



# Access to Family and Medical Leave Since the Passage of the FMLA: Coverage, Knowledge and Use of the New Law

## A. Introduction

### 1. Data Sources

Most of the information in the following four chapters is based on new data from the Employer Survey and the Employee Survey. In addition, the Commission has scientific data from the FMLA questions on the Census Bureau's survey to supplement the understanding of small "covered" employers and "non-covered employers." Data derived from other sources will be cited accordingly.<sup>1</sup>

### 2. Definitions of Employer and Employee Coverage under the FMLA

The Act defines "employer" as any person who has 50 employees or more on his or her payroll anywhere within the continental United States. By that definition, an employer with no more than one employee in each of the 50 states is still an "employer" under the Act. It is possible, however, to be a "covered employer" but not have any "covered employees." This is because the Act has complicated employee eligibility criteria which set minimum size requirements not only for the employee's own worksite, but also for the worksites in close proximity to where the employee works. These employee eligibility criteria provide that an employee is covered under the Act if there are 50 employees or more either at the employee's worksite, or within a 75-mile radius of the worksite.

In addition to working in a "covered" worksite, employee eligibility depends on issues related to the employee's length of service and hours worked. An employee must also have been employed for at least 12 months and have worked at least 1,250 hours with that employer during the previous 12-month period to be eligible for job-protected leave.



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<sup>1</sup> See Chapter II for a description of the three samples.

Only those employers with employees who meet all the Act's employee eligibility requirements are actually involved in providing leave to their employees under the Act. In order to focus the Commission's resources on employers with practical responsibility for eligible workers, the Employer Survey uses the worksite as the unit upon which to base an analysis of employers' and employees' experience under the Act and with family and medical leave policies generally. Specifically, the Employer Survey applies the definition of the DMS file, which defines a worksite as "a single physical location where business is conducted or where services or industrial operations are performed." It should be noted that the Employer Survey, like the DMS, uses the term "business establishment" as a synonym for the single "worksite." Thus, throughout the Employer Survey, the term "business establishment" is intended to refer to a specific work location. In this report, however, the term "worksite" will be used rather than "establishment" and should not be substituted for the word "company," which was not the unit of analysis used in the Employer Survey.

## B. New Data on Extent of the FMLA Coverage

### 1. Coverage of Worksites and Employers

In order to find out which worksites are covered under FMLA, the Employer Survey included two questions. The first question asked how many employees worked at the site. If the answer is at least 50, then the worksite is classified as being covered by the FMLA. If the answer is fewer than 50 employees, then a follow-up question asked how many people worked within a 75-mile radius of the worksite location. If that number was at least 50, then the respondent's worksite is classified as covered under FMLA.

The Employer Survey estimates that 10.8 percent of all private-sector U.S. worksites are covered by the Act (see Table 4.1). This relatively small proportion of U.S. worksites actually employs more than half (59.5 percent) of the nation's private-sector employees, most of whom work for the country's largest employers. Indeed, almost half of the nation's employees work in covered worksites with more than 250 employees, even though those worksites comprise a tiny proportion (4.6 percent) of all covered worksites. Of those employees working for covered employers, 90.2 percent work at the small proportion (39.1 percent) of worksites that employ at least 50 employees, and the remaining 9.8 percent of employees work at

TABLE 4.1  
**Coverage of Worksites and Employees  
 Under the Family and Medical Leave Act**

	Worksites	All Employees
FMLA-covered worksites	10.8%	59.5%
FMLA-non-covered worksites	89.2%	40.5%
Total	100.0%	100.0%
<b>FMLA-COVERED WORKSITES</b>		
<u>Number of Employees at Worksites</u>		
At least 50 employees at worksites	39.1%	90.2%
At least 50 employees within a 75-mile radius of worksite	60.9%	9.8%
50 to 250 employees	95.4%	53.9%
More than 250 employees	4.6%	46.1%
<b>STANDARD INDUSTRIAL CLASSIFICATION</b>		
Manufacturing	9.4%	24.5%
Retail	27.7%	15.7%
Services	26.2%	34.1%
All other industries	36.8%	25.7%

SOURCE: WESTAT INC. TABULATIONS OF DATA FROM WESTAT INC., SURVEY OF EMPLOYERS, 1995.

the remaining 60.9 percent of smaller worksites that qualify because of the 75-mile radius rule.

In Table 4.1, which shows FMLA-covered employers by industry (Standard Industrial Classification), industries with the largest worksites, such as manufacturing, also have a large number of employees working in a relatively small percentage of

covered worksites. Thus, only about 9.4 percent of FMLA-covered worksites are in manufacturing, but those worksites employ 24.5 percent of all employees. One-quarter of FMLA-covered worksites are within the services sector, which employs 34.1 percent of employees. Another 27.7 percent of FMLA-covered worksites, employing 15.7 percent of employees, are in the retail sectors; and the remaining 36.8 percent of worksites are in the residual category.

It should be noted that the demographic profile of employees at large worksites is different in some respects than the demographic profile of employees at small worksites. For example, research shows that larger worksites have somewhat higher numbers of males, African Americans, highly educated employees, union members, and married employees. Smaller worksites have somewhat higher numbers of young employees, women, non-union and less educated employees.<sup>2</sup> Given the fact that employee coverage under the FMLA is based in part on the size of the worksite, these pre-existing differences in the types of workers who tend to work in large and medium versus small firms, is reproduced in the demographics of employee coverage, as discussed below.

## 2. Extent of Employees' Coverage

This section discusses which employees in the United States are actually eligible to take leave under the Family and Medical Leave Act. Both the Employer Survey and the Employee Survey offer data concerning the extent of employees' FMLA coverage. The Employer Survey provides data based on a sample of all private-sector U.S. employers and their employees. The Employee Survey provides data on a more inclusive sample, consisting of all U.S. employees working in both the private-sector and the public-sector. The inclusion of public sector employees in the Employee Survey sample results in a higher percentage of employees working for covered employers and a higher percentage of employees eligible to take leave under the Act.<sup>3</sup>

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<sup>2</sup> See Charles Brown et. al, *Employers Large and Small*, (Cambridge, MA: Harvard University Press, 1990)., Walter Y. Oi, *Low Wages and Small Firms in Research in Labor Economics*, 1991, Volume 12, pp. 1-39, and especially p. 9, Table 1, and Todd L. Idson, et al., *A Selectivity Model of Employer-Size Wage Differentials*, in *Journal of Labor Economics*, January 1990, Volume 8, Number 1, Part 1, p. 99.

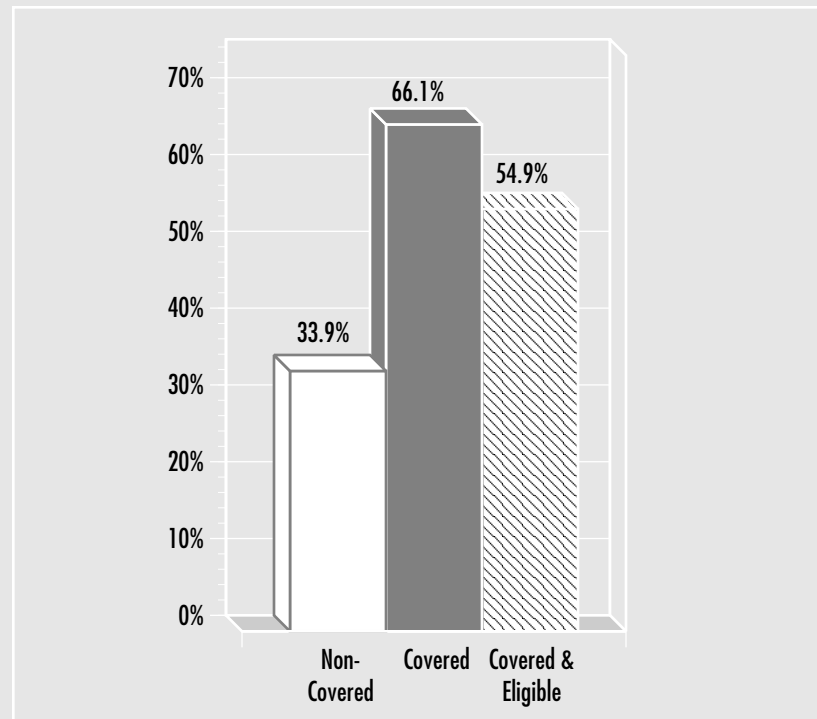
<sup>3</sup> While the Employee Survey numbers are larger than the Employer Survey numbers because of the inclusion of public sector workers, it should be noted that the Employee Survey totals may be slightly inflated for two reasons. First, the Employee Survey data is based on the employed household population with telephones, which means that it is a slightly more affluent group than the total employed population including households with no telephones. As higher-income workers tend to work at covered worksites, the number of those working at covered worksites may be slightly elevated. Another reason the Employee Survey data may be inflated is that it includes anyone employed over an 18-month period, while the Employer Survey is based on a single point in time.

The Employer Survey finds that 59.5 percent of private-sector employees in the U.S. work for covered employers, while the Employee Survey finds that 66.1 percent of employees work for covered employers, including private and public sector worksites. Applying the Act's employee eligibility criteria, the Employer Survey finds that slightly less than one half (46.5 percent) of all private-sector employees are eligible to take leave under the Act<sup>4</sup>, compared to slightly more than half (54.9 percent) of all employees eligible to take leave under the Act in the Employee Survey. It is significant that the difference between the fraction of

employees in covered worksites and the fraction of employees that are eligible is roughly the same across both surveys - 11 to 13 percent<sup>5</sup> (see Figure 4.1).

FIGURE 4.1

**Demographic Profile of Employees by Coverage Status under FMLA**



SOURCE: AGUIRRE INTERNATIONAL TABULATIONS OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN, SURVEY OF EMPLOYEES, 1995

<sup>4</sup> The question on the Employer Survey used to measure the number of employees eligible for the Act was "How many employees at this location worked at least 1,250 hours for your organization in the past 12 months?" This question is not entirely congruent with the law, which defines employee eligibility as those who have worked at least a year and at least 1,250 hours. The estimates provided above, therefore are slight overestimates of the percent eligible because they include those persons who have worked at least 1,250 hours, but may not have worked at least 12 months for the company. See David Cantor, et al., *The Impact of the Family and Medical Leave Act: A Survey of Employers*, (Rockville, MD: Westat, Inc., 1995), p. 3-2.

