A LEGISLATIVE MODEL FOR MATERNITY AND PARENTAL LEAVE IN KOREA:
TOWARDS GENDER EQUALITY IN RECONCILING WORK AND CHILDCARE

by

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Abstract

This paper proposes a legislative model for maternity and parental leave in South Korea (hereinafter Korea) to realize gender equality in reconciling work and childcare. It recommends that Korea should replace its compulsory maternity leave system with a voluntary system which expands maternity and parental benefits. For the parental leave and benefits system, Korea should increase the wage-replacement rate of the income-based parental benefits system, while reframing parental leave and benefits as individual entitlements rather than family entitlements.

Gender equality in reconciling work and childcare is important for Korea in two respects. First, gender equality is one of the basic human rights declared by the Convention on the Elimination of All Forms of Discrimination Against Women and the Constitution of Korea. Second, it will realize the legislative intent of maternity and parental leave, which is to ease career breaks of women upon pregnancy and childbirth. Therefore, this paper proposes a gender-equal legislative model for maternity and parental leave and benefits in Korea.

First, this paper proposes a voluntary maternity leave system and an expansion of maternity benefits for women to take advantage of their right to work. The current compulsory system limits women’s right to work because it prohibits women from working for a certain period of time after the birth of a child, regardless of their ability to return to the workplace. To avoid abuse of the voluntary system by employers who might illegitimately refuse to grant maternity leave to women, Korea must also expand maternity benefits to minimize the possibility of such abuse.
Secondly, this paper proposes an increase in the wage-replacement rate under the income-based parental benefit system with the conceptualization of parental leave and benefits as an individual entitlement. The current system provides only 40% as the wage-replacement rate under the income-based parental benefit system. Under the current level of the wage-replacement rate, because of the gender wage gap, fathers must forgo more income on average than mothers. Because the increase of the wage-replacement rate minimizes the gender gap in lost wages, this paper argues for the increase of the wage-replacement rate under the income-based parental benefit system. Furthermore, the individual entitlement of the right to parental leave and benefits incentivizes paternal participation because additional leave and benefits are available only if fathers take leave and benefits. Therefore, this paper proposes an increase of the wage-replacement rate under the income-based parental benefits system with a conceptualization of parental leave and benefits as an individual entitlement for gender equality in reconciling work and childcare in Korea.
Dedication

I dedicate this work to the government of the Republic of Korea, in pursuit of a desirable policy to resolve the problem of reconciling work and childcare.

I also dedicate this work to the late Father Drinan.
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I. Introduction

This paper analyzes the current maternity and parental leave and benefits system in Korea and proposes a legislative model that would promote greater gender equality. For the purpose of this paper, maternity leave refers to a limited period around childbirth where leave is exclusively granted to women,\(^1\) and parental leave refers to leave after childbirth granted for men and women to take care of a newborn child over a period of time relatively longer than maternity leave.\(^2\) During maternity and parental leave, maternity benefits and other parental benefits support economic stability for individuals on leave. This paper uses the terms maternity\(^3\) and parental benefits to refer to cash benefits mandated by the government to replace foregone earnings during maternity and parental leave. On the basis of these definitions, this paper proposes a legislative model for Korea.

Gender equality is an important value to pursue for Korea in two respects. First, gender equality is one of the basic human rights under the CEDAW\(^4\) and the Constitution of Korea.\(^5\) However, the current system discriminates on the basis of

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1. OECD, EMPLOYMENT OUTLOOK 174 (1995) (stating that “leave granted only to mothers for a limited period around the time of childbirth.”).
2. Id. (stating that “long-term leave available to parents to allow them to take care of an infant or young child over a period of time”).
3. JEAN-MICHEL SERVAIS, INTERNATIONAL LABOUR LAW 277 (2005). The author divides maternity benefits into two categories on the basis of the ILO Maternity Protection Convention. The first category of benefits is for medical care which is not directly related to the concept of income remuneration. The second category of benefits is for the suspension of previous earnings. For the purpose of this chapter, maternity benefits are limited to the second category.
5. Constitution of Republic of Korea, adopted on July 17, 1948, art. 11(1) (stating that “all citizens are equal before the law, and there may be no discrimination in political, economic, social, or cultural life on account of sex, religion, or social status”).
gender since it does not allow women to choose when to take maternity leave and forces them to continue taking parental leave instead of their spouses. For men, the system does not allow them to take parental leave and forces them to work instead.

Second, gender-equal maternity and parental leave systems will realize the original legislative intent of the system, to prevent career interruptions of women upon pregnancy and childbirth. According to Article 1 of the Act on Equal Employment and Support for Work-Family Reconciliation, the legal system purports to promote female employment. In contrast with the original legislative intent, the current system limits women’s right to work because it forces women to take parental leave instead of their spouses. Therefore, by providing a gender-equal legislative model for the maternity and parental leave system in Korea, this paper’s model will realize important values of the CEDAW and the Constitution of Korea as well as promote female employment as originally intended.

To provide a legislative model, this paper conducts a comparative study of three countries. First, this paper compares the United States and Germany to provide a legislative model for maternity leave in Korea. Secondly, this paper compares Germany and Japan to provide a model for parental leave and benefits systems. New legislation is necessary for maternity and parental leave in Korea because the existing regulatory system fails to realize gender equality and promote

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6 Act on Equal Employment and Support for Work-Family Reconciliation, Act No. 3989, Dec. 4, 1987, art. 1 [hereafter EES] (stating that “[t]he purpose of this Act is to realize gender equality in employment in accordance with the principle of equality proclaimed in the Constitution of the Republic of Korea by ensuring equal opportunities and treatment in employment between men and women and protecting maternity and promoting female employment, and to contribute to the improvement of all the people’s quality of life by supporting the reconciliation of work and family life for workers.”).
female employment as originally intended.7 As a result, a new legislative model is required to cure the failure of the existing regulatory system. Therefore, by conducting a comparative study of the United States, Germany, and Japan, this paper constructs a new legislative model for Korea.

A. The Background of Research

The legislative proposal presented here is based on a variety of demographics in modern Korea, Germany and Japan, including changes in the labor market and in typical family models. First, because of the influx of female workers into the labor market, there is an increasing need in Korea to accommodate maternity and parental leave and benefits as essential systems to reconcile work and childcare. Second, because fewer other family members are able to take care of a newborn child, parental leave and benefits systems are important for Korea. Under the traditional family model, other family members of the family could be responsible for childcare instead of the parents.8 For example, grandparents, aunts and siblings played major roles in child rearing.9 Lastly, because the birthrate is declining, Korea needs to provide adequate protection for workers who decide to give birth and raise a child like other Asian countries such as Japan and Singapore.10

7 OECD, REDUCING THE RISK OF POLICY FAILURE 16 (2000) dividing policy failure into three categories: failure related to lack of regulatory knowledge, willingness and ability. Among these categories, failure in Korea falls into failure related to lack of willingness. Employers perceived the costs of compliance as too costly and it discouraged employers to comply with the system.
8 KWANGHO KIM & MIJIN CHO, OLD FUTURE: THE SECRET OF TRADITIONAL CHILD REARING 127 (2012).
9 Id.
10 Gavin Jones, Late Marriage and Low Fertility in Singapore: the Limits of Policy, 10 JAPAN. J. POPULATION 89, 95 (2012).
1. Changes in the Labor Market: The Influx of Female Workers

In Korea, women have become an important element in the workforce since economic development began in 1962. Between 1963 and 2007, women’s labor participation rate increased from 37.0% to 50.1%, whereas men showed a slight decrease from 78.4% to 73.9%. As a result, women accounted for 34.4% of all participants in the labor market in 1963, whereas the proportion rose to 41.7% in 2007. Furthermore, it is estimated that women will be 52.4% of the overall workforce in 2015. As women’s participation rate increases, women can no longer fully devote themselves to caring for their children unless the law systematically guarantees time and income to support their health and their role as caregivers.

However, Korean women still have difficulties in participating in the workplace after the birth of a child. In 2008, 69.3% of women between the ages of 25 and 29 participated in the paid labor market, but the average female participation rate only reached 50.0%. In contrast with the high percentage of women in their late twenties, women between 30 and 34 only had a 53.3% participation rate. The percentage rose to 58.5% for women between 35 and 39. The relatively low participation rate for women between the ages of 30 and 34 is due to women leaving

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11 Economic development began with industrialization in Korea, even though it was more than a century after the industrialization of the United Kingdom, which began in the nineteenth century. See Jinwha Jung, Korean Economy and Women: The Structural Change in the Labor Market, in The Change in Women’s Life and Future Agenda 115, 116 (2008).
12 Id. at 116-17.
13 Id.
14 Id. at 117.
15 KOREAN NATIONAL STATISTICAL OFFICE, 2009 STATISTICAL ANALYSIS ON WOMEN’S LIFE 14 (2009).
16 Id.
17 Id.
the workforce to raise children, and this phenomenon is referred to as the M-shaped female labor force participation curve.\(^{18}\) In Korea, women are giving birth later than they used to: The lowest trough of the M-shaped curve had included women between 25 and 29, but even with the shift of the lowest trough to women between 30 and 34, the M-shaped curve remains a valid description of Korea’s female workforce.\(^{19}\)

The tendency of Korean women to leave the workforce when they give birth is more pronounced than in other countries of similar economic status. Developed countries such as the United States and Sweden experienced the M-shaped curve in female labor force participation in the process of industrialization, but the curve disappeared between the late 1970s and early 1980s when GDP per capita reached $20,000.\(^{20}\) As countries developed economically, represented by the increase of GDP per capita, they accommodated systems to allow women to continue working

\(^{18}\) See Joonmo Cho & Yongil Jeon, M-SHAPED FEMALE LABOR PARTICIPATION CURVE—REALITY AND PREDICTION IN KOREA (2008). This paper was presented at the symposium held by the Korean Women’s Development Institute on December 22, 2008. This paper analyzes the current status of the M-shaped curve which defines the major characteristics of Korean female labor force participation. This paper predicts that the M-shaped curve will turn into a reverse U-shaped curve which does not show the lowest peak for the birth or care for the child. However, this transformation is based on the assumption that adequate policy measures for childcare have accounted for women’s participation in the workplace.

\(^{19}\) The shift of the lowest peak from the age between 25 and 29 to the age between 30 and 24 is primarily due to a shift in the age of women getting married. In 2008, the average age of women getting married was reported to be 28.3, which was a slight increase from 28.1 in 2007. The average age is estimated to rise continuously according to the continuous rise from 26.0 in 1998 to 28.3 in 2008. In 1990, the majority of women got married when they were in their early twenties. Since 1995, women in their late twenties have become the dominant female group getting married. In 2008, women in their late twenties continued to be the majority, but since 1998 the proportion of women in their early twenties decreased by 22% and women in their early thirties increased by 14.9%. The age of marriage is estimated to rise continuously in the future. Therefore, the lowest peak of the female labor force participation rate shifted from the 25 to 29 age group to the 30 to 34 age group. Korean National Statistical Office, 2009 Women’s Life Based on Statistical Analysis 7-8 (2009).

Despite the birth of a child. As a result, the M-shaped curve disappeared as GDP per capita increased. If Korea had followed the path of other developed countries, the M-shaped curve should have disappeared in 2004 when GDP per capita rose to $20,425.\(^\text{21}\) Despite its economic development, Korean labor policies have not yet developed in a manner that accommodates gender equality for new parents. This situation in Korea is serious since it affects both gender equality and overall economic development; as a result, this paper focuses on gender equality in the maternity and parental leave and benefits system as a means to advance parallel societal goals.

2. Changes in the Family Model: The Absence of Other Family Members for Childcare

Aside from changes in the labor market, changes in the typical family model have created additional difficulties for reconciling work and childcare in Korea. In 43.9% of Korean families, both parents participate in the labor market.\(^\text{22}\) In these families, other family members or childcare services are necessary for childcare when the parents participate in the workplace. However, the decline in the number of multi-generation families cohabiting with one another has prevented grandparents from becoming the primary caregivers for the newborn child of working parents.

Between 1966 and 2006, the percentage of households with three or more generations


\(^{22}\) The Korean Statistical Information Service (KOSIS) conducted survey on the compositions of families in 2005 and almost one-half of Korean families were dual-earner families. KOREAN STATISTICAL INFORMATION SERVICE, 2006 SAHWETONGAEJOSAGYULGIUA (GAJOK, BOGUN, SAHWECHAMYEQO) [2006 Social Statistical Survey Report (Family, Health and Social Participation)], http://kostat.go.kr/board_notice/BoardAction.do?method=view&board_id=78&seq=425&num=425&parent_num=0. In addition, 8.6% of Korean families were single-parent households. JAEEON JOO & CHAEJEONG LEE, GENDER STATISTICS IN KOREA 114 (2009).
living together declined from 24.1% in 1966 to 7.0% in 2006. Therefore, grandparents are no longer easily available to be the primary caregivers. Although women participate in the workplace just as much as men do, according to a survey on families in Korea in 2005, while 47.5% of families considered mothers as the primary caregivers for the child, the corresponding figure for fathers reached only 9.6%. 

Furthermore, the number of family members also declined along with the number of generations cohabiting with one another. Family members other than working parents took care of children while working mothers participated in the workplace. The decrease in the number of family members deprived working mothers of other family members such as older siblings who were able to take care of children while mothers are away from home, participating in the labor market. Between 1966 and 2006, the number of families with four or fewer members increased whereas the number of families with five or more members decreased. Families with four or fewer members accounted for 36.0% of total Korean families in 1966, 81.7% in 1995, 86.6% in 2000, 90.0% in 2005, and 91.3% in 2006. By contrast, the number of families with five or more members decreased from 64.0% in 1966 to 18.3% in 1995, 13.4% in 2000, 10.0% in 2005 and 8.8% in 2006. As a result, throughout thirty years of Korean industrialization and urbanization, the

24 Id. In 2005 Survey on Families in Korea, 47.5% of mothers and 9.6% of fathers accounted for caregivers for the child of families with both parents participating in the paid labor market. In case of families with only one parent working in the labor market, 9.0% of fathers were considered to be caregivers for the child. The proportion of fathers did not differ greatly between families with two-wage earners versus a single earner.
26 Id.
27 Id.
number of families with five or more members decreased by 55.2%. Consequently, the change in the distribution of the number of family members affected the average number of family members. The average number of family members decreased from 5.5 in 1966 to 3.3 in 1995. This decline has continued as the average number reached 3.1 in 2000 and 2.9 in 2006. Therefore, these changes in the family model have created difficulties in reconciling work and childcare.

3. Changes in the Demographic Features: The Declining Birthrate

The maternity and parental leave and benefits system is important for Korea to solve the problem of its declining birthrate. Korea has suffered from a declining birthrate since mid-1980s. In 2006, the birthrate in Korea hit 1.08, the lowest among OECD member countries. To merely maintain a country’s population, the birthrate must be 2.1. Since 1983, the birthrate in Korea has been below 2.1.

28 Id.
29 Id.
30 The statistical evidence concerning the birthrate will be extracted from the statistics available from OECD sources. The OECD provides a comprehensive set of statistics for population analysis. The website called “OECD statistics” is available at http://stats.oecd.org. The main page instructs various ways to access the information. Among them, this paper selected to access “by country.” Access leads to the profile statistics of 2009, and “Korea” is one of the countries enrolled in the profile. Population statistics are available at the top. For the purpose of this paper, birthrate refers to the total fertility rate. According to the OECD Glossary of Statistical Terms, the total fertility rate refers to “the number of children that would be born per woman, assuming no female mortality at child bearing ages and the age-specific fertility rates of a specified country and reference period.” The OECD Glossary of Statistical Terms is available at http://stats.oecd.org/glossary/index.htm. The Korean National Statistical Office (KNSO) defines the total fertility rate as “the average number of children a woman has during her lifetime. It is especially used to compare fertility levels. It is calculated by adding live birthrates by age group. Total fertility rate= sum of live birth rates by age group.” The KNSO Glossary of Statistical Terms is available at http://www.nso.go.kr/eng2006/e03__0000/e07d__0000/e07d__0000.html (last visited May 3, 2010).
31 In 2006, the total fertility rate of Korea was reported to be 1.08.
32 The ideal birthrate to sustain a society is referred to as replacement-level fertility or replacement fertility. The Population Reference Bureau (PRB) names it as replacement-level fertility and defines it as “the level of fertility at which a couple has only enough children to replace themselves, or about two children per couple.” The PRB’s glossary of demographic terms is available at
Working mothers will choose to have children despite their role as workers if maternity and parental leave systems allow them to take leave for their children, while maintaining their status as workers in the labor market. As a result, reform of maternity and parental leave systems will help to solve the problem of decline of birthrate resulting from difficulties in reconciling work and childcare. The negative impact on Korean economic development and society of the declining birthrate calls for reform of the maternity and parental leave system in Korea.

B. The Purpose of Research

The primary purpose of this paper is to promote gender equality in reconciling work and childcare by introducing a legislative model for maternity and parental leave in Korea. Women in Korea have fewer opportunities to participate in the labor market than women in other OECD member countries. According to the statistical evidence, there is a close correlation between women’s participation in the

http://www.prb.org/Educators/Resources/Glossary.aspx (last visited April 15, 2014). New Zealand’s national statistical office provides that the replacement fertility refers to “a total fertility rate of 2.1 children per woman, which equates to the average number of children each woman is required to have for a population to replace in the long term, without migration.” New Zealand’s national statistical office provides the definition of replacement-level fertility at http://www2.stats.govt.nz/domino/external/omni/omni.nsf/wwwglsry/replacement+level(last visited April 15, 2014).

33 In 1980, the total fertility rate of Korea was reported to be 2.83, which is above replacement-level fertility. In 1983, it fell to 2.08. Korea became a member country of the OECD in 1996, so the total fertility rate of Korea prior to 1996 is not provided by the OECD. For data prior to 1996, this paper refers to the statistics provided by the Korean National Statistical Office available at http://kosis.kr.

34 In 2008, the average female employment rate in the OECD member countries was reported to be 63.2%. The highest rate was found in Iceland (85.4%), followed by Sweden (79.4%), Norway (78.9%) and Switzerland (78.5%). By contrast, only 58.7% of women in Korea participated in the workplace. Among the OECD member countries, fourteen countries showed more than 70% of female employment rate in contrast with countries such as Luxemburg (59.5%), Poland (57.7%), Greece (55.7%) and Hungary (55.4%) and Italy (52.1%) along with Korea. KOREAN WOMEN’S DEVELOPMENT INSTITUTE, WOMEN AND MEN IN KOREA: STATISTICAL COMPARISON WITH OTHER OECD MEMBER COUNTRIES 3 (2009).
labor market and men’s participation in the parental leave system. When men participate in the parental leave system, their spouses have more chances to continue working after childbirth. Therefore, this paper provides a legislative model for maternity and parental leave in Korea to realize gender equality in reconciling work and childcare.

C. The Methodology of Research

This paper conducts a comparative study of the U.S., German and Japanese maternal and parental leave systems to provide a legislative model for Korea. Comparative analysis is an effective way to evaluate different solutions to a problem such as the discriminatory impact of maternity and parental leave systems on a mother’s right to work and the paternal right to childcare. Differences among the three countries can be found in various aspects of maternity and parental leave, such as the duration of leave and the amount of benefits. This paper uses a comparative study as methodology to analyze the problems in Korea and suggests legislation that will more fully realize gender equality because the problem in Korea is caused by

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35 Countries with the highest rate of female employment show a relatively high ratio of men to women in taking leave for childcare. In 2006, 89 men per 100 women in Iceland took parental leave. In 2007, 77 men per 100 women in Sweden took parental leave. By contrast, only 2 men per 100 women took parental leave in Korea in 2007. Therefore, there is a close relationship between the female employment rate and men’s participation in parental leave. PF8: Use of Childbirth-Related Leave by Mothers and Fathers, OECD 2 (2008), http://www.oecd.org/dataoecd/53/57/41927348.pdf/.

36 Kai Schadbach, The Benefits of Comparative Law: A Continental European View, 16 B.U. INT’L L. J. 331, 415-18 (1998). This article appreciates comparative law as beneficial for practitioners in particular. However, the benefits of comparative law are not limited to practitioners. In fact, legislators often refer to legislation in foreign countries to evaluate the pros and cons of different approaches to solve a problem. 139 Cong. Rec. 1987 (1993). For example, when the United States adopted the FMLA, it referred to the experience of Germany, because the United States considered the economic power of Germany as competitive enough to be comparable to the United States. Heather A. Peterson, The Daddy Track: Locating the Male Employee within the Family and Medical Leave Act, 15 Wash. U. J.L. & Pol’y 253, 256 (2004).
outdated legislation designed for a different era.

For maternity leave, this paper compares U.S. and German legislative solutions, because they represent two different theoretical frameworks for legislating law to remedy gender discrimination.\(^37\) The U.S. system adopts the equal treatment approach\(^38\) whereas the German system adopts the special treatment approach.\(^39\)

The U.S. system treats pregnant workers in the same way as other similarly situated workers.\(^40\) When workers suffer physiological or other medical conditions which might prevent them from working, they go through medical examinations to assess their capacity to continue working. Within the U.S. model, pregnancy is treated in the same way as other physiological conditions which may or may not allow women to work.\(^41\) As a result, the ability or inability to work determines eligibility for work from the perspective of the equal treatment approach.\(^42\) Therefore, the U.S. system objects to compulsory maternity leave as an unreasonable limitation on women’s right to work. By contrast, the German system’s special treatment approach prohibits women from working after the birth of a child on the basis that all women are unable

\(^37\) Wendy W. Williams, *Equality’s Riddle: Pregnancy and the Equal Treatment/Special Treatment Debate*, 13 N.Y.U. REV. L. & SOC. CHANGE 325, 326 (1984-1985). The author defends the equal treatment approach in response to criticism from the special treatment proponents. The author views that the dispute centers on “whether pregnancy should be viewed as comparable to other physical conditions or as unique and special.”

\(^38\) *Id.* The equal treatment approach considers pregnancy as comparable to other physical conditions.

\(^39\) *Id.* The special treatment approach views pregnancy as unique and special.

\(^40\) *Id.* at 325. The Pregnancy Discrimination Act of 1978 (PDA) explicitly states that “women affected by pregnancy, childbirth or related medical conditions…be treated the same for all employment related purposes…as other persons not so affected but similar in their ability or inability to work.” 42 U.S.C. § 2000e(k) (2000).

\(^41\) *Id.* at 327. Equal treatment proponents view pregnancy as “just one of the physical conditions that affect workplace participation for men and women.”

\(^42\) The PDA articulates that pregnant women should be treated in the same way as other people similar in their “ability or inability” to work. 42 U.S.C. § 2000e(k) (2000).
to work because of their health. Special treatment proponents treat pregnancy differently from other physiological conditions. As a result, this system does not allow women to decide whether to work or not on the basis of their actual ability to work, but rather prohibits all women from working after giving birth. Therefore, the German system upholds compulsory maternity leave as a protective measure for women’s reproductive health.

The U.S. and German systems also differ with regard to financial support for maternity leave. The U.S. system treats pregnant workers in the same way as other similarly situated workers with physiological problems that prevent them from working, and this includes its provision for financial support.

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43 Wendy W. Williams, *Equality’s Riddle: Pregnancy and the Equal Treatment/Special Treatment Debate*, 13 N. Y. U. Rev. L. & Soc. Change 325, 326-27 (1984-1985) (stating that “The critics believe that the ‘equal treatment model’ precludes recognition of pregnancy’s uniqueness, and thus creates for women a Procrustean bed—pregnancy will be treated as if it were comparable to male conditions when it is not, thus forcing pregnant women into a workplace structure designed for men. Such a result, they believe, denies women’s special experience and does not adequately respond to the realities of women’s lives.”).

44 Annie Pelletier, Comment, *The Family and Medical Leave Act of 1993—Why Does Parental Leave in the United States Fall So Far Behind Europe?*, 42 GONZ. L. REV. 547 (2006-2007). Germany guarantees fourteen weeks of maternity leave. Among these fourteen weeks, six weeks are available before the birth whereas eight weeks are allocated for the postnatal period. During the six weeks before the birth, if a woman explicitly declares to work, then she may continue working. If she revokes her declaration, then she is prohibited from working until the eight weeks of the postnatal period expires.

45 Financial support during maternity leave can be referred to as maternity benefits. There are two kinds of benefits which are medical expenses and wage replacement. For the purpose of this paper, the benefits refer to cash benefits to replace previous earnings. Maternity Protection Convention (June 15, 2000), www.ilo.org/ilolex/english/reportforms/pdf/22e183.pdf.


47 INSTITUTE FOR WOMEN’S POLICY RESEARCH, FACE SHEET #A131, MATERNITY LEAVE IN THE UNITED STATES 2-4 (2007). The PDA requires employers to treat pregnant workers in the same way as others temporarily disabled regarding all conditions of employment such as pay and fringe benefits, including paid sick days, health insurance coverage and temporary disability insurance. It does not mandate employers to provide paid leave but they should include pregnancy if they provide it for other medical conditions. As a result, some individual states adopted temporary disability insurance as the financial source for maternity benefits. For example, California, Hawaii, New Jersey, New York, Rhode Island, and Puerto Rico offer temporary disability insurance to all workers. These states provide temporary income to workers with non-work related, temporary disabilities including pregnancy and childbirth.
support is available for workers unable to work because of a physiological condition, such support is equally available to those “disabled” by pregnancy. If financial support is not available for workers disabled by other physiological conditions, then it is also unavailable for pregnant workers “disabled” by pregnancy. In contrast, the German system guarantees full wage replacement for pregnant workers, whereas the system provides partial remuneration for workers disabled by other physiological conditions. The German system treats pregnancy differently from other physiological conditions which may or may not disable workers to continue working. The German system presumes that all women are incapacitated from working due to pregnancy. As a result, regardless of the system applicable to other sickness benefits, the German system guarantees full remuneration during maternity leave, contrasting with the U.S. system.

For parental leave, this paper compares the German and Japanese systems, both of which provide compensation that is proportional to lost income and guarantee additional benefits for paternal usage of leave entitlements. These systems allow

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48 There are three entities responsible for the wage-replacement system in Germany. The first entity is the statutory health insurance programs which provide the employee’s average daily wage minus certain statutory deductions. The payment from the statutory health insurance is capped at 13 Euro per day. The amount exceeding the cap is paid by the employer or the state. Even if the employer pays for the rest of the lost income, the federal government remunerates for the expenditures from the general account. If the employee is covered by the sickness benefit, then the cap does not apply to the employee and the benefit equivalent to the sickness is provided for the employee. If the employee is not covered by statutory health insurance, then the state pays for the average daily wage capped at 210 Euro, instead of 13 Euro per day. Germany provides a complicated mechanism for maternity benefits but, in essence, it fully remunerates for the loss of income from the social insurance system and federal taxation.

49 Germany guarantees 67% and Japan provides 40% of lost income. Parental Allowances, FEDERAL STATISTICAL OFFICE, http://www.destatis.de/jetspeed/portal/cms/Sites/destatis/Internet/EN/Content/Statistics/SocialBenefits/ChildrenAllowance/content75/ParentalAllowanceInfo.psml; and OECD, BABIES AND BOSSES:
parents to take leave to care for their children. It is a right to take leave, which can be referred to as “leave entitlements.” Germany, Japan, and Korea have shared the lowest paternal participation rate in parental leave.\(^{50}\) Korea has provided a flat-rate system instead of a wage-dependent system. Furthermore, at their peak level, the benefits reach only one-third of the average income lost during paternal leave.\(^{51}\) Korea changed its system from a flat-rate system to a wage-dependent system starting in 2011, but the wage-replacement rate remains at its highest level as low as 40%.

Germany and Japan provide benefits proportional to a worker’s previous earnings to attract men to participate in childcare, although the wage-replacement rates of Germany and Japan differ from each other.\(^{52}\) However, despite having similar systems, the ultimate effect on men’s participation in parental leave has been different in Germany and Japan. Germany experienced a rapid increase in men’s participation, whereas Japan did not.\(^{53}\) The major difference in the compensation system in Germany and Japan was whether an exclusive period for men to receive parental benefits was available or not. Germany guarantees two additional months of parental benefits if both parents take parental leave.\(^{54}\) In Germany, twelve

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\(^{54}\) Germany followed the experience of Sweden. In 1995, Sweden introduced so-called “father’s months.” Sweden provided two months of additional benefits for parents if both parents take leave. As a result, a household with both parents taking leave may receive two more months of benefits than a household with only one parent taking leave. The primary purpose of “father’s months” was to attract
months of benefits are available if only one parent takes leave and receives benefits.\textsuperscript{55} However, if the other parent also takes leave for at least two months, a total period of fourteen months of benefits is available for parents.\textsuperscript{56} By contrast, Japan mandated that only one parent to take the whole period of leave and receive benefits.\textsuperscript{57} By providing incentives for both parents to take parental leave, Germany attracted more fathers to the system.\textsuperscript{58} Following the German approach, in June 2009, Japan passed legislation to extend parental leave to fourteen months, with two additional months of benefits for paternal usage of leave entitlements.\textsuperscript{59} The new system entered into force on June 30\textsuperscript{th}, 2010,\textsuperscript{60} and paternal usage of leave entitlements increased from 1.38\% in 2010 to 2.63\% in 2011.\textsuperscript{61} However, experts criticized the incentivizing men to take leave for childcare. Anita Haataja, \textit{Father’s Use of Paternity and Parental Leave in the Nordic Countries}, UNIVERSITY OF HELSINKI 10 (2009), http://dspace2.lib.helsinki.fi:8081/dspace/bitstream/handle/10250/8240/FathersLeaves_Nordic.pdf?sequence=1.

\textsuperscript{56} \textit{Id}.
\textsuperscript{57} OECD, BABIES AND BOSSES: AUSTRIA, IRELAND, JAPAN 130 (2003) (stating that the total period of benefits available for a couple is limited to one year); and Rebecca Ray, Janet C. Gornick & John Schmitt, \textit{Parental Leave Policies in 21 Countries: Assessing Generosity and Gender Equality}, CENTER FOR ECONOMIC AND POLICY RESEARCH 16 (2009), http://www.cepr.net/documents/publications/parental_2008_09.pdf,(last visited Apr. 16, 2014) (reporting that the Japanese system allows only one parent to take the whole period of leave).
\textsuperscript{59} \textit{Introduction to the Revised Child Care and Family Care Leave Law}, MINISTRY OF HEALTH, LABOUR AND WELFARE, http://www.mhlw.go.jp/english/policy/affairs/dl/05.pdf (last visited Apr. 7, 2010). The period extends to fourteen months when both parents take leave for childcare. Because the maximum period available for a parent still remains as one year, two additional months of leave are exclusive to one parent as the German system.
\textsuperscript{60} \textit{Id}. The Diet (referring to parliament of Japan) passed legislation unanimously in June 2009 and specified that legislation enters into force on June 30\textsuperscript{th}, 2010.
system as discriminatory on the basis of gender, because fathers tend to take only two additional months of leave and benefits, whereas mothers take the transferable period of twelve months. Likewise, despite the advantages of the German and Japanese systems for paternal usage of leave entitlements, they still maintain limitations on paternal usage of leave entitlements. The advantages and disadvantages of the German and Japanese systems are important sources for Korea to look into for the purpose of this paper. Therefore, this paper conducts a comparative analysis of the German and Japanese systems in order to provide a new legislative model for Korea.

D. The Originality and Limitation of Research

Regarding maternity leave, this paper presents the first arguments for supporting the expansion of maternity benefits in Korea as a way to prevent an employer’s abuse of the voluntary maternity leave system. The prior controversy over the obligatory maternity leave system concentrated on whether the mandatory post-natal period for leave limits a woman’s right to decide when and how long to

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2013)(reporting that paternal usage of the system increased from 1.38 percentage in 2010 to 2.63 percentage in 2011).

62 Nabanita Datta Gupta, Nina Smith & Mete Verner, Child Care and Parental Leave in the Nordic Countries: A Model to Aspire to?, INSTITUTE FOR THE STUDY OF LABOR 33 (2006), http://ftp.iza.org/dp2014.pdf (last visited Apr. 16, 2014). This paper analyzes family-friendly policies in Nordic countries and finds a glass ceiling created by the welfare system limiting women’s further development in the workplace. The father quota is a representative example presuming women as primary caregivers by limiting fathers’ leave and benefits to two months only. Therefore, incentives for paternal usage of leave entitlements are not always positive in respect to gender equality in reconciling work and childcare.

63 A compulsory period for maternity leave was perceived as the general norm. At the international level, the International Labour Organization (ILO) recognized the compulsory period in the Maternity Protection Convention. At the regional level, the European Community provided the compulsory period in the Pregnancy Directive. In individual countries, Germany recognized the compulsory period from 1878 when it was the first nation in the world to introduce such benefits.
take leave on the basis of individual health conditions. The critics of the obligatory systems advocated a voluntary system, because the voluntary system allows women to decide whether to work or not. However, advocates of the voluntary system did not provide any suggestions that would prevent employers from refusing to grant maternity leave on the basis of the financial burden of supporting maternity leave. Korea mandates the obligatory post-natal period of leave for women, which is not an entitlement but rather a prohibition from working. Korea requires employers to provide full remuneration during the period of maternity leave, including the prohibited period. To lessen the economic burden for employers to hire female workers and grant maternity leave to them, Korea introduced partial remuneration drawing upon the resources from the government-sponsored employment insurance system, but it was not enough to minimize the employer’s financial burden. Furthermore, employers often refuse to grant leave, and Korea does not enforce the legislative mandate due to traditionally weak enforcement of

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65 YOUNGOK KIM ET AL., A STUDY ON WOMEN’S CAREER INTERRUPTIONS FOLLOWING CHILDBIRTH AND POLICY RECOMMENDATIONS 3 (2007). During the first sixty days, employers are responsible to provide full remuneration. During the last thirty days, provides full remuneration with a cap on it. If an employee does not take more than sixty days leave, employment insurance does not provide any remuneration to the employee and the employer is fully responsible for remuneration during the whole period of maternity leave. Koyongbohumbub [Employment Insurance Act], art. 75 (Act No. 11530, Dec. 11, 2012) (R.O.K.) [hereinafter EIA].
66 EIA, art. 5 (Act No. 6509, Aug. 14, 2001) (R.O.K.), (stating that “(1) The State may bear a part of the expenses required annually for insurance programs through its general account. (2) The State may bear the expenses required for the management and operation of insurance within the limits of its annual budget.”).
67 EIA, art. 55-8 (1) (stating that “Employment insurance shall be granted during the additional 30 days after the first 60 days of maternity leave.”).
Because of the double trap in the system – employers’ financial burden and the weak enforcement system – Korea failed to realize the original legislative intent of allowing women to take maternity leave. Therefore, this paper proposes that the expansion of public financial support for maternity benefits will lessen the economic burden on employers if they hire female workers. Since the expansion of public financial support will relieve the employers’ financial burden, there will be less demand for the strong enforcement mechanism.

Regarding parental leave, this paper is the first to compare the German and Japanese systems on the basis of recent changes in these two countries with conservative welfare policies which have traditionally prioritized male-breadwinner families over dual-earner families. Germany, Japan and Korea are all countries with conservative welfare policies abstaining from expanding public expenditure on family policies that would depart from the male-breadwinner-favoring system. In 2007, Germany adopted a wage-dependent system with a father quota. A father quota is

68 DANIELLE VENN, LEGISLATION, COLLECTIVE BARGAINING AND ENFORCEMENT: UPDATING THE OECD EMPLOYMENT PROTECTION INDICATORS 8 (2009), http://www.oecd.org/dataoecd/36/9/43116624.pdf (last visited Apr. 7, 2010). This paper finds the strictness of employment protection in Korea as below average across OECD.

69 OECD, REDUCING THE RISK OF POLICY FAILURE: CHALLENGES FOR REGULATORY COMPLIANCE 16 (2000), dividing compliance failure into three categories: failure related to lack of regulatory knowledge, willingness and ability. Lack of willingness usually comes from the costs for compliance. As employers were fully responsible for the benefits, compliance failure in Korea can be referred to as failure related to lack of willingness.

70 Ito Peng, The Political and Social Economy of Care: Republic of Korea Research Report 3, U. N. RESEARCH INSTITUTE FOR SOCIAL DEVELOPMENT 3 (2009), http://www.unrisd.org/80256B3C005BCCF9/(httpAuxPages)/1EF2AE4F5E388259C125756100541F68/$file/RoKRR3.pdf (last visited Apr. 16, 2010). This paper emphasizes that Korea tried to depart from the male-breadwinner system, but failed to do so. It starts by introducing characteristics of welfare policies in Korea. It states that Korea is a “familialistic regime” and adopts a “male-breadwinner model.” It finds that Japan and Germany are similar to Korea in these respects.

71 C. Katharina Spiess & Katharina Wrohlich, The Parental Leave Benefit Reform in Germany: Costs and Labour Market Outcomes of Moving towards the Scandinavian Model, INSTITUTE FOR THE STUDY
an additional period of leave available when a spouse takes leave in addition to the other spouse. Since the quota incentivizes fathers to take leave, it is called a “father quota” ever since Norway first adopted it.\textsuperscript{72} Japan originally provided a wage-dependent system but adopted a father quota in 2010.\textsuperscript{73} Such changes in these two states are so recent that there is no prior study on the comparison of the German and Japanese systems after the reforms in 2007 and 2010.\textsuperscript{74} Therefore, this paper is original with regard to the comparison of leave schemes in Germany and Japan, particularly on the basis of the recent changes in these two systems.

However, the scope of this paper is limited, because it focuses only on maternity and parental leave, two parts of a larger issue in reconciling work and childcare. Korea is also working to expand childcare facilities and part-time availability for working parents as two other policy measures to help parents

\textsuperscript{72} Valeria Criscione, Paternity Rights ... And Wrongs, GUARDIAN (March 19, 2011), http://www.theguardian.com/money/2011/mar/19/parental-rights-norway-reduce-inequality (last visited Oct. 29, 2013) (stating that Norway was the first to adopt a father quota in 1993).


reconcile work and childcare. The ultimate effect of maternity and parental leave will coincide with the effects of other measures to reconcile work and childcare. However, it is not easy to collect data to evaluate the status of childcare facilities and flexible working hours because of the relatively short history of legislation to support these policies in comparison with maternity and parental leave in Korea.

Therefore, this paper concentrates on maternity and parental leave.

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75 Ministry of Labor, The Fourth Basic Plan for Equal Employment and Reconciling Work and Family 2008-2012 25-86 (2008). In Korea, consideration of the female workforce started from 1953 when the Labor Standards Act guaranteed special protection for working women. During the 1960s, Korea did not have any chance to consider gender equality in the workplace as an important policy goal to achieve because it was deeply involved in rapid economic development. However, in the 1970s, women’s rights in the workplace became an issue when economic development slowed down enough to attract social attention for women in the workplace. As a result, the Ministry of Labor started to initiate the equal employment policy and it finally introduced the fourth basic plan for gender equality. The first phase of the gender equality policy started from the 1970s and lasted until the mid-1980s. The maternity protection measures were appreciated as the major accomplishment during the first phase of the gender equality policy. The second phase started in 1987 and ended in 2000. The second phase introduced parental leave to Korea for the first time. Between 2001 and 2007, the third phase of gender equality policy introduced socialization of maternity costs for the first time. Finally, the Ministry of Labor introduced the fourth phase between 2008 and 2012 as a period for reconciling work and childcare. As particular measures for reconciling work and childcare, the Ministry of Labor introduced the expansion of childcare facilities and flexible working hours. It has been only one year since the introduction of the new policies so the data are not available to evaluate the ultimate effect of these policy measures.

76 Maternity leave was introduced in Korea when the Labor Standards Act was enacted in 1953. Keunro Kijun Bub [Labor Standards Act], art. 60 (1) (Act No. 286, May 10, 1953) (R.O.K), http://www.klaw.go.kr/CNT2/LawContent/MCNT2LawEtc3Dan.jsp?s_lawmst=86551&history=H&lawnm=%ea%b7%bc%eb%a1%9c%ea%b8%b0%ec%a4%80%eb%b2%95&keyword= [hereinafter LSA] [translated by Kook Hee Lee] (stating that “Women are entitled to 60 days of protective maternity leave with full remuneration.”); and Childcare Policy, MINISTRY OF HEALTH, WELFARE AND FAMILY AFFAIRS, http://english.mw.go.kr/front_eng/jc/sjc0108mn.jsp?PAR_MENU_ID=1003&MENU_ID=100308. The Infant Care Act was enacted in 1991 to expand and improve childcare facilities; the flexible working hour system went into force in 2008. Double-Income Can Take Childcare Leave for up to Two Years, MINISTRY OF LABOR (June 27, 2008), http://www.molab.go.kr/english/Information/news_view.jsp?id=2078.

77 In addition to maternity and parental leave, paternity leave also exists as a leave system for reconciling work and childcare. According to the definition from the 1995 OECD Employment Outlook, paternity leave refers to leave granted only to fathers for a limited period around the time of childbirth (not necessarily immediately after birth, but within a short period thereafter). OECD, OECD EMPLOYMENT OUTLOOK 174 (1995). Korea provides five consecutive days of paternity leave after the birth of a child. The first three days are paid, whereas the last two days are unpaid. Employment insurance does not provide remuneration during the period. Fathers have to apply for paternity leave
E. The Outline of Research

This study consists of three chapters aside from this introduction. Chapter II proposes legislation on maternity leave. It analyzes the problems of maternity leave and provides a desirable legislative approach to expand maternal employment opportunities. Next, chapter III proposes legislation for parental leave. It analyzes the problems of parental leave and provides a desirable legislative approach to expand paternal opportunities to participate in parental leave. Lastly, chapter IV summarizes the legislative proposals presented in chapters II and III.

within thirty days after the birth. Otherwise, they lose the right to take paternity leave. In Korea, maternity and paternity leave are imbalanced with respect to the payment, duration and flexibility. The difference between these two systems is derived from the different treatment between men and women with regard to their attachment with the newborn child. The primary policy of maternity leave is to protect the mother’s health. The ILO Maternity Protection Convention expands the purpose of protection to the health of the child. By contrast, paternity leave is to allow fathers to bond with the newborn child or to take care of their spouses after birth. On the basis of the physiological differences between men and women with regard to the birth of a child, maternity and paternity leave serve different legislative purposes. This paper does not consider paternity leave as an important mechanism for gender equality in reconciling work and childcare because parental leave is still available for the same purpose as paternity leave. Therefore, this paper analyzes the problems of maternity and parental leave excluding paternity leave from the discussion.

This paper considers that there are two main problems of maternity leave in Korea. First of all, the compulsory period after the birth limits women’s right to work because there are some women who can return to the workplace prior to the expiration of the compulsory period. Secondly, the lack of financial support limits women’s right to work. The employment insurance partially remunerates lost income and the employers are responsible for the difference between the grant from the employment insurance and the actual lost income. The employer’s financial burden to grant maternity leave to women discourages employers from hiring female workforce. Therefore, this paper suggests two policy recommendations. First of all, the voluntary maternity leave system should replace the compulsory period. Secondly, Korea should expand socialization of maternity benefits to ease the employer’s financial obligation.

This paper considers that there are primary obstacles to realize gender equality in parental leave. First of all, Korea lacks financial support for parental leave. The wage replacement rate does not reach a level enough to guarantee gender equality. Secondly, Korea does not recognize the right to parental leave and benefits as an individual right. Instead, it considers the right to parental leave and benefits as an entitlement conferred upon a family. Therefore, this paper proposes that Korea should expand financial support for parental leave and recognize the right to parental leave and benefits as an individual right so that both parents may enjoy it.
II. A Legislative Proposal for Maternity Leave in Korea

This chapter consists of two parts. Part A analyzes the problems of maternity leave in Korea, focusing on compulsory leave and the lack of financial support for maternity leave. Part B provides a legislative proposal combining the voluntary leave system with an expansion of financial support for maternity leave.¹

A. The Problems of Maternity Leave in Korea

This part is divided into two sections to analyze the problems of maternity leave in Korea. Section 1 analyzes how Korean women are by law denied the right to work for 45 days after giving birth, even when they are fully capable of returning to the workforce. Section 2 analyzes how Korea’s current system requires employers to subsidize maternity leave benefits, which has the unintended consequence of discouraging companies from hiring women of child-bearing age.

1. The Problem of the Compulsory Period

This section analyzes the problem of the compulsory period in Korea in comparison with the German and U.S. systems. Germany maintains the compulsory period as Korea does. By contrast, the United States abolished the compulsory period on the grounds that it limits a woman’s right to work. By comparing these two systems, this paper will analyze the problem of the compulsory period.

¹ This part is important for the purpose of this paper because prior study on maternity leave and benefits in Korea has focused on the importance of the expansion of socialization of maternity benefits. In contrast with such a limited scope of the policy recommendation, this paper proposes the voluntary system along with the expansion of socialization of maternity benefits. Therefore, this part deserves special attention for the purpose of this paper.
period in Korea.

a. Ignorance of the Individual Characteristic of Pregnancy

Korea requires a compulsory maternity leave period of 45 days after a female worker gives birth. This requirement is premised on the special treatment approach in securing women’s rights. There are three different laws regulating maternity leave in Korea: the Constitution, the Labor Standards Act, and the Act on Equal Employment and Support for Work-Family Reconciliation. First of all, the Constitution guarantees “special protection” for working women. By adopting the special treatment approach, Korea recognizes pregnancy as a unique condition limited to women. Such a constitutional approach allows other existing legislation to provide different conditions for maternity leave which are not based on sick leave for other medical conditions. Therefore, following the mandate from the Constitution, the Labor Standards Act (LSA) provides an independent chapter dedicated to special protection for women and minors in the workplace. The LSA guarantees maternity leave as one of the provisions to ensure special protection for women.

In contrast with Korea, the United States guarantees voluntary maternity leave instead of the compulsory period because it adopts the equal treatment

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2 Constitution, art. 32, para. 4 (stating that “Special protection shall be accorded to working women, and they shall not be subjected to unjust discrimination in terms of employment, wages and working conditions.”).
4 Id. art. 74 (1) (stating that “An employer shall grant a pregnant female worker 90 days of maternity leave before and after childbirth.”).
approach as the theoretical background for how to treat pregnant workers in relation to workers with other medical conditions. U.S. Congress adopted the Pregnancy Discrimination Act (PDA) mandating that individual states and employers treat pregnant workers in the same way as workers with other medical conditions. The statutory language of the PDA did not prohibit the preferential treatment of pregnant workers over workers with other medical conditions. However, because it explicitly articulates that pregnant workers shall be treated “the same for all employment related purposes” as workers with other medical conditions, the PDA is considered as recognizing the equal treatment approach as the theoretical background for how to treat pregnant workers in relation to other similarly situated workers. As a result, the United States does not allow a compulsory period as a legitimate policy measure to protect pregnant workers, because leave for other medical conditions are completely voluntary in nature.

5 42 U.S.C. § 2000e(k) (stating that “women affected by pregnancy, childbirth or related medical conditions…be treated the same for all employment related purposes…as other persons not so affected but similar in their ability or inability to work.”).
6 Id.; and Catherine Cloud Barre, *The Viability of Maternity Leave Policies under Title VII and the Equal Protection Clause*, 5 Va. J. Soc. Pol'y & L. 603 (1998) (stating that “The Act does not affirmatively require employers to provide favorably differentiated (extra) benefits to pregnant women but merely requires that “women affected by pregnancy, childbirth, or related medical conditions…be treated the same…as other [nonpregnant] persons…similar in their ability or inability to work…. “ One of the primary purposes of the PDA is to secure the same health and disability insurance and benefits policies for pregnant women that other employees receive for illnesses that similarly interrupt their ability to work.”).
However, the United States had to struggle with how to treat pregnant workers, even after it adopted the equal treatment approach as its theoretical background. In *California Federal Savings & Loan Association v. Guerra*, the Supreme Court of the United States upheld a California statute granting four months of unpaid leave with the right to reinstatement only for pregnant workers, but did not provide the same benefits for “other disabled workers.” The Court recognized the PDA as the minimum threshold of protection for pregnant workers and upheld preferential treatment for pregnant workers. It also stated that employers could follow the equal treatment approach mandated by the PDA if they guaranteed the same benefits for other similarly situated workers. However, the Court failed to mandate employers to grant equal treatment for workers with other temporary disabilities as equal treatment proponents urged the Court to do. This dispute over how to treat pregnant workers shows the difficulties in dealing with pregnancy in the workplace. In Korea, the compulsory leave system was adopted to protect women’s health similar to how the unpaid leave and reinstatement right system for pregnancy was adopted to protect women’s health under the California statute. As Korea did not provide any compulsory leave for other medical conditions, it treated

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9 *Id.* at 285.
10 *Id.* at 290-91.
11 Brief for the National Organization for Women et al. as Amici Curiae for Neither Party, California Federal Savings & Loan Association v. Guerra, 479 U.S. 272 (1987) (No. 85-494), 1986 WL 728368 (concluding that “this Court should … rule that employers must comply with both the state law and the PDA, by providing an unpaid leave of absence to all disabled workers”).
pregnancy differently from other medical conditions just as the California statute did not provide equal treatment for pregnant workers to other workers. In case of the California Statute, the Supreme Court of the United States upheld the legitimacy of the statute on the grounds that the PDA did not prohibit more protection for pregnant workers than others. However, this dissertation proposes that different treatment for pregnant workers under the compulsory leave system violates women’s right to work because it treats pregnant workers differently from other workers.

Furthermore, the dispute over how to treat pregnant workers will continue in the United States, because different treatment of pregnant workers from workers with other temporary disabilities is still in effect.\(^1\) In \textit{AT & T v. Hulteen}, female employees challenged the seniority system which did not include the total period of pregnancy leave in calculating retirement benefits, though all medical leave for other conditions were included in the calculation.\(^2\) \textit{AT & T} changed its seniority system to include the total period of pregnancy leave if female employees took pregnancy leave after the PDA was enacted.\(^3\) However, women who took leave prior to the

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\(^1\) Deanell Reece Tacha, \textit{Women and Law: Challenging What is Natural and Proper}, 31 \textit{NOVA L. REV.} 259, 268 (2007). The author articulates that the continuous dispute over how to treat men and women is a positive disagreement which leads to active discussion about social equality. The author does not express her own opinion about maternity leave in the United States. However, on the basis of her positive perspective towards the continuous debate on the issue, she will probably see maternity leave in the United States as a flexible system which may improve as society pays continuous attention to the issue.

\(^2\) \textit{AT & T v. Hulteen}, 129 S.Ct. 1962, 1967 (2009) (stating that “Four of those women are named respondents in this case. Each of them received less service credit for pregnancy leave than they would have accrued on the same leave for disability…If her total term of employment had not been decreased due to her pregnancy leave, each would be entitled to a greater pension benefit…The EEOC issue a notice of right to sue to each named respondent and the CWA (collectively, Hulteen), and Hulteen filed suit in the United States District Court for the Northern District of California.”).

\(^3\) \textit{Id.} at 1967 (stating that “On April 29, 1979, the effective date of the PDA, \textit{AT & T} adopted its Anticipated Disability Plan which replaced the MPP and provided service credit for pregnancy leave on the same basis as leave taken for other temporary disabilities.”).
enactment of the PDA could not receive equal treatment with other similarly situated workers.\textsuperscript{15} Women argued that the PDA should apply because they received pension benefits after the PDA was enacted.\textsuperscript{16} Since the ultimate effect of different treatment occurred after 1978, female plaintiffs argued that the PDA should apply.\textsuperscript{17} AT & T defended its policy on the grounds that pregnancy leave was taken before the PDA was enacted.\textsuperscript{18} The Supreme Court upheld the different treatment of pregnancy leave from other disability leave prior to the PDA on the grounds that the employers did not have a legal obligation to provide equal treatment at that time.\textsuperscript{19} However, the dissenting opinion stated that AT & T violated the PDA because it maintained the discriminatory seniority system when the PDA was enacted.\textsuperscript{20}

\textsuperscript{15} \textit{Id.} (stating that “AT & T did not, however, make any retroactive adjustments to the service credit calculations of women who had been subject to the pre-PDA personnel policies.”).

\textsuperscript{16} Brief for the Respondents at 8, AT & T v. Hulteen, 129 S.Ct. 1962 (2009) (No. 07-544) (stating that “While the leave may have taken place earlier, the only actionable discrimination occurs when the employer fails to treat the worker “the same for … as other persons … similar in their ability or inability to work.”).

\textsuperscript{17} \textit{Id.} at 36-51. The main argument of the respondents was that “Construing the PDA to prohibit post-act reliance on pre-act service calculations does not give the PDA an impermissible retroactive effect.” The respondents considered that the Ninth Circuit did not construe the PDA to “change the legal consequences of acts completed before its effective date.” The respondents argued that “the court construed Title VII to prohibit AT & T from relying on those prior crediting decisions when setting pensions at the end of respondents’ careers, decades after the PDA took effect.” In response, the Court concluded that “AT & T’s pre-PDA decision not to award Hulteen service credit for pregnancy leave was not discriminatory, with the consequence that Hulteen has not been ‘affected by application of a discriminatory compensation decision or other practice.’”.

\textsuperscript{18} Brief for the Petitioners at 37-38, AT & T v. Hulteen, 129 S.Ct. 1962 (2009) (No. 07-543). The third argument by petitioners to challenge the adjudication of the Ninth Circuit was that “AT & T engaged in no new, actionable violations of Title VII when respondents retired.” To support this argument, petitioners alleged that “AT & T’s pre-PDA service credit awards were completed employment practices when respondents returned from maternity leaves.”

\textsuperscript{19} AT & T v. Hulteen, 129 S.Ct. 1962, 1964 (2009) (No. 07-543) (holding that “An employer does not necessarily violate the PDA when it pays pension benefits calculated in part under an accrual rule, applied only pre-PDA, that gave less retirement credit for pregnancy than for medical leave generally. Because AT & T’s pension payments accord with a bona fide seniority system’s terms, they are insulated from challenge under Title VII § 703(h).”)

\textsuperscript{20} \textit{Id.} at 1975. Justice Ginsberg dissented with Justice Breyer. They dissented on the grounds that “AT & T committed a current violation of Title VII when, post-PDA, it did not totally discontinue reliance upon a pension calculation premised on the notion that pregnancy-based classifications display no
Therefore, the controversy over how to treat pregnant workers is an on-going discussion which requires continuous overview in the United States.\textsuperscript{21} Despite continuous controversy over how to treat pregnant workers, U.S. policy adheres to the voluntary nature of maternity leave as the fundamental principle to uphold. The United States considers maternity leave as voluntary leave because it defines maternity leave as medical leave instead of parental leave.\textsuperscript{22} The Family and Medical Leave Act (FMLA) provides four grounds to take twelve weeks of unpaid leave.\textsuperscript{23} First, an employee may take leave for the birth of a child or to care for a newborn infant. Second, an employee can take leave for the adoption of a child or the placement of a child in the employee’s home for foster care. Third, an employee may take leave due to a serious health condition of the employee’s spouse, son, daughter, or parent. Lastly, an employee can take leave for a serious health condition that makes the employee unable to perform essential functions of the job. Among these four grounds, a working woman can take leave to care for a child based on the first or second ground. If an employer grants

\textsuperscript{21} \textit{Id.} (stating that “Congress interred Gilbert more than 30 years ago, but the Court today allows that wrong decision still to hold sway.”).

\textsuperscript{22} William McDevitt, Comment, \textit{Evaluating the Current Judicial Interpretation of “Serious Health Conditions” under the FMLA}, 6 B.U. PUB. INT. L. J. 697, 710-12 (1997). This paper analyzes the Supreme Court’s decisions regarding the term, “serious health conditions” of employees to grant leave under the Family and Medical Leave Act (FMLA). This paper analyzes the Court’s decisions regarding pregnancy-related leave and concludes that the Court’s required incapacity to work which is more than mere discomfort created by pregnancy to grant leave under the FMLA.

childcare leave for mothers, the employer has to provide childcare leave for fathers under equal terms with mothers. However, mothers can take leave for her health conditions related to pregnancy based on the fourth ground. This leave is not available for fathers because fathers never experience pregnancy. Therefore, the United States considers maternity leave as medical leave for an employee’s health rather than leave for childcare.

By contrast, the European Union’s maternity leave is leave for childcare, instead of medical leave as it is under the U.S. system. When the Women’s Rights Committee of the European Parliament proposed extension of the compulsory period from two weeks to six weeks, it aimed to encourage mothers to breastfeed a child.24 Leave for breastfeeding is closer to leave for the care of the child than medical leave for women’s reproductive health.25 In contrast, the U.S. defines maternity leave as the period of the actual physical inability to work as a result of pregnancy, childbirth or related medical conditions.26 It clearly excludes leave for reasons related to childrearing, such as breastfeeding, bonding or preparation for childbirth without any

24 Extend Maternity Leave to 20 Weeks, Says Women’s Rights Committee, European Parliament 1 (2009), http://www.europarl.europa.eu/pdfs/news/expert/infopress/20090414IPR53679/20090414IPR53679_en.pdf (stating that “In addition, of the 20 weeks, six weeks will have to be taken after the birth to encourage women to breastfeed as long as possible.”).
25 District courts in the United States explicitly rejected to recognize leave for breastfeeding as medical leave. Instead, they considered leave for breastfeeding as leave related to childcare. In Wallace v. Pyro Mining Co., a female employee challenged the employment policy of refusal to grant leave for breastfeeding on the basis of the PDA. The court viewed that breastfeeding was not a medical condition related to pregnancy because it was not a sickness or temporary disability. Wallace v. Pyro Mining Co., 789 F. Supp. 867, 869 (W.D.Ky. 1990). In Fejes v. Gilpin Ventures, Inc., the court also concluded that the PDA did not include breastfeeding as the prohibitive criterion in differentiating women from men. In Fejes v. Gilpin Ventures, Inc., 960 F. Supp. 1487, 1492 (D. Colo. 1997).
26 Maternity Leave, 2 EEOC Compl. Manual (BNA) No. 92, § 626.5 (July 1986). The EEOC distinguished maternity leave from child-care related leave. It stipulates that maternity leave refers to leave for the actual physical inability to work based on medical conditions.
disability.  

From the perspective of the U.S. approach, compulsory maternity leave is not necessary when the length of maternity leave is tailored to fit each woman’s individual ability. Medical experts state that normal recuperation from childbirth requires six weeks but they emphasize that variations may occur due to the individual differences among women. Consequently, just as other forms of medical leave require a medical certificate confirming the period necessary for recovery, maternity leave should be voluntary and based on certification from a licensed doctor so that women are not forced to stay away from their work before and after childbirth.

In conclusion, the United States opposes compulsory leave on the basis of equal treatment. According to this logic, pregnancy should be treated in the same way as other physiological conditions which may or may not disable women from working. By differentiating pregnancy from other physiological conditions,

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28 COMMITTEE ON PROFESSIONAL STANDARDS OF AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS, STANDARDS FOR OBSTETRIC-GYNECOLOGIC SERVICES 21-22 (1989) (stating that “Based on the outcome of the postpartum examination, the physician can determine whether the woman is ready both physiologically and psychologically to resume working. Most women may return to work several weeks after an uncomplicated delivery. A period of 6 weeks is generally required for a woman’s biological condition to return to normal, but the physician should base recommendations regarding the time at which the patient can resume full activity on the patient’s individual circumstances.”).
29 This applies to how other employment policies treat women’s reproductive health in relation to men. In UAW v. Johnson Controls, Inc., employers limited women’s employment opportunities on the grounds of their reproductive health conditions. The Supreme Court of the United States invalidated the employment policy on the grounds that women are entitled to the same employment opportunities as men, because the workplace environment does not only affect women’s reproductive health but may affect men’s reproductive health as well. Therefore, in general, the equal treatment approach in the United States dominates employment policies regarding women’s reproductive health. UAW v. Johnson Controls, Inc., 499 U.S. 187 (1991).
compulsory leave limits women’s right to work. Korea should follow the United States by adopting an equal treatment approach and opposing compulsory leave.

b. Reinforcement of Traditional Gender Role Stereotypes

Korea’s compulsory maternity leave complies with the mandate from the Maternity Protection Convention, the primary international instrument governing this area of law. In 1919, the ILO promulgated the Maternity Protection Convention as the first international instrument recognizing maternity as a subject of protection and adopting the special treatment approach as its theoretical background. In particular, the Maternity Protection Convention provided six weeks of prenatal and six weeks of postnatal leave, though the prenatal leave was voluntary and the postnatal leave was compulsory. When the ILO revised the 1919 Convention in 1952, it maintained the compulsory period as the core of its maternity leave system, but it also expanded women’s discretion to manage the maternity leave system. Prior to the

30 Lesley J. Wiseman, Note, A Place for “Maternity” in the Global Workplace: International Case Studies and Recommendations for International Labor Policy, 28 OHIO N.U. L. REV. 195, 227 (2001). The author conducts a comparative study of China and Mexico. In a section comparing these two countries, the author emphasizes that the compulsory period limits women’s right to decide whether to resume working or not on the basis of their own health.

31 E. Abena Antwi, Comment, Women in the World of Work: After Eighty-Six Years, Has the International Labour Organization Done Enough to Promote Equality?, 31 N.C. J. INT'L L. & COM. REG. 793, 800 (2006). The author explores the international instruments regulating gender equality in the workplace. The author concludes that the maternity protection convention was enough to protect women from discrimination but the enforcement mechanism lacked practicality. As a result, the author considers the special treatment approach taken by the maternity protection convention as the legitimate approach to protect women in the workplace.

32 Maternity Protection Convention art. 3, Nov. 29, 1919 (stating that “[i]n any public or private industrial or commercial undertaking, or in any branch thereof, other than an undertaking in which only members of the same family are employed, a woman (a) shall not be permitted to work during the six weeks following her confinement; (b) shall have the right to leave her work if she produces a medical certificate stating that her confinement will probably take place within six weeks”).

33 Maternity Protection Convention (Revised) art. 3(2), Jun. 28, 1952 (providing that “The period of maternity leave shall be at least twelve weeks, and shall include a period of compulsory leave after confinement.”).
revision, six weeks were the fixed period for prenatal leave, and women were prohibited from taking more than six weeks of compulsory leave after the birth of the child. The revision, however, allowed women greater freedom to schedule their twelve weeks of leave including, for example, taking no leave before the birth and twelve weeks after. The revision tried to respect women’s right to decide when and how long to take leave except for maintaining the compulsory period. The ILO continued to maintain the compulsory period when amending the Maternity Protection Convention once again in 2000. The amendment in 2000 maintained the compulsory period as the major part of the maternity leave system and extended the total period from twelve weeks to fourteen weeks. The extension of the total duration complies with the special treatment approach because it is motivated by protective attitudes towards women. The compulsory period also furthers the special treatment approach. However, the extension guarantees women’s right to decide how long and when to take leave, whereas the compulsory period deprives women of choices. Therefore, though the compulsory period is not compelled by international law, it is completely legitimate under applicable international law.

Just as Korea does, Germany also maintains the compulsory period as the core of its maternity leave system. This is in contrast with the United States. The

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34 Maternity Protection Convention art. 4(4), Jun. 16, 2000 (providing that “[w]ith due regard to the protection of health of the mother and that of the child, maternity leave shall include a period of six weeks’ compulsory leave after childbirth”).
35 Id. art. 4(1) (providing that “On production of a medical certificate or other appropriate certification, as determined by national law and practice, stating the presumed date of childbirth, a woman to whom this Convention applies shall be entitled to a period of maternity leave of not less than 14 weeks.”).
36 To analyze the problem of the compulsory period in Korea, this paper conducts a comparative study of the U.S. and German systems. In the previous chapter, which is entitled “Ignorance of the Individual Characteristic of Pregnancy,” this paper focused on the U.S. approach opposing the compulsory period.
German experience represents the basic attitude of the European Union towards how to treat pregnant workers in relation to other similarly situated workers. The European Union has already promulgated several laws concerning women in the workplace. The first legislation was the Equal Treatment Directive, which mandates its member states to treat men and women in equal terms in the workplace.\(^{37}\)

However, this legislation allows preferential treatment to women regarding pregnancy and maternity.\(^{38}\) Though the European Union amended the Equal Treatment Directive several times, it maintained the special protection for pregnancy and maternity.

The chapter considered the European approach to emphasize the position of the United States, but the chapter mainly focused on the system in the United States. Following the analysis of the U.S. system, this chapter now studies the system in Germany. By analyzing the legislative history of maternity leave in Germany, this chapter emphasizes that the compulsory period is based on gender stereotyping and ultimately results in the reinforcement of stereotyping.

\(^{37}\) Council Directive 76/207 1976 O.J. (L 29) 40 (EC) 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 [Directive 76/207]; 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 for men and women as regards access to employment, vocational training and promotion and working conditions [Directive 2002/73]; Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunity and equal treatment of men and women in matters of employment and occupation (recast) [Directive 2006/54]. All these three directives are “equal treatment directives” which support the “principle of equal treatment” between men and women in the workplace. Directive 76/207 states that “The purpose of this Directive is to put into effect in the Member States the principle of equal treatment for men and women as regards access to employment, including promotion, and to vocational training and as regards access to employment, including promotion, and to vocational training and as regards working conditions and on the conditions referred to in paragraph 2, social security.” This principle is hereinafter referred to as “the principle of equal treatment.” Directive 76/207, art. 1(1). Directive 2002/73 amended Directive 76/207 but it maintained the principle of equal treatment as the purpose of legislation. The recast Directive 2006/54 also emphasizes the principle of equal treatment as the legislative purpose of the equal treatment directive. Directive 2006/54, art. 1 (stating that “The purpose of this Directive is to ensure the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. To that end, it contains provisions to implement the principle of equal treatment in relation to: (a) access to employment, including promotion, and to vocational training; (b) working conditions, including pay; (c) occupational social schemes. It also contains provisions to ensure that such implementation is made more effective by the establishment of appropriate procedures.”).

\(^{38}\) Directive 76/207, art. 2(3) (providing that “This Directive shall be without prejudice to provisions concerning the protection of women, particularly as regards pregnancy and maternity.”) On the basis of this particular provision, the European Court of Justice upheld maternity leave until the child reaches six months old, with full remuneration which excluded men from the same benefits. Directive 2002/73 maintained the special treatment approach.
maternity as an exception to the principle of equal treatment. Further promoting the special treatment approach towards pregnant workers under the Equal Treatment Directive, the European Union promulgated legislation solely devoted to pregnant workers which can be referred to as the “Pregnancy Directive.” The Pregnancy Directive focuses on protective measures for the health of working mothers. Among the protective measures, the Pregnancy Directive mandates its member states to provide at least a two week compulsory period, before or after birth, among fourteen total weeks of maternity leave.

Despite these practices on the grounds of the special treatment approach, the variations in practice dilute the legitimacy of the compulsory period. First of all, the period of compulsory leave is not uniform. Korea allocated thirty days as the

39 Directive 2002/73 maintained the special treatment approach. Directive 2002/73, art. 2(7) (stating that “This Directive shall be without prejudice to provisions concerning the protection of women, particularly as regards pregnancy and maternity.”) In detail, the amendment prescribes the rights related to maternity leave. Id. art. 2 (7) (describing that “A woman on maternity leave shall be entitled, after the end of her period of maternity leave, to return to her job or to an equivalent post on terms and conditions which are no less favorable to her and to benefits from any improvement in working conditions to which she would be entitled during her absence.”). Directive 2006/54 further emphasizes the “substantive equality” for women. Directive 2006/54, Preamble, para. 24 (articulating that “the Court of Justice has consistently recognized the legitimacy, as regards the principle of equal treatment, of protecting a woman’s biological conditions during pregnancy and maternity and of introducing maternity protection measures as a means to achieve substantive equality.”).

40 Directive 92/85/EEC 1992 O.J. (L 348) 1 (EC) 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).

41 Id. art. 1(1) (providing that “The purpose of this Directive, which is the tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC, is to implement measures to encourage improvements in the safety and health at work of pregnant workers and worker who have recently given birth or who are breastfeeding.”).

42 Id. art. 8 (stating that “1. Member States shall take the necessary measures to ensure that worker within the meaning of Article 2 are entitled to a continuous period of maternity leave of at least 14 weeks allocated before and/or after confinement in accordance with national legislation and/or practice. 2. The maternity leave stipulated in paragraph 1 must include compulsory maternity leave of at least two weeks allocated before and/or after confinement in accordance with national legislation and/or practice.”).
compulsory period among the sixty days of maternity leave when it initially introduced the concept of the compulsory period.\textsuperscript{43} According to the record, “thirty days” of the compulsory period was not based on any medical grounds. Instead, it was arbitrarily presumed that at least a half of the entire period should be allocated as the compulsory period to recover from the medical conditions after childbirth.\textsuperscript{44} Then, it extended the period from thirty days to forty five days.\textsuperscript{45} As thirty days of compulsory leave was not based on examination of actual medical conditions, the extension was not proposed upon any changes in medical conditions of women’s health after childbirth.\textsuperscript{46} Instead, Korean parliament followed the Maternity Protection Convention of the ILO, which prescribes six weeks of compulsory leave after childbirth.\textsuperscript{47} As Korea did, Germany also extended its original compulsory period of three weeks to eight weeks.\textsuperscript{48} Furthermore, the ILO prescribes six weeks

\textsuperscript{43} LSA, art. 60 (1), (Act No. 791, Dec. 4, 1961) (R.O.K.), http://likms.assembly.go.kr/law/jsp/LawJoHist.jsp?LAW_ID=A1530&PROM_NO=02708&PROM_DT=19741224&LAW_NM=근로기준법&JO_NO=第 60 條&JO_TITLE=産前後休暇&REV_DATE=1961124 (stating that “An employer shall grant a pregnant female worker 60 days of paid maternity leave before and after childbirth. In such case, 30 days shall be allocated after the childbirth.”).
\textsuperscript{44} Proposal to Revise the LSA (Proposal No. AA0176, Nov. 16, 1961) (R.O.K).
\textsuperscript{45} LSA, art. 72 (1), translated by Kook Hee Lee (Act No. 6507, Aug. 14, 2001) (R.O.K.), http://likms.assembly.go.kr/law/jsp/LawThree.jsp?WORK_TYPE=LAW_THREE&LAW_ID=A1531&PROM_DT=19970313&PROM_NO=05309&LAW_KD=법률&Before=LAW_BON (stating that “the employer shall grant 90 days of maternity leave before and after childbirth. 45 days shall be allocated after the childbirth.”).
\textsuperscript{47} Proposal to Revise the LSA, Proposal No. 160880 (July 16, 2001) (R.O.K.).
\textsuperscript{48} When Germany introduced maternity leave for the first time in 1878, it provided only three weeks of compulsory leave after the birth without any period voluntary in nature before or after the birth. Susan L. Erickson, \textit{Maternity Care Policies and Maternity Care Practices, in} \textit{Birth by Design} 203, 204 (Raymond De Vries et al eds., 2001). The current system in Germany guarantees fourteen weeks of maternity leave following the mandate of the Pregnancy Directive. Among the fourteen weeks, six weeks are voluntary and eight weeks are compulsory. Six weeks of voluntary leave are allocated before the birth whereas eight weeks of compulsory leave should be taken after the birth. Annie
as the compulsory period\textsuperscript{49} whereas the European Union traditionally considered at least two weeks as necessary for the health of mothers in 1992.\textsuperscript{50} The European Union is in the process of extending the period to six weeks.\textsuperscript{51} However, because there is no change in women’s health conditions related to pregnancy from the past when the Pregnancy Directive originally prescribed two weeks as the compulsory period for recuperation in 1992, the proposed extension is not based on medical reasons to protect women’s reproductive health. In fact, new legislation allows mothers and fathers to share the compulsory period, and such allowance dilutes the original purpose of protecting women’s health conditions because men can share the period with their spouses.\textsuperscript{52} As a result, even if the European Union recognizes the same period of compulsory leave as the ILO, compulsory leave on the grounds of protection for women’s reproductive health loses its legitimacy. These different approaches taken by each jurisdiction dilute the legitimacy of compulsory leave because it is no longer based on health of mother.

