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## Income Security When Temporarily Away from Work

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### Introduction

Suppose that you are ill or injured and temporarily unable to work. Or suppose that you are temporarily laid off or temporarily between jobs. Or suppose that you need to be away from work to care for a relative, or want to be away from work to go on a vacation. What do you do for income during periods like these? Assume that you get no income from either your employer or the government during such periods. Because you would have to engage in self-help, what might you do?

You could save money in advance to draw upon when your income temporarily stops. You could borrow money in times of temporary need and repay it later. You could seek gifts from friends, family, and/or charities. You could purchase private insurance that provides income when you are temporarily in need. In some families, if one earner is temporarily without income, perhaps another can start earning or can earn more. But this is less likely in today's world in which both adults in a two-adult household are often already working in as highly paid jobs as they can reasonably find.<sup>1</sup>

In the real world, all of these self-help strategies are problematic. Too many people fail to save significant sums for "rainy days";<sup>2</sup> most can at best cover only a couple of missed paychecks.<sup>3</sup> In some cases, the lack of savings is the result of short-sighted thinking that they won't ever be away from work and hence without income. Others would like to save, but have reluctantly concluded that spending on essentials eats up all of their regular income. Still others make foolish choices to spend for immediate pleasure and have nothing set aside for times of need.<sup>4</sup>

Relatively few buy insurance against specified risks of short-term income needs.<sup>5</sup> Besides, private insurance is not available to deal with several common

needs for temporary income. For example, paid vacation leave is not a “risk” for which insurance is appropriate; paid sick leave for the first day or so of illness is probably administratively too expensive for a separate insurance policy to cover.

Many people temporarily away from work without adequate savings or insurance are unable to borrow enough from regular commercial sources to maintain anything like their accustomed living standard.<sup>6</sup> Some might be able to borrow from predatory lenders, but they would have to pay exorbitant interest rates if they do.<sup>7</sup> Some are able to borrow, at least for a while, from friends and relations, but many times those potential lenders themselves are financially hard-pressed.<sup>8</sup>

A different way to deal with a temporary loss of income would be to eat and drive less, move to cheaper housing, stop spending for recreation, and use other similar personal austerity measures, although these adjustments might significantly reduce your standard of living.<sup>9</sup> Besides, many people are stuck with legal obligations to pay for their current housing and vehicles, making downsizing very difficult.<sup>10</sup>

In the face of these realities, in order to help prevent large numbers of people from having to either rely on the kindness of others or to suffer sharp, often disruptive, drops in their standard of living, employers and government can and do play various roles:<sup>11</sup>

- First, government and employers can entice or require employees to save more.
- Second, they can facilitate or subsidize employee borrowing and/or relieve people from debt.
- Third, they can offer or require the purchase of insurance to cover certain risks of otherwise temporarily having no income.
- Fourth, they can redistribute income in a variety of ways to those in temporary need of income.

Acting on their own, employers presumably play these roles when they think it is good for business, including their goal of attracting and retaining well-qualified and productive employees. Employers might also play roles here because they are required (or enticed) to do so by government.

Many critics of current arrangements in the United States argue that government and employers are not doing enough to deal with people’s temporary need for income replacement, or are not helping in the right ways. What is clear is that governments in many other wealthy nations do a great deal more than the government does in the United States. For example, many nations provide or require employers to provide paid sick leave, paid maternity and child-bonding leave, and paid vacation leave.<sup>12</sup> Almost nowhere in the United States is anything like this required.

## Historical Context: What Has Been Done to Replace Wages of Those Temporarily Away from Work

### ILLNESS OR INJURY (TEMPORARY DISABILITY)

Sometimes people become sick or injured and are temporarily unable to work. If the temporary disability arises out of a *work-based injury* (or illness), employees in all 50 states are entitled to claim from state-mandated and employer-funded workers' compensation programs (WC).<sup>13</sup> To satisfy this legal obligation, most employers either buy workers' compensation insurance or else self-insure against the risk of these claims. WC benefits permit the few who have the bad luck of being injured on the job to collect from a pool that is potentially available to everyone in their workplace.

WC income replacement benefits usually start after just a few days off work and typically replace two-thirds of past earnings on a tax-free basis (up to a modest maximum level of past earnings) for the length of the temporary disability. WC also provides medical care, rehabilitation benefits, long-term disability income replacement benefits, and death benefits. But these features will be put aside here because this chapter focuses on income replacement for temporary spells away from work.

States adopted WC plans in the Progressive Era (the time period from the 1890s to the 1920s) on the grounds that: (1) employers can control workplace dangers and hence should have financial incentives to do so, (2) the costs of workplace injuries (and illnesses) that do occur should be incorporated into the price of the product or service the employer sells, and (3) it is a fair trade-off to require this sort of employer-provided benefit because in return, in nearly all cases, WC laws preclude the injured or ill worker from suing his or her employer for money damages in tort law.

But WC covers only *work-related* disabilities. So, if workers suffer a non-occupational injury or illness, the program provides nothing to them. While this is perhaps understandable given the historic justification for the workers' compensation plans, the result is hardly satisfactory from the worker's perspective. Getting injured while at home or out on the town or at someone else's house or engaging in recreational activities, or getting sick from a disease that is not work-related, or having a child and being unable to work, can all cause the employee to have to be away from work and in need of income.

In response to this gap, many (but by no means all) employers offer "sick leave" benefits, and some offer short-term disability insurance plans.<sup>14</sup> These employer-provided benefits come in many different forms. The traditional sick leave plan provides employees with between 8 and 11 days a year of paid sick leave after an initial year of service.<sup>15</sup> In some firms, unused sick leave is accumulated and carried over from year to year. Elsewhere, sick days disappear if

not used at the end of the year. Plans with an accumulation feature look more like savings plans, whereas if there is no accumulation, the plan seems more like insurance.

Employers offer sick leave for several reasons. First, some offer the benefit because they don't want workers coming to work when ill, as this condition often leads to low productivity, and could in some cases lead to infecting other employees. They also know that this is a valuable employee benefit that could help them compete against other employers to attract and retain good workers.

