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Maternity Rights: A Comparative View of Mexico and the United States

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**MATERNITY RIGHTS:
A COMPARATIVE VIEW OF MEXICO
AND THE UNITED STATES**

ROBERTO ROSAS*

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It is with the utmost respect and admiration that I dedicate this article to the Honorable Justice of the U.S. Supreme Court Sonia Sotomayor, who throughout her invaluable career as a jurist has worked ceaselessly in support of minorities, fighting to end racism and discrimination.

I want to thank Lucia Valeria Montalvo for her invaluable assistance with research and editing the article, as well as Valeria Guerra for her efficient aid.

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ABSTRACT

Women play a large role in the workplace and require additional protection during pregnancy, childbirth, and while raising children. This article compares how Mexico and the United States have approached the issue of maternity rights and benefits. First, Mexico provides eighty-four days of paid leave to mothers, while the United States provides unpaid leave for up to twelve weeks. Second, Mexico allows two thirty-minute breaks a day for breastfeeding, while the United States allows a reasonable amount of time per day to breastfeed. Third, Mexico provides

childcare to most federal employees, while the United States provides daycares to a small number of federal employees. Fourth, employment discrimination on the basis of pregnancy is unlawful in both countries. Lastly, Mexico enforced paid maternity leave to all pregnant employees to protect them from exposure to COVID-19; meanwhile, forced maternity leave is illegal in the United States.

In addition to a comprehensive review of maternity rights in Mexico and the United States, this article advocates for necessary measures that must be taken in order to enforce women's maternity rights. The article highlights the laws shortcomings and advocates for the law to continue evolving so that having children and parenting does not hinder an employee's career stability and professional growth. This article argues that although the law grants women rights, especially regarding maternity, the problem continues in the effectiveness of these rights. Women continue to be discriminated by society and in the workplace when they decide to become mothers.

INTRODUCTION

Women play a large role in the workplace and their contributions to the world economy are invaluable.¹ Women in both the United States and Mexico hold a significant percentage of jobs contributing to the economic prosperity of their country.² In the United States, women hold over fifty percent of jobs in the United States.³ In 2019, the United States

1. Rebecca L. Ziman, *Women in the Workforce: An In-Depth Analysis of Gender Roles and Compensation Inequity in the Modern Workplace* 3 (2013) (Senior Honors Thesis, University of New Hampshire) (on file with University of New Hampshire Scholars' Repository) (correlating an increase of women receiving degrees in higher education with women surpassing men in previously male-dominated industries).

2. See Tomas Bermúdez, *La Mujer Mexicana en el Mercado Laboral: Más y Mejor es Posible*, EL ECONOMISTA (Mar. 7, 2019, 11:58 PM), <https://www.economista.com.mx/opinion/La-mujer-mexicana-en-el-mercado-laboral-mas-y-mejor-es-posible-20190307-0167.html> [https://perma.cc/VJE2-A4VM] (detailing how the increase of women in Mexico's work force went from twenty percent to sixty percent in the last century, which has benefited companies' work productivity and helped social equality); see also Ziman, *supra* note 1, at 6 (explaining how women are closing in on the disparity of jobs held among genders by now holding an average of 43.6 percent in the fields of business, management, and financial operations).

3. See, e.g., Tara Law, *Women Are Now the Majority of the U.S. Workforce—But Working Women Still Face Serious Challenges*, TIME (Jan. 16, 2020), <https://time.com/5766787/women-workforce/#:~:text=The%20high%20number%20of%20women,to%2089.2%25%20for%20men> [https://perma.cc/B6TU-T3JZ] (reporting how women dominated the retail and health care industries was fueled in part by demand from economically-empowered female consumers).

private sector employed approximately 76,852,000 women.⁴ In Mexico, 44.1% of women were in the workforce in 2017.⁵ Labor rights and benefits related to pregnancy and maternity are a growing concern for working women who decide to have children.⁶ However, these issues are not exclusive to women because fathers are now becoming more involved in raising and caring for their children.⁷ Maternity, defined as the state of being a mother, including pregnancy, deserves legal protection in the workplace by virtue of its vital role to society.⁸ Women worldwide share a concern for maternity rights and benefits; however, countries approach legal rights related to motherhood and pregnancy from differing perspectives.⁹

Even though mothers are granted privileges by Mexico and United States law to help balance motherhood and employment, women still face obstacles.¹⁰ Mexican society places high importance on women

4. *Women in the Workforce—United States: Quick Take*, CATALYST (Oct. 14, 2020), <https://www.catalyst.org/research/women-in-the-workforce-united-states/> [https://perma.cc/W7HB-SZP2].

5. *Women in the Workforce—Mexico: Quick Take*, CATALYST (June 13, 2020), <https://www.catalyst.org/research/women-in-the-workforce-mexico/> [https://perma.cc/TXT9-38XG] (summarizing statistics in Mexico showing that although there has been an increase in women's employment, there is still lower participation by women in comparison to other countries).

6. See Naweed Harooni et al., *Maternity Protection at the Workplace*, WABA (2000), <https://waba.org.my/pdf/MaternityProtectionattheWorkplace-final.pdf> [https://perma.cc/2AD9-75AK] (detailing examples of maternity protection such as paid maternity leave, job security, and breastfeeding breaks).

7. See Michael Yogman et al., *Fathers' Roles in the Care and Development of Their Children: The Role of Pediatricians*, 138 AM. ACADEMY PEDIATRICS 1, 1–3 (2016) <https://pediatrics.aappublications.org/content/pediatrics/138/1/e20161128.full.pdf> [https://perma.cc/HC5L-QJNR] (expanding on the start of a “new fatherhood,” where fathers are balancing time between family and work which has allowed them to spend more time with their children).

8. E.g., Harooni et al., *supra* note 6 (showing how maternity protection rights help women in their role as a mother and supporting the economy).

9. Marguerite Ward, *10 Countries that Show just how Behind the US is in Paid Parental Leave for New Mothers and Fathers*, BUS. INSIDER (May 5, 2020, 12:56 PM), <https://www.businessinsider.com/countries-with-best-parental-leave-2016-8> [https://perma.cc/2H7J-RCEM] (comparing the differences in maternity rights in countries, including the right to paid parental leave and noting “[o]ut of the world's 196 countries, the [United States] and Papua New Guinea are the only ones that have no federally mandated policy to give new mothers paid time off.”).

10. E.g., Lesley E. Ogden, *Working Mothers Face a 'Wall' of Bias—But There are Ways to Push Back*, SCIENCEMAG (Apr. 10, 2019, 3:00 PM), <https://www.sciencemag.org/careers/2019/04/>

becoming mothers and evaluates a woman's success based on whether she is a mother.¹¹ At the same time, employers discriminate against women for needing flexibility in their schedule to be mothers.¹² Mothers are attributed the entire burden of caring for children, while fathers are seen as not having any obligations that would affect their work and work schedule.¹³

The purpose of this article is to compare how Mexico and the United States have approached the issues of maternity rights and benefits from differing perspectives within diverse legal frameworks.¹⁴ Additionally, the article highlights the laws' shortcomings and advocates that the law must continue evolving to provide more prerogatives to women—and parents in general—to facilitate a person's professional growth while being a parent.¹⁵ Part II of this article presents a legal analysis of Mexican regulations pertaining to maternity rights in the workplace.¹⁶

working-mothers-face-wall-bias-there-are-ways-push-back [https://perma.cc/4ENC-BVTY] (exploring the “maternal wall bias” that women face as working mothers).

11. See, e.g., *Shadow Report on Employment Discrimination Against Women in Mexico*, SEXUAL & REPRODUCT. RTS. AREA 3 (June 2018), https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MEX/INT_CEDAW_NGO_MEX_31406_E.pdf [https://perma.cc/Q65R-4PHK] (outlining how Mexico's social security law reinforces stereotypes between men and women by placing limitations on fathers to daycare access while allowing all working mothers to have access).

12. See Joan C. Williams & Amy J.C. Cuddy, *Will Working Mothers Take Your Company to Court?*, HARV. BUS. REV. (Sept. 2012), <https://hbr.org/2012/09/will-working-mothers-take-your-company-to-court> [https://perma.cc/J8G4-486W] (illustrating how a single mother filed a lawsuit and collected \$215,000 in damages against her employer who fired her when she rescheduled a meeting due to her daughter's illness).

13. See JoAnne M. Youngblut et al., *Factors Influencing Single Mother's Employment Status*, 21 HEALTH CARE WOMEN INT'L 125 (Mar. 2000), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2792579/pdf/nihms149035.pdf> [https://perma.cc/PQ85-P9W9] (detailing the overwhelming lack of support single mothers face).

14. Compare Ward, *supra* note 9 (noting the United States' failure to provide paid parental leave), with Ángel Guillermo Ruiz Moreno, *La Discriminación de la Mujer por Maternidad*, REVISTA LATINOAMERICANA DE DERECHO SOCIAL, Jan.–June 2007, at 137, 138, <https://revistas.juridicas.unam.mx/index.php/derecho-social/article/view/9498/11532> [https://perma.cc/59HY-4L6G] (emphasizing the protections that Mexican law gives not only during pregnancy but also postpartum).

15. See generally Ward, *supra* note 9 (discussing other countries' approach to laws protecting paternal leave).

16. See generally Moreno, *supra* note 14, at 137 (expanding on the various laws in place to protect expecting and working mothers).

Part III of this article presents an analysis of relevant U.S. labor laws applicable to pregnant women in comparison with Mexican law.¹⁷

I. MEXICO'S LEGAL FRAMEWORK FOR THE PROTECTION OF MATERNITY RIGHTS

Throughout the years, it has been proven that Mexican women were not only involved but played an important role in arduous and difficult endeavors such as the independence movement and national revolution.¹⁸ Josefa Ortiz de Dominguez, Gertrudis Bocanegra, and Leona Vicario are a few examples of women that played important roles in Mexico's history.¹⁹ These women are unjustly not remembered for the significance of their intervention.²⁰ The process of recognizing women is not a simple one since Mexican society has erroneously held the idea that women are only suitable for housework and childbearing.²¹ This erroneous idea has resulted in immediate discrimination in employment opportunities simply because they are women; employers consider a woman's possibility of becoming a mother and everything being a mother entails.²²

In this regard, I would like to quote a leading researcher on labor and social security law who believes the inefficiency of current law has created a social imbalance openly discriminative to women in the workforce:

17. See *Infra* Part III.

18. See generally 20 *Mujeres Importantes en la Historia de México*, LA UNIÓN—GUANAJUATO (Mar. 5, 2020, 5:00 PM), <https://www.unionguajuato.mx/articulo/2020/03/05/infraestructura/20-mujeres-importantes-en-la-historia-de-mexico> [<https://perma.cc/NF7E-ZLMU>] (summarizing important women who helped shape Mexico. For example, Carmen Serdán, who printed propaganda and proclamations to fight against dictator Porfirio Díaz).

19. *Id.* (describing the impact that these women made by helping Mexico gain independence through their participation in the movement).

20. See *id.* (illustrating how feminists made an impact by recovering the biographies of women who impacted Mexico's history).

21. See SER MADRE EN EL MEXICO DE HOY, EL UNIVERSAL (2018), <https://www.eluniversal.com.mx/articulo/el-universal/nacion/ser-madre-en-el-mexico-de-hoy> [<https://perma.cc/Q83Q-694S>] (acknowledging the societal shifts that must be made in Mexican society after noting there is “a deeply-rooted sexism that places [women] secondary to men only because of their gender.”).

22. See generally Ogden, *supra* note 10 (reiterating the bias employers have towards hiring women because they perceive women as having less time since it is “often assumed they’re home with their kids . . . [and are thus] penalized because of those assumptions . . .”).

Today, women have entered the workforce on a large scale and have stopped depending on men. This is without prejudice to that fact that each day there are more so-called “dysfunctional families,” meaning, homes with a single parent where the only person responsible for the household and the support of the children is a woman. This has generated a notorious social imbalance due to the inefficiency of the current law; this imbalance has turned openly discriminative for women who are at risk of maternity.²³

As a result, it is important that the Mexican regulatory framework recognizes access to maternity protection mechanisms and the rights they encompass.

The fight for women’s rights in Mexico has been slow and not very progressive.²⁴ Although it is true that—through the law—women have rights, especially in regard to maternity, the problem continues to be the effectiveness of these rights.²⁵ Mexican women continue to be discriminated against by society and in the workplace when they decide to become mothers.²⁶ This discrimination is confirmed by a study conducted by the National Council for the Prevention of Discrimination (CONAPRED for its initials in Spanish).²⁷ The study’s findings state the number of children appears to have a significant impact on a woman’s economic participation in all age ranges (from nineteen to over sixty); with the exception of women aged fifteen to nineteen, women without children have a higher economic participation than women with

23. Moreno, *supra* note 14, at 137 (arguing the above quote should be used to influence Mexico’s regulation of maternal rights).

24. See, e.g., Women at Work in G20 Countries: Progress and Policy, OECD 5 (2019), <https://www.oecd.org/g20/summits/osaka/G20-Women-at-Work.pdf> [<https://perma.cc/KRN9-T85W>] (“Of more concern is the situation in Mexico . . . where there has been little progress towards reducing a sizeable gender gap . . .”); cf. EL UNIVERSAL, *supra* note 21 (“The role of a mother goes beyond the need of being recognized; it demands a more serious cultural, social, and governmental effort. [It] is a value worthy of being promoted and preserved but it’s also necessary to vanish sexism towards women and demystify the mother figure. Only then we’ll we be able to justly understand their valuable contribution to the country. We owe them that much.”).

25. See Moreno, *supra* note 14, at 138 (acknowledging the Political Constitution of Mexico and labor regulations that are in place to support leave and accommodations for new mothers); see also Women at Work in G20 Countries: Progress and Policy, *supra* note 24 (“Raising the quality of job opportunities available to women that allow for a better work-life balance would improve their well-being, enhance their incentives to participate in the [labor] market and reduce the [underutilization] of their skills.”).

26. Moreno, *supra* note 14, at 145.

27. SEXUAL & REPRODUCT. RTS. AREA, *supra* note 11, at 8 (reporting “2,935 complaints related to employment discrimination between the years of 2011 and 2017.”).

children.²⁸ Therefore, necessary measures must be taken to ensure women's rights are enforced, especially on the issue of maternity.²⁹

It is essential that in conjunction with the protection of motherhood, a mechanism must be created that allows for the development of women in other areas of their lives in addition to being a mother.³⁰ This mechanism would provide women benefits such as childcare so they can continue growing personally and professionally.

It is worth noting that Mexico has signed various international agreements, and its legislation affords rights related to maternity.³¹ However, the system can still be improved.³² The State must guarantee that not only the mother but also the child, from the moment of conception, have the necessary nutrients for the development of the fetus and at birth have the necessary resources available.³³ These guarantees are true for a large percentage of urban areas, but the same cannot be said for people in rural areas who live in a serious state of abandonment and marginalization.³⁴

This part of the article describes the main aspects of the Mexican legal framework for women who are in gestation, delivery, and postpartum, as well as the rights they have once they decide to become mothers.³⁵

28. See, e.g., *Women in the Workforce—Mexico: Quick Take*, *supra* note 5 (“Women with dependents . . . face bias by companies and are overlooked for promotion and recruitment.”).

29. See SEXUAL & REPRODUCT. RTS. AREA, *supra* note 11, at 4 (“Committee recommended States ‘repeal all legal provisions that discriminate against women’ . . . [and] adopt all measure that are necessary to eradicate the discrimination they face in the workplace.”).

30. *Cf. id.* (“Although employment discrimination can be legally punished through many different means in Mexico, . . . it is rarely actually punished.”).

31. See generally Moreno, *supra* note 14, at 141–42 (discussing the legislation Mexico has put in place to protect working mothers).

32. *Id.* at 145–46 (indicating how some employers still make non-pregnancy a requirement and inquire about the number of children a woman has).

33. Claudia Gamboa Montejano & Sandra Valdés Robledo, “*Derechos de la Maternidad*,” *Estudio Teorico Conceptual de Iniciativas Presentadas, y Derecho Comparado*, CÁMARA DE DIPUTADOS, CENTRO DE DOCUMENTACIÓN, INFORMACIÓN Y ANÁLISIS 2 (May 2008) (Mex.), <http://www.diputados.gob.mx/sedia/sia/spi/SPI-ISS-12-08.pdf> [<https://perma.cc/2MBE-DU6S>] (noting numerous disparities between rural and urban communities when it comes to women's access to resources needed during pregnancy).

34. *Id.* at 59 (comparing the challenges faced for those in rural areas).

35. See Moreno, *supra* note 14, at 138 (explaining the agencies and laws that give protections to women in Mexico such as, *Instituto Mexicano de Seguro Social*).

A. *Conceptual Framework*

Below are some concepts related to the topic of maternity with the purpose of providing more elements for the reader's greater understanding and comprehension of the subject.

Maternity. Paternal relationship that unites the mother with the child. Motherhood can be legitimate when the child is conceived in marriage or illegitimate when conceived outside of marriage. (V. child; illegitimate and legitimate child; mother and her species). Public or private establishments that provide assistance to women with childbirth will be called maternity wards.³⁶

In a social context in relation to maternity, the following should be noted:

At the beginning of the XXI century, motherhood in Mexico was redefined and demystified in the face of the growing insertion of women into the economy and politics, birth control, and assisted reproduction, among others. Various professionals reiterate that motherhood is a social concept that varies according to the times given that "motherly love" is not natural, but rather a cultural, social, religious, and even economical imposition.³⁷

The concept of motherhood is generally associated with the bond between a woman and her baby.³⁸ This idea is a limited view of motherhood because it really means a vital experience through time that does not depend on the age of the child.³⁹ From a social perspective, the majority of countries have established laws that protect maternity.⁴⁰ This type of regulation is carried out through leave for the care of newborns, shorter workdays, or authorization to breastfeed during work hours.⁴¹

Each woman experiences motherhood from a different perspective given that maternity involves a lot of emotions that are not uniform, which present all sorts of nuances related to the love and protection of the

36. Montejano & Robledo, *supra* note 33, at 4.

37. *Id.*

38. *See id.* (illustrating the relational aspect of motherhood).

39. *Id.* at 6.

40. *More than 120 Nations Provide Paid Maternity Leave*, INT'L LAB. ORG. (Feb. 16, 1998), https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_008009/lang-en/index.htm [<https://perma.cc/S57V-2KB6>].

41. Montejano & Robledo, *supra* note 33, at 48.

child.⁴² In view of the above, Mexico's National Human Rights Commission considers it vital for a mother's health to go hand in hand with the minor's best interest, and "therefore greater importance should be given to what is best for the child."⁴³ Therefore, it is important for courts, administrative authorities, and legislative bodies—federal and state—to give women all the support they need.⁴⁴ This will ensure mothers have the necessary resources for the care, nourishment, protection, education, and health of the child since it is in the womb, and the child can count on this protection from its mother, since the child depends on his mother and responsible parties for the enforcement of their rights.⁴⁵

On the other hand, the Supreme Court of Justice of the Nation has issued several decisions related to the best interest of the child, among which the following stand out:

- **INTERÉS SUPERIOR DEL NIÑO. FUNCIÓN EN EL ÁMBITO JURISDICCIONAL (BEST INTEREST OF THE CHILD. STANDARD APPLIED IN COURT DECISIONS).**⁴⁶
- **INTERÉS SUPERIOR DEL MENOR. EL EJERCICIO DEL DERECHO DE LOS MENORES DE EDAD A PARTICIPAR EN LOS PROCEDIMIENTOS QUE AFECTEN SU ESFERA JURÍDICA INVOLUCRA UNA VALORACIÓN DE PARTE DEL JUEZ. (BEST**

42. *See generally Feelings, Relationships and Pregnancy*, PREGNANCY, BIRTH & BABY, <https://www.pregnancybirthbaby.org.au/feelings-relationships-and-pregnancy> [<https://perma.cc/FFA8-DXAX>] (last updated Sept. 2020) (recognizing the emotional rollercoaster pregnancy can bring in a women's life and how it is related to the circumstances of a women's life, such as support from the father, social status, and financial well-being).

43. *Observaciones Generales del Comité de los Derechos del Niño*, UNICEF 258 (May 29, 2013), <https://www.unicef.org/UNICEF-ObservacionesGeneralesDelComiteDeLosDerechosDelNino-WEB.pdf> [<https://perma.cc/6T63-AFZR>].

44. *Cf. SEXUAL & REPRODUCT. RTS. AREA*, *supra* note 11, at 4–6 (reiterating the deficiencies in diminishing employment discrimination against women in administrative and court settings).

45. *See id.* (reinforcing the need to provide greater protective mechanisms to protect women from discrimination in Mexico's employment context).

46. INTERÉS SUPERIOR DEL NIÑO. FUNCIÓN EN EL ÁMBITO JURISDICCIONAL, Pleno de la Suprema Corte de Justicia [SCJN], *Semanario Judicial de la Federación y su Gaceta*, Décima Época, Tomo I, Marzo de 2014, Tesis 1a./J.18/2014, página 406 (Mex.), <https://sjf2.scjn.gob.mx/detalle/tesis/2006011> [<https://perma.cc/U6BK-56VG>].

