

BENEFITS AND CHALLENGES TO “PERIOD POLICIES” – MENSTRUATING INDIVIDUALS ARE EMPOWERED THROUGH INCLUSIVE DIALOGUE AND ADVOCACY

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The governing laws within the United States center the experience of white, cis-gender, able-bodied males and largely ignore the existence and experience of menstruating individuals within the workplace.¹

Despite the progress made since Judy Blume’s watershed novel, *Are You There, God? It’s Me, Margaret*, the topic of menstruation is still avoided, shamed, stigmatized, and misunderstood. One possibility to advance the rights of menstruating individuals and recognize these cyclical realities is menstrual leave, or “period policies.” The goal of this type of legislation is to address the intersectional indignities of menstrual injustice and normalize periods through more accommodating employment regulations.² However, the dialogue surrounding these policies has been limited and risks leaving behind individuals who are already excluded from many workplace protections, compounding the discrimination and disparate treatment experienced.

Menstrual stigma has long resulted in exclusion and vulnerability, despite the fact that 800,000,000 people on the planet menstruate on any given day.³ As COVID-19 disrupts global health care, there is a renewed focus on access to and quality of care for

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¹ For example, menstruating individuals who take the bar examination to access the legal profession are ignored in planning for the realities of this experience. See Margaret E. Johnson, Marcy L. Karin, & Elizabeth B. Cooper, *Stop the Stigma Against Menstruation; Starting with the Bar Exam*, THE NAT’L JURIST (July 28, 2020), <https://www.nationaljurist.com/national-jurist-magazine/stop-stigma-against-menstruation-starting-bar-exam> [https://perma.cc/N3U3-A36U].

² Margaret E. Johnson, *Menstrual Justice*, 53 U.C. DAVIS L. REV. 1, 52 (2019).

³ ACLU, *The Unequal Price of Periods: Menstrual Equity in the United States*, <https://static1.squarespace.com/static/59b30c869f8dce4dd22e04fd/t/5dec557a2a03fa5b2d4b2334/1573672315770/MenstrualEquityHandbook.pdf> [https://perma.cc/MM4U-XCGK].

vulnerable communities—and these vulnerabilities are increasing under the pandemic.⁴ Period policies are one potential tool in a broader set of recommended practices to enhance menstrual equity, a concept that champions societal recognition, without shame or stigma, of the reality of having your period.⁵ In the workplace, menstruation-related symptoms result in lost productivity, absenteeism, and a complicated array of tactics to avoid revealing the source of these symptoms. Menstruating individuals are often punished for their periods in the workplace (and at schools, in prisons, through the pink tax, etc.).⁶ Advocates argue that period policies render these indignities avoidable and improve the experience within the workplace for menstruating individuals.⁷

Yet, further research is needed within the United States to gauge whether period policies actually empower or impede menstruating individuals within the workplace—such policies have seen uneven success internationally.⁸ One company that is frequently cited as employing a progressive period policy is Nike, the U.S.-based sportswear supplier with over 75,000 employees globally.⁹ Nike requires subcontractors to follow “local laws,” which could include menstrual leave *if* the local laws have such a

⁴ UNICEF, *Periods in the pandemic: 9 Things We Need to Know* (Aug. 31, 2020), <https://www.unicef.org/coronavirus/covid-19-periods-in-pandemic-9-things-to-know> [<https://perma.cc/ZZ2N-M7ES>]. “Sadly, this is already a reality for women and girls living in poor and marginalized communities, emergency and humanitarian contexts, incarceration facilities, have special needs or disabilities and/or facing other barriers.” Sandy Garçon, *Covid-19 Has Made Menstrual Health More Urgent Than Ever*, PSI (Mar. 18, 2020), <https://www.psi.org/2020/03/covid-19-has-made-menstrual-health-more-urgent-than-ever/> [<https://perma.cc/739A-FLEY>].

⁵ Bridget J. Crawford et. al., *The Ground on Which We All Stand: A Conversation About Menstrual Equity Law and Activism*, 26 MICH. J. GENDER & L. 341, 343 (2019).

