# SOUTH CAROLINA JOURNAL OF INTERNATIONAL LAW & BUSINESS

VOLUME 22, ISSUE 2 SPRING 2026


## CONTENTS

### ARTICLES

# UNIVERSITY OF SOUTH CAROLINA
# JOSEPH F. RICE SCHOOL OF LAW FACULTY

## 2025–2026

### ADMINISTRATION

William C. Hubbard, B.A., J.D.; *Dean and Professor of Law*
Susan S. Kuo, A.B., J.D.; *Associate Dean for Academic Affairs and Professor of Law, Class of 1969 Chair for Teaching Excellence*
Ned Snow, B.A., J.D.; *Associate Dean of Faculty Development and Ray Taylor Fair Professor of Law*
Claire S. Raj, B.A., J.D.; *Associate Dean for Clinics and Externships*
Romona Keith, B.A.; *Assistant Dean for Academic Services & Law Registrar*
Elizabeth Niehaus, A.B., M.B.A.; *Vice Dean for Finance & Business Operations*
Karen R. Britton, B.S., M.S., Ed.D.; *Vice Dean for Admissions and Career & Professional Development*
Megan Seiner, B.A., J.D.; *Vice Dean for Alumni & Student Engagement and Strategic Initiatives*
Gary P. Moore, B.S.; *Assistant Dean for Academic Technology*
Emily F. Suski, B.A., M.S.W., J.D., LL.M.; *Associate Dean for Strategic and Institutional Priorities*

### FACULTY

Janice M. Baker, B.A., J.D.; *Legal Writing Instructor*
Scott R. Bauries, B.A., M.Ed., Ph.D., J.D.; *Professor of Law*
David W. Beasley, B.A., J.D., *Distinguished Professor of Practice & Public Service*
Derek W. Black, B.A., J.D.; *Professor of Law and Ernest F. Hollings Chair in Constitutional Law*
Marie C. Boyd, A.B., J.D.; *Associate Professor of Law*
Meghan E. Brooks, A.B., J.D.; *Assistant Professor of Law*
Kevin Brown, B.S., J.D.; *Mitchell Willoughby Professor of Law*
Taylor P. Callahan, B.A., J.D.; *Academic Success and Bar Preparation Instructor*
David R. Carducci, B.A., J.D.; *Legal Writing Instructor*
Elizabeth Chambliss, B.S., M.S., Ph.D., J.D.; *Henry Harman Edens Professor of Law*
Jesse M. Cross, M.A., J.D.; *Professor of Law*
Tessa Davis, A.B., M.Sc., J.D., LL.M.; *Miles and Ann Loadholt Chair of Law*
Joshua G. Eagle, B.A., M.S., J.D.; *Solomon Blatt Professor of Law*
Lisa A. Eichhorn, A.B., J.D.; *Director of Legal Writing and Professor of Law*
Jacqueline R. Fox, B.A., J.D., LL.M.; *Professor of Law*
Mark Glover, B.A., J.D., LL.M.; *Professor of Law*
James Smith Harrison, III, B.A., J.D., *Legal Writing Instructor*
Cassandra Jones Havard, B.A., J.D.; *Professor of Law*
Laura W. Jordan, B.A., J.D.; *Legal Writing Instructor*
Laura Lane-Steele, B.A., J.D.; *Assistant Professor of Law*
Ami Leventis, B.A., J.D.; *Legal Writing Instructor*
David K. Linnan, B.A., J.D.; *Associate Professor of Law*
Lisa V. Martin, B.A., J.D.; *Professor of Law*
Benjamin Means, A.B., J.D.; *Professor of Law and John T. Campbell Chair in Business & Professional Ethics*
S. Alan Medlin, B.A., J.D.; *David W. Robinson Professor of Law*
Colin Miller, B.A., J.D.; *Professor of Law and Thomas H. Pope Professorship in Trial Advocacy*
Amy L. Milligan, B.S., B.A., J.D.; *Assistant Director of Legal Writing*
Zoe Niesel, B.A., J.D.; *Professor of Law*
Stephanie A. Nye, B.A., J.D.; *Director of Externship & Special Academic Programs*
McKenzie Osborne, B.S., J.D., LL.M., *Legal Writing Instructor*
Nathan Rouse, BARSC, J.D.; Assistant Professor of Law
Alex Ruskell, B.A., J.D., A.L.M., M.F.A., *Academic Success & Bar Preparation Instructor and Program Director*
Joseph A. Seiner, B.B.A., J.D.; *Oliver Ellsworth Professor of Federal Practice*
David E. Sella-Villa, B.A., B.S., M.Sc., J.D.; *Assistant Professor of Law*
Bryant Walker Smith, B.S., J.D., LL.M.; *Associate Professor of Law*
Brett Stevens, B.A., M.A., J.D., *Academic Success and Bar Preparation Instructor and Program Director*
Seth Stoughton, B.A., J.D.; *Professor of Law*
Etienne C. Toussaint, S.B., M.S.E., J.D., LL.M.; *Associate Professor of Law*
Charles P. Trumbull, B.A, J.D., *Assistant Professor of Law*
Michael J. Virzi, B.A., J.D.; *Legal Writing Instructor*
Clinton G. Wallace, A.B., J.D., LL.M.; *Professor of Law*
Madalyn K. Wasilczuk, B.A., J.D.; *Assistant Professor of Law*
Emily R. Winston, B.A., J.D.; *Associate Professor of Law*
Mark Yancey, B.S., J.D., *Director of Graduate Programs and Professor of Practice*
Marcia A. Zug, A.B., J.D.; *Miles and Ann Loadholt Professor of Family Law*

## Law Library

Kris Niedringhaus, B.A., J.D., M.A.; *Associate Dean & Director of Library*
Daniel A. Brackmann, B.A., J.D., M.S.L.I.S., *Reference Librarian*
Megan Brown, B.A., M.L.I.S.; *Acquisitions and Electronic Resources Librarian*
Aaron Glenn, B.A., J.D., M.L.I.S.; *Reference Librarian*
Katherine Magner, B.A., M.L.I.S.; *Access Services Librarian*
Rebekah K. Maxwell, B.A, J.D., M.L.I.S.; *Associate Director of Library Operations*
Cornelius Pereira, B.A., M.A., M.L.I.S.; *Head of Technical Services*
Christopher Collins, B.A., J.D., M.L.I.S.; *Reference & Faculty Services Librarian*

## Emeriti

Gregory B. Adams, B.S., J.D., LL.M., J.S.D.; *Professor Emeritus of Law*
Robert T. Bockman, B.A., M.A. J.D.; *Senior Legal Writing Instructor Emeritus*
F. Ladson Boyle, B.S., J.D., LL.M.; *Charles E. Simons, Jr. Professor Emeritus of Federal Law*
W. Lewis Burke, B.A., J.D.; *Distinguished Professor Emeritus of Law*
James R. Burkhard, B.A., M.A., J.D.; *Professor Emeritus of Law*
Katharine I. Butler, B.S., M.Ed., J.D.; *Distinguished Professor Emerita of Law*
Josephine F. Brown, B.A., J.D.; *Professor Emerita of Law*
Jaclyn A. Cherry, B.A., J.D.; *Distinguished Professor Emerita of Law*
Terrye M. Conroy, B.S., J.D., M.L.I.S.; *Law Librarian Emerita*
Joseph Russell Cross, Jr., B.A., M.Ln., J.D.; *Law Librarian Emeritus*
Nathan M. Crystal, B.S., J.D., LL.M.; *Distinguished Professor Emeritus of Law and Class of 1969 Professor Emeritus of Professional Responsibility and Contract Law*
James F. Flanagan, A.B., LL.B.; *Oliver Ellsworth Distinguished Professor Emeritus of Federal Practice*
Patrick J. Flynn, A.B., J.D.; Professor Emeritus of Law
Kenneth W. Gaines, B.S., J.D., LL.M.; *Professor Emeritus of Law*
F. Patrick Hubbard, B.A., J.D., LL.M.; *Ronald L. Motley Distinguished Professor of Tort Litigation*
Philip T. Lacy, B.A., LL.B.; *Distinguished Professor Emeritus of Law*
Ralph C. McCullough, II, B.A., J.D.; *Distinguished Professor Emeritus of Law*
Martin C. McWilliams, Jr., B.A., J.D., LL.M.; *Distinguished Professor Emeritus of Law*
Pamela Rogers Melton, B.A., J.D., M.L.I.S.; *Law Librarian Emerita*
John E. Montgomery, B.Ch.E., J.D., LL.M.; *Distinguished Professor Emeritus of Law and Dean Emeritus*
Dennis R. Nolan, A.B., M.A., J.D.; *Distinguished Professor Emeritus of Law and Webster Professor Emeritus of Labor Law*
Diana M. Osbaldiston, B.S., M.S., M.L.A., A.A.L.L., M.M.A., *Law Librarian Emerita*
David G. Owen, B.S., J.D.; *Carolina Distinguished Professor of Law Emeritus*
Elizabeth G. Patterson, B.A., J.D.; *Distinguished Professor Emerita of Law*
Burnele Venable Powell, B.A., J.D., LL.M.; *Distinguished Professor Emeritus of Legal Studies and Miles & Ann Loadholt Chair Emeritus of Law*
Walter F. Pratt, Jr., B.A., D.Phil., J.D.; *James P. Mozingo III Professor Emeritus of Legal Research and Distinguished Professor Emeritus of Law*
O'Neal Smalls, B.S., J.D., LL.M.; *Distinguished Professor Emeritus of Law*
Stephen A. Spitz, B.S., J.D.; *Professor Emeritus of Law*
Roy T. Stuckey, A.B., J.D.; Webster Distinguished Professor Emeritus of Clinical Legal Education
Melissa M. Surber, B.A., M.L., *Law Librarian Emerita*
Karen G. Taylor, B.A., M.L.I.S., *Law Librarian Emerita*
Eldon D. Wedlock, Jr., A.B., J.D., LL.M.; *Distinguished Professor Emeritus of Law*
Robert M. Wilcox, A.B., J.D.; *Dean Emeritus*

## Adjunct Faculty

Ellen Mercer Adams
Hon. Joseph F. Anderson, Jr.
Brook Andrews
Andrew Atkins
Brett H. Bayne
Joseph Bias
Hon. D. Garrison Hill
John Boyd
Creston Brown
Robert A. Muckenfuss
Teri Callen
Steven Austermiller
Joseph D. Clark
Jonathan E. Spitz
Cynthia Coker
Hon. Thomas W. Cooper, Jr.
D. Nichole Davis
Christian Fisanick
Aleksandra Chauhan
Anthony D'Elia
Joseph Dickey, Jr
Bess Jones DuRant
Charles Durant
Hon. John Few
Tiffany Freeman Holston
Daniel R. Goldberg
Clyde Bennett Gore
Kara Bailey Hamilton
Karama Bailey Herrington
William O. Higgins
Winston Holliday
Hon. Jocelyn Newman
Lee P. Jedziniak
Kinli Abee
Kyliene Keesley
Elle Klein
Hon. James E. Lockemy
Cory E. Manning
David Maxfield
Joseph M. McCulloch, Jr.
Elizabeth Scott Moïse
Samuel Williams
Briani Bennett
William Newsome
Clarke Newton
Tracy Pinnock
Hon. Michelle Childs
A. Marvin Quattlebaum, Jr.
Douglas E. Ray
Creighton Waters
Eric Robinson
Crystal Rookard
Dowse B. Rustin, IV
Sally T. McKay
Morgan Nalley-Robins
April Sampson
Todd Serbin
Derek Shoemake
Justin Dixon
Sarah St. Onge
Jane Taylor
Karen Thomas
Vordman Traywick, III
Robert E. Tyson, Jr.
John LaFitte Warren, III
Gus M. Dixon
Travis C. Wheeler
Joseph Wideman, Jr.
Hon. H. Bruce Williams
Benton D. Williamson
Richard Willis
Mike Mathison
David S. Wyatt

The *South Carolina Journal of International Law & Business* (US ISSN 1936-4334) is a student-edited legal journal published in affiliation with the University of South Carolina. The Journal is published online twicea year.

## SUBMISSIONS INFORMATION

*The South Carolina Journal of International Law & Business* welcomes the submission of articles from scholars, practitioners, business leaders, government officials, and jurists on topics relating to recent developments in international law and business. The Journal also welcomes the submission of shorter works such as book reviews, commentaries, and bibliographies by qualified authors. The Journal does not consider submissions from students not on the Journal's staff.

In selecting a submission for publication, the Journal considers its originality, meaningfulness, and thoroughness. Submissions must conform with *The Bluebook: A Uniform System of Citation* (22th ed. 2025) and the *Texas Law Review Manual on Usage & Style* (16th ed. 2024). Submissions should be in Microsoft Word format, double-spaced, and footnoted appropriately. Additionally, submissions should have numbered pages.

The Journal prefers submission through the ExpressO electronic submission service. Alternatively, submissions may be emailed to scjilb@mailbox.sc.edu or sent via post to

**Submissions**
**South Carolina Journal of International Law & Business**
**UofSC Joseph F. Rice: School of Law**
**1525 Senate Street**
**Columbia, South Carolina 29208**

When submitting via email or post, the author should include a curriculum vitae or resume listing educational and employment history and previous publications.

The Journal promptly reviews submissions on a rolling basis. Expedited review may be available for authors facing strict acceptance deadlines from other publications. The author should email the submission and include in the subject line "expedited review." The body of the email should include the author's name, the title of the manuscript, the names of other publications from which the author has received offers, and the relevant deadline. The journal does not guarantee it will make a selection decision prior to the author's deadline. Regrettably, the Journal is unable to perform expedited reviews during May or December.

# *PROTECTING THE DEBTOR ACROSS THE ATLANTIC*: A Comparative Analysis of the United States and European Union Regulatory Frameworks Against Debt Collection Abuse and Harassment

*By Terin Michelle Tyson, J.D.*[†]

ABSTRACT

Consumer debt is a long-standing global phenomenon, yet the regulation of debt collection practices remains fragmented across international borders. This lack of uniform standards leaves consumers vulnerable to debt collectors who exploit weak legal frameworks, resorting to abusive, harassing, and deceptive tactics to pressure repayment. Such practices not only undermine consumer trust in the financial services industry but also prove self-defeating; aggressive collection methods can destabilize a consumer's financial footing and daily livelihood, ultimately impairing their capacity to repay.

This article provides a comparative evaluation of consumer protections against abusive and harassing debt collection practices in the United States and the European Union (EU). The regulatory frameworks in the United States and the EU are structurally distinct. The United States relies primarily on a centralized federal regulatory model through the *Fair Debt Collection Practices Act* (FDCPA). In contrast, the EU regulates abusive debt collection through a more fragmented framework derived from multiple directives and regulatory instruments, including the *Unfair Commercial Practices Directive* (UCPD), the *Consumer Credit Directive* (CCD), the *Credit Servicers and Credit Purchasers Directive*, the *Unfair Contract Terms Directive* (UCTD), the *General Data Protection Regulation* (GDPR), and the implementation mechanisms of individual Member States. These differing regulatory approaches create a useful comparative framework for evaluating how legal systems attempt to prevent abusive debt collection practices and protect consumer welfare. By comparing the centralized statutory regime of the United States with the EU's directive-based regulatory framework, this article argues that structural design, procedural accessibility, and enforcement mechanisms significantly influence the effectiveness of legal protections against abusive and harassing debt collection practices.

