

Please cite as: Block, R., Kossek, E. & Malin, M., Holt, A. 2006. The Legal and Administrative Context of Work and Family Policies in the U.S. Canada and the European Union. Managing the Work-Home Interface. Routledge, (F. Jones, Burke, R., Westman, M., Editors.)

## **2 The legal and administrative context of work and family leave and related policies in the USA, Canada and the European Union**

*Richard N. Block, Martin H. Malin,  
Ellen Ernst Kossek and Angela Holt*

### **INTRODUCTION**

Countries and cultures vary in the extent to which government is viewed as playing a role in encouraging or mandating workplace practices to support work and family (Lewis and Haas, 2005). In a world in which corporations operate internationally, and in which employees and the unions that represent them find themselves in 'competition' with employees in other countries, it is important to understand international differences in social mores and employer implementation of work and family policies. For example, although over the last several decades the USA has generally become more accepting of women's participation in paid employment and of fathers' involvement in early child care, an implementation gap persists where many legal and employer practices related to work and family have not fully caught up to labor market and societal changes (Barnett, 1999; Lewis and Haas, 2005). In this chapter we describe and contrast legal and employer approaches to work and family supports related to leave and time off from work for family, pregnancy and caregiving, in the USA, Canada, the European Union (EU) and selected countries in the EU. While the field of work and family has now broadened to include eldercare and time off from work for all employees regardless of whether they have caregiving responsibilities (Kossek and Lambert, 2005), due to space limitations, we focus our review on policies relating to leave and caregiving.

Table 2.1 provides an overview of the provisions of leave policies by country that we will draw upon throughout this chapter. As the table shows, for example, Canada and the countries of Europe have more extensive legally mandated family leave policies than the USA. As our review will suggest, these differences in policy may be attributed partly to several key differences in contextual and institutional contexts (Lipset, 1989; Block *et al.*, 2004). The differences between the USA and Canada and between the USA and the countries in Europe are consistent with the findings of other research that demonstrate that Canada and the EU provide higher labor standards to employees within their borders than the USA (Block, Roberts and Clarke, 2003; Block, Berg and Roberts, 2003).

*Table 2.1* Characteristics of parental leave in the USA, Canada, UK, Germany, Norway and Sweden

<i>Country</i>	<i>Title of legislation</i>	<i>Scope of coverage (benefit and eligibility)</i>	<i>Compensation rate</i>	<i>Duration</i>	<i>Job security</i>
USA	Family and Medical Leave Act of 1993 (federal)	Eligible employees for an eligible employer; <sup>a</sup> birth or care of a child, adoption or foster care placement, care employee's spouse, parent or child or because of the employee's own illness	Unpaid	12 weeks	Entitled to same position or one that is equivalent in pay, benefits and other terms and conditions of employment
UK	No explicit family leave policy	There are maternity and parental (same for paternity) benefits	Maternity: paid (90% of salary for 6 weeks and then L100/week for 12 weeks). Parental: Unpaid	18 weeks maternity; 13 weeks unpaid parental	Entitled to same position as before leave
Canada	Employment Standards Legislation (federal); most Canadian provinces have separate Human Rights and Employment Standards Amendments	New mothers and parents are entitled to the leave; maternity leave benefits can be received after a 2-week waiting period	55% (maternity: 15 weeks; parental: up to 35 weeks)	17 weeks maternity leave; 12–52 weeks parental leave	Entitled to same position with equivalent terms and conditions of employment

Germany	The Maternity Protection Act (Mutterschutzgesetz) and Child Benefit Act (Bundeserziehungsgeldgesetz)	Maternity and parental leave that protects employees from termination, grants income, entitles employees to their job upon return, and absence from work to raise a child	State benefits paid for up to 24 months; EUR460 (\$544 US) 1st year and EUR307 (\$363) 2 years	Maximum of 3 years	Entitled to return to same position the employee held before leave; may request a reduction in work hours after the birth of a child
Norway	N/A	Parental leave entitles either parent to leave if they have been employed or self-employed for 6 of the past 10 months; mothers who are not entitled to cash benefits receive a 'maternity grant'	100% for 42 weeks or 80% of salary for the full year	1 year; 3 years for single parent	Full job protection; entitled to return to same position the employee held before leave
Sweden	The Swedish Family Policy	All employees are entitled to this leave; family leave benefits allow for a reduced work schedule until a child is 8 years old	Paid (90% of pay for first 12 months and flat rate for additional 3 months)	Paid up to 15 months; extended leave up to 18 months	Entitled to same position employee held at commencement of leave

<sup>a</sup> 'Eligible employee' is an employee who has worked at least 12 months with 1250 hours of service to the employer; 'eligible employer' is any person engaged in commerce or in any industry or activity affecting commerce who employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year (Family and Medical Leave Act, 1993; www.dol.gov).

## 42 *Background and context*

Also relevant, especially with respect to differences between the EU and USA, is the role of trade unions in creating social policy. In the EU unions are considered to be social partners with employers through corporatist arrangements and are full participants in the dialogue with employer groups and governments around social (including employment) policy. The USA in contrast, takes more of a minimalist market-based employer approach in which markets are assumed to be competitive and in which employers have wide latitude to determine the level of support they will provide for the family-related needs of their employees. There is little or no employee representation for work and family at the organizational level because of low unionization and the absence of employee representation at high governmental levels. Another contributing factor may be culturally based; consistent with its long-standing belief in individualism, the US culture tends to value approaches to employee caregiving determined by individual employees and individual employers, with a limited role for government regulation (Block *et al.*, 2004).

The chapter is organized as follows. In the next three sections we provide a review of the legal obligations and employer practices with a focus on family leave and time off from work for family, in the USA, then Canada, and the EU and selected EU countries. In each section we discuss the relevant legislation and policy and highlight some best employment practices, particularly in regard to paid and unpaid family leave, time off for pregnancy and caregiving. In the final section we summarize and provide directions for future research.

### **WORK AND FAMILY IN THE USA**

In this section we first discuss legal obligations to provide support for work and family in the USA with a focus on the Family Medical Leave Act of 1993, as it represents the major USA legislation. We then provide data on the prevalence of employee access to workplace policies addressing work and family.

#### **Legal issues related to work and family in the USA**

Employers in the USA have no legal obligation to provide direct support specifically for maternity or childcare. But under the Family and Medical Leave Act US employers do have legal obligations to provide unpaid leave and time off from work up to 12 weeks in any 12-month period for the birth or adoption of a child, for the employee's serious health condition, or to care for a spouse, parent or minor or disabled child who has a serious health condition.<sup>1</sup> The FMLA covers employers of 50 or more full- and part-time employees (see *Walters v. Metropolitan Education Enterprise, Inc.*, 1997). The FMLA requires that employers continue employee health

insurance coverage while an employee is on leave under the same conditions that would have occurred if the employee had continued working (US Department of Labor, undated-c).

An employee returning from FMLA leave has a right to be restored to the same or an equivalent position from which the employee took leave. The Department of Labor (DOL) regulations define an equivalent position as 'one that is virtually identical to the employee's former position in terms of pay, benefits and working conditions, including privileges, perquisites and status. It must involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority' (Legal Information Institute, undated, Sec. 2614(a)(1)). The statute, however, provides that an employee is not entitled to any right or benefit to which the employee would not have been entitled had the employee not taken a leave (Legal Information Institute, undated, Sec. 2614(a)(3)).

### ***Implementation trends***<sup>2</sup>

The primary impetus for enactment of the FMLA was the need to enable employees to take time off from work following the birth or adoption of a child without worrying about job security or health insurance.<sup>3</sup> In practice, however, leave following birth or adoption of a child accounts for a small minority of FMLA leaves that are taken. The DOL's 2000 surveys, the most recent data available (Cantor *et al.*, 2000), summarize the reasons for taking leave during the previous 18 months. The most frequent reason for taking leave was one's own health, which comprised a majority (52.4%) of the respondents. The second most common reason, given by less than a fifth of the sample (18.5%), was to care for a newborn, newly adopted or newly placed foster child. The third most frequent reason, given by 13% of the sample, was to care for an ill parent, followed by an ill child (11.5%). Only 7.8% of all leaves were taken for maternity-related disability.

Because most leave is taken or sought for serious health conditions, most of the litigation has been over this issue. This is not surprising as the term 'serious health condition' is ambiguous. While the term clearly covers open heart surgery, and would clearly not cover a skinned knee, health conditions in between these two situations, such as a case of bronchitis or a child's ear infection, are often open to debate. A survey of appellate court FMLA decisions issued between December 1994 and October 1999 found that 25% concerned the seriousness of the employee's illness and 6% concerned the seriousness of the illness of the employee's family member (Wisensale, 2001, p. 172).