Secondly, there is no agreement on whether the prenatal or postnatal period should be compulsory. Korea, Germany and the ILO prescribe the postnatal period

\textsuperscript{49} C 183 Maternity Protection Convention, 2000 (providing that “With due regard to the protection of the health of the mother and that of the child, maternity leave shall include a period of six weeks’ compulsory leave after childbirth, unless otherwise agreed at the national level by the government and the representative organizations of employers and workers.”).

\textsuperscript{50} Council Directive 92/85/EEC 1992 O.J. (L 348) 1 (EC) 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), art. 8(2) (providing that “The maternity leave stipulated in paragraph 1 must include compulsory maternity leave of at least two weeks allocated before and/or after confinement in accordance with national legislation and/or practice.”).


\textsuperscript{52} Id.
as compulsory leave. However, the European Union gives discretion to the member states to determine whether the prenatal or postnatal leave should be compulsory under the Pregnancy Directive of 1992. The European Union is in consideration of extending the compulsory period from two weeks to six weeks, but it still maintains the same position as its original Directive of 1992 regarding whether the compulsory period shall be the prenatal or postnatal period. Therefore, these variations in the form of the compulsory period dilute the original legislative purpose of protecting women’s health after childbirth.

In addition, in the case of the European Union, compulsory leave is for childcare purposes instead of protecting women’s health conditions, because compulsory leave serves as a period for breastfeeding. How to treat breastfeeding in the workplace has been under dispute even in the United States, where the equal treatment approach has been recognized as the theoretical background for how to treat women in the workplace. Proponents of equal treatment may argue that breastfeeding is similar to other physical conditions. As other physical conditions may require medical leave for certain difficulties, so may breastfeeding need a period

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53 Directive 92/85, art. 8(2) (stating that “The maternity leave stipulated in paragraph 1 must include compulsory maternity leave of at least two weeks allocated before and/or after confinement in accordance with national legislation and/or practice.”).
55 Maureen E. Eldredge, The Quest for a Lactating Male: Biology, Gender, and Discrimination, 80 CHI.-KENT L. REV. 875, 876 (2005). The author stipulates that the PDA and Title VII are not enough to protect women’s situations without comparable situations applicable to men, such as breastfeeding, prescription contraception coverage, and infertility treatments exclusive to women.
56 Id. The article compares the need for time to pump milk to the need for time to stretch for employees with back pains.
However, it is misguided to argue that a period for breastfeeding is equivalent to a period for pregnancy, because breastfeeding is a situation in the process of raising a child whereas pregnancy is not. Rather, the equal treatment approach can be satisfied by providing parental leave for either gender, in which nursing women can take leave for breastfeeding and men can take leave for childcare equivalent to breastfeeding. Men can bottle-feed and bond with an infant just as women breastfeed. As a result, although men are not able to breastfeed, they are able to take care of a child under the parental leave system.

When the European Union proposed extension of the compulsory period, it purported to encourage women to breastfeed their newborn child. It allows the father to

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57 Diana Kasdan, Note, Reclaiming Title VII and the PDA: Prohibiting Workplace Discrimination against Breastfeeding Women, 76 N.Y.U.L. REV. 309, 313 (2001). The author articulates that breastfeeding is not a matter of choice in the domain of child-raising. Instead, the author emphasizes that breastfeeding is closely related to gender or pregnancy. However, the author does not limit the conceptualization of breastfeeding as a biological characteristic of women. The author perceives breastfeeding as a unique condition, not only a biological function, but also a social function. Although the author acknowledges the biological condition of breastfeeding, the author refuses to accept the conclusion that breastfeeding is a medical condition. Id. at 333.

58 Id. Although the author is opposed to defining breastfeeding as a matter of choice in the process of child-raising, this paper accepts the conceptualization of breastfeeding as a matter of choice for childcare because such a conceptualization does not eliminate protection for women who decide to breastfeed after birth. Because optional leave instead of compulsory leave can accommodate an individual choice of breastfeeding, compulsory leave is not necessarily the only possible way to accommodate breastfeeding in the workplace.

59 Id. The author criticizes that acknowledging breastfeeding as childcare limits challenges of discrimination on the basis of breastfeeding but it is not always true. Because of excluding fathers from the equivalent benefits for childcare, insufficient leave for breastfeeding may be challenged as gender discrimination under Title VII.


61 European Parliament, Legislative Observatory: The Procedure File, http://www.europarl.europa.eu/oeil/file.jsp?id=5697042 (last visited April 16, 2014). The first document available to refer to the history of the legislative proposal to extend the compulsory period was the initial legislative document from the European Commission and European Council. It states that “The increase is designed to allow women to recover from pregnancy and childbirth, to have more time with their children, and to be able to breastfeed for a longer period.” The increase refers to the increase of the total period of maternity leave and compulsory leave. However, in the process of the new amendment, the compulsory period was particularly tailored for breastfeeding.
share the period with the mother if the couple agrees. However, because the European Union provides the compulsory period as maternity leave instead of parental leave, it fundamentally considers women as the leave-taker during the compulsory period instead of men. Even if Europe considers breastfeeding as legitimate grounds to prescribe maternity leave, it could still allow women to have enough time to breastfeed by providing optional maternity leave instead of the compulsory period. By prescribing compulsory leave instead of voluntary leave, Europe prioritized women’s role as caregivers over their role as workers. Therefore, compulsory leave loses its legitimacy to protect women’s and children’s health, because it originally purports to force women to stay at home for childcare instead of returning to the workplace according to the legislative purpose of compulsory leave in the European Union.

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62 Id. One of the documents available for reference for the procedure of extension was the decision of the Committee on Women’s Rights and Gender Equality. The decision states that “this period may be shared with the father, in accordance with the legislation of the Member State concerned if the couple agrees.”

The compulsory period in Korea limits women’s right to work because it ignores the individual characteristic of pregnancy and reinforces gender stereotyping. The comparative study of the U.S. and European approaches shows that the compulsory period is based on generalizations of women’s biological conditions and expands the biological differences between men and women to their social functions as workers and caregivers. Such limitation on flexibility of the leave system reduces women’s employment opportunities. Women may get lesser jobs because employers are reluctant to hire women upon the possibilities to provide compulsory leave without any exceptions. The compulsory period requires employers to hire replacements or allow overtime allowances for other employees. In addition, employers have to

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65 Joan C. Williams & Stephanie Bornstein, The Evolution of “Fred”: Family Responsibilities Discrimination and Developments in the Law of Stereotyping and Implicit Bias, 59 HASTINGS L.J. 1311, 1331-322 (2008). The author stipulates that employers perceive explicit sex discrimination as violation of Title VII but does not consider discrimination against mothers on the basis that they are responsible for childcare as gender discrimination.


67 OECD, REDUCING THE RISK OF POLICY FAILURE: CHALLENGES FOR REGULATORY COMPLIANCE 16 (2000), dividing compliance failure into three categories: failure related to lack of regulatory knowledge, willingness, and ability. The current maternity leave system falls into the second category, lack of willingness to comply. Employers lose willingness to comply with the regulation due to extensive costs to comply.

68 Id. at 9, suggesting regulatory reforms for different types of regulations: economic, special and administrative regulations. For economic regulations, deregulation or efficiency-promoting regulations are suggested. For special regulations, such as health, safety and welfare regulations, financial incentives are proposed. For administrative regulations, simplification of administrative procedures are recommended. Since the maternity leave system in Korea falls under the special regulation which require financial incentives for compliance, subsidization of the costs for replacement or overtime allowances may also be supplementary regulations to attract more employers to comply with the system.
pay maternity benefits even if female workers are capable of returning to work earlier than the prescribed compulsory period. Such costs to comply with the regulation result in lesser jobs for women and employers’ reluctance to hire women. Therefore, the compulsory period in Korea limits women’s right to work.

2. The Employers’ Financial Obligation to Remunerate Lost Income

This section analyzes the problem of an employer’s financial obligation to support maternity leave. Korea guarantees ninety days of maternity leave. Employers are primarily responsible for full remuneration during the first sixty days of maternity leave and employment insurance pays for the last thirty days of maternity leave. Despite subsidies from employment insurance, employers are still

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69 When Korea introduced maternity leave for the first time in 1953, it was suffering from the devastating situation caused by the Korean War, which lasted for three years and ended in 1953. By prescribing fully paid maternity leave, it obligates the employers to be responsible for full remuneration. Korea guaranteed a right to maternity leave that was practically impossible under the economic hardship that Korea suffered as a developing country. Jennifer L. Porges, The Development of Korean Labor Law and the Impact of the American System, 12 COMP. LAB. L. J. 335, 343-44 (1990-1991). The author analyzes the legislative history of Korean Labor Law in the perspectives of historical analysis on the basis that American Labor Law substantially affected Korean Labor Law, but the ultimate impact was not as expected because the locality of Korea was not reflected in the implementation process. However, paid maternity leave as stipulated by the Labor Standards Act of 1953 was not an outcome of the American impact on Korean Labor Law. It was rather influenced by international labor standards. Although the author emphasizes the American impact on Korean Labor Law, the author does not ignore the influences from the international labor standards. In addition to international labor standards, the author also emphasizes the influence of Japanese practices. Because Korea had been colonized by Japan at the dawn of modernization between 1919 and 1945, Japanese practices remained as the bible of Korean Labor Law. Id. at 344.


71 Id. art. 72 (2) (stating that “The first 60 days of maternity leave shall be paid leave.”).

responsible for a substantial amount of lost income for women on maternity leave.\textsuperscript{73} Therefore, the financial obligation to pay full remuneration during maternity leave limits women’s right to work.

This section is particularly important for understanding the relationship between a compulsory system and employer’s financial obligation to support maternity leave, because the financial obligation for employers to support maternity leave expands the adverse impact of the compulsory period. Women are prohibited from working during the compulsory period and employers do not receive enough public subsidies to relieve them from the financial burden of hiring female workers. Although employers are obligated to pay full remuneration during maternity leave, they often avoid providing full remuneration.\textsuperscript{74} Furthermore, they are hesitant to hire female workers due to the financial obligation to pay full remuneration, at least for the compulsory period after the birth.\textsuperscript{75} Under the compulsory system, women have no

\textsuperscript{73} Myunghee Song, Sanjeonhuhuga Mihalyongshil Taejosa Mit Nodongshijangbokguih Whalsungwha Banganae Guanhan Yongu [Maternity Leave and Reinstatement Afterwards] 6 (2006). The author conducts a study on the reality of women facing childbirth while they are actively participating in the workplace. The author concludes that an employer’s financial obligation to pay full remuneration during the first sixty days obstructs employers from hiring female workers and from granting them maternity leave.

\textsuperscript{74} Pilho Yun, 470 Thousand Newborn Babies But Only 90 Thousand Received Maternity Benefits, Etoday, Oct. 10, 2012, http://www.etoday.co.kr/news/section/newsview.php?idxno=640190 (last visited Nov. 1, 2013). 99,494 working women received medical expenses for the childbirth, whereas only 90,290 women received maternity benefits in 2011. These statistical figure shows that employers often avoid providing maternity benefits for working women.

\textsuperscript{75} Id. at 8-9. Employers are not satisfied with the current maternity leave system. 52.9\% of employers considered that the duration of maternity leave should not exceed ninety days. In contrast, only 37.5\% of employers answered that the duration of maternity leave may exceed ninety days. Employers prefer a shorter leave of absence because they have to suffer the direct costs of maternity benefits. If their financial obligations are lifted, they may feel comfortable with a longer period of maternity leave.
choice but to stop working.\footnote{Mai Chen, *Protective Laws and the Convention on the Elimination of All Forms of Discrimination Against Women*, 15 WOMEN’S RTS. L. REP. 1, 18 (1993). The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) does not prescribe the compulsory period as the ILO Maternity Protection Convention. However, the author appreciates the possibility that member countries of the ILO can reserve the provision of the compulsory period. Although the CEDAW does not particularly obligate the member countries to provide compulsory period as the ILO does, the CEDAW still condones the compulsory period as a legitimate measure under Article 11, which allows protective measures for women’s health in the workplace.} What is worse, the employer tends to avoid providing full remuneration during the compulsory period.\footnote{Pilho Yun, *470 Thousand Newborn Babies But Only 90 Thousand Received Maternity Benefits*, E-today, Oct. 10, 2012, http://www.etoday.co.kr/news/section/newsview.php?idxno=640190 (last visited Nov. 1, 2013). 99,494 working women received medical expenses for the childbirth, whereas only 90,290 women received maternity benefits in 2011. The statistical evidence proves that the employer avoid providing maternity benefits even if the leave system is compulsory rather than voluntary.} The ultimate effect of employers’ financial obligation during the compulsory period discourages women from working and renders them without any economic stability during the compulsory period. Therefore, this chapter is particularly important in its analysis of the relationship between the compulsory period and the financial obligation which marginalizes women’s status as workers.

To provide substantial analysis on the adverse impact of the financial obligation for employers to pay full remuneration during maternity leave, this section is divided into five sub-sections. Firstly, sub-section (a) focuses on the relationship between employers’ financial obligation to support maternity leave and the compulsory period. Secondly, sub-section (b) conducts a comparative study of financial support for maternity leave in the United States and Germany. The U.S. system guarantees payment equivalent to other sickness benefits whereas the German system fully remunerates for the lost income from the health insurance scheme. Thirdly, sub-section (c) focuses on the objections that Korea faced when introducing the
socialization of maternity costs. Employers opposed the introduction on the basis of their financial obligations to contribute to the employment insurance program.

Fourth, sub-section (d) analyzes the effect of socialization maternity benefits in Korea. Lastly, sub-section (e) reviews disputes over financial sources of maternity benefits in Korea. Throughout the analysis, this section will emphasize that the employer’s financial obligation to pay full remuneration during maternity leave seriously limits women’s right to work.

a. The Relationship between the Employer’s Financial Obligation and the Compulsory Period

When Korea introduced maternity leave for the first time in 1953, it obligated employers to pay full remuneration throughout the whole period. While Korea provided for the employers’ obligation to guarantee full remuneration during maternity leave from the beginning, it did not prescribe the compulsory period as sixty days of maternity leave. Instead, Korea allowed women to decide when and how long to take leave. When Korea prescribed employers’ obligation to pay full

78 Keunro Kijun Bub [Labor Standards Ac], art. 60 (1) (Act No. 286, May 10, 1953) (R.O.K), http://www.klaw.go.kr/CNT2/LawContent/MCNT2LawEtc3Dan.jsp?s_lawmst=86551&history=H&l_lawnm=%ea%b7%bc%eb%a1%9c%ea%b8%b0%ec%a4%80%eb%b2%95&keyword= [hereinafter LSA] [translated by Kook Hee Lee] (last visited May 18, 2010)(stating that “Women are entitled to 60 days of protective maternity leave with full remuneration.”).

79 Id. In 1953, the ILO Maternity Protection Convention already provided twelve weeks of maternity leave with six weeks of compulsory period as the minimum threshold for its member countries to follow after. However, Korea did not follow the mandate from the ILO Maternity Protection Convention when it promulgated the Labor Standards Act in 1953. Sixty days of maternity leave under the LSA of 1953 did not meet the standard of twelve weeks under the ILO Maternity Protection Convention. Furthermore, Korea did not provide any compulsory period as the ILO Maternity Protection Convention mandated.

80 Id. There is no empirical evidence which can show the actual period of maternity leave that women took under the voluntary maternity leave system of 1953. However, considering the devastating post-war period after the Korean War between 1950 and 1953, the legislative purpose of the voluntary
remuneration in the beginning, it did not provide a compulsory period. As a result, when Korea introduced employers’ obligation to pay full remuneration for lost income during maternity leave, Korea did not purport to ensure economic stability during the compulsory period.

In 1961, Korea introduced the compulsory leave period of thirty days after birth. The increased economic development of this period required a female workforce in the process of industrialization. When Korea introduced the first maternity leave system in 1953, it was recovering from the Korean War. In the process of reestablishing the economy, employers had to provide full remuneration if they granted maternity leave to women. The maternity leave system was prescribed as a voluntary system so employees were not obligated to stay at home after birth. On the basis of the voluntary nature of the system, employers could refuse to grant maternity leave to women. The entitlement to take maternity leave was a legal right conferred on women, but the social atmosphere after the War was not progressive enough to respect women’s rights to maternity leave as an important policy goal to achieve. Furthermore, the economic situation after the Korean War did not allow Korea to implement the voluntary system as effectively as it originally expected.

system would not be to expand women’s right to work. Instead, the lack of understanding of the maternity leave system would be the reason why Korea did not follow after the mandate from the ILO Maternity Protection Convention which obligates the member states to provide a compulsory period. Particularly, because Korea did not follow the minimum period of maternity leave under the ILO Maternity Protection Convention, ignorance to the importance of international labor standards would be a fundamental reason why Korea omitted the compulsory period.

81 LSA, art. 60 (1), (Act No. 791, Dec. 4, 1961) (R.O.K.), http://likms.assembly.go.kr/law.jsp/LawJoHist.jsp?LAW_ID=A1530&PROM_NO=02708&PROM_DATE=19741224&LAW_NM=근로기준법&JO_NO=第 60 條&JO_TITLE=産前後休暇&REV_DATE=1961·12·4 (stating that “An employer shall grant a pregnant female worker 60 days of paid maternity leave before and after childbirth. In such case, 30 days shall be allocated after childbirth.”).
The overall standard of maternity leave was too high for Korea to implement in practice. The fundamental background of the lack of consideration for the effectiveness of labor standards in Korea was primarily affected by the prioritization of unification of the Korean Peninsula over economic development under the President Rhee regime. Because President Rhee could not handle the post-war situation, in 1960, President Park took over the presidency and began to prioritize economic policy over unification policy. President Park particularly focused on the economic development plan to industrialize the Korean economy which relied heavily on agriculture. To prepare for the economic development plan, Congress finally passed the amendment for the Labor Standards Act to incorporate the compulsory period of thirty days in maternity leave. As a result, Korea adopted

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82 Kathleen B. O’Neill, *Industrial Relations in Korea: Will Korea Become Another Japan?*, 12 COMP. LAB. L. J. 360, 385 (1990-1991). The article evaluates that Korea did not adopt the Labor Standards Act in accordance with its unique economic situation, which was suffering from a high unemployment rate and a lack of infrastructure to start economic development. Instead, Korea followed Japanese standards which were affected by American labor law. There are several possibilities that led Korea to prescribe the relatively high labor standards. Naively high enthusiasm, legislative conveniences, or a desire to improve the national public image could have led to the inappropriate labor standards in Korea. It is not obvious which factor mostly affected Korea to implement the high labor standards. However, it is clear that an employer’s responsibility to pay full remuneration during maternity leave was not in compliance with the situation in Korea.

83 Clive Hamilton, *Capitalist Industrialization in Korea* 25-26 (1986). The author analyzes the period between 1950 and 1960 as a confusing era for Korea to turn to the economic development phase. President Rhee was overwhelmed by anticommunism and focused on the unification policy rather than the economic development plan. As a result, the labor standards adopted in 1953 could not reflect the reality in the workplace and lead the work environment to improve the economic situation in Korea.

84 Id. at 35. When President Rhee suffered from criticism on the basis of illegal activities during the election. The Student Revolution of 1960 forced President Rhee to resign from the presidency.

85 Id.

the compulsory period as the main part of its maternity leave system.

The compulsory period continued to be the core of maternity leave policy in Korea throughout the subsequent revisions in the maternity leave system. In 2001, Korea extended the total period of maternity leave from sixty days to ninety days. Along with the extension of the total period, it also extended the period of compulsory leave from thirty days to forty-five days. By extending the compulsory period, Korea expressed its strong support for a protective attitude towards the health of female workers.

Along with the extension of the compulsory period, Korea partially relieved employers’ financial obligations to pay full remuneration during maternity leave. As the first attempt to socialize maternity costs, employment insurance started to provide full remuneration, up to ₩1,350,000 per month ($1,350), during the last thirty days of maternity leave. Korea limited the duration of the insurance coverage to thirty days because the policy background of socialization of benefits was to remunerate the extra expenses that the employers had to bear due to the extension of the total

1961·12·4 (stating that “An employer shall grant a pregnant female worker 60 days of paid maternity leave before and after childbirth. In such cases, 30 days shall be allocated after childbirth.”).
87 LSA, art. 72 (1), translated by Kook Hee Lee (Act No. 6507, Aug. 14, 2001) (R.O.K.), http://likms.assembly.go.kr/law/jsp/LawThree.jsp?WORK_TYPE=LAWS_THREE&LAW_ID=A1531&PROM_DT=19970313&PROM_NO=05309&LAW_KD=법률&Before=LAW_BON (stating that “the employer shall grant 90 days of maternity leave before and after childbirth. 45 days shall be allocated after childbirth.”).
88 Id.
89 Koyongbohumbub [Employment Insurance Act], art. 55-8 (1) (Act No. 6509, Aug. 14, 2001) (R.O.K.) [translated by Kook Hee Lee] [hereinafter EIA], http://likms.assembly.go.kr/law/jsp/Law.jsp?WORK_TYPE=LAWS_BON&LAW_ID=A1525&PROM_NO=06509&PROM_DT=20010814 (stating that “Employment insurance shall be granted during the additional 30 days after the first 60 days of maternity leave.”).
duration of maternity leave from sixty days to ninety days. Although Korea introduced employment insurance to socialize maternity costs for the first time, it still left employers responsible for lost income during the remaining period of maternity leave. Employment insurance was only responsible for paying maternity benefits during the last thirty days. As a result, during the majority of the leave period, employers are still the primary source of financial support for maternity leave. The lack of financial support discriminates on the basis of sex, because the adverse impact is limited to women only. Therefore, the introduction of insurance coverage during maternity leave is insufficient to relieve employers from the economic disincentives to hire women instead of men.

After the implementation of extended maternity leave, to relieve the financial burden to hire female workers, Korea expanded employment insurance coverage only for small- and medium-sized enterprises (SMEs). Despite the introduction of the insurance coverage for maternity leave, employers were still responsible for the first

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90 Special Report of the Committee on Environment and Labor, 215th Congress, Dec. 6, 2000, at 6. The Committee on Environment and Labor reviewed legislation to introduce socialization of maternity benefits. In the discussion, the director of the Korea Chamber of Commerce and Industry represented the employer’s position and the manager of the Korean Confederation of Trade Unions represented the employee’s position. To provide the policy background for the revision, the senior researcher of the Korea Women’s Development Institute participated in the debate to assess the practicality of the legislation.

91 Social Welfare Department, Employer’s Position towards the Legislation for Female Employment, Korea Employers Federation, Vol. 275, at 52-53 (2001). The Korea Employers Federation represents employer’s interests with regard to government policy regulating the labor market. The socialization of maternity costs was an important issue for employers because it increased the direct cost of employing female workers. Employers fundamentally opposed socialization because socialization required increased contributions from the employers to sustain the insurance scheme. Furthermore, the employers were still concerned about the remaining period of maternity leave that they have to pay full remuneration.
sixty days of maternity leave.\textsuperscript{92} To relieve employers from such financial obligations, Korea finally expanded the insurance coverage to provide up to \textline{￦1,350,000} per month ($1,350) for employees in SMEs throughout the whole period of maternity leave.\textsuperscript{93} Although Korea expanded the coverage to the whole period of maternity leave, it allowed only SMEs to benefit from the expansion.\textsuperscript{94} The policy background of the different treatment between SMEs and large businesses is the different financial circumstances that SMEs face when hiring female workers.\textsuperscript{95} In

\textsuperscript{94} Kyungup Hong, \textit{Chulsan Huga Jung Ingum Junaek Junghu Koyongbohum Jigup} \textit{[Full Remuneration from Government or Employment Insurance during Maternity Leave]}, Apr. 21, CHOSUN.COM, http://www.chosun.co.kr/national/news/200504/200504210380.html, translated by Kook Hee Lee. To minimize deficiency in the financial sources for employment insurance, Congress limited the expansion to only small- and medium sized enterprises [hereinafter SMEs]. Congress estimated that employment insurance requires ￦110,000,000,000 Won ($110,000,000) to support small businesses. However, if the employment insurance finances large businesses as well, then the employment insurance requires ￦200,000,000,000 ($110,000,000) instead. Therefore, Congress decided to limit the expansion to SMEs businesses only.
\textsuperscript{95} Sunlim Kim & Seokwon Gong, Mosungbohogwanlyun3bub Gaejung Gongpyo \textit{[Promulgation of Amendments for 3 Maternity Related Acts, June 3, 2005]}, http://www.molab.go.kr/view.jsp?cate=2&sec=1&mode=view&div_cd=001&state=A&seq=6953, translated by Kook Hee Lee. The Ministry of Labor explains the policy background of the expansion limited to SMEs on the grounds that women in SMEs change their occupations more frequently than women in large businesses. The Ministry of Labor analyzes the phenomena and concludes that the employer’s financial burden to support maternity leave minimizes the chances for women to take leave
Korea, SMEs hire more women than large businesses. However, the extension of maternity leave from sixty days to ninety days increased the financial burden on SMEs to hire female workers. As a result, after the extension in 2001, SMEs reduced female employment by 6% in 2002. In contrast with the slight decline in female employment in SMEs, large businesses expanded the number of female employees, despite the financial obligations to support maternity leave. In conclusion, Korea expanded insurance coverage only for SMEs due to the different effects of the financial obligation on SMEs and large businesses.

The employer’s financial obligation to support maternity leave limits women’s right to work particularly in relation to the compulsory period. Despite the congressional efforts to expand insurance coverage for maternity benefits, insurance coverage is not enough to relieve employers from the financial burden of hiring in SMEs. As a consequence, the expansion of insurance coverage became available to employees in SMEs. Congress originally intended to extend the period of insurance coverage to large businesses from 2008, but it failed to do so due to the financial crisis which increased the beneficiaries of unemployment insurance.

96 Ministry of Labor, 2002 Survey on Wage Structure 874-906 (2002). Businesses hiring between ten and ninety nine employees hired 1,269,748 women, whereas businesses hiring one hundred or more employees hired only 685,065 women.


female workers, which discourages employers from hiring female workers.  

Particularly, during the compulsory period, employers suffer from the financial obligation to provide full remuneration during the period and the costs to substitute for women on compulsory leave.  

Likewise, the financial obligation of employers to support maternity leave is an obstacle for women to participate in the workplace. Therefore, along with the compulsory period, the financial obligation for employers limits women’s employment opportunities.

b. A Comparative Study of the Financial Support for Maternity Leave

The U.S. and German systems posit different attitudes towards financial support for maternity leave. The U.S. system guarantees equal treatment between pregnant workers and workers in similar situations. As a result, if individual states and employers guarantee a certain level of financial support for workers with other temporary disabilities, they have to extend the same financial support to

100 DEHANSANGGONGHWEUSO [THE KOREA CHAMBER OF COMMERCE AND INDUSTRY], GUKNEGIUPUI YEOSUNGINRYUK HWAKDEBANGAN [A PLAN TO EXPAND FEMALE EMPLOYMENT IN LOCAL BUSINESSES] 6 (2004) [translated by Kook Hee Lee].

101 Dorothea Alewell & Kerstin Pull, An International Comparison and Assessment of Maternity Leave Legislation, 22 COMP. LAB. L. & POL’Y J. 297, 300-05 (2001). The article analyzes the direct and indirect costs of maternity leave. Direct costs refer to maternity benefits that employers have to pay for women on maternity leave and indirect costs refer to substitution costs for women on maternity leave.

102 Courtni E. Molnar, “Has the Millennium Yet DAWNED?”: A History of Attitudes towards Pregnant Workers in America, 12 MICH. J. GENDER & L. 163, 164 168 (2005). The author traces back to the pre-PDA attitude towards pregnant workers in the United States. The author analyzes the different positions that the United States has taken throughout history. The author concludes that the United States does not have to choose between the equal or special treatment approaches. Instead, the author proposes that the United States should respect individual women’s differences and accommodate the differences instead of adhering to a uniform approach for every pregnant woman. However, the author misunderstands the genuine intent of equal treatment which respects the individual differences of women as the first and foremost consideration when treating pregnant workers.
pregnant workers. For example, if temporary disability insurance guarantees paid leave for workers with other temporary disabilities, it has to provide paid leave for pregnant workers under equal terms. Currently, the United States does not guarantee paid maternity leave at the federal level. Instead, the FMLA guarantees twelve weeks of unpaid leave for the birth or care of the child, care for other family members and medical conditions of employees themselves. In contrast with the U.S. approach, Germany guarantees full remuneration during maternity leave regardless of the benefits that other temporarily disabled workers receive during leave for their sickness. Although Germany imposed financial obligations on

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103 Janie L. Clanton, Note, Toward Eradicating Pregnancy Discrimination at Work: Interpreting the PDA to “Mean What It Says,” 86 Iowa L. Rev. 703, 704 (2001). This article does not focus on maternity benefits but rather analyzes job assignments such as heavy lifting during pregnancy. However, this article particularly emphasizes the equal treatment approach for pregnant workers with other “similarly situated workers.” This article is important for its focus on how to interpret “similarly situated workers” and “ability to work” in the PDA, which are key elements of the equal treatment approach. Since the interpretation of these key elements of the PDA is equally applicable to maternity benefits, this article is significant for this paper as well.

104 Newport News Shipbuilding & Dry Dock Co. & EEOC, 462 U.S. 669, 683-85 (1983). The Supreme Court concludes that the insurance policy excluding pregnancy-related coverage for spouses of male employees discriminated against women because the PDA guarantees equal treatment for pregnancy in relation with other similar situations. Although the case was controversial for its expansion of the PDA to spouses of male-employees from female employees, the Supreme Court particularly emphasizes the importance of equal treatment between pregnant workers and non-pregnant workers with regard to the insurance coverage.

105 Gillian Lester, A Defense of Paid Family Leave, 28 Harv. J. L. Gender 1, 33 (2005). The article supports labor market intervention to realize equality between men and women. The article fundamentally criticizes the absence of paid family leave which includes leave related to the birth or care for the child on the basis that the market cannot accommodate the dual function that women have to handle when they participate in the workplace.

106 Nancy E. Dowd, Family Values and Valuing Family: A Blueprint for Family Leave, 30 Harv. J. on Legis. 335, 345-47 (1993). This article supports public subsidy for family leave instead of unpaid leave which leaves the economic stability of individual families on the hands of the market. The article was published in the same year as the FMLA was promulgated. The FMLA was finally adopted by Congress in 1993, but the dispute over whether or not to grant paid family leave continued for a long time in the United States. However, the United States adopted the FMLA on the grounds of the equal treatment approach, but there was still an on-going debate on whether the unpaid nature is suitable or not.

employers to provide maternity benefits, Germany finally succeeded in socializing maternity benefits.  

Korea follows the German approach with regard to the guarantee of full remuneration during the period of maternity leave, but Korea still forces employers to be privately responsible for the financial obligations during the first sixty days of leave in contrast with the Germany system which ensures that employers are not privately liable for the financial obligations. Korea provides remuneration for ninety days of maternity leave as Germany does for fourteen weeks. However, Korea failed to socialize the total amount of maternity benefits whereas Germany succeeded

to evaluate the status of the FMLA in the international perspective. This article sees that because of the different legislative purposes and other differences between these two countries, the nominal comparison between the systems is not appropriate to appreciate the value of the FMLA in the United States. To compare these two systems, this article analyzes the Maternity Leave Act, Sick Leave Act and Parental Leave Act in Germany, which are combined together in the United States. This article explains the status of legislation, as of 2005, which guaranteed full remuneration during maternity leave but conferred on employers partial responsibility for maternity benefits.


The Expenditure Compensation Act regulates two different methods of distributing the payment of costs for certain benefits provided by the employer to the employee in a new manner and has adapted the compensation procedure to the current structures of the social insurance system. The variant called the U1 is applied when the participating employers are to be reimbursed for expenditures for continuing to pay wages in case of illness; the U2 system is to compensate employers for expenditures in continuing to pay employees on maternity leave. The employers make contributions to cover the costs of these payments and apply to the health insurance funds for full (U2 Procedure) or partial (U1 Procedure) reimbursement.

Germany further explains how the U2 distribution system relieves employers from the financial obligations to pay maternity benefits for women:

Female employees receive a supplement to the maternity allowances from their employers during the maternity protection period. It is the equivalent of the difference between the maternity allowances from the health insurance funds and their last net wages. Within the framework of the distribution of payment system, the employers are reimbursed for expenditures including those for the employers, supplement to the maternity allowance by the insurance fund.
Korea guarantees employment insurance as the financial source for the last thirty days of maternity leave but it obliges the employers to be responsible for the first sixty days of maternity leave. Although it guarantees employment insurance as the financial source for ninety days in case of small companies, it provides a cap of ₩1,350,000 per month ($1,350) for support of employment insurance in any case. In contrast, Germany provides maternity benefits partly from statutory health insurance. After employers pay for the rest of lost income, they get remuneration from the health insurance scheme. As a result, German employers do not face direct financial obligations to pay for lost income. Therefore, although Korea imitates the social welfare regime of Germany, Korea fails to provide the same level of government support in comparison with Germany.

109 NODONGBU [MINISTRY OF LABOR], MOSUNGBOHIBYONGUI SAHWEJUK BUNDAMBANGAN [A PLAN FOR SOCIALIZATION OF MATAENRITY COSTS] 101 (1999). Korea considered socialization of maternity costs even before it introduced partial support from employment insurance, but it failed to expand insurance coverage to cover full remuneration throughout the total period of maternity leave. 110 SADANBUBIN HANJUKYOSUNGDANCHAEHYPUHWE [KOREA WOMEN’S ORGANIZATION ASSOCIATION], MOSUNGBOHIBYONGUI SAHWEBUNDAMWA JUNRYARGBBEAL JUNMUNGA WORKSHOP BOGOSEO [EXPERT WORKSHOP REPORT TO DEVELOP STRATEGIES TO SOCIALIZE MATERNITY PROTECTION COSTS] 48 (1999). This report analyzes the applicability of the proposal to partially socialize maternity benefits with health insurance schemes. This report criticizes it and states that the proposal still leaves a substantial part of maternity benefits to employers. 111 Germany, The Sixth Periodic Report of States Parties to the Committee on the Elimination of Discrimination against Women, CEDAW/C/DEU/6, at 46-47, (Oct. 22, 2007), http://www.bayefsky.com/reports/germany_cedaw_c_deu_6.pdf (last visited May 7, 2010). Germany reports to the U.N. Committee in charge of discrimination against women with regard to how Germany relieved employers from financial burdens to pay remuneration during maternity leave. Germany allowed employers of small businesses as the only beneficiaries for the system to get reimbursement from the health insurance scheme for spending on remuneration for lost income during maternity leave. Because the health insurance scheme initially provided only partial remuneration for lost income, employers were responsible for the difference between lost income and remuneration from the health insurance scheme. Although Germany allowed employers to get reimbursement from the health insurance scheme, it limited the scope of employers to small businesses. The Federal Constitutional Court saw it as violation of equal treatment as stipulated by Basic Law, which is equivalent to the Constitutional Law in other countries. Because large businesses may avoid hiring women on the basis of their expenditures during maternity leave, the Court saw it as discrimination on the basis of gender. As a result, Germany allowed employers regardless of their sizes to get reimbursement since January 1, 2006.
On the surface, the German approach guarantees more favorable treatment for women on maternity leave than the U.S. system. The United States assures that employers treat pregnant workers in the same way as other similarly situated workers. As a result, the United States considers leave entitlements of workers in similar situations as the standard for comparison to evaluate the legitimacy of maternity leave. Although the United States guarantees equal treatment between pregnant workers and other workers, the actual leave taking pattern shows that pregnant workers enjoy less favorable treatment than workers in similar situations. Data show women took more unpaid leave than paid leave around the time when Congress adopted the FMLA. If women were treated equally with other similarly situated workers, they would have taken as much paid leave as workers who should have taken leave for their health conditions as women had to take leave for recuperation after birth of child.

However, there are concerns about the adverse effect of paid maternity leave on female employment. The primary concern is the employer’s reactions towards

112 Nicholas Pedriana, Discrimination by Definition: The Historical and Legal Paths to the Pregnancy Discrimination Act of 1978, 21 YALE J.L. & FEMINISM 1, 5 (2009). This article reviews the social, cultural and legislative debate surrounding the PDA at the time of promulgation.


114 Kristin Smith, Barbara Downs & Martin O’Connell, U.S. Census Bureau, Maternity Leave and Employment Patterns: 1961-1995 12 (2001). This report compares the proportion taking paid maternity leave to the proportion taking unpaid maternity leave. Between 1991 and 1995, 31% of women took paid leave and 35% took unpaid maternity leave. This report also analyzes the leave taking patterns of sick or vacation leave. In case of sick or vacation leave, paid leave overrode unpaid leave in contrast with maternity leave. The period between 1991 and 1995 is critical because it was around time when Congress adopted the FMLA. The United States did not guarantee paid maternity leave as fully as Germany, so the U.S. system more substantially lacks consideration for the economic stability of women during maternity leave than the German system.
the financial costs to guarantee economic stability during maternity leave. Since employers suffer financial loss during maternity leave, they tend to reduce female wage growth after they return to work. However, there are variations in the ultimate effects of maternity benefits on female wage growth, and the duration is critical in this respect. A period for recuperation after birth (e.g. three months of maternity leave) does not affect female wage growth, but the reduction of the wage growth starts when the period extends to enough time to raise a child after recuperation according to the study conducted in Europe. Therefore, short periods of paid maternity leave don’t have adverse effect on female employment.

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115 Kirstein Allen, Germany Bans EU Proposal for Longer Maternity Leave, THE LOCAL (Mar. 17, 2009), http://www.thelocal.de/society/20090317-18079.html (last visited April 16, 2014). This article reports the German opposition towards the EU proposal to extend paid maternity leave. It emphasizes the rationale that the German government supports to object to the proposal. The government is primarily concerned about the employer’s financial burden to extend paid maternity leave. The Bundesvereinigung der Deutschen Arbeitgeberverbande [BDA, The Confederation of German Employers’ Association] articulated that the extension of paid maternity leave for one month will require 500 million euro per year.

116 JAN ONDRICH, C. KATHARINA SPIESS & QUING YANG, THE EFFECT OF MATERNITY LEAVE ON WOMEN’S PAY IN GERMANY 1984-1994 (2002) (stating that “while the employer’s mandate for parental benefits may not be a severe burden for a firm with an employee absent on leave, the (uncertain) costs of hiring and training temporary workers must be added to the leave costs to the firm. It is plausible that firms try to recoup these costs from the returning mother by reducing her future wage growth”); European Court Finds No Discrimination Against Low-Seniority Female Employees, WORKPLACE PROF BLOG (Oct. 6, 2006), http://lawprofessors.typepad.com/laborprof_blog/2006/10/european_court_.html (last visited April 16, 2014). The article criticizes the European Court’s finding regarding less payment for women than men on the grounds of the lack of seniority for their time off from work during maternity leave; Lawrence H. Summers, Some Simple Economics of Mandated Benefits, 79 AMER. ECON. REV. 177, 181-82 (1989); and Jonathan Gruber, The Incidence of Mandated Maternity Benefits, 84 AMER. ECON. REV. 622, 622 (1994).

117 Joseph E. Zveglich, Jr. & Yana van der Meulen Rodgers, The Impact of Protective Measures for Female Workers, 21 J. LAB. ECON. 533, 534 (2003) (concluding that there was no adverse impact on female wage growth in Taiwan and acknowledging that the ultimate effect of benefits on the wage level may vary due to differences in the systems); and Christopher J. Ruhm, The Economic Consequences of Parental Leave Mandates: Lessons from Europe, 112 Q. J. ECON. 285, 285 (1996) (finding that the duration of benefits determines the ultimate effect of benefits on the wage level of women after the birth).

Although the critique of employer’s economic costs for maternity benefits implicates socialization of maternity benefits as a policy agenda for Korea, it is controversial whether socialization will ultimately bring about a positive impact on female employment. Even if the social insurance scheme or the taxation program provides full remuneration for maternity leave, employers have to contribute financially to those systems. Nevertheless, because maternity benefits mostly increase the female employment rate, they are necessary measures to maintain women in the labor market after birth.

Although financial support from insurance or government is desirable to relieve employers of financial obligations, the international community acknowledges the employer’s private responsibility to pay full remuneration during maternity leave. The ILO Maternity Protection Convention ensures that women receive two-thirds of previous earnings as maternity benefits. It proposes compulsory social insurance

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119 When employers in the United States opposed the expansion of insurance coverage for pregnant workers prior to the enactment of the PDA, they emphasized the increase in their financial contribution to maintain the insurance scheme. Patricia A. Shiu & Stephanie M. Wildman, Pregnancy Discrimination and Social Change: Evolving Consciousness about a Worker’s Right to Job-Protected, Paid Leave, 21 YALE J.L. & FEMINISM 119, 132 (2009). This article analyzes the development of California law concerning pregnant workers. It emphasizes California’ efforts to accommodate pregnant workers in relation to other workers by increasing the overall level of protection for employee’s welfare status. This article analyzes the policy background of the exclusion of pregnant workers from the employment insurance prior to the enactment of the PDA to solve the fundamental problem of economic defense from the employers to expand paid maternity leave.
120 Jane Waldfogel, Understanding the Family Gap in Pay for Women with Children, 12 J. ECON. PERS. 137, 137 (1998). This article argues that the increase in productivity will offset the costs for maternity benefits and increase the female employment rate and wage levels simultaneously.
121 Maternity Protection Convention, art. 6(3), Jun. 15, 2000, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C183 (last visited April 2006) (providing that “Where, under national law or practice, cash benefits paid with respect to leave referred to in Article 4 are based on previous earnings, the amount of such benefits shall not be less than two-thirds of the woman’s previous earnings as are taken into account for the purpose of computing benefits.”).
or public funds as the ideal approach. Furthermore, it prohibits employer’s individual liability to provide maternity benefits. However, the ILO fails to ensure that member countries realize socialization of maternity benefits to minimize the employer’s economic burden to hire women, because the Maternity Protection Convention allows employer’s individual liability in case national law prescribed the liability prior to the adoption of the Maternity Protection Convention and if the government, employers and employees agree to do so. As a result, Korea mandated that employers be personally responsible for the financial obligation to support maternity leave, as the Maternity Protection Convention allowed.

c. The Development of the Socialization of Maternity Benefits in Korea

The social expenses of maternity leave frequently face opposition from employers on the grounds that the employers’ share of contribution has increased following the socialization of maternity costs. When Korea introduced partial remuneration for maternity costs from employment insurance, it faced opposition

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122 *Id.* art. 6(8). Article 6(8) of the ILO Maternity Protection Convention stipulates that:

In order to protect the situation of women in the labour market, benefits in respect of the leave referred to in Articles 4 and 5 shall be provided through compulsory social insurance or public funds, or in a manner determined by national law and practice. An employer shall not be individually liable for the direct cost of any such monetary benefit to a woman employed by him or her without that employer’s specific agreement except where: (a) such is provided for in national law or practice in a member State prior to the date of adoption of this Convention by the International Labour Conference; or (2) it is subsequently agreed at the national level by the government and the representative organizations of employers and workers.

123 *Id.*

124 *Id.*
The first basis for objecting to partial socialization was the economic situation after the Asian financial crisis in 1998. In 2000, Korea introduced a legislative proposal to partially remunerate from employment insurance only three years after Korea received financial aid from the International Monetary Fund (IMF). As a result, employers considered that the Korean economy had not recovered enough to support the socialization of maternity benefits. Employers suggested that the proposal should be reintroduced after the economy fully recovered from the crisis. They argued that at least three to ten years were necessary to recover from the aftermath of the crisis. However, the amendment was to enter into force after Korea finished the short-term recovery plan approved by the IMF.

In mid-1997, Korea’s per-capita income exceeded $10,000 nationwide and $20,000 in the major cities. It was also the world’s third-largest automobile exporter and one of the largest steel producers and shipbuilders in the global arena. As the world’s eleventh largest economy, Korea had achieved economic success. However, by the end of 1997, the nation’s economic success story quickly faded. The “Asian financial crisis” had spread to Korea. Between November 19, 1997, when Korea first approached the International Monetary Fund (IMF) for a bailout, and December 24, 1997, the Korea won fell more than fifty percent against the U.S. dollar. The stock price index fell from 498 and 350, and the short-term market rate of interest increased to a forty percent annual rate.

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127 Ellen J. Shin, Note, *The International Monetary Fund: Is It the Right Or Wrong Prescription for Korea?*, 22 Hastings Int’l & Comp. L. Rev. 597, 597 (1999). The author analyzes the situation in Korea around the Asian Financial Crisis in 1997:

In mid-1997, Korea’s per-capita income exceeded $10,000 nationwide and $20,000 in the major cities. It was also the world’s third-largest automobile exporter and one of the largest steel producers and shipbuilders in the global arena. As the world’s eleventh largest economy, Korea had achieved economic success.

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129 *Id.*
130 International Monetary Fund, *IMF Approves SDR 15.5 Billion Stand-by Credit for Korea*, Press Release No. 97/55 (Dec. 4, 1997), http://www.imf.org/external/np/sec/pr/1997/PR9755.HTM (last visited April 16, 2014). The plan was to end at the end of 2000 and the amendment was to enter into force in November 2001. Congress started to review the amendment from December 2000. Therefore,
Despite opposition from employers, Congress finally passed the amendment to socialize maternity benefits. However, the amendment was not enough to relieve employers from the liability to provide maternity benefits. The amendment mandated employment insurance to provide benefits for only the last thirty days, with a cap on it as Germany prescribed a cap on the total amount of benefits provided by the statutory health insurance scheme.\textsuperscript{131} The German system currently remunerates for the difference between the amount provided by the health insurance scheme and the actual loss of income from the health insurance scheme. However, when Germany introduced the maternity leave system, it maintained an employer’s obligation to supplement the difference as the Korean system. As a result, both Korea and initially Germany left employers responsible for the difference between the actual loss of income and the grants from insurance when they introduced the maternity leave system.

Further amendments in Korea expanded insurance coverage only for small- and medium-sized enterprises (SMEs).\textsuperscript{132} Approximately 95.5\% of female workers

\textsuperscript{131} The amount of benefits shall be ordinary wages which are equivalent to daily basic wages excluding severance pay or other miscellaneous payment. The cap on the ordinary wages paid by the insurance in Korea is ₩1,350,000 ($1,350) per month. The female average wage amounted to ₩1,413,000 ($1,413) in 2008. Therefore, the cap is not enough to guarantee the economic stability of women during maternity leave. MINISTRY OF LABOR, LABOR STATISTICS, http://laborstat.molab.go.kr. Germany capped the grant from insurance at 13 Euro per day. Reichsversicherungsordnung (RVO) § 200(3) (F.R.G.), translated in Database of Conditions of Work and Employment Programme, available at http://www.ilo.org/public/english/protection/condtrav/database/index.htm (follow, for example, “maternity protection” hyperlink; “country /subject” hyperlink; then add “Germany” and “cash benefits” search criteria; then follow “perform search”).

\textsuperscript{132} ENFORCEMENT DECREES OF EMPLOYMENT INSURANCE ACT art. 12 (R.O.K.). This provision defines preferentially supported enterprises which are equivalent to small- and medium- sized enterprises (SMEs): and Among companies providing paid maternity leave, SMEs will be first to cancel, MINISTRY
are employed by the SMEs. As a result, further amendment limited to the SMEs substantially expanded opportunities for women to take maternity leave. When Korea expanded insurance coverage to the SMEs, Germany already allowed the SMEs to get reimbursement from the insurance program for the expenses during maternity leave. As a result, Korea followed Germany’s path to relieve financial burdens of employers to compensate for lost income during maternity leave. When the amendment limited to SMEs in Korea went into force on January 1, 2006, the new amendment in Germany to expand the reimbursement system to large corporations

133 JIYOUN JANG ET AL., YUSUNGGEULLOJA MOSUNGBOHOUI HYUNGHWANGGUA JUNCHEKBANGAN [POLICY AGENDA AND SURVEY ON MATERNITY PROTECTION FOR FEMALE WORKERS] 2 (2004). The study focuses on the current status of female workers and examines the protective measures for maternity in the workplace. In the introduction, the study summarizes the employment status of women in Korea. It stipulates that only 4.5% of women were employees of large enterprises employing 300 or more employees in 1999. The rest of working women, 95.5% of all working women, were employees of SMEs.

134 Women Taking Maternity Leave Increase, MINISTRY OF LABOR (Jan. 31, 2007), http://www.molab.go.kr/english/Information/press_view.jsp?id=1053. This article emphasizes the positive impact of the expansion of insurance coverage for women in SMEs. 52.3% of the total leave takers were employees of SMEs in 2006. It was a 9.9% increase from 2005. The Ministry of Labor attributed the increase to the expansion of the insurance coverage for women in SMEs which started from 2006.

135 Germany, The Sixth Periodic Report of State Parties to the Committee on the Elimination of Discrimination Against Women, CEDAW/C/DEU/6, at 46-47 (Oct. 22, 2007). Employers contributing to the health insurance system get full reimbursement of expenditures during maternity leave. Prior to 2006, only the SMEs were covered by the reimbursement system:

The Expenditure Compensation Act regulates two different methods of distributing the payment of costs for certain benefits provided by the employer to the employee in a new manner and has adapted the compensation procedure to the current structures of the social insurance system. The variant called the U1 is applied when the participating employers are to be reimbursed for expenditures for continuing to pay wages in case of illness; the U2 system is to compensate employers for expenditures in continuing to pay employees on maternity leave. The employers make contributions to cover the costs of these payments and apply to the health insurance funds for full (U2 Procedure) or partial (U1 Procedure) reimbursement.
also went into force. In this respect, Germany was continuously far more progressive than Korea in the efforts to relieve employers of financial obligations to compensate for lost income during maternity leave. Korea planned to enlarge the expansion to large corporations starting in 2008, but it failed to do so. So far, large corporations are solely responsible for maternity benefits without any subsidies from employment insurance except for the last 30 days of leave. Therefore, with regard to reimbursement for the difference between the subsidies from the insurance program and the actual loss of income, the Korean system lags behind the German system.

d. The Effect of Socialization of Maternity Benefits in Korea

A 1994 survey of the private sector shows that the majority of employers guaranteed maternity leave and benefits for women even when Korea had not introduced socialization of maternity benefits. Among 101 selected business entities, 97 entities offered maternity leave, whereas only 4 failed to do so.139

136 Id. (reporting that “On 1 January 2006, the Act on the Compensation of Employer Expenditures and to Amend Further Laws (Expenditure Compensation Act) came into force.”).
137 Among Companies Providing Paid Maternity Leave, SMEs will be first to cancel, Ministry of Labor (Apr. 26, 2005), http://www.molab.go.kr/english/Information/news_view.jsp?id=223. This article explains the political agreement between the ruling party and the government to expand the insurance scheme to SMEs from 2006 and large corporations from 2008:
   SMEs will no longer have the responsibility to pay for maternity leave for their workers starting from next year, and large corporations will be relieved of the responsibility starting from 2008.
138 The survey was conducted by researchers in Korea Women’s Development Institute in 1994 when employers were fully responsible for maternity benefits. JUNGEUN PARK ET AL., CHUIUPYEOSUNGUI MOSUNGBOHBUYONGGUI JANYUYANGYUKBIYONGGUI SAHWEJUKBUNDAMBANGSHIKAE GUANHAN YONGU [A STUDY ON SOCIALIZATION OF MATERNITY AND CHILDCARE COSTS] (1994).
139 Id. at 58. The selected entities varied in industry, size, the number and proportion of female workers, the number and proportion of married women. Id. at 45. The survey selected 57 entities in the service sector and 28 entities in the manufacturing sector.
Furthermore, 67 entities provided 100% of the average wage, 10 entities offered 80-95% and 11 entities guaranteed 60-75%. In total, 93.6% of the selected employers provided a 60% or more wage-replacement rate for maternity leave.

However, the problem was the relatively low status of women in the manufacturing sector. In 1994, when the survey was conducted, 1,765,000 women worked for manufacturing entities, whereas only 645 women participated in the service sector. However, all 4 entities which failed to provide maternity leave were manufacturing companies. Furthermore, while 78.6% of entities in the service sector guaranteed 100% of wage replacement, only 65.2% of entities in the manufacturing sector guaranteed 100% of wage replacement. Therefore, when employers were solely responsible for maternity leave policy, the majority of working women could not enjoy their right to take maternity leave and benefits as mandated by law.

The actual number of beneficiaries of maternity benefits from employment insurance is available to estimate the situation of women after Korea socialized maternity benefits. In 2002, 22,711 women applied for maternity benefits from employment insurance. In 2005, 41,104 women applied for benefits from

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140 Id. at 62. There were only three entities offering 25-50% of the average wage and three entities providing none.
141 Id.
142 KOREA NATIONAL STATISTICAL OFFICE, ANNUAL REPORT ON THE ECONOMICALLY ACTIVE POPULATION SURVEY 299 (1994).
143 PARK ET AL., supra note 138, at 58.
144 Id. at 62.
145 YOUNGOK KIM ET AL., A STUDY ON WOMEN’S CAREER INTERRUPTINS FOLLOWING CHILDBIRTH AND POLICY RECOMMENDATIONS 2 (2007).
employment insurance. The number of beneficiaries approximately doubled in the first three years of employment insurance as the financial source for maternity benefits.

The number of beneficiaries of maternity benefits from employment insurance is comparable to the number of working women giving birth to a child. Korea offers a statutory health insurance program which covers medical expenses for the birth of the child. The number of working women receiving medical expenses for childbirth from health insurance reflects the actual number of working women giving birth to children. If those recipients are also insured by employment insurance, they are eligible to take maternity benefits via the employment insurance plan. The eligibility to receive benefits from employment insurance does not affect their eligibility to receive benefits from the statutory health insurance plan. However, not all employed women receiving medical expenses from health insurance benefit from employment insurance during maternity leave. For example, the ratio of women receiving maternity benefits from employment insurance to women receiving medical expenses from health insurance increased from

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146 Id.
147 NATIONAL HEALTH INSURANCE CORPORATION, HEALTH SECURITY SYSTEM, http://www.nhic.or.kr/eng/ (introducing that “The National Health Insurance Program of Korea covers the whole population as a compulsory social insurance system. Its main sources of finance are contributions from the insured and government subsidy.”). The health insurance scheme covers paid workers, self-employed workers and their dependents. In this research, women insured as paid workers are considered as the comparison group with working women receiving maternity benefits from the employment insurance.
148 HEALTH INSURANCE ACT art. 45 (R.O.K.); and ENFORCEMENT DECREE OF THE HEALTH INSURANCE ACT art. 25 (R.O.K.).
149 Although 1% of women giving birth does not go to hospital for the birth, this paper considers working women giving birth to a child at a hospital as the only comparison group with working women receiving maternity benefits from the employment insurance. Youngae Moon, Neagi Jibaeseo Nauleyo [I will give birth to my child at home], MIZEN, No. 279 (Apr. 2006).
In 2002 to 80.9% in 2005. In 2011, the ratio stayed at 90.7%. Despite the increase, the ratio has not reached 100%, which means that women who give birth to child do not always benefit from socialization of maternity benefits. Although Korea tried to socialize maternity benefits, not all working women received benefits from employment insurance.

The comparison between situations before and after socialization shows that the employment insurance plan failed to improve woman’s right to take maternity leave and benefits. The statistics from the individual survey on the private sector in 1994 concludes that only 3.2% of employers failed to provide maternity benefits at all. However, after socialization the percentage of women who did not receive benefits from employment insurance varied from 20%-40% of the total number of working women receiving medical expenses from health insurance. It is possible that employers provided maternity benefits for women who did not receive benefits from employment insurance. Because employment insurance covers only the last thirty days of maternity leave, it does not provide any benefits for women taking 60 days or less. However, the statistics show that 76.5% of women took more than

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150 YOUNGOK KIM ET AL., A STUDY ON WOMEN’S CAREER INTERRUPTIONS FOLLOWING CHILDBIRTH AND POLICY RECOMMENDATIONS 34 (2007).
151 Pilho Yun, 470 Thousand Newborn Babies But Only 90 Thousand Received Maternity Benefits, ETODAY (Oct. 10, 2012), http://www.etoday.co.kr/news/section/newsview.php?idxno=640190 (last visited Nov. 1, 2013). 99,494 working women received medical expenses for the childbirth, whereas only 90,290 women received maternity benefits in 2011.
153 YOUNGOK KIM ET AL., A STUDY ON WOMEN’S CAREER INTERRUPTIONS FOLLOWING CHILDBIRTH AND POLICY RECOMMENDATIONS 34 (2007). The table in this study refers to the number of recipients of medical expenses from health insurance as “A,” and the number of recipients of maternity benefits from employment insurance as “B.” In 2002, B/A was 60.2%. In 2003, it increased to 72.0%. In 2004, B/A reached 79.7%. Finally, in 2005, it was 80.9%.
sixty days while only 60.2% received benefits from employment insurance. The difference between 76.5% of women who took more than sixty days and 60.2% of women who received benefits from employment insurance implies that not all women taking leave during the last thirty days of maternity leave received benefits from employment insurance. The difference amounts to 16.3%. The proportion of 16.3% of women is almost the same as 13.7% of women uninsured by employment insurance. Although it is possible to assume that employers provided maternity benefits out of their own pockets instead of employment insurance, it is unlikely that they voluntarily refused to take advantage of the social insurance scheme to which they financially contributed an amount proportional to the average wage of their employees. As a result, it is unlikely that the employers provided remuneration for those uncovered by employment insurance. Therefore, despite efforts to socialize maternity benefits, Korea has failed to encompass all eligible working women in the benefit structure of the socialization scheme.

If Korea expands insurance coverage, it will improve women’s opportunities to take maternity leave. Since 2006, employment insurance expanded financial support for employees in SMEs. When employment insurance initially started to provide financial support for maternity leave in 2002, 66.7% of the total applicants

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154 JIYOUN JANG, SANGJUNHU YUKA HUGA GULLY UN SHIL TAEJO SA KYUL GUA [SURVEY ON MATERNITY AND PARENTAL LEAVE] 4 (2002). The statistics on the period of time that women took for maternity leave was based on the individual survey on 1,029 employers. The employees answering the questions regarding maternity leave were composed of 535 women who had already given birth to a child and 748 women who were expecting a child. Id. at 2.
155 KIM ET AL., supra note 153, at 34.
for employment insurance were employees in large businesses, and only 33.3% were employees in SMEs.\textsuperscript{157} Until 2005, there was a 3-4% yearly increase in the number of beneficiaries in SMEs.\textsuperscript{158} However, between 2005 and 2006 in which employment insurance expanded support for employees in SMEs, there was a 10% increase in the ratio of beneficiaries in SMEs. In 2005, only 42.4% of women applying for the benefits were employed in SMEs.\textsuperscript{159} In 2006, 52.3% of women were employees in SMEs.\textsuperscript{160} The actual number of beneficiaries from SMEs in 2006 was 25,602,\textsuperscript{161} 46.7% more than the 17,446 women in 2005. Furthermore, in 2006, 48,972 women applied for benefits,\textsuperscript{162} a 19.1% increase from 41,104 women in 2005. The increasing rate of employees in SMEs who applied for benefits was far higher than the rate of overall applicants. If financial support increases, employees will apply for leave more than now, because they are no longer afraid of losing their income when taking maternity leave from the workplace. Therefore, the difference in leave-taking behaviors in small and large businesses shows that financial support directly influences the conditions for women’s practical enrollment in the maternity leave system.

\textsuperscript{160} Ministry of Labor, Women Taking Maternity Leave Increase (Jan. 31, 2007).
\textsuperscript{161} Id.
\textsuperscript{162} Id.
e. The Dispute over the Financial Source of Maternity Benefits

In the process of socializing maternity benefits in Korea, there were concerns about the legitimacy of employment insurance as the financial source for maternity benefits. There were two primary issues with adopting employment insurance as the financial source for maternity leave. The first concern was a deficiency of employment insurance, which was a typical basis to oppose the extra expenditures of the social insurance plan. For example, in the United States, the Clinton Administration introduced federal regulations to encourage individual states to provide paid leave for the birth or adoption of a child within the unemployment

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163 When discussing the financial source for maternity benefits, Korea had to consider the theoretical background of maternity leave. According to the equal treatment proponents, maternity leave serves as medical leave. However, Germany, which adopted the special treatment approach, adopted health insurance as the financial source for maternity benefits from the beginning because the initial legislative purpose of maternity leave in Germany was concerns for female health conditions in the workplace. However, due to the strong impetus for social welfare legislation, Germany expanded maternity leave and benefits to be sufficient to ensure that women are entitled to leave for childcare. Korea was more concerned about the practical issues in adopting the insurance scheme for maternity benefits. As a result, Korea failed to clarify its theoretical attitude towards maternity benefits which could affect further progress in maternity leave. Mona L. Schuchmann, Note, *The Family and Medical Leave Act of 1993: A Comparative Analysis with Germany*, 20 J. CORP. L. 331, 345-46 (1995) (discussing the different legislative purposes of maternity leave in the United States and Germany).

164 COMMITTEE ON ENVIRONMENT AND LABOR, REPORT ON AMENDMENT FOR MATERNITY PROTECTION LEGISLATION, 220th Cong., 5th Sess. 1 (2001). The Minister of Labor concerned about the deficiency in employment insurance from 2003 in the case of recognizing employment insurance as the financial source for maternity benefits.

165 Mona L. Schuchmann, Note, *The Family and Medical Leave Act of 1993: A Comparative Analysis with Germany*, 20 J. CORP. L. 331, 344-45 (1995). The Note compares the system in the United States and Germany. It emphasizes the strong desire to expand social welfare expenditures in Germany and to minimize welfare expenditures in the United States. Although Germany has a long history as a social welfare country, it is also concerned about the increase in its social welfare expenditures, which requires a substantial contribution from employers. Germany opposes the extension of paid maternity leave in the EU on the basis of the economic burden on employers. Although Germany considered the costs for substitution and depreciation of human resources in the employer’s perspective as the major obstacle to expanding maternity benefits, it could not avoid concerns about the increase in social welfare benefits, because it provided maternity benefits through the health insurance program. *Commission Pushes for Stronger Rights*, EURAct, (Oct. 3, 2008), http://www.euractiv.com/en/socialeurope/commission-pushes-stronger-rights-women-workers/article-175985 (last visited April 16, 2014).
insurance plan. In response, employers raised the past experiences of 1990 and 1991 when the recession reduced state unemployment insurance funds. However, in Korea, the Ministry of Labor and the employers exaggerated the extra expenditures to provide maternity benefits from employment insurance when they strongly opposed the concept of socialization of maternity benefits. The second concern was the original legislative intent of employment insurance. It is interesting to note that the same issue was raised by the representatives of employers in the United States when the Clinton Administration introduced the legislative proposal to provide grants for individual states to provide paid leave from employment insurance.


168 COMMITTEE ON ENVIRONMENT AND LABOR, CONFERENCE RECORD FOR AMENDMENT OF MATERNITY PROTECTION LEGISLATION, 220th Cong., 5th Sess., 6 (2001). The Ministry of Labor estimated that employment insurance should be responsible for ₩176 billion ($176 million) per month to subsidize maternity benefits. However, the actual expenditure in 2002 reached only 22.6 billion won. The huge discrepancy between the estimated figure and the actual figure shows that the Ministry of Labor was not considerate enough to oppose to the socialization scheme. JIYON JANG ET AL., YOSUNGGEULLOJA MOSUNGBOHOUI HYUNGHWANGGUA JUNGCHEKBANGAN [Reality and Policy Agenda for Maternity Protection Female Employees] 166 (2004).


The proposed regulations boldly acknowledge that BAA-UC is designed to “provide partial wage replacement to mothers and fathers on leave following the birth or adoption of a child” (64 Fed. Reg. 67972). As the U.S. Chamber of Commerce established in its written
Employment insurance in Korea is primarily designed to support the economic stability of the unemployed, as is the system in the United States. Due to the job-protected nature of maternity leave in Korea, opponents argued that employment insurance is not suited to maternity benefits. However, they disregarded the ultimate effect of maternity benefits: reduction or prevention of female unemployment upon the birth of the child. Korea suffers from the permanent or temporary exit of the female workforce upon marriage or birth of a child. To allow women to continue working, Korea decided to socialize maternity benefits. Therefore, the original legislative intent of maternity leave is closely related to the comments opposing BAA-UC, submitted to the Department of Commerce established in its written comments opposing BAA-UC, submitted to the Department of Labor on February 2, 2000, this objective is wholly incompatible with the purpose of unemployment compensation, and the requirements of joblessness, availability, and involuntariness which are intended to prevent the diversion of UC funds for other governmental experiments and purposes. Moreover, this frank admission of intent demonstrates that the BAA-UC stands as a direct challenge to Congressional judgment and intent.”

171 EMPLOYMENT INSURANCE ACT art. 1(R.O.K.) (stating that “The purpose of this Act is, through the enforcement of employment insurance, to seek to prevent unemployment, promote employment and develop and improve the vocational skills of workers, to strengthen the nation’s vocational guidance and job placement capacity and to stabilize the livelihood of workers and promote their job-seeking activities by granting necessary benefits when they are out of work, thereby contributing to the economic and social development of the nation.”).

172 LABOR STANDARDS ACT art. 74(5) (stating that “After the end of the protective leave under paragraph (1), the employer shall allow the female worker to return to the same work, or one with the same level of pay, as before the leave.”).


174 OECD, OECD ECONOMIC SURVEYS: KOREA 2008 38 (2009). Female employment between the ages of 25 and 54 in Korea ranked the third lowest among member countries. In 2008, 62% of women in Korea participated in the workplace whereas the average female employment rate in OECD member countries reached 70%. The survey emphasizes the overwhelming increase in the total number of women participating in the workplace throughout the process of industrialization. However, it is concerned about the heavy volume of the female workforce exiting from the paid labor market upon the birth of the child.

When Korea originally proposed socialization of maternity benefits, Congress considered health insurance as the financial source instead of employment insurance. Health insurance seemed to be a legitimate source to provide maternity benefits, because maternity leave purported to protect women’s reproductive health. However, health insurance was already in deficit, which removed it as a possible financial source to support maternity leave. Therefore, health insurance could not serve as the financial source for maternity benefits.

In contrast with the situation in Korea, Germany mandates that health insurance provides maternity benefits in the same fashion it provides sickness benefits. Health insurance provides income-replacement for eighteen weeks of maternity leave. It caps the maximum amount of income-replacement at 210 Euros per month. If an employee’s salary exceeds the cap, then employers have to supplement the difference between grants from insurance and the actual loss of income. However, the employers can get full reimbursement from health insurance afterwards. In essence, health insurance in Germany covers the whole amount of maternity benefits without any financial burden on employers to provide

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176 HEALTH INSURANCE ACT art. 1 (R.O.K.) (stating that “The purpose of this act is to improve the citizens’ health and promote social security by providing the citizens with insurance benefits for prevention of disease and injury, medical examination, medical treatment, rehabilitation and childbirth, death and improvement of health.”).
180 Id.
maternity leave for women.\textsuperscript{182} Though Germany guarantees sickness benefits via health insurance, it treats sick leave differently from maternity leave.\textsuperscript{183} In principle, employers pay the average wage for employees throughout six weeks of sick leave.\textsuperscript{184} They get 80\% reimbursement from health insurance afterwards.\textsuperscript{185} As a result, German health insurance treats maternity benefits more favorably than sickness benefits.\textsuperscript{186}

Although Germany provides maternity benefits from health insurance, Korea lacks the legitimacy needed to mandate health insurance to provide maternity benefits, because it does not prescribe maternity leave solely on the grounds of health of mothers, but rather it considers women’s role as caregivers as the fundamental rationale for allowing women to take leave from the workplace. When Korea began its health insurance policy, it adopted the German system as its role model.\textsuperscript{187}

\textsuperscript{182} Dorothea Alewell & Kerstin Pull, An International Comparison and Assessment of Maternity Leave Legislation, 22 COMP. LAB. \\ & POL’Y J. 297, 297 (2001).
\textsuperscript{184} Id. 350-351.
\textsuperscript{185} Aufwendungsausgleichsgesetz [AAG, Act on the Compensation of Employer Expenditures and to Amend Further Laws], Dec. 22, 2005,BGBI. 1 at 3686, § 1 (1) (Ger.), translated by Mino Han.
\textsuperscript{186} Mona L. Schuchmann, Note, The Family and Medical Leave Act of 1993: A Comparative Analysis with Germany, 20 J. CORP. L. 331, 345-46 (1995). Germany purported to protect the health of the mother and fetus. Germany continued to expand leave and benefits to provide adequate protection for mother and fetus. If Germany was only concerned about the health of mothers, it would not have given a more generous provision for pregnancy than other sicknesses. Germany guaranteed a more favorable provision because it considered women’s reproductive health as a more important policy goal than other sicknesses, because reproductive health directly affects the potential human resources to sustain or improve the whole society and economy in the future. Susan L. Erikson, Maternity Care Policies and Maternity Care Practices: A Tale of Two Ger manys in BIRTH BY DESIGN: PREGNANCY, MATERNITY CARE, MIDWIFERY IN NORTH AMERICA AND EUROPE 203, 203 (Raymond de Vries et al., 2001).
\textsuperscript{187} CENTER FOR HEALTH POLICY RESEARCH OF OKLAHOMA MEDICAL RESEARCH FOUNDATION, THE KOREAN HEALTH CARE SYSTEM 1 (1992). Korea launched its universal health care system in 1976. Before the government introduced universal health insurance coverage, it began a voluntary system limited to employers with more than 500 employees. Korea adopted the voluntary system on the basis of the German approach which started as a voluntary system.
However, Korea has difficulties in mandating health insurance to provide maternity benefits, which substitutes for the income lost during maternity leave. They are on the grounds of initial absence of support for workers during sick leave in general. Health insurance in Germany compensates for the loss of income during sick leave. It provides only 80% of lost income, but it explicitly functions as a mechanism to provide income stability apart from supporting medical expenses. As Germany compensates for the loss of income during sick leave, it guarantees income-replacement during maternity leave. However, Korea did not provide any sickness benefits through its health insurance program, whereas Germany guaranteed 80% support from the health insurance program. As a result, to balance support for women on maternity leave and workers on sick leave, health insurance provides benefits for sick leave as well as maternity leave in Germany. If it provides benefits for maternity leave only, it loses its legitimacy as the statutory health insurance program to support workers in need of financial support while they are unable to

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190 Stefan Kircherger, Health Care Technology in Germany, in HEALTH CARE TECHNOLOGY AND ITS ASSESSMENT IN EIGHT COUNTRIES (H. David Banta ed., 1995).
191 Aufwendungsausgleichsgesetz [AAG, Act on the Compensation of Employer Expenditures and to Amend Further Laws], Dec. 22, 2005,BGBl. 1 at 3686, § 1 (2) (Ger.), translated by Mino Han.
192 Carol Daugherty Rasnic, The United States’ 1993 Family and Medical Leave Act: How Does It Compare with Work Laws in European Countries?, 10 CONN. J. INT’L L. 105, 135-36 (1994). The different levels of the minimum threshold for Germany and Korea can be attributed to the different historical background of social security systems, in both countries. Germany has a long history of social security since 1883. The long history of social security at the national level brought about a rapid development in the overall level of social security in Germany. By contrast, after Korea was decolonized by Japan after thirty-six years of colonization, beginning in 1919, it was forced to rebuild the whole nation after World War II. However, due to the Korean War between 1950 and 1953, Korea had difficulties in developing its own social security system. It was 1976 when Korea started to provide a government-led universal social security system. DONG-MYEON SHIN, SOCIAL AND ECONOMIC POLICIES IN KOREA: IDEAS, NETWORKS, AND LINKAGES 62 (2003).
participate in the workplace. However, Korea cannot follow the German system, because the Korean health insurance scheme does not provide any financial support for loss of income during sick leave. Therefore, Korea lacks the legitimacy needed to mandate health insurance to provide maternity benefits as a wage-replacement system.