Although many other nations require employers to provide sick leave (or governments directly operate sick leave plans on which workers can draw),<sup>16</sup> in the United States, only one state requires the provision of routine sick leave.<sup>17</sup> Today, nearly half of American employees are not entitled to paid sick leave.<sup>18</sup>

Some employers do not provide sick leave because they can readily replace those who are out ill or injured and care little about having workers who have a longer term connection to them. Others may perceive keeping track of employee time off as burdensome, or may fear that too many of their employees would abuse sick leave benefits by calling in ill or injured when they are not.

For illnesses and injuries lasting more than a few days, a handful of states (California, Hawaii, New Jersey, New York, and Rhode Island) have created short-term non-occupational disability plans that provide income replacement for as long as a year after the commencement of the disability, with the benefits typically starting after a one-week waiting period.<sup>19</sup> These benefits tend to be less generous than workers' compensation benefits, replacing only 50–66 percent of past wages up to a statutory maximum that varies wildly from state to state: contrast the weekly maximum in New York of \$170 with that of California of nearly \$1,000.<sup>20</sup> In addition to providing assistance for non-workplace injuries and illnesses, these temporary disability insurance (TDI) plans cover pregnancy-related disability. Like all disabilities, that amount of leave time for pregnancy disabilities and childbirth is based on medical advisory guidelines used by the TDI plans (e.g., for normal births, the guidelines recommend a leave of six weeks).<sup>21</sup>

TDI is insurance in the sense that all employees are covered and those in need draw down the benefit. In California and Rhode Island, this insurance is fully funded by a uniform payroll tax imposed on employees (up to a designated wage ceiling).<sup>22</sup> TDI plans in New York, Hawaii, and New Jersey are formally funded, in part or in full, by employers,<sup>23</sup> but in the end, the actual economic impact of the funding (as with WC) is likely born by workers in the form of lower wages.

In states without TDI plans, some employers provide their workers with short-term disability insurance on top of sick leave (or acquire a group policy that allows their employees to elect to purchase coverage).<sup>24</sup> Yet in the end, fewer than half of U.S. employees have private disability insurance coverage.<sup>25</sup>

## VACATION AND PUBLIC HOLIDAYS

Sometimes people will want to take or will be encouraged to take a vacation. Many workplaces are closed for public holidays. Again, unlike many other nations,<sup>26</sup> in the United States there is no requirement that employers pay their workers when the business is closed for public holidays, and American workers have no government-created legal right to paid vacation.

Of course, many employers do provide their workers with paid public holidays—although the number of such paid days off varies considerably, generally from 5 to 12 days a year, with an average of 8 days per year.<sup>27</sup> These paid days off can be understood as a forced savings plan, in the sense that people who might earn slightly more for the time they do work, were they not paid on public holidays, remain in pay status for those public holidays. For those paid by the month or by the week, such arrangements also make it much easier on the employer's book-keeping since employees simply draw their normal pay on those holidays even if they are off work. Yet, 23 percent of U.S. workers with private employers are not paid for public holidays on which they are off work.<sup>28</sup>

Paid vacations, when provided, may also be seen as a kind of forced savings plan. The typical worker earns vacation days as he/she works—for example, one day a month, or two weeks after a year's employment. Rather than being paid slightly more when working, the employee is able to draw down consecutive paid vacation days that most workers welcome. To be sure, regardless of employee preference, some employers are eager for their workers to take vacations so as to give them a break, hoping they will come back refreshed and will be able to buckle down to work again.

But even when voluntarily provided, paid vacations in the United States tend to be quite modest in length compared to those provided (and often legally required) in other nations where a month of paid vacation leave is common. Two weeks of paid vacation is typical in the United States for those employed with a firm for a few years or less, with the length of one's paid vacation often increasing with longer service—to three or four or five, and in rare cases, even more weeks in due course.<sup>29</sup>

Not all employees actually take the paid vacation they earn. Perhaps they are workaholics or feel pressure from superiors not to go on vacation. In some businesses, unused vacation days simply lapse—a “use it or lose it” policy that probably prompts a substantial share of workers to take what they earn. In other employment settings, paid vacation days may be accumulated and may be drawn down in future years or cashed out as lump sum payment when leaving the firm or at retirement. Those employees whose employers allow them to accumulate paid vacation time are, in effect, saving for the future.

## PAID TIME OFF (PTO)

In response to concerns about sick leave abuse (and the burdens of policing sick leave which may require invading employees' privacy), an increasing number of firms in recent years have adopted paid time off plans (PTO) that, at a minimum,

merge paid sick leave and paid vacation days into a single program.<sup>30</sup> For example, a firm that used to give two weeks of paid vacation and eight paid sick leave days now might offer three weeks of PTO. Employees who manage their own paid time off have a strong incentive not to waste their earned days off on a pretended sick day, as that day can instead later be used for a more extended vacation (or for some other preference of the employee, such as going to see a child's performance at school). A few firms have merged other kinds of paid time off into their PTO plan as well, such as folding in paid public holidays at enterprises like hospitals that operate and require staffing every day of the year. In such a setting an employee might well have more than five weeks a year of PTO.

### FAMILY CARE

Sometimes family members will need someone who normally would be at work to stay home and provide them care, typically because the family member is ill. Those in need of care might be children, spouses, parents (including in-laws), or an even wider range of relatives and close friends. The period that the employee must be away from work to provide such care can vary enormously, from a day or two to several months. The need to be away to provide care is sometimes predictable, though at other times it is not; this need is sometimes recurrent and other times not. In the United States today, most of this sort of time off is taken by women.<sup>31</sup>

For short increments of leave, some workers are able to use vacation days (or PTO days) to provide care to an ailing family member, and in some firms, employees are able to use their sick days to care for ill loved ones. In California and seven other states, employers who provide paid sick days to their employees are required to allow employees to use up to half of their accrued sick leave benefits to care for a sick family member, including a child, parent, spouse, or registered domestic partner.<sup>32</sup>

For more serious illnesses requiring longer absences, generally speaking, there is no right in the United States to paid time off in such circumstances. However, California and New Jersey have extended their TDI plans to cover this sort of need (calling it paid family leave, or PFL, in California, and family leave insurance, or FLI, in New Jersey).<sup>33,34</sup> To be sure, some employers provide special paid leave arrangements for employees to care for their children immediately before and after birth.<sup>35</sup> But, apart from the exceptions noted, all of those are voluntary arrangements, and a large share of employees must simply go without pay if they take time off to provide necessary care to kin.

