Gendered Complications of Covid-19: Towards a Feminist Recovery Plan

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Gendered Complications of COVID-19: Towards a Feminist Recovery Plan

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(updated draft, October 16, 2020)

Naomi R. Cahn* and Linda C. McClain**

“This is our moment to build a system that is capable of delivering gender equality.”


ABSTRACT

Gendered inequalities are on the frontlines of COVID-19. The catalogue of COVID-19’s impact covers all aspects of women’s lives: work, family, education, health, reproduction, mental and physical well-being, and leisure. The pandemic has exposed the limitations in the current economic system on public and private support for gender equity and the intersecting impact of gender, race, and class in that lack of support. Women of color, particularly Black, Latina, and Native American women, are at the intersection of the inequities in the emerging stay-at-home economy.

This Article argues that COVID-19 is likely to have complex implications for gender equality and gender equity as state and local governments, the federal government, and private actors focus on recovery plans. The negative impact includes hundreds of thousands of deaths, lingering health complications for many among the several million people who have already contracted the virus, massive economic disruption and loss for individuals, families, and communities, and the exacerbation of structural inequalities. The creative policy responses prompted by the devastating impact of COVID-19 provide promise for building a more transformative and equitable future. Indeed, while it is possible to try to return to the status quo, developing a roadmap to resilience provides an opportunity to address the gender inequities in our social infrastructure – if there is political will to follow that roadmap. Proposing a feminist recovery plan, this Article focuses on a set of issues relating to gender inequities concerning work and family,

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including the gender pay gap, the child care crisis, and the disproportionate role of women—particularly, women of color—in providing essential but undervalued care work.

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I. INTRODUCTION

Gendered inequalities are on the frontlines of COVID-19. Globally, the pandemic has made preexisting disparities worse, and preexisting problems within social, political, and economic systems have amplified the pandemic’s impact.¹ In the United States, the pandemic has exposed the limitations in the current economic system on public and private support for

gender equity and the intersecting impact of gender, race, and class in that lack of support.

The catalogue of COVID-19’s impact covers all aspects of women’s lives: work, family, education, health, reproduction, mental and physical well-being, and leisure. The unprecedented job losses during the pandemic have hit women harder than men. Women are a larger percentage of workers in the service-related jobs in which businesses furloughed or laid off employees to ensure social distancing. At the same time, the nature of women’s employment also has led to greater vulnerability to exposure to COVID-19. Women are the overwhelming majority of health and home care workers and child care workers, and thus they are on the frontlines of providing paid care to both children and the elderly. More than half of home

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4 This Article uses the terms “woman” and “women” broadly to include cisgender women and transgender women, as well as people who identify as nonbinary but are affected by the gendered effects of the pandemic. It also discusses how these gendered effects relate to particular groups of women, for example, women married to men who live in two-parent households or women rearing children in single-parent households. It also recognizes that the pandemic has compounded effects of inequality for the LGBTQ+ community. See, e.g., Resources: COVID-19, TRANSGENDER L. CTR., https://transgenderlawcenter.org/resources/covid19; Petruce Jean-Charles, LGBTQ Americans Are Getting Coronavirus, Losing Jobs. Anti-Gay Bias Is Making It Worse For Them, USA TODAY (May 10, 2020, 3:30 PM), https://www.usatoday.com/story/news/nation/2020/05/09/discrimination-racism-fuel-covid-19-foes-lgbtq-americans/3070036001/.


health care workers are women of color; \textsuperscript{7} one in five workers is a single mother. \textsuperscript{8}

These gendered patterns intersect with a “racial justice paradox” that reveals what Catherine Powell calls the “color of COVID”: “people of color [are] overrepresented among both the unemployed and among essential workers” being asked to take risks at work. \textsuperscript{9} Further, the “color of COVID” intersects with the “gender of COVID”: women of color, particularly Black, Latina, and Native American women, are at the intersection of the inequities in the emerging stay-at-home economy. \textsuperscript{10} They are a prominent part of the female workforce in low-paid and undervalued frontline jobs – including care work – vital to the economy but who lack the flexibility of being able to work from home and have been disproportionately affected by the so-called “shecession” of pandemic-related job loss. \textsuperscript{11} Women of color are also disproportionately represented among women living in poverty in the U.S., and the lack of adequate policy responses to the pandemic’s impact on work and family is increasing that economic insecurity. \textsuperscript{12}


At the same time, the pandemic also reveals the protective effects of class for some women: women who are in professions where working from home is feasible, or who are not essential workers, or who depend upon or benefit from the domestic labor of other women. However, the pandemic has had gendered effects even among more privileged professional women—such as women in academia; their greater likelihood than male colleagues to be engaged in domestic chores and child care during the pandemic has negatively affected their productivity more than that of their male peers.\(^{13}\)

When it comes to family responsibilities, mothers have assumed the majority of child care and schoolwork responsibilities for children who can no longer attend day care or whose schools have closed.\(^{14}\) In September 2020, as the new school year began (often virtually), a staggering “865,000 women dropped out of the labor force”—four times the rate of drop out by men (216,000).\(^{15}\) Mothers of young children are disproportionately among this group who feels “driven out” by the impossibility of managing work and family demands.\(^{16}\)

Although the pace of job loss and the increased amount of child care affecting women are new, the weaknesses in support for gender equity are not. Prior to the pandemic, women faced barriers affecting work, family leave, and child care; they also experienced unequal parenting burdens. Those unequal burdens flowed both from women doing more work in dual-parent heterosexual households and from the fact that almost five times as much

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\(^{15}\) Soo Youn, *Quitting Was Her Only Option. She is One of 865,000 to Leave the Workforce Last Month*, THE LILY (Oct. 7, 2020), https://www.thelily.com/quitting-was-her-only-option-she-is-one-of-865000-women-to-leave-the-workforce-last-month/?utm_campaign=wp_to_your_health&utm_medium=email&utm_source=newslette

\(^{16}\) Id. (quoting sociologist Marianne Cooper, author of the book, Cut Adrift: Families in Insecure Times).
many children live with a single mother than with a single father.17 As with child care, the COVID-19 pandemic has highlighted the care needs of older Americans and of the precarious condition of the undervalued – and predominantly female – workforce that provides elder care.18

The pandemic has also posed challenges for – and exacerbated inequities in – women’s reproductive health. A number of states deemed abortion a nonessential service that could be postponed,19 while other states explicitly protected access to abortion.20 Due to the pandemic, “far fewer women want to get pregnant” and seek to delay pregnancy or have fewer children; yet women have reported that it is harder to get birth control. Higher percentages of Black (38%) and Latina (43%) women than white women (29%) reported such challenges.21 In the United States and globally, the pandemic has also intensified domestic violence, a form of injury that disproportionately affects women.22

Even the political response reflects and reinforces preexisting gender patterns. Before the pandemic, women (including white women and women of color) held elected office at a rate significantly below that of men and

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below women’s percentage of the population, even after the historic gains of the 2018 elections. This continued gender inequity in politics has profoundly affected the pandemic’s consequences. The United States has a dramatically higher proportional number of COVID-19 cases and deaths than its peers around the globe; one evident cause is the toxic masculinity – or “mask-ulinity” – of President Donald Trump and some of his political allies, a form of masculinity which has associated masks and other protective measures with shame and weakness even after Trump himself contracted the virus. Such toxic masculinity includes both an exaggerated emphasis on toughness and risk-taking, including “reopening” the economy without sufficient regard to how to do so safely in light of protecting workers and public health, as well as an absence or suppression of empathy or caring about the staggering human toll of the pandemic. That dangerous performance of masculinity is also evident in Trump’s callous use of George Floyd to tout economic recovery and his “law and order” response to the

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25 See Dr. Julia Marcus, The Dudes Who Don’t Wear Masks, ATLANTIC (June 23, 2020), https://www.theatlantic.com/ideas/archive/2020/06/dudes-who-wont-wear-masks/613375/ (noting negative influence of President Trump’s mocking mask wearers as weak and reporting research that, even though men are at higher risk than women for dying from COVID-19, they are especially likely to not wear masks because they view wearing them as “shameful,” “a sign of weakness,” and “not cool”).

26 This Article uses the term “toxic masculinity” to refer to a set of beliefs or behaviors that the person performing them associates with traditional masculinity, or what being a boy or man in a particular society requires, and that have harmful effects, including perpetuating gender inequality, misogyny, racism, and homophobia. See infra nn. 160-165 (further discussing the development and implications of toxic masculinity).
widespread protests against police brutality and systemic racism spurred by Floyd’s videotaped murder under the knee of Derek Chauvin.\textsuperscript{27}

While this Article does not assume that female leaders necessarily or exclusively embrace certain “feminine” values lacking in toxic masculinity, such as care and empathy, it is notable that countries led by women had “systematically and significantly better” COVID-19 outcomes in the early stages of the pandemic, measured in numbers of cases and deaths.\textsuperscript{28}

In cataloguing pre-existing gender disparities and the impact of COVID-19 on women, this Article argues that COVID-19’s gendered effects are symptomatic of deeper, structural problems. It suggests that COVID-19 is likely to have complex implications for gender equality as state and local governments, the federal government, and private actors focus on recovery plans. Moreover, the heightened visibility of the Black Lives Matter movement\textsuperscript{29} during the pandemic brought these inequities into even sharper relief, leading to calls to address the “pandemic” of racism and its intersecting effects with COVID-19.\textsuperscript{30}

Responses to the pandemic provide the opportunity to address these inequities, and this Article argues that, without addressing them, roadmaps to recovery remain incomplete.\textsuperscript{31} A feminist recovery plan has the potential

\textsuperscript{27} Maegan Vazquez, Trump Invokes George Floyd’s Name While Taking Economic Victory Lap, CNN (June 5, 2020, 3:30 PM), https://www.cnn.com/2020/06/05/politics/donald-trump-george-floyd-rose-garden/index.html.


\textsuperscript{29} See Nate Cohn & Kevub Quealy, How Public Opinion Has Moved on Black Lives Matter, N.Y. TIMES (June 10, 2020), https://www.nytimes.com/interactive/2020/06/10/upshot/black-lives-matter-attitudes.html (charting American voters’ growing support for the movement since the death of George Floyd).

\textsuperscript{30} See ‘We Are Living in a Racism Pandemic,’ Says APA President, (May 29, 2020), https://www.apa.org/news/press/releases/2020/05/racism-pandemic; see also Powell, supra note 3 (arguing that COVID-19 pandemic provides “portal” into addressing interconnected pandemics of racism, policing, and poverty).

\textsuperscript{31} Cf. Lobel, supra note 1, at 552 (“Unpacking the factors that contribute to the persistent gender pay gap is key to understanding the need for multilayered reforms that target the different causes and stages of unequal compensation.”); Ines Smyth & Caroline Sweetman, Introduction: Gender and Resilience, 23 GENDER & DEVELOPMENT 405, 405 (2015), https://www.tandfonline.com/doi/abs/10.1080/13552074.2015.1113769?journalCode=cgde20 (arguing for the importance of “development and humanitarian researchers, policymakers and practitioners” approaching resilience “from a gender perspective” and in ways that “support women’s rights and gender equality”)).
to address such inequities in a transformative way with long-term effects. Addressing gender inequities will also build “resilience”—understood as “[t]he ability of people, households, communities, countries, and systems to mitigate, adapt to and recover from shocks and stresses in a manner that reduces chronic vulnerability and facilitates inclusive growth.” 32 Indeed, “resilience” is a key concept in plans for economic recovery and preparing for future pandemics. 33 A feminist recovery plan, this Article argues, must also address those inequities evident from the intersection of gender, race, and class in the pandemic’s effects. 34 A feminist recovery plan would build upon the so-called “business case” for gender equality, recognizing it not only as a social but a business “imperative.” 35

32 Smyth & Sweetman, supra note 31, at 405 (quoting USAID definition of resilience); see also Ann S. Masten et al., Resilience in Development: The Importance of Early Childhood, Encyclopedia on Early Childhood Development (Oct. 2013), http://www.childencyclopedia.com/resilience/according-experts/resilience-development-importance-early-childhood (defining “resilience” broadly as “the capacity of a dynamic system to withstand or recover from significant challenges that threaten its stability, viability, or development”). As explained infra in Part IV, this Article draws on the analysis of resilience employed by Martha Albertson Fineman in vulnerability theory. See, e.g., Martha Albertson Fineman, Introduction to Privatization, Vulnerability, and Social Responsibility: A Comparative Perspective 1, 4 (Martha Albertson Fineman et al. eds., 2017).