The FMLA allows an employer to require an employee to substitute applicable paid leave accrued under a collective bargaining agreement or under an employer's unilaterally adopted policies for FMLA leave.<sup>4</sup> Where the employer imposes such a requirement, the paid leave runs concurrently

#### 44 *Background and context*

with the employee's statutory entitlement of 12 weeks of FMLA leave. Where the employer does not impose such a requirement, an employee may exhaust accrued paid leave and then take an additional 12 weeks of unpaid FMLA leave. An employer may also designate other unpaid leave taken by an employee for reasons covered by the FMLA as FMLA leave (US Department of Labor, undated-c).

Another DOL regulation provides '[i]f an employee takes paid or unpaid leave and the employer does not designate the leave as FMLA leave, the leave taken does not count against an employee's FMLA entitlement' (US Department of Labor, undated-d). But in *Ragsdale v. Wolverine World Wide, Inc.* (2002), the US Supreme Court held that this regulation could not be used to grant an employee who took 30 weeks of unpaid leave (because of an illness) an additional 12 weeks of unpaid FMLA where her employer had not informed her that the 30 weeks of leave would be considered FMLA leave. The court ruled that to give the employee an additional 12 weeks of leave when she had already taken 30 weeks was inconsistent with the FMLA's grant of only 12 weeks of leave. The court also observed that *Ragsdale* had not relied on her employer's failure to notify her of the designation of her leave as FMLA leave. There was no evidence that she would have acted differently had she received the designation notice.

#### ***Legal ambiguities***

The FMLA has generated a great deal of litigation since it was enacted. This section will discuss some of the more important unresolved issues under the statute.

As noted, the FMLA requires employers to restore employees returning from leave to the same or positions equivalent to the positions they held prior to taking leave. The statute contains two exceptions to the job restoration requirement. The first enables an employer to deny job restoration to a salaried employee who is among the 10% highest paid within a 75-mile radius, if denial of job restoration 'is necessary to prevent substantial and grievous economic injury', the employer notifies the employee at the time it determines that such injury will occur and the employee refuses to return from leave (US Department of Labor, undated-e). There is evidence that this provision is rarely invoked. Gely and Chandler's (2004) survey of 136 childbirth leave cases decided between 1995 and 2003 found that employers raised the 'key employee' defense in only three cases.

More controversial, however, is the second exception, which provides '[n]othing in this section shall be construed to entitle any restored employee to . . . any right, benefit or position to which the employee would not have been entitled had the employee not taken leave' (Legal Information Institute, undated, Sec. 2614(a)(3)). DOL regulations appear to place the burden of proof on the employer to establish that the exception applies. The regulations provide '[a]n employer must be able to show that an

employee would not otherwise have been employed at the time reinstatement is requested in order to deny restoration to employment.’ (US Department of Labor, undated-a). The regulations give an example of an employee on leave when a lay-off is conducted. They state, ‘An employer would have the burden of proving that an employee would have been laid off during the FMLA leave period and, therefore, would not be entitled to restoration’ (US Department of Labor, undated-a).

In the USA, where the unionization rate is low, employers generally have a great deal of flexibility to reallocate, transfer and lay off employees as their interpretation of business needs requires. Thus, substantial changes may occur at the workplace when an employee is away from work for up to 12 weeks. These changes have often found their way into court, and this exception to the ‘job restoration’ principle has generated some legal controversy regarding how it should be interpreted. Given an adverse job action, such as a lay-off, must the employee taking a leave prove that he or she suffered an adverse impact on the job because of the leave, or must the employer prove that the adverse impact would have occurred regardless of the leave? In *Rice v. Sunrise Express, Inc.* (2000), decided by the Seventh Circuit Court of Appeals,<sup>5</sup> Rice was one of the company’s two billing clerks when she took an FMLA-protected leave. The employer laid her off effective the date she was scheduled to return from leave, retaining the other billing clerk, who had been with the employer less time than Rice. There was conflicting evidence concerning whether the employer would have laid off Rice rather than the other billing clerk, had Rice not taken leave. The court observed that the FMLA entitles an employee returning from leave to restoration to her former position or an equivalent position, but that a returning employee could not obtain a job or position that he/she would not have had if no leave had been taken.

In order to balance these two principles, the court ruled that this exception to the ‘restoration’ rule incorporated a discrimination requirement into the FMLA’s job guarantee provision, i.e., the complaining employee must show that the change in the job status suffered by the employee was an act of discrimination taken against the employee due to the employee’s leave.

Although other courts prior to *Rice* had adopted this discrimination analysis,<sup>6</sup> legal scholars have criticized this approach that requires *employees to prove* that their employers denied them job restoration because of their leave.<sup>7</sup> The Courts of Appeals for the Tenth and Eleventh Circuits have also disagreed with the discrimination analysis approach and have followed the DOL regulation and held that the employer has the burden of proving that the employee would not have occupied his or her pre-leave position even if he or she had not taken leave.<sup>8</sup> The issue is not likely to be resolved definitively unless the Supreme Court agrees to review it.

Questions about the rationale for an employer’s action *vis-à-vis* an employee may also arise after the employee returns from leave. An employer may restore an employee to his or her former position when the employee

returns from leave but subsequently take adverse action against the employee. The FMLA prohibits employers from interfering with, restraining or denying employees their FMLA rights (Legal Information Institute, undated). Thus, the relevant question is whether an employer's adverse action against an employee because who has taken leave interfered with the employee's leave rights. In cases such as this, the issue is whether the adverse action is due to the leaves or attendance and productivity problems associated with the absences. As with denials of job restoration, the courts have disagreed over how to analyze such claims.

In *Bachelder v. America West Airlines, Inc.* (2001) employee Bachelder had been a passenger service supervisor when the defendant discharged her in April 1996. She had taken FMLA leave in 1994 and 1995. On 14 January 1996, she had a corrective action discussion with her manager, at which she was advised to improve her attendance. FMLA-protected and non-protected absences were cited. In February 1996 Bachelder was absent for three weeks for medical reasons. On 9 April she called in sick for one day to care for her child. She was terminated shortly after the last absence for being absent 16 times since the January counseling, failing to carry out certain job responsibilities and for below-par on-time performance.

Reversing the lower court, the Ninth Court of Appeals held that the discharge of Bachelder interfered with her FMLA rights. The court analogized the FMLA provision to the National Labor Relations Act, the law covering union-management relations, which prohibits employer interference with, restraint or coercion of employee rights to engage in concerted activity and which does not require a showing of discrimination. The court observed, 'As a general matter, then, the established understanding at the time the FMLA was enacted was that employer actions that deter employees' participation in protected activities constitute "interference" or "restraint" with the employees' exercise of their rights' (*Bachelder v. America West Airlines*, p. 1124). The court held that an FMLA plaintiff 'need only prove by a preponderance of the evidence that her taking of FMLA-protected leave was a negative factor in the decision to terminate her' (*Bachelder v. America West Airlines*, p. 1125).

Other courts have disagreed with this 'in-part test' and have held that the employee has the burden of proving that his or her FMLA-protected activity motivated the adverse employment action. For example, in *Kohls v. Beverly Enterprises, Wisconsin, Inc.* (2001) the court ruled for the employer, holding that the employee must prove that the employer would not have discharged her had she not taken the FMLA leave. In *Burke v. Health Plus of Michigan, Inc.* (2003) the court granted summary judgment against the plaintiff's FMLA claim. The court characterized the plaintiff's evidence as establishing, at most, that her employer was hostile to her because she was ill and would request FMLA leave after she exhausted her paid time-off benefits. In the court's view, the allegations of such a pre-emptive action were insufficient to establish a *prima facie* case of discrimination.



The requirement of a showing of intentional discrimination in FMLA interference claims has been severely criticized (Malin, 2003). As with the dispute over burdens of proof in denials of job restoration cases, the division in the courts over FMLA interference claims must probably await definitive action from the Supreme Court.

In the US federal system national law generally pre-empts state law in that a state may not validly enact a law that provides lesser coverage than national law, but states may enhance federally provided legal benefits. California is the only state in the country to have enacted a comprehensive paid family leave program. Under California's new Family Leave Law, effective 1 July 2004, workers will receive up to six weeks of paid leave per year to care for a new child (birth, adoption or foster care) or seriously ill family member (parent, child, spouse or domestic partner). The benefit will replace up to 55% of wages, up to a maximum of \$728 per week in 2004. The maximum benefit will increase automatically each year in accordance with increases in the state's average weekly wage (California, undated).

### **Work and family at the workplace in the USA**

As employers in the USA have no legal obligation to provide for employees' family needs beyond the requirement for unpaid leave in the FMLA, family-related benefits are provided to employees either by employer discretion or through collective bargaining. Although, as noted, work and family issues arise in a variety of work-related contexts, they are most clearly expressed in matters related to childcare. Table 2.2 presents data on the availability to employees of employer-provided childcare in the USA. Table 2.2 indicates that few employees have such services available to them. In 2003 only 8% of private employees had access to childcare services through their employer. This percentage was double the percentage in 2000, when only 4% of private employees worked for employers who provided childcare. In 1999, the percentage was 6%.