B. A Legislative Proposal for Gender Equality in Maternity Leave

This paper proposes that the current maternity leave system in Korea should be replaced by a legislative proposal which focuses on gender equality as the primary policy goal. The current maternity leave system is based on the special treatment approach. The exclusive system for women is still necessary considering the lack of financial support for medical leave available for other physical conditions. However, Korea does not have to maintain the compulsory period as the core of its maternity leave system, as far as it relieves employers from the financial obligation to be responsible for maternity benefits. Korea guarantees the compulsory period on

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193 EES, art. 1 (stating that “The purpose of this Act is to realize gender equality in employment in compliance with the idea of equality in the Constitution of the Republic of Korea by ensuring equal opportunity and treatment for men and women in employment, while protecting maternity and promoting women employment, as well as to contribute to improve the quality of life for all the people by providing support for the reconciling of work and family life for workers.”). The Equal Employment Opportunity Act, a predecessor of the EES, was promulgated in 1987 by the ruling party to win female votes in the prospective presidential election. Chai Yun Alice, Integrative Feminist Politics in the Republic of Korea, in FEMINIST NATIONALISM 169, 175-6 (Lois A. West ed., 1997).


195 This is the core of the legislative model for maternity leave. There are jurisdictions specifying the particular period allocated before or after the birth and jurisdictions conferring the whole discretion on employers and employees. The rationale of the mandatory period is to secure women’s health. Due to the concerns for abuse of discretion conferred on employers, the proponents of the mandatory period
the grounds that women need a particular period for recuperation from pregnancy and confinement. If employers have no reason to refuse to grant leave to women after childbirth, the compulsory period is unnecessary because women can tailor when and how to take advantage of the maternity leave system on the basis of their own health conditions related to pregnancy and confinement. Socialization of maternity benefits may lead to such relief of financial obligations for employers to compensate for lost income during maternity leave. As a result, if the compulsory period serves as a mechanism to prevent employers from abusing a voluntary leave system, socialization of maternity benefits will help Korea to adopt the voluntary system to expand individual’s discretion to decide when and how long to take leave for their own health conditions. Therefore, this part proposes that Korea should abolish the compulsory period and expand financial support for maternity leave instead.

This part comprises two sections to establish the legislative model for maternity leave in Korea. The first section proposes that Korea should combine the special and equal treatment approaches as the theoretical background for maternity leave to maintain an exclusive system for women without the compulsory period after the birth.\textsuperscript{196} To effectuate the proposal to abolish the compulsory period without an adverse impact on women, the second section proposes that Korea should relieve an

\textsuperscript{196} Korea adopts the special treatment approach as the theoretical background to prescribe maternity leave exclusively to women. It also adheres to the special treatment approach to allocate a certain period after the birth as the compulsory period. Section 1 proposes Korea to combine the special and equal treatment approaches to provide maternity leave without limitations on the employee’s discretion to decide when and how long to take maternity leave.
employer’s financial liability during maternity leave by expanding employment
insurance coverage for maternity benefits.¹⁹⁷

1. The Combination of the Special Treatment and Equal Treatment Approaches

This section proposes that Korea should combine the special and equal
treatment approaches to maintain maternity leave without a compulsory period after
birth. The current maternity leave system considers the special treatment approach
as the background for protective measures for women’s reproductive health.
However, this paper proposes that the special treatment approach is not enough to
guarantee women’s right to work, despite its consideration for women’s health
conditions.

This paper suggests that Korea should maintain maternity leave as exclusive
leave for women on the grounds of the special treatment approach. The proponents
of the equal treatment approach argue that maternity leave should be available in the
same conditions as other medical or sick leave. However, they do not support
inadequate protection for pregnant workers.¹⁹⁸ Instead, they call for the overall

¹⁹⁷ If Korea lifts the prohibition on working for a certain period of time after the birth, employers may
abuse the voluntary nature of maternity leave. Employers are not willing to grant maternity leave for
the costs to support maternity leave. Among those expenditures, the financial obligation to pay
maternity benefits directly affects employer’s tendency to avoid granting maternity leave to women.
Therefore, to minimize the adverse impact of the voluntary maternity leave system, section 2 proposes
that Korea should relieve employers from the financial liability to provide maternity benefits.
¹⁹⁸ Patricia A. Shiu & Stephanie M. Wildman, Pregnancy Discrimination and Social Change: Evolving
Consciousness about a Worker’s Right to Job-Protected, Paid Leave, 21 YALE J. L. & FEMINISM 119, 135
(2009). This paper traces back the history of Californian approach to provide adequate protection for
women as well as safety net for all workers. To review the historical background of the equal treatment
approach in the U.S. system, this paper analyzes the controversy over Miller-Whol Co. Inc. v Comm’r of Labor & Indus
(Miller-Whol). In this case, a Montana statute treated pregnancy more favorably than other temporary
disabilities. The Ninth Circuit upheld the statute but opponents argued that Montana should take advantage
of the case to establish a safety net
improvement of working conditions for all workers.\textsuperscript{199} The current system in Korea guarantees more protection for maternity leave than sick leave.\textsuperscript{200} If Korea tries to improve the overall status of sick leave as well as maternity leave, it will face strong opposition on the basis of the ensuing economic hardships required to fully accommodate all the necessities that workers require for their sickness. When Korea partially socialized maternity costs, it had difficulties in overcoming economic arguments opposed to the concept of socializing maternity benefits. Considering the limited scope of research, this paper will not argue for potential expansion to encompass the reform of the overall working conditions of all workers. Instead, it will call for the special treatment approach to guarantee adequate protection for pregnant workers independently from reform for all workers.

However, this paper also proposes the equal treatment approach as the theoretical basis for Korea to replace the compulsory maternity period with a voluntary system on the grounds of the increase in female representation in the

\textsuperscript{199} Laura Oren, \textit{Honor Thy Mother?: The Supreme Court’s Jurisprudence of Motherhood}, 17 \textit{Hastings Women’s L.J.} 187, 211 (2006). This paper analyzes the Jurisprudence of the Supreme Court concerning gender issues including working mothers. This paper reviews the controversy over how to treat pregnant workers in relation with other workers, which was a continuation of the controversy from Miller-Whol. This paper compares the different approaches from the equal and special treatment approach on the grounds of the statements from the amici submitted to the Court in California Federal Savings & Loan Association v. Guerra (Cal.Fed.), Cal. Fed. Sav. & Loan Ass’n v. Guerra, 479 U.S. 272, 275 (1987). The American Civil Liberty Union (ACLU) supported the equal treatment approach by proposing California improve the working environment for all workers and contended that the California statute prescribing four weeks of job-protected pregnancy leave and the PDA were complimentary to each other. Cal. Fed. Sav. & Loan Assoc. v. Mark Guerra, 1986 WL 728369 (April 4, 1986).

\textsuperscript{200} The situation in Korea resembles the situation in \textit{Miller-Wohl} and \textit{Cal. Fed.} Korea prescribes ninety days of maternity leave with full remuneration provided by the employer and employment insurance. By contrast, Korea guarantees unpaid leave as sick leave, which is far too short for maternity leave.
legislative and executive branch. The increase of female representation makes it easier to raise gender issues and brings about an outcome closer to adequate gender equality. There are certain studies focusing on the impact of an increase in female representation on issues related to reconciling work and childcare. For example, one study finds that there is a positive link between an increase in female representation in parliament and responsiveness to issues such as weeks of maternity leave. Furthermore, another study finds that there is a positive link between an increase in female representation in the executive branch and women-friendly policy.

201 Lena Wangnerud, *Women in Parliaments: Descriptive and Substantive Representation*, 12 ANNU. REV. POLT. SCI. 51, 52 (2009) (This paper conducts a comparative study on the impact of female representation in parliament on women’s interests and finds out a positive link between female representation and women’s interests.); Claire Devlin & Robert Elgie, *The Effect of Increased Women’s Representation in Parliament: The Case of Rwanda*, 11 PALIAM. AFF. 1, 3 (2008) (This paper analyzes the link between an increase in female representation in parliament and women’s interests in Rwanda. It concludes that women’s issues are now raised more easily and more often than before due to the substantial increase in female representation in parliament.); Sandra Grey, *Numbers and Beyond: The Relevance of Critical Mass in Gender Research*, 2 POLIT. & GENDER 492, 497 (2006) (This paper analyzes the impact of an increase in female representation in parliament in New Zealand on its parental leave policy and finds a positive link between an increase in female representation and gender equality in policy outputs. This paper casts doubt on the joint-effect of increase in female representation in the legislative and executive branches, but does not derive a negative conclusion.); Gunnel Gustafsson, *Sustainable Pressure for “Women-Friendliness” in Sweden*, 19 POLIT. PSY. 43, 47 (1998) (This paper finds a positive link between the increase in female representation in parliament and women-friendly policies in Sweden.); and S. Laurel Weldon, *Beyond Bodies: Institutional Sources of Representation for Women in Democratic Policy Making*, 64 J. POLIT. 1153, 1153-54 (2002) (This paper emphasizes the importance of female engagement in the policy making process as civil servants.).

202 A. Schwindt-Bayer & William Mishler, *An Integrated Model of Women’s Representation*, 67 J. POLIT. 407, 413 (2005) (This paper conducts a comparative analysis on the impact of an increase in female representation in the legislature on the legislature’s responsiveness towards women’s issues such as maternity leave policy. It finds a positive link between an increase in female representation and responsiveness towards women’s policy.)

203 Leslie A. Schwindt-Bayer & William Mishler, *An Integrated Model of Women’s Representation*, 67 J. POLIT. 407, 423-25 (2005) (This paper conducts comparative analysis on the impact of the increase of female representation in parliament in 31 countries. It finds a positive link between the increase in female representation in parliament and responsiveness towards women’s issues such as weeks of maternity leave. )
outcomes for day-care coverage. These issues may not be directly related to the equal treatment approach. However, if the increase of female representation brings about positive attitudes towards these issues, it will be the same for the issue of the compulsory nature of maternity leave. In fact, when Korea extended the compulsory period from thirty days to forty five days, female representatives announced a declaration to socialize maternity benefits. Although they did not consider the compulsory period as discriminatory, they at least perceived the importance of maternity leave and benefits system for female employment. Therefore, the increase of female representation is a positive sign for the equal treatment approach to be discussed and approached in Korea.

Applying the conclusions from these studies to the situation in Korea, it is possible to open the door for debate on the legitimacy of the compulsory maternity period, because there was a substantial increase in female representation in the legislative and executive branch of Korea since the introduction of the compulsory maternity leave system. First, the female ratio in the parliament of Korea rose to a certain level to allow female representatives to express their own perspectives towards policies concerning gender equality in reconciling work and childcare.

When Korea adopted the compulsory period, women’s position in parliament was too

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204 Kathleen A. Bratton & Leonard P. Ray, *Descriptive Representation, Policy Outcomes, and Municipal Day-Care Coverage in Norway*, 46 J. Polit. Sci. 428, 435 (2002) (This paper conducts a study on the change in day-care coverage in Norway on the basis of the change in the female ratio in the legislature. It concludes that the increase in female representation in the legislature improved the day-care coverage in Norway. In addition, this paper also comments on the importance of female representation to derive women-friendly policy outcomes.).

marginal to discuss issues of gender equality. However, the increase of female representation will bring about greater support for the voluntary maternity leave system.\footnote{206}{Rosabet Moss Kanter, \textit{Effects of Proportions on Group Life: Skewed Sex Ratios and Responses to Token Women}, 82 AMER. J. SOC. 965, 966 (1977); SANGUNG KIM, HAN GWUNERO BONUN HAEABNGHU JUNGHISA 100 NYUN [100 Years of Political History after Decolonization] 98 (1999) (in 1961, women accounted for 0.9% in parliament); Inter-Parliamentary Union, \textit{Women in Each National Parliament}, http://www.ipu.org/wmn-e/classif.htm (last visited Nov. 1, 2013) (providing that Korea ranks 89th out of 188 countries as of April 2012 with 15.7% of female representation in parliament); Sandra Grey, \textit{Does Size Matter? Critical Mass and New Zealand’s Women MPs}, 55 PARLIAM. AFF. 19, 26-27 (2002) (There were changes in parental leave policy between 1975 and 1999. Among the various changes, the shift from maternity leave to parental leave was the most obvious change. When the change occurred, women accounted for 14.4% of seats in parliament. Unless women reach more than 15% of seats in parliament, they are still a minority according to a study analyzing patterns of behavior of women to define them as the minority of a group); and Rosabeth Moss Kanter, \textit{Some Effects of Proportions on Group Life: Skewed Sex Ratios and Responses to Token Women}, 82 AMER. J. SOC. 965, 966 (1977).}

Second, Korea also achieved a substantial increase in female representation in the executive branch. In 2004, women accounted for 40.1% of public service.\footnote{207}{Republic of Korea, The Sixth Periodic State Report to the Committee on the Elimination of Discrimination Against Women, CEDAW/C/KOR/6, at 14 (2006). Women accounted for 39.3% in 2003.} It is a substantial increase from 19.9% in 1998.\footnote{208}{Republic of Korea, The Fifth Period State Report to the Committee on the Elimination of Discrimination Against Women, CEDAW/C/KOR/5, at 17 (2003). The female ratio rose to 32.2% in 2000.} In addition, women in managerial positions of public service rose from 2.9% in 1998 to 10.0% in 2006.\footnote{209}{Civil Service Reform, Representation: Promotion of Representativeness within the Civil Service, CIVIL SERVICE COMMISSION, http://www.csc.go.kr/eng/csR/csr02-04.asp#print (last visited Nov. 4, 2009).} There are certain studies that view the role of women in the executive branch as a more critical
factor than the role of women in parliament in determining the policy outcome of women’s issues.\textsuperscript{210} In particular, the establishment of a policy agency in charge of women’s policy or issues is necessary to effectively realize women-friendly policy outcomes.\textsuperscript{211} In fact, Korea introduced the Ministry of Gender Equality in 2001.\textsuperscript{212} An independent ministry responsible for gender equality issues is unusual in the world as shown by the participants of the World Women’s Ministerial Conference. During the Conference, only four countries had an independent ministry responsible for gender equality issues.\textsuperscript{213} Furthermore, in Nordic countries, Norway and Greenland are the only country with an independent ministry for gender equality.\textsuperscript{214}

\textsuperscript{210} Alan Siaroff, \textit{Women’s Representation in Legislatures and Cabinets in industrial Democracies}, 21 INT. POLIT. SCI. REV. 197, 208 (2000) (This paper appreciates the importance of women in parliament to bring about women-friendly policy outcomes, but it puts more weight on women in cabinet positions.); and S. Laurel Weldon, \textit{Institutional Sources of Representation for Women in Democratic Policymaking}, 64 J. POLIT. 1153, 1170 (2002) (This paper does not see a numerical increase in women in parliament as the only impetus for women-friendly policy outcomes. Instead, women’s movements and women in the executive branch may bring about a more positive impact on women’s issues than women in parliament.).

\textsuperscript{211} S. Laurel Weldon, \textit{Institutional Sources of Representation for Women in Democratic Policy Making}, 64 J. POLIT. 1153, 1170-71 (2002) (This paper emphasizes the importance of women’s movements and a policy agency in charge of women’s policy as preconditions to effectuate a positive impact of the increase of female representation in parliament on women-friendly policy outcomes.); and Joni Lovenduski, \textit{Introduction: State Feminism and Representation, in STATE FEMINISM AND POLITICAL REPRESENTATION 1, 4} (Joni Luvenduski & Claudie Baudino eds., 2005) (This paper emphasizes the role of a policy agency in charge of women’s issues as an impetus to bring about women-friendly policy outcomes.).

\textsuperscript{212} Republic of Korea, \textit{The Fifth Periodic State Report to the Committee on the Elimination of Discrimination Against Women}, CEDAW/C/KOR/5, at 12 (Jul. 23, 2003). Korea established the Ministry of Gender Equality in January 2001 as a policy agency for women’s affairs in general to promote women’s overall status in society.

\textsuperscript{213} Ji-hee Kwon, \textit{World Women’s Ministerial Conference Takes Place on 13th by the Minister of Gender Equality and Family}, WOMEN’S NEWS (July 12, 2013). Ministers discussed gender equality issues in each country and only four countries — Canada, Indonesia, Tunisia and Chile — had an independent ministry responsible for gender equality issues. In Nordic countries, only Norway has an independent ministry. In Sweden, an independent ministry was established in 2007 and dissolved in 2010.

In Sweden, an independent ministry was established in 2007 but dissolved in 2010.

In contrast, Korea has enlarged the role of Ministry of Gender Equality to family issues and named it the Ministry of Gender Equality and Family in 2004. The enlargement conveys a strong will to incorporate gender equality as an important value in the policy making process for family issues. Finally, in 2013, a female president was elected for the next five years. As a result, the executive branch of Korea fulfilled a precondition for bringing about women-friendly policies by increasing female representation and establishing an agency for gender equality. Therefore, this paper proposes the equal treatment approach as the theoretical basis to replace the compulsory maternity period with a voluntary period on the grounds that Korea achieved a substantial increase in female representation in the legislative and executive branch to effectively discuss the legitimacy of the current maternity leave policy.

In addition to the increase of female representation in the legislative and executive branches, advancement of the female education level allows Korea to expand discussion about maternity leave. In 2012, 74.4% of the overall women and

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68.6% of men graduating high school in Korea entered universities.\textsuperscript{217} As a result, female workforce is ready to enter into the job market after graduation. However, 49.9% of women and 73.3% of men were economically active in 2012.\textsuperscript{218} Such a large gap between the level of education and participation in economic activities brings attention to the obstacles for women to enter into the job market. Therefore, the increase of the female education level is a positive change in Korean society because more attention will be paid to the equal treatment approach for the maternity leave system.

Lastly, the change of social notion from preference to male offspring to preference to female offspring allows more active discussion for maternity leave. As a Confucian country, Korea traditionally preferred male offspring to female offspring.\textsuperscript{219} However, such social notion has changed and preference to female offspring is overwhelming.\textsuperscript{220} As a result, society pays more attention to women’s status in the workplace. Therefore, the change of social notion allows open discussion for the maternity leave system.

\textsuperscript{217} KOREA NATIONAL STATISTICAL OFFICE, KOREAN SOCIAL INDEX 2012 14 (2013). In 2005, 83.3% of men and 80.8% of women entered universities. However, since then, the ratio of women started to exceed the ratio of men entering universities. Such advancement of the female educational level has brought about attention to women’s status in the workplace.
\textsuperscript{218} Id. at 19. The female employment rate has not much changed despite rapid advancement of the female educational level. In 2000, 48.8% of women participated in economic activities, which is not much different from 49.9% in 2012.
\textsuperscript{219} Ulla Larsen, Woojin Chung & Monica Das Gupta, Fertility and Son Preference in Korea, 52 POP. STUD. 317, 318 (1998). This study focuses on Korean tradition of preference to male offspring in Korea. It states that Confucian tradition mainly contributed to social notion of preference to male offspring.
2. The Expansion of Financial Support for Maternity Leave

In addition to replacing the compulsory period with a voluntary system, this paper proposes that Korea should expand financial support for maternity leave.221 There are three particular proposals to expand financial support for maternity leave. First, employment insurance should remain as the financial source for maternity benefits.222 Second, employment insurance should cover the whole period of maternity leave for women in large corporations as well as in SMEs.223 Lastly, employment insurance should eliminate the cap on benefits for women in highly paid jobs.224

221 The expansion of maternity benefits refers to the expansion of social expenditures on maternity benefits. Under the current maternity leave system in Korea, employment insurance provides maternity benefits in part and the employers are still responsible for a substantial amount of maternity benefits. To minimize the adverse impact on female workers, this paper tries to expand the amount covered by employment insurance. In essence, the expansion of maternity benefits refers to the expansion of the socialization of maternity benefits.

222 When Korea introduced the socialization of maternity benefits, there was controversy over the financial source for maternity benefits. Jun-sang Choe, Providing Maternity Benefits from Health Insurance, HANGEORAE (Dec. 6, 1996). There was an argument that health insurance should provide maternity benefits instead of employment insurance. It was based on the fact that maternity leave purported to protect women’s health. However, national health insurance provided medical expenses but it did not provide any remuneration for loss of income during medical leave. In contrast, employment insurance provided benefits to maintain employment status. As a result, Korea finally adopted employment insurance as the financial source for maternity benefits because maternity benefits purported to maintain employment. Despite the continuous dispute over the legitimacy of employment insurance as the financial source for maternity benefits, this paper proposes that Korea should maintain the current system of employment insurance providing maternity benefits.

223 Since 2006, employment insurance provided maternity benefits for women in SMEs during the whole period of maternity leave. In contrast, it only provided benefits for women in large corporations for the last thirty days. As a result, large corporations were penalized for employing female workers instead of men. Therefore, this paper proposes that employment insurance should expand coverage for female workers in large corporations to expand female employment opportunities in large corporations.

224 The current system limits the maximum amount of benefits provided by employment insurance. As a result, women who earn more than the maximum amount are penalized on the basis that their average income exceeds the arbitrarily prescribed maximum amount available from employment insurance. The gender wage gap is a serious problem in Korea. If the maternity benefits system penalizes women with higher income, it will not be able to improve the quality of female employment.
a. Employment Insurance as the Financial Source for Maternity Benefits

The major problem with employment insurance as the financial source for maternity benefits is the relatively low enrollment rate of female workers. Since July 1995, Korea expanded the coverage of employment insurance from large corporations to all businesses. Furthermore, employment insurance covers employees regardless of their employment status. As a result, irregular, temporary or part-time workers have equal access to coverage to regular, permanent, or full-time workers under employment insurance. Theoretically, Korea provides universal coverage under its employment insurance system. Even in practice, the enrollment rate for all workers in employment insurance substantially increased, as legislators and policy makers expected. In 1997, the enrollment rate for all workers reached only 31.9%. When Korea introduced employment insurance as the financial source for maternity benefits in 2001, the enrollment rate was 49.5.

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225 JAEGH KWON ET AL., EMPLOYMENT INSURANCE IN KOREA: THE FIRST TEN YEARS 6-7 (2006). The Employment Insurance Act (EIA) entered into force on July 1, 1995. It started as an insurance program for employers hiring 30 or more employees. Finally, the EIA covered all workplaces by encompassing businesses hiring one or more employee under coverage. Theoretically, Korea achieved “universal” employment insurance for all workplaces.

226 MINISTRY OF LABOR, EMPLOYMENT POLICY, EMPLOYMENT INSURANCE SYSTEM (EIS), EIS APPLICATION & PREMIUM RATES, http://www.molab.go.kr/english/Employment/Employment_Insurance_Rate.jsp (last visited on Sep. 10, 2009). The English website of the Ministry of Korea provides a thorough analysis of the employment insurance system. It particularly emphasizes universal coverage at least in theory. The website does not articulate any disparity between the statutory languages of universal coverage and reality.

227 In 1997, the total number of paid workers was 13,404,000. Jaechol Lee, Goyongcheluneungryuk Nakjaejum [Inability to Create Job Opportunities], Daily Seoul Economy, Nov. 1, 2006, http://economy.hankooki.com/lpage/economy/200611/e2006110118341970060.htm.; In 1997, the total number of insured workers was 4,280,430. MINISTRY OF LABOR, YEARLY STATISTICS OF EMPLOYMENT INSURANCE 1997 7 (1999). As a result, only 31.9% of paid employees were enrolled in the employment insurance program in 1997.

228 MINISTRY OF LABOR, YEARLY STATISTICS OF EMPLOYMENT INSURANCE 2001 3 (1993). It was a slight decrease from the enrollment rate in 2000. In 2000, 50.9% of paid workers were covered by employment insurance. In 2000 and 2001, part-time workers were not eligible to apply for employment
2009, 59.0% of paid workers were covered by the employment insurance program.\textsuperscript{229} Although the enrollment rate increased since 1994, it still does not reach 100%, which was the original legislative aim of universal coverage for paid workers. The situation of women is more serious than that of men. In 2006, only 44.5% of female workers were insured by employment insurance.\textsuperscript{230} By contrast, 61.4% of male workers were covered by the employment insurance program.\textsuperscript{231} The gender disparity in enrollment rate shows that the expansion of employment insurance coverage is the first precondition that Korea should achieve in order to retain employment insurance as the financial source for maternity benefits.

To solve the relatively low enrollment rate of female workers in employment insurance, this paper proposes that the Ministry of Employment and Labor (Prior to September 1, 2010, the Ministry of Employment and Labor was entitled the Ministry of Labor) should enforce the penal provision under the Employment Insurance Act (EIA). The EIA requires all employers hiring one or more employees to provide employment insurance. However, because employers have to contribute to the

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\textsuperscript{229} KOREA EMPLOYMENT INSURANCE INFORMATION SERVICE, JULY 2009 STATISTICS OF EMPLOYMENT INSURANCE 4 (2009), http://www.keis.or.kr/.
\textsuperscript{230} YOUNGOK KIM ET AL., A STUDY ON WOMEN’S CAREER INTERRUPTIONS FOLLOWING CHILDBIRTH AND POLICY RECOMMENDATIONS 1 (2007). The report first analyzes the problem of employment insurance as the financial source for maternity benefits. The report recommends that employment insurance should expand coverage for the majority of female workers. However, the report does not specifically articulate the policy recommendation to expand coverage for female workers. Instead, the report simply emphasizes the increase in the enrollment rate of female workers.
\textsuperscript{231} Id. The enrollment rate of men is higher than the rate of women. However, the male enrollment rate is still far behind the enrollment rate in the health insurance program. Korea guarantees universal health insurance. By contrast, it does not consider universal coverage for employment insurance as an important policy goal to achieve. Therefore, not only for female workers, but also for the welfare of all workers, the Ministry of Employment and Labor should enforce the penal provision under the Employment Insurance Act.
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employment insurance fund, they avoid the mandate from the EIA. The backgrounds of the avoidance of payment for the employment insurance derive from high costs to comply with the regulation. To make the employers comply with the regulation, enforcement measures are adopted. For example, the Enforcement Decree of the EIA prescribes fines less than ₩3,000,000 (approximately $3,000) for employer’s failure to provide employment insurance. The EIA designates the Ministry of Employment and Labor (MEL) as the legitimate enforcer of the penal provision. Nevertheless, the MEL did not exercise its legitimate enforcement power to prevent and monitor the employer’s behavior. When the MEL officially conducted a survey of 4,255 employers and found that 88% of employers violated the Labor Standards Act and the Act on Equal Employment and Support for Work-Family

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232 MINISTRY OF LABOR, EMPLOYMENT POLICY, LABOR INSURANCE, EMPLOYMENT INSURANCE SYSTEM (EIS): EIS APPLICATION & PREMIUM RATE, http://www.molab.go.kr/english/labor/Insurance_Rate.jsp (last visited Nov. 15, 2013). Employment insurance offers two major programs. It requires different premium rates for each program. The first program is the unemployment benefits. Employees and employers equally pay 0.45% of average wages, which amounts to 0.9% in total. The second program is job security and vocational competency development. Employees are not responsible for any rates for the second program. By contrast, an employer’s premium rates vary on the basis of the size of the business. Employers with fewer than 150 employees are responsible for 0.25%, whereas employers with 1000 or more employees pay 0.85%.

233 OECD, REDUCING THE RISK OF POLICY FAILURE: CHALLENGES FOR REGULATORY COMPLIANCE 18 (2000), categorizing failure to comply with regulations into three categories: failure related to lack of regulatory knowledge, willingness and ability. Avoidance of contribution to employment insurance falls under the second category of failure: failure related to lack of regulatory willingness. This report analyzes the backgrounds of failure and concludes that failure related to lack of regulatory willingness may arise when costs of compliance is too high to comply with.

234 The Enforcement Decree of EIA, art. 146 (R.O.K.).

235 Id. art. 3 (providing that “The Ministry of Labor shall take charge of managing employment insurance.”). The EIA guarantees full discretion of the Ministry of Labor to monitor the implementation procedure of legislation in the workplace.

236 Anthony Forsyth, The “Transplantability” Debate Revisited: Can European Social Partnership Be Exported to Australia?, 27 COMP. LAB. L. & POL’Y 305, 337 (2006). The author analyzes the examples of implanting foreign labor law. As one of the examples, the author focuses on the Korean experience. After the Korean War, Korea adopted the U.S. labor law. However, it failed to realize the original legislative intent of the U.S. labor law due to the lack of enforcement. The author focuses on the cultural differences between Korea and the U.S. as the determining factor in discouraging the enforcement of legislation.
Reconciliation, it did not monitor the employer’s compliance status with the Employment Insurance Act. The MEL took it for granted that the employers were neglectful of employment insurance. The MEL did not consider any penalties or sanctions for these employers violating their obligation to comply with the Employment Insurance Act. Therefore, the first step to expand coverage for employment insurance is for the MEL to perceive the importance of employment insurance and enforce the regulation.

To make the MEL enforce the legitimate mandate, expansion of human resources for enforcement is required. In the second half of 2013, the MEL hired 60 officials to enforce the part of the legitimate mandate related to industrial safety. The MEL focused on industrial safety because there were several industrial accidents

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237 NODONGBU [Ministry of Labor], NODONGBAEKSEO [White Paper on Labor] 1-34 (2009). The Ministry of Labor [MOL] chose 4,255 employers on the basis of the proportion of irregular workers among the overall number of employees. The problem of irregular workers is a significant issue affecting all aspects of employment issues. They are a unique concept limited to Korea. Irregular workers are workers with the employment contract with a specified period for employment. Because Korea originally maintained life-time employment contracts as the typical form of employment contract, it does not provide adequate protection for irregular workers. The MOL selected 4,255 employers who hire irregular workers more than regular workers. The MOL focused on the compliance status with the LSA and EES, which guarantees a minimum threshold for work environments. The main feature of the LSA and EES is that the ultimate result of the violation of these two legal mechanisms is easily recognizable. For example, if employers expose employees to hazardous environments, the MOL can find violations of labor standards at a glance. If employers do not hire female workers on the basis of sex, the MOL can recognize discrimination by visiting the workplace. However, the adverse impact of violation of the EIA is recognizable only when employees need benefits from employment insurance. Therefore, employers and the MOL do not consider the low enrollment rate of the employment insurance as important as violation of the LSA and EES.

238 In 1997, when Korea faced economic crisis, it had to follow the IMF mandate to change the labor market structure. The IMF considered that flexibility in the labor market was necessary for Korea to overcome the crisis. Along with a flexible labor market, Korea had to scrutinize the regulation of the labor market. However, it failed to do so. As a result, government officials continue to neglect their duty to enforce labor law. GYU-JIN HWANG, PATHWAYS TO STATE WELFARE IN KOREA: INTERESTS, IDEAS AND INSTITUTIONS 128 (2006).

in the first half of 2013. In 2013, only 66.6% of employees were insured by the employment insurance system. However, the MEL did not hire anyone to enforce the employment insurance law which mandates employers to contribute to the system. Such neglect of human resources proves that the MEL perceives employers’ violation of the employment insurance system as a minor issue to be ignored compared to other policy agenda. Therefore, enlargement of human resources for enforcement is required to strengthen enforcement of the legitimate mandate for employers to contribute to the employment insurance system.

Beginning enforcement of the penal provision by the MEL would comply with the efforts to expand the role of employment insurance in Korea. Although globalization discouraged state intervention in the labor market, Korea continued to regulate the labor market to minimize the side effects of globalization. Opposite to globalization, rising income and education levels brought about attention to the problems of the labor market and called for state intervention in it. When Korea faced a serious increase in the unemployment rate due to the financial crisis of 1997, it extended the employment insurance program and introduced emergency programs to solve the massive rise in the unemployment rate. Overall, Korea

241 Guy Standing, *Why Basic Income is Needed for a Right to Work*, 2 RUTGERS J. L. & URB. POL’Y 91, 91 (2005). This paper analyzes the tension between globalization of the labor market and state intervention for the basic welfare of its citizens. This paper supports state intervention to maintain the basic welfare status of its citizens as Korea does.
243 Huck-ju Kwon, *Globalization, Unemployment and Policy Responses in Korea: Repositioning the State?*, 1 GLOB. SOC. POL. 213, 214 (2001). This article emphasizes that Korea strengthened state
tends to show a particularly strong interest in the problem of unemployment. It has financed job training opportunities and unemployment benefits to solve the problem of unemployment. Financing job training opportunities and unemployment benefits does not require regulatory enforcement since the MEL directly establishes job training centers and provide unemployment benefits. However, forcing employers to contribute to the employment insurance system cannot be enforced by any direct financing by the MEL. Instead, the MEL should visit each and every employer and check whether they have contributed to the system in accordance with their actual employment situations. Enforcing the Employment Insurance Act is a form of state intervention against unemployment. If employers do not provide unemployment insurance for more than one-half of female workers, the majority of female workers cannot receive any benefits from employment insurance, or in case they are removed from their current positions. At the same time, uninsured female workers are not eligible to receive maternity benefits from employment insurance. As a result, the Korean government should intervene in the current practice of the Employment Insurance Act to protect women's right to employment insurance and maternity benefits. Furthermore, such intervention is similar to the past practices of the Korean government, which solved the problem of unemployment stemming from the economic crisis. Although the past practices involved direct funding of job

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training centers and unemployment benefits, the Korean government can hire more officials to strengthen regulatory enforcement of the employment insurance law. Therefore, the effort to enforce the Employment Insurance Act is in line with the basic attitude of the Korean government towards the state’s role in the labor market to prevent unemployment.

b. Expanding Coverage for Women in Large Corporations

This paper proposes that employment insurance should expand coverage for women in large corporations, because women in large corporations are more marginalized than women in SMEs. Women in SMEs receive benefits from employment insurance throughout the whole period of maternity leave, whereas women in large corporations are entitled to only the last thirty days of maternity leave.\textsuperscript{245} Different treatment is based on the different financial abilities of SMEs and large corporations.\textsuperscript{246} Congress considered that SMEs are financially unable to provide maternity benefits with their own funds, while large corporations can afford to do so. However, the assumption is in error, because the female employment rate is lower in the large corporations and the gender wage gap in large corporations exceeds the gap in SMEs.\textsuperscript{247} As a result, women in large corporations need support

\textsuperscript{246}OECD, ENHANCING SME COMPETITIVENESS: THE OECD BOLOGNA MINISTERIAL CONFERENCE 2001, 70 (2001). This paper provides thorough analysis on the differences between SMEs and large corporations. Due to the difference in size, SMEs and large corporations cannot invest at the same level in every aspect. As a result, the financial status of SMEs and large corporations differs from each other.
\textsuperscript{247}THE FEDERATION OF KOREAN INDUSTRIES, CEO REPORT ON CURRENT ISSUE, CER-2007-07, DAEGIUP IRNYUKGUJO MIT YEOSUNGIRYUK HYUNHWANG JOSAGYULGUIA [Survey on HR Structure
from the government as women in the SMEs. Therefore, this paper proposes that Korea should expand employment insurance coverage for maternity benefits to be received by women in large corporations.

Historically, large corporations in Korea have discriminated against married women. Female workers were the primary labor force in the labor-intensive light manufacturing industries in the 1960s and 1970s. However, they quit their jobs upon marriage. The harsh working conditions contributed to the high percentage of permanent exit of female workers from the workplace. In fact, when they got

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and Female Workforce in Large Corporations] 1 (2007). The Federation of Korean Industries [FKI] is an organization representing the interests of businesses particularly those referred to as "chabols." Chabols are conglomerates which are "large corporations" for the purpose of this paper. The FKI conducted survey on 220 corporations among the top 300 corporations in terms of the total revenue in 2005. The FKI reports that the average female ratio to the total workers was only 12.4% in top 100 corporations and 16.2% in corporations between the top 101 and 300. Women in large corporations earned 60.2% of what men earned, whereas women in all workplaces earned 63.2%.

Seung-kyung Kim, "Big Companies Don’t Hire Us, Married Women": Exploitation and Empowerment among Women Workers in Korea, 22 FEMIN. STUD 555, 557 (1996). This article articulates discrimination against married women in the history of economic development. It starts with description of female workers in the earlier stages of economic development:

Through the end of the 1970s, light industries produced most of Korea’s exports, and female workers comprised more than one-half of the work force in these industries: electronics, 55.2%; textiles, 72.4%; and rubber footwear, 52.4%.

Id. at 559. The author interviewed a typical female factory worker who quit her job upon marriage:

I spent more than seven years working in a shoe factory before I got married. I never want to see another sewing machine. My husband earns 400,000 won a month as a skilled technician. That is not a lot, but we can live on it. My husband bought this apartment where we live. Our mortgage payments are 70,000 won a month. I do not have big ambitions. I just want to stay home to take care of my daughter and my husband. I worked for a long time. My husband wants me to stay home, too, so why should I go back to a miserable factory job at a sewing machine?

Id. (repeating after the statement from the employee that “although her family had been too poor to send her to high school and she had spent many years working under harsh conditions, she had married a high school graduate who was a successful blue-collar worker, and she was comfortable”).
older, they were not eligible to work in export-free zones with high salaries.\textsuperscript{251} Instead, they had to work for subcontracting factories without any fringe benefits.\textsuperscript{252} Fringe benefits were available for only single women working long hours in harsh labor conditions.\textsuperscript{253} Due to the lack of employment opportunities for better working conditions, women usually did not return to the workplace after marriage.

The situation of married women in large corporations did not change much as the Korean economy improved. One survey compared the situation of married women and single women in Korea.\textsuperscript{254} The typical trend in the employment of married women is their exit from the labor market and return to the workplace after birth or after caring for the child.\textsuperscript{255} When women return to work, they may not be able to retain their prior positions. The Ministry of Gender Equality (MGE) in

\begin{itemize}
  \item \textsuperscript{251} \textit{Id.} (stating that “t]he best jobs were simply unavailable to older women (i.e., women past their mid-twenties”).
  \item \textsuperscript{252} \textit{Id.} (stating that “[o]ther alternatives available for married women included working at subcontracting factories”).
  \item \textsuperscript{253} \textit{Id.} The author cites the comment from one interviewee: “Big companies don’t hire us, married women, so we wind up in subcontracting factories where there are no fringe benefits at all and no job security either.”
  \item \textsuperscript{254} Bun Song Lee, Soomyung Jang & Jayanta Sarkar, \textit{Women’s Labor Force Participation and Marriage: The Case of Korea}, 19 J. ASIAN ECON. 138, 138 (2008). This paper conducts a comparative analysis of married women and single women in Korea regarding their participation in the labor market. The study found that married women’s employment rate was 40-60\% of the employment rate of single women. The study conducted further study on the employment pattern of married women. There were two factors affecting the employment pattern of married women. The first factor was the wage of their spouses. The second factor was the age of married women. The first factor was obvious because married women have less incentive to participate in the workplace if their husband’s wage is competitive enough to support their household. The second factor, age, was the key point of this paper. In the case of young married women, there was high demand from the labor market. By contrast, middle-aged married women were not competitive in the labor market but there was a high supply because women tend to return to the workplace after raising their children. Regardless of the technical conclusions related to married women, the overall inferior status of married women in the labor market justifies the legislative proposal for Korea to expand financial support for maternity leave.
  \item \textsuperscript{255} OECD FAMILY DATABASE, http://www.oecd.org/dataoecd/29/62/38773711.pdf (last visited Sep. 11, 2009). OECD defines this pattern of employment in female lifetime as an “M” curve. The M-curve refers to the tendency of female employment rates traditionally declining noticeably during the prime years of family formation, around the ages of 25 to 35, and increasing again as children grow up. The OECD found out that there are prominent M patterns in Czech Republic, Hungary, Japan and Korea among the member countries.
\end{itemize}
Korea conducted a survey in 2005 on women who returned to the workplace after the birth of a child.\textsuperscript{256} The MGE defined employment in large corporations as employment of high quality.\textsuperscript{257} The survey found that 44.4\% of maternity leave takers in large corporations could not return to the workplace.\textsuperscript{258} In addition to large corporations, venture and foreign corporations were considered as employers offering high-quality job opportunities. 22.2\% of maternity leave takers in venture corporations and 16.7\% of maternity leave takers in foreign corporations could not return to the workplace.\textsuperscript{259} However, more maternity leave takers in large corporations could not return to the workplace than those in the other two corporations. Therefore, married women are significantly marginalized in large corporations in Korea. If employment insurance provides maternity benefits for women in large corporations as well as women in SMEs, women’s marginalization in large corporations will decline as they can still manage their dual role as workers and mothers, which makes it difficult for them to maintain their competitiveness in large corporations.

\textsuperscript{256} Jungwon Park, Gihonyeosungdo Ilhagoshipda [Married Women Would Like to Work], DATANews (May 25, 2005), http://blog.naver.com/rehouse?Redirect=Log&logNo=120013353571. The Ministry of Gender Equality (MGE) conducted survey with INCRUIT, INC., a job searching portal site. The survey was open between May 4, 2005 and May 18, 2005. 1,147 women participated in the survey.

\textsuperscript{257} Id. The MGE proposed several criteria to determine the quality of employment opportunities. The size of business was one of those criteria. As a result, employment in large corporations was considered to be employment of high quality.

\textsuperscript{258} Id. At the same time, there was a 13.7\% increase in employment of SMEs with less than 100 employees. The significant contrast between employment in large corporations and SMEs shows the different status of married women in different sized businesses.

\textsuperscript{259} Id. By contrast, employment in the SMEs hiring less than 100 employees increased by 13.1\%. Fortunately, employment in education increased by 22.6\% and employment in public service increased by 27.8\%. However, female employment in the education and public service sectors has been relatively high compared to other job categories. Therefore, the discrepancy between employment in SMEs and large corporations is relatively more important than employment in other job categories.
c. Full Remuneration for Women with High Salaries

In addition to the expansion of financial support for women in large corporations, this paper proposes an expansion of financial support for women with high salaries. The current system limits the maximum amount available from employment insurance for each individual. As a result, employers have to pay the rest of the lost income for women with high salaries as the Labor Standards Act mandates. This paper claims that the employer’s financial obligation prevents them from hiring women. By contrast, there is a counter-argument that claims employers are willing to hire high-skilled women despite their financial obligation to pay maternity benefits because employers would like to retain a high-quality workforce. However, Korean employers are not willing to bear the financial obligation to maternity benefits for high-quality workforce. Instead, they avoid hiring women for high-quality positions. The United Nations Development Programme introduced the Gender Empowerment Measure (GEM) as the measure for evaluating the status of females in society. The GEM is based on the ratio of

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260 The cap on maternity benefits is not an original product of Korea. Before Germany socialized full compensation for lost income during maternity leave, it also limited the maximum amount available from health insurance. However, countries which capped the maximum amount of maternity benefits tend to eliminate the cap on benefits. Germany has already achieved the goal. Recently, Monaco has set a transitional period to eliminate the cap on maternity benefits. No Cap on Maternity Benefits, BALTIC TIMES (May 27, 2009), http://www.baltictimes.com/news/articles/22939/(last visited April 16, 2014).

261 Following the original German approach, Korea has a dual system to compensate for the loss of income during maternity leave. Employment insurance provides ordinary wages up to W1,350,000 ($1,350) per month and the employer is in charge of the difference between the actual loss of income and the grants from employment insurance. Korea follows the system in Germany, partially because it relies on the social welfare regime of Germany. Germany depends on its comprehensive insurance system to guarantee the basic welfare of its citizens. Dong-Myeon Shin, The Elective Affinities of Production Regime and Welfare Regime in Korea, 40(1) KOR. POLIT. SCI. REV. 115, 130-32 (2006).

262 UNITED NATIONS DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT 1995, 72 (1995). The United Nations Development Programme (UNDP) introduced the two major indices for gender
women in parliament, as legislators, senior officials, managers, professionals, technicians, and the ratio of estimated female-to-male earned income. These job categories are relatively high-salary jobs for women in Korea. The average female wage was ₩1,839,000 ($1,839) per month in 2007. Female legislators, senior officials and managers earned ₩3,682,000 ($3,682) per month and female professionals earned ₩2,367,000 ($2,367) per month. In addition, female technicians earned ₩1,840,000 ($1,840) per month. However, women accounted for a relatively small proportion of these highly paid occupations. Women took 13.4% of parliamentary seats, 8% of legislators, senior officials and managers and 39% of professionals and technicians. Furthermore, the ratio of estimated female to male earned income reached only 40%. Korea ranked 26th in the Human Development Index, which accounts for the average achievements in basic dimensions of human evaluation. Firstly, the Gender-related Development Index (GDI) provides the difference between men and women in the general human development process. Secondly, the Gender Empowerment Measurement (GEM) is an agency which shows women’s representation in politics and the economy. The Gender Empowerment Measurement (GEM) is a representative index on gender perspectives. When evaluating female status in society, the GEM is considered as one of the more important criteria to consider.

263 UNDP, _supra_ note 262. The GEM focuses on three variables: women’s participation in political decision making, access to professional opportunities and their earning power.

264 JAESEON JOO & CHAEJEONG LEE, _KOREAN WOMEN’S DEVELOPMENT INSTITUTE, 2008 RESEARCH PAPER-18 GENDER STATISTICS IN KOREA_ 252 (2009). The Korean Women’s Development Institute published yearly statistical evidence showing the status of females in Korea. One of the categories is employment. It provides salary differences in various job categories, including those reflected in the calculation of the GEM. In Korea, legislators, senior officials and managers earn the highest salary among all. In addition, professionals earn the second-highest salary and technicians earn the third-highest salary.

265 _Id_. It was substantial increase from 1,167,000 won in 2000.

266 _Id_. It was substantial increase from 2,289,000 won and 1,696,000 won in 2000.

267 _Id_. It was substantial increase from 1,370,000 won in 2000.


269 _Id_.
development, regardless of gender, but ranked 64th in the GEM.\textsuperscript{270} Furthermore, women are losing their earning power in these job categories which are more competitive. Traditionally, the gender wage gap in these highly paid jobs was evaluated as the lowest in all Korean job categories.\textsuperscript{271} However, between 2000 and 2007, the gender wage gap in these highly paid job categories was enlarged, whereas the average gender wage gap stayed at the same level in Korea.\textsuperscript{272} Therefore, Korea should expand financial support for maternity leave for women in highly paid jobs so that women can maintain their competitiveness in their job positions along with their male colleagues.

When Korea expands financial support for maternity benefits in highly paid jobs, it should guarantee full remuneration just as Germany did. When Germany introduced maternity benefits, it provided a cap on the maximum amount available from health insurance. As a result, employers were responsible for the difference between the cap and the actual loss of income. However, Germany introduced the reimbursement system for employers to reduce the economic hardship of hiring female workers. It introduced health insurance as the financial source to reimburse

\textsuperscript{270} UNDP, HUMAN DEVELOPMENT REPORTS: STATISTICS, http://hdr.undp.org/en/statistics/indices/ (last visited May 4, 2010) (This webpage provides definition of the Human Development Index. It states that “The three basic dimensions of human development consists of a long and healthy life, knowledge and a decent standard of living.”); and UNDP, supra note 268, at 330 (This reports provides various indices to measure quality of life such as Human Development Index and Gender Empowerment Measure and states that Korea ranked 26th in the former and 64th in the latter.).

\textsuperscript{271} JAESEON JOO & CHAEJEONG LEE, KOREAN WOMEN’S DEVELOPMENT INSTITUTE, 2008 RESEARCH REPORT-18, GENDER STATISTICS IN KOREA 252 (2009). Women earned 62.9% of what men earned in 2000. However, female legislators, senior officials and mangers earned 79.2% of what their male colleagues earned. Furthermore, female professionals and technicians earned 64.9% and 68.1% of what their male counter parts earned.

\textsuperscript{272} Id. In 2007, women earned 63.0% of what men earned, which was only a 0.1% increase from 2000. Female legislators, senior officials and mangers earned only 73.1%, which was a 6.1% decline from 2000. Female professional earned 60.8% which was a 4.1% decline from 2000. Furthermore, female technicians earned only 60.1%, which was an 8.0% decline from 2000.
benefits that the employers had to pay for maternity leave. As Germany gradually expanded its socialization scheme, Korea should likewise provide full remuneration from employment insurance instead of obliging employers to be responsible for maternity benefits.

The German experience is particularly important in this respect, because Korea adopted a social welfare system similar to the German system. The social welfare system can be divided into three general categories.273 The first system is the liberal system, which allows the market to provide welfare benefits for individual citizens.274 As a result, the state does not provide full remuneration for maternity benefits in a liberal system such as the United States.275 The United States has government welfare programs but the federal law does not mandate employers to provide full remuneration for lost income during maternity leave.276 The second system is the conservative system, which minimizes the intervention of the state into the welfare system, but in which the state does not fail to provide benefits for those

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273 ESPING-ANDERSON, THE THREE WORLDS OF WELFARE CAPITALISM 36-37 (1990). The author categorizes welfare states on the basis of the extent to which wage-earners can leave apart from the market. The author adopts “commodification” and “decommodification” to explain the liberty that wage-earns may enjoy in each welfare regime.

274 Id. at 42. The lack of welfare benefits for individuals is not a fault of society but the fault of individuals.

275 Annie Pelletier, Comment, The Family Medical Leave Act of 1993—Why Does Parental Leave in the United States Fall So Far behind Europe? 42 GONZ. L. REV. 547, 571-72 (2006-2007). The author argues that the welfare system in the United States and Germany differ from each other. The author does not adopt the categorization of the welfare state on the basis of the extent of commodification or decommodification. Instead, the author simply articulates the strong atmosphere of capitalism in the United States and strong support for state intervention in Germany. Esping-Anderson analyzes the conservative system in Germany as the minimized intervention of the state into the market. However, as the author in this article specifically articulates, the German system is generous on welfare benefits for those who cannot afford to buy them in the market. The Maternity benefits system is one of the areas that the market could not function well in the perspectives of the conservative welfare system.

276 Marcia L. McCormick, Gender, Family and Work, 30 HOFSTRA LAB. & EMP. L.J. 309, 324 (2013). The author appreciates achievements of the FMLA but argues that it is still insufficient since only 9% women had access to paid maternity leave.
who cannot afford to buy benefits from the market.\textsuperscript{277} Germany and Korea fall into the conservative system, which depends on the social insurance system to supplement the market system.\textsuperscript{278} The last system is the social democratic system which universalizes the welfare system and is found in countries such as Sweden.\textsuperscript{279} Full remuneration from social insurance is closer to the social democratic system. However, as Germany expanded its health insurance coverage for full remuneration, even a conservative system regards socialization of maternity benefits as the minimum intervention of the state to guarantee gender equality. Therefore, as Korea follows the conservative system for its welfare policy, it needs to adopt full remuneration from employment insurance for women in highly paid jobs.

To make employers comply with the new system, other policy measures such as tax benefits are required. A tax benefit for employers complying with the new

\textsuperscript{277} In contrast with the categorization of the welfare state on the basis of the extent of decommodification, the legal literature focused on the different criteria to compare each welfare regime. One piece of literature on the U.S. and German systems analyzed the differences in three respects: legal programming, administration and financing. Stephan Leibfried, \textit{United States and West German Welfare Systems: A Comparative Analysis}, \textit{12} \textit{Cornell Int'l L. J.} 175, 177 (1979).


\textsuperscript{279} The Swedish welfare regime is well-known for its coverage for all citizens. The obvious contrast can be found in many places, particularly in the U.S. legal literature due to the contrasting perspectives between the liberal approach in the U.S. and the social democratic approach in Sweden. Stephanie M. Westhuis, Comment, \textit{Social Welfare and the Family: Examining the Policy Considerations, Similarities and Differences in the State of Wisconsin and Sweden, 9 Tulsa J. Comp. \\& Int'l L.} 213, 216 (2001).
system will motivate employers to comply with the system. Korea considers a tax benefit as an important policy measure to motivate employers to follow the government policy direction. For example, in 2013, Korea provided tax benefits for employers expanding job opportunities. However, Korea has not introduced any tax benefits for employers guaranteeing maternity leave and benefits for female employees. Therefore, to make employers comply, other policy measures such as tax benefits are required.

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III. A Legislative Proposal for Parental Leave in Korea

This chapter proposes a legislative model for Korea to realize gender equality in parental leave. The parental leave system differs from the maternity leave system in many respects.\(^1\) Most of all, parental leave is available for men and women while maternity leave is limited to women.\(^2\) The fundamental background of the maternity leave system is to guarantee a period for women to recuperate from medical conditions associated with pregnancy and childbirth.\(^3\) On the basis of a protective attitude towards women’s health conditions, Korea adopts maternity leave before and after birth for ninety days.\(^4\) While maternity leave purports to protect maternal health conditions, the fundamental background of the parental leave system is to allow parents to take leave from the workplace after the birth of the child and to raise

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\(^1\) Along with differences on the surface, the policy background of each system differs. In the case of parental leave, the increase in female employment, dual-earner households, and single parents brought about parental leave as an important mechanism to reconcile work and family in 1980s. By contrast, maternity leave was introduced far before parental leave when women started to participate in the workplace upon industrialization. OECD, OECD EMPLOYMENT OUTLOOK 1995 171 (1995).


\(^3\) OECD FAMILY DATABASE, PF7: KEY CHARACTERISTICS OF PARENTAL LEAVE SYSTEMS 1, http://www.oecd.org/dataoecd/45/26/37864482.pdf (last visited Mar. 29, 2010). This report defines maternity, paternity and parental leave under independent terms and conditions. According to the report, maternity leave refers to “employment-protected leave of absence for employed women at around the time of childbirth, or adoption in some countries.”

\(^4\) Geun Tae Kim, Korea: Quality Childcare, OECD OBSERVER, No. 248 (Mar. 2005) http://www.oecdobserver.org/news/printpage.php/aid/1552/Korea.html (last visited April 16, 2014). This paper reports that Korea maintains 90 days of maternity leave as a policy measure to allow women to combine work and family life. It evaluates the current status of maternity leave as enough to guarantee opportunities for Korean mothers to combine work and family life.
their children. The parental leave system is distinguishable from the maternity leave system, because the parental leave system is independent of a woman’s health. As a result, the parental leave system should be equally accessible to men and women, but the Korean system lacks consideration for paternal opportunities to participate in the system. Therefore, this paper proposes a legislative model to guarantee equal opportunities for Korean fathers to take leave to care for their newborn children.

This chapter consists of two parts. Part A analyzes problems with the current parental leave system in Korea. It points out two major obstacles for gender equality. The first problem is the lack of financial support. The system has provided an equal amount of benefits for every individual taking leave for childcare until it finally adopted the wage-dependent system in 2011. The wage-dependent system provides 40% as the wage-replacement rate, and individuals have to lose 60% of their pre-leave income for taking parental leave. As a result, in order to minimize financial loss for the household, men who earn more than women are less

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5 OECD, OECD EMPLOYMENT OUTLOOK 174 (Jul. 1995), http://www.oecd.org/dataoecd/3/40/2409893.pdf (last visited Mar. 22, 2010). The first analysis on the parental leave system in the OECD countries began in 1995 when the Employment Outlook devoted a whole chapter to the parental leave system. To open the door for the analysis, the Employment Outlook defined three different leave systems, which were maternity, paternity and parental leave. It defines parental leave as “long-term leave available to parents to allow them to take care of an infant or young child over a period of time.”

6 This paper considers that there are two major defects with regard to the parental leave system in Korea. First, it does not provide a wage-dependent parental benefits system. Second, it does not recognize the individuality of the right to leave and benefits.

7 Enforcement Decree of the Employment Insurance Act, Presidential Decree No. 14570, Apr. 6, 1995, art. 95 (1) (stating that the benefits amounts to “five hundred thousand won per month,” which is equivalent to $ 500 per month).

likely to take leave.\textsuperscript{9} The second problem is the lack of individuality in the right to leave and benefits. The current system allows individuals to take leave and receive benefits only if the spouses of the individuals are not partaking in the system.\textsuperscript{10} Furthermore, the total period of benefits is limited to one year per child without guaranteeing one year for each parent. As a result, parents have to share one year of benefits with each other. In combination with the lack of financial support, ignoring individuality discourages fathers from taking leave for childcare.\textsuperscript{11} To solve these problems, part B proposes that the Korean system should expand financial support and individuality. To figure out a desirable approach for gender equality, this part conducts a comparative study of the German and Japanese systems. The comparative analysis of these two systems helps this paper propose a new model for


\textsuperscript{10} Employment Insurance Act, Act No. 4644, Dec. 27, 1993, Art. 70(1) (prescribing that “If an insured person who is granted 30 days or more of child-care leave (excluding a period overlapping with the 90 day-maternity leave under Article 74 of the Labor Standards Act) under Article 19 of the Act on Equal Employment and Support for Work-Family Reconciliation meets all the requirements prescribed in the following subparagraphs, the Minister of Labor shall pay child-care leave benefits: <Amended by Act. No. 8781, Dec. 21, 2007> <Enforcement Date Jun. 22, 2008> 1. The unit period of insurance under Article 41 prior to the beginning date of the child-care leave shall be 180 days or more in total; 2. The spouse who is an insured person shall not take child-care leave (excluding less than 30 days of child-care leave) for the same child; and 3. The application shall be made within one month after the beginning date of the child-care leave or 12 months after the end of the child-care leave: Provided that a person who was not able to apply for childcare leave benefits within the said period due to the causes prescribed in the Presidential Decree shall make the application within 30 days after the causes disappear.”).

\textsuperscript{11} Anita Haataja, \textit{Fathers’ Use of Paternity and Parental Leave in the Nordic Countries}, The Social Insurance Institution of Finland, Online Working Papers 2/2009, at 5, http://helda.helsinki.fi/bitstream/handle/10250/8370/FathersLeaves_Nordic.pdf?sequence=1 (last visited Mar. 22, 2010). This paper analyzes paternal leave taking behavior in Nordic countries, which guarantees the individuality by prescribing the father quota, an exclusive period of leave and benefits for fathers. It emphasizes that the background of introducing the father quota was to expand individuality to increase paternal usage of leave entitlements.
Korea, because the German and Japanese systems were similar to the Korean system. However, the German and Japanese systems recently were reformed to attract more fathers to participate in their parental leave programs. As a consequence, a comparative study of the German and Japanese systems is important to provide a legislative model for Korea. Therefore, part B will propose a new model for Korea on the basis of a comparative analysis of the German and Japanese systems.

A. The Problems of Parental Leave in Korea

Korea does not guarantee equal opportunities for men and women to participate in its parental leave system, because it lacks consideration for financial support and individuality. This part consists of two sections. The first section analyzes the problem of financial support, and the second section focuses on individuality in the right to leave and benefits.

1. The Lack of Financial Support

The Korean welfare system has traditionally lacked financial support for the parental leave system. When Korea introduced the system for the first time in 1987, it allowed only women to take leave for childcare.\(^{12}\) It did not consider men as

caregivers and excluded them from the system.  

Under the leave system in 1987, because only women were entitled to take maternity or parental leave, these two systems did not differ from each other in respect to the gender of the beneficiaries. However, these two systems differed from each other in respect to the availability of financial support. While Korea recognized full remuneration for maternity leave, it did not guarantee any financial support for parental leave. As a result, Korea prioritized maternity leave over parental leave by ensuring the financial stability of maternity leave while ignoring financial support for parental leave. Even when Korea finally expanded leave to men in 1995, it did not guarantee financial support.

centers at work, an independent conflict resolution system and an administrative conflict resolution system by establishing the Employment Dispute Mediation Committee).

Yeong-Ran Park, Gender Dimensions of Family Policy in Korea, CANANDA-KOREA SOCIAL POLICY SYMPOSIUM II, at 23 (Jan. 27-28, 2005), http://www.utoronto.ca/ai/canada-korea/papers/Yeong-RanPark_FamilyPolicy.doc (last visited Mar. 19, 2010). This paper analyzes the gender dimension of family policy in Korea which requires more gender-balanced policy measures to reconcile work and childcare. It states that due to Confucian tradition and the emphasis on a patriarchal family structure, the Korean family policy has been traditionally gender discriminatory. It emphasizes that women have difficulties in reconciling work and childcare and care for elderly family members. Due to the problem of an aging society, this paper reports that gender-balanced policy measures to reconcile work and childcare is essential for Korea’s future.

The concentration on women as the primary beneficiaries of parental leave was a common characteristic of parental leave in European countries. However, as Sweden did, European countries are trying to equalize the opportunities for childcare. Clare McGlynn, Reclaiming a Feminist Vision: The Reconciliation of Paid Work and Family Life in European Union Law and Policy, 7 COLUM. J. EUR. L. 241, 249 (2001).

Nowadays, European countries are generous on paid parental leave. However, during 1980s, when European countries introduced parental leave for the first time, they differentiated parental leave from maternity leave by prescribing unpaid parental leave in contrast with paid maternity leave. MARY ANN GLENDON, ABORTION AND DIVORCE IN WESTERN LAW 53-58 (1987).

Park, supra note 13. This paper finds that the aging society requires the expansion of public expenditure on social welfare benefits. It considers that Korea faced questions of to what extent the government should support social welfare benefits. When Korea guaranteed financial support for maternity leave without corresponding subsidies for parental leave, it prioritized maternity leave over parental leave on the basis of the economic analysis of budgetary constraints.

Therefore, from the outset, the Korean system has neglected the importance of financial support for the parental leave system in contrast with the maternity leave system.

In 2001, Korea introduced financial support for parental leave but failed to realize gender equality in reconciling work and childcare. The 2001 reform mandated employment insurance to provide ₩200,000 per month (US $200) until the child reached one year old. However, the benefits were not enough to guarantee financial stability for the leave-takers. One survey found that among 909 leave-takers, only 12.0% of the respondents were satisfied with ₩200,000 per month and 32.2% considered that ₩200,000 per month was far below the income level necessary to maintain financial stability during the leave period. The respondents considered ₩500,000-600,000 per month (US $500-600) as a desirable level to maintain financial stability prior to the reform. Korean legislature decided to increase the amount of benefits to ₩500,000 per month (US $500) in 2007. However, even after the system increased the amount to meet this expectation, fathers

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18 The first attempt to introduce financial support for parental leave came along with “the socialization of maternity costs.” Prior to the “socialization of maternity costs,” employers were fully in charge of providing full remuneration for lost income during maternity leave. However, by socializing maternity costs, employers were partially relieved from the full responsibility to pay previous earnings of mothers on maternity leave. Interestingly, “maternity costs” does not only refer to financial support for maternity leave but also includes financial support for parental leave. Korea defines financial support for parental leave as maternity costs, because Korea considers that the primary beneficiary of the parental leave system is female. Chris Rowley, Kil-Sang Yoo & Dong-Heon Kim, *Unemployment and Labour Markets in Korea*, in *UNEMPLOYMENT IN ASIA 58, 67-68* (John Benson ed., 2005).
20 *KYUYONG LEE ET AL, SURVEY AND POLICY ANALYSIS ON PARENTAL LEAVE 5* (2004).
21 *Id.*
accounted for only 1.5% of the overall beneficiaries.\textsuperscript{22} When the government increased financial support, it aimed to incentivize paternal usage of leave entitlements.\textsuperscript{23} However, while the number of male leave-takers and the number of overall leave-takers increased simultaneously, the ratio of fathers to the overall beneficiaries declined from 1.7% to 1.5%.\textsuperscript{24} As a result, the increase in the amount of benefits was more beneficial for mothers than fathers. In fact, the increase brought about an adverse impact on paternal usage of leave entitlements. Since the total amount of benefits increased from ₩200,000 per month to ₩500,000 per month, women who earned less than their spouses could receive more than they received prior to the revision. Consequently, more mothers participated in the system upon the increase in the total amount of benefits.\textsuperscript{25} By contrast, because fathers still had more to lose than their spouses, the increase was not as attractive as it was to mothers.\textsuperscript{26} As a consequence, the increase in the total amount of benefits encouraged the spouses of fathers to take leave instead of fathers. Therefore, the first paid parental leave system did not incentivize paternal usage of leave entitlements.

\textsuperscript{22} MINISTRY OF LABOR, 2008 EMPLOYMENT INSURNACE ENCYCLOPEDIA 249 (2008).
\textsuperscript{23} MINISTRY OF LABOR, PRESS RELEASE, JINANHE YUKAHUJKSUBUPJA KGE NEULUTA [The Increase of the Number of Beneficiaries of the Parental Leave System] 3 (Feb. 13, 2009). The Ministry of Labor reports that the number of beneficiaries increased when the amount of benefits increased in 2007. It emphasizes that the increase in benefits was to attract paternal usage of leave entitlements. However, the actual number of male beneficiaries increased, but the proportion of fathers to mothers declined.
\textsuperscript{24} Id. The number of fathers taking leave amounted to 230 in 2006 while the number reached 310 in 2007. The overall beneficiaries increased from 13,670 to 21,185 and the ratio of fathers to overall beneficiaries declined from 1.7% to 1.5%.
\textsuperscript{25} Id. In 2005, 10,492 women received parental benefits while the number reached 28,790 in 2008. Thus, in 2008, the total number of women accounted for more than double that of 2005.
\textsuperscript{26} Id. The total number of male beneficiaries increased from 208 in 2005 to 355 in 2008. In 2005, 1.9% of the overall beneficiaries were fathers while only 1.5% were fathers in 2008.
The Korean system failed to effectuate financial support as a way to realize gender equality, because it maintained a flat-rate system instead of a wage-dependent system. Due to the large gender wage gap, Korean fathers are particularly more sensitive to economic loss from parental leave.\(^{27}\) The fundamental difference between the flat-rate system and the wage-dependent system is whether to reflect the actual loss of income.\(^{28}\) The flat-rate system discourages fathers who earn more than their spouses to take leave instead of their spouses, because the flat-rate system provides an equal amount of benefits for each individual.\(^{29}\) As a result, the increase in the total amount of benefits fails to attract more fathers to participate in the system as far as the system maintains the flat-rate system instead of the wage-dependent system.

In 2011, Korea finally replaced the flat-rate system with a wage-dependent system.

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\(^{28}\) C. Katharina Spiess & Katharina Wrohlich, \textit{The Parental Leave Benefit Reform in Germany: Costs and Labor Market Outcomes of Moving towards the Scandinavian Model}, \textit{Institute for the Study of Labor}, Discussion Paper Series, IZA DP No. 2372, at 2 (Oct. 2006), ftp://ftp.iza.org/dps/dp2372.pdf (last visited Mar. 17, 2010). This paper evaluates the costs and benefits of the German parental leave reform in 2007. It finds that the wage-dependent system succeeds in increasing paternal usage of leave entitlements. As background information, this paper provides policy reasons for Germany to replace the flat-rated system with the wage-dependent system. It states that Germany follows Scandinavian countries in increasing the paternal usage of leave entitlements.

system. Korea has provided national plans on the declining birthrate since 2006.\textsuperscript{30} The Ministry of Health and Welfare established the First Basic Plan on the Declining Birthrate and Aging Society in 2006.\textsuperscript{31} With regard to parental benefits, the First Basic Plan on the Declining Birthrate and Aging Society emphasized an increase of the total amount of benefits to 500,000 Won (US $500) per month as an effective measure to support working parents.\textsuperscript{32} However, it failed to guarantee equal opportunities for men and women to participate in the system, because men accounted for only 1.5% out of the overall participants in the system.\textsuperscript{33} 500,000 Won per month reached only 26.7% of the average income, and the government of Korea recognized such a low wage-compensation rate brought about the lack of paternal usage of leave entitlements.\textsuperscript{34} On the basis of the failure of the flat-rate system, Korea replaced the flat-rate system with a wage-dependent system under the Second Basic Plan on the Declining Birthrate and Ageing Society while entered into force in 2011.\textsuperscript{35} It particularly emphasizes the change of payment method as an

\textsuperscript{30} Republic of Korea, The Sixth State Report to the CEDAW, CEDAW/C/KOR/6, at 30 (2007). This paper reports that Korea pays special attention to its declining birthrate from 1.3 in 2001 to 1.16 in 2004. To provide the legal background for national plans on low birthrate, Korean legislature passed the Framework Act on the Aging Society with Low Birth Rate and the Act went into effect in September 2005. The Act mandates the government to provide national plans on low birthrate and the Ministry of Health and Welfare provided the First Basic Plan on Low Birthrate in 2006.


\textsuperscript{32} Id. at 104.

\textsuperscript{33} Id.

\textsuperscript{34} Id.

effective measure to increase paternal usage of leave entitlements.\textsuperscript{36}

Nevertheless, Korea still lacks financial support for parental leave, because it provides only 40\% of pre-leave income as the wage-replacement rate. Under the flat-rate system, Korea provided 500,000 Won per month, which amounted to 26.7\% of the average income.\textsuperscript{37} Korea provides 40\% as the wage-replacement rate under the wage-dependent system, which is a slight increase from 26.7\% under the flat-rate system.\textsuperscript{38} The current gender wage gap in Korea is the largest among OECD member countries. According to the OECD report in 2010, women earn only 62\% of what men earn in Korea, whereas women earn 82.4\% of what men earn on average.\textsuperscript{39} Because of the large gender wage gap in Korea, loss of income during parental leave seriously discourages paternal usage of leave entitlements.\textsuperscript{40} Even under the wage-dependent system which entered into force in 2011, individuals still

\textsuperscript{36} Id.
\textsuperscript{37} GOVERNMENT OF KOREA, A PLAN FOR AGING SOCIETY AND POPULATION 104 (2010). This paper evaluates the policy outcome of the First Basic Plan on Low Birthrate and Ageing Society and finds that only 1.5\% of the overall leave-takers were men.
\textsuperscript{38} MINISTRY OF HEALTH AND WELFARE, PRESS RELEASE, THE SECOND BASIC PLAN ON LOW BIRTHRATE 2 (Oct. 26, 2010). Korea finally adopted a wage-dependent system and provided 40\% as the wage-replacement rate.
\textsuperscript{39} Seoul, S. Korea Gender Wage Gap Highest in OECD, YONHAP NEWS, Apr. 2, 2010, http://english.yonhapnews.co.kr/business/2010/04/02/82/0502000000AEN20100402001400320F.HTML (last visited Nov. 18, 2010). This paper reports that Korea ranked the first from the bottom in the survey on gender wage gap among OECD countries.
\textsuperscript{40} Anita Nyberg, Parental Leave, Public Childcare and the Dual Earner/Dual-Carer Model in Sweden, Parental Insurance and Childcare, PARENTAL INSURANCE AND CHILDCARE, Discussion Paper, at 13 (Apr. 19-20, 2004), http://pdf.mutual-learning-employment.net/pdf/sweden04/diss papSWE04.pdf (last visited April 16, 2014). This paper analyzes the legislative history of parental leave and public childcare in Sweden. Sweden provided an income ceiling for the parental leave and benefits system. For those above the ceiling, the system provided benefits less than 80\% of their pre-leave income. This paper reports that 75\% of those who earn above the income ceiling were men in Sweden according to the survey in 2000. Likewise, a gender wage gap is a serious problem not only in Korea but also in other countries such as in Sweden.
lose 60% of pre-leave income. In 2013, the wage-replacement rate remains at 40% and there is no discussion of any increase of the rate to attract more fathers to participate in the system. As a result, men still have to suffer the loss of income for taking leave for childcare, despite the change from the flat-rate system to a wage-dependent system. In practice, to provide 100% of pre-leave income as a wage-replacement rate is impossible considering the limited financial resources available to support the parental leave and benefits system. However, in other countries, such as Nordic countries, 80-90% is an average income-replacement rate for the parental leave and benefits system, and they succeeded in increasing paternal usage of leave entitlements. Therefore, despite the change in the parental leave and benefits

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41 EUROPEAN FOUNDATION FOR THE IMPROVEMENT OF LIVING AND WORKING CONDITIONS, ADDRESSING THE GENDER PAY GAP: GOVERNMENT AND SOCIAL PARTNER ACTIONS 17 (2010). This paper analyzes the background of the gender wage gap and finds that disproportionate leave-taking behaviors of men and women contributed to the gender wage gap. In fact, the gender wage gap and unequal opportunities for men and women to take part in the parental leave and benefits system are closely related with each other in a vicious circle. The gender wage gap obstructs men from taking leave and such a disproportionate leave-taking behavior enlarges the gender wage gap.

