

Employers' and Employees' Experiences with Leave Since Enactment of the FMLA

A. Introduction

This chapter discusses patterns of leave-taking based on data from the Employer and Employee Surveys,¹ and from employers' and employees' testimony at public hearings held by the Commission on Leave. The chapter starts with a section that describes the reasons for which workers took leave and the length of the leave they took, as well as the needs of employees who wanted to take leave but did not do so. The next section discusses how the job duties of employees on leave were covered for the duration of their leave, and the attitudes of employees toward their co-workers who took leave. This is followed by a section on employees' benefits while on leave, access to wage replacement, and how leave-takers dealt with lost wages if their leave was partially paid or unpaid. The last section examines the degree to which leave-takers returned to their jobs and is followed by a brief chapter summary.

It should be noted that a broad definition of leave-taking is used here, covering not only absences designated by the employer and employee as leave taken "under the FMLA," but also leave taken for reasons covered by the FMLA but possibly designated as sick leave, personal leave, or vacation. In other words, the types of leave-taking reported on in this chapter reflect a combination of leave that is covered by the FMLA and other voluntary leave policies.

B. Who Needs and Takes Leave?

The Employee Survey shows significant demand for the kinds of leave covered by the FMLA. Nearly 17 percent of employees surveyed took leave for reasons cov-

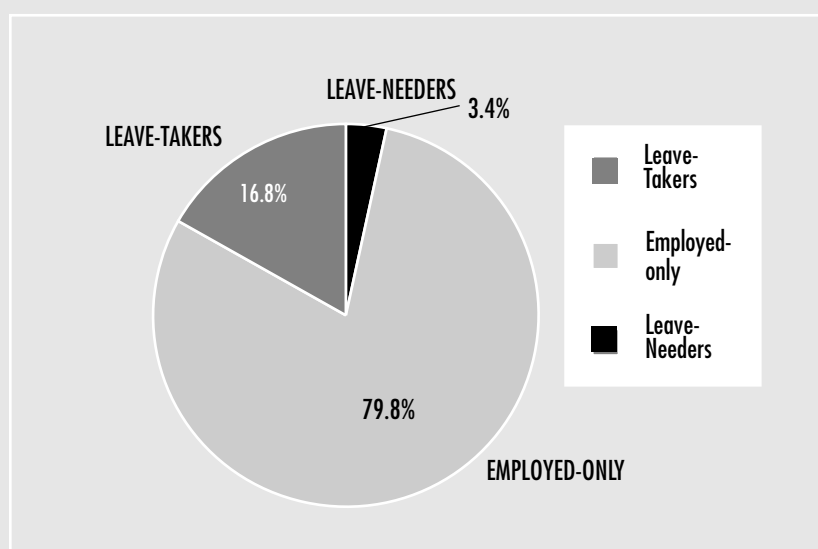


¹ See Chapter II for descriptions of the two samples, which are representative, and can be generalized to the population as a whole.

ered by the Act between January 1, 1994 and the summer of 1995.² An additional 3.4 percent stated that they needed but, for a variety of reasons discussed below, did not take leave. In other words, about 20 percent of the employees surveyed in

both covered and non-covered worksites either took or needed to take leave for serious personal medical conditions or family caregiving reasons (see Figure 5.1).

FIGURE 5.1
Employee Surveyed by Leave Status



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

The demographic profile of leave-takers generally resembles that of the overall employee sample (see Appendix E, Table 5.A). Nevertheless, there are some noteworthy contrasts between the overall survey population and the leave-taker population. For example, women are more likely to take leave than men (58.2 percent compared with 41.8 percent), reflecting in large part the facts that men do not bear children and (as discussed below) women are somewhat more likely to care for infants and some seriously ill family members than men.

In absolute numbers, the largest group of leave-takers is between 35 and 49 years old (about 40 percent of all leave-takers). However, relative to their representation in the employed population (22.8 percent), employees in the 25-to-34 year-old age group are more likely than other employees to take leave (29.6 percent). As will be discussed below, this in large part reflects the fact that many employees who take leave do so to care for young children, and that those in their 20's, 30's and 40's are most likely to have children who may need care.

² As discussed in Chapter IV, seven percent of this group are considered "FMLA-users," that is, they took their leave under the guidelines of the Act and designated it as such. As the overall number of cases of FMLA users is small, (n=138) they are not analyzed separately from the leave-taker group. However, their patterns of leave-taking are comparable to the leave-taker group as a whole in terms of their reasons for leave, length of leave and extent of pay during leave. see Katherine A. McGonagle, et al. Commission on Leave Survey of Employees on Impact of the Family and Medical Leave Act (Ann Arbor, MI: Institute for Social Research, Survey Research Center, University of Michigan, October 1995), Tables 6.2.2 (c), (d), and (e).

African American and Latino employees have a higher probability of taking leave than whites. However, this finding does not control for multiple socio-demographic characteristics, such as education, income and family size. For example, leave is also more likely to be taken by employees with one or more children than employees without dependents.

There does not seem to be any particular relationship between educational level and the likelihood of taking leave. Differences in annual family income, however, are notable: employees with annual family incomes of \$20 to 30,000 are more likely to take leave relative to their representation in the employed population than employees in other income categories. It is not surprising, then, that hourly employees (whose incomes tend to be lower than those of salaried employees) are also more likely to take leave than salaried workers- even though they are less likely to be covered by the Act.

C. Reasons for Taking Leave

The FMLA covers two major types of leave: medical leave which includes leave for one's own serious health condition (excluding maternity-disabilities); and family leave, which includes (a) leave to care for a newborn, a newly-adopted or new foster child (parental leave)³ and (b) leave to care for a seriously ill child, spouse or parent. In addition, there is another type of leave which crosses these two major categories - maternity-disability leave. When taken before childbirth, it is a second type of medical leave. When taken after childbirth, it may combine physical recovery from a serious health condition and care of a newborn.

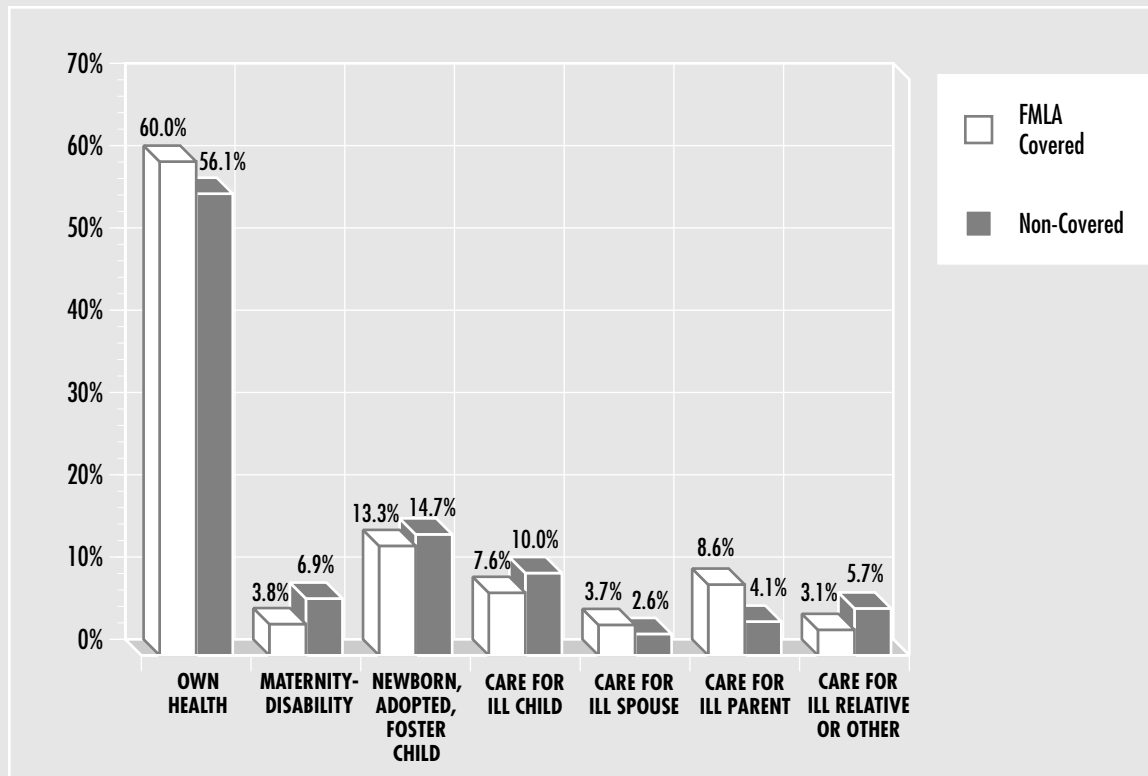
Reasons for leave-taking by employees at non-covered worksites closely resemble those of employees working at covered worksites.⁴ This suggests that the need for leave is to a great extent independent of the availability of mandated, job-protected family and medical leave.

