

**BUYER BEWARE: THE HIDDEN COST OF FAMILY LEAVE
PLAN IN AN INTERNATIONAL MERGER AND ACQUISITION**

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ABSTRACT

This paper will examine the numerous paid work leave laws in Germany and Italy pointing out fundamental distinctions between these countries and the United States. If you want to get the best end of a deal, you need to know the cultural landscape of the market before it becomes a point of conflict and it's your job to confirm the information you gather.

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1. INTRODUCTION

Much of what drives most businesses is the intangible element of “Human Capital”, and the culture reflected in performance levels.¹ In the merger and acquisitions of a foreign company, perspective hidden costs are a real issue. If you want the best end of a deal, you will need to know the landscape of the laws governing labor and specifically, employee benefits guaranteed in the target market regarding family leave. The concept of guaranteed leave from work for family needs and other personal duties has long been one of the basic assumed rights in most European countries.² In Germany and Italy, for example, the greatest labour cost disparity with the US is not wages. It is the amount of paid time off and other perquisites/benefits.

Since labor standards define the work environment, shape the conditions of employment and have implications on trade, foreign direct investment, employment and economic competitiveness; it is critical that ‘soft due diligence’ be an integral part of the pre-acquisition research.

It is the onus of the lawyer to convince the American investors, they represent, to adjust their perspectives to fit the legal, synergized³ cultural, and social realities that prevail in Europe [specifically, for this thesis: Germany and Italy] with respect to family and medical leave issues (and indeed, the entire relationship between work-life and home-life).⁴ Perhaps, the greatest challenge facing top managers during the transition from two organizations to one integrated organization is establishing a process⁵ and making decisions in order to reconcile such differences so that the synergies planned for can be achieved.

¹ Woburn Update: “Integrating culture & technology for rapid growth”, Woburn Consulting Group. www.woburnconsulting.com

² Carol Daugherty Rasnic, *The United States’ 1993 Family and Medical Leave Act: How Does it Compare with Work Leave Laws in European countries?*, 10 Conn. J. Int’l. L. 105 (1994).

³ Synergized defined as the interaction of two or more agents or forces so that their combined effect is greater than the sum of their individual effects.

⁴ Ibid.

⁵ Paul Thompson, Terry Wallace and Jorg Flecker, *The urge to merge: organizational change in the merger and acquisitions process in Europe*, 3 Int’l J. Human Resource Mgt., (1992);

When one starts the M&A investigation procedure, he will need to identify the differences between his company [US] values, procedures, laws and policies with the new company's policies, laws and procedures⁶ governing family leave plans. The following sample list identifies critical areas for consideration:

- i. Social ideology of the country, including the history and the present status of the country's political, economic, and social values and the systems in place to implement them,⁷
- ii. The purposes of the legislation⁸ and
- iii. the coverage of the law.⁹

These are often practically interrelated, but reflect different theoretical perceptions. Not to mention, discovering a way to integrate and combine values that is not easily joined.¹⁰ Pre-merger planning has a direct impact on the businesses' post-merger cultural and community integration.¹¹

2. TARGET COUNTRY- GERMANY – FAMILY LEAVE BENEFITS

As early as 1878, Germany inaugurated the first Maternity Leave Act.¹² The legislated protections provided three weeks of leave after birth; coverage and benefits continue to increase.¹³

D.M. Schweiger, and K. Weber, *Strategies for Managing Human Resources during Mergers and Acquisitions: An Empirical Investigation*, 101,118 in *Human Resource Planning* (1st ed., 1992).

⁶ Carol Kleiman, *On Family Leave Plans U.S. is Left Far Behind.*, CHI. TRIB. (22/05/1989), available at http://articles.chicagotribune.com/1989-05-22/business/8902030132_1_care-for-family-members-parental-leave, last seen on 02/07/2015

⁷ See *infra* part 4.1 (discussing the social ideology of nations).

⁸ See *infra* part 4.2 (discussing the purposes of the laws)

⁹ See *infra* part 4.3 (discussing the coverage of the laws)

¹⁰ *Supra* 27.

