
Impact of Family and Medical Leave on Non-covered Establishments

More than 89 percent of U.S. establishments are not covered by the Family and Medical Leave Act (FMLA) based on estimates from the 2000 Survey of Establishments, while some 33.6 million employees work for non-covered establishments. The purpose of this chapter is to describe the family and medical leave policies of these businesses, and to discuss the perceived impact of these policies on non-covered establishments.³⁶ The first section of this chapter describes family and medical leave policies and practices of these establishments. The second section describes the perceptions of the impact of their current family and medical leave policies on their businesses and employees. Finally, the chapter presents analyses to explore some of the implications of expanding the FMLA to the largest of these non-covered establishments.

Differences between groups (including the 1995 and 2000 surveys) were analyzed for statistical significance by means of either chi-square tests or z-tests. These tests were computed taking into account the specific sample design and weighting of the data. An observed difference has been deemed “significant” if there is less than a 10 percent chance that the difference occurred by chance, given that the null hypothesis of “no difference” is true (i.e., $p < .10$). Furthermore, for all significant differences it is noted whether the significance is at the 10 percent level ($p < .10$) or the 5 percent level ($p < .05$).

³⁶ Establishments were classified as not covered by the Act if they had fewer than 50 employees at the sampled location *and* if they had fewer than 50 employees in total in locations within 75 miles of the sampled location.

7.1 Non-covered Establishments and Their Family and Medical Leave Policies

This section describes the characteristics of non-covered establishments. It also briefly reviews their policies, discussed previously in Chapter 5, and describes some of their practices for managing family and medical leave.

7.1.1 Establishment Characteristics

The majority of non-covered establishments are in the service or all other industries economic sectors (Figure 7.1; Appendix Table A2-7.1). Only about 20 percent are in manufacturing or retail sectors. In terms of size, roughly 80 percent of non-covered establishments have 10 or fewer employees (Figure 7.2; Appendix Table A2-7.2). Another 16 percent have 11 to 24 employees, while only 4 percent have between 25 and 49 employees.

Figure 7.1. Standard Industrial Classification of Non-Covered Establishments: 2000 Survey

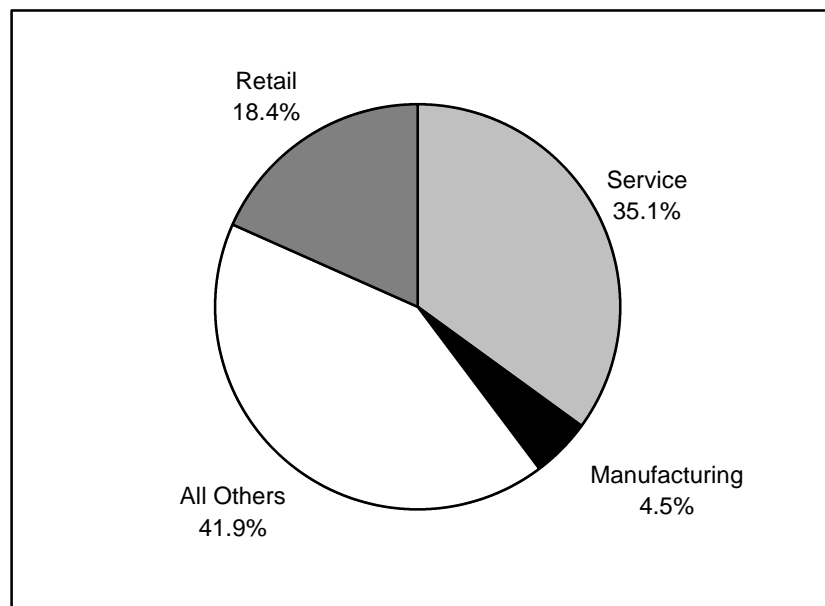
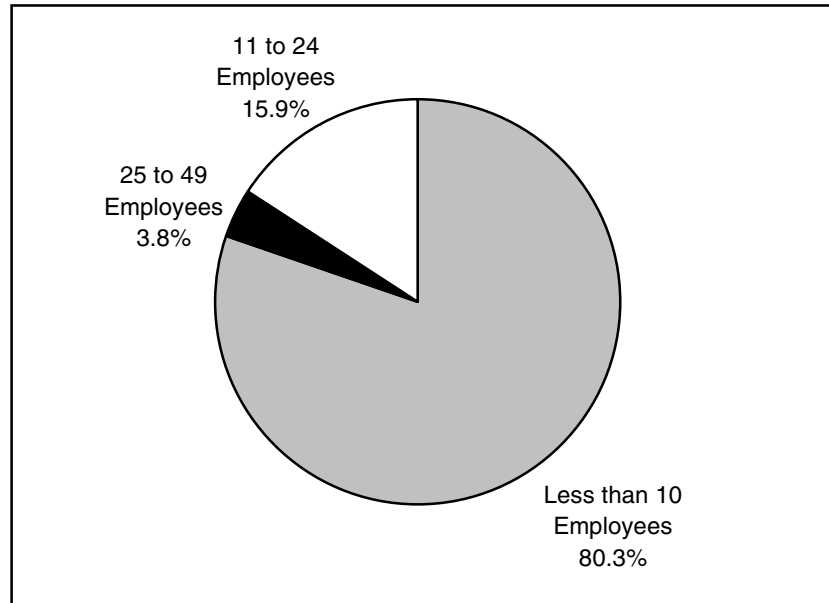


