



## Analysis and Responses to Statutorily Mandated Questions

As reported in the previous chapters, the Commission on Leave has collected extensive scientific data and other kinds of information concerning family leave policies in general, and the Family and Medical Leave Act in particular. The Commission's findings cover many topics related to employers' leave policies and employees' leave experiences. Having explored many of the issues surrounding the need for leave and the implementation of voluntary policies, state laws and a new federal law, we now turn to the specific areas of inquiry posed to the Commission and specified in the statute which established it.

### (A): “Existing and Proposed Mandatory and Voluntary Policies Relating to Family and Temporary Medical Leave, Including Policies Provided by Employers Not Covered Under this Act”

As a result of the Employer Survey, the Characteristics of Business Owners (CBO) survey and other data gathered in papers and through public hearings, we now have valuable information on the family and medical leave policies of both covered and non-covered employers since passage of the Family and Medical Leave Act. The Employer Study makes clear that the FMLA has had a significant impact on employer leave practices and especially on formal leave policies, with two-thirds of covered worksites changing some aspect of their policies in order to comply with the Act. Among those covered worksites that did make changes, the most common change was to increase the reasons for which employees can take leave. For example, 69.3 percent of employers changed their policies to grant male employees time off for family leave. Other common changes were allowing leave to be taken for a longer period of time, making the leave job-guaranteed, expanding health insurance benefits and easing employee eligibility requirements.

Chapter IV discusses in detail the results of questions asked both covered and non-covered employers about the types of benefits currently available under their family and medical leave policies. With respect to covered worksites, the data show

that over 90 percent of employers at covered worksites provide up to 12 weeks of job-guaranteed leave for each of the reasons specified under the FMLA, and some portion of this group have policies that go beyond the requirements of the Act. Among covered worksites, larger worksites with more than 250 employees are only slightly more likely to offer leave than worksites with 250 employees or fewer. Over 90 percent of employers at covered worksites also continue health benefits, and guarantee a job upon return from leave for the reasons specified in the Act.

The proportion of employers at non-covered worksites that offer benefits on a uniform basis is much lower. Fewer than one-half of employers at non-covered worksites offer 12 weeks of job-protected leave for reasons provided under the Act. Employers at smaller, non-covered worksites tend to have relatively informal policies regarding the use of leave, which depend on the particular circumstances of the employer and of the employee requesting leave. Among the non-covered worksites, there are significant differences in the availability of 12 weeks of leave, with worksites that have fewer than ten employees less likely to offer 12 weeks of job-guaranteed leave for each of the reasons under the Act. The percentage of employers at non-covered worksites that continue health benefits changes with each reason for leave, ranging from 69 to 86 percent. A substantial majority (at least 84 percent) of employers at non-covered worksites who offer 12 weeks of leave do guarantee employees their jobs for each of the reasons specified in the Act, but that is lower than the minimum 95 percent of employers at covered worksites who do so. Employers at non-covered worksites are also less likely to offer paid time off than are those at covered worksites, and are less likely to continue pension or retirement, or contributions to employees' life insurance plans and disability. Relatively few employers offer family and medical leave for reasons not included in the Act, although those that do are usually FMLA-covered worksites.

Approximately two-thirds (66.1 percent) of the U.S. labor force work for covered employers, and certain subgroups of America's labor force are more likely than others to be among that group. Employees with higher levels of education, hourly workers, families with higher income levels and unionized workers enjoy the greatest proportion of coverage. An employee's racial or ethnic background is also correlated with the likelihood that he or she will be working for a covered employer, with African Americans the most likely to be covered. Least likely to be working for a covered employer are employees from households with the lowest family income levels, with the lowest education levels, the youngest workers and Latino workers.

Despite the fact that two-thirds of workers are employed at covered worksites, only slightly more than half (54.9 percent) of U.S. workers, public and private-sector combined, actually meet the Act's eligibility requirements for taking leave, based on length of service and hours worked. The number of eligible employees drops to less than half (46.5 percent) for those in the private sector. The disparity between the extent to which employees are "covered" versus "covered and eligible" is greater 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.

Only about ten percent of all private-sector U.S. worksites are covered by the Act, but they employ 60 percent of the country'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.

The overall rate at which employees are utilizing the Family and Medical Leave Act is between two and four percent. The Employer Survey, which covers only the private sector, finds that at covered worksites the ratio of employees taking leave under the FMLA is 3.6 for every 100 employees. This ratio varies somewhat by both the size of the organization, as well as by type of industry. Employees in the manufacturing sector are more likely to have used the Act than are employees in the retail industries.