33 For some examples of state recovery plans referring to resilience, see Resilience Roadmap, CA.GOV (Aug. 6, 2020), https://covid19.ca.gov/roadmap/ (California plan); Beyond Recovery: Reopening Hawai’i, https://governor.hawaii.gov/wp-content/uploads/2020/05/Gov_Reopening-Presentation-Slide-Deck_18-May-2020.pdf (Hawai’i plan; referring to “state roadmap to recovery and resilience”). For an example linking resilience and equity, see NY Forward: A Guide to Reopening New York and Building Back Better, (May 2020), https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/NYForwardReopenigGuide.pdf (referring to opportunity to build back “more resilient, and more equal”; to building back “core parts of our society and our economy to be more resilient to future pandemics,” but also to address systemic issues that have limited progress and opportunity). See also Danielle Allen et al., Roadmap to Pandemic Resilience: Massive Scale Testing, Tracing, and Supported Isolation (TTSI) as the Path to Pandemic Resilience for a Free Society, 17 (Edmond J. Safra Center for Ethics at Harvard University, April 20, 2020) (stating that focus should be “not on ‘opening’ the economy but on mobilizing a pandemic-resilient economy”).

34 On the need for a feminist recovery plan, see Hawai’i State Commission on the Status of Women, Building Bridges, Not Walking on Backs: A Feminist Economic Recovery Plan for COVID-19 1 (2020); see also Powell, The Color and Gender of COVID-19, supra note 10 (arguing that, because “women of color sit at the intersection of race, gender, and economic disparities,” they “must be placed at the center of policy solutions”).

The Article begins, in Part II, with an overview of persistent, pre-pandemic gender inequity in the areas relating to work and family, including the gender pay gap, the child care crisis, and the disproportionate role of women, particularly women of color, in providing essential but undervalued care work.

Part III then canvasses how COVID-19 has highlighted and exacerbated these unequal patterns of care and work and how gender, race, and class intersect in these effects. Part III also considers how the challenges posed by responding to the pandemic suggest potentially promising and constructive steps forward. It considers some of the initial federal and state responses.

Part IV suggests that moving forward post-pandemic should mean moving beyond the status quo, and envisions what form a feminist economic recovery plan could take. In articulating new approaches to work and family, it draws on elements of federal and state responses, highlighting some promising policies as well as where such responses fall short. It argues that crucial policies include workplace flexibility, paid leave, equal pay, and freedom from employment discrimination, as well as accessible, affordable, and high quality child care, addressing familial barriers to remote learning, and greater recognition of—and better working conditions for—essential workers.

II. GENDER AS A RISK FACTOR PRE-PANDEMIC

To understand how the pandemic has both illuminated and worsened gender inequities relating to work and family requires a brief inventory of those inequities. This Part briefly reviews such inequities, including the gender pay gap and lower pay in traditionally “female” jobs, as well as women’s disproportionate role in providing paid and unpaid care.

A. The Workplace: The Gender Pay Gap

The gender pay gap, or the median annual earnings ratio, for women “of all races” is $0.82 for every $1.00 earned by men “of all races.” That ratio, however, masks significant differences among women: measured against every $1.00 white men earn, Asian American women earn $0.90 and white women, $0.79, while Black women earn $0.62, Native American

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women, $0.57, and Latina women, $0.54.\textsuperscript{37} The average gender pay gap is also larger between mothers and fathers.\textsuperscript{38}

The gender pay gap is a combination of multiple factors, not just sex discrimination.\textsuperscript{39} Consider that women are clustered in lower-paying jobs. In the top slice – the top 0.1% – of earners, only one in ten are women.\textsuperscript{40} Despite comprising less than half of the labor force, women account for almost 70% of low-wage workers—that is, workers in jobs that pay under $10 per hour.\textsuperscript{41} Jobs traditionally identified as female and which are still held predominantly by women—such as home health and child care workers—typically have lower pay and fewer benefits than jobs traditionally identified with men and which are still held predominantly by men.\textsuperscript{42} Home health aides are among the nation’s most poorly paid workers, with a median yearly income of $24,060 in 2018.\textsuperscript{43} Only in 2015 did the U.S. Department of Labor extend the federal minimum wage and overtime protections of the Fair Labor Standards Act (FLSA) to the two-million-plus home care workers in the

\textsuperscript{37} Id.
United States. Protections are still lacking at the state level. Such caregiving is physically taxing, but the wages are so low that many workers cannot afford health insurance; 46% rely on Medicaid for health coverage. As elaborated in Part III, this predominantly female workforce is also made up predominantly of women of color and has been at the frontlines in the pandemic.

The gender pay gap also reflects that women have fewer years of work experience and are more likely to work part-time (with lower hourly wages and benefits) than men because of care-based obligations. Although the dual-earner family is more common today than the family with the husband as sole breadwinner, persisting attitudes about gender roles more strongly associate work – and the financial obligation to provide – with men, and caring for children more strongly with women. More than 70% of both men and women say it is very important for a man to be able to support a family financially to be considered a good partner, and only a quarter of men say the same for a woman (39% of women think this is important). When the husband does not work full-time, the divorce risk is almost a third higher than when he is working full-time.

These gender inequities in employment are worse for women of color, who stand at the intersection of multiple barriers. At the very top of earners, under 1% of Fortune 500 CEOs are women of color, and none is Black or Latina. Based on their share of the overall workforce, Latinas and Native American women are twice as likely to be in the low-paid workforce,

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47 Bleiwis, supra note 36.
51 Courtney Connley, The Number of Women Running Fortune 500 Companies Hits A New High, CNBC (May 19, 2020), https://www.cnbc.com/2020/05/19/the-number-of-women-running-fortune-500-companies-hits-a-new-high.html#:~:text=There%20are%20also%20just%20three,Fortune%20500%20company%20last%20year.
while Black women are 1.5 times as likely.\textsuperscript{52} Black women contribute significantly to the financial security of their families, as they are more likely to be the breadwinners in their households – and more likely to be a single head of household. Yet, women of color are overrepresented in low-wage jobs like retail, hospitality, and restaurants.\textsuperscript{53}

\textbf{B. Paid and Unpaid Care}

Long before the pandemic, references to a “child care crisis” in the United States signaled that the lack of affordable, accessible, and high quality child care was an obstacle to full participation by mothers in the workforce.\textsuperscript{54} (Fathers too must handle this issue, of course, but not finding child care has virtually no impact on their employment.\textsuperscript{55}) With this nationwide shortage of child care, more than half of Americans live in “child care deserts,” defined as areas where there are more than three children per opening at a licensed child care center.\textsuperscript{56}

The availability of a child care program is more likely to affect mothers’ employment than it is fathers'.\textsuperscript{57} Although the problem of finding high quality child care is one that crosses class lines, it also has race and class dimensions. Child care deserts are most likely to be in low- and middle-income and rural communities.\textsuperscript{58} Further, Black women experience more difficulty finding child care than do white women, and lower-income women are less likely to be happy with the quality of the care they have found.\textsuperscript{59}

\begin{itemize}
\item \textsuperscript{54} Leila Schochet, \textit{The Child Care Crisis Is Keeping Women Out of the Workforce}, CTR. FOR AM. PROGRESS (Mar. 28, 2019, 8:00 AM), https://www.americanprogress.org/issues/early-childhood/reports/2019/03/28/467488/child-care-crisis-keeping-women-workforce/.
\item \textsuperscript{55} \textit{Id.} (“Mothers who were unable to find a child care program were significantly less likely to be employed than those who found a child care program, whereas there was no impact on fathers’ employment.”).
\item \textsuperscript{56} \textit{Id.;} Rasheed Malik et al., \textit{The Coronavirus Will Make Child Care Deserts Worse and Exacerbate Inequality}, CTR. FOR AM. PROGRESS (June 22, 2020, 6:30 AM), https://www.americanprogress.org/issues/early-childhood/reports/2020/06/22/486433/coronavirus-will-make-child-care-deserts-worse-exacerbate-inequality/.
\item \textsuperscript{57} Megan Leonard, \textit{U.S. Parents Lost $35 Billion By Staying Home With Their Kids – The Coronavirus Pandemic Could Make It Worse}, CNBC (May 22, 2020, 1:32 PM), https://www.cnbc.com/2020/05/22/child-care-indirectly-costs-parents-35-billion-coronavirus-may-increase-that.html. 12% of women, compared to 1% of men, were not working because they could not find child care. Schochet, supra note 54.
\item \textsuperscript{58} Malik, supra note 56.
\item \textsuperscript{59} Schochet, supra note 54.
\end{itemize}
In the informal care sector, women assume the majority of caretaking for children and for elderly parents. Among married heterosexual couples who have children and where both parents work, wives provide 10.3 hours per week of child care, while husbands provide 7.2 hours of child care; where there is a child who is age five or under, married women provide 16.8 hours per week, while married men provide 10.6 hours. Nearly 25% of children in the United States live with one parent, typically the mother; such parents experience added time demands in juggling care and work.

The burden of informal caretaking is not only financial but also physical and emotional. Here, too, there are intersecting gender and race effects. Research shows that “[h]ealth problems affect 25 percent to 30 percent of informal caregivers, particularly those who are African American, female, unemployed, middle-aged, and who are providing [the] highest levels of care”—problems that are, “in turn, associated with increased emotional distress and mental health problems.” Further, limited access by immigrants to insurance and healthcare worsens these disparities.

Pre-pandemic, the United States already stood out as a laggard among comparable nations for its lack of paid leave for workers’ family caregiving responsibilities or for their own health care. In the absence of such policy, however, by 2018, the majority of large private employers had adopted some form of paid leave policies in recognition of workers’ challenges in balancing

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60 Halley Bondy, Caregiving, or Career? The Choice No Woman Should Have to Make, NBC NEWS (Jan. 29, 2020, 1:17 PM), https://www.nbcnews.com/know-your-value/feature/caregiving-or-career-choice-no-woman-should-have-make-ncna1125616 (60% of caregivers are women, but the proportion of men who caregive (40%) is rapidly growing).


64 Id.

paid work and their caregiving responsibilities.\textsuperscript{66} Even so, a sizeable minority of large employers and many smaller employers do not have paid leave policies, meaning that workers do not uniformly enjoy this benefit.\textsuperscript{67} The top-earning 25% of workers are at least twice as likely as those in the bottom 25% to have access to either paid or unpaid family care leave.\textsuperscript{68} Similarly, employers differ with respect to worker access to paid sick leave. While such leave is nearly universally available at the top quartile of wage distribution (for 92% of such workers), barely half of workers in the lowest quartile had access to such leave.\textsuperscript{69} Caretaking thus imposes an extra financial burden on low-income households, and the lack of paid leave is a symptom of the insecure conditions of their work.