<sup>5</sup> Findings from a study by the Families and Work Institute, *Access to Leave Benefits Under the Family and Medical Leave Act of 1993*, reveal the overall number of employees eligible to take leave under the Act to be at the same level as the Employer Survey. Their study was based on a 1992 survey of a national representative sample of 2,958 employees (National Study of the Changing Workforce, discussed in Chapter III).

### 3. The Demographics of Employee Coverage

Who are the employees who work for covered employers and who are the employees who can take leave under the Act? Demographic profiles of employees surveyed reveal some interesting differences between those working at covered worksites as compared to those working at sites that are not covered, and clarifies what kinds of employees are most likely to have access to the FMLA on the basis of employee eligibility requirements.

The Employee Survey is based on a nationally representative sample of employed persons 18 and over and thus reflects the demographic profile of the American Workforce (see Table 4.2). For example, men are somewhat more heavily represented in the labor force (and thus in this sample) than women (about 54 percent compared with 46 percent). The largest age group of employees is between 35 and 49 years old. With respect to race and ethnicity, over 80 percent of the sample is white and non-Latino. By far the largest group of employees is married; a majority have no children. Only about eight percent of the employees have less than a high school education, with the remainder roughly evenly distributed in the three higher education categories. Regarding family income, the single largest group is in the category earning between \$30,000 and \$50,000 a year. About half the employees are hourly workers, and almost 40 percent are salaried. Finally, 16.3 percent of the employees are members of unions.

There are some demographic differences between employees who work at covered and non-covered worksites (See Appendix E, Table 4.A). These differences are largely related to differences in the workforce composition of worksites in different size categories, as discussed above.<sup>6</sup> Those most likely to work at non-covered worksites include the youngest and the oldest employees (those under 25 and over 49 years old), Latinos, employees whose annual family income is less than \$20,000, those who are neither salaried nor hourly (that is, who are compensated by piece-work rates or commission, for instance) and non-union employees. On the other hand, African Americans and union members are more likely than whites or Latinos or non-union employees to work for covered employers.

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<sup>6</sup> Multi-variate analysis regarding the clustering of certain demographic variables and the variable of firm size was presented at the National Academy of Sciences Workshop by the Institute for Social Research, Survey Research Center, University of Michigan.

**TABLE 4.2**  
**Demographic Profile of Employees Sample**

ALL RESPONDENTS n=	122,000,000 100.0%
<b>GENDER</b>	
Male	53.7%
Female	46.3%
<b>AGE</b>	
18-24	13.8%
25-34	22.8%
35-49	41.5%
50-64	18.7%
65 or over	3.2%
<b>RACE</b>	
Latino	7.0%
African American	8.8%
Non-Latino White	82.2%
Other	2.0%
<b>MARITAL STATUS</b>	
Married	65.1%
Living w/ Partner	4.0%
Separated	1.5%
Divorced	9.7%
Widowed	2.3%
Never been Married	17.4%
<b>CHILDREN UNDER 18</b>	
None	56.8%
One or more	43.2%
<b>EDUCATION</b>	
Less than High School	7.7%
High School Graduate	29.2%
Some College	28.9%
Four Years of College or more	34.1%
<b>ANNUAL FAMILY INCOME</b>	
Less than \$20,000	15.4%
\$20–30,000	12.4%
\$30–50,000	24.3%
\$50–75,000	11.3%
\$75,000 or more	11.0%
Unknown	25.5%
<b>COMPENSATION TYPE</b>	
Salaried	37.7%
Hourly	50.9%
Other	11.4%
<b>UNION STATUS</b>	
Union	83.7%
Non-union	16.3%

SOURCE: AGUIRRE INTERNATIONAL TABULATION OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN, SURVEY OF EMPLOYEES, 1995.

Note: The “unknown” or “no answer” responses accounted for less than 2% of total responses in all categories except income, where they have been included in the table.



The Employee Survey also reveals some differences between employees who work for a covered employer, and employees who, in addition, are eligible to take leave under the Act (see Appendix E, Table 4.A). Overall, 66.1 percent of the employees surveyed work at sites that are covered by the FMLA, but only about 54.9 percent are eligible to take advantage of the Act. Women are more likely to work at covered sites, while women and men are almost equally likely to be eligible to take leave under the Act.

Employees between 25 and 49 years old are especially likely to be working for covered employers (about 68 percent), and to be eligible to take leave under the Act (about 60 percent). By contrast, employees in the youngest and oldest age groups (18 to 24 and 65 years or older) are especially unlikely to be eligible (34.4 percent and 40.3 percent).

African American employees are particularly likely to be both covered (81.9 percent) and eligible (74.1 percent), while Latino employees are relatively less likely to be either covered or eligible (59.4 percent and 48.5 percent).

The two largest categories of marital status are “married” and “never married.” Interestingly, divorced employees are more likely than married employees to be covered (70.2 percent compared with 65.0 percent) and eligible (61 percent compared with 56.7 percent). However, employees who have never been married are less likely to be both covered and eligible (40.8 percent). (The relatively small number of employees who are “separated” are also especially likely to be covered and eligible.) Those with at least one child under 18 are more likely than those without these dependents to be both covered and eligible (58.3 percent compared with 52.3 percent).

The patterns with respect to education and annual family income are similar. In general, the likelihood of being covered, and of being both covered and eligible, rises as income and education levels increase. Thus, for instance, 47 percent of those with less than a high school education, and only 42.8 percent of employees with less than \$20,000 a year in family income, are covered and eligible. This compares with 57.6 percent of those with at least four years of college or more and over 60 percent of those with an annual family income of \$30,000 or more, who are covered and eligible.

As to job characteristics, employees who are covered and eligible are more likely to be salaried. For instance, almost 69.3 percent of salaried employees work at a covered worksite, and 61.7 percent are eligible and covered by the Act. By contrast, while 71.3 percent of hourly employees are covered, only 56.5 percent are covered and eligible. Employees compensated in some other way, that is, on the basis of piece work or commission, are far less likely to be covered or eligible than either salaried or hourly employees.

However, unionized employees - who are most likely to be paid by the hour - are far more likely to be covered and to be both covered and eligible than non-union employees. For example, 89.8 percent of unionized employees are covered, compared with 61.7 percent of non-union employees; 81.3 percent of unionized employees are both covered and eligible, compared with just under 50 percent of non-union employees.

In sum, while almost two-thirds of employees work for employers that are covered by the Act, only about 55 percent are both covered and eligible to take leave under the FMLA. Those most likely to work for covered employers are women, 25 to 34 year olds, African Americans, employees who are separated, divorced or widowed, those with at least one child under 18, employees with higher levels of education and income, and unionized employees. The profile of employees who are most likely to be both covered and eligible to take leave under the Act looks similar to those who are covered. The disparity between the extent to which employees are “covered” versus “covered and eligible” is greatest for three subgroups of workers: those 18 to 24 years old, those who have never been married, and those with annual incomes of \$20,000 or less.

#### **4. Number of Businesses and Employees Not Covered**

Among private-sector worksites in the U.S., 89.2 percent are non-covered, accounting for 40.5 percent of the nation’s employees (see Table 4.1). Among the companies in the Census small business sample, which are generally synonymous with worksites, 91.3 percent are non-covered - accounting for 52.8 percent of the employees in that business sector.

## C. Changes in Employer Leave Policies Since the FMLA

Chapter III of this report discusses various studies and surveys that assess the nature and extent of voluntary leave policies and state statutes that existed prior to the Act's passage. The Employer Survey did not ask employers questions about their leave policies prior to the Act. It did, however, survey employers about when their organization first established its family and medical leave policies and what changes they have made in their family and medical leave policies since the FMLA was enacted. Consequently, the existing studies of pre-Act policies discussed in Chapter III, combined with the Employer Survey data on the date of starting leave policies and changes in leave policies following the Act's passage, provide a good picture of changes that employers have made in family and medical leave policies as a result of the passage of the FMLA.

### 1. Extent of Changes in Leave Policies as a Result of the FMLA

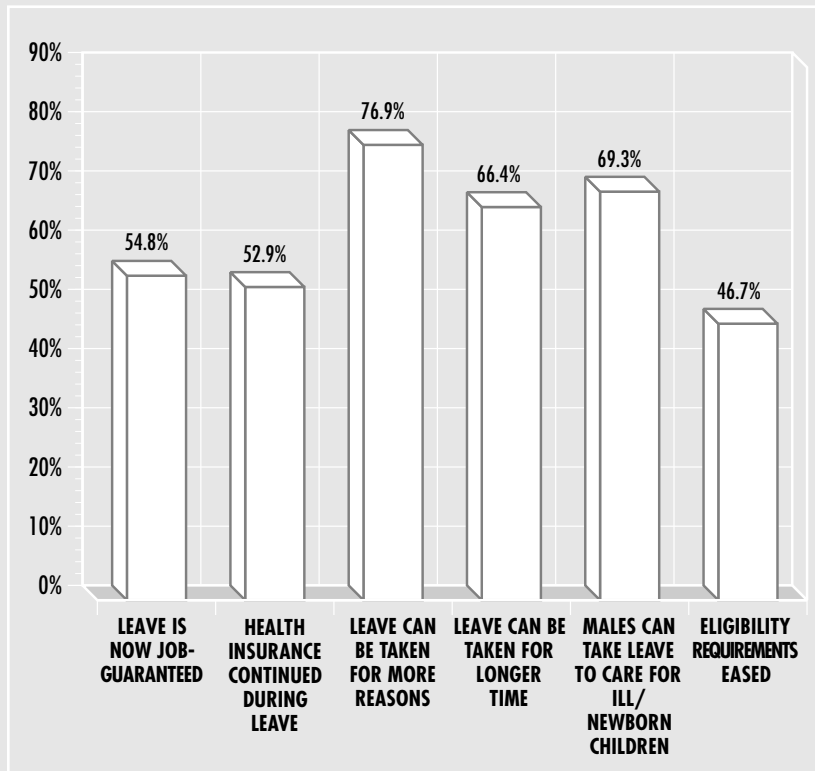
The passage of the FMLA has had a substantial impact on employer leave policies. According to the Employer Survey, two-thirds of worksites (66.5 percent) covered by the Act have changed some aspect of their policy in order to comply with the law.<sup>7</sup> In other words, prior to the Act, one-third of covered employers were voluntarily offering leave policies consistent with, or more generous than, the FMLA.

