



How the Commission Went About Its Work

A. Mission of the Commission on Leave

In 1993, Congress passed the Family and Medical Leave Act (FMLA, or the Act), which requires employers with 50 employees or more to provide up to 12 weeks of unpaid, job-protected leave to employees for the following reasons: care of a newborn, newly-adopted or foster child; care of a child, spouse or parent with a serious health condition; or the serious health condition of the employee, including maternity-related disability. Employees are eligible to take leave if they have worked for a covered employer for at least one year, and for 1,250 hours over the previous 12 months, and if there are at least 50 employees working for their employer within a 75-mile radius.

Title III of the FMLA established a bipartisan Commission on Leave (the Commission) to conduct a comprehensive study of mandatory and voluntary policies relating to family leave and temporary medical leave and to submit a report of its findings to Congress.

Specifically, the Family and Medical Leave Act charges the Commission to study the following points:

- “A) existing and proposed mandatory and voluntary policies relating to family and temporary medical leave, including policies provided by employers not covered under this Act;
- B) the potential costs, benefits and impact on productivity, job creation and business growth of such policies on employers and employees;
- C) possible differences in costs, benefits and impact on productivity, job creation and business growth of such policies on employers based on business type and size;
- D) the impact of family and medical leave policies on the availability of employee



Opposite: Top: Christie Sens and son testifying at Commission on Leave Public Hearing, Washington DC, August 4, 1995. Bottom: Members of the Commission on Leave at the Commission on Leave Public Hearing, Washington DC, August 4, 1995. From left to right: Leland B. Cross, Jr., Ellen Bravo, Mary Tavenner, Donna Lenhoff (Vice-Chair), Sen. Christopher J. Dodd (Chair), Lenore Miller, Richard Reimhardt and Scottie Theresa Neece. (Not shown: Sen. Larry E. Craig, Rep. Patricia Schroeder, Rep. Steven Gunderson, Pamela L. Egan, Secretary Ronald H. Brown (ex-officio), Philip Lader (ex-officio), Secretary Robert B. Reich (ex-officio) and Secretary Donna E. Shalala (ex-officio). **Above:** Paul Gill, CEO, Mousefeathers, testifying at Commission on Leave Public Hearing, San Francisco, CA, June 26, 1995.

benefits provided by employers, including employers not covered under this Act;

E) alternate and equivalent State enforcement of Title I with respect to employees described in Section 108(a);

F) methods used by employers to reduce administrative costs of implementing family and medical leave policies;

G) the ability of the employers to recover, under Section 104(c)(2), the premium described in such section;

H) the impact on employers and employees of policies that provide temporary wage replacement during periods of family and medical leave.”

Since its first meeting in November 1993, the Commission’s work focused on obtaining research that would provide responses to the above eight points. The purpose of this report is to provide a comprehensive discussion and analysis of that research, which includes a review of the literature, two commissioned surveys and a number of other smaller studies, as well as three public hearings on the subject of family and medical leave.

B. Organization of the Commission

The Family Leave Commission was well-positioned to assume the substantive challenge posed by Congress. Commission members possessed expertise and a broad range of practical experience relevant to evaluating family and medical leave issues. Members included Congressional leaders from both political parties, representatives from labor and the business community, including small businesses and ex-officio Cabinet members from the Federal agencies with the most direct responsibility for, and interest in, family and medical leave policies (See Biographical Sketches of Commission Members in Appendix).

The Commission held six meetings between November 10, 1993 and October 23, 1995. The meetings were well-attended. The Commission elected a Commission Chair and Vice Chair, Senator Christopher J. Dodd (D-CT) and Donna R. Lenhoff, General Counsel of the Women’s Legal Defense Fund, respectively. A bipartisan Technical Task Force of Commission members was also established, to operate as a working sub-group of the whole Commission.¹ The Technical Task Force held sub-

¹ The four members of the Technical Task Force were Suzanne Day, staff for Commission Chair, Senator Christopher Dodd; Donna Lenhoff, Commission Vice-Chair; Damon Tobias, staff for Senator Larry E. Craig; and Mary Tavenner.

group meetings and occasionally convened teleconferences with Commission members to advance the work of the Commission. Commission members remained extremely involved throughout the entire process of fulfilling the Congressional mandate.