At the state level, eight states and the District of Columbia have enacted laws requiring access to paid family leave.\textsuperscript{70} These provisions include progressive wage replacement, expansive legal definitions of who and what makes a family, and job protections regardless of employer size.\textsuperscript{71} Connecticut and Oregon are acclaimed for having adopted the best practices.\textsuperscript{72} Both states offer the highest compensation, with Connecticut ensuring that those who make forty times the state’s minimum wage or less will get 95% of their regular pay while away from work, and Oregon mandating full pay for anyone who makes 65% or less of the state’s average weekly wage.\textsuperscript{73} Additionally, both states include an expansive definition of

\textsuperscript{66} PL+US 2018 Employer Scorecard, PL+US (PAID LEAVE FOR THE UNITED STATES), https://paidleave.us/topemployerpolicies (noting “tipping point” reached in 2018, with 72% of surveyed companies reporting paid leave policies).
\textsuperscript{68} Isabel V. Sawhill, Sarah Nzau, & Katherine Guyot, A Primer on Access to and Use of Paid Family Leave, BROOKINGS (Dec. 5, 2019), https://www.brookings.edu/research/a-primer-on-access-to-and-use-of-paid-family-leave/.
\textsuperscript{71} Id.
\textsuperscript{72} Bryce Covert, Connecticut and Oregon Make Paid Family Leave a Reality, AM. PROSPECT (July 11, 2019), https://prospect.org/health/connecticut-oregon-make-paid-family-leave-reality/ (praising new family leave policies enacted by Connecticut and Oregon and stating that, with regard to paid family leave, “[b]oth Oregon and Connecticut went further than all of the other states that have come before them”).
\textsuperscript{73} A BETTER BALANCE, supra note 68, at 4.
family when deciding who can take paid family and medical leave. This list includes spouses, siblings, children, grandchildren, grandparents, parents-in-law, and, in Oregon, registered domestic partners.\(^{74}\) Both states include anyone “related by blood or affinity whose close association . . . is the equivalent of a family relationship.”\(^{75}\)

As discussed below, the pandemic is accelerating consideration at the federal and state level of long-needed policies around paid child care and paid family and sick leave.

## III. GENDER AS A RISK FACTOR DURING THE PANDEMIC

These gendered patterns of care and work predated the pandemic, but they made a difference and even intensified during it. Women assumed even more caretaking responsibility, with children out of school and day care, and were more financially vulnerable to changes in the economy. Moreover, despite slogans like “we’re all in this together,” the structural inequalities around race and class also shaped how women experienced the pandemic’s effects.\(^{76}\) Indeed, most of those effects have been negative, but some potentially positive developments suggest possible foundations for an economic recovery more attentive to the inequities that the pandemic brought into sharp focus. In this section, we canvass some of the ways that the pandemic highlighted and made worse existing inequalities, then we turn to promising developments, looking at some federal and state recovery plans meant to combat these inequalities, and, finally, we briefly address the interrelationship between the pandemic and politics. In Part IV, the Article examines the strengths and weaknesses of these plans with respect to constructing a robustly feminist economic recovery.

### A. The Negatives

The catalogue of COVID-19’s negative impact includes multiple aspects of women’s lives: work, child care, reproductive health, and domestic violence.

#### a. Employment

Almost twice as many working women as men are employed in two industries that have been substantially impacted by the virus: health care and social assistance and the leisure and hospitality industry. Women, however,

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\(^{74}\) Id.

\(^{75}\) Id.

receive less pay than do men in each of these fields.\textsuperscript{77} Even before the pandemic, women’s concentration in these and other low-paying jobs contributed to women “of nearly all races and ethnicities” having higher poverty rates than men in the U.S., with single mothers and women of color disproportionately represented among women in poverty.\textsuperscript{78} They are also sectors in which a high proportion of the workforce is unable to work remotely, and the pandemic has meant that such workers, particularly women with young children, were disproportionately likely to become unemployed.\textsuperscript{79} Studies show that job loss is highest in the United States for immigrants, with non-citizen immigrant women being hit the hardest.\textsuperscript{80}

The pandemic has brought into sharp focus the critical role of women of color in the essential, but undervalued, workforce, highlighting the intersecting “color” and “gender” of COVID-19 introduced in Part I.\textsuperscript{81} Ai-Jen Poo and Palak Shah, leaders of the National Domestic Workers Alliance, persuasively argue that this workforce is the “critical engine of our economy,” in times of both stability and crisis, but is “largely unprotected by our safety net.”\textsuperscript{82}


\textsuperscript{78} Robin Bleiweis et al., The Basic Facts about Women in Poverty, Center for American Progress (Aug. 3, 2020), https://cdn.americanprogress.org/content/uploads/2020/08/07060425/Women-In-Poverty-UPDATE.pdf?ga=2.74065424.364922471.1602612292-1274926962.1602345265; see also Women and Poverty in America, https://www.legalmoment.org/women-and-poverty-america (noting contributing role of women’s segregation into lower-paying jobs, such as retail and hospitality, as contributing to women’s higher risk of poverty than men).

\textsuperscript{79} Dimitris Papanikolaou & Lawrence Schmidt, Working Remotely and the Supply-side Impact of COVID-19 (July 25, 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3615334. Note that, because the pandemic is not a static occurrence, statistics vary depending on when any particular measurement is taken. The overall trends concerning gender, however, are consistent, so the “snapshot” numbers in the article provide a panoramic view.


\textsuperscript{81} See Powell, Color and Gender of COVID, supra note 10.

The consequences of this lack of protection are demonstrated by the child care crisis. Approximately one-quarter of child care workers lost their jobs during the first few months of the pandemic.\(^\text{83}\) Almost half of all child care centers closed.\(^\text{84}\) Even as they reopened, they faced new guidelines that were designed to reinforce safety but were also difficult and expensive to implement, especially in light of child care centers’ thin profit lines.\(^\text{85}\) In addition, with many workers still staying home and because of the social distancing restrictions, child care centers have fewer children.\(^\text{86}\) In addition, as jobs have returned during the economic recovery, that recovery is uneven and unequal: mothers of elementary school-age children (six through twelve) have been less likely to regain employment than fathers of the same-aged children, and Black women and Black men are also among those taking the longest to regain employment.\(^\text{87}\)

b. Parental child care and remote schooling: Along with pandemic-related closures of child care centers, parents also faced the consequences of the closures of schools as well as summer camps (for parents who could

\[^\text{83}\]U.S. BUREAU OF LABOR STATISTICS, TABLE B-1: EMPLOYEES ON NONFARM PAYROLLS BY INDUSTRY SECTOR AND SELECTED INDUSTRY DETAIL (last checked Aug. 7, 2020), https://www.bls.gov/news.release/empsit.t17.htm (more than one million people held such jobs in July 2019 compared to approximately 775,000 in June 2020 (using seasonally adjusted numbers)). See also Dana Goldstein & Julie Bosman, As Day Care Centers Reopen, Will Parents Send Their Children?, N.Y. TIMES (May 30, 2020), https://www.nytimes.com/2020/05/29/us/coronavirus-child-care-centers.html (reporting on precarious position of many child care centers and that “[t]he coronavirus cost the industry more than 355,000 jobs in March and April”).


afford camps) and the cancellation of other organized summer activities. The intersecting gender, race, and class effects on who is able to provide care and support remote learning were also evident in the consequences of these closures.

By August 2020, “93% of people in households with school-age children reported their children engaged in some form of ‘distance learning’ from home,” although the ability to use online resources varied by class. By August 2020, “93% of people in households with school-age children reported their children engaged in some form of ‘distance learning’ from home,” although the ability to use online resources varied by class.88 Parents almost doubled the amount of time they spent on education and household tasks, increasing from thirty to fifty-nine hours per week, with, on average, fathers spending fifteen fewer hours than mothers.89 Across the board, employed mothers with the ability to stay home struggled to balance work and home schooling. Further, in households with “dual earning, straight married couples,” one study found that mothers “reduced their work hours four to five times as much as fathers.”90 Even before the pandemic, research found that working from home increased not only job-related stress but also family conflict.91 During the pandemic, as children continued to “go to mommy first” in dual-earner mother-father households, the gender gap in work hours was increasing by 20% to 50%.92 Further, single mothers

88 Kevin Mcelrath, Nearly 93% of Households with School-Age children Report Some Form of Distance Learning During COVID-19, U.S. Census Bureau (Aug. 26, 2020), https://www.census.gov/library/stories/2020/08/schooling-during-the-covid-19-pandemic.html#:~:text=Nearly%2093%25%20of%20Households%20With,Distance%20L earning%20During%20COVID%2D19&text=Nearly%2093%25%20of%20people%20in,t o%20rely%20on%20online%20resources (“[I]n households with incomes of $100,000 or more, 85.8% of people with children reported using online resources for distance learning. By contrast, only 65.8% of people in households with incomes of less than $50,000 . . . reported that children were using online resources.”).
89 Cohen & Hsu, supra note 14.
91 Suzanne Edwards & Larry Snyder, Yes, Balancing Work and Parenting is Impossible. Here’s The Data, WASH. POST (July 10, 2020, 6:00 AM), https://www.washingtonpost.com/outlook/interruptions-parenting-pandemic-work-home/2020/07/09/599032e6-b4ca-11ea-aca5-ebb63d27e1ff_story.html?fbclid=IwAR2jFG0GDyawBwxNqjD2C1viN6NcGU4Sv24bsxeysVz4j1hOhzo7_h3M7g.
92 Grose, supra note 90 (reporting that although study done by researchers William Scarborough and Caitlyn Collins did not investigate “why women whose work circumstances were the same as their husbands were doing more of the child care,” they “speculated” that a partial reason may be that “when a child needs help, they go to mommy first,” and “over days and weeks that has a cumulative, undermining effect”); see also Lydia Dishman, There’s a Massive Pay Gap Between Men and Women Who Work From Home, FAST CO. (Mar. 31, 2020), https://www.fastcompany.com/90484420/theres-a-massive-pay-gap-between-men-and-women-who-work-from-home.
reported added stress juggling work and parenting during the pandemic, as many shouldered sole responsibility for meeting their children’s needs.\textsuperscript{93}

As the school year resumed, the gendered effects on employment of who cared for children were vividly clear, as women dropped out of the labor force at a four-to-one ratio compared to men, and mothers with young children were a prominent group among such women.\textsuperscript{94} The demands of remote learning have been another factor with gendered effects. With most children slated to engage in remote learning, rather than returning to school in actual classrooms, parents “of all races” reported high levels of stress over how to provide the “hands-on help from an adult at home” required by such learning while meeting work demands; one survey found that 80% of parents lacked any person to provide this in-person help, whether a relative, neighbor, nanny or tutor.\textsuperscript{95} However, while 54% of the mothers in the survey reported that they would be primarily responsible for their children’s education on weekdays, only 29% of fathers said they would be.\textsuperscript{96}

Essential workers at greater risk of exposure to COVID-19 faced added difficulty finding people willing to provide child care and support for remote learning.\textsuperscript{97} Single parents (predominantly mothers) and those unable to work from home have had the fewest options for help with child care and remote learning that would allow the parent to go back to work.\textsuperscript{98}

Low-income, Black, and Latinx families experienced the greatest impact from school closures and cancellation of summer programs, when factoring in access to computers, home internet connections, school provided


\textsuperscript{94} Youn, supra note 15 (comparing 865,000 women with 210,000 men). As they anticipated the school year starting, more than half of mothers said they would be the ones responsible for educating their children on weekdays compared to 29% of men (only 2% of women predicted that their partners would do so). Claire Cain Miller, ‘I’m Only One Human Being’: Parents Brace for a Go-It-Alone School Year, N.Y. Times (Aug. 19, 2020), https://www.nytimes.com/2020/08/19/upshot/coronavirus-home-school-parents.html.

\textsuperscript{95} Cain Miller, supra note 94 (reporting results of survey conducted by Morning Consult).

\textsuperscript{96} Id. A further finding was that while some couples indicated “they planned to split the job equally, . . . men and women disagreed: 36 percent of men, and 18 percent of women, said they were splitting the work.” Id.