What is "necessary care" is not always clear, and existing paid family leave programs contain safeguards to prevent abuse. California, for example, requires physicians to certify the relative's serious health condition before the caretaker can be paid for leave.<sup>36</sup> Yet requiring one's kin to have a serious health problem is arguably too narrow a rule, as it prevents, for example, adult children from claiming paid time off when it is essential for them to resettle their elderly parents (who don't meet the definition of seriously ill) in a new living situation.

## SPECIAL DUTIES

Sometimes a special occasion will arise that will draw a person away from work (e.g., a special event in a child's life, or a funeral of a loved one). Other times, people are called away from work to perform public service, such as jury duty or temporary military service. Again, U.S. workers have no legal right to be paid for time off of this sort, although some employers voluntarily keep employees in full pay status for at least some of these sorts of leaves.<sup>37</sup> Moreover, some specifically provide several days a year as paid "personal days" to be taken whenever the employee wishes, and those days could be used for these sorts of purposes.<sup>38</sup>

## UNEMPLOYMENT

For a variety of reasons, some employees are temporarily laid off work or discharged from their jobs. Other employees choose to leave a job and then find themselves temporarily between jobs. During this period of unemployment the worker might be actively seeking another position, retraining for a new kind of work, or may simply be off work (which might facially resemble vacation, although the employee might not feel as if it is "vacation" unless she or he already has a new job set to start at a specific time in the future).

The unemployment insurance (UI) system that exists in every state provides partial income replacement for those who are unemployed for some statutorily enumerated reasons.<sup>39</sup> States are effectively coerced by federal tax policy to offer such benefits, although states have some leeway in the details. Simply put, to claim unemployment benefits you must not have voluntarily quit your job or have been discharged for misconduct, and you must be available to take a new job and must be actively searching for new work.

UI traditionally replaces 40–50 percent of prior wages up to a moderate statutory ceiling. That low benefit level itself helps prod claimants to search for a new job. Yet it also makes it difficult for the unemployed to retain their past living standard for very long.<sup>40</sup> Traditionally, these benefits are available after a week of unemployment and can continue for up to six months. In times of high national unemployment, Congress often extends unemployment benefits for longer periods.<sup>41</sup>

Employers pay into their state UI fund based on the past claims history of their own employees, subject to minimum and maximum contributions.<sup>42</sup> State UI plans came into effect in the 1920s, and the federal program was adopted in 1935 as part of the Social Security Act.<sup>43</sup> The thinking behind the federal unemployment insurance program was similar to that underlying WC: employers should have financial incentives to keep people employed once they have been hired, and, in turn, they should take responsibility for providing short-term income support for those whom they hire and then choose to let go (but they should not be responsible for the income needs of those whom they discharge for misconduct or who voluntarily quit). As with WC, the federal government has utilized employers

to fund employees' insurance protection against unemployment risks that could leave them (and their families) in serious financial trouble.

Both WC and UI premiums likely have the economic effect of ultimately reducing the wages that would be paid in the absence of such plans. Thus, speaking generally, these plans may be thought of as ways of forcing employees to insure themselves. The existence of such plans surely makes many workers believe (or would do so if they thought about it) that they need not save money (or as much money) to prepare for these possible risks (or try to buy private insurance to cover these risks on their own).

## BANKRUPTCY AND WELFARE

Brief mention should also be made of other roles that governments play for the temporarily unemployed. People who are without income for temporary periods and borrow money they cannot later pay back (or who have already borrowed in the past and must default on their loans when they are temporarily without income) might, by choice or by feeling they have no other choice, declare bankruptcy. Rather than putting people in debtors' prison (or other such harsh penalties) as was the practice in the early nineteenth century, bankruptcy laws allow debtors, at least to some extent, to discharge their obligations without paying them off in full.<sup>44</sup> However, the government limits individual bankruptcy filings to once every eight years,<sup>45</sup> and doing so may seriously harm credit ratings.<sup>46</sup> Bankruptcy might be viewed as a kind of redistribution mechanism from creditors to debtors.

Yet, knowing of the bankruptcy escape hatch, creditors presumably charge interest and fees on the funds they extend to consumers that allow the creditors to absorb losses when debts are discharged in bankruptcy. On that understanding, it might be said that bankruptcy is a kind of insurance plan in which borrowers in general pay more for credit to cover the risk that some of them might become bankrupt. These days, because creditors are increasingly sophisticated in the way they segment classes of borrowers, those who are at greater risk of bankruptcy pay more for credit based on that risk, which may be thought of as analogous to risk-rated insurance premiums.

In any event, most people would probably agree that, while perhaps serving in a back-stop role, our bankruptcy system is hardly the best way to plan for the need for income when temporarily away from work.

Another role that the government plays for those temporarily without income is in the provision of means-tested cash assistance (TANF, or welfare) and related programs (such as food stamps, public housing, and Medicaid). But to qualify, people usually must have lost or spent most of their assets, and the benefits provided support only an extremely modest living standard.<sup>47</sup> Clearly, one strong policy reason for making other arrangements for temporary income replacement available on a local, state, or national level is to prevent workers from falling into

welfare status, given both the stigma and typically sharply reduced living standards that usually accompany welfare enrollment.

## Models Underlying Paid Leave Arrangements; Saving/Borrowing, Insurance, and Redistribution

### FORCED SAVINGS

From the libertarian perspective, workers should be left to bear the negative consequences of failing to provide for their own future if that was their choice. But many people would reject this line of argument, not only because they understand that some workers, if left to their own devices, will fail to protect their own interests, but also because they fear that too many could wind up not on the street, but on welfare.

Moreover, from a pragmatic perspective, we have seen that a variety of programs are already in place to force people to plan ahead.<sup>48</sup> For example, paid vacations, paid public holidays, PTO plans, and certain sorts of paid sick leave plans are, as noted above, readily understood as arrangements by which employees are forced to save up for future periods of absence from work.