Among those covered worksites that have made changes, the most common change (76.9 percent) is to increase the number of reasons for which employees can take leave (see Figure 4.2). The reason most likely to have been added (made by 69.3 percent) is granting male employees time off to care for seriously ill or newborn children. Another common change (made by 66.4 percent of covered worksites) is allowing leave to be taken for a longer period of time. Over half of the covered worksites that have made changes have done so by making the leave job-guaranteed, and by expanding health insurance benefits (either continuing them during leave, or for a longer period). Almost half of the covered worksites that have made changes (46.7 percent) have eased employee eligibility requirements (see Appendix E, Table 4.B).

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<sup>7</sup> David Cantor, et al., *The Impact of the Family and Medical Leave Act: A Survey of Employers*, (Rockville, MD: Westat, Inc., 1995) p. 4-2.

**FIGURE 4.2**  
**Percentage of Worksites Changing Family and Medical Leave Policies by Type of Change<sup>(1)</sup>**



SOURCE: WESTAT INC. TABULATIONS OF DATA FROM WESTAT INC., SURVEY OF EMPLOYERS, 1995.

<sup>(1)</sup> Percentages in table refer to FMLA-covered worksites whose policies changed due to FMLA.

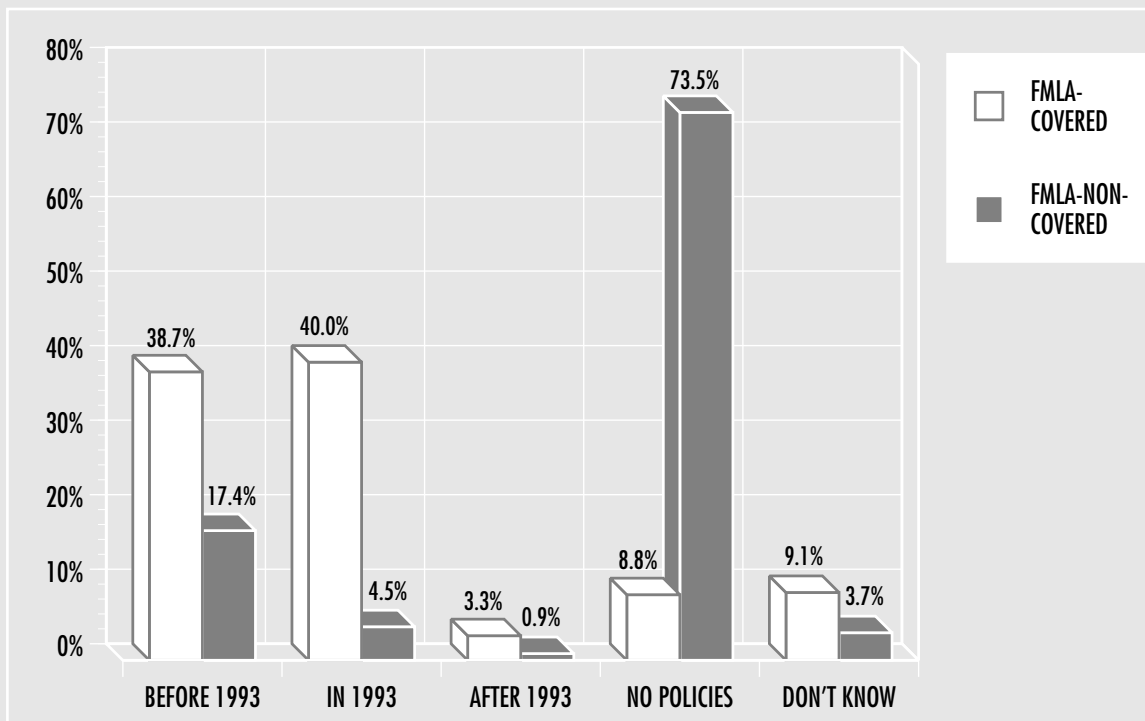
The Census survey<sup>8</sup> finds that among “covered” employers that are privately, not publicly owned 66.4 percent did not have to make leave-related policy or practice changes as a result of the Act.<sup>9</sup> At least one policy change was necessary in 31.7 percent of the covered worksites. Those worksites that made changes did so for the following reasons: 29.6 percent to accommodate fathers’ care of newborn children; 26.3 percent for newly-adopted or foster children; 24.0 percent for a seriously ill child, spouse or parent; 19.7 percent for maternity-related issues; and 18.3 percent for personal health conditions.

<sup>8</sup> See Chapter II, Section C for more information on the CBO sample used for the Census Survey.

<sup>9</sup> These findings on the extent of policy changes among FMLA-covered worksites cannot be compared to findings on the same topic from the Employer Survey because of differences in the way the question was asked and differences in the survey sample universe.

The Employer Survey also finds that among covered employers with family and medical leave policies that provide job-guaranteed leave, 38.7 percent established their policies before 1993, and approximately 43 percent did so during or after 1993 (see Figure 4.3). Roughly nine percent of covered worksites report having no FMLA policies established. Worksites with more than 25 employees are more

**FIGURE 4.3**  
**Date of Establishment of Family and Medical Leave Policies:**  
**FMLA-Covered and Non-Covered Worksites**



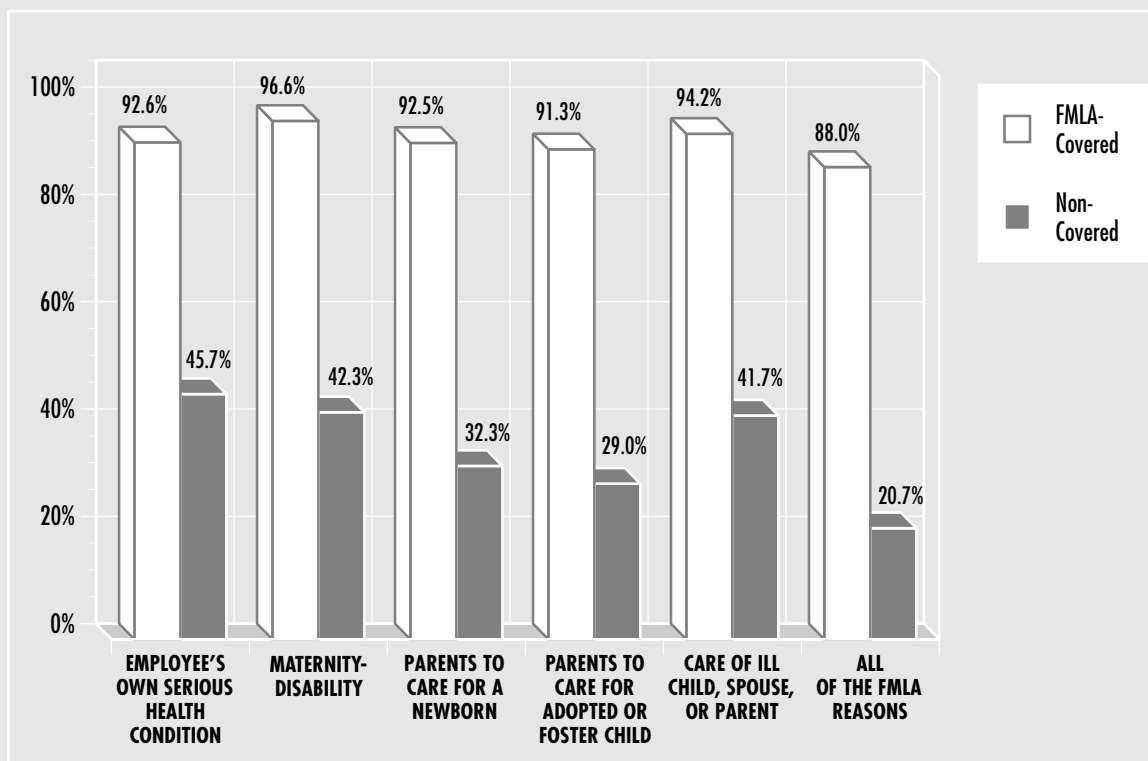
SOURCE: AGUIRRE INTERNATIONAL TABULATIONS OF DATA FROM WESTAT INC., SURVEY OF EMPLOYERS, 1995.

likely to have had family and medical leave policies in place prior to 1993. Almost one-fifth (17.4 percent) of non-covered employers had family and medical leave policies before 1993, and an additional 5.4 percent adopted family and medical leave polices in or after 1993 (see Appendix E, Table 4.C).

## 2. Leave Policies of Covered and Non-Covered Employers

The Employer Survey asked both covered and non-covered employers a number of questions about the types of benefits currently available under their family and medical leave policies. The questions asked about the following benefits: availability of up to 12 weeks of leave, including all the reasons specified in the Act; continuation of health benefits during leave; and job guarantee upon return from leave.<sup>10</sup> Respondents were also asked whether they offer any additional leave beyond that required by the Act. The data show that over 90 percent of the covered worksites provide up to 12 weeks of leave for family and medical reasons. They

FIGURE 4.4  
**Availability of Up to 12 Weeks of Leave:  
 FMLA-Covered and Non-Covered Worksites**



SOURCE: WESTAT INC. TABULATION OF DATA FROM WESTAT INC., SURVEY OF EMPLOYERS, 1995.

<sup>10</sup> The only worksite respondents queried about health benefits and job guarantee are those who answered "yes" to the question about whether they provided 12 weeks of leave.

also continue health benefits, and guarantee a job upon return from leave for the reasons specified in the Act. A review of the data shows some considerable differences between the policies of covered and non-covered employers.

**Availability of 12 weeks of leave:** The FMLA requires that covered employers provide up to 12 weeks of unpaid leave for the reasons specified by the Act (see Figure 4.4, previous page). The vast majority of FMLA-covered worksites do that. For each of the FMLA-specified reasons, the percentage of covered worksites that report offering a 12-week period of leave exceeds 90 percent. By contrast, less than one-half of the non-covered worksites offer 12 weeks of leave for family and medical reasons. Non-covered worksites are less likely to offer leave for the care of a newborn child, or a child recently adopted or placed with the employee for foster care (see Appendix E, Table 4.D).