\textsuperscript{97} Id.

\textsuperscript{98} Id. Faced with a lack of child care options and having to meet other obligations, one in three parents in the survey mentioned above have “left a child at home without supervision from an adult or teenager.” Id. These “impossible choices” bring to mind the challenges faced by single mothers in the 1990s, when “welfare to work” requirements failed to support safe, high quality child care: some mothers decided “that the best way to protect their children is to keep them home, teach them how to make grilled cheese sandwiches, dial 911, and operate the dead bolt locks on the door.” Katherine Boo, After Welfare, THE NEW YORKER (April 9, 2001), p. 93.
meals, and direct instruction from teachers. These inequities were evident as education experts reflected on the implications of “the lost [school] year” for children and of the long-term implications on heightening inequality amid diminishing resources. While parents across “demographic divides” worried about their children missing school, their different levels of resources and income shaped how they planned for the new school year. Parents with a graduate school education were almost twice as likely as those without a college degree to report that they had thought about paying for a private teacher or tutor to help. As parents with more economic resources turn to solutions not uniformly available to working-class and poorer parents—like “learning pods” and even “pod schools”—these trends may deepen inequality because of the critical role of education as a pathway out of poverty and step toward economic success. Thus, “the numerous harms of being kept out of school – academic, social, emotional, psychological, physical – felt by all children” will fall more heavily on children with the least family resources. Further, as one single mother put it, parents priced

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99 Dana Goldstein, Research Shows Students Falling Months Behind During Virus Disruptions, N.Y. Times (June 10, 2020), https://www.nytimes.com/2020/06/05/us/coronavirus-education-lost-learning.html. An additional issue, globally, is the gendered effects of school closures due to COVID-19 and challenges about reopenings. There is concern that such developments will have lasting effects on girls and reverse progress on increasing the number of girls who attend school, particularly for poor communities where remote learning is not possible and the burden of care falls to girls, and increase sexual abuse and teen pregnancies. See Robert Jenkins & Rebecca Winthrop, Education Plus Development: 5 Actions to Bring the most Marginalized Girls Back to School after COVID-19, Brookings (May 15, 2020), https://www.brookings.edu/blog/education-plus-development/2020/05/15/5-actions-to-help-bring-the-most-marginalized-girls-back-to-school-after-covid-19/. 100 The Lost Year (a discussion moderated by Emily Bazelon), N.Y. Times (Magazine), Sept. 13, 2020, at 32 (story in magazine issue with cover title: “The Lost Year”) 101 Cain Miller, supra note 94. 102 Id. 103 Caroline Thomson & Adriana Gomez, Why Parents are Forming ‘Learning Pods’ and How They Might Deepen Inequality, PBS News Hour, (Aug. 24, 2020), https://www.pbs.org/newshour/education/why-parents-are-forming-learning-pods-and-how-they-might-deepen-inequality#:~:text=The%20race%20to%20set%20up,inequities%20in%20access%20to%20education.&text=In%20some%20cases%2C%20parents%20are%2C%20an%20hour%20or%20more.&text=%E2%80%9CWhen%20you%20have%20working%20class%20need%20to%20have%20an%20option%2C%20David%20Zweig, The Rise of the Pod Students, N.Y. Times, Aug. 2, 2020, at 32 (describing pod schools offered by some private schools and observing that “there might be no more potent symbol of inequality during the pandemic than the pod school”). 104 Cain Miller, supra note 94 (quoting Professor Frank Worrell, at Graduate School of Education, University of California, Berkeley on parents’ worry over missing school: “For many poor families and immigrant families, education really is the way out of poverty . . . Even parents who didn’t have college degrees are recognizing the importance of college in this economy, and wanting that for their kids.”). 105 Zweig, supra note 103.
out of these options feel “like we’re directly failing our children because we can’t offer or afford the same level of opportunities.”

These inequities in the new world of remote education may worsen both the education gap and the wealth gap. In addition, studies show that schools that could safely reopen and remain open are mostly in “wealthier, whiter neighborhoods”; this, too, could widen the “education gap.” Further, Black families began the pandemic with only one-tenth of the wealth of white families; with the loss of jobs and school closings, the pandemic is “worsening the future economic outlook for Black children.”

c. Reproductive health. With respect to reproductive health, prior to the pandemic, the unintended pregnancy rate – the number of women who did not want to be pregnant at the time they became pregnant – was almost 50% for all women; but it was five times higher for low-income women than for wealthier women, and approximately double for Black women than for white women. The maternal mortality rate for Black women is double that for white women. The Trump administration had successfully challenged the Affordable Care Act’s contraception coverage for employees of religious institutions.

During the pandemic, Black and Latina women were more likely than white women to report challenges in accessing contraception. Although

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108 Id.
109 Kelly Glass, Black Families Were Hit Hard by the Pandemic. The Effects on Children May Be Lasting, N.Y. TIMES (June 29, 2020), https://www.nytimes.com/2020/06/29/parenting/coronavirus-black-children-inequality.html. The pandemic also exacerbates family wealth disparities. See Cahn, supra note 53 (reporting that, while 13% of White respondents have already skipped paying a bill, that is true for 37% of Black/African-American respondents and 39% of Hispanic/Latino respondents).
113 McCammon & Pao, supra note 21. For statistical differences, see supra text accompanying note 21.
many family planning clinics remained open during the pandemic, for women seeking telehealth, many online platforms did not accept insurance or Medicaid. Moreover, while the American College of Obstetricians & Gynecologists successfully sued the Food & Drug Administration to ensure broader availability of mifepristone, the “abortion pill,” the Trump administration opposed those efforts. Medical visits for reproductive health services, such as contraception and STIs, dropped dramatically. And there is speculation that the birth rate dropped, a finding in accord with historical times of economic depression.

Several states specifically defined abortion as a non-essential or elective health procedure, effectively banning access for the duration of the public health emergency. The majority of these bans were lifted, either by court order or through the expiration of the initial executive order, except in Arkansas, where a federal court ruled in favor of the requirement that patients have at least “one negative COVID-19 NAAT test within 48 hours prior to the beginning of the procedure.”

115 Margaret Talbot, The First Abortion Case Before a Post-Ginsburg Supreme Court, THE NEW YORKER, Sept. 29, 2020, https://www.newyorker.com/news/daily-comment/the-first-abortion-case-before-a-post-ginsburg-supreme-court?utm_source=nl&utm_brand=tny&utm_mailing=TNY_Daily_100120&utm_campaign=aud-dev&utm_medium=email&bxid=5be9f9f924c17c6adf0f7df2&ctid=36290222&hash=ebdf606e9c313a0a6f56681b93b61&hashb=2a095db65e86a92ab8bc09eecedc59834d6e6c aakhash=8d7773b06cb6f8366ec7f6fa69beaf5b1ab546176a2c6b77e9a1137e0b2f1&esrc=AUTO_OTHER&mbid=mbid%3DCRMNYR012019&utm_term=TNY_Daily.
services, this requirement assumes access to testing and fast results, which poses practical obstacles to patients, given test shortages and the time needed to obtain a test result. \(^{122}\) By contrast, some states prioritized access to abortion, \(^{123}\) recognizing the significance of the procedure. Indeed, during the pandemic, new research emerged showing that obtaining access to an abortion can benefit not only a woman’s mental health but also her care of a subsequent baby. \(^{124}\)

d. Domestic Violence:

Finally, in the wake of the COVID-19 quarantine, stay-at-home orders across the United States brought many family members into a heightened amount of daily contact. With workplaces closed and some work shifting to homes, the percentage of people who remained home during normal working hours nearly doubled (45% to 85%). The unintended consequence of these measures impacted vulnerable family members who were prevented from leaving their abusive households as tensions heightened due to the closures of schools and businesses, job loss, and economic strain. \(^{125}\) International experience has shown that family violence escalates during and after large-scale disasters or crises, and the rates of domestic violence have increased globally. \(^{126}\) While the overall incidence of domestic violence increased 12%, it went up 20% during working hours. \(^{127}\) Moreover, the rate of first-time abuse also rose by 23% during working hours, compared

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\(^{122}\) Sobel, *supra* note 120.

\(^{123}\) *Id.* (noting New Jersey, Virginia, and Washington).


\(^{126}\) *Id.*

to 16% overall.\textsuperscript{128} The increase in unemployment relatedly increased the “frequency and severity of domestic abuse.”\textsuperscript{129}

\section*{B. Positive Responses}

Amidst enormous challenges of responding to the pandemic, some responses suggest potentially promising steps forward. Heightened attention to the critical role of child care to economic recovery may pave the way to more robust support for child care. The temporary enactment of modest paid leave as a result of the pandemic might also prove an important first step toward more expansive leave policies. After a seeming stall in moving toward workplace flexibility, the reality that a sizable number of employees could work remotely may lead to more employers allowing employees to work from home – importantly, this may be true even for some low-income workers. Further, in households with a mother, father, and children, the structure of parental caregiving may change if some men’s increased engagement in caregiving begun during the pandemic continues in the “new normal.”\textsuperscript{130} In addition, given that the professions oriented towards caring – whether that includes teachers, nurses, or home health care aides – are overwhelmingly female, the pandemic may cause more attention to the gender pay gap in those positions. This section briefly previews some of the gender-equity-related steps taken during the pandemic, including legislative initiatives related to child care, unemployment insurance, and family leave, and cultural changes, such as the increased attention to the gendered labor of child care at home and in the workplace. The next Part then addresses the need to build on these steps and move towards more fundamental change.

\subsection*{a. Support for child care.} One promising response was federal attention to child care issues. In the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Congress appropriated $3.5 billion in emergency

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\textsuperscript{130} See Alon, \textit{supra} note 61 (arguing that although women will continue to carry a higher burden of child care during the pandemic, men’s child care hours will also increase, which could lead to a change in norms and more male participation in child care post-pandemic; further, if the workforce opens before schools/daycares, it is more likely that men will be able to telecommute and take care of the kids, while women would have to return to work).

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funds for the Child Care and Development Block Grant. States were given some flexibility by the federal Administration for Children and Families to mitigate the effects of the pandemic. These measures allowed states to increase health precautions in child care facilities, prevent permanent closures by paying subsidies, and provide child care to frontline workers who were not provided paid leave for childcare. Washington State, for example, also used federal funds to provide tools for distance learning, develop resources to close the educational opportunity gap, and reduce child care costs for parents seeking employment. Although the House passed subsequent legislation, including an updated version of the HEROES Act (Health and Economic Recovery Omnibus Emergency Solutions Act), which would provide $57 billion dollars in child care funding, the Senate did not enact this legislation. As a result, the child care support, while a promising recognition of the critical nature of such care, was temporary.

b. Unemployment insurance. A second promising step relates to unemployment insurance. Although the United States, unlike some European countries, did not provide job protection during the pandemic through the form of salary supplements, it did provide financial support for the unemployed. Because of the combination of bonus checks and enhanced unemployment insurance, the poverty rate remained relatively stable in the

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first several months of the pandemic.\textsuperscript{137} When these additional protections expired, calls to extend them stressed women’s (particularly women of color) disproportionate poverty rates and the need for a broader range of policy proposals—including unemployment insurance—to “narrow gender disparities in poverty” and foster “lasting economic security for women and their families.”\textsuperscript{138}

c. Paid family and medical leave. Third, the federal recovery bills provided various short-term forms of paid leave, and a number of states that lacked paid leave laws are considering them.\textsuperscript{139} In the Families First Act,\textsuperscript{140} the first-ever federal law mandating paid leave rights for private sector employees, Congress temporarily granted both paid sick leave and paid family and medical leave.\textsuperscript{141} Some workers could receive two weeks of paid sick leave to care for themselves or another individual, and twelve weeks of emergency child care leave with ten weeks of pay.\textsuperscript{142} While the introduction of short-term paid leave is a critical first step, this mandate contained a number of exclusions.

