

Modern Families, Outdated Laws

The single most important economic and sociological change in our society in modern times has been the entry of women into the labor market. Today, three of every four women of working age are employed – more than double the share a half-century ago.

These changes have had a major impact on family life. Fewer than one out of every four households are “traditional,” with one wage-earner and a stay-at-home spouse. Dual-earner families — with both spouses in the labor market — now constitute about half of all married couples.

Our public policy institutions have not kept pace with these remarkable changes, however. Tax law, labor law and a host of other institutions are still designed from top-to-bottom on the assumption that husbands will be full-time workers, while wives will mainly stay at home.¹

Unfair taxes.

The highest tax rates in our economy are paid by women wage earners. In fact, women earning only modest incomes can pay taxes at rates that are twice those paid by such billionaires as Jeff Bezos, Mark Zuckerberg and Bill Gates. Consider that:

- When a woman leaves the home and enters the labor

market, she will be taxed at her husband’s tax rate, even if she earns only the minimum wage. When all taxes and all costs are considered (including the cost of child care and other services she was previously providing as a homemaker), a woman in a middle-income household working a full-time minimum wage job can expect to keep only about one-third of each dollar she earns.²

- Even if her husband has maxed out on his Social Security contributions, the woman must start all over. At retirement, she is entitled to one-half her husband’s benefit or the benefit she has earned in her own right — but not both. For that reason, she will likely get no extra Social Security benefits in return for her payroll taxes.
- In community property states, a woman at the time of divorce is entitled to half the couple’s assets – including IRA and

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Nan Hayworth, MD, is a Goodman Institute Board member. She represented New York’s 19th congressional district in the 112th Congress.

¹This brief analysis is based on Kimberley A. Strassel, Celeste Colgan and John C. Goodman, *Leaving Women Behind: Modern Families, Outdated Laws* (Lanham, Maryland: Rowman & Littlefield, 2006).

²Income tax rate = 24%. FICA payroll tax = 15.3%. State and local income taxes = 6%. Replacement of in-home services = 25%.

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401(k) funds, savings account money, and private pensions. But she is not entitled to half the Social Security contributions. In fact, she will receive no benefits at all based on her husband's contributions unless she stays married for ten years.

- If the woman's husband dies prematurely, Social Security will provide a modest benefit as long as she stays home and takes care of children. But if she earns an income, at some point the combined effect of direct taxes plus loss of benefits will leave her with as little as 10 cents out of each extra dollar she earns.³
- Once the widow's children are grown, Social Security benefits will cease, and she will be on her own to fend for herself. But if she previously responded to the system's anti-work incentives by remaining out of the labor market, she will have to enter the market without job skills.
- When the woman reaches retirement age she will once again qualify for Social Security benefits. But if she tries to supplement those benefits with wage income, special taxes on the elderly can push her marginal tax rate as high as 95 percent, leaving her with only a nickel out of

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each additional dollar she earns.⁴

- Because women live longer than men, they will be more burdened by the Social Security benefits tax, which will cause many middle-income seniors to forfeit more than one-fourth of their private pension income and IRA withdrawals.⁵

These taxes affect men as well as women. However, in many households women are still the second earner. They are more likely to be the survivor of a premature

death. And they are more likely to need wage and capital income to meet basic needs during the retirement years.

Unfair Work Rules.

Like the tax system, laws that affect the workplace were shaped and molded decades ago by legislators who had no idea how modern family life would be lived. Here are more examples:

- Both men and women workers pay the same unemployment insurance taxes, but because women are more likely to work part-time and because they voluntarily move in and out of the labor market more frequently (for example, to raise children or care for a parent), they are less likely to receive any benefits in return for the taxes they pay.⁶

³Loss of Social Security income = 50% above \$17,040 in 2018. Probable income tax rate = 22%. FICA payroll tax = 15%. State and local income taxes = 6%. The earned income tax credit may provide offsetting income.