Figure 7.2. Size of Non-Covered Worksites: 2000 Survey



7.1.2 Family and Medical Leave Policies

As described in Chapter 5, some non-covered establishments do provide up to 12 weeks of unpaid leave for the five FMLA reasons, but the proportion is much less than that of covered establishments (see Table 5.1 in Chapter 5). A majority provide leave for mothers' maternity-related reasons (65.7%) and for the employee's own serious health condition (66.4%). Only about one third of non-covered establishments provide up to 12 weeks of unpaid leave for all five FMLA reasons. Non-covered establishments were more likely than covered establishments to report that providing up to 12 weeks of leave depends on the circumstances. This may indicate that these policies, in general, are more likely to be handled on an informal basis, rather than based on company-wide rules.

As discussed in Chapter 5, the leave policies of non-covered establishments have changed considerably since 1995. More non-covered establishments in 2000 reported that they provide these benefits, compared to 1995. The gap between covered and non-covered has narrowed appreciably.

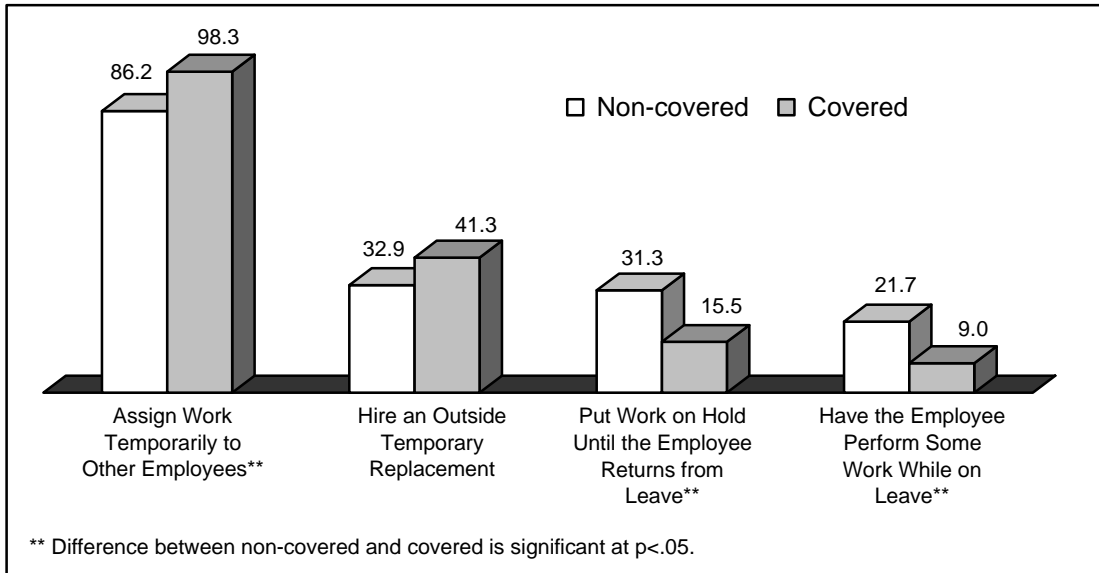
Among those non-covered establishments that provide up to 12 weeks leave for the five FMLA reasons, between 76 percent and 89 percent continue health care benefits during the unpaid leave (Appendix Table A2-5.4). Those establishments that provide leave for these reasons are quite likely to guarantee the job upon return from leave. More than 87 percent reported they guaranteed the jobs of people taking unpaid leave for the FMLA reasons (Appendix Table A2-5.5).

