

Assessing the Impact of Family and Medical Leave Policies on Employers

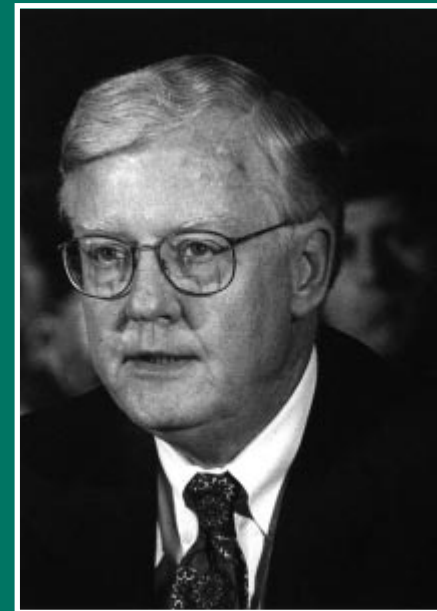
A. Introduction

This chapter presents data from the Employer Survey, as well as qualitative information obtained through public hearings and supplementary survey data on small employers, to assess the impact of family and medical leave policies in general, and of the FMLA in particular, on employers.¹ The chapter begins with sections covering administration and the extent to which employers are complying with the FMLA, its costs, some of its benefits to employers and its effects on business and employee performance. These are followed by a section that analyzes the effects on worksites² with different types of experiences in complying with and implementing the Act. The next section compares the experiences of employers covered by the FMLA with expectations of how the Act would affect worksites not currently falling under its mandate. The chapter closes with a brief summary and conclusion.

B. Administration of and Compliance with the FMLA

Among covered worksites, the majority of employers find the additional administrative activities necessitated by the Act either “very easy” or “somewhat easy” to implement. However, there is variation in assessments across the different types of administrative activities identified by the survey.

More than 90 percent of covered employers find it “very easy” or “somewhat easy” to determine whether their worksite is covered by the Act, and to determine em-



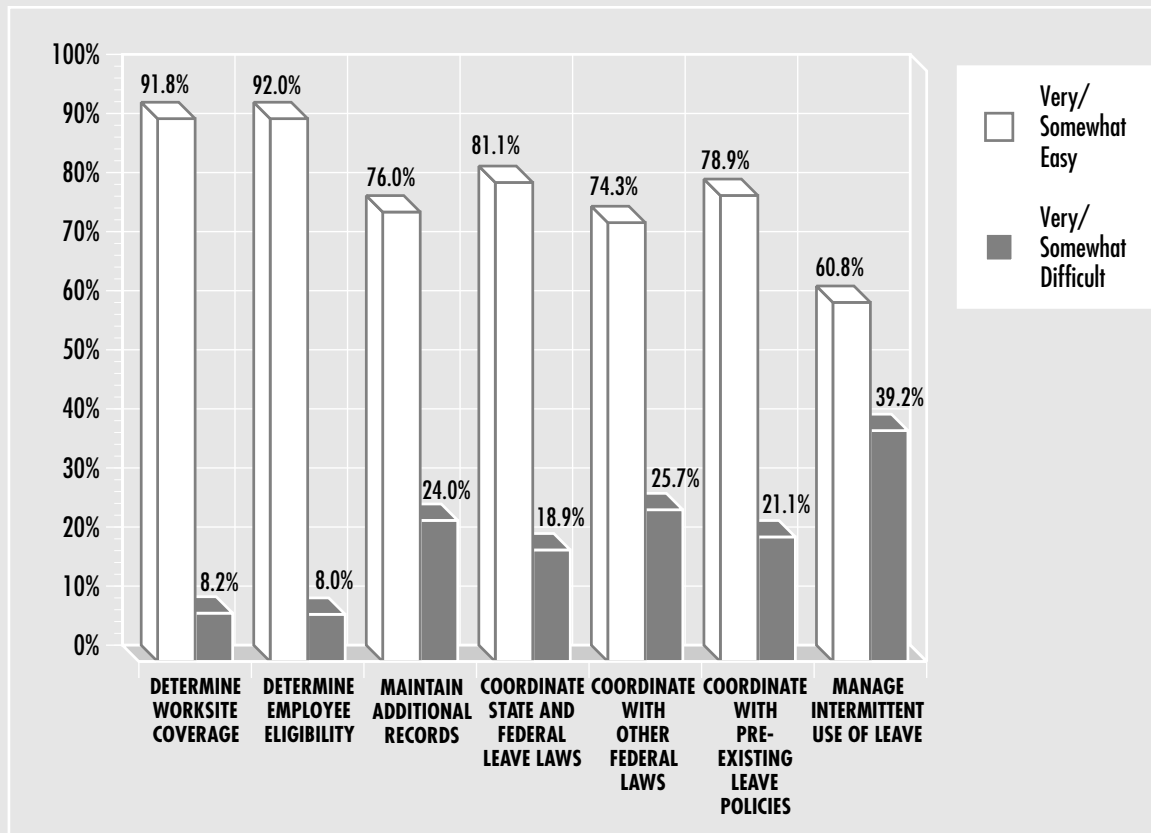
Opposite: Top Left: Nell Rivers, Human Resources Manager, and Marsha Lawrence, Vice President, Public and Operator Services, Bell Atlantic, testifying at Commission on Leave Public Hearing, Washington, DC, August 4, 1995. Top Right: Mary Ann Thode, President and CEO, St. Marys Medical Center, testifying at Commission on Leave Public Hearing, San Francisco, CA, June 26, 1995. Bottom: Denis Thompson, Director, Human Resources, Dallco Industries, Inc., testifying at Commission on Leave Public Hearing, Washington, DC, August 4, 1995. **Above:** Ronald Compton, Chairman and CEO, Aetna Life and Casualty Company, testifying at Commission on Leave Public Hearing, Washington, DC, August 4, 1995.

¹ See Chapter II for a description of the samples and methods used to gather data on employers.

² The worksite was the unit of analysis used in the Employer Survey by Westat. Throughout this Chapter we use the term “worksite,” not the terms firm or company to refer to the location on which the employer data is based.

FIGURE 6.1

Ease of Performing FMLA Administrative Activities: The Impact of FMLA on Covered Worksites



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

ployee eligibility (see Figure 6.1). These employers report having slightly more trouble with additional record-keeping necessary for the Act and with the coordination of state and federal leave laws, other federal laws and other leave policies - with between 74 percent and just over 81 percent of employers reporting these activities to be “somewhat” or “very easy.” A sizable majority of covered worksites report no problems administering the Act in any one of the categories cited.

Testimony before the Family Leave Commission by various employer representatives confirms the finding that the majority of sites from every size category find administrative responsibilities under the Act to be “easy” or “somewhat easy” to carry out (see Appendix E, Table 6.A). Thus, for instance, Diane Duval, Corpo-

rate Benefits Manager from the Lotus Corporation, a computer software company, described the modifications in paperwork to comply with the Act as “very minimal.”³ Ms. Duval also noted that “due to the broad work/family initiatives we already had in place in 1993, we had only to make modest accommodations to our existing leave policies in order to comply ... [and] in terms of administering the program, we have found the U.S. Department of Labor’s model forms extremely helpful.”⁴

The area with which covered sites appear to have the greatest difficulty is the management of intermittent leave under the FMLA. The Act permits eligible employees to take leave “intermittently or on a reduced leave schedule” under certain conditions. By its very nature, intermittent leave may require more administration because it offers employers and employees the opportunity to negotiate both the timing and the schedule of the proposed leave. Under the FMLA, intermittent leave may be taken for the birth of a child or the care of a newborn, newly-adopted or foster child, if the employer grants the employee’s request for such a schedule. Leave for a serious health condition (either the employee’s or a family member’s) may be taken intermittently or on a reduced leave schedule when “medically necessary.”⁵

The majority of employers (60.8 percent) find it either “very” or “somewhat easy” to manage the Act’s intermittent leave provisions. However, 39.2 percent find it to be either “somewhat difficult” or “very difficult.” That is, the proportion finding intermittent leave difficult to administer - while still a minority - is higher than the percentage reporting difficulties with any of the other administrative aspects of the law covered in the survey.