Given existing arrangements, some scholars and policymakers believe that workers could be pressed to save up as well for temporary unemployment, temporary disability, and the temporary need to care for kin.<sup>49</sup> Even if those events are less predictable than routine occurrences like public holidays and vacations, across a lifetime of employment, modest sums could regularly be put away to cover these other risks. And if these events do not occur, that would simply mean a higher standard of living in retirement (or more money to leave to one's heirs). Clearly, government could create such a forced savings plan and require all workers to participate. It could run such a regime through public agencies or make employers manage it. A less aggressive approach would be to provide a financial incentive for this sort of plan—perhaps analogous to the tax incentives that government now provides in an effort to entice workers to save (beyond Social Security) for their retirement (e.g., 401(k) plans).

From the savings perspective, the different reasons that people have for temporarily needing income might seem ill-served by having separate savings accounts for each different purpose, as is generally the practice today. With one, presumably larger, account, people could draw down from it for vacation, having a baby, being ill, being between jobs, and so on. As a result, people would be less likely than today to have, for example, unused unemployment benefits while running out of paid sick leave. However, if people could draw down all of their savings any time in order to go on vacation, then the idea of coerced savings for various less predictable needs is undermined. This suggests that some paternalistic restrictions on the draw-down of savings might be included in any forced

saving plan. For example, part of a worker's account might be earmarked exclusively, say, for disability or unemployment lasting more than two weeks.<sup>50</sup> Furthermore, workers might be permitted to borrow against this portion of their account at reasonable interest rates if unplanned/involuntary contingencies occurred early in their career and before adequate savings have been created.

## REQUIRED PRIVATE INSURANCE

Rather than coercing people to save for occasions that create a need for temporary income replacement, they might instead be required to obtain insurance from the private insurance market for certain events. The idea here is that the bad luck of getting ill, being injured, or losing a job, or having to provide extended care for an ill loved one will be unevenly felt, in contrast to the general need to take off work on public holidays or to take vacations. From this perspective, the vision is that nearly all of us would prefer to pay a small sum on a regular basis that in turn gave us the right to draw down a substantial sum when we suffer one (or more) of these bad luck life events. Put differently, it may seem unfair that people who, without fault, lose jobs or become ill or are injured or have to provide kin care receive less paid vacation than those who do not, which would be the case were time away from work owing to those unplanned events to be funded from a forced savings plan of the sort described above.

## REDISTRIBUTION

Forced savings and forced insurance plans are based on the idea that workers should be coerced into taking care of their own needs. But some may believe that certain needs for paid time off are specially entitled to public support. Paid time off to deliver and then to bond with a newborn baby is a benefit that likely falls in this category, based on the belief that such supported time off is good for both the child and the rest of society. From this perspective, to make would-be parents individually save up for such paid time off is the wrong solution. Of course, providing this benefit for such workers need not be part of any special temporary income replacement plan, but could come directly via tax law. Indeed, the existing federal child tax credit (\$1,000 annually) does exactly this—providing funding from society at large to those who have children (albeit without any requirement that they use the funds to provide care or any requirement of prior workforce attachment).<sup>51</sup> Hence, one could imagine a much larger tax credit going to those who care for their newborns—especially those who temporarily take time away from work to do so.

Note also that another way to promote redistribution is to adopt a coerced insurance plan that does not charge premiums on the basis of risk even when it would be administratively efficient to do so. In such case, the funding mechanism serves to redistribute from low-risk to high-risk participants in the plan. Putting an arbitrary cap on UI premiums illustrates this phenomenon.

## OVERALL

Those who reject libertarian calls for self-sufficiency and instead favor government intervention to help provide employees with income support when they are temporarily away from work may rest their recommended policy solutions on quite different underlying ideas about the public purpose(s) behind any such plan—forced savings, required insurance, or redistribution.

Our feelings about the appropriateness of drawing down income support when away from work for certain reasons may vary, depending on the model underlying the plan being tapped. For example, if you are understood to have saved up beforehand, then we are much more likely to accept your choice to draw down from your account when you are between jobs if you left voluntarily and want time to find new work. But if someone did not save individually and seeks to draw from an insurance pool, we are much less likely to favor allowing claims from those who have chosen to be out of work.

Thus the details of any plan are extremely important, such as the income replacement rate, any waiting period, the behaviors that disqualify one from obtaining the benefit, the prior workforce attachment required to obtain a benefit, the maximum duration of the benefit, the funding mechanism used to pay for the plan, and the party who will administer the plan (e.g., the employer, a government agency, or an insurance company).

But unless one is clear about whether coerced savings will suffice, whether insurance for some risks is essential, and whether certain grounds exist for claiming deserve special redistributive support, it is difficult to make sensible judgments about what those details should be.

## Current Policy Proposals

Many people advocate reforming the way in which income is provided to those temporarily away from work, but reformers envision very different solutions. I group them under two headings.

### MAINTAIN SILOS BUT MAKE CHANGES

The most common reform proposals build on what we have now. Needs for income when temporarily away from work are identified based on the reason for the need, and each type of need is dealt with by a separate program (or silo).

Despite structural similarities, reform proposals in this vein can differ wildly from one another. On the one hand, some seek to expand the amount of the benefit provided by one or more existing silos. In the 1970s, for example, a reasonably successful national effort was made to increase the share of lost income that is replaced by WC.<sup>52</sup> But increasing the wage replacement rate is not the only way to improve benefits.

## CONSIDER POSSIBLE UI REFORM

The basic UI benefit could be expanded to routinely cover a year of unemployment, the maximum wage level to which the benefit applies could be raised to twice the average weekly wage, and/or the amount of prior labor force attachment (or prior earnings) needed to qualify for any UI could be reduced. One could also liberalize the plan's eligibility requirements; for example, perhaps pregnancy-related leave could be covered (as was proposed during the Clinton administration).<sup>53</sup>

On the other hand, some reformers seek to create new silos by making mandatory some benefits that are now almost entirely voluntarily provided by employers, if at all. San Francisco, for example, has mandated that all employers in the city provide paid sick leave, and many would like this solution imposed by Congress nationwide.<sup>54</sup> Making the current five-state TDI program a nationwide program is another example in this vein.