During its first year of operation, the Commission was faced with the dilemma of a broad and ambitious legislative mandate but no Congressional appropriation with which to move ahead. The Commission also did not know whether money would be appropriated at any time in the future. Without such funding, it was clear that the Commission lacked the resources to authorize any research effort to obtain new data to respond to the eight Congressionally-mandated questions. The first year was thus devoted to the development of a work plan, relying, to the extent possible, on Executive branch agency resources. The Commission knew that a body of research on family and medical leave and related issues already existed, some of which had potential as valuable data sources for its work.

Given the uncertainties concerning funding, the Commission members agreed early on that a comprehensive assessment of existing data sources was needed, to determine: 1) what was already available that could be used to respond to the eight questions posed in the statute; and 2) whether, and to what extent, there were gaps in that data that needed to be supplemented by new research. It was clear that even if funding did ultimately become available, such an assessment would be valuable in enabling the Commission to take advantage of all available data and avoid replicating already-existing information.

C. Assessment of Existing Data Sources

In 1994, the Commission conducted a careful review of existing and potential data sources on family and medical leave, specifically addressing the extent to which existing data sources might be used to address each of the Commission's eight questions.² The data sources fell into three main categories: 1) ongoing surveys by

² Ellen Galinsky, et al., *Report to the Executive Director of the Commission on Leave: Existing and Potential Data Sources for Addressing FMLA Research Questions*, (New York: Families and Work Institute, September 1994.)

government agencies³; 2) one-time studies by individual researchers⁴; and 3) one-time studies by benefits consulting firms and business trade organizations.⁵

The analysis was divided into the following topic headings which provided a useful grid for plotting the Commission's questions against existing sources: current and proposed policies and practices; knowledge of FMLA; FMLA implementation and compliance; FMLA impact on employers; FMLA impact on employees; and wage replacement.

With respect to current policies and practices of employers (both covered and not covered by the FMLA), the Employee Benefits Survey conducted by the Bureau of Labor Statistics of a nationally representative sample of employers was found to provide the best available information. The Employee Benefits Survey contains information on the paid and unpaid family and medical leave policies of both public and private sector employers of all sizes. Other surveys of businesses were limited due to the scientifically non-representative nature of their samples.

With respect to FMLA implementation and compliance, the information about the methods that employers were using to minimize the costs of implementing family and medical leave policies was not available for nationally representative samples of employers. However, FMLA compliance data was available from the Department of Labor's Wage and Hour Division.

³ These included: U.S. Department of Commerce, Bureau of the Census, *Characteristics of Business Owners Survey*; U.S. Department of Commerce, Bureau of the Census, *Current Population Survey*; U.S. Department of Labor (DOL), Wage and Hour Division, *DOL Enforcement Data*; U.S. DOL, BLS, *Employee Benefits Survey*; U.S. DOL, BLS, *Employment Cost Index Survey*; U.S. Department of Health and Human Services, National Center for Health Statistics, *National Health Interview Survey*; U.S. DOL, BLS, *National Longitudinal Study of Youth*.

⁴ The Conference Board, *Work-Family Roundtable: 1994*; Roberta M. Spalter-Roth and Heidi I. Hartmann, *Unnecessary Losses: Costs to Americans of the Lack of Family and Medical Leave*, (Washington, DC: Institute for Women's Policy Research, 1988); Jane Waldfogel, *The Family Gap for Young Women in the US and UK: Can Maternity Leave Make a Difference*, (Cambridge, MA: Malcolm Wiener Center for Social Policy, Kennedy School of Government, Harvard University, 1994); William M. Mercer, Inc. and University of California, Berkeley, *Survey Results: Family and Medical Leave Act*, (University of California, Berkeley, 1994.); National Institute of Child Health and Human Development, *Study of Early Child Care*; Eileen Trzcinski and William T. Alpert, *Leave Policies in Small Business: Findings from the US Small Business Administration Employee Leave Survey*, (Washington, DC: U.S. Small Business Administration, 1990); James T. Bond, Ellen Galinsky, et al, *Beyond the Parental Leave Debate: The Impact of Laws in Four States*, (New York: Families and Work Institute, 1991); Wisconsin Maternity Leave and Health Project, University of Wisconsin-Madison.