⁶ See, e.g., Michael Alison Chandler, *This Woman Said She Was Fired for Leaking Menstrual Blood at Work. The ACLU is Suing for Discrimination*, THE WASHINGTON POST (Sept. 11, 2017), https://www.washingtonpost.com/local/social-issues/ga-woman-said-she-was-fired-for-leaking-during-her-period-at-work-the-aclu-is-suing-for-discrimination/2017/09/08/50fab924-8d97-11e7-8df5-c2e5cf46c1e2_story.html [<https://perma.cc/D39D-GXUB>]. This punishment may be even more severe if the individual is also punished for intersecting factors, such as gender identity, that menstruation may reveal.

⁷ See generally Crawford, *supra* note 6.

⁸ Jennifer Weiss-Wolf, *U.S. Policymaking to Address Menstruation: Advancing an Equity Agenda*, 25 WM. & MARY J. RACE, GENDER & SOC. JUST. 493, 521 (2019) (“Some have unwieldy, even humiliating medical requirements. Most tend to be under-utilized for fear of backlash.”).

⁹ Tugba Sabanoglu, *Number of employees of Nike worldwide from 2009 to 2020*, STATISTA (Feb. 4, 2021), <https://www.statista.com/statistics/243199/number-of-employees-of-nike-worldwide/> [<https://perma.cc/3R9P-TNWL>].

requirement.¹⁰ But nowhere in the Code of Conduct does it state that Nike employees qualify for menstrual leave. The company may require compliance with all applicable local laws regarding menstrual leave (if such laws exist), but this type of policy has for the most part not been adopted within the United States. If a company like Nike released an inclusive policy for *all* menstruating individuals, it would set the stage for others to follow in its footsteps.

With no employer as a clear leader, the U.S. is still grappling with the social, religious, and practical implications of period legislation. As in Blume's tome, religion often plays an intersectional role in the utilization and success (or lack thereof) of period policies, particularly in countries where paternalistic sexism is tied to implementation of period policies.¹¹ For example, in 2017, Italy introduced a menstrual leave policy that was touted as "a standard-bearer of progress and social sustainability."¹² Yet, critics posit that the law might actually penalize women when they are already struggling to participate in the workforce: employers would be incentivized to hire non-menstruating individuals instead.¹³ The legislation stalled. Period policies or laws will not improve working conditions "if women fear that using such leave will disadvantage their prospects of workplace advancement."¹⁴

Finally, and most importantly, the use of menstrual leave policies risks reinforcing stereotypes or *increasing* disadvantage, especially for individuals with intersecting

¹⁰ NIKE, *Inside the Lines: Nike Code of Conduct*, https://s1.q4cdn.com/806093406/files/doc_downloads/2019/05/Nike-Inside-the-Lines-Code-of-Conduct_May-2019.pdf [<https://perma.cc/S5JU-4WPR>]; see also MENSTRUAL MATTERS, *Menstrual Leave: What Lies Beneath . . . Part 1 – Origins* (Aug. 21, 2019), <https://www.menstrual-matters.com/ml-origins-1/> [<https://perma.cc/C9LH-7VNX>].

¹¹ Johnson, *supra* note 3, at 16, 19. "Although historical narratives surrounding menstruation as destructive, impure, or dirty have largely been abandoned by many religions, those narratives are still embedded within broader culture today." *Id.* at 19.

¹² Anna Momigliano, *Giving Italian women 'menstrual leave' may backfire on their job prospects*, THE WASH. POST (Mar. 24, 2017, 6:00 AM), <https://www.washingtonpost.com/news/worldviews/wp/2017/03/24/giving-italian-women-menstrual-leave-may-backfire-on-their-job-prospects/> [<https://perma.cc/C6Z5-6LS9>].

¹³ *Id.*

¹⁴ Beth Goldblatt & Linda Steele, *Bloody Unfair: Inequality Related to Menstruation – Considering the Role of Discrimination Law*, 41 SYDNEY L. REV. 293, 308 (2019). Furthermore, the policy mentioned, *supra* note 13, focused on "women" and excluded other individuals who menstruate.

identities.¹⁵ Most conversations or potential legislation surrounding period policies do not consider individuals who menstruate that are intersex, transgender, gender diverse, or other—these individuals must not be excluded from the protections of such policies, if enacted, and should be included in the dialogue.¹⁶ Critical menstrual scholars note that gender inequality relating to menstruation “is exacerbated for women who are positioned outside of normative constructs of the white, able, middle-class woman.”¹⁷ There are serious safety and privacy implications for a menstruating individual within the workplace who is forced to reveal confidential health information that would result in discrimination and even danger in the workplace.¹⁸

The question of whether to employ workplace period policies is layered, and one that has received far too little attention in the past. When scrutinized through an intersectional lens, the analysis becomes even more challenging—but no less urgent. There is insufficient scholarship, dialogue, and consideration of these unique issues, particularly

¹⁵ Goldblatt & Steele, *supra* note 15, at 308-309.

