Statutory Routes to Workplace Flexibility in Cross-National Perspective

Institute for Women's Policy Research

Center for WorkLife Law
University of California
Hastings College of the Law

About This Report

This report is based on a review of statutory employment rights aimed at increasing workers' ability to change their working hours and arrangements in 20 high-income countries and the United States, to facilitate work-family reconciliation, lifelong learning, gradual retirement or as a general right irrespective of reasons. It argues that, in the context of U.S. demographic and economic changes, an explicit right to request flexible working could play an important role in preparing the U.S. economy for the future.

About the Institute for Women's Policy Research

The Institute for Women's Policy Research (IWPR) conducts rigorous research and disseminates its findings to address the needs of women, promote public dialogue, and strengthen families, communities, and societies. IWPR focuses on issues of poverty and welfare, employment and earnings, work and family, health and safety, and women's civic and political participation.

IWPR's work is supported by foundation grants, government grants and contracts, donations from individuals, and contributions from businesses and organizations. Members and affiliates of IWPR's Information Network receive reports and information on a regular basis. IWPR is a 501(c)(3) tax-exempt organization that also works in affiliation with the women's studies and public policy programs at The George Washington University.

About the Center for WorkLife Law

The Center for WorkLife Law is a nonprofit research and advocacy organization that seeks to eliminate employment discrimination against employees who have caregiving responsibilities for family members, such as mothers and fathers of young children and adults with aging parents. WorkLife Law works with employees, employers, attorneys, legislators, journalists, and researchers to identify and prevent family responsibilities discrimination.

WorkLife Law is based at the University of California Hastings College of the Law and is directed by Distinguished Professor of Law and author Joan C. Williams. It was founded as the Program on Gender, Work & Family at American University Washington College of Law in 1998 and is supported by research and program development grants, university funding, and private donations. Please visit our website for further information: www.worklifelaw.org

$10
IWPR No. B258
ISBN No. 978-1-933161-14-3

Cover photography by Noriko Copper, Ron Chapple Studios, and Kathy Wynn/Dreamstime.org

Institute for Women's Policy Research
1707 L Street NW, Suite 750
Washington, DC 20036
Phone: (202) 785 5100 Fax: (202) 833 4362
www.iwpr.org

Statutory Routes to Workplace Flexibility in Cross-National Perspective

Ariane Hegewisch
Institute for Women's
Policy Research and
Center for WorkLife Law,
University of California
Hastings College of the Law

Janet C. Gornick
City University of New York and
Luxembourg Income Study

INSTITUTE FOR WOMEN'S POLICY RESEARCH
1707 L Street NW, Suite 750 • Washington, DC 20036
202 785 5100 • www.iwpr.org

About the authors

Ariane Hegewisch is Scholar-in-Residence at the Institute for Women's Policy Research (IWPR) and an international fellow of the Center for WorkLife Law, University of California Hastings School of Law. She is a specialist in comparative human resource management, with a particular focus on working time, labor market flexibility, and gender equality.

Janet C. Gornick is Professor of Political Science and Sociology at The Graduate Center, and Professor of Political Science at Baruch College, both at the City University of New York. She is also Director of the Luxembourg Income Study, a cross-national research institute and data archive based in Luxembourg. Most of her research concerns the effects of social welfare and labor market policies on family well-being and gender equality.

Acknowledgements

The authors are grateful to the Alfred P. Sloan Foundation for providing intellectual and financial support for this project. They also thank several colleagues for invaluable comments, including staff at the Center for WorkLife Law, the Institute for Women's Policy Research and Workforce Flexibility 2010, as well as Heather Boushey and Jodie Levin-Epstein. The views contained in this brief, however, are solely those of the authors. IWPR would also like to thank the Ford Foundation and the Annie E. Casey Foundation for their financial support for IWPR's work on job quality.

The authors would also like to acknowledge the support and technical expertise of the Sloan Center on Aging and Work/Workplace Flexibility at Boston College who are hosting the statutory background tables for this report at http://agingandwork.bc.edu/globalpolicy (see Global Initiatives).

Table of Contents

Tables and Figures

Summary

The large majority of high-income countries have introduced flexible working statutes aimed at making it easier for employees to change how many hours, and when and where they work within their current job. Patchy progress towards more diversified work arrangements is pushing workers out of the labor market altogether, or into jobs that are below their skill levels and potential. Few economies can afford such a waste of human resources in view of changing demographics, reduced labor force growth, and global competition for knowledge.

U.S. employers are faced with a dramatic increase in the share of older workers and a significant slowdown in labor force growth, even if demographic trends in the United States are less dramatic than in most other high-income countries. The growth in mothers' labor force participation, a major source of additional labor in recent decades, has stalled and U.S. labor force participation for women has fallen behind in cross-national comparison. Demand for more diverse work arrangements is high, yet workplace change is lagging behind changing workforce demographics.

Flexible working statutes strengthen the ability of individual employees to find solutions that allow work-life reconciliation, but in a manner that takes account of employers' business and operational requirements. Of 20 high-income countries examined in comparison with the United States, 17 have statutes to help parents adjust working hours, 6 help with family care giving responsibilities for adults; 12 allow change in hours to facilitate lifelong learning; 11 support gradual retirement; and 5 countries have statutory arrangements open to all employees, irrespective of the reason for seeking different work arrangements. Evaluation of statutes supporting flexible working hours shows that the laws have caused few problems for employers, and that gender equality improves most where laws are interpreted broadly, not narrowly focused on part-time work.

Finally, the report discusses the U.S. legal framework regarding flexible work arrangements, and suggests that an explicit right to request flexible work can play an important role in preparing the U.S. economy for the future.

Methodology

This report is based on a review of statutory employment laws aimed at increasing workers' ability to change their working hours and arrangements in 20 high-income countries and the United States. It includes statutes providing a general right to alternative work arrangements, as well as laws targeting work-family reconciliation; training and education; and gradual retirement. The study was conducted during 2007 by reviewing secondary sources, identifying and examining primary legislative texts, and, in some countries, consulting with government officials and national legal experts. A full description of statutes, including year of implementation; tenure requirements; employer scope for refusal; small employer exemptions and legal appeals procedures, is available at http://agingandwork.bc.edu/globalpolicy.

This study was conducted as part of a broader cross-national research project on working time regulation and labor market outcomes led by Janet C. Gornick, Professor of Political Science and Sociology at the City University of New York.

U.S. pressures for improved workplace flexibility

Workforce-workplace mismatch; juggler families; time poverty; work-family conflict—such terms have entered common parlance and suggest that something is not quite right in the way that work is organized. The debates about flexible working, or rather about the need for alternative work arrangements not based on a full-time, all-the-time model, go back at least one quarter of a century when mothers began to enter the workforce in large numbers. Working mothers are no longer news in the workplace, yet problems of inflexibility persist and, if anything, have gotten worse for mothers and others because of the long hours culture in some jobs and the pressures of a 24/7 economy in others. The lack of workplace adjustment to new demographics, together with a lack of public support for child care, pushes many mothers temporarily out of the workplace or into inferior jobs—with highly adverse long-term effects on earning, family income, and retirement security.[1] The rapid increase in litigation against family responsibilities discrimination, nearly 400 percent in the last decade as documented by the Center for WorkLife Law, provides stark evidence of the continued discrimination faced by working mothers (and others with caregiving responsibilities). But the dramatic increase in legal cases also suggests that these workers are increasingly unwilling to accept the prejudice from employers who continue to operate as if they have an unlimited supply of employees willing and able to work "all day/every day."

> ***"When workplaces are not responsive to the needs for alternative working arrangements, the chances are that employees will work below their potential or leave altogether. …The costs of such a loss of human capital go beyond the individual business to the economy as a whole."***

U.S. labor force participation of women is falling behind internationally

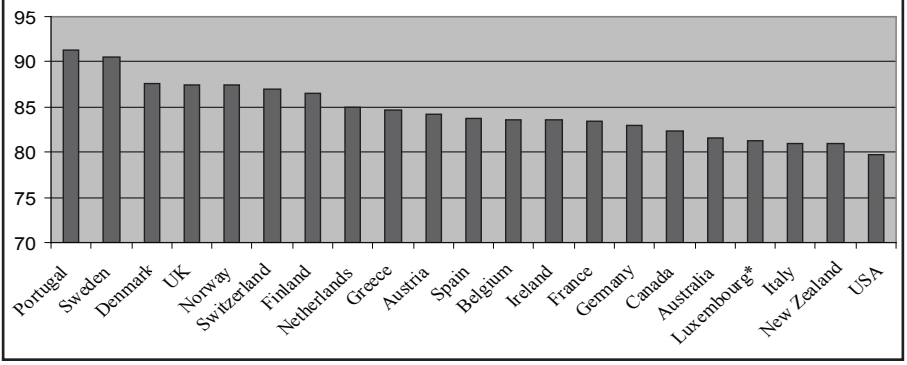
American businesses have been fortunate during the last fifty years because they have been able to rely on a rapidly expanding workforce. The next fifty years are likely to see much more modest growth in labor force participation. Mothers' labor force participation, the source of much of labor force growth

[1] Rose and Hartmann, 2004, find that, over a 15-year reference period, gender differences in working patterns, combined with pay discrimination, lead to women earning less than 40 cents for every dollar earned by a man.

