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# Promoting gender equality through regulation: the case of parental leave

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## ABSTRACT

Parental leave regulation is not gender-neutral. Policies that encourage fathers' leave-taking relate to the enhancement of child well-being, caring fatherhood, and gender equality among the couple and in the workplace. There are various designs of parental leave policies, depending on a combination of factors, such as length, income replacement rate and the compulsory nature of leave. This article draws on data from the 16th International Review of Leave Policies and Related Research (2020) and analyses main features of parental leave policies in seven countries (Germany, Poland, Portugal, Sweden, Israel, Japan and the United States), confronting it with recent research on the use of parental leave in those countries. Subsequently, the article provides evidence for the benefits of fathers' uptake of paternity and parental leave and points out three features that leave policies must incorporate to promote gender equality and notes the importance of employers' self-regulation.

**KEYWORDS** Parental leave; paternity leave; gender equality; caring fatherhood; work-life balance; legislation as tool to change perceptions

## 1. Introduction

Gender equality is an ideal, a value, and a socio-political goal of democratic societies. It is also an overarching concept,<sup>1</sup> present in every layer of social life. Despite persistent inequalities,<sup>2</sup> there is an affirmation of equality between the sexes at least at the level of mainstream social and legal discourses.

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<sup>1</sup>Vera Lomazzi, Sabine Israel and Isabella Crespi, 'Gender Equality in Europe and the Effect of Work-Family Balance Policies on Gender-Role Attitudes' (2018) 8 *Social Sciences* 1.

<sup>2</sup>Regardless of the last century's significant progress, women are far from achieving substantive equality in all domains. In fact, according to United Nations UN, 'The World's Women 2015: Trends and Statistics' (2015) xiii–xiv. women all over the world, and regardless of their social or economic stance, are more likely to be victims of violence and are more exposed to poverty. Gender inequalities manifest in many fields, from violence to health, education, and environment, but also work, time, power and decision-making. For this reason, statistics on gender equality are based on multiple indicators – see Gender Equality Index, available at <https://eige.europa.eu/gender-equality-index> (accessed 20 September 2019) and UN.

Gender equality is nowadays enshrined in major human rights instruments<sup>3</sup> and is a self-standing sustainable development goal.<sup>4</sup> One of the gender equality sustainable development goal's target is to 'recognise and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility within the household and the family as nationally appropriate'.<sup>5</sup>

Women work less than men in paid work, which partially explains the persistent gender pay gap.<sup>6</sup> However, data suggest that women undertake most of the unpaid care work and domestic work, such as childcare or helping dependent and vulnerable people due to ageing or health-related issues, cooking and doing the housework. This imbalance seems to constitute a pattern replicated all over the world, despite varying (but always lower) participation of men in unpaid care work.<sup>7</sup>

The gender (im)balance regarding participation in the labour market v. unpaid care work is, in no small extent, the result of 'gender contracts' made in the family. However, as Vera Lomazzi, Sabine Israel and Isabella Crespi note 'these arrangements (...) are not simply the result of individual preferences, but of the interplay of individuals' values, partners' negotiations, structural factors, and institutional opportunities'.<sup>8</sup>

Various studies demonstrate the importance of regulation and public policies in addressing issues of gender equality.<sup>9</sup> In this regard, it is vital to

<sup>3</sup>E.g. the UN Charter (preamble), the Universal Declaration of Human Rights (articles 1, 2, 7, 16, 23(2) and 25(2)), the International Covenant on Civil and Political Rights (articles 2, 3 and 26), the International Covenant on Economic, Social and Cultural Rights (articles 2 and 3), the Convention on the Elimination of All Forms of Discrimination against Women, ILO Conventions 100, 111, 156, 183, 189 and 190, the Beijing Declaration and Platform for Action, the European Convention on Human Rights, the Istanbul Convention, the American Convention on Human Rights and the African Charter on Human and Peoples' Rights.

<sup>4</sup>UN A/RES/70/1. Transforming Our World: The 2030 Agenda for Sustainable Development Transforming Our World: The 2030 Agenda for Sustainable Development Preamble' <[https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_RES\\_70\\_1\\_E.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_70_1_E.pdf)> accessed 15 July 2020.

<sup>5</sup>ibid 18. Target 5.4.

<sup>6</sup>Esteban Ortiz-Ospina and Max Roser, 'Economic Inequality by Gender' <<https://ourworldindata.org/economic-inequality-by-gender#citation>> accessed 26 July 2020; EIGE, *Tackling the Gender Pay Gap: Not without a Better Work-Life Balance* (2019) <[https://eige.europa.eu/publications/tackling-gender-pay-gap-not-without-better-work-life-balance?utm\\_source=newsletter&utm\\_medium=email&utm\\_campaign=money\\_and\\_power\\_in\\_the\\_eu\\_equally\\_shared&utm\\_term=2019-07-10](https://eige.europa.eu/publications/tackling-gender-pay-gap-not-without-better-work-life-balance?utm_source=newsletter&utm_medium=email&utm_campaign=money_and_power_in_the_eu_equally_shared&utm_term=2019-07-10)>.

<sup>7</sup>United UN (n 2) 84; Jacques Charmes, *The Unpaid Care Work and the Labour Market. An Analysis of Time Use Data Based on the Latest World Compilation of Time-Use Surveys* (International Labour Organization 2019) 17; Gaëlle Ferrant, Luca Maria Pesando and Keiko Nowacka, 'Unpaid Care Work: The Missing Link in the Analysis of Gender Gaps in Labour Outcomes' 1.

<sup>8</sup>Cf. Lomazzi, Israel and Crespi (n 1) 7–8.

<sup>9</sup>Louis N Christofides, Alexandros Polycarpou and Konstantinos Vrachimis, 'Gender Wage Gaps, "sticky Floors" and "Glass Ceilings" in Europe' (2013) 21 *Labour Economics* 86; Barbara Petrongolo and Claudia Olivetti, 'The Economic Consequences of Family Policies: Lessons from a Century of Legislation in High-Income Countries' (2017) <<http://www.nber.org/papers/w23051>>; Ariane Hegewisch and Janet C Gornick, 'The Impact of Work-Family Policies on Women's Employment: A Review of Research from OECD Countries' (2011) 14 *Community, Work and Family* 119.

notice that regulation is not neutral and plays an essential role in building the setting upon which gender relations will unfold. It is not only a matter to know how regulation and legislation can promote gender equality, but firstly to understand how it hinders it.

Parental leave constitutes a good example of how the state can hold back or promote gender equality, depending on how it regulates and legislates on the matter. In the beginning, the only parental leave that existed was maternity leave, a legal solution to the problems working mothers faced.<sup>10</sup> Maternity leave legislation varies, and the way states legislated on maternity leave has led to very different outcomes concerning women's participation in the labour force. For example, long maternity leave hampers women's re-entrance in the labour market and tend to decrease their human capital, whereas short leave facilitates women's return to the labour market and improves the chances of long-term equality.<sup>11</sup>

Extended leave is not dictated by biological constraints, but by public policies that stem from a political choice, associated, for example, with the lack of childcare services for children under the age of three. Even when legislation allows for mothers or fathers to take long leave, women are the ones to do it, motivated not only by social norms and expectations but also frequently by economic factors. As long leave is usually only partially paid (or even not paid at all), the economically rational choice is that the parent who earns less takes the leave, thus optimising the family income. Since women often earn a salary inferior to those of men, they are the ones that take the leave. If they are already mothers, the chances that the gender pay gap among the couple is even higher increases.<sup>12</sup> Hence, legislation on parental leave may support the vicious circle of gender inequality.

Paternal leave and incentives for fathers' leave-taking constitute critical attempts to promote gender equality by challenging the stereotypical male

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<sup>10</sup>In fact, one cannot ignore that there are biological differences concerning women and men's entrance in parenthood – *vd.* Marie Evertsson, 'Parental Leave and Careers: Women's and Men's Wages after Parental Leave in Sweden' (2016) 29 *Advances in Life Course Research* 26, 27. See also Katarzyna Suwada, 'It Was Necessary at the Beginning to Make This Whole Revolution': Men's Attitudes to Parental Leaves in Sweden and Poland' (2017) 20 *Men and Masculinities* 570, 572.

<sup>11</sup>Anton Nivorozhkin and Laura Romeu-Gordo, 'How Do Longer Parental Leaves Affect Women's Workplace Tasks? Evidence from Germany' (2019) 25 *Feminist Economics* 119, 137; Clara Welteke and Katharina Wrohlich, 'Peer Effects in Parental Leave Decisions' (2019) 57 *Labour Economics* 146, 146 <<https://doi.org/10.1016/j.labeco.2019.02.008>>; Thordis Reimer, 'Why Fathers Don't Take More Parental Leave in Germany: Comparing Mechanisms in Different Work Organizations' (2019) 0 *Community, Work and Family* 1, 5 <<https://doi.org/10.1080/13668803.2019.1608157>>.

