

PRELIMINARY ANALYSIS OF THE IMPACTS OF
PROSPECTIVE REVISIONS TO THE REGULATIONS
IMPLEMENTING THE FAMILY AND MEDICAL LEAVE ACT
(FMLA) OF 1993 AT 29 CFR 825

Prepared for:

US Department of Labor
Employment Standards Administration
200 Constitution Avenue, NW
Washington, DC 20210

Prepared by:

CONSAD Research Corporation
121 North Highland Avenue
Pittsburgh, PA 15206

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1.0 INTRODUCTION

The Family and Medical Leave Act (FMLA) of 1993 allows eligible employees of a covered employer to take up to 12 weeks of unpaid job-protected leave in any 12 month period when the employee or the employee's parent, child, or spouse has a serious health condition, or for a child's birth or placement for adoption or foster care. Title I of the FMLA applies to private sector employers of 50 or more employees, to public agencies, and to certain federal employers and entities such as the U.S. Postal Service and the Postal Rate Commission. Title II applies to civil service employees covered by various federal annual and sick leave systems, and Title V extends leave provisions to certain employees of the U.S. Senate and House of Representatives.

More specifically, under the FMLA, a covered employer:

... is any person engaged in commerce or in any industry or activity affecting commerce, who employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year. Employers covered by FMLA also include any person acting, directly or indirectly, in the interest of a covered employer to any of the employees of the employer, any successor in interest of a covered employer, and any public agency. Public agencies are covered employers without regard to the number of employees employed. Public as well as private elementary and secondary schools are also covered employers without regard to the number of employees employed. [29CFR825.104(a)].

Further, a public agency under the FMLA includes:

... the government of the United States; the government of a State or political subdivision of a State; or an agency of the United States, a State, or a political subdivision of a State, or any interstate governmental agency. "State" is further defined ... to include any State of the United States, the District of Columbia, or any Territory or possession of the United States. The determination of whether an entity is a "public" agency, as distinguished from a private employer, is determined by whether the agency has taxing authority, or whether the chief administrative officer or board, etc., is elected by the voters-at-large or their appointment is subject to approval by an elected official. A State or a political subdivision of a State constitutes a single public agency and, therefore, a single employer for purposes of determining employee eligibility. For example, a State is a single employer; a county is a single employer; a city or town is a single employer. [29CFR825.108(a) - (c)].

Finally, an eligible employee under the FMLA is an employee of a covered employer who:

- (1) has been employed by the employer for at least 12 months, and
- (2) has been employed for at least 1,250 hours of service during the 12-month period immediately preceding the commencement of the leave, and
- (3) is employed at a worksite where 50 or more employees are employed by the employer within 75 miles of that worksite. [29CFR825.110(a)].

Therefore, even though all public agencies and all public and private elementary and secondary schools are covered under the FMLA regardless of their size, employees of such employers are only eligible for FMLA leave if they work at worksites where 50 or more employees are employed by the employer within 75 miles of those locations (and also meet the other eligibility requirements relating to job tenure and hours of work).

The current regulations implementing the FMLA are published in Part 825 of Title 29 of the Code of Federal Regulations (29 CFR 825). The decision by the U.S. Supreme Court in *Ragsdale vs. Wolverine Worldwide, Inc.*, invalidated section 825.700(a) of the regulations. In light of this decision, Congressional hearings, and other feedback the Department has received from stakeholder meetings, the Employment Standards Administration (ESA), Wage and Hour Division of the U.S. Department of Labor (DOL) has decided to review the regulations and to consider revisions that will benefit both employees and employers.

This report summarizes the results of a study that has been undertaken to estimate the likely economic impacts that will result from implementing a set of proposed revisions to the FMLA regulations that are under consideration by the ESA.

Chapter 2 presents an industry profile, at the 2-digit North American Industry Classification System (NAICS) industry level of detail, that describes the current coverage of the FMLA for the private nonagricultural industry sector, the agriculture sector, the federal government, state governments, and local governments. Estimates of the total numbers of covered establishments and covered employees are developed and reported. Furthermore, estimates of the number of workers eligible to take FMLA leave and the number of FMLA leave takers are also presented. The data sources and methodologies used in developing the industry profile for the study are documented.