Table 1. Change in labor force participation rates for prime age women (25 to 54), 1994-2006			
	1994	2006	Change
Australia	67.7	74.4	+ 6.7
Austria	71.7	80.9	+ 9.2
Belgium	67.2	77.0	+ 9.8
Canada	75.4	81.3	+ 5.9
Denmark	82.7	85.1	+ 2.4
Finland	84.0	85.3	+ 1.3
France	76.7	81.2	+ 4.5
Germany	72.6	80.3	+ 7.7
Greece	53.9	69.1	+15.2
Ireland	53.6	70.5	+16.9
Italy	52.6	64.3	+11.7
Luxembourg (2005)	55.7	72.2	+16.5
Netherlands	64.5	77.8	+13.3
New Zealand	71.7	76.4	+ 4.7
Norway	79.4	83.4	+ 4.0
Portugal	74.4	82.7	+ 8.3
Spain	54.6	71.2	+ 16.6
Sweden	86.9	86.2	-0.7
Switzerland	74.1	81.2	+ 7.1
UK	74.1	77.9	+ 3.8
USA	75.6	75.5	- 0.1

Source: OECD Employment Outlook 2007; Statistical Annex Table C.

Figure 1. Labor force participation rates for college educated women (25 to 64), 2005



* Luxembourg: data for 2004.
Source: OECD Employment Outlook 2007; Statistical Annex Table D.

since the 1970s, has leveled off since the mid 1990s.[2] U.S. labor force participation for prime working age women (age 25 to 54) has stalled and is now lower than it is in 14 of the 20 high-income countries reviewed in this study in addition to the United States (Table 1). Labor force participation for college educated women in the United States is lower than in any of the other 20 countries (Figure 1).[3]

[2] See Cohany and Sok, 2007.
[3] Higher labor force participation elsewhere is not simply a reflection of higher levels of female part-time work, although that undoubtedly plays a role. Portugal, Finland, and Sweden—all countries with higher labor force participation than the United States—have levels of female part-time work which are at lower or similar levels than in the United States (OECD, 2007; Statistical Annex).

Demographic pressures for change in the United States

"Labor force participation for college educated women in the United States is lower than in any of the other 20 countries evaluated in this report."

Pressures for change are not limited to working mothers. Fatherhood used to make little difference to men's working patterns, but younger men increasingly expect to share family responsibilities, and are making work-life balance more of an issue when selecting jobs.[4] A growing number of employees have responsibility for elderly parents and are likely to occasionally need time off to care for them,[5] and one in five employees aged 45 to 55 are estimated to be in the "sandwich generation" with caring responsibilities both for dependent children and elderly parents in need of help.[6] The age composition of the workforce is changing dramatically. Since the mid 1990s the number of employees who are 55 years and older has grown by a staggering 48 percent; by 2012 they will account for almost one-fifth of the workforce.[7] With an older workforce comes increased pressure for new forms of working, be they to facilitate a reduction in working hours as official retirement approaches or a continuation of work post retirement.

As baby boomers are beginning to leave the workforce, the flow of new people entering the workforce is slowing. In the United States, even though birth rates are at replacement rate and continue to be high relative to many other high-income countries, birth rates are much lower than a few decades ago. Annual labor force growth rates (including growth due to immigration) in the next ten years are predicted to be only about half of what they were during the last decade.[8] Demand for new skills and qualifications at the same time is growing, requiring many in the existing workforce to take time out to acquire new skills. Together these trends are translating into greater competition for good staff, and greater pressures to adjust work arrangements to more diverse workforce needs.

"The lack of workplace flexibility, together with a lack of public support for child care, pushes many mothers temporarily out of the workplace or into inferior jobs—with highly adverse long-term effects on earning, family income and retirement security."

[4] See, for example, Bond et al. 2002, for younger men's increased time spent on domestic work and care; and The Radcliffe Public Policy Institute, 2000, on younger men's job priorities.
[5] According to Pew Research Center, 7 out of 10 baby boomers (ages 41 to 60 in 2005) have at least 1 living parent, a significant increase from 15 years ago, see Taylor, 2005.
[6] Belden Russonello & Stewart and Research/Strategy/Management, 2001.
[7] See Toossi, 2005.
[8] See Toossi, 2005.

Progress towards workplace change remains patchy

"Fatherhood used to make little difference to men's working patterns, but younger men increasingly expect to share family responsibilities, and are making work-life balance more of an issue when selecting jobs."

While there has been growth in the number of companies offering alternative work arrangements, their availability remains patchy. For example, fewer than half of all full-time employees, and only one-third of those in medium and highly paid jobs, believe that they would be able to work part-time in the same position.[9] Fewer than 3 out of 10 employees say they have the ability to change their daily starting times, and only 1 in 10 employees participate in formal flextime schemes.[10] Just as important, only a minority of employees—fewer than one in three—are confident that they could use the flexible working arrangements that are offered to them without jeopardizing their job or career.[11] Research on workplace advancement and on professional women's reasons for leaving their jobs when they become mothers show that these are more than idle fears.[12]

When workplaces are not responsive to the needs and wishes for alternative work arrangements of their employees the chances are that these employees will work below their potential or leave altogether. The costs to individual businesses are by now well-documented.[13] Against the background of changing demographics and global competition for knowledge and skills, the costs of such a loss of human capital go beyond the individual business to the economy as a whole.

[9] See Galinsky et al., 2004.
[10] Data for 2002 from BLS, in Golden, 2005.
[11] See Galinsky et al., 2004.
[12] See, for example, Glass, 2004, or the case studies of women who have "opted out" by Stone, 2007.
[13] See, for example, Corporate Voices for Working Families, 2005.

International trend: Statutory routes to speeding up workplace change

The United States is not alone with the slow and haphazard pace of workplace change in response to the changing workforce or with looming demographic pressures making response to change more urgent. During the last decade there has been a rapid increase in the number of countries that have turned to employment statutes to speed up the pace of workplace change and make it easier for employees to find a match between their work and non-work responsibilities, without forcing them to change their jobs. The British Government in its 2000 Green Paper on "Work and Parents: Competitiveness and Choice" argues: "Best practice is unlikely to permeate the whole economy and frequently does not reach the lowest paid. Statutory options may therefore need to be considered to provide minimum standards... ."[14] The rights provided in these statutes generally are "soft rights," conditional at least to some extent on finding a fit with employers' operational and business requirements.

Typically, employment statutes target different groups of workers/reasons for seeking altered work arrangements. This report focuses on four of these:[15]

- Care of one's children (statutes in 17 of 20 countries)
- Care for a sick or elderly adult (statutes in 6 of 20 countries)
- Pursuit of training and education (statutes in 12 of 20 countries)
- Gradual retirement (statutes in 11 of 20 countries)

Additionally, and most innovatively, **five countries have universal statutes** that provide all employees with a right or mechanism for requesting alternative work arrangements, irrespective of their reason for seeking change. (See Table 2 for a country-by-country overview.)

From reduced hours to a menu of alternative work arrangements

The statutes cover a broad range of work arrangements and regulatory approaches (see Box 1). Part-time work—the ability to change from full-time to part-time hours, either permanently or temporarily, or to change from part-time to full-time, a reflection of concern over involuntary part-time work—is the centerpiece of many working time statutes.

[14] U.K. Department of Trade and Industry, 2000, Section 6.13

[15] Rights for workers with disabilities are another important type of provision; a full review of provisions for workers with disabilities is outside the scope of this brief.