Businesses with more than five hundred employees were exempt from both paid leave provisions.\textsuperscript{143} This exemption left out, among others, more than two million employees of large grocery store chains, who are deemed essential workers and whose jobs place them at risk of contracting COVID-19.\textsuperscript{144} Businesses with fewer than fifty employees could choose not


\textsuperscript{138} Release: New Fact Sheet on Women in Poverty Underscores the Need to Extend COVID-19 Unemployment Insurance, supra note 12.


\textsuperscript{140} Families First Coronavirus Response Act, Pub. L. No. 116-127 (2020).


\textsuperscript{142} Boesch, supra note 141; see also U.S. Dep’t of Labor, Wage and Hour Division, \textit{Families First Coronavirus Response Act: Employee Paid Leave Rights}, DEP’T OF LABOR, https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave.

\textsuperscript{143} Id.

to provide paid child care leave if it “would jeopardize the viability of the business.”

Moreover, in an effort to maintain the essential worker workforce, the Act excluded health care providers and emergency responders and defined both categories broadly. Thus, less than 50% of private sector employees were guaranteed coverage due to the laws’ exemptions and overly broad regulations. These exclusions fall disproportionately on Black women and other women of color, who make up the vast majority of home health aides. Between April and June 2020, “caregiver-related calls” to the Center for WorkLife Law hotline over problems of workplace accommodation and family leave increased more than 250% from the prior year; director Joan Williams concludes that the stories told by these workers—among them many mothers—demonstrate that “Families First is falling short.”

d. Changing work/life balance, workplace “flexibility,” and the gendered division of labor. Another set of potentially positive changes centers on a readjustment of work/life balance, an increase in workplace flexibility, and changes to the gendered division of household labor. During the pandemic, the move to working from home (when possible) highlighted and often increased gender inequality in household labor. At the same time, it also created the potential for dialogue about such inequality, as well as for improvements in work-life balance and more workplace flexibility. There are predictions that the ability to work from home will continue after the pandemic. On the other hand, it may reinforce class, race, and gender

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146 U.S. DEP’T OF LABOR, FAMILIES FIRST CORONAVIRUS RESPONSE ACT: QUESTIONS AND ANSWERS, https://www.dol.gov/agencies/whd/pandemic/ffcra-questions#56 (defining health care providers as anyone employed in the health care industry, ranging from hospitals to retirement facilities and home health care providers; emergency responders are defined broadly as any worker who is “necessary for the provision of transport, care, healthcare, comfort and nutrition of such patients, or others needed for the response to COVID-19”).
148 Poo & Shah, supra note 82.
inequality, as those with jobs most likely to permit working from home are white and higher-income, and, if gendered caretaking patterns continue, male.¹⁵²

Second, staying home made visible to both parents the work of child care. Many men in heterosexual households certainly believed that they were doing more in the household,¹⁵³ although their female partners did not necessarily agree on the amount that the men were doing.¹⁵⁴ While it is true that women continue to do the majority of the work, men’s participation in child care has steadily increased over the last half century.¹⁵⁵ Since the start of the pandemic, “68% of fathers report feeling closer or much closer to their children.”¹⁵⁶ If some men’s increased engagement in caregiving continues into the “new normal,” the norms of parental caregiving may change in a direction supportive of gender equity.¹⁵⁷

Finally, parents’ challenges (discussed above) in trying to “home school” their children and monitor online learning in the wake of school closures may provide some momentum for improving the working conditions and pay of child care providers and teachers. Indeed, a large majority of parents agree that teachers should be paid more.¹⁵⁸ If this translates into governmental action, it could address the chronic problem that

¹⁵² Cohen & Hsu, supra note 14.
¹⁵⁶ Richard Weissbourd et al., How the Pandemic is Strengthening Fathers’ Relationships with Their Children, HARV. GRADUATE SCHOOL OF EDUCATION (June 2020), https://static1.squarespace.com/static/5b7c56e255b02c683659fe43/t/5eeceba88f50eb19810153d4/1592585165850/Report+How+the+Pandemic+is+Strengthening+Fathers+Relationships+with+Their+Children+FINAL.pdf.
society undervalues forms of care vital to human development and human well-being.\textsuperscript{159}

C. Politics

One obstacle, however, to moving forward constructively in the United States on COVID-19 has been the lack of effective national leadership. Instead, President Donald Trump’s style of leadership models a toxic masculinity\textsuperscript{160} or, indeed, a toxic “mask-ulinity.”\textsuperscript{161} This dangerous performance includes destructive messages about “toughness” and scoffing at wearing masks. Trump criticized mask mandates even as the Administration’s public health experts advised that mask wearing was a critical step to help minimize the spread of COVID-19. Trump declined to wear a mask himself until mid-July,\textsuperscript{162} continued to question their efficacy, and held political rallies and other public events at which supporters put themselves at risk. Trump’s failure to model mask wearing and to practice social distancing likely contributed to his contracting COVID-19 in October. He has also reinforced the dangerous association—one held particularly by

\textsuperscript{159} On the need to recognize and support care as a public value and to address injustices of the gendered care economy, see LINDA C. MCCLAIN, THE PLACE OF FAMILIES: FOSTERING CAPACITY, EQUALITY, AND RESPONSIBILITY 84-114 (2006).

\textsuperscript{160} On “toxic masculinity” as a “salient” feature in the responses to the pandemic by President Trump and Brazil’s President Jair Bolsonaro, see Robin Dembroff, In this Moment of Crisis, Macho Leaders are a Weakness, Not a Strength, THE GUARDIAN (Apr. 13, 2020), https://www.theguardian.com/commentisfree/2020/apr/13/leaders-trump-bolsonaro-coronavirus-toxic-masculinity/. Accounts of toxic masculinity typically include the following beliefs and behaviors: (1) “Suppressing emotions or masking distress”; (2) “Maintaining an appearance of hardness”; and (3) “Violence as an indicator of power (think: ‘tough-guy’ behavior).” Maya Salam, What Is Toxic Masculinity?, N.Y. TIMES (Jan. 22, 2019), https://www.nytimes.com/2019/01/22/us/toxic-masculinity.html (observing that a term “once relegated to women’s studies classrooms . . . suddenly seems to be everywhere”). For scholarly accounts, see, e.g., Terry A. Kupers, The Role of Misogyny and Homophobia in Prison Sexual Abuse, 18 UCLA WOMEN'S L.J. 107, 112 (2010) (explaining it as “the constellation of socially regressive male traits that serve to foster domination, the devaluation of women, homophobia and wanton violence” (citation omitted)); Michael Kimmel & Lisa Wade, Ask A Feminist: Michael Kimmel and Lisa Wade Discuss Toxic Masculinity, SIGNS (Dec. 12, 2017), http://signsjournal.org/kimmel-wade-toxic-masculinity/ (conversation held over Skype).


Republican men\textsuperscript{163}—of mask-wearing with weakness and shame.\textsuperscript{164} (Just as masculinity ideology is associated with a rejection of condom use, this same ideology may be at work with respect to “condoms of the face.”\textsuperscript{165}) Public health experts note that the rejection of mask-wearing and social distancing guidelines had a gendered cost: the virus has infected more men than women and killed far more of them.\textsuperscript{166} Mask resistance has also turned violent and even lethal when those attempting to enforce mask-wearing rules—such as grocery store workers, health care workers, and other essential, other public-facing employees—are the targets of mask resisters.\textsuperscript{167} Further, even as they may be exposing such employees to the virus, some mask resisters have pointed to President Trump’s example to justify their refusals.\textsuperscript{168}

It was, thus, unsurprising but still disturbing that President Trump’s first act, on returning to the White House after four days in Walter Reed Hospital where he received treatment for COVID-19, was to remove his face mask on camera and to shove it into his pocket. By contrast, Democratic nominee Vice President Joe Biden has consistently worn a mask and followed public health guidelines, insisting that mask wearing shows leadership, not weakness. After Trump’s diagnosis, he reiterated the importance of wearing masks: “It’s not about being a tough guy. It’s about doing your part.”\textsuperscript{169} After Trump’s mask-removing video, Biden tweeted his

\textsuperscript{163} Farhad Manjoo, \textit{Trump Can Still Make a Difference on Masks}, N.Y. Times (Sept. 30, 2020), https://www.nytimes.com/2020/09/30/opinion/sunday/coronavirus-masks.html (reporting that, by late spring, mask wearing was an irredeemably partisan issue, and the “primary resisters were Republican men”; “only 43 percent said Trump should wear a mask”).

\textsuperscript{164} See Marcus, supra note 25; Abby Haglage, \textit{Men Less Likely to Wear Masks Because They’re Not Cool, Study Finds}, YAHOO (May 15, 2020, 1:29 PM), https://www.yahoo.com/lifestyle/men-less-likely-to-wear-masks-because-theyre-not-cool-study-finds-sociologists-say-trump-toxic-masculinity-also-play-a-role-17292741.html. The Article reports on the observations of one researcher: “Since the office of the president is so tied to hyper-masculinity, Trump and Pence are performing almost a caricature of toxic masculinity by refusing to demonstrate basic safety precautions.” Id.


\textsuperscript{167} See, e.g., Christina Goldbaum, \textit{When a Bus Driver Told A Rider to Wear a Mask, He Knocked Me Out Cold}, N.Y. TIMES, Sept. 20, 2020, at 6 (recounting attacks on transit officers in New York City and in other U.S. cities).

\textsuperscript{168} For example, Fiana Tulip recounted on CNN that her mother, a health care professional, died from COVID-19 after a woman who came into the hospital refused to wear a mask, saying, “You know, I don’t have to wear a mask if my president doesn’t.” CNN REPLAY, (Oct. 6, 2020), https://www.facebook.com/watch/?v=344100576923980.

own video showing himself wearing a mask with the message: “Masks Matter. They Save Lives.” Women as well as men can perpetuate this toxic mask-ulinity that associates protecting one’s health with being unmanly: Fox News commentator Tomi Lahren responded to Biden’s video with the taunt, “Might as well carry a purse with that mask, Joe.”

A related aspect of this narcissistic leadership style is an exaggerated emphasis by the Trump Administration and some governors on “reopening” the economy and schools without sufficient regard to how to do so safely to protect public health. This false dichotomy between jobs versus health, touting numbers about jobs and economic recovery while ignoring or minimizing numbers about the human toll of COVID-19, suggests a lack of basic empathy. Essential – and other – workers had to return to work without adequate testing, protective equipment, or social distancing measures in place. The reckless disregard by Trump and some state governors of scientific information from experts within the Trump Administration, indicates a dangerous performance of masculinity at the expense of public health.

Instead of leading him to heed public health guidelines and stop endangering himself and others, “Trump’s experience with COVID-19 seemed only to confirm his view that [] the disease is a personal test of masculinity, and that his recklessness is a sign of strong leadership.” The lessons he drew from his own experience—with 24/7 medical care and multiple experimental treatments—were that people should not “fear” COVID-19 or let it “dominate” their lives; since he “beat” it, they would, too. Already identified (before his diagnosis) as the biggest single spreader of misinformation about COVID-19, he continued to do so, insisting his treatments were a “cure.” Further, statements that Americans are “learning to live with” COVID-19 seemed devoid of either any empathy for the many who lost family or friends to the virus or any recognition of the disproportionate toll the economic and public health crises have taken on Black people and other people of color, overrepresented among essential workers.


170 See Grossman and McClain, supra note 169 (discussing Lahren).

171 See NAOMI CAHN, JUNE CARBONE & NANCY LEVIT, SHAFTED (forthcoming 2021).


174 https://www.youtube.com/watch?v=_e55hSFNJ0I.