The hearing testimony sheds light on why some employers have trouble administering intermittent leave. Elizabeth Pedrick Sartain, a vice president of Southwest Airlines, testified that the company does “not have any problem with employees taking long-term leaves of absence. They don’t take it unless they need it.” But

³ Testimony of Diane Duval, Lotus Corporation, at Washington, DC Hearing, August 4, 1995, U.S. Commission on Leave Public Hearing Transcript, p. 77.

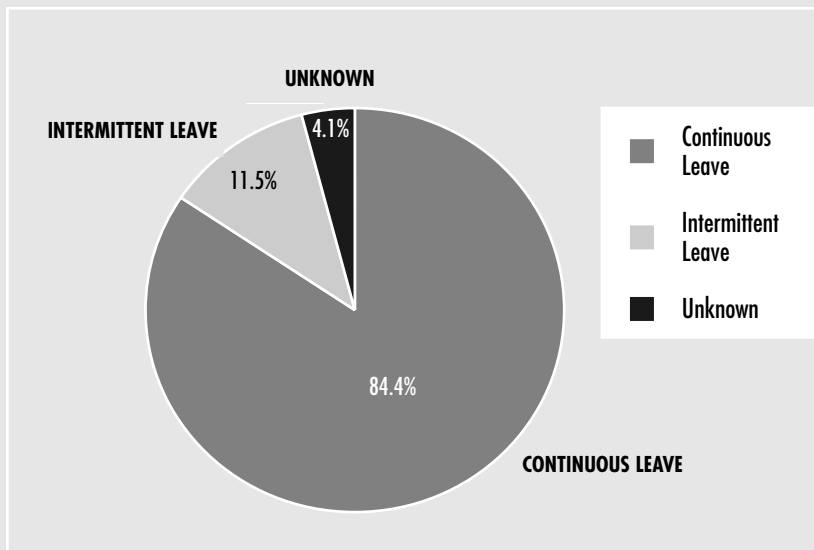
⁴ *Ibid.*, p. 24.

⁵ An employer may request that an employee support an intermittent leave request for a serious health condition with certification from the health care provider. Employees must make a reasonable effort to schedule their foreseeable intermittent leave so as not to disrupt the employer’s operation unduly, subject to the approval of the health care provider. Employers may assign employees temporarily to alternative positions with equivalent pay and benefits that better accommodate such recurring periods of intermittent leave.

problems arise with intermittent and reduced leave aspects of the law because the company “control[s] attendance through a reward and incentive program and also an attendance control program.”

In this case, the “major administrative burden ... [is] the increased use of the intermittent leave for absences that would have ordinarily been routine absences that we would have covered under our sick plan.”⁶ Another complaint, registered by a representative of Lotus (also quoted above), was that while in general the family and medical leave policy under the FMLA was “extremely manageable,” the “administrative complexities of intermittent leave” created difficulties in “developing an efficient, automated tracking mechanism for this type of leave.”⁷

FIGURE 6.2
Leave-Takers: Continuous vs. Intermittent Leave



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

On the other hand, some testifying employers found the intermittent leave provisions to be an asset. Linda Siebert Rapaport, a manager from First Chicago Bank, for example, described intermittent leave as “extremely important

for our working parents who need to take time off, for example, to take their children for treatments or for their parents as well.” She found intermittent leave to be a “useful tool along with our emphasis on flexible work arrangements to be able to gradually return people to work in the most effective way possible.” Here, the FMLA is seen as “part of a wide range of other family-friendly strategies that we are using at this time.”⁸ In further testimony, Elizabeth Carlson, an employer representative from the National Futures Association, a large manufacturing organization, described in approving terms an employee “who takes intermittent leave to take care of her husband. I have seen her return to work after spending many

⁶ Testimony of Elizabeth Pedrick Sartain, Vice President, People Dept., Southwest Airlines, at Chicago, IL Hearing, U.S. Commission on Leave Public Hearing Transcript, pp. 81, 112.

⁷ Duval, p. 65.

⁸ Testimony of Linda Seibert Rapaport, Assistant Vice President, First Chicago Bank, at Chicago, IL Hearing, May 8, 1995, U.S. Commission on Leave Public Hearing Transcript, pp. 25-6.

hours at the hospital with him, caring for him, supporting him, being with him at a very crucial time.” This representative went on to state: “Particularly with intermittent leave, we work closely with our employees to try and work out a program that enables them to fulfill their obligations not only to themselves and their family, but also to fulfill their obligations to our company as well.”⁹

While some employers have expressed concerns about the use of intermittent leave, this type of leave-taking is a small proportion of leave-taking overall. The Employee Survey finds that 84 percent of employees take leave continuously, while 11.5 percent take it on an intermittent basis (see Figure 6.2). Leave is taken on an intermittent basis (rather than all at once) by just under a quarter of leave-takers caring for an ill child or spouse and 17 percent of those caring for an ill parent. Eleven percent of employees who take leave to care for their own serious illness also take leave on an intermittent basis rather than all at once (see Appendix E, Table 6.B).

Returning to the broader range of administrative activities associated with the Act, the survey reveals no noteworthy differences between employers from different industrial sectors. When covered worksites are broken down into size categories - small (having fewer than 50 employees), medium sized (50 to 250 employees) and large (with more than 250 employees) - the data suggest that the degree of difficulty in administering the Act grows with the size of the worksite (see Appendix E, Table 6.A). The larger the site, the greater degree of difficulty: worksites with 1,000 employees or more are more likely than those with between 250 and 1,000 employees to report difficulty coordinating the FMLA with pre-existing leave laws (see Inset 6-1); and over three-fourths of those with 1,000 employees or more report difficulties implementing the Act’s intermittent leave provisions.

Inset 6-1

Valerie M. Pinkert, Vice President and Manager, Bank of America

While complying with the principles of the Act has not been a problem, the administrative aspect of complying with the technical and complex regulations has proven to be a great challenge. For example, while the Act encourages employers to go beyond the law in developing their own policies, employers who have generous leave programs that go beyond what is required under the law receive no accommodation under the Act for their further efforts.... We also believe that the regulations could be streamlined and modified in ways that would help to alleviate some of these difficulties.

Testimony of Valerie M. Pinkert at San Francisco CA Hearing, June 26, 1995, U.S. Commission on Leave Public Hearing.

⁹ Testimony of Elizabeth Carlson, Director of Human Resources, National Futures Association, at Chicago, IL Hearing, May 8, 1995, U.S. Commission on Leave Public Hearing Transcript, pp. 35-6.

In short, smaller covered worksites are more likely than larger ones to find the administration of the Act relatively easy. On the one hand, this may seem counter-intuitive since larger worksites also tend to have larger and more professional human resource management staffs. That is, one might hypothesize that the administration of the Act would be easier in larger worksites, given the well-organized presence of this function within most large worksites. On the other hand, larger worksites are also more likely to have leave-takers, to be covered by other laws, to have pre-existing formal policies regarding leave, and so on. As such, the Act may require more overall administrative adjustment and realignment at larger worksites. These factors could account for the finding that larger covered worksites - especially the largest sites surveyed - have more trouble than small and medium-sized covered worksites with these administrative functions.

The hearing testimony indicates that at least some of the difficulty experienced by larger employers in administering the Act can be attributed to start-up costs. Valerie M. Pinkert, the vice president and employee relations manager of Bank of America, for example, noted that “[b]ecause we’re so large and in 48 states, we have to go through steps that smaller organizations that are in a couple of states don’t. [In a small operation, a]ll ten managers can come to a training class. When you’ve got 90,000, how do we best do this in a cost-effective way?”¹⁰ Catherine A. Morris, a human resource manager from ARCO, a large firm in the oil and gas industry, found it burdensome “mak[ing] sure that every unit everywhere in the country understands exactly what the Act requires, and is able, then, to do what’s legally required.” She went on to note that the letter of notification requirements to employees could be cumbersome, and that “sometimes it’s caused confusion ... with 23,000 employees, the increased paperwork has become very burdensome.”¹¹