Employees in service industries are roughly twice as likely to work for employers who provide childcare as employees in goods-producing industries. In 2003 only 5% of employees in goods-producing industries had access to employer-provided childcare, while 9% of employees in service-producing industries had access to such services. This difference may be due to the higher percentage of female employees in the service-producing sector relative to the goods-producing sector. Between 1999 and 2003 the mean percentage of female employees in the service-producing sector was approximately 53%, while the mean percentage of female employees in the goods-producing sector was approximately 24% (US Bureau of Labor Statistics, undated-b).

It is interesting that union-represented workers in the USA are only slightly more likely to have access to employer-sponsored or financed childcare than non-represented workers. In 2003 10% of union-represented

Table 2.2 Percentage of employees in the USA with access to employer-provided childcare services, by industry, union representation and employer size, 1999, 2000, 2003

Year	<i>Employer-provided funds or on-site or off-site child care</i>			<i>Resource and referral service</i>			<i>All</i>		
	<i>Employer-provided funds or on-site or off-site child care</i>	<i>Resource and referral service</i>	<i>All</i>	<i>Employer-provided funds or on-site or off-site child care</i>	<i>Resource and referral service</i>	<i>All</i>	<i>Employer-provided funds or on-site or off-site child care</i>	<i>Resource and referral service</i>	<i>All</i>
	By industrial sector			By union representation status			by establishment employment		
	<i>All private industry</i>			<i>Represented by a union</i>			<i>Establishments of fewer than 100</i>		
1999	6			5			3		
2000	4			8			1		
2003	8	10	18	10	15	25	4	3	7
	<i>Goods-producing industries</i>			<i>Not represented by a union</i>			<i>Establishments of 100 or more</i>		
1999	2			6			10		
2000	2			4			9		
2003	5	11	16	8	10	18	13	19	32
	<i>Service-producing industries</i>								
1999	7								
2000	5								
2003	9	10	19						

Source: US Bureau of Labor Statistics (undated-a).

workers had access to employer-sponsored childcare, while 8% of non-represented workers had such access. In 1999 the percentage of non-represented employees who had access to employer-sponsored childcare was similar to the percentage of union-represented employees who had such access; the percentages were 6% and 5%, respectively. In 2000 8% of union-represented workers had access to employer-sponsored childcare, as compared to 4% of non-represented workers.

These data suggest that while union-represented employees are slightly more likely to have access to employer-sponsored child care than non-represented employees, the differences are not that great. If it is true that employer-sponsored childcare is provided in union-represented firms because employees and employers negotiate for it, the fairly low incidence of employer-sponsored childcare in non-represented firms suggests that employers resist providing such a benefit in negotiations and/or that most unions do not negotiate for such a benefit for the employees they represent. In a union-represented workplace, obtaining employer-sponsored childcare may mean that the union must sacrifice something else. Thus, it may be that most unions do not place a sufficiently high value on the benefit such that they are willing to give up something for it in collective bargaining negotiations. It may be that given a choice between employer-sponsored childcare or an increase in some other component of compensation, such as wages or health insurance, employees prefer the latter. One might suggest that this could be because childcare is a benefit that employees may need only for a short period of their working life; after the age of five, children attend school. Moreover, not all employees who require childcare would obtain it from the employer even if it was offered by the employer; there are often substitutes for employer-sponsored childcare. Therefore, at any one time, only a small percentage of employees in a bargaining unit are likely to have a need for employer-sponsored childcare. On the other hand, the need for increases in other types of compensation is likely to be widespread.<sup>9</sup>

It should also be observed, however, that in 2003 union-represented workers were 50% more likely than non-represented workers to have access to a childcare referral service.<sup>10</sup> This suggests that although unions were either unable to convince employers to provide childcare services or were unwilling to give up other benefits for employer-provided childcare, they are able to convince their employers to provide the relatively inexpensive childcare referral service. The data also suggest that unions were willing to raise childcare-related issues during collective bargaining negotiations, and were able to place childcare in the contract in many instances. As it is not unusual in collective bargaining for parties to introduce a benefit at a low level, and to build on that benefit in future negotiations, the small gap between union-represented and non-represented employees in access to employer-provided childcare may increase into the future.

The data also suggest that employees in larger establishments are substantially more likely than employees in smaller establishment to have

access to childcare support through their employer. These data suggest that resources play a large role in the decisions of US employers to provide support for childcare. Larger employers generally have greater financial resources than smaller employers, and are likely to be able to afford childcare to a greater extent than small employers.

With respect to the matter of FMLA leave, as noted above, other accrued leave can be linked to FMLA leave to provide paid leave for employees. The two major types of paid leave in the USA are sick leave and vacation. Although employees in the USA are not legally entitled to sick leave or vacation (Block, Roberts and Clarke, 2003), it is not unusual for employees in the USA to have accrued such leave. Table 2.3 provides a sense of the percentage of employees in the USA who have access to such benefits. As can be seen, about half of all employees in the USA have access to sick leave and about 80% have access to vacations. These give employees some options with respect to maintaining income during an FMLA leave.

## **WORK AND FAMILY IN CANADA**

### **National leave policy in Canada**

Unlike the case in the USA, where there is no mandated pay for employees on FMLA leave, Canadian employees on approved family-related leave receive benefits through the federal Employment Insurance System, the system that is supported through taxes on employers and employees and is used primarily for compensating unemployed workers (Block, Roberts and Clarke; 2003, Human Resources and Skill Development Canada, undated).

Policies vary by province<sup>11</sup> and many provide more than required by the Employment Standards Legislation in Canada. The minimum national benefit rate is 55% of the employee's salary, with a maximum of \$413 per week. An employee must accumulate 600 insured working hours in the previous 52 weeks to be eligible for maternity and parental benefits and must have suffered a loss of income of at least 40%. Biological and surrogate mothers are eligible to receive up to 15 weeks of maternity benefits, while parental benefits have a maximum of 35 weeks. The 35 weeks of parental benefits may be taken by one parent or shared between the two parents. Like maternity benefits, sickness benefits also may be received for up to 15 weeks. A combination of all three types of benefits can be taken for a maximum of 50 weeks. Aside from financial benefits, employees who take leave are entitled to their jobs upon return from leave. (Human Resources and Skill Development Canada, undated).

Maternity benefits may be received by either a biological or surrogate mother for up to 15 weeks and for up to 52 weeks if the child is hospitalized. Parental benefits are payable for up to 35 weeks to either the biological or adoptive parents while caring for a newborn or an adopted child (Human Resources and Skill Development Canada, undated).

Table 2.3 Percentage of employees in the USA with vacation and sick leave time, by industry, union representation and establishment size, selected years

Year	<i>Sick leave (all employees)</i>	<i>Vacations (all employees)</i>	<i>Sick leave (full-time/ part-time employees)</i>	<i>Vacations (full-time/ part-time employees)</i>	<i>Sick leave</i>	<i>Vacation</i>	<i>Sick leave</i>	<i>Vacation</i>
	By industrial sector				By union representation		By establishment size	
	<i>All private industry</i>				<i>Represented by a union</i>		<i>Establishments, LT 100</i>	
1990							47	
1992							53	
1994							50	88
1996							50	86
1999	53	79	63/19	90/43	54	86	47	73
2000		80		91/39		93		73
2003		79		91/40		90		73
	<i>Goods-producing industries</i>				<i>Not represented by a union</i>		<i>Establishments GT 100</i>	
1991							67	
1993							65	97
1995							58	96
1997							56	95
1999	42	84			53	78	60	86
2000		89				79		89
2003		87				78		87
	<i>Service-Producing Industries</i>							
1999	57							

Source: US Bureau of Labor Statistics (undated-a).

A new type of federal benefit was added as of 4 January 2004. ‘Compassionate Care’ benefit entitles eligible employees in provinces that permit such leave to receive benefits for up to six weeks if the employee must be absent from work to care for a family member (a child or step-child, wife, husband or common-law partner, father or mother, step-parent, or the common-law partner of the employee’s mother or father) with a significant risk of death within 26 weeks. Like maternity, parental and sickness benefits, the employee has to have accumulated at least 600 insured working hours in the previous 52 weeks. The care in question can be emotional support, direct assistance or the arrangement of care for the third party (Human Resources and Skill Development Canada, 2004).

