Independent Women's Forum®

Working for Women

A Modern Agenda for Improving Women's Lives

Preface

Four years ago, Independent Women's Forum released our *Working for Women* report, detailing ways that lawmakers could make policy changes to create a more flexible, modern economy that would enable more women to pursue their dreams—whether those dreams are to become the CEO of a major corporation, the President of the United States, a home-based entrepreneur, or a stay-at-home mother raising strong children and building a healthy community.

In updating this report, we are gratified that many of these recommendations have been put into action and significant progress has been made in lowering tax burdens, encouraging flexible work arrangements, and identifying the best approaches for supporting workers and their loved ones. As our overall economic conditions have improved, job opportunities have become more plentiful, and wages and benefits have increased.

But there is still much work that needs to be done.

Independent Women's Forum presents this updated edition of *Working for Women: A Modern Agenda for Improving Women's Lives Second Edition.* This report reflects changes in our economy and current public policies and identifies additional policy reforms that will give women greater opportunity to flourish by encouraging the creation of a more dynamic, innovative, and flexible working world.

We welcome additional ideas and feedback on other ways we can create a society that supports women and helps all individuals and families thrive.

With great appreciation,

Hadley Manning

Patrice Onwuka

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Executive Summary

One hundred years ago this year, American women gained the right to vote with the ratification of the 19th Amendment to the U.S. Constitution. We have much to celebrate: Women in the United States are healthier, wealthier, more prosperous, and free than ever. This was true when IWF released our first *Working for Women* report in 2016, and it is also true today.

Women's achievements are impressive: Women are increasingly assuming positions of power in business, government, academia, and the non-profit sector. More women than ever before are going to college and earning degrees, including master's and doctorates, making women an increasingly educated segment of the workforce. Today, women hold a majority of professional, managerial and related positions in American businesses. In 2019, for the first time, women comprised the majority of the college-educated workforce in the U.S.[1]

Women are also increasingly starting businesses of their own. When we published this report in 2016, we mentioned an estimate of 9.1 million women-owned businesses in the United States. But the trend of increased women's entrepreneurship has grown even stronger: Between 2017 to 2018, women started 1,821 net new businesses *each day*. In 2018, there were 12.3 million women-owned businesses (40 percent of all firms), employing 8 percent of the total private sector workforce.

As more women work, poverty rates, especially among single-parent homes, have fallen. In 2018, the poverty rate for families headed by single mothers fell 1.7 percentage points to 26.8 percent, the lowest rate for this group on record.[2] The real median income for households headed by single mothers increased 5.8 percent and real median earnings increased by 7.6 percent. Rising incomes allowed more of these families to move up into the middle class.

Despite this success, and even with the unprecedented economic expansion, many women still struggle with issues highlighted in our 2016 *Working for Women* report. Some women cannot find jobs that suit their skill sets or time constraints; some work part time when they would prefer full time. Others are working full time, but wish they could afford to stay home with their young children, scale back, or at least have more flexibility than their current job provides. Women worry about their husbands, sons, and daughters and whether they will find the

path to a meaningful, fulfilling career (and family life). Many families face tight budgets and struggle to save adequately.

While women in America have more opportunities than ever before, their challenges are real. Unfortunately, politicians often imply that bad bosses or an overwhelmingly sexist society are the cause of women's obstacles, and argue that top-down government policies are necessary to protect women. Yet there is not a one-size-fits-all solution to the challenges women face, and these well-intentioned government efforts may help some, but they will backfire for many more by making our workplaces less flexible and discouraging job creation.

Instead of creating top-down reforms or expanding government programs, policymakers need to understand where the law has helped women advance economically, and where it impedes women's progress. Policymakers need to think more creatively about how to help women foremost by creating a stronger economic environment that gives people more choice, opportunities, and resources so they can build the lives and work situations that meet their unique preferences and situations.

This new *Working for Women* report provides an updated picture of economic opportunity, paid family leave, workplace flexibility, child care, retirement, and pay equity in the United States. Excitingly, the policy debate in these areas has become more robust and has received more attention in the last few years, and we've noted where new ideas and proposals have been introduced.

As in our previous report, IWF details specific policy proposals that will help advance women's prospects by facilitating job creation and removing red tape that makes it harder for women to find work they want. We encourage reforms that return resources and control to individuals so that women can make choices that make sense for themselves and their families. We recommend that government focus financial assistance on those truly in need (particularly those with lower incomes) while removing regulations and government obstacles to make it easier for all Americans to climb the economic ladder and live the American Dream.

Below is a list of recommended reforms that will be described in greater detail in the report that follows:

Make Tax Cuts Permanent for Workers: In 2017, Congress passed and President Donald Trump signed into law sweeping reforms to the tax code that reduced tax

burdens for businesses and workers at every income level. These tax cuts reward those who work while also making it easier for more families to make ends meet on one salary. However, these tax benefits are set to expire in 2025. Policymakers should make tax cuts permanent for workers and families as they did for businesses.

Protect Gig Workers and Independent Contractors: States are considering proposals to reclassify gig workers as employees of the digital platforms and allow them to unionize. This would backfire for gig workers by eliminating flexibility and opportunities for work. Companies that currently allow workers to offer services on their own schedule might institute shifts and control scheduling. They might restrict who can sell goods on their platforms, as well as imposing additional fees that would drive away customers. States and federal lawmakers should reject proposals to reclassify gig workers as employees.

Reform Licensing Regimes: Someone who wants to start a business or enter a profession too often finds that first she must obtain a license from the government, which can require completing schooling, taking tests, and paying fees. These can be prohibitive roadblocks. States should evaluate existing licensing and fee practices and eliminate all that fail to advance legitimate public safety or quality concerns. For military spouses, states should consider ways to expedite licenses or transfer the licenses of those who are in good standing. They should also consider ending blanket exclusions of individuals with criminal records, and instead exclude only those individuals whose convictions are recent and relevant and pose a legitimate threat to public safety.

Earned Leave: In 2018, IWF published a paper introducing the idea of allowing employees welcoming a new baby or child to their family to access a share of their future Social Security benefits, in exchange for delaying their eligibility for Social Security retirement benefits. This program would be entirely voluntary: No worker would have to take Earned Leave benefits, and there would be no new taxes imposed to pay for this program. This would simply shift the timing of when workers would receive benefits that they have already accrued. This tax-neutral, voluntary effort deserves additional consideration.

Front Loading Child Tax Credits: Senators Bill Cassidy (R-LA) and Krysten Sinema (D-AZ) have offered a new bipartisan proposal that would offer new parents the option to take an advance on the child tax credit to allow them to take paid time off to welcome a new child. The tax credit received in the year of a child's birth or adoption would then be effectively paid back by reduced eligibility for future child

tax credits. This bipartisan proposal for a voluntary option to give taxpayers more flexibility with the timing of their tax credits deserves additional exploration.

Allow People to Save on Their Own for Leave Time: Americans are encouraged to save pre-tax dollars in a variety of accounts, for purposes that policymakers recognize are critical needs, such as healthcare costs (health savings accounts), education (529 education savings accounts) and flexible spending accounts (to defray certain healthcare and childcare costs). Personal leave from work is also a critical need, and people ought to be able to save tax-free so that they can accrue resources that will sustain them during such absences from work, either through Personal Care Accounts (PCAs) or through reforms to Health Savings Accounts (HSAs).

Reform the Fair Labor Standards Act: The antiquated, Depression-era Fair Labor Standards Act needs to be updated. Congress should take a fresh look at this law and roll back unnecessary rules and classifications that hardly apply to our modern world.

Pass Compensatory Time for the Private Sector: Since 1986, under section 7(o) of the FLSA, employees in the public sector have the option of taking compensatory time off—1.5 hours of paid time off for every hour of overtime worked—in lieu of cash overtime pay. This provides government employees with choice and flexibility to determine for themselves what they need more, cash or paid time off. It is past time to allow private sector employees the same choices and flexibility as government workers have enjoyed for 30 years.

Allow Employees to Agree to an 80/14 Schedule: The FLSA's requirement that non-exempt employees receive overtime pay for all hours worked in a work week is a barrier to flexible schedules. The FLSA should be amended to allow employees to voluntarily choose a flexible schedule in exchange for being paid overtime after 80 hours of work over 14 days, rather than the traditional overtime after 40 hours in 7 days.

Remove Other Barriers to Flexible Scheduling: Lawmakers understandably wish to ameliorate challenges created for workers by just-in-time scheduling practices. However, regulations limiting just-in-time scheduling practices do not solve workers' problems, but create new ones by making it more likely that employers will reduce hours overall, decrease wages, and further move to automate and consolidate their workforce to address higher employment costs. Lawmakers should reject such proposals.

Increase Tax Credits for Children: Lawmakers ought to consolidate existing child-centered tax credits and spending, and use those savings to provide added refundable tax relief for parents, particularly to the parents of the youngest children. This would accomplish numerous important policy goals by alleviating disincentives for childbearing, ending the current government bias against stay-at-home parents, and simplifying the tax code. Since many of the current programs, such as Head Start, are geared to assist low-income women, a new mechanism for support should be allocated on a means-based scale to help those with lower incomes most.

Eliminate Regulations That Make Day care Needlessly Expensive: Regulations are one reason why day-care centers are so expensive. Everyone wants day-care centers to be safe, stimulating environments with well-trained childcare professionals. However, studies suggest that some regulations—specifically those with very low child-to-staff ratios—are not enhancing the quality of care that children receive, but are just increasing costs. Reforming or repealing such regulations could reduce the shortage of care, apply downward pressure on prices and encourage higher quality by increasing competition.

Encourage Saving for Early (and Lifetime) Education: Currently, Americans are encouraged to start saving for their children's college education immediately after their children are born. Policymakers should consider expanding this savings vehicle to help parents broadly to save and prepare for the costs of child-rearing, even before K-12 education begins.

Expand Catch-up Contributions to Retirement Savings Vehicles: Women tend to take more time out of the workforce to care for family members. As a result, they tend to earn lower wages while working and often miss savings opportunities for multiple years. Therefore, lawmakers should expand eligibility for catch-up contributions, so that someone who took at least one year out of the workforce to care for a family member could start making catch up contributions before age 50. This would benefit people (disproportionately women) who have sacrificed for their families, giving them more opportunity to put away additional earnings and start earning more interest earlier in anticipation of retirement.

Reduce Capital Gains Taxes: Policymakers can also attempt to encourage more savings by changing tax laws that discourage savings. Under current law, when Americans purchase a stock or earn interest on an investment, they are taxed on the return generated. Policymakers should be seeking to reduce, or even eliminate, these taxes in order to change this dynamic and encourage more Americans to save.