Part II examines the consequences of abusive and harassing debt collection practices for both consumers and the financial services industry. Part III provides a historical overview of debt collection practices in the United States and the EU, tracing the developments that led to modern regulatory frameworks. Part IV analyzes the regulatory and directive-based frameworks used to address abusive and harassing debt collection practices. Part V offers a comparative analysis of the two systems from the perspective of consumer protection and best policy practices, evaluating the overall effectiveness of each framework while examining their structural and procedural limitations. Finally, Part VI concludes.

---

[†] Juris Doctor Candidate for the Class of 2026 at the University of South Carolina Joseph F. Rice School of Law and Editor-in-Chief for the South Carolina Journal of International Law and Business. Thank you to the Editorial Board of the South Carolina Journal of International Law and Business, Professor Cătălin-Gabriel Stănescu, and Professor Dave Maxfield.

## TABLE OF CONTENTS

## I. INTRODUCTION

Consumer debt is a long-standing global phenomenon, yet the regulation of debt collection practices remains fragmented across international borders.[1] This lack of uniform standards leaves consumers vulnerable to debt collectors who exploit weak legal frameworks, resorting to abusive, harassing, and deceptive tactics to pressure repayment.[2] Such practices not only undermine consumer trust in the financial services industry but also prove self-defeating; aggressive collection methods can destabilize a consumer's financial footing and daily livelihood, ultimately impairing their capacity to repay.[3] While consumers bear a recognized social and legal obligation to repay borrowed funds, that obligation must be balanced against protections that preserve their dignity and financial stability.[4]

This article provides a comparative evaluation of consumer protections against abusive and harassing debt collection practices in the United States and the European Union (EU). The regulatory frameworks in the United States and the EU are structurally distinct. The United States relies primarily on a centralized federal regulatory model through the *Fair Debt Collection Practices Act* (FDCPA). In contrast, the EU regulates abusive debt collection through a more fragmented framework derived from multiple directives and regulatory instruments, including the *Unfair Commercial Practices Directive* (UCPD), the *Consumer Credit Directive* (CCD), the *Credit Servicers and Credit Purchasers Directive*, the *Unfair Contract Terms Directive* (UCTD), the *General Data Protection Regulation* (GDPR), and the implementation mechanisms of individual Member States. These differing regulatory approaches create a useful comparative framework for evaluating how legal systems attempt to prevent abusive debt collection practices and protect consumer welfare. By comparing the centralized statutory regime of the United States with the EU's directive-based regulatory framework, this article argues that structural design, procedural accessibility, and enforcement mechanisms significantly influence the effectiveness of legal protections against abusive and harassing debt collection practices.

Part II examines the consequences of abusive and harassing debt collection practices for both consumers and the financial services industry. Part III provides a historical overview of debt collection practices in the United States and the EU, tracing the developments that led to modern regulatory frameworks. Part IV analyzes the regulatory and directive-based frameworks used to address abusive and harassing debt collection practices. Part V offers a comparative analysis of the two systems from the perspective of consumer protection and best policy practices, evaluating the overall effectiveness of each framework while examining their structural and procedural limitations. Finally, Part VI concludes.

## II. THE EFFECTS OF ABUSIVE AND HARASSING DEBT COLLECTION PRACTICES

Abusive and harassing tactics used to collect debt span a range of actions. In Spain, debt collectors have dressed in undertaker garb, driving fake hearses bearing the words "Undertaker of

---

[1] Teams Interview with Cătălin-Gabriel Stănescu, Associate Professor in Private Law, University of Southern Denmark (Nov. 6, 2025) (on file with author).
[2] *Id.*
[3] *Id.*
[4] *Id.*

Debt-Collection" and harassing debtors at their homes and workplaces.[5] In other cases, such as in Croatia, individuals have been called by debt collectors to relay messages to their neighbors about their debts.[6] In many countries, a debtor's debt becomes a public spectacle through the use of billboards as well as publishing their name and debt amounts in newspapers and on websites.[7] Globally, debtors have received intimidating messages, phone calls, and mail threatening physical violence or legal action.[8]

The most common harms caused by the use of abusive and harassing debt collection practices are oftentimes subjective injuries, making them difficult to quantify.[9] This is due to the stigma around debt and a consumer's inability to pay their debt off quickly.[10] People who are struggling and being relentlessly harassed by collectors are unlikely to seek help.[11] Abusive and harassing tactics negatively impact the mental health of consumers, resulting in anxiety and depression.[12] Data shows that one in eight people who are behind on at least one payment say they have attempted to take their own life.[13] Surveying further shows that many people, after receiving a barrage of messages from creditors about their debt, are left feeling bombarded, bullied, and unable to see a way out of their situation.[14]

While there is a considerable lack of research on the effects of debt on the mental health of debtors, data demonstrate that aggressive debt collection practices raise the risk of suicide among debtors.[15] Studies have found that intimidating and threatening letters sent in an attempt to collect debt raise the risk of suicide by adding to the recipient's feelings of despair and helplessness.[16] The research also shows that contact from creditors plays a big role in compounding distress, especially during the cost-of-living crisis.[17]

## III. THE HISTORICAL CONTEXT OF DEBT COLLECTION IN THE UNITED STATES AND EUROPEAN UNION

Debt collection dates back to 3000 B.C. and has been a longstanding practice, especially within

---

[5] CĂTĂLIN-GABRIEL STĂNESCU, EU INFORMAL DEBT-COLLECTION REGULATIONS: FAILURE BY DESIGN? 1 (Oxford Univ. Press, 2025).
[6] *See id.*
[7] *See id.*
[8] *See* Alec P. Rhodes, Rachel E. Dwyer & Jason N. Houle, *Debt Collection Pressure and Mental Health: Evidence From a Cohort of U.S. Young Adults*, 66 J. HEATH & SOC. BEHAV. 38, 41-42 (2024). *See also* Denis Campbell, *Aggressive Debt Collectors Raise Risk of Suicide*, THE GUARDIAN: MENTAL HEALTH (Dec. 3, 2018, 2:30 PM), https://www.theguardian.com/society/2018/dec/03/aggressive-debt-collectors-raise-risk-of-suicide (further demonstrating the weight of aggressive debt collection on the mental health of consumers).
[9] *See* Lisa Stifler, *Debt in the Courts: The Scourge of Abusive Debt Collection Litigation and Possible Policy* Solutions, 11 HARV. L. & POL'Y REV. 91, 109 (2017). *See generally* Rhodes, Dwyer & Houle, *supra* note 8, at 41(for the broader understanding that while suicide is a real harm, abuse is difficult to quantify and even more difficult to establish that abusive debt collection is the sole reason for suicide).
[10] *See* Rhodes, Dwyer & Houle, *supra* note 8, at 41.
[11] *See* Rhodes, Dwyer & Houle, *supra* note 8, at 41.
[12] *See Government Must Stop Debt Collectors Bombarding People About Missed Payments – as 1 in 8 People Who are Behind on a Bill Have Attempted Suicide During Cost of Living Crisis*, MONEY & MENTAL HEALTH: POL'Y INST. (Dec. 6, 2022), https://www.moneyandmentalhealth.org/press-release/debt-collection-cost-of-living-crisis/.
[13] *See id.*
[14] *See id.*
[15] *See id.*
[16] *See* Campbell, *supra* note 8.
[17] *See* Campbell, *supra* note 8.

the Greek and Roman Empires.[18] However, those unable to repay lenders would become debt slaves, along with their families.[19]

The history of debt collection in the United States and EU reveals how each region's regulatory framework for combating abusive practices evolved into what exists today. Broadly, creditors have always found it more convenient and timely to handle debt collection outside the court system, given how considerably long legal proceedings can take.[20] However, this convenience came at a cost, opening the door to abuse and harassment as collectors sought to force quick payments.[21]

Globally, the booming eras of consumerism drove the widespread expansion of credit, making the practice of buying items in installments commonplace among consumers who lacked sufficient liquid funds.[22] This surge in consumer credit, in turn, fueled the growth of the debt collection industry[23] As collectors sought faster ways to recover payments and avoid lengthy legal proceedings, abusive and harassing tactics became prevalent.[24] The simultaneous advancement of technology further compounded the problem, giving collectors new and more invasive modes of access to debtors, intensifying the abuse, and making it increasingly difficult for debtors to avoid humiliation and public shame for falling behind on payments.[25]

a. THE TIMELINE OF DEBT COLLECTION PRACTICES IN THE UNITED STATES

i. UNITED STATES: 17TH AND 18TH CENTURY DEBT COLLECTION

England's harsh debt collection practices—including the use of debtors' prisons—shaped the American colonies' early attitudes toward debt.[26] Debtors' prisons took root in America from the late 1600s through the early 1800s, but it never achieved the same cultural permanence it had in Europe, and its legitimacy was increasingly questioned as the colonies matured.[27]

By the time the United States Constitution was drafted, settlers had grown deeply discontent with the creditor-focused legal framework inherited from England.[28] The Framers responded directly: The Constitution vested Congress with the authority to establish uniform

---

[18] Michael Ziegler, *A Brief History of Debt Collection*, ZIEGLER DIAMOND L. (Jan. 2, 2017), https://attorneydebtfighters.com/debt-collection-harassment-law-evolved-over-centuries/; *Debt Collection in History*, MARCADIS SINGER PA (Apr. 29, 2016), https://marcadislaw.com/debt-collection-history/.
[19] *See Debt Collection in History*, *supra* note 18.
[20] *See* STĂNESCU, *supra* note 5, at 71.
[21] *See* STĂNESCU, *supra* note 5, at 71.
[22] *See A Brief History of the European Debt Collection Industry: The Road to Empathetic Problem-solving*, INTRUM, https://www.intrum.com/about-us/who-we-are/one-hundred-years/a-brief-history-of-the-european-debt-collection-industry-the-road-to-empathetic-problem-solving/.
[23] *See* STĂNESCU, *supra* note 5, at 56-57.
[24] *See* STĂNESCU, *supra* note 5, at 17-18.
[25] *See* STĂNESCU, *supra* note 5, at 22-24.
[26] *See* APRIL KUEHNHOFF ET AL., *A Brief History of Debt Collection and Its Regulation in the United States,* NCLC DIGITAL LIBRARY: FAIR DEBT COLLECTION §1.2 (11th ed. 2026), https://library.nclc.org/book/fair-debt-collection/12-brief-history-debt-collection-and-its-regulation-united-states.
[27] *See generally* Nino C. Monea, *A Constitutional History of Debtor's Prisons*, 14 DREXEL L. REV. 1, 27 (2022) (tracing the history of the colonies and the termination of the use of debtor's prisons).
[28] *See* KUEHNHOFF ET AL., *supra* note 26.

bankruptcy laws.[29] That authority was exercised broadly, and near consensus emerged in Congress that debtors should have the right to voluntarily invoke bankruptcy, discharge their debts, and secure release from prison.[30] The underlying conviction driving this shift was that in the American context, it was the debtor, not the creditor, who stood in need of protection from abuse.[31] Although this was a major step forward toward protections for debtors, debtors still faced public shame and financial ruin, forcing many American settlers to relocate to areas with established legal protections for borrowers, such as Texas, to escape relentless creditors.[32]

### ii. UNITED STATES: NINETEENTH AND TWENTIETH CENTURY DEBT COLLECTION

By the late nineteenth and early twentieth century, "salary lenders" or loan sharks targeted workers with short-term loans at astronomical interest rates, often exceeding 1000%.[33] Defaults on loan payments were met with tactics of public shaming and aggressive repossession, which reinforced the link between debt and humiliation.[34] A common harassment tactic during this era included the employment of a "bawler-out," which was usually a woman who would stand outside the borrower's workplace and loudly scold the borrower for failing to repay the loan.[35] Collectors would not only harass the debtor through public humiliation and shame but also induce repayment by confronting their family and friends.[36]

By the early 1900s, due to the shift in economic conditions resulting from World War I, one in five American workers owed money to salary lenders.[37] While states attempted to curb consumers' borrowing from salary lenders, manufacturing and installment loan options to purchase goods grew substantially.[38] As consumer debt rose, so did the consequences of defaulting on an installment contract. One missed payment resulted in the immediate repossession of purchased items, with no refund of prior payments.[39]

In the 1940s, the telephone came into widespread use, providing debt collectors with an additional method of constant communication with debtors, in addition to harassing them through letters and in-person visits.[40] The widespread adoption of the telephone and later automation allowed collectors to contact debtors repeatedly at all hours of the day.[41] Collection agencies increasingly relied on psychological tactics to provoke emotional responses of distress and accelerate repayment.[42]

---

[29] *See* KUEHNHOFF ET AL., *supra* note 26.
[30] *See* KUEHNHOFF ET AL., *supra* note 26.
[31] *See* KUEHNHOFF ET AL., *supra* note 26.
[32] *See* KUEHNHOFF ET AL., *supra* note 26.
[33] *See* KUEHNHOFF ET AL., *supra* note 26.
[34] *See* KUEHNHOFF ET AL., *supra* note 26.
[35] *See* KUEHNHOFF ET AL., *supra* note 26.
[36] *See* Fitzgerald & Campbell, *The History Behind the Fair Debt Collection Practices Act (FDCPA)*, FITZGERALD & CAMPBELL (Dec. 28, 2016), https://www.debtorprotectors.com/blog/2016/december/the-history-behind-the-fair-debt-collection-prac/.
[37] KUEHNHOFF ET AL., *supra* note 26.
[38] *See* KUEHNHOFF ET AL., *supra* note 26.
[39] *See* KUEHNHOFF ET AL., *supra* note 26.
[40] *See* STĂNESCU, *supra* note 5, at 21.
[41] *See* STĂNESCU, *supra* note 5, at 21; *see generally* 15 U.S.C. § 1692(d)(5) (prohibiting repeated telephone calls made with intent to annoy, abuse, or harass).
[42] *See* STĂNESCU, *supra* note 5, at 21.