The likely impact of these silo reform proposals depends on the details. For example, imagine that employers were required to give all workers a two-week paid vacation after a year of service. That would make mandatory something that a very large number of employers already provide, so that only a minority of businesses would be impacted. By contrast, if the mandatory paid vacation were extended to, say, a month, as is common in Europe, that expansion would impose a larger obligation on nearly all employers.

Many women's groups are currently focused especially on creating new paid time off benefit plans for workers who care for seriously ill or injured relatives and/or their newborn children (while the proposals are gender-neutral, we know from the experience of European programs and California's Paid Family Leave program that mainly women benefit from such programs). In essence, advocates want to turn the unpaid leave now guaranteed to qualified employees by the Family and Medical Leave Act (FMLA) into a paid leave plan. Many advocates of this idea would also like a changed cultural climate in which male workers would just as frequently take on this caregiving role.<sup>55</sup> This reform responds to a specific issue that is clearly important to women and much touted by those who see such benefits as facilitating ongoing female labor force participation rates.<sup>56</sup>

## MORE SWEEPING REFORMS

In the 1970s there was talk (that amounted to nothing) of expanding WC coverage to injuries incurred around the clock. Twenty-four-hour workers' compensation would have provided new protections for workers suffering from non-occupational disabilities (sickness or injury). Focusing just on temporary income replacement, 24-hour WC would have brought the 45 states that do not have TDI broadly into line with the few states that do. From the worker's perspective, this makes sense. To be sure, off-work injuries and illness are generally beyond the control of the employer and their coverage by employers might

be difficult, given the level at which WC insurance premiums are currently set. Employers successfully fought this initiative, which some thought was shortsighted, as the additional cost of this reform would likely have been passed on to the worker in the form of more slowly rising wages.<sup>57</sup>

As noted earlier, starting in the 1990s, a substantial number of employers began to offer paid time off (PTO) in lieu of certain earmarked (silo) benefits. One strong motivation for such a plan is the belief by some employers that policing sick leave is an unnecessarily difficult problem. Underlying PTO is the belief that if employees are in charge of their own paid time off, they will be more responsible with that time, such as being more likely to give notice before they will take that time off, allowing firms to plan better for absence. The typical PTO plan provides more paid vacation days for the majority of workers, who are generally out sick fewer than five days a year. However, a person who has the bad luck of actually being sick for longer, such as eight work days, could be worse off under the PTO plan than under the firm's former sick leave policy (although even that person might be better off over time if that sickness is simply an unusual bad luck experience). Those who are most harmed by combining silos into PTO are those who are regularly and genuinely out ill for more than five days. This comparison vividly shows the contrast between the "savings" model that underlies PTO and the "insurance" model that at least some sick leave plans reflect: the former imposes costs on the less fortunate, who must spend their savings on illness instead of vacation, while the latter imposes costs on the more fortunate, who must pay for sick benefits they might rarely use, if ever.

Some have written about converting UI into a coerced savings plan akin to PTO.<sup>58</sup> Their idea is that over their career, most people can cover their own occasional unemployment (if any) via required savings (especially if one may also occasionally draw one's "time off" savings account into debt). This approach not only denies the need for "insurance" for most people, but also seeks to end what are seen as many of the undesirable features of today's unemployment plan— intrusion into employee privacy by supervising work searches; denying benefits to those who quit voluntarily but with good reason (even if the reason is not good enough to qualify them for benefits under existing rules), providing only a modest level of income replacement, and requiring a substantial deductible before benefits flow (typically, the first week of unemployment is uncompensated). Moreover, given that it would be the employee's own savings fund that was being drawn upon, this would provide a clear incentive for the claimant to quickly find a new job.

More than 20 years ago, I proposed an even more sweeping reform that would create a substantially non-siloed forced-savings plan intended to cover all of the needs for income for those temporarily away from work.<sup>59</sup> I called that plan "short term paid leave." Under my proposal, employees would earn one paid day of leave for every five days worked. This paid leave bank could be drawn from to pay for time off for the full range of reasons discussed earlier. My plan would be accompanied by the ending of all of today's silo programs—paid

public holidays, paid vacation, paid sick leave, paid maternity leave, paid leave to care for family members, unemployment insurance (UI), paid occupational disability compensation (WC), and paid non-occupational disability compensation (TDI). My plan is intended to deal with temporary periods away from work of up to six months.

My proposal includes a modest insurance or redistribution feature—allowing a moderate amount of “borrowing” against future Social Security retirement benefits, combined with a partial forgiveness of such loans in some cases. My plan also has a paternalistic semi-silo feature—requiring some banking of paid days off for use on the occasion of more extended unemployment or illness/injury (lasting more than two weeks). The proposal requires employers to fund all end-of-year unused paid leave beyond two weeks by depositing appropriate amounts in employees’ accounts at designated financial institutions—analogueous to the way in which 401(k) retirement plans are funded. This not only helps protect employees against the risk of the possible bankruptcy of employers who might leave their workers with now-worthless accrued paid time off, but also it assures the effective “portability” of accrued benefits from job to job.

Some employers feared the added costs of this plan, but many of those already providing generous paid leave warmed to the idea, seeing that at worst it might cost them slightly more in payroll costs, which could well be offset by slowing the rate of wage increases. Typical workers in these firms might well, in effect, be trading somewhat lower wages for an extra week of paid vacation each year. But employers are helpless to implement such an idea on their own, as government-required WC, UI, and TDI benefits would have to be eliminated as this sort of substitute plan were put in place. That would require special government waivers that have not been forthcoming so far.

I appreciate that some people oppose my plan because they place a higher value on the insurance and redistribution features of both existing and proposed schemes. They are often put off by the idea that at least some of those with repeated bad luck requiring time away from work because of joblessness, disability, child-bearing, and kin care could be worse off than under an imagined series of separate silos.

As a compromise, I suggest combining my proposal with, for example, a separate plan that uses federal income tax revenues to fund six weeks of baby-bonding leave, on the theory that in taking such leave the parent is performing a public service that should be funded by society at large.