INTEREST OF THE CHILD. THE EXERCISE OF A MINOR'S RIGHT TO PARTICIPATE IN PROCEEDINGS AFFECTING THEIR LEGAL RIGHTS INVOLVES AN ASSESSMENT BY THE JUDGE).⁴⁷

- **INTERÉS SUPERIOR DEL MENOR COMO ELEMENTO DE INTERPRETACIÓN EN EL ÁMBITO JURISDICCIONAL.** (BEST INTEREST OF THE CHILD AS A STANDARD).⁴⁸

In general, these decisions hold that courts must take into account the best interest of children and adolescents.⁴⁹ The decisions also hold a child's opinion must be considered in any decision affecting them and emphasizes the judge's obligation to monitor specific circumstances of each case in order to reach a stable, fair, and equitable solution, especially for the child.⁵⁰

47. See generally INTERÉS SUPERIOR DEL MENOR. EL EJERCICIO DEL DERECHO DE LOS MENORES DE EDAD A PARTICIPAR EN LOS PROCEDIMIENTOS QUE AFECTEN SU ESFERA JURÍDICA INVOLUCRA UNA VALORACIÓN DE PARTE DEL JUEZ, Pleno de la Suprema Corte de Justicia [SCJN], Semanario Judicial de la Federación y su Gaceta, Décima Época, Tomo I, Marzo de 2012, Tesis aislada, página 9 (Mex.) <https://sjf.scjn.gob.mx/SJFSem/Paginas/Reportes/ReporteDE.aspx?idius=25608&Tipo=2> [<https://perma.cc/6K59-S29Y>] (detailing the legal position of minors during proceedings in a court of law in Mexico and the importance of their opinions and thoughts on legal matters in which they are involved).

48. INTERÉS SUPERIOR DEL MENOR COMO ELEMENTO DE INTERPRETACIÓN EN EL ÁMBITO JURISDICCIONAL, Pleno de la Suprema Corte de Justicia [SCJN], Semanario Judicial de la Federación y su Gaceta, Décima Época, Tomo II, Febrero de 2015, Tesis 1a. LXXXIII/2015, página 1397 (Mex.) <https://sjf2.scjn.gob.mx/detalle/tesis/2008546> [<https://perma.cc/T7WX-N9LY>] (“The best interests of the child have a content of a real and relational nature, which requires a verification and special attention of the specific and specific elements that identify minors, so the scrutiny to be carried out in disputes affecting that interest, directly or indirectly, is stricter than that of other cases of protection of fundamental rights.”).

49. See “*El Interés Superior de Niñas, Niños y Adolescentes, una Consideración Primordial*”, COMISIÓN NACIONAL DE LOS DERECHOS HUMANOS (July 2018), https://www.cndh.org.mx/sites/default/files/doc/Programas/Ninez_familia/Material/cuadri_interes_superior_NNA.pdf [<https://perma.cc/GEG6-9T9H>] (emphasizing how tribunals and courts in Mexico require the best interest of the child to be considered in all cases dealing with their rights).

50. *Id.*

B. *Legal Provisions on Maternity Protection in Mexico*

1. *Constitutional Analysis*

Without a doubt, the 1917 Constitution revolutionized the legal system.⁵¹ This Constitution is considered the first in the world to incorporate social rights, often referred to as the Mexican Magna Carta.⁵² For example, Article 123 recognizes the demands workers fought for, and, specifically for women, the Constitution established important protections.⁵³

This article established the following: “Article 123 . . . (A)(II) The maximum duration of a night shift is seven hours. Unhealthy or dangerous work is generally prohibited for women”⁵⁴

Since the Constitution’s enactment, it has protected women’s rights while pregnant and during childbirth.⁵⁵ Legislators were aware of the need to protect a woman’s job, as well as a woman’s health during and after childbirth in order to protect the child.⁵⁶ In 1917, this constitutional precept (Article 123) established that women are not to be exposed to risks at work, are entitled to receive their full salary, and have job

51. See José Dávalos, *El Constituyente Laboral*, SECRETARÍA DE GOBERNACIÓN 40–41 (2016), <https://archivos.juridicas.unam.mx/www/bjv/libros/9/4458/21.pdf> [<https://perma.cc/J623-B9WB>] (detailing the addition of social rights in the Constitution of 1917 in Mexico); see also Glenn Louis McBride, WHAT IS THE DIFFERENCE (2020), https://mexicanlaws.com/What_is_the_difference.htm#:~:text=The%20Mexican%20Constitution%20of%201917%2C%20written%20after%20the%20Mexican%20Revolution,exploited%20by%20foreign%20companies%2C%20etc. [<https://perma.cc/6HE6-HYNV>] (“It contains reforms that addressed the principal causes of the Mexican Revolution - labor abuses, land expropriated from farmers and villages, natural resources exploited by foreign companies, etc. The Constitution of 1917 contains such revolutionary ideas for the time as 48-hour work weeks, overtime, vacations and maternity leave.”).

52. McBride, *supra* note 51.

53. *Id.*; see Dávalos, *supra* note 51, at 43–44, (recognizing how Mexican reforms for social rights in the Constitution of 1917 were initiated).

54. Constitución Política de los Estados Unidos Mexicanos, CPUEM art. 123, Diario Oficial de la Federación [DOF] 05-02-1917, (Mex.).

55. See *id.* (detailing the constitutional protections in place for women during pregnancy, childbirth, and postpartum in the workforce).

56. Cf. Montejano & Robledo, *supra* note 33, at 2 (emphasizing how laws established because of the Constitution of 1917 emphasize protections to the health of women and were enacted so that women would have a consistent way to keep their children healthy, helping them grow).

security.⁵⁷ Accordingly, Article 123 section A paragraph V of the previously mentioned Constitution establishes the following:

Article 123 . . .

V. Women, during the three months prior to delivery, will not perform physical labor requiring considerable material effort. In the month following birth, they are required to enjoy rest while receiving their full salary and retaining their employment and the rights they would have acquired under their employment contract. During the nursing period, they shall have two special breaks per day of half an hour each to nurse their children.⁵⁸

With the above mentioned, the Mexican Magna Carta made it clear—in an extraordinary way for its time—there is a right to maternity leave for a working woman.⁵⁹ This favorably resulted in the prerogative continuing to this date.⁶⁰ The right is supported by regulations and courts prosecute women’s rights violations during and after childbirth.⁶¹

As part of the historical study this Article makes of the original content of Article 123 of the Constitution, a constitutional reform came into effect on December 5, 1960.⁶² Part B was added to Article 123 with fourteen sections,⁶³ making a distinction between employees in the public sector and private sector.⁶⁴ Part B, Subsection XI establishes the scope of social security law for the then Federal District and federal government.⁶⁵

Section XI subsection C of the recently added Part B states:

XI. Social security shall be provided according to the following minimum standards:

57. Constitución Política de los Estados Unidos Mexicanos, CPUEM, art. 123, Diario Oficial de la Federación [DOF] 5-2-1917, (Mex.).

58. *Id.*

59. McBride, *supra* note 51.

60. *See generally* Dávalos, *supra* note 51, at 135–155 (describing how a favorable response to the protection of women and their rights has ushered in reformations to expand on these protections, all of which are still in effect today).

61. *See id.* at 177 (depicting the lasting protections that are in place for women in the workforce and the responsibility that employers have in upholding and protecting those rights).

62. *Id.* at 137–39.

63. *Id.* at 139–40.

64. *Id.* at 138–40.

65. *Id.* at 139.

- a) Will cover . . . maternity;
- c) Women will be given a month's rest before the approximate date of delivery, and two months after. During breastfeeding, women will have two additional breaks a day, each of thirty minutes to breastfeed their children. Additionally, they will be given medical and obstetric attention, medicine, and aid for breastfeeding and the childcare service.⁶⁶

Article 123 has been modified several times; it was amended for the eleventh time in 1974.⁶⁷ Part A Section XV was changed to impose a duty on employers to maintain the workplace with the best conditions of hygiene and safety.⁶⁸ The purpose was to provide pregnant women with “the best guarantee for their health and the life of their offspring.”⁶⁹

At the same time as the above-mentioned amendment (published on December 31, 1974), amendments were submitted for Part B Section XI Subsection C to incorporate the following rights, which continue in effect today:

- Avoid jobs that are strenuous and pose danger to the health of the woman and her child.⁷⁰
- Right to full salary.⁷¹
- Guarantee of retaining job and acquired rights.⁷²

Currently, we can find Article 123 to be structured for the purpose of investigation in the following manner:

Title 6 [of Constitution 1917]

Labor and Social Welfare

66. *Id.*

67. *Id.* at 146–47. See generally Montejano & Robledo, *supra* note 33 (describing the changes and reforms Article 123 has undergone since its inception to expand for further protection of individuals).

68. Dávalos, *supra* note 51, at 147 (detailing the standards and requirements for employers regarding cleanliness of workplaces); Montejano & Robledo, *supra* note 33, at 8.

69. Dávalos, *supra* note 51, at 175; Montejano & Robledo, *supra* note 33, at 8.

70. Dávalos, *supra* note 51, at 146–48.

71. *Id.* at 148.

72. *Id.*

Article 123. Every person has the right to have a decent and socially useful job. Therefore, job creation and social organization of work shall be encouraged according to the law.

(Amended by decree published in the *Diario Oficial de la Federación* on June 18, 2008).

A. Workers, day laborers, domestic employees, artisans, in generally, all contract work:

(Added by decree published in the *Diario Oficial de la Federación* on December 5, 1960).

V. During pregnancy, women shall not perform such work that requires excessive physical effort and could be dangerous regarding pregnancy. Women have the right to enjoy a disability due to childbirth, which shall cover six weeks before the birth and six weeks thereafter. During such disability leave, women shall receive their full wages and retain their employment and the right acquired under their employment contract. During the nursing period, they shall have two special rest periods per day, consisting of half an hour each, to feed their babies.

(Amended by decree published in the *Diario Oficial de la Federación* on December 31, 1974. Modified due to the Constitution reprint, published in the *Diario Oficial de la Federación* on October 6, 1986).

XV. An employer shall follow the legal regulations on hygiene and health that are applicable to its establishment, and to adopt adequate measures for the prevention of accidents in the use of machines, instruments, and materials. The employer must organize the work in such a way to protect the health and safety of workers and of unborn children, in the case of pregnant women. The law shall contain the appropriate sanctions in each case.

(Amended by decree published in the *Diario Oficial de la Federación* on December 31, 1974).⁷³

In this outline, we find there have been changes that seem minimal in relation to those previously documented, but, in reality, the changes represent a significant advance as far as the following points are concerned:

73. Constitución Política de los Estados Unidos Mexicanos, CPEUM, art. 123, *Diario Oficial de la Federación* [DOF] 05-02-1917, últimas reformas DOF 17-06-2014 (Mex.) (citing one of the most radical of the provisions of the 1917 Mexican Constitution, which gave the working class a relief to the many abuses and hardships previously faced from uncontrolled labor managers).

- Modification of pre-birth rest, extending it to six weeks before the child is expected to be born⁷⁴
- Express obligation to receive full salary⁷⁵

As for Part B Section XI, it has remained unchanged since its publication on December 31, 1974.⁷⁶ This shows that the government, as an employer, considers the protection of pregnancy valuable—before, during, and after birth.⁷⁷ The protections are provided for in part through the corresponding social security agency, the *Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado* (“ISSSTE”) (Institute of Social Security and Services for State Workers).⁷⁸

In 1974, Article 4 of the Constitution was amended,⁷⁹ placing men and women on equal footing before the law, which achieved even more significant progress through the decree published on June 6, 2019.⁸⁰ The decree held that in addition to equality, there should be mechanisms that recognize gender equality, mainly for women workers and heads of household.⁸¹

Article 4 of the Constitution also guarantees the right to healthcare, so that every pregnant woman, regardless of whether she is directly protected as a worker or indirectly protected as a beneficiary (through her husband, father, or partner), has access to healthcare that ensures the

74. *Id.*

75. *Id.*

76. Constitución Política de los Estados Unidos Mexicanos, CPEUM, art. 123, Diario Oficial de la Federación [DOF] 05-02-1917 (Mex.) (addressing how workers may only be suspended with just cause under the terms established by law).

77. *Id.*

78. *See* Ley del Seguro Social [LSS], art. 85, 94, 101–02, Diario Oficial de la Federación [DOF] 21-12-1995, últimas reformas DOF 21-10-2020 (Mex.) (illustrating in the case of pregnancy, the institute will grant benefits to the insured during pregnancy, childbirth, and postpartum).

79. Constitución Política de los Estados Unidos Mexicanos, CPEUM, art. 4, Diario Oficial de la Federación [DOF] 31-12-1974 (Mex.).

80. Constitución Política de los Estados Unidos Mexicanos, CPEUM, art. 4, Diario Oficial de la Federación [DOF] 31-12-1974, últimas reformas DOF 06-06-2019 (Mex.) (recognizing men and women are equal before the law; and, further, protecting the organization and development of families).

81. *Id.*

follow up and birth of the child.⁸² I take the liberty of quoting this constitutional precept verbatim:

Every person has the right to healthcare. The law shall set forth the rules and conditions to access health services and shall establish the concurrence of the Federation and the state in matters of general public health, as provided in Article 73 Section XVI of this Constitution.

(Added through decree published in the *Diario Oficial de la Federación* on February 3, 1983).⁸³

2. *Analysis of the Legal Framework*

Within the legal framework created by these constitutional provisions, there are some laws aimed at protecting maternity in various areas of law, such as health, employment, etc.⁸⁴

Among them we find:

a. Healthcare Law

La Ley General de Salud (General Health Law) is the code that regulates health law in Mexico, which provides for maternity as a right of every woman regardless of her characteristics, marital status, or economic status.⁸⁵ This grants the following prerogatives as rights for women and obligations for health authorities:⁸⁶

- Stipulates maternal and childcare is a matter of general health and basic health service (Article 3, section IV subsection 17, and section IV).⁸⁷

82. See Constitución Política de los Estados Unidos Mexicanos, CPEUM, art. 4, Diario Oficial de la Federación [DOF] 31-12-1974 (Mex.) http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM_ref_079_31dic74_ima.pdf [<https://perma.cc/CH7D-NQAD>] (establishing the Law will define the bases and modalities for the access to health services and establish the concurrence of the Federation in matters of general health).

83. Constitución Política de los Estados Unidos Mexicanos, CPEUM, art. 4, Diario Oficial de la Federación [DOF] 31-12-1974 (Mex.).

84. See, e.g., *id.* (indicating there are provisions in different areas of the law that extend to protect maternity rights).

85. Ley General de Salud [LGS], art. 1, Diario Oficial de la Federación [DOF] 07-02-1984, últimas reformas DOF 19-02-2021 (Mex.).

86. See *generally id.* (identifying both obligations and rights granted through the Article).

87. Ley General de Salud [LGS], art. 3.

- Grants priority status (Article 61, section I) ensuring attention in three stages: pregnancy, childbirth, and postpartum.⁸⁸
- Promotes institutional organization of committees for the prevention of maternal and infant mortality (Article 62).⁸⁹
- Promotion of breastfeeding, and, where appropriate, direct food aid to improve the nutrition of mothers and children (Article 64, Section II).⁹⁰
- Health, education, and labor authorities, in their respective fields, support and encourage the monitoring of occupational activities that may endanger the physical and mental health of pregnant women (Article 65, Section III).⁹¹

Health services with the above-mentioned characteristics are provided by hospitals created by the Federal Department of Health and each State's Department of Health throughout the country.⁹² These hospitals provide maternal-child services under the criteria of universality and free-of-charge based on socioeconomic conditions of their patients.⁹³

b. Federal Civil Code

Within the Federal Civil Code published in the *Diario Oficial de la Federación* on June 3, 2019, there are provisions that regulate affiliation, through which the rights and obligations of mothers are ensured, such as:

- A mother has no right to refuse to recognize her child. She is required to have her name on the child's birth certificate. If the mother's name is not given when filing, it shall be noted in the record that the mother is unknown, but an investigation of

88. Ley General de Salud [LGS], art. 61.

89. *Id.*

90. Ley General de Salud [LGS], art. 64 (noting institutional guidance and surveillance actions, including the training and promotion for breastfeeding, and, in addition, promoting the installation of lactation centers in the workplace in both public and private sectors).

91. Ley General de Salud [LGS], art. 65.

92. Ley General de Salud [LGS], art. 73 (noting the promotion of care programs that consider, among other things, hospitals, outpatient services, day centers, halfway houses, and sheltered workshops).

93. Ley General de Salud [LGS], art. 35.

maternity can be made through the court system in accordance with the relative provisions of this Code. (Article 60).⁹⁴

- When a marriage is in the process of dissolution, or before if there is an emergency, and only for the duration of the trial, the Civil Code provides, as a provisional measure, that children be placed in the care of a person designated by mutual agreement of the spouses and may be one of the spouses. In the absence of a mutual agreement, the spouse requesting the divorce shall propose the person who will have provisional custody of the children. The judge, following the procedure established by the respective code, shall decide on the matter. Unless there is serious danger to the development of the child, children under seven years old must remain in the care of the mother. (Article 282, Section VI).⁹⁵
- There is a right to investigate maternity, only if the mother is alive or in the event of her death, four years after the child is of age. (Article 388).⁹⁶

c. Law Protecting the Rights of Children and Teenagers

Ley Para La Protección de Derechos de Niñas, Niños, y Adolescentes (“Law for the Protection of the Rights of Children and Adolescents”) published in the *Diario Oficial de la Federación* on May 29, 2010, is the legal instrument that contains the rights and obligations of mothers.⁹⁷ A mother’s rights and obligations are related to the rights to protect girls, boys, and adolescents; this includes providing suitable living conditions for the child’s well-being and healthy psychophysical development.⁹⁸ Article 20 states “mothers have the right, while pregnant or breastfeeding, to receive necessary medical attention and nutrition, in accordance with

94. Código Civil [CC], art. 60, Diario Oficial De La Federación [DOF] 26-05-1928, últimas reformas DOF 03-06-2019 (Mex.).

95. Código Civil [CC], art. 282 (describing the conditions that must be present for an adult, other than the parents, to care for the child under provisional custody).

96. Código Civil [CC], art. 388.

97. Ley Para la Protección de los Derechos de Niñas, Niños y Adolescentes [LPDNNNA], Diario Oficial de la Federación [DOF] 29-05-2000, últimas reformas DOF 19-8-2010 (Mex.).

98. See, e.g., Ley Para la Protección de los Derechos de Niñas, Niños y Adolescentes [LPDNNNA], art. 19–20 (emphasizing how a mother’s obligations are necessary for healthy development of adolescents).

a woman's right to integral health."⁹⁹ With regard to the right to health, Article 28 paragraph c and f provide for the promotion of breastfeeding and states that pre-and postnatal medical care for mothers should be coordinated at the federal, state, and/or municipal level.¹⁰⁰

d. Federal Labor Law

Labor legislation offers specific provisions for the protection of women's health during pregnancy, which is understandable since it is a regulation under Article 123 of the Constitution where a number of provisions come from that are worthy of analysis.¹⁰¹ In addition to complying with the Constitution, labor law protects mothers because they comprise a large percentage of the female workforce.¹⁰² According to the *Encuesta Nacional de Ocupación y Empleo* (ENOE) (National Survey of Occupation and Employment), there were 15,785,000 working mothers during Mexico's 2018's fourth quarter, representing 72.9% of the female workforce.¹⁰³

Notably, the current Federal Labor Law (*Ley Federal del Trabajo*) was published on April 1, 1970.¹⁰⁴ However, it was significantly amended by decrees published in the *Diario Oficial de la Federación* on December 1, 2012 and May 1, 2019, both which are relevant for the purposes of this research.¹⁰⁵ The amendments have contributed to substantive equality between men and women, to avoid discrimination against women on the basis of gender, and to seek equality, eradicating violence in the

99. *Ley Para la Protección de los Derechos de Niñas, Niños y Adolescentes* [LPDNNA], art. 20.

100. *Ley Para la Protección de los Derechos de Niñas, Niños y Adolescentes* [LPDNNA], art. 28.

101. *Constitución Política de los Estados Unidos Mexicanos*, CPUEM, art. 123, *Diario Oficial de la Federación* [DOF] 05-02-1917 (Mex.).

102. Rubén Migueles, *Madres Trabajadoras 15.8 millones en México: Inegi*, EL UNIVERSAL (May 10, 2019), <https://www.eluniversal.com.mx/cartera/madres-trabajadoras-158-millones-en-mexico-inegi> [<https://perma.cc/3ZEH-286M>] ("The number of working mothers has been on the rise with over 25% in growth the past eight years.")

103. *Id.* ("From this total, 15,396,000 were employed, while 389,000 were unemployed.")

104. *Ley Federal del Trabajo* [LFT], *Diario Oficial de la Federación* [DOF] 10-04-1970, últimas reformas DOF 11-01-2021 (Mex.).

105. *See, e.g.*, *Ley Federal del Trabajo* [LFT], art. 337 (explaining how an employer must cooperate with the laws of relevant authorities, such as article 123 of *Constitución Política de los Estados Unidos Mexicanos*).

workplace, which is applaudable in a culture like Mexico's.¹⁰⁶

Federal Labor Law, which consists of 1010 articles, contains a chapter that classifies women in a "special" category, granting them the privileges described below:

Article 164 of the Federal Labor Act states women in the workplace enjoy the same rights and have the same obligations as men.

Women must have the same working conditions as their equals; under no circumstance may their benefits be less than those set out in the Act.

Women have the right to a workday without exploitation: it must be eight hours for a day shift, seven hours for a night shift, and seven and a half hours for a mixed shift. Under special circumstances, this may be extended by three hours and no more than three times a week.

Every woman has the right to receive a just salary, annual bonus, and training for work.¹⁰⁷

One of the most important prerogatives in a working mother's labor rights is the right to have health insurance¹⁰⁸ and to receive timely medical care, medicine, and hospital services for her and her children.¹⁰⁹

The Federal Labor Law Article 170 specifically provides the following rights to pregnant women:

- During pregnancy, they shall not perform strenuous work that poses a danger to their health in relation to the baby.¹¹⁰
- They will receive leave of six weeks before and six weeks after the birth. This may be done at the express request of the employee or with the prior written authorization by the doctor of the appropriate medical institution.¹¹¹

106. *See, e.g., id.* (discussing obligations imposed on employers).

