

# Family and Medical Leave: Making Time for Family Is Everyone's Business

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**W**hen the Family and Medical Leave Act (FMLA) was signed into law in 1993, it became America's first federal policy explicitly designed to help employees balance work and family. It broke new ground by requiring employers to acknowledge employees' critical family obligations, and by recognizing the dual economic and caregiving roles of both women and men.

Although extremely modest when compared to policies in most other industrialized nations, the FMLA did not move easily from idea to implementation. Instead, it took nine years and the efforts of hundreds of individuals, organizations, and state and federal policymakers to establish the basic principle that people should not have to choose between their loved ones and their jobs. Since

1993, the FMLA has helped more than 35 million people keep their jobs and health insurance while caring for new babies and sick family members, or while recovering from their own serious illnesses. Approximately 18% of the leaves are taken to care for a newborn or a newly adopted child.<sup>2</sup>

The National Partnership for Women & Families led the fight for the FMLA from conception to enactment and continues to lead efforts to make family leave more available and affordable. This article tells the story of the contemporary movement for family and medical leave. What did it take to pass the FMLA? What has it achieved? And what are the next steps for making family and medical leave policies more meaningful for today's working families?

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## What It Took to Pass the FMLA

The FMLA had its roots in debates over a California law mandating maternity leave for childbirth. After a federal district court in 1984 struck down that law as sex discrimination against men, Congressman Howard Berman, a Democrat from California, sought help from the National Partnership for Women & Families, then the Women's Legal Defense Fund, in framing a bill that would require employers to grant maternity leave.

Instead, the National Partnership put forward the idea of a broader leave that would not only meet the needs of new mothers, but address a wider range of work/family conflicts affecting both women and men.

To advocates for women's issues and civil rights, the existing maternity leave programs were flawed in several ways. First, there was no national policy toward maternity leave, just a thin patchwork of state and employer programs. Second, working women—and men—needed job-protected time off not only when babies were born, but also for adoption and in times of family illness. Third, a focus on maternity leave alone risked jeopardizing advances that had been won in the fight against sex discrimination (such as the Pregnancy Discrimination Act of 1978).

These arguments convinced key lawmakers and advocates that it was time to establish a national family and medical leave that was comprehensive and gender-neutral. From almost the very first draft, the FMLA was designed to include both adoption and childbirth, mothers and fathers, those caring for seriously ill family members, and those who were ill themselves. This inclusive approach recognized that babies and parents need

to be together immediately after birth and that the need for caregiving does not end with infancy. Moreover, now that women have entered the workforce to stay, making time for family is everyone's business.

To build the grassroots support necessary to move a major new policy initiative, the National Partnership set out to create the broadest coalition possible. Early members of the Family and Medical Leave Coalition included feminist law professors, the Association of Junior Leagues, the Children's Defense Fund, and the League of Women Voters. Over time it grew to include the American Association of Retired Persons, Alzheimer's Association, Catholic Conference, Hadasah, United Steelworkers of America, American Academy of Pediatrics, and more than 100 other groups focused on women, children and seniors, and on issues of labor, disability, religion, and civil rights.

In their nine-year campaign, coalition members worked to make the case for family and medical leave. They cultivated relationships with unlikely allies in Congress and elsewhere, finding common ground in family values that cut across typical party lines. They testified before the House and Senate and helped secure witnesses for hear-

ings. They drafted model legislation and helped to pass state laws that primed the ground for the federal effort. They found employers who asserted that providing family and medical leave was good for business, and they found families whose stories made the issue come alive. They held press conferences, met with newspaper editors, conducted research, distributed fact sheets, and debated the issue at every opportunity. By addressing a clear need and linking so many interests, the campaign for the FMLA gained bipartisan and popular support. The breadth of the coalition helped insulate supporters from accusations of liberal extremism, economic naiveté, or hostility to family values.

Attacks on the idea of family leave were, however, unrelenting. Well-financed business interests and trade associations led the charge against the FMLA, including the Society for Human Resource Management (an organization of personnel managers), the National Federation of Independent Businesses (the small business lobby), and the U.S. Chamber of Commerce. They objected to any laws that set standards of behavior for employers, and they argued that requiring even unpaid leave would be disastrous for business. Other ideological leaders opposed any policy that, in their view, encouraged women to stray from their traditional role in the home. The steady flow of attacks on the FMLA by these groups delayed its passage for nearly a decade.

In fact, after the FMLA was first drafted in 1984, a version of the legislation was introduced in Congress every

year until it became law in 1993. With growing public support and compromises that reduced the period of leave and exempted small employers, the FMLA passed both the House and the Senate in 1990 and 1991. It was vetoed, however, by President Bush, and became a key issue in the 1992 presidential campaign. Immediately after President Clinton's inauguration, the bill passed again with strong bipartisan support, and on February 5, 1993, the FMLA became the very first bill President Clinton signed into law. (See Box 1 for details on the law.)