But increasingly a broader menu of work arrangements is being offered:

- change in the scheduling of hours (changing daily starting or finishing time or the distribution of hours across working days, for example, by working nine days out of each two-week period)
- greater autonomy over daily starting and finishing times through flex-time
- change in the location of work, through home-based work or tele-working

Box 1. Overview: Statutory rights to alternative work arrangements[16]

Alternative work arrangements to care for one's child(ren)

Parental leave for parents, directly after birth or adoption:

- Right to gradual return to work on part-time basis
  - Usually for set period; job guaranteed; with some compensation
  - Employer's ability to refuse very limited
- Right to time-off for breastfeeding
  - Usually for set period; with some compensation
  - Employer's ability to refuse very limited

Parental leave for parents of younger or disabled children:

- Parental leave may be taken as reduction in work hours, or in blocks
  - Usually for set period; job guaranteed; with some compensation
  - Employer may refuse on business grounds

Alternative work arrangements for parents of younger or disabled children:

- Changes in numbers of hours; scheduling of hours; location of work
  - Usually as permanent contractual change; without compensation
  - Employer may refuse on business grounds
- Right to refuse overtime or shift patterns incompatible with care responsibilities

[16] This box describes the most common arrangement for each target group although provisions in individual countries might differ, particularly regarding business reasons for refusing changes and availability of wage replacement/social insurance benefits.

Alternative work arrangements for care of a sick or elderly adult

- Changes in numbers of hours; scheduling of hours; location of work
  - Usually as permanent contractual change; without compensation
  - Usually limited to specified lists of relatives
  - Employer usually may refuse on business grounds

Alternative work arrangements for vocational training or further education

- Reduced working hours or change in scheduling of hours to pursue training or education with recognized provider
  - Compensation available in limited cases; might depend on employing registered unemployed person instead; job protected
  - Employer may postpone; only limited ability to refuse

Alternative work arrangements for older employees

- Reduced working hours with partial pension prior to retirement
  - Usually requires joint application from employer and employee to social insurance authority
  - Might require employment of registered unemployed person

Alternative work arrangements for all employees

- Changes in numbers of hours; scheduling of hours; location of work
  - Usually as permanent contractual change; without compensation
  - Employer may refuse on business grounds

Macroeconomic concerns motivate flexible working statutes

Ensuring better work-life reconciliation makes good economic sense—as well as potentially improving gender equality by making it easier for women to stay in the labor force, and for men to increase their contribution at home. Most recent statutes are aimed at parents and caregivers. Women's labor force participation is lower than men's in all countries, because women continue to perform the lion's share of unpaid care. According to one study, the U.K. economy is losing billions because in their search for the right hours many women are taking jobs far below their professional experience and qualifications.[17] Another

[17] See Equal Opportunities Commission (EOC), 2005.

recent U.K. study found that one million economically inactive workers aged 50 and older said they would return to the labor market if more flexible jobs were available.[18]

"There is another incentive for policy makers to support flexible work: when more people work, more people contribute to taxes and social insurance and thus provide funds for those who no longer can work."

Statutes providing working time adjustments for training and education were generally first introduced in the 1980s in response to high levels of structural unemployment, which disproportionately hit the least skilled. Since then these measures have been re-embraced as an important tool for encouraging lifelong learning and for ensuring that economic growth is not hampered by skill shortages. Likewise many early retirement regulations were first introduced to provide work opportunities for an unemployed person by reducing the hours of an older worker close to retirement. Such statutes are now being reinvented as means for keeping older workers in employment for longer, and thus raising labor force participation.

There is another incentive for policy makers: the positive effect on the public purse when more people work and hence contribute to social insurance and taxes to support those who are no longer in the workforce.

The "high road" to flexibility

"The explicit objective of most flexible work statutes is to find solutions that are workable for both employer and employee."

The explicit objective of most statutes is to find solutions that are workable for both employer and employee, or, as formulated in the 1997 European Union Part-Time Work Directive, "…contribute to the flexible organization of working time in a manner which takes account of the needs of employers and workers."

The term "flexibility," particularly in Europe, has often led to furious debates because it has been used both to describe employers' ability to tailor labor use more closely and quickly to changes in demand, through hiring and firing or changed work hours at little notice; and workers' ability to find work arrangements that fit more closely with their non-work responsibilities. There are many examples of "win-win" solutions where employers might get the "flexibility" to

[18] See Loretto et al., 2005.

expand production during busy periods, and employees the "flexibility" to use those extra hours worked for time-off when they need it. Yet, when this "flexibility" extends to half-a-day notice for an extra shift, it can wreak havoc on employees who have child care responsibilities, are active in the community, coach a sports team, or attend an adult education class. In this sense, what many workers need, and what the statutes are seeking to facilitate, is less "flexibility" but more "predictability," together with a greater range of alternatives for arranging when, where and how much they work.

Important prerequisite: Equal treatment for part-time workers

All European Union countries in this study are bound by the 1997 European Union Part-Time Work Directive which provides a right to equal treatment and pro rata pay and benefits for part-time workers relative to comparable full-time workers.[19] European Union countries, as well as Australia, are also bound by a substantive body of case law which has determined that adverse pay and conditions for part-time workers constitute indirect sex discrimination (or disparate impact). This case law has evolved during the last two decades and reflects the fact that the overwhelming majority of part-time workers in all countries are women who work part-time because family caregiving responsibilities prevent them, unlike most men, from working full-time. Under those circumstances providing adverse terms and conditions to part-time workers has been ruled to constitute indirect sex discrimination (or disparate impact). In most countries in this study it is no longer legally possible to exclude part-time workers from employers' pension plans, limit paid leave to full-time workers, or pay lower pro rata wages than to a full-time worker doing a similar job.[20]

"In most countries in this study it is no longer legally possible to exclude part-time workers from employers' pension plans, limit paid leave to full-time workers, or pay lower pro rata wages than to a full-time worker doing a similar job."

[19] For more information on measures that grant part-time workers pay and benefit parity, see http://agingandwork.bc.edu/globalpolicy.

[20] See Heron, 2005, on the development of European case law on part-time equity and Palmer et al., 2006, for a discussion of relevant case law on flexible working rights, particularly for the United Kingdom.

Cross-national review of rights to alternative work arrangements

The next section presents an overview of the legislative arrangements in place in 20 countries in comparison with policies operating in the United States. (The U.S. legal framework is discussed in the final section of this report.) Each country reviewed has statutory rights for at least one of the four target groups—parents; family caregivers; employees pursuing vocational training or education; and employees seeking gradual retirement—and many countries have statutes for more than one group. A complicating factor is that the legal framework regulating access to alternative work arrangements is generally distinct from that regulating access to social insurance benefits while reduced hours are being worked. Social insurance regulation, for example, determines whether someone is entitled to combine paid maternity or parental leave with part-time work; the labor code regulates under which circumstances an employer has to allow an employee to convert to part-time work as part of such leave. This review focuses on the latter, that is, on rights to reduced or otherwise changed working hours; rights to wage replacement are not covered in detail.[21] The review was conducted during 2007 by consulting secondary sources, identifying and examining primary legislative texts, and, in some countries, conferring with government officials and national legal experts.[22]

Alternative work arrangements for parents—in 17 of 20 countries

Statutes making it easier for parents to work reduced hours, or otherwise rearrange working hours, have grown rapidly during the last decade. Broadly there are four ways in which parenthood combined with employment is supported by statutory alternative working rights:

- Gradual return to work on part-time basis after the birth or adoption of a child; this is usually for a set period with the right to return to the same or equivalent job at the end of it, with some financial compensation to make up for the loss of earnings. A related aspect is time-off for breastfeeding.

[21] A more detailed comparison of regulations regarding wage replacement and social insurance benefits for parental leave can be found in Gornick and Meyers, 2003.

[22] A fully referenced description of statutes, including year of implementation; tenure requirements; employer scope for refusal; small employer exemptions and legal appeals procedures, is available at http://agingandwork.bc.edu/globalpolicy. The detailed information about these statutes that is provided online was compiled by the authors of this report; it is intended to be a companion to Table 2 (see page 19).

- Parental leave for parents of younger or disabled children once the employee has returned to work, which may be taken as a reduction in work hours, or in blocks. Such arrangements are also job-protected and generally include an allowance for loss of earnings.
- Reduced hours or other alternative work arrangements for parents of younger or disabled children, without compensation and, though not in all countries, without a right to return to previous work hours.
- The right to refuse overtime or shift patterns that are incompatible with care responsibilities.

The statutes have the purpose of making it easier for women to stay in work when they become mothers or care for young children, and for men to share some of the tasks involved in raising children.