¹¹ Darryl A Weiss, *Opening in a Foreign Country; be careful*, Global Business News, available at <http://www.globalbusinessnews.net/story.asp?sid=158>, last seen on 02/07/2015.

¹² Mona L. Schuchmann, *The Family and Medical Leave Act of 1993: A Comparative Analysis with Germany*, 20 Iowa J. Corp. L. 331 (1995) (quoting Bulla & Buchner discussing history of maternity leave in Germany)

Basically, the Mutterschutzgesetz, Maternity Protection Act of 1968 was instituted to ensure that expecting mothers are not discriminated against when applying for jobs and to provide them with added protection from being dismissed from work as a result of their pregnancy or arrival of their newborn child. This law actually goes well beyond that fundamental claim and provides much more.¹⁴

Under the Maternity Protection Statute (*Mutterschutzgesetz* or *MuSchG*), revised on June 20, 2002, expectant mothers must not be employed for a period of six weeks before the date of expected childbirth and for a period of eight weeks after giving birth (12 weeks in the case of pre-term or multiple births), hereinafter “maternity leave.”¹⁵ This Act ensures that the expecting mothers that are deemed unable to work are not financially penalized during the *Schutzfrist*. The Maternity Protection Pay is issued by the employer and must be at least the same amount as of a 13-week wages’ average or of the last 3 months before pregnancy.¹⁶

Women usually receive a maximum of €13 per day (\$17.31 US), up to a maximum of €210 in total, during maternity leave from the government. The employer is then required to pay the difference between the applicable maternity pay and the woman's average salary or wages net of tax and social security contributions, calculated on the basis of the wage statements for the last three months or 13 weeks before the commencement of maternity leave.¹⁷

Termination within the probationary period, during which the protections of the Termination Protection Statute do not apply, is not permissible in the case of a pregnant woman and their job is protected for a three year period.¹⁸ Only in particular cases, where the termination is unrelated to the woman's condition during pregnancy or the four months' period following childbirth, for example, in the event of a plant

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Bloomberg BNA, *International Labor and Employment Laws*, Germany, 3rd Ed., The Bureau of National Affairs, Inc. , 69-71, (2014)

¹⁶ Ibid, at 63.

¹⁷ Ibid, at 155., See also, note 55.

¹⁸ Ibid, at 78.

closing, the authorities may declare a termination permissible upon the employer's application.

Parental leave is a two year income-tested leave.¹⁹ Parents are also granted a 3 year job-protected leave following childbirth (This pertains only to parents whose employers have more than 15 employees). Parents can split this leave or take it at the same time. Although, both parents are eligible for this leave, less than one percent of eligible fathers actually take this leave in Germany.²⁰ Traditionally, social expectations have been that women will take on most, if not all, child care responsibilities.²¹ This traditional view has been reinforced by the reality that mothers tend to earn less at paid work than fathers' do.²² Women's traditional gender roles and their disadvantage relative to men in the labor market work together to shift the responsibility of care for infants and young children heavily toward mothers.

In many cases, women can take a period of up to three years of parental leave onto maternity leave. If a mother or father wishes to avail her or himself of parental leave, she or he must apply to the employer in writing, at least seven weeks before the leave is to commence. In that application, the employee must state for which periods until the child's second birthday she or he wishes to take parental leave. Parental leave can be taken in one or two parts; any further split requires the employer's consent.²³

In principle, extended parental leave can be taken only until the child's third birthday, but with the employer's consent up to twelve months thereof can be taken until the child's eighth birthday.²⁴ Parental leave

¹⁹ Annie Pelletier, *The Family Medical Leave Act of 1993-Why Does Parental Leave in the United States Fall so far Behind Europe?*, 42 Gonz. L. Rev. 547 (2007).

²⁰ *Ibid.*, at 565,567.

²¹ Rebecca Ray, Janet C. Gornick, and John Schmitt, *Parental Leave Policies in 21 Countries*, Center for Economic and Policy Research (cepr), (2008).