Figure 5.2 offers an overall picture of the reasons why employees take leave, including both leave-takers at covered worksites and those employed at non-covered

³ Throughout, leave to care for a newborn child as a category is collapsed with leave to care for a newly-adopted or new foster child, since the incidence of the latter two types of leave is extremely small and resembles closely that of the former.

⁴ As noted in Chapter IV, covered worksites are more likely to offer leave for each of the FMLA reasons than non-covered sites.

FIGURE 5.2
**Leave-Takers at FMLA-Covered and Non-Covered
 Worksites, by Reason for Leave**



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

Note: Percentages do not add to 100% because respondents could choose more than one category.

worksites. There is no statistically significant difference regarding the reasons for taking leave between these two groups of employees. Fifty-nine percent of those who take leave do so because of their own serious health problems.⁵ Leave-taking for one's own serious health condition is least prevalent among those aged 25 to 34, and more prevalent among workers with relatively lower levels of education, lower levels of annual family income (especially for employees in the less than

⁵ It is important to keep in mind that the data do not distinguish between "serious health condition" leaves taken as regular sick leave - such as the sick days many companies offered before the FMLA was passed - and "FMLA leave" taken after regular sick days have been exhausted, or in lieu of sick days. See Katherine A. McGonagle, et al. *Commission on Leave Survey of Employees on Impact of the Family and Medical Leave Act*, (Ann Arbor, MI: Institute for Social Research, Survey Research Center, University of Michigan, October, 1995), p. 19.

\$20,000 per year category) and among unionized employees. Hourly employees are more likely to take leave for their own serious health condition than salaried workers. Men are more likely than women to take leave for their own serious health conditions and employees in their 50's and 60's are more likely than younger employees to take leave for this reason (see Appendix E, Tables 5.B and 5.C).

Men and women are taking comparable amounts of parental leave. In addition, some portion of women's care of newborns is probably included in their designation of maternity-disability leave. Men are more likely to take spousal care leave than women, some of which is probably care of their wives before or after childbirth. Women are more likely to care for seriously ill children or parents.⁶

About one-fourth of leave taken appears to be used by relatively young parents to care for their children. More specifically, almost one-fifth of all leave taken is taken by parents caring for newborn, adopted or foster children, and by women as maternity-disability leave. These two types of leave are taken by 17.1 percent of employees at covered worksites and 21.6 percent of employees at non-covered worksites. An additional eight percent of leave is taken by employees needing to care for their seriously ill children. This category of family leave is taken by 7.6 percent of employees at covered worksites and ten percent of employees at non-covered worksites.

Leave to care for a seriously ill child is most likely to be taken by employees between the ages of 25 and 34, and next most likely to be taken by employees in the 18-to-24 and 35-to-49 age groups. Maternity-disability leave and leave to care for a newborn child are, not surprisingly, more often taken by married than unmarried employees. Approximately ten percent of leave is taken by employees who are typically somewhat older in order to care for seriously ill adult family members. For example, leave is taken by around three percent of employees in covered and non-covered worksites to care for seriously ill spouses. About nine percent of leave-takers at covered worksites, and about four percent of employees at non-covered worksites take leave to care for a seriously ill parent.

Women are somewhat more likely than men to need leave and to take leave, in large part because only women take leave in order to bear children, and because

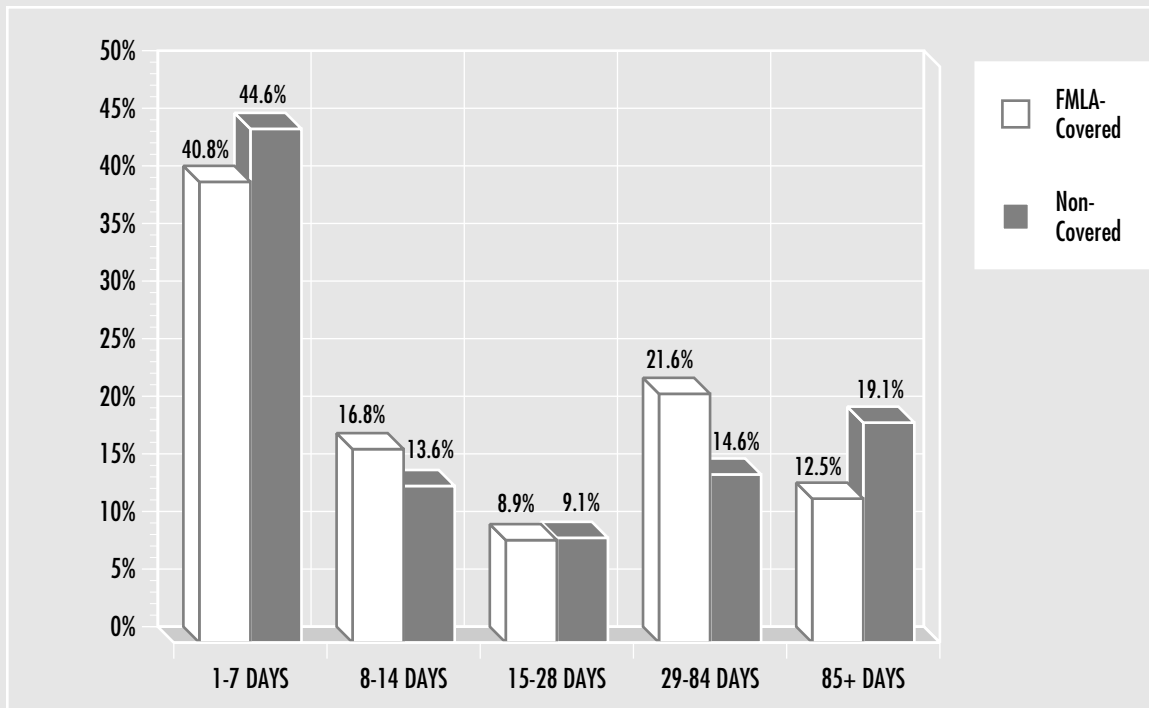
⁶ There is no statistically significant relationship between reason for leave and race/ethnicity. See McGonagle, et al., p. 20.

women are more likely than men to take most kinds of family leave. On the other hand, when men and women take leave, they take comparable amounts of parental leave, and men take more leave to care for a seriously ill spouse - some of which may be care of their wife before or after childbirth.

D. Length of Leave

The Family and Medical Leave Act allows for unpaid leave of up to 12 weeks. The great majority of all leave falls within the 12-week period established by the Act.⁷

FIGURE 5.3
Leave-Takers at FMLA-Covered and Non-Covered
Worksites, by Length of Leave



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

⁷ It should be noted that it is impossible to interpret precisely what employees mean when they report a certain number of days of leave-taking. Some employees may think of a weeks leave in terms of seven days, while others may think of five days (the work week) as a weeks leave. For the purposes of this report, 84 days (12 times seven days) means 12 weeks of leave.

The median length of leave for all leave-takers was ten days, with a mean of 37 days. Ten percent of leave-takers were on leave for one to three days; 75 percent were off the job for fewer than 35 days.⁸

As shown in Figure 5.3, leave taken by workers in non-covered worksites has a different distribution than that taken by workers at covered worksites. For example, 30.5 percent of leave-takers at covered worksites were off the job for somewhere between two weeks (15 days) and 12 weeks (84 days), compared with 23.7 percent of leave-takers at non-covered worksites. In addition, periods of leave that lasted more than 12 weeks were taken by 12.5 percent of employees at covered worksites and 19.1 percent of employees at non-covered worksites.