Relatively few worksites offer family and medical leave for reasons not included in the Act, although those that do are usually FMLA-covered worksites. The most frequent “other” reason that these worksites give is leave for bereavement/death in the family. Most worksites that add other reasons, however, do so under “personal leave” policies which allow leave for multiple reasons pending supervisory approval.

Among covered worksites, larger worksites with more than 250 employees are only slightly more likely to offer leave than the worksites with 250 employees or fewer.<sup>11</sup> As mentioned above, more than 90 percent of covered worksites make up to 12 weeks available for the various listed reasons, with differences of only a few percentage points between worksites with more than 250 and those with fewer than 250 employees. The greatest difference between the two sizes is that the larger worksites are more likely to offer family and medical leave for more reasons than the ones included in the Act.

Among the non-covered worksites, there are significant differences in the availability of 12 weeks of leave.<sup>12</sup> Worksites with more than ten, but fewer than 50 employees, are much more likely to offer 12 weeks of leave for each of the reasons under the Act than are worksites with ten employees or fewer. Worksites with ten employees or fewer are especially unlikely to offer parental leave to care for newborns and for adoption or foster care placement. All non-covered worksites, how-

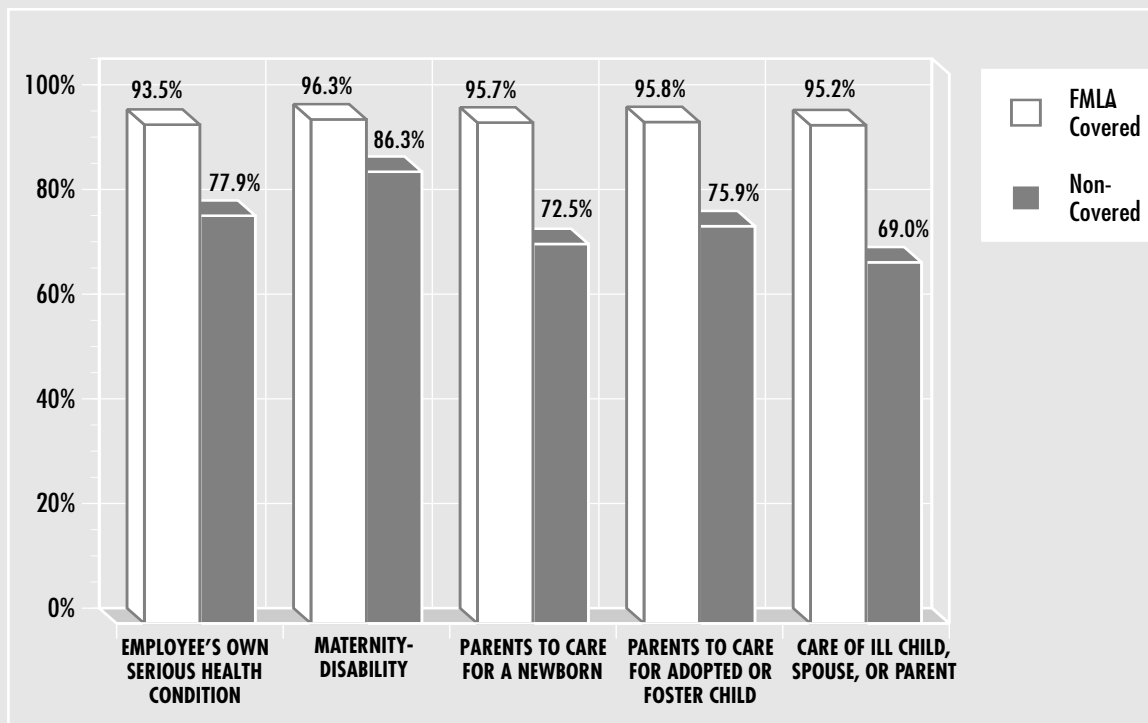
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<sup>11</sup> David Cantor, et al., *The Impact of the Family and Medical Leave Act: A Survey of Employers*, (Rockville, MD: Westat, Inc., 1995)p. 3-9, Table 3-5.

<sup>12</sup> *Ibid.*

FIGURE 4.5

**Continuation of Health Benefits During Leave:  
FMLA-Covered and Non-Covered Worksites <sup>(1)</sup>**



SOURCE: WESTAT INC. TABULATION OF DATA FROM WESTAT INC., SURVEY OF EMPLOYERS, 1995.

<sup>(1)</sup> Percentages refer to establishments that make up to 12 weeks of leave available (or that it depends on circumstances).

Note: Difference between FMLA-covered and non-covered worksites is significant at  $p < .05$ .

ever, appear equally likely to decide whether to grant family and medical leave on an informal, case-by-case basis.

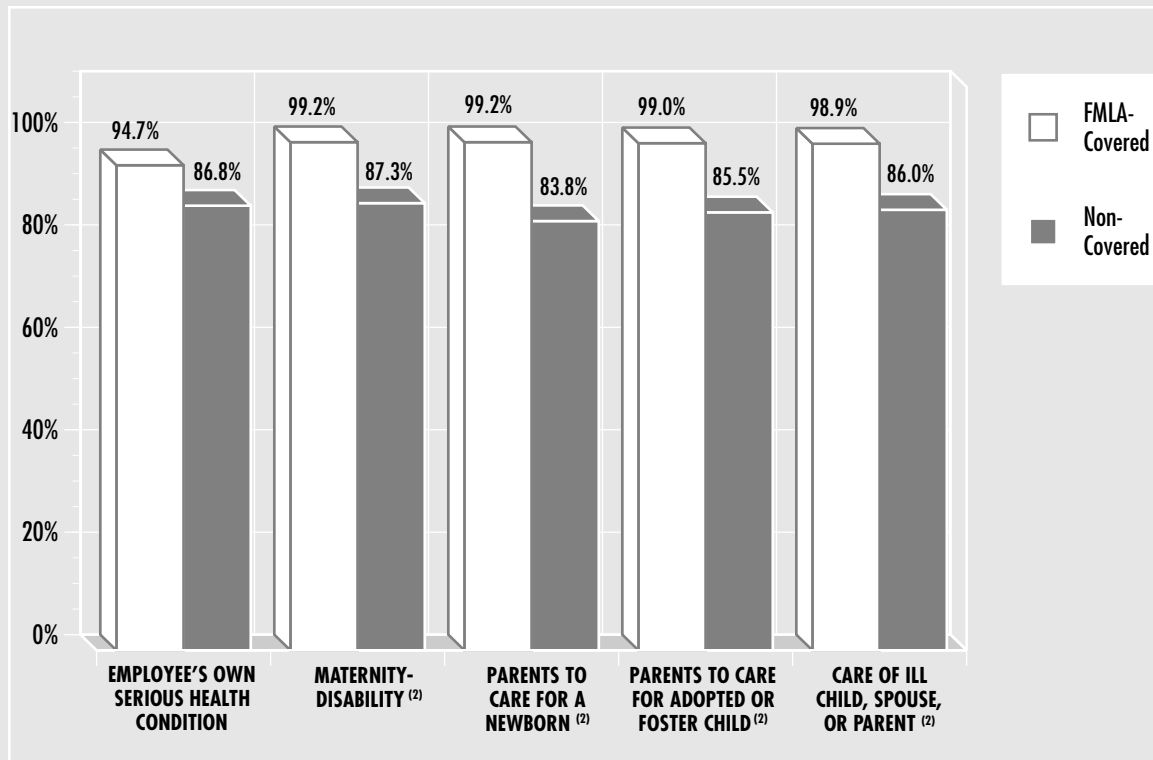
Overall, there are no substantial industry-based differences in the types of family and medical leave offered to employees.

**Continuation of health benefits:** A second requirement of FMLA is that the employer continue health benefits for the leave-taking employee and that employer and employee contributions to the health plan remain the same as they were before the leave (see Figure 4.5). Of those worksites (covered and non-covered) that offer health benefits, most that provide 12 weeks of leave also continue these health



FIGURE 4.6

### Are Employees Guaranteed Jobs Upon Return From Leave? FMLA-Covered and Non-Covered Worksites <sup>(1)</sup>



SOURCE: WESTAT INC. TABULATION OF DATA FROM WESTAT INC., SURVEY OF EMPLOYERS, 1995.

<sup>(1)</sup> Percentages in table refer to worksites that make up to 12 weeks of leave available (or that it depends on circumstances).

<sup>(2)</sup> Difference between FMLA-covered and non-covered worksites is significant at  $p < .05$ .

benefits during leave. Differences related to type of leave are insignificant among covered worksites, while the most common type of leave with continued health benefits among the non-covered worksites is maternity-disability leave.