The debt collection industry grew substantially worldwide following World War II, with the United States leading the way.[43] No development reshaped the consumer credit market more dramatically than the credit card, which achieved widespread adoption in the United States during the 1960s.[44] As consumer debt became normalized at a pace unmatched by most other nations, the American debt collection industry faced pressure to scale quickly, turning to International Business Machines (IBM) and early automation to keep up with the volume of accounts requiring recovery.[45] In this sense, the United States became an early and influential adopter of technology-driven debt collection.[46]

Before the FDCPA was enacted, federal protection against abusive collection was limited.[47] Congress enacted the Consumer Credit Protection Act (CCPA) in 1968 as an umbrella statute for consumer credit issues, but state laws on debt collection remained fragmented.[48] Model reforms were proposed, yet by the mid-1970s, large portions of the United States population still lacked meaningful protection against abusive debt collection, leaving collectors free to use aggressive tactics and consumers with limited recourse.[49]

From 1938 to 1977, the federal government relied primarily on enforcement actions brought by the Federal Trade Commission (FTC) to protect consumers from unfair and deceptive debt collection practices.[50] In 1968, the National Conference of Commissioners on Uniform State Laws developed the Uniform Consumer Credit Code to remove barriers to the free flow of credit.[51] Building on that foundation, the National Consumer Law Center drafted the National Consumer Act, released in 1970, which was intended to serve as a model for state-level reform and stronger consumer protections, but it was never widely adopted.[52]

That gap in uniform regulation left consumers vulnerable.[53] Without consistent federal standards, debt collectors in many states could employ abusive and harassing tactics with little meaningful consequence.[54] Congress responded by enacting the Fair Debt Collection Practices Act (FDCPA) in 1977, signed into law by President Carter.[55] The FDCPA established direct federal regulation of debt collection conduct, setting a national baseline that all states were required to meet.[56]

### b. THE TIMELINE OF DEBT COLLECTION PRACTICE IN THE EUROPEAN UNION

---

[43] *See* STĂNESCU, *supra* note 5, at 20.
[44] *See* STĂNESCU, *supra* note 5, at 20-21.
[45] *See* STĂNESCU, *supra* note 5, at 21.
[46] *See* STĂNESCU, *supra* note 5, at 21-22.
[47] Monea, *supra* note 27, at 3.
[48] *See* Julien Ayanna, *Consumer Debt*, EBSCO KNOWLEDGE ADVANTAGE, https://www.ebsco.com/research-starters/social-sciences-and-humanities/consumer-debt (2022); KUEHNOFF ET AL., *supra* note 26.
[49] This large portion of the population is estimated to have been 40% of the American population. KUEHNOFF ET AL., *supra* note 26.
[50] *See* KUENOFF ET AL., *supra* note 26.
[51] *See* KUENOFF ET AL., *supra* note 26.
[52] *See* KUENOFF ET AL., *supra* note 26.
[53] *See* KUENOFF ET AL., *supra* note 26.
[54] *See* KUENOFF ET AL., *supra* note 26.
[55] KUENOFF ET AL., *supra* note 26.
[56] *See* KEVIN M. LEWIS, CONG. RSCH. SERV., IF11247, THE FAIR DEBT COLLECTION PRACTICES ACT: LEGAL FRAMEWORK, (June 10, 2019).

### i. EUROPEAN UNION: 17TH AND 18TH CENTURY DEBT COLLECTION

European debt collection traces its roots to ancient Greece and Rome, where private actors were enlisted to enforce both public and private debts.[57] When a debtor could not pay, debt slavery and bondage were accepted, even expected, social responses.[58] As those practices were gradually outlawed, debtors' prisons emerged to take their place, trading one form of confinement for another.[59]

After the mid-1800s, the European debt collection industry began to modernize, moving away from debtor imprisonment and toward the seizure of income and assets as the preferred means of recovery.[60] France led the way, becoming one of the first European nations to abolish debtors' prisons, with Germany, England, Austria, Denmark, and Finland following in relatively short succession.[61] Rather than using debtors as laborers or prisoners, creditors increasingly turned to direct repossession, entering debtors' homes and seizing items of value without involving the courts.[62] While this shift resolved some of the cruelties of imprisonment, it introduced new concerns about unchecked creditor power.[63]

However, not all European nations moved in the same direction.[64] Romania, for instance, established debtors' prisons by law in 1864 and did not abolish them until 1912, a reminder that modernization across the continent was uneven and far from uniform.[65]

While most EU Member States had abolished imprisonment for the non-payment of debts by 1869, debtors could still be jailed for failing to comply with a court order to settle a debt—a meaningful distinction that kept coercive enforcement alive in practice.[66] That practice persisted across most of Europe until the early 1970s, and remains in use in Ireland to this day.[67] Historically, repo men and debt collection agencies became prominent during this era, using this tactic of economic coercion.[68] European debt collection agencies emerged fully by the late 1800s as creditors sought more organized means of recovering what they were owed.[69] In France, a reformed criminal, Eugène François Vidocq, founded one of the continent's leading private detective agencies which took on debt collection as a core function. This was one of the earliest examples of a debt collection operation resembling modern practice.[70] Germany followed a different path, with

---

[57] *See* Ziegler, *supra* note 18.
[58] *See* Zeigler, *supra* note 18.
[59] *See* Zeigler, *supra* note 18.
[60] *A Brief History of the European Debt Collection Industry: The Road to Empathetic Problem-solving*, *supra* note 22.
[61] By 1867, nearly all European states had eliminated debtor prisons. STĂNESCU, *supra* note 5, at 19.
[62] *See* STĂNESCU, *supra* note 5, at 18-19.
[63] *See* STĂNESCU, *supra* note 5, at 19.
[64] *See* STĂNESCU, *supra* note 5, at 19.
[65] STĂNESCU, *supra* note 5, at 19.
[66] STĂNESCU, *supra* note 5, at 19.
[67] STĂNESCU, *supra* note 5, at 19.
[68] *See* STĂNESCU, *supra* note 5, at 18 (Emphasizing that repo men and debt collection agencies seized wages and assets, repossessed movable property, and evicted debtors from their homes).
[69] *A Brief History of the European Debt Collection Industry: The Road to Empathetic Problem-solving*, *supra* note 22.
[70] *A Brief History of the European Debt Collection Industry: The Road to Empathetic Problem-solving*, *supra* note 22.

its debt collection industry evolving out of credit reporting organizations modeled after those in the United States and England; the first such organization was established there in 1872.[71]

### ii. EUROPEAN UNION: 19TH AND 20TH CENTURY DEBT COLLECTION

Debt collection through individual collectors and agencies became more widespread around World War I, driven by shifting economic conditions and the rapid growth of installment purchasing.[72] Agencies during this period sharpened their focus, making the recovery of overdue amounts their primary business rather than an incidental service.[73]

Installment buying was a novel concept in the early 1900s, initially accessible only to the wealthy whose personal reputations and social connections served as the foundation of creditworthiness.[74] As debt collection agencies grew in scale, so did their reach—extending eventually to everyday consumers. Some of today's largest debt collection companies in the EU trace their origins to this era, and by 1936, the industry had gained considerable notoriety and legitimacy.[75]

The Second World War brought an unexpected surge in debt collection activity across the EU.[76] Yet while the United States consumer credit market gained widespread traction in the 1960s, Europe did not experience comparable growth until the 1990s—and even then, access to consumer credit remained largely concentrated among the upper class.[77] As businesses struggled to manage the volume of late and non-payments that accompanied this growth, demand for debt collection agencies rose accordingly.[78] Technological adoption followed a similar lag: Europe embraced telephone-based collection methods in the 1960s, roughly two decades behind the United States, and did not fully integrate computerized debt collection until the 2000s, despite the technology becoming available in the 1980s.[79] In large part, this delay reflected Europe's prolonged recovery from the Second World War and the relatively late emergence of a robust consumer economy, which did not take hold until the late 1970s.[80] Against this backdrop, Sweden and the United Kingdom enacted the first sector-specific laws governing informal debt collection in 1974, marking an early effort to bring the industry under formal legal oversight.[81]

By comparison, comprehensive debt collection regulation has arrived slowly at the EU

---

[71] *A Brief History of the European Debt Collection Industry: The Road to Empathetic Problem-solving*, *supra* note 22.
[72] *See* STĂNESCU, *supra* note 5, at 20.
[73] *See A Brief History of the European Debt Collection Industry: The Road to Empathetic Problem-solving*, *supra* note 22.
[74] STĂNESCU, *supra* note 5, at 20.
[75] For example, the Swedish company, Intrum, founded in 1923, is now the largest debt collection company in the EU. *A Brief History of the European Debt Collection Industry: The Road to Empathetic Problem-solving*, *supra* note 22.
[76] *See* STĂNESCU, *supra* note 5, at 21.
[77] *A Brief History of the European Debt Collection Industry: The Road to Empathetic Problem-solving*, *supra* note 22.
[78] *A Brief History of the European Debt Collection Industry: The Road to Empathetic Problem-solving*, *supra* note 22. Businesses found it more practical to engage a debt collection agency than to risk recovering nothing from debtors on their own.
[79] STĂNESCU, *supra* note 5, at 21.
[80] STĂNESCU, *supra* note 5, at 21.
[81] *See* STĂNESCU, *supra* note 5, at 21-22.

level. As consumer credit expanded across Europe in the late twentieth century, the need for clearer and more consistent standards became increasingly apparent.[82] The EU's response, however, has been incremental and largely indirect—addressing the symptoms of abusive collection practices through a series of directives rather than confronting them head-on. The Unfair Commercial Practices Directive, the 2008 Consumer Credit Directive, the 2021 Credit Servicers and Credit Purchasers Directive, the Unfair Contract Terms Directive, and the General Data Protection Regulation have each added a layer of oversight, collectively shaping how debt collection by credit servicers, purchasers, and collectors is conducted, but without the unified, consumer-focused framework that has characterized the American approach.[83]

#### iii. COMPARISON OF THE HISTORICAL CONTEXT OF THE UNITED STATES AND EU

Ultimately, both the United States and EU debt collection systems share the same inherited legal culture, one that historically normalized debtor coercion as a means of recovering unpaid obligations. Over time, however, the two systems have diverged sharply. The United States moved toward direct, consumer-centered regulation, while the EU has continued to prioritize the interests of creditors and the financial services industry. Though both have long abandoned debt bondage and debtors' prisons, their divergent paths explain why, when faced with similar pressures, the United States responded with targeted federal legislation and the EU with a gradual, fragmented series of directives.

## IV. REGULATORY AND DIRECTIVE FRAMEWORKS AGAINST DEBT COLLECTION ABUSE AND HARASSMENT TACTICS

### a. UNITED STATES: THE REGULATORY FRAMEWORK USED TO REGULATE ABUSIVE AND HARASSMENT TACTICS TO COLLECT DEBT

In 1977, Congress enacted the Fair Debt Collection Practices Act (FDCPA) to eliminate abusive debt collection practices while also protecting reputable debt collectors from unfair competition.[84] The FDCPA functions as an amendment to the Consumer Credit Protection Act (CCPA).[85]

#### i. WHAT THE FDCPA COVERS AND WHO IT APPLIES TO

The FDCPA applies only to entities that qualify as "debt collectors"—defined as any person or business whose principal purpose is the collection of debts, or who regularly collects debts owed to another.[86] In practical terms, this covers anyone collecting on behalf of someone else; a creditor collecting its own debts ordinarily falls outside the definition.[87] Several categories of actors are excluded entirely, including federal employees collecting debts in the course of their official duties and, following the Supreme Court's decision in *Henson v. Santander Consumer USA, Inc.*,

---

[82] *See* STĂNESCU, *supra* note 5, at 21-22.
[83] STĂNESCU, *supra* note 5, at 7.
[84] LEWIS, *supra* note 56.
[85] LEWIS, *supra* note 56.
[86] 15 U.S.C. § 1692(a).
[87] LEWIS, *supra* note 56.

individuals or entities that purchase debts outright.[88] In 2006, Congress further amended the definition to exclude certain private entities operating "bad check enforcement programs on behalf of a state or district attorney."[89]

The FDCPA's protections extend only to consumer debt, obligations incurred primarily for personal, family, or household purposes, such as credit card debt and medical bills. Business-related and commercial debts fall outside its reach.[90]

ii. PROHIBITED CONDUCT UNDER THE FDCPA

The FDCPA prohibits debt collectors from taking various actions when seeking to collect debts from consumers, including engaging in harassment or abuse.[91] While not an exhaustive list, this includes tactics such as: the use of profane language, contacting a debtor at their place of work, harassing the debtor's family members, publishing lists of consumers who allegedly refuse to pay (with the exception of publishing a list to a consumer reporting agency), advertising a debt for sale to coerce payment, making calls without meaningfully disclosing the collector's identity (except as allowed to obtain location information), and threatening violence.[92] The FDCPA is widely regarded as one of the strictest federal regulations governing debt collection conduct.[93]

iii. THE ENFORCEMENT OF THE FDCPA

The FDCPA is enforced by both the Federal Trade Commission (FTC) and the Consumer Financial Protection Bureau (CFPB), each of which may pursue administrative enforcement actions against violators.[94] The CFPB is additionally authorized to promulgate rules implementing the FDCPA and to issue interpretive guidance.[95] Since 2013, the CFPB has accepted consumer complaints regarding debt collection, making complaint data, including the issue raised, the collector's response, and the collector's name, publicly accessible online, and consumers can also share the narrative behind their complaint.[96]

Beyond agency enforcement, the FDCPA empowers consumers to bring private lawsuits directly against debt collectors who violate the statute.[97] A successful claimant may recover monetary damages and attorney's fees, though most courts have held that the FDCPA does not authorize punitive damages.[98]

iv. EXCEPTIONS TO LIABILITY

---

88 15 U.S.C. § 1692(a). *See also* Henson v. Santander Consumer USA Inc., 582 U.S. 79, 81 (2017) (the case which is referred to and considered to be a landmark case to further the definition of debt collectors).
89 LEWIS, *supra* note 56.
90 LEWIS, *supra* note 56. *See also* 15 U.S.C. § 1692(a).
91 LEWIS, *supra* note 56. *See also* 15 U.S.C. § 1692(a).
92 *See* LEWIS, *supra* note 56. *See also* 15 U.S.C. § 1692(e).
93 LEWIS, *supra* note 56.
94 LEWIS, *supra* note 56.
95 LEWIS, *supra* note 56.
96 *See* April Kuehnhoff et al., *1.3.1.2 Consumer Complaints About Debt Collection*, NCLC DIGITAL LIBRARY: FAIR DEBT COLLECTION, https://library.nclc.org/book/fair-debt-collection/1312-consumer-complaints-about-debt-collection (last visited Oct. 31, 2025).
97 LEWIS, *supra* note 56.
98 LEWIS, *supra* note 56.