Reject Attempts to Increase Social Security Retirement Benefits: The Social Security program already faces financial strain. The most important action policymakers can take is to reject attempts to expand the already enormous retirement benefit system even more.

Reform Social Security to Protect the Safety Net: Policymakers should consider reforms that would make Social Security more financially sound and ensure that Social Security serves as a safety net for those who need it most. Rather than promising more generous retirement benefits to future workers (which the federal government will be unable to fully pay for under current law), future retirees' benefits should be comparable to those received today. Congress should also consider explicit reductions in benefits that are paid out to high-income retirees, while augmenting benefits for lower-income beneficiaries.

Make Social Security More Fair by Rewarding Work: Policymakers should also begin to phase out how benefits are calculated for married couples to better recognize and reward the contributions of working spouses. Under current law, a spouse who never works is eligible to receive one-half of her spouse's Social Security retirement benefit, even though she has never directly paid into the system. Policymakers should phase out the subsidy for the stay-at-home parent to create a fairer system that reflects modern families and rewards workers for their contributions to the system.

Encourage Savings as a Part of Social Security: Policymakers should consider how to move toward a system that allows people to save and invest on their own. A defined contribution system, which consists of personally-owned retirement accounts, for example, would allow people to put money away for their own retirement, and those assets would grow during their working lives. That account would be someone's personal property and could be passed on at death.

Clarify Pregnancy Discrimination Act: The Pregnancy Discrimination Act of 1978 was intended to help women continue working while pregnant. However, ambiguities in the law fail to make clear the expectations for how employers must accommodate pregnant workers. A simple change to the existing Pregnancy Discrimination Act can clarify that a pregnant worker must receive the same accommodations as other workers with similar abilities and limitations.

Protect Arbitration: Unfortunately, our civil litigation system is often slow and inefficient. Arbitration is an alternative to litigation in court that allows victims of discrimination to enforce all of their civil rights and receive compensation swiftly, privately, and in a flexible and cost efficient manner. Recently, #MeToo activists have attempted to prohibit the enforcement of employment arbitration agreements, forcing women who have been discriminated against to try their cases publicly in open court, a process that can drag on for years. In order to ensure that women who have faced workplace discrimination can receive justice in a prompt and equitable manner, Congress should reject any effort to carve out exceptions to arbitration for cases of employment discrimination.

Economic Opportunity

The Way It Can Be

Americans want to live in a country where there are ample job opportunities, and today's economy is fulfilling that desire. With the national unemployment rate near a 50-year low and more than seven million unfilled positions, this is one of the best economies in recent history to find work. Women especially are benefitting from greater opportunities to work and start businesses. Good policies can continue to encourage job creation, flexibility, and better compensation.

Women have different preferences about work based on their particular life circumstances. Many women with children, for example, may prefer flexible hours or the ability to work part-time or from home. But others want full-time positions with the potential to grow in earnings and responsibility. The economy is increasingly evolving to provide a variety of work arrangements so that people can make choices based on their goals.

We want workers to have the ability to earn more as they gain experience. Tax policies should allow workers to keep more of what they earn. People should not feel constricted to one job or one profession, but be able to enter industries and start businesses of their own when they have the ambition and skills to do so. Unnecessary work regulations should not become impediments to workers from entering occupations. We need to modernize policy to bring this vision to life.

The Challenge We Face Today

Millions more Americans are working today. Individuals are finding full-time jobs when previously they were underemployed. Many others no longer feel trapped in jobs that fail to put them on the career path they want or to offer the opportunity to move up and live out their American Dream. Workers can leave their job and find a new one with better pay or greater responsibility. Many women have launched businesses or started side jobs that could one day become full-time endeavors.

Economic statistics confirm these dramatic improvements in the labor force. The official unemployment rate for women has declined significantly over the past few years falling from a high of 9 percent in November 2010 to 3.2 percent in October 2019.[3]

While much of this drop in unemployment is a result of women finding jobs, millions of women also left the labor force. The reasons for doing so are hard to ascertain, but given the

robust jobs market, we can assume that many women left the labor force as a personal choice rather than for lack of economic opportunities.

In 2018, there were 57.1 million women outside the labor force, which is 7.5 million more than in 2009.[4] The number of employed women increased by 6.9 million during that period, which means that the number of women who did not participate in the labor force surpassed the number who became employed.[5]

This did not just begin recently, but continues a long downward trend that has started to reverse an impressive 40-year growth in women's labor force participation.[6] The labor force participation rate among women climbed from about 35 percent in 1950 to 60 percent in 1999. As a result, the share of women comprising the overall labor force has risen from just a third in the 1950s to nearly half today.

Since 2000, this rate has been in steady decline adding to the overall decline in labor force participation. The Bureau of Labor Statistics projects female labor participation will fall by about 1 percentage point by 2024.

Against the backdrop of women's educational success over the past several decades, we may wonder why more women are dropping out of the labor force. Women today outpace men when it comes to education, earning more bachelor's, master's, and now PhDs. Women are better positioned to compete in the workforce—and demand higher salaries—than ever before.

However, the share of young female workers aged 16-24 and 25-54 and the labor force participation rates among these two groups are both declining—whereas, the participation rate of female workers 55 and over is rising.

Women's declining workforce participation at young and middle ages could be the result of women feeling more secure in their decision to stay home to raise children and forgo paid work. In a booming economy in which earnings are steadily rising and many families can live comfortably on one paycheck, some women (particularly married women) may choose not to work outside of the home. This argument is bolstered by the fact that we have seen a decline in poverty and reduction of dependence on related social services in tandem with the decline in workforce participation.

Median household income hit a record-high of $61,937 in 2018, recovering from a post-recession low of a little over $56,000. The Census Bureau reported: "This was also the second consecutive year that U.S. median household income was higher than median household income in 2007, the year before the latest recession."[7][vii] This means that today the average American family is living on more income than before. With bigger family

budgets than before the recession, Americans have the opportunity to save or invest in important endeavors such as additional education or starting a business.

Rising wages are driving the growth in household incomes, welcome news after years of stagnant wages. For example, according to the Bureau of Labor Statistics, the median weekly earnings for women were $726 in 2009 and $726 in 2015 (adjusted for inflation), suggesting that Americans were treading water during the Obama Administration.[8] However, there has been a turn around. Median weekly earnings for women climbed to $788 in 2018 and may exceed $800 for 2019.

While the media often suggest that businesses are to blame when wages stagnate, too often government policy makes it more difficult and expensive for businesses to create jobs or pay employees more. High tax rates on businesses reduce revenue that could be spent on increasing wages. Laws such as the Affordable Care Act raise costs for businesses by forcing employers to spend more on benefits rather than increasing take-home pay and make it more difficult to offer full-time jobs. Minimum wage laws and mandated paid leave similarly make hiring workers more expensive, and prevent businesses from being able to offer a variety of benefits or compensation options that some workers may prefer.

Increased benefit costs certainly played an important role in wage stagnation. In 2009, 30.3 percent of businesses' total average employee compensation costs, or about $8.90 per hour, went to benefits; in 2015, about 31.5 percent of compensation costs, or $10.50 per hour, went to benefits, rather than take-home pay.[9] That means that companies were spending more on their employees, yet employees weren't seeing that money in their paychecks. Benefit costs have climbed even further to $11.48 per hour in June 2019.[10]

According to the Federal Reserve, a significant majority of adults (75 percent) in 2018 indicate they are either living comfortably or doing okay financially, in part because wages have started rising.[11] However, how much better might their financial positions be if more compensation went to wages rather than benefits they may not even want?

Workers may prefer benefits over additional take-home pay (or vice versa). This is why policymakers should avoid regulating the structure of compensation packages so that employees can choose positions with the mix of take-home pay and benefits that appeal to them. This is particularly important for women workers, who may value benefits such as working from home or telecommuting, which by nature would be hard to standardize and regulate.

In addition to the direct costs to employers of providing non-cash

benefits, businesses must also reallocate resources from productive activities to administrative and legal work to comply with government mandates. The cost of government intervention is less research, development and innovation, as well as less money in workers' paychecks.

Entrepreneurship is one way that women have been able to earn a living while enjoying benefits that traditional jobs do not offer such as flexibility and remote work. The rise in women-owned business has truly been a stellar story. The number of women-owned businesses increased dramatically from 402,000 (4.6 percent of all firms) in 1972 to 12.3 million (40 percent of all firms) in 2018.[12] Today, these firms employ 8 percent of the total private sector workforce.

Cutting business regulations and reducing taxes under the Trump Administration helped to spur additional growth in women-owned businesses. Between 2017 to 2018, women started 1,821 net new businesses each day. This is higher than during the pre-recession period between 2002 and 2007 (714), the recession and recovery period between 2007 and 2012 (1,143), and the post-recession period between 2012 and 2017 (952).

Policymakers should seek to encourage this trend. While not every woman aspires to launch the next Amazon, many want to build their own business or enter a new field. We should try to remove the government red tape that makes it needlessly hard for them to do so.

Our goal should be that every person who wants to work should be able to find a job. We should seek to maximize employment freedom so that employers are free to offer, and employees can accept, work arrangements that make sense for them. This includes contract or "gig" employment, individual micro-businesses, direct selling, as well as full- and part-time options. Those who want to start their own business should not be hindered by unnecessary government regulations.

POLICY SOLUTIONS

Make Tax Cuts Permanent for Workers: In 2017, Congress passed and President Donald Trump signed into law sweeping reforms to the tax code that reduced tax burdens for businesses and workers, ended the tax penalty for going without health insurance compliant with the Affordable Care Act, and simplified taxes so that families and businesses no longer spend as much of their time and resources complying with the code.

The Tax Cuts and Jobs Act (TCJA) permanently reduced corporate income tax rates from the world's highest statutory income tax rate of 35 percent to 21 percent, putting the U.S. rate much closer to the global average. As a direct result of the corporate tax cut, companies passed tax savings onto their workers in the form of higher pay, bonuses, or new benefits such as paid parental leave. After years of stagnant wages, four million American workers have received pay and benefit increases as a direct result of the tax reforms.[13]

The TCJA also cut income tax rates for workers at every income level, nearly doubled the standard deduction, expanded the Child Tax Credit, and preserved other popular tax benefits like the deductions for mortgage interest and charitable contributions, among others. It delivered a $2,000 average tax cut for a family of four.[14] These tax cuts reward those who work while also making it easier for more families to make ends meet on one salary. However, many of these tax benefits are set to expire in 2025. Policymakers should make tax cuts permanent for workers and families as they did for businesses.