### **An overview of work–family labor standards**

In Canada the provinces have the sole authority to adopt labor standards for all employees within the jurisdiction that do not work in industries that operate directly in interprovincial commerce. This latter group includes such industries as airlines, communications and banking. For the purposes of labor standards, these industries are under what is called the federal jurisdiction. Labor standards for the federal jurisdiction are established by the federal government through the Canada Labour Code. The three territories, Northwest Territories, Nunavut and Yukon, may adopt their own labor standards. In areas in which the territories choose not to legislate, the Canada Labour Code governs. Thus, within Canada, there are 14 governmental jurisdictions that adopt labor standards: the 10 provinces, the three territories and the federal government (Block, Roberts, and Clarke, 2003).

Table 2.4 summarizes the relevant work–family legislation in the 14 Canadian jurisdictions. Despite the legal separation among the provinces, territories, and the federal jurisdiction, there is substantial uniformity among them. Of the 14 jurisdictions, 13 permit 17 or 18 weeks of maternity/pregnancy leave. Alberta permits 15 weeks. Most of the jurisdictions permit 35–37 weeks of parental leave, generally taken after the exhaustion of maternity/pregnancy leave benefits.

In general, Canada has developed an integrated system of work–family support, with responsibilities shared between the individual jurisdictions and the federal government. The jurisdictions provide the statutory authority to provide employees with the leave. The federal government, through the tax-supported Employment Insurance system, provides the financial support.

### **Work–family support at the Canadian workplace**

Table 2.5 presents the percentage of Canadian employees overall, and by sector, union representation and establishment size, with access to employer-financed childcare. As indicated in Table 2.5, only 6% of Canadian

Table 2.4 Percentage of employees in Canada with childcare, 1998–99, by industry, union representation and employer size

	Men	Women
<i>Overall</i>	6	6.1
<i>By industry</i>		
Forestry, mining	3.3	7.2
Labor-intensive tertiary manufacturing	2.9	2.5
Primary product manufacturing	3.6	0.0
Secondary product manufacturing	2.9	2.7
Capital-intensive tertiary manufacturing	12.3	3.5
Construction	1.8	0.0
Transportation, storage	5.2	4.0
Retail trade and commercial services	2.3	1.2
Finance and insurance	3.9	5.8
Real estate, etc.	2.2	2.3
Business services	3.8	2.5
Education, health care	17.3	13.9
<i>By union representation</i>		
Represented	11.5	10.7
Not represented	3.7	4.5
<i>By establishment size</i>		
Fewer than 10 employees	1.0	1.6
10–49 employees	2.1	2.7
50–99 employees	2.5	3.2
100–499 employees	4.3	4.0
500–999 employees	11.7	9.1
1000 or more employees	24.0	23.0

Source: Comfort *et al.* (2003).

employees had access to employer-financed childcare in 1998–99, approximately the same level as the USA. On the other hand, there are greater differences within groups in Canada than in the USA. The largest differences can be seen by examining the industrial distribution of childcare services. Education and health care have by far the highest incidence of employer-provided childcare access. This is likely to be because both of these industries are part of the public sector in Canada, and are more likely to respond to political pressure than private employers. Unionization also appears to matter more in Canada than in the USA. Represented employees are two to three times as likely as non-represented employees to have access to employer-provided childcare. Establishment size and unionization, which are related, also appear to be associated with employer-provided childcare. These data suggest that Canadian unions have been more aggressive in pursuing and obtaining employer-provided childcare than their counterparts in the USA. One may speculate that part of the reason may be the different health insurance systems in the two countries. In the USA, unions must

Table 2.5 Canadian maternity/pregnancy leave requirements by province, 2004

	<i>Weeks maternity/ pregnancy leave</i>	<i>Weeks parental leave</i>	<i>Period for completion of parental leave</i>	<i>Compassionate care leave</i>	<i>Family responsibility/ illness/emergency leave</i>
Federal jurisdiction	17	37	Immediately after maternity leave	Yes	
Alberta	15	37	Immediately after maternity leave		
British Columbia	17	35 or 37	Immediately after maternity leave		
Manitoba	17	37	None	Yes	8 weeks
New Brunswick	17	37	Immediately after maternity leave	Yes	3 days
Newfoundland	17	35	Immediately after maternity leave	Yes	3 days
Northwest Territories	17	37	Immediately after maternity leave		
Nova Scotia	17	52	Immediately after maternity leave	Yes	Yes
Nunavut	17	29	Immediately after maternity leave	Yes	Yes
Ontario	17	35/37	Immediately after maternity leave		10 days
Prince Edward Island	17	35	Immediately after maternity leave	Yes	8 weeks
Quebec	18	52	Must end 70 weeks after birth	Yes	12 weeks Yes
Saskatchewan	18	34/37	Immediately after maternity leave.		
Yukon	17	52	Immediately after maternity leave	Yes	8 weeks

Source: Provincial and Canadian Government websites.



bargain for health insurance coverage; therefore, increases in health insurance must be diverted from other potential benefits. On the other hand, in Canada, where health insurance is provided by the government, unions need not negotiate for it; therefore, they can bargain for other benefits, such as employer-provided childcare.

## **WORK AND FAMILY IN EUROPE AND THE EUROPEAN UNION**

Although the EU is not a sovereign country but a political union of sovereign countries, the EU has become increasingly politically integrated over the last 40 years. The directives issued by the European Council apply to all member states, and the EU acts in international bodies like a single entity (Block, Berg and Roberts, 2003). Thus, there is a basis for comparing the EU with the USA and Canada.<sup>12</sup>

### **Formal legislation**

The directives that may be considered as addressing work and family can be conceptualized as tracking the creation of the family in the context of employment: they relate to pregnancy, return to work immediately after childbirth and childcare. Interestingly, these directives were not initially justified on the basis of work and family, as the EU has moved cautiously in issuing directives on social policy (Springer, 1994). Rather, these directives were premised on three widely held norms within the EU: (1) worker health and safety, including psychological health; (2) employment policy that would support the labor force participation of women; and (3) equal employment opportunities for women (Springer, 1994).

Thus, the earliest directive directly addressing employers and employees, Directive 92/85, issued in 1992, derived its authority from the Directive 89/391, issued in 1989 (European Council, 1992a). Directive 89/391 places a broad-based general duty on employers to safeguard the safety and health of their employees (European Council, 1989).

Specifically referring to Directive 89/391, Directive 92/85 requires employers to shield pregnant and breastfeeding workers from exposure to substances considered harmful to the fetus or infant. The directive requires the European Commission to make an assessment of those substances that are considered hazardous or harmful to pregnant and breastfeeding workers. Employers are obligated to take this assessment into account, to inform affected workers of the results of their assessment and to change the conditions of workers who are exposed to these substances. If appropriate changes in conditions cannot be made, employers are obligated to find the worker a different job, or failing that place the worker on leave. The

directive also requires 14 weeks of maternity leave, prenatal leave as needed for care of the fetus, a prohibition on dismissal for pregnancy or breastfeeding. Payment for leave is to be in accordance with national laws and policies (European Council, 1992a).

Parental leave is addressed in Directive 96/34. This directive, extended to the UK in 1997,<sup>13</sup> grants men and women parental leave for up to three months during the first eight years of the child's life (European Council, 1996, 1997). Directive 2002/73 reaffirmed the principle, established in directives issued in 1976 and 1992, that women returning from maternity leave are to be returned to the position from which they took the leave or are to be provided a job that is equivalent to the job from which they took the leave (European Parliament and European Council, 2002). Thus women who take maternity leave may suffer no job disadvantage.

Indirectly related to work and family, but relevant, is the EU working time directive, Directive 93/104. This directive, although justified on the basis of worker health and safety, affects work and family issues by placing limits on the number of hours a person may work in specified time periods, thus permitting the employee some time to address family-related matters. The directive entitles the worker to at least 11 hours off within each 24-hour period and to 24 hours off in every seven-day period. The directive also limits the worker to an average of no more than 48 hours of work in each seven-day period over a reference period of not more than four months. Finally, the directive guarantees each worker in the EU a minimum of four weeks of annual leave per year (European Council, 1993).

### **Informal**

In addition to the formality of binding legislation, the EU has also addressed work and family through informal means. A non-binding recommendation (European Union, undated) issued by the European Council encourages the member states to develop '[m]easures . . . to enable men and women to reconcile their occupational and family obligations' (European Council, 1992b). Among other recommendations, member states were encouraged to consider addressing childcare for parents who work or were in school, affordability of childcare and training for childcare workers.