While the FDCPA provides remedies for abusive debt collection practices, it is not without exceptions in its enforcement.[99] The FDCPA provides limited safe harbors for debt collectors.[100] A collector incurs no liability if it can demonstrate that a violation resulted from a bona fide unintentional error and that it maintained procedures reasonably designed to prevent such errors.[101] The FDCPA similarly shields collectors from liability when they act in good-faith reliance on a CFPB advisory opinion.[102]

### v. THE FEDERAL FLOOR, STATE CEILINGS

The FDCPA establishes a federal baseline that all states must meet, but it does not preempt state law.[103] States may enact their own debt collection regulations, provided those laws are not inconsistent with the FDCPA, and many have used that latitude to provide consumers with even greater protections.[104] Florida's Consumer Collection Practices Act (FCCPA) is a notable example: it prohibits creditors from using threats or intimidation and bars debt collectors from contacting a debtor's workplace once informed that personal calls are not permitted there.[105] Importantly, the FCCPA extends these protections to original creditors as well as third-party collectors, a broader reach than the FDCPA itself.[106] Rather than conflicting with federal law, the FCCPA operates as a complementary layer of protection fully consistent with the FDCPA's core purpose.[107]

## b. EU: THE DIRECTIVE FRAMEWORK USED TO REGULATE ABUSIVE AND HARASSMENT TACTICS TO COLLECT DEBT

The EU regulates abusive debt collection practices primarily through directives and the implementing mechanisms of its Member States, rather than through a single, unified statute like the FDCPA.[108]

### i. DEVELOPMENT OF THE DIRECTIVE FRAMEWORK

EU-level regulation of debt collection developed slowly and indirectly.[109] For much of the twentieth century, the Union relied on general consumer protection instruments that addressed debt collection only incidentally.[110] The UCPD, enacted in 2005, was the first broadly applicable tool to challenge abusive collection conduct—though it was never designed for that purpose.[111] The 2008 CCD introduced disclosure and transparency requirements for consumer credit agreements,

---

99 LEWIS, *supra* note 56.
100 LEWIS, *supra* note 56.
101 *See* LEWIS, *supra* note 56.
102 LEWIS, *supra* note 56.
103 *Debt Can Be A Heavy Burden For Many Individuals, And Dealing,* STATE REGULATION PREVENTING CREDITOR HARASSMENT: PROTECTING CONSUMER FROM AGGRESSIVE COLLECTION PRACTICES (Apr. 15, 2025).
104 Florida Debt Collection Practices and Statutes for Consumers, TRATTA.IO BLOG (Sept. 23, 2025), https://www.tratta.io/blog/business-debt-collection-laws-florida-statutes.
105 *Id.*
106 *Id.*
107 *Id.*
108 STĂNESCU, *supra* note 5, at 127-28.
109 *See* STĂNESCU, *supra* note 5, at 46.
110 *See* STĂNESCU, *supra* note 5, at 6.
111 *See generally* STĂNESCU, *supra* note 5, at 156 (emphasizes that "[t]he UCTD aims to rectify situations of unequal bargaining power between parties in a contract, which may be caused by differences in information, expertise, or negotiating strength related to the contract terms").

but similarly stopped short of directly regulating collection behavior.[112] The UCTD, though older, provided a basis for challenging contractual terms that unfairly disadvantaged debtors.[113] The GDPR, enacted in 2016 and effective in 2018, added a layer of data protection relevant to how collectors handle debtor information.[114] It was not until 2021, with the enactment of the CSCPD, that the EU produced its first instrument explicitly targeting abusive informal debt collection, nearly half a century after the United States enacted the FDCPA.[115]

### ii. WHAT THE EU FRAMEWORK COVERS AND WHO IT APPLIES TO

Unlike the FDCPA's precise statutory definition, the term "debt collector" in the EU is broadly construed to encompass creditors, debt buyers, debt collection agencies, and any other individual or entity engaged in the collection of non-performing loan (NPL) debt.[116] Rather than a single, sector-specific instrument, the EU relies on a fragmented framework drawn from multiple directives including the UCPD, the 2008 CCD, the 2021 CSCPD, the UCTD, and the GDPR.[117]

Until 2021, EU legislation addressing informal debt collection was scarce, and the current framework relies on rules scattered across directives, which cannot fully replace sector-specific debt-collection statutes.[118] The CSCPD is the first EU-wide instrument to explicitly address abusive informal debt collection, though its scope is limited to NPLs originated by credit institutions, leaving large categories of consumer debt entirely outside its reach.[119]

### iii. PROHIBITED CONDUCT UNDER THE EU DIRECTIVES

The EU framework does not enumerate specific prohibited debt-collection tactics like the FDCPA does.[120] The UCPD serves as the primary tool for addressing abusive collection conduct, but it was not designed as a debt-collection law, it governs commercial practices throughout the entire transaction, treating debt collection as an after-sales commercial practice connected to the underlying contract.[121] Under the UCPD, debt collectors are prohibited from engaging in "unfair commercial practices," which includes misleading actions, misleading omissions, and aggressive practices that materially distort a consumer's behavior.[122] Aggressive practices are defined as those that use harassment, coercion, or undue influence to impair a consumer's freedom of choice—a

---

[112] Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC 2008 O.J. (L133) 66.
[113] Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts 1993 O.J. (L 95) (UCTD) 29-34.
[114] Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation) 2016 O.J. (L 119) (GDPR) 1–88.
[115] Directive (EU) 2021/2167 of the European Parliament and of the Council of 24 November 2021 on credit servicers and credit purchasers and amending Directives 2008/48/EC and 2014/17/EU 2021 O.J. (L 438) (CSCPD) 1.
[116] Cătălin-Gabriel Stănescu, *Regulation of Abusive Debt Collection Practices in the EU Member States: An Empirical Account*, 44 J. CONSUMER POL'Y 179, 180 (2021).
[117] STĂNESCU, *supra* note 5, at 53.
[118] *See* Directive (EU) No 2021/2167 on credit servicers and credit purchasers 2021 O.J. (L438) (CSCPD).
[119] *See id.*
[120] *See generally* Cătălin-Gabriel Stănescu, *Is the Unfair Commercial Practices Directive Fit to Effectively Tackle Abusive Debt Collection?*, 9 J. EUR. CONSUMER & MKT. L. 235 (Dec. 2020) (demonstrates that there is no express definition within recent Directives and therefore, no specific prohibited tactics).
[121] *Id.*
[122] *Id.* at 236.

standard broad enough to capture some abusive collection tactics, but one that requires case-by-case interpretation rather than providing the clear, enumerated prohibitions of the FDCPA.[123]

The UCTD supplements this by prohibiting contractual terms that create a significant imbalance between the rights of creditors and debtors, offering debtors some protection against one-sided collection-related contract provisions.[124] The CSCPD goes further within its limited scope, requiring credit servicers and purchasers to treat borrowers fairly and with respect, to communicate clearly and transparently, and to refrain from harassment or undue pressure—but again, only in the context of NPLs originated by credit institutions.[125]

#### iv. THE ENFORCEMENT OF THE EU DIRECTIVES

The EU framework lacks a centralized enforcement body comparable to the CFPB or FTC.[126] Enforcement of the directives is delegated to Member States, which are responsible for designating competent national authorities and establishing effective, proportionate, and dissuasive penalties.[127] In practice, however, enforcement is inconsistent across the Union, and the absence of a dedicated pan-European debt collection regulator means that systemic abuses can persist without coordinated federal-level intervention.[128]

The directives also provide limited private rights of action for consumers subjected to abusive or harassing debt-collection practices.[129] Under the UCPD, consumers in most Member States do not have a direct right to sue debt collectors for damages—enforcement is primarily administrative.[130] The CSCPD requires Member States to establish complaint and redress mechanisms for borrowers dealing with credit servicers and purchasers, but those mechanisms vary significantly in scope and accessibility across jurisdictions.[131]

The absence of robust enforcement mechanisms has produced tangible consequences.[132] For example, debt collectors in Spain drew widespread attention after dressing "in undertaker garments and arriving at debtors' homes in fake hearses bearing the words 'Undertaker of Debt Collection,'" because Spain lacks sector-specific debt collection protections, and collectors faced no meaningful legal consequences for the practice which illustrated the real-world gap left by the EU's fragmented regulatory approach.[133]

### c. EXCEPTIONS TO LIABILITY

Because the EU framework is built on general consumer protection directives rather than targeted debt-collection statutes, exceptions to liability are not clearly delineated as the FDCPA's good-faith safe harbors are. Debt collectors may invoke general defenses available under national

[123] *Id.* at 238.
[124] *Id.* at 236.
[125] *Id.* at 235.
[126] *See id.* at 239.
[127] *See id.*
[128] *See* Stănescu, *supra* note 116, at 211.
[129] *See* Stănescu, *supra* note 116, at 182.
[130] *See* Stănescu, *supra* note 116, at 182.
[131] *See* STĂNESCU, *supra* note 5, at 53-54.
[132] *See* STĂNESCU, *supra* note 5, at 1.
[133] STĂNESCU, *supra* note 5, at 1.

law, but there is no uniform EU-wide safe harbor for bona fide errors or good-faith reliance on regulatory guidance. Collectors operating across Member States may also exploit regulatory gaps between jurisdictions, particularly given that even the Member States with sector-specific regulations typically apply them only to domestic collection activity—leaving debtors exposed when collectors operate across borders.

#### i. EU BASELINE, MEMBER STATE SUPPLEMENTATION

The EU framework establishes a baseline through its directives, but Member States are expected to supplement that baseline at the national level. In practice, however, only a minority of Member States have enacted sector-specific statutes governing abusive informal debt collection, leaving protection uneven across the Union. Sweden and the United Kingdom[134] were among the earliest to act, enacting sector-specific debt-collection laws as early as 1974. Sweden's framework, administered through its Kronofogden—a dedicated national enforcement authority—provides a relatively structured system for debt recovery with built-in debtor protections.[135] Prior to Brexit, the United Kingdom maintained the Consumer Credit Act and the Financial Conduct Authority's (FCA) debt collection guidance, which together imposed meaningful constraints on collector conduct and provided consumers with enforceable rights.[136] These examples demonstrate that robust national frameworks are achievable, but their absence in the majority of Member States leaves the broader EU population without equivalent protections.

Even where sector-specific regulations do exist, they tend to be narrow in application and do not extend to collectors operating from other Member States—a significant limitation in a single market where cross-border debt collection is common.[137] This stands in sharp contrast to the United States model, where the FDCPA sets a uniform federal floor that all states must meet, with states free to exceed, but not fall below that baseline.[138] In the EU, the absence of an equivalent floor means that consumer protection in the debt collection context depends heavily on the Member State in which a debtor resides, producing a patchwork of protections that leaves many European consumers meaningfully exposed.

## V. COMPARATIVE ANALYSIS OF THE UNITED STATES AND EUROPEAN UNION SYSTEMS

### a. OVERALL EFFECTIVENESS OF THE FRAMEWORKS

Based on current frameworks, the United States model is most effective at protecting consumers from abusive and harassing debt-collection practices. The FDCPA is a single, comprehensive statute that directly targets informal debt collection, enumerates specific prohibited conduct, and provides consumers with a clear and accessible private right of action, including

[134] Although the U.K. formally withdrew from the EU on January 31, 2020, its historical membership remains relevant to this article and the comparison of the two frameworks.
[135] *Swedish Enforcement Authority (Kronofogden)*, GOVERNMENT OFFICES OF SWEDEN, https://www.government.se/government-agencies/swedish-enforcement-authority-kronofogden/ (last visited Mar. 25, 2026).
[136] *See generally* Consumer Credit Act 1974, c. 39 (UK).
[137] *See generally* STĂNESCU, *supra* note 5, at 52 (explaining how debt collectors take advantage of the absence of sector-specific legislation).
[138] *See* LEWIS, *supra* note 56.

statutory damages and attorneys' fees. When a collector engages in abusive or harassing conduct, a consumer can straightforwardly characterize that behavior as a violation of the FDCPA and seek relief without having to fit the claim into a broader legal category. Beyond the federal baseline, consumers may also invoke state law protections that, in many jurisdictions, extend the FDCPA's reach, covering original creditors, imposing stricter prohibitions, or providing additional remedies.

That said, the FDCPA is not without its limitations. Its protections apply only to third-party debt collectors, leaving consumers who are pursued directly by original creditors without federal recourse. And in states that have not enacted broader protections, that gap can be significant.

The EU's framework, by contrast, was never designed with debt collection specifically in mind. Its protections are spread across multiple directives—the UCPD, UCTD, GDPR, CCD, and CSCPD—each of which addresses a different aspect of commercial or financial conduct, with debt collection addressed only incidentally or within a narrow scope. Even with the addition of the CSCPD in 2021, the regulatory framework remains fragmented and incomplete. Rather than pointing to a clear statutory prohibition, EU consumers seeking relief from abusive collection conduct must typically reframe their claim within a broader category—unfair commercial practices, unfair contract terms, or data protection violations—a requirement that introduces an additional burden on the very consumers the framework purports to protect.

Compounding this problem is the EU's relative lack of developed case law in this area. Without a robust body of judicial decisions interpreting and applying debt collection protections, consumers and practitioners alike lack the clarity needed to reliably identify what conduct crosses the line and what remedies are available when it does. Until the EU develops either a sector-specific regulatory instrument or a more substantial body of interpretive case law, European consumers will remain at a structural disadvantage compared to their American counterparts, dependent on their home Member State and the willingness of national authorities to fill gaps that EU-level directives have left open.

### b. STRUCTURAL COHESION AND FRAGMENTATION

In the United States, the FDCPA provides a coherent federal baseline that applies uniformly nationwide, while preserving the ability of states to enact stronger protections. Debt collectors operate under a clear set of core rules, and consumers benefit from a consistent floor of protection regardless of where they reside. Where state law goes further, extending protections to original creditors, imposing stricter prohibitions, or expanding available remedies, consumers have access to those additional layers without sacrificing the federal baseline beneath them. The result is a structurally cohesive system: tiered, flexible, and nationally consistent at its foundation.

The EU framework, by contrast, is structurally fragmented at every level. There is no single, horizontal instrument dedicated to abusive informal debt collection. Instead, consumer protections are dispersed across the UCPD, CCD, UCTD, GDPR, and the narrowly scoped CSCPD, each of which must be independently implemented by Member States with considerable variation in how that implementation unfolds in practice. Some Member States have enacted sector-specific statutes while others rely almost entirely on general consumer or civil law. This patchwork creates significant regulatory gaps, particularly in cross-border situations where collectors and debtors are in different Member States and no single national framework clearly governs the relationship.

The practical burden this places on consumers is substantial. Unlike a United States consumer who can point directly to the FDCPA and identify a specific prohibited practice, an EU consumer seeking relief must first determine which directive—if any—applies to their particular situation, a task made difficult by the overlapping and indirect nature of the available instruments. Even where an applicable directive can be identified, many of them do not attach meaningful private rights of action, leaving consumers unable to bring direct claims and dependent instead on national authorities to pursue enforcement on their behalf. Where those authorities are underfunded, inconsistent, or inactive, protections that exist on paper may offer little practical relief to the consumers who need them most.

### c. PROCEDURAL ACCESSIBILITY AND LIMITS TO ENFORCEABILITY

The United States framework is considerably more procedurally accessible to debtors than its European Union counterpart. The FDCPA expressly authorizes private lawsuits, supports class actions, and is backed by active public enforcement from dedicated federal agencies, the CFPB and FTC, each empowered to investigate violations, pursue enforcement actions, and promulgate implementing regulations. Although the statute is limited to certain types of consumer debt and applies primarily to third-party collectors within that scope, it offers a clear, direct, and well-tested enforcement pathway that does not require consumers to navigate overlapping legal frameworks or identify the correct regulatory instrument before seeking relief.

The EU's enforcement model, by contrast, is far more dependent on the willingness and capacity of public authorities and the manner in which individual Member States have chosen to transpose and apply the relevant directives. Few EU instruments provide a standalone cause of action specifically for abusive debt collection. Instead, consumers must typically ground their claims in general contract law, consumer protection law, or data protection law, whichever framework their national system makes most accessible. This not only increases the burden on individual consumers but also produces inconsistent outcomes across the Union, even where the underlying harm closely resembles conduct that the FDCPA addresses directly and unambiguously.