<sup>12</sup>As stated in EIGE (n 6) 17.: 'While the total gender gap in net monthly earnings in the EU stands at 31% (to the detriment of women), for couples with children under the age of seven, it reaches 48%, the highest level observed across the life stages examined. This life stage is associated not only with the levelling off of women's earnings but also to a notable increase in men's earnings. The family formation implies an earnings' 'penalty' for mothers and a 'reward' for fathers, a finding consistently observed in broader research (EIGE, 2017b, p. 23; ILO, 2018). Among couples whose youngest child is over seven years of age, the gender gap begins to reduce, but remains considerably higher compared to women in partnerships without children or in comparison to other life stages'.

gender role.<sup>13</sup> To promote the involvement of men in care responsibilities is an example of how legislation and regulation can help change society through the establishment of a legal framework that not only allows but also encourages men to take care of their children.

Parental leave for mothers has existed for a long time, but the inclusion of fathers is a recent achievement, currently far from being universal.<sup>14</sup> Nevertheless, paternity leave and the sharing of parental leave are essential features of public policies aimed at work-life balance and are at the heart of many public policies adopted since the beginning of the century.<sup>15</sup> As stated in a recent report 'leave for fathers – in conjunction with leave for mothers and when enshrined in national policies – contributes significantly to the recognition and redistribution of unpaid care work'.<sup>16</sup>

Paternity leave belongs exclusively to the father and usually corresponds to a short period after birth; parental leave can be used by one parent, the other, or (when allowed) by both and translates into a more extended period (months or years). According to a European Commission 2018 report, 'all EU Member States offer some form of paternity or parental leave (or both) following the birth of a child'. Nonetheless, some countries do not allow fathers to take any leave, a reality that will predictably change due to the enactment of the EU Directive on work-life balance for parents and carers.<sup>17</sup> Still, even after the Directive's transposition, the legal framework on parental leave in Europe will be far from being uniform, because the Directive sets its goals far beneath what some States currently grant on this matter.

The reality is that there are many different models of paternity and parental leave across the EU and the world, varying in length, compensation (and level of compensation) and transferability, among other factors.

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<sup>13</sup>Gender equality is not the sole goal of paternal leave. Another important objective is to promote the well-being of the child by improving the quality of the father-child relationship. On the benefits of paternal engagement in childcare see Christina Boll, Julian Leppin and Nora Reich, 'Paternal Childcare and Parental Leave Policies: Evidence from Industrialized Countries' (2014) 12 *Review of Economics of the Household* 129, 130.

<sup>14</sup>According to the World Bank, 'While more than half of the economies covered mandate paid leave reserved explicitly for fathers, the median duration of that leave is just five days (figure 1.4). Only 43 economies have paid parental leave that can be shared by mothers and fathers' – see World Bank, 'Women, Business and The Law 2020' 8.

<sup>15</sup>Kai Uwe Müller, Michael Neumann and Katharina Wrohlich, 'The Family Working-Time Model: Towards More Gender Equality in Work and Care' (2018) 28 *Journal of European Social Policy* 471, 471–72 <<https://doi.org/10.1177/0958928717753581>>.

<sup>16</sup>N van der Gaag and others, 'State of the World's Fathers: Unlocking the Power of Men's Care' (2019) 32; Ann-Zofie Duvander and others, 'Gender Equality: Parental Leave Design and Evaluating Its Effects on Fathers' Participation' in Peter Moss, Ann-Zofie Duvander and Alison Koslowski (eds), *Parental Leave and Beyond: Recent developments, current issues, future directions* (Policy Press 2019). See *infra*, page 20.

<sup>17</sup>European Parliament and Council of the European Union, *Work-Life Balance Directive 2019 15*. Directive (EU) 2019/1158 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU [2019] OJ L188/79. Member states shall transpose this directive until 2 August 2022.

## 2. A showcase of parental leaves policies and its effect on fathers' leave-taking

In this section, parental leave's policies in four European countries (that are also EU Member States) and three non-European countries are examined. European countries are Germany, Poland, Portugal and Sweden, and non-European countries are Israel, Japan and the United States (US). Rapport to different geographies and cultural systems determined countries selection. Also, the existence of internationally disseminated studies on the use of paternity and parental leave by fathers in those countries was a critical factor.

There are some limitations to this analysis. Parental leave will be examined in its mainstream form, i.e. without considering variations arising from specific circumstances, such as the birth of twins, premature births, disability or health condition of the mother or the child. There is also no systematic mention to eligibility criteria, although all the seven countries relate leave rights to the employment situation of parents. Furthermore, a few countries also have some type of benefits for non-workers, at a low flat-rate (e.g. Germany and Portugal). Another aspect disregarded is the access of same-sex parents to parental leave, as well as that of adoptive parents. Breastfeeding-related rights were also excluded, as well as childcare leave and other types of care leave, and the relation of leave to the provision of public childcare for children under school age.

The information below regarding length, compensation, type of leave and flexibility, is based on the 16th International Review of Leave Policies and Related Research, released in 2020, and provided by the International Network on Leave Policies and Research.

### 2.1. Germany

Germany provides maternity leave and parental leave, but there is no statutory provision of paternity leave.<sup>18</sup> Nonetheless, both parents can use parental leave, as it is an individual right, and fathers often use a share of their parental leave as non-mandatory paternity leave.<sup>19</sup> Maternity leave lasts for a maximum of 14 weeks, of which eight (after the birth) are mandatory, and is compensated at no-ceiling 100% rate. Maternity leave time is deducted from parental leave.

Parents have the right to 36 months of parental leave, but not all of it is paid. In fact, German legislation underwent a significant reform regarding parental leave benefits in 2007. Before the reform, parental leave compensation was paid at a monthly flat rate of 450 Euro for a period of 12

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<sup>18</sup>Pia Schober and others, 'Germany Country Note' in A Koslowski and others (eds), *International Review of Leave Policies and Research 2020* (2020) <[http://www.leavenetwork.org/lp\\_and\\_r\\_reports/](http://www.leavenetwork.org/lp_and_r_reports/)>.

<sup>19</sup>Reimer (n 11) 6.

months or 300 Euro for a period up to 24 months.<sup>20</sup> After 2007, there are two types of leave benefit, which can be combined: *Elterngeld* and *ElterngeldPlus*. Among other goals (such as accelerating women's return to the labour force, promoting the increment of fertility rates and boosting gender equality in general) the reform intended to increase fathers' uptake of parental leave.<sup>21</sup>

*Elterngeld* is income-related, amounting to 65% of previous earnings, with a minimum of 300 Euro and a maximum of 1800 Euro.<sup>22</sup> This benefit lasts for 12 months after the birth of the child, to which two months can be added if both parents use at least two months of leave. In practice, it means that parental benefit can go up to 14 months paid at a relatively high level.<sup>23</sup>

Another form of compensation is *ElterngeldPlus*, a 24-month benefit granted to parents that work part-time. As in *Elterngeld*, the replacement rate is 65% for the lost earnings. There is also a sharing bonus of 4 months through 'partner months' when both parents work part-time (25–30 hours/week) for at least four consecutive months.<sup>24</sup>

Fathers' uptake of parental leave is still very incipient when compared to that of mothers, despite the significant increase following the 2007 reform.<sup>25</sup> In fact, in 2016, 38.8% of fathers took some parental leave, a figure approximately ten times higher than in 2006 (3.5%).<sup>26</sup> Hence, the number of fathers taking parental leave increased, but the duration of leave taken decreased.<sup>27</sup>

Most fathers (<sup>4</sup>/<sub>5</sub>) do not exceed the two months of shared bonus that, otherwise, would not be paid. Thus, these bonus months are interiorised as a social norm, dictating the maximum amount of time fathers should dedicate to leave.<sup>28</sup> The same logic applies to mothers, in the sense that *Elterngeld* has institutionalised the idea that parents should care for their children at home until their first birthday.<sup>29</sup> In fact, mothers' will to take the leave and not to return to work seems to be an essential factor affecting fathers' uptake of parental leave,<sup>30</sup> even though it is an individual entitlement.

<sup>20</sup>Welteke and Wrohlich (n 11) 147.

<sup>21</sup>Reimer (n 11) 2; Schober and others (n 18) 287.