⁴Laurence J. Kotlikoff, Some Older Workers Face Astronomical Tax Rates, Brief Analysis No. 115, Goodman Institute for Public Policy Research, October 5, 2016. Assumes federal income tax = 13.10%, state and local income tax = 4.76%, Social Security benefits tax = 6.55%, FICA tax = 15.3%, sales tax = 4.76%, Social Security earnings penalty = 50%

⁵Ibid. Given a 15% federal income tax rate, the Social Security benefits tax can raise the tax rate on pension and IRA withdrawals to 27.75%. It can raise the rate from zero to 12.75% for capital gains, dividend income, Roth IRA withdrawals and tax-exempt income.

⁶About half the states categorically deny benefits to part-time workers.



- If a woman temporarily leaves the work force to raise children and then returns years later, she will lose most of the credits she accrued and run the risk of being ineligible for Social Security disability benefits.⁷
- Unlike federal workers, private sector hourly employees cannot store up hours one week to take off the next week, say, to attend a child’s soccer game or take a parent to the doctor.

Again, these laws apply equally to men and women. But women are more likely to move in and out of the labor market, to require flexible work schedules and to work part-time. Almost two thirds of part-time employees are women.

Unfair Employee Benefit Policies.

Women are adversely affected by public policies in other ways. In contrast to some other developed countries, the United States encourages employers rather than government to provide such benefits as health insurance and pensions. Our private employee benefits system is not the result of free market forces, however. Instead, it has been designed to accommodate a full-time worker with a stay-at-home spouse and penalize any other arrangement. For example:

- Because they are more likely to work part-time, women are less likely to qualify for any employer-provided benefits and they are not allowed to trade reduced pay, say, for inclusion in the employer’s health plan.

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- Because they move from job to job and in and out of the labor market more frequently than men, women are more likely to be burdened by employee benefit programs that penalize job switching (e.g., lack of vesting in a pension plan and lack of portable health insurance).
- When people acquire health insurance and save for retirement on their own (not through an employer), the tax system is far less generous.

- Couples with two full-time working adults often find that they must accept unnecessary, duplicate sets of employee benefits, say, because the wife is unable to opt for higher wages if she forgoes health insurance from her own employer when she is already covered on her husband’s employer’s plan.

A Better Way.

Many changes are needed to bring aging institutions into sync with the way people are living their lives in the 21st century. Here are a few suggestions:

- We need a fairer tax system for two-earner couples, ideally a system that taxes all income at one low rate. Barring that, dual earner couples should be able to file genuinely separate returns.
- Employee benefits law should permit flexibility, making it easier for dual-earner couples to obtain higher wages rather than unneeded, duplicate benefits and for part-time workers to accept lower wages in return for more valuable health and

⁷You need 40 credits (quarters), 20 of which were earned in the last 10 years before you become disabled. Thus, you must work for at least 5 of the last 10 years to qualify for disability benefits.

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- retirement benefits.
- We need flexibility in labor law, making it easier for workers (especially parents with young children) to choose alternatives to the traditional 40-hour work week.
- We need to replace the arbitrary limits on retirement savings contributions with a system that is fairer to women who move in and out of the workplace.
- We need a fairer system for providing tax relief for health insurance — especially for single parents who leave the workforce for extended periods of time and for others who must purchase health insurance on their own.
- We need to repeal laws that prevent health and retirement benefits from being portable — so that people are not penalized when

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- they switch jobs.
- We need a completely new approach to the treatment of spouses receiving Social Security retirement benefits and widows receiving survivors' benefits. The ideal is "earnings sharing," with each partner getting credit for half of all payroll taxes paid.
- We need to abolish the earnings test — both for retirement and survivor's benefits, allowing beneficiaries to work without the loss of benefits they have rightfully earned. This agenda assumes that people can be successful without limiting the freedom or raising the taxes of others. Its goal is to liberate women from outdated institutions that unfairly penalize them. Women in our society should be able to live productive, satisfying lives, without misguided public policies that hold them back.



6335 W Northwest Hwy - #2111 • Dallas, TX 75225 • email: info@goodmaninstitute.org • +1 214 302.0406

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