



# Future Directions: Commission on Leave Recommendations

### COMMISSION ON LEAVE RECOMMENDATIONS

*Based on the information detailed in this report, the Commission on Leave developed and unanimously adopted the following recommendations.<sup>1</sup>*

## PUBLIC EDUCATION AND TECHNICAL ASSISTANCE

### A. Increased Public Education on the Family and Medical Leave Act (FMLA)

The Commission recommends that the Labor Department do more to educate employees, employers and the public in general about the FMLA, including but not limited to: inauguration of a 1-800 number; on-going PSAs; employee rights and responsibilities education programs targeted to FMLA populations; distribution of information to libraries, schools, hospitals, community and senior centers, etc., and, as appropriate, on the Internet; increased distribution of materials to employers and employees; and special campaigns to educate doctors, social workers and other health professionals on their role in the FMLA and how they can help their clients use it — perhaps working with doctor, nurse, and social-worker associations and with medical colleges and other training institutions. The Labor Department should also identify other agencies that have on-going links to business, unions, health care providers or others who have a role in making the FMLA work, and encourage those agencies to assist in public education efforts.

### B. Model Record-Keeping

The Commission recommends that the Labor Department, in consultation with the Commerce Department and the Small Business Administration, work with large and small business and employee representatives and software companies to develop model systems for record-keeping and for personnel practices that could be widely distributed to businesses to assist them in complying with FMLA.

### C. Specific Areas of Technical Assistance and Public Education

- (1) To better protect employee privacy, the Commission recommends that the Labor Department make clear, through technical assistance opinion letters, or other appropriate means, that the categories of information that

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<sup>1</sup> One voting member of the Commission was absent for this vote.

employers are to keep confidential be expanded to include requests for leave and orally-provided information (in addition to the actual medical certification documents).

- (2) Because the FMLA's overlap with other state and federal laws has proven confusing to the public, the Commission recommends that the Labor Department do more public education and technical assistance and, if appropriate, provide model record-keeping on the interaction of FMLA with the unemployment compensation program, with state laws and with other federal laws like the Americans with Disabilities Act and the Pregnancy Discrimination Act.

In particular, when an employee loses her or his job in violation of the FMLA, the employee should not be disqualified from unemployment compensation. The Commission recommends that the Labor Department issue guidance to state unemployment insurance programs to this effect.

- (3) To address cultural barriers to leave-taking, the Commission recommends that appropriate federal agencies create a national business/employee Round Table to address corporate and general cultural barriers that prevent employees, male and female, from taking advantage of available family and medical leave policies. And the Labor Department should direct some of its efforts at increasing public awareness of the FMLA toward populations that are particularly affected by these cultural barriers.

## DIRECTIONS FOR FUTURE RESEARCH

### Introduction

There is no question that the work of the Family Leave Commission has provided rich sources of data about the impact of a particular kind of family-friendly workplace policy - family and medical leave policies - on employees and on employers. Indeed, the two new datasets that the Commission has created will no doubt be the subject of extensive further study. In fact, these two studies can yield much information that is useful to build upon and improve family and medical policies - useful not only to Congress and other public policy makers, but also to businesses, employee organizations and individuals. In addition, there are a number of areas

of research that the Commission did not try to pursue, and that would also be extremely useful as a basis for improving future family-friendly workplace policies.

At the same time, the research community has evidenced a lively interest in the impact of family and medical leave policy at all levels - on the economy, on employers, on families, on individual employees, on children, on women, on the elderly and on society as a whole. The Commission urges that this interest, and the work that has already been done, be enhanced by researchers in the academy, in government and in businesses. Specifically, the following new research should be pursued:

- (A) Building on the instruments developed for the Commission's two surveys, additional regular questions on family and medical leave should be added to existing and on-going government and private surveys, including the Census Bureau's Current Population Survey and the Bureau of Labor Statistics' Employment Benefits Survey;
- (B) Additional research should be done to assess the impact of family leave policies (both those required by the FMLA and those voluntarily provided) on: child development and well-being, particularly the effect on the physical, cognitive and social development of children; child and family health, particularly the effect on parents' role in meeting their children's health needs; family and life functioning, particularly the effect on families' ability to provide an economically secure and nurturing environment for childrearing and other kinds of family caregiving;
- (C) Additional research should be done to assess the impact of family leave policies (both those required by the FMLA and those voluntarily provided) on employees who do not have telephones - generally, low-income people - and on public employers and employees;
- (D) Additional macroeconomic research should be done to assess the impact of family leave policies (both those required by the FMLA and those voluntarily provided) on countries' and companies' overall economic performance. Research on the domestic impact should take cognizance of the interaction between family leave policies and other benefit policies resulting from voluntary provision, state laws or other sources. Research on the impact on countries should take cognizance of the related impacts of factors such as culture, demographics and medical practices;