²² Of course, one reason that mothers earn less than the fathers of their children is that child care responsibilities lead many mothers to interrupt their employment or to put their jobs on a "mommy track" that trades off diminished responsibilities at work (and, therefore, diminished prospects for promotion) for more time and greater flexibility to devote to child care.

²³ *Ibid.*

²⁴ *Ibid.*

may be taken, in full or in part, by each parent alone or jointly by both parents.²⁵

Such request can be made only twice during parental leave. If the employer wishes to deny the requested reduction in working hours, it must do so in writing within four weeks, setting forth the reasons for denial. If the employer fails to grant the request, or does not grant the request in a timely manner, the employee may institute legal proceedings in the labor courts.²⁶ The term Union has a very different connotation in the U.S. as compared to other countries. In most European countries, the employer will be working with either Works Councils or Trade Unions. The Unions, unlike in the U.S., are mandated by statute in most cases and play a major role in work determination, training, wage rates and redundancies,²⁷ regulated by Work Councils.

For the employer to facilitate the part-time work request, the employer must organize substitutes or otherwise cover the shortfall in working time.²⁸ If the employee shall be entitled to return to full time again, the employers will need predictability (announcement requirements sufficiently in advance) and laws enabling him to hire substitutes temporarily. Otherwise, he will have too many employees on board when the part-time employee returns to full time.²⁹

Women are well protected in Germany from loss of employment due to dismissal from the beginning of pregnancy until 4 months following childbirth (*Schutzfrist*) through a *Kündigungsverbot*, Dismissal Ban. Only, in extremely rare exceptions are employers permitted to dismiss a pregnant employee during this time.³⁰

²⁵ Ibid, at 93.

²⁶ In Germany, worker participation in the most sensitive areas of management occurs through employee representation on works councils, not through union representation. The right to be consulted before decision-making combined with the right to share in the decisions invests the works councils with great power and influence.

²⁷ Ibid, at 50.

²⁸ *Labor and Employment Law Projects of the New German Government*, Jones Day Commentary, (March 2014)

²⁹ Ibid, at 68.

³⁰ Ibid, at 55.

If employer receives a Certificate of Expected Date of Delivery within 2 weeks of canceling a pregnant employees' contract- the dismissal is usually retracted or nullified. Not many company's want to invest in the complicated and often, unsuccessful undertaking of challenging the higher authorities on this subject.³¹

Having the work done by co-workers: to facilitate the part-time work request, currently requires the employer to organize substitutes or otherwise cover the shortfall in working time. Heavier work loads for co-workers may in the long run lead to dissatisfaction and increased fluctuation, more error-prone work and lower productivity.³² Hence, we would expect the costs of work-sharing solutions borne by the employer to be a function of the duration of leave such that employer costs will generally increase with increasing maternity leave duration.³³

If the employee shall be entitled to return to full time again, the employers will need predictability (announcement requirements sufficiently in advance) and laws enabling him to hire substitutes temporarily. Otherwise, he will have too many employees on board when the part-time employee returns to full time. It would be desirable (and can be expected) that the new laws will follow the pattern of the regulations on parental leave where such claim already exists. If the new model, once implemented, is widely used, this will mean an increasing administrative burden for employers, who once more will be encumbered with socio-political objectives of politics. The additional paid leave to care for family members will mean costs for the employers.³⁴

Existing studies on the effect of maternity leave provisions on women's labor market position concentrate on the duration of maternity leave as a proxy for the costs accruing to employers – the underlying hypothesis being that the longer the leave duration, the more human capital is being

³¹ Ibid.

³² Dorothea Alewell, Kerstin Pull, *An International Comparison and Assessment of Maternity Leave Regulations*, www.wivi.uni-jena.de/Papers/wp-a0102.pdf, University of Jena.

³³ Ibid.