Notably, some state governors and mayors have had a more empathic and careful response to the pandemic, heeded public health experts, and resisted the false dichotomy of public health versus economic recovery. Prominent among them have been women (such as Michigan’s governor, Gretchen Whitmer) and – at the level of mayors – women of color, such as Atlanta’s mayor Keisha Lance Bottoms. They have eschewed the Trump Administration’s reckless disregard for the human costs of reopening the economy too soon.

Research on gender and political representation in Congress and state legislatures shows that “women in legislatures are more likely than their male colleagues to give priority to issues, such as healthcare and children and families, associated with women’s traditional caregiving roles in society, and to issues, such as reproductive health and women’s rights, associated with the organized women’s movement.” While Biden’s selection of Senator Kamala Harris as his vice presidential choice is historic, women of various identities continue to face obstacles to their running for and being elected to political office, and gender stereotypes about women’s “electability” continue to play a role.

As mentioned in Part I, globally, nations led by women showed some of the lowest rates of COVID-19 deaths and cases. Studies of the leadership styles of the women heading those countries with better success at battling the pandemic show certain hallmarks, such as listening with humility to other voices and ensuring that people with diverse backgrounds

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179 See supra note 28 and accompanying text.
and expertise are at the table.\textsuperscript{180} Such qualities are consistent with feminist methodology of seeking to listen to multiple perspectives and, in assessing law and policy, asking not only “the woman question” but also other questions about who is included and excluded.\textsuperscript{181}

Perhaps, given what ensued in the United States, it is not surprising that, when the White House announced formation of the President’s Coronavirus Task Force, it consisted of twelve men, eleven of whom are white.\textsuperscript{182} Nonetheless, it is important to note that an empathetic and effective style of leadership is not limited to women— but that carrying a purse, like wearing a mask, can be a positive sign of strength.

IV. TOWARD AN INTERSECTIONAL FEMINIST RECOVERY PLAN

While a recovery process might focus on a return to the status quo, the development of a recovery plan also opens up an opportunity to address the intersecting inequities of gender, race, and class made more visible by the pandemic—that is, to go beyond a return to the status quo and instead move forward. Consequently, rather than simply focus on economics, a feminist recovery plan could approach the goals of recovery and “resilience” in a way mindful of such inequities. Such a plan would insist that building resilience requires addressing such inequities, and—as Professor Martha Fineman has argued—focusing on how society and its institutional structures allocate benefits and burdens in ways that mitigate or worsen human vulnerability.\textsuperscript{183} It would reject the toxic masculinity of some current responses, which may have contributed to the pandemic’s particularly

\textsuperscript{180} Taub, supra note *.
\textsuperscript{181} See Katharine T. Bartlett, Feminist Legal Methods, 103 HARV. L. REV. 829 (1990).
\textsuperscript{183} See generally Martha Albertson Fineman, The Vulnerable Subject and the Responsive State, 60 EMORY L. J. 251, 256 (2010). As this Article uses the term, building resilience refers both to the resources needed by human beings and the proper design of social systems and institutions. See, e.g., Martha Albertson Fineman, Vulnerability, Resilience, and LGBT Youth, 23 TEMP. POL. & C.R.L. REV. 307, 320 (2014) (explaining that “[r]esilience is what provides an individual with the means and ability to recover from harm or setbacks,” and “[t]he degree of resilience an individual has is largely dependent on the quality and quantity of resources or assets that he or she has at their disposal to command”). Legal scholar Martha Albertson Fineman enlists the concept of resilience in elaborating on the obligation of a responsive state to address the universal human experience of vulnerability and provide mechanisms for building resilience. See Martha Albertson Fineman, Introduction to Privatization, Vulnerability, and Social Responsibility: A Comparative Perspective 1, 4 (Martha Albertson Fineman et al. eds., 2017).
ferocious impact in the United States when compared with similar industrial democracies.

What form would a feminist economic recovery plan attentive to the intersectional issues of gender equity discussed throughout this Article take? This Part suggests some contours, using as a point of departure enacted and proposed federal legislative responses and some state recovery plans. It takes inspiration from the Hawai’i State Commission on the Status of Women (“Commission”), which explicitly labels its work a “feminist economic recovery plan for COVID-19.”

A. A Beginning? Governmental Responses and an Inspiration

While gender equity was not explicitly identified as an aim of federal relief bills, some of the provisions addressed relevant matters such as child care and paid leave. Nonetheless, the federal legislative responses showed gaps not only in coverage but also in content. The House of Representatives has tried to fill in the gaps, such as by passing the updated HEROES Act, which includes specific relief for women and minority-owned businesses, funding for child care, expansions to paid sick, family, and medical leave, relief for currently unprotected immigrants, and additional funding toward domestic violence prevention. But the Senate has not passed comparable legislation, and negotiations between Speaker Nancy Pelosi and the White House have not yet yielded a new round of measures to help individuals and families and to foster economic recovery.

While many states have developed their own recovery plans, the plans rarely include specific references to the needs of women (including women of color) or marginalized communities. A few, however, stand out for their use of an “equity lens.” For example, Washington’s “Safe Return to Public Life” plan commits to use such a lens to support recovery of “all people and communities” and to pay “particular attention to those who have been disproportionately impacted by COVID-19, including communities of color, individuals experiencing homelessness, individuals with disabilities, as well as those experiencing unemployment, poverty, and food insecurity.” The plan calls for reducing child care costs for unemployed parents, assisting individuals with finding temporary and permanent housing, and ensuring public access to protective supplies. Massachusetts’s economic recovery plan commits to “funding more affordable housing, . . .

184 See BUILDING BRIDGES, NOT WALKING ON BACKS, supra note 34.
185 See supra discussion of the CARES and Families First Acts.
188 Id.
189 Id.
stabilizing neighborhoods, and supporting minority-owned businesses with record levels of funding.”190 New York’s plan proposes to build back “more resilient, and more equal.”191 The reopening guide speaks of the opportunity to not only build back “core parts of our society and our economy to be more resilient to future pandemics” but also address “systemic issues” that have limited progress and opportunity.192

A more robust commitment to gender equality permeates the “feminist economic recovery plan” proposed by the Hawai‘i Commission in April 2020. The plan emphasizes economic empowerment and robust social services as crucial tools to create this systemic change. It is explicitly intersectional in its aims, as signaled by its title: “Building Bridges, Not Walking on Backs,” which may allude to pioneering feminists Cheryl Moraga and Gloria Anzaldúa’s classic collection of writings by women of color, This Bridge Called My Back.193

The plan calls for centering “marginalized people and communities to build back better” because they are the hardest hit by COVID-19 due to the “combined effects of sexism, racism, classism,” and other systems of oppression.194 In this respect, the plan is specific to the needs of Hawai‘i, in terms of both the particular structures of inequality that different populations of women in Hawai‘i face and how certain features of the Hawai‘i economy contribute to that inequality. At the same time, the plan offers some principles and specific policy recommendations that could usefully inform other recovery plans. For example, the plan calls for supporting “women’s economic independence” and for “the redistribution of unpaid care work.”195 Second, it takes an inclusive approach, using the term “women+” to embrace cisgender women and girls as well as transgender women and nonbinary people.196 Third, it identifies women’s political representation as a recommended principle and practice for a “gender-and socially-responsive recovery,” stating that “women+” should be included “in all levels of consultation, decision-making and communication outreach.”197 The Commission points with approval to international recognition that

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191 NY Forward, supra note 33.
192 Id.
193 BUILDING BRIDGES NOT WALKING ON BACKS, supra note 34; see THIS BRIDGE CALLED MY BACK: WRITINGS BY RADICAL WOMEN OF COLOR (Cheryl Moraga & Gloria Anzaldúa, eds. 4th ed. 2015).
194 BUILDING BRIDGES, NOT WALKING ON BACKS, supra note 34, at 5.
195 Id. at 16.
196 Id. at 18 (explaining that “references to women+ within [the plan] refer to women, girls, and people who identify as women, including trans women, and who identify as femme, nonbinary and/or genderfluid”).
197 Id. at 15-16.
governments should “put women and girls at the centre of their efforts to recover from COVID-19,” and that this starts “with women as leaders, with equal representation and decision-making power.” While adding diverse voices and stirring will not necessarily make a difference, it is critical to ensure that caretaking – which has typically been associated with women – and work on the ground in essential industries – often performed by women of color – are central to any future planning.

This plan, along with the most constructive elements of some state plans and blueprints from organizations dedicated to building a more just economy with better economic security for women (particularly women of color), holds promise for transformative change. Because the pandemic has so clearly revealed major gaps in the social safety net and in gender equity, recovery provides the possibility for addressing those gaps. To be clear: creative and transformative responses will need to address a broad array of gender inequities revealed and heightened by the pandemic, and will face the same challenges to implementation that such programs confronted prior to the pandemic. This Part focuses particularly on responding to the gender inequities discussed above relating to work and family and the disproportionate role of women—particularly, women of color—in providing essential but undervalued care work.

B. Crucial Elements: Addressing Gender Inequities in the Workplace and Social Services

A feminist economic recovery plan needs to address a cluster of workplace issues, including mandating paid leave, closing the gender pay gap, and supporting the care economy. Such a plan must also ensure access to social services that are integral to gendered aspects of family and work, such as reproductive health care and domestic violence resources.

Moreover, concerns about workplace flexibility, in terms of both managing a work-from-home economy and acknowledging that such a form of work is less available for women in lower-paid jobs, must also inform any feminist economy recovery plan. Thus, for example, supporting child care supports working mothers, regardless of whether they must work at a

198 Id. at 6 (quoting Antonio Guterres, UN Secretary-General, April 9, 2020).
200 As Ai-Jen Poo and Palak Shah, leaders of the National Domestic Workers Alliance, powerfully urge: “We are at a critical juncture. The future of work will be decided by how we respond to this moment.” Poo & Shah, supra note 82.
201 In the words of the Hawai‘i Commission: “This is our moment to build a system that is capable of delivering gender equality.” BUILDING BRIDGES, NOT WALKING ON BACKS, supra note 34, at 1.
workplace (such as a hospital or nursing home) or are able to work from home.

1. Paid Leave

While Congress took some tentative first steps towards paid family leave during the early days of the pandemic (as discussed in Part III), that legislation was incomplete. Providing paid family and medical leave for all workers, regardless of whether they work at small businesses or are deemed “essential,” has been a longstanding priority for feminist organizations, and Congress has considered such legislation during the pandemic.\(^{202}\)

Individual states should also make paid leave a priority in their recovery plans. Particularly in the absence of federal legislation beyond the CARES Act, the role of states is critical. Some states already had paid family and/or sick leave policies prior to the pandemic (as discussed in Part II). Since then, numerous states and local governments have considered—and, in some instances, enacted—additional leave laws in light of the pandemic. These proposals generally: (1) expand existing requirements for sick and family leave (e.g., as in New York); (2) include protections for workers who have been infected or need to quarantine (e.g., as in Colorado); or (3) propose entirely new legislation on paid sick leave.\(^{203}\)

In addition to encouraging state leave policies, a feminist recovery plan would require the U.S. to finally end its outlier status and enact national family and sick paid leave legislation and also take steps to ensure that men are as likely to provide caregiving as women. Such leave would help address the needs of the many workers who (as discussed earlier) do not currently have adequate paid leave through their employers.\(^{204}\)

It is critical, however, that paid leave laws work in tandem with a broader set of policies and cultural commitments that create gender equity around work and family roles of the sort previewed in Part III.B. Otherwise, they may have unintended consequences. For example, when California


\(^{204}\) As the organization Closing the Women’s Wealth Gap (CWWG) details: “Three in four Latinx workers . . . and three in five Black workers . . . report not having access to any paid or partially paid parental leave through their employers.” Derbigny, supra note 199, at 12. CWWG explains how the absence of such leave contributes to the gendered wealth gap: “Given that women are more likely to take on caregiving roles, the absence of a paid leave policy means that they must take unpaid time out of the workplace, forego the accumulation of social security or retirement benefits, and spend down savings or take on debt when a child or loved one requires care.” Id. at 13.
enacted its first paid leave law, which provided up to six weeks of partial paid leave funded by a payroll tax on employees, research showed “employment rates for first-time mothers using the paid leave dropped 7% over a decade while their yearly wages dropped 8%,” whereas employment rates and yearly wages did not likewise drop for men who took the leave. Over ten years, “women who took the leave lost an estimated $24,000 . . . compared to women who didn’t.” Economists theorized about different explanations for this unintended consequence, including discrimination by employers against women who took the leave once they returned to work, but concluded that the more likely explanation was women’s decision to invest more in their children and to either reduce their work hours or leave the workforce. The study does not undermine the value of paid leave but emphasizes the need for additional policy changes in areas like subsidized child care and social changes around gendered caregiving.