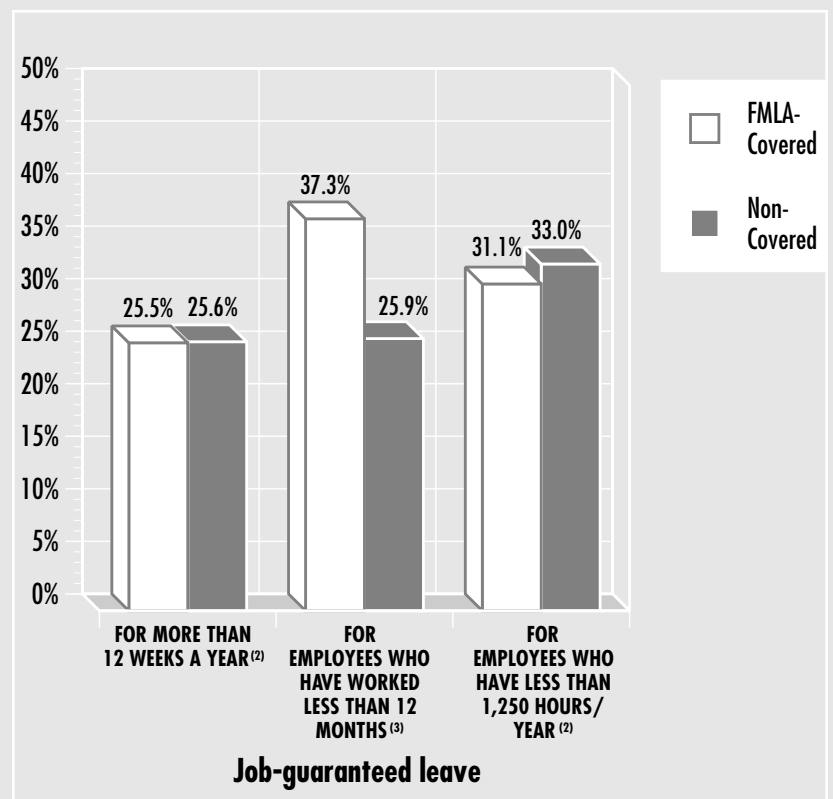
FMLA-covered worksites are significantly more likely to continue health benefits than are non-covered worksites. Over 90 percent of covered worksites offering 12 weeks of leave continue health benefits while employees are on leave for all the reasons required under the Act. By contrast, the percentage of non-covered worksites that continue health benefits changes with each reason for leave, ranging from 69 percent (for care of a family member with a serious health condition) to 86 percent (for maternity-disability reasons). Between 73 and 78 percent of

non-covered worksites continue health coverage while employees are on leave for their own serious health condition, to care for a newborn and to care for an adopted or foster child. Non-covered worksites are more likely to decide on a case-by-case basis whether to continue health benefits (see Appendix E, Table 4.E).

**Guarantee of job upon return from leave:** The FMLA also requires employers to provide leave-takers with the same or equivalent position upon their return to work. A substantial majority of both covered and non-covered worksites who offer 12 weeks of leave do guarantee employees their jobs for each of the reasons specified in the Act (see Figure 4.6). Worksites covered by FMLA are somewhat more likely to do so than are those not covered by the Act. Thus, a minimum of 95 percent of covered worksites that offer 12 weeks of leave guarantee jobs upon their employees' return for each of the specified reasons, compared with at least 84 percent of non-covered worksites. Again, non-covered worksites are more likely to make this decision on a case-by-case basis (see Appendix E, Table 4.F).

**Additional leave offered:** One-quarter of the worksites in the Employer Survey offer more than the 12 weeks of job-guaranteed leave required by the Act (see Figure 4.7). More than half (58.2 percent) of the covered worksites report that they provide no more than 12 weeks of leave time, compared with 43.2 percent of non-covered worksites, although this leave is not necessarily job-protected. Non-covered worksites are more likely than covered worksites (31.2 percent compared with 16.3 percent) to say that they make the determination on a case-by-case basis (see Appendix E, Table 4.G).

FIGURE 4.7  
**Additional Family and Medical Leave Benefits Provided to Employees: FMLA-Covered and Non-Covered Worksites <sup>(1)</sup>**



SOURCE: WESTAT INC. TABULATION OF DATA FROM WESTAT INC., SURVEY OF EMPLOYERS, 1995.

<sup>(1)</sup> Percentages refer to worksites that make up to 12 weeks of job-guaranteed leave available (or that depends on circumstances) for at least one of the reasons listed in Appendix E, Table 4.D.

<sup>(2)</sup> Difference between FMLA-covered and non-covered worksites is significant at  $p < .05$ .

<sup>(3)</sup> Difference between FMLA-covered and non-covered worksites is significant at  $p < .10$ .

A slightly higher percentage of covered than non-covered worksites (37.3 percent compared with 25.9 percent) offer leave to employees who have worked less than the 12 months required for eligibility under the Act. This difference can be attributed primarily to non-covered worksites' more frequent practice of making these decisions on a case-by-case basis (15.5 percent compared with 27.5 percent). About

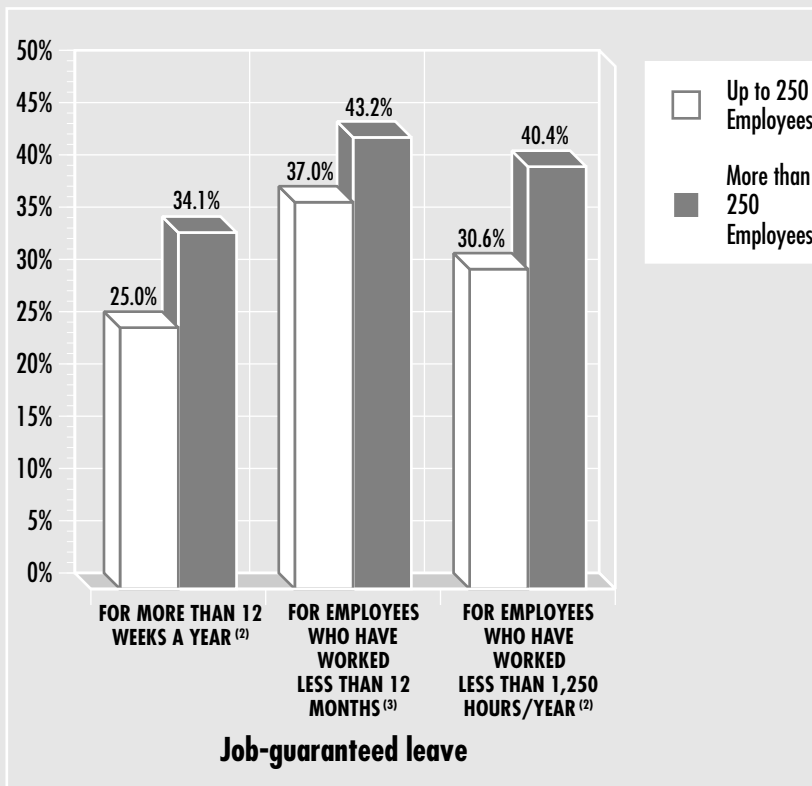
the same proportion of FMLA-covered and non-covered worksites say they do not have more generous eligibility requirements (47.2 percent compared with 46.7 percent, respectively)(see Appendix E, Table 4.G).

About one-third of both covered and non-covered worksites that offer job-guaranteed leave make that leave available to employees who have worked less than 1,250 hours. Non-covered worksites are more likely to make those leave decisions, as well, on a case-by-case basis.

Worksites with up to 250 employees are somewhat less likely than larger organizations to offer more than 12 weeks of job-guaranteed leave (25 percent compared with 34 percent)(see Figure 4.8). They are also somewhat less likely to offer leave benefits to employees with less than 12 months tenure (37 percent compared with 43 percent), or who have worked less than 1,250 hours in the previous year (31 percent compared with 40 percent)(see Appendix E, Table 4.H).

FIGURE 4.8

### Additional Family and Medical Leave Benefits Provided to Employees, by Size of Worksite (FMLA-COVERED WORKSITES ONLY)<sup>(1)</sup>



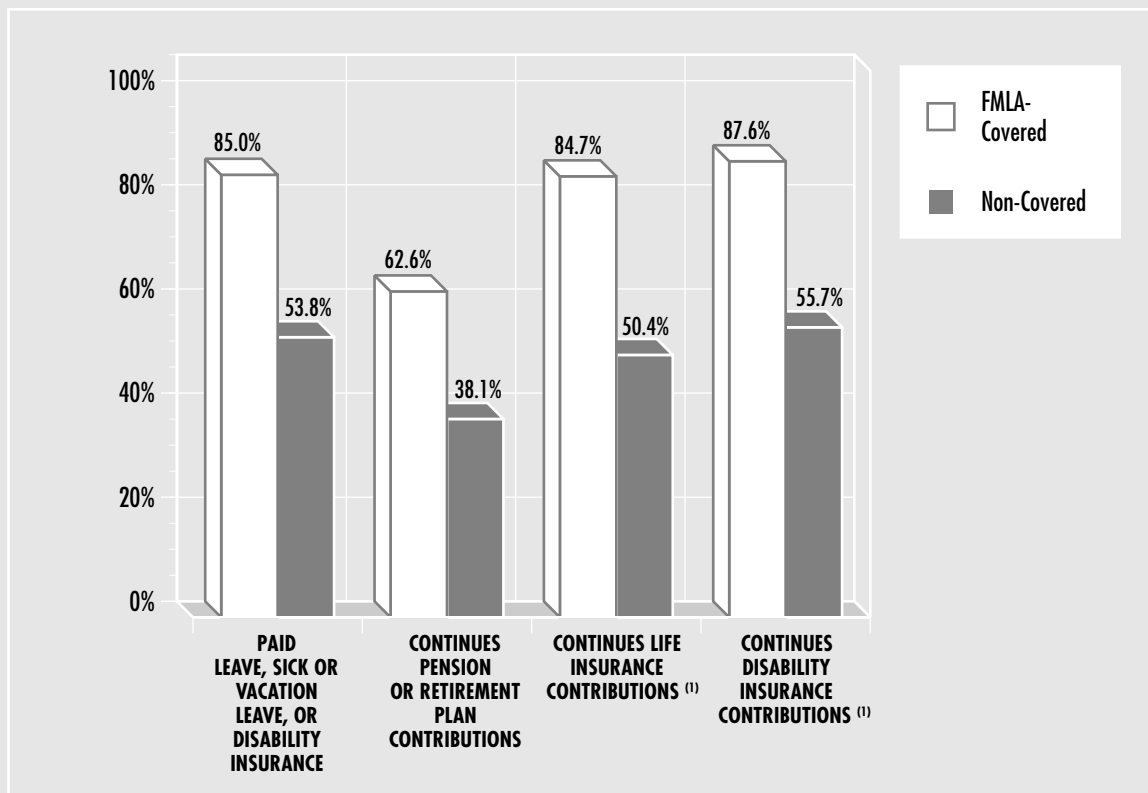
SOURCE: WESTAT INC. TABULATION OF DATA FROM WESTAT INC., SURVEY OF EMPLOYERS, 1995.

<sup>(1)</sup> Percentages refer to worksites that make up to 12 weeks of job-guaranteed leave available (or that it depends on circumstances) for at least one of the reasons listed in Appendix E, Table 4.D.

<sup>(2)</sup> Difference between the worksite sizes of FMLA-covered worksites is significant at  $p < .05$ .

<sup>(3)</sup> Difference between the worksite sizes of FMLA-covered worksites is significant at  $p < .10$ .