⁵ Studies in this category included: Employee Benefit Research Institute, *Employee Benefit Research Institute Poll*, (Washington, DC: EBRI, 1993); Hewitt Associates, *On Employee Benefits, Employer Responses to Family and Medical Leave Legislation*, (Lincolnshire, IL: Hewitt Associates, 1993); Steven W. Barnett, and Gerald L. Musgrave, *The Economic Impact of Mandated Family Leave on Small Businesses and Their Employees*, (Washington, DC: The National Federation of Independent Businesses Foundation, 1991).

With respect to FMLA's impact on employers, the assessment found that available data, such as membership surveys by business associations and client surveys by benefits consulting firms, provided a partial picture of what employers were doing to implement more generous leave policies, or to extend FMLA-like leave benefits to employees not eligible under the Act. It was determined, however, that additional research based on a nationally representative sample of employers would be useful. There were no data sources that adequately and convincingly addressed the question of whether employers reduced fringe benefits because of the FMLA. It was also determined that the magnitude of direct and indirect costs and benefits to employers of family and medical leave policies in general, and the FMLA in particular, was limited. In general, there was some useful data on current employer policies and practices, but virtually no data on access and usage of the new law.

In regard to FMLA impact on employees, it was found that existing data regarding pre- and post-FMLA utilization of family and medical leave benefits was limited at best, and that new research would be required to document the incidence and length of family and medical leave for different purposes by different segments of the labor force. Information about the costs and benefits of family and medical leave for employees and their families was also inadequate.

Little research was found on the subject of wage replacement. The Families and Work Institute's State Parental Leave study, which covered four states, provided some data on the subject, as one of the states studied mandated temporary disability insurance (TDI) coverage for maternity-disability leave. In addition, the Institute for Women's Policy Research was developing estimates of the costs of partial to full wage replacement for different types of family and medical leave.⁶

In sum, the assessment found some useful data on current employer policies and practices; however, with the exception of the Employee Benefits Survey, the data were not based on scientific samples representative of the entire business community. Employee data were more scarce, with virtually no representative random sample survey data available. Moreover, none of the existing research provided data on access, usage or impact of the new law per se. Consequently, it was determined that while some data sources already did exist to address parts of the ques-

⁶ Heidi Hartmann and Yoon Young-Hee, *Expanding Social Insurance to Include Paid Family Care Leaves*, (Washington, DC: Institute for Women's Policy Research, 1995).

tions posed by the statute, new research would be needed to obtain accurate data in order for the Commission to respond comprehensively to all the issues stipulated by the Commission's legislative mandate.

D. Public Hearings

The Commission placed a high priority on hearing directly from the public. Specifically, the Commission believed that it was important to gain a first-hand look at the effects of the FMLA, and of family and medical leave policies in general, on businesses, on employees and on families. To do this, the Commission decided to conduct public hearings in different sites across the country. The hearings enabled the Commission to hear first-hand from the affected employers, employees and their families.

Commission staff worked hard to reach a wide variety of people whose experiences might not be fully captured by the research. Panels were arranged so as to provide a broad cross-section of views and perspectives, including a case study of one company's experience, on all topics of relevance to family and medical leave, and the FMLA. Panels discussed such topics as voluntary family and medical leave policies, costs and benefits of leave policies to employers and employees, concerns of small employers, employees' experiences with leave-taking and wage replacement.

A broad cross-section of U.S. workers and employers, from different sectors of the economy, different-sized worksites and with diverse perspectives, testified about their own experiences with family and medical leave, and with the new Act. The hearings gave the Commission the opportunity to hear from individuals - business owners, workers, managers, spouses, parents and family members - about how the issue of balancing work and family had affected them and their businesses directly, and how they felt about utilizing and/or complying with the new law. Their testimony provided the Commission with important insights into the impact of family and medical leave policies, and the FMLA. The hearings were held on May 8, 1995, in Chicago, Illinois; on June 26, 1995, in San Francisco, California; and on August 4, 1995, in Washington, D.C.

E. Commissioned Research

Based upon the review of existing data sources, it was clear to the Commission that new research was needed to provide the kind of data that would allow comprehensive answers to all the mandated questions. In FY '95, Senator Dodd, the Commission's Chair, secured a Congressional appropriation so that the Commission could do its work. The Congressional funding was supplemented by an additional allocation from the United States Department of Labor.

