



# Human Rights Project

A Project of the Urban Justice Center

## THE HUMAN RIGHT TO PAID SICK LEAVE

*How the United States and New York City Fail Low-Income Women of Color*

October 2011

Paid sick leave – the right to paid time off when a worker is too ill to work or to enable a worker to care for an ill family member – is enshrined under human rights law. Yet the United States fails its people in not mandating the human right to paid sick leave in its policies. This briefing aims to provide policy makers and advocates with an overview of: 1) the current situation in the United States and the disparities suffered by low-income women of color; 2) relevant human rights standards to advance this issue of economic and social justice; 3) recommendations and models to implement a paid sick leave policy on the local, state, and/or national level, and; 4) how the popular demand for paid sick leave policies override the minimal costs of implementation.

### ***U.S. Background: Low-Income Women of Color Struggle Most***

The United States fails to guarantee its workers with the human right to paid sick leave. There is no policy at the national level that affords U.S. workers with this basic human right, and workers are left to the whims of their employers and the free market when seeking a paid sick day. This means that far too often workers must choose between their health and financial security. Approximately 42% of workers in the U.S. private sector do not have access to paid sick leave through their employers.<sup>1</sup> And almost forty-four million U.S. workers do not have a single paid sick day.<sup>2</sup>

Low-income women of color are particularly impacted by the lack of Federal or State-level policies mandating paid sick leave. Women of color continue to be paid less on average, and close to two-thirds of low-wage workers – the majority of whom are women – do not have access to paid sick days.<sup>3</sup> Yet in many families of color, a woman is not only the primary breadwinner, but also responsible with caring for others at home.<sup>4</sup> It should come as no surprise then

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<sup>1</sup> Claudia Williams, Robert Drago, Ph.D., Kevin Miller, Ph.D., & Youngmin Yi, *Access to Paid Sick Days in the States, 2010* p. 2 (Inst. for Women's Policy Research 2011).

<sup>2</sup> *Ibid.* at 1.

<sup>3</sup> National Partnership for Women & Families, *Women of Color Need a Paid Sick Days Standard* p. 1 (Dec. 2010) (defining "low-wage" as the bottom wage quartile).

<sup>4</sup> *Ibid.*

that 75 percent of women who earn less than the poverty wage do not get paid when they must miss work to tend to a sick family member.<sup>5</sup>

The situation in New York City is no better. Almost half of working New Yorkers do not have paid sick leave – as many as 1.85 million workers.<sup>6</sup> Similar to the statistics nationwide, the numbers in New York show extreme inequalities based on income, race, and gender. In the private-sector, 84 percent of the top quartile of wage earners have access to paid sick leave.<sup>7</sup> Conversely, for those at the bottom quartile of wage earnings, a mere 37 percent of workers can take paid time off if they are too ill to work.<sup>8</sup> People of color disproportionately comprise the city’s lowest earners, with up to 80 percent of the city’s minimum wage labor coming from immigrant and other communities of color.<sup>9</sup> And 60 percent of low-income working mothers do not receive paid sick days.<sup>10</sup> Indeed, New York’s low-income women of color are often forced to make a grim decision when they or a family member becomes ill.

The United States lags far behind many other nations when it comes to paid sick leave. Although it prides itself on being a pioneer in human rights, the truth is that, unlike more than 145 countries in the world, the U.S. does not provide for paid sick days to its workers.<sup>11</sup> The U.S. does not even extend paid sick leave to new mothers one of the only nations in the world along with Papua New Guinea and Swaziland.<sup>12</sup>

### ***Human Rights Demand More***

The United States falls short of human rights standards by failing to provide the human right to paid sick leave for all its workers. Human rights often afford people with universally-recognized protections that are far greater than those found under the U.S. Constitution and laws. Examples include the human rights to housing, healthcare, and decent work. Unlike U.S. domestic law, human rights laws, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), require that countries provide their workers with paid leave to take care of themselves and/or their families in times of poor health. Disparities in access suffered by low-income women of color in the U.S. run afoul of this basic human right.

CEDAW calls for the basic human right to paid sick leave for all employees.<sup>13</sup> CEDAW, often described as the international bill of rights for women, is the preeminent international convention aimed at preventing discrimination and guaranteeing equal justice for women and women of color worldwide. CEDAW protects women’s right to the equal enjoyment of various human rights such as education, healthcare, family relations, and political and public life.<sup>14</sup> CEDAW

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<sup>5</sup> *Ibid* (defining “poverty” as less than 100% of the Federal Poverty Level).

<sup>6</sup> Jeremy Reiss, Nancy Rankin, Krista Pietrangelo, *Sick in the City: What the Lack of Paid Leave Means for Working New Yorkers* p. 3 (Community Service Society of New York 2009).