³⁴ Ibid, at 4.

lost. In many cases, however, the loss of human capital during a limited absence of several months may not be the main cost factor for employers faced with a mother on leave who wishes to return to her previous job. Moreover, it may well be the re-organization of work during absence and thereafter, that causes a problem to the employer.³⁵

The United States maternity leave is unpaid, while mothers on maternity leave in Germany receive pay reaches up to a 100% of the wage – 40% of these costs are borne by the employer.³⁶ These costs of having to co-finance maternity pay add to the costs of reorganization.

3. TARGET COUNTRY - ITALY – FAMILY LEAVE BENEFITS

In Italy, parental leave is regulated mainly by the law (currently laws 1204 of 1971 and 903 of 1977).³⁷ According to a law adopted in 1971 and amended many times since, pregnant women here are obligated to take off the last two months of pregnancy and the first three months following the birth - for a total of five months during which they receive full salary, 80 percent of it paid by the state.³⁸ Having babies is a serious business everywhere. But in Italy, working women are given the time to treat it almost like a job. Long paid leaves, combined with free medical care, are considered part of an Italian mother's birthright - one element of the safety net that middle-class taxpayers across Europe have both enjoyed and supported with very steep taxes for many decades now, in contrast to their middle class counterparts in America, who by and large see social spending as money only for the poor.³⁹

³⁵ Supra, at 34.

³⁶ Ibid.

³⁷ Office of Retirement and Disability Policy, *Social Security Programs Throughout the World: Europe, 2012*, available at <http://www.ssa.gov/policy/docs/progdsc/ssptw/2012-2013/europe/italy.html>, last seen on 16/07/2015; Article 99 of the Constitution established the National Economic and Labor Council (*Consiglio Nazionale dell'Economia e del Lavoro (CNEL)*).

³⁸ Celestine Bohlen, *The State of Welfare in Italy; Where Every Day is Mother's Day*, The New York Times (12/05/1996).

³⁹ Ibid.

The Italian Constitution, under Article 37, states that working women and men have equal rights as to salary and all protections of applicable laws. Moreover, it provides that a working woman must be granted work conditions that:

- i. Give her the opportunity to carry out her essential role within the family, and
- ii. Ensure a special and adequate protection to the mother and the child.⁴⁰

After some delay, the 1996 EU Directive on parental leave has now been converted into Italian law. The aim of the new law is to enable a more satisfactory balance to be struck between family and work commitments. Legislative Decree no. 151 of March 26, 2001, sets out the main principles relating to maternity rights:

- i. A pregnant employee has the right to time off during working hours for medical appointments. Requests for such leave are not to be unreasonably refused;
- ii. A woman is entitled to maternity leave and salary during the following time periods:
 - a) A mandatory period of two months before the expected date of delivery;
 - b) The days between the predicted date of delivery and actual date of delivery;
 - c) A further mandatory period of three months after the delivery;
 - d) An optional period of six months (during which the employee is paid at a reduced rate) until the child is eight years old); and
 - e) If there is only one parent, for a maximum of 10 days a working mother is entitled to two hours paid leave a day (reduced to one hour if her working hours are less than six), until the child is one year old, in order to feed the baby.

⁴⁰ Ibid, at 86.

The salary paid to the employee for the aforementioned periods is recoverable by the employer from the social security authorities (Istituto Nazionale di Previdenza Social (INPS)) as follows:

- i. for 80 percent of the employee's salary for the mandatory periods, and
- ii. for 30 percent of the employee's salary for the optional period for a maximum of six months until the child is three years old.

In addition to the mandatory maternity leave governed by the laws, there are also benefits that are not written in legislation, but simply sanctioned by tradition. For instance, women with risky pregnancies are entitled, with the appropriate doctor's certificate, to take all nine months of pregnancy off.⁴¹ Likewise, mothers suffering from depression or mothers whose babies require special care can get other doctors' certificates, entitling them to stay away from work for up to three years.

A pregnant employee cannot be dismissed during the pregnancy period and within the first year after birth of the child, except for just cause.