107. Ley Federal del Trabajo [LFT], art. 164.

108. Constitución Política de los Estados Unidos Mexicanos, CPUEM, art. 123, Diario Oficial de la Federación [DOF] 05-02-1917 (Mex.); Ley del Seguro Social [LSS], art. 5, Diario Oficial de la Federación [DOF] 21-12-1995, últimas reformas DOF 21-10-2020 (Mex.).

109. Ley del Seguro Social [LSS], art. 56, 87.

110. Ley Federal del Trabajo [LFT], art. 170 sec. I.

111. Ley Federal del Trabajo [LFT], art. 170 sec. II.

- In the event the baby was born with any type of disability or requires hospital attention, the leave can be up to eight weeks after birth.¹¹²
 - In the event a woman becomes a mother through adoption, she will also have the right to leave for six weeks of paid leave, after they receive the baby.¹¹³
 - There will be a lactation period for a maximum of six months, and women will have two breaks of thirty minutes to feed the newborn; this will be done in a place designated by the company, which should be in optimal conditions and clean.¹¹⁴
- e. Federal Law for Federal Employees, Part B of Article 123 of the Constitution

Employees subject to Article 123 Part B, colloquially known as “public servants,” are entitled to various rights created by privity (employment relationship, born through an appointment granted by the government entity or body), as well as various social security benefits such as “maternity, breastfeeding break (maintaining the right to work) and benefits for the development and welfare of the child.”¹¹⁵ Article 28 of this law guarantees the enjoyment of one month’s rest before the date set for the birth of the child and two months after it.¹¹⁶ During breastfeeding, women shall have the right to decide whether to take two breaks per day, thirty minutes each, to breastfeed their children or hand pump.¹¹⁷

112. *Id.* (noting approval from a certified doctor is needed for this request).

113. *Id.*

114. Ley Federal del Trabajo [LFT], art. 170 sec. IV (illustrating the workplace’s obligation to provide privacy, breaks, and an optimal environment for new mothers).

115. Constitución Política de los Estados Unidos Mexicanos, CPUEM, art. 123 pt. B, Diario Oficial de la Federación [DOF] 05-02-1917 (Mex.); Gustavo Leal Fernández et al., *La Seguridad Social de los Trabajadores al Servicio del Estado: “Crónica de una Muerte Anunciada,”* SCIELO 117 (Aug. 2017) http://www.scielo.org.mx/scielo.php?script=sci_arttext&pid=S0185-16162017000200105 [<https://perma.cc/5DFS-DBQJ>].

116. Ley Federal de los Trabajadores Al Servicio del Estado, Reglamentaria del Apartado B) del Artículo 123 Constitucional, art. 28, Diario Oficial de la Federación [DOF] 28-12-1963, últimas reformas 01-05-2019 (Mex.).

117. *Id.*

It is important to mention that the law applies to federal employees and employees of today's Mexico City.¹¹⁸ Each state in conformity with Article 116 of the Political Constitution of the Mexican States¹¹⁹ has the power to issue laws that regulate the employment relationship with its employees, which must respect the principles of Article 123 of the Constitution.¹²⁰ Thus, each state regulates its employment and social security relationship, which in general terms is very similar to the principles explained in the previous points.¹²¹ It should be noted that each state has a public agency responsible for providing social security benefits to public servants, which, subject to compliance with the requirement of the law in force, grants access to benefits in money and kind for pregnant workers (before and after birth).¹²²

C. Values of Mexican Culture Regarding Maternity, Matriarchy, and Respect for Women

Over the years, it has not been easy to achieve gender equality for women in society.¹²³ Currently, more Mexican women are participating in the labor market; however, they do so in a distinctly unequal context.¹²⁴ A woman's participation in the labor market is at the expense of society's recognition of their desire to improve themselves personally

118. Fernández et al., *supra* note 115.

119. Constitución Política de los Estados Unidos Mexicanos, CPUEM, art. 116, Diario Oficial de la Federación [DOF] 05-02-1917 (Mex.).

120. Fernández et al., *supra* note 115. (contending that while each state has the power to regulate employment laws, they cannot offend the protection guaranteed in Article 123 of Mexico's Constitution).

121. Constitución Política de los Estados Unidos Mexicanos, CPUEM, art. 116.

122. See generally *Incapacidad por Maternidad*, IMSS, <http://www.imss.gob.mx/sites/all/statics/maternidad/pdf/e-book-incapacidad-maternidad.pdf> [<https://perma.cc/NJC4-6ZJP>] (delineating requirements and general information that allows pregnant women to obtain social security benefits).

123. See *Goal 5: Achieve Gender Equality and Empower All Women and Girls*, UNITED NATIONS, <https://www.un.org/sustainabledevelopment/gender-equality/> [<https://perma.cc/9G9J-ET35>] (“Despite [advances], many challenges remain: discriminatory laws and social norms remain pervasive, [and] women continue to be underrepresented at all levels of political leadership . . .”).

124. See Elia De la Cruz Toledo, *Understanding the Evolution of Female Employment in Mexico*, COLUM. UNIV. SCH. OF SOC. WORK, <https://paa2014.princeton.edu/papers/140271> [<https://perma.cc/9YWB-9G43>] (recognizing the number of Mexican women joining the labor force has increased at a steady rate since 1989).

and professionally.¹²⁵ Moreover, many women work not so much out of a desire of their own, but out of need to generate income to meet their economic needs (personal and family) and, at the same time, devote time to unpaid housework at home.¹²⁶

Although women have grown personally and professionally, the Mexican culture has always considered maternity to be extremely important.¹²⁷ For this reason, in Mexico, as in other countries, women are celebrated for Mother's Day.¹²⁸ Mother's Day recognizes a mother's efforts and dedication to their children.¹²⁹ Notably, today, Mexican society sees a higher value in women who are mothers, and, therefore, it is very important for society to celebrate the holiday.¹³⁰ This celebration has become commercial and consumer triggering.¹³¹

Today, we must recognize that for Mexico, there is no matriarchy figure.¹³² Matriarchy is "the power a woman has as an authority to

125. *Cf. id.* (noting the ambiguity surrounding the increase in women's participation in the labor market in Mexico is unclear and may be due to demographical change or changes in the returns that incentivize or discourage women's employment).

126. *See* Soñia Montaña et al., *Women's Contribution to Equality in Latin American and the Caribbean*, ECON. COMM'N FOR LATIN AM. & CARIBBEAN 55 (Aug. 2007) (acknowledging while women were key contributors to the economy and to anti-poverty efforts in Latin America and the Caribbean, economic progress had been slower than hoped because unpaid housework and care for family members fell disproportionately on women).

127. *See, e.g.*, Martha Barksdale, *What is the History of Mother's Day in Mexico?*, HOWSTUFFWORKS (May 10, 2019), <https://people.howstuffworks.com/culture-traditions/holidays-other/history-of-mothers-day-in-mexico.htm> [<https://perma.cc/PU23-G3V9>] (recognizing the ties between motherhood and Mexico's traditional values and illustrating how in the 1920s some people in Mexico were concerned that women were diverting from their primary role of childbearing as contraception and professional opportunities became more accessible).

128. *See id.* (discussing how México's traditional values—intertwined with religion—led to an immediate acceptance of the religious and patriotic meaning of Mother's Day).

129. *See, e.g., id.* (comparing similarities between Mother's Day celebrations in Mexico and the United States, where children and families present their mothers with gifts of candy, flowers, cards, phone calls, restaurant outings, and musical performances).

130. *Cf. Ser Madre en el Mexico de Hoy*, EL UNIVERSAL (May 5, 2018), <https://www.eluniversal.com.mx/articulo/el-universal/nacion/ser-madre-en-el-mexico-de-hoy> [<https://perma.cc/Q83Q-694S>] (asserting how Mexican culture needs to make social and cultural changes instead of only recognizing mothers on one day in order to truly show appreciation for what mothers have done for the country).

131. *Id.* (emphasizing how the Mother's Day celebration in Mexico has boosted commerce and consumerism).

132. *See* Laura Islas, *¿Por qué México no ha tenido Presidentas?*, REPORTE INDIGO (June 11, 2018), <https://www.reporteindigo.com/reporte/mexico-ha-tenido-presidentas-derechos->

govern and make decisions within a society.”¹³³ Throughout the years, the man has continued to hold power over the woman within society.¹³⁴ It is not enough to know that among Mexican presidents, no woman has even been President of the Republic, unlike other Latin American countries.¹³⁵ We must recognize that almost sixty-three years after women were finally able to exercise their right to vote for the first time in the country, women have obtained positions at the local and state level as mayor and governors.¹³⁶ Nevertheless, the general pending debt is to occupy the largely popularly elected position.¹³⁷

Mexican political scientist Monica Maccise Duayhe, who during 2008 to 2015 was the head of the Gender Equality Unit of the Supreme Court of Justice of the Nation (SCJN), states:

In Mexico, what exists are obstacles to equal access to political and electoral rights for women, but that is not something that depends on them and, in fact, neither on men, there are social structures and historical issues that have prevented the effective access in terms of the equal exercise of rights.¹³⁸

Over the years, society has tried to respect women, but this has not happened to a great extent.¹³⁹ Even though it has not happened to a great

politico-electoral-mujeres-democracia/ [https://perma.cc/8EFY-UVWJ] (explaining how women have governed in other Latin American countries but Mexico has yet to have a woman president).

133. Cf. Águeda Gómez Suárez, *Sistemas Sexo/Género “Matriarcales”: Bijagó* (Guinea Bissau) y *Zapoteca* (México), 14 ESTUDIOS DE ANTROPOLOGÍA BIOLÓGICA 343, 346 (2009) (noting there has been no society in which men have been deprived of their power and rights, as has been done with women in the West during the nineteenth century; there is no known society where the system of stratification of the sexes favors them, although it is known that there are societies with great equality).

134. See Islas, *supra* note 132 (stressing there is a machismo culture in Mexico; the idea that women are only able to raise children and are not suitable to perform positions of authority has greatly limited women in obtaining rights and holding positions of power for decades).

135. *Id.* (emphasizing while there are more women than men in Mexico, none have ever held the position of President of the Republic, unlike other Latin American countries, where on 10 different occasions, women have already governed).

136. *Id.*

137. *Id.*

138. *Id.*

139. Cf. Rafael Tovar & Lopez-Portillo, Understanding the Role of Women as Leaders in Mexican Politics: Looking Back and Moving Forward 23 (Apr. 21, 2016) (Ph.D. dissertation, University of San Diego) (on file with the University of San Diego School of Leadership and Education Sciences) (clarifying how although women are absent from the history of Mexico, it does not mean they were not present in the evolution of the country; despite women being pushed aside

extent, the legislature has sought to ensure women have rights that guarantee such respect.¹⁴⁰ Unfortunately, these measures have been difficult to enforce.¹⁴¹ We must stress that as long as women are not given respect, it is unlikely for their rights to be enforced, and more so regarding maternity.¹⁴² Therefore, reiterating what was previously established in previous paragraphs, authorities must ensure the rights established by law and must be attentive of pregnant women, as well as during childbirth, to ensure full compliance with their rights.¹⁴³

Without a doubt, Mexico has a good legal framework.¹⁴⁴ Nonetheless, the problem is found in the reality of the women who decide to become mothers—many times without the support of their partners—or of the fathers who, in the face of “traditional” culture, decide to turn their backs on their daughter who “got pregnant.”¹⁴⁵ As well as low quality jobs without social welfare benefits, much less social security.¹⁴⁶ Comparatively, women who are in a more privileged position (formal

as secondary characters in the nation’s narrative, women have been a prominent part of Mexican culture for many centuries).

140. *See, e.g., id.* at 13–14 (acknowledging recent reforms have passed regarding terms of political gender equality).

141. *See, e.g., id.* at 146 (indicating not all areas of the government are gender inclusive despite the measures put in place—some municipalities are not as supportive of politically successful women as others).

142. *Cf. EL UNIVERSAL, supra* note 130 (demystifying the idea of a traditional mother figure and demanding serious cultural, social, and government efforts that acknowledge a women’s dignity).

143. *See generally* Toledo, *supra* note 124 (encouraging effective public policy programs to further female participation in the Mexican labor market, which can result in less stress for children, families, and governments, increases in national wealth and development, and reductions in poverty rates and inequality).

144. *See, e.g.,* Tovar & Lopez-Portillo, *supra* note 139 at 14 (describing how the biggest legal breakthrough for gender equality in Mexican politics was made in 2014, when the Mexican Congress had to maintain a balance of 50% men and 50% women after the elections of 2015).

145. *See, e.g.,* Natasha J. Cabrera et al., *Mexican American Mothers and Fathers’ Prenatal Attitudes and Father Prenatal Involvement; Links to Mother-Infant Interaction and Father Engagement*, 60 *SEX ROLES* 510, 511–15 (2009) (admitting in a study of pregnant women that pregnancies intended by mothers but unintended by fathers had the greatest risk of women’s postpartum depression and diminished health outcomes for the infant as opposed to parents who wanted the pregnancy).

146. *See Shadow Report on Employment Discrimination Against Women in Mexico*, SEXUAL & REPRODUCT. RTS. AREA 3 (June 2018), https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MEX/INT_CEDAW_NGO_MEX_31406_E.pdf [<https://perma.cc/Q65R-4PHK>] (proposing reform in the federal social security law to ensure equal access for parental leave and domestic worker’s rights).

work), are relegated by a voracious working world, which is not willing to tolerate distractions such as “motherhood.”¹⁴⁷

D. Maternity Leave

Maternity leave is without a doubt a basic right from a physical and emotional point of view, as it contributes to the safety of the mother and the child.¹⁴⁸

Safe motherhood is considered a fundamental aspect in achieving proper work and productivity for women, as well as gender equality at work. Maternity protection is therefore a fundamental labor right and has been enshrined in core universal human rights treaties, being one of the concerns of the International Labor Organization.¹⁴⁹

In order to respect the rights of working mothers, it is required for women in Mexico to take leave, in addition to receiving their full salary, and, of course, keep their job.¹⁵⁰ This is one of the most important social welfare rights for women.¹⁵¹ Maternity disability consists of a period during which a woman can be absent from work to care for her newborn child enjoying her full salary at 100%.¹⁵² During pregnancy, and even some time after childbirth, the employee cannot be fired, and thus enjoys the

147. *See id.* at 6 (“[B]etween 2013 and 2017, not one single employer in all the country was fined for employment discrimination or harassment In this same time-frame, only 16 companies were fined for violating rules related to ‘women’s or children’s rights’ What is clear though is that the *Secretaría* is failing to punish companies for discrimination and harassment in the workplace, including the discrimination women face on account of their pregnancy (contrary to what the State holds).”).

148. *See generally* *La Maternidad y la Paternidad en el Trabajo, La Legislación y la Práctica en el Mundo*, ORGANIZACIÓN INTERNACIONAL DEL TRABAJO 7 (2014), https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_242618.pdf [<https://perma.cc/XTE4-UY96>] (asserting a healthy maternity period is imperative for the mother’s health and survival of the newborn).

149. *Id.* at 1.

150. *See* Ángel Guillermo Ruiz Moreno, *La Discriminación de la Mujer por Maternidad*, REVISTA LATINOAMERICANA DE DERECHO SOCIAL, Jan.–June 2007, at 137, 138, <https://revistas.juridicas.unam.mx/index.php/derecho-social/article/view/9498/11532> [<https://perma.cc/59HY-4L6G>] (describing the various constitutional requirements applied to maternity rights).

151. *See generally* ORGANIZACIÓN INTERNACIONAL DEL TRABAJO, *supra* note 148, at 12 (emphasizing the need for laws to support motherhood is critical and there are still 830 million women that remain without these basic protections under the law).

152. *See, e.g.*, Moreno, *supra* note 150, at 142 (noting the constitutional protection which requires women on maternity leave to be paid their full salary up to eighty-five days).

right to job stability.¹⁵³ The Mexican Institute of Social Security (IMSS) issues a unique certificate establishing the coverage of the disability.¹⁵⁴ The certificate consists of eighty-four calendar days, covering the prenatal and postnatal period.¹⁵⁵ The eighty-four days are distributed in two periods: one prenatal and one postnatal.¹⁵⁶ Paid leave applies to both the public and private sectors.¹⁵⁷ “The length of leave is crucial for a woman to recover from childbirth and return to work, while providing the necessary care for a newborn. When leave is too short, mother may not feel ready to return to work and may leave the workforce.”¹⁵⁸

The amendment, published in December 2012, granted mothers residing in Mexico the possibility of extending their maternity leave after delivery if they grouped together their prenatal maternity leave and preferred to enjoy it together with the postnatal period.¹⁵⁹ This permission can be textually found in Article 170 Section II of the Mexican Labor Code, which states:

Working women will be given a six-week break before and after giving birth. At the express request of the employee, with the prior written authorization of the doctor of the social security institution to which she belongs or, where appropriate, the health service provided by the employer, taking into account the employer’s opinion and the nature of the work performed, up to four of the six weeks of pre-birth leave may be transferred to post-birth leave. In the event that the child is born with any disability or requires hospital care, the leave may be up to eight weeks after the birth, upon production of the corresponding medical certificate. In the case of private doctors writing the medical certificate, it must contain the doctor’s

153. *See id.* at 141–42 (reiterating the protections under Mexico’s labor law and ensuring mother’s job security once their maternity leave ends).

154. IMSS, *supra* note 122.

155. *Id.*

156. *See id.* (discussing the flexibility provided by allowing the total number of days to be transferred from the prenatal to postnatal period).

157. *See* Constitución Política de los Estados Unidos Mexicanos, CPUEM, art. 123, Diario Oficial de la Federación [DOF] 05-02-1917 (Mex.) (recognizing subsection A and B respectively allow paid leave for private and public workers).

158. ORGANIZACIÓN INTERNACIONAL DEL TRABAJO, *supra* note 148, at 3.

159. Ley Federal del Trabajo [LFT], art. 170, Diario Oficial de la Federación [DOF] 10-04-1970, últimas reformas DOF 11-01-2021 (Mex.) (illustrating how women can transfer their prenatal leave period to their postnatal leave, thus increasing their time off after delivery).

name and professional license number, date and medical condition of the employee.¹⁶⁰

To take maternity leave, the employee must provide a medical certificate from a certified professional from IMSS or the private doctor who is caring for them during the pregnancy.¹⁶¹ The certificate must contain the name and professional license number of the person who issued it, the date, and the health condition of the employee.¹⁶²

E. Breastfeeding

Breastfeeding is the ideal way to provide babies with the nutrients they need for healthy growth and development.¹⁶³ Studies show that virtually all women can breastfeed, provided they have good information and family support.¹⁶⁴ In view of the excellent nutrition provided by a mother, once postpartum leave ends, there is a right in Article 170 Section IV of the Labor Code to breastfeed during work hours.¹⁶⁵ The law grants, for up to six months, a working mother two special breaks, each of thirty minutes, where she can feed her baby in a clean and adequate place designated by the company.¹⁶⁶ If this possibility does not exist, an employer can reduce the workday by an hour each day.¹⁶⁷

However, breastfeeding goes beyond direct feeding by the mother to the newborn, says Doctor Gabriela Mendizabal:

160. Ley Federal del Trabajo [LFT], art. 170 sec. II.

161. Ley Federal del Trabajo [LFT], art. 170; see Verónica López & David Leal, *Mexico: New Maternity Leave Regulations*, LITTLER (July 28, 2016), <https://www.littler.com/publication-press/publication/mexico-new-maternity-leave-regulations> [https://perma.cc/YLR8-3VUM] (listing the different avenues women can receive their medical certificates through in order to certify their pregnancies and qualify for maternity leave).

162. Ley Federal del Trabajo [LFT], art. 170 sec. II.

163. See *Breastfeeding is Best*, MARCH OF DIMES, <https://www.marchofdimes.org/baby/breastfeeding-is-best.aspx#:~:text=for%20your%20baby%3F-,Breast%20milk%20is%20the%20best%20food%20for%20babies%20in%20the,your%20baby%20grow%20and%20develop> [https://perma.cc/UB65-S73Q] (last updated Apr. 2019) (illustrating the critical function of breastfeeding on the healthy development of babies).

164. But see *Nationwide Breastfeeding Goals*, CTR. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/breastfeeding/data/facts.html> [https://perma.cc/JWA8-B93C] (last updated Sept. 28, 2020) (reporting reasons why mothers stop breastfeeding stem from issues with lactation, unsupportive work policies, and a lack of family support).

165. Ley Federal del Trabajo [LFT], art. 170 sec. IV.

166. Ley Federal del Trabajo [LFT], art. 170 sec. IV.

167. *Id.*

[C]onsists of the supply of formula by the institute for the insured's child or the wife or partner of the insured or pensioner, or in the absence of the latter, to the person responsible for feeding the child. This benefit will be granted for six months from the assessment of the treating physician, which in IMSS can be immediately after childbirth or four or five months after, while in ISSTE and ISSFAM it will be provided since the birth of the child as a result of the mother's inability to breastfeed the newborn (Article 160, LISSFAM).¹⁶⁸

F. *Childcare*

In accordance with the provisions of Articles 201 to 207 of the social security law, we can define day care centers as a center for the attention, care, and integral development for the children of employees.¹⁶⁹ It is prudent to cite the following precept:

Article 201. The day care center sector covers the risk of not being able to provide care during the work day for children in early childhood, for working women, widowed or divorced workers or those who have been entrusted by the courts with the custody of their children by granting the benefits set out in this chapter.