42 Mizuho Aoki, Parental Leave Still Finds Dads in Huge Minority, THE JAPAN TIMES (Jun. 2, 2010), http://search.japantimes.co.jp/print/nn20100602f2.html (last visited April 67, 2014). Japan guarantees 50% as the wage-replacement rate. However, it suffers from a lack of paternal usage of leave entitlements because fathers still suffer from an income loss of 50% of pre-leave income. As a result, the Japanese system is an important example for Korea to refer to in the process of reforming the system for gender equality.

43 Thomas Brunk, Increase in Parental Benefit Has Minimal Impact on Fathers’ Take-Up Rate (Sep. 3, 2007), http://www.eurofound.europa.eu/eiro/2007/07/articles/se0707019i.htm (last visited Nov. 22, 2010). This paper analyzes the impact of increases in parental benefits on paternal usage of leave entitlements. It specifies that the increase was not as effective as expected. There are various backgrounds of the minimal impact. One of the backgrounds of the lack of paternal usage of leave entitlements was the lack of individuality. However, if the wage-replacement rate reaches 100%, then there will be no problem to attract more men to engage in the system. The system fundamentally requires individuality of the right to leave and benefits as a precondition to guarantee equal opportunities for men and women to engage in the system, because 100% of the wage-replacement rate is impossible for limited financial resources in practice.

44 Maureen Baker, Parental Benefit Policies and the Gendered Division of Labor, 71 SOC. SERVICE REV. 51, 58 (1997). This paper compares different parental benefits systems in Canada, the United States and Sweden. It concludes that the different models did not substantially change gender role stereotypes. However, it stipulates that there are some differences in leave-taking behavior and the wage-replacement rate of the parental benefits system was an important factor to determine the
system from a flat-rate system to a wage-dependent system, Korea still lacks financial support for equal opportunities for men and women to take advantage of the system.

2. The Lack of Individuality in the Right to Parental Leave and Benefit

Individuality in the right to parental leave and benefits [hereinafter individuality] refers to whether an individual may claim a right to leave and benefits regardless of whether or not the spouse of the individual takes advantage of the system. If a system neglects individuality, then that system grants the right to leave and benefits as a family entitlement instead of an individual entitlement. Under such a system, if the spouse of the individual takes leave or receives benefits, the individual is not entitled to leave or benefits. Therefore, a system recognizes individuality when it grants the right to leave or benefits regardless of whether the spouse of the individual takes leave or receives benefits.

The Korean system fundamentally lacks consideration for individuality because it allows employers to refuse to grant leave if the employee’s spouse is already on parental leave.45 Upon the employers’ rejection, parents have to decide

45 ENFORCEMENT DECREES OF THE ACT ON EQUAL EMPLOYMENT AND SUPPORT FOR WORK-FAMILY RECONCILIATION [hereinafter Enforcement Decree of the EES] art. 10. This article excludes certain circumstances from an employer’s legal obligation to guarantee parental leave:

Employers may, pursuance to the provision of Article 19 (1) of the Act, deny the right to childcare leave in any of the following events:

1. If the worker has offered continuous services in the business concerned for less than a year prior to the scheduled date of childcare leave (hereinafter referred to as “scheduled start date of leave”); or
2. If the worker’s spouse is on childcare leave for the same infant (including childcare leave provided under other laws).
whether the mother or the father should take leave for the child. There are various factors determining who should take leave for childcare. Among them, income loss plays an important role, because a parent loses earnings for taking advantage of the system. To minimize income loss, a household may determine the parent who earns less than the other as the parent to take leave, unless the household receives full remuneration for lost income. Because the Korean system provides only partial remuneration for lost income, the lower-earning parent will take leave instead of the higher-earning parent to minimize the income loss of the household. In this case, the parent who earns less than the other is the mother instead of the father, on average, due to the gender wage gap. To minimize a household’s loss of income, the parent who earns more than the other will abandon the opportunity to spend time with the

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47 ESTEHR GEISLER & MICHAELA KREYENFELD, MAX PLANCK INSTITUTE FOR DEMOGRAPHIC RESEARCH, WORKING PAPER 2009-010, AGAINST ALL ODDS: FATHERS’ USE OF PARENTAL LEAVE IN GERMANY 8-9 (2009). There are various factors affecting the paternal usage of leave entitlements. For example, highly educated and urban men take leave for childcare. Furthermore, public employees are more willing to take leave than private employees. Temporary employees are less likely to take leave than others. Prior employment history or employment status of their spouses also affects the paternal usage of leave entitlement. Among these various factors, this paper finds that highly educated men tend to take leave while temporary workers are discouraged from using leave entitlements.

48 Margaret O’Brien, Social Science and Public Policy Perspectives on Fatherhood in the European Union, in THE ROLE OF THE FATHER IN CHILD DEVELOPMENT 121, 137 (Michael E. Lamb ed., 2004). This paper emphasizes the structural flaw which prioritizes women in leave taking due to the lack of financial support and the income disparity between men and women.

49 Janet C. Gornick & Marcia K. Meyers, Creating Gender Egalitarian Societies: An Agenda for Reform, 36 POL. & SOC. 313, 324 (2008). This paper focuses on paid family leave, work time regulations and childcare service as the three main areas to look at for reconciling work and childcare. Three components of paid family leave for an egalitarian society are: 1) the right to take six months of paid leave with job protection; 2) nontransferable leave entitlement; and 3) 100% wage replacement up to an earnings cap during these leave periods.

50 Id. at 318. None of the OECD countries have women with children earning equivalent to their male partners. For example, mothers’ share of total parental earnings is as low as 18% to 19% in Germany and the Netherlands. Even if Denmark and Sweden had a higher proportion than Germany and Netherlands, mothers’ share was only as high as 34% to 38%. The United States ranked in the middle of OECD countries and mothers’ share accounted of 28% of total parental earnings.
child. Considering the gender wage gap, on average, the parent abandoning the opportunity will be the father. Consequently, Korea fails to recognize individuality and it ultimately leads to gender discrimination in reconciling work and childcare. Therefore, the lack of consideration for individuality is a serious problem that blocks gender equality.

Furthermore, the current Korean system limits the paternal right to take parental leave, because it does not provide any benefits when the spouse of the employee has already taken or is taking parental leave or reduced working hours for 30 days or more. Korea provides one year of parental leave for each parent.\textsuperscript{51} By granting leave for each parent, Korea guaranteed individuality of the right to take parental leave. As a result, if each parent fully takes advantage of the system, the total period of parental leave available for each child amounts to two years.\textsuperscript{52} However, Korea limits individuality in practice, because it does not provide any benefits when the spouse of the employee has already taken or is taking parental leave or reduced working hours for 30 days or more.\textsuperscript{53} If an individual parent takes one

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\begin{itemize}
\item \textsuperscript{51} Geun Tae Kim, OECD Observer, No. 248, Korea: Quality Childcare (Mar. 2005), http://www.oecdobserver.org/news/printpage.php/aid/1552/Korea.html (last visited Apr. 16, 2010). This paper reports that Korea will strengthen public policy to support working parents. One of the measures to support working parents is to emphasize the importance of the parental leave and benefits system. Korea sees one year of parental leave for each parent as a relatively long period of leave for working parents to reconcile work and childcare.
\item \textsuperscript{52} Linda Haas, Equal Parenthood and Social Policy: A Study of Parental Leave in Sweden 83 (1992). This paper analyzes the development of the parental leave and benefits system in Sweden. It states that one of the determinants of fathers’ participation in the system is whether the system guarantees individuality in the right to leave and benefits. In this respect, the Korean system guarantees individuality by providing one year of leave for each parent instead of providing one year of leave for each child.
\item \textsuperscript{53} Employment Insurance Act, No. 11864, June 4, 2013, art.70 (1). The Act provides two preconditions to receive parental benefits. First, an employee shall be enrolled in employment insurance for 180 days or more. Second, the employee’s spouse shall not take parental leave or reduced working hours for 30 days or more.
\end{itemize}
year of leave and receives benefits for the period, the spouse of the individual parent is no longer entitled to receive benefits when taking one year of parental leave.

Limitations on the right to take parental benefits particularly restrict paternal usage of leave entitlements, because fathers are more sensitive than mothers to lost income during parental leave. Due to the gender wage gap, fathers lose more income than mothers. Even if the system guarantees individuality, the gender wage gap will not allow fathers to take leave without financial support. As a result an increase of the wage-replacement rate is a precondition to effectuate individuality of right to take parental leave. Therefore, the current Korean system limits individuality, because it does not provide any parental benefits when the spouse of the employee has already taken or is taking parental leave or reduced working hours for the child.

Korea does not guarantee equal opportunities for men and women to take part in the parental leave system because it lacks financial support and individuality. It lacks

54 Nabanita Datta Gupta, Nina Smith & Mette Verner, Institute for the Study of Labor, Discussion Paper No. 2014, Child Care and Parental Leave in the Nordic Countries: A Model to Aspire To? 9 (2006). This paper analyzes family-friendly policies in Nordic countries. It limits the scope of analysis to the parental leave and benefits system and public childcare facilities. It emphasizes that the wage-replacement rate is important to attract more fathers to take advantage of the system. However, the Nordic countries do not provide 100% as the wage-replacement rate. As a result, mothers take leave instead of fathers.

55 Nora Reich, Hamburg Institute of International Economics, Research Paper, Who Cares? Determinants of the Fathers’ Use of Parental Leave in Germany 5 (Jun. 2010). This paper analyzes the outcome of the German parental leave reform in 2007, which adopted a wage-dependent system, and 67% as the wage-replacement rate. It states that each household determines the leave-taker on the basis of the income loss during the leave period. Due to the gender wage gap, mothers are mostly the leave-takers instead of fathers.

56 Jenna Hawkins, Transitioning Into and Out of Parental Leave: Recommendations for Three Stages of Support 46-48 (2010). This paper suggests a parental leave reform for Canada, emphasizing an increase in the wage-replacement rate and recognizing individuality in the right to parental benefits by introducing an exclusive period of leave and benefits for fathers. Likewise, individuality of the right to parental benefits increases chances for fathers to take leave for childcare.
financial support because 40% of the wage-replacement system under the wage-dependent system is not enough to compensate for the loss of income during parental leave, particularly for fathers who earn on average 38% more than mothers.\(^{57}\)

Furthermore, it lacks individuality in two respects. First, it allows employers to refuse to grant leave for employees if their spouses are already on parental leave.\(^{58}\) Second, even if employers grant leave for those employees, a parent may not receive any benefits if the spouse has taken or is taking parental leave or reduced working hours for 30 days or more.\(^{59}\) Due to the gender wage gap, women tend to take leave instead of men under the limitation on individuality. The problem of financial support may be the bigger problem than the lack of individuality because fathers may take leave instead of mothers if the government solves the problem of financial support even under the limitation on individuality. However, the limitation on individuality will deprive women of a right to take parental leave if financial support forces men to take leave instead of women. Therefore, financial support and individuality are important for the system to guarantee equal opportunities for men and women to take leave and receive benefits for childcare.

B. A Comparative Study of Germany, Japan and Korea

To solve the aforementioned problems, this paper proposes that Korea should increase

\(^{57}\) Yonhap, *Korea’s Gender-Wage Gap Widest*, KOREA JOONG ANG DAILY (Apr. 3, 2010), http://joongangdaily.joins.com/article/view.asp?aid=2918715 (last visited Nov. 23, 2010). This paper provides that the gender wage gap in Korea reaches 38%, while the gender wage gap in the OECD members amounts to only 17.6% on average.

\(^{58}\) Though employers enjoy such discretion, they may grant leave for those employees regardless of whether or not their spouses are already on parental leave.

\(^{59}\) Employment Insurance Act, No.11864, June 4, 2013, art. 70 (1). The act requires two preconditions to receive parental benefits. First, an individual shall be enrolled in employment insurance for 180 days or more. Second, the spouse shall take parental leave or reduced working hours for less than 30 days.
the wage-replacement rate under the wage-dependent system and guarantee
individuality of the right to parental leave and benefits. To support the proposal, this
part conducts a comparative study of the German and Japanese systems. Both
countries adopted a wage-dependent system and partially recognize individuality.
With respect to the right to leave, Germany does not allow employers to refuse to
grant leave to an employee on the grounds that the spouse of the employee is already
on parental leave. As a result, Germany allows both parents to simultaneously
take leave for childcare Germany recognizes individuality, because Germany does
not consider the status of the spouse as a standard for granting leave to an employee.

60 Daphne Barak-Erz, *The Institutional Aspects of Comparative Law*, 15 COLUM. J. EUR. L. 477, 481-85 (2009). This paper argues that comparative law is worthwhile not only for adjudication, but also for other purposes such as legislation and the execution of law. This paper stipulates four reasons why countries are adopting comparative law as the methodology for adopting new legislation in the contemporary era. Firstly, technological innovations and moral dilemmas allow local experiences to be applicable to other countries. Secondly, competition between countries and economic incentives bring about comparative law as an effective way to survive in the competitive global economy. Lastly, international models and conventions require individual countries to adopt comparative law as an efficient way to legislate in compliance with international standards. Parental leave reform in Korea does not fall under any of these categories in exact terms. However, the combination of the last two reasons brought about concerns if Korea refers to the experiences of other countries.

RELATIONS OBSERVATORY ON-LINE (Aug. 11, 2004),
This paper analyzes the German government reports on the parental leave reform of 2001. The Parental Leave Directive of the European Union mandates its member countries to guarantee an individual right to take at least three months of parental leave. Germany prohibits employees to take leave for childcare when their spouses are already on parental leave before 2001. However, following the mandate of the Parental Leave Directive of the European Union, Germany allowed employees to take parental leave even if their spouses were already on parental leave, because the Parental Leave Directive specifies the right to parental leave as “an individual right.”

62 Dagmar Schiek, *Parental Leave to Parental Time: German Labour Law and EU Law*, 31 INDUS. L.J. 361, 361 (2002). This paper overviews the development of parental leave in Germany. The paper focuses on reform in 2001 when Germany prohibited each parent from transferring their right to parental leave to the spouse. The paper addresses how the Parental Leave Directive caused Germany to revise its original parental leave system, which defined the right to parental leave as a family right instead of an individual right.

63 Ilona Ostner, *‘Individualisation’ – The Origins of the Concepts and Its Impact on German Social Policies*, 3 SOC. POL. & SOC. 47, 50 (2004). This paper analyzes the introduction of “individualization” in German social policies. It evaluates the 1986 parental leave system as being against
Furthermore, Germany guarantees two more months of benefits if both parents participate in the system. Because these two months are exclusive to one parent, they guarantee individuality during the additional period. By contrast, until recently, Japan adopted a wage-dependent system, but did not recognize individuality at all. The Japanese system practically prohibited fathers from taking part in the system, because it prohibited employees with a full-time housewife or househusband from taking advantage of the system and allowed only one parent to take the whole individualization. Germany adopted the concept of individualization since the European Community introduced the Parental Leave Directive in 1996. Upon the introduction of the Directive, Germany did not follow after the mandate to guarantee individuality at first in 1996. However, in 2001, Germany finally allowed both parents to take leave at the same time, relieving the restriction on the eligibility to take leave on the basis of the status of the other parent. See Heather Macrae, Rescaling Gender Relations: The Influence of European Directives on the German Gender Regime, 13 SOC. POL. 522, 541 (2006). This paper evaluates the influence of European Directives on German social policies from a gender perspective. This paper predicts that the hybrid system combining the male-breadwinner model of German legislation and the dual-earner model of European legislation will guide social policies in the future. It states that European Directives led Germany to depart from the male-breadwinner model. As a result, the Parental Leave Directive is one of the key European Directives influencing gender policy in Germany. Since the Directive mandated its member countries to ensure non-transferability of the right to parental leave, Germany finally allowed both parents to take leave at a time.

Barbara Hobson, The Individualised Worker, the Gender Participatory and the Gender Equity Models in Sweden, 3 SOC. POL. & SOC. 75, 80 (2004). This paper evaluates social policy in Sweden, which focused on gender equality in reconciling work and childcare. It states that the father quota in Sweden targeted paternal usage of leave entitlements. Following the Swedish model, the father quota in Germany also targeted paternal usage of leave entitlements. See Esther Geisler & Michaela Kreyenfeld, Against All Odds: Fathers’ Use of Parental Leave in Germany, MAX PLANCK INSTITUTE FOR DEMOGRAPHIC RESEARCH 11-12 (2009), http://www.demogr.mpg.de/papers/working/wp-2009-010.pdf (last visited Marc. 23, 2010). This paper evaluates whether value changes drive fathers to take leave for childcare. It states that economic incentives work as motivation for paternal usage of leave entitlements but value changes associated with higher education also affect paternal usage of leave entitlements. As background information, this paper provides a history of parental leave in Germany, which finally adopted the father quota. It focuses on the policy background of increasing paternal involvement and determines the causes of paternal leave-taking behavior.

C. Katharina Spiess & Katahrina Wrohlich, The Parental Leave benefit Reform in Germany: Costs and Labour Market Outcomes of Moving towards the Scandinavian Model, INSTITUTE FOR THE STUDY OF LABOR 5 (2006), http://ftp.iza.org/dps/dp2372.pdf (last visited Mar. 19, 2010). This paper evaluates prospective costs and benefits of the parental leave reform in Germany. The reform adopted the wage-dependent system with the father quota. This paper emphasizes that the female labor market participation rate will increase with moderate costs.

OECD, BABIES AND BOSSES: RECONCILING WORK AND FAMILY LIFE: AUSTRIA, IRELAND AND JAPAN 130 (2003). Since 2003, Japan guaranteed 40% of previous earnings for lost income but did not provide the father quota, such as parental leave reform in Germany brought about in 2007.
period of leave. Furthermore, Japan did not consider additional benefits for paternal usage of leave entitlements as a way to realize gender equality. Ultimately, the German system succeeded in attracting more fathers to take part in the system, while the Japanese system practically excluded fathers from the system. After the German success, in 2010 Japan lifted barriers for employees to take parental leave when the spouse of an employee is a full-time housewife or househusband. Furthermore, Japan provided two additional months of benefits when both parents participate in the system, such as is provided in Germany. As a result, more

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68 Yumi Wijers-Hasegawa, Dads Take Child-Care Leave at Own Risk: Revision to Law Enabling Time off Unlikely to Make up for Stigma, THE JAPAN TIMES (Jan. 4, 2002), http://search.japantimes.co.jp/print/nn20020104a6.html (last visited Mar. 23, 2010). The newspaper article reports that the Japanese government refuses to adopt the father quota on the basis that a prolonged history of gender role stereotyping would not change hostile workplace environments into the paternal usage of leave entitlements.


70 Ministry of Health, Labour and Welfare, Introduction to the Revised Child Care and Family Care Leave Law, http://www.mhlw.go.jp/english/policy/affairs/dl/05.pdf (last visited Nov. 25, 2010). Japan originally allowed employers to refuse to grant leave to an employee when the spouse of the employee is a full-time housewife under a management-labor agreement. In 2010, Japan finally prohibited employers from refusing to grant leave to an employee, even if the spouse of the employee is a full-time housewife, under a management-labor agreement.

71 Id. Prior to the revision, employers could refuse to grant leave if the spouse of the employee is taking leave.
fathers took leave after two additional months of benefits were guaranteed in Japan. Likewise, Japan as well as Germany lifted some of the barriers for paternal usage of leave entitlements. Therefore, on the basis of recent developments in the German and Japanese systems, this paper will propose a legislative model for Korea.

However, this paper also emphasizes the adverse impact of the German and Japanese systems on gender equality in reconciling work and childcare, because the new legislative model for Korea should avoid the gender-discriminatory aspects of the German and Japanese systems. First, the German and Japanese systems do not guarantee enough of a wage-replacement rate to provide equal opportunities for men and women to participate in the system. Lack of financial support is particularly more detrimental to Korea since the gender wage gap in Korea is larger than the gap in Germany and Japan. Second, the German and Japanese systems do not fully recognize individuality of the right to parental leave and benefits, because they still leave twelve months of leave and benefits as transferable from one parent to the

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73 Juliane Parys & Gregor Schwehoff, Household Bargaining over Parental Leave and Labor Market Participation, EUROPEAN ASSOCIATION OF LABOUR ECONOMISTS CONFERENCE 2010 25 (2010). This paper analyzes the determinants of the bargaining power in the household to reconcile work and childcare. It finds that loss of income during parental leave plays an important role in determining who will take parental leave. As a result, a parent who earns more than the other in the labor market tends to stay in the labor market instead of the other. Due to the gender wage gap, fathers are mostly the parent who earns more than the other. Consequently, a higher wage-replacement rate contributes to gender equality in reconciling work and childcare.

74 Gender Wage Gap, OECD DATABASE, http://www.oecd.org/gender/data/genderwagegap.htm (last visited Nov. 2, 2013). The gender wage gap in Korea is 37.5%, which is the largest of the OECD member countries. The gender wage gap in Japan is 27.4%, which is the second largest after the record of Korea. The gender wage gap in Germany is 20.4%, the third largest after the record of Japan.
Therefore, this paper focuses on the adverse impact of the German and Japanese systems on gender equality in reconciling work and childcare, because the new legislative model for Korea should avoid the gender-discriminatory aspects of the German and Japanese systems.

This part consists of two sections. First, section 1 discusses the situation of working women in Germany, Japan and Korea. Particularly, this section focuses on a female career break and the gender wage gap. Second, section 2 analyzes and compares the German and Japanese systems to propose a legislative model for Korea based on that comparative analysis. The comparative study will focus on financial support and individuality in the German and Japanese systems in order to introduce an increase in the wage-replacement rate under the wage-dependent system with individuality as a legislative model for Korea.

1. The Situation of Working Women in Germany, Japan, and Korea

This section consists of two sub-sections that discuss the situation of working women in Germany, Japan and Korea. The first sub-section analyzes female career breaks and the second sub-section focuses on the gender wage gap. This section studies female career breaks and the gender wage gap because they are closely related.

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75 Nabanita Datta Gupta, Nina Smith & Mette Verner, *The Impact of Nordic Countries’ Family Friendly Policies on Employment, Wages, and Children*, 6 REV. ECON. HOUSEHOLD 65, 74 (2008). This paper concludes that Nordic model is costly and it still leaves the mother as the primary leave-taker. It emphasizes that additional leave and benefits available exclusively for fathers limits the actual period of leave and benefits for fathers. It states that the total period of leave and benefits for fathers remained as low as the additional period available exclusively for fathers. Germany and Japan followed the additional period of leave and benefits for fathers on the basis of success of the Nordic model. As a result, the German and Japanese system maintains the similar disadvantage of the Nordic model which limits paternal usage of leave entitlements in practice.
to the legislative purpose of the parental leave system. Women suffer from career breaks due to pregnancy and childcare responsibilities. Without the parental leave system, women cannot maintain their positions in the workplace while they are away in the early years of a child’s development. Furthermore, if the parental leave system is practically inaccessible to fathers, mothers have to stop working even when the parents agree that the father will take leave instead of the mother. Such practical limitations lead to gender discrimination in reconciling work and childcare. In addition to the career break, the gender wage gap plays an important

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76 Elina Pylkkänen & Nina Smith, *Career Interruptions due to Parental Leave: A Comparative Study of Denmark and Sweden*, OECD 28-31 (2003), http://www.oecd.org/dataoecd/61/7/2502336.pdf (last visited Mar. 23, 2010). This paper compares career interruptions of mothers in Sweden and Denmark on the basis of different parental leave schemes. This paper emphasizes the effect of the system on female career breaks. It states that the Swedish system is more helpful to reduce female career breaks in comparison with the Danish system, because the Swedish system expands childcare opportunities for fathers while the Danish system still considers fathers as secondary caregivers to mothers.

77 Liangjun Song, *Globalization and the Changing Male Breadwinner Model: A Perspective from OECD Countries*, UNIVERSITAS 2 (2009), http://www.universitas21.com/GRC/GRC2009/Liangjun.pdf (last visited Mar. 23, 2010). This paper divides countries according to their welfare regime as proposed by Esping-Anderson. Because Germany falls under the category of a conservative welfare regime which considers family as the primary caregiver for children, it considers women as the sole caregivers. Such traditional gender-norms create female career breaks. However, by developing policies such as parental leave, countries may escape from the prolonged history of the male-breadwinner system. This paper emphasizes globalization as one major impetus which may bring about the dilution of the male-breadwinner system.

78 Monika Merz, *Women’s Hours of Market Work in Germany: The Role of Parental Leave*, INSTITUTE FOR THE STUDY OF LABOR 2 (2004). This paper finds that women’s working hours decreased since the parental leave system expanded the total duration as a job-protected period. Although the female labor market participation rate increased, the total working hours declined. However, the overall effect of the system is positive for women in maintaining their positions at the workplace upon the introduction and expansion of the leave system.

79 Per Engström, Ann-Sofie Kolm & Che-Yuan Liang, *Maternal-Biased Parental Leave*, 20 J. ECON. PSYCHOLOGY 583, 588 (2009). This paper analyzes parents’ leave taking behavior on the basis of the present biased decision making process. Mothers take leave instead of fathers, because it costs too much to invest in paternal usage of leave entitlements. It emphasizes that leave entitlements are skewed to mothers in most countries and this obstructs mothers from returning to the workplace after birth.

80 Sirin Sung, *Women Reconciling Paid and Unpaid Work in a Confucian Welfare State: The Case of South Korea*, 37 SOC. POL. & ADMINISTRATION 342, 356-57 (2003). This paper analyzes the status of Korean women reconciling work and childcare. On the basis of Confucianism, the Korean government neglects state support for the parental leave system and childcare facilities. Instead, it leaves the
role in affecting economic perspectives on leave-taking behavior.\textsuperscript{81} Parents can take leave for childcare, because the leave system provides financial subsidies.\textsuperscript{82} However, because fathers earn more than mothers on average due to the gender wage gap, fathers are more likely to take leave if the system guarantees full financial support and individuality.\textsuperscript{83} The gender wage gap in Germany, Japan and Korea is relatively more serious than the gender wage gap in other OECD countries. As a result, full financial support and individuality of the right to parental leave and benefits are particularly important for these three countries. Furthermore, gender equality in reconciling work and childcare may reduce the gender wage gap, because mothers may maintain reinstatement after a child’s early development, and fathers may take leave and receive benefits instead of mothers. Gender equality in reconciling work and childcare may prevent the loss of human capital and seniority during the leave period disproportionately taken by mothers. Consequently, the

\textsuperscript{81} Dagmar Schiek, \textit{From Parental Leave to Parental Time: German Labour Law and EU Law}, 31 INDUS. L. J. 361, 364 (2002). This paper evaluates development of the parental leave system in Germany. It emphasizes the importance of financial support to encourage fathers to take leave in spite of the gender wage gap.

\textsuperscript{82} Annette Henninger, Christine Wimbauer & Rosine Dombrowski, \textit{Demography as a Push towards Gender Equality? Current Reforms of German Family Policy}, 15 SOC. POL. 287, 295 (2008). This paper states that the German parental leave reform in 2007 discriminated against low-income families because of the wage-dependent parental benefits system. This paper provides three policy objectives of the parental leave reform. First, as social policy, the reform tried to provide financial support for families without welfare benefits. Second, as gender policy, the reform tried to increase paternal usage of leave entitlements. Third, as demographic policy, the reform tried to increase the fertility rate. With regard to the first objective, this paper sees the reform failed to prioritize low-income families. Financial support is not only needed for gender equality, but for the financial stability of families during leave for childcare. For these reasons, financial subsidies are important for the parental leave system and countries regard financial support as an essential part of the system.

\textsuperscript{83} Graeme Rusell & Carl Philip Hwang, \textit{The Impact of Workplace Practices on Father Involvement, in The Role of the Father in Child Development} 476, 486 (Michael E. Lamb ed., 2004). This paper emphasizes that financial support with individuality is a precondition for paternal involvement in the system.
gender wage gap and the legislative proposal for gender equality in reconciling work and childcare are closely related to each other. Therefore, this section focuses on female career breaks and the gender wage gap in Germany, Japan and Korea to provide context for this paper’s proposal for a new parental leave system for Korea.

a. Female Career Breaks in Germany, Japan and Korea

While Germany overcame female career breaks upon marriage and childbirth, Japan and Korea still suffer from them. The pattern of female employment in Japan and Korea shows an “M-curve,” which traditionally represents a decline in participation in the labor market during the years of marriage, childbirth and childcare between the ages of 25 and 35. Among OECD countries, Japan and Korea have a

84 JILL RUBERY, MARK SMITH & COLETTE FAGAN, WOMEN’S EMPLOYMENT IN EUROPE: TRENDS AND PROSPECTS 81-82 (1999). Men’s employment patterns show a “plateau curve” in contrast with the M-curve of an female employment profile over the life-course. Men do not experience change in their employment status in the age between 25 and 35, because men do not exit from the labor market upon family formation. MARY DALY & KATHERINE RAKE, GENDER AND THE WELFARE STATE: CARE, WORK AND WELFARE IN EUROPE AND THE USA 79 (2003). This book compares gender relations in eight countries: France, Germany, Ireland, Italy, the Netherlands, Sweden, the UK and the USA. The book concludes that the national welfare regime determines female status in society. Chapter 4, which analyzes the relationship between gender and work, focuses on different patterns of female employment patterns. It divides female employment patterns into four categories. They operate on a plateau curve (more or less continuous participation over the course of life, the left-hand peak signifying a lengthy or permanent exit from the labor force following the youngest periods of life), the M-shaped curve (which describes a pattern of returning to the labor force after a period of absence), and the right-hand peak (the active rate peaking during a woman’s thirties and forties).


86 Janneke Plantenga, European Constants and National Particularities: The Particularities: The Position of Women in the EU Labour Market, in GENDER AND ECONOMICS: A EUROPEAN PERSPECTIVE 86, 88 (A.Geske Dijkstra & Janneke Plantenga eds., 1997). This paper analyzes national differences in the change in female employment patterns in European countries. It defines the M-shaped curve as a typical model for countries in which the three-phase pattern is common. In this pattern, after the initial period of employment, women leave the market for the birth and care of a child and resume working when the child gets old. This paper clearly states that “This pattern is characterized by a clear dip in the level of participation around the age of 25 and 35, the so-called child trough.”
prominent and sharp M-curve for the female employment profile. By contrast, the female employment pattern in Germany no longer shows an M-shaped curve. Therefore, German women are relatively more relieved from career breaks than Japanese and Korean women.

The situation of female workers in Japan is slightly different from the situation in Germany. While Germany escaped the M-curve during the 1990s, Japan still maintains the M-curve as its female employment pattern. The major impetus for the formation of the M-curve is the exit of women from the labor market upon marriage or childbirth. According to a report from the Japanese government, women with children strongly desire to participate in the workplace. However, Japanese women still do not enjoy employment opportunities upon marriage and childbirth. Summing up the ratio of women participating in the workplace and women that anticipate working, the Japanese female employment profile forms an inverse U-shaped curve which is similar to the male employment profile and the

87 OECD SOCIAL POLICY DIVISION, DIRECTORATE OF EMPLOYMENT, LABOUR AND SOCIAL AFFAIRS, OECD FAMILY DATABASE 1, http://www.oecd.org/dataoecd/29/62/38773711.pdf (reporting that “in many countries, the lifetime employment profile over the life-course has flattened with changes in female labor market behavior, but the traditional ‘dip’ in female employment around childbearing years remains prominent in the Czech Republic, Hungary, Japan and Korea”).
88 Lothar Funk, Recent Trends in Female Employment Examined, EIRONLINE (Aug. 19, 2003), http://www.eurofound.europa.eu/eiro/2003/08/feature/DE0308105F.htm. This report examines changes in the German female employment pattern. It concludes that the number of employed women increased, but the volume of work done by women and the working hours of women are still substantially marginal.
female employment profile of Germany and other developed countries escaping from the M-shaped curve.\textsuperscript{92} Japanese women are willing to participate in the workplace despite their role as mothers. However, Japanese women actually participating in the workplace do not make an inverse U-shaped curve. Instead, the sum of women participating in, or anticipating participating in, the workplace can only make the M-shaped curve. If the system allows Japanese women wishing to participate in the workplace during the ages of giving birth, the Japanese situation will follow after the German experience or that of other developed countries escaping from the M-shaped curve. Therefore, it is essential for the Japanese government to provide parental leave equally applicable to men and women in order to relieve women from their responsibility as the sole caregivers for their children.

The situation of women in Korea is similar to the situation in Japan, because Korea maintains a clear M-curve in its female employment pattern. The problem of highly educated women exiting from the labor market is a major cause of the M-curve in Korea, just as it is in Japan.\textsuperscript{93} The educational level of the female workforce is as high as the level of male workers in Korea.\textsuperscript{94} However, the employment rate of

\textsuperscript{92} Id. This paper reports that latent female labor force participation, including women willing to work, turns out to be an inverse U-shaped curve.

\textsuperscript{93} Toru Suzuki, \textit{Lowest-Low Fertility in Korea and Japan}, 59 J. POPULATION PROBLEMS 1, 10 (2003). This paper reports that Korea and Japan suffer from the M-shaped curve in female employment profiles. This paper generally compares the fertility problem of Korea and Japan with European countries and reports that gender inequality is one of the reasons for the low fertility rate in Korea and Japan. Although Korea and Japan follow the low fertility rate in Eastern European countries, gender inequality in Korea and Japan is more serious than in Eastern European countries. Although Western European countries suffer from demographic problems, they suffer from a relatively moderate decline, for various reasons, and more gender-balanced policies for reconciling work and childcare also contribute to differentiation.

\textsuperscript{94} Republic of Korea, \textit{The Sixth Periodic State Report to the Committee on the Elimination of Discrimination against Women}, at 26, CEDAW/C/KOR/6 (2007). This report states that Korea
Korean women is third from the bottom among OECD member countries according to the statistical evidence in 2008. Furthermore, only slightly over half of female college graduates participate in the workplace, which is the lowest across the OECD, because they permanently exit from the labor market upon childbirth and childcare. The labor market participation rate of married women with college or university diplomas does not differ from the participation rate of married women with a lower level of education. This phenomenon starkly contrasts with the situation of male workers in the labor market, because a higher level of education incentivizes achieved gender equality in education, particularly with regard to women’s enrollment in a high level of educational institutions:

With a consistent increase in the rate of female students going to a higher level of schools, gender discrimination has been considerably reduced in school education. 79.7% of girls went to university/college in 2004, a rate relatively lower percentage than that of boys which was at 82.8%. However, 99.7% of girls went to high school, the same level as boys. Although the rate of girls advancing to university or college in 2004 does not reach the rate of boys, the proportion of girls entering university or college has been continuously rising. 67.6% of girls and 73.1% of boys went to university/college in 2001. While the proportion of boys increased by 9.7% between 2001 and 2004, the proportion of girls increased by 12.1% in the same period. Id. at 47.

95 Yoon-mi Kim, Economic Gender Inequality Deep in Korea: OECD, KOREA HERALD (Nov. 21, 2009), http://media.daum.net/nms/service/news/print/print_news?newsid=200909210615085 (last visited on Oct. 9, 2010). The rate of women participating in economic activity reached only 54.7% in 2008 which was 6.6% less than the OECD average rate of 61.3%.


97 JAESEON JOO & CHAEJEONG LEE, GENDER STATISTICS IN KOREA 210 (2008). This statistical evidence is from Economically Active Population Survey conducted by the Korea National Statistical Office. The labor market participation rate of women who never married appears to be 87.0% for women with a college level education and 79.6% for women with a university level education. This is far higher than the rate of 5.2% for women with a middle school and under level of education, and 48.4% for women with a high school level education. The figures for women who became widowed or got divorced show the same trend as the figures for women who never married. However, only 51.0% of married women with a college level education participated, which is the same as married women with a middle school, or lower, education. Furthermore, as 53.0% of married women with a high school level education participated in the labor market, 53.0% of women with a university level education took part in the workplace.

98 Id. Only 51.0% of married women with a college level education participated, which is the same as married women with a middle school or lower level of education. Furthermore, as 53.0% of married with a high school level education participated in the labor market, 53.0% of women with a university level education took part in the workplace.
men to participate in the labor market after marriage.\textsuperscript{99} Therefore, the situation of Korean women in the labor market is similar to the situation of Japanese women, rather than that of German women.

Although Korean women suffer from career breaks upon marriage, the general public no longer perceives marriage as an obstacle to female employment. According to the statistical evidence based on a survey conducted by the Korea National Statistical Office in 2006, 50.8\% of women and 43.3\% of men were supportive of female employment under any conditions,\textsuperscript{100} while only 16.7\% of women and 8.4\% of men in 1988 were favorable towards female participation in the labor market.\textsuperscript{101} Despite the slight gender gap, a large proportion of the respondents were positive about female employment in 2006, regardless of whether women are married or not. Likewise, although women still suffer hardships maintaining their employment status in the labor market, a significant portion of Korean society at least perceives that women are no longer obligated to be full-time caregivers for their children. Therefore, these social changes towards supporting dual-earner families are important for Korea in constructing a new legislative model for its parental leave system.

\textsuperscript{99} Id. 96.4\% of married men with college diplomas and 90.5\% of married men with university diplomas participated in the labor market, while only 70.2\% of married men with less than a high school level of education, and 88.2\% of men with a high school level of education, take part in the workplace.

\textsuperscript{100} Id. at 277. The survey provided seven choices for “Attitudes toward Female Employment: 1) housekeeping only, 2) employment before marriage, 3) before giving birth to the first child, 4) employment after maturity of children, 5) both before marriage & after maturity of children, 6) under any conditions, 7) don’t know.”

\textsuperscript{101} Id. In 1991, 16.7\% of women, 10.3\% of men chose the answer; in 1995, 24.7\% of women and 16.8\% of men chose the answer. In 1998, 30.4\% of women, 23.1\% of men chose the answer; in 2002, 40.2\% of women and 30.2\% of men agreed to female employment under any conditions.
Despite the recognition of women’s dual role as workers and caregivers, Korean society still prioritizes women’s role as caregivers over their role as workers. In the above survey, the proportion of men considering “after maturity of children” as a desirable period for female employment increased from the second smallest proportion in 1988 to the second largest proportion in 2006.\textsuperscript{102} In 2006, even the second largest proportion of women in all surveys conducted considered “before marriage and after maturity of children” as a desirable period for female employment, excluding the early stages of child development from a desirable period for female employment.\textsuperscript{103} Therefore, in contrast with the aforementioned positive attitude towards women’s role as workers, Koreans still prioritize women’s role as caregivers over their role as workers.

The parental leave system is an important mechanism for Korea to escape the traditional M-shaped curve of a female employment profile, because a parental leave system helps parents reconcile work and childcare.\textsuperscript{104} Germany is a country to look to for a new leave scheme in Korea, because Germany has already escaped from the M-curve. However, the situation of German women lags behind the situation of women in other Western European countries such as Sweden. For example, only 48% of women with children under three years of age participate in the workplace in

\textsuperscript{102} Id. In 2006, 27.6% of men chose “both before marriage and after maturity of children” as a desirable period for female employment while only 19.3% of men considered it as a period for female employment in 1988.

\textsuperscript{103} Id. In 2006, 27.2% of women chose “both before marriage and after maturity of children” as a period for female employment.

Germany, while the corresponding figure reaches 77% in Sweden. Nonetheless, because the German system has been relatively more helpful for women to maintain employment status compared to the Japanese system, the comparison between the German and Japanese systems is important for Korea. In particular, statistical evidence shows that the female labor force participation rate in Japan rose from 53% in 1970 to 59% in 2007, while the rate rose from 46% to 63% in Germany. Likewise, the situation of German women is better than the situation of Japanese women with respect to their opportunities for participation in the workplace. Therefore, a comparison of the German and Japanese systems is helpful for effectively constructing a new leave system in Korea.

b. The Gender Wage Gap in Germany, Japan, and Korea

Parental leave reform for gender equality helps Korea escape from the largest gender wage gap across the OECD by allowing women to avoid long and disruptive career breaks upon marriage, childbirth and childcare. According to the OECD

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105 Annette Bergemann & Regina T. Riphahn, Female Labor Supply and Parental Leave Benefits: The Causal Effect of Paying Higher Transfers for a Shorter Period of Time, INSTITUTE FOR THE STUDY OF LABOR 1 (2009). This paper evaluates the effect of German parental leave reform in 2007 on the female labor force participation rate. It finds a positive link between parental leave reform and the female labor supply. The paper introduces the background of reform which compares the situation of German women with the situation in other Western European countries such as Sweden. The comparison of 48% of women with children under three years of age in Germany, with 77% in Sweden, signifies that German women with children have more difficulties than Swedish women.


report, Korean men earn 38% more than Korean women, while men earn 17.6% more than women across OECD on average. The gender wage gap in Korea ranks first among OECD member countries. The gender wage gap in Japan and Germany also ranks high among OECD member countries following behind the gender wage gap in Korea. Japanese men earn 33% more than Japanese women, while German men earn 23% more than German women. They rank second and third among OECD member countries. Korea, Japan and Germany have failed to solve the problem of a large gender wage gap, because they do not guarantee equal opportunities for men and women to participate in the parental leave and benefits

109 OECD FAMILY DATABASE, www.oecd.org/els/social/family/database (last visited Nov. 24, 2010). Chart LMF 1.5A provides a list of the gender wage gap in 21 OECD countries. The average gender wage gap across OECD amounts to 17.6%.
110 OECD SOCIAL POLICY DIVISION, GENDER BRIEF 13 (2010). The OECD emphasizes the relatively larger gender wage gap in Korea and Japan compared to the gender wage gap in New Zealand, which is less than 10%.
111 Anne Daly, Akira Kwaguchi, Xin Meng & Karen Mumford, *Gender Wage Gap in Four Countries*, INSTITUTE FOR THE STUDY OF LABOR 18 (2009). This paper analyzes the background of the gender wage gap in Australia, France, Japan and Britain. It concludes that institutions explain the difference of the gender wage gap in these four countries. For example, the shift from the seniority-based pay system to the achievement-based pay system benefited Japanese women. However, this paper recognizes that the gender wage gap in Japan is relatively more serious than the gender wage gap in the other three countries.
112 Yukiko Abe, *Equal Employment Opportunity Law and the Gender Wage Gap in Japan: A Cohort Analysis*, 21 J. ASIAN ECON. 142, 155 (2010). This paper analyzes the relationship between the Equal Employment Opportunity Law and the gender wage gap in Japan. It concludes that the Equal Employment Opportunity Law did not reduce the gender wage gap. Instead, an increase in the educational level of female workforce contributed to the reduction of the gender wage gap. However, the reduction was not enough to mitigate the relatively larger gender wage gap in Japan compared to other OECD countries.
According to an assessment of the relationship between the family-friendly policy and the gender wage gap, equal opportunities for men and women to take part in the parental leave and benefits system helps countries solve the problem of the gender wage gap. Female wages are reduced during the period of leave due to the lack of work experience. Even if women take leave for childcare, the positive effect of the leave system is to guarantee a job position during leave for childcare. By protecting positions for women in the labor market, the leave system may contribute to continuous employment after a period of childcare. However, if the leave system practically forces only women to take leave for childcare – as it does in Germany, Japan and Korea – women cannot participate in the workplace to the extent that their male colleagues can. As a part of the necessary

114 Catia Nicodemo, Gender Pay Gap and Quantile Regression in European Families, INSTITUTE OF THE STUDY OF LABOR 18-19 (2009). This paper finds that the structural difference in the payment system and childcare responsibility enlarges the gender wage gap.
115 Hadas Mandel, How Welfare States Shape the Gender Pay Gap: A Theoretical and Comparative Analysis, 87 SOC. FORCES 1873, 1873-74 (2009). This paper analyzes whether a type of a welfare regime contributes to enlargement of the gender wage gap. It concludes that the type of a welfare regime may enlarge the gender wage gap, because each welfare regime provides a different family-friendly policy.
118 Jan Ondrich, C. Katharina Spiess & Qing Yang, Barefoot and in a German Kitchen: Federal Parental Leave and Benefit Policy and the Return to Work after Childbirth in Germany, 9 J. POPUL. ECON. 247, 263 (1996). This paper finds delay in women’s return to the workplace after childbirth due to the extension of the leave period in Germany, but ensures that the leave system allows women to retain their job positions. As a result, the leave system purports to allow women to return to the workplace after childbirth.
systematic reforms, expanding parental leave on an equal basis to women and men will help working parents to balance their work and childcare as well as allowing working mothers to continue working as well as their spouses. Therefore, the legislative reform that will enable Korea to realize gender equality in reconciling work and childcare will mitigate the gender wage gap.

At the same time, due to a large gender wage gap, financial support and individuality are important for gender equality in reconciling work and childcare in Korea. According to an assessment of leave-taking behaviors in households, the level of income of an individual parent plays an important role in determining who will take leave for childcare when the parental leave system lacks adequate financial support and individuality.\textsuperscript{120} If the system does not provide enough financial support to remunerate the loss of income during the leave period, fathers who earn more than mothers will be hesitant to take leave for childcare.\textsuperscript{121} Furthermore, when the system limits individuality of the right to leave and benefits without full remuneration, fathers will abstain from taking leave for childcare, because fathers

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Sweden tried to expand parental benefits to allow both fathers and mothers to equally participate in the leave system. \textsuperscript{120} Anna Amilon, \textit{On the Sharing of Temporary Parental Leave: The Case of Sweden}, 5 REV. ECON. HOUSEHOLD 385, 386-87 (2007). This paper analyzes factors determining the sharing of parental leave in Sweden. It emphasizes that economic incentives play an important role in determining whether to take leave for childcare. Particularly, this paper articulates that an increase in the income ceiling attracts more fathers to take part in the system. Such different reactions to an increase of an income ceiling are derived from the gender wage gap, which reduces mother’s bargaining power to participate in the labor market instead of fathers. \textsuperscript{121} Ghazala Naz, \textit{Usage of Parental Leave by Fathers in Norway}, 20 INTL. J. SOC. SOCIAL POLICY 313, 314 (2010). This paper analyzes the leave-taking behaviors of fathers in Norway. It divides the leave-taking behavior patterns into three categories: 1) no usage, 2) usage up to a father quota, and 3) usage of a transferable period. It emphasizes that a level of income of an individual parent affects whether a parent takes advantage of the system and how much a parent involves in childcare. Due to the gender wage gap, mothers take advantage of the system disproportionately more than fathers.
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make more income than mothers for taking leave for childcare.\textsuperscript{122} Therefore, Korea needs an increase in the wage-replacement rate and recognition of individuality to ensure that men and women are entitled to equal opportunities to take part in the parental leave and benefits system, because of the relatively large gender wage gap in Korea.

The German and Japanese parental leave reforms are important lessons for Korea, because they expand financial support and individuality of the parental leave and benefits system to overcome relatively large, among OECD member countries, gender wage gaps. In 2007, Germany introduced a wage-dependent system and provided two additional months of benefits when both parents participate in the system.\textsuperscript{123} In 2010, Japan also introduced two additional months of benefits when both parents take part in the system.\textsuperscript{124} In Germany and Japan, the ratio of men

\textsuperscript{122} Esther Geisler & Micahela Kreyenfeld, Against All Odds: Fathers’ Use of Parental Leave in Germany, MAX PLANK INSTITUTE FOR DEMOGRAPHIC RESEARCH 4 (Mar. 2009). This paper considers the change of social value as an important determinant for parents in deciding whether or not to take parental leave. As a result, highly educated urban fathers were more likely to take leave for childcare. It contrasts with the traditional presumption that economic determinants are the main factors for parents to participate in the system. Individuality is an economic factor determining fathers’ decision to take part in the system. However, in practice, economic determinants are important underlying causes to guarantee gender equality in reconciling work and childcare to facilitate change of social value. Therefore, despite some opponents towards the importance of economic factors for fathers’ usage of parental leave entitlements, individuality still plays an important role.

\textsuperscript{123} Annette Bergemann & Regian T. Riphahn, The Introduction of a Short-Term Earnings-Related Parental Leave Benefit System and Differential Employment Effects, THE GERMAN SOCIO-ECONOMIC PANEL STUDY PAPERS ON MULTIDISCIPLINARY PANEL DATA RESEARCH 1 (Aug. 2010), https://www.diw.de/documents/publikationen/73/diw_01.c.360971.de/diw_sp0315.pdf (last visited Apr. 17, 2014). This paper finds positive effects of the 2007 German parental leave reform on maternal employment. It emphasizes that the reform replaced a flat-rated system with a wage-dependent system and introduced two additional months of benefits to expand individuality in the right to take parental leave and receive benefits.

taking parental leave increased after the reforms. Germany and Japan explicitly stated that the reforms aimed to attract more fathers to take part in the system. They recognized that economic incentives are important determinants of fathers’ usage of leave entitlements. As a result, Germany shifted from a flat-rate system to a wage-dependent system and introduced two additional months of benefits when both parents participate in the system. Furthermore, Japan introduced two additional months of benefits when both parents participate in the system to attract more fathers to the system.


126 Jochen Kluve & Marcus Tamm, Now Daddy’s Changing Diapers and Mommy’s Making Her Career: Evaluating a Generous Parental Leave Regulation Using a Natural Experiment, INSTITUTE FOR THE STUDY OF LABOR 4 (Oct. 2009), http://ftp.iza.org/dp4500.pdf (last visited Apr. 17, 2014). This paper evaluates the effect of the parental leave reform of 2007. It concludes that the reform was successful in attracting more fathers to take part in the system. It particularly emphasizes that the original purpose of reform was to attract more fathers to take part in the system, as well.

127 Lane Lewis, Trudie Knijn, Claude Martin and Ilona Ostner, Patterns of Development in Work/Family Reconciliation Policies for Parents in France, Germany, the Netherlands and the UK in the 2000s, 15 SOC. POL. 261, 274-75 (2008). This paper analyzes the developments of the parental leave and benefits system in France, Germany, the Netherlands and the UK in the 2000s. It concludes that countries emphasized that individuals gained economic power regardless of gender. In the past, men were the only gender able to earn money to support a household. By contrast, either men or women can participate in the labor market and they appreciate income as an important part of their lives, regardless of gender. As a result, economic incentives to take leave for childcare are important determinants for parents to take part in the system. It particularly emphasizes that the original purpose of reform was to attract more fathers to participate in the system, as well.

128 Annette Henninger, Christine Wimbauer and Rosine Dombrowski, Demography as a Push toward Gender Equality? Current Reforms of German Family Policy, 15 SOC. POL. 287, 288 (2008). This paper analyzes the adverse impact of the 2007 German parental leave reform. It concludes that the reform enlarges inequality among women on the basis of the amount of income they may lose for taking leave for childcare. The background of the adverse impact is the replacement of the flat-rate system with a wage-dependent system. Although it may incur inequality among women, it lessens inequality between men and women. As a result, Germany replaced its flat-rate system with a wage-dependent system to attract more fathers to the system.
more fathers to the system.\textsuperscript{129} Economic incentives were the sole concern for these two countries, because they suffered from a relatively large gender wage gap similar to that found in Korea. Germany ranked third and Japan ranked second among OECD member countries. Korea’s wage gap ranks first among OECD member countries so it is necessary to increase financial support and expand individuality in the parental leave and benefits system. However, it has not taken strong enough measures to overcome the largest gender wage gap among OECD member countries. Therefore, the German and Japanese parental leave reforms are important lessons for Korea for how to overcome the gender wage gap and realize gender equality in reconciling work and childcare.

The characteristics of female employment in Germany, Japan and Korea are different from one another. Compared to Japan and Korea, Germany has recovered relatively well from female career breaks upon marriage, childbirth and childcare. Furthermore, a relatively large gender wage gap in Korea calls for a parental leave reform. Germany and Japan suffer from a large gender wage gap and this brought about a more progressive parental leave system. As a result, Korea should be more cautious in providing a gender-equal policy measure in constructing a new parental leave system. Therefore, the comparison of the German and Japanese systems is an important basis for proposing a legislative model for gender equality in Korea.

\textsuperscript{129} Introduction to the Revised Child Care and Family Care Leave Law, Ministry of Health, Labour and Welfare, http://www.mhlw.go.jp/english/policy/affairs/dl/05.pdf (last visited Nov. 25, 2010). This paper introduces a parental leave reform in Japan, which introduced two additional months of benefits when both parents participate in the system.
2. Parental Leave Systems in Germany and Japan

Germany, Japan and Korea share the commonality that they all pursued a strong male-breadwinner model in reconciling work and childcare. They have traditionally considered mothers as the primary caregivers instead of fathers. Furthermore, they were reluctant to change their traditional views even when other countries with social democratic welfare regimes started to shift towards support for dual-earner families.

The tradition of male-breadwinner families in conservative welfare regimes brought about a delay in expanding financial support and individuality in Germany, Japan and Korea, but there are variations among the three countries.

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130 Martin Seeleib-Kaiser & Tuukka Toivonen, *Family Policy Development under Conservative Rule in Child-Deprived Germany and Japan: The Rise of ‘Human Capital’ Imperatives*, OXFORD UNIVERSITY 2 (2009), http://users.ox.ac.uk/~gree1254/Papers/SEELEIB-KAISER&TOIVONEN2009.pdf (last visited Feb. 3, 2010) (This paper compares family policy in Germany and Japan with each other on the basis that both countries suffer from a continuously declining birthrate. It stipulates that Germany and Japan share the commonality that they are conservative welfare countries which promote a male-breadwinner model.); and Shogo Takegawa, *Japan’s Welfare-State Regime: Welfare Politics, Provider and Regulator*, 34(2) DEV. & SOC. 169, 188 (2005) (This paper criticizes the traditional perspective in categorizing the welfare state regimes of individual countries. It even disagrees with orientalism, which considers Korea and Japan as countries with identical welfare regimes. It stipulates that the Japanese welfare system will be de-gendered in the future, but it at least recognizes that Japan still maintains a male-breadwinner model.).

131 Ito Peng, *The Political and Social Economy of Care: Republic of Korea Research Report 3*, UNITED NATIONS RESEARCH INSTITUTE FOR SOCIAL DEVELOPMENT 2 (2009), http://www.unrisd.org/80256B3C005BCCF9/(httpAuxPages)/1E82AE4F5E388259C125756100541F68/Sfile/RoKRR3.pdf (last visited Apr. 17, 2014) (citing GOSTA ESPING-ANDERSON, SOCIAL FOUNDATION OF POST-INDUSTRIAL ECONOMIES (1999) and Jane Lewis, *Gender and the Development of Welfare Regimes*, 2 J. EUR. SOC. POL. 159 (1992)). This paper finds that Korea tried to escape from a strong male-breadwinner welfare regime. It cites two renowned authors’ literature on welfare regimes. This paper cites two publications emphasizing traditional gender norms in reconciling work and childcare in Korea, Japan and Germany.

132 OECD FAMILY DATABASE, http://www.oecd.org/dataoecd/45/26/37864482.pdf (last visited Feb.10, 2009). This database describes variations in financial support and individuality of the right to leave and benefits. It stipulates that there are countries providing flat-rated systems or income-related systems. However, it emphasizes that countries recognizing individuality in the right to leave mostly do not recognize individuality in the right to benefits. Although there are variations in the extent of the lack of financial support and individuality of the right to leave and benefits, Korea, Japan and Germany are not
introduced their paid parental leave system in 1986. This was twelve years after Sweden introduced their system in 1974.\textsuperscript{133} Furthermore, it had been twelve years since 1995 when Sweden introduced additional benefits for paternal usage of leave entitlements, while Germany introduced its wage-dependent system and an additional two months of benefits in 2007.\textsuperscript{134} On the other hand, Japan has been more reluctant than Germany to support dual-earner families.\textsuperscript{135} Japan introduced an unpaid parental leave system in 1991 and introduced a paid leave system in 1995.\textsuperscript{136} When it introduced the paid leave system in 1995, it guaranteed 25\% as the wage replacement rate under the wage-dependent system and increased the rate to 40\% in 2001.\textsuperscript{137} It finally increased the rate to 50\% and introduced additional benefits for paternal usage of leave entitlements in 2010 and paternal usage of the system

social-democratic countries such as Scandinavian countries, which provide a relatively high percentage of a worker’s previous earnings and a non-transferable period.


\textsuperscript{134} Id. at 3. This paper states that Sweden introduced the father quota in 1995 for one month and extended the period to two months in 2002.

\textsuperscript{135} Heidi Gottfried & Jacqueline O’Reilly, \textit{Reregulating Breadwinner Models in Socially Conservative Welfare Systems: Comparing Germany and Japan}, 9 SOC. POL., 29 (2002). This paper compares the male-breadwinner systems in Germany and Japan. It states that Germany and Japan adopted different ways to depart from the male-breadwinner model and the German approach was more progressive than the Japanese approach due to the impact of the EU on the issues of labor market and equality regulations in Germany.

\textsuperscript{136} OECD, \textit{BABIES AND BOSSES: RECONCILING WORK AND FAMILY LIFE – AUSTRIA, IRELAND AND JAPAN} 130 (2003). It analyzes policies to reconcile work and family life in Austria, Ireland and Japan. With regard to Japanese parental leave policy, it provides historical analysis from the beginning of the unpaid system in 1991. When Japan introduced the paid system in 1995, it prescribed the wage-dependent system instead of the flat-rated system. The wage-replacement rate was 25\% in 1995 and rose to 40\% in 2001.

increased afterwards. The Korean system lags far behind the German and Japanese systems, because it introduced a wage-dependent system in 2011 and has not adopted additional benefits for paternal usage of leave entitlements as the German and Japanese systems have. Although Korea, Japan and Germany have traditionally supported a male-breadwinner system, they took different routes in reconciling work and childcare.

The first part of this section analyzes the German parental leave system and emphasizes that the German system succeeded in replacing the flat-rate system with the wage-dependent system and recognizing individuality in part. However, there are still some loopholes limiting equal opportunities for men and women to take part in the German system. Most of all, the German system guarantees only two months of additional benefits available when both parents take part in the system as a non-transferable period of benefits for an individual parent. As a result, it practically limits paternal right to leave and benefits to those two additional months, because fathers are more sensitive to lost income due to the large gender wage gap and mothers tend to take leave and benefits for the transferable period instead of


139 Nabania Datta Gupta, Nina Smith & Mette Verner, Child Care and Parental Leave in the Nordic Countries, INSTITUTE FOR THE STUDY OF LABOR 33-34 (2006), http://ftp.iza.org/dp2014.pdf (last visited Apr. 17, 2014). This paper criticizes that the Nordic model is an expensive way to support working parents. Furthermore, it states a father quota as a negative aspect of the Nordic model, which practically limits the total period of leave and benefits to the father quota. The 2007 German parental leave reform maintains similar problems as the Nordic model, because it follows the Nordic model, particularly with regard to the father quota. Therefore, the German system still suffers from gender discriminatory aspects and limitations on the paternal right to leave and benefits.
The second part of this section analyzes the Japanese system and finds that it suffers from a lack of financial support and individuality more so than the German system. Because the Japanese system recently adopted two additional months of leave and benefits when both parents participate in the system, it finally considered individuality as an important policy measure for gender equality. Japan is expecting the policy outcome of increased paternal usage of leave entitlements such as Germany has had. However, Japan still maintains gender discriminatory aspects in its parental leave and benefits system, because it leaves twelve months of benefits as transferable from one parent to the other. Therefore, this paper conducts a comparative study of the German and Japanese systems to provide a potential legislative proposal for Korea.

a. The German System

In 1986, Germany introduced the parental leave and benefits system to allow

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140 C. Katharina Spiess & Katharina Wrohlich, The Parental Leave Benefit Reform in Germany: Costs and Labour Market Outcomes of Moving towards the Scandinavian Model, Institute for the Study of Labor 12 (2006), http://ftp.iza.org/dp2372.pdf (last visited Apr. 17, 2014), This paper analyzes the 2007 German parental leave reform. It was an estimated result prior to the implementation of the reform. It expects an increase in the female labor force participation rate and an adverse impact on the father quota as Nordic countries have already experienced.

141 Yumi Wijers-Hasegawa, Dads Take Child-Care Leave at Own Risk: Revision to Law Enabling Time Off Unlikely to Make Up for Stigma, THE JAPAN TIMES (Jan. 4, 2002), http://search.japantimes.co.jp/cgi-bin/nn20020104a6.html (last visited Nov. 26, 2010). This paper reports that Japan needs additional months of leave and benefits when both parents participate in the system to increase paternal usage of leave entitlements following after Nordic countries. However, the Japanese government responds that the Japanese culture would not allow the government to adopt a new system in 2002. Japan finally introduced a father quota as Nordic countries in 2010, eight years after the discussion of necessity to adopt a father quota.

142 Introduction to the Revised Child Care and Family Care Leave Law, MINISTRY OF HEALTH, LABOUR AND WELFARE, http://search.japantimes.co.jp/cgi-bin/nn20020104a6.html (last visited Nov. 26, 2010). The Japanese government reports that it adopted a father quota to attract more fathers to the system.

143 Id.
either men or women to take leave for childcare.\textsuperscript{144} Prior to 1986, Germany allowed only women to take paid leave until the child reached six months without any corresponding benefits for men.\textsuperscript{145} Because Germany considered women as the sole caregivers for newborn children, it did not provide a system for gender equality.\textsuperscript{146} There were two major forces pressuring Germany to introduce the parental leave system in 1986, at both the international and regional levels. At the international level, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) entered into force\textsuperscript{147} and Germany became a ratifying state with a legal obligation to follow the mandate from the CEDAW.\textsuperscript{148} Because the CEDAW

\begin{footnotes}
\footnote{144} Bundeserziehungsgeldgesetz [Act on Granting of Parental Benefit and Parental Leave], Jun. 12, 1985, BGBl. I at 2154. For translation of legislation, refer to PETER ABRAHAMSON, THE MALE-BREADWINNER MODEL UNDER CHANGE: THE CASE OF GERMANY TOWARDS THE 21\textsuperscript{st} CENTURY 84 (1999). This book analyzes various aspects of the German social policy consolidating the male-breadwinner model. Although German social policy traditionally encourages the male-breadwinner model, this book finds some positive signs to the dual-earner model.

\footnote{145} An Act to Institute an Entitlement to Maternity Leave, June 25, 1979, BGBl. I No. 32, at 797, §8a (1), \textit{translated in INTERNATIONAL LABOUR OFFICE, LEGISLATIVE SERIES 85-93} (1980) (stating that “A mother shall be entitled to maternity leave immediately after the end of the protected period referred to in subsection (1) of section 6 and until the date on which her child reaches the age of six months. She shall receive cash maternity benefit under subsection (1) or (3) of section 13 in respect of the leave period.”); and Dagmar Schiek, \textit{From Parental Leave to Parental Time: German Labour Law and EU Law}, 31 INDUS. L.J. 361, 361 (2002) (stating that “A right to parental leave combined with a monthly parental allowance has been granted in West Germany since 1985 by the Bundeserziehungsgeldgesetz (Statute on Educational Allowance and Parental Leave ‘BERzGG’) which for the first time, regulated parents’ rights outside the Mutterschutzgesetz (Maternity Protection Law ‘MuSchG’)).” This paper analyzes the development of parental leave in Germany before and after the unification of West and East Germany.

\footnote{146} Karin Gottschall & Katherine Bird, \textit{Family Leave Policies and Labor Market Segregation in Germany: Reinvention or Reform of the Male Breadwinner Model?}, 20(1) REV. OF POL’Y RES. 115 (2003). This paper evaluates changes in the female labor market participation patterns in Germany. It states that female labor market participation patterns started to change when the parental leave system started to change. However, it emphasizes that prior to the introduction of parental leave in 1986, Germany considered women as the sole caregivers. It particularly states that “The male breadwinner and female career model has deep and tenacious roots in Germany, resulting in comparably low female employment rates and a gender-structured labor market.”


\footnote{148} Germany, \textit{The Second and Third Periodic State Report, COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN} 4 (Nov. 4, 1996),
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mandated its member states to ensure that family education includes the recognition of child-rearing as cooperation between men and women.\textsuperscript{149} Germany faced a critical decision in shifting from its traditional gender role definition of child-rearing to a more progressive approach. Although the CEDAW does not require any particular system, it certainly mandates its member states to recognize child-rearing as common responsibilities of men and women in the family. To realize equal sharing of childcare responsibilities, the parental leave and benefits system should be equally available for men and women. At the regional level, German fathers challenged paid leave exclusive to women for childcare as a violation of the principle of equal treatment between men and women in the European Court of Justice (hereinafter ECJ), and made it a legal issue to dispute whether men are entitled to the corresponding benefits of the paid maternity leave system.\textsuperscript{150} Although the ECJ did not see it as a violation, leave exclusive to women became a controversial issue at the community level.\textsuperscript{151} On the basis of international and regional pressure to change

http://www.un.org/womenwatch/daw/cedaw/cedaw22/germany2-3.pdf (last visited Feb. 8, 2010). Germany reports its status as a member state of the CEDAW and provides background information in detail. It starts with its ratifying status to the CEDAW. Germany ratified the CEDAW in 1985, which is the year when the legislature worked on the parental leave system for men and women which entered into force in 1986.

\textsuperscript{149} CEDAW art. 5(b), http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article5 (last visited Feb. 8, 2010).

States Parties shall take all appropriate measures:
(b) To ensure that family education includes a proper understanding for maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

\textsuperscript{150} Hofmann v. Barmer Ersatzkasse, Case C-184/83, 1984 E.C.R. I-3047. This case finds that maternity leave exclusive to women complies with the principle of equal treatment between men and women. However, since the European Court of Justice officially discussed the legality of maternity leave exclusive to women, the European Union started to consider the necessity of leave for men as well as women.

\textsuperscript{151} Id. at para. 28.
the system to be more equally available to fathers and mothers, Germany introduced its parental leave system in 1986.

Despite its original intent to expand the opportunities for men and women, the 1986 system did not guarantee gender equality. In addition to the expansion of entitlements for both men and women, the 1986 system extended the total duration of the leave system so that parents could stay at home for childcare until the child reached ten months.\(^\text{152}\) Prior to the introduction of the 1986 system, women could take leave until the child reached six months.\(^\text{153}\) As a result, the extension of the total duration of the leave system is an important part of the 1986 system in addition to the expansion of leave entitlements for men and women. However, while the extension of the leave entitlement failed to attract men to take leave for childcare, the extension of the total duration of the leave system delayed women’s return to the workplace after childbirth and lowered the wage level of women due to the loss of human capital and seniority during the extended period.\(^\text{154}\) Therefore, despite the


\(^{153}\) Monika Merz, Women’s Hours of Market Work in Germany: The Role of Parental Leave, HELSINKI CENTER OF ECONOMIC RESEARCH 6-7 (2004), http://ethesis.helsinki.fi/julkaisut/eri/hecer/disc/15/womensho.pdf (last visited Feb. 10, 2010). This paper reports that the parental leave system reduced women working in the market and emphasizes four months of additional benefits available for mothers only in addition to maternity benefits during the first two months since 1979 in Germany.

\(^{154}\) Jan Ondrich, C. Katharina Spiess & Quing Yang, Barefoot and in a German Kitchen: Federal Parental Leave and Benefit Policy and the Return to Work after Childbirth in Germany, 9 J. POP. ECON. 247, 263 (1996) (This paper analyzes the changes in women’s behavior after Germany introduced the 1986 system with an extended period of paid leave until the child reached one year old. It states that women tended to return later due to the extended period although the system ultimately increased the return rate. Therefore, the extension of the total period of the leave system results in an extension of job interruption of working women due to childbirth.); Annette Bergemann & Regina T. Riphan, Female Labor Supply and Parental Leave Benefits: The Causal Effect of Paying Higher
efforts to expand opportunities for childcare to fathers in 1986, Germany failed to realize gender equality in reconciling work and childcare.

The background for the failure to realize gender equality in 1986 was the lack of consideration for financial support to change the traditional structure of gender inequality in reconciling work and childcare. The parental leave system in 1986 did not guarantee payment during leave for childcare on the basis of the actual lost income. Instead, the system guaranteed an equal amount of remuneration for families with a newborn child regardless of the employment status of the parents receiving the payment. Furthermore, ignoring the employment status of parents

Transfers for a Shorter Period of Time, Institute for the Study of Labor 5 (2009), http://ftp.iza.org/dp3982.pdf (last visited Feb. 9, 2010) (This paper evaluates the causal effect of parental leave reform which introduced the income-related system with a shortened period of benefits. It states that the shortened period of paid leave motivated women to return to the workplace earlier than before. Because women are still predominant leave takers, the extension of the total period of the paid leave system forces more women to stay at home for childcare instead of their spouses, whether they decided to stay at home voluntarily or involuntarily. Although this paper does not evaluate the causal effect of the increase in the total duration of the leave system in 1986, this paper is applicable to the 1986 system.); Christopher J. Ruhm, The Economic Consequences of Parental Leave Mandates: Lessons from Europe, 113 Q. J. Econ. 285, 311-15 (1998) (This paper analyzes the economic consequences of parental leave in nine European countries. It states that parental leave increases the female employment rate by guaranteeing their job security but decreases the wage level due to loss of human capital and seniority during parental leave. Germany is one of the countries that this paper dealt with and the 1986 system is one of the systems that this paper focused on.); and Jan Ondrich, Katharian Spiess & Qing Yang, The Effect of Maternity Leave on Women’s Pay in Germany 1984-1994, German Institute for Economic Research 4 (2002), http://www.diw.de/documents/dokumentenarchiv/17/39209/ondrich_spiess_yang.pdf (last visited Apr. 17, 2014). (This paper finds that extension of leave and benefits for men and women lowers the wage level of women because women are the primary beneficiaries of the system and the depreciation of human capital during an extended period results in the decline of the wage level of women in comparison with men.).

Danile Erler, Germany: Taking a Nordic Turn?, in The Politics of Parental Leave: Children, Parenting, Gender and the Labour Market 118, 122 (Sheila B. Kamerman & Peter Moss eds., 2009). This paper analyzes the development of the parental leave system in Germany. With regard to the 1986 system, this paper states that it was an innovative turn from the prior politics but still promoted a male-breadwinner system because it did not provide payment on the basis of the actual loss of income.

155 Kimberly J. Morgan & Kathrin Zippel, Paid to Care: The Origins and Effects of Care Leave Policies in Western Europe, 10 Soc. Pol. 49, 56 (2003). This paper finds that center-right or conservative governments introduced the parental leave system in western European countries.
signifies that the system did not target working parents as the primary beneficiary of the system. Instead, the system aimed to benefit housewives who were not eligible to receive any benefits under the prior system. Prior to introducing a system for men and women, Germany allowed only working mothers to receive full remuneration until the child reached six months. As a result, housewives were not eligible to receive any cash benefits for childcare. However, because the 1986 system guaranteed an equal amount of benefits regardless of employment history, housewives could receive the same amount of benefits as working mothers. As a consequence, by changing the system, the conservative government tried to promote male-breadwinner families instead of dual-earner families. Furthermore, because payment did not consider the actual loss of income as basis for benefits, men who earned more than women on average had to lose more than women to take leave for childcare. As a result, the system aimed to encourage working mothers to stay at

Germany is not an exception and the payment mode also reflects the party ideology of conservatism, which considers that women are the primary caregivers for children. As a result, a flat-rated system, regardless of employment status, became the payment mode for the 1986 system in Germany.

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157 Id. at 58.
158 Martin Seeleib-Kaiser & Tuukka Toivonen, Family Policy Development under Conservative Rule in Child-Deprived Germany and Japan: The Rise of ‘Human Capital’ Imperatives?, OXFORD UNIVERSITY 1 (2009), http://users.ox.ac.uk/~gree1254/Papers/SEELEIB-KAISER&TOIVONEN2009.pdf (last visited Feb. 6, 2010). This paper considers developing human capital as another aim of the parental leave policy. For this argument, this paper summarizes prior studies on the impetus of development of the parental leave system in western democracies. It stipulates that social democracy brought about continuous revisions of the parental leave system from a male-breadwinner model to a dual-earner model. However, because Germany remained a conservative welfare regime instead of a social democratic regime and the conservative government continued to lead family policy, it maintained a male-breadwinner model instead of a dual-earner model in the 1986 system.
159 Dagmar Schiek, From Parental Leave to Parental Time: German Labour Law and EU Law, 31 INDUS. L. J. 361, 362 (2002). This paper argues that despite German efforts to expand opportunities for men, Germany failed to realize gender equality. It starts by analyzing the 1986 system.
home for childcare, instead of remaining at the workplace, by discouraging paternal usage of leave entitlements. In this respect, the system once again promoted the male-breadwinner system instead of the dual-earner system. These aspects of the 1986 payment system discouraged paternal usage of leave entitlements and failed to guarantee equal opportunities for men and women to take leave for childcare.