FIGURE 4.9  
**Continuation of Pay and Benefits During Leave:  
 FMLA-Covered and Non-Covered Worksites**



SOURCE: WESTAT INC. TABULATION OF DATA FROM WESTAT INC., SURVEY OF EMPLOYERS, 1995.

<sup>(1)</sup> Difference between FMLA-covered and FMLA-non-covered worksites is significant at  $p < .05$ .

**Continuation of pay and benefits, other than health insurance, during leave:** Worksites covered by the Act are also more likely to offer paid time off such as for sickness (or vacation) than non-covered worksites (85 percent compared with 53.8 percent)(see Figure 4.9). Of those worksites that offer pension or retirement plans, covered worksites are also more likely to continue these contributions (62.6 percent compared with 38.1 percent) than non-covered worksites. A similar pattern exists for making contributions to employees' life insurance plans and disability (see Appendix E, Table 4.I).

For FMLA-covered worksites, the size of the worksite does not have a big effect on the granting of paid leave (such as sick or vacation pay), or continuation of pension, life insurance and disability insurance during periods of leave. Thus, of those worksites with 50 to 250 employees, between 62.2 and 88 percent continue pay and benefits during leave, depending on the particular benefit. Among those worksites with more than 250 employees, the percentage that continue particular pay and benefits ranges from 68 to 90 percent (see Appendix E, Table 4.J).

In sum, the data show that more than 90 percent of the covered worksites provide up to 12 weeks of job-guaranteed leave for family and medical reasons. Of that group, 95 to 96 percent continue health benefits, and 95 to 99 percent guarantee a job upon return from leave for the reasons specified in the Act. The proportion of non-covered worksites that offer these benefits on a uniform basis is much lower - between 21 to 46 percent make up to 12 weeks of leave available, depending on the reason for leave. Of that group, between 69 and 86 percent continue health benefits (depending on the reason for leave), and approximately 85 percent offer a job-guarantee upon return from leave, regardless of the reason.

While the vast majority of covered employers are in compliance with the FMLA, approximately ten percent of covered employers appear to be failing to meet all, or some part, of their obligations under the Act. Further research on this employer minority is needed over time to learn the cause of that apparent non-compliance and the extent to which it may be due to not having eligible employees, lack of knowledge of the new law, unintentional non-compliance or intentional violations of the Act. The fact that about ten percent of employers do not know whether they are covered indicates that knowledge (or lack of it) may be a significant factor, as discussed below.

#### D. Knowledge of the New Law

To educate the public about the FMLA, the Department of Labor has initiated an extensive outreach campaign. From August 5, 1993 to September 30, 1995, Department of Labor staff presented more than 1,400 speeches, seminars and media events, responded to 270,000 telephone inquiries, and distributed public service announcements to all major markets. While this has been a well-organized public education effort, the following data from the Employer and Employee Surveys show that more education is needed overall, especially among employees.

### 1. Employers' Knowledge of the FMLA

Section 109 of the FMLA makes employers responsible for notifying employees about their rights under the Act by posting a notice which sets forth the FMLA's pertinent provisions. Since employees are technically dependent on the employer to be informed about the law, employer knowledge is an important indicator of how far the law has penetrated the U.S. labor market, and is important in its own right. To assess employers' knowledge of the law, the Employer Survey directly asked the respondent if he or she believes that his or her worksite is covered under the FMLA. The result was that 86.5 percent of the employers whose worksites are classified as "covered" by the Act (that is, they report 50 employees or more at the worksite or within a 75-mile radius) know that the FMLA applies to their location and 12.3 percent of the covered employers do not know if their worksite is covered. A tiny portion (1.2 percent) of employers at covered worksites incorrectly believe that FMLA does not apply to their location (see Table 4.3).<sup>13</sup>

Worksites that are not classified as "covered" by the Act due to their size are less knowledgeable about the law. Of those, more than half (56.5 percent) do not know whether they are covered, 8.3 percent incorrectly think they are covered and 35.2 percent know they are not covered.<sup>14</sup>

**TABLE 4.3**  
**Self-Report of Whether the Family and Medical Leave Act Applies to Worksite by FMLA Coverage Status<sup>(1)</sup>**

DOES THE FAMILY AND MEDICAL LEAVE ACT APPLY TO THIS LOCATION? <sup>(2)</sup>	FMLA-Covered	Non-Covered	Total
Yes	86.5%	8.3%	16.8%
No	1.2%	35.2%	31.5%
Don't Know	12.3%	56.5%	51.7%
Total	100.0%	100.0%	100.0%

SOURCE: WESTAT INC. TABULATIONS OF DATA FROM WESTAT INC., SURVEY OF EMPLOYERS, 1995.

<sup>(1)</sup> A worksite is considered "covered" if there are 50 employees or more at one worksite surveyed or within a 75-mile radius of that worksite.

<sup>(2)</sup> Difference between FMLA-covered and non-covered worksites is significant at  $p < .05$ .

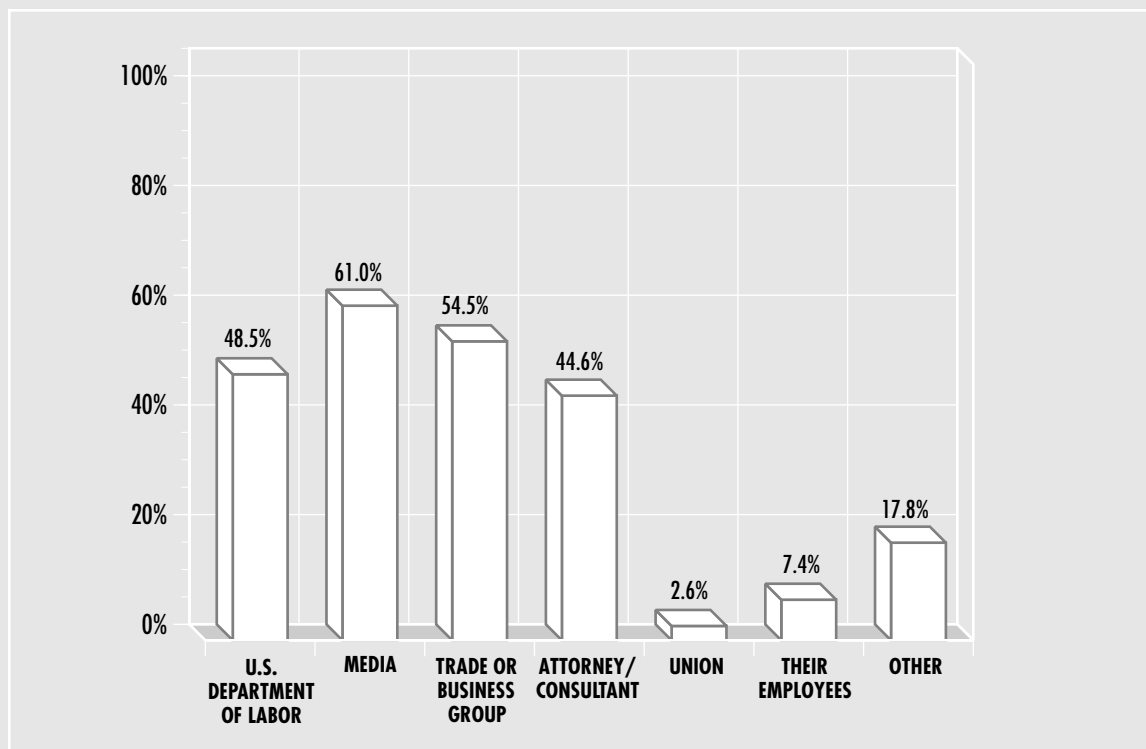
<sup>13</sup> Employer knowledge of the FMLA and whether it applies to the worksite surveyed may be somewhat overstated since a letter from Westat, Inc. regarding the Commission's research on FMLA was mailed before the telephone interview was conducted for the Employer Survey.

<sup>14</sup> Since the employer coverage and employee eligibility requirements of the FMLA are different, and relatively complicated, it is not surprising that there is some confusion about coverage, especially among worksites that are not covered.

Worksites that either are incorrect about their coverage or do not appear to understand whether they are covered by the FMLA tend to be small (fewer than 50 employees). In fact, of those employers who are either incorrect or uncertain about their coverage status, 79.3 percent are worksites with ten employees or fewer. In addition, two-thirds of the group of employers that were unsure or incorrect about their coverage status qualify as covered only because of the 75-mile radius rule. In other words, they do not have 50 employees or more at the surveyed worksite, but they do have 50 employees or more within a 75-mile radius of the surveyed worksite. These findings suggest that outreach to small businesses about the 75-mile radius rule might alleviate some of the current confusion among employers about their coverage status.

Worksites which reported that they were covered by the FMLA (whether correctly or incorrectly) were asked how they learned about the Act. The majority of

**FIGURE 4.10**  
**How Employers Learned About FMLA**



SOURCE: BUREAU OF LABOR STATISTICS, TABULATIONS OF DATA FROM WESTAT INC., SURVEY OF EMPLOYERS, 1995.

worksites learned about the FMLA either through the media (61 percent) or through trade and business associations (54.5 percent). Slightly less than one-half of these worksites learned about the FMLA through the U.S. Department of Labor (48.5 percent) or through attorneys/consultants (44.6 percent) (see Figure 4.10).

The Census Survey, in contrast to the Employer Survey, finds that a smaller number of the covered employers know they are covered by FMLA (69.2 percent) and a larger percentage believe they are not covered (15.8 percent). About the same percentage in both surveys do not know if the law applies to them. The results on knowledge of the law among the non-covered worksites is roughly the same as the Employer Survey findings. Roughly half do not know if the law applies to them or have never heard of it at all, 43 percent know that they are not covered and 7.7 percent incorrectly believe they are covered.