Chapter 3 identifies the proposed revisions to the current FMLA regulations that likely would have economic impacts on covered employers and their employees, presents the methods for estimating such impacts on the basis of available data (and plausible, realistic assumptions where data gaps exist), and develops estimates of the economic impacts for the proposed regulatory revisions. The impacts that have been analyzed include changes in the costs incurred by employers and employees.

Detailed citations for the references that have been used in performing the study are contained in Chapter 4.

Estimates of the number of seriously injured military service members by the number of potential workers eligible to take FMLA leave to care for them under S. 1894, 'Support for Injured Servicemembers Act of 2007,' are contained in Appendix A. This proposed bill amends the Family and Medical Leave Act by extending it to a primary caregiver of a seriously injured military service member for a combined total amount of leave of 26 weeks to be taken within a 12-month period.

2.0 INDUSTRY PROFILE

2.1 Introduction

This chapter contains information describing the employers (and their employees) that will be affected by revisions to the FMLA regulations at 29 CFR 825. These employers represent all private sector employers, as well as all federal, state, and local government employers.

Data are not provided for any private and public sector employees working in the Territories and possessions of the U.S. (i.e., outside of the 50 states and the District of Columbia) because very little data are available for the Territories and possessions, and the limited data that are available would not appreciably affect the results.

Information is also provided for small businesses in most of the affected private industry sectors. For the railroad industry, data are only provided for all employers; separate data are not available for small businesses. Similarly, information for public sector employers (including the U.S. Postal Service, Bonneville Power Authority, and Tennessee Valley Authority) are only provided for all employers.

2.2 Estimates for the Industries Covered by the FMLA

Table 2.1 presents aggregate estimates of the total number of firms, establishments, employment, annual payroll, revenues, and net income for all industry sectors subject to the current and proposed FMLA regulations. The sectors are classified on the basis of the North American Industry Classification System (NAICS) at the 2-digit level of detail.

The estimates in Table 2.1, based primarily on 2005 data, indicate that there are 6.65 million firms with 8.16 million establishments in the affected industry sectors. These firms employ 139 million employees, producing annual payrolls totaling \$5.16 trillion in the affected industry sectors. Annual revenues are estimated at \$22.1 trillion, with net income estimated at \$1.64 trillion.¹

The estimates of the total number of establishments, employment, and annual payroll are based, primarily, on U. S. Census Bureau data from *County Business Patterns (CBP), 2005 (2007)*, which covers all industries except crop and animal production (NAICS 111,112), rail transportation (NAICS 482), Postal Service (NAICS 491), pension, health, welfare, and vacation funds (NAICS 525110, 525120, 525190), trusts, estates, and agency accounts (NAICS 525920), private households (NAICS 814), and public administration (NAICS 92). Also, *County Business Patterns (CBP)* includes certain types of government employment including: government

¹ It should be noted that revenues and net income estimates are *not* available for public sector employers, as well as for certain private employers (such as the forestry, fishing and hunting industries).

Table 2.1: Summary Statistics for All Industry Sectors Affected by the Proposed Revisions to the Current FMLA Regulations at 29 CFR 825, by Industry, 2005