In addition to the flat-rate system, the 1986 system reinforced the male-breadwinner system because it ignored individuality. While the system allowed men to participate, they had to share leave and benefits with their spouses. If a system recognizes individuality, it should allow each individual to take leave and receive benefits regardless of whether the spouse of the individual takes leave or not.

However, the 1986 system guaranteed the right to leave and benefits as a family entitlement instead of an individual entitlement. With regard to the right to leave,

\[\text{model is desirable for gender equality in reconciling work and childcare. This paper focuses on the parental leave system with special emphasis on financial support and individuality in the right to leave and benefits. It emphasizes that except for the daddy quota in which an individual may claim the right to leave without any interference from the spouse’s right to leave, the wage replacement level has strong influence on the paternal usage of leave entitlements. In conclusion, this paper states that the higher the wage replacement level is, the higher the paternal usage of leave entitlements.}\]

\[\text{Christine Wimbauer & Annette Henninger, Family Policy in Germany and Its Implications for Social Inequality, GERMAN INSTITUTE FOR JAPANESE STUDIES 3 (2008), http://www.dijtokyo.org/doc/Wimbauer%200811Henninger_Paper.pdf (last visited Mar. 25, 2010). This paper emphasizes gender equality as the policy goal to achieve in developing family policy in Germany. It evaluates the 1986 system reinforcing the male-breadwinner model.}\]

\[\text{Act on Granting of Parental Benefit and Parental Leave [Federal Parental Benefit Act], Dec. 6, 1985, § 3 (1), translated in R. BLANPAIN, INTERNATIONAL ENCYCLOPEDIA FOR LABOUR LAW AND INDUSTRIAL RELATIONS (1991) (stating that “Only one person shall receive parental benefit for the care and upbringing of a child.”).}\]

\[\text{Id. § 3 (2) sentence 1 (stating that “If both spouses meet the eligibility conditions, parental benefit shall be paid to whichever they nominate to receive it in their case.”); and Alison J. Smith, Parental Leave: Supporting Male Parenting? A Study Using Longitudinal Data of Page Variation across the European Union, MAX PLANCK INSTITUTE FOR DEMOGRAPHIC RESEARCH, http://www.demogr.mpg.de/papers/workshops/010623_paper06.pdf (last visited Feb. 10, 2010). This paper evaluates various aspects of the parental leave system. It focuses on policy aspects to increase the paternal usage of leave entitlements. This paper emphasizes that a parental leave system which mandates both parents to share the total duration of leave and benefits, such as the 1986 system, adversely affects the paternal usage of leave entitlements.}\]
men were deprived of their opportunity to spend time with a newborn child during the first two months after childbirth because the system prohibited men from taking leave during those two months on the basis that women are prohibited from working during the first two months after childbirth under the Maternity Protection Act for the health of the mother and the child. The 1986 German system fundamentally considered the paternal right to childcare as an ignorable policy goal, in comparison with the maternal right to childcare, because mothers, instead of fathers, must take care of their children under the auspices of the Maternity Protection Act, regardless of a mother’s willingness to take leave, during the first two months after childbirth. If the 1986 German system regarded the prohibited period under the Maternity Protection Act as a period for the health of the mother and child, there is no legitimate reason to prevent the father, during the first two months after birth, from taking leave for childcare, instead of the mother recuperating from medical conditions associated

163 Dagmar Schiek, From Parental Leave to Parental Time: German Labour Law and EU Law, 31 INDUS. L.J. 361, 367 (2002). This paper compares the 1986 system with 2001 system with regard to gender equality in reconciling work and childcare. It states that both the 1986 or 2001 systems prohibited men from taking leave for childcare during the first two months after the child is born. Because the Maternity Protection Act prohibits women from working during those two months, women are available for childcare instead of their spouses. As a result, the German system deprives men of their right to childcare on the basis of overlapping with the prohibited period under the Maternity Protection Act. However, if the purpose of the prohibited period is to protect the health of the mother, then there is no legitimate reason for preventing men from taking leave during the first two months. Because the German system presumes the prohibited period as a period for childcare as well, it deprives men of a substantial part of the early stage of the child’s development. It is explicit gender stereotyping that women are the primary caregivers instead of men.

164 Eileen Trzcinski, Family Policy in Germany: A Feminist Dilemma?, 6 FEM. ECON. 21, 27-28 (2000). With regard to the right to parental leave and benefits, this paper considers the conservative welfare regime as a positive mechanism to provide choices for women to decide when and how long to take leave for childcare because the increase of paternal usage of leave entitlement is practically impossible. However, this analysis is flawed from the outset because it presumes that there is no policy measure to increase the paternal usage of leave entitlement.
with pregnancy and childbirth. However, because the German system considered the prohibited period as a time for mothers to take care of their newborn children, it deprived fathers of their right to childcare during a substantial part of the child’s early development. In this respect, ignoring individuality was fundamentally based on the gender stereotype that mothers are the primary caregivers instead of fathers.

With respect to the right to benefits, the German system disregarded the paternal right to childcare because it designated the mother as the beneficiary when both parents failed to decide who will receive the benefits. Furthermore, in practice, because of the lack of financial support, fathers who on average earn more than mothers are more hesitant to take leave and receive benefits instead of their spouses. Therefore, the 1986 system reinforced the male-breadwinner system because it ignored individuality in addition to the lack of financial support on the basis of the flat-rate system.

165 Mona L. Schuchmann, Note, The Family and Medical Leave Act of 1993: A Comparative Analysis with Germany, 20 J. CORP. L. 331, 345-46 (1995). This paper compares the maternity, paternity, parental and sick leave systems in the United States with the systems in Germany. It articulates the legislative purpose of each leave system in Germany in detail. With regard to the German maternity leave system, it emphasizes that concerns for the health of the mother and children after the Industrial Revolution brought about the first maternity leave system in 1878.

166 Clare McGlynn, Ideologies of Motherhood in European Community Sex Equality Law, 6 EUR. L. J. 29, (2000). This paper criticizes the reinforcement of traditional gender stereotyping in European Community sex equality law, such as the Equal Treatment Directive, which allows a special treatment approach with regard to pregnancy and child-rearing. As a result, this paper analyzes cases adjudicated in the European Court of Justice. Regarding Hofmann v. Barmer Ersatzkasse, this paper criticizes German maternity leave exclusive to women after the prohibited period as reinforcing traditional gender stereotypes. Because the Court upheld the maternity leave system, this paper argues that the judicial reinforcement of traditional gender stereotypes prevents a shift from a discriminatory gender structure in reconciling work and childcare in the European Community.

167 Act on Granting of Parental Benefit and Parental Leave [Federal Parental Benefit Act], Dec. 6, 1985, § 3 (2) sentence 4, translated in R. BLANPAIN, INTERNATIONAL ENCYCLOPEDIA FOR LABOUR LAW AND INDUSTRIAL RELATIONS (1991) 1 (stating that “Should the choice not be decided by the end of the third month of the child’s life or if no agreement is reached then the wife shall be the eligible person.”).
Following the mandate from the Parental Leave Directive of the European Union, in 2001, Germany started to depart from the male-breadwinner system because it expanded individuality by allowing both parents to take leave simultaneously. The Parental Leave Directive of 1996 states that member states should provide at least three months of leave as a non-transferable period, which does not allow the status of one parent to affect the right to leave of the other parent.

When Germany followed the mandate from the Parental Leave Directive and upheld the principle of non-transferability as the basis to grant leave to employees, even if a parent is already on leave, the other parent was still eligible to take leave at the same time. Prior to reform in 2001, only one parent could take leave at a time, which excluded fathers from the system in practice, because mothers took leave instead of

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168 The European Union changed its original directive, which was promulgated in 1996. In 2010, the Parental Leave Directive extended the minimum period from three months to four months. Although the Parental Leave Directive upholds the principle of non-transferability, it admits that its member countries are still allowed to provide a transferable right. However, in 2010, the revision explicitly states that at least one month of every four months should be a non-transferable period. The member states may implement the revision in two years. Council Directive 96/34, Clause 2.1, O.J. (L 145) 4, 8 (EC), http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=31996L0034&model=guichett (last visited on Nov. 9, 2009) (stating that “this agreement grants, subject to clause 2.2, men and women workers and individual right to parental leave on the grounds of the birth or adoption of a child to enable them to care of that child, for at least, three months, until a given age up to 8 years to be defined by Member States and/or management and labour”); and Council Directive 2010/18/EU, Clause 2.2, O.J. (L 68) 13, 18 (EC), http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:068:0013:0020:EN:PDF (last visited May 4, 2010) (stating that “The leave shall be granted for at least a period of four months and, to promote equal opportunities and equal treatment between men and women, should, in principle, be provided on a non-transferable basis. To encourage a more equal take-up of leave by both parents, at least one of the four months shall be set down at national level through legislation and/or collective agreements taking into account existing leave arrangements in the Member States”).

169 Council Directive 96/34, Clause 2.2, O.J. (L 145) 4, 8 (EC), http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=31996L0034&model=guichett (last visited on Nov. 9, 2009) (providing that “To promote equal opportunities and equal treatment between men and women, the parties to this agreement consider that the right to parental leave provided for under clause 2.1 should, in principle, be granted on a non-transferable basis.”).
fathers to minimize income loss during leave for childcare. By following the mandate from the Parental Leave Directive, Germany at least recognized individuality as a part of its parental leave system because it allowed a parent to take leave regardless of the leave status of the other parent.

Germany achieved the 2001 reform under the auspices of the left coalition government, but the reform was not enough to guarantee gender equality. Until the 2001 reform, the conservative coalition government promoted a male-breadwinner model instead of a dual-earner model. For example, the conservative coalition government introduced the 1986 system and continuously extended the total period of the leave system without introducing the wage-dependent system or recognizing individuality. Continuous changes under the conservative coalition government maintained the male-breadwinner system instead of the dual-earner system, because the extension of the duration without reform in payment or individuality tends to allow only mothers to take part in the system.

The departure from the male-
breadwinner model is primarily motivated by the change of party ideology.\textsuperscript{173} In 1998, the Social Democratic Party and the Greens, which were relatively progressive with regard to gender equality in reconciling work and childcare, formed a coalition government after prolonged dominance since 1982 by the center-right government.\textsuperscript{174}

The coalition government started to revise the parental leave system to be more flexible and attractive to dual-earner families.\textsuperscript{175} When the Parental Leave Directive entered into force in 1996, the center-right government still maintained the male-breadwinner model as the ideology of the parental leave system.\textsuperscript{176} However, due to the change in political ideology of the government in 2001, Germany succeeded in reforming its system to comply with the mandate from the Parental Leave Directive of the European Union and finally allowed both parents to take leave at the same time.

Despite the first step towards gender equality in 2001, Germany still failed to guarantee equal opportunities for men and women to participate in the parental leave system because it maintained the flat-rate system without recognizing individuality.

In 2003, only 2.6\% of all benefit recipients were men, while the corresponding figure

\textsuperscript{173} Kimberly J. Morgan & Kathrin Zippel, \textit{Paid to Care: The Origins and Effects of Care Leave Policies in Western Europe}, 10 \textit{SOC. POL.}, 49, 56 (2003) states that party ideology plays an important role in the formation of the parental leave system. It Find that right or center-right governments introduced the parental leave system for the first time in Western European countries without considering gender equality as an important policy goal to achieve.

\textsuperscript{174} Jochen Clasen, \textit{Reforming European Welfare States: Germany and the United Kingdom Compared} 179 (2005) states that the red-green coalition launched a new labor and family policy departing from the male-breadwinner model.

\textsuperscript{175} Andrea Vogt & Susanne Zwingel, \textit{Asking Fathers and Employers to Volunteer: A (De)Tour of Reconciliation Policy in Germany?}, 20 \textit{REV. POL. RES.}, 459, 460 (2003) considers the red-green coalition as an impetus to change German policy to reconcile work and childcare and emphasizes its more gender balanced attitude.

\textsuperscript{176} Kimberly J. Morgan & Kathrin Zippel, \textit{Paid to Care: The Origins and Effects of Care Leave Policies in Western Europe}, 10 \textit{SOC. POL.}, 49, 56 (2003) finds that Western European countries introduced the parental leave system under the auspices of the right or center-right government. As a result, the system promoted the male-breadwinner system without substantial recognition of the importance of financial support and individuality in the right to leave and benefits.
in 1999 was 2.7%. As a result, there was not a significant change in the paternal usage of leave entitlements after reform in 2001. The flat-rate system fundamentally did not consider gender equality as an important policy goal to achieve. It did not reflect the actual loss of income, because the system guaranteed an equal amount of benefits for families with a newborn child. Furthermore, the right to benefits is a family entitlement instead of an individual entitlement. Even if both parents decide to take leave at a time, only one parent is entitled to receive benefits. If they do not reach an agreement on who should receive the benefits, the mother is

177 Esther Geisler & Michaela Kreyenfeld, Against All Odds: Fathers’ Use of Parental Leave in Germany, MAX PLANCK INSTITUTE FOR DEMOGRAPHIC RESEARCH 33 (2009), http://www.demogr.mpg.de/papers/working/wp-2009-010.pdf (last visited Apr. 17, 2014) finds that highly educated and urban men tend to participate in the system actively. As subsidiary data, this paper presents the male ratio to all benefit recipients from 1987 to 2007. The data in 2001 is partial so the data in 2003 is more appropriate to be compared with the data in 1999.

178 Christine Wimbauer & Annette Henninger, Family Policy in Germany and Its Implications for Social Inequality, Fertility and Social Stratification Germany and Japan in Comparison, German Institute for Japanese Studies 4 (2008), http://www.dijtokyo.org/events/Wimbauer%20_0811Henninger_Paper.pdf (last visited Apr. 17, 2014) finds that the German parental leave reform in 2007 brought about an increase in the paternal usage of leave entitlements, but benefited women with high income while shortening the total period of benefits available for housewives. Though the reform in 2007 was not perfectly coordinated to minimize side effects on housewives, it at least achieved more gender-balanced policy measures by adopting a wage-dependent system with a father quota recognizing individuality, in part.

179 Jan Ondrich, C. Katharina Spiess, Qing Yang & Gert G. Wagner, The Liberalization of Maternity Leave Policy and the Return to Work after Childbirth in Germany, 1 REV. ECON. HOUSEHOLD 77, 80 (2003) finds that the parental leave system allows women to return to the workplace but the system is limited to women only because the flat-rate system guarantees an equal amount of benefits for family with a newborn child.

180 OECD, EMPLOYMENT OUTLOOK JUNE 2001 145 (2001). The OECD reports that many countries maintained the right to parental leave and benefits as a family entitlement instead of an individual entitlement in 2001. If a country recognizes the right to parental leave and benefits as a family entitlement, parents should collectively decide who takes leave for childcare, instead of the other parent. An individual cannot claim the right on the basis of his or her status as an individual parent, because the entitlement is based on family. As a result, if one parent is already on leave, the other parent cannot claim the right to leave on the basis of his or her status as an individual parent. Germany at least recognized individuality, because it recognized the right to leave even when one parent is already on leave. However, it still ignores individuality, because the benefits are still available for only one parent.

designated as the beneficiary without any legitimate grounds for prioritizing the mother over the father.\textsuperscript{182} Therefore, the 2001 reform failed to realize gender equality because it maintained a flat-rate system without recognizing individuality.

To solve the problems of the 2001 reform, Germany replaced the flat-rate system with an income-related system to increase paternal usage of leave entitlements in 2007 and achieved its policy goal. Prior to reform in 2007, the flat-rate system guaranteed 300 Euros per month for twenty-four months.\textsuperscript{183} As a result, Germany maintained marginal paternal usage of leave entitlements until 2007.\textsuperscript{184} To increase the paternal usage of leave entitlements, the reform moved towards an income-related system instead of a flat-rate system.\textsuperscript{185} Although the income-related system respected the employment status of beneficiaries, it also guaranteed 300 Euros per month as the minimum amount of benefits available for parents without previous

\textsuperscript{182} Id. § 3 (2) (stating that “Should the choice not be decided by the end of the third month of the child’s life or if no agreement is reached then the wife shall be the eligible person.”).

\textsuperscript{183} Marcus Tamm, The Impact of a Large Parental Leave Benefits Reform on the Timing of Birth around the Day of Implementation, AUSTRIAN ACADEMY OF SCIENCES 5 (2009), http://www.oeaw.ac.at/vid/lmdc/download/sess2_2_tamm_paper_4lmdc.pdf (last visited Feb. 10, 2010) This study evaluates the effect of the parental leave in 2007 on fertility rate. It finds a positive impact on the fertility rate and provides background information on the payment system before and after reform. With regard to the flat-rate system prior to the reform, this paper divides the system into two modes. The first payment mode consists of “a monthly benefit of up to 300 Euro payable for a maximum of 24 months postpartum” and the second mode consists of a “monthly benefit of up to 450 Euro payable for a maximum of 12 months postpartum.”

\textsuperscript{184} Esther Eisler & Michaela Kreyenfeld, Against All Odds: Fathers’ Use of Parental Leave in Germany, Max Planck Institute for Demographic Research 3 (2009), http://www.demogr.mpg.de/papers/working/wp-2009-010.pdf (last visited Nov. 10, 2009) starts by analyzing previous literature on economic considerations for German men’s low rates of usage of parental leave. This paper finds that economic considerations play an important role, as well as other factors such as employment conditions and sociological and cultural factors.

\textsuperscript{185} Jocehn Kluve & Marcus Tamm, Now Daddy’s Changing Diapers and Mommy’s Making Her Career: Evaluating a Generous Parental Leave Regulation Using a Natural Experiment, INSTITUTE FOR THE STUDY OF LABOR 16 (2009), http://ftp.iza.org/dp4500.pdf (last visited Apr. 17, 2014) finds that the parental leave reform in 2007 achieved its original policy goal to increase paternal involvement in childcare. This paper particularly emphasizes the role of 67% of pre-childbirth earnings for up to 12 months after the birth of the child as an economic incentive for fathers to take leave for childcare.
earnings or with a relatively low income level, and increased the wage-replacement rate by 1% for every 20 Euros lower than the income level of 1,000 Euros per month.\textsuperscript{186} Despite the minimum amount available for employees without previous earnings, the new system considered working parents as the primary beneficiaries of the system by reflecting the actual loss of income in contrast with the flat-rate system, guaranteeing an equal amount of benefits for parents, regardless of their employment history.\textsuperscript{187} The consideration for actual loss of income resulted in a substantial increase in paternal involvement. Between January 2007 and June 2008, 14% of the overall applicants for benefits were fathers, while the proportion was only slightly above 3% right before the introduction of the wage-dependent system on January 1, 2007.\textsuperscript{188} Therefore, the 2007 reform succeeded in increasing paternal usage of leave entitlements as intended by replacing the flat-rate system with the income-related system.

In addition to the income-related system, the 2007 reform introduced an additional two months of benefits as partial recognition of individuality. But despite reform to recognize individuality, the German system still lags behind the


\textsuperscript{187} Jennifer Abramsohn, More German Fathers Opting to Take Parental Leave, DEUTSCHE WELLE (Aug. 15, 2007), http://www.dw-world.de/dw/article/0,,2740146,00.html (last visited on Nov. 11, 2009). The wage-dependent system created an economic incentive for men to take leave for childcare.

\textsuperscript{188} Annica Böttcher & Sascha Kireger, Parental Allowance-A First Look Back, FEDERAL STATISTICAL OFFICE (Oct. 28, 2008), http://www.destatis.de/jetspeed/portal/cms/Sites/destatis/Internet/EN/Content/Publikationen/STATmagazin/SocialBenefits/2008__10/2008__10ParentalAllowance.psml (last visited on Nov. 11, 2009). Between January 2007 and June 2008, a total number of 752,000 parents applied for the benefits and 103,000 applicants were men.
Scandinavian system with regard to individuality. Prior to reform, benefits were available for twenty-four months, while only twelve months are available under the new system. In addition to the change in the maximum period of benefits available through the leave system, the reform in 2007 guaranteed two additional months of benefits if both parents participate in the system. Although the total duration of leave remained at three years, the total duration of benefits declined from twenty-four months to a maximum of fourteen months. While shortening the total duration of benefits, the German system introduced two additional months of benefits.

189 Jan Ondrich, C. Katharina Spiess, Qing Yang & Gert G. Wagner, *The Liberalization of Maternity Leave Policy and the Return to Work after Childbirth in Germany*, 1 REV. ECON. HOUSEHOLD 77, 80 (2003). This article finds that the parental leave system allows women to return to the workplace after childbirth. This article analyzes the effect of the extension of parental leave in Germany and provides substantial information about developments in the German system. Although the German system granted 300 Euro per month for twenty-four months, parents could choose to receive 450 Euros per month for twelve months.

190 *Parental Allowance: 29% Claimed by Both Fathers and Mothers*, FEDERAL STATISTICAL OFFICE (Jun. 8, 2009), http://www.destatis.de/jetspeed/portal/cms/Sites/destatis/Internet/EN/press/pr/2009/06/PE09__212__2922.psml (last visited Mar. 26, 2010). The system succeeded in attracting more fathers to engage in childcare, because the system guarantees two more months of benefits on the condition that both parents participated in the system. Until March 2009, 126,000 mothers and fathers received the benefits for children born in January and February 2008, which are two additional months granted because both parents participate in the system.

191 Annette Bergemann & Regina T. Riphahn, *Female Labor Supply and Parental Leave Benefits: The Causal effect of Paying Higher Transfers for a Shorter Period of Time*, INSTITUTE FOR THE STUDY OF LABOR 1 (2009), http://ftp.iza.org/dp3982.pdf (last visited Apr. 17, 2014) (evaluating the gender effect of parental leave reform in 2007. It states that due to the shortened period of benefits with an income-related system, women accelerated the time of their return to the workplace after childbirth. This paper is based on prior studies on the adverse impact of the extended period of benefits with a flat-rate system); Jan Ondrich, C. Katharina Spiess & Qing Yang, *Barefoot and in a German Kitchen: Federal Parental Leave and Benefit Policy and the Return to Work after Childbirth in Germany*, 9 J. POPUL. ECON. 247, 264-65 (1996) (analyzing the causal effect of the parental leave system since 1986 and finds delay in women’s return to the workplace as Germany continuously extended the total period of benefits); Jan Ondrich, C. Katharina Spiess & Qing Yang, *The Effect of Maternity Leave on Women’s Pay in Germany 1984-1994*, German Institute for Economic Research 20-21 (2002), http://www.diw.de/documents/dokumentenarchiv/17/39209/ondrich_spiess_yang.pdf (last visited Apr. 17, 2014) (evaluating the gender effect of the continuing extension of the total period of benefits since 1986 on female wage levels. It states that because the extension brought about delay in women’s return to the workplace, the wage level decreased as the German system increased the total duration of benefits to twenty-four months in 1992).
to increase paternal usage of leave entitlements following the “Scandinavian model.”

It is important to focus on the Scandinavian model, because it is considered to be the most progressive and well-established system realizing gender equality in reconciling work and childcare, including a parental leave system.

Although the German system considers the Scandinavian model as the role model to follow, it lags behind the Scandinavian system with regard to individuality. The Swedish system provides two months of additional benefits for each parent if they both take leave, which results in a total of four nontransferable months. However, Germany only provides an additional two months of benefits when both parents participate in the system, which leads to a total of only two nontransferable months. Although those two months for only one parent in the German system aim to increase paternal usage of leave entitlements, two months for each parent in the Swedish system respects individuality more than the German system, because two

192 C. Katharina Spiess and Katharina Wrohlich, The Parental Leave Benefit Reform in Germany: Costs and Labour Market Outcomes of Moving towards the Scandinavian Model, INSTITUTE FOR THE STUDY OF LABOR 5 (2006), http://ftp.iza.org/dp2372.pdf (last visited Apr. 17, 2014) defines the 2007 reform as a change towards the “Scandinavian model” in two respects. First, the income-related system for one year is the standard form in the Scandinavian model targeting dual-earner families as the primary beneficiaries of the system. Second, the father quota is one aspect of the Scandinavian system enhancing the paternal usage of leave entitlements. Except for Denmark, which abolished the quota in 2002, other countries such as Norway, Sweden and Iceland guarantee the father quota as a part of the system for dual-earner families.

193 Ann Zofie Duvander, Tommy Ferrarini & Sara Thalberg, Swedish Parental Leave and Gender Equality: Achievements and Reform Challenges in a European Perspective, INSTITUTE FOR FUTURE STUDIES 9 (2005), http://www.iffs.se/wp-content/uploads/2011/01/20051201134956filU8YIJLRAaC7u4FV7gUmy.pdf (last visited Apr. 17, 2014). This study evaluates the Swedish system from the perspective of the European Union. It states that although the Swedish system is progressive enough to be recognized as the first and foremost leader in gender equality, it still needs to revise its system to be more gender-balanced. The fundamental difference between the father quota in Germany and Sweden is whether the quota is available for either mother or father. The German system is not identical to the Swedish system in this respect. Though the primary beneficiary of the two months quota for each parent is the father instead of the mother, it is still important to differentiate between the two systems with regard to whether the quota is available for each parent.
months are reserved for each “individual” parent. On the other hand, Germany guarantees two months of a reserved period only for one parent. Furthermore, because the German system leaves twelve months of benefits as transferable from one parent to the other, it does not fully recognize individuality. While the Swedish system also leaves twelve months of benefits as transferable from one parent to the other, because the Swedish system provides at least two months for the mother and the father on equal terms as non-transferable from each other, the Swedish system is more concerned with individuality than the German system. The Swedish system provides two nontransferable months of benefits, regardless of whether or not both parents take leave. Finally, among Scandinavian countries guaranteeing an additional period of benefits for paternal usage of leave entitlements, Iceland has

194 Anita Haataja, *Fathers’ Use of Paternity and Parental Leave in the Nordic Countries*, THE SOCIAL INSURANCE INSTITUTION 14 (2009), http://helda.helsinki.fi/bitstream/handle/10250/8370/FathersLeaves_Nordic.pdf?sequence=1 (last visited Feb. 16, 2010). This paper compares the paternal usage of leave entitlements in Nordic countries. It stipulates that there is variation in the proportion of men taking leave for childcare and their share due to differences in allocation of benefits on a transferable or non-transferable basis. While Iceland guarantees only three months of transferable benefits, Sweden provides twelve months as transferable from one parent to the other.

195 Babara Hobson, *The Individualised Worker, the Gender Participatory and the Gender Equity Models in Sweden*, 3 SOC. POL’Y. & SOC. 75, 79-80(2004) This paper evaluates Swedish social policy on gender. Among the policies affecting gender equality in Sweden, this paper emphasizes the role of the parental leave system to allow women and men to share work and childcare on equal terms. It emphasizes that the Swedish system realized the importance of financial support and individuality to recognize gender equality as the policy goal to achieve. It states that the pursuit of individualization is a precondition to realize gender equality in social policies.

196 Anne Lise Ellingsæter, *Leave Policy in the Nordic Welfare States: A ‘Recipe’ for High Employment/High Fertility?*, 12 COMMUNITY WORK & FAM. 1, 6 (2009) (This article focuses on Nordic countries because they maintain a high female labor force participation rate and fertility rate. Because these two policy aims are primary concerns for most countries with an aging society, this paper analyzes the background for success in Nordic countries. It states that policies to reconcile work and childcare are the core of success. In particular, this paper finds that the arrangement of the paid parental leave system is critical for success. As a result, it evaluates the background and policy outcomes of the paid parental leave system in Nordic countries. This paper defines Iceland, Finland, Sweden, Norway and Denmark as Nordic countries in the social democratic welfare regime. It states that all Nordic countries provide a “daddy quota,” except for Denmark. It finds that Denmark
the most progressive system with regard to individuality. While the German and Swedish systems guarantee only two months to incentivize paternal usage of leave entitlements, Iceland provides three months as a nontransferable period for each parent.197 The Scandinavian model is not perfectly organized for the purpose of guaranteeing individuality, as Iceland leaves three months as transferable from one parent to the other. Nonetheless, in comparison with the German system, the Scandinavian system is more concerned with individuality. Therefore, despite partial recognition of individuality in 2007, Germany still lags behind the Scandinavian system in respect to individuality.

In contrast with the reform in 1986 and 2001,198 political ideology did not play an important role in the formation of Germany’s new system in 2007.

According to the party ideology of each government, the 1986 system reinforced the

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male-breadwinner model by introducing the flat-rate system, while the 2001 system expanded individuality by allowing both parents to take leave at the same time. Distinguished from the relatively homogeneous party ideology of the coalition governments in 1986 and 2001, the coalition government in 2007 was a mixture of center-right and center-left parties. While the center-left party supported the wage-dependent system for working mothers, the center-right parties adhered to the flat-rate system to protect housewives in receiving financial aid for raising children. However, they overcame conflict through compromise. By proposing the minimum amount of benefits for parents without previous earnings and the maximum amount of benefits for high-income earners, the center-left party succeeded in persuading the center-right parties to agree to the wage-dependent system as the method of payment. Furthermore, the center-left party originally proposed the father quota as a deduction from the twelve months of the maximum period available.

199 Annette Henninger, Christin Wimbauer & Rosine Dombrowski, *Demography as a Push toward Gender Equality? Current Reforms of German Family Policy*, 15 SOC. POL. 287, 293-94 (2008). This paper stipulates a grand coalition of the conservative parties, the Christian Democratic Union (CDU) and the Christian Social Union (CSU) with the Social Democratic Party (SPD) in 2005, as the turning point for the parental leave policy to adopt the wage-replacement system in 2007.

200 Wolfgang Erler & Daniel Erler, *Germany, in INTERNATIONAL REVIEW OF LEAVE POLICIES AND RELATED RESEARCH* 2007 157, 161 (Peter Moss & Karin Wall eds., 2007). This article analyzes the parental leave policy in Germany. It states that there were conflicts between the center-right and center-left parties in consolidating the reform proposal in 2007. With regard to the wage-replacement system, the center-right government opposed incentivizing dual-earner families. To compromise with the center-right parties, the center-left party proposed to provide a minimum amount of benefits for non-working parents and guaranteed an income cap of 2,700 Euros per month so that the maximum amount of benefits would be capped at 1,800 Euro per month.

for one parent, in order to reduce the period taken by mothers and reallocate it to fathers. In response to the proposal, the center-right parties opposed it on the grounds of depriving the maternal right to take leave for childcare as originally acknowledged by the previous system. Mothers on leave could stay at home for far longer before the reform in 2007, because twenty-four months of benefits were available prior to the reform. As a consequence, center-right parties worried about weakening the male-breadwinner model as traditionally supported by the conservative welfare regime. However, by adding two months of benefits to the original twelve months of benefits, the center-left party compromised with the center-right parties and succeeded in departing from the male-breadwinner model, overcoming a prolonged history under the conservative party ideology. Therefore, Germany finally overcame its traditionally conservative views and adopted the wage-dependent system with two additional months of benefits for paternal usage of leave entitlements.

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202 Rickard Eriksson, *Parental Leave in Sweden: The Effects of the Second Daddy Month*, SWEDISH INSTITUTE FOR SOCIAL RESEARCH 13-14 (2009), http://www.diva-portal.org/smash/get/diva2:494986/FULLTEXT02 (last visited Apr. 17, 2014). This paper compares the policy effect of the second additional month for fathers, introduced in 2002, with the first additional month for fathers in 1995. Sweden introduced an additional month of leave and benefits for the father when he takes leave in addition to the mother in 1995 and extended the additional period from one month to two months in 2002. When Sweden introduced the first additional month for fathers in 1995, it deducted one month from the twelve months of the original period available for parents to share with each other. As a result, the first additional month for fathers shifted one month from mother to father, in practice. However, because the second additional month for fathers was added to the twelve months of original period, the introduction of the second additional month for fathers in 2002 did not bring about as much of an increase in the paternal usage of leave entitlements as the first additional month for fathers in 1995.

203 Annette Henninger, Christine Wimbauer & Rosine Dombroski, *Demography as a Push toward Gender Equality? Current Reforms of German Family Policy*, 15 SOC. POL. 287, 295 (2008) evaluating the 2007 parental leave reform. This paper emphasizes that the reform originally purported to realize two policy outcomes. In terms of gender policy, the reform tried to increase maternal employment and paternal childcare. In terms of demographic policy, the reform focused on increasing
Despite reform in 2007, Germany still needs two significant reforms to achieve gender equality in reconciling work and childcare.\textsuperscript{204} They are the expansion of financial support and recognition of individuality. To be more specific, the current German system lags behind the financial support mechanism of the Scandinavian system in two respects. First, a 67\% wage-replacement rate is not enough to guarantee gender equality in taking leave for childcare. Considering the incentivizing effect of financial support, a 100\% rate is ideal to attract more men to take part in the system.\textsuperscript{205} However, because of financial constraints, it might be practically impossible to guarantee full remuneration for lost income.\textsuperscript{206} Norway is

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\textsuperscript{204} In 2007, Germany reformed its parental leave and benefits system. One of the policy aims to achieve throughout the 2007 reform was more gender-balanced usage of leave entitlements. Although there was a substantial increase in paternal usage of leave entitlements, the reform did not consolidate equal distribution of leave entitlements between men and women. Therefore, Germany still lacks consideration for gender equality in its parental leave benefits system.

\textsuperscript{205} Janet C. Gornick & Marcia K. Meyers, \textit{Creating Gender Egalitarian Societies: An Agenda for Reform}, 36 Pol. & Soc. 313, 324 (2008). This article analyzes work-family reconciliation policies in six European countries and considers an ideal model to fully accommodate a dual-earner model. One of the elements of an ideal model is a wage-replacement system which compensates with full remuneration of lost incomes. As a result, this paper considers 100\% as a desirable wage-replacement, although it keeps a benefit ceiling to incorporate financial difficulties for countries to subsidize parental benefits.

\textsuperscript{206} Trude Lappegard, \textit{Changing the Gender Balance in Caring: Fatherhood and the Division of Parental Leave in Norway}, 27 Popul. Res. & Policy Rev. 139, 144 (2008). This piece evaluates the effects of parental leave reform in Norway, which introduced one month of the father quota in 1993. This paper collected data between 1993 and 1997. As a result, it focuses on the effect of the father quota, in particular. However, it also stipulates various factors affecting the paternal usage of leave entitlements. The Norwegian system guarantees 52 weeks of parental leave with an 80\% wage-replacement rate and 42 weeks with full remuneration. Mothers and fathers share substantial part of the total benefits, because only one month is the non-transferable period. The Norwegian system proves that 100\% remuneration is practically possible. However, because the system guarantees a different
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the only country guaranteeing 100% of previous earnings if parents take 42 weeks of leave instead of 52 weeks.\textsuperscript{207} It provides 80% of previous earnings for 52 weeks of leave, but it raises the wage-replacement rate to 100% if a parent takes leave for a shorter period of time.\textsuperscript{208} However, considering the average wage-replacement rate of the Scandinavian system, 80% of the wage-replacement rate is practically possible for Germany.\textsuperscript{209} Furthermore, Germany has already manifested its strong intention to increase its budget to support the paternal usage of leave entitlements.\textsuperscript{210} As a result, financial constraints cannot be the sole ground to oppose an increase in the wage-replacement rate, because Germany manifested its strong desire to follow the Scandinavian model and invest substantial funds into increasing paternal usage of leave entitlements. It is true that Germany has a larger population and lacks Norway’s oil revenues. However, the ratio of spending on maternity and parental

\begin{itemize}
  \item \textsuperscript{207} Trude Lappegard, \textit{Changing the Gender Balance in Caring: Fatherhood and the Division of Parental Leave in Norway}, 27 POPUL. RES. & POLICY REV 139, 144 (2008). This paper finds a positive effect from the father quota in Norway. In addition to the father quota, this paper introduces developments of the Norwegian system and emphasizes that Norwegian parents receive 100% remuneration when taking leave up to 42 weeks.
  \item \textsuperscript{208} \textit{Id.} However, the wage-replacement rate declines when parents take leave up to 52 weeks instead of 42 weeks.
  \item \textsuperscript{209} C. Katharina Spiess & Katharina Wrohlich, \textit{The Parental Leave Benefit Reform in Germany: Costs and Labour Market Outcomes of Moving towards the Scandinavian model}, INSTITUTE FOR THE STUDY OF LABOR 13-15 (2006), http://ftp.iza.org/dp2372.pdf (last visited Apr. 17, 2014). This paper evaluates the expected costs and policy outcomes of parental leave reform in 2007. It finds that it will increase maternal employment and the costs will be moderate. In contrast with the concerns for financial burden to introduce the wage-dependent system, the German system could sustain the wage-dependent system. Therefore, the financial constraints are not persuasive enough to oppose increasing the wage-replacement rate to 80% from the outset.
  \item \textsuperscript{210} \textit{German Family Minister Calls New Parental Leave Law a Success}, DEUTSCHE WELLE (Dec. 15, 2007), http://www.dw-world.de/dw/article/0,,3005391,00.html (last visited Mar. 12, 2010). This report reports that the budget of 3.5 billion Euros was overdrawn by 130 million Euros in 2007. Due to the increase in paternal usage of leave entitlements, Germany spent more than it had originally expected. Germany increased the budget to 4 billion Euros without hesitation. Considering such strong support from the German government for paternal usage of leave entitlements, an increase of the wage-replacement rate is practically possible despite opposition on the grounds of financial constraints.
\end{itemize}
leave shows that Germany does not spend enough on it compared to other OECD countries. In 2009, Germany spent 0.3% of its GDP, whereas the average was 0.4%. Second, the income ceiling in Germany is relatively lower than the Swedish system. The German system provides 1,800 Euros per month for parents with an income of at least 2,700 Euros per month. By contrast, the Swedish system guarantees 2,720 Euros per month for parents with an income of at least 3,400 Euros per month. Such a large gap in the income ceiling between the two systems implies different attitudes towards the paternal usage of leave entitlements. The Swedish system is more inclined to the dual-earner system, while the German system still encourages a conservative family model, ignoring the importance of remuneration for high-income families so that women with a relatively high level of income may continue working while raising their children. Due to the gender wage

212 Overview of the Standard Benefits and Tax Concessions Relevant to Family Policy and the Amounts involved in the Federal Republic of Germany as of 17th March 2008, Ministry of Family Affairs, Senior Citizens, Women and Youth, http://www.bmfsfj.de/RedaktionBMFSFJ/Abteilung2/Pdf-Anlagen/regelleistungen-steuererm_C3_A4_C3_9Figungen-englisch.property=pdf,bereich=bmfsfj,sprache=de,rwb=true.pdf (last visited Mar. 15, 2010). This report states that the maximum amount available per parent is 1,800 Euros per month from the income level of 2,700 Euros per month.
213 Ministry of Integration and Gender Equality Sweden, A Short Presentation of the Parental Benefit System in Sweden at a Public Hearing on Maternity, Paternity and Parental Leaves, EUROPEAN PARLIAMENT (2009), http://www.europarl.europa.eu/document/activities/cont/200902/20090202ATT47970/20090202ATT47970EN.pdf (last visited Mar. 15, 2010). This presentation reports that the Swedish system focuses on gender equality in reconciling work and childcare. Although it limits the maximum amount to 2,720 Euros per month starting from the income level of 3,400 Euros per month, the limitation exceeds that of Germany.
214 Trude Lappegard, Changing the Gender Balance in Caring: Fatherhood and the Division of Parental Leave in Norway, 27 POPUL. RES. & POLICY REV. 139, 157-58 (2008) detailing the importance of the wage level of mothers in determining the paternal usage of leave entitlements. It generally emphasizes the impact of financial support on the actual leave taking behavior of fathers.
gap, the rise of the income ceiling will attract more men to take leave for childcare.\textsuperscript{215}

Studies have found that fathers with a higher income are less likely to participate in the German parental leave system.\textsuperscript{216} In fact, 46% of German fathers received more than 1,000 Euros per month, while the corresponding figure of mothers was less than 15%.\textsuperscript{217} On the other hand, more than 50% of mothers received less than 500 Euros per months, so the increase in the income ceiling is more attractive to fathers than mothers.\textsuperscript{218} Likewise, a rise in the income ceiling is necessary to attract more

\textsuperscript{215} Elina Pylkkänen & Nina Smith, Career Interruptions due to Parental Leave: A Comparative Study of Denmark and Sweden, OECD (Mar. 13, 2003), http://www.oecd.org/dataoecd/61/7/2502336.pdf (last visited Feb. 18, 2010) evaluating the gender effect of the parental leave system in Denmark and Sweden. While the Swedish system succeeds in attracting more men to participate in the system, the Danish system does not. Because an increase in paternal usage of leave entitlements leads to a corresponding increase in maternal employment in Sweden, this paper appreciates the Swedish system particularly with regard to its positive gender effect. Among the various aspects of the Swedish system, this paper emphasizes the financial incentive to increase the paternal usage of leave entitlements. This paper acknowledges that the Swedish system provides an income ceiling which might adversely affect paternal involvement. However, it states that employers supplement the difference between 80% of remuneration and actual loss of income because collective agreements may include additional support from the employers. This paper emphasizes the importance of financial support for the paternal involvement, so it is supportive of the increase in the income ceiling to attract more men to take leave for childcare.

\textsuperscript{216} Trude Lappegard, Changing the Gender Balance in Caring: Fatherhood and the Division of Parental Leave in Norway, 27 POPUL. RES. & POLICY REV. 139, 142(2008) (reporting that the importance of financial aspects of the system on gender division of leave taking behavior); and Johanna Lammi-Taskula, Doing Fatherhood: Understanding the Gendered Use of Parental Leave in Finland, 6(2) FATHERING 133, 138-139 (2008).

\textsuperscript{217} Wolfgang Erler, German Leave Reforms: Acknowledging Diversity, THE DANISH NATIONAL CENTRE FOR SOCIAL RESEARCH 3 (2008), http://www.sfi.dk/Default.aspx?ID=6664 (last visited on Nov. 16, 2009). This article evaluates the policy outcomes achieved by parental leave reform in 2007. 21.7% of fathers received between 1,500 and 1,800 Euros per month in contrast with 4.4% of mothers, thus the average amount of benefits paid to fathers exceeded the amount distributed to mothers. In particular, between January 2007 and June 2008, fathers received 973 Euros per month on average while mothers received 590 Euros per month on average. See Annica Böttcher & Sascha Krieger, Parental Allowance – A First Look Back, FEDERAL STATISTICAL OFFICE (Oct. 28, 2008), http://www.destatis.de/jetspeed/portal/cms/Sites/destatis/Internet/EN/Content/Publikationen/STATmagazin/SocialBenefits/2008_10/2008_10ParentalAllowance.psm (last visited Feb. 18, 2010) (reporting that the average amount granted reached 643 Euros per month with a large gender gap of 973 Euros for men and 590 Euro per women).

\textsuperscript{218} Wolfgang Erler, German Leave Reforms: Acknowledging Diversity, THE DANISH NATIONAL CENTRE FOR SOCIAL RESEARCH 3 2008, http://www.sfi.dk/Default.aspx?ID=6664 (last visited Nov. 16, 2009). This article reports the policy outcome of the 2007 parental leave reform. It states that 53.4% of women received benefits from 300 to 500 Euro per month in contrast with 28.6% of men.
fathers to participate in the system. Therefore, the current German system needs to increase the wage-replacement rate and income ceiling to attract more fathers to the system.

The increase in the wage-replacement rate and income ceiling complies with the German public’s desire to participate in the system. One survey found that 82% of relatively younger German men considered financial loss as the major obstacle to taking leave for a newborn child.\(^\text{219}\) As a result, mothers take leave instead of their spouses.\(^\text{220}\) In addition, another survey in 2005 found that only 25% of parents decided who would take parental leave in compliance with their own wishes.\(^\text{221}\) In other words, 75% of parents determine who should take leave under the influence of economic, social or cultural norms. On the basis of these surveys, Germany replaced the flat-rate system with the wage-dependent system to remove economic obstacles and enable the German public to decide to take leave as they wish.

However, because the wage-replacement rate does not reach the level enough to guarantee equal opportunities for men and women to take part in the system,

\(^{219}\) Wolfgang Erler & Daniel Erler, \textit{Germany}, \textit{THE DANISH NATIONAL CENTRE OF SOCIAL RESEARCH}, http://www.sfi.dk/graphics/Leave%20network/country%20notes%202007/germany%202007.pdf (last visited Apr. 17, 2013). This article introduces research papers on the new parental leave and benefits system in Germany. One of the research papers conducted a survey on reasons younger men did not take leave for childcare in 2005. 82% chose financial loss, 74% chose career disadvantages and 55% chose their own experience with their mothers as the primary caregiver.

\(^{220}\) \textit{Parental Allowances-A First Look Back}, \textit{FEDERAL STATISTICAL OFFICE} (Oct. 28, 2008), http://www.destatis.de/jetspeed/portal/cms/Sites/destatis/Internet/EN/Content/Publikationen/STATmagazin/SocialBenefits/2008__10/2008__10ParentalAllowance.psml (last visited Nov. 16, 2009) Women earn less than men, so women received a lower level of benefits than men after Germany adopted the wage-dependent system. The federal statistical office reports that men received 590 Euro per month whereas women received 973 Euro per month.

Germany failed to effectuate the wage-dependent system to increase the paternal usage of the leave entitlement to the level of the social democratic countries.\textsuperscript{222} For children born in 2007, 13.7\% of parental benefits were granted to fathers by June 2008.\textsuperscript{223} Although an absolutely gender-balanced distribution of benefits, in which 50\% of parental benefits would be granted to fathers, is practically impossible, an increase in the wage-replacement rate can attract more fathers to participate in the system. For example, social democratic countries such as Sweden succeeded in attracting more men to participate in their system than Germany did. In the case of Sweden, about 90\% of fathers took advantage of the system in 2007.\textsuperscript{224} Sweden guarantees 80\% of previous income as benefits, which exceeds the wage-replacement rate of 67\% found in Germany.\textsuperscript{225} Furthermore, the income ceiling in Sweden exceeds the income ceiling in Germany. Studies have continuously reaffirmed the

\textsuperscript{222} Anita Haataja, \textit{Fathers’ Use of Paternity and Parental Leave in the Nordic Countries}, \textbf{THE SOCIAL INSURANCE INSTITUTION} 9 (2009), https://helda.helsinki.fi/bitstream/handle/10250/8370/FathersLeaves_Nordic.pdf?sequence=1 (last visited Apr. 17, 2014). This paper reports a relatively high level in the paternal usage of leave entitlements in Nordic countries with a social democratic welfare regime. In Denmark, in 2007, about 60 fathers per 100 children born took leave for childcare and 80 fathers per 100 children born in Finland took part in the system.

\textsuperscript{223} New! \textit{The Statistical Yearbook 2009}, \textbf{FEDERAL STATISTICAL OFFICE OF GERMANY} (Oct. 7, 2009), http://www.destatis.de/jetspeed/portal/cms/Sites/destatis/Internet/EN/press/pr/2009/10/PE09__379__p001.psm1 (last visited on Dec. 22, 2009). This press release reports statistical evidence collected in 2008. The highest number of men applying for parental benefits for children born from 2007 to June 2008 was the highest in Berlin, which was about 17\%. It also reports that the national average was 13.7\%.


\textsuperscript{225} \textit{Id.} at 3. Parental benefits are available for 16 months. 13 months are given at 80\% of the previous income, up to a ceiling of around 3,400 Euro per month. 3 months are given at a flat rate of approximately 20 Euros per day.
importance of financial support in increasing paternal involvement in the system. Therefore, to comply with the German public desire to participate in the system, the German system requires an increase in the wage-replacement rate and income ceiling. In addition to financial support, the 2007 system lacks consideration for individuality, because a substantial part of the total period of benefits is transferable from one parent to the other. The current system guarantees twelve months of benefits for one parent and two additional months of benefits when both parents participate in the system. Now, both parents can take leave at the same time, but the benefits are not double that which are received by a family with only one parent on leave. On the surface, two additional months of benefits seem to incentivize paternal usage of leave entitlements. However, insofar as two months are the only period exclusive to one parent, the German system lacks consideration for individuality. For example, if parents share fourteen months of benefits with each other on equal terms, the maximum period available for each parent is limited to only seven months. Twelve months of benefits are available if only one parent takes part.


227 Johan Ekbert, Rickard Eriksson & Guido Friebel, Parental Leave-A Policy Evaluation of the Swedish “Daddy-Month” Reform, INSTITUTE FOR THE STUDY OF LABOR 2 (2005), http://ftp.iza.org/dp1617.pdf (last visited on Dec. 30, 2009). This paper evaluates additional months of benefits available for parents when both parents take part in the system as a measure to guarantee equal opportunities for men and women to take part in the system. Germany provided two more months of benefits when both parents take part in the system, following the experience of Sweden.

228 C. Katharian Spiess & Katharina Wrohlich, The Parental Leave Benefit Reform in Germany: Costs and Labour Market Outcomes of Moving towards the Scandinavian Model, INSTITUTE FOR THE STUDY OF LABOR (2006), http://ftp.iza.org/dp2372.pdf (last visited Dec. 30, 2009). This paper evaluates the 2007 parental leave benefit reform. It emphasizes additional months of benefits available when both parents take part in the system as a measure to attract the paternal usage of leave entitlements.
in the system, so the maximum period of benefits available for each parent declines when both parents take part in the system and share an equal period of benefits. As a result, the reform ultimately penalizes equal distribution of childcare responsibilities between the mother and father, in contrast with its original policy goal to achieve gender equality in reconciling work and childcare.

Germany’s current system guarantees fourteen months of benefits for parents when both parents participate in the system.\(^{229}\) The maximum period available for each parent is twelve months.\(^{230}\) To take advantage of fourteen months of benefits, one parent has to take at least two months of benefits because one parent can take up to a maximum of two months of benefits.\(^{231}\) As a result, except for those two months, twelve months of benefits are transferable between parents.\(^{232}\) In practice, the problem of the transferable period is the disproportionate allocation of the total

\(^{229}\) Rebecca Ray, Janet C. Gornick & John Schmitt, *Parental Leave Policies in 21 Countries: Assessing Generosity and Gender Equality*, CENTER FOR ECONOMIC AND POLICY RESEARCH 1 (2009), http://www.lisproject.org/publications/parentwork/ParentLeaveReport.pdf (last visited Dec. 30, 2009). This paper reviews variations in 21 countries. It states that the duration of paid leave ranges from three months to one year. As a result, fourteen months of benefits are relatively progressive in comparison with 20 other countries.


\(^{231}\) Tine Rostgaard, *Setting Time aside for the Father: Father’s Leave in Scandinavia*, 5(3) Community, Work & Fam. 343, 348 (2002). Since January 2002, Sweden reserved two months of benefits for each parent and eliminated those benefits when each parent does not take advantage of the system. Following Sweden, Germany ensured that one parent must take at least two months for both parents to share fourteen months of benefits.

\(^{232}\) C. Katharina Spiess & Katharina Wrohlich, *The Parental Leave Benefits Reform in Germany: Costs and Labour Market Outcomes of Moving towards the Scandinavian Model*, INSTITUTE FOR THE STUDY OF LABOR (2006), http://ftp.iza.org/dp2372.pdf (last visited Apr. 17, 2014). The merit of a transferable period of benefits is to allow parents to decide how to share the benefits. When Germany introduced “the father quota,” opponents argued that a father quota intervenes into parents’ private decisions on time allocation. As a result, twelve months of benefits remained transferable from one parent to the other.
period between the parents. The minimum requirement to gain an additional two months of benefits is for one parent to take at least two months of benefits.

According to the statistical evidence, a majority of fathers take leave for only two months. Because there are twelve months of benefits that are transferable from the father to the mother, the mother takes twelve months of benefits instead of the father, while the father only takes two months of benefits. If Germany specified seven non-transferable months of benefits for each parent, the leave-taking patterns of each parent would be different from the current state of gender imbalance. However, because Germany left twelve months of benefits as a transferable period of benefits, Germany failed to realize individuality. Therefore, the reform failed to realize equal opportunities for men and women to take leave for childcare due to the transferability of a substantial period of parental benefits from one parent to the other.

234 FEDERAL STATISTICAL OFFICE OF GERMANY, PRESS RELEASE NO. 212, PARENTAL ALLOWANCE: 29% CLAIMED BY BOTH FATHERS AND MOTHERS (June 9, 2009). Until March 2009, among parents with children born in January and February 2008, 70% of fathers claiming benefits received benefits for only two months.
235 Id. As a result, among the mothers taking leave for children born in January and February 2008, 76% of the mothers received benefits for 12 months whereas only 4% received benefits for 2 months.
236 Janet C. Gornick & Marcia K. Meyers, Creating Gender Egalitarian Societies: An Agenda for Reform, 36 POL. & SOC. 313, 324 (2008) proposes a desirable policy measure for gender equality in reconciling work and childcare. With regard to paid parental leave, it proposes six months of paid leave for each parent as a desirable period of benefits to minimize the adverse impact of a relatively long period of benefit obstructing women from returning to the workplace. Germany currently guarantees fourteen months of benefits for both parents to share, so seven months of benefits for each parent can be one model for securing individuality.
237 Id. This article proposes two preconditions to guarantee gender equality in parental leave policy. One is six-months of paid leave for each parent and the other is the non-transferability of the right to paid leave. The first condition sets a specific duration on the basis of the effects on the female labor market attachment. The second condition considers transferability in the right to paid leave transfers a portion from the fathers to the mother. The second condition is particularly important for Germany because the current system leaves twelve months of benefits as a transferable period from one parent to the other.
When Germany introduced two additional months of benefits, it faced opposition on the basis of too much intervention into private decisions on time allocation. Opponents considered parents’ right to decide how to share the period as an important policy goal to achieve by guaranteeing the transferability of the total period of benefits from one parent to the other. Germany traditionally perceived the family – as opposed to day-care – as the primary caregiver during early childhood, so it considered time allocation for childcare as up to individual families. However, in practice, the family meant the mother as Germany provided allowances for the family when the mother stays at home for children aged 13 months to 36 months. As a result, the reservation of two months of benefits for only one parent was not in line with a family-oriented or traditional ideology towards childcare in Germany. Although the conditional provision of two additional months of benefits may have been an intervention into private decision making, a purely transferable period of benefits limited private decisions on time allocation, because the lack of financial support would not allow fathers to take leave instead of mothers.

238 C. Katharina Spiess & Katharina Wrohlich, The Parental Leave Benefit Reform in Germany: Costs and Labour Market Outcomes of Moving towards the Scandinavian Model, INSTITUTE FOR THE STUDY OF LABOR 5 (2006) predicted the ultimate effect of the 2007 parental leave reform. It stresses two additional months of benefits, but articulates that there was opposition on the basis of intervention into private decisions on time allocation.

239 Eileen Trzcinski, Family Policy in Germany: A Feminist Dilemma?, 6 FEM. ECON. 21, 21 (2004) emphasizes the traditional family policy in Germany which supports family as the primary caregiver for early childhood. However, it finds that the German system is in line with more gender balanced policy measures to provide equal opportunities for men and women to participate in childcare. When introducing the traditional attitude towards child-rearing in Germany, this paper emphasizes that Germany tried to force parents to stay at home as professional child-caregivers. Almost always, it was the mother instead of the father who was in charge of childcare.

240 Closing the Gender Gap : Germany, OECD, http://www.oecd.org/gender/Closing%20the%20Gender%20Gap%20-%20Germany%20FINALFINAL.pdf (last visited Nov. 3, 2013) (criticizing childcare allowances which provides financial subsidies when the child is not enrolled in day-care).
Therefore, under the 2007 system the transferable right of benefits, in practice, does not guarantee private decisions on time allocation for childcare as stipulated by opponents of the father quota.

To make Germany order a 50-50 split, more progressive measures – such as 12 months of leave and benefits for each parent – are required. According to the OECD report, German women’s status in the labor market is relatively lower than those of other European countries.\textsuperscript{241} It criticizes the gender discriminatory childcare system as impetus of degrading women’s status in the labor market.\textsuperscript{242} It particularly recommends enlargement of additional months for fathers on the basis of the substantial increase of men taking advantage of the system.\textsuperscript{243} Currently, 12 months of leave and benefits are transferable from one parent to the other. However, only 2 months are additionally granted when both parents participate in the system. To be equally available for men and women, 12 months of leave and benefits should be individually granted to each parent. Therefore, to make Germany order a 50-50 split of the leave system, 12 additional months of leave and benefits should be guaranteed for each parent.

Partial recognition of individuality by introducing additional months of benefits for paternal usage of leave entitlements is not enough to guarantee gender

\textsuperscript{241} Closing the Gender Gap : Germany, OECD, http://www.oecd.org/gender/Closing%20the%20Gender%20Gap%20-%20Germany%20FINALFINAL.pdf (last visited Nov. 3, 2013) (reporting that the majority of women with children work part-time and the gender wage gap is the third largest across OECD countries).
\textsuperscript{242} Id. (reporting that the tax/benefits system prefers single breadwinner couples to dual-earner families with children of school age and the childcare allowance provides financial support for mothers with children aged 13 months to 36 months to stay at home).
\textsuperscript{243} Id. (reporting that the percentage of men taking leave increased from 9% in 2007 to 25% in the second half of 2010).
equality according to the Swedish experience. As Germany followed the Swedish model of the father quota, the policy outcome of the father quota in Sweden is important to estimate the ultimate effect of the policy in Germany. In 1995, Sweden introduced one month of parental benefits for each parent as a non-transferable period, and ten months as a transferable period. When Sweden introduced the father quota for the first time, it did not add the quota to the original period but rather deducted from the twelve months of the transferable period. The reason for the deduction was to transfer the period claimed by the mother to the father. The introduction of the father quota reduced the proportion of fathers who never took leave for childcare. However, it failed to extend the period of benefits

244 Margaret O’Brien, Social Science and Public Policy Perspectives on Fatherhood in the European Union, in The Role of the Father in Child Development 121, 133 (2004) overviews changes in European policy towards the paternal involvement in childcare. It states that the Scandinavian countries were progressive in promoting the paternal involvement in childcare particularly with regard to introducing the father quota. In 1993, Norway first introduced the father quota and Sweden then followed the Norwegian model. Germany followed after the Scandinavian countries, particularly the Swedish model of the two-month non-transferable period.

245 Tine Rostgaard, Setting Time aside for the Father: Father’s Leave in Scandinavia, 5(3) Community, Work & Family 343, 348 (2002) evaluates the father quota in Sweden, Norway and Denmark. It finds that Sweden focused on increasing paternal usage of leave entitlements, while Norway focused on motherhood and Denmark emphasized parenthood, although these countries experienced the father quota as a core element of their parental leave benefits policies. As evidence of focus on fatherhood, this paper emphasizes the introduction of a one-month reserved period, despite financial difficulties in the early 1990s. Sweden reduced the wage-replacement rate from 90% to 80% in 1995, but introduced a one month non-transferable period for each period.

246 Wolfgang Erler & Daniel Erler, Germany, The Danish National Centre for Social Research, http://www.sfi.dk/graphics/Leave%20network/country%20information%20notes%202007/germany%202007.pdf (last visited Apr. 17, 2014). This paper states that the original German model in 2007 was to deduct from the twelve months as well. However, the CDU/CSU opposed the decrease in the total duration for the mother. Sweden deducted from the original period, so it introduced a more gender-balanced model than Germany.

claimed by the father to more than one month of the exclusive period and share the transferable period with the mother. As a result, the introduction of the father quota was only a partial achievement of the original policy goal to realize gender equality in the distribution of work and childcare. To increase the days of benefits claimed by the father, Sweden extended the non-transferable period from one month to two months in 2002. While Sweden deducted two months from the original transferable period of twelve months to allocate one month for each parent in 1995, in 2002 Sweden added one more month to the original period of twelve months when increasing the non-transferable period from one month to two months. As a result, Sweden currently guarantees thirteen months of paid leave with benefits up to 80 percent of the previous earnings. Among these thirteen months, two months are

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248 Id. This paper states that “During the years before 1995, around half of all fathers used no leave at all, but after the introduction of the ‘daddy month’ this proportion was reduced to a fifth of all fathers.”

249 John Ekberg, Rickard Eriksson & Guido Fiebel, Parental Leave-A Policy Evaluation of the Swedish ‘Daddy-Month’ Reform, INSTITUTE FOR THE STUDY OF LABOR 11-12 http://ftp.iza.org/dp1617.pdf (last visited Apr. 17, 2014). This paper evaluates the policy outcome of the introduction of a daddy-month. It states that fathers remained to be marginally active, because they took advantage of only the exclusive period without sharing the transferable period with mothers.

250 Per Engström, Ann-Sofie Kolm & Che-Yuan Liang, Maternal Addiction to Parental Leave, UPPSALA UNIVERSITET 2-3 (Nov. 17, 2006), http://www.nek.uu.se/pdf/wp2006_28.pdf (last visited Mar. 15, 2010). This paper analyzes the effect of the father quota on equal sharing of parental leave and emphasizes the original policy goal of increasing the total share of paternal usage of leave entitlements when Sweden increased the father quota from one month to two months.


Consider a couple where both the mother and the father would take six months of parental leave if the total time of parental leave is twelve months. After the introduction of the second daddy month they have 13 months of parental leave to share. The restriction that two months is reserved for each couple is not binding, so the reform simply means that the total time the parents are eligible for parental leave increase by one month. For this type of couples we would expect that some part of the increase goes to the father and some part goes to the mother.
reserved for each parent on the basis of non-transferability. However, the reform in 2002 still remained a partial achievement in equal distribution of parental benefits between the father and mother. The overall number of fathers taking parental leave increased and the average duration of leave increased as well. Nevertheless, the total length of time for men taking parental benefits accounted for only 20.8% of the total length of time for benefits claimed by the overall population. In particular, a study finds that the 2002 reform increased the number of fathers taking two-month leave and decreased the number of fathers taking one month of leave or less. This implies that fathers tend to take only the additional period of benefits guaranteed exclusively for one parent. In other words, a transferable period of leave and benefits are considered to be a period for mothers only.

The limited effect of the additional months of benefits is also found in

reserved for each parent on the basis of non-transferability. However, the reform in 2002 still remained a partial achievement in equal distribution of parental benefits between the father and mother. The overall number of fathers taking parental leave increased and the average duration of leave increased as well. Nevertheless, the total length of time for men taking parental benefits accounted for only 20.8% of the total length of time for benefits claimed by the overall population. In particular, a study finds that the 2002 reform increased the number of fathers taking two-month leave and decreased the number of fathers taking one month of leave or less. This implies that fathers tend to take only the additional period of benefits guaranteed exclusively for one parent. In other words, a transferable period of leave and benefits are considered to be a period for mothers only.

The limited effect of the additional months of benefits is also found in

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252 Nabanita Datta Gupta, Nina Smith & Mette Verner, The Impact of Nordic Countries’ Family Friendly Policies on Employment, Wages and Children, 6 REV. ECON. HOUSEHOLD 65-69 (2008) argues the Nordic countries had that much success in attracting men to parental leave. It is based on the analysis of female wage growth after leave. The paper emphasizes that despite efforts to extend additional months for men as in Sweden, women are still relatively less successful in the labor market than men.

253 SWEDISH INSTITUTE, FACT SHEET: GENDER EQUALITY, GENDER EQUALITY IN SWEDEN 1 (2009). This paper overviews women’s status in Sweden: In Sweden parents are entitled to 480 days’ parental allowance once a child is born or adopted. Women claim most of the days. In 2008, men claimed about 20 percent of parental leave.

254 Id. at 15 (stating that “The point estimate of the increase in use of parental leave by fathers is somewhat lower for the second daddy month, 3.4 compared to 4.9 days.”).


The most common measure used to compare men and women’s use of paid parental leave is to compare the total amount of days used in one year. It is clear from this measure that mothers still take most parental leave, although the proportion of total days used by men has been increasing. In 1987, fathers took about seven per cent of total parental leave days that year; in 2005, it has increased to 19.5 per cent, and during 2006 it increased further to 20.6 per cent. The introduction of a father’s quota in 1995 (one month) and its extension in 2002 (to two months) have both led to more fathers taking more leave; the second month had a less dramatic effect than the first.

256 Id. at 14 (concluding that “The mean increase in the use of parental leave by fathers was the result of fathers using about two months of parental leave.”).
Iceland, Finland, and Sweden. In 2000, Iceland introduced legislation to institute a non-transferable period for each parent. It provided three steps to guarantee three months of the non-transferrable period of benefits for each parent and three months of the transferable period for parents to share with each other. Prior to the introduction of a non-transferable period for each parent, Iceland originally provided six months of transferable benefits as the only period of benefits available for childcare. In 2001, Iceland added one month to the six transferable months and guaranteed one non-transferable month for each parent. In 2002, it added one more month to the seven months of the total period and guaranteed two non-transferable months for each parent. In 2003, it finally added one more month to the eight months of the total period and provided three non-transferable months for

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258 Thorgerdur Elinarsdottir & Gyda Margarét Pétursdóttir, Iceland: From Reluctance to Fast-Track Engineering, in THE POLITICS OF PARENTAL LEAVE 159, 160-62 (Sheilar B. Kamerman ed., 2009). This piece emphasizes recent efforts to provide a more gender-balanced parental leave policy in Iceland. In particular, the father quota is one of the measures employed to ensure that fathers engage in the system. It explains the procedure for instituting the father quota and states three steps needed before Iceland achieved, three non-transferable months for each parent.


260 Nabania Datta Gupta, Nina Smith & Mette Verner, Child Care and Parental Leave in the Nordic Countries: A Model to Aspire To?, INSTITUTE FOR THE STUDY OF LABOR 8 (2006), http://ftp.iza.org/dp2014.pdf (last visited Apr. 17, 2014). This paper compares different policy measures and policy outcomes of Nordic parental leave and child care schemes. Although Sweden, Norway and Finland introduced the father quota far earlier than Iceland, they lag behind Iceland with regard to respect for individuality because the proportion of the father quota in Iceland exceeds the proportion in other countries. To provide analysis, this paper explains the recent developments of the father quota in Iceland. The first step to introduce the father quota was to provide a one-month quota for each parent.

261 Id. The second step was to guarantee a two-month quota for each parent.
each parent.262 When Iceland guaranteed one non-transferable month in 2001, the average number of days of benefits claimed by fathers reached 39, which was around one month of the non-transferable period available for each parent.263 As the non-transferable period increased from one month to two months in 2002, the average number of days of benefits claimed by the father increased from 39 to 68, which is around two months of the increased non-transferable period.264 In 2003, the average number of days of benefits claimed by the father finally rose to 97, or around three months of the non-transferable period.265 In 2004, as Iceland no longer extended the non-transferable period, the average number of days claimed by the father remained at 96, which was still around three months of the non-transferable period.266 Mothers consistently claimed around six months of benefits, which were originally available as the transferable period for either parent prior to the introduction of the non-transferable period of each parent, regardless of how many months of benefits were available as a non-transferable period for the mother. So the mother is still the primary beneficiary of the Icelandic system.267 Even when the non-transferable period was limited to two weeks, Finland experienced similar behavioral patterns

262 Id. The final step to consolidate the father quota was to incorporate a three-month quota for each parent.
263 Ingolfur V. Gislason, Parental Leave in Iceland: Bringing the Fathers in Developments in the Wake of New Legislation 2000, THE CENTER FOR GENDER EQUALITY 15 (2007), http://www.jafnretti.is/D10/_Files/parentalleave.pdf (last visited Mar. 29, 2010). The average number of days claimed by men was 39, while the average number of days claimed by women was 186.
264 Id. The average number of days for men was 68, while the average number of days for women was 187.
265 Id. The average number of days for men was 97, while the average number of days for women was 183.
266 Id. The average number of days of benefits for men was 96 days, while the average number of days for women was 182.
267 Id. The average number of days claimed by mothers stayed around 180, which is six months of benefits originally available as a transferable period for either parent.
between mothers and fathers taking advantage of the system. Finland guarantees six months of paid parental leave for either parent.\textsuperscript{268} If fathers take two weeks of it, they receive two additional months of paid leave on top of the common period available for either parent.\textsuperscript{269} In Finland, more fathers took parental leave after the introduction of bonus weeks.\textsuperscript{270} However, the average period claimed by the father decreased after the introduction of the reserved period of two additional months of benefits exclusively for one parent, because fathers tend to take leave limited to the reserved period only. As a result, in Finland, fathers are still taking less of parental leave in comparison with mothers.\textsuperscript{271} Therefore, according to the experience in Iceland and Finland, unless the system guarantees non-transferability for the whole period of the leave system, it will be unable to encourage fathers to take a substantial part of the leave system to take care of their newborn child.


\textsuperscript{269} Patricia M. Evans, *Comparative Perspectives on Changes to Canada’s Paid Parental Leave: Implications for Class and Gender*, 16 INT. J. SOC. WELFARE 119, 125 (2007). This article conducts a comparative study on European countries to figure out the most effective way to realize gender equality without a discriminatory impact on low-income parents. Among the various policy measures taken by European countries, the paper particularly focuses on the reserved period for each parent. The paper notices that countries adopted various forms of the reserved period. It divides the approaches taken by various countries into two categories. One is a system based on the principle of an individual entitlement. The other is a system that guarantees additional benefits in case fathers share parental leave with mothers.

\textsuperscript{270} Anna Pamanen, *More men availing of Family Leave*, EUROFOUND (Sep. 29, 2004), http://www.eurofound.europa.eu/ewco/2004/09/FI0409NU06.htm (stating that “Within one year from 2002 to 2003, the number of fathers taking such leave more than doubled from 1,399 to 3,095. Two thirds of these men also availed of the ‘bonus days’ scheme that was introduced in 2003.”).

In particular, the comparison between the experiences in Iceland and Sweden shows that paternal share of the total period of parental benefits is proportional to the non-transferable period for an individual parent. In 2000, the paternal share of the total period of parental benefits for Iceland was only 3.3%. In 2001, the share reached 11.5% and finally rose to 31.2% in 2007. The paternal share of benefits in Sweden was 20.8% in 2007. The paternal share of benefits in Iceland and Sweden differs by approximately 10%, which can be attributed to the one-month difference between the reserved periods which are additional months of benefits provided only for one parent, mostly for fathers in each system. Therefore, the comparison between the experiences in Sweden and Iceland shows that the paternal share of the total period of parental benefits is proportional to the period of the non-transferable period for an individual parent.

A comparative study of countries with a non-transferable period shows that the German system needs to expand the non-transferable period to guarantee gender equality in reconciling work and childcare. Germany follows the Scandinavian model, because that model aims for gender-balance in reconciling work and childcare. However, the model contains the fundamental problem of a disproportionate

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272 Anita Haataja, *Fathers’ Use of Paternity and Parental Leave in the Nordic Countries*, THE SOCIAL INSURANCE INSTITUTE OF FINLAND 16 (2009), https://helda.helsinki.fi/bitstream/handle/10250/8370/FathersLeaves_Nordic.pdf?sequence=1 (last visited Apr. 17, 2014). This paper conducts a comparative analysis of Nordic countries with regard to men’s share of parental benefits and it concludes that there are variations among the countries which are well-known for a progressive approach towards parental leave and benefits.

273 Id.

274 Id.

allocation of benefits between fathers and mothers in the actual period of benefits claimed by each. The Scandinavian model prescribes only a part of the total period of benefits available for parents as a non-transferable period, so fathers enjoy a limited right to leave and benefits in comparison with mothers who claim the transferable period instead of fathers.276 Therefore, the experiences of Scandinavian countries leave an important lesson for Germany to expand the non-transferable period to achieve gender equality.