Protect Gig Workers and Independent Contractors: Americans have long used freelance work opportunities, such as handymen and cleaning services, in lieu of or in addition to traditional work arrangements. In these flexible arrangements, individuals set their own schedules to meet their personal and professional needs.

The internet age has opened countless new freelance work opportunities from ridesharing to grocery delivery. Digital platforms such as Uber, Etsy, and TaskRabbit allow individuals to earn money in a range of ways including sharing their personal property with strangers, offering services, or selling goods. According to Pew Research, one quarter of Americans (24 percent) have earned money on a digital platform from 2015 to 2016.[15] The gig economy is one of our fastest growing economic sectors. The share of the workforce composed of independent contractors grew from 10.7 percent to 15.8 percent from 2005 to 2015.[16] Between 2002 to 2014, this sector grew at a rate twice as fast as traditional

employment, according to the American Action Forum.[17] Gig work is popular with women looking for flexibility, earnings potential, and the ability to help others.

Gig workers are not traditional full-time employees employed by these digital platforms. They are independent contractors. The tradeoff of a guaranteed salary and benefits is the ability to create their own schedule and determine how often to work. Gig workers often pay fees to the platforms to list their services and sell their products.

States are considering proposals to reclassify gig workers as employees of the digital platforms and allow them to unionize. In 2019, California passed AB 5, which imposes a stricter standard for classifying workers as independent contractors than employees. The effect would be to reclassify many workers in the "on demand" or "gig" economy, a subset of independent contracting, as employees and subject to regulations about sick leave, overtime, and minimum wages. New Jersey is considering similar legislation.

This would backfire on gig workers by eliminating the flexibility that they rely on and eliminating opportunities. Companies that currently allow workers to offer services on their own schedule might institute shifts and control the schedule of workers. They might restrict who can sell goods on their platforms, as well as imposing additional fees that would drive away customers.

Reclassifying gig workers as employees would have particular disadvantages for women who often particularly value workplace flexibility. Taking gig work opportunities away from women would deny them this choice. States and federal lawmakers should reject proposals to reclassify gig workers as employees of digital platforms to protect the flexibility and opportunity that these workers want.

Reform Licensing Regimes: Someone who wants to start a business or enter a profession too often finds that first she must obtain a license from the government, which can require completing schooling, taking tests, and paying fees. These can be prohibitive roadblocks, particularly for many women who are trying to balance jobs and family responsibilities, and those from lower-income backgrounds with fewer resources.

Occupational licenses tend to be justified as necessary to protect consumers' health and safety. Occupational licenses used to be required in only a few select industries, but the number of jobs requiring government licenses to operate has ballooned from 10 percent of the workforce in 1970 to nearly 30 percent today.

State governments now commonly require licenses for jobs without legitimate health and safety concerns, such as braiding hair, interior design, and yoga instruction. According to a study of some low- and medium-skilled jobs, the average license required around 9 months of education and training.[18] This is often time that low-skilled and poor workers cannot afford.

While these licenses are purportedly to keep people safe, often the real purpose—or at least the end result—of licensing regimes is to protect existing businesses from competition. Such barriers artificially raise the cost of products and services in license-protected industries anywhere between 3 and 16 percent. This benefits existing suppliers, but also harms both customers and those would-be providers who are kept out of the marketplace.

Licensing can be particularly devastating to certain workers. Military families move frequently—as often as every two to three years—and military spouses face the difficulty of securing a new occupational license in each new state. Also, Americans with a criminal background are often barred from securing occupational licenses because of blanket exclusions for the formerly incarcerated or those with criminal records, regardless of whether their records are relevant to the job for which they are applying.

Nearly one third of working-age adults have a criminal record, including misdemeanors and arrests. This means millions of women and men are free from prison but still locked out of opportunity. One study suggests that at least 1.7 million workers are left out of the workforce due to their criminal record.[19] In addition, immigrants with considerable training and experience are often prevented from applying their skills in occupations in the U.S. due to unnecessary licensing requirements. These are individuals who need opportunity and want to work.

States should evaluate existing licensing and fee practices and eliminate all that fail to advance legitimate public safety or quality concerns. For military spouses, states should consider ways to expedite licenses or transfer the licenses of those who are in good standing in other states. They should also consider ending blanket exclusions of individuals with criminal records, and instead exclude only those individuals whose convictions are recent and relevant and pose a legitimate threat to public safety.

Absent these expensive and often arbitrary licensing regimes, the market will develop other mechanisms for helping consumers identify those hairdressers, painters, designers, and other professionals who have the requisite skills.

Independent trade associations can act on their own to develop criteria and provide certificates of approval to qualified businesses and entrepreneurs. In this technological age, consumers also have myriad other ways for garnering information about potential providers. Websites such as Angie's List, Yelp, and AirBNB allow consumers to read others' reviews and rate their own experiences with providers. Public ratings encourage providers to treat customers with greater respect, and create a more open and effective way for consumers to evaluate their options. These new feedback mechanisms are rendering government's costly and onerous certification processes even more outdated and unnecessary.

Family Leave Policies

The Way It Can Be

We want women to have work opportunities that provide compensation packages that meet their individual needs. We want people to be able to take time off when they need to—for their own health concerns or to care for family members. We want people to be treated fairly, whether they are working parents, adult workers with elderly parents, or a single adult without dependents. We want people to be able to save for their own needs, but also for there to be a flexible safety net that can help those who need it.

We need to modernize policy to bring this vision to life.

The Challenge We Face Today

When Americans hear about people who lose their jobs because of an illness, or a new mother having to return to work just weeks—or even days—after giving birth, they are justifiably concerned.

Yet before crafting one-size-fits-all policy solutions, it is important to define the actual problem that needs to be addressed. Alarming headlines often suggest that our country is worse than the third world in its failure to support workers. That is an inaccurate picture of the American workplace. Most fundamentally, just because the United States does not statutorily mandate that companies must provide paid sick leave or maternity leave does not mean that most companies fail to offer such benefits, or that most workers lack paid leave time.

In fact, the reality is far more encouraging. The Bureau of Labor Statistics (BLS) National Compensation Survey shows that 86 percent of civilian full-time workers have paid sick leave, 54 percent have paid personal leave, 87 percent have paid vacation, 22 percent have paid family leave, and 91 percent have unpaid family leave.[20] Not surprisingly, full-time workers are more likely to have more paid benefits than those working part-time, and those with higher incomes are also more likely to have paid benefits than those with lower incomes. Still, the BLS finds that roughly 40 percent of part-time workers also have access to some form of paid leave.[21]

Those working for larger companies are also more likely to have benefits than those working for smaller establishments. For example, the 2016 National Study of Employers (a survey of 920 employers, all with 50 employees or more) found that most

employers offer parental leave, and a majority offer at least some paid leave. Larger employers surveyed (those with more than 1,000 employees) were most likely to offer some paid parental leave, with 67 percent of such companies providing this benefit. Even among the smallest companies in the survey (those with between 50-99 employees), a majority (55 percent) provided paid leave following the birth of a child.[22]

Focusing on one category of leave, such as maternity or family leave, overlooks how companies attempt to provide employees with flexibility for using paid leave benefits. Even when businesses do not offer a specific family leave benefit, they often allow workers to use sick leave, personal leave, or vacation time to attend to family matters, such as following the birth of a child.

For instance, the Census Bureau studied the experience of women having their first child and found that roughly 70 percent of these women worked during pregnancy (a percentage which fell to slightly under 60 percent in the month preceding the birth); three months after the birth, 59 percent of the women who worked during pregnancy had returned to work; and 79 percent were working by their child's first birthday.[23]

These working mothers reported using a variety of leave options: 56 percent of full-time working mothers used paid leave, 42 percent used unpaid leave, 10 percent used disability leave, 19 percent quit their job, while nearly 5 percent reported being let go (the number totals more than 100 percent because women often used more than one type of leave). Part-time workers were more likely to quit (37 percent reported quitting their jobs) and had fewer benefits: 20 percent used paid leave, 46 percent used unpaid leave, and just 2 percent had disability leave.[24]

This doesn't mean that all workers enjoy sufficient leave time or have adequate pay-replacement following the birth of a child. Certainly some women face real pressures and could use additional support. Given that most workers live paycheck-to-paycheck,[25] the Census Bureau finding that 42 percent of working mothers took unpaid leave means that many faced a difficult financial time.[26]

A Pew Research Center report found that 17 percent of workers they surveyed who lacked paid leave benefits through employers—and 48 percent of those with annual incomes less than $30,000—ended up seeking government assistance.[27]

However, policymakers should recognize that most employers value their employees and want to retain them (rather than face the cost of replacing them), so they provide leave as part of their compensation package, especially for full-time workers. We

can celebrate that the trend is in the right direction: For example, companies across the country have expanded time off to their employees since the passage of the 2017 Tax Cuts and Jobs Act. Employers—such as Starbucks,[28] Walmart,[29] Chipotle,[30] CVS,[31] and Lowes[32]—now voluntarily provide paid leave benefits to their workers. Many companies also have increased wages, provide adoption assistance, offer employer-sponsored health insurance, and assist with tuition costs.[33]

Policymakers should also consider how a government mandate or government-administered paid leave program would disrupt current employment contracts and benefit packages and would result in lower cash wages and reduced benefits, potentially leaving many workers worse off than before. For example, one legislative proposal, the Family and Medical Insurance Leave Act, or FAMILY Act, would, in effect, do to benefit packages what Medicare for All would do to health insurance. Namely, it would eliminate the variety of private arrangements and replace them with one government-run benefit. The FAMILY Act, sponsored by Senator Kristin Gillibrand (D-NY), would create a new federal entitlement program under which qualified workers would be guaranteed 60 days of family and medical leave per year. When on leave, workers would receive two-thirds of their average pay from the federal government. This new entitlement would be funded with a dedicated payroll tax.

Proponents claim this program would solve the problem of those who lack sufficient paid leave. Some women with less-generous leave packages may benefit from this arrangement; however, it would also disrupt the employment contracts of the majority of working Americans who already have leave benefits. This proposed federal entitlement would encourage businesses currently providing paid leave programs—including more generous leave packages—to cease doing so. Companies and employees would also be less likely to seek mutually beneficial arrangements, such as part-time and work-from-home options, during periods of leave.

The costs of this proposal would go far beyond the new payroll tax. Women would also face lower wages and fewer employment opportunities as businesses seek to comply with the new program. Knowing that any worker could take up to three months of paid leave creates a significant new risk for employers. While the federal government (i.e. taxpayers) would pick up the direct costs of workers' wages during their absence, businesses would still have to identify and train replacement workers or shift work to other existing employees, which can be particularly difficult for small businesses.