The Commission immediately proceeded with the task of commissioning the new research in the form of two major studies - an Employer Survey and an Employee Survey. As the existing data were focused on voluntary family and medical leave policies prior to the passage of FMLA, the main focus of the new research was to provide data on how employer policies were changing as a result of the new law; the relative costs and benefits to employers of providing family and medical leave; how employees were faring under the new law; and the nature of leave-taking for employees in both covered and non-covered firms.

The Commission contacted the Bureau of Labor Statistics (BLS), which had previously completed contracts with two research organizations for the purpose of filling task orders on specific survey research issues. The two research organizations were Westat, Inc., a social science research firm located in Rockville, Maryland, and The Institute for Social Research, Survey Research Center at the University of Michigan. Other clients who had used these same contracts included the Employment and Training Administration (ETA) and the Internal Revenue Service (IRS). Working with the Bureau of Labor Statistics, Commission staff wrote task orders under the BLS contract for Westat to conduct an Employer Survey and for Michigan to conduct an Employee Survey. In addition, the Commission decided to have Westat implement an "embedded" Employee Survey, focusing on a non-random sample of leave-takers from the firms responding to the Westat Employer Survey. The FMLA projects were related to BLS research interests, because they would provide information about the performance of a new telephone sampling design and the effectiveness of telephone interview procedures for establishment surveys.

The bipartisan Technical Task Force was formed in early 1995 to assist in the implementation of the studies. The Technical Task Force formulated questions designed to elicit responses directly related to the study agenda mandated by the U.S. Con-

gress. Working with the Technical Task Force, the Westat and Michigan research teams designed the survey instruments for the studies. Commission members were consulted throughout the instrument design process and their recommendations were used to improve the instruments.

Westat, Michigan and the U.S. Department of Labor took all steps possible to assure that the data collected from the Employer Survey, the Employee Survey and the “embedded” Employee Survey were kept confidential to the fullest extent allowed by law.

1. Employer Survey

This national, random sample Employer Survey, conducted by Westat, provides the first statistically valid data on employers of diverse sizes assessing both their experience with the Family and Medical Leave Act as well as family and medical leave policies in general. The data provide national estimates for a number of important issues: the extent of coverage of the new law; the impact of the Act on FMLA-covered businesses, including costs and benefits; and the possible impact the law would have if expanded to cover establishments that are not now covered by the Act.⁷

The sample design that the Employer Survey used was a stratified, probability sample of private-sector business establishments in the United States, with strata defined by size of the establishment and major industrial classification (SIC) division. The Dun & Bradstreet DUNS Market Services file (DMS) served as the sample frame. DMS is one of the few commercially available lists of business establishments that is reasonably comprehensive in coverage and that includes relevant size information necessary for designing effective worksite samples. Establishments were selected directly proportionate to the number of employees reported on the DMS frame. The unit of analysis was the worksite, defined as a “single physical location where business is conducted or where services or industrial operations are performed.”⁸ Government and quasi-governmental establishments (e.g., public schools, universities and post offices) at all levels were excluded from the sample frame.⁹

⁷ For information on Westat’s description of the “Limitations of the Research,” see David Cantor, et al., *The Impact of the Family and Medical Leave Act: A Survey of Employers*. (Rockville, MD.: Westat, Inc., 1995) p.6-1.

⁸ The survey did not attempt an assessment of “covered companies,” but rather of “covered worksites.” This is consistent with BLS practice for comparable employer surveys.

⁹ This population represents an additional 18 to 19 million workers.

Project staff for the Employer Survey reviewed the Commission's draft questionnaire, clarified with the Technical Task Force the purpose of each item and its relationship to the Commission's research objectives, then designed the instrument. Prior to initiating the actual survey, the Employer Survey staff extensively pre-tested the survey instrument to evaluate and modify it for final use with the chosen sample.