Germany now attaches greater importance to gender equality than private parental choices about who takes leave. This paradigm shift started from unification of Western Germany and Eastern Germany.277 Since Eastern Germany considered women’s attachment to the workplace as an important policy goal to achieve, unification negotiations brought about acknowledgement of equal sharing of childcare responsibilities as a value for the unified Germany to achieve.278 The parental leave and benefits reform in 2007—introducing additional months of leave and benefits when both parents participate in the system—is the evidence of the shift from the male-breadwinner family model.279 Therefore, despite long history of upholding private choices of who takes leave, Germany started to consider gender

276 Id. at 15.
277 Daniel Erler, *Taking a Nordic Turn?*, in THE POLITICS OF PARENTAL LEAVE POLICIES: CHILDREN, PARENTING, GENDER AND THE LABOUR MARKET 119, 122 (Sheila B. Kramerman & Peter Moss eds., 2009) analyzing the fundamental impetus of shift from gender discriminatory paradigm to equal sharing of parental leave and benefits system.
278 Id.
279 Birgit Pfau-Effinger & Maike Smidt, *Differences in Women’s Employment Patterns and Family Policies: Eastern and Western Germany*, in WORK AND FAMILY POLICY: INTERNATIONAL AND COMPARATIVE PERSPECTIVES 101, 108 (Stephen Sweet ed., 2012) defining introduction of additional months of leave and benefits when both parents participate in the system as paradigm shift from the traditional family policy in Germany since unification of Eastern and Western Germany.
equality as an important policy goal to achieve in its parental leave and benefits system.

The German system departed from the male-breadwinner model by adopting the wage-dependent system with a father quota, but it still lacked financial support and individuality for gender equality. Traditionally, Germany maintained a flat-rate system and did not guarantee individuality under the conservative coalition government.\textsuperscript{280} After the European Union promulgated the Parental Leave Directive and the Social-Democratic coalition government replaced the conservative government, the German system allowed both parents to take leave simultaneously.\textsuperscript{281} In 2007, Germany finally adopted a wage-dependent system with two additional months of benefits if both parents participate in the system.\textsuperscript{282} The wage-dependent system replaced the flat-rate system so that the system could reflect the actual loss of

\begin{itemize}
  \item Jan Ondrich, C. Katharina Spiess & Qing Yang, \textit{Barefoot and in a German Kitchen: Federal Parental Leave and Benefit Policy and the Return to Work after Childbirth in Germany}, 9 J. POPUL. ECON. 247, 250 (1996) finds maternal delay of return to the workplace after extension of the duration of the parental leave system. It divides the parental leave system into two stages. The first stage ended in 1985 and the second stage starts in 1986. Germany expanded the leave system to fathers in 1986, so this paper divides the period into two stages. Although Germany expanded the system to fathers in 1986, it provided a flat-rate system instead of a wage-dependent system and allowed only one parent to take leave at a time.
  \item Government Publishes Report on Parental Leave, EUROFOUND (Aug. 11, 2004), http://www.eurofound.europa.eu/eiro/2004/08/inbrief/de0408203n.htm (last visited Mar. 30, 2010). This study analyzes the German government’s report on the changes in leave-taking behavior after it allowed both parents to take leave at the same time following the mandate from the Parental Leave Directive. The report finds a slight increase in the number of fathers taking leave for childcare, but mothers are still primarily responsible for childcare.
  \item C. Katharina Spiess & Katharina Wrohlich, \textit{The Parental Leave Benefit Reform in Germany: Costs and Labour Market Outcomes of Moving towards the Scandinavian Model}, INSTITUTE FOR THE STUDY OF LABOR 5 (2006), http://ftp.iza.org/dp2372.pdf (last visited Apr. 17, 2014). This paper evaluates expected costs and effects of the German parental leave reform in 2007. It predicts the increase of female employment and moderate costs to implement the system. The focus is the effect of the wage-dependent system with the father quota. This paper states that the increase of the female labor force participation rate and fertility rate as the two primary policy goals to achieve with the wage-dependent system and the father quota.
\end{itemize}
income for fathers who on average earn more than mothers.\textsuperscript{283} However, a 67% wage-replacement rate lags behind the 80-100% rate of the Scandinavian countries, which attracted more than 80% of eligible fathers to participate in the system.\textsuperscript{284} The father quota recognized individuality for the first time in the history of the German parental benefits system.\textsuperscript{285} Nevertheless, because the German system still leaves a substantial part of the benefits as transferable from one parent to the other, it lacks consideration for individuality to realize gender equality in reconciling work and childcare.\textsuperscript{286} Therefore, despite departing from the male-breadwinner model, the German system still needs to expand financial support and individuality in order to achieve gender equality.

\textsuperscript{283} OECD, OECD EMPLOYMENT OUTLOOK 1995 180 (1995). This is the first OECD report detailing parental leave arrangements. It introduces that the majority of countries retained a flat-rated system instead of a wage-dependent system in 1995. It also addresses that countries started to lower the wage-replacement rate even when they introduced the wage-dependent system instead of the flat-rated system, partly due to the economic recession. However, in 2001, the OECD considers the wage-dependent system as the standard payment mode to increase paternal usage of leave entitlements. See OECD, OECD EMPLOYMENT OUTLOOK 2001 145 (2001).

\textsuperscript{284} Rebecca Ray, Janet C. Gornick & John Schmitt, Parental Leave Policies in 21 Countries: Assessing Generosity and Gender Equality, CENTER FOR ECONOMIC AND POLICY RESEARCH 19 (2009), http://www.cepr.net/index.php/publications/reports/plp/ (last visited Apr. 17, 2014) analyzing the parental leave systems in 21 high-income countries. It states that the Scandinavian countries achieved gender-balanced policy measures for reconciling work and childcare and provided 80-100% as the wage-replacement rate.

\textsuperscript{285} John Ekberg, Rickard Eriksson & Guido Friebel, Parental Leave – A Policy Evaluation of the Swedish “Daddy-Month” Reform, INSTITUTE FOR THE STUDY OF LABOR 3 (2005), http://ftp.iza.org/dp1617.pdf (last visited Apr. 17, 2014) This paper finds the increase of paternal usage of leave entitlements after introducing the father quota but finds no difference in maternal share of the total period of benefits available for both parents. The father quota failed to change gender division in work and childcare, substantively, so this paper signifies more progressive approaches towards gender equality in reconciling work and childcare.

\textsuperscript{286} Ann-Zofie Duvander, Tommy Ferrarini & Sara Thalberg, Swedish Parental Leave and Gender Equality: Achievements and Reform Challenges in a European Perspective, INSTITUTE FOR FUTURES STUDIES 22 (2005), http://www.iffs.se/wp-content/uploads/2011/01/200512011349566iU8YILRaaC7u4FV7gUmy.pdf (last visited Apr. 17, 2014) analyzes the current status of the Swedish system and provides proposals to enhance individuality of the right to leave and benefits. With regard to the father quota, this paper states that non-transferability is difficult to institute but it is essential for gender equality in the distribution of the total period of benefits between the father and the mother.
b. The Japanese System

Since the introduction of the parental leave system in 1991, Japan has not considered financial support and individuality as important policy measures to ensure equal opportunities for men and women to participate in the system. The first parental leave system in 1991 allowed parents to take leave until the child reached one year.287 Regarding financial support, it prescribed the system as unpaid leave.288 Furthermore, it allowed employers to refuse to grant leave for childcare when the spouse of the employee is “ordinarily” available for childcare.289 The enforcement regulation recognizes two exceptional cases as situations when the spouse is “ordinarily” available for childcare. The first case is when the spouse is unemployed.290 Consequently, the 1991 system practically excludes breadwinners...

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287 Michiko Aizawa, An International Perspective: A Proposal to Combine Disparate Approaches to the Maternal Wall, 7 EMPLOYEE RTS. & EMP. POL’Y J. 495, 510 (2003). This article conducts a comparative study on the Japanese and American system on gender discrimination cases in reconciling work and childcare. To conduct the comparative study, this paper provides the historical development of the parental leave system in Japan. It states that “Under the Childcare Leave Law of 1991, workers who are raising their own biological or adopted child and who live in the same household as that child, can request the employer grant childcare leave until the child turns one year old.

288 Kristina T. Geraghty, Note, Taming the Paper Tiger: A Comparative Approach to Reforming Japanese Gender Equality Laws, 41 CORNELL INT’L L. J. 503,514-15 (2008). This note conducts a comparative study on the Japanese and Norwegian systems for gender discrimination cases. As background information, this paper provides a legislative history of gender equality legislation. It introduces the first parental leave system and describes an unpaid leave system, which is merely the starting point for providing measures to reconcile work and childcare in Japan.

289 Michiko Aizawa, An International Perspective: A Proposal to Combine Disparate Approaches to the Maternal Wall, 7 EMPLOYEE RTS. & EMP. POL’Y J. 495, 510 (2003). In addition to this exceptional case, there are several other cases legitimately recognized as cases when employers may refuse to grant leave to employees. First, “when the employer concludes a written agreement with a union which organizes the majority of workers at the establishment or, if such a union does not exist, with a worker who represents the majority of workers.” Second, if the worker has worked for less than one year for the employer, the employer is entitled to determine whether to grant leave or not.

of single-earner families from the benefits available under the parental leave system.

As a male-breadwinner country, the limitation prevents fathers from taking advantage of the system. The second case is when the spouse of the employee is employed but already on leave in any form. In this case, the Japanese system does not allow parents of dual-earner families to take leave at the same time. Furthermore, because the system mandates one parent to take the whole period of leave, it significantly reduces the chances of paternal engagement. Therefore, when Japan introduced its parental leave system for the first time in 1991, it failed to recognize fathers as the primary caregivers of the newborn child, because it did not guarantee financial support and individuality for the leave system.

In 1994, Japan once again failed to achieve gender equality in reconciling work and childcare because while it introduced the paid leave system for the first time,


291 Statistical Handbook of Japan: Chapter 12 Labor, STATISTICS BUREAU, http://www.stat.go.jp/english/data/handbook/c12cont.htm, (last visited Jan. 13, 2010) (The Statistics Bureau provides the 2008 labor force participation rate (rate of the labor force to the population aged 15 years and over) instead. The overall rate was 60.2%, while the rate for men was 72.8% and the rate for women was 48.4%); Mari Osawa, The Vicious Circle of the “Male Breadwinner” Model of Livelihood Security, 16 WOMEN’S ASIA 21: VOICES FROM JAPAN 1, 5 (2006). This study reports that Japan has established its social security system to support a male-breadwinner model, but it failed to secure the stability of families due to a lack of consideration for gender equality. Men and women are equal members of a family, so gender equality should have been the basis of the system, but Japan failed to do so.


it maintained limitations on individuality. When Japan introduced the paid leave system, it adopted a wage-dependent system instead of a flat-rate system.\footnote{Michiko Aizawa, An International Perspective: A Proposal to Combine Disparate Approaches to the Maternal Wall, 7 EMPLOYEE RTS. & EMP. POL’Y J. 495, 510 (2003). This article compares the Japanese and American approaches towards gender discrimination in reconciling work and childcare. To explain the legislative background of the Japanese system, this paper reviews the legislative history of the Japanese system. The first revision occurred in 1994, which introduced financial support for parental leave for the first time in its history. However, it maintained limitations on the individuality of the right to leave.} In this respect, the Japanese system was far more progressive than the German system, because Germany adopted a flat-rate system instead of a wage-dependent system when it expanded its original system, previously limited to working mothers, to fathers in 1986.\footnote{Jan Ondrich, C. Katharina Spieß, Qing Yang & Gert G. Wagner, The Liberalization of Maternity Leave Policy and the Return to Work after Childbirth in Germany, 1 REV. ECON. HOUSEHOLD 77, 80 (2003). This piece finds a positive effect on female employment after childbirth and childcare after Germany expanded the system to fathers and extended the total period of the leave system. It starts by analyzing the system prior to the 1986 reform and expands its analysis to the 1986 system. The most significant change in 1986 is the expansion of benefits from mothers to fathers.} However, the 1994 reform failed to effectuate the wage-dependent system as an incentivizing mechanism for fathers to take leave for childcare, because it still allowed employers to refuse to grant leave to employees when their spouses were “ordinarily” available for childcare.\footnote{In 2007, women in Japan earned 66.9\% of what men in Japan earned in 2007. Databook of International Labour Statistics 2009, THE JAPANESE INSTITUTE FOR LABOUR POLICY AND TRAINING 181 (2009), http://www.jil.go.jp/kokunai/statistics/databook/2009/05/p181_t5-10_t5-11.pdf (last visited Jan. 18, 2010).} The 1994 reform still targeted working mothers as the primary caregivers for a newborn child instead of their spouses.\footnote{European Industrial Relations Dictionary: Parental Leave, EUROFOUND, http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/PARENTALLEAVE.htm (last visited Jan. 18, 2010). This page on the website of the Eurofound (a tripartite EU agency providing expertise on living and working conditions, industrial relations and managing change in Europe) explains the background of the Parental Leave Directive in 1996. It states that the Directive originally guaranteed individuality of the right to leave and even strengthens the non-transferability of the right to leave by increasing the minimum period for a non-transferable right to leave from three months to four months in 2009. In contrast with the Japanese system, the European system emphasizes...}

Consequently, despite the 1994 reform, the proportion of...
eligible fathers taking leave for childcare remained at less than 2%. Therefore, the 1994 system was another failure for gender equality in reconciling work and childcare.

In 2001, Japan failed to reform the system to be accessible to fathers as it failed in 1994, because it maintained limitations on individuality. The 2001 reform aimed to increase paternal usage of leave entitlements in light of the continuously declining birthrate. It increased the wage-replacement rate from 25% to 40% so that more fathers could take advantage of the system. However, Japan fundamentally lacked consideration for gender equality because it consistently allowed employers to refuse to grant leave to employees when the spouses of the employees are “ordinarily” available for childcare. In other words, employers could refuse to grant leave when the spouses of the employees took leave for a child or did not participate in the labor market. Japan presumed that mothers should take leave instead of fathers or should not participate in the labor market while their spouses participate in the labor market upon childbirth. As a result, the reform in 2001 was not enough to provide equal opportunities for men and women to take part in the system, despite an increase in the wage-replacement rate. According to a survey on Japanese paternal desire

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the individuality of the right to leave as an important element to guarantee gender balance in reconciling work and childcare.

299 Jeff Kingston, Japan’s Quiet Transformation: Social Change and Civil Society in the 21st Century 282 (2004). Japanese society started to depart from traditional gender role stereotyping, but it was too slow to accept fathers’ engagement in childcare as a natural phenomenon.


301 Leonard Schoppa, Japan’s Declining Population: The Perspective of Japanese Women on the “Problem” and “Solutions,” UNIVERSITY OF VIRGINIA 4 (July 2008), http://people.virginia.edu/~ljs2k/wilson08.pdf (last visited Apr. 17, 2014). This report states that each stage of policy responses to the declining birthrate had a negative impact on gender equality because
to take leave for childcare, approximately 30% of the respondents expressed a positive attitude towards taking leave for childcare. \(^{302}\) Nevertheless, in practice, only 1.56% of the eligible fathers took leave while more than 70% of working women quit their job upon childbirth. \(^{303}\) If the leave system was practically accessible to fathers, there would not have been such a large gap between paternal desire to take leave and actual leave-taking behavior. \(^{304}\) Unless the system relieves limitations on individuality, paternal usage will remain as marginal as it originally has been, despite the increase in the wage-replacement rate from 25% to 40%. \(^{305}\)

Apart from the internal problems of the parental leave system, the workplace environment is still hostile towards paternal usage of leave entitlements. \(^{306}\)

However, unless the system lifts legislative barriers for paternal usage of leave

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\(^{304}\) Anne E. Imamura, The Japanese Family Faces 21st-Century Challenges, JAPAN DIGEST (Sep. 2004), http://iis-db.stanford.edu/docs/123/family.pdf (last visited Feb. 25, 2010). This study analyzes current challenges that Japan faces with regard to their families. Lack of paternal engagement in childcare is one of the problems the Japanese government tries to solve but this report states that the parental leave system is not enough to support paternal usage of leave entitlements. This report states that the Japanese government introduced a new policy called “Plus One Proposal to End the Low Birthrate.” It targets to increase maternal leave takers to 80% and paternal takers to 10%.

\(^{305}\) The wage-replacement is not enough to guarantee equal opportunities for men and women to take parental leave. Even if Japan presumed that the increased of the wage-replacement rate could attract more men to take leave, it fundamentally failed to eliminate limitations on individuality of the right to leave and receive benefits.

entitlements, it fundamentally prohibits fathers from taking leave, even before they face the practical difficulties of social and cultural bias towards their leave-taking behavior. Therefore, the reform in 2001 was another failure to increase paternal usage, despite the increased wage-replacement rate, because it ignored the importance of individuality.

In 2007, Japan increased the wage-replacement rate from 40% to 50% by increasing resumption benefits.\textsuperscript{307} When Japan introduced 25% as the wage-replacement rate, it provided 20% while taking leave and 5% after returning to the workplace.\textsuperscript{308} When it increased the wage-replacement rate from 25% to 40%, it provided 30% while taking leave and 10% after returning to the workplace.\textsuperscript{309} In 2007, it did not increase the rate for leave itself but increased the resumption benefits.

In 2010, Japan changed the system and finally followed in the footsteps of the German system to recognize individuality. With regard to the right to leave, Japan abolished a provision allowing employers to refuse to grant leave to employees on the basis of the status of their spouses.\textsuperscript{310} Prior to the 2010 reform, employers could refuse to grant leave to employees if the spouses of the employees are

\textsuperscript{308} Id.
\textsuperscript{309} Id.
\textsuperscript{310} Id. The Japanese government focused on expanding financial support and individuality of the right to leave and benefits. It abolished an employer’s discretion to refuse to grant leave when the spouse of an employee is “ordinarily” available for childcare. Furthermore, it provided two additional months of leave and benefits when both parents participate in the system. These changes are similar to the German system which recognized financial support and individuality of the right to leave and benefits as core elements of its system.
“ordinarily” available for childcare.311 For example, when the employee’s spouse is a full-time housewife, the employer could refuse to grant leave to employees. The reverse situation could hold if a mother worked full-time while a father stayed at home to be in charge of housework and childrearing. However, because, in most cases, a single-earner Japanese family consists of a male-breadwinner and a female-caregiver, the limitation primarily targeted male-breadwinner families and ultimately prohibits male-breadwinners from taking advantage of the system.312 Second, when the spouse is on leave in any form from the workplace, the employer might refuse to grant leave to employees. This particular limitation contrasts with the current situation in Germany, because Germany finally allowed both parents to take leave at the same time following the mandate from the Parental Leave Directive of the European Union.313 Therefore, prior to the 2010 Japanese parental leave benefits reform, Japan lagged behind Germany in respect to individuality.

Furthermore, with regard to the right to benefits, Japan introduced two additional months of leave and benefits when both parents participated in the

311 Kristina T. Geraghty, Note, Taming the Paper Tiger: A Comparative Approach to Reforming Japanese Gender Equality Laws, 41 CORNELL INT’L L.J. 503, 514 (2008). This note introduces gender equality laws in Japan. It explains the nature of the parental leave system in Japan since 1995. From the beginning, Japan considered women as the primary caregivers while leaving men as secondary to their spouses. As a result, employers enjoyed the discretion to refuse to grant leave when their spouses are full-time housewives or on leave in any forms from the workplace.

312 Heidi Gottfried & Jacqueline O’Reilly, Reregulating Breadwinner Models in Socially Conservative Welfare Systems: Comparing Germany and Japan, 29 SOC. POL. 36 (2002). This article finds that Germany and Japan took different routes in their departure from the male-breadwinner model. In Japan, only 17% of mothers work full-time. As a result, most single-earner families are male-breadwinner families.

system. Prior to the reform, Japan guaranteed twelve months of leave and benefits for only one parent. It mandated only one parent to take the whole period of leave, so it practically excluded fathers from the system. To solve such an inherent obstacle for fathers to take part in the system, Japan followed the 2007 German reform, which guaranteed additional benefits for paternal usage of leave entitlements. Germany adopted two additional months of leave and benefits in 2007 and succeeded in increasing paternal usage of leave entitlements. On the basis of the success of the German reform, Japan finally acknowledged the importance of financial incentives for fathers to take part in the system.

Although the 2010 reform succeeded in partially recognizing individuality, the current Japanese system is not enough to guarantee gender equality in reconciling work and childcare. The 2010 reform maintained 50% as the wage-replacement rate and guaranteed two additional months of benefits when both parents participate in the system. Nonetheless, the current Japanese system lags behind the German system.

314 Introduction to the Revised Child Care and Family Care Leave Law, MINISTRY OF HEALTH, LABOUR AND WELFARE, http://www.mhlw.go.jp/english/policy/affairs/dl/05.pdf (last visited Apr. 16, 2010). Japan reports that it introduces two additional months of leave and benefits because it was trying to increase paternal usage of leave entitlements.

315 Rebecca Ray, Janet C. Gornick & John Schmitt, Parental Leave Policies in 21 Countries: Assessing Generosity and Gender Equality, CENTER FOR ECONOMIC AND POLICY RESEARCH 16 (2009), http://www.cepr.net/documents/publications/parental_2008_09.pdf (last visited Apr. 16, 2010). This paper evaluates parental leave policies in 21 developed countries, including Japan. This paper states that Japan lags behind other countries because it mandates only one parent to take the whole period of leave.

316 C. Katharina Spiess & Katharina Wrohlich, The Parental Leave Benefit Reform in Germany: Costs and Labour Market Outcomes of Moving towards the Scandinavian Model, INSTITUTE FOR THE STUDY OF LABOR 4 (2006). This research predicts the policy outcomes and costs of the 2007 parental leave benefit reform. The 2007 reform adopted a wage-dependent system and two additional months of leave and benefits when both parents participate in the system.

which provides 67% as the wage-replacement rate. Japan would do better if it increased the wage-replacement rate to the level of the Swedish system, which guarantees 80% as the wage-replacement rate. Japan aims to provide a wage-replacement system, because it already recognizes the effectiveness of the wage-replacement system in attracting more fathers to take part in the system. To attract more fathers to take part in the system in Japan, increasing the wage-replacement rate is one of the foremost preconditions, according to the experience in Sweden. With regard to individuality, Japan maintains twelve months of leave and benefits as transferable from one parent to the other. Furthermore, it guarantees two months of leave and benefits as an exclusive period for one parent, but it does not provide a corresponding period for the other parent. Like the German system, Japan provides a non-transferable period of leave and benefits for only one parent. In the case of Scandinavian countries, either parent is entitled to a non-transferable period, regardless of gender. In particular, Iceland guarantees three months of leave and

321 Heidi Gottfried & Jacqueline O’Reilly, Reregulating Breadwinner Models in Socially Conservative Welfare Systems: Comparing Germany and Japan, 9 SOC. POL. 30, 42 (2002) finds different policy measures that Germany and Japan adopted to depart from the male-breadwinner model. Japan perceived women’s dependency on the labor market as the primary obstacle to increase the fertility rate, so it targeted women as the primary beneficiaries of the parental leave system. Since the average fertility rate of working mothers amounts to only 0.60, while housewives maintain 2.96 as the corresponding figure, Japan considers women’s role as workers as an obstacle to increasing the fertility rate.
benefits for each parent on the basis of the principle of non-transferability, while leaving only three months as a transferable period.\textsuperscript{322} After reform directed towards individuality, Iceland succeeded in attracting more fathers to participate in the system.\textsuperscript{323} Therefore, despite the 2010 reform, Japan still has to focus on financial support and individuality for gender equality in reconciling work and childcare.

c. Lessons from Germany and Japan

Based on the comparison between the German and Japanese systems, Korea’s parental leave system should focus on the expansion of financial support and individuality for gender equality in reconciling work and childcare. When Korea and Japan introduced a parental leave system for the first time, they did not provide any financial support.\textsuperscript{324} As a result, Korea was on an equal footing with Japan at the beginning of their respective parental leave systems. Furthermore, when they adopted the paid leave system, they both agreed that a declining birthrate made financial support necessary for the success of a policy for reconciling work and childcare.


\textsuperscript{323} \textit{Id.} at 15. Men’s application increased from 82.4\% in 2001 to 89.8\% in 2004 and the average number of days for men increased from 39 to 96 between 2001 and 2004. The exclusive period for an individual parent increased from one month in 2001 to three months in 2004, so the number of fathers and days for them gradually increased between 2001 and 2004.

\textsuperscript{324} Kunio Urakawa, \textit{Comparative Study of Declining Birthrate Problems and Social Security Policies between Korea and Japan}, \textsc{Research Center for Korean Studies at Kyushu University} (Oct. 21, 2009), http://rcks.isc.kyushu-u.ac.jp/jp/uploads/photos/116.pdf (last visited Feb. 19, 2010) compares the demographic problems and policy responses in Japan and Korea. This study emphasizes the important role of financial subsidies to support working parents to raise their children. It states that Japan and Korea lag behind other OECD countries with regard to their social expenditure in cash benefits or service, which includes parental benefits.
However, they took different approaches towards how to provide financial support during leave for childcare: Korea provided a flat-rate system while Japan guaranteed a wage-dependent system. Despite the difference in the mode of payment, they have continuously experienced that less than 2% of eligible fathers take advantage of the system. Consequently, regardless of the mode of payment, Japan and Korea have failed to attract fathers to participate in the system. In contrast, Germany succeeded in attracting more fathers to participate in the system by introducing a wage-dependent system. Just as in Japan and Korea, in Germany, 

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325 Reconciling Work and Family Life – A Synthesis of Findings for OECD countries, OECD 2 (Nov. 29, 2007), http://www.oecd.org/dataoecd/18/27/39689983.pdf (last visited Feb. 19, 2010). This report surveys different patterns of national policy in reconciling work and childcare. It emphasizes the role of concerns regarding the declining fertility rate in Japan and Korea as a major impetus to provide systems to support working parents. As a consequence, mainly as solution for demographic problems, Japan and Korea introduced the paid parental leave system.

326 For detailed information about the development of the Korean system, please refer to Chapter III.B.1. (Korea introduced the parental leave system in 1987 but was guaranteed payment since 2001); and Yun-Suk Lee & Eun-Ki Soo, Attitudes toward Married Women’s Employment in Korea and Japan: Implications from Latent Class Analyses, 34 DEVELOPMENT & SOC. 125, 141-43 (2005), http://sociology.snu.ac.kr/isdr/publication/journal/34-1/005_Lee%20Yun-Suk(3EB%8B%EC%8B%9C).pdf (last visited Feb. 19, 2010). This article compares different attitudes towards married women’s employment in Korea and Japan. Although Asian countries seem to be similar with regard to gender role stereotyping because they share common historical and cultural background of Confucianism. However, this paper finds that Japanese society is more open to maternal employment than Korean society. The Japanese system is more generous with support for working parents, so Japanese society is more gender-balanced with regard to policy to reconcile work and childcare. In the same sense, the wage-dependent system in Japan deserves appreciation in comparison with the flat-rate system in Korea.


328 Parental Allowance Still Very Popular with Fathers, FEDERAL STATISTICAL OFFICE OF GERMANY (Feb. 29, 2008), http://www.destatis.de/jetspeed/portal/cms/Sites/destatis/Internet/EN/press/pr/2008/02/PE08_087_2922.psml (last visited Apr. 10, 2010). During the fourth quarter of 2007, about 23,000 out of 184,500 applicants were fathers. As a result, fathers accounted for 12.5% of the overall applicants. During the entire year of 2007, 10.5% of applicants were fathers, which is quite in contrast with 3.3% of fathers during the entire year of 2006.
prior to the reform in 2007, less than 2% of eligible fathers took part in the system.\footnote{PF8: Use of Childbirth-Related Leave by Mothers and Fathers, OECD FAMILY DATABASE 3, http://www.oecd.org/dataoecd/53/57/41927348.pdf (last visited Feb. 19, 2010). This report compares the ratio of men to women who take parental leave in OECD member countries. It emphasizes that Germany maintained 2% as the ratio of men to women taking leave for childcare prior to the 2007 reform.} If a wage-dependent system alone could have attracted more fathers to participate in the system, Japan should have been able to increase paternal usage of leave entitlements when it introduced a wage-dependent system to replace its flat-rate system. The primary difference between the German and Japanese systems was with regards to whether the system recognized individuality.\footnote{Purvi Patel, Note, Valuing Care in a Liberal Society: A Rights-Based Analysis, 9 GEO. J. GENDER & L. 427, 446 (2008). This note criticizes the current family leave system in the United States because it lacks consideration for financial support. It stipulates that the equal treatment approach obstructs the U.S. from adopting a paid leave system. However, because financial support promotes individuality in the right to leave, this paper proposes a paid leave system based on the importance of individuality in the right to leave. This paper emphasizes the close relationship between financial support and individuality. However, according to the experience in Japan and Germany, systems may improve financial support and individuality in the right to leave and benefits independently.} Germany allowed both parents to take leave at the same time\footnote{Report from the Commission on the Implementation of Council Directive 96/34/EC of 3rd June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC, EUROPEAN UNION (Nov. 2002), http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&type_doc=COMfinal&an_doc=2003&nu_doc=358&lg=en (last visited Feb. 19, 2010) (The European Union promulgated the first Parental Leave Directive in 1996 and mandated its member states to guarantee three months of unpaid leave on the basis of the principle of non-transferability. In 2010, it extended the period to four months. In response to the mandate from the first Parental Leave Directive, Germany allowed both parents to take leave to guarantee the non-transferability in the right to leave. See Council Directive 2010/18 , Clause 2(2), 2010 O.J. (L 68) 13, 18 (EU).} and guaranteed two months of additional benefits as a non-transferable period aimed particularly at fathers.\footnote{The 2007 parental leave reform brought about the father quota for the first time in Germany, following the Scandinavian model (particularly, the Swedish model). For more detailed information and analysis on the father quota in Germany, refer to Chapter III.B.2.a.} By contrast, the Japanese system allowed employers to refuse to grant leave if the spouse of the employee is “ordinarily” available for childcare.\footnote{Japan grants full discretion to employers to refuse requests to take parental leave in two cases. First, when the employee worked less than one year for the employer. Second, if the employee’s spouse is}
mandated only one parent could take advantage of the system and did not guarantee any period of benefits exclusive to fathers.\(^{334}\) As a result, the Japanese system as a practical matter excluded fathers from the system. Recognizing the problems of its parental leave system, Japan finally followed the German approach by lifting barriers preventing paternal usage of leave entitlements.\(^{335}\) Recently, Japan has eased its resistance towards recognizing individuality.\(^{336}\) In 2010, it abolished a provision allowing employers to refuse to grant leave when the spouse of the employee is “ordinarily” available for childcare. With regard to a father quota, even prior to 2010, Japanese society was well aware of the success stories of Scandinavian countries. But the Japanese government did not implement the father quota on the grounds that profound gender bias would not allow fathers to take advantage of the

\(^{334}\) Yumi Wijers-Hasegawa, Dads Take Child-Care Leave at Own Risk: Revision to Law Enabling Time Off Unlikely to Make Up for Stigma, The Japan Times (Jan. 4, 2002), http://search.japantimes.co.jp/print/nn20020104a6.html (last visited Feb. 19, 2010) (This article reports that Japanese fathers have difficulties in taking leave for childcare. It compares the Japanese parental leave system with the Swedish system and emphasizes the role of the father quota in granting equal opportunities for men and women to take part in the system in practice.); For detailed information and analysis on failures to adopt the father quota in Japan, refer to Chapter III.B.2.b.

\(^{335}\) Introduction to the Revised Child Care and Family Care Leave Law, MINISTRY OF HEALTH, LABOUR AND WELFARE, http://www.mhlw.go.jp/english/policy/affairs/dl/05.pdf (last visited Apr. 12, 2010). The Japanese government abolished limitations on individuality in two respects. First, it no longer allows employers to determine eligibility for taking leave on the basis of whether or not the spouse of the employees is available for childcare. Second, it provides two additional months of leave and benefits when both parents have participated in the system.

\(^{336}\) Leonard Schoppa, Exit, Voice, and Family Policy in Japan: Limited Changes Despite Broad Recognition of the Declining Fertility Rate, 20 J. Eur. Soc. Pol. 422, 422-23 (2010). This article finds that due to the lack of active participation by Japanese women, Japan failed to realize gender equality in the process of reforming its policy measures for reconciling work and childcare. Recently, when Japan had a general election in 2009, neither conservative nor liberal parties considered gender equality as the foremost policy goal to achieve. Instead, both parties emphasized child allowances, which are based on the number of children, instead of the employment status of parents. This article emphasizes the role of women’s activities in the political process as an important factor determining the larger picture of policy measures in each country.
system, even if the system recognized individuality. However, Japan finally adopted a father quota by providing two additional months of leave and benefits when both parents participate in the system. Likewise, Japan finally acknowledged the importance of individuality for the parental leave system. Finally, paternal usage of the system in Japan reached 2.63% in 2011 when Japan introduced additional months of leave and benefits when both parents take part in the system. These changes in Germany and Japan create an important message for Korea in how to focus on expanding financial support and individuality.

The lessons from Germany and Japan are particularly important for Korea in respect of demographic problems. When Germany and Japan faced demographic problems, they concentrated on support for male-breadwinner families instead of dual-earner families. Germany maintained the flat-rate system as the payment

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337 Annette Schad-Seifert, Coping with Low Fertility? Japan’s Government Measures for a Gender Equal Society?, GERMAN INSTITUTE FOR JAPANESE STUDIES 16-17 (2006), http://www.dijtokyo.org/publications/WP0604-%20Schad.pdf (last visited Apr. 13, 2010). This paper finds that a majority of young men in Japan cannot take leave from the workplace due to a huge burden as calculated by working hours. It states that employees working more than 60 hours a week increased from 19% in 1994 to 23% in 2004.

338 Introduction to the Revised Child Care and Family Care Leave Law, MINISTRY OF HEALTH, LABOUR AND WELFARE, http://www.mhlw.go.jp/english/policy/affairs/dl/05.pdf (last visited Apr. 13, 2010). The Japanese government reports the recent changes in the Japanese system which prohibits employers’ discretion to refuse to grant leave on the basis of status of the spouse of the employees and provides two additional months of leave and benefits when both parents participate in the system. In addition, the reform finally raised wage-replacement from 40% to 50%, adding 10% of previous earnings after returning to the workplace.


340 Heidi Gottfried & Jacqueline O’Reilly, Reregulating Breadwinner Models in Socially Conservative Welfare Systems: Comparing Germany and Japan, 9 SOC. POL. 29, 36 (2002) (This paper finds that Germany and Japan adopted different ways to depart from the male-breadwinner model. Despite all these efforts, this paper emphasizes the prolonged history of the male-breadwinner system. As a result, the demographic problems pushed Germany and Japan to emphasize policy measures to ensure that male-breadwinner families have no difficulties in raising their children. It led to ignorance of women’s
mode for the parental benefits system, and Japan restricted individuality under the parental leave and benefits system. By contrast, Scandinavian countries provided policy measures to support dual-earner families when they suffered from a declining birthrate. They guaranteed a relatively high wage-replacement rate in comparison with the German and Japanese systems. Furthermore, they introduced a father quota for the first time. Scandinavian systems are not perfectly fit for gender equality, because they still maintain a substantial period of benefits as transferable from one parent to the other. However, their relatively more progressive measures are a model for countries which previously used the male-breadwinner model to increase the birthrate to increase the female employment rate in order to deal with a declining birthrate and labor shortages in the future. Korea itself suffers from the lowest total fertility rate across the OECD and focuses on demographic policy measures to increase the fertility rate. Korea provides policy measures for male-

341 Taro Miyamoto, After the Male-Employment Oriented Regime: Dilemmas in Japanese Welfare Reform 3 (2008) (comparing Japanese and Swedish labor and welfare policy in the era of declining birthrate and emphasizing support of male-breadwinner families in Japan and the dual-earner families in Sweden); Id. at 9 (stating that Germany is between Japan and Sweden with regard to adherence to the male-breadwinner families in the era of declining birthrate); and Marianne Sundstrom, The Growth in Full-Time Work among Swedish Women in the 1980s, 36 ACTA SOC. 139, 139 (1993). This study emphasizes the increase of full-time work among Swedish women during the 1980s. As background information, this study provides an increase in maternal employment during the 1970s as the starting point of the increase in full-time work among Swedish women. It emphasizes public policy measures such as the introduction of paid parental leave, expansion of public childcare facilities and tax benefits for dual-earner families.

breadwinner families instead of dual-earner families, so it follows in the footsteps of Germany and Japan instead of following the Scandinavian countries. The Korean legal system is based on the German and Japanese systems, so it refers to the German and Japanese approaches instead of the Scandinavian model. Furthermore, because Germany, Japan and Korea have traditionally maintained a conservative welfare regime, Korea refers to the German and Japanese systems instead of the Scandinavian system. As a result, Korea failed to expand financial support and individuality for its parental leave system. However, Germany and Japan finally departed from a male-breadwinner system on the basis of experiences in other

The Minister for Health and Welfare in Korea emphasizes the declining birthrate in Korea hitting a record low of 1.17 in 2002. The Minister emphasizes child allowance and childcare facilities as measures to increase the fertility rate without emphasizing parental leave reform for gender equality. Ito Peng, *The Political and Social Economy of Care: Republic of Korea Research Report 3*, UNITED NATIONAL RESEARCH INSTITUTE FOR SOCIAL DEVELOPMENT 34 (2009), http://www.unrisd.org/unrisd/website/document.nsf/d2a23ad2d50cb2a280256eb300385855/1ef2ae4f5e388259e125756100541f68/$FILE/RoKRR3.pdf (last visited Apr. 7, 2010). This report analyzes Korean policy to reconcile work and childcare. It focuses on public childcare facilities to support working parents. However, it finds that Korea failed to publicize childcare facilities and stresses the importance of other policy measures, such as leave schemes, as necessary for gender equality in reconciling work and childcare.

Danielle Venn, *Legislation, Collective Bargaining and Enforcement: Updating the OECD Employment Protection Indicators*, OECD, http://www.oecd.org/dataoecd/36/9/43116624.pdf, (last visited Apr. 19, 2010). This article compares legislation, collective bargaining and enforcement across the OECD. It finds differences on the basis of legal regimes. Whether a country maintains civil law tradition or common law determines the direction of the system. Among civil law countries, some countries follow the French model, while some follow the German model. This paper finds that Korea and Japan follow the German model.

Huck-Ju Kwon, *Beyond European Welfare Regimes: Comparative Perspectives on East Asian Welfare Systems*, 26 J. SOC. POL. 467, 478-79 (1997). This article finds some differences between West and East Asian countries with regard to welfare regimes. Korea and Japan are considered to be conservative welfare countries because they rely on compulsory insurance policies, families and maintain the status quo rather than changing current social stratification. Despite some differences between Western and Eastern countries, Korea and Japan mainly follow core aspects of conservative welfare countries. Therefore, Korea refers to German and Japanese legislation for the parental leave system as conservative welfare countries.

countries which provided a more gender-balanced parental leave system and succeeded in increasing the fertility rate.\(^{347}\) In practice, Germany succeeded in increasing the fertility rate after introducing a wage-dependent system and an additional two months of benefits for the use of paternal leave.\(^{348}\) Therefore, to solve demographic problems, Korea needs to adopt a gender-equal parental leave system.

Furthermore, according to the experiences in Germany and Japan, parental leave reform for gender equality in Korea is politically feasible, because the political ideology of the ruling party no longer plays an important role in revising legislation for gender equality in reconciling work and childcare. Germany continuously failed to expand financial support and individuality under its center-right government.\(^{349}\)

\(^{347}\) Tomas Kögel, *An Explanation of the Positive Correlation between Fertility and Female Employment Across Western European Countries*, SOCIAL SCIENCE RESEARCH NETWORK 4 (June 2, 2006), http://ssrn.com/abstract=995206 (last visited Mar. 3, 2010) (providing comparative analysis across Western European countries and emphasizing that policy measures promoting gender equality in reconciling work and childcare are important preconditions to increasing the fertility rate); and José María Da Rocha & Luisa Fuster, *Why Are Fertility Rates and Female Employment Ratios Positively Correlated across O.E.C.D. Countries?* UNIVERSITY OF TORONTO 4 (2005), http://www.chass.utoronto.ca/~lfuster/research/paperrevi.pdf (last visited Mar. 17, 2010) (finding a positive correlation between female employment rate and fertility rate across OECD emphasizing parental leave policy for gender equality as one of the measures to increase the female labor force participation rate and fertility rate at the same time).


\(^{349}\) Kimberly J. Morgan & Kathrin Zippel, *Paid to Care: The Origins and Effects of Care Leave Policies in Western Europe*, 10 SOC. POL. 49, 56 (2003). This article reports that right or center-right governments in Western European countries introduced a parental leave system originally targeting mothers as primary caregivers. Germany also introduced a system under the rule of a center-right
However, in 2007, the coalition government of the social-democratic and center-right parties compromised with each other and introduced a wage-dependent system and two additional months of benefits for paternal leave entitlements. Because center-right parties also recognized overwhelming demographic concerns, they finally acknowledged expanding financial support and individuality. The situation in Japan is similar to that of Germany. In Japan, the conservative ruling party has been hesitant to expand financial support for leave and individuality. However, in 2010, the conservative ruling party unanimously passed legislation to expand financial support and individuality. The conservative ruling party recognized an urgent call to revise legislation to solve a problem of a declining birthrate, so it shifted from its government, so it allowed only one parent to take leave at a time and maintained a flat-rated system instead of a wage-dependent system.

350 Angelika von Wahl, Continuing or Reversing Reform? German Family Policy under the Merkel Government, SOCIAL SCIENCE RESEARCH NETWORK (2010), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1580320## (last visited Apr. 16, 2010). This paper finds that the grand-coalition government succeeded in reforming the parental leave benefits system while it failed to revise antidiscrimination legislation. It emphasizes that a coalition government of social-democratic and center-right parties achieved political success by overcoming conservative party ideology.

351 Annette Henninger, Christine Wimbauer & Rosine Dombrowski, Demography as a Push toward Gender Equality? Current Reforms of German Family Policy, 287 SOC. POL., 287, 288 (2008). This study reports that a major compromise of the grand-coalition government was due to demographic concerns.

352 Priscilla A. Lambert, The Political Economy of Postwar Family Policy in Japan: Economic Imperatives and Electoral Incentives, 33 J. JAPANESE STUD. 1, 19-20 (2007). This paper provides that the Japanese government at least expanded family policy in contrast with constraints during the pre-war period. The conservative ruling party paid attention to the parental leave system, because of economic and electoral concerns. However, prior to 1991, the conservative party failed to pass legislation for paid parental leave. Furthermore, until 2010, the conservative party maintained a system practically excluding fathers from the system.

353 Introduction to the Revised Child Care and Family Care Leave Law, MINISTRY OF HEALTH, LABOUR AND WELFARE, http://www.mhlw.go.jp/english/policy/affairs/dl/05.pdf (last visited Apr. 16, 2010). The Japanese government reports that the Diet unanimously passed legislation in June 2009 due to demographic concerns in an aging society. The new system entered into force in June 2010 and Japan hopes that the policy outcome will increase the total fertility rate.
adherence to a male-breadwinner model to a dual-earner model. These experiences in Germany and Japan show the political ideology of the ruling party need not obstruct a conservative welfare regime from introducing a system for dual-earner families. Korea is under the rule of a conservative party. However, because the political ideology of the ruling party no longer determines the direction of parental leave reform, expanding financial support and individuality should be politically feasible in Korea.

Furthermore, expanding financial support and individuality is politically feasible because of the increase in the number of female representatives in the Korean parliament. There are various factors in determining the political feasibility of gender equality legislation passing in a country’s parliament. One of the driving forces for passing legislation for gender equality is a relatively high ratio of female representatives in parliament. When Germany allowed both parents to take leave at the same time in 2001, women accounted for 30.9% of the overall representatives

354 Id. The Japanese government reports demographic concerns as the sole reason for introducing a new system.
355 Seoul, The Feud in South Korea’s Ruling Party, THE ECONOMIST PRINT EDITION (Mar. 4, 2010), http://www.economist.com/world/asia/PrinterFriendly.cfm?story_id=15612171 (last visited Apr. 16, 2010). This paper reports that there are some conflicts among leaders of the conservative ruling party. The President and other female leaders have different views on political issues. Despite some differences in political ideas among members of the conservative ruling party, they share the commonality that they function under the auspices of a conservative political ideology.
356 Priscilla A. Lambert, The Comparative Political Economy of Parental Leave and Child Care: Evidence from Twenty OECD Countries, 15 SOC. POL. 315, 319-20 (2008). This study finds that there are various factors influencing the direction of a parental leave system. It finds that political and economic institutions influence policy measures to reconcile work and childcare. In addition, the percentage of female representatives in parliament affects the direction of the parental leave system.
357 Id. at 333. In particular, this paper emphasizes the role of female representatives in parliament. It states that female representatives prioritize women’s issues and gender equality.
in the lower house of the German parliament.\textsuperscript{358} When Germany introduced its first parental leave system in 1986, women accounted for 9.8% of the overall representatives.\textsuperscript{359} In 1998, when the proportion rose to 26.3%, the coalition government of the social democratic and liberal parties replaced the conservative government. The parties comprising the coalition government between 1998 and 2002 had traditionally prioritized women’s representation in parliament, so Germany achieved an increase in female representation in parliament and achieved further parental leave reform in 2001. When Germany passed parental leave benefit reform legislation in 2006, which went into effect in 2007, 32.17% of the representatives in the lower house of parliament were women. On the basis of a continuous increase in female representation in parliament, Germany expanded financial support and individuality for gender equality in reconciling work and childcare. In this respect, a parental leave benefit reform for gender equality should be as politically feasible in Korea as it was in Germany. Currently, women account for 14.72% of the representatives in the Korean parliament.\textsuperscript{360} Korea introduced unpaid parental leave for both men and women in 1997. Women accounted for 3.0% of representatives at that time. Furthermore, the ratio only rose to 5.9% in 2001 when Korea introduced

\begin{footnotesize}
\textsuperscript{358} Birgit Meyer, \textit{Much Ado about Nothing? Political Representation Policies and the Influence of Women Parliamentarians in Germany}, 20 REV. POL’Y RES. 401, 421 (2003), finds that there was a substantial increase in female representation in Germany. Between 1998 and 2002, 30.9% of representatives in the lower house of German parliament were female.

\textsuperscript{359} Id. The percentage of women in the lower house of the German parliament was 9.8% between 1983 and 1987 and 26.4% between 1994 and 1998.

\textsuperscript{360} Women in National Parliaments, INTER-PARLIAMENTARY UNION (Feb. 10, 2010), http://www.ipu.org/wmn-e/arc/classif280210.htm (last visited Apr. 19, 2010). The Inter-Parliamentary Union is a non-profit organization collecting data from national parliaments from 186 countries. On the basis of data collected by February 28, 2010, women account for 14.72% of representatives in the Korean parliament. Among 299 members, 44 are women.
\end{footnotesize}
its first paid parental leave system. Considering this, 14.72% is a substantial increase in female representation to provide a more gender-balanced parental leave benefits system, expanding both financial support and individuality.\textsuperscript{361} Therefore, because of the increase in female representation in parliament, a parental leave benefit reform is politically feasible in Korea.

Even if the current ratio of female representatives in the Korean parliament is not enough to pass legislation for parental leave benefits reform, the Japanese experience shows that bureaucrats can play an important role in reforming the system for gender equality without legislative action. In comparison with Germany, Japan lacks female representatives in the legislature to pass legislation for parental leave benefit reform that expands financial support and individuality.\textsuperscript{362} When Japan passed legislation in 2009 to eliminate limitations on individuality and introduce two additional months of benefits for paternal usage of leave entitlements, only 9.4% of representatives were female, in contrast to 32.17% of representatives in Germany when legislation for its 2007 reform was passed.\textsuperscript{363} When the Japanese liberal party

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\textsuperscript{361} Women in National Parliaments, Inter-Parliamentary Union (Jan. 1, 1997), http://www.ipu.org/wmn-e/arc/classif010197.htm (last visited Apr. 19, 2010) (As of January 1997, the Inter-Parliamentary Union collected data from 177 countries. Women accounted for 3.0% of representatives in Korea. Among 299 members, only 9 were women.); and Women in National Parliaments, INTER-PARLIAMENTARY UNION (Oct. 12, 2001), http://www.ipu.org/wmn-e/arc/classif121001.htm (last visited Apr. 20, 2010) As of October 12, 2001, the Inter-Parliamentary Union collected data from 179 national parliaments. 16 out of 273 representatives were female.).


\end{footnotesize}
won the next election in 2010, the ratio of female representatives rose to approximately 11.3%, but it still lagged behind the 32.17% found in Germany.364

Furthermore, when Japan introduced unpaid parental leave in 1992, Japanese women did not participate in the gender equality movement.365 Instead, the Ministry of Labor introduced the system to solve the problem of a labor force shortage and a declining birthrate.366 As a result, the Ministry of Labor neglected the importance of gender equality as a policy goal to achieve. The leave system remained unattractive to fathers, and mothers had to take leave instead of their spouses.367 In particular, male-breadwinners were excluded by allowing only one parent to take leave at the same time, and a low wage-replacement rate was a disincentive for fathers to participate in the system.368 Although the Ministry of Labor perceived such inherent deficiency in the system, it was hesitant to reform the system until 2009.369 The

364 Women in National Parliaments, INTER-PARLIAMENTARY UNION (Feb. 10, 2010), http://www.ipu.org/wmn-e/classif.htm (last visited Apr. 20, 2010). The Inter-Parliamentary Union collected data from 186 countries as of February 28, 2010, and reports that 11.3% were female in Japan. As a result, 54 out of 480 representatives were female.

365 Leonard Schoppa, Exit, Voice, and Family Policy in Japan: Limited Changes despite Broad Recognition of the Declining Fertility Problem, 20 J. Eur. Soc. Pol. 422, 440 (2010). This article finds that Japanese women had the choice between whether to exit from motherhood or not when Japan was in need of a female labor force in the 1990s. As a result, Japanese women chose to exit from motherhood and Japan suffered from a declining birthrate since then. This paper finds the lack of women’s participation in attracting fathers to housework and childcare has brought about a persistent lack of consideration for gender equality in reconciling work and childcare. As a result, when Japan introduced a parental leave system for the first time, Japanese women did not play an important role.

366 Id. In the absence of participation from women, bureaucrats of the Ministry of Labor have negotiated with employers to provide an unpaid leave system since 1992.

367 Id. at 20. This article particularly states that Japan could have introduced a system more like the Swedish system if it went through a political process with active women’s participation.

368 Id. This article states that 40% as the wage-replacement rate is not enough to guarantee equal opportunities for fathers to participate in the system.

369 G. Vogt, Talking Politics: Demographic Variables and Policy Measures in Japan, in THE SILVER MARKET PHENOMENON: BUSINESS OPPORTUNITIES IN AN ERA OF DEMOGRAPHIC CHANGE 17, 19-20 (F. Kohlbacher & C. Herstatt eds., 2008) (This study finds that there are three dimensions to policy
Korean bureaucratic system resembles that of Japan. As a result, as Japanese bureaucrats change their attitude towards the parental leave system, Korean bureaucrats should shift from a prolonged conservative viewpoint to a more gender-equal attitude so that men and women can enjoy equal opportunities to take leave for childcare as well as participate in the workplace. There is evidence of changing attitudes of Korean bureaucrats regarding leave-taking patterns for childcare. In 2012, 8.1% of male bureaucrats took leave for childcare, while only 2.8% of men took leave on average.\footnote{Promotion of Childbirth: Bureaucrats Take Parental Leave, MINISTRY OF SECURITY AND PUBLIC ADMINISTRATION (May 30, 2013), http://www.mospa.go.kr/gpms/ns/mogaha/user/userlayout/bulletin/userBtView.action?userBtBean.bbsSeq=1023769&userBtBean.cxTdc=1012&userBtBean.cxTctype=21010002&currentPage=351 (last visited Nov. 4, 2013) (reporting that there has been a substantial increase of leave taking behaviors of male bureaucrats since adoption of the system in 1995. In 1995, there were only 12 male bureaucrats. However, in 2012, the number reached 2,291 in 2012); and Seunga Hong, Paternal Participation in Childcare in Korea: Achievements and Assignments, KOREA WOMEN’S DEVELOPMENT INSTITUTE (Aug. 26, 2013), http://www.kwdi.re.kr/noticeView.kw?sgrp=S01&siteCmsCd=CM0001&topCmsCd=CM0029&cmsCd=CM0038&pnunum=2&num=0&ntNo=531&dvsn=&src=&srcTemp=&currTp=1&currtPg=1 (last visited Nov. 4, 2013)(reporting that paternal usage of parental leave in Korea is not enough to reach gender-equal sharing of childcare responsibilities because only 2.8% of men use the system).} Furthermore, female bureaucrats are expected to account for more than a half of the overall bureaucrats in Korea.\footnote{In 2015: More Female Bureaucrats than Male Bureaucrats, MINISTRY OF SECURITY AND PUBLIC ADMINISTRATION (June 28, 2013), http://www.mospa.go.kr/gpms/ns/mogaha/user/userlayout/bulletin/userBtView.action?userBtBean.bbsSeq=1023887&userBtBean.cxTdc=1012&userBtBean.cxTctype=21010002&currentPage=1 (last visited Nov. 4, 2013) (reporting that female bureaucrats expected to be 50.1% in 2015).}

In contrast with the role measures in an aging society. They are family, replacement and elderly population. Replacement policy means migration and immigration policy and this is not closely related to a parental leave system. This paper finds that Japan concentrates on policies for an elderly population while ignoring family policy such as a parental leave system. However, it introduces policies proposed by bureaucrats of the Ministry of Labor or the Ministry of Health and Welfare to increase the fertility rate. One of the plans that Japanese bureaucrats focused on until 2009 was a plan for working mothers and childrearing. However, it was not comprehensive enough to address limitations for fathers to participate in the system. Likewise, Japanese bureaucrats did not focus on gender equality until they introduced a reform proposal in 2009.; and Annette Henninger, Christine Wimbauer & Rosine Dombrowski, Demography as a Push toward Gender Equality? Current Reforms of German Family Policy, 15 SOC. POL. 287, 295 (2008) (In contrast with Japan, Germany perceived a parental leave system as a gender policy along with a demographic and social policy to solve the declining birthrate problem and social stratification.).
of bureaucrats in the formation of the parental leave system in Japan, female representatives in parliaments played an important role in Germany as well as in countries such as Sweden and Norway, countries well-known for a more gender-balanced parental leave system. As a result, countries with the active participation of female representatives in parliaments achieved reform earlier than Japan. Despite the initial failure of Japanese policymakers to adopt a more gender-balanced system, they finally led parental leave benefits reform in 2010. On the basis of their traditional role in leading economic development plans, they rarely faced external constraints in determining the direction of a parental leave system. In fact, Japanese bureaucrats were the leading experts in studying the European social welfare system to follow the advanced approach guaranteeing more equal

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372 Linda Haas & C. Philip Hwang, The Impact of Taking Parental Leave on Fathers’ Participation in Childcare and Ties with Children: Lessons from Sweden, Paper Presented at the First International Conference-Community, Work and Family, 16-18 March 2005, Manchester, UK. This paper finds that the Swedish parental leave system is effective enough to change gender dynamics in reconciling work and childcare. As background for such changes in Sweden, this paper emphasizes the role of female representatives in parliament. In 2004, women accounted for 45% of representatives in parliament.

373 Midori Shimada, Fertility Rate Decline in Japan from the Perspective of Gender Inequality and Social Problems of Modern Japanese Family, UNIVERSITY OF JYVÄSKYLÄ 57-61 (2009), https://jyx.jyu.fi/dspace/bitstream/handle/123456789/21260/URN_NBN_fi_jyu-200906251750.pdf?sequence=1 (last visited Apr. 21, 2010) (This study analyzes the effects of Japanese demographic policies on gender. One of the demographic measures is to expand the parental leave system. This paper finds a relatively low ratio of female representatives in the Japanese Diet. It finds the important role of Japanese bureaucrats in expanding the system although the system still lacks consideration for gender equality. This paper does not analyze the process of reforming the system in 2010, but it states that Japanese bureaucrats introduced a revised system in each stage of progressing towards a relatively more gender-balanced system.); and Introduction to the Revised Child Care and Family Care Leave Law, MINISTRY OF HEALTH, LABOUR AND WELFARE, http://www.mhlw.go.jp/english/policy/affairs/dl/05.pdf (last visited Apr. 22, 2010) (The Ministry of Health, Labour and Welfare produced a report of a new system. It started with emphasis on demographic concerns and illustrates each provision of new legislation. The Ministry of Health, Labour and Welfare proved its major role in reforming the system by producing the report and translating it into English.).

374 Huck-Ju Kwon, Beyond European Welfare Regime: Conservative Perspectives on East Asian Welfare Systems, 26 J. SOC. POL. 479 (1997). This article emphasizes the state’s role in modernization in Japan and Korea. Social pressure for a change in Japan and Korea is not strong, so bureaucrats play a major role in reforming the system even after the process of modernization.
opportunities for men and women to take leave for childcare. However, despite Japanese bureaucrats’ efforts to adopt a progressive system, they failed to adopt a more gender-balanced parental leave system because they did not consider gender equality as an important policy goal to achieve. Japanese bureaucrats were accustomed to maintaining a Confucian hierarchy in Japan’s social order, so they perceived gender inequality as a natural foundation to begin with. As a consequence, the 2010 parental leave reform in Japan was a dramatic departure from old habits which seemed to be impossible to change. A key cause for the direction of the Japanese parental leave system is the broad discretion that Japanese bureaucrats enjoyed while initiating economic development plans. Because Japanese bureaucrats were active in learning from advanced countries, they recognized the importance of the change in the German parental leave system and followed the

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375 Huck-Ju Kwon, *Policy Learning and Transfer: The Experience of the Developmental State in East Asia*, University of Montreal 14 (2009), http://www.cccg.umontreal.ca/RC19/PDF/Kwon-H_Rc192009.pdf (last visited Apr. 22, 2010). This paper finds that developing countries need their own ways to develop social policies. It emphasizes the tradition of following after policy measures already introduced by developed countries. This tradition is not an exception for policy measures to solve the problem of an aging society. Japan introduced a long-term health care insurance system, and it fundamentally adopted a German program instead of creating its own program.

376 Shogo Takegawa, *Japan’s Welfare-State Regime: Welfare Politics, Provider and Regulator*, 34 Dev. & Soc. 169, 186 (2005). This article finds that Japanese bureaucrats neglected gender equality. Japan recognized the importance of gender inequality upon international pressure, such as from the U.N.

377 Kuniko Inoguchi, *Political Economy of Reform: The Characteristics of Japanese Institutions, in DEMOCRACY, MARKET ECONOMICS, AND DEVELOPMENT: AN ASIAN PERSPECTIVE* 199, 120 (Farrukh Iqbal & Jong-il You eds., 2001). This study finds that Japanese bureaucrats led the economic development process in the post-World War II era. It states that Japanese bureaucrats maintained their social hierarchy under the tradition of Confucianism, instead of performing a radical change such as bringing about gender equality.

378 Huck-Ju Kwon, *Beyond European Welfare Regimes: Comparative Perspectives on East Asian Welfare Systems*, 26 J. Soc. Pol’y. 467, 477 (1997). This article finds that Japan and Korea are different from conservative welfare regimes. In particular, this paper emphasizes the role of bureaucracy in economic development plans after World War II in Japan and the Korean War in Korea. Bureaucrats enjoyed full discretion in economic development, even when they introduced social welfare policies such as parental leave benefit system.
German approach. In particular, because Germany has been traditionally resistant to change in its traditional gender relations in reconciling work and childcare, the change in Germany was noteworthy for Japan.

The situation in Korea is similar to the situation in Japan, thus the lack of female representatives in parliament is no longer an unavoidable obstacle in passing new legislation for a more gender-balanced parental leave system. As in Japan, bureaucrats in Korea play an important role in the formation of family policy, such as parental leave. Bureaucrats enjoyed full discretion in economic development plans aimed at catching up with advanced countries, so they are ready to adopt European policy measures in order to solve the problem of Korea’s aging society.

Furthermore, as in Japan and Germany, Korea also maintained policy measures to

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379 Huck-Ju Kwon, Policy Learning and Transfer: The Experience of the Developmental State in East Asia, University of Montreal 9 (2009), http://www.cccg.umontreal.ca/RC19/PDF/Kwon-H_Rc192009.pdf (last visited Apr. 22, 2010). This paper argues that developing countries need their own way to provide social policy measures instead of transplanting policies already implemented in developed countries. However, Japan has followed after German social welfare policies since the introduction of social insurance based on the Bismarkian model.

380 ULRICH MÖHWALD, CHANGING ATTITUDES TOWARDS GENDER EQUALITY IN JAPAN AND GERMANY 135 (2002). This study states that Germany and Japan shared the commonality of gender bias in reconciling work and childcare, but they took different approaches in changing this attitude on the basis of different social and economic backgrounds.

381 Huck-Ju Kwon, Beyond European Welfare Regimes: Conservative Perspectives on East Asian Welfare Systems, 26 J. SOC. POL’Y. 467, 479-480 (1997). This paper finds the special role that bureaucrats play in reforming the welfare systems in Japan and Korea. In both countries, modernization has been an important national policy goal to achieve. The state played an important role in introducing policy measures such as economic development plans and welfare systems. While social movements brought about modernization in western countries, state-led social reforms brought about modernization in Japan and Korea. As a result, bureaucrats started to play an important role in formation of the social welfare system.

382 Huck-Ju Kwon, Policy Learning and Transfer: The Experience of the Developmental State in East Asia, University of Montreal 15 (2009), http://www.cccg.umontreal.ca/RC19/PDF/Kwon-H_Rc192009.pdf (last visited Apr. 22, 2010). This paper finds that despite the necessity to pave its own way to provide social welfare policies, Korea continuously refers to European countries such as Germany.
support male-breadwinner families instead of dual-earner families. As a result, reforms in Japan and Germany provide lessons for Korean bureaucrats to deal with their old habit of ignoring the importance of parental leave in a continuously declining birthrate. Therefore, although the ratio of female representatives in parliament has not yet reached the ratio in the German parliament, Korean bureaucrats can follow Japanese bureaucrats in playing an important role in changing the parental leave system.

C. A Legislative Model for Korea and Obstacles to Pass New Legislation

According to the comparison between the German and Japanese systems, financial support and individuality are important elements of the legislative reform for gender equality in Korea. A wage-dependent system entered into force in Korea in 2011, but the Korean system had provided a flat-rate system until 2010.

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383 Reconciling Work and Family Life – A Synthesis of Findings for OECD Countries, OECD (Nov. 29, 2007), http://www.oecd.org/dataoecd/18/27/39689983.pdf (last visited Apr. 23, 2010). This report finds that Germany, Japan and Korea particularly lack gender equality in reconciling work and childcare. It emphasizes that these countries traditionally focused on support for male-breadwinner families instead of dual-earner families. However, it recognizes that Japan and Korea lag behind the German system. It particularly emphasizes that Japan and Korea consider these policies as merely demographic policies, without any consideration for gender discrimination created by its pro-natalistic attitudes towards reconciling work and childcare. The pro-natalistic aspect has been heavily criticized in other literature. See Neil Howe, Richard Jackson & Keisuke Nakashima, The Aging of Korea: Demographics and Retirement in the Land of the Morning Calm, GLOBAL AGING INITIATIVE CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES 39 (2007), http://csis.org/files/media/csis/pubs/070321_gai_agingkorea_eng.pdf (last visited Apr. 23, 2010). This study finds that Korea suffers from an aging society in need of an increase in the female labor force participation rate and the fertility rate. However, it criticizes current policies focusing on the increase in the fertility rate without similar attention paid to an increase in the female labor force participation rate.

384 Guen Tae Kim, Korea: Quality Childcare, OECD OBSERVER (2005), http://www.oecdobserver.org/news/fullstory.php/aid/1552/Korea.html (last visited Marc. 4, 2010). The writer is the Minister for Health and Welfare in Korea. He states the current status of the parental leave system, but still does not perceive the significance of financial support and individuality in the right to leave and benefits to support dual-earner families.
Despite the introduction of the wage-dependent system in 2011, the Korean system does not recognize individuality. The flat-rate system has paid 500,000 Won ($500) per month for a parent taking leave for childcare.\textsuperscript{385} The wage-dependent system also limits financial resources available for childcare, because the wage-replacement rate is too low to guarantee equal opportunities for men and women to take part in the system. The wage-dependent system provides 40% as the wage-replacement rate, which has been the rate maintained by Japan. Japan has suffered from severely marginal participation by fathers in the parental leave system, so 40% is not a desirable rate in order to achieve gender equality in reconciling work and childcare. The total period of benefits available for a child is limited to only one year at most, and parents have to share the period with each other.\textsuperscript{386} Furthermore, only one parent can take paid leave at a time.\textsuperscript{387} As a result, the majority of leave-takers are

\textsuperscript{385} Toru Suzuki, \textit{Population Policy in Eastern Asian Low fertility Countries, XXVI INTERNATIONAL UNION OF SCIENTIFIC STUDY OF POPULATION (IUSSP) INTERNATIONAL POPULATION CONFERENCE} (2009), http://iussp2009.princeton.edu/download.aspx?submissionId=90011 (last visited Apr. 13, 2010). This paper finds that East Asian countries have difficulty in raising the fertility rate because of the traditional family model the government tries to uphold. On the basis of the relatively small proportion of GDP each government spends on family policy measures in Japan and Korea, this paper finds difficulties in raising the fertility rate. As one of the expenditures for the low fertility rate, this paper focuses on parental benefits. It states that Korea guarantees 500,000 Won ($500) per month but it is not enough to solve the low fertility rate.

\textsuperscript{386} Id.

\textsuperscript{387} Danielle Venn, Legislation, Collective Bargaining and Enforcement: Updating the OECD Employment Protection Indicators 9 (2009), http://www.oecd.org/dataoecd/36/9/43116624.pdf (last visited Apr. 13, 2010). This study evaluates enforcement procedures of employment protection across the OECD. It evaluates whether legal mechanisms function as effective tools to solve the problems arising in the labor market and employment contracts. It analyzes legal systems across the OECD and sees some similarities and differences on the basis of diverse legal traditions. It states that the Korean system is based on the German model. As a result, Korea tends to follow German legislation in all respects. The area of parental leave is not an exception. As a result, when Korea institutionalized its system, it did not doubt limiting individuality in the right to leave and benefits. Germany originally did not allow both parents to take leave at a time, and Korea also does not allow parents to take leave at the same time. Furthermore, as Germany provided the right to leave and benefits as a family entitlement instead of an individual entitlement, Korea allowed one parent to transfer the whole period of leave
mothers instead of fathers. On one hand, because the flat-rate system does not reflect the actual loss of income, fathers hesitate to participate in the system and the majority of mothers take advantage of the system by themselves.\textsuperscript{388} On the other hand, because employers enjoy full discretion in determining eligibility in taking leave if the spouse of an employee is on parental leave, the system does not perceive the right to leave as an exclusive right for an individual parent.\textsuperscript{389} Furthermore, because the benefits are transferable from one parent to the other, mothers are more willing to participate in the system than fathers.\textsuperscript{390} Due to the largest gender wage gap among OECD countries, a distinct lack of financial support and neglect of individuality the current system has been rendered practically invalid for fathers.\textsuperscript{391} Therefore, financial support and individuality should be core pillars for Korea’s policies.

There are four important specifications for the legislative model in Korea. First, the parental leave system should guarantee the right to take leave and receive benefits as an exclusive right for each parent instead of a right transferable from one and benefits to the other parent. Therefore, Korea ignored individuality in the right to leave and benefits as an important part of the parental leave system.\textsuperscript{388} Babara Hobson, *The Individualized Worker, the Gender Participatory and the Gender Equity Models in Sweden*, 3 SOC. POL’y & SOC. 75, 80-82 (2004). This article analyzes an equal gender policy model emphasizing individuality in the right to leave and benefits. It states that a wage-dependent system is one of the elements to ensure individuality.\textsuperscript{389} Ilona Ostner, 'Individualisation’ – *The Origins of the Concept and Its Impact on German Social Policies*, 3 SOC. POL’y & SOCIETY 47, 50 (2004). This work analyzes the role of individualization in the formation of German social policies. It states that the flat-rate system without individuality during the 1980s and 1990s was the system under policies which emphasized the right to leave and benefits as a family entitlement rather than an individual entitlement.\textsuperscript{390} Arnlaug Leira, *Caring as Social Right: Cash for Child Care and Daddy Leave*, 5 SOC. POL., 362, 373 (1998), stating that the Scandinavian countries introduced the father quota as partial recognition of the individual right to leave and benefits.\textsuperscript{391} Janet C. Gornick & Marcia K. Meyers, *Creating Gender Egalitarian Societies: An Agenda for Reform*, 36 POL. & SOC. 313, 324 (2008) emphasizes financial support and individuality as essential elements of gender equality.
parent to the other. Second, the parental leave system should increase the wage-
replacement rate, because 40% is not enough to guarantee equal opportunities for 
men and women to fully take part in the parental leave system. Third, enforcement 
guidance is necessary for understanding equal employment legislation in detail. 
Lastly, training programs for employees, employers and government officials are 
necessary for effective implementation of equal employment legislation.

However, Korea will face two major obstacles in passing the proposed 
legislation for gender equality. One is the concern that there will be an excessive 
increase in public expenditure on parental benefits, and the other is the effect of 
traditional gender roles on reconciling work and childcare. Introducing a wage-
dependent system and expanding individuality requires a substantial increase in 
financial support.\footnote{Julie C. Suk, Are Gender Stereotypes Bad for Women? Rethinking Antidiscrimination Law and Work-Family Conflict, 110 Colum. L. Rev. 1, 36 (2010). This article criticizes the equal treatment approach of the United States compared to the special treatment approach of the European countries. However, this paper fails to note that the paid parental leave system in Sweden is not a product of the special treatment approach. It concludes that the Swedish policy focuses on financial support for the parental leave system, because it considers that the role of mothers as caregivers is more important than their role as workers in the labor market. However, the Swedish system focuses on financial support for parental leave to guarantee individuality. For fathers, financial incentives are important factors to determine whether to take leave or not. This article should have focused on the importance of financial support as an incentivizing mechanism for paternal usage of the leave system, instead of focusing on whether the Swedish system considers female workers as mothers rather than workers in the labor market.} As a result, financial constraints are major concerns for Korea to enact new legislation for gender equality. Furthermore, as a country with a 
prolonged history of Confucianism, Korea has difficulties in accepting the norm of 
gender equality in reconciling work and childcare. Although these may deter Korea 
from passing new legislation, experiences in other countries provide substantial 
evidence that economic concerns cannot be the sole grounds for objecting to
reforming the system. In addition, an urgent call to increase the female labor force and the fertility rate will bring about national consensus on reforming the system. A prolonged history of traditional gender role stereotyping cannot be grounds for refusing to adopt a more progressive system for gender equality, because reforming the system is the first step in changing the culture; and other countries with a prolonged history of male-breadwinner systems succeeded in introducing a system for gender equality. Therefore, despite difficulties in adopting the proposed system, this dissertation emphasizes the importance of gender equality in reconciling work and childcare.