There are some noteworthy differences in length of leave associated with different reasons for leave (see Appendix E, Tables 5.D and 5.E). Of those taking leave for their own serious health problem (excluding maternity-disability), about 51.6 percent of covered employees were on leave for 14 days or fewer, while 53.8 percent of non-covered employees were on leave for 14 days or fewer. Only 13.6 percent of covered employees and 20.4 percent of non-covered employees took leave for their own serious health condition that lasted longer than 12 weeks.

Maternity-disability leave, which represents only four to seven percent of all leave taken, tends to be longer. For employees in covered worksites, over 40 percent of such leaves last more than 12 weeks (85 days or more), and for employees at non-covered worksites about 45 percent of leave lasts more than 12 weeks (85 days or more). This type of leave may cover some time before the birth of a child, as well as post-partum recovery. Most leave to care for newborns is less than 12 weeks, with a significant proportion less than one week. Approximately half of both covered and non-covered employees who took leave to care for a newborn were off the job for less than a month (28 days), and more than one-third of non-covered employees took seven days or fewer (37.1 percent).

Most family leave to care for a seriously ill child, spouse, or parent lasts 14 days or fewer. For example, 90 percent of covered and non-covered employees take 14 days or fewer to care for seriously ill children, as did 80 percent of leave-takers who are caring for seriously ill parents. Of employees who take leave to care for a seriously ill spouse, around 80 percent of covered employees take leave that lasts

⁸ McGonagle et al., p. 19.

14 days or fewer, and almost 90 percent of non-covered employees take leave that lasts fewer than 14 days.

The data also reveal some distinctive variations in length of leave among leave-takers (see Appendix E, Table 5.F). Women, as noted above, take longer periods of leave (with a median length of 15 days, and a mean of 41, as opposed to 10 days and 33 days, respectively, for men). This is not surprising, given that only women bear children, and that women are still more likely than men to be responsible for most kinds of family care. Men, however, take longer periods of leave for their own serious health conditions. Hourly (as opposed to salaried) workers, and by those with relatively lower levels of education are more likely to take leave lasting over 28 days.

Length of leave does not appear to vary significantly by income level. However, salaried employees are more likely to take shorter leave - up to seven days - (47.2 percent) compared with employees who are paid by the hour (39.5 percent).

In sum, most periods of leave are short. The majority of leave to care for a seriously ill child, parent or spouse) lasts fewer than 14 days, as does roughly half of leave taken to recover from one's own serious health condition. Parental leave and maternity-disability leave lasts longer.

E. Employees Who Needed but Did Not Take Leave

According to the Employee Survey, 3.4 percent of employees said that they needed leave for a reason covered by the FMLA, but did not take it. As noted above (see Appendix E, Table 5.A), these leave-needers who did not take leave are especially likely to be African American, to be hourly workers, to have one or more children, to have low levels of family income and to have some college education, but less than a four-year degree.

The leave-needers surveyed are most likely to need leave for their own serious health condition or to care for a sick child, parent or spouse - over 40 percent in both categories (see Figure 5.4). Almost none of the workers in this sub-sample needed, but did not take, maternity-disability leave. In addition, almost ten percent of leave-needers report they wanted to take parental leave but did not. Despite demographic variations among leave-needers, it is not possible to link demographic variables on the particular patterns of need, given the small sub-sample

sizes (see Appendix E, Table 5.G).

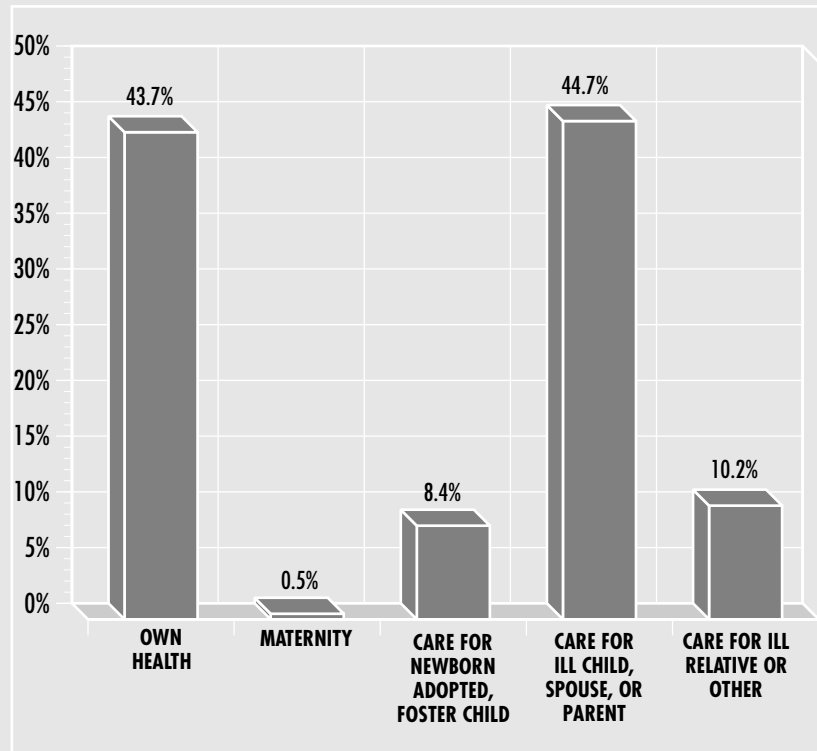
The importance of wage replacement to leave-takers is underscored by the finding that among the employees who needed but did not take leave, fully 63.9 percent were unable to take leave because they could not afford the associated loss of wages (see Figure 5.5, next page). This was far more frequently cited than any other reason given for not taking leave by those who needed leave (see Appendix E, Table 5.H)⁹.

The fact that almost two-thirds of those who needed but did not take leave cite financial constraints as a reason for not taking leave is consistent with other research in this area. For instance,

evidence regarding the impact of wage replacement on leave-taking is found in a study of state parental leave laws. In Rhode Island, which had both Temporary Disability Insurance (TDI) and a new leave law, the population of women with household incomes under \$20,000 per year who took less than six weeks of leave after childbirth dropped to zero percent. This compared with an average of 19 percent for similarly-situated women in three states with no TDI coverage (that is,

FIGURE 5.4

Reason for Needing Leave Among Employees Who Needed but Did Not Take Leave

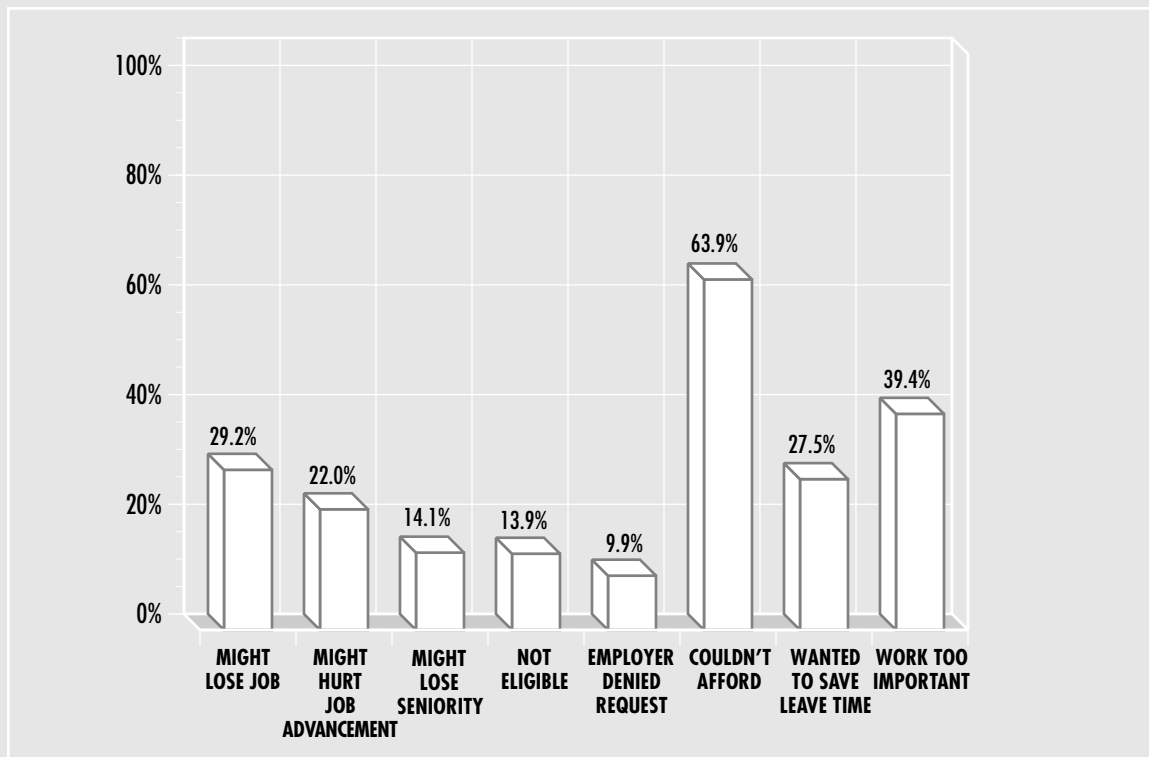


SOURCE: AGUIRRE INTERNATIONAL TABULATION OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN, SURVEY OF EMPLOYEES, 1995.