This benefit may be extended to insured persons who, by court order, exercise parental authority and custody of a child, provided that their rights before the institute are in force and they are unable to provide care and attention to the child.

The childcare service will be provided during the morning and afternoon shift, and the child of a worker who works at night may have access to one of these shifts.

Article amended DOF 12-20-2001.¹⁷⁰

In the interest of equity in childcare, the Mexican Supreme Court of Justice issued a decision in 2016 under the heading, "*GUARDERÍAS*

168. Gabriela Mendizábal Bermúdez, *Análisis Comparativo de las Presentaciones de Seguridad Social por Maternidad*, 116 BOLETÍN MEXICANO DE DERECHO COMPARADO 453, 465 (2006).

169. See Ley del Seguro Social [LSS], art. 201, 207, Diario Oficial de la Federación Artículo [DOF] 21-12-1995, últimas reformas DOF 21-10-2020 (Mex.) (requiring centers providing care for workers' children to meet various requirements from operating hours to the standard of care for the children).

170. Ley del Seguro Social [LSS], art. 201.

DEL IMSS. AL PREVERSE REQUISITOS DIFERENCIADOS A LA MUJER Y VARÓN ASEGURADOS PARA ACCEDER A ESTE SERVICIO, SE TRANSGREDE EL DERECHO A LA IGUALDAD (“IMSS GUARDIANS. BY PROVIDING FOR DIFFERENTIATED REQUIREMENTS FOR INSURED WOMEN AND MEN TO ACCESS THIS SERVICE, THE RIGHT TO EQUALITY IS TRANSGRESSED”),¹⁷¹ and extended the protection of care by both parents of minors.¹⁷² The extension of maternity rights to people other than the biological mother advances the legal structure of a Latin American country like Mexico, whose influence is important.¹⁷³ The Court reasoned the discriminatory nature of the social security law, based on the following arguments:

In the case of men, the insurance only operated by divorce, widowhood or custody in accordance to a court order. Thus, the female employee will always have access to the childcare service since, according to gender stereotypes, it is her responsibility to take care of the children. On the other hand, the father will only have access to insurance when he does not have a wife who can satisfy the role of caregiver since he must invest his time in working to provide for the family.¹⁷⁴

In the day care center, the service, whether direct or contracted, is responsible for providing hygiene, food, health care, education, and recreation in accordance with the principle of the best interest of the child under the conditions of equality, respect, and full exercise of the rights of

171. *Guarderías del IMSS. Al Preverse Requisitos Diferenciados a La Mujer y Varón Asegurados Para Acceder a Este Servicio, Se Transgrede el Derecho a la Igualdad*, Suprema Corte de la Justicia de la Nación [SCJN], *Semanario Judicial de la Federación y su Gaceta*, Decima Época, Tomo I, Diciembre del 2016, Tesis 2a. CXXXIII/2016, página 909 (Mex.).

172. *See id.* (holding equality is violated when men are subject to different requirements than women in obtaining childcare services and ruling insured workers are entitled to the same benefits regardless of gender).

173. *See* José Manuel Ruiz Ramírez, *Acceso a las Guardería y Género*, *Suprema Corte de Justicia de la Nación*, SUPREMA CORTE DE LA JUSTICIA DE LA NACIÓN [SCJN], https://www.scjn.gob.mx/sites/default/files/derechos_humanos/articulosdh/documentos/2016-12/ACCESO%20A%20LAS%20GUARDER%C3%8DAS.pdf [https://perma.cc/4BKT-ECTH] (Mex.) (analyzing the results of the Supreme Court of Justice of the Nation’s finding that men should not be discriminated against when seeking childcare).

174. *Id.* at 1.

a forty-three-day old child to four years of age.¹⁷⁵

G. *Employment Discrimination*

The right to maternity has been analyzed from a normative perspective; now we will discuss the effectiveness of these rights in the day-to-day life of working mothers in Mexico, where the number of single mothers who have economic responsibility for the household is on the rise.¹⁷⁶ This has generated a notorious social imbalance for women who are in a state of weightlessness; paraphrasing Dr. Ángel Guillermo Ruiz Moreno, it is possible to affirm that reality has once surpassed the law.¹⁷⁷

Discrimination is:

to alter equality; to fail to respect or to violate rights, which in this case are limited to those derived from a physiological condition, motherhood. Because it is a sexual condition, this kind of discrimination must be considered sexual since it is only caused by the biological characteristics of the female sex.¹⁷⁸

Discrimination is an act punishable not only by local legislation, but also by international conventions.¹⁷⁹ Mexico cannot, and should not, continue to engage in conduct that generates differential treatment simply because of gender.¹⁸⁰ Women will have children, and, as a result, will be absent from work for disability and will always have prerogatives that are not “convenient” for the employer to grant.¹⁸¹ Some of the

175. See Reglamento Para la Prestación de los Servicios de Guardería, Diario Oficial de la Federación [DOF] 30-06-1997, últimas reformas DOF 29-12-2009 (Mex.) (listing all regulations related to providing childcare services in Mexico).

176. See Moreno, *supra* note 150, at 137 (“Each day, there is a higher number of what are called dysfunctional families, otherwise known as single parent households in which the head of the household and support of the children is from the mother.”).

177. See *id.* at 137–38 (“This has generated a notorious social imbalance in the face of the inefficiency of the current legal regulations; that has turned into openly discriminatory treatment for women going through the trance of motherhood. It is possible to affirm that reality has once again surpassed the law.”).

178. Patricia Kurczyn Villalobos, INSTITUTO DE INVESTIGACIONES JURÍDICAS DE LA UNIVERSIDAD NACIONAL AUTÓNOMA DE MÉXICO, SERIE ENSAYOS JURÍDICOS, NO. 18, ACOSO SEXUAL Y DISCRIMINACIÓN POR MATERNIDAD EN EL TRABAJO 145 (Mex. 2004).

179. *Id.* at 36–41.

180. See *id.* at 186 (supporting the notion that laws should not be based on gender but apply to both sexes equally).

181. See *generally* Villalobos, *supra* note 178, at 150 (arguing—due to the inconvenience in the workplace—measures protecting pregnant woman are necessary).

limitations most commonly mentioned by working mothers is that they are denied time to feed their child (breastfeeding).¹⁸² Moreover, a woman whose pregnancy is notorious is hardly hired for a job; in this situation, the employer argues that she is not hired given the “right and freedom of selecting employees.”¹⁸³

Firing an employee for which the only justification is pregnancy or the care of minor children is in itself unjustified and gives rise to legal action against the employer to demand reinstatement or payment of damages set by the Constitution.¹⁸⁴ The firing of an employee is not necessarily exercised in a direct way.¹⁸⁵ In practice, there are many actions or omissions that exclude pregnant women, such as the continuation or assignment of activities that imply a risk for the woman and the child; or, when returning from her period of maternity leave, not being allowed to participate in decision making, given leave, or insurance through social security so she can have access to the daycares, or significant changes in work activities which undoubtedly puts pressure on the employee and forces her to resign.¹⁸⁶

Similarly, when an employee is not given a promotion and is entitled to it, or is excluded from training or education, she has the right to demand its fulfillment through a complaint.¹⁸⁷ The basis for this claim

182. *See, e.g., id.* at 146 (illuminating working mothers’ experience of discrimination in the workplace).

183. *Id.* at 146–47 (showing how employers use excuses which appear legal to justify not hiring pregnant women).

184. *Id.* at 151–52. *See generally* Ley Federal del Trabajo [LFT], Diario Oficial de la Federación [DOF] 10-04-1970, últimas reformas DOF 11-01-2021 (Mex.) (providing grounds for a woman to file a legal action against an employer who has treated her improperly due to maternity or raising minor children).

185. Villalobos, *supra* note 178, at 151–52 (alluding to different methods employers use to indirectly terminate the employment of a pregnant employee).

186. *See id.* at 151–54 (reiterating tactics used by employers to get a working mother to resign from her position).

187. *See id.* at 146, 151, 201 (affirming a woman’s right to complain when she experiences discrimination on the basis of pregnancy and recognizing “workers enjoy the same rights to fill jobs, train, be promoted, or gain other job benefits . . . and differences in opportunities between men and women is discriminatory and illegal.”).

is found in Articles 153A to 153X and 154 of the Federal Labor Code.¹⁸⁸

All of these actions are socially reprehensible, and it is emphasized that there are laws to protect women who have made the difficult but rewarding decision to become working mothers.¹⁸⁹

Working relationships imply a number of obligations on the employer, such as providing pregnant women with the protection set out in the regulations.¹⁹⁰ It is also prohibited for employers or their representatives to require the submission of a certificate stating they are not pregnant in order to be hired, retain employment or be promoted, as well as fire an employee because she is pregnant, changed her marital status, or is caring for a minor child, as provided for in Articles 132 and 133 of the Federal Labor Act.¹⁹¹ The sanction for non-compliance of protections to pregnant women will make the employer liable to a series of fines established in the Chapter of Responsibilities and Sanctions of the Federal Labor Law, which covers Articles 992 to 1010.¹⁹²

H. *Temporary Protections due to COVID-19*

It should be mentioned that at the time of writing (May 29, 2020), the whole world is being hit by a virus that has been declared a pandemic by the World Health Organization (WHO).¹⁹³ Businesses and governments have been urged to adopt protective measures given the lack of knowledge about the impact of COVID-19 on pregnant women.¹⁹⁴ It is

188. Ley Federal del Trabajo [LFT], art. 153–54, Diario Oficial de la Federación [DOF] 10-04-1970, últimas reformas publicada 11-01-2021 (Mex.) http://www.diputados.gob.mx/LeyesBiblio/pdf/125_020719.pdf [<https://perma.cc/6TAW-4B26>] (identifying the Articles under which a mother can file a claim based on employment discrimination).

189. See Villalobos, *supra* note 178, at 134–35, 187 (describing how México recognizes maternity as a fundamental right and noting the importance of eliminate ill-designed practices and policies from companies running afoul from women’s fundamental rights).

190. Ley Federal del Trabajo [LFT], art. 132 sec. XXVII, Diario Oficial de la Federación [DOF] 10-04-1970, últimas reformas DOF 11-01-2021 (Mex.).

191. Ley Federal del Trabajo [LFT], art. 132–33.

192. See, e.g., Ley Federal del Trabajo [LFT], art. 992–1010 (listing a combination of factors considered when imposing sanctions on an employer—such as the gravity of an infraction or whether the action taken was intentional or negligent).

193. Terdos Adhanom Ghebreyesus, *La OMS Caracteriza a COVID-19 como una Pandemia*, ORGANIZACIÓN PANAMERICANA DE LA SALUD (Mar. 11, 2020), https://www.paho.org/arg/index.php?option=com_content&view=article&id=10436:la-oms-caracteriza-a-covid-19-com-o-una-pandemia&Itemid=226 [<https://perma.cc/2RLA-FYP7>].

194. *Por Qué los Médicos Urgen a Proteger Especialmente del Covid-19 a las Embarazadas en Tareas Esenciales*, INFOBAE (May 28, 2020), <https://www.infobae.com/>

unknown whether the coronavirus can be passed from mother to child or whether it causes miscarriage, stillbirth, premature birth, or congenital anomalies.¹⁹⁵ IMSS implemented measures for granting maternity leave and consider pregnant women and women in postpartum a vulnerable population.¹⁹⁶ These actions have been carried out with the aim of generating protective measures against the spread of the virus.¹⁹⁷

Research shows:

[P]regnancy puts an enormous amount of additional pressure on a woman's respiratory and cardiovascular systems, and causes significant changes to their immune systems, including substantially different reactions. It has also been documented that pregnant women have a higher risk of hypertension and diabetes, two factors that aggravate COVID-19. However, even if a vaccine or treatment is discovered, pregnant women would unlikely be candidates for it.¹⁹⁸

The Mexican government began to take action against COVID-19 on Saturday, March 14, 2020.¹⁹⁹ The government cancelled in-person class for students and released the press release titled "*Presenta IMSS plan para evitar contagios por COVID-19 en embarazadas, adultos mayores*

america/eeuu/2020/05/28/por-que-los-medicos-urgen-a-proteger-especialmente-del-covid-19-a-las-embarazadas-en-tareas-esenciales/ [https://perma.cc/W5RG-59HQ].

195. *E.g., id.* (“[Researchers] also cited other works, both from that pandemic of 2009 and from the flu of 1918, which agreed that infection with these viruses in the first trimester was associated with an increased risk of death of the fetus. ‘Similar reports of serious pregnancy complications and fetal death can also be found in the most limited research that was done on the coronaviruses that caused the SARS and MERS epidemics’ in 2003 and 2012.”).

196. *See* IMSS, *supra* note 122 (setting out criteria for women to be eligible for subsidies under IMSS regulations).

197. *See* INFOBAE, *supra* note 194 (“In this unprecedented public health crisis we can afford to offer pregnant essential workers the opportunity to temporarily leave their tasks in the line of fire. If we do not take protective measures now, pregnant women and their children could take unnecessary risks.”).

198. *Id.*

199. *Mexico Braces for Coronavirus Lasting ‘all year’, Tightens Curbs*, REUTERS (Mar. 14, 2020), <https://www.reuters.com/article/us-health-coronavirus-mexico/mexico-braces-for-coronavirus-lasting-all-year-tightens-curbs-idUSKBN211143> [https://perma.cc/G8Y2-AQWL] (“Mexico warned on Saturday that the coronavirus outbreak could last all year as it began rolling out tougher measures to contain the spread, calling for an end to large gatherings and extending Easter school holidays.”); *see Presenta IMSS Plan Para Evitar Contagios por COVID-19 en Embarazadas, Adultos Mayores y Pacientes con Enfermedades Crónicas*, IMSS (Mar. 31, 2020), <http://www.imss.gob.mx/prensa/archivo/202003/163> [https://perma.cc/3FPA-998Q] (reporting Mexico’s response to COVID-19 during March 2020).

y pacientes con enfermedades crónicas” (IMSS presents plan to prevent transmission of COVID-19 to pregnant women, elderly, and patients with chronic diseases).²⁰⁰ The press released proposed the following:

1. Disability due to maternity will be granted by filing an application, which can be filed by a relative, friend, or acquaintance of the Applicant with an official identification, and Applicant’s identification.²⁰¹
2. Leave will be granted from the thirty-fourth week of pregnancy and last eighty-four days.²⁰²
3. For working mothers who have received prenatal care outside of IMSS, one must provide a clinical summary by their private doctor, signed with the doctor’s professional license number; attached lab and medical tests, and the patient’s identification. Similarly, a family member or acquaintance can submit the paperwork.²⁰³

In the same vein, on April 22, 2020, IMSS issued a press release titled “*Convenio con hospitales privados garantiza atención sin costo para población derechohabiente que requiera tratamiento médico*” (Agreement with private hospitals to guarantee free care to the entitled population that require medical treatment).²⁰⁴ The purpose of this agreement is for it to be used during the pandemic by people who have social security and require medical treatment other than COVID-19, among which is obstetrician-gynecologist care.²⁰⁵ These insurance holders will receive medical attention free of charge in 146 private hospitals in twenty-seven states in Mexico.²⁰⁶ This is possible through a subrogation agreement signed between the government of Mexico, Mexican Hospitals Consortium, and the National Association of Private

200. IMSS, *supra* note 199.

201. *Id.*

202. *Id.*

203. *Id.*

204. *Convenio con Hospitales Privados Garantiza Atención Sin Costo para Población Derechohabiente que Requiere Tratamiento Médico*, IMSS (Apr. 22, 2020, 3:43 PM) (Mex.), <http://www.imss.gob.mx/prensa/archivo/202004/214> [<https://perma.cc/U6LJ-QL2V>].

205. *See id.* (emphasizing IMSS hospitals should be the first stop for patients and noting that specialized hospitals for pregnancy will not be affected or limited in continuing treatments).

206. *Id.*

Hospitals.²⁰⁷ Dr. Mauricio Hernandez Avila, in his capacity as Direction of Economic and Social Benefits of IMSS, explained that this agreement, effective from April 23 to May 23, 2020, gives the availability of 3,115 beds in private hospitals to provide quality care to vulnerable populations and pregnant women.²⁰⁸ The subrogated medical attention by private hospitals will be provided to pregnant women from the thirty-seventh week of pregnancy.²⁰⁹ The IMSS Call Center will inform pregnant women what hospitals are available.²¹⁰ This program is expected to subrogate 578,000 deliveries and C-sections during the duration of the agreement, which is a part of Phase III of the health emergency.²¹¹

The above-mentioned measures were expanded in passing days; this is a result of the dangerousness of the virus.²¹² Therefore, on May 4, 2020, the *Diario Oficial de la Federación* published an order identified as “ACDO.AS2.HCT.070420/119.P.DPES.”²¹³ The order authorizes the granting of maternity leave and disability due to maternity through remote access digital platforms.²¹⁴ The order came into effect on the day of its publication.²¹⁵

On the basis of the order, IMSS Medical Benefits Department is authorized to:

- Certify the pregnancy and approve maternity disability from a remote access digital platform for both women who receive their prenatal care with IMSS providers and women who see a private doctor;²¹⁶
- Suspend the process of registering new CLABE accounts²¹⁷ and modifying current CLABE accounts of participating banks

207. *Id.*

208. *Id.*

209. *Id.*

210. *Id.*

211. *Id.*

212. See ACUERDO ACDO.AS2.HCT.070420/119.P.DPES, *Diario Oficial de la Federación* [DOF] 04-05-2020 (Mex.) (illustrating Mexico’s attempt to amend and extend protections surrounding the uncertainty of Covid-19 included passing an order).

213. *Id.*

214. *Id.* (listing exemptions granted for pregnant women during Covid-19).

215. *Id.*

216. *Id.*

217. See *CLABE Numbers: Your Complete Guide*, BANK.CODES (Sept. 11, 2020), <https://bank.codes/guides/clabe-numbers-guide/> [<https://perma.cc/D5MY-79C3>] (recognizing that

for the payment of benefits for temporary disability for maternity;²¹⁸ and

- Add to the IMSS portal the ability for an employer to make the payment for their employee who has maternity disability.²¹⁹

The above-mentioned background focused on medical attention and payment of disability through social security.²²⁰ However, let us think about all the female Mexican workers who are pregnant but are not in the week required to receive leave that legally suspends their obligation to go to work.²²¹ On March 30, 2020, the *Diario Oficial de la Federación* published an order by which the General Health Council declared as “ACUERDO POR EL QUE SE DECLARA COMO EMERGENCIA SANITARIA POR CAUSA DE FUERZA MAYOR A LA EPIDEMIA DE ENFERMEDAD GENERADA POR EL VIRUS SARS-CoV2 (COVID-19).”²²² This order is complemented by the order published on March 31, 2020, titled “ACUERDO POR EL QUE SE ESTABLECEN ACCIONES EXTRAORDINARIAS PARA ATENDER LA EMERGENCIA GENERADA POR EL VIRUS SARS-CoV2” (Agreement Establishing Extraordinary Measures to Address the Emergency Created by the Virus SARS-CoV2),²²³ which ordered the immediate suspension of work

CLABE stands for *Clave Bancaria Estandarizada* (Standard Bank Code). This standard is a requirement for the sending and receiving of domestic inter-bank electronic funds transfer.).

218. ACUERDO ACDO.AS2.HCT.070420/119.P.DPES, *supra* note 212.

219. *Id.*

220. See Ley Federal del Trabajo [LFT], Diario Oficial de la Federación Artículo 101 [DOF] 10-04-1970, últimas reformas 11-01-2021 (Mex.) http://www.diputados.gob.mx/LeyesBiblio/pdf/125_020719.pdf [<https://perma.cc/6TAW-4B26>] (detailing the obligations of employers to pay IMSS to cover disability or retirement pensions for a certain percentage of that person’s wages); see also, e.g., ACUERDO ACDO.AS2.HCT.070420/119.P.DPES, *supra* note 212 (showing the employer’s ability to make disability payments now includes the IMSS portal).

221. IMSS, *supra* note 204 (illustrating how care under the subrogated agreement is for women who are at least 37 weeks pregnant).

222. Acuerdo por el que se Declara como Emergencia Sanitaria por Causa de Fuerza Mayor a la Epidemia de Enfermedad Generada por el Virus SARS-CoV2 (COVID-19), Diario Oficial de la Federación [DOF] 30-03-2020 (Mex.) (declaring a nationwide health emergency as a result of the COVID-19 epidemic).

223. See Acuerdo por el que se Establecen Acciones Extraordinarias para Atender la Emergencia Generada por el Virus SARS-CoV2, Diario Oficial de la Federación [DOF] 31-03-2020 (Mex.) (ordering all non-essential workers to stay home and releasing a detailed list of certain occupations allowed to continue working outside their own home).

relationships of non-essential activities as of March 30, 2020.²²⁴

It should be noted that under the last of the above-mentioned orders, it is mandatory for employees who are in the “vulnerable person” category to be suspended from going to work in person, whether essential or non-essential work.²²⁵ Additionally, the order reiterated that women who are pregnant or in the immediate postpartum period are classified in this population.²²⁶ In accordance to Federal Labor Law Article 427 Section I, pregnant women must not physically go into work at their principal place of business and have the legal protection to receive their regular pay.²²⁷ As it has been previously stated, pregnant employees are granted special protections creating employment stability.²²⁸ Employment stability requires greater and special protection by the government given that during the period of pregnancy, women are in a special physical condition and have worthy needs that merit keeping their job, and, therefore, avoid having their employment suspended or terminated because of such factors.²²⁹

If, in the face of such an atypical situation and generator of emotional and financial stress, there is no guarantee of employment (salary) and

224. *See* Acuerdo por el que se Declara como Emergencia Sanitaria por Causa de Fuerza Mayor a la Epidemia de Enfermedad Generada por el Virus SARS-CoV2 (COVID-19) (mandating each person not involved with essential services to stay home in order to prevent the spread of the Covid-19 virus).