A gradual return to work after birth or adoption—in 12 of 20 countries

The statutes range from a fixed reduction in the working day for a period of time, initiated particularly with breastfeeding mothers in mind, to the ability to stretch out paid parental leave by combining it with a return to work on reduced hours. "Gradual return" models vary in complexity but in all cases are job-protected, with a right to return to previous working hours:

- In Austria, parents may extend two-year job-protected parental leave until a child's fourth birthday, by returning part-time.
- In Denmark, parents may take 32 weeks of parental leave, with an allowance, in one block, or instead work part-time for 64 weeks, with pro rata allowance for the hours they do not work.
- In France and Germany, parents are entitled to parental leave of up to 36 months, with an allowance, but may also return to work part-time during that period, with an adjusted allowance. (In Germany, financial support is provided for low-income parents only.)
- In Greece, mothers (fathers only if the mother transfers the right) are entitled to reduce the working day by one hour during the first 30 months after their return to work; with the agreement of the employer they may also choose a reduction of two hours per day over 12 months.
- Norwegian parents, with the most diverse options, are entitled to paid job-protected parental leave of up to one year after birth or adoption, and may combine this with working 50, 60, 75, 80, or 90 percent of their usual hours for up to two years.

- Portuguese mothers or fathers are entitled to (breast)feeding breaks which may also be taken as general reduction in the working day, during the first year.
- In Spain, the first 6 weeks of a 16-week entitlement must be taken as a block of time at the time of birth by the mother; the remaining 10 weeks may be taken as full leave or combined with part-time work by either parent. Additionally, during the first nine months back at work breast-feeding mothers are entitled to two daily paid breaks of half an hour or fathers and mothers may reduce the work day by half an hour per day (or save them for time-off in whole days).

In Belgium, Luxembourg, and Sweden, parental leave may also be used to reduce work hours, but without specifying that this leave is solely for the period directly after birth.

Parental leave on a part-time basis for parents of young children—in 8 of 20 countries

Many countries allow parents of younger children to take some parental leave after they have formally returned to work. Such a possibility increases the chances of the father taking some time off for family care and thus contributes to broader goals of increased equality between men and women. This approach is most developed in Sweden where 480 days paid leave are available until the child is eight years old, including a "use it or lose it" period of 60 days for each parent, in order to increase the incentives for fathers to take some time off to care for young children (a single parent is entitled to the whole leave). The leave may be taken as a temporary reduction in working hours. Other national statutory arrangements include:

- In Belgium, each parent is entitled to the equivalent of three months full-time leave before the child is four-years-old (eight in case of a disabled child), either as full-time off, as six months at 50 percent of usual working hours, or 15 months working 80 percent of usual work hours.
- In Luxembourg, six months parental leave, with allowance, may be taken before the child is five-years-old, and may be stretched out to 12 months working at least 50 percent of usual working hours.
- In the Netherlands, reflecting the great diversity in weekly work hours there, parental leave rights are specified as 13 times the usual weekly work hours (whatever these were), to be taken before the child turns eight-years-old.

- In Portugal, parents may reduce work hours in a variety of ways for up to two years until the child is 12 years old (for up to three years if the family has three or more children, and longer if a child is disabled).
- In Ireland, daily reductions in work hours are not an option but 14 weeks of job-protected parental leave before the child turns eight-years-old may be parceled into smaller blocks of time.

Common to all of these is that the arrangements will be in place for a limited period, after which the employee returns to the usual contractual work arrangement; usually (though not in all countries) this leave is at least partly paid (through social insurance financing); most countries also credit social security and pension contributions during the leave period.

Right to alternative work arrangements for parents of younger or disabled children—in 8 of 20 countries (plus one country pending)

The third variant for parents is a right to reduce working hours, and in some countries, to other alternative work arrangements, but without any financial compensation for the lost income, and, though not in all countries, without an automatic right to return to previous hours. Sweden was the first country, as far back as 1978, to give mothers and fathers the right to reduce their daily work hours by 25 percent until the youngest child reached the age of eight. The measure was very successful in increasing women's labor force participation. Initially part-time employment rose, encouraging women who stopped work after becoming mothers to return to the labor market; over time the share of mothers who work part-time (the number of fathers making use of this has risen only very slowly) has fallen as women have returned to full-time work within a shorter time period after each child. Part-time work in Sweden is now no more prevalent among employed women than it is in the United States.

Other countries since have tried to emulate this effect:

- In Austria, both parents may reduce their hours or change the scheduling of hours until the child is seven-years-old, with a right to return to full-time work afterwards.
- In Norway, parents may ask for reduced hours until the child is 10 years old.
- In Spain parents caring for children under eight-years-old are entitled to reduce work hours by 20 to 50 percent.

- In the United Kingdom, parents of children under six-years-old, or 18 if the child has a disability, have a right to request reduced hours, changed scheduling of hours, flextime or a change in the location of work.
- In New Zealand, all parents (and other caregivers) will have similar rights to the United Kingdom starting in July 2008.
- In Italy a law was passed in December 2007, mandating the government, within the next 12 months, to introduce legislation to provide preferential access to part-time work for parents of children under 13 or of a disabled child.
- Australia provides a right through a different legal mechanism (see below).

The refusal of schedules or shift patterns that clash with child care—in 8 of 20 countries

Finally, in some countries employers must take account of parental status when they set working hours. This has been the case in Switzerland since 1964 (updated since) where employees with family caregiving responsibilities have the additional right to refuse overtime. Likewise in Norway, employees may explicitly refuse overtime if this clashes with child care needs (the employer may demand documentation from a child care center to check up on the employee's claim); in France employees have the right to refuse a change in scheduling, or overtime, if the schedule conflicts with family responsibilities.

Alternative work arrangements to care for a spouse or elderly relative (or anyone) in need of care—in 6 of 20 countries (plus one country pending)

The explicit inclusion of family caregiving responsibilities for adult relatives is not as widespread as rights in relation to parenthood, but is on the increase.

- In Belgium, an employee may take 12 months leave full-time or 24 months part-time to look after a seriously ill family member.
- In Spain, such leave is also available for up to two years.
- In Switzerland, caregivers for adults may refuse overtime or shift changes.
- In the United Kingdom, statutes were amended in 2007 to provide adult caregivers with the same rights as parents, because surveys showed that these employees were much less successful in getting a voluntary agreement from their employer.

- In New Zealand, starting in July 2008, anyone providing care for someone else, irrespective of familial relationship, can make a statutory request to alternative working arrangements.
- In Italy, a law was passed in December 2007, mandating the government, within the next 12 months, to introduce legislation to provide preferential access to part-time work for employees caring for seriously ill relatives or for someone fully disabled.
- Australia provides a right through a different legal mechanism (see below).

The introduction of rights for caregivers has been accompanied by debate regarding the relationship of the caregiver to the person in need of care, and the type of medical conditions that might qualify. In New Zealand, after considerable debate, parliament decided not to limit or specify the relationship—anyone caring for another adult can request change. In the United Kingdom, the privileged caring relationship is limited to a relative, spouse, or someone living at the same residence. Regarding qualifying conditions, the U.K. government decided against requiring the presentation of proof for the severity of an illness or caregiving need, arguing that incentives for abuse are low, particularly where employees request reduced hours as these lead to a reduction in income. Furthermore, the administrative burden caused by such a requirement is substantial for employees, the medical profession, and government agencies charged with certifying a person's incapacity.

Non-discrimination statutes as an indirect route to alternative work arrangements for employees with family caregiving responsibilities

A different route to adjusted working hours is provided through Australian statute: employees with family caregiving responsibilities (that is parents and those caring for adult relatives) are explicitly protected against discrimination. This includes the ability to challenge a formally neutral work requirement—such as the obligation to work full-time—which in practice is much harder to fulfill by those with caring responsibilities. In the Australian state of New South Wales this approach has been developed furthest and includes an obligation on the employer to accommodate alternative working needs, as long as they do not cause significant costs or organizational problems.[23] Similar non-discrimination approaches (albeit limited to mothers because drawing on the protection against disparate impact under sex discrimination legislation) have developed in European Union case law, particularly in the United Kingdom, since the late 1980s.

[23] See Bourke, 2004, for a discussion of Australian case law.

Alternative work arrangements for lifelong learning—in 12 of 20 countries

Almost as prevalent as work-family reconciliation are statutes to encourage individual employees to pursue education and training independently of their current employment. Employers have to provide time off (in most, though not all, countries unpaid) or allow adjustment in working hours to attend courses or examinations; this is irrespective of any regulations encouraging or obliging employers to provide job related training. Workers are generally expected to do some of the training on their own time, through recognized vocational or educational providers.