Note: Percentages do not sum to 100% because respondents could choose more than one category.

⁹ It is also noteworthy that only nine percent of males reported that their employer denied their leave request, while 19 percent of female leave-needers cited this as a reason for not taking leave. While this sub-population is too small to allow for inferences of statistical significance, the Employee Survey notes the need for further research to determine whether there is a significant relationship between sex and being denied a leave request. McGonagle, et al., p. 23.

FIGURE 5.5
Reasons for Not Taking Leave Among All Leave-Needers⁽¹⁾



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

Note: Percentages do not sum to 100% because respondents could choose more than one category.

⁽¹⁾Leave-needers constitute 3.4% of the employee sample, see Appendix E, Table 5.A.

no temporary wage replacement) for maternity-disability leave.¹⁰ In other words, having at least partial wage replacement plays an important role in making it possible - especially for low-income women - to take maternity disability leave at all, and to take longer periods of leave.

¹⁰ James T. Bond et al., *Beyond the Parental Leave Debate: The Impact of Laws in Four States*, (New York: Families and Work Institute, 1991).

F. Expectations of Needing Leave Within the Next Five Years

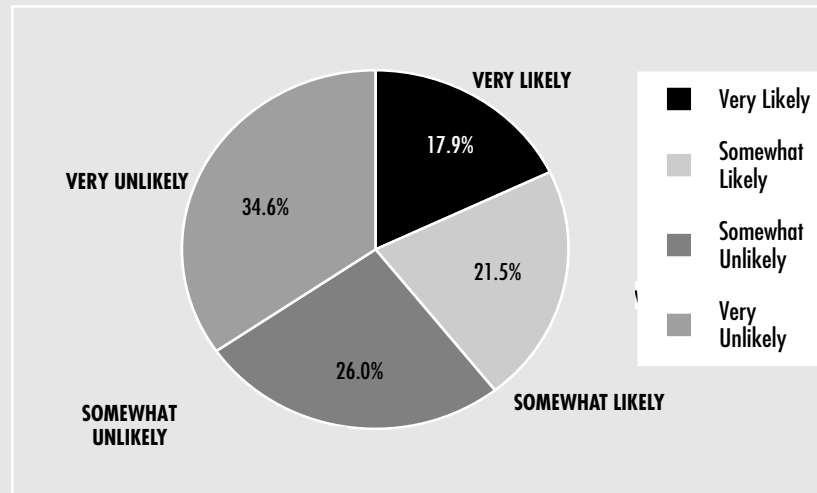
As noted above, over 16 percent of employees surveyed took leave for a reason covered by the FMLA within the year-and-a-half period covered by the Employee Survey. However, as shown in Figure 5.6, about forty percent of all the employees state they are “very likely” or “somewhat likely” to need to take leave for an FMLA reason sometime within the next five years (15.4 percent of men and 20.8 percent of women thought it “very likely; 19.6 percent of men and 23.7 percent of women said it was “somewhat likely”). Combining the categories “very likely” and “somewhat likely” to need leave, the projected need for leave appears to be somewhat greater for women than men. (see Appendix E, Table 5.I).

To the extent that employees who project a need for leave within the next five

years are able to attach reasons for which they would need leave, three noteworthy patterns emerged (see Appendix E, Table 5.J). First, not surprisingly, the proportion of employees projecting a need for leave for their own serious health condition increases with age; those over 65 years old are about four times as likely as the total population to project needing leave within the next five years for this reason.

Second, notwithstanding the fact that parental leave (to care for a newborn) is taken in about equal proportions by men and women leave-takers, women are about twice as likely as men to project needing leave for this reason within the next five years. Third, the most frequently cited reason for a projected need for

FIGURE 5.6
Likelihood of Needing Leave Over the Next Five Years Among All Employees



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

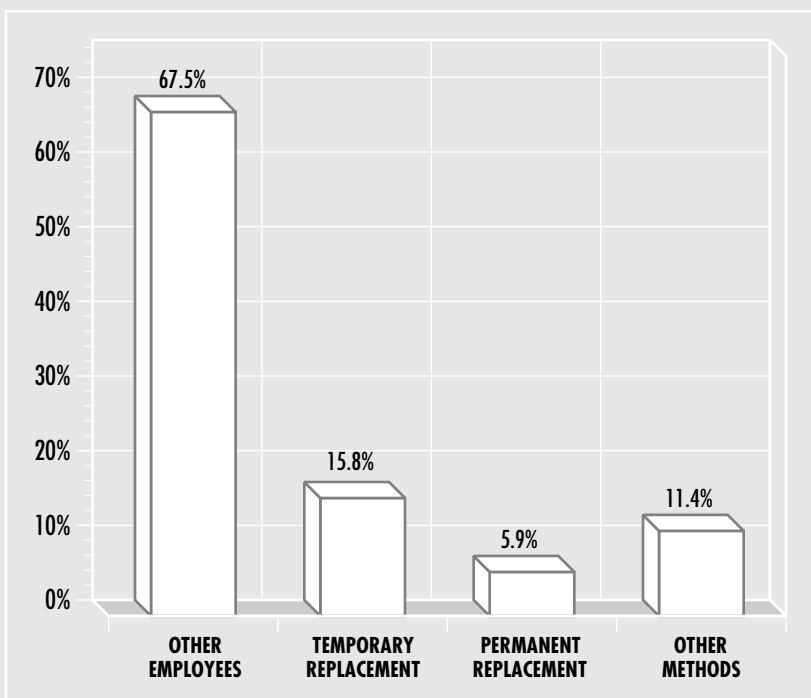
leave in the future is to care for a seriously ill parent. Moreover, the projected need for eldercare leave differs across demographic categories. Women are more likely than men to project a need for eldercare leave. Finally, employees in the highest education and income categories are more likely than those with less education and income to project needing leave to care for seriously ill parents.

G. Methods Used To Cover Work

In trying to understand the patterns of leave-taking among employed Americans, it is important to consider what is happening in the workplaces of leave-takers while they are away from their jobs. Both employers and employees have raised concerns about how and whether the work of leave-takers would be covered during their absences. Both the Employee and Employer Surveys provide data that illuminate this issue.

FIGURE 5.7

Methods Used to Cover Work of Leave-Takers While They Were Off the Job (As Reported by Employees)



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

1. The Employee Perspective

The Employee Survey suggests that by far the most prevalent method used by employers to cover the work of employees who took leave is to assign their work temporarily to their co-workers. Figure 5.7 shows the percentage of leave-takers citing different methods of covering their work while they were on leave. The prevalence of assigning the work of leave-takers to other workers holds across all demographic variables (see Appendix E, Table 5.K).

Women are twice as likely as men to have their work covered by temporary replacements (20.7 percent compared with 9.1 percent). African American leave-takers are more likely than those in the other racial groups to have their work covered by temporary replace-

ments while they are on leave. Employees between 18 and 34 years old are more likely to have their work covered by permanent replacements (10.9 percent and 7.3 percent, compared with two to five percent of employees of other ages).