## Conclusion

In sum, as a policy matter, the advantage of the silo approach to temporary income replacement is that special terms and conditions can be applied as appropriate to the different reasons for which income is to be replaced. This approach can also readily combine insurance for some income losses, savings arrangements for

others, and redistribution features for yet others. And it can mix and match employer, government, and required employee roles and responsibilities in saving as seems appropriate. On the other hand, unless the system of silos covers all employee needs, workers can find themselves with many protections that they cannot call upon because the reason they are temporarily away from work does not have its own silo, or the worker's claim on that silo is exhausted. Moreover, employee benefits that require meeting silo-specific eligibility conditions often are expensive to administer and require intrusion into the employee's private life (to obtain eligibility verification and to be sure the employee is engaging, or not engaging, in certain behaviors).

A non-silo approach could be easier to administer and more protective of employee privacy, and could be largely indifferent to the reason the employee temporarily needs income replacement. Yet, unless additional features are attached, a single "forced savings" approach for dealing with short-term paid leave precludes handling some risks of income loss via insurance and openly subsidizing some reasons for being away from work on redistribution grounds.

The politics of these competing reforms is complex. The silo approach so far has left us with many missing silos, and even the existing silos often look incoherently different from each other. Still, special interest groups with a concern about one type of temporary income loss are likely to focus attention on creating or improving a silo that deals with that specific problem, and as a result, they might be able to create a coalition for what is pitched as a narrow reform. Getting rid of silos altogether is a far more ambitious strategy. Yet, if the benefit costs of the two approaches to employers were largely the same, business might get behind the non-silo strategy on the basis of the simplification of administration and in the name of employee autonomy.

## Notes

1. In 2006, 41 percent of married-couple families had both spouses in the workforce. Stella Potter Cromartie, "Labor Force Status of Families: A Visual Essay," *Bureau of Labor Statistics* (July/August 2007), <http://www.bls.gov/opub/mlr/2007/07/ressum.pdf>.
2. During unemployment, personal savings only account for around 25 percent of earnings loss smoothing, making it a significantly smaller source of smoothing than government support, which makes up over 50 percent of earnings loss compensation. Susan Dynarski, Jonathan Gruber, Robert A. Moffitt, and Gary Burtless, "Can Families Smooth Variable Earnings?" *Brookings Papers on Economic Activity* (1997): 230.
3. Discover Financial Services, "Discover U.S. Spending Monitor Falls to New Low," *Business Wire*, March 4, 2009, <http://investorrelations.discoverfinancial.com/phoenix.zhtml?c=204177&p=irol-newsArticle&ID=1262399&highlight=>; James X. Sullivan, "Borrowing during Unemployment: Unsecured Debt as Safety Net," *Journal of Human Resources* 43 (2008): 386. ("The median 25-64-year-old worker only has enough financial assets to cover three weeks of pre-separation earnings. This falls far short of the average unemployment spell, which lasts about 13 weeks").
4. Savings or assets are only used to smooth about one-quarter of the loss of income from unemployment, and only over one-third of households have assets worth more than their entire

- income loss. Dynarski, Gruber, Moffitt, and Burtless, "Can Families Smooth Variable Earnings?" 270–271; a growth in frequency of transitory income shocks in the United States has led to increasing consumption inequality. Richard Blundell, Luigi Pistaferri, and Ian Preston, "Consumption Inequality and Partial Insurance," *American Economic Review* 98, no. 5 (2008): 1913.
5. Older and better-educated cohorts are more likely to purchase partial insurance to guard against temporary income shocks, though lower-income households are far more sensitive to these shifting circumstances. However, none of these populations self-insure fully and comprehensively. Blundell, Pistaferri, and Preston, "Consumption Inequality," 1914.
  6. Unemployment has a stronger effect on food consumption, housing, and durables expenditures than other kinds of income shocks. Dynarski, Gruber, Moffitt, and Burtless, "Can Families Smooth Variable Earnings?" 265–266; Sullivan, "Borrowing during Unemployment," 384–385, 406 ("very low-asset households do not borrow . . . these households are not able to fully smooth consumption over these temporary income shocks . . . [they] tend to have very low credit limits and their applications for credit are frequently denied . . . Half of all very low-asset households that have applied for credit have been denied within the past five years").
  7. Predatory lenders are estimated to cost families \$3.4 billion each year, and approximately 5 million payday loan recipients find themselves caught in a cycle of non-repayable debt each year through debt extension programs such as rollovers, extensions, or back-to-back transactions. Keith Ernst, John Farris, and Uriah King, "Quantifying the Economic Cost of Predatory Payday Lending," *Center for Responsible Lending* (2004): 2–4.
  8. Borrowing from family and friends plays a relatively small role in U.S. temporary income relief. Sullivan, "Borrowing during Unemployment," 405; an extensive literature on the "added worker effect" shows little evidence of a statistically significant financial benefit to additional household member employment. Dynarski, Gruber, Moffitt, and Burtless, "Can Families Smooth Variable Earnings?" 266–267.
  9. Households across the income spectrum are, to some extent, able to use postponing durable goods purchasing in order to smooth consumption across temporary income shocks. Sullivan, "Borrowing during Unemployment," 386.
  10. Karen E. Dynan, "Changing Household Financial Opportunities and Economic Security," *Journal of Economic Perspectives* 23, no. 4 (2009): 59–60; Katherine Porter and Tara Twomey, "Risk Allocation in Home Ownership: Revisiting the Role of Mortgage Contract Terms," chapter 8 of this volume.
  11. Private transfers (such as between family members), additional work by other household members, and household savings play a small role in smoothing consumption during temporary income shocks, especially when compared to the relatively strong role that government programs, particularly unemployment insurance, can play. Sullivan, "Borrowing during Unemployment," 383–386.
  12. E.g., Australia, Canada, New Zealand, the United Kingdom.
  13. For a history of the development of workers' compensation programs, see Richard Epstein, *The Historical Origins and Economic Structure of Workers' Compensation Law*, 7 *Workmen's Comp. L. Rev.* 1 (1983–1984).
  14. See Table 19, Bureau of Labor Statistics, U.S. Department of Labor, *National Compensation Survey: Employee Benefits in Private Industry in the United States*. Prepared by the Bureau of Labor Statistics, 2007, 28, <http://www.bls.gov/ncs/ebs/sp/ebsm0006.pdf>.
  15. On average, private workers receive 8 days of paid sick leave annually, and state and local government workers receive 11 days of paid sick leave annually. Bureau of Labor Statistics, U.S. Department of Labor, *Paid Sick Leave in the United States*. Prepared by the Bureau of Labor Statistics, 2010, 28, [http://www.bls.gov/opub/perspectives/program\\_perspectives\\_vol2\\_issue2.pdf](http://www.bls.gov/opub/perspectives/program_perspectives_vol2_issue2.pdf).
  16. See, e.g., *New Zealand Holidays Act, Revised Statutes*, (2003), §§129–63–71; *Australia Fair Work Act, Commonwealth Numbered Acts*, (2009), § 87; *Canada Labour Code, Revised Statutes* (1985), § 183.
  17. In 2011, Connecticut became the first state to require employers with 50 or more employees to provide up to 40 hours of paid sick time each year to certain hourly employees who accrue