In terms of other leave, in some respects non-covered establishments have broader policies than their FMLA-covered counterparts (see Appendix Table A2-5.8 and Table 5.5 in Chapter 5). For example, non-covered establishments are more likely to allow employees to take leave for other reasons (e.g., attending school meetings, routine medical appointments), and proportionately more non-covered establishments continue either full or partial pay for employees taking leave for the FMLA reasons. For other benefits, particularly those involving employer payments (e.g., contributions to pension or retirement; paid sick leave), non-covered establishments provide those benefits less frequently than do covered establishments (Appendix Table A2-5.17).

7.1.3 Managing Family and Medical Leave Use

To better understand how non-covered establishments deal with work when employees take family and medical leave, respondents were asked how they typically cover work while an employee is on leave. The most common method used by non-covered establishments to accomplish the work is the same one most used by covered establishments—assign work temporarily to other employees (see Figure 7.3). However, significantly fewer non-covered establishments use this method (86.2% of non-covered establishments versus 98.3% of covered establishments; see also Appendix Table A2-7.4). Other commonly used methods include putting the work on hold while the employee is on leave (31.3%), and having the employee perform some work while on leave (21.7%). Significantly more non-covered establishments use these two methods, compared to covered establishments.

Figure 7.3. Comparison of Covered and Non-covered Establishment Methods of Covering Work While an Employee is on Leave: 2000 Survey



7.2 Impact of Current Family and Medical Leave Policies

The 2000 Survey of Establishments included items about the impact of family and medical leave policies on non-covered establishments. These items parallel those asked of covered establishments (e.g., business performance and costs).

In general, the majority of non-covered establishments reported that their family and medical leave policies have no noticeable effects on their businesses and employees (see Appendix Table A2-7.5). Among those that reported any effect, the majority reported that their leave policies had a positive effect on business productivity. In terms of profitability and growth, however, more said that their leave policies had a negative effect.

The majority of non-covered establishments reported that their family and medical leave policies had no noticeable effect on employee outcomes including productivity, absenteeism, turnover, career advancement, and morale (see Appendix Table A2-7.5). Among those establishments that reported any effects, the majority reported that their leave policies had a positive effect on these employee measures.

7.3 Implications of Expanding the FMLA to Smaller Establishments

President Clinton and other proponents of family and medical leave have considered expanding the coverage of the FMLA to smaller establishments. To explore how difficult it might be for smaller establishments to comply with the Act, this section describes two analyses. The first analysis examines non-covered establishments' expectations about the impact of the FMLA on their business if they had to comply with the Act.³⁷ It compares these anticipated effects to those actually experienced by covered establishments, and describes how non-covered establishment expectations have changed since the 1995 Survey of Establishments. The second analysis compares the family and medical leave policies of a subset of non-covered establishments, those with 25 to 49 employees, to a subset of covered establishments, those with 50 to 99 employees.

7.3.1 Anticipated Impact of Complying With the FMLA

Survey respondents from non-covered establishments were asked to imagine that the FMLA applied to their establishment, and then asked what effect complying with the Act would have on their businesses and employees.³⁸ These included questions about business impact, employee impact, and establishment costs. This subsection describes respondents' answers to these items, and compares these results to those found in the 1995 Survey of Establishments.

Business Impact

A slight majority of non-covered establishments reported that becoming covered by the FMLA would have a negative effect on their business productivity and profitability (50.5% and 51.1%, respectively; Appendix Table A2-7.6). Most of the remaining establishments reported that this would have no noticeable effect on productivity and profitability (39.6% and 42.5%, respectively). For business growth, a majority (54.2%) reported it would have no noticeable effect, while 38.6 percent anticipated a negative effect on growth.