## What the FMLA Has Achieved

Since 1993, an estimated 35 million working women and men have taken leave under the FMLA. Business has not been hurt by it: A 1998 survey of businesses with 100 or more employees (all covered by the law) found that 84% reported no costs or actual cost savings as a result of their family and medical leave policies.<sup>3</sup> Although business opposition has not disappeared, opponents' attacks have diminished in volume and narrowed to calls for "technical corrections" affecting the application of the law.<sup>4</sup> The general public has embraced the FMLA as much in practice as it did in theory. A 1998 survey found that 88% of Americans who were familiar with the law viewed it favorably.<sup>5</sup>

Congress created the bipartisan Commission on Leave to measure the FMLA's affect on employers and employees. The Commission's extensive surveys of randomly selected workers and businesses across the country found

## Box 1

### Key Components of the FMLA

The FMLA allows eligible women and men to take up to 12 weeks of unpaid leave from work to:

- ▶ Care for newborn or newly adopted children;
- ▶ Care for children, parents, or spouses who have serious health conditions; or
- ▶ Recover from their own serious health condition (including pregnancy and childbirth).

To be eligible, a person must:

- ▶ Work for a private employer who has 50 or more employees (within a 75-mile radius), the federal government, or a state or local government; and
- ▶ Have worked for that employer for at least one year and at least 1,250 hours during the last 12 months (an average of 25 hours per week).

The FMLA entitles those who have taken leave under the law to return to their previous job, or to an equivalent job with the same pay, benefits, and other conditions. Employers who provide health insurance must also continue to pay their share of the health insurance premium for employees on FMLA leave.

## Box 2

### Usage and Impact of the FMLA Findings of the Commission on Leave

In 1995, and again in 2000, the U.S. Department of Labor conducted national, random sample surveys asking employers and employees about their experiences with the FMLA and with family leave in general. The 2000 Survey of Establishments gathered information from a random sample of 1,839 private (nongovernment) business establishments, some covered by the FMLA and some not. The 2000 Survey of Employees interviewed a random sample of 2,558 U.S. residents who had been employed at any time since January 1, 1999. Key findings from these recent surveys include the following:

#### Employees need and use the FMLA.

- ▶ Approximately three million employees per year took some form of FMLA-covered leave.

- ▶ In 2000, 17% of all employees took a leave for family or medical reasons.
- ▶ About 8% of the leaves were taken for maternity leave, and 18% of leaves were taken to care for a newborn, newly adopted, or newly placed foster child.
- ▶ The median leave taken is only 10 days long, and most employers cover the leave by assigning work to other employees (98%) or hiring a temporary replacement (41%).
- ▶ About one-third of leave-takers (34%) received no pay during their leave, and almost 1 in 10 workers who took leave and did not receive full pay reported they were forced to go on public assistance.
- ▶ Fully 78% of those who needed but did not

take leave said that their inability to afford unpaid leave was a reason for their decision.

#### The FMLA has not harmed employers.

- ▶ Nearly two-thirds of employers (64%) say that complying with the FMLA is very easy or somewhat easy.
- ▶ About 90% of covered employers said that complying with the FMLA caused no increase or just a small increase in their administrative costs.

#### Knowledge of the FMLA is limited.

- ▶ Although 84% of employers knew that their establishments were covered, nearly 50% of employees covered by the law did not know if they were.

Source: Cantor, D., Waldfogel, J., Kerwin, J., et al. *Balancing the needs of families and employers: Family and Medical Leave surveys, 2000 update*. Rockville, MD: Westat, 2001. Available online at <http://www.dol.gov/dol/asp/public/fmla/main.htm>.

that the FMLA helped working families without harming their employers. The law had its intended effect of expanding employees' access to family and medical leave. In 1994 to 1995, two-thirds of covered work sites had changed their policies to comply with the FMLA, usually by increasing the reasons that justified taking a leave.<sup>6</sup> Today, only one-half of work sites not covered by the law provide 12 weeks of parental leave, and only one-third offer 12 weeks of leave for all FMLA-covered reasons.<sup>2</sup> Key findings from the Labor Department's 2000 update of the Commission's surveys are summarized in Box 2.

### Making Family and Medical Leave Work for More Americans

Although the FMLA is a major step forward in federal work/family policy, even its strongest supporters know that it is just a first step. The product of nine years of

negotiations and compromises, the law covers only certain employees and employers, and it assures only an unpaid leave. These limitations do not diminish the symbolic importance or actual impact of the FMLA, but they provide a clear agenda for advocates of family and medical leave. The coalition that mobilized to support passage of the FMLA has reconvened in an effort to (1) lower the threshold of law to cover employees in mid-sized businesses, and (2) find ways to provide income to people on unpaid leave.

#### Cover More People

The FMLA applies only to work sites that have 50 or more employees. This excludes about one-third of the U.S. labor force, and about 45% of employees are not eligible for leave because they have not worked for their current employer for the required one year and 1,250 hours (about 25 hours per week).<sup>2</sup> Such eligibility criteria tend to exclude especially vulnerable groups such as low-wage workers, part-time workers, and women leaving welfare for work.