Women would shoulder most of the unintended consequences of the new leave regime. Women, particularly of childbearing age, are more likely to

take extended family/medical leave. As a result, employers may be reluctant to hire these women. This is particularly unfair to women who do not want or are unable to have children: The expectation that they may use this leave benefit may unfairly hamper their career prospects.

These are not just theoretical risks. European countries offer women extensive paid-leave time, but European women pay a considerable price in terms of workplace opportunities. Writing for the National Bureau of Economic Research (NBER), professors at Cornell University, Francine D. Blau and Lawrence M. Kahn, found that European countries have been able to boost their female labor force participation rate by enacting family leave mandates and other benefits, but that women were mostly working in part-time and lower-paid positions.[34] Data show that European women are far less likely than their American counterparts to be in managerial positions. In fact, 14 percent of American women workers are managers (compared to 15 percent of American men), while just 5.9 percent of European women workers are (compared to 12.2 percent of European men).[35] And Pew Research demonstrates the correlation between paid family and medical leave programs and gender wage gaps: The more generous the paid leave, the wider the wage gap.

NBER also published a study by María F. Prada and Graciana Rucci of the Inter-American Development Bank, and Sergio S. Urzúa of Cornell University on the effect of a law in Chile that required employers with twenty or more female workers to provide childcare. They concluded that the starting wages of women hired by affected employers was between 9 and 20 percent less than female workers hired before the mandate went into effect.[36]

Spain's provision requiring that companies must provide all workers with children under age 7 the option of reduced hours was meant to help women balance work and family. Yet, a study published by IZA, an international research institute, and written by Daniel Fernández Kranz of IE Business School and Núria Rodríguez-Planas of IZA, IAE-CSIC, found that it harmed women's economic prospects. Women were more likely than their male colleagues to lose their jobs, less likely to be promoted, and had reduced wages.

Women with lower incomes and in less skilled positions were most likely to suffer from these unintended consequences.[37]

This area of research has become more robust in the United States in recent years, as eight states have enacted paid family and medical leave entitlement programs. California was

the first to do so in 2002. Consistent with findings from other countries, a new report on California's paid leave law show that it decreased women's earnings by 8 percent over a decade.[38]

These examples illustrate an important, though often overlooked, point. Government mandates not only disrupt existing employment arrangements and impede women's professional advancement generally, but they especially harm the economic prospects of women who are most vulnerable: Those with lower incomes and who are not currently working. This concept applies to mandates for paid leave, childcare, hours and other arrangements.

Research also suggests that paid leave programs generally transfer money from lower income workers to higher income workers, since taxes are imposed on all workers but those with lower incomes are less likely to utilize benefits.[39]

Evidence from other countries and U.S. states all raise serious concerns that an entitlement-based program would force those with lower incomes to fund a program from which they receive disproportionately little benefit compared to those with higher incomes.

For example, studies show that Canada's paid parental leave program still unevenly supports higher earners despite offering paid parental leave since 1971.[40] Similarly, economists at the University of California concluded that Norway's program led to a "pure leisure transfer to middle and upper income families … at the expense of some of the least well off in society."[41] In California, the median income of eligible mothers who take paid leave is about $10,000 higher than the median income of the general population.[42]

These are important—and often overlooked—realities to keep in mind. A one-size-fits-all paid leave program may seem like a boon for parents, but it would backfire on many by failing to recognize the divergent circumstances of different families and by reducing economic opportunity and taking resources away from those who need it most.

Policymakers should consider better ways to help people prepare for times of leave from work and to provide financial support to those who lack sufficient paid leave benefits, without creating a costly and disruptive one-size-fits-all new government entitlement.

POLICY SOLUTIONS

Earned Leave: In 2018, IWF published a paper introducing the idea of allowing employees welcoming a new child to their family to access a share of their future Social Security benefits in exchange for delaying their eligibility for Social Security retirement benefits. This program would be entirely voluntary: No worker would have to take Earned Leave benefits, and there would be no new taxes imposed to pay for this program. This would simply shift the timing of when workers would receive benefits that they have already—as the name suggests—earned.

Importantly, this approach encourages responsible use: Workers who took advantage of the option would know that they would be delaying a benefit in the future. This would also minimize the likelihood that businesses would change their existing benefit packages because of this new program (i.e. privately offered benefits would retain their value in the marketplace).

This concept has since been introduced as two pieces of legislation, one introduced by Senators Joni Ernst (R-IA) and Mike Lee (R-UT), and another introduced by Senators Marco Rubio (R-FL) and Mitt Romney (R-UT). This tax-neutral, voluntary effort deserves additional consideration.

Front Loading Child Tax Credits: Our Earned Leave proposal set off new innovations in policy that similarly offer families a trade off against existing benefits. Senators Bill Cassidy (R-LA) and Krysten Sinema (D-AZ) have offered a new bipartisan proposal that would offer new parents the option to take an advance on the child tax credit (up to $5000) to allow them to take paid time off to welcome a new child. The tax credit received in the year of a child's birth or adoption would then be effectively paid back by reduced future child tax credits (over ten years).

This approach would also be voluntary, would not require a new payroll tax or meaningfully affect government finances over the long term, and would not change existing compensation arrangements between employers and workers.

More consideration needs to be given to how this tax credit proposal would be administered, and policymakers and the public need to consider the risk that policymakers would eventually eliminate the tradeoffs of the tax credit (so that it would be a major reduction in total government revenue). However, this bipartisan proposal for a voluntary option to give taxpayers more flexibility with the timing of their tax credits deserves additional exploration and consideration.

Allow People to Save Tax-Free for Leave Time: Americans are encouraged to save pre-tax dollars in a variety of different accounts for critical needs, such as health care (health savings accounts), education (529 education savings accounts) and flexible spending accounts (to defray certain healthcare and childcare costs). Personal leave from work is also a critical need, and people ought to be able to save tax-free so that they can accrue resources that will sustain them during such absences from work.

Policymakers could allow people to place pre-tax dollars into a Personal Care Account (PCA), which could then be drawn upon to replace or supplement income during periods of leave eligible under the Family and Medical Leave Act. Workers could be allowed to save tax-free up to the equivalent of 12 weeks of pay, capped at a maximum of $5,000 each year, which would then be available for periods of leave. If unused before reaching retirement age (as defined under the Social Security Act), the PCA would then be treated as an IRA. Policymakers also ought to allow individuals to make up contributions for years during which they were unable to set money aside, in order to help workers who have inconsistent earnings or face unemployment. To avoid this savings mechanism becoming a "tax shelter" for the more affluent, policymakers can cap the total amount that a worker can accumulate in her savings account.

Washington should also allow employers to contribute to employees' PCAs the way they can contribute to 401K plans or Health Savings Accounts. This would help smaller companies that are unable to afford and administer fully paid family leave benefits to have a way to help their employees. Additionally, non-profits could be established by generous individuals as well as larger corporations as part of their social corporate responsibility efforts to help set up and fund PCAs for lower-income workers, in order to help provide leave benefits for those facing the biggest financial challenges. Many generous individuals and foundations are interested in helping people during times of childbirth or illness and would support such a cause.

Alternatively, Rep. Andy Biggs (R-AZ) has proposed a bill called the Freedom for Families Act that would reform Health Savings Accounts (HSAs) to give workers the option to use the funds in their HSAs to make up for pay lost during absences from work for qualifying illnesses or life events—in other words, to self-fund paid-leave benefits. Families have long used HSAs to cover medical expenses, but under current law only those enrolled in high-deductible health plans are eligible to open and contribute to these tax-advantaged accounts.

This bill would eliminate that restriction so that anyone could open and use an HSA. Additionally, the Freedom for Families Act would expand HSA contribution limits from $3,500 to $9,000 for individuals and from $7,000 to $18,000 for married couples, giving families a chance to accrue more funds and therefore be more financially secure in the event of a family or medical event.

Unlike other top-down paid leave proposals, the existence of such savings options would be less of a financial strain on businesses and less likely to affect employers' expectations for their employees and therefore to reduce women's economic opportunities. It also would not discourage employers from offering paid leave, since workers could still fully enjoy any paid-leave benefits offered, and preserve the money in their accounts for their retirement. Policymakers should embrace this opportunity to help workers help themselves.

Allow Workers to Earn Paid Time Off: The Working Families Flexibility Act, introduced by Sen. Mike Lee (R-UT), would amend the woefully out-of-date Fair Labor Standards Act to allow workers eligible for overtime pay to opt for more paid time off, rather than extra pay.[43] Government workers have long enjoyed this option: Rather than getting paid time-and-a-half for every hour worked overtime, they can earn an extra hour-and-a-half of paid leave. Private-sector workers deserve this option too.

The ability to earn more paid leave would be beneficial for all workers — particularly women. Someone who is pregnant could try to work overtime to bank paid leave time for after the baby's birth. Parents of young children or people caring for elderly parents or other family members could similarly seek opportunities to work overtime in order to accrue more paid time off to use when they need it. Workers eligible for overtime are less likely to have traditional paid leave benefits, making this reform particularly important.

Workplace Flexibility

The Way It Can Be

We want an economy that offers a multitude of job arrangements so that workers have a greater chance of finding the mix that meets their preferences at every stage of life. This means that women should have the choice of hourly jobs, part-time and contract work possibilities, as well as salaried positions.

The best way to ensure that workers are protected and treated well by their employers is for the economy to generate an abundance of jobs so that employers have to compete to attract and retain valued workers. We need to modernize policy to bring this vision to life.

The Challenge We Face Today

As previously discussed, American women have very different preferences when it comes to work. Some dream of high-powered careers and high earnings, some want to start their own businesses, and others would prefer positions in jobs they find personally meaningful but that offer flexibility so they can prioritize other aspects of life, such as children and family.

Unfortunately, today, many women are not able to act on these preferences. Some are working more than they would prefer because they cannot find flexible work arrangements that meet their needs. Others are stuck in part-time positions but dream of finding full-time jobs that will be the start of a highly-rewarding career.