<sup>22</sup>Stefanie Aunkofer, Michael Meuser and Benjamin Neumann, 'Couples and Companies: Negotiating Fathers' Participation in Parental Leave in Germany' (2018) 27 *Revista Espanola de Sociologia* 65. Percentage of income replacement may vary depending on the amount of previous earnings. Hence, a previous income of €1,000–€1,240 is replaced at a 67% rate. There is also a penalty and an increment for those whose previous income is respectively above or below €1,240 and €1,000.

<sup>23</sup>Reimer (n 11) 2.

<sup>24</sup>Schober and others (n 18) 277.

<sup>25</sup>ibid 287–88.

<sup>26</sup>ibid 287.: 'In 2018, 24.5 per cent of mothers with children below the age of six years were on Parental leave (*Elternzeit*), compared to 1.6 per cent for fathers'.

<sup>27</sup>Reimer (n 11) 4.

<sup>28</sup>ibid 3.

<sup>29</sup>Welteke and Wrohlich (n 11) 148.

<sup>30</sup>Reimer (n 11) 14.

While both parents can take leave simultaneously, compensation (although relatively high) is insufficient: an income reduction of one third would most probably imbalance most families. Also, the existence of an upper limit may translate into significant income reduction. Therefore, compensation rates may constitute an obstacle to fathers' leave-taking, especially when the father has a higher income than the mother.<sup>31</sup>

## 2.2. Poland

In Poland, there is maternity leave, paternity leave and parental leave. Maternity leave lasts for 20 weeks, of which six can be used before birth. Furthermore, 14 weeks of maternity leave are mandatory. After maternity leave, parents can choose to share (or not) parental leave, up to 32 weeks. Paternity leave lasts up to two weeks.<sup>32</sup>

Parental leave in Poland is often perceived as an extension of maternity leave, in part due to the compensation scheme which places a choice on the mother: if she chooses to be fully compensated during maternity leave, then the first six weeks of parental leave will also be paid at a 100% rate and the remaining 26 weeks at a 60% rate. The alternative is an 80% compensation rate during maternity and parental leave. This scheme is a constraint for fathers to take leave.<sup>33</sup>

Paternity leave is fully paid. Furthermore, if the mother does not fulfil the eligibility criteria to access maternity leave, it does not affect the father's right to take leave.<sup>34</sup>

Flexibility regarding leave uptake and the timing of the decision is limited. Parental leave can be taken immediately after maternity leave as a block, or it can be split into four separate periods (however, two of them must last for at least 14 weeks). Parents must decide the way they will use parental leave within the first three weeks after birth. Paternity leave can be used for 24 months after the child's birth, and it can be split into two one-week periods. Parents can also choose to combine parental leave and part-time work.<sup>35</sup>

Data on fathers' uptake of parental leave is recent. Men still lag far behind women regarding parental leave-taking in Poland, mothers being 99% of

<sup>31</sup>ibid 5–6.

<sup>32</sup>Anna Kurowska, Piotr Michoń and Barbara Godlewska-Bujok, 'Poland Country Note' in A Koslowski and others (eds), *International Review of Leave Policies and Research 2020* (2020) 456–58 <[http://www.leavenetwork.org/lp\\_and\\_r\\_reports/](http://www.leavenetwork.org/lp_and_r_reports/)>; Trine Rogg Korsvik and Marta Warat, 'Framing Leave for Fathers in Norway and Poland: Just a Matter of Gender Equality?' (2016) 24 *NORA – Nordic Journal of Feminist and Gender Research* 110, 111–12 <<https://doi.org/10.1080/08038740.2016.1182588>>.

<sup>33</sup>Kurowska, Michoń and Godlewska-Bujok (n 32) 456–57; Olga Zajkowska, 'Parental Leaves in Poland: Goals, Challenges, Perspectives' (2019) 46 *Problemy Polityki Społecznej: studia i dyskusje* 121 <<https://doi.org/10.31971/16401808.46.3.2019.6>>.

<sup>34</sup>Korsvik and Warat (n 32) 112; Zajkowska (n 33) 125; Kurowska, Michoń and Godlewska-Bujok (n 32) 456.

<sup>35</sup>Kurowska, Michoń and Godlewska-Bujok (n 32) 458.



leave takers in 2017 and 2018.<sup>36</sup> The use of paternity leave has been increasing: in 2012, 28,600 men used some or all paternity leave and, in 2015, the number rose to 148,429.<sup>37</sup> However, fathers' parental leave-taking rates remain very low.

Considering that parental leave policy is gender-neutral and that leave is highly compensated, fathers' low uptake of leave is often attributed to gendered social norms regarding care work,<sup>38</sup> that seems to influence mothers' uptake of parental leave and underpins public support of current leave policy.<sup>39</sup>

Paternity leave is a father-exclusive leave that cannot be transferred to the mother. Parental leave is intertwined with maternity leave, especially regarding compensation. Furthermore, there is no 'father quota', which means that the mother can entirely use it. Being a family leave, and not an individual entitlement, parental leave in Poland naturally falls on those who undertake care work in the family: women. In sum, although formally gender-neutral, parental leave in Poland does not eschew gendered social norms.<sup>40</sup>

### 2.3. Portugal

In Portugal, the common designation 'parental leave' comprises mother-exclusive initial parental leave (former 'maternity leave'), a father-exclusive initial parental leave (former 'paternity leave'), and initial parental leave.

Mother-exclusive initial parental leave is mandatory and lasts for 42 days after the child's birth. Besides, mothers can use up to 30 days of initial parental leave before birth. Father-exclusive initial parental leave duration is 25 business days. Of these, 20 are mandatory (5 must be used right after the child's birth and the remaining 15 within six weeks after the birth), and 5 are optional.<sup>41</sup>

<sup>36</sup>ibid 465.

<sup>37</sup>Suwada (n 10) 575. See also Zajkowska (n 33) 127. Still, this seems to be a small figure, considering that in 2014 c. 630,000 were granted maternity benefit – see Korsvik and Warat (n 32) 121.

<sup>38</sup>Poland, as many former socialist countries, has long ago endorsed a dual-earner family model. Per contra, care work remained in the private sphere being performed mainly by women – see Zajkowska (n 33) 124. The author further notes that the reform that led to the current one year leave was partially motivated by the lack of childcare services for children under three years old.

<sup>39</sup>Natasza Kosakowska-Berezecka and others, 'Evaluations of Men in Domestic Roles in Canada, Norway, Poland, and India' (2018) 26 *Journal of Men's Studies* 143, 146; Kurowska, Michoń and Godlewska-Bujok (n 32) 466–67; Korsvik and Warat (n 32) 116.

<sup>40</sup>As Suwada concludes in a study about attitudes of Polish and Swedish fathers regarding 'daddy quotas': 'For Polish men functioning in the system grounded in the exclusive mothering discourse, the introduction of gender-neutral parental leave is not always reasonable. The mother is usually seen as the main carer and the father's role is to help and support her when she needs that. The non-transferable parental leave for fathers is for Polish men an abstract idea' – see Suwada (n 10) 583.

<sup>41</sup>Karin Wall, Rita B Correia and Mafalda Leitão, 'Portugal Country Note' in A Koslowski and others (eds), *International Review of Leave Policies and Research 2020* (2020) 468–69, 473 <[http://www.leavenetwork.org/lp\\_and\\_r\\_reports/](http://www.leavenetwork.org/lp_and_r_reports/)>.

After the use of father-exclusive parental leave and mother-exclusive parental leave, parents can share the rest of the parental leave. In this case, there is a one-month ‘sharing bonus’ if the leave is shared for at least 30 consecutive days or two periods of 15 consecutive days. Hence, parental leave is of 120 days fully paid (100%) or 150 days paid at 80%. However, if both the father and the mother use each one, exclusively, 30 consecutive days or two periods of 15 consecutive days, they have the right to 150 days fully paid leave or 180 days paid at 83% compensation rate.<sup>42</sup> Parents cannot take leave at the same time, except for the fifth month, by sharing 30 days (15 days each), in which case there is no ‘sharing bonus’.