³⁷ The survey did not collect information on non-covered establishment knowledge about the requirements of the FMLA

³⁸ Respondents were told the following about the Act: "The Federal Family and Medical leave Act of 1993...gives employees in certain organizations the right to take up to 12 weeks of unpaid, job guaranteed leave a year for various family and medical reasons."

Employee Impact

When considering employee outcomes, non-covered establishments were most likely to anticipate that complying with the FMLA would have no noticeable effect on employee productivity, absenteeism, turnover, career advancement, or morale. Among those establishments that anticipated some effect, many more anticipated a negative effect than a positive effect. For example, 40.0 percent anticipate a negative impact on employee productivity, compared to 17.2 percent that anticipate a positive impact. For employee absences, 31.5 percent anticipate a negative effect, compared to 8.2 percent that anticipate a positive effect. The exception to this pattern is the anticipated effects on morale. For this measure, about the same proportion of establishments anticipate positive and negative effects (24.6% positive vs. 23.9% negative).

Cost Impact

The survey included items about anticipated increases in administrative, hiring/training, and litigation costs due to compliance with the FMLA. Most establishments expect that becoming covered by the FMLA would increase their administrative and hiring/training costs (Appendix Table A2-7.7). For administrative costs, 14.0 percent anticipate large increases, 31.1 percent anticipate moderate increases, and 26.3 percent anticipate small increases. A similar pattern occurs for the cost of hiring and training. A majority reported that becoming covered by the Act would not increase their litigation costs. Almost 9 percent reported that becoming covered by the FMLA would result in cost savings.

Comparing Non-Covered Establishments' Anticipated Impact to Covered Establishments' Actual Impact

To better understand non-covered establishments' expectations about the impact of complying with the FMLA, an analysis was conducted to compare non-covered establishments' opinions about the *anticipated* impact of complying with the Act to covered establishments' opinions about the *actual* impact of the FMLA on their businesses. This analysis cannot provide any conclusions about the real effect that expanding the Act might have on smaller establishments. However, this comparison can provide useful insights into the concerns of non-covered establishments about the FMLA.

In general, non-covered establishments are very apprehensive about the possibility of being included under the FMLA, and for every measure of impact except employee absenteeism and employee morale, non-covered establishments expect more negative effects, compared to the effects that covered establishments actually experienced. (Appendix Table A2-7.6 for non-covered establishments, Appendix Table A2-6.12 for covered establishments.) Figure 7.4 displays these comparisons for business productivity and profitability. In terms of costs associated with complying with the FMLA, Figure 7.5 illustrates that non-covered establishments anticipate higher costs than covered establishments actually experienced (Appendix Table A2-7.7 for non-covered establishments; Appendix Table A2-6.15 for covered establishments).

One can interpret these differences in several ways. On the one hand, they indicate a great deal of apprehension on the part of small businesses about complying with the FMLA. On the other hand, these differences suggest that the impact of the FMLA is not as negative in practice as it is perceived to be in the abstract.

Figure 7.4. Non-covered Establishments' Anticipated Business Impact of FMLA, Compared to Covered Establishments' Actual Business Impact of FMLA: 2000 Survey