The Employee Survey finds that of the household members who had been employed in either the private-sector or the public-sector within the 18 months prior to the survey interview, two out of every 100 employees have taken leave using the Family and Medical Leave Act. While 16.8 percent of all employees surveyed have taken leave for a reason covered by the FMLA, not all leave taken have necessarily been identified as "FMLA leave." Of the 16.8 percent who have taken leave, seven percent of that group took leave "under the FMLA." Given that 55 percent of all employees work at covered worksites and are eligible to take leave under the Act, the Employee Survey finds that the overall FMLA-utilization rate among employees at covered public and private-sector worksites is two percent.<sup>1</sup> Combining the findings of the Employer and Employee Surveys, approximately

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<sup>1</sup> The Employee Survey had a strict set of criteria for determining whether an employee's leave was taken "under the FMLA." The employee had to meet the eligibility rules specified by the Act, had to have knowledge of the FMLA, and had to designate their leave as "FMLA-leave." This may explain in part why the FMLA utilization rate is lower in the Employee Survey than the Employer Survey.

one-and-a-half million to just over three million workers took FMLA leave during the 18 months covered by both surveys.

In addition to the 16.8 percent of employees who have taken FMLA-covered leave, approximately 3.4 percent needed to take leave but did not. Thus, according to the Employee Survey, approximately one-fifth of working Americans need to take leave for family and medical reasons.

In sum, a look at the changes that employers made to comply with the Act and the resulting access of almost two-thirds of U.S. employees to family and medical leave policies present a picture of important changes that can be attributed to the Act - both the benefits offered by employers and the leave options available to employees. To be sure, prior to the Act, many employers did voluntarily provide some degree of family and medical leave coverage to their employees. A small number of those employers had policies that matched, or even surpassed FMLA requirements in the protections they offered. But until the FMLA, the overall picture was that of a patchwork quilt, in which different employers offered different types of leave with a range of eligibility requirements and specifications. Many voluntary policies were informal and applied unevenly among employees. Employers may have provided leave, but not for all the reasons offered by FMLA, especially family leave provisions which allow employees to care for the serious health condition of an ill parent, child or spouse, or for parental leave to care for a newborn. Leave was sometimes handled informally, or on a case-by-case basis, was often for a shorter duration, and health insurance and other benefits were not necessarily maintained. Perhaps most significantly, the discretionary nature of many leave policies meant that leave-taking employees did so at some risk to their job security, benefits and other issues.

Thus, the data reveal that even at this early stage, the Act has succeeded in replacing the piecemeal nature of family and medical leave policies with a more consistent and uniform standard that assures a minimum level of protection to all eligible employees. The FMLA, with its signature features of guaranteed job protection and maintenance of health benefits, begins to emerge, even now, as a major step forward in helping working Americans meet their medical and family caregiving needs while still maintaining their jobs and their economic security.

(B): “The Potential Costs, Benefits and Impact on Productivity, Job Creation and Business Growth of Such Policies on Employers and Employees”

**1) Employers**

The information used to assess costs and benefits for employers is derived from three key areas of inquiry on the Employer Survey, namely: ease of compliance with the administrative activities associated with FMLA; costs of administration, benefits, hiring and training; and the effect of the Act on factors related to the performance of the worksite and its employees. It should be noted that this is an assessment based on the first two years of experience with the new law.

Among covered worksites, the vast majority of respondents find that both general compliance and the administrative activities associated with implementing the Act are either “very easy” or “somewhat easy.” Specifically, over 90 percent of employers at covered worksites found it “very” or “somewhat easy” to determine whether the Act applies to their worksite, and to determine employee eligibility. Between 74.3 percent and just over 80 percent of employers at covered worksites report additional record-keeping and coordination of state and federal leave laws, other federal law, and other leave policies to be “somewhat” or “very” easy. In short, a sizable majority of employers at covered worksites report few or no problems with administering the Act. The area with which covered employers appear to have the greatest difficulty concerns the management of intermittent leave under the FMLA. Thus, while the majority of employers at covered worksites (60.8 percent) find it either “very” or “somewhat easy” to manage the Act’s intermittent leave provisions, 39.2 percent find them either “somewhat” or “very difficult.” The use of intermittent leave, however, is relatively low, with only 11.5 percent of leave-takers taking intermittent leave.

Covered-worksite respondents to the Employer Survey were also asked to rate the extent of cost increases they had experienced in four broad areas: general administrative costs; the cost of continuing health benefits to employees taking leave; costs associated with hiring and training replacements for employees taking leave; and “other” costs. The great majority report no cost increases at all, or only slight cost increases in all four categories. With respect to administrative costs, 89.2 percent of employers at covered worksites report no or only small cost increases. Over 90 percent of covered worksites report no or small increases in costs associ-

ated with continuing employee benefits during leave. No or small increases in costs are reported with respect to hiring and training by over 95 percent of employers. Finally, 98.5 percent of employers at covered worksites report no or small cost increases in other areas.