Moreover, there is an individual right of each parent to additional parental leave, up to three more months, which is paid at 25% if taken immediately after initial parental leave. Otherwise, it is unpaid. There are other forms to use additional parental leave (e.g. on a part-time basis) that will not be detailed in this article.<sup>43</sup>

In 2019, 76.7% of fathers took father-exclusive initial parental leave days.<sup>44</sup> ‘Sharing bonus’ regarding parental leave was introduced in 2009. Before this date, mothers could share maternity leave with fathers, but the percentage of parents who did it was minimal (596 fathers in 2008). In 2010, the year after the reform, that number grew considerably to 16,426 ‘sharing bonus’ being granted. In 2019 there were 23,180 parents sharing leave under ‘sharing bonus’ benefit, which represents 31.22% of total initial parental leave.<sup>45</sup> Fathers tend to share only the minimum period necessary to get the bonus, after the mother uses the first 4 or 5 months, accordingly to the preferred scheme.<sup>46</sup> Additional leave uptake is not significant, most probably due to low compensation.<sup>47</sup>

A study conducted in Portugal revealed that perspectives on gender-neutral parental leave and work are not homogeneous. Conversely, different attitudes emerged, some close to the dual-earner/dual-carer family model, others still found of the breadwinner family model, and

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<sup>42</sup>It is noteworthy to stress that parental benefits are not taxed. Therefore, parents may receive a higher income than when they are working – *ibid* 469.

<sup>43</sup>*ibid* 473–74.

<sup>44</sup>As *ibid* 482 explain: ‘Take-up of the mandatory leave is still not at 100 per cent for three main reasons: statistics exclude employees with special social protection regimes (e.g. civil servants, bank workers); some employees still do not fit eligibility criteria (they do not have a sufficient record of social contributions or their family income is not as low as required by the flat-rate benefit); and labour inspection services only recently began to control uptake of leave by fathers leading to lack of implementation by some employers’.

<sup>45</sup>*ibid* 481.

<sup>46</sup>*ibid*.

<sup>47</sup>Anna Escobedo and Karin Wall, ‘Leave Policies in Southern Europe: Continuities and Changes’ (2015) 18 *Community, Work and Family* 218, 227 <<https://doi.org/10.1080/13668803.2015.1024822>>; Wall, Correia and Leitão (n 41) 482–83; Karin Wall, Rita B Correia and Rita Gouveia, ‘Atitudes Face Às Licenças Parentais Em Portugal’ [2019] *Sociologia, Problemas e Práticas* 55, 60.

others defending a one-and-a-half-earner family model.<sup>48</sup> The difference in attitudes related to socio-economic factors.<sup>49</sup>

An important aspect of Portuguese society to bear in mind is the high level of women participation in the labour market and full-time employment.<sup>50</sup> The need to have two providers probably fosters attitudes favourable to a relatively quick return of mothers to the labour market. Nonetheless, a recent study seems to indicate a preference for a 7–12 months duration leave, not aligned with current legislation (*rectius*, compensation level) on the matter. Regarding parental leave share, about  $\frac{3}{4}$  of the respondents were favourable to some sharing, but most of them did not defend equal sharing: mothers should take the most considerable share. Only  $\frac{1}{4}$  uphold equal sharing of parental leave.<sup>51</sup> It seems probable that these attitudes are linked to a generalised perception that women are ‘natural’ caregivers and, therefore, more skilled than men in caring.<sup>52</sup> This perception is also prevalent among employers, in detriment of mothers (who are penalised for not corresponding to the ideal type of worker), but also constitutes a disadvantage for fathers concerning parental leave-taking.<sup>53</sup>

## 2.4. Sweden

When it comes to parental leave, Sweden is often considered to be a pioneer country, even among Nordic countries.<sup>54</sup> In Sweden, women are obliged to take leave for two weeks before or after the birth of the child. The second parent – usually, the father – is entitled to 10 days leave (called parental leave at birth), to be used within 60 days after delivery. These entitlements are included in parental leave, which is an individual right of each parent to take full-time leave until the child becomes 18 months old.<sup>55</sup>

Alongside parental leave, each parent has parental leave benefit for 240 days, of which 90 cannot be transferred to the other parent. It is an individual

<sup>48</sup>For a comparative perspective on leave policy in Europe, relating to the different models of family well-being models, see Karin Wall and Anna Escobedo, ‘Parental Leave Policies, Gender Equity and Family Well-Being in Europe: A Comparative Perspective’ in Almudena Moreno Mínguez (ed), *Family Well-Being: European Perspectives*, vol 49 (Springer 2013).

<sup>49</sup>Wall, Correia and Gouveia (n 47) 70–71.

<sup>50</sup>Escobedo and Wall (n 47) 221.: ‘Portugal approaches Northern Europe with 73% of dual-earner couples, though only 7% worked part-time’.

<sup>51</sup>Wall, Correia and Gouveia (n 47) 64–66.

<sup>52</sup>Vanessa Cunha and others, ‘Why Are Caring Masculinities so Difficult to Achieve? Reflections on Men and Gender Equality in Portugal’ in Sofia Aboim, Paulo Granjo and Alice Ramos (eds), *Changing Societies: Legacies and Challenges. Vol. i. Ambiguous Inclusions: Inside Out, Inside In* (Imprensa de Ciências Sociais 2018) 319 <<https://doi.org/10.31447/ics9789726715030.13>>.

<sup>53</sup>Karin Wall and others, *Men and Gender Equality in Portugal* (2017) 39–48.

<sup>54</sup>Li Ma and others, ‘Fathers’ Uptake of Parental Leave: Forerunners and Laggards in Sweden, 1993–2010’ (2020) 49 *Journal of Social Policy* 361, 362.

<sup>55</sup>Ann-Zofie Duvander and Niklas Löfgren, ‘Sweden Country Note’ in A Koslowski and others (eds), *International Review of Leave Policies and Research 2020* (2020) 556 <[http://www.leavenetwork.org/lp\\_and\\_r\\_reports/](http://www.leavenetwork.org/lp_and_r_reports/)>.

right, and a formal requirement must be signed if a parent wants to transfer part of his/her leave benefit to the other parent.

Regarding compensation, eligible parents receive an income-based benefit of 77.6% of earnings for the first 195 days of leave and a flat-rate benefit for the remaining 45 days.<sup>56</sup> The same 77.6% rate applies to paternity leave. Parental leave can be used full-time or part-time, and parents can combine paid and unpaid leave. Leave can be shared simultaneously for 30 days, but these cannot coincide with the use of exclusive father or mother days.<sup>57</sup>

Sweden is the EU country that rates higher in the Gender Equality Index (83.6).<sup>58</sup> Nevertheless, sharing of parental leave is not equal. Parental leave at birth was used almost exclusively by men, and the percentage of use rounded 76%.<sup>59</sup> Regarding parental leave, fathers tend to use all or part of their exclusive share and transfer the remaining to the mother. In 2018, women took an average of 83 days of parental leave, a little more than the double of days taken by men (41).<sup>60</sup> In this respect, Sweden is an excellent example of the impact father 'quotas' may have in enhancing the use of parental leave, since it was firstly introduced in the country in 1995. At the time, it generated a high impact and boosted men's take-up of leave. However, the extension of that period to two months did not have the same impact, because some men (with high-income) had spontaneously begun to extend their leaves.<sup>61</sup>

A predictor of equal sharing of parental leave seems to be educational level. However, the reason appears to lie in the economic advantage that higher education brings, rather than a difference of convictions regarding gender equality.<sup>62</sup> Inequalities in leave sharing related to social and economic factors have also been interpreted as a consequence of social and economic inequalities.<sup>63</sup>

## 2.5. Israel

In Israel, women are entitled to 26 weeks of maternity leave, 14 of which are mandatory. Compensation covers 15 weeks, and the remaining are unpaid. Compensation amounts to 100%, with a ceiling of approximately € 360.00/day. Up to six weeks may be used before birth. Regarding flexibility, mothers can transfer part of their maternity leave to the father, provided they comply with specific requirements.<sup>64</sup>

<sup>56</sup>ibid 557–58. There is an upper limit on this benefit of circa 45,000.00€/year.

<sup>57</sup>ibid 559.

<sup>58</sup>See <https://eige.europa.eu/gender-equality-index/2019/SE>.

<sup>59</sup>Duvander and Löfgren (n 55) 564.

<sup>60</sup>ibid.

<sup>61</sup>Ma and others (n 54) 364–65.

<sup>62</sup>Christina Bergqvist and Steven Saxonberg, 'The State as a Norm-Builder? The Take-up of Parental Leave in Norway and Sweden' (2017) 51 *Social Policy and Administration* 1470, 1482.

<sup>63</sup>Ma and others (n 54) 379.

<sup>64</sup>Nadav Perez-Vaisvidovsky, 'Israel Country Note' in A Koslowski and others (eds), *International Review of Leave Policies and Research 2020* (2020) 332–34 <[http://www.leavenetwork.org/lp\\_and\\_r\\_reports/](http://www.leavenetwork.org/lp_and_r_reports/)>.