Following the issuance of the 1992 recommendation, the Council shifted its approach and conceptualized childcare in the EU as a component of a full-employment strategy in the Community because it removes a barrier to female labor force participation. The Luxembourg Job Summit of 1997 announced a European Employment Strategy (EES) (European Commission, 2002a). As part of the EES, the European Council, meeting in Barcelona in 2002, stated in its conclusions that EU member states should strive toward the goal of child care for 33% of all children under three years old, and for 90% of all children between three years old and mandatory

Table 2.6 Summary of status of selected EU members regarding 2002 European Council targets on childcare, 2002

	<i>Exceeds or within 20% of Council targets, 1- to 3-year-olds</i>	<i>Exceeds or within 20% of Council targets, 3 years to school age</i>
Austria (2000–01)		
Belgium (2001)		
Flemish	×	N/A
French		N/A
Denmark (2001)	×	×
Germany (1998)		×
Italy (1998)		
Netherlands (2001)		
Spain (2000–01)		×

Source: European Commission (2002a).

school age (European Council, 2002). In essence, the Council focused on numerical goals for childcare within each member country rather than recommending that the EU legislate for all member countries.

In its 2002 report to the Council, the European Commission examined childcare polices in various EU member states to determine how far the member states would be required to go to meet the Barcelona targets. Of the 15 states, seven provided data to the European Commission on the percentage of children in childcare by the relevant ages. These data are summarized in Table 2.6.

Based on these data, the Commission came to two conclusions. First, the Commission determined that most European states did not provide sufficient, affordable childcare services to meet the Council’s targets. Second, the Commission determined that the lack of comparable data across member states would make it difficult to assess whether countries were meeting the targets (European Commission, 2002a).

Referring to the Luxembourg Summit on Employment Strategy in 1997, as well as previous and subsequent meetings, Eurostat, the data analysis agency for the EU and the European Commission, conducted a feasibility study in 2002 regarding the collection of childcare data in the EU. The study concluded that it was necessary to collect uniform data from the providers and the users (European Commission, 2002b).

### **Comparisons of national leave policies and best practices for selected EU countries**

In addition to examining work and family at the EU level, it also seems useful to focus on the country level. To that end, this section will review national leave policies and examples of progressive firm-level practices for selected EU countries based on the availability of reliable research data.

Although this is not intended to be a complete survey of work–family practices in the EU countries, we hope this section will provide the reader a flavor of some national differences within the EU as well as what is possible under these national regimes.

### ***United Kingdom***

With respect to national policy, women on maternity leave are legally entitled to receive 26 weeks of ordinary maternity leave at all contractual benefits except wages and salary (UK Department of Trade and Industry, 2004). Women on ordinary maternity leave receive statutory maternity pay, which, since April 1993, is 90% of regular pay for the first six weeks and £100 or 90% of average weekly earnings, whichever is less, for the next 20 weeks (Department of Trade and Industry, 2004). Women who have been employed for 26 weeks or more are entitled to 26 weeks of additional maternity leave after the conclusion of ordinary maternity leave, with entitlement to benefits determined by the employment contract (UK Department of Trade and Industry, 2004). Men on paternity leave receive two weeks' leave at the same rate as statutory maternity pay for the last 20 weeks (Bowker *et al.*, 2003; UK Department of Trade and Industry, 2003).

As an example of practices in the UK, Wakefield Metropolitan District Council in West Yorkshire, which is a local council to over 300,000 people in the community, developed a work–life balance 'scheme' to create, attract and retain a more qualified and motivated workforce (Bigwood, 1996). Since the 1980s the council has implemented programs such as flexitime, job sharing and career breaks. Recently, labor and management worked jointly to form a group that developed leave options that the employees desired and that were feasible for the council. The result was four different options from which the employees could choose depending upon their needs. These included two types of leaves: *paid short-term leave*, allowing individuals to take up to a maximum of 15 days a year for dependant care; and open-ended *unpaid longer-term leave* as a supplement to the short-term leave. *Term-time working* allows employees to work only during school terms and be off when school is not in session, but they are still paid in installments throughout the year. The fourth option, *temporary negotiated hours*, allows employees and managers to establish working hours that are feasible for both the employee and the organization. Two other new work–life policies include formation of day-care clubs for children during school holidays and a computerized childcare information service to assist parents, childcare providers and employers (Bigwood, 1996).

The retailer Marks & Spencer increased its maternity leave options to include short enhanced leave that provides 18 weeks full pay and another 8 weeks of statutory maternity/adoption pay. M&S also added enhanced long leave whereby the employee receives 10 weeks at full pay, 16 weeks of

statutory pay and 26 weeks of unpaid leave. Asda Group Unlimited, the UK's second largest food retailer, developed its 'Babies at Asda' program. Women receive 90% pay for the first six weeks and then statutory maternity pay for up to one full year and salaries return to 100% when they return to work. Paternity leave can be taken for two weeks at full pay. Both men and women can change their hours upon returning to work to accommodate their needs (Bowker *et al.*, 2003).

### **Germany**

Regarding national policy, the Maternity Protection Act (*Mutterschutzgesetz*) and the federal Child Benefit Act (*Bundeserziehungsgeldgesetz*) are the statutory protections in Germany. These laws grant employees maternity leave and pay, the right to return to their job after leave and the right to be absent from work to raise the child. An employee cannot be dismissed during pregnancy or up to the end of the fourth month after the birth. The federal Child Benefit Act also protects employees from dismissal during their absence from work. In some exceptional cases, however, the employer is entitled to terminate the employment contract with the approval of a competent authority (Moll and Wojtek, 2003).

Pregnant women are not required to work six weeks before and eight weeks after childbirth. During this time they are entitled to receive maternity pay at 100% of average earnings, with the cost to be shared by the statutory health insurance policy and the employer if the person has statutory health insurance, or shared between the state and the employer if the person does not have statutory health insurance or private health insurance (Europa: Gateway to the European Union, undated; European Foundation for Employment and Living Conditions, undated-b). After the maternity pay period ends, a parent is entitled to childcare leave to the end of the month in which the child reaches 18 months of age. There is a childcare payment of DM600 per month (as of July 2004), which decreases after the seventh month at higher incomes and which is also coordinated with the maternity allowance (European Foundation for Employment and Living Conditions, undated-a). When returning to work after their absence, they may go back to their previous hours of employment and position as before the birth (Moll and Wojtek, 2003).

With respect to practice in Germany, RWE Net AG, which is the largest electricity distribution company in Europe, has a number of progressive policies such as a company kindergarten and on-site day care for children of employees, and three-year parental leave with the option of working part time when they return. Job sharing is also very common. RWE also has an employee involvement program where employees work in small teams to create solutions or suggestions regarding workplace issues of concern to them (Jones, 2003).

### ***Sweden***

With respect to policy, Sweden is by far the most progressive industrialized country in the area of family leave benefits. Employees receive 90% of pay for the first 12 months of leave and then a fixed benefit for an additional three months. This leave may be divided between parents however they choose, although there are incentives for fathers to take a substantial portion of it. Employees are entitled to their jobs upon return from the leave. There is extended parental leave until the child is 18 months of age and then the employee can work up to 6 hours a day and still receive benefits until the child is eight years old (Parry, 2001). Parental leave may be taken in quarter, half or full days in the years before the child completes his/her first year of school (Haas, 2003). With respect to practice, it must be noted that Sweden's federally mandated benefits are among the best in the world and are so comprehensive that organizations most likely do not find the need to increase benefit levels above those prescribed by national policy. Thus, firms in Sweden must provide substantial work–family benefits for their employees.

### ***Norway***

As Norway is not a member of the European Union, it is not obligated to comply with EU directives. Thus, it may act with complete sovereignty in work and family policy. As a Scandinavian country, Norway's work–family policy is similar to the policy in Sweden in providing generous leave benefits. In Norway either parent is eligible for leave. The parent must have been employed for at least six of the previous 10 months. Either parent may take up to 52 weeks of leave at 80% or 42 weeks at 100% pay. Single parents, however, are entitled to three years' leave. These cash benefits are for 'insured' parents. Maternity grants are available for women who cannot receive maternity benefits and also for adoptive parents (Jordan, 1999).

With respect to practice among Norwegian firms, the HAG Company, a furniture manufacturer, offers a generous maternity/paternity leave system. This is for either birth or adoption of a child and the employee is entitled to 42 weeks of leave at full pay or 52 weeks at 80% of his/her salary. New mothers also can take unpaid leave for up to another full year after the paid leave and are entitled to the same job upon return (Jones, 2003).<sup>14</sup>

## **COMPARING INSTITUTIONAL SUPPORT FOR WORK–FAMILY IN THE USA, CANADA AND THE EUROPEAN UNION**

Structurally, the USA, Canada, and the EU have used a blend of legal and informal mechanisms to reconcile work–family conflicts. The main legal mechanism has been time off for family reasons with no long-term penalty

to job status, with penalty defined as a job status different from what the employee would have experienced had he or she not taken the leave.

Differences among the USA, Canada, and the EU revolve around pay and related legal structures. Canadian workers receive pay provided through the Employment Insurance system while on family-related leave. Workers in the USA receive no paid leave for family purposes, although they may use any other paid leave, such as sick pay or vacation pay, that they have accrued. EU directives do not provide workers in EU countries maternity leave pay, although legislation in the individual countries may provide for pay from government sources.