225. Acuerdo por el Que Se Establecen Acciones Extraordinarias para Atender la Emergencia Generada por el Virus SARS-CoV2 (identifying groups of at-risk individuals including those over 60, pregnant people, those with pre-existing conditions that could escalate upon contraction of COVID-19, and immunosuppressed people who should not go to work even if they are essential workers).

226. *See id.* (stipulating both pregnant and postpartum women should not report directly to work due to potentially heightened risks of Covid-19).

227. Ley Federal del Trabajo [LFT], art. 427 sec. I, Diario Oficial de la Federación [DOF] 10-04-1970, últimas reformas DOF 11-01-2021 (Mex.) (listing circumstances that qualify as means for establishing legal protection for a temporary suspension of work including health issues confirmed by a health authority); Ley Federal del Trabajo [LFT], art. 429 sec. IV, Diario Oficial de la Federación [DOF] 10-04-1970, últimas reformas DOF 11-01-2021 (Mex.).

228. Ley Federal del Trabajo [LFT], art. 133 (listing prohibited mechanisms that employers may not utilize on employees and outlining certain protections for pregnant women that exist to make sure they are not pressured into resigning or being discriminated against in the hiring process or while working).

229. *See* Ley Federal del Trabajo [LFT], art. 132 sec. XXVII (“[An employer] must provide pregnant women with the protection laid down in these regulations.”); *see also* Ley Federal del Trabajo [LFT], art. 133 sec. XV (explaining an employer is prohibited from firing or forcing a worker to resign because she is pregnant or for taking care of her children).

social security (health insurance), it is very likely that for lack of income and the increase in expenses, female workers will be forced into debt and work in the informal economy.²³⁰ As a result, pregnant women can be exposed to COVID-19, which could affect their health and that of their child.²³¹ Similarly, if an employer does not pay the pregnant employee's salary, it would be an act of discrimination prohibited by constitutional law and by Federal Labor Code Articles 2, 3, 132, section XXXI, and 164.²³² Employers will continue to cover a pregnant employee's salary if the employee complies with the requirements of the Social Security Code Article 102, and IMSS will cover the pre-and postnatal subsidy (maternity disability benefits).²³³

The government published on May 18, 2020, an announcement of economic measures needed to avoid the spread of the virus.²³⁴ The publication is titled "*Lineamientos técnicos de seguridad sanitaria en el entorno laboral*" (Technical Guidelines for Health Safety in the Workplace),²³⁵ and states the following about the vulnerable population:

Recommends that before returning or within the first month of returning to work [employees] be given permission to consult with their family doctor or the company's doctor to evaluate their state and treatment.

Workplaces located in a region considered to be high or medium risk (orange and red), should implement special guidelines to reduce the risk of

230. Tamar Diana Wilson, *The Informal Economy and Social Programs in Mexico: A Critique*, 45 *Latin Am. Perspectives* 130, 132 (2019) ("Although poverty and employment in the informal economy are not isomorphic, a large overlap of these two categories of people can be assumed.").

231. See INFOBAE, *supra* note 194 (analyzing how although little is known about the specific effects of COVID-19, pregnancy often causes changes to a woman's immune system making her vulnerable to respiratory diseases; studies from recent outbreaks such as SARS in 2003, H1N1 in 2009 and Ebola in 2014 showed increases in fetal death from the mother contracting the virus in their first trimester).

232. See, e.g., *Ley Federal del Trabajo [LFT]*, art 132, sec. XXXI (advancing women and men should be treated equally with the assistance of appropriate protocols and providing equal treatment and opportunity to prevent gender discrimination in the workplace)

233. See *Ley del Seguro Social [LSS]*, art. 102, *Diario Oficial de la Federación [DOF]* 21-12-1995, últimas reformas *DOF* 21-10-2020 (Mex.) (mandating requirements such as providing a certificate of pregnancy that includes expected due date of the child).

234. SECRETARÍA DEL TRABAJO Y PREVISIÓN SOCIAL, *LINEAMIENTOS TÉCNICOS DE SEGURIDAD SANITARIA EN EL ENTORNO LABORAL* (2020) https://www.gob.mx/cms/uploads/attachment/file/552550/Lineamientos_de_Seguridad_Sanitaria_F.pdf [<https://perma.cc/8AQS-KG62>].

235. *Id.*

the population who is vulnerable, as well as prevent possible infections in workspaces and to employees.

It is important to remember, that in workplaces located in high-risk areas it is prohibited for people in the vulnerable population to physically go into work, and in cases of low risk areas, special attention should be paid to vulnerable employees regardless of whether it is necessary to implement special measures.²³⁶

The fight against COVID will continue, and the work environment will very likely never be the same.²³⁷ It is in the hands of employers and pregnant employees to adopt protective measures and respect labor rights, guaranteeing harmony between the parties and maintaining job security.²³⁸ I hope this will lead to a permanent audit of the respect given to acquired rights, such as is the right to maternity leave for working women.²³⁹

II. UNITED STATES' FRAMEWORK FOR THE PROTECTION OF MATERNITY RIGHTS

Similarly, the United States supports women to be a part of the workforce while being a mother, without discrimination for the latter.²⁴⁰

236. *Id.*

237. See OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, GUIDANCE ON PREPARING WORKPLACES FOR COVID-19 6 (2020), <https://www.osha.gov/Publications/OSHA-3990.pdf> [<https://perma.cc/8L2L-DLXB>] (recognizing the processes and procedures that are otherwise standard practice in the workplace are subject to change as a result of the lifestyle changes brought on by the pandemic such as absenteeism, change in patterns of commerce, and interrupted supply and demands).

238. See, e.g., Constitución Política de los Estados Unidos Mexicanos, CPUEM art. 123, Diario Oficial de la Federación [DOF] 05-02-1917, (Mex.) (authorizing broad protections for pregnant women that employers must abide by); see also Ley Federal del Trabajo [LFT], art. 132, Diario Oficial de la Federación [DOF] 01-04-1970, últimas reformas DOF 11-01-2021 (Mex.) (stating an employer must abide by all relevant laws that require an employer to respect the rights of their pregnant employees); see also Ley del Seguro Social [LSS], art. 102, Diario Oficial de la Federación [DOF] 21-12-1995, últimas reformas DOF 21-10-2020 (Mex.) (noting the requirements the pregnant employee must abide by to receive benefits).

239. See, e.g., Naweed Harooni et al., *Maternity Protection at the Workplace*, WABA 3 (2000), <https://waba.org.my/pdf/MaternityProtectionattheWorkplace-final.pdf> [<https://perma.cc/2AD9-75AK>] (acknowledging the continuing fight for women's rights must include equality in all aspects such as salary, and in the workplace concerning pregnancy and maternity leave).

240. 42 U.S.C. § 2000e(k) (2018) (adopting laws to prevent women from being discriminated against in the workforce and specifically protecting pregnancy and medical issues relating to pregnancy).

A. *Legal Provisions on Maternity Protection in the United States*

Maternity law has evolved a lot in the last sixty years, each law providing protection where the previous law left a gap.²⁴¹

1. *Title VII of the Civil Rights Act of 1964*

The Civil Rights Act of 1964 was the fruit of more than two decades of advocacy by African Americans during the twentieth century.²⁴² After World War II, advocacy began for the end to racial segregation in society and equal rights to all regardless of race.²⁴³ Precedential legislation and case law resulted from these efforts.²⁴⁴ The most important to our analysis is the Civil Rights Act of 1964, which prohibited discrimination based on race, color, sex, religion, and national origin.²⁴⁵ An important section of the Civil Rights Act is Title VII.²⁴⁶ Title VII of the Civil Rights Act of 1964 specifically prohibits gender-

241. Harooni et al., *supra* note 239 (“By the end of 2013 a total of 103 countries had ratified [some] maternity protection[s].”).

242. *Civil Rights Movement Timeline*, HIST. (Jan. 19, 2021), <https://www.history.com/topics/civil-rights-movement/civil-rights-movement-timeline> [<https://perma.cc/L3GQ-Z6KY>] (“The civil rights movement was an organized effort by Black Americans to end racial discrimination and gain equal rights under the law. It began in the late 1940s and ended in the late 1960s.”).

243. *See, e.g., Montgomery Bus Boycott*, HIST. (Jan. 21, 2021), <https://www.history.com/topics/black-history/montgomery-bus-boycott> [<https://perma.cc/GV2S-LLY2>] (showing the fight for equal rights progressed through a yearlong boycott of city buses in 1955 at Montgomery, Alabama, to protest segregated seating after Rosa Parks was arrested for refusing to give her seat to a white man); *see also March on Washington*, HIST. (Jan. 14, 2021), <https://www.history.com/topics/black-history/march-on-washington> [<https://perma.cc/9ALX-LNZF>] (describing a protest of 250,000 people in front of the Lincoln Memorial advocating for the civil rights of African Americans where Martin Luther King had his “I Have A Dream” speech).

244. *See Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954) (holding segregation in public schools was a violation of equal protection under the Fourteenth amendment); *see also* Exec. Order No. 9981, 13 Fed. Reg. 4313 (July 28, 1948) (“It is hereby declared to be the policy of the President that there shall be equality of treatment and opportunity for all persons in the armed services without regard to race, color, religion or national origin.”).

245. 42 U.S.C. § 1981 (1964) (current version at 42 U.S.C. § 1981 (2018)) (“All persons within the jurisdiction of the United States shall have the same right in every State and Territory . . . to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens . . .”).

246. 42 U.S.C. § 2000e et seq. (1964) (current version at 42 U.S.C. § 2000e et seq. (2018)) (prohibiting employers from firing, hiring, or depriving employees of opportunities based on their race, color, religion, sex, or national origin).

based discrimination in employment.²⁴⁷

Supreme Court cases have held women are not discriminated against for their pregnancy—they are discriminated against for their sex.²⁴⁸ However, there are two exceptions under Title VII that allow an employer to discriminate: (1) the bona fide occupational qualification defense and (2) the business necessity defense.²⁴⁹

The bona fide occupational defense is applied to facially *discriminatory* policies where the defendant must prove that the essence of the job and the essence of the business requires a specific gender.²⁵⁰ The analysis requires proof that the job requires a person of specific gender, religion, or ethnicity, and that such requirement is reasonably necessary to the regular business functions of the employer.²⁵¹ In *Int'l Union v. Johnson Controls, Inc.*, a battery manufacturer banned women “capable of bearing children” from jobs involving actual or potential lead exposure.²⁵² Employees in those positions reported high blood lead levels considered critical levels by OSHA for workers who wishes to have a family.²⁵³ The employer relied on scientific evidence that lead

247. See, e.g., 42 U.S.C. § 2000e-2 (1964) (current version at 42 U.S.C. § 2000e-2 (2018)) (“It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.”).

248. See, e.g., *Young v. United Parcel Serv.*, 575 U.S. 206, 210 (2015) (“Title VII’s prohibition against sex discrimination applies to discrimination based on pregnancy. . . . [Thus] employers must treat all ‘women affected by pregnancy . . . the same for all employment related purposes . . . as other persons affected but similar in their ability or inability to work.’”).

249. See 42 U.S.C. § 2000e-2(e)(1) (2018) (“[I]t shall not be an unlawful employment practice for an employer to hire and employ employees . . . on the basis of his . . . sex . . . in those certain instances where . . . sex . . . is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise . . .”); see also 42 U.S.C. § 2000e-2(k)(1)(a)(i) (2018) (“An unlawful employment practice based on disparate impact is established under this subchapter only if—(i) a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity; . . .”).

250. See, e.g., *Int'l Union v. Johnson Controls, Inc.* 499 U.S. 187, 198–200, 203 (1991) (noting a facially discriminatory policy that prohibited women from working unless they had medical documentation of infertility will only qualify as a BFOQ if the job qualification relates to “the ‘essence’ or the central mission of the employer’s business . . .”).

251. 42 U.S.C. § 2000e-2(e)(1) (2018).

252. 499 U.S. 187, 190, 221.

253. See *id.* at 191–92 (stating employees reported blood lead levels in excess of 30 micrograms per deciliter, which is considered a critical level for a worker who wishes to have a

exposure resulted in a high rate of abortion, and the purposes of their exclusionary policy was to prevent tort liability from prenatal injuries.²⁵⁴ The Court held the exclusionary policy was sex discrimination and was in violation of Title VII of the Civil Rights Act of 1964.²⁵⁵

The business necessity defense is applied to facially *neutral* policies.²⁵⁶ The defense is a concept created by the courts that allows gender-based discrimination when it is necessary to protect the employer's commercial interests.²⁵⁷ A requirement may be put in place for minimum competency or physical requirements for a job.²⁵⁸ However, a facially neutral requirement can have a discriminatory effect.²⁵⁹ When a requirement has a discriminatory effect, the employer has the burden of proof to show the requirement is necessary to do the job.²⁶⁰

In *Dothard v. Rawlinson*, the Alabama Board of Corrections required correctional counselor applicants to meet a minimum height requirement of 5 feet 2 inches and minimum weight requirement of 120 pounds.²⁶¹ The primary duty of a correctional counselor was to maintain security and

family); *see also* 29 U.S.C. § 653(b)(4) (2018) (complying with OSHA standards is not a defense for a state tort or criminal liability).

254. 499 U.S. 187, 191–202.

255. *See id.* at 202, 207, 211 (“Johnson Controls’ fear of prenatal injury, no matter how sincere, does not begin to show that substantially all of its fertile women employees are incapable of doing their jobs. . . . Congress in the PDA prohibited discrimination on the basis of a woman’s ability to become pregnant. We do no more than hold that the PDA means what it says. It is no more appropriate for the courts than it is for individual employers to decide whether a woman’s reproductive role is more important to herself and her family than her economic role. Congress has left this choice to the woman as hers to make.” Thus, while discrimination on the basis of sex has been allowed due to safety concerns it is only in limited circumstances where there is a high correlation between sex and ability to perform job).

256. *See, e.g., id.* at 195–97 (finding Johnson’s policy is not neutral because it applies explicit discrimination to women and not men and therefore the policy can only be defended as a BFOQ—a more stringent standard than business necessity).

257. *See, e.g., id.* at 194 (noting how courts analyze and decide whether neutral policies that have a discriminatory effect on a certain class are justified under business necessity—a more lenient standard for the employer than the statutory BFOQ defense).

258. *See, e.g., Dothard v. Rawlinson*, 433 U.S. 321, 329–31 (1977) (analyzing a facially neutral policy on height and weight requirements under business necessity).

259. *See, e.g., id.* at 329–30 (recognizing a facially neutral policy that requiring height and weight requirements for a job had a discriminatory effect on women because it excluded “41.13% of the female population while excluding less than 1% of the male population.”).

260. *Id.* at 329.

261. *Id.* at 323–24.

control inmates in Alabama's four all-male maximum security penitentiaries, maximum security prison for women, youth center, honor camp, state cattle ranch, and nine work release centers which includes one for women.²⁶² The Alabama Board of Corrections reasoned the height and weight requirements were job related.²⁶³ Three-fourths of the Correctional Counselors worked at the four all-male maximum security penitentiaries, and their daily duties involved a large number of strip searches for contraband when prisoners re-entered the prison buildings after working at the penitentiary's farm.²⁶⁴ The height and weight requirement disproportionately discriminated against women.²⁶⁵ The height requirement excluded 33.29% of Alabama's female population while only excluding 1.28% of men.²⁶⁶ The weight requirement excluded 22.29% of women and only 2.35% of men.²⁶⁷ Alabama's requirements combined would exclude 41.13% of the total female population while excluding less than 1% of the male population.²⁶⁸

To establish a prima facie case of discrimination, a plaintiff needs to show that the facially neutral standard selects applicants for hire in a discriminatory pattern.²⁶⁹ Upon a finding that the employment standards are discriminatory in effect, the burden of proof then shifts to the employer to show that any given requirement has a "manifest relationship to the employment in question."²⁷⁰ If the employer proves that requirements are job related, the plaintiff must show that other selection devices, without a similar discriminatory effect, would also serve the

262. *Id.* at 326–327 (explaining when the suit was in the District Court, fifty-six women were correctional counselors out of the total 435 positions, and women could only compete equally for twenty-five percent of the available jobs with men).

263. *Id.* at 330–331 (discussing how if the Board had brought sufficient evidence to show the height and weight requirements were essential to job performance, they could have fully satisfied Title VII).

264. *Id.* at 326.

265. *See id.* at 328–29 (examining the exclusionary effects of the policy and noting it severely impacted and excluded over forty percent of women).

266. *Id.* at 329 (analyzing national statistics to emphasize how discriminatory and baseless height and weight requirements are for female prison guards).

267. *Id.*

268. *Id.* at 329–30.

269. *Id.* at 328–29 (“In enacting Title VII, Congress required ‘the removal of artificial, arbitrary, and unnecessary barriers to employment’”).

270. *Id.* at 329.

employer's legitimate interest.²⁷¹

2. *Pregnancy Discrimination Act (PDA)*

In 1978, the PDA amended Title VII of the Civil Rights Act of 1964 to incorporate pregnancy, childbirth, and other related medical conditions.²⁷² The PDA does not require employers to provide reasonable accommodations to pregnant women.²⁷³ However, federal courts have required accommodations.²⁷⁴ Moreover, a recent Supreme Court decision held pregnant employees in certain positions can ask for accommodations under Title VII or ADA if their employer affords accommodations to other employees with limitations.²⁷⁵ The Supreme Court relied on reasoning based on the second clause of the PDA to afford certain reasonable accommodations to pregnant women: “women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, as other persons not so affected by similar in their ability or inability to work.”²⁷⁶

In *Young v. United Parcel Service*, a pregnant part-time female driver for United Parcel Service (UPS) sought accommodations based on a doctor's order stating she could not lift more than twenty

271. *Id.*

272. 42 U.S.C. § 2000e(k) (2018); see *Newport News Shipbuilding & Dry Dock Co. v. EEOC*, 462 U.S. 669, 670, 677 (1983) (finding that Congress disapproved of the Court's holding in *General Electric Company v. Gilbert*—which held the exclusion of disabilities caused by pregnancy in an employer's disability did not amount to discrimination based on sex—when it passed the Pregnancy Discrimination Act). *Contra* *Gen. Elec. Co. v. Gilbert*, 429 U.S. 125, 145–46 (1976) (holding that Title VII, as enacted, did not categorize discrimination on the basis of pregnancy as a form of sex discrimination).

273. See *Newport News Shipbuilding & Dry Dock Co.*, 462 U.S. at 687, 690 n.5 (1983) (Rehnquist, J. dissenting) (asserting pregnant women should be treated equally in their ability or inability to work. However, the Act does not require employees to provide accommodations to pregnant women unless employers are providing accommodations for other employees with the same ability or inability to work).

274. See, e.g., *Townsend v. Town of Brusly*, 421 F. Supp. 3d 352, 366–67 (5th Cir. 2019) (ruling that the employer's failure to accommodate plaintiff due to her pregnancy was a violation of the PDA).

275. See *Young v. United Parcel Serv.*, 575 U.S. 206, 231 (2015) (“[T]here is a genuine dispute as to whether UPS provided more favorable treatment to at least some employees whose situation cannot reasonably be distinguished from *Young's*.”).

276. 42 U.S.C. § 2000e(k) (2018); see *Young*, 575 U.S. at 210 (citing the statutory language from 42 U.S.C. § 2000e(k), which defines the terms “because of sex” and “on the basis of sex”).

pounds.²⁷⁷ After her request, UPS let Young go because her pregnancy-related lifting restriction was (1) not an “on the job” injury, (2) she did not lose her Department of Transportation certification, and (3) nor was disabled as defined under the Americans with Disabilities Act.²⁷⁸

The parties disagreed on the meaning of the second clause of the PDA.²⁷⁹ UPS argued the second clause merely clarified the first clause defining sex discrimination to include pregnancy discrimination and that a PDA plaintiff asserting discrimination in accommodations must show her employer discriminated against pregnant women within a facially neutral category.²⁸⁰ In contrast, Young argued the second clause meant she only needed to show UPS accommodated one or two workers who were similarly situated to her.²⁸¹ The Court did not adopt either interpretation and held that a denial of an accommodation may be *prima facie* evidence of disparate treatment under the second clause of the PDA.²⁸²

The Court approached the analysis as a disparate treatment claim, where an employer intentionally treated a plaintiff-employee less favorably than employees with the plaintiff’s qualifications but outside the plaintiff’s protected class.²⁸³ A plaintiff may prove disparate treatment through direct evidence of a workplace decision relied expressly on a protected characteristic or by using the burden-shifting framework set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).²⁸⁴ To make a *prima facie* case applying the burden-shifting

277. See *Young*, 575 U.S. at 211 (highlighting UPS’s failure to accommodate Young’s lifting restrictions. “Young consequently stayed home without pay during most of the time she was pregnant and eventually lost her employee medical coverage.”).

278. Cf. *id.* at 211–12 (indicating UPS provided accommodations for other employees who they believed suffered from employee-related injuries or consequences).

279. *Id.* at 219.

280. See *id.* at 220 (deciphering Congress’ intent in enacting the Pregnancy Discrimination Act. Specifically, the Court agrees that Congress did not intent to provide pregnant employees an “unconditional most-favored-nation status”).

281. See *id.* (contending how a plaintiff may utilize circumstantial evidence to rebut an employer’s legitimate and nondiscriminatory purpose for treating individuals inside protected class differently compared to those outside a protected class).

282. *Id.* at 229.