The gap in complaint infrastructure further widens this disparity. Since 2013, the CFPB has maintained a centralized, publicly accessible database of consumer debt collection complaints, recording the nature of each complaint, the collector's response, and the collector's identity, all available for public review. This system serves a dual purpose: it gives individual consumers a meaningful channel for reporting abuse, and it gives regulators a continuously updated picture of systemic patterns across the industry. The EU has no equivalent mechanism; consumers must navigate national-level complaint systems that vary widely in accessibility, transparency, and effectiveness. While some Member States have established financial ombudsman services or consumer protection agencies that accept debt collection complaints, there is no uniform process, no centralized data collection, and no public-facing database comparable to the CFPB's. The practical consequences are significant; not only are individual consumers left without a reliable or consistent path to redress, but policymakers across the Union are deprived of the data needed to identify, monitor, and respond to systemic abuses before they become entrenched.

## VI. CONCLUSION

In conclusion, the comparison between the United States and EU frameworks reveals a clear divergence in how two similarly developed legal systems have chosen to balance the interests of creditors and consumers. Through the FDCPA and its network of complementary state statutes, the United States has built a regulatory architecture that directly targets abusive and harassing debt-collection conduct, with clear prohibitions, accessible enforcement mechanisms, and meaningful remedies for harmed consumers. The EU, despite recent progress with the CSCPD, continues to rely on a fragmented collection of directives that were never designed with debt collection in mind, leaving consumers dependent on the Member State in which they reside and on the willingness of national authorities to fill gaps left by EU-level instruments.

Historical context is essential to understanding how this divergence developed. Both systems inherited the same creditor-centered legal culture rooted in English and European debt collection traditions. But their trajectories diverged sharply over time. The United States experience with debtors' prisons, the early constitutional commitment to uniform bankruptcy law, and the eventual legislative response to widespread collector abuses in the 1970s collectively produced a federal regime that placed the debtor—not the creditor—at the center of the regulatory framework. The EU's path was slower and less direct, shaped by the uneven pace of economic development across Member States, the structural preference for incremental harmonization over prescriptive federal mandates, and a consumer credit market that did not achieve widespread use until decades after its American counterpart.

There is also a deeper cultural dimension worth acknowledging. The American regulatory tradition has long reflected a political commitment to individual rights and federal protection against institutional abuse: values that found natural expression in a statute like the FDCPA. The EU's approach, rooted in the principle of subsidiarity and the deference it affords Member States, produces a system that is more flexible but structurally less equipped to guarantee uniform consumer protection across the Union. Neither approach is without merit, but when measured against the specific harm of abusive and harassing debt collection, the United States model's directness, clarity, and enforceability give it a meaningful and demonstrable advantage, one that the EU, as its consumer credit market continues to mature, may ultimately find worth emulating.

# *PARENTING WITHOUT PAY OR EQUAL PARTNERSHIP*: IMPROVING THE FMLA THROUGH COMPARATIVE ANALYSIS

*By: Courtney Jean Clavel*[1]

ABSTRACT

This article seeks to analyze ways to improve the Family and Medical Leave Act by comparing government-protected parental leave in the United States, Australia, Japan, and Norway. Section II will introduce the current fears around America's birth rate, why women are important to the American workforce, why families often need two parents working, and, finally, how the Family Medical Leave Act has fallen short and a common suggestion for improvement.

Section II will analyze various countries' national laws that govern parental leave. Each subsection will describe the country's nationally protected parental leave policy. It will proceed as follows: the United States, Australia, Japan, and then Norway. Following the description of each country's leave options, the article will outline how the protections are used by the citizenry of each country. Finally, it will provide areas of critique and praise within each country, except for the United States, and proposals within those countries for improvements.

Section III will turn to the United States and suggest areas of improvement for the Family Medical Leave Act based on common critiques. Suggestions will be based both on research of American scholars and by applying the solutions created by the countries analyzed.

Section IV will conclude that the first step to improve the Family Medical Leave Act is to make the protected parental leave paid for by the federal government, as opposed to by employers. Next, it can also be improved by incorporating an amendment to allow for paid leave to account for day-to-day parenting needs. Finally, the article will conclude that there must be a societal change beginning with the passage of these amendments and pushes within businesses for all parents to take their parental leave with the goal of changing the inequitable division in childcare.

---

[1] Juris Doctor Candidate for the Class of 2026 at the University of South Carolina Joseph F. Rice School of Law, Student Works Editor for the South Carolina Journal of International Law and Business, Associate Justice of Administration for the Mock Trial Bar at USC Law, and Board Member of If/When/How: Lawyers for Reproductive Justice.

# TABLE OF CONTENTS

# I. INTRODUCTION

Many people in the United States panic because of the declining birthrate in the country. Between 2014 and 2020, the U.S. Centers for Disease Control and Prevention (CDC) reported that the United States birth rate declined 2% annually.[2] The CDC now reports that the fertility rate in the United States is at an all-time low.[3] The decline can be seen as primarily affecting women between the ages of twenty and thirty-nine,[4] which are often viewed as the best ages to have children.

In turn, the United States has seen a rise in pro-natal ideology with political figures and commentators, like Vice President JD Vance, calling for people to have more children.[5] Vice President Vance made statements suggesting that citizens with children should have greater voting power than those without because children make a citizen more invested in the outcome of the nation.[6] Elon Musk expressed a fear of a civilization collapse if birth rates do not rise.[7] Matt Walsh stated that a woman's role is in parenting her children and that parenting should take priority over working.[8]

The low birth rate and desire to encourage women to have children has attracted the attention of the White House—President Donald Trump has made it clear that promoting birth among America's young women is a priority by extending access to in vitro fertilization[9] and stating that a $5,000 child credit to be paid directly to new mothers "sounds like a good idea."[10]

However, this decline does not come out of nowhere. Men and women are making the choice not to have children even in cases where they typically would want to be parents. Some individuals cite social changes, financial issues, and logistics as reasons for their decision to not have children.[11] Many of these issues are evidenced by parents' experience in the workplace, specifically mothers. Women have stated that lack of flexibility in their jobs, lack of childcare, and

---

[2] U.S. CTR. FOR DISEASE CONTROL & PREVENTION, U.S. FERTILITY RATE DROPS TO ANOTHER HISTORIC LOW (Apr. 25, 2024),

[3] *Id.*

[4] *Id.*

[5] Rachel Cohen Booth, *The Movement Desperately Trying to Get People to Have More Babies*, VOX (July 30, 2024, 6:00 AM EDT), https://www.vox.com/policy/363543/pronatalism-vance-birth-rates-population-decline-fertility.

[6] *Id.*

[7] Lisa Hagen, *Who Are Pronatalists, the People Who Want Women to Start Having a Lot More Babies?*, KGOU (Apr. 7, 2025, 3:37 PM CDT), https://www.kgou.org/politics-and-government/2025-04-07/who-are-pronatalists-the-people-who-want-women-to-start-having-a-lot-more-babies.

[8] *Daily Wire's Matt Walsh: "Our Goal as a Society Should be Fewer Women in the Workforce Because a Lot More of Them Are Home Raising Their Kids,"* MEDIA MATTERS FOR AMERICA (Apr. 9, 2025, 2:49 PM EDT), https://www.mediamatters.org/matt-walsh/daily-wires-matt-walsh-our-goal-society-should-be-fewer-women-workforce-because-lot-more.

[9] *See* Press Release, The White House, Expanding Access to In Vitro Fertilization (Feb. 18, 2025), https://www.whitehouse.gov/presidential-actions/2025/02/expanding-access-to-in-vitro-fertilization/.

[10] Hannah Demissie & Katherine Faulders, *Trump Administration Looking at $5,000 'Baby Bonus' to Incentivize Public to Have More Children*, ABC NEWS (Apr. 23, 2025, 1:59 PM EDT), https://abcnews.go.com/Politics/trump-administration-5000-baby-bonus-incentivize-public-children/story?id=121094707.

[11] Catherine Aponte, *Why Some Women Don't Want Children*, PSYCH. TODAY (June 19, 2023), https://www.psychologytoday.com/us/blog/a-marriage-of-equals/202306/why-some-women-dont-want-children.

disproportionate childcare responsibilities are some of the reasons they find it difficult to manage working and starting a family.[12]

The solution to the issue of a low birthrate cannot be addressed by asking women to leave the workforce to stay home and care for children. Since the women's labor movement, women have grown to be a key part of the American workforce. Women are outperforming men in standardized testing and secondary education, and women have made incredible strides in joining upper management despite being barred for decades.[13] Workplaces benefit from having women as employees and managers. Female managers can provide universal support to all employees, while women under male managers often report feeling unsupported.[14] Employees also report feeling less burnt out and more confident in meeting developmental milestones under female leadership than under male leadership.[15]

Not only does the workplace benefit from mothers and women working, but so do families. Despite economic data showing that income has outpaced inflation, making it possible to afford the same necessities year to year, Americans feel as though their paychecks cannot keep up with the cost of living.[16] There is a rise in the need for dual-income households. Issues facing families such as the rising cost of housing, rising cost of daycare, planning for retirement or uncertainty, saving for college or secondary education, and other similar longer-term goals often require both parents to be active participants in the workforce.[17]

The Family and Medical Leave Act (FMLA) was the first step to ensure that women were able to both raise a family and continue working, encouraging equal partnership in parenting. As will be discussed further in the following section, the FMLA was monumental because it provided both parents with twelve weeks of unpaid leave for pregnancy, birth, and childcare immediately following the birth of a child.[18] However, since its passage, it has failed on a few fronts. Some say that it is too broad, both in its gender neutrality approach and in its scope, for effective implementation.[19] Others have said that even if it is effective, it is not achieving its gender-neutral goals because women are taking leave at a higher rate than men.[20]

A common suggestion to improve the FMLA's pitfalls is to have paid federal leave to encourage postpartum mothers who are healthy and able to return to work to do so within a

---

[12] *The First Five Things to Know: Impact of the Child Care Crisis on Women & Mothers*, FIRST FIVE YEARS FUND (Mar. 8, 2023), https://www.ffyf.org/resources/2023/03/the-first-five-things-you-need-to-know-impact-of-the-child-care-crisis-on-women-mothers/.

[13] *See* Patti C. Miles, *Why Do Educated, Successful Women Leave the Workforce?*, 2 AM. INT'L J. SOC. SCI. 1, 1 (2013).

[14] *See* CATHLEEN CLERKIN, WHAT WOMEN WANT—AND WHY YOU WANT WOMEN—IN THE WORKPLACE 7-8 (Ctr. for Creative Leadership, 2017).

[15] *See id.* at 8.

[16] Ben Casselman, *Wages Have Outpaced Inflation. But Not for Everyone*, N.Y. TIMES (Oct. 28, 2024), https://www.nytimes.com/2024/10/28/business/economy/inflation-wages-pay-salaries.html.

[17] *See* Tesa E. Leonce, *The Inevitable Rise in Dual Income Households and the Intertemporal Effects on Labor Markets*, 52 COMP. & BENEFITS R. 64, 66-68 (2020).

[18] *See* Family and Medical Leave Act, 29 U.S.C. § 2612 (1993).

[19] *See* Naomi Gerstel & Amy Armenia, *Giving and Taking Family Leaves: Right or Privilege*, 21 YALE J.L. & FEMINISM 161, 164-65 (2009).

[20] *See* Ariane Prohaska & John F. Zipp, *Gender Inequality and the Family and Medical Leave Act*, 32 J. FAM. ISSUES 1425, 1441-42 (2011).

reasonable time.[21] The United States lags behind almost every country in regard to parental leave because there is no federally protected paid leave.[22] To catch up with the rest of the world, Congress could look to the actions taken by other countries and the impacts those actions have on their citizens and workforce to ensure that any future law or amendment would reach the ultimate goals of the Family and Medical Leave Act. Throughout this article, the parental leave structures of Australia, Japan, and Norway will be examined after taking a deep look at the Family and Medical Leave Act to find areas of improvement based on the successes and pitfalls of other nations.

## II. PARENTAL LEAVE POLICY BY COUNTY

### A. THE UNITED STATES OF AMERICA

The primary piece of legislation that makes up the parental leave policy in the United States is the Family and Medical Leave Act.

#### 1. THE FAMILY AND MEDICAL LEAVE ACT

Congress passed the Family and Medical Leave Act (FMLA) in 1993 for a variety of purposes including promoting a stable economy through balancing the needs of families with the demands of working, allowing leave for medical reasons of the individual employee or another member of their family, and promoting equality in employment for both men and women.[23] The FMLA provides twelve weeks of time off for the birth or adoption of a child, among other things.[24] However, if both parents are employed by the same employer, they are only entitled to twelve weeks total for both parents.[25] Employees are not entitled to be paid during their approved leave.[26] When employees want to use their protected time off for a child, they must comply with the statutory requirements, one of which is to provide the employer with notice thirty days before the beginning of their leave.[27]

Another primary requirement is that the employer and the employee must meet the eligibility requirements. For employers to fall under the FMLA's requirements to offer unpaid leave, they must "employ 50 or more employees for each working day during each of 20 or more calendar workweeks."[28] Employers who do not meet this criterion are not required to provide even unpaid leave. Additionally, for employees to be entitled to unpaid leave, they must be employed for at least twelve months and work at least 1250 hours, or about 156 workdays, with that employer within those twelve months.[29]

---

[21] *See* SARAH COOMBS, MOM & BABIES SERIES: PAID LEAVE IS ESSENTIAL FOR HEALTHY MOMS AND BABIES, (Nat'l P'ship for Women & Fams.. May 2021),

[22] *See* Claire Cain Miller, *The World 'Has Found a Way to Do This': The U.S. Lags on Paid Leave*, N.Y. TIMES (June 22, 2023), https://www.nytimes.com/2021/10/25/upshot/paid-leave-democrats.html#:~:text=It%20would%20cover%20care%20for,ours%20for%20a%20long%20time.%E2%80%9D.

[23] *See* 29 U.S.C. § 2601.

[24] *See id.* § 2612(a)(1)(A)-(B).

[25] *See id.* § 2612(f).

[26] *See id*. § 2612(c).

[27] *See id*. § 2612(e)(1).

[28] *See id*. § 2611(4)(A)(i).

[29] *See id*. § 2611(2)(A)(i)-(ii).

If a qualifying employee meets all of the requirements, the employee is entitled to retain the position they held before their leave or be given a position equivalent to their prior position in pay and benefits.[30] The employer also cannot deduct any benefits that the employee accrued prior to their leave as a result of their request.[31] While on leave, an employer is required to fulfill any obligations it has regarding the employee's group health plan.[32] They cannot change or alter the plan as a result of the employee's absence due to their leave.[33] While these protections would help a majority of men and women who choose to take time off due to the birth or adoption of a child, there are exceptions to these protections that businesses are entitled to.[34]

"Highly compensated employees" are exempt from these protections.[35] These are "the highest paid 10 percent of the employees . . . within 75 miles of the facility at which the employee is employed."[36] If a parent falls into this category of highly compensated employee, the employer can deny reinstatement into their prior position if the employee can show "denial is necessary to prevent substantial and grievous economic injury to the operations of the employer."[37] There has not been a firm test formulated by the courts for when an employee's absence would cause economic injury, but regulations have outlined that if reinstatement would threaten the "economic viability of the firm," reinstatement is a substantial and grievous injury.[38] This test is stricter than the undue hardship test set up by the Americans with Disabilities Act,[39] but even that test does not provide clear answers for employees to look to.

