



**RECOMMENDATIONS RESPECTFULLY SUBMITTED TO
THE TRUMP ADMINISTRATION REGARDING
WORKPLACE AND HEALTH POLICIES IMPACTING WOMEN AND FAMILIES**

INTRODUCTION

The Sex and Law Committee of the New York City Bar Association addresses issues pertaining to gender and the law with the aim of reducing barriers to gender equality in the workplace, healthcare, and civic life. Our membership includes attorneys from law firms, government agencies, not-for-profit organizations, and law school faculties. Our work in this area has led members of the Committee to develop substantial expertise regarding issues directly impacting the ability of women to participate in the workforce and contribute to the economy. We respectfully submit this memo to share our views with the Trump Administration on three of those issues: family leave, affordable childcare, and access to healthcare.

As Assistant to the President Ivanka Trump wrote in an op-ed in *The Wall Street Journal*, motherhood is “the greatest predictor of wage inequality in our country.”¹ Ms. Trump explained that our outdated federal policies are poorly suited to a time in which families rely on the incomes of working mothers--noting that two thirds of married couples are dual-income, 70% of mothers with children under 18 work outside the home, and households led by single mothers have doubled in three decades.

Indeed, in the absence of policies supporting working parents, women face significant barriers to reaching their full potential in the workforce. In part due to parenting burdens that fall disproportionately on women, the wage gap between men and women persists, and is particularly wide for women of color. While white women working full-time, year-round earn 76% percent of what white men earn, black women in the same circumstances earn 62% and Hispanic and Latina women earn only 54%.²

Policies that foster the ability of women to participate in the workforce on a more even playing field are beneficial not only to families, but also to the national economy. According to a McKinsey and Company study, 25% of current domestic product is attributable to the increased participation of women in the workforce since 1970.³ However, women’s workforce

¹ Ivanka Trump, *The Trump Plan Will Help Working Mothers*, WALL ST. J., Sept. 14, 2016, at A15.

² U.S. CENSUS BUREAU, *Current Population Survey, Annual Social and Economic Supplements*, Table P-38; U.S. CENSUS BUREAU, *2015 American Community Survey 1-Year Estimates*.

³ Joanna Barsh & Lareina Yee, *Unlocking the full potential of women in the US economy 1*, MCKINSEY & COMPANY, (Apr. 2011), available at

participation in the U.S. has stalled since the 1990s.⁴ This has not been the case in other advanced economies and research suggests a primary cause is the lack of federal family leave policies in the United States.⁵

We urge the Trump administration to: 1) implement a policy of family leave for all parents; 2) address the high costs of childcare in a comprehensive manner; and 3) protect women's ability to time and space their children.

FAMILY LEAVE FOR BOTH PARENTS PROMOTES OPPORTUNITY FOR WOMEN

President Trump's proposal to provide six weeks of paid maternity leave through the unemployment insurance system could be an improvement for mothers in the workforce, given that the United States is currently one of few developed countries that do not require parental leave at all.⁶ However, failing to include paternity leave would ensure that childcare responsibilities continue to fall primarily to women employees and limit their career advancement. Research shows that current college graduates are paid relatively equal wages for equal jobs, but as soon as employees start having children, the wage gap between men and women immediately grows.⁷ Some reports have indicated that the proposal might include only birth mothers, thus excluding foster and adoptive mothers and fathers who also need time to bond with their children. If the maternity leave policy were expanded to include all new parents, including adoptive and foster parents, it would better allow parents to continue working and to share parenting responsibilities.

We also urge the President to consider workers' needs for other forms of paid leave beyond parental leave. In addition to bonding with a new child, workers should have access to paid leave to address their own serious health needs and to care for family members with serious health needs.

THE HIGH COSTS OF CHILDCARE AND CHILDBIRTH AFFECT ALL PARENTS

Access to affordable childcare would allow more women to continue working outside the home after giving birth, since women are much more likely to leave the workforce due to

http://www.mckinsey.com/client_service/organization/latest_thinking/unlocking_the_full_potential. See also Eileen Appelbaum et al., *The Economic Importance of Women's Rising Hours of Work: Time to Update Employment Standards*, CENTER FOR AM. PROGRESS & CENTER FOR ECON. & POL. RESEARCH (Apr. 2014), available at <https://cdn.americanprogress.org/wp-content/uploads/2014/04/WomensRisingWorkv2.pdf> (all links last visited March 31, 2017).