283. See *id.* at 212 (citing the rule from its precedent in *McDonnell Douglas Corp. v. Green*, where the Court looks to the disparate treatment of the employee to determine whether the employer purposely treated another employee unfairly without justification).

284. See *id.* at 212–13 (arguing the dissent’s interpretation of the PDA is inconsistent with Congress’ intent to overrule *Gilbert*).

framework, the plaintiff must (1) belong to the protected class, (2) she must have sought accommodation from her employer, (3) the employer did not accommodate her, and (4) the employer accommodated others similar in their ability or inability to work.²⁸⁵ Once there is a prima facie showing of disparate treatment, the employer must provide a legitimate, non-discriminatory reason for treating employees outside the protected class better than those within the protected class.²⁸⁶ After the employer provides a reason, the employee has an opportunity to prove by a preponderance of the evidence that reason offered by the employer is a pretext for discrimination.²⁸⁷

Case law has only discussed accommodations for women who are pregnant at the time they are seeking accommodations.²⁸⁸ Notably, accommodations are not only limited to during the pregnancy, but must also be extended to postpartum because women suffer from temporary health conditions after childbirth.²⁸⁹ Even though reasonable accommodations have been required by courts through PDA, it is not a blank check for all accommodations, and courts have been careful to extend.²⁹⁰

285. *Id.* at 229.

286. *Id.* at 213.

287. *Id.* (holding that Congress may not have intended any deviation from disparate-treatment law through the enactment of the Pregnancy Discrimination Act).

288. *See* Gen. Elec. Co. v. Gilbert, 429 U.S. 125, 136 (1976) (“Pregnancy is, of course, confined to women, but it is in other ways significantly different from the typical covered disease or disability. The District Court found that it is not a ‘disease’ at all, and is often a voluntarily undertaken and desired condition We do not therefore infer that the exclusion of pregnancy disability benefits from petitioner’s plan is a simple pretext for discriminating against women.”); *see also* Young, 575 U.S. at 217 (analyzing how the District Court believed UPS’s failure to accommodate for Young’s restrictions in pregnancy could not compare to employees who fell on the job, or suffered from another form of disability).

289. *See* Kelly v. First Data Corp., No. 1:19-CV-372, 2020 WL 419440, at *15 (S.D. Ohio Jan. 27, 2020) (elaborating how Plaintiff alleged sufficient facts amounting to a valid claim against her employer for failure to accommodate her postpartum medical issues under the Americans with Disabilities Act).

290. *See* Gen. Elec. Co., 429 U.S. at 145–46 (finding there was no facial gender-based discrimination in refusing to constitute pregnancy as a disability). *But see* Newport News Shipbuilding & Dry Dock Co. v. EEOC, 462 U.S. 669, 685 (1983) (“The Pregnancy Discrimination Act now has made clear that, for all Title VII purposes, discrimination based on a woman’s pregnancy is, on its face, discrimination because of her sex.”); *see also* Young, 575 U.S. at 210 (reiterating the concept discussed in *Newport News Shipbuilding & Dry Dock Co. v. EEOC*, where the Court purported that Congress’ intention in passing the PDA was to overturn the holding and the reasoning in *Gilbert*); *cf.* Townsend v. Brusly, 421 F. Supp. 3d 352, 366 (5th Cir. 2019) (finding

3. *Americans with Disabilities Act (ADA)*

The Americans with Disabilities Act of 1990 (ADA) states a disability is a physical or mental impairment that substantially limits one or more major life activities.²⁹¹ Pregnancy is not a disability that requires accommodation for the purposes of the ADA.²⁹² However, related medical conditions resulting from the pregnancy or childbirth may qualify as a disability that requires accommodation under the ADA.²⁹³

A reasonable accommodation for a pregnancy-related disability may include redistributing marginal or non-essential functions that a pregnant worker cannot perform, or modifying how a marginal function is performed, such as occasional lifting of objects.²⁹⁴ Workplace policies may be adapted to fit the necessities of a pregnant employee such as increasing the frequency of breaks or providing drinks at a workstation where normally prohibited by workplace policies.²⁹⁵ Additional reasonable accommodations may include, but are not limited to, modifying work schedules, teleworking where feasible, granting additional leave unrelated to an employer's sick leave policy, purchasing or modifying equipment, and temporarily reassigning an employee to a light duty.²⁹⁶ Pregnancy and related medical conditions do not, absent

Defendant's argument that they were motivated by state law to be weak and determining that "a reasonable jury could find that cost was a factor, as the defendants lack the same financial incentive to continue to employ pregnant employees in some capacity and had a countervailing incentive to replace them.").

291. 42 U.S.C. § 12102(1)(A) (2018).

292. *See* 42 U.S.C. § 12102(1) (2018) ("The term disability means, with respect to an individual—(A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment (as described in paragraph (3)).").

293. *See Accommodation and Compliance: Pregnancy*, JOB ACCOMMODATION NETWORK, <https://askjan.org/disabilities/Pregnancy.cfm> [<https://perma.cc/5RL5-M3R5>] (illustrating examples of conditions resulting from pregnancy applicable under the ADA that can be accommodated such as: "gestational diabetes, back pain, high blood pressure (known as preeclampsia), urinary tract infections, severe dehydration, and depression.").

294. *See id.* (suggesting employers can assign lighter duties to their pregnant employees in lieu of laying them off).

295. *See, e.g., id.* (listing various examples of workplace modifications, such as providing a flexible schedule or allowing mini refrigerators as a means to accommodate pregnant women and the side effects of pregnancy).

296. *See id.* (suggesting that various factors can affect or worsen a women's side effects due to pregnancy such as the temperature at the workplace, standing for too long, or performing frequent heavy lifting).

unusual circumstances, constitute a physical impairment under the ADA.²⁹⁷

4. *Family and Medical Leave Act (FMLA)*

In 1993, Congress enacted the Family and Medical Leave Act (FMLA), which entitles employees to leave to care for their child while accommodating an employer's business interests.²⁹⁸ FMLA allows both fathers and mothers to take leave for child rearing because it is important for the development of children and the family unit.²⁹⁹ Additionally, Congress found the number of single-parent households in which the single parent or both parents work is increasing significantly.³⁰⁰

Leave requirement

An eligible employee shall be entitled to a total of 12 workweeks of leave during any 12-month period for one or more of the following:

(A) Because of the birth of a son or daughter and in order to care for such son or daughter.

(B) Because of the placement of a son or daughter with the employee for adoption or foster care.³⁰¹

Under FMLA, every eligible employee working for an employer with fifty or more employees within seventy-five miles of the worksite has the right to:

1. a twelve-week leave of absence without pay
2. during any twelve-month work period

297. *E.g.*, *Villareal v. J.E. Merit Constructors*, 895 F. Supp. 149, 152 (S.D. Tex. 1995) (reasoning that pregnancy does not constitute a disability under the ADA because pregnancy discrimination is covered by both Title VII of the Civil Rights Act of 1964 and the Pregnancy Discrimination Act).

298. 29 U.S.C. § 2601(b) (2018) (highlighting how the FMLA “minimizes the potential for employment discrimination of the basis of sex” by providing leave for both males and females in regard to childcare).

299. 29 U.S.C. § 2601(a)(2) (2018) (recognizing that due to the nature of gender roles, many fathers may not seek leave for childcare. The purpose of the FMLA is to promote fathers, along with mothers, to take leave to create a balance between work and family).

300. 29 U.S.C. § 2601(a)(1) (2018) (recognizing that in all households, working parents have become the norm, requiring a revision in the law to adapt to these societal changes).

301. 29 U.S.C. § 2612 (2018).

3. for childbirth, to care for a newborn child, adoption, or care for spouse or child if they have a serious health condition, among others.³⁰²

To be eligible, the individual must have worked for the employer for one-year minimum and for at least 1,250 hours.³⁰³ An employer may require a certification by a health care provider certifying the qualifying event.³⁰⁴ The certification must include the date on which the serious health condition commenced, the duration of the condition, appropriate medical facts, and a statement that the employee is needed to care for their child and an estimate of the time needed.³⁰⁵ This certification differs from the certification in Mexico because it requires the employee to state the amount of time off they will take.³⁰⁶ Mexico provides a statutory amount of days for women to have as leave, and they are unable to extend that amount.³⁰⁷

Women can take leave through FMLA during pregnancy to care for their newborn and even when their child is an adult and has a serious medical condition.³⁰⁸ However, this law only applies to employers with more than fifty employees, and the employee must have worked at the company for a year.³⁰⁹ The reality is that only about 50% of employees

302. 29 U.S.C. § 2612(a)(1) (2018). 29 U.S.C. § 2611(2)(B) (2018).

303. 29 U.S.C. § 2611(2)(A) (2018).

304. *See* 29 U.S.C. § 2613(a) (2018) (describing the protocol employers may take if they doubt the authenticity of an employee's certification. For example, the employer has the right to request the employee to obtain a second opinion of another health care provider to confirm the eligibility for leave).

305. *See generally* 29 U.S.C. § 2613(b) (2018) (indicating the required information employees must provide their employee to constitute sufficient certification for leave).

306. *See* Roberto Rosas, *Maternity Rights in Mexico: With References to the Spanish and American Codes*, 6 J. L. & SOC. CHALLENGES 151, 156 (2004) (advocating for a change in American law towards maternity leave. Specifically analyzing Mexican law and Spanish law to demonstrate the success the countries have experienced and demonstrating that the United States can experience this through reformation of their laws).

307. *See id.* (recognizing that Mexico has a forty-two day prenatal period of leave with pay).

308. *See* 29 U.S.C. § 2612(1) (2018) (providing the various circumstances which may invoke the need for an employee to take leave).

309. *See, e.g.*, 29 U.S.C. § 2611(4) (2018) (defining employer as any person engaged in commerce or in any industry or activity affecting commerce who employs 50 or more employees); 29 U.S.C. § 2611(2)(A) (2018) (defining eligible employee as someone who has been employed for at least twelve months by the employer).

in the workforce are covered by FMLA.³¹⁰ A pregnant employee may also use the leave for prenatal care and incapacity related to pregnancy.³¹¹

Similarly, fathers may take leave for the birth of the child and to care for his spouse after the birth of the child.³¹² They may also take leave to care for an adult child if the situation meets the requirements of the statute.³¹³ Unfortunately, only a small percentage of men take FMLA leave due to gender stereotypes.³¹⁴ Gender stereotypes prevent men from taking leave because they are expected to work long hours and do so even after the birth of the child.³¹⁵ In 1995, thirteen percent of men covered by FMLA took leave.³¹⁶ Eighteen years later, the percentage has only increased to sixteen.³¹⁷ Congress found caretaking often falls on women, and the numbers show that despite the enactment of FMLA, it still does.³¹⁸

310. See generally *Guide to Pregnancy Discrimination in Employment*, NAT'L ADVOCATES FOR PREGNANT WOMEN 4, <https://mk0nationaladvoc87fj.kinstacdn.com/wp-content/uploads/2020/07/06CFinalDraft.pdf> [<https://perma.cc/P8UQ-WW5J>] (noting the realities of FMLA including that not the entire American workforce is covered by FMLA).

311. See *Frequently Asked Questions and Answers About the Revisions to the Family and Medical Leave Act*, U.S. DEP'T OF LAB., <https://www.dol.gov/agencies/whd/fmla/final-rule/faq> [<https://perma.cc/2HFL-T9F5>] (summarizing how under the FMLA, a pregnant woman is authorized to take leave for various circumstances).

312. 29 U.S.C. § 2612(a)(1) (2018).

313. See 29 U.S.C. § 2612 (2018) (laying out the various parameters and requirements considered when an employee desires to take leave from work. For example, an employee must provide their employer with not less than thirty days' notice before taking leave if the necessity for leave is foreseeable).

314. See Kelli K. Garcia, *The Gender Bind: Men as Inauthentic Caregivers*, 20 DUKE J. GENDER L. & POL'Y 1, 3 (2012) ("Even when company policies offer equitable family leave benefits for men and women, the workplace culture often discourages men from using these benefits.").

315. See, e.g., *id.* at 24 (treating men as secondary caregivers often results in job inflexibility and overworking for new fathers).

316. *A Look at the U.S. Department of Labor's 2012 Family and Medical Leave Act Employee and Worksite Surveys*, NAT'L P'SHIP FOR WOMEN & FAMS. 1 (Feb. 2013), <https://www.nationalpartnership.org/our-work/resources/economic-justice/fmla/dol-fmla-survey-key-findings-2012.pdf> [<https://perma.cc/C8DK-LZQZ>] (depicting a slow growth rate of men taking leave in the last twenty years since FMLA's enactment).

317. See *id.* (showing the percentage of men who took leave under FMLA rose to fourteen percent in 2000 and sixteen percent in 2012).

318. See 29 U.S.C. § 2601(a)(5) (2018) ("Due to the nature of the roles of men and women in our society, the primary responsibility for family caretaking often falls on women, and such responsibility affects the working lives of women more than it affects the working life of men.");

A pregnant employee and spouse working for an employer subject to FMLA has a right to maintain her health insurance coverage through the employer during time off.³¹⁹ The FMLA ensures that the working woman's health benefits remain intact during an absence from work.³²⁰ The employer should either: (1) restore the employee's position once leave is over, or (2) place the employee in an equivalent position with equivalent employment benefits unless the employee is in the top ten percent of the workforce.³²¹ If in a key position, the employer might notify that the employee is unable to take leave.³²²

Notably, a leave of absence granted under FMLA is without pay.³²³ An employee may elect, or the employer may require the employee to use paid vacation leave, personal leave, or medical and sick leave for any part of the twelve weeks.³²⁴ Even though the opportunity to spend more time with one's child is available, unpaid leave puts a parent in a difficult financial situation.³²⁵ Raising children is expensive, and some parents are unable to afford the unpaid time off.³²⁶

see also NATL' P'SHIP FOR WOMEN & FAMS., *supra* note 316 (reporting how, despite the FMLA helping both men and women manage the dual demands of family and work, fifty-six percent of women took leave in 2011).

319. *E.g.*, 29 U.S.C. § 2614(c) (2018) (mandating employers subject to FMLA maintain coverage under any health group plan as long as the employee takes leave at the same rate it would if the employee were actively working).

320. *See id.* (stating an employer may stop an employee's FMLA benefits if they fail to return after the duration of their leave expires).

321. *See* 29 U.S.C. § 2614(a–b) (2018) (explaining that the statute should not be misinterpreted to mandate an employer provide an employee with a better position or benefit they would have had if the leave had not been taken).

322. *See* 29 U.S.C. § 2614(b) (2018) (defining key employees as the top ten percent highest paid salaried employees within seventy-five miles of the facility at which they are employed).

323. *Cf.* 29 U.S.C. § 2612(d)(1) (2018) (maintaining employers under the FMLA are not required to offer paid leave and even if they do, they are not required to offer paid leave for the full twelve-week period).

324. 29 U.S.C. § 2612(d)(2)(B) (2018) (providing eligible employees the ability to substitute their non-paid leave with other methods of paid days off that employers can give).

325. *See* NATL' P'SHIP FOR WOMEN & FAMS., *supra* note 316, at 2 (“A growing share of workers need leave but do not take it—most commonly because unpaid leave is unaffordable—and women bear a disproportionate burden. . . . Nearly half of those who were FMLA-eligible and needed but did not take leave . . . cited lack of pay as the reason.”).

326. *See id.* (discussing how Forty-six percent of workers indicated lack of pay as the reason they did not take needed leave).

B. Breastfeeding

Eighty-four percent of babies in the United States are initially breastfed.³²⁷ When babies are six months old, that percent lowers to fifty-eight percent.³²⁸ Many mothers stop breastfeeding early because of a variety of factors such as unsupportive work policies and lack of parental leave.³²⁹ Health professionals promote breastfeeding to improve infant health because it contains antibodies that protect infants from bacteria and viruses.³³⁰ All fifty states have laws allowing mothers to breastfeed in any private or public place.³³¹ Many states have laws that require lactation rooms in public buildings and require employers to provide them in their businesses.³³²

Until 2010, federal protection for breastfeeding had been limited.³³³ The Patient Protection and Affordable Care Act (PPACA) amended Section 7 of the Fair Labor Standards Act (FLSA) providing nursing mothers protection while at work.³³⁴ PPACA requires employers to provide the following:

327. *Nationwide Breastfeeding Goals*, CTR. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/breastfeeding/data/facts.html> [<https://perma.cc/JWA8-B93C>] (last updated Sept. 28, 2020).

328. *Id.*

329. *Id.* (emphasizing how a majority of mothers reported they did not breastfeed for as long as they intended to due to many factors including cultural norms adverse to breastfeeding, lack of family support, and unsupportive hospital practices/policies).

330. *Breastfeeding State Laws*, NAT'L CONF. STATE LEGISLATURES (June 9, 2020), <https://www.ncsl.org/research/health/breastfeeding-state-laws.aspx> [<https://perma.cc/5ESG-3KSV>] (reporting fewer ear infections, respiratory infections, and urinary tract infections as benefits breastfed children receive).

331. *Id.*

332. *See, e.g., id.* ("Several states have unique laws related to breastfeeding. For instance, Puerto Rico requires shopping malls, airports, public service government centers and other select locations to have accessible areas designed for breastfeeding and diaper changing that are not bathrooms. Louisiana's law requires certain state building to provide suitable areas for breastfeeding and lactation, and Illinois requires at least one mother's lactation room in the State Capitol.").

333. *See, e.g.,* Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, 124 Stat. 119 (2010) (categorizing the newly enacted requirements that grant mothers federal protections for breast feeding); *see also, e.g.,* NAT'L CONF. STATE LEGISLATURES, *supra* note 330 ("President Obama signed the Affordable Care Act (ACA) on March 30, 2010. . . . Among many provisions . . . [it] require[d] an employer to provide reasonable break time for an employee to express breast milk for her nursing child . . .").

334. Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, 124 Stat. 119, 577 (2010); *see also* Marcy Karin & Robin Runge, *Breastfeeding and a New Type of*

Reasonable break time for nursing mothers.

(r)(1) An employer shall provide—

(A) Reasonable break time for an employee to express breast milk for her nursing child for one year after the child's birth each time such employee has need to express the milk; *and*

(B) A place, other than a bathroom, that is shielded from a view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.³³⁵

A space may be temporarily converted to a lactation room for when the employee needs it, and a bathroom is not a permissible lactation room.³³⁶

If an employer violates the requirements of 29 U.S.C. § 207(r), the Department of Labor may seek injunctive relief in federal district court and may obtain reinstatement and lost wages for the employee.³³⁷ However, courts have not decided whether there is a private right of action under the law.³³⁸

Employment Law, 63 CATH. U. L. REV. 329, 330 (2014) (arguing instead of creating labor standards or antidiscrimination laws that protect all working mothers, Congress created a law that encourages low-income women to breastfeed).

335. 29 U.S.C. § 207(r)(1) (2018); Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, 124 Stat. 119, 577 (2010). *But see* 29 U.S.C. § 207(r)(3) (2018) (limiting the requirement in (r)(1) by stating employers with less than 50 employees are exempt if compliance would impose undue hardship).

336. *See Fact Sheet #73: Break Time for Nursing Mothers Under the FLSA*, U.S. DEP'T OF LABOR (Apr. 2018), <https://www.dol.gov/agencies/whd/fact-sheets/73-flsa-break-time-nursing-mothers> [<https://perma.cc/6A2Y-NXHR>] (“Employers are also required to provide ‘a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.’”).

337. Reasonable Break Time for Nursing Mothers, 75 Fed. Reg. 80073, 80078 (Dec. 21, 2010) (“For example, if an employer terminates a nursing mother employee because she takes breaks to express milk that she is entitled to under the FLSA, or because she has informed her employer that she intends to take breaks to express breast milk, this would be considered a violation of 29 U.S.C. 15(a)(2) (i.e., an unlawful violation of section 7(r)). In such a case, the Department could pursue injunctive relief in federal district court and seek reinstatement and lost wages for the employee.”); 29 U.S.C. § 216 (illustrating the consequence employers may face if they fire a nursing mother because she takes a break to express breast milk).

338. *See, e.g., Miller v. Roche Sur. & Cas. Co., Inc.*, 502 F. Appx. 891, 894 (11th Cir. 2012) (suggesting a plaintiff's claim that her employer terminated her because it did not give her a time and place to express milk did not clearly address whether a private action or claim existed under the FLSA); *see also, e.g., EEOC v. Vamco Sheet Metals Inc.*, No. 13 Civ. 6088, 2014 WL 2619812, at *6–7 (S.D.N.Y. June 5, 2014) (identifying the lack of support of a private right of action related to a private right of action for violations of Section 207(r) of the FLSA. “The only other

In the last year, federal law now requires public buildings to have a lactation room.³³⁹ A lactation room is a “hygienic place, other than a bathroom, that—is shielded from view; is free from intrusion; and contains a chair, a working surface, and, if the public building is otherwise supplied with electricity, an electrical outlet.”³⁴⁰ A public building is not required to provide a lactation room to the public if “the public building—does not contain a lactation room for employees who work in the building; and does not have a room that could be repurposed as a lactation room or a space that could be made private using portable materials, at a reasonable cost”; or “new construction would be required to create a lactation room in the public building and the cost of such construction is unfeasible.”³⁴¹

The statute is the fruit of the Fairness for Breastfeeding Mothers Act of 2019,³⁴² which advocates for lactation rooms in public buildings.³⁴³ This legislation, “Fairness for Breastfeeding Mothers Act,” had been introduced every year since 2016; it was not until recently it was enacted into law.³⁴⁴

Employers who fire a lactating employee due to her need to express milk during work hours will be subject to a sex discrimination claim under Title VII of the Civil Rights Act of 1964 as amended by the Pregnancy Discrimination Act.³⁴⁵ The Fifth Circuit held lactation is a related medical condition of pregnancy for purposes of the PDA, 42

court[*Miller v. Roche Sue. & Cas. Co., Inc.*] to entertain a § 207(r) claim brought by an individual reached the merits and dismissed the claim without addressing whether a private cause of action existed. . . . In any event, this issue need not be decided now.”).