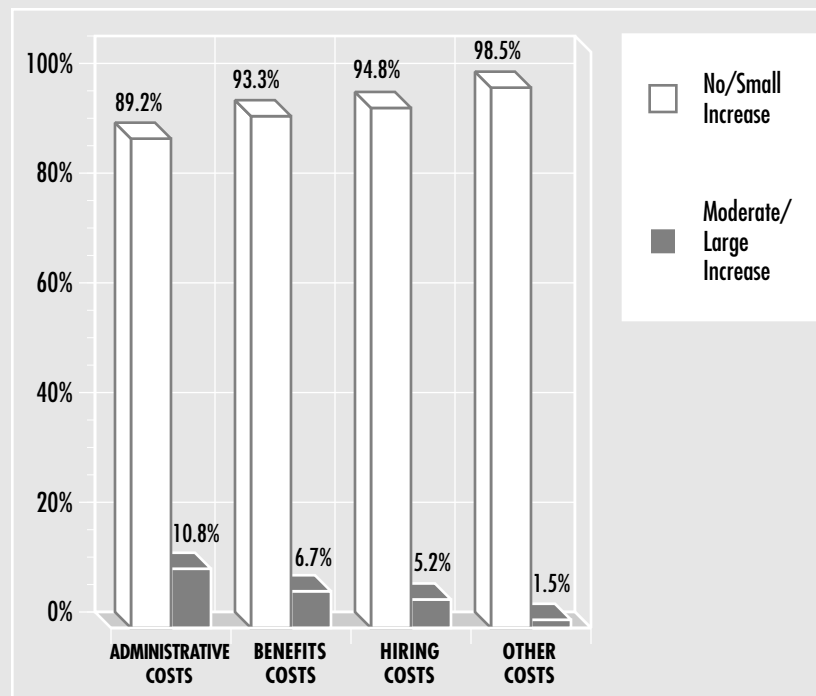
The fact that smaller worksites are more likely to manage human resource policies informally may also partially explain the size differences relating to perceived administrative difficulties. In smaller worksites, administrative difficulties encountered as a result of the Act would most likely be experienced by individual supervisors or managers making leave-related decisions, rather than by a larger formal department charged with administering the Act.

¹⁰ Testimony of Valerie M. Pinkert, Vice President and Manager, Employee Relations, Bank of America, at San Francisco, CA Hearing, June 26, 1995, U.S. Commission on Leave Public Hearing Transcript, p. 52.

¹¹ Testimony of Catherine A. Morris, Human Resources Manager, ARCO, at San Francisco, CA Hearing, June 26, 1995, U.S. Commission on Leave Public Hearing Transcript, pp. 68,96,102.

Historically, when federal standards that affect business administration (especially, but not exclusively, human resource management issues) are first put into place, organizations experience a learning curve effect. They tend to have more difficulties administering policies in the early phases of implementation, and less trouble over time as the processes involved are adjusted to fit the circumstances of a specific organization. Further research regarding the administrative activities related to the Act five years or more after its implementation would be useful for assessing how much of the difficulty reported in the first two years is due to “start-up” problems that will diminish over time.

FIGURE 6.3
Cost to Employers: Impact of FMLA on Covered Worksites



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

C. Costs to Employers

Covered employers were asked to rate the extent of cost increases they had experienced in four broader 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 small cost increases, in all four categories (see Figure 6.3). With respect to administrative costs, 89.2 percent of covered employers report no increase or only a small increase in costs. Over 90 percent of covered worksites experience no or small cost increases associated with continuing

employee benefits. No or small increases in costs are reported with respect to hiring and training by 95 percent of employers. Finally, 98.5 percent report no or small cost increases in “other” areas. Manufacturing establishments are slightly more likely to report moderate to large increases than the sample as a whole.¹² Otherwise sectoral distinctions are not significant.

With regard to size, the larger sites look somewhat different than the smaller sites (see Appendix E, Table 6.C). In general, the highest costs experienced by covered

employers in all size categories fall into the category of administrative costs and the lowest costs fall into the “other costs” category. With respect to administrative costs, covered employers with 25 employees or fewer are more likely to report small cost increases or no cost increases at all (90.7 to 100 percent) than larger employers.¹³ Between about 11 and 25 percent of covered employers with 26 to 250 employees report modest or large increases in administrative costs. Among the largest employer group, with 1,000 employees or more, 58.3 percent report small or no cost increases, but 41.7 percent report moderate or large increases in administrative costs.

Increases in benefits costs are also most likely to be reported by the largest employers, with 28.9 percent stating they experience modest or large increases, compared with 11.2 percent or less of employers with up to 99 employees.

Inset 6-2

Elliott Lehman, Co-Chairman Emeritus, Fel Pro Corporation

There are expenses involved in administering [the Act]. They are not great. In our case, we estimate that it takes ten percent of one of our human resource personnel. But there are other concomitant expenses when trying to deal with a person who takes the leave. How do we cover them in the plan, what will the supervisors have to do and things like that... [which total t]en percent of one person's time in our human resources department.

It is estimated, not even including the administrative costs of finding a replacement, that it takes a year and a half for a [replacement] to get up to the speed of the person who has left. And that's all the way through. And so that is why when we examine these kinds of data we have to balance them out: What did you have? What does it cost? What is the cost of the 13 weeks or the 12 weeks, which nobody takes because - let's face it - when you have unpaid leave in today's society, who can afford to take off that long of time if they have to balance their own personal budgets?

Testimony of Elliott Lehman at Chicago IL Hearing, May 8, 1995, U.S. Commission on Leave Public Hearing.

¹² 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 4-6.

¹³ Some employers who have fewer than 50 employees at their worksite are considered “covered” under the FMLA because of the 75-mile radius rule, and are therefore included in this analysis.

As mentioned above, this size effect - relatively higher cost increases being reported by relatively larger employers - could reflect the likelihood that larger worksites have more leave-takers, and tend to have formal policies that may require greater time and effort to bring into line with the Act's requirements. Nell Rivers, a human resources manager from Bell Atlantic, for instance, testified that in addition to direct costs, the company has "lost substantial productivity due to the need to train more than 6000 supervisors" on FMLA and on additional "new paperwork burdens."¹⁴ Inset 6-2 contains one employer's testimony at the public hearings on his experience with costs related to the FMLA.

D. Benefits to Employers

Very few worksites report any significant cost savings (see Appendix E, Table 6.D). Once accounting for sampling error, only two of the size categories report savings that are significantly different from zero (five to 99 employees and 251 to 500 employees). Of the cost savings that do exist, there is a slight tendency for the larger worksites (i.e., 251 to 500 employees) to report more cost savings than the smaller worksites (i.e., fewer than 250 employees). Indeed, over ten percent of sites in the 251 to 500 employee size category experience cost savings as a result of complying with the FMLA (compared with five percent or less of worksites with fewer than 250 employees). To some extent, these savings may offset some of the relatively higher level of costs reported by larger sites, as described above.

One benefit noted by several testifying employer representatives is the savings resulting from reduced employee turnover costs. Ms. Rapaport from First Chicago Bank, for instance, emphasized that the cost of offering leave is outweighed by the cost of losing employees who have no access to leave: "... [W]e look at the fact that to recruit, to source, to hire, to go through the administration, training someone, bringing them up to speed would probably cost 50 to 150 percent of annual salary. In this way, we have someone who is coming back who is recommitted who knows the job, and that is very valuable for us in a business sense."¹⁵ Terri Wolfe, Human Resources Director at Patagonia, a large clothing manufacturing and sales organi-

¹⁴ Testimony of Nell Rivers, Human Resources Manager, Bell Atlantic, at Washington DC Hearing, August 4, 1995, U.S. Commission on Leave Public Hearing Transcript, p. 92.

¹⁵ Rapaport, p. 26.

zation, noting the high replacement cost of even entry-level employees (\$15,840) - to say nothing of senior executives (\$89,599) - stated: “If the ethical obligation we all have as employers isn’t reason enough to support these types of leaves, the financial impact certainly is. The choice to implement family and medical leave policies is a matter of priorities.”¹⁶

Some employers have found that the Act has helped them to establish uniformity and consistency in their family and medical leave policies. Thus, Ms. Pinkert, a Bank of America vice president, testified that even though the organization already provided more benefits than those required under FMLA, the Act provided “a backbone to go on ... everybody is doing the same thing.” In this case, the FMLA helped establish specifically “what the procedures would be ... and I think that’s positive.”¹⁷ Further testimony from Ms. Morris, a human resources manager at ARCO noted “no downside” to providing FMLA benefits, and found it, in fact, “easier when [the] government passes a law” such as the FMLA.¹⁸ Ronald Compton, CEO of Aetna Life and Casualty Company, testified likewise in support of the FMLA, noting that the “intent and spirit” have from the beginning been “on the mark.”¹⁹

Several employers testified that the Act provides benefits not only to companies, but to their employees as well. Mary Ann Thode, President and CEO of St. Mary’s Medical Center (owned and operated by Catholic Healthcare West), noted for instance, that the FMLA did not represent a “significant financial burden [or a] significant administrative headache,” rather serving to “support [our] efforts to bolster the health of the family, and therefore the community that we serve.” She described the Act as “cost-effective for us in reducing the emotional stress that employees feel when someone they care about needs their care.”²⁰

Marsha Brock, the human resources manager at Casto Travel, noted that as a result of the Act the company has “expanded this benefit to all of our employees regardless of their office size or location [and] ... we have also waived the one-year eligi-

¹⁶ Testimony of Terri Wolfe, Human Resources Manager, Patagonia, at Washington DC Hearing, August 4, 1995, U.S. Commission on Leave Public Hearing Transcript, p. 29.