The FMLA provides causes of action for employees to bring against employers who fail to comply with the FMLA. These causes of action can be divided into two categories: interference claims and retaliatory discrimination claims.[40] This allows employees to bring suit for employers' actions that either keep an employee from using their protected time off or retaliate against an employee for using their protected time off. To establish a claim of interference by their employer, the employee must show that their employer harmed the employee by interfering with their FMLA benefits.[41] To establish a claim of retaliatory discrimination, the employee must show that their employer took adverse action against them in connection with taking FMLA leave.[42] If the employee meets this initial threshold, the burden then shifts to the employer to prove that the action did not have a discriminatory purpose.[43] However, there is little research to show if the initial threshold and burden shifting have impacted the success rates of claims under the FMLA.

---

[30] *See* 29 U.S.C. § 2614(a)(1).
[31] *See id.* § 2614(a)(2).
[32] *See id.* § 2614(c)(1).
[33] *Id.*
[34] *Id.*
[35] *Id.* § 2614(b)(2).
[36] *Id.*
[37] *Id.* § 2614(b)(1)(A).
[38] 29 C.F.R. § 825.218 (2013).
[39] *See id.*
[40] *See* 29 U.S.C. § 2615(a).
[41] *See* Lloyd v. Balt. Police Dep't, No. 23-cv-1987-ABA, 2024 U.S. Dist. LEXIS 170862, at *6 (D. Md. Sept. 20, 2024).
[42] *See* Irvin v. Versatrim, LLC, 737 F. Supp. 3d 297, 309-10 (E.D.N.C. 2024).
[43] *See id.*

### 2. AMERICAN USE OF PARENTAL LEAVE AND AREAS FOR IMPROVEMENT

In the years following the FMLA's passage, large employers with more than one hundred employees were quick to comply with the mandate of providing unpaid leave.[44] Maternity coverage grew from 35% in 1988 to 86% in 1995.[45] While smaller firms with less than one hundred employees at a slower rate, they still complied with an increase from 19% in 1990 to 49% by 1994.[46] In addition, many employers began altering their health insurance coverage policies during maternity leave to comply with the new federal requirement.[47]

Of the people taking federal leave under the FMLA today, only 20-25% are using it for the birth or adoption of a child.[48] It is primarily taken by people without a bachelor's or post-secondary degree, accounting for around 57% of beneficiaries.[49] Proponents of the FMLA believed that its passage would aid low-income earners and prevent the use of welfare because it would give women with low income stronger job security.[50] However, low-income women leave work following the birth of children at higher rates than high-income women.[51] Their failure to return to work can be due to a number of possibilities, including a lack of adequate resources while on unpaid leave, a lack of attachments to work, or a low probability of increased wages following their return.[52] High-income women are not excluded from the risks associated with taking their leave. As discussed, if a woman is a highly compensated employee, her employer can deny reinstatement to her position if the employer can show economic injury.[53] However, because of the lack of clear guidelines,[54] women may struggle to challenge an employer's claim of economic injury to the business.

Despite the improvements in availability, the FMLA is not as successful as it could have been. Five reasons have been cited for its lack of success: many employees are not protected by the statute; the unpaid leave is causing financial strain on new families; the legal entitlements are narrowly tailored to immediately post-birth as opposed to the day-to-day conflicts that arise with parenthood; the protections are still being used primarily by women despite its attempt to equalize the labor; and employers find difficulty in the practical administration of the protections.[55] The

---

[44] *See* Jane Waldfogel, *The Impact of the Family and Medical Leave Act*, 18 J. POL'Y ANALYSIS & MGMT. 281, 285 (1999).
[45] *Id.*
[46] *Id.*
[47] *See id.* at 288.
[48] *See* NAT'L P'SHIP FOR WOMEN & FAMS., KEY FACTS: THE FAMILY AND MEDICAL LEAVE ACT (Jan. 2021), https://nationalpartnership.org/report/fmla-key-facts/; SCOTT BROWN ET AL., EMPLOYEE AND WORKSITE PERSPECTIVES OF THE FMLA: EMPLOYEE LEAVE-TAKING PATTERNS, Dep't Lab. (July 2020), https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/WHD_FMLA2018PB2LeaveTaking_StudyBrief_Aug2020.pdf.
[49] *See* BROWN ET AL., *supra* note 48.
[50] *See* Ann O'Leary, *How Family Leave Laws Left Out Low-Income Workers*, 28 BERKELEY J. EMP. & LAB. L. 1, 52 (2007).
[51] *See* PAMELA WINSTON ET AL., SUPPORTING EMPLOYMENT AMONG LOWER-INCOME MOTHERS: THE ROLE OF PAID FAMILY LEAVE, OFF. ASS'T SEC'Y FOR PLAN. & EVAL. (May 2019), https://aspe.hhs.gov/sites/default/files/migrated_legacy_files//189581/PFL.pdf.
[52] *See id.*
[53] 29 U.S.C. § 2614(b)(1)(A).
[54] *See* 29 C.F.R § 825.218 (2013).
[55] *See* Nicole B. Porter, *Finding a Fix for the FMLA: A New Perspective, a New Solution*, 31 HOFSTRA LAB. & EMP. L. J. 327, 328 (2014).

FMLA also does not address any parenting needs beyond the initial weeks before and after the birth or adoption of a child.

Academics have put forth a broad range of suggestions, such as shrinking the number of employees required for an employer to offer leave, eliminating or decreasing the number of days an employee must work in order to qualify, offering leave longer than twelve weeks, and expanding the reasons for leave.[56] Others have taken a less-discussed route by suggesting that the FMLA be divided into two acts: leave for birth and another leave for family and medical needs.[57] Some have suggested the passage of a Short-Term Absence Act (STAA) to aid with the day-to-day needs of caring for a family and address the division of the FMLA.[58]

The goal of separating the birth provision from the family and medical needs provision is to allow each group to have individualized solutions as opposed to a broad, overarching solution that is difficult to enforce.[59] This would allow employers to understand why a person is taking leave and to accommodate based on the specific reason for the leave. The proposed STAA would allow for family members to take a few days off for any reason beyond immediate post-birth care.[60] This would allow parents to attend parent-teacher conferences, doctor's appointments, and other necessary parenting tasks.[61] These additions, alongside the other popular suggestions, would make the choice to have and raise children while working more appealing without the common fears mentioned previously. While these suggestions aid with some of the issues with the FMLA, it does not address the gender divide in the use of parental leave which cannot be addressed without encouraging paternal involvement at the individual or business level.

### B. AUSTRALIA

The two principal pieces of legislation that make up parental leave policies in Australia are the Fair Work Act and the Paid Parental Leave Act.

#### 1. FAIR WORK ACT

In 2009, Australia passed the Fair Work Act (FWA).[62] The FWA's main objectives are to "provide a balanced framework for cooperative and productive workplace relations that promotes national economic prosperity and inclusion for all Australians," including providing ways for employees to maintain a family outside of work.[63] The FWA section that governs protections for parents falls under Chapter 2 and is titled "Division 5—Parental leave and related entitlements," and is further divided into three subdivisions.[64]

The FWA provides that an employee is entitled to twelve months of unpaid parental leave for either the birth of a child or the adoption of a child under sixteen.[65] For an employee to be entitled leave, they must be employed at their job for at least twelve consecutive months prior to

---

[56] *See id.* at 329.
[57] *See id.* at 330.
[58] *See id.* at 355.
[59] *See id.* at 354.
[60] *See id.* at 355.
[61] *Id.*
[62] Australia has passed a new version of this act as of November 2025. The citations in this article refer to the previous version of the act.
[63] *Fair Work Act 2009* (Cth) ch 1 pt 1-1 div 2 s 3 (Austl.).
[64] *Id.* at ch 2 pt 2-2 div 5.
[65] *See id.* at sub-div B s 70.

taking their leave.[66] The FWA then divides parents into two categories: "employee couples" and other than employee couples."[67] An employee couple is a pair of employees who are spouses or partners of one another.[68] While an other than employee couple is not specifically defined, it can be presumed that an employee who is not in an employee couple is a single parent.

If the employee is not in an employee couple, their use of leave must be in a continuous period.[69] Additionally, if a single parent gives birth to the child, they may begin their leave up to six weeks prior to the birth, and they may receive more time if their employer agrees.[70] The notes to this subsection also outline that if a pregnant employee is unable to work in their current position, or at all due to their pregnancy, they are potentially entitled to paid leave, unpaid leave, or transfer to an appropriate position.[71]

If both members of an employee couple intend to take leave, they too must take the leave continuously.[72] The pregnant partner is entitled to begin their leave six weeks before giving birth.[73] The nonpregnant partner may take leave concurrent with the pregnant partner for only eight weeks in total and cannot begin until the birth of the child.[74] This provides an exception to the rule that the leave must be continuous and clarifies that fathers are not legally entitled to take time off prior to the birth of their child to assist the mother in preparing for birth.[75]

Beyond the two categories of employees, Australia also has a system for flexible unpaid parental leave. Flexible unpaid parental leave is available to all employees, including part-time and casual employees, who are not typically protected because they have not worked at least twelve continuous months for the employer.[76] This kind of leave allows an employee to take up to thirty days of unpaid leave during the twenty-four-month period following the birth or adoption of a child.[77] Unlike employee couple and other than employee couple leave, the flexible parental leave can be separated into periods of a few days spread across the two year time frame.[78] While employees are entitled to flexible leave regardless of whether they take unpaid leave, using it counts against their twelve month allocation.[79]

Though there was no federal paid time off before the FWA, the FWA recognized that some employers choose to offer paid leave to their employees. Any employee who takes paid parental leave is not prevented from taking unpaid parental leave.[80] However, this section's note points out that any paid time off taken reduces that employee's allotted unpaid leave as the timelines run concurrently.[81]

---

[66] *See id.* at sub-div A s 67.
[67] SEE COMMENT
[68] *Id.* at ch 1 pt 1-2 div 2 s 12.
[69] *Id.* at ch 2 pt 2-2 div 5 sub-div B s 71(1).
[70] *Id.* at s 71(3).
[71] *Id.*
[72] *Id.* at s 72(2).
[73] *Id.* at s 72(3)(a)(i).
[74] *Id.* at s 72(5)(a), c(i).
[75] *Id.* at s 72(6)(a).
[76] *See id.* at s 72(5)(c)(i).
[77] *Id.* at s 72(6)(a).
[78] *Id.*
[79] *Id.*
[80] *Id.* at s 79.
[81] *Id.*

Once an employee's protected leave ends, that worker may return to his or her previous position or, if that position no longer exists, to a position requiring similar qualifications and offering similar pay.[82] Employers may hire new employees to assume the job responsibilities of employees on parental leave, but must ensure the replacement employees know that their positions are temporary.[83]

2. PAID PARENTAL LEAVE ACT

The Paid Parental Leave Act (PPLA) was passed in 2010 and is Australia's primary legal protection for paid parental leave.[84] Under the PPLA, the primary caretaker of a child, either born or adopted, is entitled to eighteen weeks of paid parental leave at the national minimum wage.[85] The national minimum wage, as of July 2024, is $24.10 per hour.[86] An employee is eligible for payment only if they satisfy the statutory requirements, including an income test, a work test, residency requirements, and registration of the child's birth or adoption.[87] The income test requires that the individual caretaker's income fall below approximately $150,000, though this threshold is adjusted annually.[88] The work test asks whether the caretaker has worked at least ten out of the last thirteen months prior to taking the leave, or at least one day a week in a ten-month period,[89] and the primary caretaker may not work while receiving the payment.[90]

This paid leave system is meant to be used by only the primary caretaker, most often the mother. However, in 2013, Dad and Partner Pay was introduced as an amendment to the PPLA, allowing the partner of the primary caretaker to take two weeks of leave paid at the national minimum wage.[91] These partners are subject to the same income, residence, and work tests and are similarly limited in being unable to work while on paid leave.[92] Although not explicitly stated in the statute, the creation of Dad and Partner Pay implies that the mother, or birth parent, was presumed to be the primary caretaker taking paid leave. The PPLA operates alongside the FWA, meaning that even employees who are not entitled to paid leave remain federally protected for unpaid leave.

---

[82] *Id.* at sub-div C s 84.
[83] *Id.* at s 84A.
[84] *See* Marian Baird et al., *Gender Equality and Paid Parental Leave in Australia: A Decade of Giant Leaps or Baby Steps?*, 63 J. INDUS. REL. 1, 2 (2021).
[85] *Parental Leave Pay*, LEGAL SERVS. COMM'N S. AUSTL. (last visited Apr. 30, 2025), https://www.lawhandbook.sa.gov.au/ch32s01s02s04.php#:~:text=The%20Paid%20Parental%20Leave%20Act,and%20after%201%20July%202023.
[86] *Minimum Wages*, FAIR WORK OMBUDSMAN (last visited Apr. 30, 2025), https://www.fairwork.gov.au/pay-and-wages/minimum-wages.
[87] *See supra* note 85.
[88] *Meeting the Income Test*, SERVS. AUSTL. (last visited Apr. 30, 2025), https://www.servicesaustralia.gov.au/meeting-income-test-for-parental-leave-pay?context=64479.
[89] *Id.*
[90] *Parental Leave Pay for a Child Born or Adopted Before 1 July 2023*, SERVS. AUSTL. (last visited Apr. 30, 2025), https://www.servicesaustralia.gov.au/parental-leave-pay-for-child-born-or-adopted-before-1-july-2023.
[91] *Paternity Leave and Partner Leave*, AUSTLS. UNIONS (last visited Apr. 30, 2025), https://www.australianunions.org.au/factsheet/paternity-leave/.
[92] *Id.*

### 3. AUSTRALIAN USE OF PROTECTED TIME OFF AND AREAS OF IMPROVEMENT

It is important to note that only 43% of employees were entitled to paid parental leave under the PPLA.[93] Casual employees make up 23% of employed individuals, and they are entitled to flexible leave under the FWA.[94] Casual employees make up 2.4 million[95] of Australia's over 27 million citizens.[96]

Because a majority of those who do not qualify for paid leave are causal employees, there seems to be a deepening gap divided by socioeconomic status causing a decline in paid protected leave.[97] Australia has seen a decline in full-time permanent positions among its employees.[98] More and more women are employed at part-time jobs. As mentioned prior, it is casual and part-time employees, largely women, who often fall outside of paid leave protections. This gap, based on economic status, could be reduced by expanding the eligibility scope of the FWA and the PPLA.[99]

In addition to the issues regarding the percentage of the population that is entitled to leave, there is also a concerning gap for fathers. Of women who have children under the age of six, only about 38% have full time positions, compared to 83% of men in the same situation.[100] It has been theorized that the laws have had an inverse effect because the laws reinforce inequities by assuming women are children's primary caretakers over men.[101] Research has shown there is a correlation between the post-leave income of women and the time they spent on parental leave in specifically male-dominated industries.[102] However, in gender-neutral or women-dominated industries, such correlation did not exist.[103] This seems to suggest that the field of employment's culture plays a large role in whether women are punished for taking their protected leave.