Paternity leave is a six calendar days entitlement of fathers not to work after birth. This leave is partially paid: the first, fifth and sixth days of leave are compensated at sick level, i.e. the first day is not paid, and the last two are paid at a 50% rate. The rest of the days (second to fourth) are considered as annual leave and fully paid.<sup>65</sup>

Parental leave in Israel is an individual and non-transferable right of each parent and can be taken until the child's first birthday. This leave is not paid, and parents cannot take leave simultaneously.<sup>66</sup>

Israel is an outlier among OECD countries concerning fertility rate.<sup>67</sup> However, it does not mean that family-friendly policies are set forth. On the contrary, the Israeli state is supportive of fertility, but care work is mainly a private matter, to be handled by the family (i.e. by women).<sup>68</sup> In this context, the number of fathers taking parental allowance has increased over the last decade (281 in 2008 to 1,266 in 2018) but remains at very low levels (0.94%, considering a total of 134,454 beneficiaries in 2018).<sup>69</sup> Also, over a third of men who took one week of leave (transferred by the mother) did it simultaneously with the mother.<sup>70</sup> Bowers and Fuchs point out three main possible explanations for fathers' low uptake of leave: unawareness (according to a 2015 study, half of the respondent women ignored the possibility to share parental leave benefits with the father), short duration of paid leave (as leave is short, mothers want to take all possible time) and lack of compensation (since the leave is unpaid after the 15th week and the father is often the primary economic provider of the family, taking leave would be a significant financial disadvantage).<sup>71</sup>

A final noteworthy aspect is that men who took parental allowance had above-average incomes. Considering that compensation rate is 100% and that the upper limit is high, it would be interesting to deepen knowledge

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The author points out the rules applicable to leave transfer: 'The first six weeks after birth cannot be transferred; both the mother and her spouse must be eligible for leave and for benefits; the minimum period to be transferred is seven days; the mother must return to work; the mother has to provide written consent to transfer her leave; mothers in a same-sex relationship cannot transfer their leave to their (female) spouse; one of the transferred weeks may be used by the spouse while the mother is on leave'.

<sup>65</sup>ibid 334. This leave is treated, correspondingly, as sick leave and annual leave, i.e., if the father has exhausted sickness or annual leave days, then he is not entitled to leave around the time of birth of his child.

<sup>66</sup>ibid.

<sup>67</sup>Fertility rate was of 3.1 in 2018, the highest among OECD countries – see <https://data.oecd.org/pop/fertility-rates.htm>.

<sup>68</sup>Liora Bowers and Hadas Fuchs, 'Women and Parents in the Labor Market-Israel and the OECD' (2016) 1 <[http://taubcenter.org.il/wp-content/files\\_mf/womenandparents\\_eng.pdf](http://taubcenter.org.il/wp-content/files_mf/womenandparents_eng.pdf)> accessed 18 July 2020; Nadav Perez-Vaisvidovsky, 'Israel: Leave Policy, Familialism and the Neoliberal Welfare State' in Peter Moss, Ann-Zofie Duvander and Alison Koslowski (eds), *Parental Leave and Beyond: Recent developments, current issues, future directions* (Policy Press 2019).

<sup>69</sup>Amir Prager, 'Parental Rights for Fathers in Israel' 2 <<https://m.knesset.gov.il/EN/activity/mmm/Parental%20Rights%20for%20Fathers%20in%20Israel%20-%20ABSTRACT.pdf>>.

<sup>70</sup>37% – see ibid (data from 2018). See also *supra*, note 64.

<sup>71</sup>Bowers and Fuchs (n 68) 10.

on the relation of leave-taking with other social and economic aspects, such as gender-equality ideals and economic and job stability.

## 2.6. Japan

Japan is considered one of the most generous countries regarding parental leave policies, especially for fathers. Nevertheless, fathers' uptake of parental leave in Japan is significantly low.

Japanese state grants mothers a 14-week maternity leave, six before the birth and eight after, of which six are mandatory,<sup>72</sup> paid at 67%. There is no statutory paternity leave, although many employers provide a 'leave for child-bearing of spouse'.<sup>73</sup>

Parental leave is a generous<sup>74</sup> individual entitlement of each parent, to be used until the child's first birthday, paid at 67% for the first 180 calendar days of each parent's parental leave and 50% for the remaining period. There is also a sharing bonus of two months if both parents take some leave, and leave can be extended up to 24 months under certain conditions.<sup>75</sup> Parents can take leave simultaneously but must take one block leave, except when the father takes leave in the same period of the maternity leave period, in which case he can take another block of leave.<sup>76</sup>

Data from 2016 revealed that approximately 56% of fathers who had newly-born children in 2015 took leave within two months after birth. According to official data, in 2018, 82.2% of mothers took leave, compared to only 6.16% of fathers.<sup>77</sup> Besides, the year before, circa 60% of women took long leave (10–18 months) whereas 80% of fathers took less than one month of parental leave and 36.3% took less than five days leave.<sup>78</sup>

Workplace culture and gendered conceptions of family roles are often appointed as the leading causes for the low uptake of parental leave by fathers in Japan, despite the favourable regulatory frame and government efforts to enhance the use of parental leave by fathers.<sup>79</sup> Hence, social

<sup>72</sup>Hideki Nakazato, Junko Nishimura and Junko Takezawa, 'Japan Country Note' in A Koslowski and others (eds), *International Review of Leave Policies and Research 2020* (2020) 353 <[http://www.leavenetwork.org/lp\\_and\\_r\\_reports/](http://www.leavenetwork.org/lp_and_r_reports/)>.

<sup>73</sup>ibid 363.

<sup>74</sup>'OECD Family Database' 8 <[https://www.oecd.org/els/soc/PF2\\_1\\_Parental\\_leave\\_systems.pdf](https://www.oecd.org/els/soc/PF2_1_Parental_leave_systems.pdf)> accessed 19 July 2020. According to this report, Japan holds 'by far the most generous paid father-specific entitlement in the OECD'.

<sup>75</sup>Nakazato, Nishimura and Takezawa (n 72) 355–56. Conditions are related to lack of institutional child-care or impossibility for the spouse to take care of the child for reason of death, injury, and illness. Conditions are verified at the end of leave and at 18 months of age.

<sup>76</sup>ibid 356.

<sup>77</sup>Thisanka Siripala, 'Can Japan Kick-Start Paternity Leave among Workaholic Dads? | The Japan Times' *The Japan Times* (13 February 2020) <<https://www.japantimes.co.jp/news/2020/02/13/national/social-issues/paternity-leave-workaholic-dads/#.Xs-d6DpKg2w>>.

<sup>78</sup>Nakazato, Nishimura and Takezawa (n 72) 364.

<sup>79</sup>Takeru Miyajima and Hiroyuki Yamaguchi, 'I Want to but i Won't: Pluralistic Ignorance Inhibits Intentions to Take Paternity Leave in Japan' (2017) 8 *Frontiers in Psychology* 1, 2; Ofra Goldstein-Gidoni,

norms seem to play an essential role in the matter, considering the evidence on younger fathers desire to take leave.<sup>80</sup>

## 2.7. United States of America

In the US, leave is regulated under the Family and Medical Leave Act of 1993, which grants eligible<sup>81</sup> employees 12 weeks (in 12 months) of unpaid leave under certain conditions, among which is the birth of a child.<sup>82</sup> Hence, the US is the only OECD country that does not grant paid leave at the national level (not even maternity leave).<sup>83</sup>

Due to eligibility criteria, approximately 40% of parents who have a child are not covered by FMLA.<sup>84</sup> Furthermore, of these, only circa 26% have access to paid parental leave, through state-level legislation, city-level policies or workplace benefits.<sup>85</sup>

Research conducted in states that provide paid parental leave has confirmed expected outcomes, such as the improvement of maternal employment and salaries and the effect on the well-being and health of children.<sup>86</sup> However, focus on paternity leave and fathers' uptake of parental leave has been limited,<sup>87</sup> as existing research tends to focus on maternity leave.<sup>88</sup>

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“Working Fathers” in Japan: Leading a Change in Gender Relations?” (2020) 27 *Gender, Work and Organization* 362, 366–70.

<sup>80</sup>Siripala (n 77); Miyajima and Yamaguchi (n 79) 1–2; Goldstein-Gidoni (n 79) 370.

<sup>81</sup>Private employers and non-profit organisations with less than 50 employees are not obliged under FMLA. Moreover, the employee must have worked at least 1,250 hours in the course of the previous 12 months to be eligible to take leave under FMLA.