⁴ Matt Markezich, *Why the United States still needs paid family and medical leave*, WASHINGTON CENTER FOR EQUITABLE GROWTH, Feb. 8, 2017, available at <http://equitablegrowth.org/equitablog/value-added/why-the-united-states-still-needs-paid-family-and-medical-leave/>.

⁵ *Id.*

⁶ *See id.*

⁷ Jaison R. Abel & Richard Dietz, *When Women Out-Earn Men*, LIBERTY STREET ECONOMICS, Aug. 5, 2015 (blog of the Federal Reserve Bank of New York), available at <http://libertystreeteconomics.newyorkfed.org/2015/08/when-women-out-earn-men.html#.VdOI-5frOGc>.

parenting responsibilities, which negatively impacts their lifetime earnings.⁸ We are pleased that President Trump has acknowledged the high cost of early childcare. However, President Trump’s proposal to give families a \$5,000 tax deduction to compensate for childcare costs falls short in terms of costs and logistics because \$5,000 is too low to cover most working parents’ childcare expenses. Parents pay an average of \$9,589 per year for full-time childcare for children ages 0-4.⁹

Subsidizing childcare by means of a tax deduction would not benefit families with incomes so low that they owe little or no taxes. Approximately 45% of households in the United States already pay zero or negative federal income taxes.¹⁰ President Trump has proposed providing such families “almost \$1,200 per year” for childcare via the Earned Income Tax Credit.¹¹ But that amount is plainly insufficient for the families who most need assistance with childcare costs. Families with young children making \$1,500 a month or less spend an average of 49% of their income on childcare.¹² According to the U.S. Department of Health and Human Services, for childcare to be considered “affordable” it should cost no more than 10 percent of a family’s income.¹³ In addition, a tax credit approach reduces funding available to pay for other programs that affect low-income families in order to subsidize the comparatively well off.

Parents of very young infants face special difficulties. Health officials, including the American Academy of Pediatrics, recommend that even healthy, full-term infants should not enter daycare before they are 12 weeks old.¹⁴ Parents who must return to work early must face both the scarcity and high cost of childcare centers that will accept infants at six weeks old. The scarcity of such care is likely due to the substantial staffing costs that providing care to very young children entails. In keeping with the recommendation of the National Association for the Education of Young Children,¹⁵ many states require one staff person for every three infants

⁸ Jacob Mincer & Solomon Polachek, “Family Investments in Human Capital: Earnings of Women,” in MARRIAGE, FAMILY, HUMAN CAPITAL AND FERTILITY, (Theodore W. Schultz, ed., (1974); June E. O’Neill & Dave O’Neill, *What Do Wage Differentials Tell Us about Labor Market Discrimination?* (working paper, National Bureau of Economic Research, April 2005).

⁹ Brigid Schulte et al., *The Care Report*, NEW AMERICA (SEPT. 2016), available at <https://www.newamerica.org/better-life-lab/policy-papers/new-america-care-report>. New America, *The Care Report*, available at <https://www.newamerica.org/better-life-lab/policy-papers/new-america-care-report>.

¹⁰ T15-0138 - *Tax Units with Zero or Negative Income Tax*, TAX POLICY CENTER, available at <http://www.taxpolicycenter.org/model-estimates/tax-units-zero-or-negative-income-tax/tax-units-zero-or-negative-income-tax>.

¹¹ *Child Care Fact Sheet*, DONALDJTRUMP.COM, available at https://assets.donaldjtrump.com/CHILD_CARE_FACT_SHEET.pdf.

¹² Sarah Jane Glynn, *Families Need More Help to Care for Their Children*, CENTER FOR AMERICAN PROGRESS, available at <https://www.americanprogress.org/issues/economy/news/2012/08/16/11978/fact-sheet-child-care/>.

¹³ Elise Gould & Tanyell Cooke, *High quality child care is out of reach for working families*, ECONOMIC POL. INST., Oct. 6, 2015, available at <http://www.epi.org/publication/child-care-affordability/>.