- such time. See 2011 Conn. Pub. Acts 0052. In addition, two cities have enacted paid sick days requirements—San Francisco and Washington, DC (Milwaukee, Wisconsin passed a local ordinance by ballot, but it was overturned)—and according to the National Partnership for Women and Families, in 2011, there are 20 states and cities that have introduced paid sick day legislation or have active campaigns to promote legislation. See National Partnership for Women and Families, “State and Local Action on Paid Sick Days,” June 2011.
18. See Table 19, “National Compensation Survey,” 2007, 28.
  19. See relevant Disability Program statutes: *Cal. Unemp. Ins. Code* § 2627(b) (1993); *N.J. Stat. Ann.* § 43:21–38 (2004); *N.Y. Workers’ Comp. Law* § 208 (McKinney’s 2006); *R.I. Gen. Laws* § 28–41–12 (2008); *Haw. Rev. Stat.* § 392–324 (West’s 2009); *P.R. Laws Ann.* 11 § 203(c)(1) (1995).
  20. State of California Employment Development Department, “Disability Insurance (DI) and Paid Family Leave (PFL) Weekly Benefit Amounts in Dollar Increments (2009), DE 2589 Rev. 3 (1–10), [http://www.edd.ca.gov/pdf\\_pub\\_ctr/de2589.pdf](http://www.edd.ca.gov/pdf_pub_ctr/de2589.pdf); *N.Y. Workers’ Comp. Law* § 204 (McKinney’s 1989).
  21. See Jonathan Borak, MD, “Book Reviews: *The Medical Disability Advisor and Official Disability Guidelines*,” *J. Occup. Environ. Med* 49, no. 3 (2007): 346–347.
  22. Rhode Island Department of Labor & Training, “About TDI,” <http://www.dlt.state.ri.us/tdi/>; State of California Employment Development Department, “About the Program,” [http://www.edd.ca.gov/Disability/About\\_the\\_Program.htm](http://www.edd.ca.gov/Disability/About_the_Program.htm).
  23. New York State Insurance Fund, “About Disability Benefits,” <http://ww3.nysif.com/Home/DisabilityBenefits/AboutDisabilityBenefits.aspx>; New Jersey Department of Labor and Workforce Development, “Cost to the Worker-State Plan,” [http://lwd.dol.state.nj.us/labor/tdi/worker/state/sp\\_cost.html](http://lwd.dol.state.nj.us/labor/tdi/worker/state/sp_cost.html).
  24. The majority of private insurance companies offer short-term disability insurance programs. For an overview of the percentage of workers with access to such programs, see Table 16, U.S. Department of Labor, *National Compensation Survey, March 2009*, Prepared by the Bureau of Labor Statistics, 60, <http://www.bls.gov/ncs/ebs/benefits/2009/ebbl0044.pdf>.
  25. *Ibid.*
  26. For instance, workers in Australia are entitled to four weeks of annual paid leave, while Canadian workers are entitled to at least two weeks of paid vacation. Both countries give longer leave entitlements to workers who have been with their company for longer periods. See *Australia Fair Work Act, Commonwealth Numbered Acts*, (2009), § 87; *Canada Labour Code, Revised Statutes* (1985), § 183.
  27. See Table 20, U.S. Department of Labor, *National Compensation Survey: Employee Benefits in Private Industry in the United States, March 2007*, Prepared by the Bureau of Labor Statistics, 29, <http://www.bls.gov/ncs/ebs/sp/ebsm0006.pdf>.
  28. *Ibid.* at 28.
  29. Jessica Yang, “Paid Time Off from Work,” *Salary.com*, November 12, 2004, [http://www.salary.com/personal/layoutscripts/psnl\\_articles.asp?tab=psn&cat=cat011&ser=ser031&part=par088](http://www.salary.com/personal/layoutscripts/psnl_articles.asp?tab=psn&cat=cat011&ser=ser031&part=par088).
  30. Forty-two percent of private companies now offer PTO rather than a traditional vacation plan. Society for Human Resource Management, “2009 Employee Benefit Survey,” Table D-1, 26, Society for Human Resource Management, [http://www.shrm.org/Research/SurveyFindings/Articles/Documents/09-0295\\_Employee\\_Benefits\\_Survey\\_Report\\_spread\\_FNL.pdf](http://www.shrm.org/Research/SurveyFindings/Articles/Documents/09-0295_Employee_Benefits_Survey_Report_spread_FNL.pdf). X employers say they switched to this to avoid moral hazard and administrative burden problems.
  31. National Partnership for Women and Families, “Facts about the FMLA: What Does It Do, Who Uses It, and How?” National Partnership for Women and Families, <http://www.nationalpartnership.org/site/DocServer/FMLAWhatWhoHow.pdf?docID=965>.
  32. See *Cal. Lab. Code* § 233. See also *Conn. Gen. Stat.* § 31–511l; *Haw. Rev. Stat.* § 398–3 (2010); *Md. Code Ann., Lab. & Empl.* § 3–802; *Maine Rev. Stat Ann. Tit. 26*, § 636; *Minn. Stat.* § 181.9413; *Wash. Rev. Code Ann.* § 49.12.270; *Wis. Stat.* § 103.10.
  33. State of California Employment Development Department, “Paid Family Leave Fact Sheet,” DE 8714CF Rev. 10 (12–09), [http://www.edd.ca.gov/pdf\\_pub\\_ctr/de8714cf.pdf](http://www.edd.ca.gov/pdf_pub_ctr/de8714cf.pdf).