Workers without high school diplomas or vocational qualifications tend to have greater rights than workers who already have some qualifications. Thus in Denmark an employee may request time off to pursue basic education for up to three and one half years, combined with work. For those who already have higher level qualifications, job-protected leave of up to one year is available. In Italy, employees who have not finished basic education are entitled to up to 150 hours leave (paid via social insurance) to get their high school diploma. Many countries no longer specify the level of education of the worker (but financial support tends to be targeted on the least skilled):

- At the most basic level, Greek law guarantees up to 20 days per year to take national exams.
- In Belgium, employees are entitled to follow recognized vocational and educational programs on full pay (employers are partly refunded through social insurance).
- In Finland, unpaid leave is available for up to two years in a five-year period.
- In France, the employee may take up to one year full-time or 1,200 hours part-time leave to follow recognized training and education.
- In Italy, anyone is entitled to educational leave for up to 11 months during their working life.
- In Norway, the entitlement is for up to three years, full- or part-time.
- Luxembourg provides an explicit right to return to full-time work for employees who changed to part-time work for educational purposes.
- In Spain, employees have a right to adjust working hours and shift patterns to follow training or education, without a specific time period or time-off regulation.

- In Sweden, since 1974, job-protected education leave can vary from a one-hour reduction each day to a maximum of six years full-time.

Reduced working hours on the way to retirement—in 11 of 20 countries

Measures to facilitate a reduction in working time in the years before official retirement are in place in 11 countries. The statutes are concerned less with formalizing an employee's right to reduced hours—generally an application has to come jointly from employer and employee—and more with access to a partial pension prior to retirement age, and the impact of such gradual (or phased) retirement on full retirement pensions. Schemes often make partial pension payments for an older worker conditional on the employment of a registered unemployed person. This is unlike measures concerning working parents and training and education where it is more common to have two sets of parallel statutes: one describing the process for workplace adjustment, the other entitlements to an allowance, funded via social insurance.

Recent reforms have tended to push up the age at which it is possible to receive a partial pension, as a reflection of the general increase in the official retirement age introduced or debated in most Organisation for Economic Co-operation and Development (OECD) countries.[24] While many countries are phasing out the option of full early retirement there continues to be strong policy interest in gradual retirement, both as a means for increasing the number of employees who work up to retirement, and by making it easier to work beyond the official retirement age. For example:

- In Austria, employees may reduce work hours to between 40 and 60 percent of usual full-time hours, with the agreement of their employer, and receive a partial pension once they reach 52 years of age (women) and 57 years of age (men); this age threshold will increase annually until 2013 when the minimum age for women will be 60 years of age (65 years of age for men).
- In Finland, where a reduction of between 30 and 70 percent of usual full-time hours is possible, the age threshold was increased from 56 to 58 years of age in 1998.
- In Germany, "old-age-part-time work" requires the hiring of a registered unemployed person for the employee to become eligible for partial pension.

[24] In the 1990s and early 2000s, many European countries aggressively reformed their pension policies, as part of a broader policy effort aimed at reversing the rise in early retirement, and the effects are now unfolding.

Table 2. Overview of statutes enabling alternative work arrangements (AWAs), 2007[25]

	Australia	Austria	Belgium	Canada	Denmark	Finland	France	Germany	Greece	Ireland	Italy	Luxembourg	Netherlands	New Zealand	Norway	Portugal	Spain	Sweden	Switzerland	United Kingdom	United States
Universal right to reduced hours[1]			✓			✓3	✓	✓					✓								*
Parental rights																					
Gradual return to work		✓	✓		✓		✓	✓	✓			✓	✓		✓	✓	✓	✓		9	
Parental leave on part-time basis		✓				✓				5	6	✓	✓		✓	✓	✓	✓			
Reduced hours and other AWA	✓2	✓												✓7	✓	✓	✓	✓		✓	
Refuse overtime/ shift patterns	✓2														✓		✓		✓		
Care for adults																					
Reduced hours and other AWA	✓2		✓								6			✓7			✓			✓	
Training and education																					
Reduced hours and other AWA			✓		✓	✓	✓	✓4			✓	✓	✓		✓	✓	✓	✓			
Older workers																					
Reduced hours with partial pension		✓	✓		✓	✓	✓	✓			✓	✓	✓		8		✓	✓			

Notes: 1. Statutes in this category include changes in numbers of hours and/or scheduling, not homework or flextime. Flextime is widely available via collective agreements in many countries.
2. Australia: Provided indirectly, as part of protection against family caregiver discrimination.
3. Finland: The statute governs conditions for reduced hours with wage replacement, subject to hiring an unemployed person for the vacated hours.
4. Germany: No national law, state laws provide one to two weeks annual leave for training and education.
5.Ireland: Parental leave may be divided into several blocks; daily reduced hours option is not specified.
6. Italy: A basic commitment to provide preferential access to reduced hours for carers for fully disabled person, parents of children under 13 or with a disability; relatives of a seriously ill person has been passed into law in Dec 2007, with a mandate to introduce specific legislation by end of 2008.
7. New Zealand: Law will come into force July 2008.
8. Norway: No statute but binding collective agreements in most sectors.
9. United Kingdom: Might be negotiated as part of flexible working rights for parents of young children.
*United States: Draft legislation currently before Congress.

[25] For full description of the statutes, including the year of implementation; tenure requirements; and small employer exemptions, see http://agingandwork.bc.edu/globalpolicy. This information is correct, to the best of our knowledge, up to December 2007.

While social insurance dimensions dominate in this field, the ability to develop an individual flexible solution is nevertheless increasingly in evidence with the range of reductions on offer. An interesting new solution is provided in the Netherlands where a formal part-time pension was abolished and replaced with individual life-course savings accounts; these provide employees with the option to save up additional hours worked in time savings account (perhaps best described as "paid leave saving accounts"); at a later time the employee may reduce his or her working hours and make up their full pay by drawing on the time account.

The vanguard: Rights to reduced hours for all employees—in 5 of 20 countries

In five countries, policy makers have introduced provisions that do not require an employee to provide a reason for seeking change. In these five countries it is irrelevant whether an employee wants time to pursue a hobby, write a book, look after an older parent, volunteer in the community, or have a little more hands-on time with a teenage child. These are in addition to regulations making working time adjustments easier for family responsibilities, training or education or gradual retirement, and generally provide employers with greater scope for refusing change than for those other conditions.

National approaches differ. Three countries—France, Germany, and the Netherlands—have introduced a general open-ended right to reduced hours. The change in numbers, and related changes in the scheduling, of hours involves a permanent contractual amendment of the employment contract. Employees also have a right to request an increase in hours (which in practice primarily applies to preferential consideration for full-time vacancies) in response to concerns over involuntary part-time work.

In Belgium, in contrast, all employees over the course of their working life are entitled to a career break of one year, which may be stretched out over a maximum of five years if work hours are reduced to 80 percent each year, with a right to return to previous hours at the end of the period. Finally, in Finland, on a somewhat different basis, all employees qualify for a reduction from full-time to part-time hours with partial wage replacement for the hours not worked, as long as an unemployed person is hired to take their place; an application has to come jointly from employer and employee.

Two main reasons for a universal right: gender equality and making it easy on employers

Making an arrangement available to all employees lessens the danger of developing a "Mommy Track." In the Netherlands, for example, the law is explicitly aimed at creating a more equal division of domestic and paid work between parents. The stated goal is a 150 percent arrangement, where each partner works "three-quarter time"—instead of the more common current arrangement in which fathers work full-time (or more) while mothers work half-time (or less). The Dutch approach also explicitly encourages volunteer work, arguing that spending time helping in a homeless shelter can be as valuable to society as looking after children at home. Although gender equality in work and care is not as explicitly specified as a goal in Germany and France, making reduced hours more open and acceptable to men is clearly an important objective.

Universal hours are also easier to implement from a management perspective: Human resource managers consistently report that it is easier to include all employees, as long as there is some means of making business objections heard, rather than limiting a provision to a subset of employees (such as those with caregiving responsibilities). Those who are formally excluded from the policy may easily feel resentful, with a negative impact on motivation.[26] There are also sound operational reasons for an inclusive right: including more people, with a broad range of scheduling needs, makes it more likely that scheduling needs can be accommodated than limiting a right to parents, for example, who tend to have fairly homogenous working time needs, consistent with the school day, daycare, and school holidays. People without dependent children might be happier to work on weekends or during school vacations if they can have time off instead during the week. A more inclusive approach additionally eases the employer's monitoring role regarding who does or does not qualify.