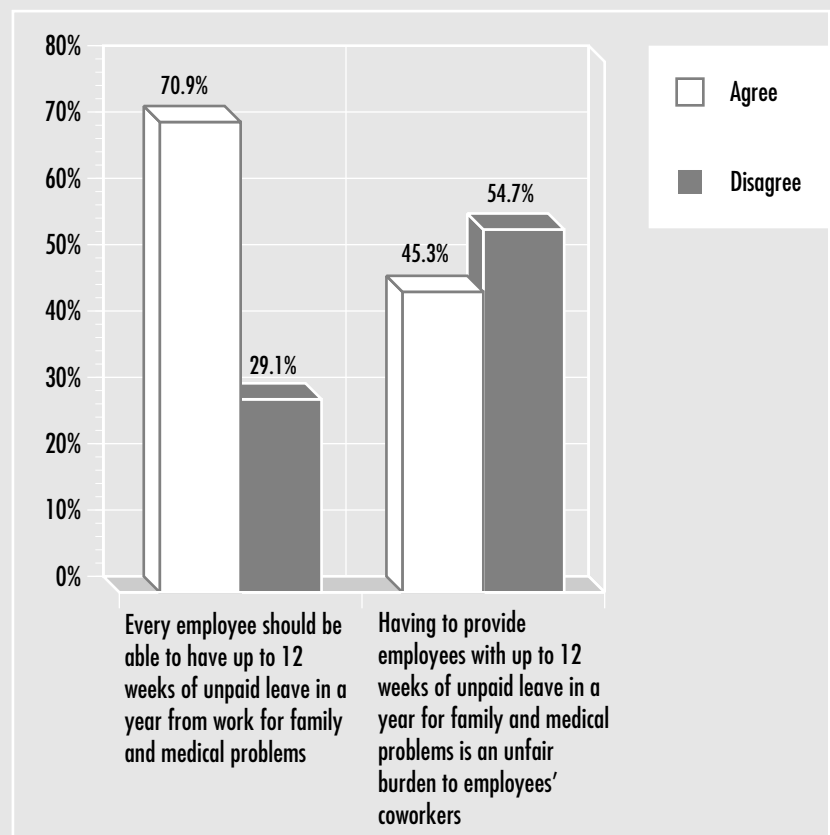
Those in the highest family income category (\$75,000 or more per year) and those with the highest levels of education (BA or more) are least likely to have their work covered by co-workers, and most likely to cite “other” methods of work coverage. This is not surprising in light of the fact that high levels of income and education are positively correlated with the likelihood of holding managerial or professional positions. These employees are less likely to have co-workers who can cover their work, and are harder to replace either temporarily or permanently. These employees are also more expensive to replace, given that the training of new employees for higher-skilled positions takes longer and is more costly than training employees for lower-skilled positions. Not surprisingly, then, salaried employees are less likely than hourly workers to have their work assigned to other employees while they are on leave, or to be permanently replaced by their employers.

Employees in the lowest income category (family income below \$20,000 per year) are most likely to state that permanent replacements were hired to cover their work. This probably reflects the fact that lower-income workers are likely to be lower-skilled as well, thus easier and less costly to replace.

Despite the fact that the most common method of covering the work of leave-takers is to assign work to co-workers, as illustrated by Figure 5.8, the attitude of non-leave-taking employees toward leave is

FIGURE 5.8

Attitudes of Employees Concerning the Family and Medical Leave Act



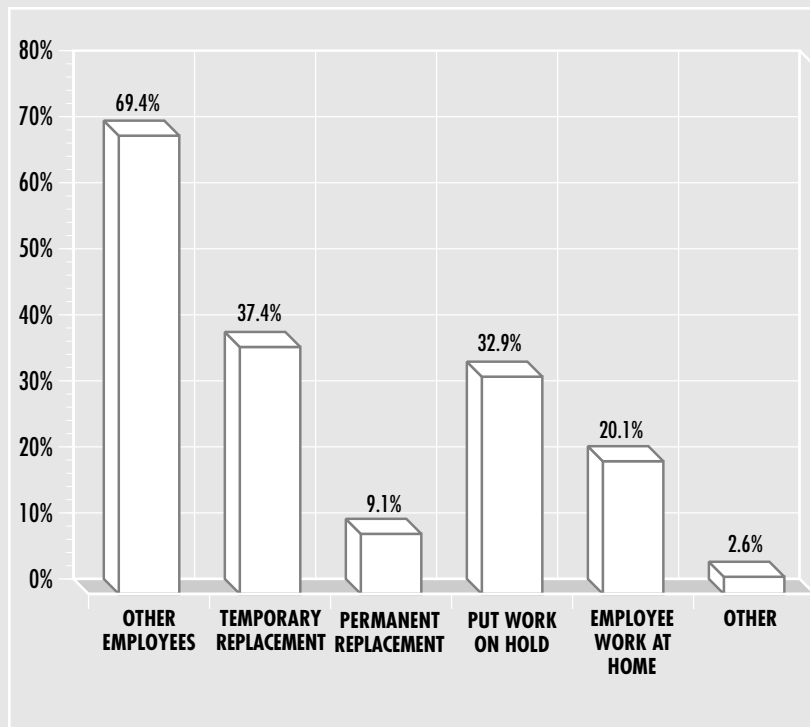
SOURCE: AGUIRRE INTERNATIONAL TABULATION OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN, SURVEY OF EMPLOYEES, 1995.

Note: The employees who were asked these questions are all non-leave-taking employees.

generally positive. A slight majority of employees who did not take leave (55 percent) feel that having up to 12 weeks of family and medical leave available to all employees would not pose “an unfair burden” on the co-workers of employees taking leave. More than two-thirds (70.9 percent) of employees agreed that “every employee should be able to have up to 12 weeks of unpaid leave in a year from work for family and medical problems.” That is, while employees clearly feel some concern about the possibility of having their own workloads increase as a result of their co-workers taking leave, most favor having 12 weeks of leave available to all employees for family and medical reasons.

FIGURE 5.9

Method Used to Cover the Work of Leave-Takers While They Were off the Job (As Reported by Worksites)



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

Note: Percentages do not sum to 100% because respondents could choose more than one category.

2. The Employer Perspective

The Employer Survey results also suggest that assigning work to other employees is the most common method of covering leave-takers' job responsibilities (see Figure 5.9). About 70 percent of employers report having used this method. The Employer Survey suggests a higher incidence of hiring of temporary replacements for leave-taking workers than does the Employee Survey (37.4 percent). A significant percentage also report that leave-taking employees worked at home (20.1 percent).

The Employer Survey reveals some notable differences across industrial sectors as to methods used to cover leave-takers work while

they are on leave (see Appendix E, Table 5.L). Fully 87.5 percent of employers in

manufacturing, but only 61 percent of those in services, state that they use other employees to cover the work of leave-takers. Employers from the retail sector are most likely to cite the use of permanent replacements, and those in manufacturing are especially likely to “put work on hold.”

Size differences also emerge in the results of the Employer Survey with regard to how worksites cover the work of leave-takers (see Appendix E, Table 5.M). For instance, while only 61.8 percent of sites with fewer than ten employees use other employees to cover the work of leave-takers, between 96 and 99 percent of larger employers (those with 50 employees or more) do so. (A smaller number of employees may make it harder to spread around the work of leave-takers.) Also noteworthy is the fact that in worksites with 50 employees or more, the use of temporary replacements is especially prevalent. Finally, the smallest employers - with fewer than ten employees - are the most likely to put work on hold.

H. Continuation of Benefits and Wage Replacement During Leave

1. Continuation of Benefits

The Family and Medical Leave Act requires employers to continue health insurance (but not other benefits) during periods of leave for family or medical reasons. Both the Employer and Employee Surveys queried respondents on their practices and experiences with the continuation of benefits.

Over 95 percent of covered worksites report the continuation of health benefits during employee leave for FMLA reasons (see Figure 5.10, next page).¹¹ The percentage of non-covered worksites that continue health benefits is lower across the board. For example, 86.3 percent of non-covered worksites continued health benefits for maternity-disability reasons while 69 percent continued health benefits for family leave (see Appendix E, Table 5.N).