For example, women, especially working mothers, highly value flexibility. In July 2019, FlexJobs released a survey of 2,000 women with children 18 years old and younger and found that most working mothers prefer flexible working conditions over a higher salary. When asked about the value of different job attributes, 82 percent said work-life balance was most important, followed by flexible work options (78 percent), and work schedule (77 percent). These all ranked ahead of salary (76 percent).[44]

Women are not alone in their desire for more flexibility and a greater variety of work arrangements. Millennials, who are the largest generation in today's workforce according to Pew Research, also highly value jobs that offer flexibility.[45] By 2025, according to Forbes, 75 percent of the workforce will be Millennials, and 72 percent of Millennials want to work when, where and how they like in jobs that offer freedom and flexibility.[46] A 2015 study of Millennials indicated that they are more willing than other generations to pass up a promotion, change jobs, take a pay cut, or even change careers in order to

achieve more flexibility. In fact, a 2018 FlexJobs survey found that 70 percent of Millennials have left or considered leaving a job because it didn't offer flexible working arrangements.[47]

Government regulations limit businesses' ability to offer and workers' ability to negotiate mutually agreeable flexible work arrangements.

For example, the federal law governing how businesses must compensate employees, the Fair Labor Standards Act (FLSA), was first enacted during the Great Depression and is woefully out of step with the modern era. Back in the 1930s, most jobs could be easily categorized as management or production, and work typically was performed for certain hours during the day, at a specific place of employment.

Today, our work world has transformed so that lines between management and labor are blurred, more employees do not work a fixed schedule, and many employees want the flexibility to work from home at different times during the day and week. This makes it a challenge for businesses to apply many of the FLSA's outdated concepts while meeting the needs of their employees. The traditional employer-employee relationship has also been challenged by new models, such as independent contracting.

But public policy isn't keeping up with the times. Instead, it's moving in the wrong direction: The Department of Labor (DOL), seemingly intending to keep people working from 9 a.m. to 5 p.m. in an office cubicle or doing shift work on a factory floor, recently finalized a rule related to FLSA overtime requirements that could further limit workplace flexibility.

The FLSA generally requires employers to pay employees the federal minimum wage (currently $7.25 per hour) and time-and-a-half for hours worked in excess of 40 hours per week, unless the employee is "exempt" from the overtime pay. The largest overtime exemption, which has been in the FLSA since it was originally passed in 1938, is for "white collar" employees. Overtime pay is undoubtedly important to many workers. However, the overtime-eligible status has some disadvantages. An employee who is eligible for overtime (called "non-exempt") must clock in and out every day and is only paid for hours actually worked. While non-exempt workers have the opportunity to earn overtime if they work in excess of 40 hours a week, they also need not be paid if they leave work to spend time with family, and have very few opportunities to work from home.

"Exempt" employees, in contrast, must be paid their full salary for any week in which they perform any work—whether they work 5 hours, 35 hours or 45 hours. Exempt employees, then, do not earn more for working in excess of 40 hours, but also do not earn less

if they work fewer than 40 hours. Because exempt employees receive a guaranteed salary that cannot be reduced because of the quantity of work performed, they cannot lose pay by going home early on a Friday night to attend a child's sporting event. This is a tradeoff that many people value.

The recently finalized rule narrows the FLSA "white collar" overtime exemptions. Currently, someone who makes a salary of $23,660 or more can be exempt from the requirement that they receive overtime pay if they also meet the criteria of having job duties that meet the DOL's definition of being primarily administrative, executive, professional, computer or outside sales employees. Starting in 2020, the salary threshold for being exempt from overtime will increase to $35,568. While this is a more modest increase than the $47,000-per-year salary threshold proposed by the DOL in 2015, it still means that many workers will become non-exempt, forcing them to become eligible for overtime pay rather than receiving the guaranteed salary of an exempt employee.[48]

The DOL estimates the new rule will affect about 1.3 million workers. Presumably the regulators believe that this will be a boon to those workers, who will have to begin tracking hours and might start receiving overtime.[49] However, these new regulations might also do significant harm, especially to those in lower-income areas and with more modest incomes.

Employers reacting to the rule have raised concerns about its high cost. The DOL estimates the new regulations will cost employers $120.5 million per year over the next ten years.[50] Businesses would not only have to allocate more for overtime pay as a result of the new rules, but, just as significantly, they would also face new compliance costs in tracking more workers' hours and monitoring overtime. Those costs have to come from somewhere. Many employers will not be able to afford these new administrative costs, in addition to paying overtime. Thus, most obviously, workers may find their hours are reduced and earnings lowered as businesses shift resources in response to the new costs associated with these rules. Other employees may see their positions refashioned or eliminated. In the long-term, employers may forgo new hiring and automate jobs. Consumers may also see prices increase and quality decline.

Not all workers and businesses will be affected equally. The new threshold applies nationwide, which means that areas with lower costs of living will bear the highest costs. A $35,568 salary is much lower than the median household income in cities such as New York City and Washington, D.C., and in states like Connecticut, New Jersey, and Maryland. In these locales the median household income is around $70,000. But in Mississippi, West Virginia, and Arkansas, the median household income is well

below $40,000.[51] As a result, employers in these areas will face the biggest compliance challenges, and workers there will find the biggest changes to their compensation, and, possibly, the most harm to their economic opportunities.

Even those employees who receive more income may not welcome this new regulatory regime and their reclassification as hourly workers eligible for overtime. While some employees may not mind tracking their time, others want to be on salary. Salaried workers may have the benefit of feeling that they are being compensated for their contributions to the business or organization, not just time logged on the job. Many workers do not want to have to tell their managers every time they work late and every time they leave early.

Flexible work arrangements, which allow workers to structure their days around other priorities such as caregiving duties for their children, may be limited or eliminated. Employers may look to avoid new administrative requirements that would mean they have track all the time when work-from-home employees respond to emails, conduct phone calls, or do other work-related tasks and pay them overtime. They may require that all work is instead done on site. Lawmakers are also creating new rules governing how employers must schedule their employees' work time. Many businesses that use shift workers have moved to require some employees to call in before a potential shift so the manager can assess whether demand is sufficient to require that worker. These scheduling arrangements certainly can create problems for workers: Working parents face the challenge of arranging care for their children, which they may or may not end up actually using, and, in periods of low demand, workers may find they have fewer working hours, and therefore less income than they need.[52]

However, while these scheduling practices create real challenges, they also have benefits for businesses and their workers. More efficient staffing practices help businesses lower employment costs, making it less likely that they will have to cut workers, move toward automation, or shut down. Regulations that impede these scheduling efficiencies could result in real harm for many workers who may see their hours cut, pay reduced, and job options curtailed as businesses embrace other ways to reduce employment costs.

Americans ought to reject the very premise of these intrusive regulations. Why should the Department of Labor and other bureaucracies create one-size-fits-all compensation regimes and scheduling practices for all American workers? They should allow Americans to negotiate work arrangements that make the most sense for them and meet their needs and aspirations—not the arbitrary definitions created by government.

POLICY SOLUTIONS

Reform the Fair Labor Standards Act: The antiquated, Depression-era Fair Labor Standards Act needs to be updated. Congress should take a fresh look at this law and roll back unnecessary rules and classifications that hardly apply to our modern world.

Pass Compensatory Time for the Private Sector: Since 1986, under section 7(o) of the FLSA, employees in the public sector have the option of taking compensatory time off—1.5 hours of paid time off for every hour of overtime worked—in lieu of cash overtime pay. This provides government employees with choice and flexibility to determine for themselves what they need more, cash or paid time off. However, the FLSA prohibits comp time for overtime-eligible workers in the private sector, where women (and men) are denied the opportunity to choose paid time off over cash for working overtime. The Working Families Flexibility Act, introduced by Senator Mike Lee (R-UT), would amend the FLSA to allow private workers and employers to voluntarily agree to 1.5 hours of compensatory time for every hour of overtime worked, instead of 1.5 times pay for that additional hour. It is past time to allow private sector employees the same choices and flexibility that government workers have enjoyed for 30 years.

Encourage Work Flexible Arrangements: Workers increasingly desire flexible work arrangements to meet personal demands. However, as states and local jurisdictions employ mandates on leave, it may be difficult for employers with employees across different states to comply with laws and still provide the flexibility that their employees desire. The Workflex for the 21st Century, introduced by Rep. Mimi Walters (R-CA) would amend the Employee Retirement Income Security Act of 1974 (ERISA) to establish a voluntary workflex option. Under this bill, employers who provide flexible workplace arrangements that include a combination of a minimum amount of paid leave per year and at least one flexible work option would be exempt from certain state and local laws regarding employee benefits. Those flexible work options could include a biweekly work schedule, a compressed work schedule, telework, job sharing, flexible scheduling, or predictable scheduling. If employers are relieved from restrictive, one-size-fits-all benefits mandates they can be free to offer greater flexibility and benefits to meet their employees needs. For employers, it reduces several concerns: administrative costs, added layers of complexity for employees who move between jurisdictions, and exposure to increased liability for unintentional non-compliance of compliance with different state and local leave mandates.

Allow Employees to Agree to an 80/14 Schedule: The FLSA's requirement that non-exempt employees receive overtime pay for all hours worked in a work week is a barrier to flexible schedules. Employers can and do allow employees to shift work hours within a day—to come in and leave early, for example. But the overtime requirement limits flexibility by increasing the cost of any flexible schedule that seeks to shift work hours from one week to the next. For example, an employee who worked six eight-hour days (48 hours) in the first week of a pay period but only four, eight-hour days in the second week of a pay period (32 hours) is owed for eight hours of overtime pay, although she worked the same total number of hours (80) over the two weeks as an employee with a traditional schedule.

The FLSA should be amended to allow employees to voluntarily choose a flexible schedule in exchange for being paid overtime after 80 hours of work over 14 days, rather than the traditional overtime after 40 hours in 7 days. This scheduling would appeal to some workers, because it accommodates for other family caregiving priorities such as doctor appointments or conducting personal business without having to take a vacation day.

Remove Other Barriers to Flexible Scheduling: Lawmakers understandably wish to address challenges created for workers by just-in-time scheduling practices. However, these solutions and regulations do not solve workers' problems, but create new ones by making it more likely that employers will reduce hours overall, decrease wages, and further move to automate and consolidate their workforce to reduce employment costs. Lawmakers can do more for workers by rejecting proposed legislation to micromanage scheduling practices, and redoubling efforts to facilitate job creation so workers who prefer more regular work schedules can find jobs that provide greater certainty.

Caring for Children

The Way It Can Be

We want parents to be able to choose how to care for their young children. We want the marketplace to offer a wide variety of high-quality, affordable child care and preschool arrangements. We also want to make it easier for those parents who want to be home with their children to be able to afford to do so. We need to modernize policy to bring this vision to life.

The Challenge We Face Today

More and more children are being raised in dual-income or single-parent households, which means that most end up spending some time being cared for by people other than their parents.

Today 60 percent of children under five are in a childcare arrangement.