Overall, it can be concluded that in these three western democracies there is a consensus that, at a minimum, employees are entitled to time off from work for maternity and child care purposes with no loss of job status. Beyond this, however, there are differences with respect to pay and the amount of time to be taken.

### **Future research directions**

The review in this chapter shows that there are policy differences across the three jurisdictions. Thus, a key question revolves around the economic and social costs of these varying policies. Do employers in countries that provide paid maternity, either directly or through relatively high payroll taxes, incur higher costs than employers in countries that do not provide such leave? If employers in paid-leave countries do incur relatively high costs, are they compensated in terms of greater productivity, lower turnover and higher morale? If their maternity leave costs are higher, do employers compensate by reducing costs in other employment-related areas, such as the number of employees or reduced supervisory costs?

Even if costs are higher associated with leave, does it make a difference? What is the overall increment to employment costs associated with work–family policies? If it is small, a country may decide that the improvement in the quality of life of its citizens is worth the cost. Even if it is not small, it may be asked whether these differences matter in terms of the economic health of the jurisdiction, as measured by such factors as employment growth and change in GDP. In other words, even if there are micro firm effects, are there macro effects?

Overall, it is hoped that this comparative overview will encourage researchers to think about different ways that capitalist systems can address the issue of work–family balance. This is likely to encourage research in ways that we cannot predict.

### **NOTES**

- 1 For the text of the Family and Medical Leave Act, see Legal Information Institute (undated).

## 62 *Background and context*

- 2 This section discusses only the most common problems. For example, the FMLA requires, whenever the need for leave is foreseeable based on the expected date of birth or adoption placement, that the employee provide the employer with at least 30 days' notice of the leave. Where the need to begin leave on a particular date is not foreseeable, the employee must provide as much notice as practicable. But a survey of 138 FMLA cases involving childbirth leave decided between 1995 and 2003 found that employers raised a defense of an employee's alleged failure to give sufficient notice only eight times (Gely and Chandler, 2004).
- 3 For example, although the House of Representatives and Senate committee reports accompanying the FMLA addressed the need for all types of leave covered by the Act, they devoted the majority of their discussions to the need for leave following birth or adoption of a child or to care for a seriously ill child (US Congress 1993a, 1993b, 1993c).
- 4 See Table 2.3 and the associated text for data on the prevalence of some paid leave in the United States.
- 5 The national legal system in the USA consists of 94 district courts, generally organized around state and regional boundaries, 12 circuit courts, or courts of appeals, organized geographically, each of which hears appeals from the district courts within its circuit, and one Supreme Court, which is the highest judicial body in the country. For a description of the national judicial system in the USA, see <http://www.fjc.gov/federal/courts.nsf>. For a listing of the districts and a map of the circuits, see <http://www.law.emory.edu/FEDCTS/>. Most states have analogous legal systems to decide questions of state law.
- 6 See, for example, *Dollar v. Shoney's, Inc.* (1997); *Watkins v. J & S Oil Co.* (1998); *Marks v. School Dist. of Kansas City, Mo.* (1996); *Maxwell v. American Red Cross Blood Service* (1996), *Tuberville v. Personal Fin. Corp.* (1996); *Oswalt v. Sara Lee Corp.* (1996, affirmed, 1996).
- 7 See *Hickox* (2002) and *Malin* (2003).
- 8 *Smith v. Diffie Ford-Lincoln Mercury, Inc.* (2002); *Strickland v. Water Works & Sewer Board of City of Birmingham* (2001).
- 9 For example, employees may prefer an additional wage increase to employer-sponsored childcare. They can use the wage increase to purchase their own childcare.
- 10 A childcare referral service provides employees with the names of childcare providers. The providers may be 'approved' by the employer, or the providers may simply be those who meet state standards and are located near the employer. The purpose of such a service is to facilitate the acquisition of childcare by the employee.
- 11 See pp. 000–000, below.
- 12 For a discussion of the theoretical differences among the governing structures of the EU, the USA and Canada, see *Marleau* (2003).
- 13 Under the 1992 Maastricht Treaty, because of the unwillingness of the UK to move forward on social issues as quickly as the other members of the EU, the EU modified its traditional unanimity rule for adopting directives on social issues. Under Maastricht, the UK could opt out of any directive on social issues with which it disagreed, thus permitting the directive to apply to the other EU members. When, as a result of a change in the UK government from conservative to labour, the UK later decided to 'opt in' on a directive from which it had previously 'opted out', it was necessary to issue a new directive (see *Block et al.*, 2001).
- 14 Although this paper has focused on work and family issues leave on either side of the North Atlantic, the reader may also be interested in work and family legislation in Australia and New Zealand, English-speaking countries with cultural ties to Europe. In Australia, the Workplace Relations Act of 1996



provides parents who have been employed for 12 months with the same employer up to 52 weeks of unpaid parental leave associated with a newborn, provided that the parents may not take the leave simultaneously and the leave may be reduced by other leave taken or parental leave available to the employee through an arbitration award or state law. The employee on leave is generally entitled to return to the position he or she held prior to the leave (see Australia, Government of, undated). In New Zealand, as in Australia, parents may share up to 52 weeks of leave associated with the birth of a child. The parent must have been employed with the same employer for at least 12 months, worked at least 10 hours per week and not be self-employed. The parent who does not take leave is entitled to two weeks partner/maternity leave. The female employee is entitled to up to 12 weeks of a government payment, which may be transferred to a husband/spouse or partner of either gender. The payment replaces the employees' average weekly earnings up to a maximum. Effective 1 July 2004, the maximum was NZ \$346.63 per week, with the payment made to the spouse/partner on leave. Receipt of the statutory leave payment is not reduced by other payments received by the employee to which he or she is entitled (for example, from a collective bargaining agreement) (see New Zealand Department of Labour, undated, and Gravitas Research and Strategy, Limited, 2003).

## REFERENCES

- Australia, Government of (undated). *Commonwealth Consolidated Acts, Workplace Relations Act of 1996*. Retrieved 29 July 2004 from [http://www.austlii.edu.au/au/legis/cth/consol\\_act/wra1996220/sch14.html](http://www.austlii.edu.au/au/legis/cth/consol_act/wra1996220/sch14.html)
- Barnett, R. (1999). A new work-life model for the 21st century. *Annals of the American Academy for Political and Social Sciences*, 562, 143–158.
- Bigwood, S. (1996). The advantage of a caring approach. *People Management*, 2(10), 40–42.
- Block, Richard N., Berg, P., and Belman, D. (2004). The economic dimension of the employment relationship. In J. A.-M. Coyle-Shapiro, L. M. Shore, M. S. Taylor and L. E. Tetrick (eds), *The employment relationship: Examining psychological and contextual perspectives* (pp. 94–118). Oxford, UK: Oxford University Press.
- Block, R. N., Berg, P., and Roberts, K. (2003). Comparing and quantifying labour standards in the United States and the European Union. *International Journal of Labour Law and Industrial Relations*, 19(4), 441–467.
- Block, R. N., Roberts, K., Ozeki, C., and Roomkin, M. (2001). Models of international labor standards. *Industrial Relations*, 40(2), 258–292.
- Block, R. N., Roberts, K., and Clarke, R. O. (2003). *Labor standards in the United States and Canada*. Kalamazoo, MI: W. E. Upjohn Institute for Employment Research.
- Bowker, G., Rotchell, D., and Frost, T. (2003, April). Hot topic: the UK's working parents move up the pay league. *Human Resources*. London.
- California (undated). *California Unemployment Insurance Code, Part 2, Disability Benefits, Chapter 7, Paid Family Leave*, §§ 3300–3306. Retrieved 3 August 2004 from <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=uic&group=03001-04000&file=3300-3306>
- Canada, Government of (undated). *Compassionate Care Benefits*. Retrieved 4