Recognizing the needs of employers

In all countries, statutes that regulate alternative work arrangements include provisions that are intended to protect employers from excessive hardship. Employers' needs are recognized through a variety of mechanisms.

First, leaves that temporarily reduce working hours are often combined with a right to at least partial wage replacement. In most cases the wage replacement is financed through social insurance or other taxes. Employers are rarely re-

[26] See, for example, Chartered Institute for Personnel and Development (CIPD), 2005. The CIPD is comparable to the U.S. Society for Human Resource Management.

quired to pay the wage replacement for their own workers; thus the financing burden is both widely shared and fairly predictable. Second, all of the existing statutes explicitly grant employers the right to refuse requests for alternative work arrangements on business grounds; differences exist however regarding the definition of acceptable business grounds for refusal. Third, substantial notification periods are often required, so that employers can organize plans for accommodating workers' alternative schedules.

"Flexible working statutes have a real impact: they encourage employees to put forward new solutions and they make sure that skeptical line managers take flexible working options more seriously."

A "right to request" or a "right" to alternative work arrangements?

An important difference between statutes concerns whether an employee has a "right" to, or a "right to request," alternative work arrangements. The "right to request" model was first introduced by the United Kingdom in 2003, and will also shortly become law in New Zealand. Under a right to request approach, the employee has an explicit procedural right to make a request for alternative work arrangements, and to receive a good faith written response from the employer, within a set timeframe. Both the U.K. and N.Z. statutes include a list of business and organizational reasons that an employer may cite in a justification of a refusal. As long as the employer follows the procedures and timetable, however, an employee has no recourse to the courts to appeal against a refusal of the request.

In other countries, statutes provide "rights" to alternative work arrangements. Such rights generally are also conditional: an employer may refuse if the implementation of a proposal would incur (serious) business or organizational costs. However, unlike with the right to request, an employee can appeal to an external body with the power of assessing whether the business objections stated by the employer are severe enough to justify a refusal.

Employer grounds for refusal

All statutes recognize employers' rights to refuse on business grounds. In all countries, including the United States, there are privileged reasons for alternative work arrangements—such as maternity or sickness. Employers generally have the least scope for refusal where part-time leave directly follows the birth or adoption of a new child, or where it is related to the care of seriously

or terminally ill relatives. Other circumstances are less privileged, with greater scope for employers to refuse the requested change.

The U.K. and N.Z. laws are most explicit in specifying grounds for refusal:

- burden of additional costs
- detrimental effect on meeting customer demand; on quality; or on performance
- inability to re-organize work among existing staff
- inability to recruit additional staff
- planned structural change

German and Dutch laws also highlight health and safety concerns. Particularly in relation to temporary reductions in working hours, whether for training or as part of parental leave, some countries give employers the right to postpone leave, or to refuse altogether if other employees are already on leave (in Belgium, for example, employers may refuse sabbatical leave if more than 2 to 3 percent of employees are already on sabbatical).

Small employer exemptions: Does size matter?

Small employers are exempted in some countries (the cut-off points range from 10 to 20 employees) but not everywhere.[27] Both the U.K. and N.Z. laws apply to all employers, irrespective of size. Policy makers in the United Kingdom felt that it would be counterproductive to segment employment rights by business size; a major reason for the rather weak legal formulation of the law and the wide recognition of business grounds for rejecting a request was to make it possible to comply with the law, irrespective of business size. This approach has been born out in practice; under the U.K. law requests and refusal rates do not differ for small employers, and small employers overwhelmingly report that the introduction of flexible working involved minimal or no costs.[28] Yet in recognition that small employers often lack the time or expertise (in the form of a human resources professional for example) to get started with a more systematic approach to alternative work arrangements the U.K. Equal Opportunities Commission has called for dedicated resources to help small businesses change working practices. The New Zealand Department of Labor has conducted research to identify problems and solutions specific to small employers.[29] In the

[27] For a country-by-country overview of size thresholds, tenure requirements and enforcement procedures, see http://agingandwork.bc.edu/globalpolicy.
[28] See, for example, British Chamber of Commerce (BCC), 2007.
[29] See New Zealand Department of Labor, 2007 at http://www.dol.govt.nz/worklife/making-it-work-practical.asp.

Netherlands, while employers with fewer than 10 employees are not covered by the full regulations, they are under obligation to design their own policy to enable their employees to apply for different work hours.

Notification periods

With the exception of leave to care for someone seriously or terminally ill, where a substantial notice period is frequently not possible, statutes generally impose a minimum of three months notice, from the time when an employee makes a request to the date when a new arrangement might begin. Longer notice periods of six months are in place in several countries with respect to reduced hours for training and education.

How are the laws working in practice?

Evaluations of the laws across such a large number of countries, qualifying conditions, legal and industrial relations traditions, and pre-existing levels of flexible working is not straightforward. Particularly in the work-family field many initiatives have only recently been introduced and have not yet been the subject of systematic evaluation. That said, some broad trends can be discerned.

Broadly positive impact on labor force participation
The comparative data at the beginning of this brief show that during the last decade, the period of introduction of almost all statutes aimed at improving work-family reconciliation, all countries except the United States (and Sweden, though stalling at a higher level) have seen at least a small increase in women's labor force participation. That said, alternative working rights are not treated as stand-alone policy tools; they coincide with significant improvements in child care provision in almost all countries, as well as improvements in general paid parental leave and other statutory supports for parents and caregivers. To our knowledge no evaluation isolating the impact of these individual factors is available.

Gender equality
How does flexible working relate to gender equality? There are two competing scenarios: improved availability of alternative work arrangements might increase gender equality by making it easier for men to be involved at home, for women to stay in better quality and career jobs, and for alternative working altogether to become less "sex-typed." Or it might decrease gender equality by reinforcing existing gendered patterns of work and making employers more

reluctant to employ women if they anticipate higher take up, among women, of flexible working time rights.

Evidence from Germany, the Netherlands, and the United Kingdom suggests that women are the majority of those adjusting their working hours; but it also suggests that flexible work is no longer the sole domain of women.[30] In the United Kingdom, in relative terms, three times as many mothers as fathers of young children requested changed work hours, but in absolute terms (given that there are more men than women in the workforce, particularly among parents), women were only slightly over half of all requesting flexible working.

The U.K. experience also suggests the importance of including a broader range of options, beyond reduced hours. Men are more likely than women to request flextime and other rescheduling options because these options do not involve a reduction in hours worked, and hence in earnings. For women, requests for part-time work initially outnumbered those for other arrangements, but part-time work has become less dominant, suggesting that women too are seeking options with less impact on their earnings.[31]

Higher quality part-time work

An important objective of the flexible working statutes is to increase the availability of part-time work in professional and career jobs so that those looking for reduced hours do not need to accept jobs below their skill levels and professional experience. Here the evidence is mixed. In the United Kingdom, the introduction of flexible working rights is correlated with a small increase in part-time jobs among professionals, and with a small decrease in the part-time/full-time wage gap. Yet at the same time, women in senior positions are less likely to successfully apply for different working time arrangements. Similar evidence is found in Germany. Because of the lack of change in higher level jobs, both the German and the U.K. governments support specific programs for employers to increase the acceptability of reduced hours in career jobs.

Implementation has caused few problems for employers

The large majority of requests from employees have been acceptable to employers. Even where employers expected costs to be a major issue in meeting new obligations, they did not find this confirmed afterwards. (Note that as wage replacement is generally provided through social insurance, such

[30] See Hegewisch, 2005, for more details.
[31] See Hooker et al., 2007, reporting the latest annual survey of flexible working in the United Kingdom.

costs are not carried by individual employers.)[32] Only a tiny minority of requests that were rejected by employers (and only a fraction of estimates prior to implementation) has made their way into courts.

Lessons from the courts

A small minority of cases has been appealed in court. Such case law has played an important role in defining the scope of the statutes and in revealing both their potential strengths and limitations. As with other employment issues, flexible working complaints are usually heard in specialized labor courts, with judges and/or lay officials familiar with work organization and employment issues. The case law confirms that one of the big barriers to greater workplace flexibility is a negative gut response from many managers—"it can't be done"—no matter what the actual evidence. The majority of cases lost by employers appear to be in this vein.[33] To help address such skepticism, Australian judges (in New South Wales) on occasion have allowed employers to try out a new arrangement (such as job sharing or home-based work) on a trial basis, providing an explicit opportunity for employers to have the decision reversed if after a few months the employer still found the arrangement unworkable; none required such a reversal.