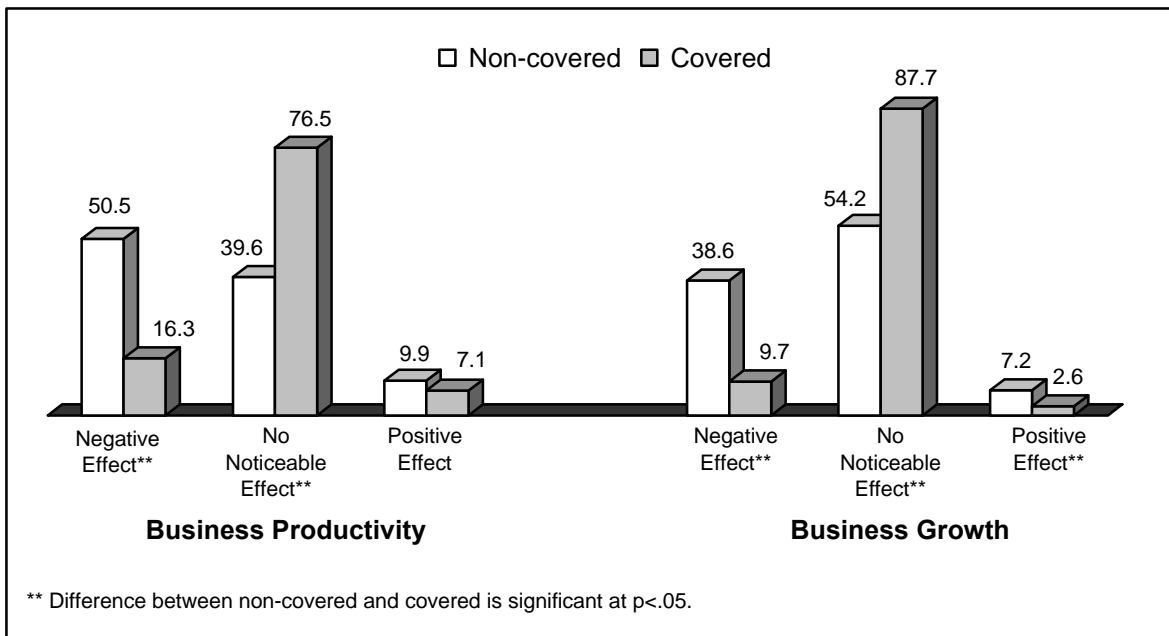
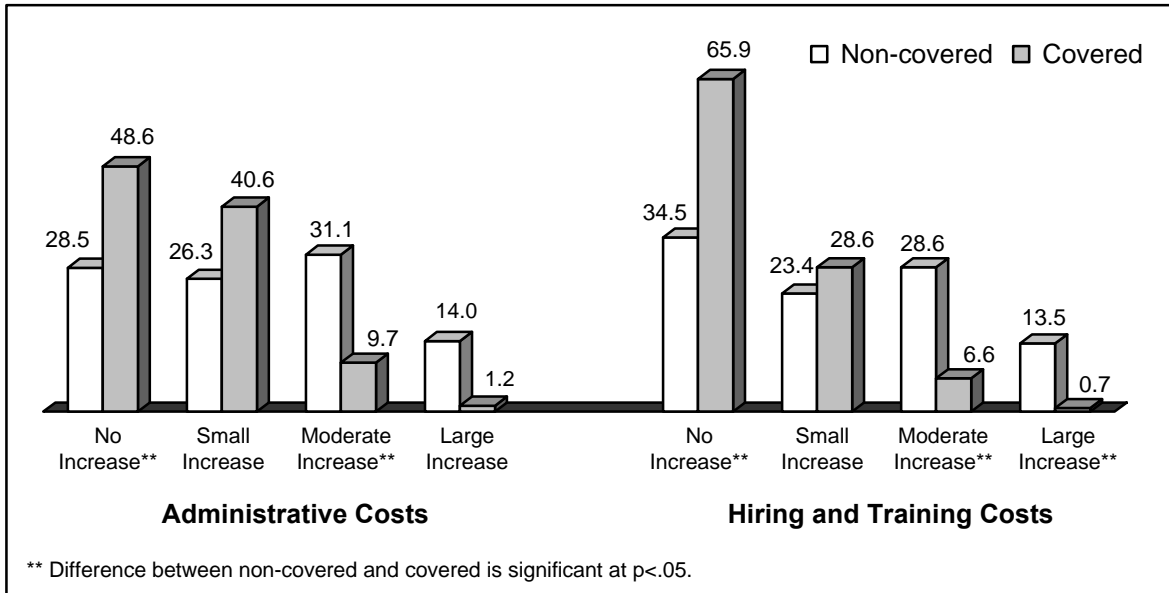


Figure 7.5. Non-covered Establishments' Anticipated Cost of FMLA, Compared to Covered Establishments' Actual Cost of FMLA: 2000 Survey