The most significant amendments introduced by the Law no. 53 are the following:

- i. The father is now entitled to take leave during the mandatory period of three months described under c) above in case of mother's death or illness, or in the event that he has custody of the child;
- ii. Both parents have the opportunity to take leave to care for their children during the optional period of six months described under d) above;
- iii. Both parents are now entitled to two hours paid leave a day described under e) above; and
- iv. Both parents independently are permitted to take leave (being paid at a reduced rate) in the event of their child's sickness until

⁴¹ Ibid.

the child is eight years old, upon presentation of a medical certificate.⁴²

Further, paid family leave taken for the purpose of caring for a newborn (or a newly adopted child) the Social Security Service grants an allowance equal to the 80% of the average daily wage for five months of compulsory leave from work. The parents can ask to be recognized a further period of elective leave from work and in this case, the allowance granted by INPS is equal to 30% of the average daily wage, this further period can go up to a maximum of 6 months within the 3rd year of the child. Specific provisions withheld in National Collective Bargain Agreements provide that, in order to grant the mother (or the father in particular circumstances) 100% of the total wage, the remaining part (from 80% up to 100% of the normal income) has to be paid by the employer.⁴³

The period of compulsory maternity leave for women can now be arranged differently. Whereas, previously the entitlement was two months prior to confinement and three months after, under the new law mothers may apply for a period of leave amounting to one month before confinement and four months after.⁴⁴

The M&A lawyer, whose client is acquiring an Italian company, must include in the due diligence phase must look at that when a case of personal illness of the employee occurs (illness not covered for by INPS) the paid leave can go up to a year, but single Collective Bargain agreements can allow it for less or more time, depending on the single provisions.

In the event of a newborn child or newly adopted, the mother is granted 5 months of mandatory leave, normally 8th and 9th month of pregnancy and up to the 3rd month of the child. This period can be extended and the mother can ask for the elective absence from work which, till the 3rd year of the child, can go up to 6 months of paid leave and after to 3rd

⁴² Ibid, at 87.

⁴³ Ibid.

⁴⁴ Ibid, at 97.

year and up to the 8th year of the child (if occur particular circumstances) up to another 4 or 5 months (so on the whole no more than 10/11 months up to the 8th year of the child). As above mentioned, the elective absence income is granted only up to 30% of the average daily wage.⁴⁵ Moreover female workers are entitled to paid time off (*permessi retribuiti*) for prenatal visits and check-ups during working hours.⁴⁶

Finally, the employer must know that the position has to be held by the company until the return of the employee from family and medical leave. The position does not have to be eliminated in the meantime and the company can replace the absent employee (if absent for long amount of time e.g. over a month) with another but only on a temporary basis, this means until the employee on leave does not return to work. When the employee returns he/she is granted the same position and tasks. Often companies, in case of parental leave, hire another employee with a fixed-term contract in order to grant covering for the position strictly for a determined period of time equal to the compulsory absence period; that opens up another set of requirements to be explored at another time.⁴⁷

As this paper has noted, Italy's parental leave policy designs vary on multiple dimensions. Leave provisions can be, more or less, generous with respect to the amount of total time granted to parents and can be, more or less, generous with respect to the level of financial remuneration provided. One last thing when scrutinizing the Italian "human capital" costs is that female labor market participation varies from one part of the country to another, being much higher in the regions of northern Italy and some central regions than it is in the South.⁴⁸

⁴⁵ Ibid.

⁴⁶ *Family Benefits*, INPS; EURAXESS Italy, European Commission - Employment, Social Affairs and Equal Opportunities; Your Europe - Family; Eurofound: <http://www.welcomeoffice.fvg.it/common/are-you-a-eueecitizen/researcher/family-benefits.aspx> (2009).

⁴⁷ Ibid, at 97.

⁴⁸ Ibid, at 97.