- (E) Additional research should be done to assess the impact of family leave policies (both those required by the FMLA and those voluntarily provided) on temporary, part-time and contract workers;
- (F) More in-depth case studies of employers who have been successful at providing family leave and other family-friendly policies should be conducted, to create a larger body of “best practices” information for employers and employee organizations to draw on;
- (G) Better tools to measure the impact of family-leave policies on employees’ morale, productivity, turnover and retraining loyalty and commitment to their employers should be developed;
- (H) Research should be done on the relationship of family leave policies to containing health care costs of the nation, of businesses and of families;
- (I) Additional research should be undertaken to identify effective approaches for employers to take to reduce the cultural barriers to taking leave; and those approaches should be disseminated;
- (J) Research should be conducted on the implementation and application of the Act with regard to Congressional employees and employing authorities that parallels applicable areas of research with regard to the private and other public sectors. Such research should include, but not be limited to, education and awareness, incidence of leave-taking, discrimination, abuse and impact on family well-being. Of special interest would be research on how applying the FMLA to Congress affects the attitudes of policy makers and their employees toward the current trend of more fully applying private sector employment laws to Congressional employees and employers; and
- (K) Additional research should be conducted on the long-term costs and benefits of family and medical leave policies for employers - including the impact on “no-fault” absence policies and on other benefits employers may provide voluntarily or through federal statute.

## POLICY DIRECTIONS

### A. Enforcement

- (1) The Commission recommends that the Labor Department continue and strengthen its program of enforcing the Family and Medical Leave Act (FMLA).
- (2) The Commission recommends that other federal agencies (in addition to the Labor Department) identify steps they can take to ensure full compliance with the FMLA by companies with which they work.
- (3) The Commission recommends that Congress seriously consider making the same court procedures and remedies available to employees of the federal government as are available to other employees.

### B. More Family-Friendly Policies

#### (1) *Wage Replacement*

The Commission's research and hearings show that by far, the major reason employees in FMLA-covered institutions do not take FMLA leave is that they cannot afford to do so. In addition, family and medical leave users often suffer financial hardship when they do take unpaid leave. Finally, many employers do already provide some form of paid leave voluntarily - indicating both their recognition of their employees' need and their own ability to provide paid leave through sick leave, disability insurance, paid childcare leave or other means. On the other hand, many employers - especially small employers - fear the additional costs that paid leave programs are likely to impose on their businesses.

The Commission makes no recommendation for or against federally-mandated paid leave. However, the Commission recommends that the development of a uniform system of wage replacement for periods of family and medical leave be given serious consideration by employers, employee representatives and others. Following are some such measures that employers, unions and states may undertake to provide wage replacement for periods of family and medical leave:

- a. Employers should consider, voluntarily or through collective bargaining, establishing or expanding existing temporary disability insurance (TDI) to provide wage replacement for periods of family and medical leave, or otherwise providing paid family and medical leave benefits on as wide a scale as they can;
- b. Unions should consider negotiating the establishment or expansion of existing methods for providing wage replacement to cover periods of family and medical leave, or otherwise providing for paid family and medical leave benefits on as wide a scale as they can;
- c. States should consider voluntarily extending unemployment compensation qualifications to employees on family and medical leave; and
- d. States should consider voluntarily establishing or expanding existing temporary disability insurance programs to provide wage replacement for periods of family and medical leave.

(2) *Additional family-friendly policies*

The Commission recommends that all American employers voluntarily take steps to ensure that their work environments affirmatively help their employees to combine their work and family obligations. For example, many employers already are providing not only paid family and medical leave, but also: flexible work schedules; part-time jobs; telecommuting; adoption benefits; facilities for nursing mothers to use for pumping during work hours; on-site child care; and emergency dependent care benefits.

(3) *The federal government should lead by example*

The Commission recommends that the federal government become a model “family-friendly” employer by, inter alia, ensuring that federal employees know about their FMLA rights; allowing employees to decide when and whether to substitute paid leave in all instances; considering standardization and extension of methods of wage replacement during periods of family leave; and providing other family-friendly workplace policies in-so-far as possible.

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In carrying out any of the Recommendations of this Commission involving activities by the federal government, the Administration in its budget requests, and the Congress in its appropriations and other relevant legislation, should be sensitive to the need for adequate funding, as appropriate.