The gender gap may be minimized by extending the leave authorized for fathers. This would encourage fathers to divide the work of new parenthood more evenly with the mothers.[104] Not only should fathers have a longer leave, but there should also be an incentive to engage in the parenting of a new child, like giving them bonus leave to encourage their consideration as the primary carer under the law.[105] Employers should also create a climate in which employees feel comfortable taking their leave and ensure there is community within the company that helps with

---

93 *Working Arrangements*, AUSTL. BUREAU STAT. (last visited Apr. 30, 2025), https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/working-arrangements/aug-2021.
94 *Id.*
95 *Id.*
96 *National, State and Territory Population*, AUSTL. BUREAU STAT. (last visited Apr. 30, 2025), https://www.abs.gov.au/statistics/people/population/national-state-and-territory-population/sep-2024.
97 *See* Gillian Whitehouse & Michelle Brady, *Parental Leave, Social Inequalities and the Future of Work: Possibilities and Constraints Within the Australian Policy Framework*, 29 LAB. & INDUS. 257, 258 (2019).
98 *Id.* at 259.
99 *Id.* at 262-63.
100 *Id.* at 260-61.
101 Ivona Hideg et al., *Parental Leave Paradox: Why Women Who Take Longer Leaves Face Career Penalties in Men-Dominated Fields*, THE CONVERSATION (Jan. 7, 2025, 4:02 PM), https://theconversation.com/parental-leave-paradox-why-women-who-take-longer-leaves-face-career-penalties-in-men-dominated-fields-246628
102 *Id.*
103 *Id.*
104 Baird, *supra* note 84, at 563.
105 Baird, *supra* note 84, at 563.

the transition.[106] Although Australia had robust protections for women and mothers, legislation alone is not enough to fix the inequities in the workplace and at home.

### C. JAPAN

The two major pieces of legislation that make up parental leave policies in Japan are the Equal Employment Opportunities Law and the Child Care and Family Care Leave Law.

#### 1. THE EQUAL EMPLOYMENT OPPORTUNITIES LAW

Following World War II, Japan began the process of changing their constitution to promote equality and individual rights among its citizens.[107] This largely included promoting quality within marriages and the right to work.[108] This goal of promoting equality slowly led to the advancement of the legal status of women. As a result, in 1972, the Working Women's Welfare Law was reformed into to Equal Employment Opportunities Law (EEOL).[109] While the 1972 version of the law focused on ensuring that men and women were provided equal opportunity in employment opportunities, the law would again be amended in 1985—placing a larger focus on the treatment of men and women, and ensuring women workers had improved welfare treatment.[110]

The EEOL can be divided into two sections: one that encourages employers to "endeavor" to treat men and women as equal, and another that prevents discrimination based on gender.[111] This law provided minimal parental leave protection, as well as unpaid parental leave for the six weeks before and after the birth of a child.[112] The return to work time frame could be extended if the woman provided proof to her employer with doctor approval that returning to work would be harmful to her health.[113] In addition to providing only minimal parental leave provided only to mothers, critics regard the EEOL as failing to meet its ultimate goal because it provided no penalties, either civil or criminal, for employers who violated the law.[114]

The legislature revised this law in 2006 to expand the protections for fathers and against discrimination on the basis of sex.[115] This legislation prevented employers from punishing parents for choosing to spend time with their family, as allowed, which included preventing demotions, mandatory retirement, and changes in job.[116] Women were in a protected position because the law also barred employers from firing female employees for requesting their protected leave.[117]

#### 2. CHILD CARE AND FAMILY CARE LEAVE LAW

Japan sought to fix the gaps in the EEOL with the passage of the Child Care and Family Care Leave Law (CCFCLL) in 1992.[118] Under these new provisions, the law entitled employees

---

[106] Baird, *supra* note 84, at 563-64.
[107] *See* Mutsuko Asakura, *Current Legal Problems Concerning Women Workers in Japan*, 13 WASEDA BULLETIN COMPAR. L. 1, 3 (1994).
[108] *Id.* at 3-4.
[109] *Id.* at 6.
[110] *Id.* at 6-7.
[111] *Id.* at 7.
[112] *See* Talia Saypof, *Breeding Incentives: Parental Leave in Japan and the United States*, 23 HASTINGS WOMEN'S L. J. 275, 277-78 (2012).
[113] *Id.* at 278.
[114] *See id.*
[115] *See id.* at 279.
[116] *See id.*
[117] *Id.* at 278.
[118] *Id.*

who were new parents, including fathers, to twelve months of leave to care for their children with partial pay.[119] The law also provided for a longer period of eighteen months if there was no availability in a childcare center or the primary care parent was indisposed due to illness, injury, or death.[120] The law prevented employers from abusing overtime work hours and provided exceptions for overnight shifts for parents with young children.[121] Not only did the law provide protections for immediately following birth, but also for the years that follow.

Japan has experienced a declining birthrate which they hope to address by more family friendly employment laws, specifically for fathers.[122] In 2010, the CCFCLL was reenacted with that goal in mind. This new version had four additions to reach those goals: expanding overtime exceptions and hour limitations for those caring for sick children; encouraging fathers to take advantage of their leave; allowing for family care on a day-to-day basis; and establishing a system that holds employers accountable for violations of the law.[123] Employers were also encouraged to provide paid time off to their employees for those day-to-day parenting needs, even though it was not mandated.[124]

Specifically regarding the father's role, previously, fathers were able to refuse to take their leave through agreement with their employer by showing that their wife was a stay-at-home mother.[125] These kinds of agreements were no longer able to be made.[126] The partial payment from 20% of the employees' wages for the full twelve-month period increased to 66% of the employees' wages for the first months of the leave and then 50% for the next six months.[127] These changes were passed to promote fathers' involvement.

### 3. JAPANESE USE OF PROTECTED TIME OFF AND AREAS OF IMPROVEMENT

Despite these efforts, the expanding legislation cannot solve the issue of gender norms in parenting. Japanese companies still provide both parents with leave but often offer fathers shorter periods as opposed to mothers.[128] Although fathers are entitled to take protected leave extending through the child's first year of life, most fathers fail to utilize the policies by only taking a fraction of that time.[129] Not only do companies not provide them with time off, most fathers choose to not take advantage of the provided time because of the societal pressure to put work over family, believing prioritizing family will prevent them from having a successful career.[130] While this

---

[119] *Id.*
[120] *Id.*
[121] *See id.*
[122] *See id.* at 279–80; Mari Yamaguchi, *Japan's Birth Rate Fell For a Ninth Consecutive Year in 2024 to Hit a Record Low*, ASSOCIATED PRESS (Feb. 27, 2025), https://apnews.com/article/japan-births-children-population-decline-marriage 37c1a83afb9f90c6ce6affd527829826.
[123] Saypof, *supra* note 112, at 280–81.
[124] *Id.* at 281.
[125] Ikuko Mizushima, *Promoting Gender Equality in Japan: An Examination of Labor*, 64 OSAKA U. L. REV. 161, 164 (2017).
[126] *Id.*
[127] *Id.*
[128] Arzaqia L.Yani, *Maternity, Paternity, and Childcare Leave in Japan*, TOKHIMO (Mar. 15, 2023), https://www.tokhimo.com/post/maternity-paternity-and-childcare-leave-in-japan-1.
[129] *Id.*
[130] *Id.*

primarily impacts fathers, mothers also feel pressure to conform to the overarching emphasis on work over family.[131]

In Japan, real change in the use of parental leave was not seen from offering more time off. It has been theorized that the structure of business, specifically having women in managerial roles, would lead to more use of the protected leave.[132] The Japanese government set out to increase women's role in leadership by 30% or more by 2020 and did so by encouraging companies to specifically recruit women.[133] Some suggest that companies should also have positions or departments dedicated to ensuring that the leave policies are used, ensuring that those who choose to use their protected leave do not face the expected stigma, and informing all employees of their rights.[134] Women are more likely to stay loyal to a job that cares for them and recognizes the importance of work-life balance, and thus are more likely to continue working to eventually hold a managerial position.[135] New management staff that includes mothers who were able to maintain their roles because of a supportive company culture will encourage management to continue providing support to the next generation of female employees.

Companies can also do more to shrink the gender gap in Japan. Even though paternity leave is uncommon, it is increasing year by year.[136] The increase in paternity leave may be due to a bigger push for companies to publicly disclose the numbers associated with talent development and internal work environment, including male parental leave, in their annual securities report.[137] While the public disclosure is likely intended to inform prospective employees of the company prior to applying, it has a dual benefit of making the companies compete for the best workplace culture. This has included making advancements in temporary staffing to ensure that fathers do not feel like they are burdening the company when they take paternity leave.[138]

Research suggests that men also need to take paternity leave to understand the work women go through to take care of the home.[139] When men use their paternity leave to be with their child and learn about homemaking, men become more appreciative of mothers and can begin to shrink the gender divide within the household, leading to a more widespread impact. In Japan, legislation alone would not be enough to fix the maternal discrimination problem at work; change requires a shift in the country's views of women and mothers.

### D. NORWAY

The two major pieces of legislation that make up parental leave policies in Norway are the Working Environment Act and the National Insurance Scheme.

---

[131] *Id.*
[132] *See* Eunmi Mun & Mary C. Brinton, *Workplace Matters: The Use of Parental Leave Policy in Japan*, 42 WORK AND OCCUPATIONS 335, 337 (2015).
[133] Mizushima, *supra* note 125, at 166.
[134] Mun & Brinton, *supra* note 132, at 337-38.
[135] Mun & Brinton, *supra* note 132, at 357-58.
[136] Naoko Kutty, *Could Japan's Paternity Leave Policy Narrow the Gender Gap?*, WORLD ECON. F. (Oct. 12, 2023), https://www.weforum.org/stories/2023/10/could-japans-paternity-leave-policy-help-narrow-the-gender-gap/.
[137] *Id.*
[138] *Id.*
[139] *Id.*

### 1. THE WORKING ENVIRONMENT ACT

In 1977, the Norwegian government passed the Working Environment Act (WEA) with the general goal of improving the working environment of its people through a comprehensive national law.[140] The Norwegian government amended the WEA on multiple occasions to address changes in the needs of the Norwegian people. Chapter twelve governs the right to parental leave.[141] The WEA provides mothers with twelve weeks of pregnancy leave,[142] six weeks of maternity leave following childbirth, and two weeks of leave for fathers to assist the mother during her recovery.[143] If a mother and a father do not live together, the father can transfer his two weeks to another person who lives with the mother to allow them to assist her in recovery.[144] Six weeks of a mother's leave must be taken following the birth of the child, and she is only permitted to return to work sooner if she provides a medical certificate from a doctor stating that she can return.[145]

The WEA also provides that each parent is entitled to leave totaling twelve months, including the leave described above, immediately following the birth of each child.[146] A parent is entitled to this leave if they are entitled to the parental benefit under the National Insurance Scheme.[147] If a parent has sole custody of the child, they are entitled to twenty-four months of parental leave.[148] This also applies to the adoption or fostering of any child under the age of fifteen.[149]

Additionally, the WEA provides for partial leave to be taken at any time within a three-year time frame of the birth of the child.[150] However, to take partial leave, the employee and employer must mutually agree on the timing of the leave.[151] The employer has the right to deny the use of partial leave if they can show that fulfilling the request would cause "significant disadvantages for the business."[152]

The WEA requires notice to the employer before taking their protected leave.[153] The time frame for the notice depends on the length of the leave the employee plans to take. If an employee takes more than twelve weeks of leave, they must provide at least four weeks' notice.[154] If they intend to take the full year, they must provide at least twelve weeks' notice.[155] In addition to parental leave, Norway also provides leave for breastfeeding[156] and for child illness.[157]

---

[140] Bjørn Gustavsen, *Improving the Work Environment: A Choice of Strategy*, 119 INT'L LAB. REV. 271, 272 (1980).
[141] Working Environment Act, June 17, 2005 No. 62 § 12 (Nor.).
[142] *Id.* at § 12-2.
[143] *Id.* at § 12-3.
[144] *Id.*
[145] *Id.* at § 12-4.
[146] *Id.* at § 12-5(1).
[147] *Id.*
[148] *Id*. at § 12-5(3).
[149] *Id.* at § 12-5(4).
[150] *Id.* at § 12-6(3).
[151] *Id.* at § 12-6(2).
[152] *Id.* (quote translated from Norwegian to English).
[153] *Id.* at § 12-7.
[154] *Id.*
[155] *Id.*
[156] *Id.* at § 12-8.
[157] *Id.* at § 12-9.

### 2. NATIONAL INSURANCE SCHEME

Passed in tandem with the WEA, the National Insurance Scheme (NIS) provides financial support for parents when they have a child either through birth or adoption.[158] These cash benefits are assigned per household based on pregnancy and parenting.[159] The NIS informs the WEA and says that a parent is entitled to leave if they have worked for six of the past ten months prior to the birth or adoption of a child under fifteen.[160] Parents are entitled to forty-nine weeks of complete compensation or fifty-nine weeks with 80% compensation for the birth of a child.[161] If women do not qualify for said leave, they are entitled to a lump-sum grant of NOK 92,648 or about $9,000.[162]

In 2018, the NIS was revised to ensure that fathers and non-birth parents have more dedicated weeks off rather than allowing them to be divided freely among the parents.[163] Fathers and non-birth parents are allocated fifteen nontransferable weeks.[164] This may have been done to prevent fathers from shifting their weeks to mothers.