¹⁴ American Academy of Pediatrics, American Public Health Association, and National Resource Center for Health and Safety in Child Care and Early Education, *Caring for Our Children: National Health and Safety Performance Standards*, Third Edition (2011).

¹⁵ Teacher Child Ratio Chart, National Association for the Education of Young Children, available at http://www.naeyc.org/academy/files/academy/file/Teacher_Child_Ratio_Chart.pdf.

below the age of six months.¹⁶ Even where childcare for very young children is available, the higher number of staff needed increases the costs to parents. Cutting costs at childcare facilities is not a viable solution. The median wage for childcare workers is less than ten dollars an hour--with nearly half of childcare workers receiving some form of public assistance; and the profit margins for daycare centers are so low that many centers close due to inability to pay insurance and other rising costs.¹⁷

Thus, a \$5,000 tax deduction or \$1,200 tax credit would be ineffective in helping working families deal with the rising costs of childcare. Only a comprehensive system of subsidizing childcare, including HeadStart or universal Pre-kindergarten, would allow parents to leave their young children in safety and be able to rejoin the workforce if they choose to.

Families already struggling with the costs of childcare will experience even greater economic harm if they lose the insurance coverage for childbirth currently required by the Affordable Care Act (ACA). The ACA requires that all insurance plans cover birth as a minimum necessary degree of coverage. This is essential given that the cost of delivering babies has risen, even for pregnancies without any complications. An uncomplicated vaginal birth costs on average \$30,000, with a copayment of \$2,200 for women with insurance. A cesarean section costs \$50,000 on average, with a \$2,700 copayment.¹⁸ Prior to the ACA, a woman with insurance that did not cover childbirth would often be unable to purchase maternity coverage in the event of an unplanned pregnancy, because insurers would consider the pregnancy a pre-existing condition. We urge the Trump administration not to roll back the ACA's protections and leave women to pay tens of thousands of dollars to give birth to a child.

THE ABILITY TO TIME AND SPACE ONE'S PREGNANCIES IS ESSENTIAL TO WOMEN'S PARTICIPATION IN THE WORKFORCE

As the U.S. Supreme Court has recognized, "The ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives."¹⁹ The Trump administration should uphold longstanding constitutional precedent and keep policies in place that have fostered the advancement of women in the workplace and their resulting contributions to the economy.

The U.S. Supreme Court has repeatedly held that the protection of liberty in the due process clauses of the 5th and 14th Amendments includes the rights to bodily integrity and to

¹⁶ "Child Care Centers Staff/Child Ratio Charts" Maryland Public Schools, *available at* http://earlychildhood.marylandpublicschools.org/system/files/filedepot/3/staff-child_ratio_chart_-_child_care_centers.pdf.

¹⁷ Center for the Study of Childcare Employment, The Early Childhood Workforce Index, July 7, 2016, *available at* <http://cscce.berkeley.edu/early-childhood-workforce-index>.

¹⁸ "The Cost of Having a Baby in the United States," Truven Health Analytics, *available at* <http://transform.childbirthconnection.org/wp-content/uploads/2013/01/Cost-of-Having-a-Baby1.pdf>.

¹⁹ *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 856, (1992) (citing R. PETCHESKY, ABORTION AND WOMAN'S CHOICE 109, 133, n.7 (rev. ed. 1990)).

make decisions about family and parenthood.²⁰ It has been nearly 45 years since the Court explained that the Constitution protects the right of a woman to end a pregnancy before viability in *Roe v. Wade*.²¹ As the Court put it in one of its many subsequent decisions upholding *Roe*, *Planned Parenthood v. Casey*, this “is a rule of law and a component of liberty we cannot renounce.”²² Overturning *Roe* would be an unprecedented upending of the law that “would seriously weaken the Court's capacity to exercise the judicial power and to function as the Supreme Court of a Nation dedicated to the rule of law.”²³

If states were permitted to use the force of law to compel a woman to carry a pregnancy to term against her will, it would be a profound violation of our Constitution's most fundamental guarantees. The patchwork of laws that President Trump has correctly observed would result from *Roe* being overturned would not be consistent with our Constitution, which guarantees the rights of all Americans regardless of the state in which they live. It would limit the right to end a pregnancy to those with the financial resources to travel to a state or country where abortion was not a crime, as was the case prior to *Roe*. Denying lower-income women the right to legal abortion in this way would deprive them of the greater opportunities for education and professional advancement that women who are able to time and space their pregnancies enjoy.²⁴ The Trump administration should honor the promises to support women in the workplace made by President Trump and Assistant to the President Ivanka Trump by respecting the long established right of all Americans to decide whether and when to have a child.