1. A Legislative Proposal for the Gender-Balanced Parental Leave System

This section provides detailed formation regarding the proposed parental leave and benefits system, which focuses on how to realize gender equality in reconciling work and childcare. In particular, it provides four specifications for the proposed parental leave and benefits system. The specifications are as follows: (1) A nontransferable period of leave and benefits, (2) an increase in the wage-replacement rate, (3) enforcement guidance for understanding equal employment legislation in detail, and (4) training programs for government officials, employees and employers for effective implementation of equal employment legislation.

a. A Nontransferable Period of Leave and Benefits for Each Parent

As the first precondition to realize gender equality in the parental leave
system, the proposed system should guarantee a nontransferable period of leave and benefits to guarantee individuality in the right to leave and benefits. The current Korean system guarantees one year of leave for each parent. However, it does not allow both parents to take leave at the same time. The current system does not guarantee individuality in the right to leave, because an individual parent’s right to leave depends on whether their spouse takes leave or not. In addition, the Korean system does not guarantee individuality in the right to benefits as well as individuality in the right to leave. Korea guarantees one year of benefits for each child, instead of guaranteeing one year of benefits for each parent. As a result, parents have to

393 OECD SOCIAL POLICY DIVISION, OECD FAMILY DATABASE: PF2.1: KEY CHARACTERISTICS OF PARENTAL LEAVE SYSTEMS 13 (2007). This database provides a table of parental leave and benefits system in the OECD member countries. It clearly states that Korea guarantees one year of leave for each child and Korea does not allow both parents to take leave at the same time. As a result, a parent’s right to take leave depends on whether the other parent is on leave or not. Therefore, the OECD recognizes that Korea does not recognize individuality in the right to take leave.

394 PORGENDUR EINARSDOTTIR, CULTURE, CUSTOM AND CARING: MEN’S AND WOMEN’S POSSIBILITIES TO PARENTAL LEAVE 15-16 (2004). This study compares national policies in four European countries, which are Norway, Germany, Spain and Iceland. It provides that the German system has traditionally upheld the male-breadwinner system. As a result, when it granted a leave entitlement for the first time, it considered the right to leave as not an individual right, but rather presumed that parents may use their entitlement so that a child is not left alone at home. Therefore, as the current Korean system prohibits parents from taking leave at the same time, the German system did not allow parents to take leave simultaneously.

395 Mary Ann Mason, Motherhood v. Equal Treatment, 29 J. FAM. L. 1, 50 (1990-91). Equal treatment proponents emphasize the importance of individuality in the right to leave. However, this article criticizes the adverse impact of the equal treatment approach. It emphasizes that women need special protection, because they are practically in charge of childcare instead of their spouses. Nevertheless, this argument ignores the nature of the background of such an adverse impact. If the system fully accommodates individuality, it has less difficulty in relieving women from difficulties in reconciling work and childcare. Therefore, despite criticism of the adverse impact of individuality in the right to leave based on the equal treatment approach, the proposed parental leave and benefits system for Korea emphasizes the importance of individuality to take leave as a precondition to realize gender equality in reconciling work and childcare.

396 Mee-yoo Kwon, Maternity Leave Numbers Hit Record in January, KOREA TIMES (Mar. 16, 2010) http://www.koreatimes.co.kr/www/news/include/print.asp?newsIdx=62479 (last visited Oct. 18, 2010). Korean society criticizes the current parental leave and benefits system on the grounds that it does not provide sufficient financial support for working parents. However, it does not recognize the lack of individuality as an obstacle for gender equality in reconciling work and childcare. It perceives that a parent may not receive any benefits if the other parent is already receiving the benefits from the
share the total period of benefits with each other. Furthermore, Korea prohibits employment insurance from providing benefits for a parent if the spouse of the parent is already receiving benefits from the insurance scheme. As a result, Korea systematically ignores individuality in the right to benefits. Likewise, the current Korean system does not guarantee individuality as a precondition to realize gender equality in reconciling work and childcare. To realize gender equality in reconciling work and childcare, the new system should provide one year of paid leave for each child and allow both parents to take leave at the same time. Such recognition of individuality guarantees equal opportunities for men and women to take leave and receive benefits for their children.

The proposed system overcomes the limitations on individuality in Germany and Japan, which provide only two months of leave and benefits as an exclusive period for fathers. The proposed system for Korea guarantees one year of paid leave for each parent. Each parent can choose when to take leave and both parents may take paid leave at the same time. As a result, under the proposed new system,

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397 REBECCA RAY, A DETAILED LOOK AT PARENTAL LEAVE POLICIES IN 21 OECD COUNTRIES (2008). The proposed parental leave system overcomes limitations on individuality in the right to parental leave in Germany. The system guarantees three years of parental leave for both parents to share with each other. The benefits are available for one year. Germany provides two more months of benefits on the basis that both parents take advantage of the system. As a result, the German system guarantees two months of paid leave for an individual parent and guarantees ten months of paid leave for both parents to share with each other. The other 22 months of leave are unpaid leave, which deprives parents of their income during leave for childcare.

398 Martin Behrens, Government Publishes Report on Parental Leave, EUROFOUND (Nov. 8, 2004), http://www.eurofound.europa.eu/eiro/2004/08/inbrief/de0408203n.htm (last visited Apr. 18). The European Union reports that Germany succeeded in increasing paternal usage of leave entitlements after it allowed both parents to take leave at the same time. The reform followed after the introduction of the Parental Leave Directive of the European Union in 2001. Germany originally allowed parents to take leave until the child reached three years old. However, the reform allowed parents to take leave at
whether the spouse of the parent takes paid leave or not does not affect that parent’s right to leave and benefits. Compared to the proposed system for Korea, the German and Japanese systems neglect individuality, because they allow parents to share the period of benefits, except for the two-month period exclusively reserved for fathers. However, the proposed model for Korea is based on the comparative study of the German and Japanese systems, because the German and Japanese

the same time. As a result, if both parents take leave at the same time until the child reaches three years old, the system practically guarantees three years of individual leave for each parent. The Korean system allowed both parents to take leave at the same time and recognized one year of leave for each parent as an individual right to take advantage of the system. However, the problem was the limitation of benefits to one year for each child. Therefore, the proposed new system in Korea mandates one year of paid parental leave for each parent and allows both parents to take leave at the same time to recognize the right to paid parental leave as an individual right, independent from whether or not the spouse of an individual is already on leave and receives the benefits.

Kimberly J. Morgan, *Caring Time Policies in Western Europe: Trends and Implications*, 7 COMP. EUR. POL. 37, 40 (2009). This article analyzes the development of the European parental leave and benefits system and finds minimal influence of feminists on the development. It emphasizes that Nordic countries developed the right to paternal leave independent from the right to maternity leave limited to women. It sees the paternal leave system as a departure from women-only policy. In this respect, the new system resembles the paternity system in Nordic countries which guarantees an individual’s right to take leave and receive benefits regardless of whether the spouse of the individual is already on leave and receives the benefits.

CEDAW, *Concluding Observations on the Fifth Periodic State Report from Germany*, CEDAW/C/SR. 640 & 641, Jan. 21 & 22, 2004. Women’s Rights Committee analyzes the State Report from Germany in 2004. At that time, Germany did not introduce two months of exclusive benefits for an individual parent on the basis that both parents take part in the system. The Committee comments that the parental leave system needs more incentives for fathers to participate in the system. However, it does not provide detailed information about measures to implement or to reform for gender equality in reconciling work and childcare. Instead, it refers to “incentives” for paternal usage of leave entitlements. Incentives mostly imply financial incentives which are effective measures to attract fathers to engage in the system. However, the incentives should not be limited to financial incentives. Beforehand, individuality in the right to leave and benefits should be implemented as the proposed system that Korea recognizes. The Committee may have already recognized the absence of individuality in the right to leave and benefits as the problem of the German system, because it states that Germany guarantees relatively large public expenditures on welfare benefits for family. Likewise, the German system originally lacked consideration for gender equality, particularly with regard to individuality.

CEDAW, *As Women’s Anti-Discrimination Committee Considers Report of Germany, Government Emphasizes Right to Freedom from Violence as ‘Political Priority’*, United Nations (Jan. 21, 2004), http://www.un.org/News/Press/docs/2004/wom1428.doc.htm (last visited on Oct. 19, 2010). The Members of the CEDAW criticized the German system before it introduced the additional benefits for an individual parent. The Members emphasized that Germany considered only women as the beneficiaries of the system. Germany responded that it increased family benefits in general and it
systems are relatively more progressive systems for Korea to follow, compared to the current Korean system, which provides one year of benefits for each child without any consideration for a nontransferable period of benefits for an individual parent.\textsuperscript{402} The proposed system for Korea is a desirable model for gender equality, because it provides one year of benefits for each parent without benefits transferable from one parent to the other.\textsuperscript{403} This preceding comparative study of the German and Japanese systems was conducted because they were perceived as countries recognizing individuality in paid parental leave, although they maintained conservative policies similar to those of the Korean system regarding the role of gender in reconciling work and childcare.\textsuperscript{404} The comparative study of Germany spends a relatively large proportion of public expenditures on family benefits. However, the Members criticized the fact that the benefits are to support families and do not solve the gender discriminatory impact of the parental leave system. On the basis of criticism from the Members of the Committee, Germany finally introduced the new system in 2007, with two additional months of benefits for an individual parent if both parents participate in the system.\textsuperscript{402} COMMITTEE ON WOMEN’S RIGHTS AND GENDER EQUALITY, WOMEN’S RIGHTS AND GENDER EQUALITY: BASIC INFORMATION 8 (2009). European Union already recognized that the current parental leave and benefits system in Member countries was not enough to guarantee gender equality in reconciling work and childcare. However, it fails to realize that the lack of individuality adversely affects gender equality in reconciling work and childcare. European Parliament published basic information about European Union gender equality legislation. However, it fails to emphasize the importance of recognizing individuality in the right to leave and benefits as a precondition to realize gender equality in reconciling work and childcare.\textsuperscript{403} CEDAW, Summary Record of the 880\textsuperscript{th} Meeting: Consideration of the Sixth Periodic Report of Germany, CEDAW/C/SR.880 (Apr. 6, 2009). The Women’s Rights Committee under the UN reviews the Periodic Report submitted by Member states. After Germany submitted its Sixth Periodic Report, the Women’s Rights Committee analyzed the parental leave and benefits reform in 2007, which introduced the two additional months of benefits for an individual parent on the basis that both parents participate in the system. The report criticized the fact that the system still considers men as the secondary caregivers, because only two months are available as an exclusive period for an individual parent. As a result, Germany still leaves ten months of benefits as transferable from one parent to the other. Therefore, the German system does not guarantee individuality in the right to paid leave, as the proposed system for Korea does, for one year of leave and benefits exclusive to each parent as a nontransferable period of leave and benefits.\textsuperscript{404} PETER HERRMANN, A COMPARISON BETWEEN THE GERMAN AND JAPANESE VALUES AND SOCIAL SYSTEM 7-8 (2009). This study provides that Germany and Japan consider family as an important value to uphold. However, it recognizes that they have had difficulties in reconciling work and childcare,
found that originally in 1986, one year of paid leave was transferable from one parent to the other. As a result, CEDAW criticized the system in 2000, because Germany did not guarantee individuality and only 1.5% of fathers were participating in the system. Furthermore, CEDAW also criticized the Japanese system for lacking individuality. The German and Japanese systems provide the important lesson that individuality is essential for gender equality in reconciling work and childcare. These systems were partially successful in improving gender equality in recognizing individuality.

On the basis of this comparative study, this dissertation proposes one because they maintained the male-breadwinner model. As a result, adopting two additional months of paid leave for an individual parent is a progressive approach as conservative welfare countries. Germany, The Fourth State Report to the CEDAW, at 87, CEDAW/C/DEU/4 (Nov. 11, 1998). Germany reported that the majority of the leave takers are women. In 1996, 1.2% of the recipients of parental benefits were fathers. Germany did not report that the lack of individuality of the right to leave and benefits as the problem of the parental leave and benefits discouraging men to take leave for their children. CEDAW, Concluding Observation of the Fourth State Report from Germany, CEDAW A/55/38 (2000). CEDAW criticizes the German system which does not recognize individuality of the right to leave and benefits. It emphasized that only 1.5% of fathers were taking advantage of the system. Japan, The Sixth State Report to the CEDAW, at 71-72, CEDAW/C/JPN/6 (Sep. 8, 2008). Japan reported that only 0.56% of eligible fathers took part in the system in 2004. However, it did not articulate the problem of limitations on individuality of the right to leave and benefits as the fundamental background of gender inequality in reconciling work and childcare; and CEDAW, Concluding Observations of the Sixth State Report from Japan, at 10-11, CEDAW/C/JPN/CO/6 (Aug. 7, 2009). CEDAW criticized the Japanese system for not providing equal opportunities for men and women to participate in reconciling work and childcare. It did not directly address the lack of individuality in the right to leave and benefits. However, it focused negative attention on the low rate of paternal usage of leave entitlements. Nobutaka Fukuda, Comparing Family-Friendly Policies in Japan and Europe?: Are We in the Same or in a Different League?, 1 (Supp.) J. POPUL. & SOC. SEC. 31, 35-36 (2009). This article compares work-family reconciliation policy focusing on maternity and parental leave policies. With respect to the parental leave policy, it focused on the level of compensation. It states that the Japanese system guarantees 40% of the pre-leave wage, just as is found in Italy. It recognizes that the Japanese policy resembled the European policy with regard to the wage-replacement system, but it recognizes that it lags behind the European system particularly with regard to individuality. However, because this paper was published in 2003, it did not recognize the improvement of the Japanese system, which finally adopted in 2010 two months of additional benefits for an individual parent. Therefore, as the Japanese system recognized the importance of individuality, the proposed system for Korea was based on the improvements to the Japanese system.
year of paid leave for each parent.\footnote{Sawako Shirahase, \textit{Wives’ Economic Contribution to the Household Income in Japan with Cross-National Perspectives}, CROSS-NATIONAL DATA CENTER IN LUXEMBURG, \url{http://www.lisdatacenter.org/wps/liswps/349.pdf} (last visited Apr. 18, 2014). This paper discusses changes in the female labor participation rate in Japan. It concludes that the current welfare policy is not enough to support dual-earner families and emphasizes that fathers are not able to take advantage of the parental leave system due to lack of individuality of the right to leave and benefits. It does not refer to terminology of individuality to address the problem of the parental leave system. However, it implies that traditional gender stereotyping obstructed Japan from adopting a more progressive system to recognize individuality. On the basis of the increase in women’s participation in the workplace, Japan finally introduced two additional months of paid leave for an individual parent. This paper was published in 2003 and did not discuss the introduction of the two additional months of leave and benefits for an individual parent. The proposed model for Korea focuses on the development of individuality in the Japanese system. In comparison with the improvements to the German and Japanese systems, the proposed model for Korea provides one year of paid leave for each parent.} Therefore, this dissertation argues for a desirable model for Korea which will achieve gender equality on the basis of the comparative study of the German and Japanese systems.

Even compared to the Scandinavian model, which was recognized as the most progressive system for gender equality, the proposed model fully recognizes individuality.\footnote{Ann-Zofie Duvander, Tommy Ferrari & Sara Thalberg, \textit{Swedish Parental Leave and Gender Equality: Achievements and Reform Challenges in a European Perspective} 10 (2005). This study concludes that the Swedish system is not enough to guarantee equal opportunities for men and women to take part in the system, because it lacks individuality of the right to leave and benefits. Sweden guarantees thirteen months of leave and benefits for parents but allows each parent to transfer their right to take leave and receive benefits to the other parent. It guarantees only two months of leave and benefits for each child as an exclusive period for an individual. As a result, except for four months in total, Sweden leaves the other nine months of leave and benefits as transferable from one parent to the other.} For example, Sweden guarantees thirteen months of paid leave for parents, but it provides only two months of leave for each parent as an exclusive period which is not transferable from one parent to the other.\footnote{Sweden, \textit{The Seventh State Report to the CEDAW}, at 23, CEDAW/C/SWE/7 (Sep. 14, 2006). Sweden reports that the Swedish parental leave and benefits system promotes gender equality in reconciling work and childcare. It describes its parental leave and benefits system and emphasizes two months of exclusive leave for each parent. However, it neglects the adverse impact of the other nine months of leave and benefits transferable from one parent to the other.} As a result, it leaves nine months of leave as transferable from one parent to the other.\footnote{CEDAW, \textit{Concluding Observations of the Seventh State Report from Sweden}, at 4-5, CEDAW/C/SWE/CO/7 (Sep. 14, 2006). The Committee on the Elimination of All Forms
the proposed model for Korea, which guarantees one year of paid leave for each parent without any period of leave and benefits transferable from one parent to the other, the Scandinavian model is not sufficient enough to recognize individuality. Iceland guarantees nine months of paid leave and guarantees three months for each parent as an exclusive period which is not transferable from one parent to the other.

However, Iceland leaves three months of leave and benefits as transferable from one parent to the other. By contrast, the proposed system for Korea does not leave any period of paid leave as transferable from one parent to the other. Currently,

Discrimination Against Women (CEDAW) criticizes that the Swedish parental leave and benefits system is not enough to guarantee gender equality in reconciling work and childcare. It states that Sweden should increase incentives for fathers to take leave for their children. Sweden reported that fathers take only 20% of the total number days taken by parents under the current system. The CEDAW does not refer to the lack of individuality in the right to leave and benefits as the cause of insufficient participation by fathers in the system. However, by referring to incentives for fathers to take leave for their children, the CEDAW implied that Sweden does not fully recognize individuality in the right to leave and benefits. Sweden provides 80% as the wage-replacement rate, which is relatively higher than the rate available in other countries. If Sweden fully recognized individuality in the right to leave and benefits, it would not suffer from disproportionate leave taking behavior between men and women.

Anita Haataja, Fathers’ Use of Paternity and Parental Leave in the Nordic Countries, The Social Insurance Institution of Finland, Online Working Paper 2, 2009, at 6-8. This paper concludes that the Nordic model is not enough to guarantee equal opportunities for men and women to participate in the system, because it depends on the “father quota” to increase paternal usage of leave entitlements. On the basis of statistical evidence, it emphasizes that fathers take only two months of the exclusive period guaranteed to an individual parent, allowing their spouses to take advantage of nine months of the transferable period from one parent to the other.

Ingólfur V. Gíslason, Parental Leave in Iceland Bringing the Fathers In: Developments in the Wake of New Legislation in 2000 10-11 (2007). This study describes the recent developments in Iceland which provided three months of exclusive period of leave and benefits for each parent. It emphasizes that Iceland increased the exclusive period from one month in 2002 and to three months in 2004.

CEDAW, Concluding Observations of the Sixth State Report from Iceland, at 6, CEDAW/C/ICE/CO/6 (Jul. 18, 2008). CEDAW criticizes that the parental leave and benefits system in Iceland still lacks consideration for gender equality. It encourages Iceland to revise the system to promote gender equality in reconciling work and childcare. As in other reports, the CEDAW does not particularly refer to the lack of individuality as the ground for criticism. However, Iceland provides 80% as the wage-replacement rate, which is comparable to the rate in Sweden. Therefore, the CEDAW implied that Iceland should promote gender equality in reconciling work and childcare, because it lacks consideration for gender equality in reconciling work and childcare.

Ranier Frank, Federal Republic of Germany: New Problems, New Solutions, 29 J. Fam. L. 371, 376-78 (1990-91). This article analyzes the problems and solutions of family law reform in Germany
Luxembourg guarantees six months of paid leave for each parent without any period of paid leave as transferable from one parent to the other.\textsuperscript{417} Compared to Luxembourg, the proposed system is more protective of individuality, because it guarantees one year of paid leave for each child, doubling the six-month period.

The proposed system is also more protective of individuality compared to the Norwegian system. In Norway, 14 weeks of leave are guaranteed for each parent and 28 weeks may be split by the parents.\textsuperscript{418} However, the proposed system guarantees one year of leave and benefits for each parent, which is far longer than 14 weeks of leave in Norway. As a result, the proposed system is also more protective of individuality compared to the Norwegian system with respect to the length of leave and benefits for an individual parent.

b. An Increase in the Wage-Replacement Rate

This dissertation proposes that Korea should have increased the wage-replacement rate under the new system entering into force in 2011. Korea traditionally maintained a flat-rate system instead of a wage-dependent system, but


introduced a wage-dependent system which entered into force in 2011. It guarantees 40% as the wage-replacement under the wage-dependent 2011 system. It is lower than the current system in Germany and Japan, so this dissertation emphasizes an increase in the wage-replacement rate as an important component of the new system for gender equality in Korea. Germany originally provided a flat-rate system when it introduced a parental leave and benefits system for the first time in 1986. In 2007, Germany finally adopted the wage-dependent payment method, following the Scandinavian countries. When Germany adopted the wage-dependent system following the Scandinavian countries, it expected an increase in the paternal usage of leave entitlements. Germany followed the Scandinavian system, because the Scandinavian system guaranteed a wage-dependent system and 80-90% of fathers took leave under that system. When Korea introduced a paid parental leave

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419 Germany, *The Second and Third State Report to the CEDAW*, at 38-39, CEDAW/C/DEU/2-3 (Nov. 4, 1996). Germany reports that only 1.5% of the total number of recipients was fathers in 1994. However, it did not recognize the flat-rate payment method as the problem of the parental leave and benefits system.

420 Germany, *The Sixth State Report to the CEDAW*, at 18-19, CEDAW/C/DEU/6 (Oct. 22, 2007). Germany reports that it introduced the wage-dependent system for the first time since the first parental leave and benefits system in 1986. The wage-dependent system provides 67% as the wage-replacement rate.

421 C. Katharina Spiess & Katharina Wrohich, *The Parental Leave Benefit Reform in Germany: Cost and Labour Market Outcomes of Moving towards the Scandinavian Model*, INSTITUTE FOR THE STUDY OF LABOR 5-7 (2006), http://ftp.iza.org/dp2372.pdf (last visited Apr. 17, 2014). This paper reports that Germany adopted the wage-dependent system following the policies of Scandinavian countries. In particular, this paper emphasizes that Germany expects an increase in the paternal usage of leave entitlements. This paper focuses on a wage-dependent payment method and an exclusive period for an individual parent, because they were considered to be the main features of the Scandinavian system.

422 Anita Haataja, *Fathers’ Use of Paternity and Parental Leave in the Nordic Countries*, The Social Insurance Institution of Finland 9 (2009), https://helda.helsinki.fi/bitstream/handle/10250/8370/FathersLeaves_Nordic.pdf?sequence=1 (last visited Apr. 17, 2014). This paper provides that 80-90% of fathers in Nordic countries participate in the parental leave and benefits system. It concludes that fathers still do not take advantage of the transferable period of leave and benefits. However, due to the exclusive period for an individual parent and the wage-dependent payment method, Nordic countries achieved a relatively high proportion of fathers participating in the system.
system for the first time in 2001, it provided the flat-rate payment method along the lines of the German system. However, Japan, which is another conservative welfare country, already provided a wage-dependent payment method when it introduced its parental leave and benefits system for the first time. Furthermore, as Germany shifted from a flat-rate system to a wage-dependent system, this traditionally conservative welfare country no longer adhered to a flat-rate system. The flat-rate system ultimately limits fathers’ opportunities to take leave, because it does not reflect the actual loss of income and guarantees an equal amount of benefits for every individual receiving benefits. Compared to their spouse, fathers lose more income on average under the flat-rate system due to the gender wage gap. By contrast, the wage-dependent system

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423 Heidi Gottfried & Jacqueline O’Reilly, Reregulating Breadwinner Models in Socially Conservative Welfare Systems: Comparing Germany and Japan, 9 SOC. POL. 29, 39 (2002). This article compares the parental leave and benefits system in Germany and Japan on the basis that they are socially conservative welfare countries. It concludes that they failed to recognize gender equality in reconciling work and childcare, although they tried to reform the system, because of deeply rooted gender stereotyping. However, this dissertation finds that Germany adopted a wage-dependent system, because they could no longer sustain their economy without balancing work and family upon the increase of maternal employment. Korea is a socially conservative welfare country as well. As a result, it has followed after the tradition in Germany, which maintained the male-breadwinner model in reconciling work and childcare.

424 Ito Peng, Social Care in Crisis: Gender, Demography, and Welfare State Restructuring in Japan, 9 SOC. POL. 411, 435 (2002). This article provides that Japan has difficulties in restructuring the parental leave and benefits system as a conservative welfare country. It also emphasizes that conservative welfare countries such as Korea have difficulties in guaranteeing equal opportunities for men and women to participate in the parental leave and benefits system.

425 Germany, The Sixth State Report to the CEDAW, at 18, CEDAW/C/DEU/6 (Oct. 22, 2007). Germany reports that it introduced 67% as the wage-replacement for gender equality in reconciling work and childcare.

426 CEDAW, Concluding Observations of the Fifth State Report from Germany, A/59/38, part 2 (2004). The CEDAW criticizes the flat-rate parental benefits system in Germany and advises that Germany should provide more incentives for fathers to take advantage of the system.

427 Hadas Mandel & Michael Shalev, Gender, Class and Varieties of Capitalism, 16 SOC. POL. 161, 171-172 (2009). This article focuses on gender discriminatory aspects in recent studies of different...
reflects the actual loss of income for individuals receiving benefits.\textsuperscript{428} As a result, the wage-dependent system mitigates the financial disadvantage of fathers taking advantage of the parental leave system.\textsuperscript{429} However, the level of a wage-replacement rate is important to effectuate the wage-dependent system, because a relatively low wage-replacement rate, such as the rate in Japan, does not provide enough financial incentive to guarantee equal opportunities for men and women to participate in the system. Korea guarantees 40\% as the wage-replacement rate, which is relatively low compared to the 67\% found in Germany and even lower than the 50\% found in Japan. Therefore, the legislative proposal for Korea should increase the wage-replacement rate to effectuate the wage-dependent system as an effective mechanism for gender equality in practice.

Regarding the wage-replacement rate, it is proposed that Korea should provide at least 67\% as the wage-replacement rate under the new system for gender forms of capitalism. It states that women do not necessarily benefit from state support in the labor market. One of the problems that women suffer from in the labor market is the gender wage gap. This paper emphasizes that women are positioned in the lower-level of the labor market and the most obvious result is the large pay gap, which does not seem to be resolved in the near future; and Seoul, \textit{Gender Arbitrage in South Korea: Profiting from Sexism}, \textsc{The Economist}, Oct. 21, 2010, http://www.economist.com/node/17311877 (last visited Apr. 18, 2014). The journal reports that gender discrimination in South Korea is particularly serious in the labor market. It emphasizes that women earn only 63\% of what men earn.

\textsuperscript{428} C. Katharina Spiess & Katharina Wrohlich, \textit{The Parental Leave Benefit Reform in Germany: Costs and Labour Market Outcomes of Moving towards the Scandinavian Model}, INSTITUTE FOR THE STUDY OF LABOR 2 (2006), http://ftp.iza.org/dp2372.pdf (last visited Apr. 17, 2014). This study evaluates the expected results of the parental leave and benefits reform in Germany, which adopted the wage-dependent system. It emphasizes that the wage-dependent system encourages men to take advantage of the system by mitigating income loss during the time of childcare.

\textsuperscript{429} Marco Caliendo, \textit{Income Support Systems, Labor Market Policies and Labor Supply: The German Experience} 20 (2009), http://ftp.iza.org/dp4665.pdf (last visited Apr. 18, 2014). This paper analyzes recent labor market reforms, which attempt to solve the problems of unemployment and low female labor force participation rate. It concludes that recent reforms mostly succeeded in solving these problems and refers to the wage-dependent parental benefits system as a successful policy reform to increase maternal employment.
equality, which is the level of Germany. Germany and Japan guarantee 67% and 50% respectively as the wage-replacement rate under their wage-dependent systems, whereas Korea introduced 40% as the wage-replacement rate under the wage-dependent system which entered into force in 2011. Under the flat-rate system in Korea, a lump-sum amount of benefits amounted to 26% of the average earnings of Korean workers. Compared to Germany and Japan, the current Korean system lacks financial support for working parents. To relieve severe gender inequality in opportunities to take leave for childcare, Korea should increase the level of compensation for lost income to a level reflecting the difference in the actual loss of income. To provide a desirable level for the Korean system, it is important to analyze the effect of the wage-replacement rate systems in Japan and Germany.

430 Rebecca Ray, *A Detailed Look at Parental Leave Policies in 21 OECD Countries*, CENTER FOR ECONOMIC AND POLICY RESEARCH 28 (2008), http://www.cepr.net/documents/publications/parental_2008_09.pdf (last visited Apr. 17, 2014). This study analyzes the parental leave and benefits system in 21 countries including Sweden, Germany and Japan. Although these three countries differ in the wage-replacement rate, they share the commonality of providing the wage-dependent system instead of the flat-rate system.

431 Ito Peng, *The Political and Social Economy of Care: Republic of Korea Research Report 3*, UNITED NATIONAL RESEARCH INSTITUTE FOR SOCIAL DEVELOPMENT 19 (2009) http://www.unrisd.org/80256B3C005BCCF9/(httpAuxPages)/1EF2AE4F5E388259C125756100541F68/$file/RoKRR3.pdf (last visited Apr. 17, 2014). This report analyzes policy reforms for balancing work and childcare. It states that Korea increased the lump-sum amount of benefits to increase paternal usage of leave entitlements. When it introduced 300,000 won ($300) per month for a child, the benefits amounted to only 10% of the average income of a dual-earner family. When it increased the amount to 500,000 won ($500) per month, it reached only 26% of the average income of a dual-earner family.

432 Christof Schiller & Stein Kyhnle, *The Erosion of the Institutional Pillars of the German Sozialstaat*, 23 KOR. J. POL. STUD. 73, 90-91 (2008). This article finds that Germany departed from its conservative welfare regime with regard to family policy, particularly with regard to the parental leave and benefits system, by replacing the flat-rate system with a wage-dependent system. Furthermore, this paper states that adopting a father-quota also demonstrates that Germany follows Scandinavian policies, which expand welfare expenditures for the parental leave and benefits system. As a result, the Korean system lags behind the German system with regard to its parental leave and benefits system.

433 CEDAW, *Concluding Observation of the Sixth State Report from Korea*, at 6, CEDAW/C/KOR/6 (Aug. 10, 2009). CEDAW criticizes the disproportionate share of men and women taking advantage of the parental leave and benefits system. It emphasizes that Korea should provide more incentives for fathers to take advantage of the system.
because they are conservative welfare countries which have adopted wage-dependent systems.  

Korea is one of the conservative welfare countries abstaining from expanding financial support for its parental leave system.  

According to the policy analysis of the 2007 parental leave and benefits reform in Germany, the German system succeeded in increasing paternal usage of leave entitlements, as it aimed to by replacing the flat-rate system with a wage-dependent system.  

However, Japan failed to guarantee gender equality in reconciling work and childcare by adopting 50% as the wage-replacement rate. The wage-replacement rate is not the only factor determining fathers’ engagement in the system.  

In particular, the absence of an

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434 Heidi Gottfried & Jacqueline O’Reilly, Reregulating Breadwinner Models in Socially Conservative Welfare Systems: Comparing Germany and Japan, 9 SOC. POL., 29, 50-52 (2002). This article analyzes the restructuring process in Germany and Japan with regard to gender equality in reconciling work and childcare. It emphasizes that Germany has improved more on the basis of the impact of the European Union and Japan has been more reserved in departing from the male-breadwinner model. However, this dissertation provides a model for Korea on the grounds of the comparative study of Germany and Japan, because they have adopted a wage-replacement rate. As a result, it is important to focus on the impact of the wage-replacement rate in these two countries.

435 Yeon Myung Kim, The Re-examination of East Asian Welfare Regime, EAST ASIAN SOCIAL POLICY 10 (2005), http://www.welfareasia.org/1stworkshop/presenters&pap ers.htm (last visited Apr. 18, 2014). This paper provides that the western typology for a welfare regime does not apply to East Asian countries. However, it recognizes that South Korea shares some aspects with conservative welfare countries. The proposed model for the Korean parental leave and benefits system is based on the German and Japanese systems, because the Korean parental leave and benefits system shares the male-breadwinner model of these conservative welfare regimes.


437 CEDAW, Concluding Observations of the Sixth State Report from Japan, at 10-11, CEDAW/C/JPN/CO/6 (Aug. 7, 2009). This paper finds that Japanese fathers do not participate in the system as much as mothers. As a result, the CEDAW criticizes the marginal proportion of Japanese fathers participating in the system.

438 Maureen Baker, Parental Benefit Policies and the Gendered Division of Labor, 71 SOC. SER. REV. 51, 51 (1997). This paper conducts a comparative study of the United States, Canada and Sweden. It emphasizes that Sweden provides 80% as the wage-replacement for the parental benefit system. It emphasizes that the wage-replacement rate is not a determining factor in increasing paternal usage of leave entitlements. However, it recognizes that a high wage-replacement rate relieves women from the dual-burden of raising their children and participating in the labor market.
exclusive period for an individual parent affects paternal usage of leave entitlements.
The low ratio of Japanese fathers engaging in the system is not necessarily derived from the relatively low wage-replacement rate of the Japanese system.\footnote{Japanese Employees Are Less Eager to Take Parental Leave, TOKYO TIMES (Aug. 5, 2013), http://www.tokyotimes.com/2013/japanese-employees-are-less-eager-to-take-parental-leave/ (last visited Nov. 5, 2013). The 2011 earthquake brought about insecurity of employment status and parents tend to abstain from taking leave for childcare. On the basis of traditionally conservative attitudes towards fathers’ leave taking behavior, the impact of the 2011 earthquake would have been more detrimental to fathers in taking leave for childcare.} However, if 50% of the pre-leave wage had been attractive enough for fathers to take leave instead of their spouses, Japanese fathers would have participated in the system regardless of individuality.\footnote{Ann-Zofie Duvander, Tommy Ferrarini & Sara Thalberg, Swedish Parental Leave and Gender Equality, Institute for Future Studies 7 (2005), http://www.iffs.se/wp-content/uploads/2011/01/20051201134956filU8YIJJLRAaC7u4FV7gUmy.pdf (last visited Apr. 17, 2014). This paper finds that the Swedish system is sufficient for gender equality. It recognizes that the wage-replacement rate of 80% is enough. However, it criticizes the father quota which limits an exclusive period for fathers to two months. In contrast with an 80% wage-replacement rate in Sweden, Japan guarantees 50% as the wage-replacement rate, far below the level guaranteed by Sweden. This paper considers the lump sum amount of benefits provided by Germany as an insufficient rate for the loss of income. At the time of analysis, the lump sum amount of benefits provided by Germany reached 30% of the average income. 50% of the Japanese system is closer to the 30% rate found in the German system than to the 80% rate found in the Swedish system. Therefore, the 50% rate in Japan is not enough for gender equality in reconciling work and childcare.} As a result, 50% is not a desirable wage-replacement rate for Korea.\footnote{Nancy Birdsall, Amina J. Ibrahim & Geeta Rao Gupta, Task Force 3 Interim Report on Gender Equality, U.N. Millennium Project 58 (Feb. 1, 2004), http://www.unmillenniumproject.org/documents/tf3genderinterim.pdf (last visited Apr. 18, 2014). This paper finds that Nordic countries have achieved gender equality in reconciling work and childcare on the basis of an increase in female representation in the legislature. As a result of the increase in female representation in the legislature, the Nordic countries adopted a high-level for the wage-replacement rate and allowed men to participate in the system without concerns for the loss of income.} This paper uses Japan as a country to analyze, because the Korean welfare system tends to follow the Japanese system in addition to the German system.\footnote{Huck-ju Kwon, Advocacy Coalitions and the Politics of Welfare in Korea after the Economic Crisis, U.N. RESEARCH INSTITUTE FOR SOCIAL DEVELOPMENT 5 http://www.unrisd.org/80256B3C005BCCF9/(httpAuxPages)/28D1433E2FA70CDCC1256CFE0041F372/Sfile/hjk2.pdf (last visited Apr. 18, 2014). This paper analyzes the development of social welfare programs in Korea. It compares the development of the Korean welfare programs on the basis of} Korea has a history of Japanese colonization, and Japan maintained a
legal system which was itself based on the German system in Korea; moreover, Korea is also a conservative welfare country.\textsuperscript{443} As a result, Korea considers the Japanese welfare system as an advanced welfare system to refer to and compare itself with.\textsuperscript{444} If Korea adopts a wage-replacement rate higher than the current Japanese system, it is relatively progressive considering that it follows the Japanese system.\textsuperscript{445} The Korean government brought about 40% as the wage-replacement rate under the new system which entered into force in 2011, as Japan once guaranteed 40% as the wage-

\textsuperscript{443} Shogo Takegawa, \textit{Japan’s Welfare-State Regime: Welfare Politics, Provider and Regulator}, 34 DEV. & SOC. 169, 172 (2005), stating that Korean social security system is based on Japanese system and Japanese system is based on the German system.

\textsuperscript{444} RAMESH MISHRA, \textit{GLOBALIZATION AND THE WELFARE STATE} 74 (1999). This publication compares the welfare regimes in various countries including Germany and Japan. It particularly compares Germany and Japan with Sweden, because Germany and Japan are conservative welfare countries, while Sweden is a social welfare country investing a large proportion of government expenditures on social welfare programs. It particularly focuses on Germany and Japan, because social insurance programs originated in Germany, and Japan is the leading industrial country among the economically developed countries in Asia. As a result, this publication considers the Japanese welfare programs as a leading authority in Asia. Korea follows after the Japanese system, because Japan achieved the most extensive economic development in Asia. However, Korea also has more connections with Japan. For example, Korea suffered from colonization under Japan. Korea and Japan share systems based on the German legal system. Therefore, it is natural for Korea to refer to the Japanese welfare system for reforms in the parental leave and benefits system.

\textsuperscript{445} Yih-Jiunn Lee & Yeun-wen Ku, \textit{East Asian Welfare Regimes: Testing the Hypothesis of the Developmental Welfare State}, 41 SOC. POL. & ADM. 197, 199 (2007). This article focuses on the hypothesis that East Asian countries focused on economic development and considered the social welfare policies as a product of the economic development. However, this paper finds that Japan is different from Korea and Taiwan. It states that the Japanese social welfare system is similar to western systems, which are distinctive from economic development. As a result, this paper considered the Japanese system as a superior system to the Korean system. This conclusion may not be absolute truth to be taken for granted. However, it is plausible to argue that the Japanese system is not identical to the Korean system and the Japanese system is closer to the western system. It explains one of the factors encouraging the Korean government to view the Japanese social welfare programs as a more advanced system than the Korean system.
replacement rate for lost income during parental leave. However, the Korean government did not consider guaranteeing individuality as a precondition for introducing the wage-dependent system. By contrast, the proposed model for Korea considers individuality as a precondition for gender equality in reconciling work and childcare. As a result, the wage-dependent system under the proposed model for Korea is based on a different premise than the wage-dependent system in Japan. The introduction of the wage-dependent system brings about an increase in the amount of benefits received by those on leave. However, the proposed model for Korea does not guarantee 100% of the pre-leave salary as the wage-replacement rate for lost income during parental leave.

446 Toru Suzuki, Lowest-Low Fertility in Korea and Japan, 59 J. POPUL. PROB. 1. 4 (2003). This article emphasizes that Korea and Japan adopted the parental leave and benefits system as a policy measure to solve the problem of the declining birthrate. Furthermore, it states that the birthrate in Korea is more severely declining than in Japan. Korea finally introduced a wage-dependent system in 2011 and adopted 40% as the wage-replacement rate, as Japan did, to increase its fertility rate.

447 MINISTRY OF HEALTH AND WELFARE, THE SECOND NATIONAL PLAN FOR THE DECLINING BIRTHRATE AND AGING SOCIETY 2 (2010). Korea adopted the wage-dependent system, following the Japanese model, but it does not recognize individuality in the right to leave and benefits, just as the Japanese system does not. As a result, it is natural for the Korean government to neglect individuality, although it finally replaces the flat-rate system with the wage-dependent system.

448 OECD Country Note, Early Childhood Education and Care Policy in Sweden, OECD 10-11 (Dec. 1999), http://www.oecd.org/education/school/2534972.pdf (last visited Apr. 18, 2014). This note overviews the parental leave and benefits system as a system to support early childhood and care policy. It emphasizes that Sweden considered gender equality in reconciling work and childcare as an important policy goal to achieve. However, Sweden does not provide the whole period of leave and benefits as an individual period reserved for each parent. The proposed model for Korea considers one year of leave and benefits as a non-transferable right exclusive to an individual parent. As a result, the total period of leave and benefits available for a child is two years, rather than one year, under the current system. Therefore, the proposed model for Korea considers individuality in the right to leave and benefits as a precondition for gender equality.

449 JUNG NA & MUGYEONG MOON, OECD THEMATIC REVIEW OF EARLY CHILDHOOD EDUCATION AND CARE POLICY: BACKGROUND REPORT 12 (2003). This report overviews early childhood education and childcare policy in Korea from the first kindergarten established during Japanese colonization in the 19th century. It states that the Korean system resembles the Japanese system in many respects. However, the proposed model for Korea tries to depart from the Japanese system to guarantee gender equality in reconciling work and childcare, because the model aims to have a higher wage-replacement rate than the Japanese system and to guarantee individuality in the right to take leave and receive benefits.
rate for gender equality. As a result, fathers still lose more than mothers, on average, due to the gender wage gap, even if the proposed model for Korea replaces 40% with 67% as the desirable wage-replacement rate under the wage-dependent system. However, it is practically difficult to guarantee 100% as the wage-replacement rate, because the financial resources for the parental leave and benefits system are limited. In fact, even the most Scandinavian countries fail to provide 100% as the wage-replacement rate, although they are less reserved in expanding public expenditure on the parental leave and benefits system for gender equality than conservative welfare countries such as Germany, Japan and Korea. For example, Norway provides 100% of the pre-leave salary, whereas Sweden maintains 80% as the wage-replacement rate. However, Norway only provides 100% on the

450 International Labour Organization, Modern Daddy: Norway’s Progressive Policy on Paternity Leave, 54 WORLD OF WORK 12, 14 (2005). This article states that Norway succeeded in attracting fathers to take part in childcare by providing a father quota. Furthermore, this article emphasizes that Norway guarantees 100% as the wage-replacement rate if parents take 42 weeks of parental leave and 80% as the wage-replacement rate if parents choose to take 52 weeks of leave instead of 42 weeks.


452 Editorial, Better Planning and Funding Needed to Tackle Low Birthrate, THE CHOSUNILBO (Oct. 27, 2010), http://english.chosun.com/site/data/html_dir/2010/10/27/2010102700939.html (Apr. 18, 2014). The editorial criticizes that the Second National Plan for the Declining Birthrate and Aging Society does not provide sufficient funding for the wage-dependent system in Korea. The Plan introduces 40% as the wage-replacement rate. If the society perceives 40% as burdensome, 100% is not a plausible plan as the first step to introduce the wage-dependent system in a conservative welfare country with a prolonged history of the flat-rate system instead of the wage-dependent system.


454 Ann-Zofie Duvander, Trude Lappegård & Gunnar Andersson, Family Policy and Fertility: Fathers’ and Mothers’ Use of Parental Leave and Continued Childbearing in Norway and Sweden, 20 J. EUR. SOC. POL. 45, 45 (2010). This article finds that Sweden and Norway differ in their parental leave and benefits systems. It states that Sweden focuses on gender equality only, whereas Norway perpetuates childrearing at home at the same time. As a result, Norway reduces the total period of leave available
grounds that parents reduce their leave period from 52 weeks to 42 weeks. As a result, it is difficult to guarantee 100% as the wage-replacement rate even in wealthy Scandinavian countries promoting gender equality in reconciling work and childcare. Korea introduced 40% as the wage-replacement rate as a moderate starting point for a conservative welfare country. However, it is hard for men to abandon 60% of their income, according to the Japanese experience in guaranteeing 40% as the wage-replacement rate. Women earn 62% of what their spouses earn in Korea. The situation in Korea is worse than in Japan and Germany, because the gender wage gap is only 33% in Japan and 23% in Germany. 40% of the wage-

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455 Father's Leave Still a Burning Issue, VIEWS AND NEWS FROM NORWAY (Sep. 20, 2013), http://www.newsinenglish.no/2013/09/20/fathers-leave-still-a-burning-issue/ (last visited Nov. 5, 2013) (stating that benefits are reduced to 80% when fully taken advantage).
456 Thomas Brunk, Increase in Parental Benefit Has Minimal Impact on Fathers' Take-Up Rate, EUROFOUND (Sep. 3, 2007), http://www.eurofound.europa.eu/eiro/2007/07/articles/se0707109i.htm (last visited Apr. 18, 2014). This report confirms that the rising income ceiling for the wage-dependent system did not bring about an increase in the paternal usage of leave entitlements. Instead, this report emphasizes the expansion of individuality as an impetus to increase paternal usage of leave entitlements.
457 Introduction to the Revised Childcare and Family Care Leave Law, MINISTRY OF HEALTH, LABOR AND WELFARE, http://www.mhlw.go.jp/english/policy/affairs/dl/05.pdf (last visited Nov. 5, 2013). Japan introduced the wage replacement system with 20% of benefits at the time of leave and 5% when workers return to work. In 2001, Japan raised the benefits at the time of work to 30% and benefits for return (resumption benefits) to 10%. In 2010, Japan raised the resumption benefits to 20%. In total, Japanese workers 50% of the pre-leave income as parental benefits. As the increase of the wage-replacement rate in Japan shows, 40% is a moderate starting point for a conservative welfare country.
458 OECD, LMF 1.5: GENDER PAY GAPS FOR FULL-TIME WORKERS AND EARNINGS DIFFERENTIALS BY EDUCATIONAL ATTAINMENT 1 (2010) (reporting that the gender wage gap in Korea is the largest across the OECD, followed by Japan and Germany).
459 Seoul, S. Korean Gender Wage Gap Highest in OECD, YONHAP (Apr. 2), http://english.yonhapnews.co.kr/business/2010/04/02/82/0502000000AEN20100402001400320F.HTML (stating that Korean women earn 38% less than Korean men, followed by 33% of Japanese women and 23% of German women).
replacement rate failed in Japan, where women earn 33% less than men. As a result, 40% of the wage-replacement will hardly work as an incentive to increase paternal usage of leave entitlements in Korea, where women earn 38% less than men. Therefore, the proposed model for Korea should provide a wage-replacement rate exceeding the 40% found in the Japanese system. This paper proposes 67% as the desirable level, which is higher than the wage-replacement rate in Japan.

The proposed model for Korea should guarantee 67% as the wage-replacement rate, because it is a moderate starting point at the initial stage of introducing the wage-dependent payment method in a conservative welfare country. Germany introduced 67% as the wage-replacement rate when it introduced its wage-dependent system for the first time in 2007. Following the German model, Japan is trying to raise the rate to 67%. The fact that Japan is continuously raising the rate shows the strong belief of the Japanese government in the importance of raising the wage-replacement rate to attract more men to the system. However, Korea has more difficulties in passing the revised legislation if the wage-replacement rate

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460 Mizuho Aoki, Parental Leave Still Finds Dads in Huge Minority, THE JAPAN TIMES ONLINE (Jun. 2, 2010), http://search.japantimes.co.jp/cgi-bin/nn20100602f2.html (last visited Apr. 18, 2014). This article reports that only 1.23% of eligible fathers took part in the Japanese parental leave and benefits system, whereas 90.6% of eligible mothers took advantage of the system in 2008. As a result, the 40% wage-replacement rate in Japan was not enough to guarantee equal opportunities for men and women to participate in the system.

461 Annette Bergemann & Regina T. Riphahn, Female Labor Supply and Parental Leave Benefits-the Causal Effect of Paying Higher Transfers for a Shorter Period of Time, Institute for the Study of Labor 3 (2009), http://ftp.iza.org/dp3982.pdf (last visited Apr. 18, 2014). This paper provides that the German reform brought about an increase in the female labor force participation rate. It states that 67% as the wage-replacement rate was a success for gender equality in reconciling work and childcare.


exceeds the rate of the German system, because of the relatively smaller ratio of female representation in its parliament.464 35.4% of German representatives in Parliament are women in 2013, whereas only 15.7% of Korean representatives were women in 2012.465 Although 67% exceeds the wage-replacement rate of 50% under the Japanese system, the proposed legislation should provide at least 67% as the wage-replacement rate, because 50% will not provide further incentives for fathers to take advantage of the system, as informed by the Japanese experience.466 There is no guarantee that 67% will bring about an increase in the paternal usage of leave entitlements.467 Nonetheless, adopting 40% as the wage-replacement rate manifests that Korea lacks the willingness to guarantee equal opportunities for men and women to participate in the system, because it is well aware of the failure, in terms of gender equality, of 40% as the wage-replacement in Japan.468 In fact, Japan raised it to 50%

464 Chan-wook Park, A Rising Tide of Women Politicians, KOREA JOONANG DAILY (April 1, 2010), http://joongangdaily.joins.com/article/view.asp?aid=2918590 (last visited Nov. 1, 2010). The news article reports that there is an increase in female participation in Korean politics. However, the participation is limited to the regional council. Korea also reports that it guarantees a quota system for female representation in the regional council. Nevertheless, it does not provide any measures to increase female participation in the National Parliament. Republic of Korea, The Sixth State Report to the CEDAW, at 14, CEDAW/C/KOR/6 (Mar. 5, 2007).


467 Tommy Ferrarini & Helena Höög, The Parental Leave Benefit Dataset (PAL): An Introduction, STOCKHOLM UNIVERSITY 4-6 (2010), http://www.iffs.se/wp-content/uploads/2011/01/20100825074224fil3Npn69yW473CXe78dnMI.pdf (last visited Apr. 18, 2014). The parental leave and benefits system developed as time passed and, overall, countries expanded leave periods and the amount of benefits to support working parents. However, it articulates that the desirable level for the wage-replacement rate is not definite and it is up to the policy makers who are responsible for establishing a system suitable for the society.

468 Shigemi Kotaka & Haruk Mera, Law Gives Dads Time for Parenting (Jul. 22, 2010), http://search.japantimes.co.jp/cgi-bin/mn20100722f1.html (last visited Nov. 1, 2010). The news article
and even tries to raise it to 67%. Furthermore, Korea maintains a higher female ratio in Parliament compared to Japan so it is feasible to adopt a rate Japan aims to achieve. 469 Korea maintains 15.7% as the female ratio in the legislature, while Japan maintains 10.8% as the corresponding figure. 470 For Japan, only 8.1% of the members of the House of Representatives and 16.1% of the Senate were female. Likewise, 67% is not an unreasonable request for the Korean parliament to recognize as a desirable approach for gender equality in reconciling work and childcare. Therefore, this dissertation proposes 67% as the desirable wage-replacement rate for Korea.

c. Enforcement Guidance for Equal Employment Legislation

This paper proposes that Korea should introduce enforcement guidance for equal employment legislation, because legislation alone does not work as an effective mechanism for gender equality in the workplace. 471 Korea maintains three reports that in 2008, only 1.23% of eligible men took parental leave in Japan. To solve the problem, in 2010 Japan introduced legislation providing two additional months of leave and benefits when both parents participate in the system, but it did not increase the wage-replacement rate from 40%. 469 Justin McCurry, Female Empowerment: How Women Are Changing the Face of Japanese Politics, GUARDIAN (Oct. 25, 2009), http://www.guardian.co.uk/world2009/oct/25/251enko-fukuda-japan-women-politics (last visited Nov. 1, 2010). This news article reports that the ratio of female representation in the Japanese legislature increased. However, female legislators failed to increase the wage-replacement rate to attract more fathers to take part in the parental leave and benefits system. 470 Women in National Parliaments, INTER-PARLIAMENTARY UNION (Sep. 1, 2013), http://www.ipu.org/wmn-e/classif.htm (last visited Nov. 5, 2013). Korea ranked 89th out of 188 countries and Japan ranked 124th out of 188 countries. The figure of Korea is based on the election in 2012. The figure of Japan is based on the election in 2012 for the House of Representatives and the election in 2013 for the Senate. 471 Günseli Berik, Growth with Gender Inequity: Another Look at East Asian Development, U.N. RESEARCH INSTITUTE FOR SOCIETY AND DEVELOPMENT 4 (2005), http://www.unrisd.org/80256B3C005BCCF9%2F(httAuxPages)%2F62428D42EFAD8BDEC12578D50054B60A%2F$file%2F10Berik.pdf (last visited Apr. 18, 2014). This paper reviews gender inequality in the workplace in East Asian countries and emphasizes weak enforcement of equal
important legal frameworks regulating gender discrimination in the workplace. They are: (1) the Constitution, (2) the Labor Standards Act, and (3) the Act on Equal Employment and Support for Work-Family Reconciliation (EES). When Korean’s Parliament passes laws and regulations for gender equality in the workplace, the Ministry of Employment and Labor (MEL) is in charge of the enforcement of legislation. For example, government officials of the MEL conduct investigations of employers for violation of equal employment legislation. Furthermore, the EES particularly prescribes imprisonment and penalties for violation. In 2009, the MEL conducted investigations on 1,272 employers and found that 1,182 of them

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employment legislation. Korea is also one of the countries failing to effectuate its equal employment legislation prohibiting gender discrimination in the workplace. Liliane Jung, National Labour Law Profile: Republic of Korea (South Korea), INTERNATIONAL LABOUR ORGANIZATION (Dec. 11, 2006), http://www.ilo.org/public/english/dialogue/ifpdial/info/national/kor.htm (last visited Nov. 3, 2010). The International Labour Organization (ILO) provides detailed information about the legal framework in member countries. It states that Korea provides various legal frameworks to comply with labor standards as mandated by the ILO.


MINISTRY OF EMPLOYMENT AND LABOR, MINISTRY OF EMPLOYMENT AND LABOR & ITS MAJOR POLICIES 31 (2010). Ministry of Employment and Labor said that this was one of its major missions to accomplish in 2010 and provided a table of legislation that the Ministry of Employment and Labor is in charge of executing. Equal employment legislation is an integral part of the table and the Ministry of Employment and Labor manifests its strong willingness to improve the level of workplace discrimination in Korea.

Labor Standards Act, Act No. 5309, Mar. 13, 1997, art. 29 (the Ministry of Employment and Labor is in charge of investigating violation of provisions under the Labor Standards Act); and Employment Insurance Act, Act No. 4644, Dec. 27, 1993, art. 94 (the Ministry of Employment and Labor is in charge of provisions concerning employment insurance, which is responsible for payment during maternity and parental leave).

Act on Equal Employment and Support for Work-Family Reconciliation, Act No. 3989, Dec. 4, 1987, art. 37 (employers violating provisions of the Act are subject to imprisonment not more than 5 years and penalties not more than 30,000,000 Won ($30,000)).
violated mandates of the EES.\textsuperscript{477} Furthermore, the number of actual cases violating provisions of the EES amounted to 5,679.\textsuperscript{478} As a result, 92.9\% of the employers violated the EES, and each employer is responsible for approximately 5 cases on average.\textsuperscript{479} However, the MEL imposed a penalty in only one case without any sanctions imposed upon the rest of the cases violating the mandates of the EES.\textsuperscript{480} Likewise, the MEL is not active in preventing, detecting and investigating operations in breach of the EES.\textsuperscript{481} Therefore, enforcement guidance is necessary for the EES to be an effective mechanism for gender equality in the Korean workplace.

Furthermore, enforcement guidance will help employees to recognize whether a particular practice constitutes gender discrimination under the EES, particularly in reconciling work and childcare. The MEL conducted a survey on how much equal employment legislation succeeded in relieving gender discrimination

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\textsuperscript{478} Id. The number of actual cases violating the mandates of the EES exceeds the number of employers violating the provisions of the EES. It implies that the employers are responsible for more than a single case. The repetitive practices of gender discrimination prove that the EES does not deter employers from gender discriminatory practices.

\textsuperscript{479} Id. In 2008, the Ministry of Employment and Labor (hereinafter MEL) conducted investigations on 1,628 employers and 1,570 of the employers violated the mandates of the EES. As a result, 96.4\% of the employers violated the provisions of the EES in 2008, while 92.9\% of the employers violated the EES in 2009.

\textsuperscript{480} OECD, OECD EMPLOYMENT OUTLOOK 182-83 (2009). The OECD emphasizes the importance of enforcement measures to effectuate anti-gender discrimination laws. On the basis of the importance of enforcement measures for gender equality in the workplace, Korea fails to enforce equal employment legislation according to the statistical evidence, proving that the MEL is negligent in enforcing mandates of the EES. The MEL imposed a penalty on a single case out of 5,679 cases violating the mandates of the EES. As a result, the MEL failed to enforce equal employment legislation.

\textsuperscript{481} Maurice E.R. Munroe, The EEOC: PATTERN AND PRACTICE IMPERFECT, 13 YALE L. & POL’Y REV. 219, 275-79 (1995). The author argues that the Equal Employment Opportunity Commission should not accept individual charges and focus on its original role to prevent, detect and investigate operations in breach of Title VII. The MEL in Korea does not accept individual charges as the EEOC does in Korea. However, it does not fully enforce equal employment legislation.
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in the workplace.  

The result of the survey clarified that the EES has not been fully implemented enough for employees to reconcile work and childcare free of discrimination on the basis of gender stereotyping.  

The most important outcome of the survey was a contrasting perspective towards whether gender discrimination is still serious in the workplace or not.  

59.9% of women argue that gender discrimination is prevalent in the workplace, while 56.8% of men feel that gender discrimination is no longer a serious problem in the workplace.  

For each gender, an equal number has the opposite view. The large discrepancy between the male and female perceptions towards gender discrimination signifies that the Korean workplace

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482 MINISTRY OF EMPLOYMENT AND LABOR, MINISTRY OF EMPLOYMENT AND LABOR & ITS MAJOR POLICIES 17 (2010). The survey on the ultimate outcome of equal employment legislation is an important task for the Ministry of Employment and Labor, according to its annual plan to increase employment opportunities for women. In 2010, particularly due to the job crisis following the economic depression, expanding job opportunities is one of the most important national objectives. Women are vulnerable during a recession, because of their dual role as mothers and workers. To support their hardships, the Ministry of Employment and Labor promises to fully implement the EES by providing and guaranteeing paid parental leave, without fail, for employees. To find out whether the EES is effective enough to realize its policy goal or not, the Ministry of Employment and Labor conducts an overall survey on whether or not employees recognize the effect of legislation.

483 Korea Women’s Association United, Republic of Korea: Critical Issues on the Seventh Periodical Report on the CEDAW, U.N. OFFICE OF HIGH COMMISSIONER FOR HUMAN RIGHTS 3 (Oct. 11, 2010), http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/Korean_Womens_Association_United(PSWG).pdf (last visited Apr. 18, 2014). This submission reports that the Korean policy measures to support work-family reconciliation concentrate on flexible working hours for female workers, instead of expanding opportunities for men to participate in the parental leave system. As a result, the measures still presume women are the only gender responsible for childcare instead of sharing the responsibility with their spouses. Therefore, the MEL needed to conduct surveys to figure out whether the EES is fully implemented for the purpose of expanding opportunities for men to participate in the parental leave system and for women to participate in the workplace.

484 MINISTRY OF EMPLOYMENT AND LABOR, WHITE PAPERS ON EMPLOYMENT LABOR 249 (2010). The Ministry of Employment and Labor states that women and men perceive gender discrimination differently from each other. In particular, men are ignorant of women’s feelings towards gender discrimination in the workplace.

485 MINISTRY OF EMPLOYMENT AND LABOR, SURVEY ON GENDER DISCRIMINATION IN EMPLOYMENT 6 (2011). The contrasting viewpoints based on the gender of the employees are a serious problem which hinders Korea from overcoming gender discrimination in the workplace.
has not overcome prolonged gender stereotyping. Men feel that a woman’s status in the workplace has improved enough for them to participate in the workplace, because they compare the current status of women with the past experiences of serious gender discrimination when women could not participate in the workplace at all. By contrast, women still feel serious gender discrimination in the workplace, because they compare their status with their male colleagues. Furthermore, 63.7% of employees perceive the responsibility of raising children as the most important obstacle for gender equality in the workplace. Likewise, Korean employees have different perspectives towards the current status of gender discrimination in the workplace.

486 Punam Sahgal, Gender Discrimination: Beliefs and Experiences: A Comparative Perspective of Women and Men in the Delhi Police, 9 J. INT’L WOMEN’S STUD. 135, 137 (2007). This paper analyzes the effects of women’s participation in the police force. It states that due to gender stereotyping, which hinders women from actively participating in police force, women still have difficulties in working as coworkers equal to men. However, male policemen do not perceive women’s difficulties as a serious problem in the workplace. This is similarly found in the current situation in the Korean workplace. Korean male workers perceive that a woman’s status in the workplace has improved enough for women to equally participate in the workplace. However, in fact, women still feel obstacles to participate in the workplace. The discrepancy still exists in the Korean workplace because gender stereotyping makes it difficult for women to participate in the workplace without any challenges from their male colleagues.

487 Hek-Hong Ng, Perception of Sex Discrimination and Employment and the ‘Class’ Context: the Case of Hong Kong Female Workers, 37 BRITISH J. SOC. 307, 307 (1986). This article observes that people tend to compare themselves with people in a different group to find out whether they are better off than those in the different group. Men do not feel that gender discrimination in the workplace is serious enough to hinder women from actively participate in the workplace, because men do not consider women as a group better off than men. As a result, men’s positive feelings about the current status of women are not objective.

488 Candace Saari Kovacic-Fleischer, United States v. Virginia’s New Gender Equal Protection Analysis with Ramifications for Pregnancy Parenting, and Title VII, 50 VAND. L. REV. 845, 848 (1997). The United States has achieved strict scrutiny for gender discrimination cases under Title VII. Furthermore, this paper articulates that the achievement expands to discrimination in the workplace including a parental role which is applicable to men and women without prejudice. As a result, this paper highly appreciates the importance of United States v. Virginia on the grounds that the Court acknowledged the importance of comparing the status of women to men to clarify the legitimacy of different treatment between men and women.

489 MINISTRY OF EMPLOYMENT AND LABOR, PRESS RELEASE, THE DIFFERENCE IN CONSCIOUSNESS OF GENDER DISCRIMINATION IN THE WORKPLACE BETWEEN MEN AND WOMEN 1 (Mar. 29, 2010). The survey conducted by the MEL proved that women have difficulties in reconciling work and childcare, although the EES had entered into force and 44.8% of men perceive that gender discrimination in the workplace is not serious enough to raise problems for women to participate in the workplace.
workplace on the basis of their gender and those who recognize severe gender discrimination consider reconciling work and childcare as the most important basis for gender discrimination in the workplace. Therefore, enforcement guidance is necessary not only for government officials to fully implement the EES but also for employees to recognize whether a particular case constitutes gender discrimination under the EES particularly with regard to reconciling work and childcare.

Enforcement guidance is necessary for employers to change the workplace environment to be more sensitive to gender discrimination in reconciling work and childcare, because a change in the attitudes of employers regarding gender discrimination is necessary for effective implementation of the EES. The survey conducted by the MEL in 2010 found that a change in the workplace environment is the most urgent change necessary to relieve women from discrimination on the basis of their role as the parents of young children. 490 34.2% of the respondents considered that a change in the attitudes of employers regarding gender discrimination in the workplace is necessary for gender equality in the workplace, whereas a change in the attitudes of employers regarding gender discrimination (23.8%), education (23.2%) and changes in policy (12.9%) were minor factors compared to a change. 491 Changes in the attitudes of employers are particularly

490 The Role of Men and Boys in Promoting Gender Equality UNESCO 4 (2004), http://www2.unescobkk.org/elib/publications/Role_of_Men_and_Boys/Role_of_Men_and_Boys.pdf (last visited Apr. 18, 2014). This brief holds that a change in the attitude of men and boys towards gender roles will bring about an improvement in gender discrimination. The survey conducted by the MEL in 2010 also proves that a change in men’s attitudes is urgent for a change in the amount of gender discrimination in the workplace.

491 MINISTRY OF EMPLOYMENT AND LABOR, PRESS RELEASE, THE DIFFERENCE IN CONSCIOUSNESS OF GENDER DISCRIMINATION IN THE WORKPLACE BETWEEN MEN AND WOMEN 2 (Mar. 29, 2010). Prior to the change of policy or education, employees feel that a change in the attitudes of employees and
necessary for gender equality, because employers are critical decision makers in the process of various employment decisions including hiring, promoting and firing workers.\footnote{492} Furthermore, many efforts have already been made for the change of employers’ attitudes on the basis of positive aspects of gender equality in reconciling work and childcare such as an increase of productivity.\footnote{493} However, employers are not yet ready to accept gender equality in reconciling work and childcare.

According to the statistical evidence of a survey on employers’ attitudes towards the EES in 2007, 58.3\% of employers held negative opinions about gender equality in reconciling work and childcare.\footnote{494} The statistical evidence is obvious enough to bring about an urgent call for measures to change employers’ attitudes towards gender equality in reconciling work and childcare. Therefore, enforcement guidance is necessary not only for government officials or employees, but also for employers in the Korean workplace.

\footnote{492} Anne Lawton, The Meritocracy Myth and the Illusion of Equal Employment Opportunity, 85 MINN. L. REV. 587, 626-28 (2000). This author emphasizes that the court relies on employer’s defense overwhelmingly, which hinders employees from challenging employer’s decision on the grounds of evidence available for them. Likewise, employers play an important role in employment decisions subject to scrutiny under equal employment legislation. Therefore, it is reasonable that employees recognize the change of employers’ attitudes as the most essential step towards gender equality in reconciling work and childcare.

\footnote{493} Joan C. Williams & Nancy Segal, Beyond the Maternal Wall: Relief for Family Caregivers Who Are Discriminated Against on the Job, 26 HAR. WOMEN’S L. J. 77, 79 (2003). The co-authors argue that a change in employers’ attitudes is necessary for gender equality in the workplace. In particular, this article emphasizes the positive aspects of gender equality in reconciling work and childcare, which lead to an increase in productivity.

\footnote{494} Seon Young Park, Bok Soon Park, Hea Ja Kyun & Won Jung Kim, A Study on the Law for Women’s Rights and Eliminate Discrimination (III)-The Accomplishment & Tasks 20 Years after the Equal Employment Act 172 (2009). This publication is an overview of gender discrimination in the Korean workplace during the past 20 years and finds that the workplace needs more improvements to reach gender equality in reconciling work and childcare. The authors interviewed employees to find out status of the EES in the Korean workplace in 2009. They used statistical evidence from 2007. The interview in 2009 confirmed employers’ negative attitudes towards gender equality in reconciling work and childcare, as already proven by statistical evidence from 2007.
Enforcement guidance should provide detailed information about what kinds of cases actually fall under the types of gender discrimination prohibited by the EES, because actual cases help government officials, employees and employers to recognize whether or not a particular case constitutes gender discrimination under the EES.\footnote{Nina A. Mendelson, \textit{Regulatory Beneficiaries and Informal Agency Policymaking}, 92 CORNELL L. REV. 397, 397 (2007). The article addresses the exemption of enforcement guidance from public and judicial review. In case of legislation, it is publicly discussed and the legislature confirms the legitimacy. However, this paper acknowledges positive impacts of enforcement guidance on beneficiaries of regulation, because enforcement guidance provides detailed information about what kinds of cases are considered a violation of legislation, which is absent from original legislation. Therefore, the Korean workplace is in need of enforcement guidance for effective implementation of the EES.} Such a case may be based on real cases or hypothetical cases violating the EES.\footnote{Todd Rakoff, \textit{The Choice between Formal and Informal Modes of Administrative Guidance}, 52 ADMIN. L. REV. 159, 163 (2000) analyzes the development of enforcement guidance in the United States. On the basis of actual cases decided by the court, administrative agencies accumulated enough data to consolidate enforcement guidance.} In addition to cases violating the EES, the best and worst cases are important criteria for the beneficiaries of enforcement guidance to determine whether a particular case constitutes gender discrimination under the EES.\footnote{Robert A. Anthony, \textit{Interpretive Rules, Policy Statements, Guidances, Manuals, and the Like-Should Federal Agencies Use Them to Bind the Public}, 41 DUKE L.J. 1311, 1333-1340 (1992). This piece considers the illegitimacy of enforcement guidance with respect to the absence of public and judicial review. However, it recognizes the importance of enforcement guidance for effective enforcement of legislation. In this respect, the best and worst cases of employers’ reactions in a particular situation are important for effective implementation of the EES.} For government officials, enforcement guidance works as guidelines providing specific criteria for imposing penalties on employers violating equal employment legislation.\footnote{Barry Sullivan, \textit{On the Borderlands of Chevron’s Empire: An Essay on Title VII, Agency Procedures and Priorities, and the Power of Judicial Review}, 62 LA. L. REV. 317, 319 (2002). The author assesses the extent of the court’s deference to EEOC guidelines. This paper perceives the EEOC guidelines as a product of government officials rather than guidelines for government officials to refer to. As a result, enforcement guidance for Korean government officials to determine whether a particular case constitutes gender discrimination under the EES is not the same as the EEOC guidelines focusing on benefits for employees and employers.} For employees, enforcement guidance provides specific criteria to
evaluate whether their employers’ practices constitute gender discrimination under equal employment legislation or not.\textsuperscript{499} For employers, enforcement guidance provides specific criteria to determine how to act in a particular situation to comply with mandates from the EES.\textsuperscript{500} Therefore, enforcement guidance should provide detailed information about what kinds of cases actually constitute gender discrimination under the EES, because actual cases are practically helpful for government officials, employees and employers to determine whether a particular case violates the EES or not.

Korea should open the door to the public, rather than only government officials, in the process of preparing information for enforcement guidance, because public participation is necessary for the procedural and substantial legitimacy of enforcement guidance, as legislation requires legislative procedures in Parliament.

\textsuperscript{499} Rebecca Hanner White, \textit{The EEOC, the Courts, and Employment Discrimination Policy: Recognizing the Agency’s Leading Role in Statutory Interpretation}, 1995 Utah L. Rev. 51, 106 (1995). This paper emphasizes the interpretive role of the EEOC in employment discrimination cases, whereas the Supreme Court is reluctant to guarantee full discretion of the EEOC to interpret legislation. This paper considers the EEOC as the competent authority to provide enforcement guidance for employees to compare their situation with actual cases under employment discrimination legislation, because the EEOC participates in employment discrimination cases as an investigator, prosecutor, attorney, mediator and adjudicator. By contrast, the MEL in Korea is not competent enough to prepare enforcement guidance without public participation, because it has not been involved in employment discrimination cases in the way that the EEOC has actively participated in employment discrimination cases in the United States. However, it is obvious that Korean employees are in need of enforcement guidance, because the EES does not provide enough information to determine whether or not a particular case constitutes gender discrimination under the EES. Therefore, public participation is necessary for Korea to provide enforcement guidance for employees to determine whether or not a particular case constitutes gender discrimination under the EES.

\textsuperscript{500} Cynthia L. Remmers, \textit{Pregnancy Discrimination and Parental Leave}, 11 Indus. Rel. L.J. 377, 413 (1989). Published four years prior to the enactment of the Family Medical Leave Act of 1993, this article analyzed the relationship between Pregnancy Discrimination Act of 1979 (PDA) and the Family Medical Leave Act of 1993 (FMLA). It emphasizes the role of employers in implementing the PDA and FMLA. Furthermore, it states that whether or not to expand benefits for employees affects employers’ financial status and their employment decisions. Therefore, enforcement guidance for the EES in Korea is not only important for employees but also for employers, because the EES directly affects employers’ business interests and decisions.
Enforcement guidance lacks procedural legitimacy in comparison with legislation, because enforcement guidance does not require legislative procedures, whereas legislation requires complicated legislative procedures for approval in the parliament. Opponents of legitimacy in enforcement guidance emphasize lack of democratic procedures for review in the parliament as the fundamental difference between legislation and enforcement guidance. Furthermore, the legislature may not have intended to authorize the agency to interpret legislation in the agency’s own capacity when the legislature designated the agency as an enforcement mechanism. As a result, public participation in the process of preparing enforcement guidance is necessary for procedural legitimacy as the legislative procedures are necessary for legislation to enter into force. In addition to procedural legitimacy, public participation is necessary for substantial legitimacy, because government officials are

501 Kevin W. Saunders, Interpretive Rules with Legislative Effect: An Analysis and a Proposal for Public Participation, 1986 DUKE L.J, 346, 378 (1986). This study proposes public participation in the process of preparing for enforcement guidance as an essential procedure to obtain democratic legitimacy. The absence of legislative procedures is an important distinction between legislation and interpretive rules of the administrative agency. Therefore, Korea needs to consider public participation as an essential step to provide enforcement guidance of gender equality in the workplace.