34. New Jersey Department of Labor and Workforce Development, "Family Leave Insurance-General Information," [http://lwd.dol.state.nj.us/labor/fli/worker/program\\_info\\_menu.html](http://lwd.dol.state.nj.us/labor/fli/worker/program_info_menu.html).
35. See Table 19, Bureau of Labor Statistics, "National Compensation Survey: 2007," 28.
36. Employment Development Department, "Paid Family Leave Fact Sheet," 2009.
37. A 2009 Survey of selected private companies found that 62 percent offered pay during jury duty and 24 percent offered pay during periods of military leave. Society for Human Resource Management, "2009 Employee Benefit Survey," Table D-3, 57.
38. Ibid.
39. U.S. Department of Labor, *State Unemployment Insurance Benefits*. Prepared by the Employment and Training Administration, 2010, <http://workforcesecurity.doleta.gov/unemploy/uifactsheet.asp>. List reasons.
40. Sullivan, "Borrowing during Unemployment: Unsecured Debt as Safety Net," 386.
41. For a recent example, see Michael Luo, "99 Weeks Later, Jobless Only Have Desperation," *New York Times*, August 2, 2010.
42. U.S. Department of Labor, *Significant Provisions of State Unemployment Insurance Laws Effectively July 2009*. Prepared by the Employment and Training Administration, <http://www.ows.doleta.gov/unemploy/content/sigpros/2000-2009/July2009.pdf>.
43. *Social Security Act of 1935, U.S. Code* 42 (1960), §§501 et seq.
44. U.S. Courts, *Bankruptcy Basics Third Edition: Chapter 13*, Administrative Office of the U.S. Courts on behalf of the Federal Judiciary, <http://www.uscourts.gov/bankruptcycourts/bankruptcybasics/chapter13.html>.
45. *Bankruptcy Act of 1978, U.S. Code* 11 (2010), § 727(a)(8).
46. Interestingly, some lenders are eager to loan money to those who just emerged from bankruptcy, thinking that such people won't be able to once more avoid their obligations in that way for some time in the future. See Katherine M. Porter, *Bankrupt Profits: The Credit Industry's Business Model for Post-Bankruptcy Lending*, *Iowa Law Review*, Vol. 94 (2008).
47. In 2004, a household composed of one caretaker and two children received, on average, \$397.41 per month. See Table 9.G1, Office of Policy, U.S. Social Security Administration, *Annual Statistical Supplement 2005: Other Social Insurance, Veterans' Benefits, and Public Assistance*. Prepared by the Office of Policy, 2007528, <http://www.ssa.gov/policy/docs/statcomps/supplement/2005/9g.html>.
48. For examples, see Cass Sunstein and Richard Thaler, *Nudge: Improving Decisions about Health, Wealth, and Happiness* (New Haven: Yale University Press, 2008).
49. See Hazel Bateman, Geoffrey Kingston, and John Piggott, *Forced Saving*, (Cambridge: Cambridge University Press, 2001).
50. Note the comparison with 401(k) retirement plans, which carry tax penalties if the funds are drawn down before retirement, but which have special exceptions for specified earlier unpenalized draw downs.
51. Child Tax Credit, *Taxpayer Relief Act of 1997, U.S. Code* 26 (2009), §§ 24, 152.
52. Daria Kiselica, Bruce Sibson, and Judith Green-McKenzie, "Workers' Compensation: A Historical Review and Description of a Legal and Social Insurance System," *Clinics in Occupational and Environmental Medicine* 4, no. 2 (2004): 237.
53. Jill Hamburg Copland, "Here Comes Paid Parental Leave," *Business Week*, 2000, <http://www.businessweek.com/smallbiz/0007/sb000703.htm>.
54. Ilana DeBare, "Law Now Entitles All Workers in S.F. to Paid Sick Leave," *San Francisco Chronicle*, February 6, 2007, [http://articles.sfgate.com/2007-02-06/news/17232369\\_1\\_sick-leave-sick-time-mission-district](http://articles.sfgate.com/2007-02-06/news/17232369_1_sick-leave-sick-time-mission-district).
55. Rebecca Ray, Janet Gornick, and John Schmitt, *Parental Leave Policies in 21 Countries: Assessing Generosity and Gender Equality*, Center for Economic and Policy Research, 2009, 1-2, [http://www.cepr.net/documents/publications/parental\\_2008\\_09.pdf](http://www.cepr.net/documents/publications/parental_2008_09.pdf).
56. Gillian Lester, "In Defense of Paid Family Leave," *Harv. J. L. & Gender* 28, no. 1 (2005): 79-82, <http://www.law.harvard.edu/students/orgs/jlg/vol28/lester.pdf>. This perspective fears that

the absence of such benefits now causes women to drop out of the workforce entirely when such needs for temporary time away from work occur (and also perhaps discourages some women from joining the labor force in the first place on the understanding that, absent such income replacement programs, women will later have to withdraw from the force when such needs arise.

57. Depending on the funding mechanism, employers might have an incentive to hire employees who are less likely to be harmed off the job (e.g., younger, married people, perhaps, who don't play football or skydive). Even so, any resultant discrimination could be handled through new antidiscrimination laws already in place in a few states that forbid discrimination by employers against workers based on their off-work recreational activities. Stephen D. Sugarman, "'Lifestyle' Discrimination in Employment," *Berkeley J. Emp. & Lab. L.* 24 (2003): 377, <http://www.law.berkeley.edu/faculty/sugarmans/Sugarman%20lifestyle%20090303.pdf>.
58. Joseph E. Stiglitz and Jungyoll Yun, "Integration of Unemployment Insurance with Retirement Insurance," *Journal of Public Economics, Elsevier* 89, no. 11-12 (December 2005): 2037-2067.
59. Stephen D. Sugarman, "Short Term Paid Leave: A New Approach to Social Insurance and Employee Benefits," *Cal. L. Rev.* 75 (1987): 465.