| NAICS Codes | Data Source | Industry Description | | | | | | | | | | |
|-------------|-------------|--|---------------------|--------------------------|------------------------|--------------------------|------------------------|-----------------|--------------------------|-----------------------------|-------------------------------------|----------------------|
| | | | Number of Firms (8) | Number of Establishments | Number of Employees(1) | Annual Payroll (\$1,000) | Revenues (9) (\$1,000) | Profit Rate (9) | Net Income (9) (\$1,000) | Employees per Establishment | Payroll per Establishment (\$1,000) | Payroll per Employee |
| 11 | CBP2005 | Agriculture: Forestry, Fishing and Hunting | 23,484 | 24,102 | 168,744 | \$5,095,741 | -- | -- | -- | 7 | \$211 | \$30,198 |
| 11 | Ag2002 | Agriculture: Farms | 540,208 | 554,434 | 3,036,470 | \$18,568,446 | \$200,646,355 | 7.97% | \$16,000,906 | 5 | \$33 | \$6,115 |
| 21 | CBP2005 | Mining, Quarrying, and Oil and Gas Extraction | 19,271 | 24,696 | 497,272 | \$30,823,272 | \$190,349,416 | 12.92% | \$24,598,450 | 20 | \$1,248 | \$61,985 |
| 22 | CBP2005 | Utilities | 6,563 | 17,326 | 633,106 | \$46,292,766 | \$380,895,450 | 5.34% | \$20,355,497 | 37 | \$2,672 | \$73,120 |
| 22 | Govt2002 | Public Utilities (excluding transit) (2) | -- | -- | 259,000 | \$11,247,420 | -- | -- | -- | -- | -- | \$43,426 |
| 22 | BPA+TVA | Power generation and transmission (3) | 2 | 2 | 16,000 | -- | \$10,330,375 | 1.49% | \$153,475 | 8,000 | -- | -- |
| 23 | CBP2005 | Construction | 778,065 | 787,672 | 6,781,327 | \$292,519,343 | \$1,139,541,795 | 6.28% | \$71,579,226 | 9 | \$371 | \$43,136 |
| 31-33 | CBP2005 | Manufacturing | 288,595 | 333,460 | 13,667,337 | \$600,696,305 | \$3,641,145,741 | 7.06% | \$257,169,987 | 41 | \$1,801 | \$43,951 |
| 42 | CBP2005 | Wholesale Trade | 337,905 | 429,823 | 5,968,929 | \$308,918,023 | \$4,706,127,631 | 3.85% | \$181,334,097 | 14 | \$719 | \$51,754 |
| 44-45 | CBP2005 | Retail Trade | 737,188 | 1,123,207 | 15,338,672 | \$348,047,012 | \$3,200,607,230 | 3.72% | \$119,039,613 | 14 | \$310 | \$22,691 |
| 48-49 | CBP2005 | Transportation and Warehousing | 168,206 | 211,150 | 4,168,016 | \$154,375,938 | \$436,285,219 | 5.46% | \$23,825,154 | 20 | \$731 | \$37,038 |
| 48-49 | Govt2002 | Public Transit and Transportation (2) | -- | -- | 921,000 | \$35,099,376 | -- | -- | -- | -- | -- | \$38,110 |
| 482 | AAR2005 | Rail Transportation (4) | 562 | 562 | 181,807 | \$11,929,869 | \$47,880,000 | 5.46% | \$2,614,685 | 324 | \$21,228 | \$65,618 |
| 491 | USPS2006 | Postal Service (5) | 1 | 37,499 | 796,199 | \$56,281,000 | \$72,650,000 | 1.24% | \$900,000 | 21 | \$1,501 | \$70,687 |
| 51 | CBP2005 | Information | 76,138 | 141,290 | 3,402,599 | \$203,129,725 | \$812,244,275 | 10.95% | \$88,976,778 | 24 | \$1,438 | \$59,698 |
| 52 | CBP2005 | Finance and Insurance | 255,273 | 476,806 | 6,431,837 | \$446,739,512 | \$2,741,212,817 | 15.18% | \$416,134,933 | 13 | \$937 | \$69,458 |
| 53 | CBP2005 | Real Estate and Rental and Leasing | 300,555 | 370,651 | 2,144,077 | \$81,790,239 | \$369,241,935 | 15.81% | \$58,385,784 | 6 | \$221 | \$38,147 |
| 54 | CBP2005 | Professional, Scientific, and Technical Services | 754,580 | 826,101 | 7,689,366 | \$456,455,965 | \$941,492,646 | 9.34% | \$87,964,335 | 9 | \$553 | \$59,362 |
| 55 | CBP2005 | Management of Companies and Enterprises | 27,353 | 47,593 | 2,856,418 | \$243,267,191 | \$119,588,075 | 16.97% | \$20,294,909 | 60 | \$5,111 | \$85,165 |
| 56 | CBP2005 | Administrative and Support and Waste Management and Remediation Services | 320,615 | 369,507 | 9,280,282 | \$255,399,069 | \$459,220,885 | 6.27% | \$28,776,699 | 25 | \$691 | \$27,521 |
| 61 | CBP2005 | Educational Services | 72,793 | 80,486 | 2,879,374 | \$82,522,976 | \$205,433,332 | 11.54% | \$23,715,223 | 36 | \$1,025 | \$28,660 |
| 61 | Govt2002 | Public Educational Services (6) | 15,014 | 15,014 | 10,331,000 | \$322,485,408 | -- | -- | -- | 688 | \$21,479 | \$31,215 |
| 62 | CBP2005 | Health Care and Social Assistance | 599,987 | 746,600 | 16,025,147 | \$589,654,273 | \$1,285,332,710 | 8.68% | \$111,555,972 | 21 | \$790 | \$36,796 |
| 71 | CBP2005 | Arts, Entertainment, and Recreation | 114,072 | 121,777 | 1,936,484 | \$52,935,670 | \$148,644,400 | 12.73% | \$18,926,330 | 16 | \$435 | \$27,336 |
| 72 | CBP2005 | Accommodation and Food Services | 462,956 | 603,435 | 11,025,909 | \$156,041,233 | \$489,690,342 | 6.78% | \$33,202,217 | 18 | \$259 | \$14,152 |
| 81 | CBP2005 | Other Services (except Public Administration) | 676,401 | 740,034 | 5,390,954 | \$127,480,612 | \$476,299,818 | 6.67% | \$31,750,918 | 7 | \$172 | \$23,647 |
| 92 | Govt2002 | Public Administration (7) | 74,067 | 74,067 | 7,534,000 | \$222,831,972 | -- | -- | -- | 102 | \$3,009 | \$29,577 |
| | | All Industry Sectors | 6,649,854 | 8,157,294 | 139,361,326 | \$5,160,628,356 | \$22,074,860,447 | | \$1,637,255,187 | 17 | \$633 | \$37,031 |