However, only about one in four children under age five is in an organized day-care facility. Most care is provided by relatives (42 percent) or non-relatives (11 percent).[53] For families using organized care facilities, child care represents a major expense. Childcare Aware released a detailed analysis of the average costs of child care, which vary considerably by state. They found that the average annual cost of full-time care for an infant in center-based care ranged from $5,307 in Mississippi to $20,415 in Massachusetts. For a 4 year old, center-based care ranges from $4,670 in Tennessee to $14,736 in Massachusetts.[54]

These are big numbers: In 28 states, the average cost of full-time day care for an infant exceeds the tuition at the state's average public college.[55] For many families, child care is their biggest monthly expense, exceeding even housing. Not only is day care expensive, it can also be difficult to find a good provider, and in many areas there are waiting lists and shortages. While there are some government programs that help working parents afford child care, an estimated 60 percent of childcare costs are paid directly by the parents.[56]

Preschools are similarly expensive, and often consist of a few hours of instruction for children, which means they do not provide sufficient hours to allow parents to work full-time.[57] Progressive proposals to address this challenge focus on subsidizing paid child care so that parents shoulder less childcare expenses. For example, Senator Elizabeth Warren has proposed having the federal government cover

all childcare costs at qualified day-care centers for families with household incomes below about $50,000 and providing subsidies so that no family would spend more than 7 percent of income on child care.

The costs of this proposal are considerable: Economists for Moody's Analytics estimated it would cost $70 billion per year, a sum Warren plans to cover by imposing a wealth tax on households with assets exceeding $50 million.[58] This financing plan has considerable drawbacks: Enormous subsidies for child care would encourage day-care centers to jack up their prices so that the burden on taxpayers would continue to grow. A wealth tax would have far-reaching economic impacts, as some of those affected would move assets overseas to avoid the tax, depriving the economy of capital. The effects of less investment would ultimately harm businesses, customers, and everyday workers.

More important, however, is how enormous subsidies for paid day care would affect the decision making of families. By making day-care centers free or very low cost for parents, more families would rely on these formal childcare providers—even if this isn't their ideal preference for their child.

In fact, surveys indicate that day care is parents' least preferred option: In 2014, Pew Research Center found that 60 percent of Americans think it is best for children if one parent stays home.[59] The research organization, Public Agenda surveyed parents with children five and under in 2000, and found that nearly two out of three parents (63 percent) disagreed with the statement: "A top-notch day care center can provide care as good as what a child would get from a stay-at-home parent." That same research found four-out-of-five young mothers (ages 18-29) said they would prefer to stay home to care for their children than to work full-time.[60]

But even if many parents believe that kids are generally better off when cared for at home by a loved one, it will be hard for many to resist the temptation to take advantage of a free childcare service once government has offered one. And relatives, like grandparents, aunts or cousins, might be less willing to provide child care if there's a low-cost government-run option for their family members.

Quebec, Canada's experience with government-funded child care provides a useful example of what we could expect from Elizabeth Warren's childcare proposal. In 2000, Quebec introduced $5-a-day child care for all children. This dramatic shift in policy led to an increase in childcare use of more than one-third. Over more than a decade, several well-respected institutions studied the effect of this policy change and found it was associated with a host of negative outcomes, including increased family

stress, increased aggressiveness and anxiety, worse health outcomes for the children, worse parenting, reduced mental health, and relationship satisfaction for the adults, and even a rise in criminality.

Academics should continue to explore the impact of day-care use on children, families, and communities. Yet in the meantime, these findings and parents' own stated preferences ought to discourage policymakers from enacting policies, like the one advanced by Senator Warren, that would create a tremendous financial incentive for families to drop family-based care in favor of day care. Rather than encouraging parents to choose day care over other arrangements, policymakers should seek to make it easier for families to afford whatever situation they believe is best, whether a day-care facility or care by a family member.

POLICY SOLUTIONS

Increase Tax Credits for Children: Policymakers could increase the child tax credit to alleviate the financial burden on parents.

The Tax Cuts and Jobs Act (TCJA) took a step in that direction when it doubled the child tax credit from $1,000 to $2,000 in 2017.[61] A portion of the tax credit is refundable, so families with modest household incomes and lower tax liabilities still benefit from some of the tax credit provisions.

However, economists such as Robert Stein, a former deputy assistant secretary at the U.S. Treasury, persuasively argue that parents are over-taxed compared to their investment in and contribution to society.[62] For example, the Urban Institute reports that: "child-related tax reductions (totaling $106 billion in 2018) represent approximately 8 percent of the $1.4 trillion in individual and corporate tax reductions identified by the Office of Management and Budget."[63] This suggests that other investments that taxpayers make—whether that is in their homes or in savings vehicles—receive better tax treatment than raising children.

The Government Accountability Office estimates that in 2015 the federal government administered 35 programs related to early learning and child care, which together cost taxpayers roughly $15 billion per year. In addition, the credit for child and dependent care expenses resulted in tax credits of approximately $5.4 billion annually. This includes children and dependent adults as the data did not distinguish between the two.[64] These resources solely benefit families using paid childcare arrangements, and primarily center-based care.

Of course, child care is just a small slice of what the federal government spends on children. The Urban Institute details $379 billion in federal outlays, and $106 billion in tax reductions that were targeted toward children in 2012.[65] Together, those amount to nearly $6,200 per child. There may be reasons for some of this money to be allocated by the government to directly support certain populations of children (such as those with disabilities) and for programs that provide services (rather than financial support) to children and families. Policymakers should nonetheless consider how to consolidate and eliminate inefficient, duplicative programs, and return those resources to parents to use as they see fit.

Lawmakers ought to consolidate existing child-centered tax credits and spending, and use those savings to provide added refundable tax relief for parents, particularly to the parents of the youngest children. This would accomplish

numerous important policy goals by alleviating disincentives for childbearing, ending the current government bias against stay-at-home parents, and simplifying the tax code. Since many of the current programs, such as Head Start, are geared to assist low-income women, a new mechanism for support should be allocated on a means-based scale to help those with lower incomes most.

Parents would therefore have more money in their budgets to spend as they see fit, whether on paid child care or on other necessities. Parents would be better positioned to afford whatever care arrangement they believe is preferable, whether that is paid child care or keeping a parent at home.

Eliminate Regulations That Make Day Care Needlessly Expensive: Regulations are one reason why day-care centers are so expensive. Everyone wants day-care centers to be safe, stimulating environments with well-trained childcare professionals. However, studies suggest that some regulations are only adding to the cost of care and not enhancing the *quality* of care that children receive. For example, economists Diana W. Thomas of Creighton University and Devon Gorry of Utah State evaluated common childcare regulations to see how they affect cost and the quality of care that children receive. Their report, "Regulation and the Cost of Childcare," was published by the Mercatus Center at George Mason University and has important public policy implications. As the authors write:

> …regulations intended to improve the quality of childcare often focus on easily observable measures, such as group sizes or child-staff ratios, that do not necessarily affect the quality of care but do increase the cost of care. These regulations can have unintended consequences, including increasing the cost of childcare while decreasing the wages of childcare workers. Eliminating regulatory standards that do not affect the quality of care while focusing on those that do, such as teacher training, will improve the quality of childcare while making it more affordable to low-income families.[66]

The economists found that relaxing the regulations governing the maximum child-to-staff ratio can significantly reduce costs: Allowing one more infant per caregiver reduces costs by an estimated 9 to 20 percent or between $850 and $1,890 annually. That savings could make a big difference for a family on a tight budget.

These cost savings are particularly attractive given that research suggests that the child-to-staff or group size ratio has little effect on the quality of care that children receive. The only requirements that they found that were associated

with improved quality related to the education and training of the caregivers. The economists explain the important implications of their findings:

> Overall, these results suggest that relaxing regulatory requirements for group size and child-staff ratios, while maintaining quality through training requirements for teachers, might lower the cost of providing childcare without significantly affecting quality. If one provider is allowed to care for a larger number of children, that provider can earn a higher wage. Higher wages would attract better-educated providers and reduce staff turnover rates overall.[67]

In other words, relaxing staff size regulations would not only reduce the price of day care, but would also allow day-care centers to reallocate some funds to those endeavors that are more likely to improve their services and care quality, for example, by having fewer, more highly-skilled and better compensated workers.

Additionally, fewer regulations, such as those that govern the setup of day-care facilities and other business practices, might also encourage more entrepreneurs to enter the childcare business. This could reduce the shortage of childcare spaces that exist in many parts of the country today and would also apply downward pressure on prices and encourage higher quality by increasing competition among providers for potential customers.

Encourage Saving for Early (and Lifetime) Education: Currently, Americans are encouraged to start saving for their children's college education immediately after their children are born. States offer parents specific tax-advantaged savings accounts, called 529s, that allow them to save for their children's future college expenses. In 2014, President Obama signed into law the Achieving a Better Life Experience Act (or ABLE Act), which was sponsored by Senators Robert Casey, Jr., (D-PA) and Richard Burr (R-NC), and Representatives Ander Crenshaw (R-FL), Chris Van Hollen (D-MD), Cathy McMorris Rodgers (R-WA), and Pete Sessions (R-TX). This law amended Section 529 of the tax code to allow savings for disability-related expenses.[68] As of June 2019, an estimated 14 million Americans have 529 accounts with investments worth $352.4 billion in assets.[69] Americans are also allowed to use Flexible Spending Accounts for tax-advantaged savings for qualified expenses, including some care arrangements.

The Tax Cuts and Jobs Act expanded the usage of Qualified Tuition Programs, also known as section 529 plans, to include elementary and secondary education tuition expenses. This helps to encourage families to save for early education.

Child care, however, is not affected, as the expansion only applies to school "kindergarten through grade 12."[70] TCJA shows policymakers' recognition that K-12 education is just as important to a child's future, and they are giving parents more options to use their education savings for grade school and secondary education. While this is a step forward for parents, many continue to struggle to pay for child care before their children reach school age. Policymakers should consider expanding this savings vehicle to help parents to save and prepare for the costs of child-rearing.

Retirement

The Way It Can Be

We want all Americans to save during their working lives so that they can live comfortably during retirement and even leave a nest egg for the next generation. We want a financially stable Social Security system that provides a sufficient benefit so that those who pay into the system during their working lives are free from poverty in old age.

To have a financially secure retirement, Americans must also have ample opportunities to work and earn enough during their working years so that they can save. We cannot have a retirement system that burdens today's workers with such high taxes that it is impossible for them to save on their own.

Therefore, we must balance the needs of current retirees and current workers and develop reforms that encourage savings, investment, and work, while always helping those who need it most. We need to modernize policy to bring this vision to life.