### 3. NORWEGIAN USE OF PROTECTED TIME OFF AND AREAS OF IMPROVEMENT

Largely due to their parental leave structure, Norwegian men and women are both expected to work while raising children.[165] Parental leave is not the only reason for this level of equality, but it is also because of their robust welfare state.[166] However, when Norway changed its leave structure to allow fathers to take more leave, cultural attitudes shifted away from viewing the home as a woman's sphere.[167] Lawmakers and businesses spearheaded this shift to create public awareness of the importance of paternal involvement in early childhood.[168] Before the cultural changes and statutory expansions, just under 3% of fathers used their protected paternal leave, but as of 2018, 90% of fathers used their leave.[169]

Fathers report that the leave quota has become a norm in their country and that employers support their taking leave.[170] Part of the reason fathers feel supported by their employers is because the right to parental leave is allocated specifically to fathers; and therefore, they have legislative

---

[158] Nordic Co-operation, *Parental Benefit and Parental Leave in Norway*, (last visited Apr. 30, 2025), https://www.norden.org/en/info-norden/parental-benefit-and-parental-leave-norway.
[159] National Insurance Scheme, Jan. 2024, § 10.3 (Nor.).
[160] *Id.* at § 10.3.2.
[161] *Id.*
[162] *Id.* at § 10.3.3.
[163] Vilja Mundheim, The Changes in the Parental Leave Policy in Norway 2018/2019: Policy Discourse and Gender Equality (May 25, 2020) (Master's thesis, VID Specialized University Stavanger).
[164] Jennifer Barrett, *Here's What Working Parents Should Envy About Norway (and It's Not Just The Electric Cars)*, FORBES (Feb. 12, 2021), https://www.forbes.com/sites/jenniferbarrett/2021/02/12/heres-what-working-parents-should-envy-about-norway-and-its-not-just-the-electric-cars/.
[165] Meagan Day, *The Norwegian Route Out of Tradwife Hell*, JACOBIN (Apr. 1, 2025), https://jacobin.com/2025/04/norway-trad-pappaperm-paternity-leave.
[166] *Id*.
[167] *Id*.
[168] Barrett, *supra* note 164.
[169] *Norway's "Daddy Quota" Means 90% of Fathers Take Parental Leave*, APOLITICAL (Sept. 17. 2018), https://apolitical.co/solution-articles/en/norways-daddy-quota-means-90-of-fathers-take-parental-leave.
[170] Elin Kvande, *Individual Parental Leave for Fathers: Promoting Gender Equality in Norway*, *in* ENGAGED FATHERHOOD FOR MEN, FAMILIES AND GENDER EQUALITY 153, 158 (Marc Grau Grau, Mireia las Heras Maestro & Hannah Riley Bowles eds., 2022).

support to assert their right to time off.[171] Some employees working high stress jobs express that they feel pressure to not take time off, but their employers have little reason to resist because the time off is paid for by the government.[172] Accordingly, because fathers now commonly take parental leave, they feel supported by their co-workers, friends, and neighbors.[173]

However, there are questions as to how strong this cultural shift has been. Between 2014 and 2018, the conservative block in Norway's government reduced the non-transferable quota.[174] Subsequently, fathers decreased the amount of time they took off to strictly comply with the statutory requirement, despite being able to take longer by splitting the leave with the mother.[175] No solid reasoning has been given as to why this occurred. Without this mandate, the fathers may choose not to take leave.[176] By mandating the parental leave, fathers are unable convince mothers to take the majority of the leave.[177] One possible way to ensure that fathers are taking equal amount of leave would be to assign leave per individual as opposed to per household.[178]

## III. HOW TO IMPROVE THE FMLA

While the FMLA was revolutionary when it was passed, the United States has not been able to address many of the issues related to work-balance and gendered expectations related to childcare. Because the FMLA is unpaid, it cannot provide an income for the parents taking time off. The FMLA also lacks protections for all Americans due to its employer and employee qualifications. Up to 44% of American workers do not qualify for leave under the FMLA, either because they have not been employed at their job for the required twelve months or because their employer has less than fifty employees, exempting them from the requirement.[179]

One solution that is evident when comparing the United States to other modern countries is to make the offered leave paid, specifically by the federal government, as opposed to employers. Another solution would be authorizing a kind of leave that allows for parents to take off for the day-to-day activities of being a parent beyond the initial leave for birth. Finally, for these legislative adjustments to work, there needs to be a societal push by the government, employers, and individuals to value the work of parents and encourage equality in childcare in the home.

### A. MAKE THE FMLA PAID BY THE FEDERAL GOVERNMENT

Making the FMLA paid by the federal government would have many benefits: putting the United States on equal footing with other similar economically situated countries, providing uniform application to all Americans, and removing the burden on companies to pay employees on leave.

---

[171] *Id.*
[172] *Id.* at 158-59.
[173] *Id.* at 160.
[174] Barrett, *supra* note 164.
[175] Barrett, *supra* note 164.
[176] Kvande, *supra* note 170, at 161.
[177] Kvande, *supra* note 170, at 161.
[178] Kvande, *supra* note 170, at 161.
[179] Ryan Golden, *FMLA: The 30-Year Legacy of a Celebrated — and Complicated — Employment Law*, HR DRIVE (Feb. 6, 2023), https://www.hrdive.com/news/fmla-30th-anniversary-history-paid-leave/641972/.

### 1. MAKING THE FMLA PAID BY THE FEDERAL GOVERNMENT WOULD PUT THE UNITED STATES ON EQUAL FOOTING WITH SIMILARLY ECONOMICALLY SITUATED COUNTRIES

As seen through comparisons throughout this article, the United States is the only country that does not offer some kind of paid leave to its citizens. However, Japan, Australia, and Norway are not the only countries that offer paid leave; the United Kingdom, Austria, Israel, Poland, Singapore, Germany, and many others do as well.[180] While the United States is not the only country that lacks federally guaranteed paid leave, the others—such as Papua New Guinea, Micronesia, and Tonga[181]—are much smaller in comparison to the United States. The United States has the highest gross domestic product (GDP) per capita, far surpassing the other countries discussed.[182] Of the countries discussed, Japan comes closest to the United States, yet its GDP per capita is less than half that of the United States.[183] This is important because higher GDP reflects greater total market value of goods and services produced within a country, making the United States economy one of the strongest in the world.[184]

GDP is not the only way to measure a country's economic situation. The Human Development Index (HDI) measures a country's capacity for work by examining education, health, and standard of living.[185] Among 193 countries, the United States ranks seventeenth.[186] Japan, Australia, and Norway all rank within the top twenty-five.[187] These economic outcomes show that the United States is an outlier in terms of not offering paid leave despite having the economic strength to provide such leave.

### 2. MAKING THE FMLA PAID BY THE FEDERAL GOVERNMENT WOULD PROVIDE A MORE UNIFORM APPLICATION TO ALL AMERICANS

The FMLA has specific requirements for employers and employees to be eligible for unpaid leave.[188] Federal paid leave would take the responsibility off the employer to be eligible but rather look to the individual employee. This would allow the development of new criteria to be considered before the government provides the leave. The United States should adopt a similar residency and employment eligibility criterion to Australia. Instead of asking if an employee has worked for a specific employer for a specified time, the United States should look to see if the individuals have been residents of the United States for a continuous year and if they have been employed for ten of the last thirteen months. This would allow people who have lost or quit their job or moved cities

---

[180] *Paid Maternity Leave By Country: The Complete Guide for Global HR Teams*, PEBL (Nov. 25, 2025), https://velocityglobal.com/resources/blog/paid-maternity-leave-by-country/.

[181] Oyster Team, *Paid Maternity Leave by Country: 2025 Comparison Guide to Maternity Leave in Countries Around the World*, OYSTER (Aug. 19, 2024 ), https://www.oysterhr.com/library/guide-to-maternity-leave-in-countries-around-the-world.

[182] Caleb Silver, *The 25 Largest Economies in the World*, INVESTOPEDIA, https://www.investopedia.com/insights/worlds-top-economies/ (last updated Jan. 16, 2026).

[183] *Id.*

[184] *See* The Investopedia Team, *GDP Per Capita: Definition, Uses, and Highest Per Country*, INVESTOPEDIA, https://www.investopedia.com/terms/p/per-capita-gdp.asp (last updated May 7, 2025).

[185] *See* Praew Grittayaphong, *Beyond GDP: Three Other Ways to Measure Economic Health*, FED. RESERVE BANK OF ST. LOUIS (Apr. 19, 2023), https://www.stlouisfed.org/open-vault/2023/apr/three-other-ways-to-measure-economic-health-beyond-gdp.

[186] U.N. Development Programme, Human Development Reports: Human Development Insights, https://hdr.undp.org/data-center/country-insights#/ranks (last visited Feb. 20, 2026).

[187] *Id.*

[188] *See* 29 U.S.C. § 2611(4)(A)(i); *see also* 26 U.S.C 2611(2)(A)(i)-(ii).

to have the federal protection of paid parental leave because their protection would not be tied to a specific employer. In addition, it would remove any requirements for an employer to have any specific number of employees before the employees are entitled to said protection.

#### 3. MAKING THE FMLA PAID BY THE FEDERAL GOVERNMENT WOULD TAKE THE BURDEN OFF COMPANIES

At the passage of the FMLA, most companies and associated lobbyists opposed the passage of the FMLA because they believed it would lead to substantial decreases in productivity and cause major disruption in the day-to-day aspects of business.[189] Critics were also concerned that the administrative requirements would cause additional expense and work for the company.[190] These concerns have not gone away and are often a source of pushback when discussing making the FMLA paid.

While paid federal leave cannot alleviate all business concerns, it would remove the employer's burden of paying the employees during their leave, despite their lack of work. Norway exemplifies that companies can see a benefit in allowing their employees to take leave and absorbing the associated costs.[191] While the research identified does not note any specific economic benefits or hardships they face, it is clear that Norwegian companies encourage their employees to take their protected leave despite knowing that they are losing the employees for up to a year.[192]

Presently, American companies are already responsible for paying an employee's health insurance premiums and other employment benefits while an employee is on leave.[193] By making the FMLA federally paid, businesses would not need to take on any additional burden beyond what is already required of them by the FMLA. As a result, and as evidenced by Norway, Australia, and Japan, when a company encourages its employee to take their protected leave it makes the employee more comfortable in their work environment and thus increases company morale.[194] This would help the American people because only half of the American workers feel satisfied with their jobs currently.[195] Generally, the happier employees are, the lower the likelihood is that they will quit their job.[196]

### B. AUTHORIZE PAID LEAVE FOR DAY-TO-DAY PARENTING ACTIVITIES

Parenting requires flexibility because children have various needs to be met that do not coincide with the traditional work schedule. As seen from this article's analysis, most government-protected parental leave focuses on the months immediately before and after a child is born. Australia's flexible leave policy under the FWA,[197] Japan's CCFCLL reform,[198] and the proposed

[189] *See* Peter A. Susser, *The Employer Perspective on Paid Leave & the FMLA*, 15 WASH. U. J. L. & POL'Y 169, 170 (2004).
[190] *See id.* at 169-70.
[191] *See* Kvande, *supra* note 170, at 159.
[192] *See* Kvande, *supra* note 170, at 159.
[193] *See* Susser, *supra* note 190, at 176.
[194] *See* U.N. Development Programme, *supra* note 187.
[195] Luona Lin, Juliana Menasce Horowitz & Richard Fry, *Most Americans Feel Good About Their Job Security but Not Their Pay*, PEW RSCH. CTR. (Dec. 10, 2024), https://www.pewresearch.org/social-trends/2024/12/10/job-satisfaction/#:~:text=Half%20of%20U.S.%20workers%20say,of%20those%20with%20lower%20incomes.
[196] *See Cracking the Code for Employee Happiness and Retention*, BLOOMBERG (last visited Apr. 30, 2025), https://sponsored.bloomberg.com/immersive/bcg/cracking-the-code-for-employee-happiness-and-retention.
[197] *See Fair Work Act 2009* (Cth) s 79.
[198] *Supra* note 118.

STAA in the United States[199] are attempts to accommodate the ever-present need for individual days off for childcare. Australia's flexible leave is beneficial; however, it is limited by the number of days the employee can take and the time frame in which they are entitled. As far as Japan, the nation has recently implemented a flexible policy, but little research has been done into its use or impacts seeing as it is a recent amendment to the CCFCLL.

The United States should adopt an amendment to the FMLA, providing two business weeks or ten days, one week or five days exclusive to each parent to take off for parental activities such as doctor or dentist appointments, parent-teacher conferences, sick days, or other related parental needs. This amendment should operate in addition to any employer-provided paid sick days because the day-to-day leave, like the leave for the birth of a child, would be covered by the federal government. To ensure that the parent uses their federal leave as opposed to employment-related leave, they should provide at least seven days' notice when possible. If providing notice is not possible due to an emergency, such as unexpected illness or injury, the parent can provide proof to their employer of said emergency to comply. This suggestion is an area that is heavily subject to change as the use of Australia's flexible leave policy and the amendment to Japan's CCFCLL law are studied both by the nation and by scholars.

### C. ENCOURAGE EQUALITY IN CHILDCARE

As seen throughout this article, even when a country has parental leave policies, it does not eliminate the societal expectation of mothers as primary caretakers. In Australia, the PPLA was for primary caregivers and was amended to include Dad and Partner Pay, which reinforced that the primary caregiver is in fact the mother. Norway has the smallest gap in terms of parenting inequality, but even then, there are concerns as to how it would continue without the leave requirements.[200] Though Norway has not eradicated gender norms, its small gap should be sought after. The United States's government and companies should be the first line of societal change to encourage the push towards a more gender equal home regarding childcare. In many homes, a father's role is perceived to be that of a breadwinner and the mother as the caretaker; thus, when leave is offered as unpaid, fathers often feel a level of responsibility to return to work to provide financially for their family.[201] Fathers, like mothers, gain connection to their child and skills in parenting through playing an active role in childcare, especially in early childcare.[202] This is evident in Norway, where fathers feel competent to take care of their children due to their designated time off with the child.[203]

Not only will the idea of a good father need to change, but so would the idea of a good mother. Because mothers are seen as primary caregivers, they can feel pressure to give up working at times to fit their societal role. When a mother takes on the primary caretaking role and is also employed, the mother's work may greatly affect the father's involvement because men fear interfering with the mother, and women feel as though they will be viewed as a bad mother.[204] Society cannot challenge these kinds of beliefs so long as legislative efforts still promote the gendered roles within caretaking. Making parental leave paid equally between mothers and fathers

---

[199] *Supra* note 58.
[200] *See* Kvande, *supra* note 170.
[201] *See* Linda Haas & Philip Hwang, *The Impact of Taking Parental Leave on Fathers' Participation in Childcare and Relationships with Children: Lessons from Sweden*, 11 CMTY., WORK & FAM. 85, 86 (2008).
[202] *See id.* at 87.
[203] *See supra* note 169.
[204] *See* Haas & Hwang, *supra* note 202, at 100.

at the federal level and encouraging it at the corporate level will show fathers that they can support their family while they care for them and show mothers that they can care for their families while working.

## IV. CONCLUSION

In conclusion, the United States made clear in the passage of the FMLA that parental leave is necessary to ensure a balance between the home and work. Despite its attempt at ensuring Americans have a right to parental leave, many Americans do not qualify for parental leave despite working due to the eligibility requirements for both employees and employers. Many parents cannot take their protected leave due to the financial hardships they face because of unpaid leave. Not only does the FMLA fail to adequately aid most Americans, but it also fails to address the gender disparity in childcare. The United States is unique in its lack of paid protected leave, but not unique in the gender divide. The best way to reform the FMLA is to begin by making it paid for by the federal government. Making it paid by the federal government will bring the United States up to the same standard as countries that are similar economically, will provide more universal coverage for Americans, and will limit the hardships faced by corporations. The FMLA should also be reformed to allow parents paid time off for the day-to-day activities necessary to be a parent, as opposed to focusing on the birth of the child. Finally, none of these legislative suggestions can fix the problem of gender disparity without cultural change, beginning with the passing of parental leave protection, facilitation of leave by employers, and appreciation for the role equal parenting has in childcare.