¹⁷ Pinkert, pp. 52-3.

¹⁸ Morris, pp. 68,96,102.

¹⁹ Testimony of Ronald Compton, Chairman and Chief Executive Officer, Aetna Life and Casualty Company, at Washington DC Hearing, August 4, 1995, U.S. Commission on Leave Public Hearing Transcript, p. 19.

²⁰ Testimony of Mary Ann Thode, President and CEO, St. Mary’s Medical Center, at San Francisco, CA Hearing, June 26, 1995, U.S. Commission on Leave Public Hearing Transcript, p. 10.

bility for the leave. We felt that a mom who has been with our company for ten months should have the same right and the same experience with her children as somebody who has been with the company, say, 15 or 20 years ... The FMLA is, we believe, in the best interest of the employee and the employer. We feel it is a dual benefit, and it will promote a productive environment and a strong dedication and loyalty.”²¹ Rhoma Young, Principal of Rhoma Young and Associates, a small management consulting company, described the Act as a useful tool to address performance problems that result from “stress from the outside world or from [their] personal life” affecting behavior. With the Act in place, managers are able to say to employees: “If you need to go out on leave to take care of these issues, we encourage you to do so.”²²

Among worksites already providing leave policies consistent with or more generous than those required by the Act, the FMLA may prove beneficial for the additional reason that these worksites are no longer at a competitive disadvantage in relation to other worksites. That is, to the extent that the Act entails costs, those are now shared by competing worksites that are also providing leave benefits because they are covered under the law. For example, Ms. Wolfe from Patagonia testified that “the enactment [of the FMLA] has actually leveled the playing field for us...[and] especially in states outside of California [it has] been very beneficial...”²³

Inset 6-3:

Bette Carlson, Director of Human Resources, National Futures Association

I really feel confident that I speak for all levels of management at NFA as well as our officers and directors when I say that NFA's experience with this leave has been very positive. As you will hear from our four staff who are here today, this policy benefits employees, because it allows them a peace of mind without any sense of guilt about shirking their job responsibility at a time when their energies need to be directed toward their families or personal lives. Management benefits by retaining its trained and experienced staff and from the loyalty and goodwill that the policy engenders among the employees. In my opinion, the United States of America and all society benefits also by ensuring positive family experiences.

Beyond providing natural caring and support, families represent the locus of deepest human experience. Connection to the past and hope for the future all arise from this nexus. I think that the Family [and] Medical Leave Act is a significant step towards bringing the United States employment policy into alignment with these positive family experiences.

Testimony of Elizabeth Carlson at Chicago, IL Hearing, May 8, 1995, U.S. Commission on Leave Public Hearing.

²¹ Testimony of Marsha Brock, Human Resources Manager, Casto Travel, at San Francisco, CA Hearing, June 26, 1995, U.S. Commission on Leave Public Hearing Transcript, pp. 17-8.

²² Testimony of Rhoma Young, Rhoma Young and Associates, at San Francisco, CA Hearing, June 26, 1995, U.S. Commission on Leave Public Hearing Transcript, p. 75.

²³ Wolfe, pp. 82-3.

In short, many employers view the FMLA as providing benefits to both the employer and the employee (see Inset 6-3). However, some employers have a different assessment of the overall balance of costs and benefits (see Inset 6-4).

Inset 6-4

Catherine A. Morris, Benefits Manager, ARCO

[ARCO] is in 100 percent agreement with the concept of providing time off for family and medical reasons. In fact, we have had, for many decades, benefits that are far in excess of what's required by FMLA. ... Our concerns are related to the ongoing paperwork requirements the Act has generated. Our employees, in essence, received no additional benefits as a result of the Act. But the company became responsible for a lot of extra paperwork.

The absences always occurred prior to the Act. There will always be issues where people have to be off work. But the regulations require letter-writing confirming coverage for people, which they're really on full pay for, most of the time. All their benefits are covered, so it's really superfluous information that we have to provide to employees - their rights and obligations under the Act. And that's the part that's burdensome ... is to make sure that every unit everywhere in the country understands exactly what the Act requires, and is able then to do what's legally required.

Testimony of Catherine A. Morris at San Francisco, CA Hearing, June 26, 1995, U.S. Commission on Leave Public Hearing.

E. Business and Employee Performance

The pattern of responses with respect to the Act's impact on business and employee performance at covered worksites is consistent with the findings above, in that a large majority of employers reported no noticeable effects in any one category.

Three dimensions of business performance were measured: productivity, profitability and growth.²⁴ The majority of covered worksites cite no noticeable effect on these dimensions (86.4 percent, 92.5 percent and 95.8 percent, respectively) (see Figure 6.4). To the extent that employers do report an effect, they are about equally likely to note a positive effect as a negative effect on business productivity and growth (6.4 percent compared with 7.3 percent, and three percent

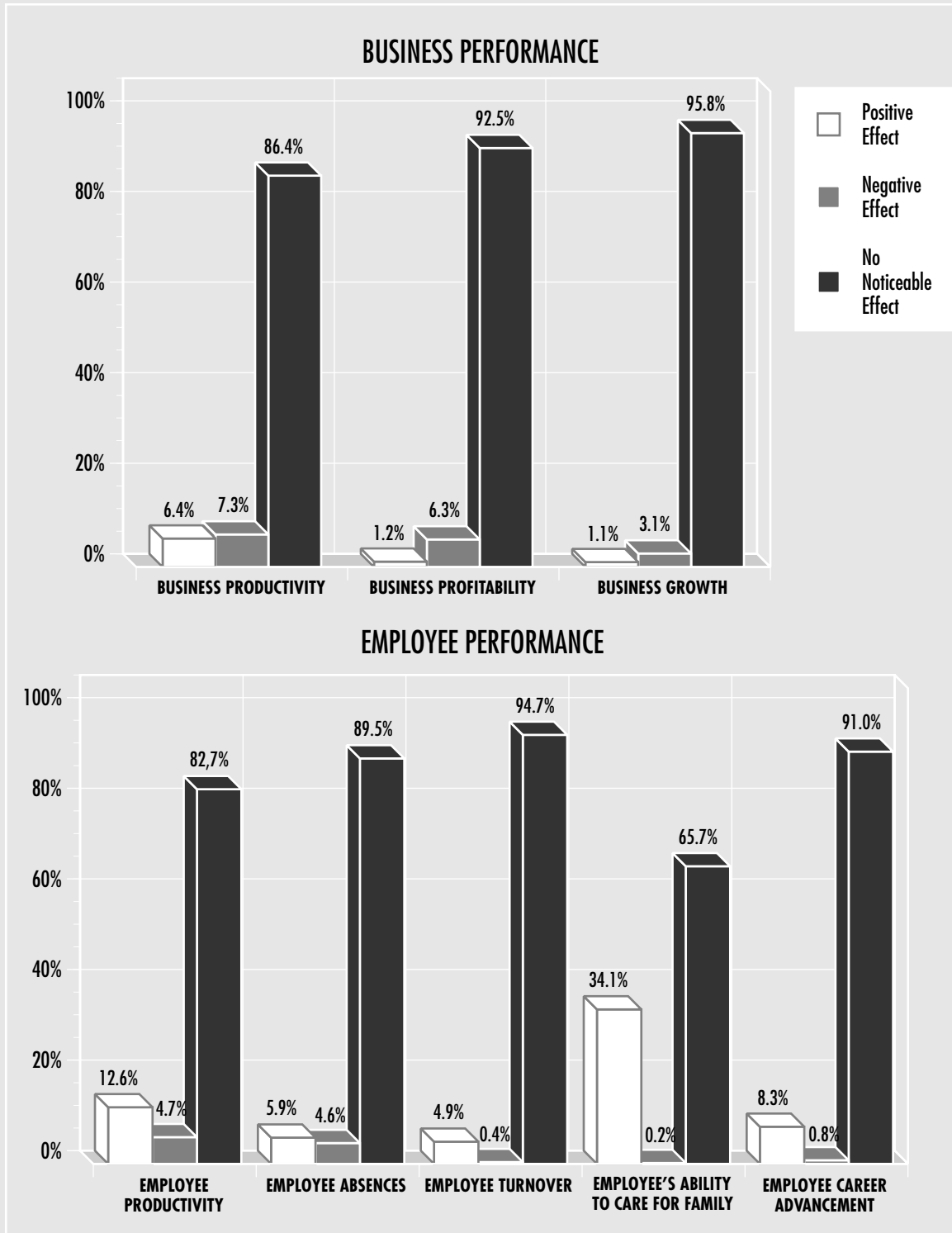
compared with 1.1 percent, respectively). More employers cite a negative effect regarding profitability (6.3 percent compared with 1.2 percent).