<sup>7</sup> Nancy Rankin, *Does NYC Need a Prescription for Paid Sick Days . . . And Can We Afford It? Unpublished BLS data for the NYC Region Provide Some Answers* p. 1 (A Better Balance 2010).

<sup>8</sup> *Ibid*.

<sup>9</sup> The Human Rights Project at the Urban Justice Center, *Race Realities in New York City* p. 29 (2007).

<sup>10</sup> Reiss, Rankin, Pietrangelo, *supra* n. 6, at 5 (defining “Low-income” as less than or equal to 200% of the Federal Poverty Level).

<sup>11</sup> Jody Heymann, Alison Earle, & Jeffrey Hayes, *The Work, Family, and Equity Index: How Does the United States Measure Up?* p. 5 (Project on Global Working Families 2007).

<sup>12</sup> Human Rights Watch, *Failing its Families: Lack of Paid Leave and Work-Family Supports in the U.S.* p. 1 (2011).

<sup>13</sup> *Convention on the Elimination of All Forms of Discrimination Against Women* art. 11(1)(e) (signed Jul. 17 1980), <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm> [hereinafter *CEDAW*].

<sup>14</sup> *Ibid*. at art. 10 (education); art. 12 (healthcare); art. 16 (marriage and family relations); art. 7 (political and public life).

offers an ideological framework and a practical blueprint for governments to combat gender inequality—in part through its definition of discrimination.

In contrast to U.S. law, CEDAW focuses on actual discrimination rather than mandating a showing of purposeful discrimination. It calls for redress of any “distinction, exclusion or restriction made on the basis of sex” which has the effect of impairing equality<sup>15</sup>, and discrimination under CEDAW has been further defined to include conduct “that is directed against a woman because she is a woman or that *affects* women disproportionately.”<sup>16</sup>

Thus, regardless of intent, human rights norms codified under CEDAW obligate governments to take affirmative steps to address gender disparities, such as those found in the U.S. and New York City regarding the human right to paid sick leave. Article 11 of CEDAW specifically calls for the elimination of discrimination in “[t]he right to social security, particularly in cases of retirement, unemployment, *sickness*, invalidity and old age *and other incapacity to work, as well as the right to paid leave[.]*”<sup>17</sup> Employees should also be allowed to take time off from work to care for sick family members.<sup>18</sup> The U.S., nonetheless, continues to fail its people with the absence of a paid sick leave policy and by permitting the disparities in access to paid sick leave among some of its most vulnerable workers—low-income women of color. Workers in the U.S. should never have to face the moral dilemma of choosing between losing their jobs and their or their families’ health. The U.S. must advance the human right to paid sick leave for its people, and take the lead in promoting the universal norms embodied in instruments such as CEDAW.

Adopted by the United Nations General Assembly in 1979, CEDAW has since been ratified by 186 out of 193 countries and implemented sub-nationally by several U.S. state and local governments. The U.S. government, however, has refused to ratify CEDAW.

### ***Recommendations for Implementing the Human Right to Paid Sick Leave***

More than 145 nations provide paid sick leave to their workers – there is no reason the U.S. cannot do the same. The vast majority of these countries provide over ten days of paid sick leave per year.<sup>19</sup> And at least 120 nations provide more than 30 days of paid sick leave to their workers.<sup>20</sup> By guaranteeing the human right to paid sick leave, these countries recognize the importance of maintaining a healthy workforce and supporting modern families where the breadwinners not only work but tend to their families. The U.S. can and should follow the example that the international community has set, and mandate paid sick leave for its workers. In fact, there are several models on the Federal, state, and local levels that aim to improve access to the human right to paid sick leave in the U.S.

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<sup>15</sup> *Ibid.* at art. 1.

<sup>16</sup> *United Nations Committee on the Elimination of All Forms of Discrimination Against Women* gen. recommendation no. 19, para. 6 (1992) <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19> [hereinafter *CEDAW Comm.*] (emphasis supplied).

<sup>17</sup> *CEDAW*, *supra* n. 13, art. 11(1)(e) (emphasis supplied).

<sup>18</sup> See *Final Report of Committee on the Elimination of Discrimination Against Women* p. 53 para. 70, 25th sess. (2-20 July 2001): A/56/38 (GAOR, 56th sess., Suppl. No. 38); See Also *Final Report of Committee on the Elimination of Discrimination Against Women* p. 203 para. 218, 34th sess. (16 Jan.-3 Feb. 2006): A/61/38 (GAOR, 60th sess., Suppl. No. 38).

<sup>19</sup> Anke Schliwen, Alison Earle, Jeff Hayes, & S. Jody Heymann, *The Administration and Financing of Paid Sick Leave*, 150 *Intl. Lab. Rev.* 43, 50 (2011).

<sup>20</sup> *Ibid.* at 51.