The Employer Survey was conducted in three steps. First, establishments drawn from the DMS file were screened to ensure the eligibility of the establishment and to obtain the name of the person at the worksite most knowledgeable about family and medical leave policies. Second, that person was mailed an advance package of materials, providing background about the project and informing him or her, through a letter from Secretary of Labor Robert B. Reich, that an interviewer would be contacting him or her shortly by telephone. This step was included to encourage the key informant to collect relevant information and to respond to questions based on actual personnel files, rather than memory or estimates. Respondents were also assured that all the data collected for the survey would be kept confidential to the fullest extent allowed by the law.

The third step was the telephone interview. Data collection for the Employer Survey lasted approximately six weeks, between June 15 and August 2, 1995. Respondents from a total of 1,206 worksites were interviewed. The response rate was 73.2 percent. A report on the findings, including some analysis of the data, was submitted to the Commission in early October 1995.¹⁰

2. Employee Survey

The Employee Survey, conducted by the University of Michigan Survey Research Center, represents the first national random sample survey of employees on their leave-taking. To our knowledge, no comparable survey of employees has been undertaken, although some data relevant to leave-taking exists in the Census Bureau's Current Population Survey (CPS) and in the SBA data of employers regarding employee leave-taking. The data provide important national estimates on the need for and occurrence of taking leave from work for reasons covered by the Family and Medical Leave Act.

¹⁰ There were three components to the Employer Survey weighting process: first, a "base-weight" was created by taking the inverse of the probability of selection; second, a non-response adjustment was made to the base weight within categories of size and SIC classification; and third, a post-stratification adjustment was made by size and industry classifications to the total that BLS publishes.

The Commission faced several difficult challenges in designing the Employee Survey. There was a deep interest not only in obtaining the lacking baseline data on employees and their leave-taking patterns, but also on gaining new qualitative data on the importance and value of leave-taking to employees and their families. However, these goals were significantly constrained by the task of locating leave-takers from a national random sample telephone survey of households. They were further constrained by the need to keep the interview brief and the difficulty of collecting qualitative data on the telephone. It became clear that, because of the Commission's resource limitations, the focus would have to be on obtaining nationally representative, quantitative data on leave-taking patterns, with limited attention to qualitative data. This choice was somewhat easier to make given the decision of the Commission to hold three public hearings across the country, to conduct a small number of case studies with leave-takers, and to use this qualitative information to supplement the survey findings.

The target population of the Employee Survey was employees aged 18 or older who lived in the continental United States in a household with a telephone; and who had been employed for pay (private or public sector) any time within approximately the last 18 months, between January 1, 1994 and the time of the interview, in the Spring/Summer of 1995. The sample design allowed for more than one respondent to be selected from a household. When a household was contacted, all eligible residents were listed and screened for eligibility for one of the three categories listed below. To achieve fixed sample size allocations for each of the three respondent categories, a category-specific subselection rate was applied for each eligible person and the person was either selected for interview or subsampled out. Following are the three categories into which the sample was divided:¹¹

1) leave-takers: people who since January 1, 1994 had taken leave from work for maternity disability; to care for a newborn, newly-adopted or new foster child; or for their own serious health condition; or for the serious health condition of their child, spouse or parent that lasted more than three days or required an overnight hospital stay;

¹¹ The actual number of people interviewed in each category include 1218 "leave-takers," 206 "leave-needers" and 928 "employed-only."

2) **leave-needers:** people who since January 1, 1994 needed, but did not take, leave from work for the reasons listed above; and

3) **employed-only:** people who neither took leave nor needed to take leave in the defined time period, but who were employed during the period from January 1994 up to the interview.

The Commission supplied questions it wanted to include in the Employee Survey, and Employee Survey staff drafted and refined the instrument, with Commission review and input. Resource constraints made it necessary to eliminate some questions the Commission would have liked to ask from the final instrument.¹² The Employee Survey team then conducted extensive pre-testing prior to implementing the survey in the field. The Employee Survey took about ten minutes per leave-taking employee, five minutes per leave-needing employee, and three minutes per employed-only person.