Changes Since 1995

The anticipated impact of FMLA coverage on business outcomes has changed little since the 1995 survey, except for business growth (Appendix Table A2-7.8). Significantly more non-covered establishments in 2000 reported that becoming covered by the FMLA would have a positive effect on business growth (3.6% in 1995 vs. 7.2% in 2000). Significantly fewer establishments in 2000 anticipated no noticeable effect on growth, compared to 1995. The change in anticipated employee effects suggests that non-covered establishments think more negatively in 2000 about the possibility of becoming covered by the FMLA. Significantly more establishments in 2000 thought that complying with the FMLA would negatively affect employee productivity, turnover, and career advancement, compared to establishments surveyed in 1995. Opinions of establishments on the anticipated costs of complying with the Act have not significantly changed except in terms of hiring/training costs (Appendix Table A2-7.9). Significantly more establishments in 2000 thought that complying with the FMLA would cause moderate increases in costs associated with hiring or training (17.8% in 1995 vs. 28.6% in 2000). On the other hand, significantly more establishments in 2000 thought that complying with the Act would result in cost savings, compared to 1995.

7.3.2 Comparison of Non-covered Establishments with 25 to 49 Employees to Covered Establishments with 50 to 99 Employees

In this section, non-covered establishments with 25 to 49 employees are compared to those covered establishments that are most similar in terms of size, those with 50 to 99 employees. In the remainder of this section, these establishments will be referred to as the non-covered subgroup and the covered subgroup, respectively. These two subgroups are compared in terms of their:

- Policies for family and medical leave consistent with the FMLA;
- Other leave policies and benefits beyond those consistent with the FMLA; and
- Impact of family and medical leave policies.

Policies Consistent with the FMLA

The subgroups differ on several policies consistent with the FMLA, mirroring those differences found between all covered and non-covered establishments (Appendix Table A2-7.10). Looking across all five FMLA reasons, the non-covered subgroup is significantly less likely to provide up to 12 weeks of unpaid leave for all reasons (59.6% vs. 81.6%). The non-covered subgroup (those establishments with 25 to 49 employees) is significantly less likely than the covered subgroup (those establishments with 50 to 99 employees) to provide up to 12 weeks of unpaid leave for parents to care for a newborn (68.5% vs. 88.1%) and for care of a family member's serious health condition (75.5% vs. 90.0%). The two groups do not differ significantly in providing up to 12 weeks of unpaid leave for the other FMLA reasons. Among those establishments that provide up to twelve weeks of unpaid leave, subgroup comparisons showed no significant difference in continuing health benefits during leave (Appendix Table A2-7.11). Subgroups differed significantly in guaranteeing the job upon return from leave only in the case of leave to care for a family member's serious health condition (Appendix Table A2-7.12).

Policies Beyond Those Consistent with the FMLA

In providing leave beyond that guaranteed by the FMLA, establishments in the non-covered subgroup were slightly less likely than their covered counterparts to say they provided leave to new employees and part time employees (Appendix Table A2-7.13). However, they were almost twice as likely to say that they did provide leave to these workers depending on the circumstances. The non-covered subgroup also was significantly more likely to allow additional leave for routine

medical appointments (Appendix Table A2-7.14). The covered and non-covered subgroups did not differ in terms of continuing contributions to pension or retirement accounts, or contributions to life and disability insurance (Appendix Table A2-7.15). So while non-covered establishments have less comprehensive leave policies, they may have more flexibility in administering their policies compared to covered establishments. They may also have less uniform policies (e.g., leave benefits may not be available all the time).

When all covered and non-covered establishments were compared, the covered ones were generally more likely to provide paid disability leave and paid vacation (Table 5.5). This is quite different from the pattern here, where the covered subgroup is no more likely than the non-covered subgroup to provide these kinds of paid leave (Appendix Table A2-7.16). Neither subgroup differed significantly in their likelihood to continue pay during leave for the five FMLA reasons (Appendix Table A2-7.17). These differences also diverge from those found in comparisons of all covered and non-covered establishments, as discussed in Chapter 5. In that case, non-covered establishment policies were slightly more generous than those of covered establishments.

In terms of other work-life benefits, the covered establishment subgroup was more likely than the non-covered establishment subgroup to provide work-life benefits including child care assistance, elder care assistance, employee assistance programs, and adoption assistance (Appendix Table A2-7.18). The non-covered subgroup was, however, more likely to provide flexible work schedules.