On all dimensions of employee performance, the majority of covered worksites report no noticeable effect (89.5 percent report no noticeable effect regarding em-

²⁴ One difficulty the Commission faced was the problem of measuring something as complex as productivity. A refinement of tools to measure productivity would help assess the impact of the FMLA and of family and medical leave policies on business performance in the future. The Commission on Leave recommends future research in this important area (see Chapter IX of this Report).

FIGURE 6.4

Business and Employee Performance: Effects of FMLA on Covered Worksites



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

Note: Percentages do not sum to 100% because a small percentage of employers did not know or did not respond.

ployee absences, 94.7 percent with respect to employee turnover and 91.0 percent on the career advancement of employees). To the extent that employers do report an effect, the positives outweigh the negatives on four measures and are roughly equally divided on the fifth - employee absences. The following hearing testimony from Martha Lawrence, Vice President of Public and Operator Services, Bell Atlantic, Silver Spring, points out one employer's concerns about employee absences: "We support the goals of the FMLA but have experienced unintended adverse consequences as a result of the implementation, including substantial costs for absences for non-serious health conditions, as well as administrative cost burdens. Employers who don't pay employees when they are off due to illnesses or employers that pay for only a handful of sick days each year, probably are not experiencing the sudden and dramatic increase in absence rates that Bell Atlantic has suffered."²⁵ However, Morton Bahr, President of the Communication Workers Union, which represents 37,000 Bell Atlantic members, disputes Bell Atlantic's assessment of the effects of the FMLA on absenteeism. He submitted testimony to the Commission stating that before the FMLA, AT&T and the Bell Companies "subjected employees who were absent from work - even with legitimate sick or disability leave - to discipline if absences exceeded a set number...Today, our members with a serious health condition can take sick leave without fear of discipline." Mr. Bahr points out that "most of the union's major telecommunications employers have found that the FMLA is not unduly burdensome."²⁶

Significant positive effects of the FMLA are evident in the areas of effect on employees' career advancement (8.3 percent compared with less than one percent noting a negative effect) and employee productivity (12.6 percent compared with 4.7 percent).

Perhaps most significant in the light of the Act's goals, is the fact that over one-third (34.1 percent) of employers surveyed note a positive effect on employees' ability to care for family members, compared with 0.2 percent negative effect. As to the positive effect, Linda Seibert Rapaport from First Chicago Bank stated: "We know that just from everyday experience that when our employees are just able to take time away to care for their family members or for their own serious illness, when they return or just knowing that this leave is available, we know that they

²⁵ Testimony of Martha Lawrence, Bell Atlantic, at Washington DC Hearing, August 4, 1996, U.S. Commission on Leave Public Hearing Transcript, p. 96.

²⁶ Testimony of Morton Bahr, Communication Workers of America, at Washington DC Hearing, August 4, 1995, Commission on Leave Public Hearing Transcript, appended to formal written transcript.

are more productive when they return, they are more willing to go the extra mile for our customers, and they become recommitted over and over again, emotionally committed to our organization and to performing service for our customers. And they also willingly offer their discretionary effort and suggest quality improvements. So we really see here that what is fundamentally good for our employees is fundamentally good for us as well. It is a real win-win.”²⁷

As to sectoral differences, manufacturing sites are more likely to perceive negative effects on employee productivity (see Appendix E, Table 6.E).²⁸ Employers in the service sector are more likely than those in other industries to note positive effects on employee turnover. In short, the sectoral distinctions suggest that covered sites in the service sector are having the most positive experiences with the Act on selected dimensions of business and employee performance, while manufacturing sites appear to be least likely to have positive experiences.²⁹

Size differences recall the pattern discussed above (see Appendix E, Table 6.F), with smaller covered employers, in general, more likely than larger ones to report no noticeable effect on the various aspects of business and employee performance measured. Regarding the three measures of business performance, between 96 percent and 100 percent of employers with 25 employees or fewer report no noticeable effects. By contrast, 26.2 percent of covered worksites with 26 to 49 employees report negative effects on productivity, and 20.9 percent report negative effects on profitability. Interestingly, however, the percentage reporting negative effects on business performance is noticeably lower for all larger employers except those with 1,000 employees or more. In this largest category, negative effects are noted by 27.6 percent regarding productivity and by 21.5 percent with respect to profitability. The percentage of employers citing negative effects on growth is extremely small by comparison, for all size categories.

As for the measures of employee performance, the results are somewhat more mixed. By far the most striking finding is that employers in all size categories are likely to note positive effects on employees’ ability to care for family members, and this proportion grows from 11.5 percent for the smallest covered employer, to 34 percent of those employing between 11 and 25 employees and to over 70 percent for employers with 1,000 employees or more.

²⁷ Rapaport, p. 24.

²⁸ Cantor, et al.

²⁹ There appears to be some confounding of the variables of size and sector in the experience of manufacturing sites, many of which are large and have relatively large numbers of leave-takers.

Negative effects are most likely to be reported by larger employers, and are most likely to attach to measures of employee productivity and absences. For instance, over a quarter of employers with 501 to 999 workers note negative effects on employee productivity (although this percentage was much lower - 4.7 percent - for all employers combined). More than one-third of employers with 1,000 employees or more note negative effects on absences (compared with 4.6 percent for all size categories).

In short, most employers do not experience any noticeable effects on business or employee performance. The most striking positive effect is in the area of helping families handle work and family responsibilities - the major goal of leave policies in general and the intent of Congress in enacting the FMLA in particular.

F. Comparisons of Covered Worksites' Experiences

Most covered employers report that the FMLA has had little measurable effect on the areas described in the previous section. Positive effects in the areas of employee performance, especially on employees' ability to care for their families, outweigh negative effects. Nevertheless, some employers, and in the case of the effects of intermittent leave, a significant minority, report costs and negative effects associated with the Act. In this section, we consider two possible reasons for these experiences.

First, we consider whether more difficulties and costs are experienced by covered worksites that need to initiate or change family and medical leave policies in order to comply with the Act (which we refer to as "complying employers") than are experienced by worksites that already have family and medical leave policies in place that are equivalent to or more extensive than those required by the FMLA ("voluntary employers"). This comparison is based on the hypothesis that the impact of the Act is more burdensome for worksites that need to start or adjust policies and procedures in order to comply.

Second, we analyze the effect of direct experience with leave-taking on employers' assessment of the FMLA. We compare differences in the perceived impact of the FMLA between worksites that had one employee or more take leave for a reason covered by the Act, and worksites that had no leave-takers during the period of time covered by the Employer Survey.

In making these two comparisons, we again refer to covered employers' answers to three key questions: ease of compliance with the Act; costs associated with the Act; and the effect of the Act on business and employee performance.