All interviewers working on this study were part of the trained staff of the SRC Survey Support Laboratory. The majority of interviewers were highly experienced, with nearly 50 percent having between two and four years of experience and one-third having five years or more. All received the following study-specific training to prepare them for the interviewing process:

Prior to the training, interviewers received a full set of study materials, along with training and practice interview directories. These allowed interviewers to learn about the nature of the project and to practice with the application prior to training. Training was conducted over the course of ten two-hour conference calls. Following training, and prior to beginning production, each interviewer was required to conduct three taped and scripted practice interviews. The regional field supervisors reviewed the tapes and scripts and provided immediate feedback. Once competency was achieved, the interviewer was approved to begin production work. Two weeks following the initial training, a follow-up mini-training was conducted.

¹² For example, the Commission would have liked to have gathered information on personal income, not just household income, and more data on occupation/skill level of employees. These data would be useful to include in future research.

The survey was divided into four sections:

Section A was administered only to employees who actually took leave for a reason covered by the Act. The questions elicited details about the leave, covering behavioral and attitudinal information.

Section B was given only to employees who needed to take leave for a reason covered by the Family and Medical Leave Act, but did not take it. The questions asked about their reason(s) for needing to take leave, their reasons for not taking leave, and what they did instead to take care of their situation.

Section C, administered to all respondents, asked a variety of questions designed to elicit information on employees' attitudes and knowledge about the FMLA, their anticipated need for leave in the future, and their eligibility for FMLA.

Section D asked a series of demographic questions, including marital status, race/ethnicity, number of dependents, educational level and income. Age and gender information had already been obtained through the household listing, prior to the Employee Survey.

Employees responding to the Employee Survey were guaranteed confidentiality and anonymity. During the field period, from June 1 through August 12, 1995, Employee Survey staff screened 20,373 randomly selected telephone numbers, of which 10,274 (50 percent) were determined to be working household telephone numbers. The screening interview was completed for 8,492 of these sample households. Completed interviews were conducted with employees from 2,352 of these households. The overall weighted response rate is the product of the screening and interview response rates. The response rate was between 71 and 75 percent, depending on respondent type (leave-taker, leave-needer or employed-only).¹³

3. Other Commissioned Research

In addition to the major Employee and Employer Surveys discussed above, the Commission supplemented its core research effort with some additional studies to

¹³ The final weight is the product of three components: 1) a sample selection weight factor that is the reciprocal of the probability that the respondent is included in the sample; 2) a screening non-response adjustment factor that adjusts for differential screening response rates across 45 Census Divisions by metropolitan status cells; and 3) an interview non-response adjustment factor that adjusts for different response rates by sex and age group within each of the three categories of respondents - leave-takers, leave-needers, and employed-only.

fill specific remaining gaps in the information needed to provide answers to the eight mandated questions. These studies included one survey based on a nationally representative random sample of businesses, and four other surveys based on non-random, non-representative samples. A sixth report presented four case studies based on open-ended interviews with leave-takers. The seventh supplemental study was a research paper consisting of an evaluative literature review on the subject of wage replacement policies offered voluntarily by employers.

a. Census Bureau

The Bureau of the Census (Department of Commerce), conducts a Characteristics of Business Owners (CBO) survey every five years in conjunction with its Economic Census. In support of the work of the Commission, and in order to meet the Commission's report deadline, the Census Bureau undertook a special early mailing of questions, including those pertaining to the FMLA, to a small sample of a universe that includes sole proprietors, partnerships and subchapter S corporations, who filed IRS forms 941 or 943 (excluding farms). All other corporations, sometimes referred to as C corporations, were excluded. The firms in this universe thus tend to be smaller firms. There are about 3,000,000 companies that are represented by the final survey results. The sample reported on here included 1,350 businesses who filed form 941 or 943 tax returns with IRS for 1994. At the request of the Commission on Leave, the Bureau of the Census and CBO sponsors (the Small Business Administration and the Minority Business Development Administration (DOC)) agreed to include a series of questions specifically addressing FMLA issues in its 1995 survey.

Although findings from this sample cannot be generalized to the universe of all private-sector employers in the United States economy, the businesses in the sample give us an important portrait of small employers in the U.S., a group that received particular attention in the debate surrounding family and medical leave legislation. Only 3.5 percent of the firms in the Census sample have more than 50 employees and would be considered "covered" employers.

b. State Survey

State or local laws which provide more generous family or medical leave rights than those established under the FMLA are not superseded by it. To identify which states have their own family and medical leave laws, and to learn about their provisions, Commission staff developed a "state enforcement mini-survey." The mini-survey contained ten questions concerning individual state family and medical leave laws.