-- Data Not Available.

Notes:

- (1) Employment is estimated when data suppression exists in County Business Patterns.
- (2) No separate data for establishments in this sector exist in the Census of Governments. Data for payroll includes only state and local governments. The numbers for establishments have been included in the Public Administration category (NAICS 92) using the summary table, Table 1, of the Compendium of Governments.
- (3) Data sources for the Bonneville Power Authority and Tennessee Valley Authority do not include payroll figures. These two establishments have been subtracted from the overall government (Public Administration) establishment number.
- (4) Represents only the freight railroad industry. Establishments represent individual companies. These payroll figures are estimates.
- (5) Data for the U.S. Postal Service include all establishments. Employment figures include 696,138 career employees and 100,061 non-career employees. Payroll figures represent compensation and benefits.
- (6) Data include employment and payroll figures for educational services in the Census of Governments Table 7 and establishment figures for school districts in the Census of Governments Table 1.
- (7) Data include employment figures for all state governments, and local governments including counties, municipalities, townships, and special districts, minus education services, transit, utilities, and transportation. Employment and payroll figures include all of the above except education services, which use data on School Districts. Each state is assumed to be a single establishment employer.
- (8) The number of firms were derived based on the average number of establishments per firm, calculated from data in the Statistics of U.S. Business, coupled with the number of establishments in industries covered by the FMLA (as presented in this table).
- (9) See text for derivation of these estimates and the data sources used.

Sources: U.S. Department of Commerce (USDOC, 2007), 2005 County Business Patterns; U.S. Department of Agriculture (USDA, 2004), 2002 Census of Agriculture; U.S. Department of Commerce (USDOC, 2004), Compendium of Public Employment: 2002; Bonneville Power Administration (BPA, 2003), "BPA Facts 2002"; Tennessee Valley Authority (TVA, 2003), "Ameded 2002 Information Statement"; Association of American Railroads (AAR, 2006), Railroad Service in the United States, 2005; U.S. Postal Service (USPS, 2006), 2006 Annual Report; U.S. Department of the Treasury, Internal Revenue Service (IRS, 2007), Statistics of Income, 2004, Table 7.

sponsored wholesale liquor establishments (NAICS 4248), retail liquor stores (NAICS 44531), book publishers (511130), federally-chartered savings institutions (NAICS 522120), federally-chartered credit unions (NAICS 522130), and hospitals (NAICS 622).