The takeaway, then, is not that paid leave is a necessity only in a global pandemic, but rather that paid leave – with other related reforms – is a necessity for a growing and equitable economy that ensures participation of both men and women in work and care and that protects children. The “business case” for paid leave is also strong: such leave increases employee “loyalty and morale, thus reducing employee turnover”; “allows smaller businesses to compete better with larger businesses”; and “heightens American businesses’ competitiveness in the global economy.” The takeaway should be that we cannot afford to leave anyone behind.

2. Equal Pay and Investing in Women as Business Owners

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206 Id.

207 Id.

208 Id.; see Elisabeth Jacobs, Can women’s “sagging middle” help explain the fall in U.S. labor force participation rates?, WASHINGTON CENTER FOR EQUITABLE GROWTH (Feb. 16, 2017), https://equitablegrowth.org/can-womens-sagging-middle-help-explain-the-fall-in-u-s-labor-force-participation-rates/ (“[T]he lower cost and higher quality of childcare might be the more important of [paid leave or child care] for making a noteworthy difference in women’s labor force participation over the course of a lifetime.”).


210 Id.
The pandemic has helped to highlight women’s performance of essential tasks with high health risks, and the devaluation of such work. This devaluation can be measured monetarily, as discussed throughout this Article, by the gender pay gap and gender overrepresentation in low-wage jobs. Though the pandemic has exacerbated women’s economic insecurity in these areas, federal and state relief have offered little in addressing the problem directly.

These inequities persist, more than half a century after the Equal Pay Act of 1963. Numerous factors contribute to this persistent pay gap. As the National Partnership for Women and Families observes: “This persistent, pervasive wage gap is driven in part by gender and racial discrimination, workplace harassment, job segregation and a lack of workplace policies that support family caregiving, which is most often performed by women.”211 Combatting these workplace inequities will require investment in women’s economic empowerment. In part, this means raising the minimum wage and supporting fair scheduling practices and pay transparency by adopting mandatory public reporting on wage gaps.212 Other measures include more robust investment in early childhood education and “affordable, high quality child care.”213 Advocacy for such reforms preceded the pandemic, but the pandemic provides a potential opening to implement them.

Hawaii’s Building Bridges, Not Walking on Backs specifically calls for raising the minimum wage as well as for programs that will enhance women’s access to capital outside the low-wage and commercial sector. The plan’s proposals include funds for retraining and professional mobility, supporting social entrepreneurship approaches, and promoting gender and racial equity programs within male dominated industries.214

Entrepreneurship in the form of business ownership is an important avenue toward women’s economic empowerment and closing the wealth gap. To that end, businesses owned by “women and minorities”—and, particularly, by Black women—were on the rise before the pandemic, but the pandemic had a devastating impact on many of those businesses.215 On the one hand, federal relief through the CARES Act prioritized support through

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213 Id.
214 BUILDING BRIDGES, NOT WALKING ON BACKS, supra note 34, at 7-14.
business loans and grants for “socially and economically disadvantaged individuals, women . . . and businesses in operation for less than 2 years.” 216 On the other, reports of who actually received these loans and grants indicate that, while 79% of Black business owners applied for Paycheck Protection Program money (PPP), only 40% had such applications approved, compared with 52% overall. 217 The program also “fell short of supporting many women of color,” since, for example, “less than 7% of businesses owned by women of color have employees.” 218

At the state level, economic recovery has included the prioritization of women and minority owned businesses. In June 2020, Massachusetts announced an economic recovery plan that commits to “funding more affordable housing, implementing critical zoning reform, stabilizing neighborhoods, and supporting minority-owned businesses with record levels of funding.” 219 For “[w]omen, minority, veteran, and immigrant small business owners [who] face disproportionate challenges to accessing capital to grow their enterprises,” the plan recommends a $25 million increase in funding for Community Development Financial Institutions. 220

3. Child Care and Support for Remote Learning

Access to high-quality, affordable child care is key to economic recovery and building resilience, as it enables parents and other adult caregivers to work, and the lack of such access poses a major obstacle to such resilience. 221 The problems with the current caregiving system in the U.S. represent one of the many “cracks in our systems the pandemic exposed and exacerbated,” and creating a better approach to child care that achieves

217 Vitelli & Roecker, supra note 215.
218 Derbigny, supra note 199, at 17.
220 Id.
gender equality is critical. During the pandemic, the “Essential Workers Bill of Rights,” sponsored by Senator Elizabeth Warren and Representative Ro Khanna, included “robust funding” to help child care providers and ensure access by essential workers to such care. While the CARES Act provided some support in the short term, the child care “deserts” predate the pandemic and show the need for additional funding and broader recognition of the interrelationship between economic sustainability and carework. Notably, the updated HEROES Act greatly increased the funding for child care from $7 billion to $57 billion, closer to the levels that child care advocates insisted was necessary.

While immediate funding was necessary to keep the child care industry and families afloat during the pandemic, additional underlying structural changes are also necessary to stabilize the future of the child care system in the United States, as well as the economy. By investing in this tool, children receive the continuity of care critical for healthy growth and development, while parents—particularly low-paid workers, of which a majority are women—are able to re-enter the workforce and increase the demand for goods with the money they are now able and willing to spend. The majority of child care providers are small businesses owned by women, and supporting the child care system will allow such facilities to remain in business with the means to pay living wages to their employees.

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224 See supra discussion of the CARES Act.
226 As the National Women’s Law Center (NWLC) explains: “A well-resourced, equitable child care system can be an effective tool at helping families weather and rebound from an impending recession.” Improving and Expanding Child Care Assistance to Stabilize Our Economy, supra note 221, at 2.
227 Id.
228 Id.
229 Id.
should begin with state and federal child care policies that will increase access, affordability, and quality.\textsuperscript{230}

Two examples of proposed federal legislation that would accomplish these aims of access, affordability, and quality are the Child Care for Working Families Act (proposed by Senator Patty Murray and Representative Bobby Scott) and the Universal Child Care and Early Learning Act (proposed by Senator Elizabeth Warren). Both bills propose sliding scale payment options so that families would only pay what they could afford, investment in workforce training and compensation, and incentives to increase the number and quality of child care centers.\textsuperscript{231}

Though these proposals predated the COVID-19 crisis, the necessity of immediate and lasting relief for this industry gained new attention through the 2020 presidential campaign. Democratic presidential candidate Joe Biden announced his plan for a “caregiving economy,” fueled by the fact that “we’re trapped in a caregiving crisis within an economic crisis within a health care crisis.”\textsuperscript{232} The plan includes tax credits and subsidies to help make early childhood education more affordable and a business credit for construction costs to build more child care facilities; free pre-kindergarten for three- and four-year-olds; access to after-school, weekend and summer care; and increased pay for childcare educators and caregivers.\textsuperscript{233}

Access to child care for very young children is not the only means for supporting children and their parents. As discussed above, school closures brought a shift to remote learning. Among parents, mothers disproportionately took on the additional labor that shift brought, and differences in race and class influenced how parents coped with these challenges and the extent to which they could employ others or try innovative solutions. If remote learning is a likely part of the future of education, as the U.S. faces a second wave or future pandemics, it is critical to generate


policies to support parents and other caregivers who must juggle paid work and parenting.

Another hurdle for families is access to technology and internet necessary to participate in remote learning. According to a report compiled by the National Center for Education Statistics, in 2017, approximately 14% of children ages three through eighteen lacked internet access at home. That general figure masks disparities: 37% of American Indian and Alaska Native children, 19% of Black children, and 17% of Hispanic children lack access, as compared to 12% of white and Asian children. “Pandemia: Latinos in Crisis,” a CBS News special, highlighted the consequences of this digital divide with stories of children sitting outside McDonald’s parking lots to access Wi-Fi needed to receive and submit assignments. The special noted the additional dilemma faced by older students whose parents are essential workers, who cannot focus on their own work when tasked with taking care of younger siblings.

While some school systems opted to make schoolwork optional, others (e.g., in Atlanta, Los Angeles, and New York City) formed partnerships with businesses to provide adequate technology. These included working with Apple, T-Mobile, and Verizon to provide tablets, internet access, and online teaching training to children in need. At the federal level, the digital divide was not specifically addressed in legislation, though $31 billion was included in the CARES Act for states to use in support of K-12 and higher education. Additionally, the Federal Communications Commission implemented the Keep Americans Connected Pledge, requesting broadband and telephone service providers to not terminate services, waive late fees, and open up Wi-Fi hotspots to those affected by the pandemic. Though more than 800 companies signed the pledge, its commitments ended June 30, 2020.

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235 Id.
237 Id.
Much uncertainty accompanied the beginning of the new school year, but longer term, a feminist recovery plan would highlight the underappreciated role of educators and also encourage innovative approaches that address the inequities in the current educational system. It is encouraging, for example, that Florida invested $500 million of the budget towards increases in K-12 and preschool teacher pay, moving the state to the top five for highest starting teacher salary. Though these increases were proposed before the pandemic, the news release in June 2020 focused on the underappreciated essential services teachers provide. No matter what approach school districts take to learning, whether in-person, hybrid, or fully remote, federal aid is crucial in the implementation of these plans, from protecting the health and safety of the students required to return, to closing the digital divide for those who remain remote.

In addition, school closures highlighted a problem “hidden in plain sight”: the food insecurity, or hunger, in the United States—experienced by millions of Americans. Many families were faced with the sudden need to provide additional meals for their school-age children. This problem prompted some positive action.

With the threat of 50.8 million students who regularly depended on school breakfasts and lunches going hungry, the U.S. Department of Agriculture began approving state requests to serve meals during school

241 Press Release, Governor Ron DeSantis Signs Historic Teacher Pay Increases into Law, supra note 159.
244 See Adrian Nicie LeBlanc & Brenda Ann Kenneally, America at Hunger’s Edge, N.Y. Times (Magazine), Sept. 6, 2020, at 6-49 (special issue documenting how the pandemic is revealing food insecurity in America).
246 See KARA BILLINGS & RANDY AUSSENBERG, CONG. RSCH. SERV., R43783, SCHOOL MEALS PROGRAMS AND OTHER USDA CHILD NUTRITION PROGRAMS: A PRIMER, 5-6 (2019) (reporting that the National School Lunch Program, School Breakfast Program, and Child and Adult Care Food Program serve, respectively, 30 million, 14.7 million, and 6.1 million children per day).
closures. Individual school systems used this approval to commit to serving food for the remainder of the schools’ closures. At the federal level, the Families First Act included similar measures to maintain access to student lunches. The provision simplified the approval process for states that requested meal program waivers, including waivers that allowed lunches to be served outside of school and care settings. Additionally, the increase in funding for the Supplemental Nutrition Assistance Program helps address this area of food insecurity. A feminist recovery plan should reckon with the deeper, systemic inequities that contribute to food insecurity in America.