502 Kristin E. hickman & Matthew D. Krueger, In Search of the Modern Skidmore Standard, 107 COLUM. L. REV. 1235, 1284 (2007). This article surveys the courts’ attitudes towards the agency’s interpretation of legislation. It emphasizes that public participation in the process of preparing enforcement guidance will help to overcome attacks on the basis of the absence of legislative procedures for approval of enforcement guidance compared to legislation.

503 Margaret H, Lemos, The Consequences of Congress’s Choice of Delegate: Judicial and Agency interpretations of Title VII, 63 VAND. L. REV. 363, (2010). The Supreme Court is reluctant to rely on the agency’s interpretation of legislation, because Congress may not have intended to authorize the agency to interpret legislation on its own accord.

504 Rachel Osterman, Comment, Origins of a Myth: Why Courts, Scholars, and the Public Think Title VII’s Ban on Sex Discrimination was an Accident, 20 YALE J.L. & FEMINISM 409, 437-40 (2009). This paper analyzes controversy over whether Title VII lacks legislative history in prohibiting sex discrimination. It states that the first EEOC guideline for sex discrimination in 1985 also emphasized the lack of legislative history banning sex discrimination. This paper concludes that legislative history may refer to other efforts in the process of consolidating legal frameworks for the ban of sex discrimination. Public participation in consolidating enforcement guidance is one of the ways to secure procedural legitimacy as legislative procedures.
not competent enough to interpret the EES and to provide detailed information about how to determine whether a particular case constitutes gender discrimination, particularly in Korea.  

First of all, enforcement guidance works as an effective mechanism to provide detailed criteria for government officials to impose penalties on employers violating the EES. If government officials prepare enforcement guidance without public participation, they will make the rules which they must follow. This paper proposes enforcement guidance for government officials, because they are not prepared to enforce the EES without further guidelines. They imposed a penalty on only one case out of 5,679 cases violating the EES according to a survey conducted by the MEL in 2009. Consequently, government officials are

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505 Thomas W. Merrill & Kristin E. Hickman, *Chevron’s Domain*, 89 GEO. L.J. 833, 879-80 (2001) analyzes the Supreme Court’s attitude to the agency’s interpretation of statutes. It states that the Court rely on the agency’s interpretation on the basis of its expertise in the area of law. However, government officials of the MEL in Korea cannot be referred to as experts in gender discrimination under the EES. They imposed penalties on only one case out of 5,679 cases violating the EES in 2009. Therefore, it is impossible to refer government officials in the EES as competent enough to prepare enforcement guidance without public participation in the process of preparation.  

506 Takehisa Nakagawa, *Administrative Informality in Japan: Governmental Activities outside Statutory Authorization*, 52 ADMIN. L. REV. 175, 183 (2000) compares administrative guidance in Japan and the United States. It emphasizes that administrative guidance is an important basis for government officials to persuade individuals to act in a certain way, following the mandate of legislation. Due to a prolonged history of similarities between the Japanese and Korean legal systems, administrative guidance in Korea is also an important basis for government officials to impose penalties on employers violating mandates of legislation such as the EES.  

507 William N. Eskridge, Jr. & Lauren E. Baer, *The Continuum of Deference: Supreme Court Treatment of Agency Statutory Interpretations from Chevron to Hamdan*, 96 GEO. L.J. 1083, 1159-68 (2008). The authors analyze the court’ position towards agency’s interpretation of legislation or its own rules. They emphasize two different perspectives towards agency’s discretion to interpret legislation and make its own rules. The first perspective is formalist analysis objecting to agency’s discretion on the basis of congressional authority to review legislation without interference from other branches. The support for public participation in the process of preparing for enforcement guidance of the EES is partly based on formalist analysis negating agency’s discretion for interpretation of legislation and rule-making authority. However, proposing enforcement guidance for effective implementation of the EES is, on the other hand, partly based on functionalist analysis in support of agency’s discretion to interpret legislation and make its own rules.  

508 MINISTRY OF EMPLOYMENT AND LABOR, WHITE PAPERS ON EMPLOYMENT AND LABOR 249 (2010). The Ministry of Employment and Labor (MEL) conducts investigation on gender discrimination on the
not capable of preparing enforcement guidance without public participation. Furthermore, employees and employers are also beneficiaries of enforcement guidance.\textsuperscript{509} Employees are fully aware of what kinds of situations they actually face with respect to gender discrimination in reconciling work and childcare and employers are also well aware of their difficulties in implementing the EES for gender equality.\textsuperscript{510} As a result, employees’ and employers’ perspectives are important elements to make enforcement guidance practically beneficial for themselves to determine whether a particular case constitutes gender discrimination under the EES or not.\textsuperscript{511} Likewise, public participation is required for substantial legitimacy of enforcement guidance of the EES. Therefore, this paper proposes public participation as an essential step for the procedural and substantive legitimacy for enforcement guidance of the EES.

\textsuperscript{509} Nina A. Mendelson, \textit{Regulatory Beneficiaries and Informal Agency Policymaking}, 92 \textit{Cornell L. Rev.} 397, 414 (2007). This article supports public participation in the process of administrative guidance on the grounds that not only direct beneficiaries but also indirect beneficiaries of legislation and guidance refer to the public in general. This paper considers employees as the direct beneficiaries of legislation and administrative guidance on one hand, and excludes employers from being direct beneficiaries. However, employers are also the direct beneficiaries of enforcement guidance, because they have difficulties in following the mandates from the EES and enforcement guidance provides detailed information about how to comply with the EES. Therefore, employers are also direct beneficiaries of enforcement guidance from the EES.

\textsuperscript{510} Katie J. Colopy, Sandra K. Dielman & Michelle A. Morgan, \textit{Gender Discrimination in the Workplace: “We’ve Come a Long Way, Baby,”} 39 \textit{Advoc.} 11, 13 (2009). A study of the development of gender discrimination cases in the United States since the enactment of Title VII of 1964, the article emphasizes the impact of workplace culture on gender discrimination. Employees and employers are constituents of workplace culture. Therefore, they are well aware of cases subject to determination in need of enforcement guidance for the EES.

\textsuperscript{511} Melissa Hart, \textit{Skepticism and Expertise: The Supreme Court and the EEOC}, 74 \textit{Fordham L. Rev.} 1937, 1961 (2006) criticizes court’s reluctance to rely on EEOC’s interpretation of equal employment legislation. It states that the Supreme Court of the United States do not have a set of rules to evaluate legal authority of administrative guidance. The reluctance is derived from an absence of a legislative process in contrast with legislation in the process of the enactment. If employees’ and employers’ perspectives are fully reflected in enforcement guidance, the doubts about legitimacy of enforcement guidance will be substantially diluted.
d. Training Programs for Government Officials, Employees and Employers

This paper proposes training programs for government officials, employees and employers on the basis of the result of a survey in 2010 recognizing the necessity of the programs to change workplace culture that is insensitive to gender discrimination.\textsuperscript{512} In 2010, the MEL conducted a survey on the current status of gender equality in the Korean workplace.\textsuperscript{513} 48.5\% of women still felt that gender discrimination is a serious problem, whereas 44.8\% of men did not perceive gender discrimination as a serious problem for the government to provide effective measures to change workplace culture.\textsuperscript{514} As a way to enhance gender equality in the workplace, 23.2\% of the respondents considered educational programs as an essential

\textsuperscript{512} Reminta Jančaityte, \textit{Family-Friendly Policies and Welfare State: A Comparative Analysis in Between Paid and Unpaid Work: Family Friendly Policies and Gender Equality in Europe} (Jolanta Reignardiene ed., 2006). This chapter analyzes family-friendly policies in three different welfare regimes: liberal, conservative and social-democratic welfare countries. Prior to the comparative analysis, this paper provided a general illustration on family-friendly policies. A training program is one of the ways to promote family-friendly workplace environments. However, it does not specify the audience of the program. In Korea, government officials, employees and employers are core actors capable of changing workplace culture to be more family-friendly. As a result, Korea should consider government officials, employees and employers as the audience of training programs to change workplace culture sensitive to gender discrimination under the EES.

\textsuperscript{513} MINISTRY OF EMPLOYMENT AND LABOR, PRESS RELEASE, \textit{THE DIFFERENCE IN CONSCIOUSNESS OF GENDER DISCRIMINATION IN THE WORKPLACE BETWEEN MEN AND WOMEN I} (Mar. 29, 2010). The Ministry of Employment and Labor (MEL) conducted a survey in 2010 on the current situation of gender equality in the Korean workplace. It aimed to evaluate the extent of implementation of the EES in the workplace. It resulted in contrasting perspectives towards the current situation of gender equality in the workplace. Men did not perceive the current situation as a serious problem to focus on, while women felt that the government needs to provide an effective policy measure to change the workplace culture.

\textsuperscript{514} Id. There is a large gap between men and women with regard to the current status of gender equality in the Korean workplace. The MEL reports that the proportion of respondents acknowledging the seriousness of gender discrimination has declined from 64.9\% in 2006 to 48.5\%. However, the large gap between men and women makes it more difficult for Korea to overcome gender discrimination, because men and women should cooperate with each other to overcome gender discrimination in the workplace.
step for effective implementation of the EES. Furthermore, 34.2% of the respondents considered the change of employer’s mind as the first and foremost step towards gender equality and 23.8% of the respondents recognized strengthening employees’ awareness of their right to equal employment opportunity as an important policy measure to realize gender equality. The common aim of these measures is to change employers’ and employees’ attitudes towards gender discrimination in the workplace. Training programs are also one of the measures to change employers’ and employees’ attitudes towards gender discrimination in the workplace. In particular, training programs are educational programs, which 23.8% of the respondents supported as a necessary policy measure to realize gender equality in the workplace. Therefore, training programs should be adopted as policy measures to realize gender equality in the Korean workplace.

The Korean government currently provides education programs for gender equality in general, but these programs do not focus on gender discrimination in the workplace. The Korean Institute for Gender Equality Promotion and Education was established in 2000 to provide gender equality education for government officials, employees, employers, teachers, parliamentarians and organizations such as the

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515 Id., at 2. Education refers to training programs to change gender bias, which is the fundamental cause of gender discrimination in the workplace. When the Korean Parliament promulgated the EES, it has fulfilled its legal obligation to make legislation public. However, promulgation alone does not make legislation widely enough spread to gather full public awareness and understanding. As a result, the respondents considered that education is essential for more effective implementation of the EES.

516 Id. The respondents may not have referred to a training program as a way to change the attitudes of employers and employees. However, training programs aim to change the attitudes of employers and employees. Therefore, these statistics are closely related to training programs for the effective implementation of the EES.
police, military and women’s rights groups. The Institute does not focus on education regarding gender discrimination in the workplace. Instead, the Institute focuses on raising public awareness of gender equality. Educational programs for gender equality in general and educational programs for gender equality in the workplace are different from each other. For example, the Korean Institute for Gender Equality Promotion and Education has five divisions in charge of education: 1) The Division of Gender-Sensitive Policy Education, 2) The Division of Gender Impact Assessment Education, 3) The Division of Leadership Education, 4) The Division of Gender Trainers’ Education, and 5) The Division of Promotional Education. These programs do not entail the specifics of gender discrimination cases that employers and employees may face in their daily lives in the workplace. Furthermore, these programs do not provide educational programs for government officials in charge of enforcement of the EES. As a result, the Korean government

517 Republic of Korea, The Sixth State Report to the CEDAW, at 15, CEDAW/C/KOR/6 (Mar. 5, 2007). Korea established the Korean Institute for Gender Equality in Promotion and Education in March 2000, following the mandate from Article 5 of the CEDAW. Article 5 mandates State Parties to modify gender stereotyping prevalent in the society. As a way to modify gender stereotyping in the society, Korea chose to establish an educational institution providing gender equality education for the general public.


519 Republic of Korea, The Sixth State Report to the CEDAW, at 15, CEDAW/C/KOR/6 (Mar. 5, 2007). Korea reports that the Korean government launched various awareness programs throughout the media to attract public attention to the issue of gender equality. It states the establishment of the Institute as an important step to raise public awareness as mandated by Article 5 of the CEDAW to modify gender stereotyping in the society. However, the programs offered by the Institute are not sufficient enough to provide opportunities for all government officials, employees and employers.

520 Korean INSTITUTE FOR GENDER EQUALITY PROMOTION AND EDUCATION, http://www.kigepe.or.kr/usr/emg/sub02/curriculum-1.asp. The Institute provides programs to raise public awareness, in general, instead of training programs for employees and employers to change their attitudes towards gender discrimination in the workplace.
reports the establishment of the Institute as an example of government policy to follow the mandate of Article 5 of the CEDAW to modify prolonged gender stereotyping, instead of Article 11 of the CEDAW, which enhances equal employment opportunity for female workers.\footnote{Id. Article 5 mandates state parties to modify a prolonged history of gender stereotyping and guarantee family education for gender equality. The Korean government reports that the Korean Institute for Gender Equality Education and Promotion is an institution for raising gender equality awareness instead of an institution systematically designed for gender equality at the workplace.} In essence, the current educational programs provided by the Korean government do not cover gender discrimination cases in the workplace. Therefore, Korea lacks systematic educational programs for gender equality in the workplace.

In fact, the Korean government originally planned to provide educational programs for gender equality in the workplace apart from educational programs for gender equality in general, but failed to provide educational programs focusing on gender discrimination in the workplace as it had originally planned. According to the Sixth Periodic Report to the CEDAW, the Third Basic Plan on Gender Equality in Employment provides training programs for gender equality in the workplace as a policy measure to implement from 2003 to 2007.\footnote{Republic of Korea, The Sixth State Report to the CEDAW, at 26, CEDAW/C/KOR/6 (Mar. 5, 2007). Korea reports the Third Basic Plan on Gender Equality in Employment (2003–2007) as an important policy to follow after the mandate of Article 11 of the CEDAW, which articulates the importance of gender equality in the workplace. The plan includes: 1) strengthening enforcement of relevant legislation, 2) supporting the compatibility of work and childcare, 3) establishing sound foundation for female employment including training programs, and 4) raising public awareness of gender equality in the workplace. The plan ultimately includes training programs, but it fails to achieve the original policy goal of introducing training programs for gender equality in the workplace.} However, the Korean government did not provide any programs for gender equality in the workplace during
the period specified by the plan. \footnote{523} The MEL failed to provide the training program because it does not have an organization responsible for education of gender equality in the workplace. As a result, the MEL originally planned to cooperate with the Ministry of Gender Equality which operates an educational center for gender equality in general. \footnote{524} However, the center does not have any experts on gender discrimination in the workplace so it failed to provide the programs as originally planned. After the failure, the MEL planed to provide training program for gender equality in the workplace from 2008 to 2012 on the basis of the Fourth Basic Plan on Gender Equality in Employment. \footnote{525} However, it limits the beneficiaries of the training programs to employers instead of expanding opportunities to employees and government officials. \footnote{526} Historically, training programs have already been recognized as an essential part of equal employment policy internationally and the beneficiaries of the programs vary from employers to employees. \footnote{527} Ignorant of the

\footnote{523}MINISTRY OF LABOR, THE FOURTH BASIC PLAN ON GENDER EQUALITY IN EMPLOYMENT (2008-2012) 5 (Jul. 2008). Ministry of Labor recognizes that it has not achieved its original policy goal to guarantee equal opportunities for men and women to take part in the workplace. It does not evaluate the achievement of training programs, because it has not provided any training programs for government officials, employees or employers to change the workplace culture.

\footnote{524}MINISTRY OF LABOR, THE THIRD BASIC PLAN ON GENDER EQUALITY IN EMPLOYMENT (2003-2007) 44 (Dec. 2012). Ministry of Labor originally planned that it would cooperate with the Ministry of Gender Equality to provide training programs for gender equality in the workplace.

\footnote{525}MINISTRY OF LABOR, THE FOURTH BASIC PLAN ON GENDER EQUALITY IN EMPLOYMENT (2008-2012) 84 (Jul. 2008). The Ministry of Labor includes training programs for gender equality in the workplace as the core policy measure under the plan.

\footnote{526}Id. The Fourth Basic Plan on Gender Equality in Employment entails five categories of projects for gender equality in the workplace. They are: 1) vocational education, 2) support for childcare, 3) a family-friendly workplace culture, 4) eradicating gender discrimination, and 5) restructuring workplace for gender equality. The last category of the project includes training programs for employers as the first step to change the attitudes of employers based on gender stereotyping. However, the restructuring does not entail training programs for government officials and employees. As a result, the Fourth Basic Plan on Gender Equality in Employment is not enough for effective implementation of the EES.

extensiveness of the beneficiaries of the programs, the Korean government failed to expand the beneficiaries of the training programs from employers to employees and government officials under the Fourth Basic Plan on Gender Equality in Employment. In addition, the Korean government has not launched any training programs for employers as it originally planned as the basis of the Fourth Basic Plan on Gender Equality in Employment. As it failed under the Third Basic Plan on Gender Equality in Employment, the Korean government failed to provide any training programs because it still does not have an institution responsible for education of gender equality in the workplace. To provide training programs for gender equality in the workplace, the Korean government has to establish an institution which is capable of providing extensive training programs for employers, employees and government officials. Therefore, Korea needs to focus on providing training programs for gender equality in employment, as it originally planned to do on the basis of the Third and Fourth Basic Plan on Gender Equality in Employment.

For Korea, the experiences of the United States are important precedents to refer to in the process of preparing training programs, because they target a variety of beneficiaries and accommodate distinctive features of diverse workplaces. When the United States promulgated Title VII of the Civil Rights Act of 1964, it established the Equal Employment Opportunity Commission (EEOC) as an administrative agency in charge of gender equality in the workplace among other responsibilities.528

528 Naomi C. Earp, Practitioners’ Notes, Forty-Three and Counting: EEOC’s Challenges and Sucesses and Emerging Trends in the Employment Arena, 25 HOFSTRA LAB. & EMP. L.J. 133, 135 (2007). This paper analyzes activities that the EEOC has led since its establishment in 1964. The
After 30 years after the establishment of the EEOC, in 1995, the EEOC adopted a National Enforcement Plan (NEP) to strengthen its enforcement mechanism and prioritized education and outreach on the basis of its own expertise in employment discrimination cases. In Korea, it has been 25 years since the Equal Employment Act (EEA) was enacted in 1987. As a result, Korea is ready to provide substantial training programs to realize the legislative intent of the EEA as the U.S. provided the NEP after 30 years after the establishment of the EEOC. The EEOC could rely on their staff as instructors of the training programs, because the EEOC staff had actively engaged in investigation, mediation and litigation of employment discrimination cases under Title VII, in contrast with the government officials in Korea who imposed penalties on only one gender discrimination case out of 5,679 cases violating the EES. On the basis of its own expertise, the EEOC provides regular no-cost programs for employees and employers so that the American workplace can maintain a workplace sensitive to employment discrimination under Title VII. In addition, United States promulgated Title VII of the Civil Rights Act of 1964 and the EEOC started to work as the core administrative agency in charge of enforcement of Title VII.

529 Anne Noel Occhialino & Daniel Vail, Why the EEOC (Still) Matters, 22 Hofstra Lab. & Emp. L.J. 671, 688 (2005) analyzes the history of the EEOC, describes the current activities of the EEOC and emphasizes the role of the EEOC in the future. The background for the emphasis on the prospective role of the EEOC are as follows: First, employment discrimination cases are still prevalent in the American workplace. Second, the EEOC is an effective agency for the enforcement of Title VII and the resolutions of cases in mediation, conciliation and litigation. This paper emphasizes the National Enforcement Plan (NEP) as an important step to strengthen the enforcement mechanism of the EEOC. What is more important, the fact that the EEOC prioritized outreach and education as the first and foremost policy measure to achieve under the NEP is noteworthy for Korea.


531 The Equal Employment Opportunity Commission (EEOC) provides free and fee-base programs. “No-Cost Outreach Programs” focuses on general information about employment discrimination laws and the procedures that employees have to go through for investigation, mediation and litigation of employment discrimination cases. The programs are offered for employee and employer groups, professional associations, students, non-profit entities, community organizations and other members of
the EEOC provides training programs on the basis of specific requests from an organization for its managers, human resources professionals, attorneys, team leaders, and non-managerial staff. For these programs, the EEOC receives certain fees and provides customized programs upon the request of the organization. Likewise, the EEOC outreach and educational programs are extensive enough to cover specific requests from organizations for various beneficiaries. These fee-based programs are important precedents for Korea in two respects. First, they target a variety of beneficiaries. Korea should provide educational programs for employees, employers and government officials in charge of enforcing the EES for gender equality in the workplace. The fee-based programs in the EEOC accommodate requests from an organization for its non-managerial and managerial staff. As a result, the EEOC programs are important examples for Korea to follow in providing programs for employees and employers. Although the EEOC does not offer programs for government officials, it at least aims to fulfill distinctive demands from employees and employers. Second, the EEOC programs acknowledge diversity in the workplace on the basis of the characteristics of the organization requesting customized programs. For example, organizations of blue-collar workers and white-collar workers have different expectations for the programs, because the

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532 The EEOC provides a customized program designed to meet an organization’s demand. The EEOC provides programs as conferences, seminars or on-site training programs for directors, managers, human resources professionals, attorneys, team leaders and non-managerial staff. The employers usually request the programs for their employees to comply with equal employment laws. EEOC TRAINING INSTITUTE, http://www.eeotraining.eeoc.gov (last visited Nov. 15, 2010).
533 Id.
workplace culture of blue-collar workers is relatively more hostile towards female employees than the workplace culture of white-collar workers. Furthermore, whether a workplace is male-dominated or female-dominated is a critical element determining the level of hostility towards female employees. Likewise, each organization may have its own demands for a training program, and the EEOC provides customized programs on the basis of the specific request from the organization. As a result, the EEOC’s customized programs are not only important for their various beneficiaries, but also for the nature of their customization on the basis of the distinctive features that each organization requires. Therefore, the customized programs of the EEOC are important indicators that the Korean government should provide training programs for a variety of beneficiaries and for unique workplaces.

2. Obstacles to Adopt a New Legislative model and Ways to Overcome the Obstacles

There are two primary obstacles for Korea to provide a new legislative model for gender equality. The first obstacle is the financial constraint to provide a new

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534 Michael J. Frank, *The Social Context Variable in Hostile Workplace Environment Litigation*, 77 Notre Dame L. Rev. 437, 438 (2002). This paper analyzes elements to decide whether the workplace environment is hostile enough to constitute harassment under Title VII. It states that the social context determines whether the environment is hostile to employees or not. It emphasizes that organizations for blue-collar workers and white-collar workers have different workplace environments and the courts should consider these differences when determining whether a particular case constitutes sexual harassment.

535 Vicki Schultz, *Reconceptualizing Sexual Harassment*, 107 Yale L.J. 1683, 1695 (1998) emphasizes that variation in workplace environments determines whether a particular case constitutes sexual harassment under Title VII. As a result, women are more subject to sexual harassment in the male-dominated workplace than the female-dominated workplace.
legislative model, which requires an increase in government social welfare expenditures. The second obstacle is the traditional male-breadwinner family model, which requires a change in the social and cultural perceptions of gender stereotyping.

This paper proposes a new model on the basis of expanding public expenditure to guarantee equal opportunities for men and women to take leave for their children and to change the traditional male-breadwinner family model. To guarantee gender equality in reconciling work and childcare, this section analyzes these two problems in detail.

a. Economic Concerns to Provide a New Legislative Model for Gender Equality

In increasing the wage-replacement rate under the wage-dependent system and expanding individuality, concerns for excessive public spending may hinder parliamentarians, government officials, and tax payers from adopting the legislative proposal for the new system. When Korea adopted employment insurance as its financial source to support its maternity and parental leave system in 2001, employers, parliamentarians, and government officials strongly opposed it on the basis of excessive public expenditure. The system started as an unpaid system, so Korean

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536 The first proposal for public expenditure on maternity and parental benefits relied on health insurance, instead of unemployment insurance, on the grounds that these benefits guarantee the health of both mother and child. The proposal assumed that the primary leave-takers would be mothers instead of fathers. However, due to a severe deficiency in health insurance funds, Korea failed to adopt health insurance as the financial source for maternity and parental benefits. Instead, it introduced unemployment insurance for the benefits. Until Korea achieved the paid leave system, it had struggled
society had difficulties in accepting the concept of financial support for non-working parents, in order to compensate for lost income during childcare, instead of participating in the workplace, prior to birth of the child. When Korea introduced its first maternity and parental benefits system in 2001, the financial concerns following the economic crisis of the late 1990s were the major obstacles.\footnote{Geun Tae Kim, Korea: Quality Childcare, OECD OBSERVER (2005), http://www.oecdobserver.org/news/fullstory.php/aid/1552/Korea.html (last visited Apr. 17, 2014). This report states that the downward trend of the total fertility rate in Korea became more evident during the economic crisis in 1997 and 1998.} In the same way, because of the more recent global financial crisis, Korea may face opposition on the grounds of economic concerns to expand public expenditure for the parental leave and benefits system. Furthermore, according to the experience in Sweden, economic recession affects the level of financial support for the parental leave and benefits system even in social-democratic countries such as Sweden, which are relatively more generous in expanding social expenditures on social welfare benefits than conservative welfare countries such as Korea.\footnote{Anita Nyberg, Parental Leave, Parental Leave, Public Childcare and the Dual Earner/Dual Carer-Model in Sweden, EUROPEAN COMMUNITIES (2004), http://pdf.mutual-learning-employment.net/pdf/sweden04/disspapSWE04.pdf (last visited Feb. 22, 2010). This paper analyzes the relationship between childcare facilities, the parental leave system and the dual earner model. This paper finds that generous provisions for childcare facilities and the parental leave system help dual earner families raise their children. This paper analyzes the Swedish system in chronological order. In 1974, when Sweden introduced its parental leave system, it guaranteed 90% as the wage-replacement rate, but reduced the rate to 80% in 1995 and to 75% in 1996 due to the economic recession during the 1990s. In 1998, when the economic

In 1974, Sweden introduced 90% as the wage-replacement rate, but reduced the rate to 80% in 1995 and to 75% in 1996 due to the economic recession during the 1990s. In 1998, when the economic
situation was strong enough to expand social welfare benefits after the recession, Sweden increased the wage-replacement rate back to the original rate of 90%.

Furthermore, Australia recently failed to adopt a paid maternity leave system due to economic constraints after the world-wide financial crisis which began in 2008.\textsuperscript{539} As other countries have experienced, Korea may face difficulties in overcoming opposition in introducing a new parental leave and benefits system on the grounds of financial constraints.

However, expanding public expenditures for parental benefits is not overly burdensome for Korea because the current level of public expenditures on social welfare benefits in Korea does not reach the OECD average, and the fiscal prudence of the Korean government supports expanding public expenditures on the new system. The OECD family database reports that Korea spends the lowest proportion of its GDP on family benefits, including benefits for the parental leave system, among the member countries.\textsuperscript{540} It states that while other OECD countries have spent 2.3\% of GDP on family benefits and increased the proportion by 0.5\% every year, Korea has spent less than 1\%.\textsuperscript{541} Furthermore, Korea spends a relatively small proportion on


\textsuperscript{540} PFI: \textit{Public Spending on Family Benefits}, OECD 1, http://www.oecd.org/dataoecd/45/46/37864391.pdf (last visited Feb. 22, 2010). This paper compares public spending on family benefits in OECD member states. Family benefits include “child-related cash transfers to families with children” including parental benefits, “public spending on services for families with children” and “financial support for families provided through the tax system.”

\textsuperscript{541} Id. at 2 (It reports that OECD countries spend 2.3\% of their GDP on average. France, Luxembourg and the United Kingdom spend more than 3.5\%, while Mexico and Korea spends less than 1\%).
cash benefits in comparison with social services and tax breaks.\textsuperscript{542} As a result, Korea does not spend enough for family benefits in comparison with other OECD member countries. Furthermore, Korea has traditionally maintained fiscal prudence based on small budgetary deficits and low public debt, so expanding government expenditures on cash benefits for the parental leave system will not incur an unreasonable financial burden.\textsuperscript{543} Consequently, the fiscal prudence of the Korean government will support expanding financial support for the parental leave and benefits system, which is an effective mechanism for solving the problem of the declining birthrate and future labor shortages.

In addition, the experience in Germany proves that financial constraints would no longer be an obstacle to introducing a new parental leave and benefits system in Korea, because the positive policy outcome overrides the financial burden of introducing a new system. When Germany tried to introduce a wage-dependent system and a father quota in 2007, it faced financial concerns as to how to support the new system.\textsuperscript{544} A study estimating the costs and benefits of reform systematically

\textsuperscript{542} Id. There are three major areas of public spending on family benefits. They are cash benefits, social services and tax breaks for family. Cash benefits refer to child allowances based on the number and age of children or the income level of families, parental benefits for the leave system, and public childcare support through payments for parents. While “the majority of countries spend a higher proportion in cash benefits than in services or tax benefits,” Korea spends a lower proportion in cash benefits along with France, Denmark, Iceland, Italy, Mexico and Spain.

\textsuperscript{543} OECD, \textit{OECD Economic Surveys: Korea}, Vol. 2003, No. 5, 2003, at 79. This issue features reforming the public expenditure system in Korea as one of the important policy reforms necessary for sustainable development. The fundamental basis for this argument is a “history of fiscal prudence.” It states that public debt remains to be 22% of GDP, far below the average of 74% in OECD countries.

\textsuperscript{544} C. Katharian Spiess & Katharina Wrohlich, \textit{The Parental Leave Benefit Reform in Germany: Costs and Labour Market Outcomes of Moving towards the Scandinavian Model}, INSTITUTE FOR THE STUDY OF LABOR 2-3 (2006). This paper analyzes the potential costs and policy outcomes of implementing the system. It emphasizes that when Germany enacted the act in September 2006, public debate concentrated on the financial costs of implementing the system. However, it concludes that the costs
analyzed whether the policy outcome overrides the financial burden of introducing a new system. The results showed that the reform would increase the female labor force participation rate, which the increase would lead to a rise in household income. According to the study, the German government would gain increased tax revenue from the increase in individual household income. Consequently, although Germany suffers from the extra costs of implementing the new system, the increase in the tax revenue mitigates the extra costs incurred by the new system. The study concludes that the reform will not threaten the fiscal prudence of the German government. In fact, extra costs did not hinder the German government from implementing the new system. The actual amount of benefits incurred in 2007 exceeded 3.5 billion Euros, as estimated by the German government, but the German government did not take it as an obstacle to implementing the system. Rather, the German government highly appreciated the increase in paternal usage of leave entitlements to 14% of all leave takers, when the paternal usage had previously remained around 3% of all leave takers since 1986 when Germany introduced its

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545 Id. at 10-13. This paper finds no significant changes in maternal behavior in the first year of implementation, while it finds some changes of paternal behavior in the same year. In the second year, it finds substantial changes in maternal and paternal behavior simultaneously.

546 Id. at 10-11. This paper finds that the reform benefits middle or high income families more than low income families. As a result, income tax revenues increased by implementing the new system. Due to the subsequent increase in government taxation, the increase in public expenditure following the new system does not render the system void on the basis of substantial amount of financial input required to implement the system.

547 German Family Minister Calls New Parental Leave Law a Success, DEUTSCHE WELLE (Dec. 15), 2007, http://www.dw-world.de/popups/popup_printcontent/0,,3005391,00.html (last visited Feb. 25, 2010). This report states that Germany expected 3.5 billion Euro as the budget for parental benefits in 2007, but it spent 130 million Euro more than expected. As a result, Germany increased the budget to 4.0 billion Euro in 2008. Despite exceeding the expected cost, Germany perceived the system as a “success” because 34% of men who became fathers in 2007 were willing to take leave due to the reform.
parental leave system.\textsuperscript{548} Because the reform increased the proportion of benefits received by fathers to 14\%, Germany recognized the positive impact on gender equality.\textsuperscript{549} Although financial constraints prevented Germany from passing legislation to expand the parental leave system, in practice they were no longer obstacles to continue the system. The wage-dependent system finally brought about an increase of paternal usage of parental leave, which has been aimed for several decades since the introduction of the German parental leave system in 1986. The new system requires an increase in the government’s budget allotted to the parental leave system. However, the German government increased its budget for the system on the grounds that there would be an increase in the paternal usage of the parental leave system upon the change of the system from the flat-rate benefit system to the wage-dependent system, although the change increased the financial resources necessary to provide benefits for workers taking part in the system.\textsuperscript{550} Therefore, as the German experience shows, financial constraints cannot be the sole ground for stopping the expansion of the Korean leave system.


\textsuperscript{549} Id.

\textsuperscript{550} \textit{German Family Minister Calls New Parental Leave Law a Success}, DEUTSCHE WELLE (Dec. 15, 2007), http://www.dw-world.de/dw/article/0,3005391,00.html (last visited Mar. 5, 2010) (This article reports that actual spending on parental benefits in 2007 exceeded the budget of 3.5 billion Euros by 130 million Euros. Germany increased the budget to 4 billion Euros for parental benefits in 2008 to encourage parents, particularly fathers, to take advantage of the system.).
b. The Male-Breadwinner System on the basis of Gender Stereotyping

As a country with a firmly established male-breadwinner system, Korea lags behind in government spending on family benefits because it fundamentally neglects the importance of financial support for dual-earner families. There are various policy measures for supporting dual-earner families.\(^{551}\) Expanding financial support for childcare facilities is one of those measures.\(^{552}\) The private sector may provide full facilities for every family, but private facilities may request high fees from individual families for taking care of their children.\(^{553}\) To relieve financial constraints for use of childcare facilities, the government may establish public childcare centers or provide cash or tax benefits for families using private facilities. On average, OECD countries spend approximately 0.6% of GDP for childcare facilities while Korea


\(^{552}\) Geun Tae Kim, *Korea: Quality Childcare*, OECD OBSERVER (2005), http://www.oecdobserver.org/news/fullstory.php/aid/1552/Korea.html (The Minister for Health and Welfare in Korea reports that Korea is concerned about childcare for maternal employment. He manifests future plans to increase public or national childcare facilities to reach 60% of all facilities.); and Tarjei Havnes & Magne Mogstad, *Money for Nothing? Universal Child Care and Maternal Employment*, INSTITUTE FOR THE STUDY OF LABOR 3 (2009), (This paper finds a positive correlation between subsidies for childcare and maternal employment. However, subsidies mostly form informal childcare which cost more than formal childcare. This paper signifies the importance of support for childcare for maternal employment, so it is noteworthy for Korea to recognize the importance of financial support for childcare.).

\(^{553}\) *Matching Work and Family Commitments: Issues, Outcomes, Policy Objectives and Recommendations*, OECD, (Nov. 29, 2007), http://www.oecd.org/dataoecd/18/27/39689983.pdf (last visited Mar. 5, 2010). This report emphasizes the importance of public childcare facilities to relieve the financial burden on individual families to support maternal employment. The Scandinavian countries are the most generous countries among the OECD countries with regard to public spending on childcare facilities.
spends only 0.1%, which is the lowest of all.\textsuperscript{554} Parental leave is a measure to support dual-earner families as childcare facilities. Financial support for taking advantage of childcare facilities and parental leave are core policy measures to support dual-earner families, so public expenditure on these two policy measures are important gauges for determining whether or not the state prioritizes support for dual-earner families.\textsuperscript{555} Since Korea does not provide as much financial support for these policy measures as much as other OECD member countries, it does not consider support for dual-earner families as an important goal to achieve.\textsuperscript{556}

The Korean government failed to increase public expenditures for dual-earner families, because of a prolonged history of the male-breadwinner model. According to studies comparing the Western and Asian countries, Confucian society is not ready to expand financial support for dual-earner families such as expanding

\textsuperscript{554} Willem Adema & Maxime Ladaique, \textit{How Expensive is the Welfare State?: Gross and Net Indicators in the OECD Social Expenditure Database (SOCX)}, OECD 25 (2009), http://www.oecd-ilibrary.org/docserver/download/5ks712h5cg7l.pdf?expires=1397820814&id=id&accname=guest&checksum=0231794C790F29053CE95A2D2B7EACA4 (last visited Apr. 18, 2014). The figures include public financial support for families with children participating in both formal day-care services and pre-school institutions. There is large variation across countries, from 0.1% in Korea to 1.4% in Denmark.

\textsuperscript{555} C. Katharian Spiess & Katharina Wrohlich, \textit{The Parental Leave Benefit Reform in Germany: Costs and Labour Market Outcomes of Moving towards the Scandinavian Model}, INSTITUTE FOR THE STUDY OF LABOR 2 (2006), http://ftp.iza.org/dp2372.pdf (last visited Apr. 18, 2014). (This paper predicts the effect of the 2007 German parental leave benefit reform. It finds a positive impact on the female labor force participation rate and moderate costs to implement the system. It states that Germany followed the Swedish model which maintains a high female labor force participation rate and a high fertility rate. Germany considered that support for the parental leave system and childcare facilities are fundamental to the Swedish model of a high female labor force participation rate and fertility rate. In particular, this paper emphasizes that “[t]he employment rate for mothers with children under three years of age is 48% in Germany compared, for example, to 77% in Sweden” on the basis of statistical evidence published by the OECD in 2006.).

\textsuperscript{556} Priscilla A. Lambert, \textit{The Comparative Political Economy of Parental Leave and Child Care: Evidence from Twenty OECD Countries}, 15 SOC. POL. 315, 316-17 (2008). This paper reports that political and economic institutions and female representation in the parliament are key factors in shaping the degree of government support for parental leave and childcare facilities. It focuses on these two primary policy measures because they require an “active government role and clearly encourage women’s and mothers’ employment.”
support for the parental leave system and childcare facilities. The family-oriented cultures consider mothers as the only caregivers and are reluctant to accept parents’ dual role as workers and caregivers, so countries with family-oriented cultures commonly experience difficulties in reforming the parental leave system to incentivize paternal usage of leave entitlements. East Asian countries such as Korea and Japan resemble Southern European countries adhering to the male-breadwinner model, so the Korean government similarly has difficulties in expanding financial support to incentivize paternal usage of leave entitlements.

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557 Toru Suzuki, Population Policy in Eastern Asian Low Fertility Countries, XXVI IUSSP INTERNATIONAL POPULATION CONFERENCE (2009), http://iussp2009.princeton.edu/download.aspx?submissionId=90011 (last visited Apr. 13, 2010). This paper finds that East Asian countries have difficulties in dealing with a declining birthrate because of a prolonged history of Confucianism. It states that the Japanese and Korean governments fail to guarantee effective policy measures for their demographic problems, because they adhere to a male-breadwinner model instead of a dual-earner model.

558 Christin Hilgeman & Carter T. Butts, Women’s Employment and Fertility: A Welfare Regime Paradox, 38 SOC. SCI. RES. 103, 105 (2009). This article finds that family policy helps countries mitigate a declining birthrate. This paper finds different patterns of family policy in three different welfare regimes. It states that Japan and Southern European countries are conservative countries expecting women to return to their traditional role as caregivers after childbirth.

559 Allison E. Vos, Falling Fertility Rates: New Challenges to the European Welfare State, 7 SOC.-ECON. REV. 485, 491 (2009) analyzes the relationship between family policy and fertility rate. It states that European countries take different approaches towards their fertility problems. Regarding Germany and other conservative welfare countries, this paper emphasizes a family-oriented culture emphasizing the role of family to raise a newborn child. It also states that Japan is also a family-oriented country and expands the theory of a welfare regime to countries outside of European countries.

560 Yeong-Ran Park, Gender Dimensions of Family Policy in Korea, Paper Prepared for Canada-Korea Social Policy Symposium II, Jan. 27-28, 2005, at 15 (This study finds that Korea tries to depart from the male-breadwinner model but still lags behind other countries. It emphasizes that Korea considered the child’s family as the primary caregivers and abstained from intervening in family matters such as is done in some liberal welfare countries. However, after the government started to provide policy measures in response to the declining birthrate, it focused on measures for male-breadwinner models. Therefore, this paper finds explicit gender bias in Korean policy to reconcile work and childcare.).
However, according to the recent changes in Japanese legislation, the male-breadwinner model no longer inhibits a country from expanding its parental leave system to a more gender-balanced system for reconciling work and childcare. Japan and Korea share the commonality that they are Asian countries, distinctive from European countries such as Germany. The geographical distance between Asian and European countries implies differences beyond their location. In the context of historical and cultural differences, experts consider that Japan and Korea are still under the influence of strong gender stereotyping due to their prolonged history of Confucianism affecting gender relations in every aspect of social relationships and life. Also former colonial rule of Korea by Japan makes Japan and Korea closer to each other. In addition, because Community legislation of the European Union is influential on gender relations of its member countries, Germany is relatively more

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Nariko O. Tsuka, Larry L. Bumpass & Minja Kim Choe, *Gender, Employment, and Housework in Japan, South Korea and the United States*, 9 Rev. Population & Soc. Pol'y 195, 196 (2000). (This paper finds that the working hours of mothers and fathers are closely related to each other. Although Japan, Korea and the United States share the commonality that mother’s working hours are closely related to husband’s working hours, they find some variations, particularly for the United States. For example, the age of children is important in determining women’s working hours in the United States, while it is not an important factor in Japan and Korea. Furthermore, commuting time affect women’s working hours in Korea and Japan more than women’s working hours in the United States. Prior to providing empirical evidence, this paper provides background information such as the cultural and historical background in each country. In particular, this paper emphasizes that Japan and Korea have developed “patriarchal family systems and gender roles based on 'patrilineal familism.'")


progressive than Japan and Korea with regard to the effects of the parental leave system on gender.\footnote{Heather Macrae, *Rescaling Gender Relations: The Influence of European Directives on the German Gender Regime*, 13 SOC. POL. 522, 543 (2006). This article finds a close relationship between gender relations in German legislation and European Directives. It states that Germany lagged behind European Directives due to its strong male-breadwinner model. Although the current system in Germany still maintains gender bias in some respects, due to the influence of European Directives, the German system at least heads towards a hybrid regime supporting dual-earner families as well as male-breadwinner models. Despite such positive interpretation of European Directives on gender relations, there is a negative interpretation of European Directives on gender relations in member countries as well. The Equal Treatment Directive adopts a special treatment approach instead of an equal treatment approach, so it considers that women need more protection than men for their reproductive health conditions and their primary role as caregivers. However, in respect to the Parental Leave Directive, Germany recognized individuality in 2001 and 2007, because the Parental Leave Directive mandated its member countries to guarantee the right to leave as an individual entitlement instead of a family entitlement.}

Germany is a conservative welfare country with a male-breadwinner model, but other member countries such as Scandinavian countries are social-democratic countries supportive of dual-earner families. As a result, Community legislation of the European Union is not hesitant to adopt progressive policy measures to support dual-earner families that these social democratic countries have already implemented. In particular, the Parental Leave Directive of the European Union mandates its member countries to ensure individuality and, in 2001, Germany was able to revise its legislation to expand individuality of its own system on the basis of such a mandate from the Parental Leave Directive.\footnote{In 2001, Germany finally allowed both parents to take leave at a time. By contrast, Korea does not allow employees to take leave if their spouses are already on parental leave. Martin Behrens, *Government Publishes Report on Parental Leave*, EUROFOUND (Aug. 11, 2004), http://www.eurofound.europa.eu/eiro/2004/08/inbrief/de0408203n.htm (last visited Apr. 13, 2010) reporting that Germany finally achieved individuality by allowing both parents to take leave at the same time. In 2007, Germany provided two additional months of benefits if both parents participated in the system. See C. Katharina Spiess & Katharina Wrohlich, *The Parental Leave Benefit Reform in Germany: Costs and Labour Market Outcomes of Moving towards the Scandinavian Model*, INSTITUTE FOR THE STUDY OF LABOR 2-3 (2006), http://ftp.iza.org/dp2372.pdf (last visited Apr. 17, 2014) reporting that Germany reformed its legislation to guarantee two additional months of benefits as of 2007.}

Prior to the revision in 2001, Germany did not allow both parents to take leave at the same time.
Germany finally revised its legislation and allowed both parents to take leave simultaneously on the basis of the mandate from the Parental Leave Directive, specifically requiring individuality in the right to take leave as a core element of the parental leave system in each member country. However, despite such differences between East Asian countries and European countries, Japan followed the German system and recognized individuality in 2010. In 2010, Japan finally introduced two additional months of parental benefits when both parents take advantage of the system, as Germany did in 2007. As the 2010 Japanese reform proves, the Confucian tradition of gender stereotyping can no longer be the sole reason for opposing new legislation to recognize gender equality in reconciling work and childcare in Korea.

c. Strategies to Overcome the Obstacles for the New System in Korea

There are two important positive policy outcomes that can overcome the obstacles to obtaining a national consensus on the new parental leave system for Korea. First, the new system brings about an increase in the female labor force participation rate. Expanding financial support and individuality requires an increase in public expenditure. Yet, emphasizing women’s role as workers goes

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565 Introduction to the Revised Child Care and Family Care Leave Law, Ministry of Health, Labour and Welfare, http://www.mhlw.go.jp/english/policy/affairs/dl/05.pdf (last visited Apr. 14, 2010). The Japanese government reports that the legislature passed new legislation to abolish an employer’s discretion to refuse to grant leave if the spouse of the employee is unemployed. Furthermore, since 2010, it guarantees two additional months of leave and benefits when both parents participate in the system.

566 This paper focuses on two aspects of reforming the system for gender equality. First, this paper proposes expansion of financial expenditure, which incurs opposition on the grounds of budgetary constraints. Here, the expansion basically refers to increasing the wage-replacement rate from 40% to
against the traditional gender norm of Korea’s family-oriented culture. As a result, asserting the maternal right to work, and the paternal right to childcare as the sole reason to emphasize the positive effect of increasing the female labor force participation rate will not be enough to obtain a national consensus on the new system. However, an increase in the female labor force participation rate is essential for sustainable growth, which is an essential long-term national goal. Consequently, the close relationship between an increase in the female labor force participation rate and sustainable growth is an important strategy for Korea to overcome the obstacles of adopting a new system for gender equality. Second, the new system is one of the measures employed to increase the fertility rate. The core concern regarding the prospect of sustainable growth is the continuously declining birthrate. As a result, the Korean government has already recognized the

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67%. Second, this paper proposes expansion of individuality. Expanding individuality opens the door for fathers to take leave for childcare. However, it incurs the extra costs of a wage-replacement system. Although expanding financial support and individuality can be two different pillars of the new system, they both require an increase in financial support for implementation. Arnlaug Leira, *Caring as Social Right: Cash for Child Care and Daddy Leave*, 5 SOC. POL. 362, 362-63 (1998) (finding that the right to care is not only a right for mothers, but also for fathers. This paper begins with arguments on the basis of a right to care and ends with arguments on the basis of a right to care in equal terms from the perspective of gender equality. In particular, this paper emphasizes the right to take at least some parts of the leave led to the introduction of paternal leave.); and Priscilla A. Lambert, *The Comparative Political Economy of Parental Leave and Child Care: Evidence from Twenty OECD Countries*, 15 SOC. POL. 315, 318-19 (2008) (This paper finds that the parental leave system depends on the political and economic institutions of each country. Demographic concerns and labor shortages are major issues for each country. As a result, countries consider these political and economic challenges as the fundamental problems of the parental leave system. The political and economic arguments are important explanations for the variations in the systems of each country. Therefore, in addition to an argument based on the right of mothers and fathers, political and economic challenges are key issues to explain variations in each country.).


importance of policy measures which reconcile work and childcare to increase the fertility rate. There is dispute over whether the parental leave system for gender equality actually brings about an increase in the fertility rate. However, because the new model relieves working parents from work-related matters to raising their children, it fosters into a demographic policy to increase the fertility rate. Therefore, on the basis of the close relationship between the proposed system’s direction toward gender equality and positive effect on the fertility rate, Korea can promote these policies by introducing the new system.

(Aug. 15, 2000), http://www.un.org/esa/population/publications/popdecline/kim.pdf (last visited Apr. 27, 2010) (This study emphasizes that a declining fertility rate is an emergent issue that Korea has to solve in order to maintain sustainable growth. It particularly emphasizes the labor shortages which will result from deficit in the pension system. As a result, this paper finds that demographic concerns and labor shortages are not two separate issues. Instead, they are closely related to each other.)


Christin Hilgeman & Carter T. Butts, Women’s Employment and Fertility: A Welfare Regime Paradox, 38 SOC. SCI. RES. 103, 103 (2009) finds a negative relationship between the fertility rate and the female labor force participation. It is in contrast with studies in the 1980s, which emphasized a positive relationship between the fertility rate and the female labor force participation rate. It states that the difference came from whether the study focused on a national policy to reconcile work and childcare or individual differences in determining fertility decisions. If policy measures for reconciliation are effective enough to relieve women from difficulties in reconciling work and childcare, then the country sees a positive relationship between the fertility and female labor force participation rates. However, if policy measures are not enough to guarantee women’s dual role as caregivers and workers, then the country suffers from a negative relationship between the fertility and female labor force participation rates.

Rafael Lalive & Josef Zweimüller, Does Parental Leave Affect Fertility and Return-to-Work? Evidence from a “True Natural Experiment”, INSTITUTE FOR THE STUDY OF LABOR 17 (2005), http://ftp.iza.org/dp1613.pdf (last visited Apr. 19, 2014) (purporting to figure out the joint behavior of women’s fertility and return-to-work decisions and how parental leave legislation interferes with these decisions. It concludes that fertility decisions rely on the institutions of parental leave policy. As more education and gender equity norms pervade, women rarely abandon their employment opportunities to give birth to children. As a result, as far as the parental leave system fully accommodates women’s dual role as caregivers and workers, women are willing to give birth to children. As a result, this paper emphasizes the importance of parental leave legislation to boost the fertility and female labor force participation rate at the same time.).
The new system brings about an increase in the female labor force participation rate, which is a precondition for Korea to maintain sustainable growth in the future. The 2008 OECD Economic Survey reports that an increase in the female employment is the first step to reforming the labor market in order to maintain sustainable growth. The survey focused on aging societies as the key issue for the member countries wishing to maintain sustainable growth. An aging society requires more human resources to participate in the labor market, so the female labor force is necessary to alleviate labor shortages. The OECD Economic Survey in 2008 proposes that Korea should expand its leave system to allow women to participate in the labor market. The OECD report is not the only reliable source to alert Korea of the emerging call to expand its leave system. Experts agree that

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573 OECD, OECD ECONOMIC SURVEYS: KOREA 126 (2009). This survey consists of five chapters. The first chapter analyzes key challenges for continuous growth in Korea. The other four chapters propose reforms to solve the current issues. The last chapter focuses on labor and education. As the foremost initiative, it proposes raising the female labor force participation rate. It focuses on the significant proportion of women exiting from the labor market at the time of marriage or childbirth. It perceives an M-shaped curve as the problem of the Korean labor market.

574 Id. at 122. When proposing reformation of the labor market and improvement of the education system, this report illustrates that background information regarding the reasons to change the systems is required in these two areas. Most of all, it stipulates population aging is the key impetus requiring human capital to participate in the labor market. The female labor force remains inactive due to difficulties in reconciling work and childcare, so this report proposes increasing the female labor force participation rate as the first step towards maintaining economic growth in an aging society.

575 Id. at 127-130. There are various factors limiting the female labor force participation. According to a Korean government survey in 2008, 60% of respondents answered that the “burden of childcare” limits their participation in the labor market. An OECD report emphasizes that the lack of childcare facilities and paternal involvement in childcare are fundamental obstacles preventing the expansion of female labor force participation. It focuses on the fact that 98% of women and 2% of men take advantage of the parental leave system. Therefore, the OECD report proposes the expansion of the parental leave system to increase maternal employment.

576 Id. Along with the parental leave system, the report emphasizes expansion of maternity leave and childcare facilities to encourage women to participate in the workplace.

577 The expansion of cash benefits for parental leave does not refer to an increase in the wage-replacement rate but also refers to recognizing individuality of the right to leave and benefits. If a system defines the right to leave and benefits as an individual entitlement, it assumes that fathers will
Korea has neglected the importance of the leave system and faces difficulties in solving the problem of reconciling work and childcare. However, Korean bureaucrats are influential enough to propose a new legislative model to the parliament and persuade parliamentarians to agree with the proposal, so it is politically feasible to achieve reform when the bureaucrats recognize the urgent call to reform the system and step forward. In fact, Korean bureaucrats enjoy vast discretion which even allows them to draft new legislation by themselves. Therefore, as far as the Korean bureaucrats recognize the importance of reform on the basis of the positive impact on the sustainable growth of the female labor force participation rate, passing new legislation for gender equality is politically feasible despite concerns for expanding public expenditures and the prolonged history of a family-oriented culture and a pro-male-breadwinner system.

578 Elena Ianchovichina & Danny Leipziger, How Can Korea Raise Its Future Potential Growth Rate?, 9(4) WORLD ECON. 133, 139 (2008). This is a report from the World Bank, one of the international economic organizations which analyze the economic development of each country in the OECD. Because this paper pictures future plans for the Korean society as the OECD Economic Survey portrays, a raise in the female labor force participation rate is a key policy measure to implement for gender equality in reconciling work and childcare. To encourage maternal employment, this report also emphasizes expanding cash benefits for parental leave.

579 Ruth Phillips, Diverse Histories, Shared Social Issues: The Australian and Korean Welfare States, in GENERATIONAL CHANGE AND SOCIAL POLICY CHALLENGES: AUSTRALIA AND SOUTH KOREA 1, 22-23 (2007). This chapter compares the Australian and Korean social welfare programs. It states that Korean bureaucrats mostly played an important role in economic development and they continued to be dominant decision makers in shifting towards a more democratic social welfare policy encompassing a marginalized group of the population.

580 Tom Ginsburg, Comparative Administrative Procedure: Evidence from Northeast Asia, 13 CONST. POL. ECON. 247, 254 (2002). This paper compares the regulatory mechanisms that Japan and Korea adopted that allow bureaucrats' vast discretion over formulating policy measures in diverse areas. Although Japan and Korea have different mechanisms to control their discretion, they share the common characteristic that bureaucrats enjoy full discretion in introducing a new legislative proposal in establishing policy measures in various areas. In particular, this paper emphasizes that Korean bureaucrats even enjoy discretion in drafting new legislation by themselves on the basis of their high level of education.
Second, in addition to a positive impact on the female labor force participation rate, reform for gender equality practically contributes to an increase in the fertility rate, which is a major concern for the Korean government as its population ages. The expansion of public social expenditure is a general policy trend in OECD countries preparing for an aging population. In 2003, the OECD proposed that Korea reform its public social expenditure system in order to maintain sustainable growth in the future. In 2008, the OECD once again emphasized tax reforms to increase public social expenditure based on a relatively small proportion of government spending on social welfare benefits. The government left responsibility for social expenditure to the private sector alone so that it could maintain “fiscal prudence.” As a result, on one hand, expanding public expenditure is a reasonable request considering the prudent fiscal policy of the Korean government. On the other hand, because the government acknowledged that the aging population is an emerging social problem to prioritize, and promised to

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581 Willem Adema & Maxime Ladaique, How Expensive is the Welfare State?: Gross and Net Indicators in the OECD Social Expenditure Database (SOCX), OECD 22 (2009), http://www.oecd-ilibrary.org/docserver/download/5ks712h5cg7l.pdf?expires=1397862457&id=id&accname=guest&checksum=F3B3B89E3C466C7114F30A2C574F8E51 (last visited Apr. 18, 2014). This paper reports that since 1980, average gross public social expenditure across the 30 OECD countries increased from 16% to 20.6%. In particular, between 2000 and 2005, the rate increased by 1% per year.

582 OECD, OECD ECONOMIC SURVEYS: KOREA 79 (2004). This report consists of four chapters. Except for the first chapter analyzing key challenges to sustain economic growth, three chapters propose reforms to improve recovery from the Asian financial crisis of the late 1990s. Except for the chapter focusing on reforming the public expenditure system, the other chapters propose monetary and structural policies to attract foreign investment.

583 OECD, OECD ECONOMIC SURVEYS: KOREA 57-61 (2009). This report emphasizes that Korea needs tax reforms to expand public social expenditure to provide a social safety net for the aging population.

584 Willem Adema & Maxime Ladaique, Net Social Expenditure: More Comprehensive Measures of Social Support, OECD 14 (2005), http://www.oecd.org/els/soc/35632106.pdf (last visited Apr. 19, 2014). This paper reports that private social expenditure comprises 4.4% of GDP in Korea, which is the fifth out of the 30 OECD countries. While the proportion of public social expenditure is the lowest among all member countries, the private expenditure is relatively high in Korea.
expand expenditure in the future, it has already shown its willingness to expand public expenditure for the parental leave system. As gender equality in reconciling work and childcare tends to increase the total fertility rate, expanding public social expenditure is a timely response to the declining birthrate in Korea. Therefore, as the Korean government establishes the problem of its aging population as the foremost policy concern for the future, expanding parental leave benefits is reasonable as a demographic policy.

In fact, the experience in the European Union (EU) is an important lesson for Korea to pass a legislative proposal to expand paternal opportunities to take leave for childcare. In 2010, the EU succeeded in passing new legislation to guarantee two weeks of leave for fathers with full remuneration, despite employers’ opposition on the grounds of fiscal constraints after the world-wide financial crisis in the late 2000s. The European Union succeeded in introducing a paid paternity leave system because it emphasized two major issues that the European Union faced for

585 Geun Tae Kim, Korea: Quality Childcare, OECD OBSERVER (2005), http://www.oecdobserver.org/news/archivestory.php/aid/1552/Korea.html (last visited Apr. 16). This is an interview with the Minister for Health and Welfare. This interview focuses on the declining fertility rate and promises to increase government spending on support for families with children.

586 See e.g., Marcus Tamm, The Impact of a Larger Parental Leave Benefit Reform on the Timing of Birth around the Day of Implementation, AUSTRIAN ACADEMY OF SCIENCES (2009), http://www.oeaw.ac.at/vid/lmdc/download/sess2_2_tamm_paper_4lmdc.pdf (last visited Apr. 16, 2014). This paper finds a positive link between gender equality in reconciling work and childcare and the fertility rate.

587 Committee Clears Way to Maternity Leave Debate, EURONEWS (Feb. 23, 2010), http://www.euronews.net/2010/02/23/committee-clears-way-to-maternity-leave-debate/ (last visited Mar. 4, 2010). The EU tried to revise the Pregnancy Directive, introducing two weeks of leave for fathers with full payment, but employers opposed the proposal on the grounds of financial constraints after the economic crisis. Nevertheless, the EU succeeded in overcoming the opposition and a European parliamentary committee finally approved the proposal.
sustainable growth in the future.\footnote{Brussels Calls for Longer Maternity Leave, DEUTSCHE WELLE (Mar. 10, 2008), http://www.dw-world.de/dw/article/0,,3688941,00.html (last visited Apr. 27, 2010). This article reports that the European Commission introduced a paid paternity leave system on the basis of concerns for the female labor force participation rate and fertility rate. In particular, it cites the comments from EU Equal Opportunities Commissioner Vladimir Pidla and emphasizes the gender gap in the labor market participation rate. Only 65.5\% of women participate in the workplace, while 91.7\% of men do, so expanding financial support for the system to reconcile work and childcare is necessary in the European Union. Furthermore, this paper also cites comments from the Commissioner emphasizing demographic challenges which threaten sustainable growth in the near future.} First, it recognized a declining birthrate as a serious problem hindering the European Union from maintaining economic growth. Second, it emphasized the importance of the female labor force participation rate in preventing future labor shortages. Although the European Union faced opposition on the grounds of economic constraints, it overcame the obstacle by emphasizing that these two policy concerns overrode the worries about increased spending.\footnote{Id. (citing comments from a British Conservative member of the European Parliament, Philip Bushill-Matthews. It states that the revision is against the interests of small business,); and Henriette Wrege, Germany Criticizes EU Changes to Maternity Leave, DEUTSCHE WELLE (Nov. 19, 2008), http://www.dw-world.de/dw/article/0,,3804991,00.html (last visited Apr. 27, 2010) (This paper reports strong opposition in Germany on the grounds of threatening businesses.).} The European experience is particularly important for Korea, because Korea is under the same pressure to increase the birthrate and solve the problem of labor shortages in the future. When Korea increased the total amount of parental benefits available under the flat-rate system in 2007, it introduced the change to the system under the First Basic Plan for the Declining Birthrate and Aging Society. Furthermore, when Korea introduced a wage-dependent system in 2010, it introduced the system under the Second Basic Plan for the Declining Birthrate and Aging Society. Likewise, Korea is concerned about the declining birthrate and considered an increase in financial support for the parental leave and benefits system as an effective policy measure to solve the problem. As a result, the experience of the European Union is an
important lesson for Korea to consider passing in a new legislative proposal for gender equality in reconciling work and childcare on the basis of its potential effects on increasing the female employment rate and declining birthrate.

Korea may face difficulties in passing new legislation for gender equality, because it requires policy makers and the public at-large to expand public expenditures on parental benefits and to depart from the male-breadwinner system. However, the new system is an effective mechanism to solve the problem of the declining birthrate and labor shortages in the future. Therefore, the effectiveness of the new system should support the Korean government in proposing new legislation for gender equality in reconciling work and childcare.

IV. Conclusion

This dissertation provides a legislative model for Korea to guarantee equal opportunities for men and women to reconcile work and childcare. Regarding maternity leave, it proposes to eliminate the compulsory period and expand financial support.\(^1\) For the parental leave system, it proposes to expand financial support and individuality in order to attract more fathers to participate in the system.

With regard to maternity leave, according to the comparative analysis of the U.S. and German systems, Korea needs to abolish compulsory maternity leave and expand maternity benefits to provide equal opportunities for men and women to

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participate in the workplace. The theoretical controversy over the equal treatment versus special treatment debate brought about different policy measures for the maternity leave systems in the United States and Germany. The United States treats maternity leave as medical leave for health conditions and provides maternity leave and medical leave under equal terms. In contrast, Germany provides more generous terms and conditions for maternity leave, and Korea follows the special treatment approach of the German system. As a result, Germany and Korea prohibit women from working for a certain period after childbirth on the grounds that women’s health requires special protection in comparison with other health conditions. However, this paper proposes that Korea should replace the compulsory period with a voluntary leave system on the basis of the equal treatment approach, just as how the United States abolished the compulsory system to expand

2 The United States considers maternity leave as medical leave for health conditions associated with pregnancy and childbirth. By contrast, Germany considers maternity leave as a period distinguished from medical leave for other health conditions.

3 Angie K. Young, Assessing the Family and Medical Leave Act in Terms of Gender Equality, Work/Family Balance, and the Needs of Children, 5 Mich. J. Gender & L. 113, 145-47 (1998). This article finds that the American Family and Medical Leave Act of 1993 succeeded in guaranteeing equal career opportunities for men and women, work/family balance and the interests of children. It analyzes legal scholars’ disputes over whether to take an equal treatment or special treatment approach for women. This paper mainly discusses parental leave, but the dispute is equally applicable to maternity leave.

4 DANIELLE VENN, LEGISLATION, COLLECTIVE BARGAINING AND ENFORCEMENT UPDATING THE OECD EMPLOYMENT PROTECTION INDICATORS, OECD 9 (2009), http://www.oecd.org/dataoecd/36/9/43116624.pdf (last visited Apr. 14, 2010). This paper analyzes employment protection status in each country on the basis of their legal system. It states that Korea follows after the German model of civil law. As a result, even with regard to maternity leave, Korea follows the special treatment approach of the German system, because both countries treat the maternity leave system as an important mechanism to protect women’s health in the workplace on the basis of the special treatment approach.

5 Mona L. Schuchmann, Note, The Family and Medical Leave Act of 1993: A Comparative Analysis with Germany, 20 J. Corp. L. 331, 347-48 (1995). This paper finds differences in the social ideology of the U.S. and German approaches. Germany perceives women as a subject of protection, so it defines a postpartum period as a compulsory period for women and prohibits them from working during the first eight weeks after the birth of a child.
women’s right to decide when and how long to take leave for their health conditions.6 Although this study adopts the equal treatment approach to replace the compulsory period, it still maintains the special treatment approach in order to expand financial support for maternity leave.7 Korea guarantees payment during maternity leave while establishing medical leave for other physical conditions as unpaid leave.8 If the equal treatment approach for maternity benefits were adopted, it would deprive mothers of current benefits from mothers and worsen their status in the labor market.9 As a result, although adopting the equal treatment approach to replace the compulsory maternity leave system with the voluntary system, this proposal maintains the special

6 Susanna Eneteg, EC Labor Law: Do Men Become Fathers?, 11 Colum. J. Eur. L. 413, 419-20 (2005). This paper finds that the Pregnancy Directive mandates its member countries to prohibit women from working for at least two weeks around the birth of a child. As a result, even if Germany prohibits women from working after the birth of a child, it complies with the Community Law. Although there is no regional community mandating Korea to prohibit women from working, Korea follows the German approach. DANIELLE VENN, LEGISLATION, COLLECTIVE BARGAINING AND ENFORCEMENT: UPDATING THE OECD EMPLOYMENT PROTECTION INDICATORS 9 (2009). This paper reports that the Korean legal system is based on the German system, as is the Japanese system.

7 This argument may seem contradictory to its original attitude towards a compulsory period. This paper proposes that Korea should abolish the compulsory period on the basis of an equal treatment approach to allow women to determine when and how long to take leave before or after the birth of a child. However, if Korea adopts an equal treatment approach with regard to payment for maternity leave, it deprives women of their current right to receive full remuneration. As a result, this paper adopts a special treatment approach instead of an equal treatment approach for payment during maternity leave.

8 Germany treats maternity leave differently from medical leave for other health conditions on the basis of a special treatment approach. As a result, Germany provides full remuneration for maternity leave while providing partial remuneration for medical leave for other health conditions. See Mona L. Schuchmann, Note, The Family and Medical Leave Act of 1993: A Comparative Analysis with Germany, 20 J. Corp. L. 331, 347-48 (1995).

9 The situation of Korean women contrasts with the situation of workers at AT&T who challenged pension benefit calculations rules in the Supreme Court of the United States. The PDA prohibited employers from treating pregnant workers differently from other similarly situated workers, so AT&T considered a period of pregnancy leave in the same way as a period of medical leave for other health conditions if women took pregnancy leave after enactment of the PDA in 1978. However, AT&T treated differently if women took pregnancy leave prior to 1978. Employers argued that to apply the PDA to women taking leave prior to 1978 is a retroactive application of the PDA. The Court held that AT&T did not violate the PDA after all. Women working for AT&T could benefit from an equal treatment approach, so they are in a different situation from Korean women who will lose financial support for maternity leave if this paper supports an equal treatment approach instead of a special treatment approach. See 129 S.Ct. 1962, 1964-66.
treatment approach to expand financial support for maternity leave. The compulsory maternity leave system should be abolished and maternity benefits for gender equality expanded in reconciling work and childcare.

With regard to parental leave, on the basis of the comparative analysis of the German and Japanese systems, Korea should expand financial support and individuality. The wage-dependent system entered into force in Korea in 2011 but the wage-replacement rate is as low as 40% as of 2014, which is the rate previously adopted by the Japanese system.\(^\text{10}\) However, since Japan raised the rate to 50%, 40% is lower than the current Japanese system.\(^\text{11}\) Furthermore, Korea considers the right to leave and benefits as a family entitlement instead of as an individual entitlement.\(^\text{12}\) Germany and Japan have been conservative welfare countries upholding a male-breadwinner model instead of a dual-earner model, as has Korea, but they succeeded in expanding financial support and individuality.\(^\text{13}\) In 2007,


\(^\text{12}\) Rebecca Ray, Janet C. Gornick & John Schmitt, *Parental Leave Policies in 21 Countries: Assessing Generosity and Gender Equality*, CENTER FOR ECONOMIC AND POLICY RESEARCH 5 (2009), http://www.cepr.net/documents/publications/parental_2008_09.pdf (last visited Apr. 13, 2010). This study evaluates whether a parental leave guarantees gender equality or not in 21 countries, including Germany and Japan. One of the criteria is whether a country guarantees individuality in the right to take leave and receive benefits.

\(^\text{13}\) Heidi Gottfried & Jacqueline O’Reilly, *Reregulating Breadwinner Models in Socially Conservative Welfare Systems: Comparing Germany and Japan*, 9 SOC. POL. 29, 50-52 (2002). This article finds that Germany and Japan took different positions with regard to how to depart from a male-breadwinner model. Although Japan tried to change its system to be more gender-balanced, it lags behind Germany because of the different regional regimes that the governments of each country respectively subscribe to. The Parental Leave Directive of the European Union directly mandates its member countries to guarantee individuality in the parental leave and benefits system for gender equality in reconciling work and childcare, whereas a prolonged Confucian tradition still influences policy makers in East Asia including Japan. However, despite differences in the current status of Germany and Japan, they
Germany introduced a wage-dependent system and two additional months of leave and benefits for paternal usage of leave entitlements. In 2010, Japan followed Germany and introduced two additional months of leave and benefits when both parents participate in the system. According to these changes in Germany and Japan, expanding financial support and individuality is the first step for Korea to guarantee gender equality in reconciling work and childcare. Germany and Japan still have to continue expanding financial support by raising the wage-replacement rate and shifting the transferable period of benefits to a non-transferable period so that share the commonality that they supported a male-breadwinner model instead of a dual-earner model until recently.

14 C. Katharina Spiess & Katharina Wrohlich, The Parental Leave Benefit Reform in Germany: Costs and Labour Market Outcomes of Moving towards the Scandinavian Model, INSTITUTE FOR THE STUDY OF LABOR 2-3 (2006), http://ftp.iza.org/dp2372.pdf (last visited Apr. 15, 2010). This paper was produced a year ahead of the introduction of the 2007 parental leave reform in Germany. It aims to analyze the policy outcome of the reform. This paper predicted that the 2007 parental leave reform would be effective in increasing the female labor force participation rate while moderating costs. The reform introduces a wage-dependent system compensating 67% of previous earnings with two additional months of leave and benefits when both parents participate in the system. In fact, after the reform entered into force in 2007, Germany succeeded in increasing paternal usage of leave entitlements as it originally aimed to achieve.

15 Id. Prior to the 2007 German parental leave and benefit reform, Germany guaranteed three years of leave and two years of benefits. The 2007 reform did not change the total duration of leave but shortened the total duration of benefits from two years to one year. However, if both parents participate in the system, the reform guaranteed two additional months of benefits. The reform mandated that at least one parent take two months to take advantage of those two additional months of benefits. Following the German approach, in 2010 Japan provided two additional months of leave and benefits when both parents participate in the system.

16 Janet C. Gornick & Marica K. Meyers, Building the Dual Earner/Dual Carer Society: Policy Developments in Europe, ARCHIVE OF EUROPEAN INTEGRATION (2001), http://aei.pitt.edu/9143/01/GornickMeyers.pdf (last visited Apr. 15, 2010). This paper finds that European countries developed various policy measures to support dual earner families. One of the key measures for gender equality in reconciling work and childcare is to revise parental leave to be available for mothers and fathers under equitable terms and conditions. There are two important features to guarantee gender equality. First, the wage-replacement rate should be high enough to guarantee substantial remuneration for lost income. Fathers earn more than mothers on average, so fathers are more sensitive to economic conditions than mothers. As a result, a relatively high percentage of wage-replacement is necessary for gender equality. Second, a non-transferable right to leave and benefits is essential for gender equality. Unless the wage-replacement reaches 100%, fathers have to suffer from lost income and as a result they abstain from participating in the system. If the right to leave and benefits is transferable from one parent to the other, fathers tend to transfer the right to mothers to minimize their economic loss during leave for childcare. Therefore, non-transferability is necessary for gender equality.
an individual can enjoy the right to leave and benefits regardless of gender. Therefore, Korea should increase the wage-replacement rate under the new system, acknowledging individuality by allowing both parents to take leave at the same time and adopt a non-transferable period of benefits for a more gender-balanced parental leave system.
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