339. See 40 U.S.C. § 3318 (Supp. I 2020) (mandating lactation rooms in public buildings be available for public use to allow breastfeeding mothers to express breast milk when necessary).

340. 40 U.S.C. § 3318(a)(3)(A–C) (Supp. I 2020).

341. 40 U.S.C. § 3318(a)(c)(A–C) (Supp. I 2020).

342. Fairness for Breastfeeding Mothers Act of 2019, Pub. L. No. 116-1130, 133 Stat. 1032 (2019).

343. See *id.* (defining the parameters for lactation rooms in public buildings in order to comply with the law).

344. See, e.g., Fairness for Breastfeeding Mothers Act of 2016, H.R. 4439, 114th Cong. (2nd Sess. 2016) (showing the first time this legislation was introduced); see also, e.g., Fairness for Breastfeeding Mothers Act of 2017, S. 1497, 115th Cong. (1st Sess. 2017) (noting there were subsequent attempts to enact the legislation).

345. See 42 U.S.C. § 2000e(k) (2018) (acknowledging discrimination on the basis of sex includes discrimination on the basis of pregnancy or related medical conditions).

U.S.C. § 2000e(k).³⁴⁶ Lactation is the physiological process of secreting milk from mammary glands and is directly caused by hormonal changes associated with pregnancy and childbirth.³⁴⁷ Lactation is a physiological result of being pregnant and bearing a child.³⁴⁸ Allowing an employee to be fired for this reason imposes a burden on women that men could never suffer.³⁴⁹ An employer cannot terminate a female employee based on the fact that she is lactating and wants to express milk at work.³⁵⁰ This reasoning has been applied by courts within the 1st Circuit,³⁵¹ 2nd Circuit,³⁵² 9th Circuit,³⁵³ 10th Circuit,³⁵⁴ 11th Circuit,³⁵⁵ and the D.C.

346. *See* EEOC v. Hous. Funding II, Ltd., 717 F.3d 425, 428 (5th Cir. 2013) (qualifying lactation and breastfeeding as “medical conditions” covered under Title VII).

347. *Id.* (defining lactation to support its conclusion that it is a medical condition of pregnancy).

348. *Id.* (explaining lactation as a natural process in conjunction with childbirth and should be a protected right for all mothers).

349. *Id.*

350. *Id.* at 430 (holding an employer who fired a woman because she was lactating and needed to express milk at work constituted a prima facie case of sex discrimination).

351. *Smith v. F.W. Morse & Co.*, 76 F.3d 413, 424 (1st Cir. 1996); *see, e.g.*, *Mayer v. Pro. Ambulance, LLC.*, 211 F. Supp. 3d 408, 417 (D.R.I. 2016) (concluding a woman is allowed pumping accommodations and cannot be disciplined or terminated from her job for choosing to breastfeed); *see also, e.g.*, *Marrero v. Misesy Rest., Inc.*, Civ. No. 17-1911, 2019 WL 6833824, (D.P.R. Dec. 13, 2019) (supporting the First Circuit’s ruling in *Smith v. F.W. Morse & Co.*, that an employer cannot discriminate against or fire a female employee based on their gender or for any pregnancy related reason).

352. *Kaytor v. Elec. Boat Corp.*, 609 F.3d 537, 546, 556 (2d Cir. 2010); *see, e.g.*, *Grewcock v. Yale New Haven Health Servs. Corp.*, 293 F. Supp. 3d 272, 278 (D. Conn. 2017) (citing Second Circuit ruling in *Kaytor v. Elec. Boat Corp.*, which “prohibit[s] an employer from discriminating against an employee based on grounds of their sex or pregnancy”).

353. *See Clark v. City of Tucson*, CV 14-02543-TUC-CKJ, 2018 WL 1942771, at *15 (D. Ariz. Apr. 25, 2018) (“Discrimination because of status as a lactating mother qualifies as sex discrimination under the PDA.”); *see also Behan v. Lolo’s Inc.*, No. 17-02095, 2019 WL 1382462, at *6 (D. Ariz. Mar. 27, 2019) (emphasizing that this Court has previously reached the same conclusion as other circuit courts—including the 5th Circuit and 11th Circuit—in holding “breastfeeding falls within the ambit of ‘related medical conditions.’”).

354. *See, e.g.*, *Martin v. Canon Bus. Solutions, Inc.*, No. 11-cv-02565-WJM-KMT, 2013 WL 4838913, at *8 n.4 (D. Colo. Sept. 10, 2013) (“Plaintiff’s access to facilities to express breast milk is relevant to whether Defendant discriminated against her based on her pregnancy.”).

355. *See, e.g.*, *Hicks v. City of Tuscaloosa*, 870 F.3d 1253, (11th Cir. 2017) (“We agree with the Fifth Circuit’s determination that lactation is a related medical condition and therefore covered under the PDA.”).

Circuit.³⁵⁶ However, the reasoning has not been applied by another circuit court of appeals.³⁵⁷

States have also passed legislation to promote breastfeeding and allow the express of milk during work hours.³⁵⁸ As an example, Texas found breastfeeding must be encouraged in the interests of maternal and child health and family values.³⁵⁹ Mothers are entitled to breastfeed their child or express breast milk in any location the mother's presence is authorized.³⁶⁰ Additionally, a public employer must provide a reasonable amount of break time for an employee to express breast milk each time the employee needs to express milk.³⁶¹ The public employer must also provide a room, other than a multiple user bathroom, that is shielded from view and free from intrusion from other employees and the public where the employee can express milk.³⁶² In reality, these statutes are rights without a remedy.³⁶³ The statutes fail to state how an employer will be punished if found to be in violation of the statutes to promote breastfeeding and allow women to breastfeed while at work.³⁶⁴

Furthermore, a business may represent itself as mother-friendly if they have a policy for flexible work schedules, accessible locations allowing privacy, access to a lactation room with a sink to wash hands and rinse breast pump equipment, and access to hygienic storage for breast milk.³⁶⁵ The Texas Department of State Health Services is responsible

356. *Allen-Brown v. D.C.*, 174 F. Supp. 3d 463, 478 (D.D.C. 2016) (“[A]s a matter of plain language, PDA applies to lactation” and is protected against being used as a rationale for unlawful termination).

357. *See Derungs v. Wal-Mart Stores, Inc.*, 374 F.3d 428, 437 (6th Cir. 2004) (“Therefore, to the extent that breast-feeding may be deemed to be a pregnancy-related activity, there is no protection for such an activity under Ohio Revised Code § 4112.02(G).”).

358. *See NAT’L CONF. STATE LEGISLATURES*, *supra* note 330 (“Thirty-two states[in the United States], the District of Columbia and Puerto Rico have laws related to breastfeeding in the workplace.”).

359. TEX. HEALTH & SAFETY CODE ANN. § 165.001.

360. TEX. HEALTH & SAFETY CODE ANN. § 165.002.

361. TEX. GOV’T CODE ANN. § 619.004(1).

362. TEX. GOV’T CODE ANN. § 619.004(2).

363. *See* TEX. GOV’T CODE ANN. § 619.006 (indicating since this chapter does not provide a cause of action, there is no real legal remedy available of these rights are infringed).

364. *Id.* (affirming there is no protection when these safeguards get breached).

365. TEX. HEALTH & SAFETY CODE ANN. § 165.003(a) (adding that the business must submit their policy for breastfeeding to the department for review, where the department will maintain a list of “mother-friendly” businesses for public inspection).

for adjudicating the applications and give the designation to businesses.³⁶⁶

In contrast, Mexico allows for two thirty-minute breaks to breastfeed only for the first six months of the child's life.³⁶⁷ U.S. law allows more time and flexibility to mothers when they need to pump, but an employer is not required to compensate for such breaks.³⁶⁸ The Mexican law grants the nursing mothers two breaks without reducing their salary.³⁶⁹

C. *Childcare*

Affordable and high-quality childcare is hard to find in the United States.³⁷⁰ Unlike Mexico, who provides public daycares through IMSS, the United States has a small number of daycares for children of federal employees and allows the remaining spots to be filled by non-federal employee children.³⁷¹ Additionally, the government provides day care

366. TEX. HEALTH & SAFETY CODE ANN. § 165.003(b); *Texas Directory*, TEX. MOTHER FRIENDLY WORKSITE, <http://texasmotherfriendly.org/texas-directory> [https://perma.cc/J5NT-KWDH] (reporting 3,365 worksites designated as Mother-Friendly and Breastfeeding Supporters). *See generally Texas Mother-Friendly Worksites*, BREASTMILK COUNTS <https://www.breastmilkcounts.com/working-moms/texas-mother-friendly-worksites/> [https://perma.cc/BZ8A-EK5S] (illustrating the process of application for designation, including that the application is free and the criteria to become designated can “easily and affordably be met” to be in compliance with the Texas legislature).

367. *See World Breastfeeding Week 2019: Protect Breastfeeding in the Workplace*, PAN AM. HEALTH ORG. 4 (2019) https://www.paho.org/hq/index.php?option=com_docman&view=download&category_slug=technical-briefs-breastfeeding&alias=49528-protect-breastfeeding-in-the-workplace-wbw-2019&Itemid=270&lang=en [https://perma.cc/U25M-WULS] (highlighting how breastfeeding breaks are part of international standards on maternity protection followed by numerous nations and charting out the breastfeeding break duration for countries, including Mexico and other countries in South America).

368. 29 U.S.C. § 207(r)(2) (2018).

369. Ley Federal del Trabajo [LFT], art. 170 sec. IV, Diario Oficial de la Federación [DOF] 10-04-1970, últimas reformas DOF 11-01-2021 (Mex.); PAN AM. HEALTH ORG., *supra* note 367, at 4.

370. *Cf.* Katie Riley & Belinda Luscombe, *The Childcare Crisis*, TIME (2020), <https://time.com/child-care-crisis/> [https://perma.cc/LS4A-XXDW] (“[O]ne year of infant care, on average, sets parents back as much as a year at a four-year public college, and nationally childcare costs on average between \$9,000 and \$9,600 annually. . . . Many parents spend far more.”).

371. *See Federal Workplace Child Care*, FEDWEEK, <https://ask.fedweek.com/federal-government-policies/workplace-child-care/#:~:text=Federal%20agencies%20have%20the%20authority,be%20children%20of%20federal%20employees> [https://perma.cc/JE3V-EML9] (“At least 50 percent of the children enrolled in a child care center must be children of federal employees. Remaining available slots may be open to the general public.”).

services to those in the armed forces,³⁷² members of the Senate,³⁷³ and House of Representatives.³⁷⁴ The daycares are not free of charge.³⁷⁵ For women employed in the private sector, they must rely on family for childcare or spend a large portion of the income on childcare.³⁷⁶ Employers are encouraged to provide childcare by being granted a tax credit when doing so.³⁷⁷

D. *Employment Discrimination*

Women face discrimination in the workplace despite all the laws in place to protect from it.³⁷⁸ Different agencies are responsible for receiving their claims, making investigations, and, for those cases where it is necessary, filing an appropriate lawsuit.³⁷⁹ The U.S. Equal Employment Opportunity Commission (EEOC) receives complaints for Title VII violations, and the U.S. Department of Labor (DOL) receives complaints for FMLA violations and FLSA violations for not providing

372. See 10 U.S.C. § 1791 (2018) (“The Secretary of Defense shall be responsible for the allocation of Office of the Secretary of Defense level funds for military child development programs for children.”).

373. See 2 U.S.C. § 2064 (2018) (showing how members of the Senate may be credited for payments to a day care center).

374. See 2 U.S.C. § 2062 (2018) (“The Chief Administrative Officer of the House of Representatives shall maintain and operate a child care center (to be known as the “House of Representatives Child Care Center”) to furnish pre-school child care and (subject to the approval of regulations by the Committee on House Administration) child care for school age children other than during the course of the ordinary school day . . .”).

375. See 10 U.S.C. § 1793 (2018) (alluding to the different rates for childcare based on the income of the child’s family).

376. See generally Leila Schochet, *The Child Care Crisis is Keeping Women Out of the Workforce*, CTR. FOR AM. PROGRESS (Mar. 28, 2019, 8:00 AM), <https://www.americanprogress.org/issues/early-childhood/reports/2019/03/28/467488/child-care-crisis-keeping-women-workforce/> [<https://perma.cc/7W8H-DAWZ>] (referring to the continued struggle between mothers having to choose a career or childcare).

377. See 26 U.S.C. § 45F (2018) (providing a credit up to \$150,000 per taxable year).

378. Cf. Schochet, *supra* note 376 (finding that mothers of color are overrepresented in low-wage work and experience a significant wage gap as a result of the compounded effects of gender and racial discrimination).

379. See *Protections Against Discrimination and Other Prohibited Practices*, FED. TRADE COMM’N, <https://www.ftc.gov/site-information/no-fear-act/protections-against-discrimination> [<https://perma.cc/34WZ-4MHU>] (“The laws enforced by EEOC makes it unlawful for Federal agencies to discriminate against employees and job applicants on the basis of race, color, religion, sex, national origin, disability, or age.”).

accommodations to nursing mothers.³⁸⁰

1. EEOC

The EEOC enforces federal laws that make it illegal for employers to discriminate on the basis of a person's race, color, religion, sex, national origin, disability, or genetic information.³⁸¹ Title VII violations for discrimination on the basis of pregnancy, childbirth, and related medical conditions are enforced by the EEOC.³⁸² Discrimination on the basis of sex includes pregnancy and involves the unfavorable treatment of a woman because of her pregnancy, childbirth, or related condition.³⁸³ The process begins with the administrative claim process by filing a charge with the EEOC.³⁸⁴ A charge of discrimination is a signed statement asserting that an organization engaged in employment discrimination and requests the EEOC to take remedial action.³⁸⁵ The charge includes information about the employer, the number of employees employed by the business, short description of the discriminatory actions, when the discriminatory actions took place, and why the employee believes she was discriminated, such as on the basis of sex.³⁸⁶ A victim of sex discrimination has 180 calendar days from the day the discrimination took place to file the charge; however, the time

380. *Laws Enforced by EEOC*, U.S. EQUAL EMP. OPPORTUNITY COMM'N, <https://www.eeoc.gov/statutes/laws-enforced-eeoc> [<https://perma.cc/8RX2-D8WQ>] (clarifying that the Pregnancy Discrimination Act is a part of Title VII and makes it illegal to discriminate against a woman because of pregnancy or childbirth as an explicitly protected group); *Major Laws Administered/Enforced*, U.S. DEP'T OF LAB., <https://www.dol.gov/agencies/whd/laws-and-regulations/laws> [<https://perma.cc/LX79-BZA6>].

381. *See generally* U.S. EQUAL EMP. OPPORTUNITY COMM'N, *supra* note 380 (pointing to other laws that the EEOC enforces under Title VII).

382. *See id.* (rendering it illegal to retaliate against a person who files a complaint against their employer for discrimination on the basis of pregnancy).

383. 42 U.S.C. § 200e(k).

384. *See Time Limits for Filing a Charge*, U.S. EQUAL EMP. OPPORTUNITY COMM'N, <https://www.eeoc.gov/time-limits-filing-charge> [<https://perma.cc/S57A-85ZE>] (identifying the filing deadline to a charge is generally within 180 calendar days from the day the discrimination took place).

385. *How to File a Charge of Employment Discrimination*, U.S. EQUAL EMP. OPPORTUNITY COMM'N, <https://www.eeoc.gov/how-file-charge-employment-discrimination> [<https://perma.cc/NNR9-UUSQ>] (emphasizing that a charge must be filed before you can file a lawsuit for unlawful discrimination).

386. *Id.*

limit may be extended by state law.³⁸⁷ The EEOC investigates the claim and issues a decision within 180 days.³⁸⁸ If the complaint is not resolved through the administrative complaint process, then a lawsuit can be filed in federal court.³⁸⁹

2. *U.S. Department of Labor*

The DOL enforces labor and worker protection laws.³⁹⁰ FMLA violations are enforced by the DOL.³⁹¹ An employee who believes his or her rights under FMLA have been violated can (1) file a complaint with the Secretary of Labor or (2) file a private lawsuit pursuant to § 107 of the FMLA.³⁹² If filing a complaint, the complaint is filed with the Wage and Hour Division of the DOL.³⁹³ The complaint includes a statement of the acts and/or omissions with pertinent dates which are believed to be a violation.³⁹⁴ The complaint must be filed within a reasonable time after the FMLA violation, but not more than two years after the alleged violation.³⁹⁵ An employee is entitled to receive, wages, employment benefits, or other compensation denied or lost due to the violation.³⁹⁶

Additionally, the DOL investigates complaints for violations of break time for nursing mothers under the Fair Labor Standards Act

387. See U.S. EQUAL EMP. OPPORTUNITY COMM'N, *supra* note 384 (“The 180 calendar day filing deadline is extended to 300 calendar days if a state or local agency enforces a law that prohibits discrimination on the same basis.”).

388. *Agency Processing of Formal Complaints*, U.S. EQUAL EMP. OPPORTUNITY COMM'N, <https://www.eeoc.gov/federal-sector/management-directive/chapter-5-agency-processing-formal-complaints> [<https://perma.cc/GV4E-HNQC>] (requiring the investigation be completed in a timely, appropriate, and impartial manner).

389. *Filing a Lawsuit in Federal Court*, U.S. EQUAL EMP. OPPORTUNITY COMM'N, <https://www.eeoc.gov/federal-sector/filing-lawsuit-federal-court> [<https://perma.cc/4SU3-X2AM>] (noting exceptions and periods where you can quit the administrative process and file a lawsuit).

390. *Summary of the Major Laws of the Department of Labor*, U.S. DEP'T OF LAB., <https://www.dol.gov/general/aboutdol/majorlaws#:~:text=The%20U.S.%20Department%20of%20Labor,workers%20and%2010%20million%20workplaces> [<https://perma.cc/B56Z-EBKG>].

391. *Id.*

392. 29 C.F.R. § 825.400(a)(1–2) (2020).

393. 29 C.F.R. § 825.401(a) (2020).

394. 29 C.F.R. § 825.401(c) (2020).

395. 29 C.F.R. § 825.401(b) (2020).

396. 29 C.F.R. § 825.400(c) (2020).

(FLSA).³⁹⁷ The Patient Protection and Affordable Care Act (PPACA) amended Section 7 of the FLSA.³⁹⁸ Employers are required by PPACA to provide reasonable break time to nursing mothers to express breast milk and must provide a place other than a bathroom to do so.³⁹⁹ Female employees who believe their employers have violated this statute must follow the complaint process with the Wage and Hour Division of the DOL.⁴⁰⁰

3. U.S. Department of Justice

While the EEOC enforces Title I of the ADA, other agencies are responsible for the enforcement of the ADA Title II-V.⁴⁰¹ The DOJ is responsible for the enforcement of Title II and III.⁴⁰² Title II prohibits discrimination on the basis of disability in all services, programs, and activities provided by the public by State and local governments.⁴⁰³ Title III prohibits discrimination on the basis of disability in the activities of places of public accommodations such as businesses that are generally open to the public like restaurants and movie theaters.⁴⁰⁴ A person who is discriminated according to ADA must first attempt to settle the

397. See Reasonable Break Time for Nursing Mothers, 75 Fed. Reg. 80,073 (Dec. 21, 2010), (summarizing how the DOL administers and enforces the FLSA through its Wage and Hour Division).

398. *Fact Sheet #73: Break Time for Nursing Mothers under the FLSA*, *supra* note 336.

399. 29 U.S.C. § 207(r)(1)(A–B) (2018).

400. *Fact Sheet #73: Break Time for Nursing Mothers under the FLSA*, *supra* note 336.

401. See *Americans with Disabilities Act*, U.S. DEP'T OF LAB., <https://www.dol.gov/general/topic/disability/ada> [<https://perma.cc/9MVY-2YCQ>] (indicating the agencies responsible for enforcing or investigating claims involving the ADA include the EEOC, FCC, and the DOJ).

402. *Id.*

403. 28 C.F.R. § 35.101(a) (2020); *State and Local Governments (Title II)*, U.S. DEP'T OF JUST. C.R. DIV., [https://www.ada.gov/ada_title_II.htm#:~:text=More%20Search%20Options-,State%20and%20Local%20Governments%20\(Title%20II\),State%20and%20local%20governme nt%20entities](https://www.ada.gov/ada_title_II.htm#:~:text=More%20Search%20Options-,State%20and%20Local%20Governments%20(Title%20II),State%20and%20local%20governme nt%20entities) [<https://perma.cc/NAJ7-9HFA>].