4. Elder Care

As with child care, the COVID-19 pandemic has highlighted the care needs of older Americans and the precarious condition of the undervalued workforce that provides elder care. This spotlight on elder care is due in part to the fact that older people, especially those in nursing homes and facilities for the elderly, have been one visible face of the at-risk community.

Women are disproportionately likely to live in nursing homes. And the workforce that provides their care, disproportionately comprised of women of color, is one of the nation’s most poorly paid and unprotected. A feminist economic recovery plan must address both the inequities


250 Id.

251 See, e.g., Adrian Nicole LeBlanc, Introduction to “America at Hunger’s Edge”, N.Y. TIMES (Magazine), Sept. 6, 2020, at 6, 10, 11 (“[O]ur treatment of hunger as an emergency, rather than a symptom of systemic inequities, has long informed our response to it, and as a result, government programs have been designed to alleviate each peak rather than to address the factors that produce them; . . . even before the pandemic, food insecurity was entangled with unaffordable housing, health care, costs, unreliable transportation.”).

252 See NAOMI CAHN & NINA KOHN, AGING WHILE FEMALE IN AMERICA (forthcoming 2022).

experienced by this workforce\textsuperscript{254} and the economic and emotional burden on families who require this care.

As this older population continues to grow, the number of people involved in formal and informal caregiving of older adults is also expected to rise. Because more adults are expressing a desire to receive this care from home, this heightens the demand for personal care and home health aides.\textsuperscript{255} Lack of Medicare support for such services hinders individuals’ ability to pay for at-home and facility-based care, often leaving family and friends to provide informal care. Family caregivers “provided an estimated 34 billion hours of care in 2017,” which was valued at $470 billion.\textsuperscript{256}

In recent years, a number of federal and state initiatives have implemented innovative ways to support caregiving and caregivers. The National Family Caregiver Support Program funds access to information services and respite services for family caregivers who provide care for adults over sixty, adults with disabilities, or children.\textsuperscript{257} Hawai’i’s Kupuna Caregivers Program provides up to $70 per day of supplemental services for unpaid caregivers—around 75% of whom are women—who work more than thirty hours per week. The money can be used for expenses relating to senior care, such as the costs of adult day care or meals to be delivered to the care recipient.\textsuperscript{258} Washington state enacted “the nation’s first social insurance program for long-term care,” which will reimburse beneficiaries for the cost of long-term services and supports services up to a lifetime cap of $36,500.\textsuperscript{259}

Federal relief plans have provided funding for aging and disability services programs and nursing workforce development, while many state

\textsuperscript{254} Such a plan should also address the inequities experienced by the many immigrant health care workers among this population. See Peters, \textit{supra} note 18; see also \textit{Immigrant Healthcare Workers Are Critical in the Fight Against COVID-19}, NEW AMERICAN ECONOMY RESEARCH FUND (Apr. 9, 2020), https://research.newamericaneconomy.org/report/covid-19-immigrant-healthcare-workers/ (noting that “more than 400,000 immigrants made up at least one in three healthcare workers in 2018”).


\textsuperscript{258} Kupuna Caregivers Program, AGING AND DISABILITY RESOURCE CTR., https://Hawai‘iadrc.org/Portals/_AgencySite/KCG%20Info%20sheet%2071117_FINAL.pdf.

recovery plans specify guidance for older adults. Even so, federal and state officials have debated the place of elder care guidelines in economic recovery plans. Notoriously, Texas’s Lieutenant Governor Dan Patrick went so far as to proclaim that economic recovery should override protecting the lives of parents and grandparents.260 Conversely, Presidential candidate Joe Biden’s caregiving plan includes $450 billion to boost senior care. The funds would be used to increase state Medicaid funding, create innovative models for long-term care outside of traditional nursing homes, support more at-home alternatives, and provide further support to industry workers while increasing jobs.261 One economic analysis of Biden’s plan predicts that such “ambitious” public investment in elder care—combined with Biden’s proposed investment in child care—would create millions of new jobs, provide support for women to remain in the labor force, make both child care and elder care more affordable for families, and also improve the wages and training of “the care workforce.”262 This sweeping proposal illustrates the concept of redefining recovery to include moving forward, rather than moving back to the same place. This instructive forward-looking approach—evident in the Biden/Harris campaign theme, “Build Back Better”—insists that the “unacceptable truths” revealed by the pandemic about “structural weakness and inequalities” call for imagining and building an economy that advances gender and racial equity for working families.263

3. Other Crucial Components: Health Care and Protection Against Domestic Violence

Gender equity also entails components such as affordable and good quality health care, including for sexual and reproductive health, and freedom from domestic violence. These areas of inequity affect women in

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260 Adrianna Rodriguez, Texas’ lieutenant governor suggests grandparents are willing to die for US economy, USA TODAY (Mar. 24, 2020, 9:14 AM), https://www.usatoday.com/story/news/nation/2020/03/24/covid-19-texas-official-suggests-elderly-willing-die-economy/2905990001/ (“No one reached out to me and said, ‘as a senior citizen, are you willing to take a chance on your survival in exchange for keeping the America that all America loves for your children and grandchildren?’ And if that’s the exchange, I’m all in.”).


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This preprint research paper has not been peer reviewed. Electronic copy available at: https://ssrn.com/abstract=3689285
both the workplace and the home. Access to health care is as necessary now as it was before the pandemic, only now there is the added barrier of a strained healthcare system. At a time when the social imbalances of gender, race, and wealth are exacerbated, ensuring access to health care must shape immediate federal and state pandemic responses, as well as ensure future protections.

a. Health Care: According to the Center for American Progress, almost sixty-eight million women and girls in the United States have a preexisting condition affecting their health. Before the Affordable Care Act (ACA) was enacted, such preexisting conditions – including pregnancy, childbirth-related procedures, and reproductive cancers – were regularly a basis for denying coverage or charging higher rates. The ACA changed that. Correspondingly, transgender status is no longer a preexisting condition that allowed denial of coverage, though the ACA did not guarantee coverage for gender-affirming care. Today, with tens of millions of Americans laid off from work, the ACA provides a critical safety net.

Yet, amidst the pandemic, contraceptives, abortions, and routine services have been mischaracterized as non-essential or elective. And the Trump administration made two leveraged attacks against the Affordable Care Act. On June 12, 2020, the Department of Health and Human Services released a final rule reinterpreting “sex,” for purposes of discrimination in health care under the ACA, as referring only to “male or female and as determined by biology.” On June 25, 2020, the Trump administration filed a brief urging the Supreme Court to strike down the ACA, arguing against

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266 Mul K. Kim, Being a Transgender Person is No Longer a Pre-existing Condition, NAT’L CTR. FOR TRANSGENDER EQUALITY (Mar. 29, 2010), https://transequality.org/blog/being-a-transgender-person-is-no-longer-a-pre-existing-condition.


By contrast, even pre-pandemic, several states provided a blueprint for expanding access to health care. Such strategies included additional state funding for premiums, easier enrollment, year-round enrollment, and requiring states to offer residents a public option.\footnote{Jesse Nadel, \textit{How States Are Combating Trump’s ACA Sabotage}, CTR. FOR AM. PROGRESS (Aug. 1, 2019, 9:00 AM), https://www.americanprogress.org/issues/healthcare/news/2019/08/01/472615/states-combating-trumps-aca-sabotage/.} Effective January 1, 2020, for example, California became the first state “to offer premium subsidies for marketplace enrollees with family incomes between 400 and 600 percent” of the federal poverty level, a part of the middle class “ineligible for federal premium assistance under the ACA.”\footnote{Id. at 3.} As another example, Governor Jay Inslee signed a law that, by 2021, will provide residents of Washington with a public option for low-cost insurance – the first state to do so.\footnote{Id. at 4-5.}

b. Gender-based Violence: As discussed in Part III.A.d, since the outbreak of COVID-19, the rate and severity of domestic violence have increased around the world.\footnote{See supra Part III.A for discussion of domestic violence.} The CARES Act responded to this increase by providing funding to hotlines and for temporary housing, as well as eviction protections for housing programs.\footnote{Coronavirus Aid, Relief, And Economic Security Act, Pub. L. No. 116-136, 116th Cong. (2020); see Robin Bleiweis & Osub Ahmed, \textit{Ensuring Domestic Violence Survivors’ Safety} (Aug. 10, 2020), https://www.americanprogress.org/issues/women/reports/2020/08/10/489068/ensuring-domestic-violence-survivors-safety/} While necessary, this relief is inadequate for improving the existing survivor support infrastructure. Instead, advocates argue policymakers must “increas[e] access to paid safe days and unemployment insurance for survivors seeking help; ensur[e] resources for Native American women and other communities at higher risk; and ensur[e] that domestic violence shelters and programs that provide direct support to survivors are deemed essential businesses and receive significant funding.”\footnote{Shilpa Phadke et al., \textit{What Women Need}, CTR. FOR AM. PROGRESS, 40 (June 8, 2020), https://cdn.americanprogress.org/content/uploads/2020/06/05133219/WhatWomenNeed-COVID.pdf.} The updated HEROES Act, passed in the House in October, includes additional emergency appropriations for state and local programs on the prevention and prosecution of violence against women programs,
family violence prevention services, and a national domestic violence hotline.\footnote{Blog: Don’t Let Congress Ignore Survivors! Senate Action Needed Now, NCADV, https://ncadv.org/blog/posts/action-alert-dont-let-congress-ignore-survivors-senate-action-needed-now (describing updating Act as better than original one for domestic violence survivors).}

Addressing gender-based violence during the pandemic and in the “long-term recovery” is an element in the Hawai‘i Commission’s feminist plan.\footnote{BUILDING BRIDGES, NOT WALKING ON BACKS, supra note 34, at 15.} Focusing both on domestic violence and sex trafficking, the plan diagnoses an “acute shortage in public interest lawyers, social workers and advocates, housing, and programming to assist victims” and calls for legislation to address these problems by enacting “loan forgiveness for public interest laywers,” increasing funding for victim-assistance programs, and creating “a comprehensive campaign” to address gender-based violence.\footnote{Id. at 15.}

States began to offer domestic violence response plans with an emphasis on quick implementation and cultural competency. For example, New York launched a Domestic Violence Task Force to address the pandemic upsurge in domestic violence cases, and it released a list of recommendations to help the state “adapt to the new normal and to transform its approach to domestic violence.”\footnote{The New York State Council on Women and Girls COVID-19 Domestic Violence Task Force, COVID-19 Domestic Violence Task Force Recommenations, 1 (May 2020), https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/DVTF-Report-FINAL.pdf.} The list includes using new technologies to reach more survivors, providing flexible funding to meet the diverse needs of survivors, providing more housing navigation services, and addressing the specific needs of Black, Indigenous, and people of color survivors.\footnote{Id. at 2-3.} State recovery plans would do well to adopt, and implement, such recommendations.

V. CONCLUSION

The pandemic has reinforced gendered expectations of roles at home, while also reinforcing the gendered wage gap and the gendered and raced nature of paid care work. Paradoxically, the pandemic’s illumination and exacerbation of such inequalities generates opportunities to center gender short-term recovery and long-term economic resilience efforts in an intersectional way that reflects race, class, and other identity dimensions.\footnote{See Issues/Agendas, NAT’L CTR. FOR TRANSGENDER IDENTITY (2020), https://transequality.org/issues/agendas.}

Moving forward to address these inequalities creates the possibilities for a feminist recovery plan. Such a plan means providing paid family and sick leave, improved child care, and protection from violence. It also means
implementing policies related to workplace flexibility, equal pay, and freedom from employment discrimination, as well as familial barriers to remote learning, and greater recognition of—and better working conditions for—essential workers.