With respect to benefits to employers resulting from the Act, very few employers report any significant cost savings. A number of employers who testified at the hearings pointed out some of the benefits to their worksites that accrued from the Act. In addition to cost savings, some employers found that the Act has helped them establish uniformity and consistency in their family and medical leave policies. Several employers testified that by providing family and medical leave to their employees, the Act benefits their worksite, as well. For example, several employers cited benefits from a lowering of employee turnover.

With respect to the Act's impact on three measures of business performance - productivity, profitability and business growth - the data reveal that most respondents experience no noticeable effects. To the extent that employers do report an effect, they are about equally likely to note a positive effect as a negative effect regarding business productivity and growth. More employers cite a negative effect regarding business profitability. With respect to the Act's impact on five measures of employee performance - productivity, employee absence, turnover, career advancement and help balancing work and family - again, the majority of covered respondents report no noticeable effect. However, the positives outweigh the negatives on four out of five of these measures. For example, over one-third of employers note a positive impact on employees' ability to care for family members, while only 0.2 percent report a negative effect. And, as discussed below, the positive effect jumps to 71 percent for the largest employers. In addition, 8.3 percent see a positive effect on employees' career advancement, while less than one percent note a negative effect. Employee absence is the only measure of employee performance where the positive and negative effects are roughly equivalent.

In sum, while many concerns were voiced by the business community about the potential negative impact of the Act when it was under discussion by Congress, data from the Employer Survey indicate that the great majority of employers have experienced little or no effects from the Act. This includes the area of costs as well as those of productivity, job creation and business growth. For example, the data indicate that employee abuse has not surfaced as a significant problem; rather, the data present a picture marked by low employee utilization rates and short leave durations, with the vast majority of employees returning to their jobs.

## 2) Employees

The Employee Survey dramatically demonstrates the overall need experienced by employees for family and medical leave policies. A full 20 percent of employees surveyed either took leave for reasons covered by the FMLA or needed to take leave, but did not do so. In addition, two-thirds of all employees surveyed think they are “very” or “somewhat likely” to take leave for an FMLA reason sometime within the next five years. (Eighteen percent think it “very likely,” and 47.5 percent say it is “somewhat likely.”) As the Employee Survey indicates, the need for leave may not occur often, but when the need does strike, it is often urgent and immediate, making the provision of job-protected leave a major benefit to those covered by the FMLA.

The hearing testimony repeatedly underscored the importance to employees and their families of the ability to take leave when the need arose in their families’ lives. Employees needed to take time off from work to fight cancer, to recuperate after childbirth, to care for a wife and newborn child, to accompany an ailing spouse to surgery, or to stay by a dying child. While the stories differed, certain themes were repeated throughout: the importance to employees of knowing that their health insurance would continue, and that their jobs would be there when they returned. Clearly, the FMLA can make a profound difference to employees struggling to balance the needs of work and family.

Prior to the Act, many employers voluntarily provided some degree of family and medical leave coverage to their employees. But often policies were partial in the types of leave provided. Jobs were often not guaranteed, nor were health benefits maintained. The passage of the FMLA has enabled more employees to take advantage of family and medical leave policies, under a more consistent and uniform standard that assures certain minimal levels of protection. As both the Employer Survey data and the hearing testimony made clear, a family-friendly leave policy can enhance employees’ productivity. As one employer explained, the FMLA “is a dual benefit, and it will promote a productive environment and a strong dedication and loyalty.”<sup>2</sup>

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<sup>2</sup> Testimony of Marsha Brock, Human Resources Manager, Casto Travel, at San Francisco, CA Hearing, June 28, 1995, *U.S. Commission on Leave Public Hearing Transcript*, p. 18.



The Employee Survey also points out several costs to employees associated with the current provisions in the FMLA and other family and medical leave policies. First, some employees are ineligible to take leave because of eligibility requirements related to their employer's size or their own hours and length of service. Second, there is a lack of wage replacement. Fewer than half of all leave-takers have full pay during their leave and the proportion of those with full pay drops significantly for workers 18 to 24 years old, hourly workers and those with low levels of education and family income. In order to cover lost wages, some employees must limit "extras," borrow money or use savings, and a small number go on public assistance. Others may cut short their leave before they or a family member are really ready for them to return to work.