4. UNITED STATES – FAMILY LEAVE BENEFITS

The United States Family and Medical Leave Act (FMLA) sets a minimum standard for parental leave, but due to the exclusion of small employers and short-tenure workers, about 40 percent of United States workers are not eligible for the FMLA.⁴⁹ In general, United States employers as a group have not stepped in to fill the gap⁵⁰. While about 60 percent of workers are eligible for FMLA related leave, only about one-fourth of United States employers offer fully paid "maternity-related leave" of any duration, and one-fifth of United States employers offer no maternity-related leave of any kind, paid or unpaid. Private employers do not appear to be narrowing the statutory gap in parental leave entitlements between the United States and the rest of the high-income countries analyzed herein.⁵¹

The United States is the only industrialized nation that does not guarantee workers paid time off to provide care to a new child, and one of only a handful of these nations that does not provide paid leave for other types of family care.⁵²

The Family and Medical Leave Act of 1993 was an important accomplishment providing unpaid, job-protected leave to recover from a serious illness, care for a new child, or care for a seriously ill spouse, parent, or child, yet only half of all workers in the United States are covered and eligible.⁵³ Even when workers are eligible for unpaid leave under the Family and Medical Leave Act, they often cannot afford to take it. Only a small percentage of workers are away from work in an average week for the birth or adoption of a child. In the average week,

⁴⁹ Annie Pelletier, *The Family Medical Leave Act of 1993-Why Does Parental Leave in the United States Fall so far Behind Europe?*, 42 Gonz. L. Rev. 558 2006-2007

⁵⁰ *Ibid*, at 560.

⁵¹ Rebecca Ray, *et al*, *Parental Leave Policies in 21 Countries, Assessing Generosity and Gender Equality*. Center for Economic and Policy Research. September, 2008. Revised June, 2009

⁵² OECD, *Gender Brief*, Prepared by the OECD Social Policy Division, Version: March 2010

⁵³ Family and Medical Leave Act of 1993, H.R. 1, 103rd Congress (1993)

only 0.4 percent of workers are out on parental leave.⁵⁴ Women are more likely than men to be out of work on parental leave in any given week, which is both because women are more likely than men to take leave, and because women take longer leaves.⁵⁵

Further, as if these consequences are not enough, corporations could be held liable under United States law if they violate its laws while operating abroad. Therefore, it is not likely, but certainly possible, that a multinational operating in Europe could violate not only the relatively employee-favoring provisions of a member state operating under the Directive, but it could also be held liable for violation of the FMLA in the United States, if the requisite three months of unpaid leave is not given to the employee.

Similarly, multinational corporations, specifically those originally incorporated in the United States, operating in Europe who violates the Directive and the FMLA will suffer the consequences in a United States tribunal. Such issues have caused some commentators to ask, “What is an American company anymore?”⁵⁶ Indeed, others are suggesting an extension of the territorialism of United States laws to reach its companies who violate acceptable labor standards on the international level.⁵⁷

The notably short era and more stringent periods of leave provided for in the FMLA are in sharp contrast to the longer, variable standard the European Union has imposed upon its member states.⁵⁸ That is, the greater need for employee-protective legislation and the history of a more paternalistic view of employees’ rights leads the European Union to

⁵⁴ Dept. of Labour, Bureau of Labor Statistics, Table 2. *Wage and Salary Workers Who Took Leave from their Main Job. During an Average Week: percent of Workers Taking Leave, Hours of Leave Taken and Type of Leave Used; Main reason for taking leave*, 2011.

⁵⁵ Ibid.

⁵⁶ Ibid, at 566.

⁵⁷ Henry F. Drummonds, *Transnational Small and Emerging Businessina World of Nikes and Microsoft (A Retrospective Article on the 1998 Lewis & Clark Law Forum and the Message of Seattle*, 4 J. Small & Emergingbus.l. 249,293(2000).

⁵⁸ Ibid.

impose more restrictions on employers in member states in order to extend and preserve employees' rights.