Additionally, the Trump administration should leave in place regulations under the Affordable Care Act that have fostered greater equity in compensation between women and men by requiring that health plans provide coverage for women's health needs comparable to that of men.²⁵ The requirement that one's health insurance cover contraception without a copayment is particularly important to low-income women seeking to delay parenthood while pursuing education and professional advancement. Allowing businesses not to comply with or repealing the contraceptive coverage requirement would make contraception—particularly long-acting reversible contraception—cost prohibitive for many minimum-wage employees. This is a matter of economic inequality as well as racial inequities. Because black women make up nearly 16% of female minimum-wage workers, the loss of the contraceptive coverage benefit would

²⁰ *Id.* at 849. (“It is settled now, as it was when the Court heard arguments in *Roe v. Wade*, that the Constitution places limits on a State's right to interfere with a person's most basic decisions about family and parenthood, as well as bodily integrity.”) (citations omitted).

²¹ *Roe v. Wade*, 410 U.S. 113 (1973).

²² *Casey*, 505 U.S. at 871.

²³ *Id.* at 865

²⁴ See Adam Sonfield *et al.*, *The Social and Economic Benefits of Women's Ability to Determine Whether and When to Have Children*, GUTTMACHER INST. (Mar. 2013), available at <https://www.guttmacher.org/report/social-and-economic-benefits-womens-ability-determine-whether-and-when-have-children>.

²⁵ Prior to the implementation of the ACA, studies found women's out-of-pocket health costs were as much as 69% higher than those of men. Louis Jacobson, *Ruth Bader Ginsburg dissent says women pay 68 percent more out of pocket for health care*, POLITIFACT (July 2, 2014), available at <http://www.politifact.com/truth-o-meter/statements/2014/jul/02/ruth-bader-ginsburg/ruth-bader-ginsburg-dissent-says-women-pay-68-perc/>.

disproportionately impact them and the families they support.²⁶

Improved access to contraception since the regulation went into effect has coincided with a decrease in unintended pregnancy and the lowest rates of abortion since the procedure became legal in 1973.²⁷ Still, at 45%, the United States has one of the highest rates of unintended pregnancy among developed nations.²⁸ The contraceptive coverage requirement is necessary to facilitate the equal participation of women in the economy by enabling them to avoid unintended pregnancy in greater numbers. We urge the administration to keep it in place.

CONCLUSION

Women are a critical part of our labor force and economy. Given the ways motherhood uniquely affects women's ability to pursue a career outside the home, we ask that the Trump administration tailor its policies to meet these challenges. In particular, the administration should put in place and maintain policies that address the disproportionate affects the cost of pregnancy, childbirth, and childcare have on the financial security of women and their ability to contribute to the economy. By promoting solutions that account for the real costs of parenthood, the administration can work to ensure that motherhood is no longer a barrier to women's equal participation in the workplace.

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²⁶ Renee Bracey Sherman, *A Right to Contraception Without Access Is a Disaster for the Black Community*, REWIRE (July 1, 2014), available at <https://rewire.news/article/2014/07/01/right-contraception-without-access-disaster-Black-community/>.

²⁷ Joerg Dreweke, *U.S. Abortion Rate Reaches Record Low Amidst Looming Onslaught Against Reproductive Health and Rights*, GUTTMACHER POL. REV. (Jan. 17, 2017), available at <https://www.guttmacher.org/gpr/2017/01/us-abortion-rate-reaches-record-low-amidst-looming-onslaught-against-reproductive-health>.

²⁸ *Unintended Pregnancy in the United States*, GUTTMACHER INST. (Sept. 2016), available at <https://www.guttmacher.org/fact-sheet/unintended-pregnancy-united-states#9>.