Third, family and medical leave policies appear to affect various groups of employees differently. Those at the lower end of the labor market, and those at the top, experience different types of problems in taking family and medical leave, reflecting pre-existing segmentation of the labor market. Fourth, some employers may not be complying, judging by the fact that some employers at covered worksites reported they are not providing certain benefits required by the Act. While the newness of the law and lack of employer knowledge may account for some of the non-compliance, the fact remains that some employees lack the job protection and health benefits guaranteed under the FMLA. All in all, however, the data show that the benefits of the Act outweigh the costs to employees, and that the FMLA's impact on employees is substantial and positive.

### (C): "Possible Differences in Costs, Benefits and Impact on Productivity, Job Creation and Business Growth of Such Policies on Employers Based on Business Type and Size"

#### **1) Costs to Employers Based on Business Type and Size**

As with the other measures of the effects of the FMLA, costs are more of a concern for larger compared with smaller covered worksites. The larger worksites are somewhat more likely to have seen "moderate" increases in administrative costs. The increased costs that larger worksites experience in administering the Act are consistent with employers' responses to questions concerning the degree of difficulty they had in administering the Act. When covered worksites are broken down into size categories - small (having fewer than 50 employees but qualifying as covered

due to the 75-mile radius rule), medium-sized (50 to 250 employees) and larger (with more than 250 employees) - the data show that the degree of difficulty in administering the Act grows with the size of the worksite: worksites with more than 500 employees are more likely than those with between 250 and 500 to report difficulty coordinating the FMLA with pre-existing leave policies, and over three-fourths of those with more than 1,000 employees report difficulties implementing the Act's intermittent leave provisions.

Certain factors could account for the finding that larger covered worksites tend to have more trouble than smaller and medium-sized sites with these administrative functions. Larger worksites are more likely to have leave-takers, to be covered by other laws, to have pre-existing formal policies regarding leave and generally require more overall administrative adjustment and realignment than do the smaller worksites. The fact that smaller worksites are more likely to manage human resource policies informally may also partially explain the size differences concerning administrative difficulties. The hearing testimony indicates, as well, that at least some of the difficulty experienced by larger worksites in administering the Act can be attributed to start-up costs. Additional research over time will help to distinguish the relative weight of start-up costs versus ongoing, routine costs in the overall bottom-line calculations of employers.

In addition to administration of the Act, the continuation of benefits during leave are more likely to cause "moderate" cost increases for larger covered worksites. Only a very small percentage of covered worksites indicate that "other" cost increases have occurred due to the FMLA. Manufacturing worksites are slightly less likely to report small or no increases than the sample as a whole.

## 2) Benefits to Employers Based on Business Type and Size

Very few covered worksites report cost savings as a result of the Act (2.5 percent). Interestingly though, the larger worksites - those with more than 250 employees - that are more likely to incur costs from complying with the Act also report slightly more cost savings (7.5 percent) than covered worksites as a whole.<sup>3</sup> These savings may help to offset the relatively higher level of costs reported by larger sites, especially to the extent that they are start-up costs.

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<sup>3</sup> David Cantor, et al., *The Impact of the Family and Medical Leave Act: A Survey of Employers*, (Rockville, MD: Westat, Inc., 1995), pp. 4-8, Table 4-7.

In addition, some of the examples of benefits raised by employers at the hearings pertain especially to the larger employers. Thus, for example, the FMLA can benefit those worksites - usually larger - already providing leave policies consistent with or more generous than the Act because it removes their competitive disadvantage in relation to other companies.

There are also direct benefits to employers in the form of enhanced employee productivity and reduced employee turnover, as well as indirect benefits to employers when employees are better able to handle their family responsibilities.

### **3) Impact on Productivity, Job Creation and Business Growth Based on Business Type and Size**

As discussed above, most covered worksites experience no significant impact on business and employee performance as a result of the Act. The majority of employers at covered worksites cite little or no noticeable effect on productivity, profitability or growth.

In general, employers' views on the impact of the Act on business performance and employee performance vary across different size categories of covered worksites. Larger worksites report more negative effects of FMLA on business productivity, profitability, employee productivity and absences. On the other hand, they are much more likely than their smaller counterparts to find that the Act has had a positive impact on their employees' abilities to care for family members. Thus, while over one-third of covered worksites across size categories find that the Act has had a positive impact on their employees' abilities to care for family members, that is true of over 70 percent of the largest covered worksites.

Manufacturing sites are more likely to perceive negative effects on employee productivity. Employers in the service sector are more likely than those in other industries to note positive effects on employee turnover and absences. Covered worksites in the service sector also report the most positive effects from the Act on business and employee productivity, while manufacturing sites are the least likely to report positive effects on these two dimensions. Overall, however, it is important to reiterate that most worksites do not experience any noticeable effects on business or employee performance, regardless of size or sector.