1. Differences Between “Voluntary” and “Complying” Employers

There are several notable differences between employers that had voluntarily implemented leave policies meeting or exceeding the criteria of the FMLA (one-third of covered worksites), and the employers that needed to change policies in order to comply (two-thirds of covered worksites). There are several differences between the “voluntary” and “complying” employers relative to ease of compliance (see Appendix E, Table G). For example, in terms of coordinating the Act with other federal laws, one-third (33.8 percent) of “compliers” reported difficulties compared with only 10.3 percent of “voluntary” employers. In terms of maintaining additional records, 27.7 percent of “compliers” report this administrative task is “very” or “somewhat difficult,” compared with 16.7 percent of “voluntaries”. The largest area of difference relates to managing intermittent leave. Forty-seven percent of “complying” employers compared with 23.3 percent of “voluntary” employers find this “somewhat” or “very difficult.”

Interestingly, there are no noticeable differences between the two groups of employers on any of the cost dimensions measured. That is, the extent of cost increases reported is similar across the two groups for administrative costs, benefits costs and costs associated with having to hire and train workers as a result of the Act.

There are no significant differences between “voluntary” and “complying” worksites as to their assessment of the effect of the FMLA on business growth, profitability and business productivity. However, differences between “voluntary” and “complying” employers are numerous in the areas of employee performance. First, with regard to employee productivity, 24.8 percent of “voluntary” employers (compared with 6.4 percent of “complying” employers) see positive effects. Over 40 percent (42.9 percent) of “voluntary” employers report positive effects on employees' ability to care for family members, compared with 29.9 percent of “complying” employers. As to employees' career advancement, 22.3 percent of “voluntary” employers note a positive effect, compared with 1.7 percent of “complying” employers. “Complying” employers are relatively less likely than “voluntary” employers

to note positive effects on employee career advancement, but less than two percent report any negative effects in these areas (see Appendix E, Table 6.H).

In sum, the experiences of “voluntary” employers with the Act appear to be somewhat more positive than those of “complying” employers. Specifically, the “voluntary” employers are less likely to have trouble coordinating the Act with other federal laws, maintaining additional records, or managing intermittent leave. They are more likely to report positive effects on various measures of employee performance, such as employee productivity. Interestingly, there appear to be no significant differences between “voluntary” and “complying” employers with respect to cost increases associated with the FMLA and effects on business performance.

2. The Effects of Having Leave-Takers

Overall, the differences between the experiences of worksites with one employee or more taking leave under the Act and those without any leave-taking employees are relatively small. However, the experience of having leave-taking employees does seem to amplify employers’ assessments of the Act - on both the positive and negative sides. It appears that the experience of having a leave-taker shapes the opinions of managers administering leave, such that they have stronger views of the impact of leave-taking in general, whether positive or negative. It should be noted that when covered employers who had no leave-takers report costs - especially administrative costs - these costs may have been incurred in anticipation of having employees take leave. On the other hand, their reports on effects and ease of compliance probably reflect their attitudes and expectations as they have not yet had direct experience with employees taking leave.

Keeping in mind that the majority of covered worksites found it “easy” (“very” or “somewhat”) to administer the Act, there are some differences between employers with leave-takers and those who did not have leave-takers on some dimensions of administration (see Appendix E, Table 6.I). For example, almost three times as many employers with leave-takers find record-keeping “somewhat difficult” than do those without leave-takers (29.6 percent compared with 11.3 percent). Twenty-seven percent of those with leave-takers find coordination of the FMLA with other federal laws to be “somewhat difficult,” compared with 16 percent of those without leave-takers.

Intermittent leave - considered more difficult to administer than other aspects of the FMLA by a significant minority of employers - is viewed as more difficult (“some-what” or “very”) to administer by employers with leave-takers than by those without (48.5 percent compared with 30.5 percent). It is not surprising that worksites with leave-takers are engaged in more record-keeping and administrative activities as a direct result; likewise, these organizations are likely to have had to identify relevant laws and adjust policies accordingly.

Regarding costs associated with the FMLA, employers with leave-takers are more likely to report costs in all three areas measured (see Appendix E, Table 6.J). The majority of covered employers experience no costs or small costs. However, moderate and large costs are more likely to be reported by those with leave-takers and in the area of administrative costs.

The effect of the FMLA on business and employee performance reveals some noteworthy contrasts between covered employers with leave-takers and those without (see Appendix E, Table 6.K). In the areas of employee productivity, absences and turnover, employers with leave-takers are significantly more likely to report positive effects than those without leave-takers (with 21.1 percent, 14.1 percent and 13.9 percent of employers with leave-takers reporting positive effects in each area, respectively, compared with 9.2 percent, 2.3 percent and 0.7 percent of employers without leave-takers.) In general, then, having direct experience with leave-taking employees is associated with a positive assessment of the effect of the FMLA on employee performance.

G. Small Worksites’ Experiences and Expectations

So far, this chapter has focused on the experiences of worksites covered by the FMLA, and those of various subgroups of covered sites. This section considers in greater detail the experiences of smaller employers, including discussion of a Census Bureau survey of small employers carried out for the Commission on Leave, and compares the views and experiences of employers covered by the Act - including the small covered employers - with the expectations of those not covered by the Act.

1. Coverage and Leave Policies of Smaller Employers

The majority of worksites surveyed in the Employer Survey are not covered by the Act because the law established coverage on the basis of worksite size. Of the worksites surveyed in the Employer Survey, about 11 percent are covered, and the remaining 89 percent are not covered. However, because of the 75-mile radius provision, a substantial number of worksites with fewer than 50 employees (60.9 percent) are covered by the FMLA.

Holding size constant, covered sites are more likely to have had family and medical leave policies in place before 1993 when the Act was passed (38.7 percent compared with 17.4 percent), and, not surprisingly, far more likely to have put policies in place during and after 1993 (presumably as a result of the Acts passage).³⁰ One reason why a sizable percentage of the smaller covered sites had policies in place before they were legally required to offer family and medical leave by the FMLA may be that these worksites are units of larger worksites, which have historically been more likely to have family and medical leave policies in place to begin with.

The attachment of many small covered sites to larger worksites probably also accounts for the fact that the percentage differences for each category of leave policies are relatively small between sites with fewer than 50 employees and those with 50 workers or more. For both covered and non-covered sites, as size increases so does the likelihood of having had policies in place before 1993, and of putting policies in place during or after 1993.

2. The Census Bureau's Survey of Small Businesses

The data discussed above show that the costs to smaller covered employers seem to be lower than those to larger ones, and the negative effects they experience more limited. A survey of small businesses with at least one employee, conducted by the Census Bureau for the Commission on Leave, provides further information about the experiences of small employers.³¹

This survey queried employers with regard to their leave policies in 1992, before the Act, and in 1994, after the passage of the FMLA. It represents three million small businesses, of which 3.5 percent had 50 employees or more on the payroll for

³⁰ See discussion in Chapter IV and Appendix E, Table 4.C.

³¹ See Chapter II for full description of the CBO Survey conducted by the Census Bureau.

20 calendar work weeks or more in 1994 - a proxy for being covered by the FMLA. Taking this employer population as a whole, about 50 percent reported that between three-quarters and all of their employees met the FMLA requirement for eligibility of having worked at the company for at least 1,250 hours in 1994. Among employers with 50 employees or more, almost 100 percent had at least one eligible employee. It should be noted that these criteria differ somewhat from those used for the Employer Survey (as described in Chapter IV), hence this population of small worksites differs somewhat from the small worksites discussed earlier in this chapter.

a) Incidence and Characteristics of Leave-Taking

About twice as many employers with 50 employees or more than employers with fewer than 50 employees reported having had at least one leave-taker in 1994; however, there was no statistically significant increase in leave-taking among the smaller or larger employers between 1992 and 1994. That is, the FMLA does not appear to have increased the incidence of leave-taking among these small employers, whether or not they were covered. In both 1992 and 1994, about 79 percent of all employers surveyed reported having no leave-takers (among employers with 50 employees or more, this figure was 55.5 percent).

There was a statistically significant increase between 1992 and 1994 in the use of family and medical leave by men - from 1.2 percent of leave-takers in sites with 50 employees or more in 1992, to four percent in 1994.