Three of the state mini-survey's ten questions pertained to one of the Commission's specific mandates for study, the question of "alternate and equivalent State enforcement" of the Act with respect to teachers and educational support staff. Specifically, FMLA, Section 108 restricts teachers' ability to take certain types of leave ordinarily available under the Act. The restrictions pertain to intermittent or reduced scheduled leave and leave near the conclusion of an academic term. Following are the three questions on the state mini-survey pertaining to teachers:

- 1) What family and medical leave provisions exist in your state law that relate specifically to instructional persons (teachers)?;
- 2) How are these provisions enforced? By whom?; and
- 3) What problems, if any, exist for local school administrators if they have to report to both state and federal enforcement entities?

Commission staff contacted each state in order to identify the person with the most knowledge about its family and medical leave policies. That person was sent a copy of the questionnaire. The respondents from the 34 states (in addition to Puerto Rico and the District of Columbia) that had family and medical leave laws were also provided a copy of their state's policy, obtained from the Women's Bureau.¹⁴ After allowing the respondent sufficient time to review the materials, an eight to 12 minute interview was conducted by telephone.

c. Surveys to Education Professionals

As mentioned above, the FMLA limits the ability of teachers and educational support staff to take certain kinds of leave generally available under the Act, and it specifically charges the Commission to study alternate and equivalent state enforcement of Section 108 with respect to those workers. The Commission contacted major management and teacher organizations in the education field, inviting them to contribute their expertise to the research process. Specifically, the Commission contacted the American Association of School Administrators, the National School Board Association, the American Federation of Teachers (AFT) and the National Education Association (NEA), the two AFL-CIO labor unions representing teachers in the U.S. Of the various educational organizations contacted, only the AFT and the NEA responded affirmatively, each offering to conduct studies designed to shed light on the question posed to the Commission regarding the special conditions in the FMLA applicable to teachers. Neither of these studies purports to be a scientific, random-sample survey.

¹⁴ Women's Bureau, U.S. Department of Labor, *State Maternity/Family Leave Law*, (Washington, DC: U.S. Department of Labor, 1993.)

i. National Education Association

The National Education Association (NEA) represents 2.2 million members, the vast majority of whom are teachers and educational support staff. The NEA survey elicited information on the level of coverage, the extent of FMLA use, the impact on the workplace and suggestions for further improvements in the FMLA. Thirty-five state affiliate offices representing 30 different states responded to the NEA's two-page questionnaire.

ii. American Federation of Teachers

The American Federation of Teachers (AFT) conducted a telephone survey of its locals in Illinois and Texas to determine whether collective bargaining had any bearing on the practical application of FMLA for members and their families. In Illinois, leave-of-absence rules are negotiated in collective bargaining or provided in state statute. In Texas, leave-of-absence rules are established by school boards.

AFT staff developed a questionnaire on various aspects of FMLA that were of particular interest to the union. In cases where leave was granted, the questionnaire asked whether health care, paid leave and return-to-work rights were also provided. The questionnaire also asked about the impact on teachers of special K-12 leave provisions, as well as whether or not teachers were being asked to meet the 1,250 hour work requirement to be eligible for FMLA protections.

The telephone survey was conducted between May 1, 1995 and June 7, 1995. All locals in Illinois with at least 100 members, as well as several smaller locals, were contacted - a total of 49 locals. Thirty-two of those locals (65 percent) responded to the survey. The replying locals represent about 48,000 (84 percent) of AFT members in Illinois. All 22 Texas locals were contacted, of those, nine local representatives (40 percent) responded. These nine locals represent 14,500 (88 percent) of AFT's Texas members.

d. Catalyst

Catalyst, a research organization that works with businesses on issues relating to women's advancement in the labor force, conducted case studies of leave-taking employees regarding family and medical leave. The purpose of these interviews was to provide some qualitative data to enrich and to personalize the quantitative information the Commission gathered through its two national scientific surveys.