(D): “The Impact of Family and Medical Leave Policies on the Availability of Employee Benefits Provided by Employers, Including Employers Not Covered Under the Act”

The Employer Survey specifically addresses this issue by asking employers at worksites whether they reduced other existing benefits to offset any increased costs associated with the FMLA, and if so, what they were. The results are that very few (1.3 percent) employers at worksites find it necessary to reduce other employee benefits in order to comply with the FMLA.<sup>4</sup> No significant differences are found in benefit reduction as a function of worksite size or industry. For example, 1.4 percent of worksites with up to 250 employees and .6 percent of worksites with more than 250 employees reduce their benefits.

The Employee Survey respondents report that the most frequent reduction in benefits was paid time off, either in the form of sick days, personal leave or vacation leave. This probably means that their employers allowed them to use these types of paid leave for wage replacement during their FMLA leave. Employees also report some reduction in health benefits (8.2 percent of covered employees) and disability insurance (1.9 percent of covered employees).

The fact that minimal numbers of employers have needed to reduce other employee benefits in order to comply with the Act is consistent with, and reinforces the other data from the Employer Survey indicating that the costs of administering and implementing the FMLA are negligible or small for the great majority of employers.

(E): “Alternate and Equivalent State Enforcement of Title I with Respect to Employees Described in Section 108(a)”

Title I, Section 108 of the FMLA restricts teachers’ ability to take certain types of leave ordinarily available under the Act. The restrictions pertain to intermittent or reduced scheduled leave, and leave near the conclusion of an academic term. Title IV, Section 401 of the Act provides that the FMLA cannot be construed to supersede any provision of any state or local law that provides more generous family or medical leave rights than those established under the Act. The Federal

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<sup>4</sup> Cantor, et al, pp. 4-12, Tables 4-10, 4-11.

regulations implementing the FMLA provide that the Department of Labor will not enforce state family or medical leave laws, and states may not enforce the FMLA.<sup>5</sup>

Mandated question E specifically charges the Commission to study alternate and equivalent state enforcement of Title I with respect to teachers. To do this, the Commission followed a two-pronged approach. First, the Commission developed a “state enforcement mini-survey” to answer this and other questions pertaining to individual state family and medical leave laws. Second, the Commission contacted major management and teacher organizations in the education field, inviting them to contribute their expertise to the research process.<sup>6</sup> Of the various educational organizations contacted, only the American Federation of Teachers (AFT) and the National Education Association (NEA) responded affirmatively, and each conducted studies designed to provide information about the special conditions in the FMLA applicable to teachers. Neither of these studies purports to be a scientific, random-sample survey. Rather, each offers useful but anecdotal information on the question posed to the Commission regarding the special conditions in the FMLA applicable to teachers.

### 1) Results of the State Survey

Following are the three mini-survey questions pertaining to teachers and the results:

*a) What family and medical leave provisions exist in your state law that relate specifically to instructional persons (teachers)?*

Thirty-three states responded to this question. Three states (Alaska, Connecticut and Oregon) and Washington, D.C. responded that they have had laws with specific provisions that pertained to teachers. Thirty states had no provisions specifically pertaining to teachers.

*b) How are these provisions enforced? By whom?*

Alaska, Connecticut, Oregon and Washington, D.C. each have enforcement provisions specifically relating to teachers. In Alaska, the provisions are enforced by

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<sup>5</sup> Federal Regulations of the Family and Medical Leave Act of 1993, Part 825.701(a), Subpart F, “Special Rules for Employees of Schools.”

<sup>6</sup> The Commission contacted the American Association of School Administrators, the National School Board Association, the American Federation of Teachers, AFL-CIO, and the National Education Association, AFL-CIO.

the state's Bureau of Labor Standards. Connecticut's provisions are enforced by the state's Department of Administrative Services. In Oregon, the state's Bureau of Labor and Industry enforces the provisions pertaining to teachers. Finally, Washington, D.C. enforces its provisions through its Department of Human Rights and Minority Business.

*c) What problems, if any, exist for local school administrators if they have to report to both state and federal enforcement entities?*

All thirty-four states that responded to this question (including Connecticut, Alaska and Oregon), Washington, D.C. and Puerto Rico know of no problems for local school administrators resulting from reporting to both state and federal enforcement entities.