Among covered employers, 72.4 percent reported that the average leave lasted between two and 12 weeks; 12.7 percent reported that the average leave lasted a week or less. (These figures are generally in line with the results of the Employer Survey.) The length of leave in these small worksites did not change significantly between 1992 and 1994.

b) Extent of Leave-Related Costs

Among the covered employers (with 50 employees or more), 73.7 percent reported no new costs associated with the Act, while 24.2 percent reported some additional costs related to the FMLA. (Results are similar to those of the Employer Survey.) Most of those reporting some cost increases - 17.6 percent of the total sample - reported cost increases of less than one percent of payroll; another 4.2 percent reported increases of between one and four percent of payroll.

c) Extent and Effect of Policy Changes to Comply with the Act

Among covered worksites (with 50 employees or more), about two-thirds did not have to make policy changes in order to comply with the Act. Of those employers making changes in order to comply with the FMLA, about 30 percent made policy changes to allow fathers to take leave to care for a newborn child, about 24 percent made changes allowing employees to take family leave (to care for a seriously ill child, spouse or parent) and about 20 percent made changes allowing for maternity-related disability leave and leave for one's own serious health condition.

Among the roughly one-third of employers making policy changes in order to comply with the Act, a small minority reported reduced employee productivity (7.7 percent), increases in unscheduled employee absences (5.6 percent) and increases in employee turnover (4.2 percent). By the same token, seven percent reported improvements in employee morale and 16.8 percent noted an increase in employees' ability to handle family needs.

3. Covered Employers' Experiences Versus Non-Covered Employers' Expectations

Small employers have voiced concerns about what would happen to their businesses if the FMLA were applied to them. For example, Jim Johnson, the owner of a small Washington D.C. photography shop with only one employee, testified that if his shop were covered, "[it] would make it difficult for me to continue in business," noting that most small employers "are barely scraping by."³² Similar concerns were voiced by the owner of another small business, Furin's, with 11 employees, "If the Family and Medical Leave Act applied to my company, it would cause a tremendous burden ... Losing just one of my employees for [12 weeks] would be devastating, especially if that employee is essential to the operation of my business....As a small business owner, I want to work out flexible arrangements with my employees when they need to take time off for sick child, spouse, or their own sickness, but I also need to stay in business to make sure I can offer people jobs. If this one mandate would include me, my days of owning my business would, and very soon, disappear."³³ The pressures on small business were brought

³² Testimony of Jim Johnson, Jim Johnson Photography, at Washington DC Hearing, August 4, 1995, Transcript of Commission on Leave Hearings, p. 175.

³³ Testimony of Bernard P. Furin, at Washington DC Hearing, August 4, 1995, U.S. Commission on Leave Public Hearing Transcript, pp. 101, 103-4.

to the attention of the Commission by other employers during the public hearings process (see Inset 6-5).

Before the passage of the Act, there was significant debate as to the possibility that the FMLA would be unduly burdensome to smaller employers. Comparisons between covered and non-covered worksites reveal striking differences between how the FMLA is perceived by those who have and have not had direct experience with the Act. As shown in Figure 6.5, the costs anticipated by non-covered worksites are significantly higher than those experienced and reported by covered worksites. Moderate or large increases in administrative costs are anticipated by 42.4 percent of non-covered sites, but experienced by only 10.8 percent of covered employers. Regarding hiring and training, moderate or large cost increases are expected by 36 percent of non-covered sites, but cited by only 5.2 percent of covered sites. That is, non-covered employers were between approximately four times and seven times more likely to expect moderate or large cost increases than covered employers were to experience them (see Appendix E, Table 6.L).³⁴

Inset 6-5

Sharon Beard, owner, Hurricane Fence Company,

Like many small businesses, you know, we're operating on small margins in order to compete with some of these bigger businesses" but "we're being pressured to provide benefits to our employees which we are incapable of providing for ourselves and our families.... For many small businesses, the cost of "carrying and maintaining health coverage" and "bring[ing] on a replacement worker and to cover them and their family would be a real hardship....I have given family paid leave for one of our guys. He had requested a leave. I gave him two weeks off paid. This was a worker who showed up every day, never complained, you know, gave the job his all. And you do that, you work with your employees. You value your employees. We're not ogres. We're not monsters. I think some people like to look at the business community and say, 'Oh, but, you know, you ought to do this for your workers.' We can't do it for ourselves, and I think that's what it gets down to.

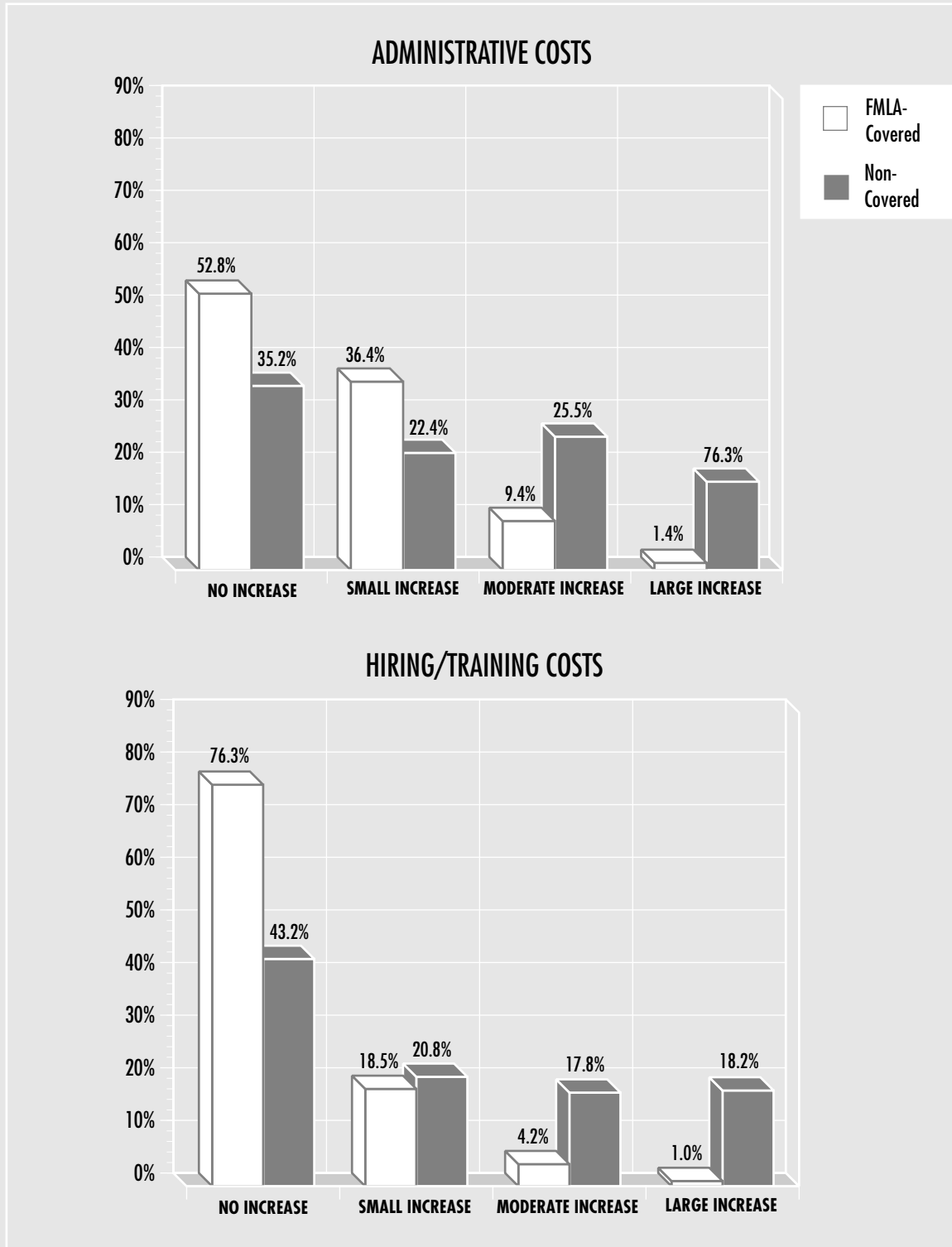
Testimony of Sharon Beard at Chicago IL Hearing, May 8, 1995, U.S Commission on Leave.

The contrast between the actual experiences of covered sites and the expectations of non-covered sites with respect to business and employee performance is also striking, as shown in Figure 6.6. Non-covered sites are far more likely to anticipate a negative effect on every dimension of performance than was experienced by covered worksites. About 47 percent of non-covered employers anticipated a negative effect on business productivity and profitability (compared with 7.3 percent and 6.3 percent reported by covered sites), and close to one-third expected a negative effect on growth, employee productivity and employee absences (compared

³⁴ Notwithstanding the non-covered sites overall negative expectations, 4.2 percent of non-covered sites anticipate that compliance with the Act would result in some cost savings.

