to a maximum of €144.78 (\$137.22/NLG 319.06).<sup>84</sup> This amount is paid by the health insurance. The benefits are fully liable to taxation and social security contributions.<sup>85</sup> As the health insurance provides for wage replacement, there is no continuation of payment by the employer during maternity leave. However, in civil service, employees with one year's service who work at least 16 hours a week may reduce their working time by 50% for a period of 6 months until the child reaches its fourth birthday. Hours not worked are remunerated at a rate of 75% of normal pay.<sup>86</sup>

In Germany, the employer does not have to continue wage payments as the main contractual obligations of both parties of the employment contract are suspended during maternity leave. However, the law for the protection of mothers stipulates that the employer has to pay a "subsidy," which supplements a maternity

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81. £1 = €1.61655 (exchange rate of August 5, 2001).

82. See DTI, *supra* note 55, at 10.

83. *Id.*; *Online Information System About Legislation in the EU Member States, Diverse Documents About Maternity Leave in EU Member States*, MISSOC ONLINE (2001), available at [http://Europa.eu.int/comm/employment\\_social/missoc2000/missoc\\_87\\_en.htm](http://Europa.eu.int/comm/employment_social/missoc2000/missoc_87_en.htm).

84. NLG 1 = €0.45378 (exchange rate of August 5, 2001).

85. See MISSOC ONLINE, *supra* note 83.

86. See EIRR, *supra* note 70, at 21.

payment by the health insurance (€12.78/\$12.11/DM 25 per day)<sup>87</sup> to the level of the woman's former net wages. Both the maternity payment by the health insurance and the employers' subsidy are not liable to social security contributions and to taxation. Depending on the woman's gross and net income, these stipulations result in varying financing cost shares of the state, the social insurance, and the employer. For a typical female worker in firms with more than 20 employees, who earns a gross income of €2,045.16 (\$1,938.40/DM 4,000), the employer's share is about 35% of the gross payroll cost of €2,454.192 (\$2,326.08/DM 4,800) and about 40% of the gross monthly wages of €2045.16 (\$1,938.40/DM 4,000), while the social insurance institutions bear approximately 50% and the state the remaining 15% of gross payroll cost.<sup>88</sup> There are special provisions for small enterprises with up to 20 employees: They do not have to pay the employers' subsidy. In exchange, there is a special compulsory maternity leave insurance for which they have to pay insurance premiums as a percentage of total payroll cost.

In Denmark, women receive weekly payments during the 4 weeks before expected confinement and the 14 weeks after confinement. Weekly payments may continue for another 10 weeks of parental leave. Fathers may receive weekly payments for 2 weeks within the 14 weeks following birth and for 2 weeks after expiry of the 24 weeks period. The maternity cash benefit is calculated on the basis of the hourly wage of the worker and the number of hours worked, with a maximum of €82.4 per week (\$362.40/DKK 2,846) and is paid by social insurance institutions. However, there are several collective agreements that provide for the continued payment of 100% of wages and salaries for certain groups of employees. In this case, employers are entitled to receive the maternity cash benefit paid by the social insurance institutions. Benefits are fully liable to taxation and contributions to the supplementary pension scheme have to be paid out of the benefits.<sup>89</sup>

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87. DM 1 = €0.51129 (exchange rate of August 5, 2001).

88. See Alewell, *supra* note 1.

89. See Rostgaard, Christoffersen & Weise, *supra* note 60; MISSOC ONLINE, *supra* note 83.