The Challenge We Face Today

Americans, particularly American women, are living longer and healthier lives. This is a wonderful blessing and achievement. Yet it also creates a new challenge of having financial resources to provide economic security and dignity during those final decades of life.

Consider that a woman who turned 65 in 2015 can expect, on average, to live 21.6 more years; that's 2.6 years more than the average man.[71] Women are fortunate to enjoy this extra time, but for many women these "golden years" are shadowed by financial strains.

Not only do women live longer than men do, which means they will need more resources to support them in old age, but they also tend to have less income at retirement. Research shows that female workers are more likely than male workers to take advantage of the opportunity to save for retirement. However, women still accumulate significantly less retirement savings because of lower earnings and more time taken out of the workforce to care for family members.[72]

Surveys suggest that most Americans live paycheck to paycheck, meaning that they use all of the money they earn each month for current expenses and save nothing for future needs.[73] While financial planners typically advise that people should have enough

savings on hand to cover at least six months of expenses in the event of an emergency, a 2019 survey by Bankrate found that just 18 percent of Americans have that cushion. Twenty-five percent had less than three months' worth of expenses, and 28 percent had no savings at all.[74]

With Americans saving little overall, including for retirement, Social Security is crucial financial support for seniors. For more than three out of five seniors, Social Security accounts for more than half of monthly income, and for more than one third (34 percent), Social Security accounts for more than 90 percent of monthly income.[75] Because women earn less during their work lives, their Social Security retirement benefits are also, on average, lower than men's. The average retirement benefit for a male worker in 2018 was $1,627, while the female worker's average retirement benefit was $1,297.[76]

Unfortunately, Social Security itself faces significant financial problems because it relies on what is known as a pay-as-you-go system. That means that taxes collected today are used immediately to fund benefits to current retirees. Nothing is saved for the future.

The stability of such a payment scheme depends on having many more people paying into the system than people taking benefits out of the system. That was the case when Social Security was designed. In 1940, there were more than 150 workers paying taxes to Social Security for each Social Security beneficiary. By 1960, there were five workers per beneficiary. Today, there are less than three workers paying in for each person taking retirement benefits out.[77]

That ratio is going to continue to get worse because of underlying demographic trends, such as our low birth rate, people living longer, and growth in the retiree population. This means that right now, when Social Security owes a retiree a monthly check for $1,200, the Social Security Administration (SSA) needs to collect about $400 each from three workers. That's a significant cost for the average American worker today. As the number of workers per retiree falls, each worker's share increases, and he or she will have to pay significantly more to support those benefits. By 2040, the SSA estimates there will be just 2.2 workers per retiree, so that $1,200 monthly benefit would essentially have to be split between two workers—a very significant burden for the shrinking pool of working Americans.

Social Security payroll taxes are already failing to generate enough money to cover annual benefits. This is a problem that will continue to get worse in the years ahead, and taxes will have to rise considerably if the government is to make good on current promises.

Social Security's financial problems are just one of the system's flaws. Social Security also does not provide a very good deal for many Americans—and the outcomes from Social Security are often simply unfair. How much one receives from Social Security largely depends on how long one lives. Some people pay into Social Security throughout their working lives, die at age 65 before retiring, and receive nothing back from Social Security in spite of years of contributions. Since those with lower incomes also have lower life expectancies, this can be particularly unfair to the poor.

Social Security also rewards some family structures over others. A married woman with a working husband can work for years and pay into Social Security, but end up no better off than if she had not worked at all (because non-working married women are entitled to spousal benefits related to their husband's earnings)

As policymakers consider how to reform Social Security, they should try to do more than just get Social Security's books to balance. They need to try to create a system that is equitable and helps Americans become a nation of savers. We also need to find more ways to help Americans save during their working lives. Of course, the biggest barrier to savings today is that too many Americans struggle to make ends meet and do not have enough money left over to be able to save for future needs, such as retirement. The real key to enabling more Americans to save is continuing the current trend of job creation and economic growth, so that people have more opportunities to work and earn higher wages.

POLICY SOLUTIONS

Expand Catch-up Contributions to Retirement Savings Vehicles: Women tend to take more time out of the workforce to care for family members. As a result, they tend to earn lower wages while working and often miss savings opportunities for multiple years. Therefore, lawmakers should do more to facilitate savings, recognizing that many Americans—particularly women—do not have consistent work histories and may have much more capacity to earn and save in some years than in others.

Under current law, the IRS allows those over age 50 to make annual catch-up contributions to their tax-advantaged retirement savings accounts. Rep. Harley Rouda (D-CA) has legislation called the Expanding Access to Retirement Savings, which would expand eligibility for catch-up contributions, so that someone who took at least one year out of the workforce to care for a family member could start making catch up contributions before age 50. This would benefit people (disproportionately women) who have sacrificed for their families, giving them more opportunity to put away additional earnings and start earning more interest earlier in anticipation of retirement. Policymakers should embrace this commonsense policy change to help people better prepare for retirement on their own.

Reject Attempts to Increase Social Security Retirement Benefits: Representative John Larson (D-CT) has more than 200 cosponsors for his Social Security 2100 Act, which would be Social Security's biggest expansion in decades. Not only would Rep. Larson impose an enormous tax increase on American workers to close the entirety of Social Security's unfunded liability, he would take even more money from workers to increase benefits for retirees.

High earners would take the biggest tax hit: Currently payroll taxes are imposed on the first $132,000 of earnings. Larson would re-impose the payroll tax on earnings above $400,000, an enormous marginal tax rate increase for this group. Yet Rep. Larson would require all workers to pay more, with payroll tax rates climbing from 12.6 percent to 14.8 percent—a historical high.

Despite employing "soak the rich" rhetoric, this proposal isn't focused on helping low-income seniors: Benefits would become more generous for *all* seniors, including those who are rich themselves. As AEI's Andrew Biggs explains, seniors are already our wealthiest cohort, with a poverty rate of less than seven percent, the lowest of any age group. Rather than taking from the rich to give to the poor,

Rep. Larson's Social Security proposal takes from younger workers (who have a much higher poverty rate) to give to retirees, regardless of whether they need it. The most important action policymakers can take is to reject attempts to expand the already enormous retirement benefit system even more.

Reduce Capital Gains Taxes: Policymakers can also attempt to encourage more savings by changing tax laws that discourage savings. Under current law, when Americans purchase a stock or earn interest on an investment, they are taxed on the return generated. By comparison, when someone purchases something else—whether it is a new dress or a television—they are not expected to pay a tax every time they use or receive enjoyment from that purchase. Savings alone is singled out for additional taxes, even when those investments are made with after-tax dollars. This double-taxation of savings encourages consumption today and discourages prudent investment in the future. Policymakers should be seeking to reduce, or even eliminate, these taxes in order to change this dynamic and encourage more Americans to save.

Reform Social Security to Protect the Safety Net: Policymakers should consider reforms that would make Social Security more financially sound and ensure that Social Security serves as a safety net for those who need it most. To help balance Social Security's expected costs, policymakers should slowly increase the retirement age for future retirees, in recognition of changing life expectancies. Policymakers should also review how cost of living increases are calculated. Under current law, people are receiving *more* generous Social Security benefits, in real dollar terms, than beneficiaries were a generation ago, and the value of Social Security benefits are expected to increase for future retirees. Given that Social Security's finances are already out of balance and the per-worker cost of providing Social Security benefits is climbing rapidly, Congress ought to consider changes to how benefits are calculated. Rather than promising more generous retirement benefits to future workers (which the federal government will be unable to fully pay for under current law), future retirees' benefits should be comparable to those received today.[78]

Congress should also consider explicit reductions in benefits that are paid out to high-income retirees, while augmenting benefits for lower-income beneficiaries. Social Security is not meant to be a welfare program, and the benefits that are received are supposed to bear a relationship to taxes paid in during one's working life. However, given Social Security's bleak prospects, changes have to be made, and those seniors with the highest incomes will be better able to withstand reduced benefit payments. It may not be fair, but it may be necessary.

Make Social Security More Fair by Rewarding Work: Policymakers should also begin to phase out how benefits are calculated for married couples to better recognize and reward the contributions of working spouses. Under current law, a spouse who never works is eligible to receive one-half of her spouse's Social Security retirement benefit, even though she has never directly paid into the system. This can result in some great inequities as a family with one higher earner and a stay-at-home parent can be eligible for higher benefits than a two-earner couple that pays more taxes into the system. Policymakers should phase out the subsidy for the stay-at-home parent to create a fairer system that reflects modern families and rewards workers for their contributions to the system. Just as in the childcare chapter we argue that the government shouldn't favor two-earner families who use paid child care, we also believe government should not subsidize traditional breadwinner families when it comes to retirement, but that government should be neutral on this critical and very personal choice.

Encourage Savings as a Part of Social Security: Policymakers should consider how to move toward a system that allows people to save and invest on their own. A defined contribution system, which consists of personally-owned retirement accounts, for example, would allow people to put money away for their own retirement, and those assets would grow during their working lives. That account would be someone's personal property and could be passed on at death.

Such a system would be much fairer in terms of the treatment of individuals: Those who work longer would contribute more and would have more assets at the end; those who die before reaching retirement would at least be able to pass a nest egg on to their loved ones, rather than forfeiting a lifetime of savings.

There are many ways to incorporate a system of personal accounts into Social Security while maintaining a basic safety net (to make sure that, regardless of the performance of the financial markets, everyone eligible for Social Security receives income support that keeps them out of poverty). Many of these proposals are more progressive, guaranteeing greater benefits for those with lower incomes while reducing promised payouts for wealthier cohorts. While policymakers address Social Security's immediate financial challenges, they should also consider how to turn this often-arbitrary pay-as-you-go system into a system that gives the American people ownership of their retirement assets.[79]

Pay Equity and Combatting Discrimination

The Way It Can Be

We need workplaces where women and men are treated and compensated fairly. At the same time, we need laws that provide employers with flexibility to reward performance and offer a variety of compensation packages to meet the needs of a changing workforce.

The best protection for women from discrimination and poor working conditions is a robust economy, which puts pressure on employers to treat employees well or risk losing them. That is why encouraging greater economic growth and job creation (as described previously in this report) is the real key to supporting healthy and fair work environments.

In addition to a strong economy, we need a legal system that allows victims of discrimination to enforce their rights. Thankfully, we have one. But we need legal reforms that will streamline the process and reduce the cost of litigation for both employees and employers.

The Challenge We Face Today

Equal pay for equal work has been the law of the land in the United States since 1963.[80] And, yet, Americans today are bombarded with distorted information about differences in men and women's earnings, which is often called the gender wage gap.