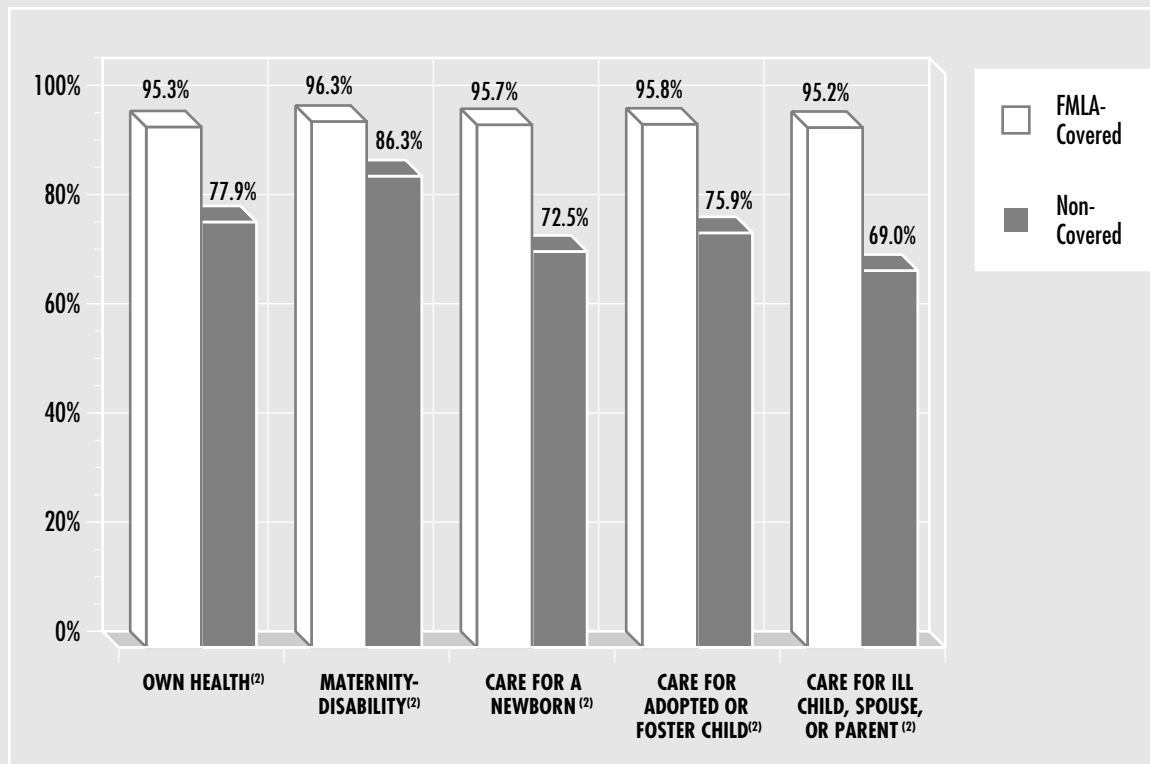
While a large majority of leave-taking employees report that their benefits were continued, nine percent state they lost some form of benefit.¹² Of those losing

¹¹ The fact that this figure is not 100 percent probably reflects a combination of employer non-compliance and the fact that some employees at covered worksites do not meet the eligibility requirements of FMLA and therefore are not guaranteed health insurance if they take leave.

¹² McGonagle, et al., p. 21.

FIGURE 5.10

Continuation of Health Benefits During Leave: FMLA-Covered and Non-Covered Worksites ⁽¹⁾



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

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

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

benefits, one-third lost their health insurance, which covered employers are required to provide for eligible employees during periods of leave. These findings mirror fairly closely what covered worksites report in the Employer Survey (see Appendix E, Table 4.E).

Non-whites, those with one or more children and non-salaried employees are especially likely to report having lost benefits.¹³ Salaried employees and employees with partial or full wage replacement are comparatively unlikely to lose benefits.

¹³ Robert Groves and Katherine McGonagle, "Talk on the FMLA Employee Survey," Presentation at the Workshop on Family Leave, sponsored by the Board on Children and Families, National Academy of Sciences, October 23, 1995, p. 50 of handout.

Employees who took leave for maternity-disability and infant care are less likely to lose benefits while on leave than those who took leave for other reasons.¹⁴

2. Wage replacement

While the FMLA does provide leave with full job protection, aimed at ensuring employment security for covered employees, the Act does not require employers to replace any of the wages lost by a leave-taker. However, an eligible employee may elect, or an employer may require an employee, to substitute accrued paid leave (i.e. vacation leave, personal leave or sick leave) for any portion of the 12 weeks of unpaid FMLA leave. This section presents data from both the Employer and Employee Surveys on various measures to replace some or all of the wages of leave-taking employees. It also presents data on how leave-taking workers cover their lost income, to the extent that they lose income while they are on leave.

To interpret the findings correctly, it is important to reiterate that neither survey distinguished between wage replacement specifically for family and medical leave, on the one hand, and pay for personal leave, sick leave or vacation, on the other hand. Thus, it must be inferred that the wage replacement reported in both surveys in large measure reflects personal, sick and vacation pay (traditional and long-standing employee benefits in many companies), as opposed to pay specifically designated for newer types of leave, such as parental and family leave (provided by the FMLA). Further research is needed to clarify the specific sources and types of voluntary wage replacement received by some FMLA leave-takers.¹⁵

a) Extent of Wage Replacement

A significant percentage of leave-taking employees (46.7 percent) report that they received full wage replacement, and an additional 19.6 percent report they received partial pay during their leave. Here, as in other dimensions of comparison, worksite coverage by the Act may make a difference (see Figure 5.11, next page). Fully 51.9 percent of those working in covered worksites received full pay while on leave, and 21.5 percent received partial wage replacement¹⁶ (See Appendix E, Tables 5.O and 5.P). The remaining 26.6 percent report that they received no wage

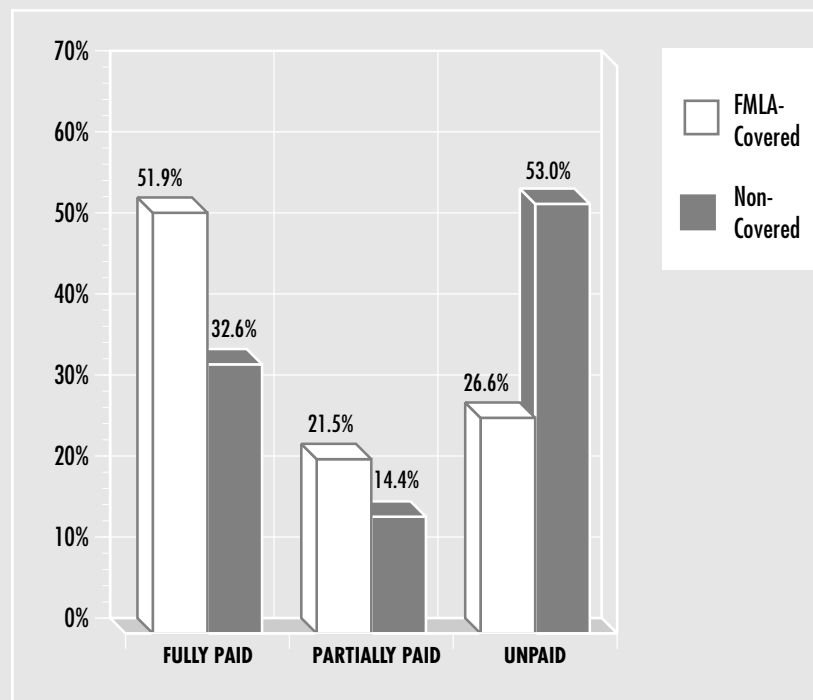
¹⁴ *Ibid.*

¹⁵ See Kirsten S. Wever, *Assessing Temporary Wage Replacement for Family and Medical Leave* (Report commissioned by The Commission on Leave, October 1995) for a discussion of the extent of voluntary wage replacement before the Act's passage.

¹⁶ As noted in the Employee Survey, the relationship between working for a covered employer and receiving some wage replacement is statistically significant.

FIGURE 5.11

Leave-Takers: Extent to Which Leave Was Paid
(FMLA-COVERED AND NON-COVERED WORKSITES)



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

replacement whatsoever. By contrast, over half of the employees working at non-covered sites received no wage replacement at all. The difference in the availability of wage replacement to employees working in covered and non-covered worksites holds true across different reasons for leave-taking.