FIGURE 6.5

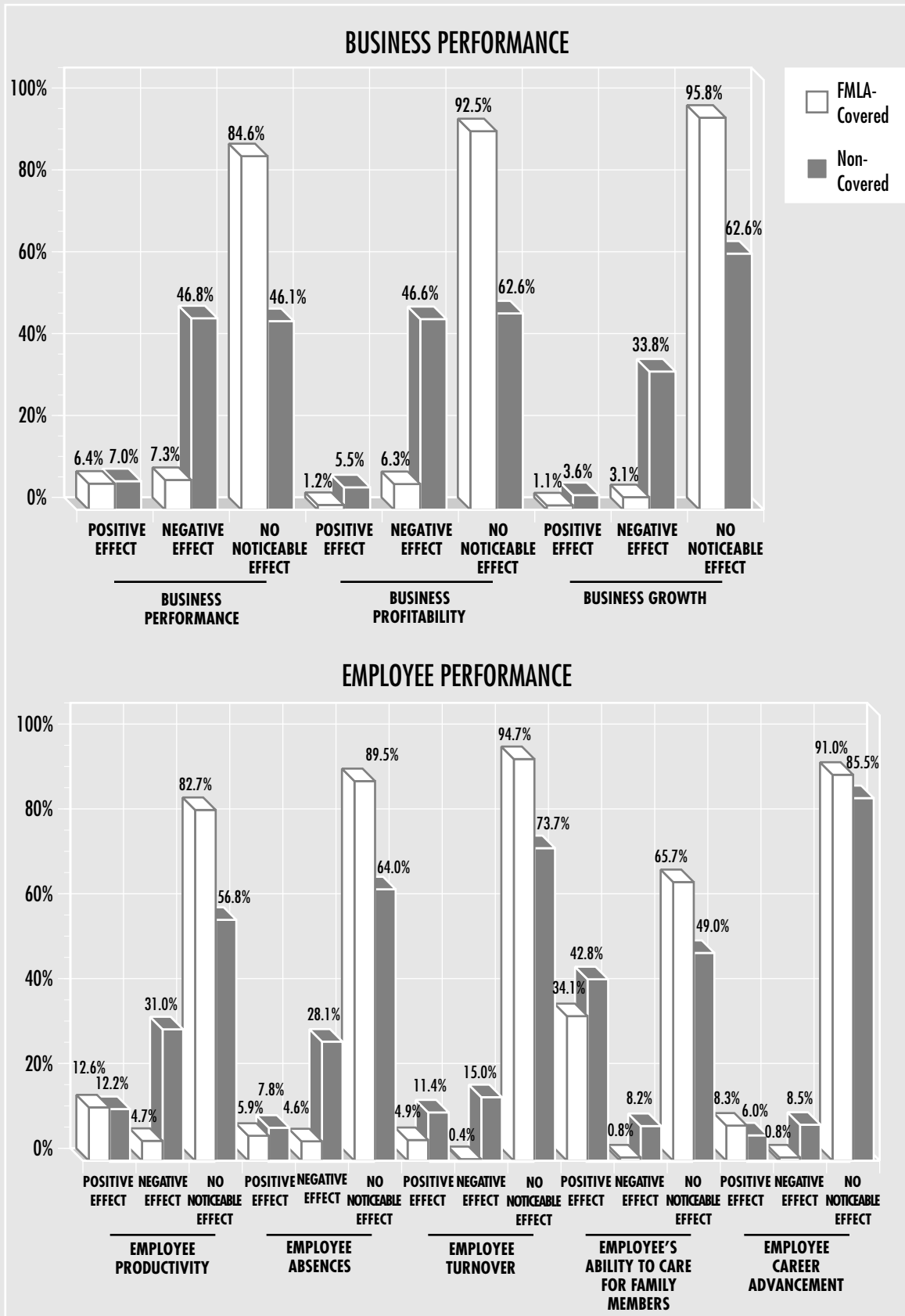
Comparison of Costs Experienced by FMLA-Covered Worksites with Costs Anticipated by Non-Covered Worksites



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

FIGURE 6.6

Comparison of Effects of FMLA on Covered Worksites with Anticipated Effects of FMLA on Non-Covered Worksites



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

with 3.1 percent, 4.7 percent and 4.6 percent respectively, reported by covered sites). Between 8.2 and 15 percent of non-covered sites (compared with less than one percent of covered employers) expected negative effects on employees' ability to care for family members, career advancement and turnover, although it should be noted that 43 percent of non-covered sites expected a positive effect on employees' ability to care for family members (see Appendix E, Table 6.M).

Put differently, the negative effects expected by non-covered employers are much greater than the negative effects experienced by covered employers. The concerns regarding possible negative effects on employee turnover are especially noteworthy: non-covered employers are more likely to anticipate negative effects in this area than covered employers are to experience and report negative effects on turnover (15 percent compared with 0.4 percent).

These expectations are also at odds with the fact that smaller covered employers tend to find the Act less burdensome than larger covered employers. These results may reflect the expectation of small employers that they lack the labor pool, administrative capacity and financial resources to absorb the impact of a family and medical leave requirement. The smaller the worksite, the greater the impact of any one employee's taking leave. On the other hand, small employers are more likely to know a leave-taking employee personally and to be able to assess the positive impact on the employee and the workplace. In short, given that smaller covered worksites are less likely than larger ones to find the FMLA costly and burdensome, the expectations of small non-covered worksites are discrepant with the experiences of worksites covered by the Act.

H. Summary

In conclusion, on the whole, the costs of the Act to employers appear to be modest or small. Most covered employers report having a relatively easy time complying with the Act. A small group of employers reports cost savings as a result of the Act, and some of the testimony heard at the public hearings suggests potential benefits to worksites to offering leave, particularly in the area of reducing employee turnover.

Larger worksites, and to a lesser extent manufacturing sites, appear to experience somewhat more difficulty with all aspects of administration and compliance than

worksites in smaller size categories and in other sectors. While the data collected in the Employer Survey do not allow for clear inferences as to what accounts for these differences, they are probably due in part to start-up costs involved in the implementation of the FMLA. These may diminish over time, and further research will be needed to determine the extent to which the administrative costs and burdens of compliance decline as these start-up costs are recouped and offset by benefits in other areas. While generally the costs and negative effects of FMLA seem to increase with the size of the worksite, this is not a constant or linear relationship.

The Employer Survey reveals some differences in the ease of administering the Act and the impact on business and employee performance, between “voluntary” employers (worksites that had leave policies pre-1993 comparable to the FMLA) and “complying” employers (worksites that had to initiate or change their leave policies after the enactment of the FMLA), although there are no significant differences in the area of cost between the two groups. Differences between worksites that had at least one leave-taker and those that did not have any leave-takers suggest that direct experience with leave-taking amplifies employers’ assessment of both the positive and negative effects of the Act, although these differences are small overall. Perhaps the most significant difference is that employers with leave-takers note enhanced productivity among their employees.

Also noteworthy is the contrast between the experiences of the small covered worksites and the expectations of the small non-covered sites. As noted above, larger covered sites are more likely to report compliance difficulties and costs than the small covered sites. The small covered employers, both those surveyed by the Census Bureau and the Employer Survey, appear to have had relatively benign experiences with the Act; they have experienced small costs and minimal changes in leave-usage since 1992. By contrast, the expectations of the small non-covered sites included in the Employer Survey are far more negative than the experiences of all covered sites, but especially so in comparison with the small covered sites.

As with any regulation that may entail costs to employers, one way to ensure that those costs do not place affected employers at a competitive disadvantage relative to non-covered worksites is to make coverage as broad as possible. With respect to the FMLA, to the extent that covered employers experience costs (for instance, the costs of replacing workers on leave) that are not experienced by non-covered worksites, the former may be placed at a competitive disadvantage. By the same

token, to the degree that the FMLA has the effect of lowering costs to covered worksites - for instance, the cost savings associated with reduced employee turnover costs - non-covered sites may be placed at a competitive disadvantage. Further research after the Act has been in force for five years or more can help clarify the relative costs and benefits experienced by covered and non-covered worksites.