## **2) Results of the Surveys of Educational Professionals**

*a) American Federation of Teachers (AFT)*

The purpose of the AFT survey was to learn about the impact of the new law, and the special leave provisions affecting teachers, on affected AFT members. The union looked at two states: one (Illinois) in which leave-of-absence rules are negotiated in collective bargaining or provided in state statute; and the other (Texas) in which leave-of-absence rules are established by school boards. This methodology was designed to determine if collective bargaining had any bearing on the practical application of the FMLA for members and their families.

The survey results show that teachers and other school employees are, in fact, taking leave without undue disruption. In all, 16 Illinois local members and 12 Texas local members have taken family and medical leave. The survey also finds that virtually all responding local representatives have heard of the FMLA and have at least a general understanding of the law. There are only three complaints among local respondents regarding implementation of the new law, two regarding the need for additional information and one concerning employer unwillingness to share information about the subject. Only a small minority of survey respondents indicated knowledge of the special leave provisions affecting classroom teachers under the law. AFT plans to correct this shortcoming by providing each local with a reference guide to FMLA, including examples that apply to classroom teachers.

Only a small fraction of surveyed locals have actually incorporated the provisions of the FMLA into their contracts. Locals in both states were eligible for maternity and child care leave before the enactment of the FMLA. A majority of Illinois respondents, and four out of nine Texas locals, state that school-related personnel (such as bus drivers, cafeteria workers, custodians and secretaries) are not required to work 1,250 hours to be eligible for FMLA protections; they are automatically covered.

In evaluating the importance of new protections provided under the FMLA, local respondents from both states cite the job security provisions, maintenance of health insurance coverage and the expansion in the types of leave available to workers, particularly parenting leave for fathers.

*b) National Education Association (NEA)*

The NEA survey of their state affiliates elicited information on the level of coverage, the extent of FMLA use, the impact on the workplace and suggestions for further improvements in the FMLA. The survey finds that: 1) most of the educational employees in the respondent states were covered by some level of family and medical leave prior to passage of the FMLA; 2) 48 percent of the respondents indicate that coverage for family leave improved with the passage of the law, while 32 percent respond that coverage for medical leave improved with enactment of the new law; 3) most respondents indicate that the level of use of family and medical leave is either relatively unchanged since passage of the FMLA, or that they do not have sufficient data on which to make a judgment about what changes there may have been in leave-usage; and 4) the number of grievances and lawsuits filed over family and medical leave has lowered in a few states since passage of the FMLA.

Finally, respondents recommend a number of changes in the FMLA. First, and most relevant to the query posed by Congress, respondents recommend eliminating the rule that allows employers to require educational employees to use additional unpaid leave beyond their FMLA leave when near the end of the school term. They also recommend extending coverage to small employers and part-time employees, making unpaid leave periods longer, providing for paid leave in place of unpaid leave, reducing the burden of health insurance costs during periods of unpaid leave and repealing the employer cost-recapture rules applicable to employees who do not return from unpaid leave.

### (F): “Methods Used by Employers to Reduce Administrative Costs of Implementing Family and Medical Leave Policies”

Prior to the passage of the FMLA, concerns were expressed that implementation of the Act would prove costly to employers, thus making cost reduction an important factor to address. The data collected by the Commission on Leave indicate that employer costs are not a substantial burden. Rather, the Employer Survey finds that employer cost increases due to FMLA are either absent or small for the majority of worksites, and this finding is corroborated by the Characteristics of Business Owners survey conducted by the Census Bureau. Thus, while the importance to employers of cost reduction in principle should not be minimized, it does not present itself as a significant factor with respect to the FMLA thus far.

The hearing testimony points out particular start-up problems experienced by employers, including those pertaining to coordination with state laws, record-keeping and training.<sup>7</sup> The testimony also provides examples of a number of ways in which employers have sought to minimize their administrative costs and burdens. Some employers have developed training programs on FMLA for managers and supervisors, which operate to decrease costs over time.<sup>8</sup> Others have developed software programs that make family and medical leave policy information available to employees on-line.<sup>9</sup> In providing estimates of initial costs to employers of complying with the Act, the Employer Study provides good base-line data for future research to assess cost-reduction methods over time.

### (G): “The Ability of Employers to Recover the Premiums Described in Title I, Section 104(c)(2) of the Act”

The Family and Medical Leave Act provides that the employer may recover the premium paid for maintaining health insurance coverage during the employee’s

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<sup>7</sup> Testimony of Valerie M. Pinkert, Vice President, Bank of America, at San Francisco, CA Hearing, June 26, 1995, *U.S. Commission on Leave Public Hearing Transcript*, pp. 14-15, 52; Testimony of Catherine A. Morris, Corporate Human Resources, ARCO, at San Francisco, CA Hearing, June 26, 1995, *U.S. Commission on Leave Public Hearing Transcript*, p. 68; Testimony of Rhoma Young, Rhoma Young & Associates, at San Francisco, CA Hearing, June 26, 1995, *U.S. Commission on Leave Public Hearing Transcript*, pp. 71-2; Testimony of Ronald Compton, CEO Aetna Life and Casualty Company, at Washington, D.C. Hearing, August 4, 1995, *U.S. Commission on Leave Public Hearing Transcript*, p. 19.