Those at covered worksites taking leave for their own serious health condition are most likely to have had full or partial wage replacement (probably in large measure sick pay). There is a statistically significant relationship between the reason for taking leave and the likelihood of receiving wage replacement: maternity-disability leave tends to be unpaid or partially paid, while all other types of leave are significantly more likely to be fully paid.¹⁷ While the source of wage replacement

¹⁷ McGonagle et al., p. 21.

for most kinds of leave is probably either sick pay, vacation days or both, the source of wage replacement for maternity-disability leave-takers is probably either state Temporary Disability Insurance (TDI) (available in five states, including the populous states of California, New York and New Jersey) or a disability insurance plan voluntarily provided by some private sector employers.¹⁸

Given that the Act does not require employers to replace leave-taking workers' wages, at first glance it appears surprising that a significant proportion of those taking parental and family leave receive some wage replacement. However, as noted, some - possibly most - of this wage replacement is in the form of sick, personal or vacation pay applied during periods of family and parental leave.¹⁹ In some cases, employees are able to work with their employers to put together "packages" that combine FMLA and other sorts of leave with some wage replacement measures.

There are some noteworthy demographic variations as to the likelihood that a leave-taker will receive wage replacement (see Appendix E, Table 5.Q). Over 75 percent of salaried employees receive full wage replacement. Unionized employees, those with the highest levels of household income and education and those between 50 and 64 years of age are also especially likely to receive wage replacement. Close to half the youngest employees and those with annual family incomes of less than \$20,000 received no pay. This is also true for between 42 and 46 percent (depending on the group) of Latinos, hourly employees and those with no college education.

The most striking difference as to employees' level of wage replacement while on leave is found with respect to education. The likelihood of an employee's having received full or partial wage replacement increases sharply as education level rises. While about one-third of leave-takers with a high school education or less are fully paid during leave, 63.7 percent of those with a college degree or more are fully paid during leave.

¹⁸ The Employee Benefits Survey conducted by the Bureau of Labor Statistics, U.S. Department of Labor, distinguishes between long-term disability insurance plans provided to 26 percent of employees, and sickness and accident insurance plans provided to 26 percent of full-time employees in small private-sector establishments and 44 percent of full-time employees in medium and large private-sector establishments.

¹⁹ For example, some state governments and many "family-friendly" companies allow employees to use up their own sick and/or vacation time and pay in order to care for ill family members.

The relationship between the level of wage replacement and income closely parallels the findings with respect to education. While 79 percent of those with household incomes of \$75,000 per year or more received full or partial wage replacement, fully 50 percent of employees with incomes of \$20,000 per year or less received any pay during their leave. In other words, lower-skilled, poorer workers are far less likely to have wage replacement. Consistent with this is the finding that hourly employees, who are more likely to have lower incomes and lower levels of education, are four times as likely as salaried leave-takers to report receiving no pay during their leaves.

Several other noteworthy differences emerge with regard to wage replacement. Men are more likely to receive full pay during their leave than women (53.5 percent of men, compared with 41.7 percent of female leave-takers). Older workers (those 50 to 64 years old) are also more likely than younger employees (those 18 to 24 years old) to receive full or partial wage replacement (81.6 percent compared with 50.9 percent).²⁰ As noted, Latino leave-takers are less likely than those in all other racial/ethnic categories to receive full or partial wage replacement while on leave.

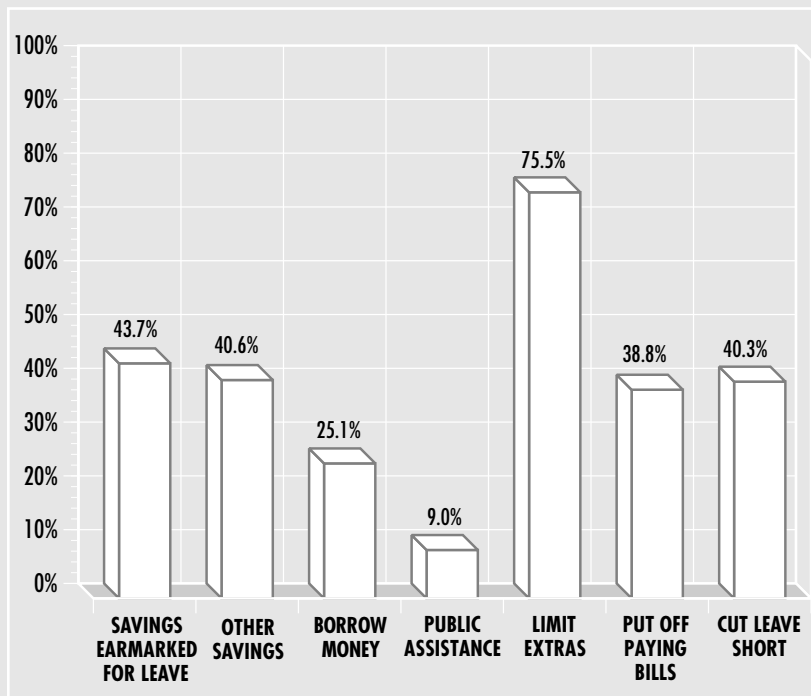
b) Measures Used to Cover Lost Income During Leave-Taking

As the previous section makes clear, while most leave-takers receive some wage replacement while on leave, many, and in some demographic groups, most, do not. This raises the question of how these employees make ends meet on significantly reduced budgets during periods of leave. Figure 5.12 shows that “limiting extras” and reliance on savings are the methods most commonly used by leave-takers who are partially paid or unpaid to cover lost wages.

Not surprisingly, differences in family income are the most reliable predictor of differences in how employees cope with the loss of income during periods of leave (see Appendix E, Table 5.R). Employees with higher family incomes are much less likely than low-income leave-takers to borrow money, to go on public assistance, to limit “extras,” or to put off paying bills. Those with family incomes of \$20,000 per year or less are at least four times more likely than those with higher incomes to

²⁰ This makes sense in light of the fact that men and older employees are more likely to have higher levels of income and education, more likely to be salaried employees, and more likely to take leave for a serious health condition.

FIGURE 5.12
**Leave-Takers⁽¹⁾: Methods of Covering
 Lost Wages Due to Leave-Taking**



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

Note: Percentages do not sum to 100% because categories are not mutually exclusive.

⁽¹⁾ Only leave-takers who report they were partially paid or unpaid during leave were asked about methods of covering lost wages.

go on public assistance in order to deal with lost income (20.9 percent compared with about five percent or less in all other income categories).²¹

As education rises, it becomes easier for leave-takers to cover lost wages. For instance, those with at least four years of college education are less likely to put off paying bills or cut leave short. Conversely, those with a high school education or less are more likely to limit extras and go on public assistance. Unionized employees are less likely to cut leave short or go on public assistance than non-union employees in order to cover wages lost due to leave-taking.

²¹ While further analyses of these data are needed to determine precisely what demographic characteristics cluster around this outcome, it seems probable that a sizable proportion of this group is accounted for by single earner families with children.

Differences also emerge with regard to other demographic variables. Based on employees' reports of their strategies for covering lost wages, white leave-takers are less likely to rely on savings to cover wages than those in other racial/ethnic categories. Women are more likely than men to go on public assistance, to limit extras and put off paying bills. The youngest leave-takers are more likely to go on public assistance and borrow money than are older workers. In addition, women are more likely than men to cut leave short. As noted in the Employee Survey, the relationship between age, sex and certain methods of covering lost wages (notably, going on public assistance) is statistically significant.²²

I. Job Protection and Returning to Work

Some employers have expressed concern that a federal leave law would lead to abuses by leave-takers, particularly with regard to decisions by employees not to return to work. The Family and Medical Leave Act requires that workers be granted their same or equivalent jobs with equivalent pay, benefits and other terms and conditions of employment when returning to work following their leave. Employers have been concerned that there is no guarantee for them that leave-takers will actually return. Employees have been concerned that, without job guarantees, taking family and medical leave puts their jobs at risk. Both the Employee and Employer Surveys shed light on this issue.