Actual Impact Versus Anticipated Impact of Family and Medical Leave Act

For this analysis, the covered subgroup's reports on the impact of the FMLA on their businesses were compared to the non-covered subgroup's opinions about the *anticipated* impact of complying with FMLA (Appendix Table A2-7.19). These results resemble those reported in Section 7.3.1, which compared all covered and non-covered establishments and found that non-covered establishments anticipate more negative impact than covered establishments actually experience. In this subgroup comparison, more establishments in the non-covered subgroup anticipated negative business impacts than were experienced by the establishments in the covered subgroup. For example, 43.1 percent of the non-covered subgroup

anticipate that becoming covered by the FMLA would have a negative effect on their business productivity, while only 10.2 percent of the covered subgroup reported that the Act had had a negative impact on their productivity. Significantly more of the non-covered subgroup anticipated negative effects on employee outcomes as well, compared to what the covered subgroup experienced.

Considering the costs associated with complying with the FMLA, establishments in the non-covered subgroup anticipated higher costs than establishments in the covered subgroup actually experienced in complying with the Act (Appendix Table A2-7.20).

7.4 Summary

This chapter examined the family and medical leave policies of non-covered establishments, and the impact of those policies on these establishments. A majority of non-covered establishments offer up to 12 weeks of unpaid leave for the five FMLA reasons, but the proportion that do so is smaller than that of covered establishments. In some respects, non-covered establishments have broader policies than do covered establishments, such as allowing leave for routine medical appointments, and providing leave with partial or full pay for a variety of reasons. Non-covered establishments may use more discretion (e.g., making decisions on a case-by-case basis) since they are not required to universally offer such leave. Non-covered establishments are more likely to cover the work of employees on leave by putting the work on hold, compared to covered establishments. Of the work *not* put on hold, the most common method of covering work is assigning it to another employee.

For the most part, non-covered establishments perceive their family and medical leave policies to have no noticeable effects on their businesses and employees (between 55% and 77%, depending on the question). Among those that reported an effect, more reported positive rather than negative effects, with two exceptions, the effects on business profitability and growth. Establishments were much more negative about the effects they anticipated if they became covered by the FMLA. In terms of business outcomes, such as productivity and profitability, a majority of businesses expected the FMLA would have negative effects. Substantial minorities

(between 25% and 40%) expected negative effects on business growth, employee productivity, absences and turnover. These negative expectations are significantly greater than those reported by covered establishments when asked about the actual impact of the Act on their businesses. Expanding coverage to these smaller establishments may thus be less costly than establishments expect.

Between 1995 and 2000, non-covered establishment expectations about the impact of the Act on employee outcomes (e.g., productivity, turnover, career advancement) became more negative.

As a way to explore potential effects of expanding the Act to smaller establishments, non-covered establishments with 25 to 49 employees were compared to covered establishments with 50 to 99 employees. In many respects these comparisons paralleled those of all covered to all non-covered establishments. The non-covered subgroup was less likely to provide up to 12 weeks of unpaid leave for the FMLA reasons, compared to the covered subgroup. Among those that did provide up to 12 weeks of unpaid leave, however, the non-covered subgroup was as likely as the covered subgroup to continue health care benefits or to guarantee the job upon return from leave, for the most part. For leave policies beyond those consistent with the Act, the non-covered subgroup was less likely to provide some kinds of leave (e.g., leave for new and part-time employees) and more likely to provide others (e.g., leave for reasons beyond those provided in the FMLA), compared to the covered subgroup.

In other respects, the policies converged somewhat more for these two subgroups. For example, the non-covered subgroup was as likely as the covered subgroup to offer a variety of paid leaves, including paid leave for the five FMLA reasons. This differs from the pattern observed in comparisons of all covered and non-covered establishments, where the covered establishments were more likely to provide this benefit. Finally, the non-covered subgroup had many of the same negative expectations about being included under the FMLA as the overall group of non-covered establishments. The non-covered subgroup anticipated more negative effects than the covered subgroup reported actually experiencing on a number of business and employee outcomes.