<sup>82</sup>Gayle Kaufman and others, ‘United States Country Note’ in A Koslowski and others (eds), *International Review of Leave Policies and Research 2020* (2020) 601–602 <[http://www.leavenetwork.org/lp\\_and\\_r\\_reports/](http://www.leavenetwork.org/lp_and_r_reports/)>; Gayle Kaufman, ‘United States: Leave Policy, Failure and Potential’ in Peter Moss, Ann-Zofie Duvander and Alison Koslowski (eds), *Parental Leave and Beyond: Recent developments, current issues, future directions* (Policy Press 2019).

<sup>83</sup>‘OECD Family Database’ (n 74) 2; Christopher J Ruhm, ‘A National Paid Parental Leave Policy for the United States’ in Diane Whitmore Schanzenbach and Ryan Nunn (eds), *The 51%: Driving Growth through Women’s Economic Participation* (Brookings 2017) 107 <[https://www.brookings.edu/wp-content/uploads/2017/10/es\\_101917\\_the51percent\\_full\\_book.pdf](https://www.brookings.edu/wp-content/uploads/2017/10/es_101917_the51percent_full_book.pdf)>.

<sup>84</sup>Ruhm (n 83) 112; Miranda N Berrigan, Sarah J Schoppe-Sullivan and Claire M Kamp Dush, ‘Moving Beyond Access: Predictors of Maternity and Paternity Leave Duration in the United States’ [2020] *Sex Roles*.

<sup>85</sup>Kaufman (n 82) 2019. According to the author, state-level legislation on parental leave with effect in 2020 exist in California, New Jersey, Rhode Island, New York and Washington (Massachusetts has enacted legislation on the matter, effectively as of 2021). Concerning cities, paid paternity leave is provided, to a lesser or greater extent, for example, in Pittsburgh, Austin, New York City, San Francisco and Washington, D.C. Several companies also hold parental leave policies, such as Spotify, Twitter, Bank of America, Ernst & Young, Coca-Cola, Microsoft, M & T Bank, Vodafone or Western Union. See also Lindsey Rose Bullinger, ‘The Effect of Paid Family Leave on Infant and Parental Health in the United States’ (2019) 66 *Journal of Health Economics* 101, 102 <<https://doi.org/10.1016/j.jhealeco.2019.05.006>> accessed 14 July 2020; Richard J Petts, Chris Knoester and Qi Li, ‘Paid Paternity Leave-Taking in the United States’ (2020) 23 *Community, Work and Family* 162, 164 <<https://doi.org/10.1080/13668803.2018.1471589>> accessed 12 July 2020.

<sup>86</sup>Bullinger (n 85) 114; Petts, Knoester and Li (n 85) 164.

<sup>87</sup>Petts, Knoester and Li (n 85) 163.

<sup>88</sup>Berrigan, Schoppe-Sullivan and Kamp Dush (n 84).



A recent study on dual-earner couples during the period 2008–2009 has concluded that predictors of leave-taking are different to men and women. Longer leave among mothers is related to ‘greater proportion of paid leave, higher household income, and lower job satisfaction’. In contrast, more extended parental leave among fathers is associated with ‘greater proportion of paid leave, older paternal age, having a less planned pregnancy, and lower endorsement of maternal essentialism’. For both, income replacement and its amount were relevant predictors of leave-taking.<sup>89</sup> Another study indicates predictors such as family structure (marriage, in particular) and a higher level of education. Also, adherence to cultural norms that endorse familialism seems to be a predictor of fathers’ leave uptake, explaining the higher leave use among Latino fathers in the US.<sup>90</sup>

Employee-friendly policies (such as parental leave policies) are an instrument to attract and retain highly skilled employees, i.e. those who already have higher incomes.<sup>91</sup> Therefore, the lack of a national policy on parental leave, combined with the variety of regional and local benefit, may be a factor of deepening inequalities among workers (Tables 1 and 2).

### 3. Evidence on the use of paternity leave

Even though paternity leave is recent, some social studies evaluate the impact of different types of legislative measures paternity leave, thus leading to a conclusion on how to legislate on parental leave to achieve the intended goals. It is crucial to also focus on studies that aim to understand what the predictors of leave-taking are.

#### 3.1. The potential benefits of fathers’ uptake of paternity and parental leave

Several studies point out the different benefits of paternity and the sharing of parental leave. As stated by Margaret O’Brien, the hypothesis is that ‘giving fathers the opportunity to spend more time at home through reduced working hours or leave after childbirth should result in their being more involved in child caretaking tasks in the future’.<sup>92</sup> In reality, time is essential for the development of strong emotional bonds.<sup>93</sup> Thus, by providing for

<sup>89</sup>ibid.

<sup>90</sup>Petts, Knoester and Li (n 85) 178. This study’s sample was based on data from the 2012 General Social Survey, the Fragile Families and Child Wellbeing Study and the National Longitudinal Study of Youth 1997.

<sup>91</sup>Kaufman (n 82) 2019; Petts, Knoester and Li (n 85) 177.

<sup>92</sup>Margaret O’Brien, ‘Fathers, Parental Leave Policies, and Infant Quality of Life: International Perspectives and Policy Impact’ (2009) 624 *Annals of the American Academy of Political and Social Science* 190, 205. O’Brien.

<sup>93</sup>Mari Rege and Ingeborg F Solli, ‘The Impact of Paternity Leave on Fathers’ Future Earnings’ (2013) 50 *Demography* 2255, 2256.





**Table 1.** Parental leave's main features.

	Length and compensation			Notes (type of leave, transferability, etc.)
	Maternity Leave (or equivalent)	Paternity Leave (or equivalent)	Parental Leave	
Germany	14 weeks (6 b.b. + 8* a.b.) Paid at 100%	Ø	36 months a.b. for each parent Paid at 65%	<ul style="list-style-type: none"> <li>- 2 bonus months of benefits if both parents take at least 2 months of leave</li> <li>- 4 bonus months of benefits if both parents work part-time at least 4 subsequent months</li> <li>- Parental leave is individual and non-transferable leave</li> <li>- Maternity leave time is included in parental leave</li> </ul>
Poland	20 weeks (14*) Paid at 100% or 80%	2 weeks Paid at 100%	32 weeks 80% for all period or 100% for the first 6 weeks and 60% for the remainder	<ul style="list-style-type: none"> <li>- Mother can take up to 6 weeks of maternity leave b.b.</li> <li>- Decision on payment scheme falls on the mother and must be communicated until the 21st day a.b.</li> <li>- Paternity leave can be taken in two separate one-week periods until 24 months a.b.</li> <li>- Parental leave is a family leave</li> </ul>
Portugal	30 calendar days b.b. 42 calendar days a.b.* Paid at 100%, 83% or 80% (see parental leave)	20* + 5 business days Paid at 100%	Without sharing bonus: 120 calendar days paid at 100% or 150 calendar days paid at 80% With sharing bonus: 150 calendar days paid at 100% or 180 calendar days paid at 83%	<ul style="list-style-type: none"> <li>- There is a sharing bonus if each parent takes at least 30 consecutive days of leave or two periods of 15 consecutive days</li> <li>- Parents can share the fifth month at the same time (in that case, there is no bonus). The rest of the leave is non-shareable (family leave)</li> <li>- Mother-exclusive initial parental leave (maternity leave) time is included in parental leave</li> <li>- There is an additional parental leave of 3 months for each parent (individual leave) paid at 25% if taken immediately after initial parental leave, or otherwise unpaid</li> </ul>



Sweden	2 weeks b.b. or a.b.* Paid at 77.6%	10 days Paid at 77.6%	18 months for each parent 240 days of parental leave benefit, of which 90 non-transferable, 195 income-based (paid at 77.6%) and 45 paid at a flat-rate (low-paid)	<ul style="list-style-type: none"> <li>- Leave is an individual right, although partially transferable via written declaration</li> <li>- Paid and unpaid leave can be combined</li> <li>- Both parents can take leave simultaneously up to 30 days until the child's 1st birthday (these 30 days cannot derive from mother's or father's quota)</li> </ul>
Israel	26 weeks (14*) Paid at 100% for the first 15 weeks (the remaining are unpaid)	6 calendar days a.b. 1st day unpaid, 2nd to 4th day paid at 100%, 5th and 6th days paid at 50%	1 year for each parent a.b. Unpaid	<ul style="list-style-type: none"> <li>- Mother can take up to 6 weeks of maternity leave b.b.</li> <li>- Part of maternity leave is transferable</li> <li>- Parental leave is individual and non-transferable</li> <li>- Parents cannot take parental leave simultaneously</li> </ul>
Japan	14 weeks (6*) Paid at 67%	∅	1 year a.b. for each parent Paid at 67% for the first 180 days and 50% for the remainder	<ul style="list-style-type: none"> <li>- Mother can take up to 6 weeks of maternity leave b.b.</li> <li>- There is a sharing bonus of additional 2 months of parental leave if both parents take some leave</li> </ul>
US	12 weeks Unpaid	12 weeks Unpaid	∅	<ul style="list-style-type: none"> <li>- In fact, there is no 'maternity' or 'paternity' leave in the US, but under the federal Family and Medical Leave Act (1993) employees are entitled to leave up to 12 weeks in a 12-month period on various grounds, namely, the birth of a child</li> <li>- There is paid leave in some states and cities</li> </ul>

Key: b.b. (before birth); a.b. (after birth); \* (mandatory).