On the other hand, where employers demonstrated a genuine business case, they prevailed. Examples include lack of demand during proposed new hours (working early hours in customer service positions), additional supervision costs (where a change in shift patterns would require additional supervisory hours for health and safety purposes), or genuine inability to recruit for work performed during the vacated hours.

Not a tool to address hostile work environments

A big challenge for flexible working policies is the translation from policy into practice: in too many organizations implementation is haphazard, depending on the good will and imagination of individual line managers. Here the statutes have a real impact: they encourage employees to put forward new solutions (and, as noted above, the large majority of these are clearly acceptable to managers), they make sure that skeptical line managers take flexible working options more seriously, and they make it harder for a new line manager to throw out alternative work arrangements agreed with their predecessor. Yet it is also clear that where few employees work alternative patterns, and/or where an

[32] A more detailed discussion of the impact on employers in Germany, the United Kingdom and the Netherlands is available in Hegewisch, 2005.

[33] For a detailed discussion of German and Dutch case law see Burri et al., 2003; see Fagan et al., 2006, 41-44, for a discussion of U.K. tribunal cases and Bourke, 2004, on Australia.

"Case law confirms that one of the big barriers to greater workplace flexibility is a negative gut response from many managers—'it can't be done'—no matter what the actual evidence."

employer is perceived as hostile, the laws have less of an impact. This is not necessarily because an employer will refuse, but because employees will not make a request in the first place, either out of fear for their jobs or career progression or because they cannot imagine how their job might be done differently. This is the case as much in high-powered career jobs (see above) as in low wage industries, particularly in those where men primarily work.

Implications for the United States

Social change has been dramatic in the United States during the last few decades, particularly in relation to the number of households with dependent children where all adults are in the workforce. The rapid increase in the number of older workers and retired persons is likely to produce equally dramatic changes over the next 30 years. Employers can no longer rely on a ready supply of workers able to work full-time without a break for all of their working lives. Workplaces clearly have not caught up with the demand for more diverse work organization. Changing demographics, combined with knowledge-based global competition, make alternative working time arrangements an issue that can no longer be ignored by policy makers.

Alternative work arrangements and U.S. laws

"Changing demographics, combined with knowledge-based global competition, make alternative working time arrangements an issue that can no longer be ignored by policy makers."

There are some precedents for employee rights to alternative work arrangements under U.S. law.[34] Title VII of the Civil Rights Act provides a right to reasonable accommodation for religious practices (including voluntary swaps of shifts, flexible schedules, or changes in assignments). The Family and Medical Leave Act (FMLA) provides a right to time off to care for a child, spouse, or parent with a serious illness, including intermittent leave. The Americans with Disabilities Act (ADA) includes rights to reasonable accommodation for a disabled person, for example by providing flexible schedules, reduced hours or home-based work.

There are no U.S. laws requiring an employer to give a worker flexible work schedules for work-family reasons as such. The only route open to an employee would be to argue that the denial of their request to work alternative hours (such as reduced hours in order to look after a child) was discriminatory under Title VII because another employee of the opposite sex was allowed to reduce hours for other personal reasons.[35] Employees on flexible schedules also have some protection against retaliation under Title VII, the ADA and the FMLA, for example, where they are treated adversely because they have reduced their

[34] See Workplace Flexibility 2010 for an outline of legislative provisions in the United States, at http://www.law.georgetown.edu/workplaceflexibility2010/law/tvii.cfm

[35] See for example *Tomaselli v. Upper Pottsgrove Township*, 2004, U.S. Dist LEXIS 25754 (E.D. Pa 2004), cited in Calvert, 2007.

work schedules for reasons protected under the law (as happened to a man who took intermittent leave to care for his father who had Alzheimers) or where an alternative work arrangement is withdrawn for no objective reason when co-workers of the opposite sex continue to enjoy it.[36]

Discrimination under such circumstances has come to be known under the summary term of family responsibilities discrimination (FRD). FRD involves differential access to flexible work schedules, discrimination against those who are on alternative schedules because of their family responsibilities as well as stereotyping and discrimination against those who are presumed that they might want alternative schedules because of caregiving responsibilities and is a rapidly growing field of litigation in the United States. FRD cases increased by nearly 400 percent between 1996 and 2005, with a significantly higher chance of success in the courts than other employment cases.[37] Attorneys representing employees in FRD cases bring suits using a variety of state and federal statutes, including the sex discrimination provision of Title VII of the Civil Rights Act of 1964, the FMLA, and the ADA,[38] as well as several common law causes of action.[39] Discrimination against caregivers has now been addressed in official guidance issued by the Equal Employment Opportunity Commission, to the extent that it is prohibited by Title VII and the ADA.[40]

Direct labor rights work better than an approach focused on litigation

Yet even though individual litigation might provide some relief for those who need, or are on, alternative work schedules for reasons of family responsibility, litigation is not ideal. It is potentially very expensive, stressful, and time consuming for both plaintiff and defendant, and it creates uncertainty for both employers and employees. A flexible working law can provide greater clarity for both employer and employee regarding their respective rights and responsibilities than the piecemeal guidelines resulting from individual litigation. Such a need for greater clarity was the explicit reasoning for the British government in introducing the U.K. Right to Request, and Duty to Consider, Flexible Working.

The U.S. Working Families Flexibility Act, which was introduced in Congress by Senator Edward Kennedy and Congresswoman Carolyn Maloney in Decem-

[36] For a full discussion, see Calvert, 2007.
[37] See Still, 2006, for a detailed analysis of FRD cases, including of their success rate in court.
[38] See Williams and Calvert, 2006. *WorkLife Law's Guide to Family Responsibilities Discrimination* San Francisco: WLL Press, Section 1-1 et seq.
[39] Williams and Calvert, 2006, section 9-1 et seq., cite wrongful discharge, intentional infliction of emotional distress, breach of contract, promissory estoppel, implied covenant of good faith and fair dealing, an tortious interference with contract.
[40] See Equal Employment Opportunities Commission, 2007.

ber 2007, is aimed at addressing these uncertainties surrounding rights and obligations related to flexible working.[41] The Act provides a "right to request" alternative work arrangements, modeled on the U.K. and N.Z. statutes; like the U.K. and N.Z. laws, the proposed U.S. law identifies a broad range of options for reorganizing work, without focusing primarily on reduced hours. Like the Dutch, French, and German laws, the proposed act does not limit the right to specific groups of employees, or reasons for seeking change, and thus would provide a tool for helping workplaces and employees adjust to changing work-life requirements throughout the life course.

"In all countries except the United States, paid maternity leave, paid sick leave, and paid vacations are nearly universal."

Flexible working rights are part of a larger package of work supports

Flexible working rights on their own are unlikely to help many women move into and stay in high-quality jobs. More is needed, and most industrialized countries provide more than is provided in the United States. In all of the other countries included in this study, paid maternity leave, paid sick leave, and paid vacations are nearly universal. Likewise, flexible work is no substitute for a lack of affordable quality child care, and in all countries in the study there has been an increase in public investment in child care, with the need for more investment in early childhood education and care increasingly being discussed in the United States. Yet whatever social supports are in place, the demand for more diverse work arrangements is likely to increase. Flexible working rights can help workplaces adjust to new demographic realities, and can help more people to develop their full potential at work.

This review of alternative work arrangement statutes from high-income countries reveals a breadth of approaches, going far beyond the traditional association of flexible working solely with work-family reconciliation. The available evidence suggests that statutes have increased the pace of change without creating undue hardship for employers. In fact, far from making a business or a country less competitive, these policies can enhance competitiveness by increasing labor supply and improving human capital utilization; thus, they support economic growth and prosperity, while contributing to greater gender equality.

[41] The Working Families Flexibility Act (S. 2419 and H.R. 4301) was introduced by Sen. Edward Kennedy and Congresswoman Carolyn Maloney on December 6, 2007.

References

Belden Russonello & Stewart and Research/Strategy/Management. 2001. In *the Middle: A Report on Multicultural Boomers Coping with Family and Aging Issues*. Washington, DC: AARP.

Bond, James T, Cynthia Thompson, Ellen Galinsky, and David Prottas. 2002. *Highlights of the National Study of the Changing Workforce: Executive Summary No.3*. New York: The Families and Work Institute.

Bourke, Juliet. 2004. "Using the Law to Support Work/Life Issues: The Australian Experience." *American University Journal of Gender, Social Policy & the Law*, 12: 19-68.