Several U.S. laws and proposals provide for paid sick leave by requiring workers to gradually “earn” or accrue paid time off through time worked for their employers. Other models might also require a minimum tenure before the worker can access paid sick leave. The following are examples of earned family leave policies in place or under consideration. Under the examples highlighted below, paid sick leave is financed entirely by employers.

**The Healthy Families Act** (introduced in 2011).<sup>21 22</sup> This proposal would set a national paid sick leave standard, enabling workers to earn up to seven paid sick days a year to address their own health needs or to care for a sick family member. The Healthy Families Act would prohibit an employer from interfering (i.e. punishing) a worker for exercising his/her right to paid sick leave.

**Connecticut Paid Sick Leave** (passed in 2011).<sup>23 24</sup> Scheduled to go into effect on January 1<sup>st</sup>, 2012, Connecticut’s paid sick leave policy covers service employees who work for businesses with 50 or more employees. The service employees must be paid on an hourly basis, and must also be protected by Federal minimum wage and overtime law. Covered workers are allowed to accrue one hour of paid sick time for every 40 hours worked up to a maximum of 40 hours per year. Up to 40 hours of leave can be used or otherwise carried over to the next year. Workers must have worked at least 680 hours for their employer before they can begin using their accrued leave, and may use the paid sick time to care for themselves, their spouses, or their children. Employees are protected from retaliation when they seek to use their accrued leave.

**San Francisco Paid Sick Leave Ordinance** (passed in 2006).<sup>25 26</sup> Implemented in 2007, the Paid Sick Leave Ordinance requires all employers to provide paid sick leave to each employee, even part-time and temporary workers, who perform work in San Francisco. Workers may use the leave to care for themselves, a family member, or a designated person if the worker is not married or in a domestic partnership. Workers accrue one hour of paid sick leave for every 30 hours worked. Employees who work for smaller businesses (less than 10 employees) are capped at 40 hours of accrued leave, while all other employees are capped at 72 hours of accrued paid sick leave. The accrued leave does not expire, and there is no maximum limit to how much accrued leave an employee may use in a year. Employees are protected from employer-retaliation when they exercise their accrued leave.

**New York City Paid Sick Time Act** (introduced in 2010).<sup>27 28</sup> Similar to minimum wage for pay, the Paid Sick Time Act is a proposed New York City bill that would ensure a minimum floor of paid sick time for all workers in the city. The Act would allow all workers to earn an hour of paid sick time for every 30 hours worked. Workers are able to earn up to 40 hours

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<sup>21</sup> H.R. 1876, 112<sup>th</sup> Cong. (Jul. 12, 2011); S. 984, 112<sup>th</sup> Cong. (Jul. 12, 2011).

<sup>22</sup> More information on the Healthy Families Act can be found at: National Partnership for Women & Families, *Paid Sick Days Campaigns*, [http://paysickdays.nationalpartnership.org/site/PageServer?pagename=psd\\_campaigns](http://paysickdays.nationalpartnership.org/site/PageServer?pagename=psd_campaigns), (accessed Sep. 16, 2011).

<sup>23</sup> Conn. Pub. Act No. 11-52 (2011).

<sup>24</sup> More information on Connecticut’s paid sick leave statute can be found at: The National Law Review, *Connecticut Becomes First State to Mandate Paid Sick Leave*, <http://www.natlawreview.com/article/connecticut-becomes-first-state-to-mandate-paid-sick-leave> (Jul. 22, 2011).

<sup>25</sup> S.F. Admin. Code (Cal.) Chapter 12W (2006).

<sup>26</sup> More information on San Francisco’s Paid Sick Leave Ordinance can be found at: City & County of San Francisco Labor Standards, Enforcement, *Paid Sick Leave Ordinance (PSLO)*, <http://sfgsa.org/index.aspx?page=419> (accessed Sept. 16, 2011).

<sup>27</sup> N.Y.C. Council Intro. 97 (Mar. 25, 2010).

<sup>28</sup> More information on the New York Paid Sick Time Act can be found at: Time to Care, *New Yorkers Deserve Paid Sick Days*, <http://www.timetocareny.org/nyc/> (accessed Sept. 16, 2011).

annually if they work for a businesses with fewer than 20 employees, and up to 72 hours annually for all other workers. Employers are prohibited from retaliating against a worker for exercising the paid leave, which can be used to care for workers' own illnesses or the illness of family members.

### ***Politicians Say No – The People and the Facts Say Yes***

There is a growing movement in the U.S. to enact policies that advance the human right to paid sick leave. The U.S. public overwhelmingly supports policies that aid workers and their families, with close to 70 percent of respondents in a recent survey in support of paid sick leave laws.<sup>29</sup> In New York City, the demand for a paid sick leave mandate is even greater.