Source: Koslowski, A., Blum, S., Dobrotić, I., Kaufman, G. and Moss, P. (2020) International Review of Leave Policies and Research 2020. DOI: 10.18445/20200915-131331-0. Available at: <https://www.leavenetwork.org/annual-review-reports/review-2020/>.

**Table 2.** Flexibility.

	Germany	Poland	Portugal	Sweden	Israel	Japan	USA
Leave can be taken full-time or part-time	✓	✓	✓	✓	✓	✓ (only by fathers)	
Leave can be taken in several blocks of time	✓	✓		✓			
Leave can be taken for a shorter period with higher compensation or for a more extended period with lower compensation		✓	✓	✓			
Both parents can take all leave simultaneously	✓	✓				✓	
Both parents can take some leave simultaneously			✓	✓			

Source: Source: Koslowski, A., Blum, S., Dobrotić, I., Kaufman, G. and Moss, P. (2020) International Review of Leave Policies and Research 2020. DOI: 10.18445/20200915-131331-0. Available at: <https://www.leavenetwork.org/annual-review-reports/review-2020/>.

fathers the time to care for their children, paternity and shared parental leave seem to constitute a golden opportunity to boost fathers' involvement in childcare throughout the child's life.<sup>94</sup>

Another benefit is the development of childcare skills, which boosts men's confidence in their ability to take care of the children,<sup>95</sup> hence fostering a virtuous circle that promotes men's involvement in care activities. The use of parental leave by fathers prevents mothers from being the only expert parent in childcaring.<sup>96</sup> In addition, some studies also report that the use of parental leave leads to a more significant commitment of men in housework,<sup>97</sup> which correlates to greater gender equality in the workplace because mothers that share care responsibilities with fathers can more easily develop their careers.<sup>98</sup>

<sup>94</sup>Mareike Bünning and Matthias Pollmann-Schult, 'Family Policies and Fathers' Working Hours: Cross-National Differences in the Paternal Labour Supply' (2016) 30 *Work, Employment and Society* 256 <<https://doi.org/10.1177/0950017015578999>>; van der Gaag and others (n 16) 36; Boll, Leppin and Reich (n 13) 130; Rossella Ciccio and Mieke Verloo, 'Parental Leave Regulations and the Persistence of the Male Breadwinner Model: Using Fuzzy-Set Ideal Type Analysis to Assess Gender Equality in an Enlarged Europe' (2012) 22 *Journal of European Social Policy* 507, 510 <<https://doi.org/10.1177/0958928712456576>>; Lenna Nepomnyaschy and Jane Waldfogel, 'Paternity Leave and Fathers' Involvement with Their Young Children' (2007) 10 *Community, Work & Family* 427 <<https://doi.org/10.1080/13668800701575077>> accessed 14 July 2020; Brienne Pragg and Chris Knoester, 'Parental Leave Use among Disadvantaged Fathers' (2017) 38 *Journal of Family Issues* 1157 <<http://www.ncbi.nlm.nih.gov/pubmed/28694555>> accessed 14 July 2020.

<sup>95</sup>van der Gaag and others (n 16) 36; Miyajima and Yamaguchi (n 79) 3.

<sup>96</sup>An aspect indicated by Rege and Solli (n 27) 2256, as one of the two mechanisms that may impact long-term impact in childcare, the other being father-child bonding.

<sup>97</sup>'Paternity and Parental Leave Policies across the European Union' [2016] *Paternity and parental leave policies across the European Union* 1, 1; Bünning and Pollmann-Schult (n 94) 269.

<sup>98</sup>Monica Porter, 'Combating Gender Inequality at Home and at Work: Why the International Labour Organization Should Provide for Mandatory Paid Paternity Leave' (2015) 48 *Geo Wash Int'l L Rev* 203, 207 <<https://heinonline.org/HOL/P?h=hein.journals/gwirl48&i=219>>; Petts, Knoester and Li (n 85) 163; Nadav Perez-Vaisvidovsky, 'Enemies, Allies or Citizens? The Subject Positions of Men in the Making of Birth Leave for Fathers in Israel' [2019] *Families, Relationships and Societies* 11.

Regarding men's perceptions, there is data showing that 'involved fatherhood is good', improving their 'physical, mental, and sexual health and reduc[ing] risk-taking'.<sup>99</sup> Some also report that their well-being relates significantly to their relationship with their children and that the experience of active and involved fatherhood had improved their communication skills and emotional intelligence.<sup>100</sup>

Nevertheless, paternity leave and the sharing of parental leave between fathers and mothers is a relatively recent phenomenon. Although there are some studies, the research on this issue is scarce, and results cannot often be generalised.<sup>101</sup> For this reason, there is a need to understand more in-depth on how paternity leave affects children, fathers, mothers and employers, and how States' policies support or hinder potential benefits.

### 3.2. How to legislate on paternity and parental leave?

As one of the most relevant instruments of law, particularly concerning European continental law, legislation goals are bound by general principles that constitute its *rationale*. Also, legislation should be, whenever possible, based on evidence.<sup>102</sup> Sometimes, it may be challenging to know in advance if the proposed legal solutions will have the expected effect. In these cases, evaluation is vital to assess legislation impact and subsequent adequacy to the intended goals. Regarding paternity and parental leave, research conducted in different contexts indicates the features legislation must have to enhance fathers' uptake of leave: non-transferability, full income compensation, and compulsory nature.

A factor to ponder when legislating on parental leave is that women tend to take all the leave time available, even if they can share that time with the father. For example, in Sweden, where the possibility to share parental leave was introduced in the 1970s, there was not a significant number of fathers using that opportunity before legislation was put in place in 1995 granting a father quota of one month.<sup>103</sup> Thus, it seems that legislating on exclusive leave for fathers (what is sometimes called 'daddy days' or 'use it or lose it'

<sup>99</sup>van der Gaag and others (n 16) 89–90.

<sup>100</sup>These kinds of benefits are also reported in a study on Swedish employers' perceptions, stressing that there are valued skills, namely problem-solving and conflict-management, which can develop and improve through the exercise of child-caring activities – cf. Linda Haas, Karin Allard and Philip Hwang, 'The Impact of Organizational Culture on Men's Use of Parental Leave in Sweden' (2002) 5 Community, Work & Family 319, 334 <<https://doi.org/10.1080/1366880022000041801>>; van der Gaag and others (n 16) 89–90.

<sup>101</sup>Lomazzi, Israel and Crespi (n 1) 21; Evertsson (n 10) 27; Bünning and Pollmann-Schult (n 94) 257; Rege and Solli (n 93) 2257; Ciccio and Verloo (n 94) 510.

<sup>102</sup>On evidence-based law making, see Rob van Gestel and Jurgen de Poorter, 'Putting Evidence-Based Law Making to the Test: Judicial Review of Legislative Rationality' (2016) 4 The Theory and Practice of Legislation 155, 155–56 <<https://doi.org/10.1080/20508840.2016.1259899>>.