The tragedy of America's inability (or unwillingness) to develop the mindset and the mechanisms to compete in this 'space between' means that we reduce our options and in the end, resort to the military instrument. Peace does not exist in a state of inertia. It must be actively and consistently maintained by engaging in the political competitions that are its constant feature.⁵⁹

5. CONCLUSION

Clearly, the greatest difference between the FMLA and the EU Directive is the amount of leave given to parents before and after the birth or adoption of a child.⁶⁰ The FMLA mandates twelve weeks of unpaid leave to be taken responsibilities within twelve months of the child's birth or adoption,⁶¹ while the typical length of leave granted to European employees is fourteen to sixteen weeks (though then Directive only requires twelve).⁶²

It is no big secret that the United States is a shameless outlier among our peer nations when it comes to adapting to the realities of the 21st century workforce. Of 168 countries included in a recent global study, 163 guarantee a period of paid leave for childbirth; the U.S. does not. (Among affluent countries, only the U.S. and Australia do not provide paid childbirth leave - and Australia offers 52 weeks of job-protected leave to all women, compared to the miserly 12 weeks of unpaid leave available to roughly one-half of women workers in the U.S.)⁶³ While the

⁵⁹ Darryl A. Weiss, *Opening in a Foreign Country, be careful*, Global Business News, available at <http://www.globalbusinessnews.net/story.asp?sid=158>, last seen on 02/07/2015.

⁶⁰ *Supra*, Morris @ Note 63 pg. 567.

⁶¹ 29 U.S.C.Family and Medical Leave Act of 1993, S. 2601-2654.

⁶² Council Directive 96/34/EC19960.J.(L145)4, Art.2(2) (granting a right to three months' leave); *See Also*, Kathryn L. Morris, *A Matter of compliance: How do U.S. Multinational and Medical Leave Act of 1993 and the European Union Directive on Parental Leave; Is an International Standard Practical or Appropriate in this area of law?*, 30 Ga. J. Int'l & Comp. L. 543 (2001)

⁶³ Judith Stadtman Tucker. *Hands Off My FMLA*, Huffpost Healthy Living (24/08/2014), available at <http://www.huffingtonpost.com/judith-stadtman-tucker>

free market proponents defend this lackadaisical approach as the American Way, our nation's abysmal track record on implementing family friendly policies has led to serious social problems here and will lead to social problems when these same proponents elect to enter the "foreign" arena, as mentioned above.⁶⁴

The social welfare ethic found in European countries is that the upbringing of children is often viewed as a societal responsibility.⁶⁵ The Directive's purpose is to: 'facilitate the reconciliation of parental and professional responsibilities for working parents.'⁶⁶ On the other hand, Americans tend to have an individualistic outlook on life and tend to view the upbringing and care of children 'in individual and voluntary terms.'⁶⁷ Collective responsibility for children is virtually unknown in the United States. The United States situation seems to assume that pregnancy [and child rearing to a large extent] is sort of a private hobby, which must be borne at your own expense.⁶⁸

While these problems seem monumental and confusing to a company beginning their transnational business, steps can be taken to avoid sanctions and maintain the goodwill of their European customers.⁶⁹ To combat such problems and because of the varying standards it is imperative that drastic measures be taken.⁷⁰ The question remains: how much due diligence and to what extent would a United States corporations go to incorporate aspects of foreign industrial relations systems into its own system, especially without "golden guarantee."

/ hands-off-my-fmla_b_37623.html?ir=India&adsSiteOverride=in, last seen on 02/07/2015.

⁶⁴ Supra 34.

⁶⁵ Emily A. Hayes, *Bridging the Gap between Work and Family: Accomplishing the Goals of the Family and Medical Leave Act of 1993*, 42 *Wm. & Mary Rev.* 1507, 1516 (2001).

⁶⁶ *Ibid.*, at 166.

⁶⁷ *Ibid.*

⁶⁸ Arielle Horman Grill, *The Myth of Unpaid Family Leave: Can the United States Implement a Paid Leave Policy Based on the Swedish Model?*, 17 *Comp.Lab.L.J.* 373, 373 (1996) (citing HR 2020, 99th Cong. (1st Sess. 1985)).

⁶⁹ Supra 34.

⁷⁰ Morris, *supra* note 177