British Chamber of Commerce. 2007. *Work and Life: How Business is Striking the Right Balance*. London: British Chamber of Commerce.

Burri, Susanne, H.C. Opitz, and A.G.Veldman. 2003. "Work-Family Policies on Working Time Put into Practice. A Comparison of Dutch and German Case Law on Working Time Adjustment." *International Journal of Comparative Labour Law and Industrial Relations,* 3: 321–346.

Calvert, Cynthia T. 2007. "Litigating flexibility." Center for WorkLife Law Issue Brief, October. http://www.worklifelaw.org/pubs/Issue%20Brief%20-%20FWAs.pdf (March 6, 2008)

Chartered Institute for Personnel and Development (CIPD). 2005. *Flexible Working: Impact and Implementation—An Employer Survey*. London: CIPD.

Cohany, Sharon.R. and Emy Sok. 2007. "Trends in Labor Force Participation of Married Mothers of Infants." *Monthly Labor Review*, 130: 9-16.

Corporate Voices for Working Families. 2005. *Business Impacts of Flexibility: An Imperative for Expansion*, researched by WFD Consulting. Washington, DC: Corporate Voices for Working Families.

Equal Employment Opportunities Commission (EEOC). 2007. "Enforcement Guidance: Unlawful Disparate Treatment of Workers with Caregiving Responsibilities." http://www.eeoc.gov/policy/docs/caregiving.html (December 4, 2007).

Equal Opportunities Commission (EOC). 2005. *Britain's Hidden Brain Drain—Final Report: The EOC's Investigation into Flexible and Part-Time Working*. Manchester, U.K.: Equal Opportunities Commission.

Fagan, Colette, Ariane Hegewisch, and Jane Pillinger. 2006. *Out of time: Why Britain Needs a New Approach to Working-Time Flexibility*, research report for the Trade Union Congress. Trade Union Congress: London, February. http://www.tuc.org.uk/extras/outoftime.pdf (March 6,2008).

Galinsky, Ellen, James.T. Bond, and E.Jeffrey Hill. 2004. *When Work Works: A Status Report on Workplace Flexibility.* New York: Families and Work Institute.

Glass, Jennifer. 2004. "Blessing or Curse? Work-Family Policies and Mother's Wage Growth Over Time." *Work and Occupations,* 31: 367-394.

Golden, Lonnie. 2005. "The Flexibility Gap: Employee Access to Flexibility in Work Schedules." In Flexibility in Workplaces: Effects on Workers, Work Environment and the Unions, Isik U. Zeytinoglu (ed). Geneva: IIRA/ILO.

Gornick, Janet C. and Marcia K. Meyers. 2003. *Families That Work: Policies for Reconciling Parenthood and Employment.* New York: Russell Sage Foundation.

Hegewisch, Ariane. 2005. *Employers and European Flexible Working Rights: When the Floodgates were Opened*. Center for WorkLife Law Issue Brief, Fall. http://www.worklifelaw.org/pubs/european_issue_brief_printversion.pdf (March 6, 2008).

Heron, Alexandra. 2005. **"**Promoting and Protecting Reduced Hours Work: European Union Law and Part-Time Work." In *Working Time for Working Families: Europe and the USA*, Ariane Hegewisch (ed). Washington, DC: Friedrich Ebert Stiftung, DC.

Hooker, Hülya, Fiona Neathey, Jo Casebourne, and Miranda Munro. 2007. *The Third Work-Life Balance Employee Survey.* The DTI Employment Relations Research Series No. 58. http://www.berr.gov.uk/files/file38387.pdf (March 6,2008).

Loretto, Wendy, Sarah Vickerstaff, and Phil White. 2005. *Older Workers and Options for Flexible Work*. Equal Opportunities Commission Working Paper Series 31. Manchester, U.K.: Equal Opportunities Commission.

Organisation for Economic Co-operation and Development (OECD). 2007. "Statistical Appendix of *OECD Employment Outlook 2007*." Paris: OECD.

Palmer, Camilla, Joanna Wade, Alexandra Heron, and K. Wood. 2006. *Maternity and Parental Rights: A Guide to Parent's Legal Rights at Work*. London: Legal Action Group.

Rose, Stephen J. and Heidi Hartmann. 2004. *Still a Man's Labor Market: The Long-Term Earnings Gap*. Washington, DC: Institute for Women's Policy Research.

Still, Mary. 2006. *Litigating the Maternal Wall: U.S. Law Suits Charging Discrimination Against Workers with Family Responsibilities*. San Francisco: University of California Hastings School of Law, Center for WorkLife Law.

Stone, Pamela. 2007. *Opting Out? Why Women Really Quit Careers and Head Home*. Los Angeles: University of California Press.

Taylor, Paul, Cary Kent, and Courtney Kennedy. 2005. "Babyboomers Approach Age 60: From Aquarius to the Age of Responsibility." Pew Research Center: A Social Trend Report. http://pewresearch.org/assets/social/pdf/socialtrendsboomers120805.pdf (Oct 11,2007).

The Radcliffe Public Policy Center. 2000. *Life's Work: Generational Attitudes Toward Work and Life Integration*. Cambridge, MA: Radcliffe Institute for Advanced Study.

Toossi, Mitra. 2005. "Labor Force Projections to 2014: Retiring Boomers." *Monthly Labor Review,* 128: 25-44.

U.K. Department of Trade and Industry. 2000. *Work and Parents: Competitiveness and Choice*. Green Paper. London: HMSO, December, Section 6.13.

Williams, Joan and Cynthia T. Calvert. 2006. *WorkLife Law's Guide to Family Responsibilities Discrimination.* San Francisco: WLL Press.

IWPR Program Advisory Committee

The Institute for

JOIN IWPR

Membership Levels

Graduate Student Member: $35
- Quarterly newsletter, fact sheets, and Research-In-Briefs
- 40% discount off a subscription to the *Journal of Women, Politics & Policy*
- 20% discount on IWPR publications
- Special IWPR conference rate

Friend: $75
Regular subscription to the IWPR Information Network
- Quarterly newsletter, fact sheets, and Research-In-Briefs
- 40% discount off a subscription to the *Journal of Women, Politics & Policy*
- 20% discount on IWPR publications
- 20% discount on one registration for an IWPR conference

Sustainer: $175
Enhanced subscription to the IWPR Information Network
- Research News Reporter Online
- Quarterly newsletter, fact sheets, and Research-In-Briefs
- 40% discount off a subscription to the *Journal of Women, Politics & Policy*
- 20% discount on IWPR publications
- 20% discount on one registration for an IWPR conference

Partner: $250
Comprehensive subscription to the IWPR Information Network
- Complimentary copies of all major IWPR reports
- Research News Reporter Online
- Quarterly newsletter, fact sheets, and Research-In-Briefs
- 40% discount off a subscription to the *Journal of Women, Politics & Policy*
- 20% discount on IWPR publications
- 20% discount on one registration for an IWPR conference

Affiliate: $350*
Organizational subscription to the IWPR Information Network
- Complimentary subscription to the *Journal of Women, Politics & Policy*
- Complimentary copies of all major IWPR reports
- Research News Reporter Online
- Quarterly newsletter, fact sheets, and Research-In-Briefs
- 20% discount on IWPR publications
- 20% discount on three registrations for an IWPR conference

* $200 for nonprofits with operating budgets under $500,000

Corporate Affiliate: $1,000**
Corporate subscription to the IWPR Information Network
- Complimentary subscription to the *Journal of Women, Politics & Policy*
- Complimentary copies of all major IWPR reports
- Research News Reporter Online
- Quarterly newsletter, fact sheets, and Research-In-Briefs
- 20% discount on IWPR publications
- 20% discount on five registrations for an IWPR conference

** $500 for corporations and businesses with revenue under $1 million

Eleanor Roosevelt Policy Council: $500-$5000 and up
Members of IWPR's premier giving circle receive a comprehensive subscription, special acknowledgement in select IWPR publications, a complimentary subscription to the *Journal of Women, Politics & Policy*, and exclusive invitations to IWPR events across the country.

Community Council, $500-$999
Institute Council, $1,000-$2,499
Leadership Council, $2,500-$4,999
President's Council, $5,000 and up

Sign up at www.iwpr.org or call Membership at (202) 785-5100.

Visit www.iwpr.org/store to purchase IWPR publications.

Institute for Women's Policy Research
1707 L Street NW, Suite 750
Washington, DC 20036
202 785 5100
www.iwpr.org