Approximately three-quarters of New Yorkers support a requirement that employers provide at least seven days of annual paid sick leave.<sup>30</sup> Yet some employers and elected officials, such as those in New York, continue to swim against the current, citing alleged harms to business and the economy. Studies of New York City's proposed law and San Francisco's experience with its paid sick leave ordinance, however, have dispelled these notions.

Indeed, studies have shown that employers in New York City would be able to manage the costs of implementing a paid sick leave policy. An analysis of data from Bureau of Labor Statistics estimated the costs of providing paid sick leave at just 39 cents per hour worked for private sector workers.<sup>31</sup> This amounts to only 1.1 percent of total compensation for private industry workers in the New York City area.<sup>32</sup> Other studies have estimated that the costs will be even lower. One study estimated that the cost of implementing the paid sick days measure in New York would be 15 cents per hour worked for smaller firms and 23 cents per hour worked for larger firms.<sup>33</sup> These costs are more than reasonable to ensure that workers never have to make a choice between their or their family's health and their livelihoods. Studies reviewing San Francisco's paid sick leave ordinance underscore this fact.

Economic data for San Francisco following implementation of its paid sick leave law shows that the city did not experience a greater loss in jobs or businesses relative to the surrounding counties without paid sick day laws. And actually, employment remained stronger in San Francisco than in neighboring counties without paid sick leave laws.<sup>34</sup> The burden, according to the Senior Vice President of the San Francisco Chamber of Commerce, has been minimal.<sup>35</sup> Furthermore, another study that interviewed San Francisco employers found that "[m]ost employers reported they were able to absorb the cost of providing paid sick leave."<sup>36</sup> The study concluded that most employers were able to put into effect the paid sick leave policy with

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<sup>29</sup> Human Rights Watch, *supra* n. 12, at 4.

<sup>30</sup> Reiss, Rankin, Pietrangelo, *supra* n. 6, at 14.

<sup>31</sup> Rankin, *supra* n. 7, at 2.

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*

<sup>34</sup> John Petro, *Paid Sick Leave Does Not Harm Employment* p. 1 (Drum Major Institute For Public Policy undated).

<sup>35</sup> Aaron Rutkoff, *Will Sick Days Cost Billions for NYC Businesses? San Francisco Says No*, The Wall Street Journal (May 13, 2010), <http://blogs.wsj.com/metropolis/2010/05/13/will-sick-days-costs-billions-for-businesses-san-francisco-says-no/>

<sup>36</sup> Shelley Waters Boots, Karin Martinson, & Anna Danziger, *Employers' Perspectives on San Francisco's Paid Sick Leave Policy* p. 9 (The Urban Institute March 2009).

“minimal impacts” on their businesses.<sup>37</sup> These studies demonstrate that the human right to paid sick leave can elevate business all the while fostering a healthy and strong workforce.

### ***Conclusion***

Low-income women of color and their families suffer most from the U.S. and New York City’s failure to fulfill the human right to paid sick leave. Universally-accepted human rights standards, such as the CEDAW, call for this basic economic and social right. Compared to the rest of the world, nonetheless, the U.S. is an outlier. Many U.S. workers struggle with juggling their work responsibilities and their or their families’ medical needs. Those that choose the former risk spreading their illnesses or seeing a loved one become more ill. While those who choose the latter often gamble with losing their jobs. These are choices no worker should have to make.

U.S. workers and their families overwhelmingly support the implementation of paid sick leave policies. Jurisdictions across the nation are answering their call. The costs, as seen in studies in New York City and San Francisco, are minimal. The benefits of realizing the human right to paid sick leave, however, include healthy communities and vibrant workforces. The United States and New York City can and must do better.

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### ***About the Urban Justice Center’s Human Rights Project***

The Human Rights Project (HRP) works to improve the lives of New Yorkers living in poverty with a particular focus on women and people of color. We do this by monitoring and advocating for government compliance with universal human rights standards, especially the human rights to employment, housing, health, food, education and other economic and social rights.

HRP has been at the forefront of the U.S. human rights “movement” for the past several years, demonstrating new models of applying human rights in the U.S., and in particular in New York City, to effectively advocate for the City’s most vulnerable across a range of issues. The U.S. constitution falls short in guaranteeing the right to health, housing, education, standard of living and other rights necessary to live in dignity. In combination with a legacy of structural discrimination, particularly through race and gender, and limits on rights that are protected, those most vulnerable in society have little recourse. The human rights framework and tools bring new possibilities in the face of limited remedies, and hope where there is despair.

Urban Justice Center’s Human Rights Project  
123 William Street, 16<sup>th</sup> Floor  
New York, NY 10038  
646-602-5600  
www.hrpujc.org

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<sup>37</sup> *Ibid.* at 12.