<sup>103</sup>The same standard occurred also, for example, in Norway and Quebec – see Andreas Kotsadam and Henning Finseraas, 'The State Intervenes in the Battle of the Sexes: Causal Effects of Paternity Leave'

leave) is a crucial factor in securing a high percentage of paternity or parental leave usage. Moreover, legislation granting fathers exclusive leave sends a sign to society about social values and expectations, enhancing the shift towards equalisation of parental care.<sup>104</sup> Although numbers are low, this seems to be also confirmed by the case of Poland, where there is a steady increase in fathers' leave-taking concerning fathers' exclusive leave.<sup>105</sup>

A second very relevant aspect is the level of compensation, which is not only a relevant predictor of leave-taking<sup>106</sup> but also a pivotal factor in breaking the vicious cycle of gender inequality in the distribution of work/care responsibilities between the sexes. Women in the labour market, as well as feminised professions, are often perceived and treated as being of less value, due to the systemic discrimination of care work. When we add to this reality the social norms that ascribe women care duties, there is little escape for them. Not only are women regarded as better mothers (and, consequently, as better women) if they assume such prescribed social role, but they are also pushed into it for economic reasons.<sup>107</sup> By assuming care responsibilities, women acquire care skills that often men that never had to perform care activities lack, thus reinforcing the idea that women are 'naturally' more suited to care.<sup>108</sup>

Compensations through flat rates, but also those that correspond to a percentage of remuneration, is a relevant added factor to encourage the parent who earns less to take the leave. Higher levels of compensation mean less impact on the family income resulting in leave-taking.<sup>109</sup> However, the only policy that removes financial pressure from the equation is full compensation, because it is the only one that makes it irrelevant who takes the leave. In sum, the level of compensation, if below 100%, constitutes a general obstacle to an extended usage of paternity and parental leave by fathers. Removing that obstacle by establishing a 100% compensation for parental leave-taking constitutes an essential step towards gender equality.

A last relevant feature is the compulsory nature of at least some period of father's leave. Besides all the benefits emerging from the use of parental leave,

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(2011) 40 *Social Science Research* 1611, 1612 <<https://doi.org/10.1016/j.ssresearch.2011.06.011>>; van der Gaag and others (n 16) 34.

<sup>104</sup>Suwada (n 10) 578–79. Nevertheless, the author also notices that society is not always ready to welcome such changes.

<sup>105</sup>Zajkowska (n 33) 127.

<sup>106</sup>Take the example of the United States, where the fact that leave is unpaid for many workers translates into severe constraints to leave-taking – cf. Petts, Knoester and Li (n 85) 177. Moreover, this aspect is also illustrated by the Portuguese case: although there is a preference for longer leaves, parents do not take additional parental leave (paid at a very low rate) – cf. Escobedo and Wall (n 47) 232.

<sup>107</sup>Korsvik and Warat (n 32) 116; Cunha and others (n 52) 319.

<sup>108</sup>Nivorozhkin and Romeu-Gordo (n 11) 120.

<sup>109</sup>*ibid* 36: 'If compensation is too low, fathers are less likely to take the leave, as they are still often the main income earners or are more likely to be paid relatively higher wages for their work than their female partners'. It is noteworthy that countries with higher income replacement rates (such as Sweden, Germany, and Portugal) present higher levels of leave-sharing.

such as the improvement of children's well-being, the advance in men's participation in housework, and the enhancement of relevant skills, the compulsory nature of father's leave-taking is a step forward in overturning social norms that are still present not only in the families but especially in workplaces. Determining that fathers are obliged to take leave could help those fathers that avoid taking parental leave due to social normative constraints and stigmatised workplaces, as it seems to be the case in Japanese society, for example.<sup>110</sup> Moreover, it would help to equalise the perception of all workers – men and women – as carers, thus improving the position of women in the labour market.<sup>111</sup>

Besides mandatory legislation, an important legislative tool to promote the sharing of parental leave is the use of nudging.<sup>112</sup> An example of nudging is the 'sharing bonus' established, for example, in Portuguese and German legislation.

### 3.3. Supportive employers: a call to self-regulation

In addition to the legal framework, social norms, and individual/partners beliefs, employers' support is one of the main factors that influence the men's leave-taking.<sup>113</sup> Recent research undertook in some of the countries referred above revealed that organisational culture is far from being generally supportive of active and caring fatherhood.<sup>114</sup>

The problem is not a rhetorical one. How society has structured labour since the first industrial revolution lays in the concept of the *worker*. The ideal *worker* is not just a person who works, but someone whose very essence is to work. *The worker* does not have any other preoccupations beyond the work and the employer's best interest. This idea of worker fosters a culture of physical presence and inflexibility that is still very present in our societies, despite the radical changes of our times, which will inevitably shape the future of employment relationships.<sup>115</sup>

Hence, companies can have a significant impact on the deconstruction of a gendered discourse around work, for which it is crucial to take work-life

<sup>110</sup>Miyajima and Yamaguchi (n 79). There is also evidence of a mismatch between desired leave-taking and the leave time effectively used by fathers in Germany – see Reimer (n 11) 2.

<sup>111</sup>Porter (n 98) 210.

<sup>112</sup>For a brief introduction to nudging, see Cass R Sunstein, 'Nudging: A Very Short Guide' (2014) 37 J Consum Policy 583. The author defines nudges as 'liberty-preserving approaches that steer people in particular directions, but that also allow them to go their own way'.

<sup>113</sup>Haas, Allard and Hwang (n 100) 320.

<sup>114</sup>Linda Haas, C Philip Hwang and Social Science, 'Is Fatherhood Becoming More Visible at Work? Trends in Corporate Support for Fathers Taking Parental Leave in Sweden' (2009) 7 303, 318; Reimer (n 11) 6; Nivorozhkin and Romeu-Gordo (n 11) 123; Wall and others (n 53) 5.

<sup>115</sup>Reimer (n 11) 4; Goldstein-Gidoni (n 79) 364; Christina Lott, Yvonne; Klenner, 'Ideal Workers and Ideal Parents: Working-Time Norms and the Acceptance of Part-Time and Parental Leave at the Workplace in Germany' (2016) WSI Working Paper 204 <<http://hdl.handle.net/10419/146748>>.

balance seriously. It is fundamental to reconstruct the opposition between home and the workplace<sup>116</sup> and consider that the *person* that works is someone who has concerns that go beyond their work. Although legislation can set the framework that allows for companies to adopt measures that aim at work-life balance, it is not possible to adequately predict or prescribe the level of adequacy that can only stem from a change in attitudes towards work.

One aspect that contributes to a company's support of fathers taking leave is the proportion of women in the workforce and, especially, in top positions, as well as the company's prioritisation of women's advancement. The adherence of companies to more caring values is another important feature. However, it is also vital that companies assume a formal position that is supportive of fathers leave-taking, expressed, for example, in internal company policies, and the establishment of other measures, such as support programmes and keep a record of fathers' use of paternity and parental leave. The incentive of colleagues, but especially of managers, is very relevant for establishing a culture of parental leave-taking in companies. Another relevant feature is the flexibility that companies may inject in their work organisation.<sup>117</sup>

In sum, employers are critical players in changing behaviours and perceptions on the value of care activities, as well as in the promotion of a balanced life for women and men and as such, raising awareness among employers on the benefits of work-life balance and the implementation of a regulation that helps to build a culture of work-life balance is vital to the success of legislation on this matter.

#### 4. Conclusion

Legislation and regulation that promote fathers' uptake of parental leave is necessary to create a favourable environment for the promotion of gender equality, but it is not sufficient. Individual ideals, social norms and financial constraints have a significant impact on people's choices. This is an unsurpassable reality of human life, but in the case of parental leave (as in other situations), the crux of the matter is that those factors unequally impact women's and men's choices. Eliminating such inequality entails the social transformation of the meaning of masculinity and femininity in work and care.

Parental leave is an instrument to enhance children's well-being and health, parents work-life balance and to promote a change towards gender equality, through a caring fatherhood paradigm that involves fathers in care work.

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<sup>116</sup>Haas, Hwang and Science (n 114) 322.

<sup>117</sup>*ibid* 318–319, 338; Linda Haas and C Philip Hwang, 'Policy Is Not Enough – the Influence of the Gendered Workplace on Fathers' Use of Parental Leave in Sweden' (2019) 22 *Community, Work and Family* 58, 66 <<https://doi.org/10.1080/13668803.2018.1495616%0APolicy>>.

Parental leave policies may have various designs, combining several levels of length, compensation, and flexibility. Longer leaves are often detrimental to women's careers, but when combined with other features (such as full income replacement), they can facilitate parental leave sharing. Compensation at 100% is also critical, not only to promote father's uptake of leave but also to eliminate inequalities among couples and fathers, thus removing financial constraints to leave-taking.

A quota for fathers is also critical, not only for the individual entitlement it grants to men, but also due to its symbolic meaning of valuing the importance of family life, father-child bond, and caring fatherhood. Moreover, 'sharing bonus' and other types of nudging for fathers' leave-taking can help accelerate the change of social behaviour.

Lastly, compulsory leave can also be a path to override social norms that hinder fathers' leave-taking, which is particularly relevant especially when data reveal that individual desires of leave-taking are superior to effective leave-taking due to obstacles posed by social norms, especially in the workplace. Nevertheless, although legislation is a valuable tool for changing social and individual behaviour, it must go together with awareness-raising among employers about the benefits of self-regulation to achieve work-life balance and tackle gender inequalities.

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