404. 28 C.F.R. § 36.101(a) (2020) (noting the primary object of attention in cases brought under ADA should be determining whether entities have complied with obligations and if discrimination has occurred); *Americans with Disabilities Act Title III Regulations: Part 36 Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities*, U.S. DEP'T OF JUST. C.R. DIV. (Jan. 17, 2017), https://www.ada.gov/ada_title_III.htm#:~:text=Title%20III%20prohibits%20discrimination%20on,care%20facilities%2C%20recreation%20facilities%2C%20and [<https://perma.cc/V7XW-MT2F>].

dispute.⁴⁰⁵ If the negotiations fail, DOJ files lawsuits in federal court to enforce the ADA.⁴⁰⁶

E. Temporary Protections due to COVID-19

In response to the pandemic, the Families First Coronavirus Response Act (FFCRA) was signed into law on March 18, 2020, and became effective on April 1, 2020.⁴⁰⁷ The law contains several important paid leave provisions related to the pandemic.⁴⁰⁸ FFCRA will reimburse American private employers with less than 500 employees with tax credits for the cost of providing employees with paid leave taken for reasons related to COVID-19.⁴⁰⁹ This will allow employers to keep their employees on the payroll and comply with public health measures.⁴¹⁰ The Department of Labor has issued a temporary regulation to implement provisions of the Emergency Paid Sick Leave Act (EPSLA) and the Emergency Family and Medical Leave Expansion Act (EFMLEA), which were enacted as part of the FFCRA.⁴¹¹

405. See *The ADA: Your Responsibilities as an Employer*, U.S. EQUAL EMP. OPPORTUNITY COMM'N, <https://www.eeoc.gov/publications/ada-your-responsibilities-employer> [<https://perma.cc/S4V2-9NTM>] (recognizing how differences and disputes may arise due to misunderstandings regarding the law).

406. *Department of Justice ADA Responsibilities: ADA Enforcement*, U.S. DEP'T OF JUST. C.R. DIV., https://www.ada.gov/enforce_footer.htm [<https://perma.cc/H7HZ-7CDD>] (“[T]he Department of Justice may not sue a party unless negotiations to settle the dispute have failed.”).

407. Families First Coronavirus Response Act, Pub. L. No. 116-127, 134 Stat. 178 (2020).

408. See, e.g., Families First Coronavirus Response Act, Pub. L. No. 116-127, 134 Stat. 178, 195 (2020) (“An employer shall provide to each employee paid sick time to the extent that the employee is unable to work (or telework) due to a need for leave because: (1) The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.”). See generally *U.S. Department of Labor Revises Regulations to Clarify Paid Leave Requirements Under the Families First Coronavirus Response Act*, U.S. DEP'T OF LAB., <https://www.dol.gov/newsroom/releases/whd/whd20200911-2> [<https://perma.cc/JW7G-MJ99>] (clarifying “workers’ rights and employers’ responsibilities under FFCRA’s paid leave provisions.”).

409. *Temporary Rule: Paid Leave Under the Families First Coronavirus Response Act*, U.S. DEP'T OF LAB. (2020), <https://www.dol.gov/agencies/whd/ffcra> [<https://perma.cc/7BQB-T42T>].

410. *Id.*

411. 29 C.F.R. § 826 (2020); see 29 C.F.R. § 826.10(a) (2020) (classifying eligible employees as those who have been employed by the employer for at least thirty calendar days).

EPSLA grants up to eighty hours of Paid Sick Leave for COVID-19 related reasons.⁴¹² The regulation allows for the following:

An employer shall provide to each of its Employees Paid Sick Leave to the extent that Employee is unable to work due to any of the following reasons:

(ii) advisement by a health care provider to self-quarantine due to concerns related to COVID-19⁴¹³

An employee may take Paid Sick Leave for the reason described in paragraph (a)(1)(ii) of this section only if:

(i) A health care provider advises the Employee to self-quarantine based on a belief that—

(C) The Employee is particularly vulnerable to COVID-19; and

(ii) Following the advice of a health care provider to self-quarantine prevents the Employee from being able to work, either at the Employee's normal workplace or by Telework.⁴¹⁴

Under FMLEA, employers are required to provide up to ten weeks of paid leave and two weeks of unpaid leave, and medical leave to eligible employees if they are caring for a child whose school of daycare is unavailable for reasons related to COVID-19.⁴¹⁵ Mexico's labor regulation distinctly contrasts with the United States, as Mexico granted pregnant women with disability leave while women in the United States are limited to the amount of Paid Sick Leave available to them through FMLA, EFMLEA, and EPSLA.⁴¹⁶

412. 29 C.F.R. § 826.21(a)(1) (2020) (indicating that only full-time employees can receive eighty hours of Paid Sick Leave, as opposed to part-time workers, who get their Paid Sick Leave time calculated by their two-week schedule).

413. 29 C.F.R. § 826.20(a)(ii) (2020) (adding coverage for those employees experiencing symptoms of COVID-19 and for those in caregiving roles diagnosed with COVID-19).

414. 29 C.F.R. § 826.20(a)(3) (2020).

415. 29 C.F.R. § 826.60 (2020) (“An Eligible Employee who has exhausted his or her twelve workweek FMLA entitlement . . . is not precluded from taking Paid Sick Leave [under § 826.70].”); *see* 29 C.F.R. § 826.70 (2020) (“An Eligible Employee’s entitlement to take up to two weeks of Paid Sick Leave under the EPSLA is not impacted by the Eligible Employee’s use of FMLA leave.”).

416. *Compare* Constitución Política de los Estados Unidos Mexicanos, CPEUM, art. 123, Diario Oficial de la Federación [DOF] 05-02-1917, últimas reformas DOF 17-06-2014 (Mex.) (“During such disability leave, women shall receive their full wages and retain their employment and the right acquired under their employment contract. During the nursing period, they shall have two special rest periods per day, consisting of half an hour each, to feed their babies.”), *with* Tom

Subsequently, the United States enacted the Coronavirus Aid, Relief, and Economic Security (CARES) Act.⁴¹⁷ The Act includes additional paid leave and unemployment insurance provisions.⁴¹⁸ If a pregnant worker quits her job as a direct result of COVID-19, such as recommendation by her doctor to self-quarantine, she may be eligible for pandemic unemployment assistance.⁴¹⁹

Moreover, pregnant workers can rely on existing law to protect themselves and their child during the pandemic.⁴²⁰ A pregnant employee may not be discriminated—treated differently than a non-pregnant employee—because of coronavirus.⁴²¹ The PDA provides protection; pregnancy discrimination is a form of sex discrimination under Title VII of the Civil Rights Act of 1964.⁴²² An employer must have a bona fide occupational qualification to justify the different treatment; it must be a

Spiggle, *Working While Pregnant: How to Protect Yourself (and Your Child) in the Coronavirus World*, FORBES (Apr. 17, 2020, 2:10 PM), <https://www.forbes.com/sites/tomspiggle/2020/04/17/working-while-pregnant-during-coronavirus/#27924ad3787a> [https://perma.cc/85L8-YACG] (“The EFMLEA and the EPSLA may also be temporary options for parents who have concerns about possibly contracting the coronavirus at work and infecting their young children or other family members at home.”).

417. Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281(2020).

418. *See, e.g.*, Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281, 313–14 (2020) (referring to sections within the CARES Act that provide additional benefits to individuals who are not eligible for regular compensation benefits under State or Federal law).

419. *Id.*

420. 42 U.S.C. § 2000e(k) (2018). *See generally* Spiggle, *supra* note 416 (alluding to both the Pregnancy Discrimination Act of 1978 forms protections for pregnant women that carry through the pandemic and disallow an employer from justifying discrimination against a pregnant employee).

421. *See, e.g.*, *Enforcement Guidance on Pregnancy Discrimination and Related Issues*, U.S. EQUAL EMP. OPPORTUNITY COMM’N (June 25, 2015), <https://www.eeoc.gov/laws/guidance/enforcement-guidance-pregnancy-discrimination-and-related-issues> [https://perma.cc/2K52-ZP Z5] (“Title VII prohibits employers from treating men and women differently based on their family status or their intention to have children.”); *see also* Spiggle, *supra* note 416 (discussing how pregnant women cannot be discriminated against in this new pandemic era due to the longstanding protection of pregnant women through Title VII and the Pregnancy Discrimination Act).

422. *See* 42 U.S.C. § 2000e(k) (2018) (highlighting how discrimination based on pregnancy is discrimination on the basis of sex and a violation of Title VII); *see also* Spiggle, *supra* note 416 (concluding discrimination against pregnant women cannot stand due to Title VII of the Civil Rights Act under most situations).

job requirement that is essential to the employer's business or job.⁴²³

An employer may not place limits on a pregnant employee's work solely to protect her from the coronavirus.⁴²⁴ Mexico has required pregnant women to work from home or go on maternity leave to protect mother and child by limiting their exposure to coronavirus.⁴²⁵ This is *illegal* in the United States.⁴²⁶ In the United States, an employer may not require a pregnant employee to stay home to prevent her exposure to coronavirus.⁴²⁷

A pregnant employee may request reasonable accommodations, but an employer is not required to accept the accommodation if it imposes an undue burden.⁴²⁸ The accommodations may be wearing Personal Protective Equipment (PPE) during the workday, telework, or temporarily transferring positions.⁴²⁹ The accommodations must be of the type that would be granted to employees with similar abilities to that

423. 42 U.S.C. § 2000e-2(e) (2018); *see* Spiggle, *supra* note 416 (indicating a restriction against discrimination toward pregnant women is not absolute).

424. *See, e.g.*, Spiggle, *supra* note 416 (“An employer may not discriminate against a pregnant employee based on coronavirus motivations, even if the employer has the best of intentions.”).

425. Acuerdo por el Que Se Establecen Acciones Extraordinarias para Atender la Emergencia Generada por el Virus SARS-CoV2, Diario Oficial de la Federación [DOF] 31-03-2020 (Mex.); *see* Pietro Straulino-Rodriguez, *Mexico Institutes Measures to Prevent the Spread of COVID-19 in the Workplace*, OGLETREE DEAKINS, (Mar. 31, 2020), <https://ogletree.com/insights/mexico-institutes-measures-to-prevent-the-spread-of-covid-19-in-the-workplace/> [<https://perma.cc/AV46-DBW8>] (defining pregnant women as high-risk, and, thus, forcing them to work from home in accordance with Mexico's policy to reduce the spread of COVID-19).

426. *Cf.* Spiggle, *supra* note 416 (“Basically, unless: a) an employee works in a work environment where there is a “high risk” or “very high risk” of coronavirus exposure, or b) an employer concludes on its own that pregnant employees may need additional protections, a pregnant employee will have a difficult time making an employer take extra steps to keep them safe due to the pregnancy.”).

427. *Cf.* Int'l Union v. Johnson Controls, Inc., 499 U.S. 187, 192, 211 (1991) (holding a sex-specific fetal-protection policies is forbidden).

428. *See* 42 U.S.C. § 12112(b)(5)(A) (2018) (recognizing an employee can refuse to make an accommodation if it causes an undue hardship); *see also* *Pregnancy Discrimination*, U.S. EQUAL EMP. OPPORTUNITY COMM'N, <https://www.eeoc.gov/pregnancy-discrimination> [<https://perma.cc/T5KB-HBEE>] (“[The] employer may have to provide a reasonable accommodation (such as leave or modifications that enable an employee to perform her job) for a disability related to pregnancy, absent undue hardship ([i.e.,] significant difficulty or expense).”)

429. *See, e.g.*, Amy Campbell, *Pregnancy and COVID-19*, HRX (July 23, 2020), <https://www.tasb.org/services/hr-services/hrx/hr-laws/pregnancy-and-covid-19.aspx> [<https://perma.cc/VE6H-FBEA>] (“[Employers] may consider offering other safety precautions, such as additional personal protective equipment or additional space from coworkers.”).

of a pregnant employee.⁴³⁰ An employer may not treat a pregnant employee less favorably—including less or no accommodations—as a non-pregnant employee with similar abilities.⁴³¹ If an employer grants accommodations to other employees because of coronavirus, a pregnant employee is entitled to the same accommodations through PDA.⁴³² Additionally, the Occupational Safety and Health Act of 1970 requires employers to provide a workplace free from recognized hazards likely to cause death or serious physical harm.⁴³³ OSHA released a guidance encouraging employers to enact prevention policies.⁴³⁴ The policy recommendations include implementing flexible work schedules so not all employees are in the office at the same time, wearing PPE, and providing hand sanitizer.⁴³⁵ Some of these prevention policies may positively affect pregnant employees by reducing their exposure to coronavirus without having to ask their employer for special accommodations.⁴³⁶

Mexico granted pregnant employees disability leave to prevent their exposure from coronavirus.⁴³⁷ The United States permits this, but in a more limited manner.⁴³⁸ Women are granted disability if conditions

430. 42 U.S.C. § 2000e(k) (2018); *Young v. United Parcel Serv.*, 575 U.S. 206, 210 (2015); see Campbell, *supra* note 429 (“Pregnant employees who cannot telework should be treated similarly to other staff with a temporary medical condition who request an accommodation.”).

431. § 2000e(k); *Young*, 575 U.S. at 210.

432. Spiggle, *supra* note 416 (“In other words, if an employer allowed non-pregnant employees to wear masks at work to reduce the chances of getting sick during flu season, it will probably have to allow the pregnant employee the same option of wearing a mask to reduce her coronavirus infection risk.”).

433. 29 U.S.C. § 654(a)(1) (2018).

434. See *Guidance on Preparing Workplaces for COVID-19*, OCCUPATIONAL SAFETY & HEALTH ADMIN. 3 (2020), <https://www.osha.gov/Publications/OSHA3990.pdf> [<https://perma.cc/8L2L-DLXB>] (detailing the purpose of the guidance and its focus on implementing engineering, administrative, and work practice controls to lower the risk of COVID-19 in the workplace).

435. See *id.* at 8–9 (encouraging employers to ensure employees are following procedures and practices that minimize contact with each other and high touch surfaces, and sanitizing measures).

436. See *id.* at 7–8 (illustrating the need to consider worker’s individual risk factors, such as pregnancy, age, and the presence of chronic medical conditions).

437. See *Presenta IMSS Plan Para Evitar Contagios por COVID-19 en Embarazadas, Adultos Mayores y Pacientes con Enfermedades Crónicas*, IMSS (Mar. 1, 2020), <http://www.imss.gob.mx/prensa/archivo/202003/163> [<https://perma.cc/3FPA-998Q>] (“Phase I . . . guarantee[d] the confinement of patients who are at risk due to their conditions . . .”).

438. Spiggle, *supra* note 416.

arising from their pregnancy meet the standard of disability.⁴³⁹ As previously mentioned, pregnancy itself is not a disability.⁴⁴⁰ Fear alone of contracting coronavirus does not meet the requirements under the statute.⁴⁴¹

At the time of writing this article, the Centers for Disease Control and Prevention (CDC) does not have data showing that COVID-19 affects pregnant women differently than others.⁴⁴² However, the CDC has noted pregnant women are vulnerable to the disease and should take precautions to reduce their exposure.⁴⁴³

CONCLUSION

Even though women have prerogatives under the law in Mexico and the United States, the laws fall short.⁴⁴⁴ In order for women to have equal footing in the employment sphere, society needs to stop solely valuing women through their motherhood.⁴⁴⁵ Employers need to look

439. *See id.* (stating the law does not apply merely because an employee is pregnant and, absent special circumstances, the current legal regulation in place makes it difficult for pregnant women to obtain accommodation).

440. *See, e.g.*, 42 U.S.C. § 12102(1) (2018) (defining a disability as an individual who (1) has a physical or mental impairment substantially limiting major activities of the individual; (2) recording of the impairment; and (3) being regarded as having the impairment); *see also, e.g.*, Spiggle, *supra* note 416 (“A normal, healthy pregnancy is not considered a disability under the ADA.”).

441. *Cf.* Spiggle, *supra* note 416 (expounding on the fact that neither the ADA, PDA, FFRCA, EFMLEA, nor OSHA allow any blanket protection for pregnant women during the coronavirus pandemic; however, a pregnant woman may be granted leave if she can show a reasonable accommodation is needed or an accommodation was given to another employee “similar in their ability or inability to work.”).

442. *Id.* (“[T]he CDC is not yet ready to conclude that pregnant employees (or their fetuses) are at higher risk than the average person for getting infected with the coronavirus or suffering more severe symptoms.”). *But see COVID-19 Pregnancy, Breastfeeding, and Caring for Newborns*, CTR. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/pregnancy-breastfeeding.html> [<https://perma.cc/KK89-GR29>] (last updated Feb. 26, 2021) (concluding from their current data pregnant women may be at an increased risk for severe illness, death, or preterm birth).

443. *See* CTR. FOR DISEASE CONTROL & PREVENTION, *supra* note 442 (emphasizing the need for a mother to implement safety precautions such as limiting visitors in a household).

444. *See, e.g.*, *Pregnancy Discrimination*, WORKPLACE FAIRNESS, <https://www.workplacefairness.org/pregnancy-discrimination> [<https://perma.cc/KB6R-QCJA>] (“The protection provided by these laws may depend on whether an employee qualifies for protection under each law and whether leave is involved.”).

445. *See Shadow Report on Employment Discrimination Against Women in Mexico*, SEXUAL & REPRODUCT. RTS. AREA 3 (June 2018), <https://tbinternet.ohchr.org/Treaties/>

past the temporary leave a woman might need for maternity and focus on the skills and work she will contribute.⁴⁴⁶ It is essential to make it clear that no one can deprive a woman of the right to become a mother because it is a decision that belongs to the woman herself, which must be guaranteed in all the aspects that such a decision entails.⁴⁴⁷

We cannot fail to recognize the legal instruments currently available in Mexico and the United States have been evolving and transforming over the years; the law has taken a significant step towards the social and economic development of the countries.⁴⁴⁸ However, it should be noted that more support is needed from government institutions for pregnant women.⁴⁴⁹ The additional support will cause employers to be more aware of pregnant workers, resulting in greater benefits and government supervision of companies to enforce compliance of benefits pregnant women are entitled to.⁴⁵⁰ We must remember that women in a state of maternity are susceptible to unjustified dismissal by employers, to acts of discrimination, and, in the most serious cases, risks to their physical integrity and that of their child.⁴⁵¹

CEDAW/Shared%20Documents/MEX/INT_CEDAW_NGO_MEX_31406_E.pdf [https://perma.cc/Q65R-4PHK] (implying no rational basis exists to support the notion that only women take care of children, and this is in direct violation of the right to non-discriminate in the workplace).

446. See Rebecca L. Ziman, *Women in the Workforce: An In-Depth Analysis of Gender Roles and Compensation Inequity in the Modern Workplace* 1 (2013) (Senior Honors Thesis, University of New Hampshire) (on file with University of New Hampshire Scholars' Repository) (identifying the increase in women who receive a Bachelor's, Master's, or Doctorate degrees and how it has yet to change the way society views the role of women).

447. See *Int'l Union v. Johnson Controls, Inc.*, 499 U.S. 187, 211 (1991) (reiterating that Congress has left the choice of motherhood to the woman herself, and not to the courts or an employer); cf. WORKPLACE FAIRNESS, *supra* note 444 (indicating how the different federal regulations legitimize the right for women to work and have protected employment).

448. See, e.g., SEXUAL & REPRODUCT. RTS. AREA, *supra* note 445, at 3 (recognizing the evolution of laws and regulations developed in Mexico to eradicate gender discrimination has helped women in the work force).

449. See Spiggle, *supra* note 416 (reiterating all the U.S. federal regulations in place to assure pregnant employees have certain rights and accessibility to care, there is still work to be done since none of the present regulations provide safety measures when it comes to being affected by the coronavirus); see also SEXUAL & REPRODUCT. RTS. AREA, *supra* note 445, at 3 (referring to the fact that domestic workers, ninety percent being women, are excluded from the basic labor rights under the Mexican Federal labor Law).

450. Cf. WORKPLACE FAIRNESS, *supra* note 444 (reiterating the possible remedies for pregnant women if an employer violates any of the federal regulations, such as back pay, front pay, promotion, reinstatement, compensatory damages, punitive damages, etc.).

451. See *id.* (illustrating the painful reality that under these regulations, unless the employer has already issued certain benefits in situations where pregnant women fall under the protections,

Although the law protects female employees who decide to become mothers, necessary measures must be taken to ensure women's maternity rights are enforced.⁴⁵² Current law in both Mexico and the United States have shortcomings such as unpaid leave or controversial social stigma, making it imperative for the law to continue evolving.⁴⁵³ Having children should not hinder an employee's career stability and professional growth solely because of their status as a parent.⁴⁵⁴ The rights granted by the Constitution and Federal and State government in both countries should be effective to further aid women in the workforce. At the same time, the law should provide what is in the child's best interest.⁴⁵⁵ Women must be given respect in the workforce for their maternity rights to be respected.⁴⁵⁶

I would like to conclude with a beautiful thought from Sister Juana Ines de la Cruz: "[M]ay the Lord shower you, not only with abundance of days, but also with His blessings."⁴⁵⁷

then they are not required to provide them, such as mental or physical benefits after the loss of a pregnancy).

452. *See id.* (explaining the investigation of cases involving job discrimination and how laws are enforced, including an individual's pregnancy, or family/medical leave discrimination handled by the EEOC and Department of Labor as well as separate state entities).

453. *See id.* (describing the two main federal regulations that protect pregnant employees from discrimination against their employers do not mandate paid leave).

454. *Cf. Ziman, supra* note 446, at 7 (stating the reasons for the inequity in the work force, especially in disproportional gender gap, is due to the social norms of women maintaining the family and household instead of working).

455. *See Observaciones Generales del Comité de los Derechos del Niño*, UNICEF (May 29, 2013), <https://www.unicef.org/UNICEF-ObservacionesGeneralesDelComiteDeLosDerechosDelNino-WEB.pdf> [<https://perma.cc/6T63-AFZR>] (emphasizing how Mexico's National Human Rights Commission believes the laws in place to protect women's health and employment opportunities should go hand in hand with the best interest of the child's welfare as well).

456. *Cf. Ziman, supra* note 446, at 7 (analyzing data which shows despite the growth society has made for female equality, most stay-at-home parents are still female and there is a high likelihood that if they ever worked, they left due to children).

457. SOR JUANA INÉS DE LA CRUZ ET AL., *OBRA COMPLETAS* 712 (Porrúa ed., Editorial Porrúa México 2018) (1693).