In 1997, a National Partnership study found that expanding the FMLA to cover businesses with 25 to 49 employees would give an estimated 13 million more workers access to job-protected leave. Although such a change would cut the proportion of the private workforce not protected by the FMLA by almost one-third (from 43% to 29%), it would affect only 6% more of the nation's private businesses.<sup>7</sup>

There is solid evidence that such an expansion would be politically feasible and not burdensome for employers. Several states already require mid-sized employers to provide some form of family or medical leave, such as leave for pregnancy-related disability or to attend children's school functions. The District of Columbia, Oregon, and Vermont extended the full range of FMLA protections to workers in mid-sized companies.<sup>8</sup> Federal legislation to lower the law's coverage to firms with 25 employees has been introduced each year since 1997, and in a 1998 survey, 79% of Americans said they favored such an expansion.<sup>5</sup>

Anecdotal reports indicate that many small businesses pride themselves on being family-friendly and use the FMLA as a model for their own policies.<sup>9</sup> When they speak publicly about the bottom-line benefits of providing family and medical leave, these employers find a ready audience.<sup>10</sup> Even so, because influential business interests remain staunchly opposed to any attempts to expand the FMLA, a stalemate is developing. In 1993, the FMLA passed with strong bipartisan support, but the political climate in the nation's capitol today is far more polarized, and it may well be difficult to pass federal proposals to expand the FMLA.

### **Make Leave More Affordable**

The fact remains, moreover, that the FMLA provides only unpaid leave. As a result, the law's promise is unfulfilled for the many who cannot go without a paycheck during a leave. The United States is one of the only industrialized countries that fails to provide any income during family or medical leave.<sup>11</sup> In both the 1995 and 2000 surveys, the U.S. Department of Labor found that

## Most Americans—82% of women and 75% of men—support “extending state unemployment or disability insurance programs to cover unpaid family and medical leave.”

the primary reason people do not take needed leave is that they cannot manage without pay.<sup>2,6</sup> In 1995, nearly 1 in 10 FMLA users who did not receive full pay was forced onto public assistance while on leave. This rate doubled to one in five users with annual family incomes below \$20,000. Concerned by these findings, the Commission on Leave called for consideration of a “uniform system of wage replacement during periods of family and medical leave.”<sup>6</sup>

Early discussions about the FMLA addressed the possibility of providing some pay during leave. However, supporters believed that establishing a broad right to job-protected leave was an essential first step. Now, with the right to leave itself firmly established, advocates have returned to the issue of affordability. In 1999, the National Partnership launched The Campaign for Family Leave Benefits to coordinate the developing movement to make family leave more affordable by organizing state coalitions, reviewing model legislation, and providing up-to-date information about the latest research and policy developments.

Momentum for paid leave is building on several fronts. At the grassroots level, as of early 2001, legislatures in 19 states had looked at the problem of unpaid leave. Five states—California, Connecticut, Illinois, New Hampshire, and New York—have conducted studies (some are ongoing) to help them decide whether, when, and how to establish family leave benefits.

Lawmakers and advocates in such states as Indiana, Maryland, Massachusetts, New Jersey, and New Mexico are looking at the option of letting people collect unemployment insurance while on unpaid family and medical leave. This approach would minimize employer costs by spreading them across the entire workforce and would minimize administrative costs by relying on the existing unemployment insurance system. Massachusetts economists estimate that this approach would cost approximately \$10.81 per covered employee per year.<sup>12</sup> In 2000, the U.S. Department of Labor adopted a regulation encouraging states to provide unemployment benefits to working parents who take leave to care for newborns or newly adopted children.

Another approach would provide a family leave benefit through state disability insurance programs. California, Hawaii, New Jersey, New York, Rhode Island, and Puerto Rico have statewide temporary disability insurance programs that already provide short-term, partial wages for employees with disabilities that are not work-related, including pregnancy. Proposals in California, New Jersey, and New York would expand these programs to cover leaves taken by fathers, adoptive parents, and those caring for seriously ill family members.

Policymaker interest in providing a family leave benefit is fueled by a consistently high level of public support for paid leave. A 1998 survey found that most Americans—82% of women and 75% of men—support “extending state unemployment or disability insurance programs to cover unpaid family and medical leave.”<sup>5</sup> More recent surveys have echoed these findings.<sup>13,14</sup>

Given this support, leaders of the movement for family leave benefits are optimistic about bringing state and federal policies into closer alignment with the needs of working families, even if it takes a long time.

## Conclusion

At a time when new research on early childhood development has heightened interest in helping parents spend time with new babies, the FMLA provides a foundation for new types of discussions among parents, employers, and policymakers. The law is significant for new parents,

yet its widespread appeal comes from the range of caregiving needs it covers, including personal illness and care for aging parents. In 1998, one-half of all Americans—and two-thirds of those under age 45—expected to need family or medical leave in the next 10 years.<sup>6</sup> This is not surprising given the growing interest in child development, the aging of the population, and a changing health care system that places more caregiving burdens on family members. Such a large and diverse constituency can only strengthen public support to help working families care for infants and seriously ill children.

## ENDNOTES

1. The authors were formerly with the National Partnership for Women & Families, respectively as Vice President/General Counsel and Communications Director. They were responsible for the development and early implementation of the Family Leave Benefits Campaign.
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