Testimony of covered employers from the Commission hearings indicates that “knowledge” of the Act means more than just learning about its existence and understanding its basic provisions.<sup>15</sup> Catherine A. Morris, the corporate human resources manager at Atlantic Richfield Company (ARCO) - whose worksite has “postings on the bulletin board,” a “benefits handbook [with a] section on family medical leave” and a “new-hire orientation program [which has] incorporated the information” on FMLA - concluded that the “Act already goes pretty far to make sure that employees are aware of the benefits...”<sup>16</sup> Elizabeth Pedrick Sartain, a Southwest Airlines vice president, however, noted that while she has been able to study the law, educate her peers and train the companies’ supervisors on the law, many “small compan[ies] haven’t done that, because they don’t know where to get access to it [and] they don’t understand it when they read it. It is extremely complex.”<sup>17</sup> Diane Duval, the corporate benefits manager from Lotus Development Corporation, believes that it is “crucial” to educate individual managers about the Act, because “[n]ot only must managers understand and support the benefits themselves, they must be able to manage the impact of such programs on the employees’ immediate workgroup.”<sup>18</sup> A number of employees also testified that their employers do not have knowledge (see below).

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<sup>15</sup> The Commission on Family and Medical Leave conducted three public hearings: in San Francisco, CA, Washington, D.C. and Chicago, IL. Footnotes will designate the location, page, and, where appropriate, the source.

<sup>16</sup> Testimony of Catherine A. Morris, Corporate Human Resources Benefits Manager, ARCO at San Francisco, CA Hearing, June 26, 1995, U.S. Commission on Leave Public Hearing Transcript, p. 102.

<sup>17</sup> Testimony of Elizabeth Pedrick Sartain, Vice President People Dept., Southwest Airlines, at Chicago, IL Hearing, May 8, 1995, U.S. Commission on Leave Public Hearing Transcript, pp. 99-100.

<sup>18</sup> Testimony of Diane Duval, Corporate Benefits Manager, Lotus Development Corporation at Washington, D.C. Hearing, August 4, 1995, U.S. Commission on Leave Public Hearing Transcript, p. 25.



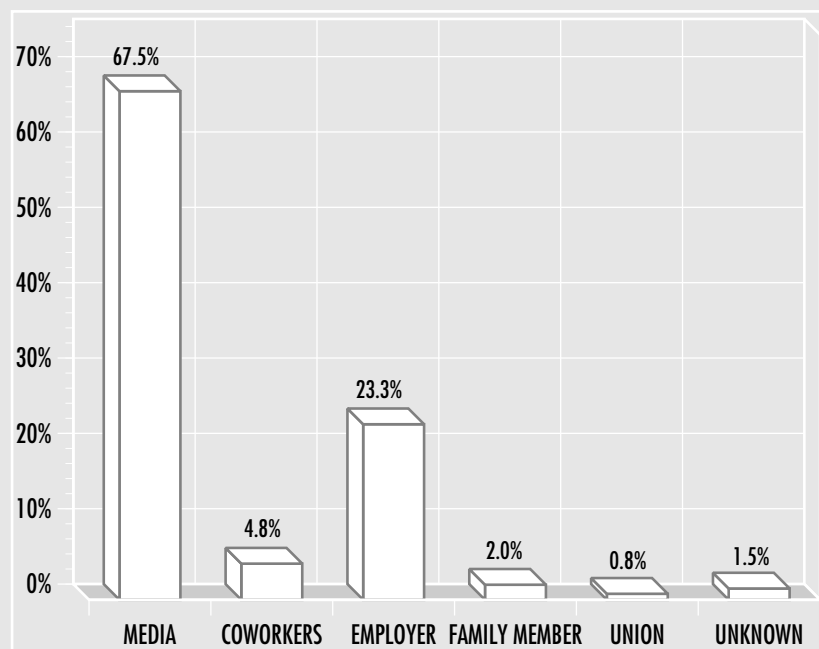
## 2. Employees' Knowledge of the FMLA

Employees, in general, are far less informed than employers about the FMLA, as well as about their individual eligibility for job-protected leave. Overall, 55.5 percent of employees have heard of the FMLA. This includes 58.2 of employees working at FMLA-covered worksites and 48.5 percent of employees at non-covered worksites.<sup>19</sup>

The Employee Survey finds that salaried employees are more likely than hourly employees, or employees paid by commission or piecework to have learned about the FMLA (see Appendix E, Table 4.K). Thus, 63.3 percent of salaried employees

FIGURE 4.11

### How Employees Learned About FMLA



SOURCE: AGUIRRE INTERNATIONAL TABULATION OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN, SURVEY OF EMPLOYEES, 1995.

Note: Numbers may not add due to rounding. 54,921,448 respondents are not included in this table because they report no knowledge of the FMLA.

<sup>19</sup> Katherine A. McGonagle, et al. *Commission on Leave Survey of Employees on the Impact of the Family and Medical Leave Act*, (Ann Arbor, MI: Institute for Social Research, Survey Research Center, University of Michigan, October 1995), p. 25, Table 6.2.2a.

have heard of the Act, compared with 50 percent of hourly wage employees and 42.9 percent of employees paid by piecework or on commission. Union members are also more likely to have heard of the Act, with 60.3 percent of union members having heard of the FMLA, compared with 54.7 percent of non-union members.

Employees with higher educational levels are also more likely to have heard of the Act. Specifically, 70.4 percent of employees with four years of college or more have heard of the Act, compared with 59.1 percent with some college education, 41.7 percent of high school graduates and 27.2 percent of employees with less than a high school education.

The Employee Survey finds that employees from all demographic groups are most likely to have learned about the FMLA through the media, and the next most likely source of information on the Act is their employers (See Figure 4.11). A greater proportion of employees who are leave-takers (who took leave for a reason covered by the Act), (27.5 percent) have heard about the FMLA through their employers than did other employees in the sample. Leave-takers are comparatively less likely (61.1 percent compared with 69 percent for other employees) to have heard of the Act through the media (see Appendix E, Table 4.L).

In sum, the media is the chief source of information for employees about the Act. The employer serves as the second most important source, although this source of information is significantly less important than the media. Only a very small number of employees have heard of the Act through their co-workers, their union or a family member.

The hearing testimony corroborates the findings from the Employee Survey that while some employees learned about the FMLA and their eligibility for leave through their employer,<sup>20</sup> others learned about it through other sources, such as the news,<sup>21</sup> their spouse<sup>22</sup> or their union.<sup>23</sup> Employee Velma Parness testified that she was able

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<sup>20</sup> Testimony of Walter Fish at Washington DC Hearing, August 4, 1995, U.S. Commission on Leave Public Hearing Transcript, p.40; Testimony of Ann Daniels at San Francisco, CA, Hearing, June 26, U.S. Commission on Leave Public Hearing Transcript, pp. 24-25; Testimony of Lori Solberg at Chicago, IL, Hearing, May 8, 1995, U.S. Commission on Leave Public Hearing Transcript, p. 135.

<sup>21</sup> Testimony of Kenneth Weaver at Chicago, IL Hearing, May 8, 1995, U.S. Commission on Leave Public Hearing Transcript, p. 38.

<sup>22</sup> Testimony of Christie Sens at Washington, DC Hearing, August 8, 1995, U.S. Commission on Leave Public Hearing Transcript, p. 36.

<sup>23</sup> Testimony of Carol Griffin at San Francisco, CA Hearing, June 26, 1995, U.S. Commission on Leave Public Hearing Transcript, p. 84; Testimony of Albert R. Burns at Chicago, IL Hearing, May 8, 1995, U.S. Commission on Leave Public Hearing Transcript, pp. 78-9; Testimony of Patricia O'Connell, at Chicago, IL, Hearing, May 8, 1995, U.S. Commission on Leave Public Hearing Transcript, p. 38.

to obtain a copy of the Act from her personnel manager, but “the university is such a huge bureaucracy that nobody was willing to take responsibility for giving [her] an answer.” As a result, she “did it on [her] own.”<sup>24</sup> Employee Patricia Connell noted: “In the past when I had requested unpaid time from my job, it had been given reluctantly and with a concern that [the employer] might be setting a bad precedent.” This time, however, “[a]rmed with the [Act], I approached my employer and asked for periodic leave to allow me to travel back and forth to Pennsylvania once a month” to assist her mother with chemotherapy sessions. This time, Ms. Connell recounted, she had “nothing to fear.”<sup>25</sup> Employee Kevin Knussman said that there were no postings of FMLA benefits<sup>26</sup> and that he experienced difficulty in obtaining information about the benefits to which he may have been entitled. Mr. Knussman believes that increased efforts are needed to educate responsible parties, such as personnel managers and attorneys, “on the benefits guaranteed under the FMLA legislation.”<sup>27</sup>

Other testifying employees reported that their employers did inform them about the FMLA, and that they assisted them in using it. Joseph Tully recalled that when he needed time off to care for his hospitalized mother, he called his department director and asked if there “was any way I could have some excused unpaid time off from work. He then told me about the FMLA and [the employer’s] policy. When he mentioned it, I remembered reading the memo from human resources about it, and I remember seeing the poster in the lunch room. However, until [the department director] reminded me of it, I hadn’t fully realized it would apply to my own situation. Therefore, I was greatly relieved to learn that FMLA would allow me to do what I felt in my heart was the right thing to do.”<sup>28</sup> In general, many employees may not even investigate their leave options until they have a concrete need to do so.

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<sup>24</sup> Testimony of Velma Parness at San Francisco, CA Hearing, June 26, 1995, U.S. Commission on Leave Public Hearing Transcript, pp. 20, 55-6.

<sup>25</sup> Connell, pp. 19-20.

<sup>26</sup> Testimony of Kevin Knussman at Washington, DC Hearing, August 4, 1995, U.S. Commission on Leave Public Hearing Transcript, p. 106.

<sup>27</sup> *Ibid.*, p. 109

<sup>28</sup> Testimony of Joseph Tully at Chicago, IL Hearing, May 8, 1995, U.S. Commission on Leave Public Hearing Transcript, p. 139.