## 64 Background and context

- January 2004 from [http://www.hrdc-drhc.gc.ca/ei-ae/pubs/compassionate\\_care.shtml](http://www.hrdc-drhc.gc.ca/ei-ae/pubs/compassionate_care.shtml)
- Cantor, D., Waldfoegel, J., Kerwin, J., McKinley Wright, M., Levin, K., Rauck, J., Hagerty, T., and Kudela Stapleton, M. (2000). *Balancing the needs of families and employers: The family and medical leave surveys*. Washington, DC: US Department of Labor. Retrieved at [www.dol.gov/asp/fmla/main2000.htm](http://www.dol.gov/asp/fmla/main2000.htm)
- Comfort, D., Johnson, K., and Wallace, D. (2003). *Part-time work and family friendly policies in Canadian workplaces*. Ottawa: Statistics Canada and Human Resources Development Canada. Retrieved 4 April 2004 from <http://www.statcan.ca/english/freepub/71-584-MIE/71-584-MIE03006.pdf>
- Employment Insurance Benefits (undated). Retrieved 15 December 2003 from [www.hrdc-drhc.gc.ca/ae-ei/employment\\_insurance](http://www.hrdc-drhc.gc.ca/ae-ei/employment_insurance)
- Europa: Gateway to the European Union (undated). *European Commission – Social Protection in the EU – Germany*. Retrieved 27 July 2004 from [http://europa.eu.int/comm/employment\\_social/missoc/2002/germany\\_en.pdf](http://europa.eu.int/comm/employment_social/missoc/2002/germany_en.pdf)
- European Commission (2002a). *Communication from the Commission to the Council – Draft Employment Report 2002*, SEC (2002) 1204. Retrieved 27 July 2004 from [http://europa.eu.int/comm/employment\\_social/news/2002/nov/jer2002\\_en.pdf](http://europa.eu.int/comm/employment_social/news/2002/nov/jer2002_en.pdf)
- European Commission (2002b). *Feasibility study on the availability of child care statistics in the European Union*. Working Paper, Directorate E, Unit E-2, Living Conditions, 3/2001/E/N°16. Retrieved 27 July 2004 from [http://europa.eu.int/comm/eurostat/Public/datashop/print-catalogue/EN?catalogue=Eurostat&collection=12-Working+papers+and+studies&product=KS-CC-02-001-\\_-N-EN](http://europa.eu.int/comm/eurostat/Public/datashop/print-catalogue/EN?catalogue=Eurostat&collection=12-Working+papers+and+studies&product=KS-CC-02-001-_-N-EN)
- European Council (1989). *Council Directive of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work*. Retrieved 27 July 2004 from [http://europa.eu.int/eur-lex/en/search/search\\_lif.html](http://europa.eu.int/eur-lex/en/search/search_lif.html)
- European Council (1992a). *Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding* (Tenth Individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC). Retrieved 27 July 2004 from [http://europa.eu.int/eur-lex/en/search/search\\_lif.html](http://europa.eu.int/eur-lex/en/search/search_lif.html)
- European Council (1992b). *Recommendation of 31 March 1992 on child care (92/241/EEC)*. Retrieved 28 July 2004 from [http://europa.eu.int/smartapi/cgi/sga\\_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=31992H0241&model=guichett](http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=31992H0241&model=guichett)
- European Council (1993). *Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organization of working time*. Retrieved 27 July 2004 from [http://europa.eu.int/eur-lex/en/search/search\\_lif.html](http://europa.eu.int/eur-lex/en/search/search_lif.html)
- European Council (1996). *Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC*. Retrieved 27 July 2004 from [http://europa.eu.int/eur-lex/en/search/search\\_lif.html](http://europa.eu.int/eur-lex/en/search/search_lif.html)
- European Council (1997). *Council Directive 97/75/EC of 15 December 1997 amending and extending, to the United Kingdom of Great Britain and Northern Ireland, Directive 96/34/EC on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC*. Retrieved 27 July 2004 from [http://europa.eu.int/eur-lex/en/search/search\\_lif.html](http://europa.eu.int/eur-lex/en/search/search_lif.html)
- European Council (2002). *Presidency conclusions Barcelona 15 and 16 March*.

- Retrieved 8 July 2004 from <http://ue.eu.int/newsroom/up.asp?MAX=&BID=76&DID=71025&File=/pressData/en/ec/71025.pdf&LANG=1>.
- European Foundation for Employment and Living Conditions (undated-a). *Germany: Childcare payment*. Retrieved 28 July 2004 from <http://www.eurofound.eu.int/emire/GERMANY/CHILDCAREPAYMENT-DE.html>
- European Foundation for Employment and Living Conditions (undated-b). *Germany: Maternity protection*. Retrieved 28 July 2004 from <http://www.eurofound.eu.int/emire/GERMANY/MATERNITYPROTECTION-DE.html>
- European Parliament and European Council (2002). *Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions*. Retrieved 28 July 2004 from [http://europa.eu.int/eur-lex/en/search/search\\_lif.html](http://europa.eu.int/eur-lex/en/search/search_lif.html)
- European Union (undated). *EU Law – Definitions: Secondary legislation*. Retrieved 28 July 2004 from [http://europa.eu.int/eurlex/en/about/pap/process\\_and\\_players2.html](http://europa.eu.int/eurlex/en/about/pap/process_and_players2.html)
- Gely, R., and Chandler, T. (2004). Maternity leave under the FMLA: an analysis of the litigation experience. *Journal of Law and Policy*, 15, 143–168.
- Government of Alberta (undated). *Employment Standards Code*, Chapter E-9. Retrieved 15 December 2003 from <http://www.qp.gov.ab.ca/documents/acts/E09.cfm>
- Government of British Columbia (undated-a). Ministry of Skills Development and Labour, *Employment Standards: Parental Leave, ESA Section 51*. Retrieved 15 December 2003 from [http://www.labour.gov.bc.ca/esb/igm/sections/sect\\_051.htm](http://www.labour.gov.bc.ca/esb/igm/sections/sect_051.htm)
- Government of British Columbia (undated-b). Ministry of Skills Development and Labour, *Employment Standards: Pregnancy Leave, ESA Section 50*. Retrieved 15 December 2003 from [http://www.labour.gov.bc.ca/esb/igm/sections/sect\\_050.htm](http://www.labour.gov.bc.ca/esb/igm/sections/sect_050.htm)
- Government of Yukon (undated-a). *Compassionate Care Leave*. Retrieved 4 April 2004 from <http://www.gov.yk.ca/depts/community/labour/compare.html>
- Government of Yukon (undated-b). *Maternity and Paternity Leave*. Retrieved 4 April 2004 from <http://www.gov.yk.ca/depts/community/labour/matpat.html>
- Gravitas Research and Strategy, Limited (2003). *Evaluation of the Implementation of Paid Parental Leave*. Prepared for Employment Relations Service, New Zealand Department of Labour, 27 August. Retrieved 27 July 2004 from <http://www.ers.govt.nz/parentalleave/pdfs/PPEvaluation/doc>
- Haas, L. (2003). Parental leave and gender equality: lessons from the European Union. *The Review of Policy Research*, 20, 89–115.
- Hickox, S. A. (2002). The elusive right to reinstatement under the family medical leave act. *Kentucky Law Journal*, 91, 477–522.
- Human Resources and Skills Development Canada (2004) *Employment insurance (EI) compassionate care benefits*. Retrieved from [http://www.hrsdc.gc.ca/asp/gateway.asp?hr=en/ei/types/compassionate\\_care.shtml&hs=tyt](http://www.hrsdc.gc.ca/asp/gateway.asp?hr=en/ei/types/compassionate_care.shtml&hs=tyt)
- Human Resources Development Canada (undated). *Employment insurance: Maternity, parental, and sickness benefits*. Retrieved from [http://www.hrdc-drhc.gc.ca/ae-ei/pubs/special\\_e.shtml](http://www.hrdc-drhc.gc.ca/ae-ei/pubs/special_e.shtml)
- Jones, D. (2003). Europe taking lead in work–life balance. *Canadian HR Reporter*, 16(14), 6–7.
- Jordan, L. (1999). *OLR Research Report: Background Information on European and*