A total of four case studies of leave-takers was included in Catalyst's report to the Commission. All four interviewees were employed by firms located in the Northeast. The leave-takers included two female managers at a pharmaceutical company who used the FMLA to extend their maternity leaves, a female professional in the finance department of a pharmaceutical company who used the FMLA to extend her maternity leave and a male professional at an insurance company who used the FMLA to care for his dying mother.

e. Westat Embedded Employee Survey

In addition to the Employer Survey, Westat also conducted an "embedded" Employee Survey, focusing on a non-random sample of leave-takers from the firms of respondents to the Employer Survey. Leave-taking employees were selected for the embedded survey through a random process initiated by their employers. When the total number of the respondent's leave-taking employees was low (ten, for example), all leave-taking employees were included in the sample. When the total number of respondent's leave-taking employees was high (100, for example), a random process was used to select which of the leave-taking employees would be asked to participate. The contact person of the employing organization was asked to distribute the questionnaires to the leave-taking employees chosen, who then were asked to return the questionnaires directly to Westat in a postage-paid envelope.

The "embedded" Employee Survey includes questions similar to those in the Employee Survey, such as reason and length of leave, benefits lost, the employee's method of covering for lost wages, the nature of the position to which the employee returned and the way in which work was covered during the employee's absence. The questions also seek information about the employee's attitudes toward and knowledge of family and medical leave.

Westat staff advised the Commission that, due to the low response rate they got to this survey, as well as the non-representative nature of the sample, the data should only be used as a supplement to the Employee Survey data set. It is not possible to generalize the findings from the embedded survey to the population of U.S. employed persons.

f. Literature Review on Wage Replacement Policies

One of the eight questions which the Commission was mandated to study under the FMLA was "the impact on employers and employees of policies that provide

temporary wage replacement during periods of family and medical leave.” As the FMLA is an unpaid leave law, the Commission needed assistance in assessing existing voluntary paid leave policies. The Commission contracted with researchers at the Radcliffe Public Policy Institute in Cambridge, Massachusetts to prepare a “white paper” on wage replacement. The paper contains a literature review and a comparative analysis of wage replacement policies found in other countries. It concludes with a summary of issues and policy considerations, and recommendations for future research.

F. National Academy of Sciences Workshop

In order to assist the Commission with its review and interpretation of the new data collected from the Employee Survey and the Employer Survey, the Commission consulted the Board on Children and Families, which offered to convene a group of experts to provide an impartial discussion of the data. Created in 1993 under the joint auspices of the National Research Council’s Commission on Behavioral and Social Sciences and Education (CBASSE) and the Institute of Medicine (IOM), the Board on Children and Families provides a national focal point for the nonpartisan analysis of child and family issues that center on policy decisions. Through this dual affiliation within the Academy complex (CBASSE/IOM), the Board works to synthesize the views of health professionals and those working in the social and behavioral sciences in the analysis of child and family issues.

On October 23 and 24, 1995, the Board held a one-and-a-half day workshop that brought members of the Commission together with research, business and policy experts on family leave issues to provide an informed discussion of the new data. The principal investigators from the Employer Survey and Employee Survey presented an overview of their findings. Participants were able to ask questions and offer their responses to the findings. The workshop format consisted of three panels - each with a lead presenter and two discussants. The first panel focused on costs and benefits to employers. The second panel focused on costs and benefits to families. The third panel discussed directions for future research. The panelists were asked to reflect on the new data from their own disciplinary perspective, and to offer suggestions about additional analysis needed for the Commission’s final report. Brief presentations were followed by discussion among participants including Commissioners, panelists and invited guests, selected on the basis of their expertise on and practical experience with the issues under discussion.

G. Summary

As a result of these research efforts, the Commission now has new data which together help to provide comprehensive answers to all the mandated questions posed by Congress. Two new national scientific data sets provide important information concerning the costs and benefits of family and medical leave policies, and the FMLA, to both employers and employees. Public hearings were held in different sites across the country to hear directly from workers and employers about their experiences with family and medical leave policies, and the FMLA. An array of research organizations with expertise in family leave issues assisted the Commission in its research.

The National Archives will house the records of the Commission. These records will include all reports submitted to the Commission, as well as transcripts from public hearings, transcripts from the National Academy of Sciences workshop and transcripts of all the Commission meetings. In addition, copies of the data sets collected by University of Michigan and Westat will be housed in the Office of Compensation and Working Conditions at the Bureau of Labor Statistics.