## E. Rate of Utilization of the FMLA

Both the Employer Survey and the Employee Survey included questions designed to estimate the number of employees who have actually taken leave “under the FMLA” (as distinct from any employee who took leave for a reason covered by the Act, but might or might not have designated it as “FMLA leave”). The two surveys arrive at fairly similar utilization rates.<sup>29</sup> The Employer Survey finds that 3.6 per every 100 employees at covered private-sector worksites took leave under the FMLA, compared with two per every 100 covered and eligible employees at covered public and private-sector worksites who took leave under the FMLA according to the Employee Survey.<sup>30</sup>

Based on the estimate from the Employee Survey, one to two million employees almost certainly took leave under the FMLA in the 18 months covered by the survey. These were workers who met the eligibility criteria in the law and believed they had indeed taken their leave under the Act. Furthermore, there are others who probably took leave under the FMLA. They include employees in covered firms who, while not eligible for one reason or another, were allowed to take leave under the Act; or employees in covered firms who, whether eligible or not, were given leave under the FMLA and did not know it. Information from the Employer Survey, which covered the same 18 months, indicates that an additional 600,000 to 1.3 million workers, just from the private-sector, might have taken leave under the Act. Thus, in total, it is likely that somewhere between one to just over three million employees took leave during the period covered by both surveys.

### 1. Data on Utilization of the FMLA from Employers’ Experience<sup>31</sup>

The Employer Survey finding that 3.6 percent of employees took leave under the FMLA, means that somewhere between 1.75 and 2.5 million private-sector employees took leave during the 18-month period of the survey. This estimate varies somewhat by both the size of the organization, as well as by type of industry (the SIC category).<sup>32</sup> Workers employed at smaller covered worksites with fewer than

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<sup>29</sup> While the methods used in the Employer and Employee Surveys are quite different - each with their own strengths and weaknesses - it is interesting that the difference in their estimates of utilization is relatively small.

<sup>30</sup> See McGonagle, et al., p. 18 and Cantor, et al., pp. 3-5

<sup>31</sup> The Census Survey questions on utilization differ from those asked in the Employer Survey in terms of the time period covered and the type of leave included. The Census Survey found that almost 20 percent of firms reported that their employees took some type of leave for a family or medical reason and that the proportion did not change between 1992 and 1994.

<sup>32</sup> Cantor, et al., pp. 3-6, Table 3-3.

250 employees are less likely to have used FMLA than those at the larger worksites (2.4 percent compared with 5.3 percent). Employees in the manufacturing sector are more likely to have used FMLA than those in the retail industries. Thus, 4.4 percent of covered employees in manufacturing took leave, compared with two percent of retail employees, 3.7 percent of service employees and 3.6 percent of employees in all other industries.

## 2. Data on Utilization of the FMLA from Employees' Experience

The Employee Survey finds that of the household members who had been employed within the 18 months prior to the interview, 16.8 percent had taken leave for a reason covered by FMLA and an additional 3.4 percent needed to take a leave but did not.<sup>33</sup> The rest neither took leave nor needed to take leave. Of the 16.8 percent of all employees who took leave, about seven percent of that group report that the leave they took was, in fact, under the FMLA. This seven percent group of FMLA leave-takers makes up almost 1.2 percent of all employees 18 years and older who had been employed from January 1, 1994 until the survey interview. Given that 55 percent of persons in the employee population are employed by worksites covered by the FMLA and eligible to take leave under the Act, the FMLA utilization rate among this group of employees is about two percent.<sup>34</sup> The Employee Survey reports that the group of leave-takers that can be most definitively characterized as having taken leave under the FMLA - called "FMLA-users" - are those who report working for an FMLA-covered employer, report that they personally meet the eligibility requirements, report having heard of the FMLA and report that they designated their leave as "FMLA leave." This strict definition of FMLA-users therefore probably results in a conservative estimate of FMLA use. Given the statistical variability in this estimate, the number of public and private-sector employees who took FMLA leave falls somewhere between one and two million according to the Employee Survey.

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<sup>33</sup> McGonagle, et al., p. 17.

<sup>34</sup> *Ibid.*, p. 18.

## F. Compliance Under the FMLA

It is clear from the data concerning employer knowledge of the law and current employer family and medical leave policies that the great majority of covered employers are knowledgeable about FMLA, and report that they are meeting their obligations under the Act. The data also show, however, that between one and 12 percent of covered employers are not providing leave for each of the reasons specified in the Act, either due to lack of knowledge or some other reason. The Wage and Hour Division of the U.S. Department of Labor is responsible for the government's efforts to ensure employer compliance under the Act. This section provides data from the Wage and Hour Division concerning their activities in enforcing compliance with the Family and Medical Leave Act.

### 1. Complaints Made to the Department of Labor

Between August 5, 1993 (effective date of the FMLA) and September 30, 1995 (the end of the fiscal year) the Wage and Hour Division received 3,833 complaints and has completed compliance actions on a total of 3,650 complaints against employers for alleged failure to comply with the FMLA. More than half the complaints (59 percent) constituted valid complaints where apparent violations of the FMLA existed. Forty-one percent of the complaints were situations which were not covered by, or which did not violate, the FMLA.

Of the total number of cases (3,650) acted on by the Wage and Hour Division, 2,897 (79 percent) were handled by conciliation and 753 (21 percent) by investigation. The Wage and Hour Division found that 1,501 cases had no violations: the employer was not covered (seven percent); the employee was not eligible (16 percent); the complaint was not valid (74 percent); or the case was not valid for other reasons (three percent).

A total of 2,149 violations was found. The Department of Labor has successfully resolved 90 percent of the complaints with FMLA violations. As of March 1, 1996, the Department has filed lawsuits in various courts against eight employers for alleged FMLA violations. Two of those cases were settled, in one case the court found there were no violations after a full trial and the remaining five cases are pending. (This does not reflect private action taken by individuals without Department of Labor participation. Employees have the right to private action, and many private lawsuits have been filed without Department of Labor participation.)

Of the valid complaints regarding the FMLA, the majority were due to employers refusing to reinstate leave-takers to their same or equivalent position (see Figure 4.12)

**FIGURE 4.12**  
**FMLA-Related Complaints Received by**  
**U.S. Department of Labor<sup>1</sup>**

Employer refusal to reinstate employee to same or equivalent position	61%
Employer refusal to grant FMLA leave	19%
Employer interference with or discrimination against an employee who has used FMLA leave	13%
Employer refusal to maintain a leave-taking employee's group health benefits	7%
Other	less than 1%

<sup>1</sup> These complaints were received between August 5, 1993 and September 30, 1995.

## 2. Resolution of Complaints

The Wage and Hour Division was able to successfully resolve the vast majority of complaints without any type of litigation. For those cases successfully resolved (a total of 1,934), FMLA leave was granted for 21 percent, adverse action was dropped for 14 percent, benefits were restored for seven percent (for a total of \$93,543), back-wage payment without job restoration was accomplished for 14 percent (for a total of \$944,898), jobs were restored for 24 percent and jobs were restored with pay/benefits for 19 percent (for a total of \$746,636).

For unresolved cases (a total of 215), job restoration was sought for 92 percent (for a total of \$1,282,463), granting of FMLA leave was sought for five percent, dropping of adverse action was sought for one percent and restoration of health benefits was sought for one percent (for a total of \$4,680). Many of these cases are under review for potential litigation by the U.S. Department of Labor.

## G. Summary

**Working for a covered employer:** Approximately two-thirds of the U.S. labor force works for covered employers. Certain sub-groups of America's labor force are more likely than others to be among those workers employed at worksites which are large enough to be covered by the Act. Employees with higher levels of education and income enjoy the greatest proportion of coverage. Differences also exist depending on one's racial or ethnic background, with African Americans having the greatest proportion of workers employed at covered worksites. Unionized workers are also more likely to work at covered worksites. By contrast, employees from households with the lowest family income levels, employees with the lowest levels of education, those in the youngest age categories, as well as Latino employees are the least likely to work for worksites covered by the Act.

**Meeting the eligibility requirements:** Due to the Act's employee eligibility requirements concerning length of tenure and number of hours worked, as well as the Act's requirements on worksite size, only slightly more than half of U.S. workers are actually eligible to take leave under the Act. Not quite one-half of private-sector workers meet the Act's eligibility requirements. The groups most likely to lose access to leave because of service and hours-related eligibility requirements are young workers, low-income workers and "never-married" workers.

While only about ten percent of all private-sector U.S. worksites are covered by the Act, this relatively small proportion actually employs more than half of the nation's private-sector employees. Industries with the largest worksites, such as manufacturing, also have a large number of eligible employees working in a relatively small percentage of worksites.

**Employer leave policies:** The passage of FMLA has had a substantial impact on employer leave policy, with two-thirds of covered worksites initiating a policy or changing some aspect of their policy in order to comply with the Act. Over 90 percent of employers at covered worksites provide up to 12 weeks of leave for family and medical reasons. The majority of this group also continues health benefits, and guarantees a job upon return from leave for the reasons specified in the Act. The proportion of non-covered worksites that offer these benefits on a uniform basis is much lower. Employers at non-covered worksites are more likely to offer leave for the employee's own serious health condition and for maternity



leave, and less likely to offer paternity leave or leave to care for a family member with a serious health condition.

**Knowledge of FMLA:** The employer community is far more knowledgeable about the law than are employees. Eighty-six and one-half percent of the employers whose worksites are classified as “covered” by the Act know that the FMLA applies to their location. In contrast, only 58 percent of employees working at covered worksites have heard of the FMLA. Salaried employees and union members are more likely to have heard of the Act than hourly employees and non-union members. The media is the key source of employee information.

**Utilization:** The Employer Survey finds that at covered worksites, the ratio of employees taking leave under FMLA was 3.6 for every 100 employees. This ratio varied somewhat by both the size of the organization, as well as by type of industry. Employees in the manufacturing sector (4.4 percent) are more likely to have used the Act than are employees in the retail industries, and employees at worksites with more than 250 employees (5.3 percent) are more likely to use the Act than are employees at smaller worksites.

The Employee Survey finds that of the household members who had been employed within the 18 months prior to the interview, 16.8 percent had taken leave for a reason covered by FMLA and approximately 3.4 percent needed to take leave but did not. Of that 16.8 percent who took leave, approximately seven percent of that group took leave under the FMLA. Given that roughly 60 percent of all employees work for covered employers, this means that the overall utilization rate among employees is two percent. This is a conservative estimate.

**Compliance:** The vast majority of covered employers are knowledgeable about FMLA, and are apparently meeting their obligations under the Act. However, between one and 12 percent of covered employers are still not providing leave for each of the reasons specified in the Act, either due to lack of knowledge or some other reason. Further research is needed to ascertain the causes of non-compliance.