66 *Background and context*

- Canadian Parental Leave Laws*. Retrieved 7 April 2004 from <http://www.cga.senate.ct.us/ps99/rpt/olr/html>
- Kossek, E. E., and Lambert, S. J. (eds) (2005). *Work and Life Integration: Organizational, Cultural and Individual Perspectives*. Mahwah, NJ: Lawrence Erlbaum Associates.
- Legal Information Institute (undated) *US Code Collection: Title 29, Chapter 28*.
- Lewis, S., and Haas, L. (2005). Work–life integration and social policy: a social justice approach to work and family. In E. Kossek and S. Lambert (eds), *Work–life Integration: Organizational, Cultural and Individual Perspectives* pp. 349–379. Mahwah, NJ: Lawrence Erlbaum Associates.
- Lipset, S. M. (1989). *Continental divide: The values and institutions of the United States and Canada*. Toronto and Washington, DC: C. D. Howe Institute and National Planning Association.
- Malin, M. H. (2003). Interference with the right to leave under the Family and Medical Leave Act. *Employee Rights and Employment Policy Journal*, 7, 329–376.
- Marleau, V. (2003). Globalization and the problem of compound decentralization: lessons from the Canadian labour relations setting. Paper presented at the *Decentralization of labour policies and collective bargaining, international seminar in commemoration of Marco Biagi*, Modena, Italy.
- Moll, W., and Wojtek, H. K. L. (2003). *Labour and employee benefits: Germany*. Retrieved 3 October 2003 from [http://www.practicallaw.com/scripts/topic.asp?Topic\\_ID=236&viewType=law](http://www.practicallaw.com/scripts/topic.asp?Topic_ID=236&viewType=law)
- New Brunswick Department of Training and Employment Development (undated). *Employment Standards*. Retrieved from <http://www.gnb.ca/0308/001e.htm>
- Newfoundland and Labrador (undated). *Labor Standards Act Amended: Chapter L-2*. Retrieved 4 January 2004 from <http://www.gov.nf.ca/hoa/statutes/l02.htm#43.3>
- New Zealand Department of Labour (undated). *Information on taxpayer-funded paid parental leave*. Retrieved 29 July 2004 from <http://www.ers.govt.nz/parental/leave/71T.html>
- Northwest Territories (undated). *Consolidation of Labour Standards Act*. Retrieved 4 January 2004 from <http://www.canlii.org/nt/sta/pdf/type169a.pdf>
- Nova Scotia Environment and Labour (undated). *Labor Standards Code*. Retrieved 8 April 2004 from <http://www.gov.ns.ca/legislature/legc/statutes/labourst.htm>
- Ontario Ministry of Labour (undated). *Publications*. Retrieved 8 April 2004 from [http://www.gov.on.ca/LAB/english/es/es\\_pubs.html](http://www.gov.on.ca/LAB/english/es/es_pubs.html)
- Parry, J. A. (2001). Family-leave policies. *NWSA Journal*, Fall, 78.
- Prince Edward Island, Community and Cultural Affairs (2001). *Guide to employment standards*. Retrieved 15 December 2003 from [http://www.gov.pe.ca/photos/original/cca\\_2001guide.pdf](http://www.gov.pe.ca/photos/original/cca_2001guide.pdf)
- Province of Manitoba, Manitoba Labour and Immigration (undated-a). *Employment standards: Compassionate care*. Retrieved 15 December 2003 from [http://www.gov.mb.ca/labour/standards/pdf/compassionate\\_care\\_leave.pdf](http://www.gov.mb.ca/labour/standards/pdf/compassionate_care_leave.pdf)
- Province of Manitoba, Manitoba Labour and Immigration (undated-b). *Employment standards: Maternity and parental leave*. Retrieved 15 December 2003 from <http://www.gov.mb.ca/labour/standards/facts.html>
- Quebec, Commission des Nomes du Travail (undated). *Absences and leaves for family and parental matters*. Retrieved 5 April 2004 from <http://canadaonline.about.com/gi/dynamic/offsite.htm?site=http%3A%2F%2Fwww.cnt.gouv.qc.ca%2Fen%2Findex.asp>

- Saskatchewan Labour (undated). *Labour standards*. Retrieved 15 December 2003 from <http://www.labour.gov.sk.ca/standards>
- Springer, B. (1994). *The European Union and its citizens: The social agenda*. Westport, CT, and London: Greenwood Press.
- UK Department of Trade and Industry (2003). *Working fathers (PL517) rights to leave and pay: A guide for employers and employees: Introduction*. Retrieved 13 July 2004 from <http://www.dti.gov.uk/er/individual/patrights-pl517a.htm>
- UK Department of Trade and Industry (2004). *Maternity rights (PL958 Rev 9): A guide for employers and employees: Section 4 maternity leave*. Retrieved 13 July 2004 from <http://www.dti.gov.uk/er/individual/mat-pl958b.htm>
- US Bureau of Labor Statistics (undated-a). *Employee benefits survey – national compensation survey: Benefits*. Retrieved 11 May 2005 from <http://www.bls.gov/ncs/ebs/home.htm>
- US Bureau of Labor Statistics (undated-b). *National employment hours and earnings*. Retrieved 12 May 2004 from <http://www.bls.gov/ces/home.htm>
- United States Congress (1993a) House Committee on Education & Labor, H. Rep. No. 103-8(I).
- United States Congress (1993b) House Committee on Post Office & Civil Service, H. Rep. No. 103-8(II).
- United States Congress (1993c) Senate Committee on Labor & Human Resources, S. Rep. No. 103-3.
- United States Department of Labor (undated-a). *The family and medical leave act of 1993: 29 CFR 825.216*. Are there any limitations on an employer's obligation to reinstate an employee? Retrieved from [http://www.dol.gov/dol/allcfr/ESA/Title\\_29/Part\\_825/29CFR825.216.htm](http://www.dol.gov/dol/allcfr/ESA/Title_29/Part_825/29CFR825.216.htm)
- United States Department of Labor (undated-e). *The family and medical leave act of 1993: 29 CFR 825.217*. What is a 'key employee?' Retrieved from [http://www.dol.gov/dol/allcfr/ESA/Title\\_29/Part\\_825/29CFR825.217.htm](http://www.dol.gov/dol/allcfr/ESA/Title_29/Part_825/29CFR825.217.htm)
- United States Department of Labor (undated-d). *The family and medical leave act of 1993: 29 CFR 825.700*. What if an employer provides more generous benefits than required by FMLA? Retrieved from [http://www.dol.gov/dol/allcfr/ESA/Title\\_29/Part\\_825/29CFR825.700.htm](http://www.dol.gov/dol/allcfr/ESA/Title_29/Part_825/29CFR825.700.htm)
- Wisensale, S. K. (2001). *Family leave policy: The political economy of work and family in America* (p. 172). Armonk, NY: M. E. Sharpe.

## TABLE OF CASES

- Bachelder v. America West Airlines, Inc., 2001, 259 F. 3rd 1112, 9th Circuit at <http://caselaw.lp.findlaw.com/data2/circs/9th/9917458p.pdf>
- Burke v. Health Plus of Michigan, Inc. 2003, 2003 WL 102800, E.D. Mich.
- Dollar v. Shoney's, Inc., 1997, 981 F. Supp. 1417, N.D. Ala.
- Kohls v. Beverly Enterprises, Wisconsin, Inc. 2001, 259 F. 3rd 799, 7th Circuit at [http://caselaw.lp.findlaw.com/scripts/printer\\_friendly.pl?page=7th/002064.html](http://caselaw.lp.findlaw.com/scripts/printer_friendly.pl?page=7th/002064.html)
- Marks v. School Dist. of Kansas City, Mo. 1996, 941 F. Supp. 886, W.D. Mo.
- Maxwell v. American Red Cross Blood Service, 1996, 3 Wage & Hour Cases 2d 633, N.D. Ala.
- Oswalt v. Sara Lee Corp., 1996, 889 F. Supp. 253, N.D. Miss. 1995, affirmed, 1996,

68 *Background and context*

- 74 F.3d 91, 5th Cir. at [http://caselaw.lp.findlaw.com/scripts/printer\\_friendly.pl?page=5th/9560402cv0.html](http://caselaw.lp.findlaw.com/scripts/printer_friendly.pl?page=5th/9560402cv0.html), August 4, 2004.
- Ragsdale v. Wolverine World Wide, Inc., 2002, U.S. Supreme Court, 535 U.S. 81 at [http://caselaw.lp.findlaw.com/scripts/printer\\_friendly.pl?page=us/000/00-6029.html](http://caselaw.lp.findlaw.com/scripts/printer_friendly.pl?page=us/000/00-6029.html), August 2, 2004.
- Rice v. Sunrise Express, Inc., 2000, 209 F. 3rd 1008, 7th Cir. at [http://caselaw.lp.findlaw.com/scripts/printer\\_friendly.pl?page=7th/973982.html](http://caselaw.lp.findlaw.com/scripts/printer_friendly.pl?page=7th/973982.html)
- Smith v. Diffie Ford-Lincoln Mercury, Inc., 2002, 298 F. 3d 955, 10th Circuit at [http://caselaw.lp.findlaw.com/scripts/printer\\_friendly.pl?page=10th/006362.html](http://caselaw.lp.findlaw.com/scripts/printer_friendly.pl?page=10th/006362.html)
- Strickland v. Water Works & Sewer Board of City of Birmingham, 2001, 239 F. 3d 1199, 11th Circuit at [http://caselaw.lp.findlaw.com/scripts/printer\\_friendly.pl?page=11th/9914103man.html](http://caselaw.lp.findlaw.com/scripts/printer_friendly.pl?page=11th/9914103man.html)
- Tuberville v. Personal Fin. Corp., 1996, 3 Wage & Hour Cases 2d 882, D. Miss.
- Walters v. Metropolitan Education Enterprise, Inc., U.S. Supreme Court, 1997, 519 U.S. 202, 1997 at [http://caselaw.lp.findlaw.com/scripts/printer\\_friendly.pl?page=us/000/u9701010.html](http://caselaw.lp.findlaw.com/scripts/printer_friendly.pl?page=us/000/u9701010.html)
- Watkins v. J & S Oil Co., 1998, 977 F. Supp. 520, D. Me.