<sup>8</sup> Testimony of Diane Duval, Corporate Benefits Manager, Lotus Development Corporation, at Washington, DC Hearing, August 4, 1995, *U.S. Commission on Leave Public Hearing Transcript*, p. 25; Testimony of Catherine A. Morris, Corporate Human Resources, ARCO at San Francisco, CA Hearing, June 26, 1995, *U.S. Commission on Leave Public Hearing Transcript*, p. 102.

<sup>9</sup> Duval, p. 25



unpaid leave under the Act if the employee fails to return from leave, subject to certain conditions. The purpose of this section is to defray the costs incurred by employers in situations where leave-takers decide to terminate employment and do not return to work.

In order to assess the prevalence of this situation, the Employer Survey asked respondents in worksites with at least one FMLA leave-taker whether any employee that took FMLA leave did not return to work. The Employer Survey finds that one-third of the worksites have had this situation occur, with the majority of this group (86.6 percent) having had only one leave-taker not return.<sup>10</sup> The Employer Survey further finds, however, that very few worksites (7.3 percent of the one-third who had a leave-taker not return) have attempted to recover health insurance benefit payments, even though they are entitled to do so under the Act.<sup>11</sup>

### (H): “The Impact on Employers and Employees of Policies that Provide Temporary Wage Replacement During Periods of Family and Medical Leave”

There are several sources of information for understanding the impact of temporary wage replacement policies on employers and employees. The Employee Survey data provide a picture of the availability of wage replacement to leave-takers in both covered and non-covered worksites following passage of the FMLA. In addition, a “white paper” prepared for the Commission by the Radcliffe Public Policy Institute provides data about the status and impact of paid leave policies prior to 1993.<sup>12</sup> Finally, there is qualitative data on the issue of wage replacement in the hearing testimony and Catalyst interviews.

#### **1) Employee Survey: Wage Replacement Data**

While the Act does not include a mandate for paid leave, it does include provisions for employers or employees to apply wage replacement provided for other kinds of leave (sick leave or vacation pay) to family and medical leave. The Employee Survey does not distinguish between wage replacement specifically for fam-

<sup>10</sup> Cantor, et al., pp. 4-14, Tables 4-12, 4-13.

<sup>11</sup> *Ibid.*, pp. 4-12, Table 4-14.

<sup>12</sup> Kirsten S. Wever, *Improving Access to Family and Medical Leave: Temporary Partial Wage Replacement Options*, (September 29, 1995).

ily and medical leave, on the one hand, and sick leave pay or vacation pay, on the other.

The Employee Survey finds that a significant percentage (46.7 percent) of all leave-taker respondents receive full wage replacement during their leave. Of those working in covered worksites, 51.9 percent receive full pay while on leave, and 21.5 percent receive partial wage replacement. The percent age of leave-takers receiving full pay is significantly lower for the youngest employees, hourly employees and those with the lowest education and income. No wage replacement whatsoever is received by 26.6 percent of leave-takers in covered worksites and over half (53 percent) of employees working at non-covered worksites.

Those employees taking leave for their own health are most likely to have full or partial wage replacement (probably in large measure sick pay, followed by vacation pay, disability insurance or a combination of these). Partial wage replacement is most common for maternity-disability leave-takers. This may reflect the fact that some private sector employers provide disability insurance plans<sup>13</sup> and that five states have mandated Temporary Disability Insurance (TDI) systems which include partial wage replacement for pregnancy and childbirth-related disabilities.<sup>14</sup>

There are some significant demographic variations as to the likelihood that a leave-taker will receive wage replacement. Salaried employees, unionized employees and those with higher levels of household income are most likely to receive wage replacement. Conversely, those who receive no pay during their leave tend to be nonsalaried, non-union and low-income respondents.

The most striking difference between employees' levels of wage replacement while on leave is found with respect to education. The likelihood of a respondent's having received full or partial wage replacement increases as education rises, from 53.8 percent of leave-takers with less than a high school education receiving either full or partial pay to 79.6 percent of those with at least a four-year college degree receiving compensation. The relationship between the level of wage replacement and income closely parallels the findings with respect to education. In

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<sup>13</sup> Employers voluntarily provide both short-term and long-term disability insurance. For example, the 1993 Employee Benefits Survey of Medium and Large Private Establishments found that 87 percent of full-time employees have short-term disability protection and 41 percent have long-term disability insurance.