The way the media presents it, it's no wonder many people wrongly believe that 21st-century employers routinely pay women less than their male counterparts. This widespread misperception is based on statistics that compare earnings of all full-time male workers with all full-time female workers.[81] According to this generalized statistic, the median for women's wages are about 80 percent of the median men's wages.[82] People refer to this as the "wage gap" and assume that this means that most women make 20 cents less than their male counterparts. This is simply not the case.

The wage gap statistic does not break down the data by industry or job position. In other words, it is not an apples-to-apples comparison. Moreover, the "wage gap" narrative ignores the different choices that men and women often make when it comes to education, work, and family. In sum, many factors— including industry,

degrees earned, hours worked, time in the office, occupational hazards (*i.e.*, dangerous work), and years of experience—affect earnings. When studies control for these variables, the wage gap shrinks to just a few percentage points,[83] some of which may be explained by discrimination and some of which can be explained by differences in priorities and negotiation styles and abilities.

The focus on a single statistic and a single aspect of work (earnings) overlooks the varied ways in which people actually evaluate work opportunities. In fact, pay is just one of many factors that people consider when deciding whether to take a job. Workers often balance money earned against other job attributes, such as the nature of the work, the hours required, the workplace environment, potential for advancement, and the ease with which one can get to and from work.

To get a better sense of how women value different job attributes, Independent Women's Forum commissioned an in-depth study and found that, depending on their circumstances, women, on average, prioritize different aspects of work. For example, working mothers tend to place a high value on flexibility: Overall, IWF's research found that offering a combination of flexible schedules, telecommuting, and reduced hours was about equivalent to offering 10 paid vacation and sick days or between $5,000 to $10,000 in salary.[84] Thus, many women are willing to trade significant financial compensation for other forms of remuneration that are not easily captured in pay statistics or factored into the wage gap.

The fixation on eliminating the so-called wage gap also pits men and women against each other, overlooking the fact that Americans want both sexes to flourish economically. Put another way, a decline in men's average earnings might reduce the wage gap, but it will not help women to earn more or otherwise improve their lives.

Of course, the fact that the pay gap is only about 2 cents on the dollar (not 20, as the media would have people believe) does not mean that American workplaces are discrimination free. In fact, according to IWF's research, the vast majority of women (74 percent) believe discrimination is at least somewhat of a problem at work.[85] We would be wise, however, to consider whether the misuse of wage gap statistics contributes to an exagerated impression of the extent of sex discrimination at work by suggesting that pay disparities are ubiquitous, normal, and therefore, presumably legal.

Thankfully, where discrimination does exist, federal and state law provide various means of redress.[86] Data from the Equal Employment Opportunity Commission (EEOC) indicates that

workers are aware of these laws and use them to challenge employers they believe are treating them unfairly. For example, in 2018, the EEOC received nearly 25,000 charges from workers alleging some form of sex discrimination under Title VII.[87] The agency determined that there was "reasonable cause" to believe a violation had occurred in 996 (or fewer than 4 percent) of these charges.[88]

Unfortunately, sometimes policies proposed in the name of protecting women can backfire. Consider, for example, the proposed rule that would require businesses to provide additional data about their compensation practices—including the demographics, such as sex and race, of their workers—to the EEOC.[89] Proponents of this rule claim it will help the EEOC identify companies that under-pay certain groups. This presumes, of course, that wage disparities are driven by discrimination, which, as already discussed, is not necessarily the case. Worse, this new reporting requirement encourages the adoption of one-size-fits-all compensation systems that may protect employers from government investigation but will not suit the needs of all workers.

For example, a human resource manager may know that one worker is paid less than another for a legitimate reason: For example, a working parent may choose reduced hours or less travel responsibilities in return for less pay. She may see this new compensation package as a significant benefit for her, allowing her to dedicate more time to children when they are young, but also enabling her to continue to work and earn money, and therefore to be better positioned to advance her career when her family circumstances change.

Such nuances are not easily reflected on the forms submitted to the EEOC. Risk-averse human resource managers will have an incentive to limit such negotiations to avoid even the appearance of discrimination. They may demote workers who seek additional flexibility or require them to accept a standard part-time position. This will leave workers—particularly working mothers who often place a premium on flexibility—with fewer, less favorable options.

Similarly, the Paycheck Fairness Act,[90] promoted under the banner of helping women, could also backfire. By increasing the likelihood and scope of class action lawsuits and burdening businesses with increased litigation costs, employers would have reason to hire fewer workers and pay workers less, albeit the same amount, regardless of experience, merit, or other non-discriminatory factors.

Moreover, by requiring that employees opt-out of pay discrimination class action suits (rather than opt-in), the legislation encourages employees and

courts to regard generalized statistics as evidence of discrimination, rather than focusing the analysis on specific comparisons of similarly-situated male and female employees. Sadly, increasing the number of class action lawsuits, which often take 7 to 10 years to unfold, would do little to correct situations where women may not be receiving equal pay for equal work.

Pregnant women face special challenges in the job market and working world. The Pregnancy Discrimination Act of 1978 provides that "women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work."[91] In the 2015 case of *Young v. United Parcel Service*, the Supreme Court held that a pregnant employee may prove discrimination if she can demonstrate she was treated differently than similarly-situated non-pregnant employees and that the employer's proferred reason for the differential treatment fails to justify the burden to pregnant employees. The Court left considerable ambiguity, however, as to which employees provide the appropriate basis for comparison and how a plaintiff can show that the employer's policy significantly burdens pregnant women. This confusion could be remedied by legislative clarity regarding the burdens of proof in such cases.

Our challenge is to create laws that discourage and punish workplace discrimination and provide compsensation to victims, while maximizing economic opportunity and flexibility so that American women and men have the freedom to work and earn more in jobs that meet their unique circumstances.

POLICY SOLUTIONS

Clarify Pregnancy Discrimination Act: Ambiguities in the Pregnancy Discrimination Act leave pregnant workers confused about their rights and leave employers struggling to understand their obligation to accommodate pregnant employees with medical work-restrictions. The Pregnancy Discrimination Act should be amended to clarify that a pregnant worker must receive the same accommodations as other workers with similar abilities and limitations. This amendment was most recently offered in the 116th Congress by Rep. Tim Walberg (R-MI).

Protect Arbitration: It is important that women who have faced workplace discrimination be able to receive justice in a prompt and equitable manner. Unfortunately, our civil litigation system is often slow and very inefficient. Civil suits can take years to wind their way through the court system; defense attorneys who play hardball often drag a victim's name through the mud both in court and in the court of public opinion; and, sometimes, plaintiff attorneys won't even agree to represent a victim unless they believe the claim is worth a great deal of money.[92]

Arbitration is an alternative to court litigation that allows victims of discrimination to enforce all of their civil rights and receive compensation swiftly, privately, and in a flexible and cost efficient manner. Because employers pay the costs of arbitration when all employees agree to it upfront, it is cheaper for claimants than filing a civil lawsuit in court. Arbitration makes it easier for claimants in such cases to hire attorneys, since arbitration ensures that attorneys for both sides are paid, irrespective of outcome. In addition, because arbitration is simpler and less formal, it allows claimants to save even more money by pursuing their claims without an attorney, if they so choose. In addition to being less costly, studies show that employees actually win more often and collect more money in arbitration than they do in court. Moreover, arbitration is conducted in private, without formal rules of evidence, and, therefore, allows a claimant the chance to tell her story in her own words without testifying in open court.[93]

In recent years, however, #MeToo activists have objected to the resolution of workplace discrimination claims through arbitration, claiming that arbitration stacks the deck against employees and "silences" victims. In truth, arbitration affords claimants the same opportunity to pursue monetary damages as trying their cases in court. Moreover, employees who have agreed to arbitrate claims against their employers may still report wrongful conduct to the police and to government agencies, and can cooperate fully in government investigations of

such conduct. Although arbitration proceedings are conducted in private, absent a confidentiality agreement, arbitration in no way prevents a victim from talking about her experience.

Prohibiting arbitration agreements may help line the pockets of the trial lawyers and advance the social justice objectives of the #MeToo movement, but it will not help victims of sex disrimination —many of whom would prefer to have their claims resolved quickly, less formally, and without the public attention that inevitably accompanies a trial in court.

Conclusion

In many ways, American women are working harder and doing more than ever before. They are achieving more professionally, and many are balancing these professional successes with vibrant personal lives as wives, mothers, and community leaders. The freedom to pursue so much is wonderful, but it means we need modern public policies that work just as hard to give women more resources and opportunities to succeed and build the lives that they want for themselves and their families today and in the future.

When it comes to improving economic policy, we recognize that the workplace is only one piece of the puzzle. Economic regulations and subsidies can impact health care, energy, housing, education, and the costs of consumer goods (i.e. the cost of living). Policymakers should consider how to roll back unnecessary regulations and focus government assistance on only those with the greatest need.

Hard-working Americans should feel secure that they can earn enough money to provide for their family's core expenses and save for future needs. We want dynamic, competitive markets so that businesses are competing to provide customers with the best value at the best price. We need to roll back government policies that impede this market process and unnecessarily inflate prices.

Even so, we recognize that economic policy isn't all that women care about. In fact, our motto at IWF is "All Issues Are Women's Issues." Women care about a fair, inclusive immigration system that honors the rule of law. Women want a healthy culture where civility and decency are the norm. Women want to see families and strong communities flourish. Women care about safe neighborhoods, good schools, parks and libraries. And women care about peace all over the world.

But the focus of this report—and much of our public debate about the status of women in the U.S.—relates to the workplace and economic opportunity. There is much at stake, and we want to see every woman and girl to be afforded the greatest degree of opportunity to realize their potential and live out their American Dream. While we acknowledge that both U.S. culture and U.S. law are already pro-women and pro-freedom, we believe implementing the policy solutions discussed within this report would improve our lives even more.

At IWF, every day, we will continue "working for women" and advocating for policies that aren't just well-intended, but actually enhance people's freedoms, choices, and opportunities.

About the *Working for Women* Report

In 2016, Independent Women's Forum published the first edition of the *Working for Women* report, which was the result of the work of a taskforce. This taskforce included Carrie Lukas, Sabrina Schaeffer, Brian Brenberg, Diana Furchgott-Roth, Randel K. Johnson, Tammy D. McCutchen, and Casey Mulligan. This Taskforce worked together to research problems and identify and agree upon solutions. We remain very grateful for their work and leadership on these important issues.

This new edition of this *Working for Women* report was produced by the staff and senior fellows who work with Independent Women's Forum. All recommendation or any errors in text are attributable solely to those at Independent Women's Forum, not to any members of the original Task Force.

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