¹⁶ Sarah E. Frank, *Queering Menstruation: Trans and Non-Binary Identity and Body Politics*, 90 SOCIOLOGICAL INQUIRY 371, 376 (2020) (“Research and data about menstruation within LGBTQIA spaces and identities are scarce”); Jennifer Weiss-Wolf, *It’s 2021: Can We Finally Achieve Full Menstrual Equity?*, MARIE CLAIRE (Jan. 27, 2021), <https://ca.finance.yahoo.com/news/2021-finally-achieve-full-menstrual-202600197.html> [<https://perma.cc/2943-2B3U>] (“At the same time, we owe deeper consideration to those for whom the costs of menstruation go beyond dollars and cents, but also extend to their safety—such as transgender people, those in police custody, and domestic violence survivors. Many people who need support exist outside the societal safety nets where menstrual products are currently made available. While doing so, activists and lawmakers alike should use gender-neutral language as the default in order to be inclusive of trans and nonbinary individuals when advocating for and advancing menstrual policies.”).

¹⁷ Goldblatt & Steele, *supra* note 15, at 309.

¹⁸ See, e.g., Johnson, *supra* note 3, at 27 (“Bleeding while trans comes with a lot of unique challenges that a cisgender person might not think about. For example, it can be difficult to know which bathroom is safe to use while menstruating, or to figure out how to smuggle a tampon into the men’s room (and out of, since men’s rooms don’t have trash receptacles in the stalls) without being outed. We may experience swelling that makes our chests more noticeable, or we may feel forced to interact intimately with our vaginal openings. Both of these experiences can cause dysphoria (anxiety around our body not matching up with our identity). Remember that there isn’t a single universal trans or nonbinary menstrual experience.”). There have been some signs that employers are thinking critically about their workers’ identities and experience. One company in India in 2020 instituted a policy of ten days of period leave for all menstruating individuals, including gender diverse employees. Alex Bollinger, *Company Gives Transgender People 10 Days of “Period Leave” to Menstruate*, LGBTQ NATION (Aug. 11, 2020), <https://www.lgbtqnation.com/2020/08/company-gives-transgender-people-10-days-period-leave-menstruate/> [<https://perma.cc/AH75-JE7V>].

with respect to gender diverse individuals.¹⁹ As the conversation on period policies continues, it must be reframed to allow for not only an accounting of menstruation broadly, but also the intersecting ways in which an individual can experience menstruation in the workplace.²⁰ The current pandemic has magnified the discrepancies present in healthcare in terms of quality and access. Hopefully, in turn, the country will show more willingness to take action to increase support and protections in the workplace, which might catalyze dialogue that is inclusive of all menstruating individuals.²¹

¹⁹ Klara Rydström, *Degendering Menstruation: Making Trans Menstruators Matter*, in THE PALGRAVE HANDBOOK OF CRITICAL MENSTRUATION STUDIES 945, 945 (Chris Bobel et al. ed., 2020) (“Yet, even though we know that menstruators are of various gender identities, there are few scholarly pieces with a focus on menstruators other than cis women.”).

²⁰ Weiss-Wolf, *supra* note 9, at 525; Johnson, *supra* note 3, at 73-74.

²¹ Advocacy organizations, including PERIOD, WASH United, Racket, the ACLU, and more, and have been pushing for menstrual equity for decades. Any progress will build upon and amplify the work they have been doing – but broader support is needed for any legislative change. See PERIOD, *Who We Are*, <https://period.org/who-we-are> [<https://perma.cc/B6GZ-WMDG>]; Savita Iyer, *These Amazing Groups Are Erasing The Global Stigma Of Menstruation*, SELF (Mar. 8, 2016), <https://www.self.com/story/these-amazing-groups-are-erasing-the-global-stigma-of-menstruation> [<https://perma.cc/GQ4M-HX69>]; ACLU, *supra* note 4.