1. Data from Employers

The Employer Survey shows that most worksites report having all leave-takers return to their jobs (67 percent).²³ Of the 33 percent of employers reporting an employee not returning to work, the great majority (86.6 percent) had only one leave-taker not return to work, 7.2 percent had two leave-takers not return, and 6.2 percent had more than two leave-takers not returning to work.²⁴

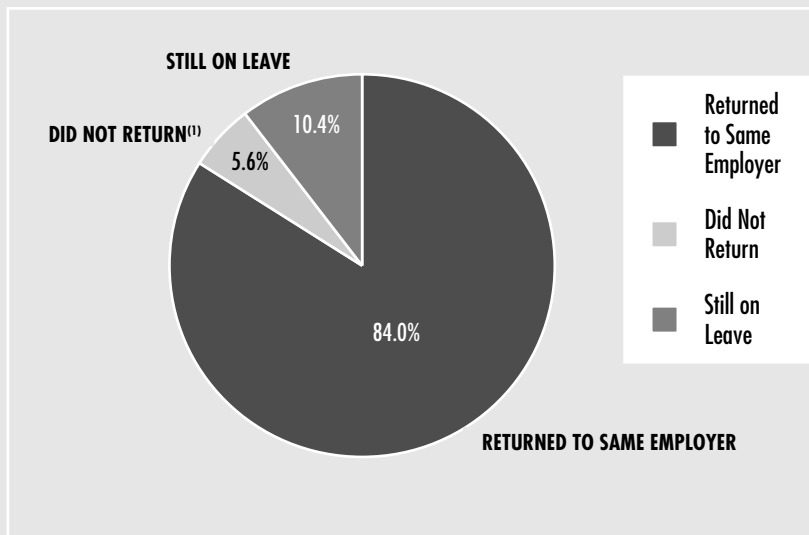
When an employee takes leave and fails to return to work, the employer has the right under the Act to reclaim health insurance benefit payments made during the

²² McGonagle, et al., p. 22. Further analysis would help clarify the extent to which certain demographic characteristics are associated with certain methods of covering lost wages.

²³ David Cantor, et al., *The Impact of the Family and Medical Leave Act: A Survey of Employers*, (Rockville, MD: Westat Inc, 1995) p. 4-14, Table 4-12.

²⁴ *Ibid.*, p. 4-14, Table 4-13.

FIGURE 5.13
Leave-Takers Returning/Not Returning to Work



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

(1) "Did not return" includes leave-takers who left the workforce and those who went to a new employer after their leave.

period of leave. However, only about seven percent of employers in this category (that is, seven percent of the 33 percent, or 2.3 percent) report having pursued this course.²⁵

2. Data from Employees

The great majority (84 percent) of leave-takers stated that they returned to work at their same employers, while six percent did not return (this included leave-takers who report taking a job with a new employer and those leaving the labor force) and ten percent remain on leave (See Figure 5.13). There are several factors that could account for employees not returning to their same employer, for instance, employees may not be offered their jobs back, or they may choose not to return.

²⁵ *Ibid.*, p. 4-14, Table 4-14.

Employees in the lowest family income category who had returned to work (less than \$20,000 annually), and leave-takers with no wage replacement at all, are most likely not to return to work to the same employer (see Appendix E, Table 5.S). This suggests that a leave-taker's level of compensation influences the decision about whether to return to work. Conversely, employees with higher family incomes, working at covered worksites and receiving full wage replacement are more likely to return to their same employers. Not surprisingly, then, salaried employees and unionized workers are more likely to return to their employers.

Leave-takers with full wage replacement are far more likely than those with either partial or no wage replacement to return to their employers after leave. Indeed, 94.2 percent of those leave-takers who were fully paid, (compared with 73.8 percent of those who were partially paid and 76.5 percent of those who were not paid at all) returned to their same employer after taking leave.

Finally, people working at worksites that are not covered by the Act are more likely than employees at covered worksites to not return to the same employer (10.9 percent compared with 1.9 percent at covered sites). This difference is statistically significant even taking into account variables like sex, age and income, which influence whether or not employees return to work, and whether or not they return to their old employer. Thus it appears that non-covered employers may face higher rates of employee turnover because they do not offer all the benefits associated with job-protected family and medical leave under the new law.

J. Summary

The Employer and Employee Surveys, together with the testimonial evidence from the Commission's public hearings, clearly indicate that family and medical leave makes a significant difference to employees trying to sustain their family and work lives at times when their own serious health problems or the needs of their dependents become pressing.

The demand for leave among employees is significant, and the FMLA expands leave access to workers who might not otherwise be able to take leave, and might therefore have to make significant sacrifices at home, or to lose their jobs in order to deal with family and medical needs. More than that, the Act creates the conditions that make leave possible for many employees by providing job guarantees

andrequiring employers to continue health benefits to employees on leave. Leave-takers report taking leave for a variety of reasons: their own serious health condition (59 percent); care for a newborn/adopted child (almost 15 percent); and care for an ill child, parent, or spouse (almost 20 percent). The reasons for leave-taking by employees at covered and non-covered worksites are very similar, suggesting that the need for leave is independent of the availability of job-protected family and medical leave.

The Employee Survey indicates that some employees need leave, but are still unable to take it. Over 40 percent of this group report needing leave for their own serious health condition or leave to care for a seriously ill family member. The major reason this group cites for not taking leave is financial. Sixty-four percent report they could not afford to take the leave they needed.

The Employee Survey also illustrates that the demand for leave is likely to continue to be substantial: among those who had neither taken nor needed to take leave, two-thirds of employees anticipate that they are very likely or somewhat likely to need leave at some time in the next five years. These projections highlight a growing need for eldercare: the reason for leave most likely to be cited by those anticipating a need for leave was to care for a seriously ill parent.

The Employer and Employee Surveys indicate that employees who need leave do not, in general, need very long leave. Most periods of leave were short, and were taken by employees who needed time off from work for reasons connected to their own serious health problems. Almost all leaves taken fell within the Act's 12-week period. Women's leave was somewhat longer because of the medical and infantcare requirements of giving birth, while men took longer leave than women for their own serious health conditions. Significantly, among leave-takers, men's role in family caregiving, across both categories of family leave (parental leave and leave to care for a seriously ill parent, child, or spouse), is currently comparable to that of women (excluding women's leave for maternity-disability).

Most leave-takers have their work covered by co-workers while they are on leave, though many employers also state that they hire temporary replacement workers to help cover the job duties of leave-takers. A majority of those employees who did not take leave do not feel burdened by having to cover the work of leave-takers, and well over two-thirds believe that every employee should have up to 12 weeks a year of unpaid family and medical leave.

Most leave-takers receive some wage replacement while they are on leave. Since unpaid leave can be a significant burden for workers, the existence of some voluntary wage replacement probably makes a profound difference in many employees' experiences of taking leave. This is not to diminish the importance of job-protected unpaid leave to many employees, but rather to point out that the existence of some wage replacement, regardless of the source, is extremely important in making it possible for many employees to take leave in the first place.

As noted above, much of the wage replacement captured by these two surveys either includes or consists entirely of forms of income that are independent of the FMLA, for instance vacation pay, disability insurance or sick pay. It therefore seems likely that some substantial portion of employers' financial outlays (in the form of wage replacement for leave) would occur even in the absence of the Act. Additional research and cost projections regarding wage replacement must take these pre-existing forms of wage replacement into account.

Most covered employers continue to provide health benefits to workers while they are on leave and most offer job-guaranteed leave. However, there appears to be some level of employer non-compliance on both counts. The great majority of leave-takers return to work for their old employers after their leave is over, although a small minority does not. Once again, leave-takers at covered worksites with the lowest levels of family income, in hourly positions and so on, are most likely not to return to work. Women are slightly more likely than men not to return to work. This can be attributed to several factors: women are more concentrated in lower-income jobs, infant care is difficult to find and women are still more likely to have primary responsibility for family caregiving.

The overview of leave-taking presented in this chapter raises many issues about a series of more specific effects of the Act on employers and employees. The next two chapters explore these in detail, considering the overall impact of the FMLA and leave policies, looking first at a variety of costs and benefits to employers (Chapter VI) and second at the experience of leave-taking from the viewpoint of employees (Chapter VII).