<sup>14</sup> Although only five states in the U.S. have mandated TDI systems, it should be noted that three of the five states (NY, NJ CA) account for 20 percent of the U.S. population.

general, lower-income employees are far less likely to have wage replacement. Likewise, non-salaried 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 periods of leave. Other differences among subgroups also emerge, with men and older workers more likely to receive pay during leave, and Latino workers least likely to do so.

The importance of wage replacement to leave-taking is underscored by the fact that 63.9 percent of all leave-needers (employees who need but did not take leave) report that they do not take leave because they cannot afford to go without a paycheck, even for a limited period of time. Fully 58 percent of those leave-needers working for covered employers and 72 percent of leave-needers at non-covered worksites say they are unable to take leave because they cannot afford the associated loss of wages. These employees are especially likely to be African American, to be hourly workers and to have low levels of family income. This is cited far more frequently than any other reason given for not taking leave by those who need leave.

In sum, the Employee Survey makes clear that many employers are already providing some measure of wage replacement to their leave-taking employees, most in the form of sick pay, disability insurance and vacation pay. The existence of some level of pay for different types of family and medical leave means that additional funding for leave should take these pre-existing forms of wage replacement into account.

## 2) U.S. Wage Replacement Policies in a Global Context

While the United States has no uniform system of wage replacement, many other countries do. Because U.S. businesses operate in an increasingly global marketplace, a look at the national wage replacement policies that exist in some of those other countries provides a valuable source of comparison. In making such comparisons, cultural, demographic and economic differences among nations should be taken into account. Most other advanced industrial countries have national legislation that provides employees with partial wage replacement for some period of time - ranging from about three to nine months when they take leave for reasons of personal illness or to give birth. The trend in many advanced industrial countries has been to encourage fathers to play greater roles in caring for their children by offering more and more generous forms of paid paternity leave. Paid leave for

employees who need to take care of ill family members is fairly common when those in need of care are children; paid leave for taking care of spouses is rarer, and only a few countries offer any wage replacement in the case of eldercare leave.<sup>15</sup>

The mechanisms used to finance paid leave vary significantly across countries, ranging from employee-funded and employee/employer-funded insurance plans to plans financed entirely out of general tax revenues. As the paper cited above indicates, comparative political and economic analyses suggest that the costs to employers are negligible, and the benefits to citizens significant.

The United States stands out in international comparison in that national family and medical leave policy is unpaid, and is available only to those working in companies with 50 employees or more. However, the FMLA is more generous than leave policies in many other advanced industrial countries in that it covers a broader range of reasons for taking leave, especially in the area of family leave.

Many U.S. companies voluntarily offer wage replacement for certain kinds of employee leave. While hard data are scarce, many of these companies associate paid leave policies with higher levels of product and service quality, and improvements in productivity.<sup>16</sup> Nevertheless, many companies - particularly smaller companies - have expressed concerns about the costs of offering employees paid leave. Some suggest that one way of reducing cost differences among employers is to standardize leave policies broadly enough that individual companies offering leave are not placed at a competitive disadvantage to companies not offering leave.

The evidence concerning paid leave associated with Temporary Disability Insurance plans in the five states that have such programs suggests that paid maternity leave and leave for personal illness provide significant benefits for employees, in terms of job stability, income maintenance, long-range earnings potential and protection of savings. In addition, employer participation in TDI is relatively inexpensive. There is also evidence to suggest that the economic well-being of even small worksites (and certainly larger worksites as well) in states whose leave policies are more extensive than those of the FMLA do not suffer.

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<sup>15</sup> For example, in Sweden employees can take 30 days of paid leave to care for elderly relatives. See Lynn B. Gerald, "Paid Family Caregiving: A Review of Progress and Policies," *Journal of Aging and Social Policy*, Vol. 5, 1993.

<sup>16</sup> General Accounting Office, *The Changing Workforce: Comparison of Federal and Nonfederal Work/Family Programs and Approaches, Report to Congressional Committees*, (U.S. General Accounting Office: Washington, DC, April, 1992).

The data reveal that many employees who currently have no access to paid leave would use it and benefit by it, especially low-income workers. Employees paid on an hourly basis and those with relatively low levels of education and income are less likely to have access to paid leave policies than are salaried employees and those with higher levels of education and income. Anecdotal evidence also suggests a strong preference among many employees for part-time leave, supporting the idea that partial wage replacement would be a significant benefit to working people.