To supplement these estimates for those industries that are missing in *County Business Patterns (CBP)*, additional data were gathered from the U.S. Department of Agriculture, *Census of Agriculture, 2002* (2004), the U.S. Census Bureau, *Census of Governments, Compendium of Public Employment, 2002* (2004), the annual reports of certain federal agencies [Bonneville Power Authority (2002) and Tennessee Valley Authority (2002)], the Association of American Railroads, *Railroad Service in the United States, 2005* (2006), and the U.S. Postal Service, *Annual Report, 2006* (2006). The second column of Table 2.1 identifies the data source used for each of these industry sectors.

The estimates of the number of firms were derived from the U.S. Census Bureau, *Statistics of U.S. Business, 2004* (2005). The *Statistics of U.S. Business* is based on *County Business Patterns (CBP)*, but it is a *firm-size* based database rather than an *establishment-size* based database [as is the case with *County Business Patterns (CBP)*]. Thus, these data contain both the number of firms and the number of establishments in those firms at the 2-digit NAICS level. Based on the average number of establishments per firm, coupled with number of establishments from *County Business Patterns (CBP)*, or from the other data sources identified above, the number of firms was calculated.

In order to estimate revenues at the 2-digit NAICS level, data primarily from the *2002 Economic Census* series (2005) were used. More specifically, depending upon the particular industry sector, estimates of the value of shipments, value of business done, receipts, sales, or revenues were used, in conjunction with the employment estimates in the *Economic Census*, to first produce estimates of average revenues per employee. These estimates were then coupled with the estimated number of workers employed in each industry at the 2-digit NAICS level [from *County Business Patterns (CBP)* or from the other data sources identified above], to produce estimates of the revenues associated with each industry subject to the current and proposed FMLA regulations. In addition, revenue estimates contained in the *Census of Agriculture*, as well as in the annual reports for the Bonneville Power Authority (2002), the Tennessee Valley Authority, and the U.S. Postal Service (2006) were also used. As noted in Table 2.1, there are several industry sectors for which revenue estimates are not available (for example, parts of NAICS 11 - Forestry, Fishing, and Hunting; NAICS 22 - Public Utilities, NAICS 48-49 - Public Transit and Transportation, and NAICS 61 - Public Educational Services; and NAICS 92 - Public Administration).

Finally, to produce estimates of the net income before taxes for each 2-digit NAICS, CONSAD primarily used data contained in the *Statistics of Income, 2004* (2007), published by the Internal Revenue Service (IRS). Specifically, for each 2-digit NAICS, the net income before taxes for each industry was divided by the total receipts for each industry, to first produce a pre-tax profit rate. These profit rates were then coupled with the revenue estimates to produce estimates of net income for each industry subject to the current and proposed FMLA regulations. Further, net income estimates contained in the annual reports for the Bonneville Power Authority (2002), the Tennessee Valley Authority, and the U.S. Postal Service (2006) were used as well.

Again, for certain industry sectors (for example, parts of NAICS 11 - Forestry, Fishing, and Hunting; NAICS 22 - Public Utilities, NAICS 48-49 - Public Transit and Transportation, and NAICS 61 - Public Educational Services; and NAICS 92 - Public Administration), net income estimates are not available.

2.3 Estimates for Firms Covered by the FMLA

Table 2.2 presents estimates of the total number of firms, establishments, employment, annual payroll, revenues, and net income for those firms *covered* by the current and proposed FMLA regulations. Hence, these data are restricted to private firms with 50 or more employees within a 75 mile radius of each other, as well as to employment in the government sectors (since all public agencies, regardless of size, are covered by FMLA).

The estimates in Table 2.2, based primarily on 2005 data, indicate that there are approximately 285,000 firms with 1.13 million establishments in the affected industry sectors that are covered by the FMLA regulations. These firms employ 95.8 million covered employees, with an annual payroll totaling \$3.69 trillion. Annual revenues are estimated at \$14.2 trillion, with net income estimated at \$1.08 trillion.²

In order to produce the estimates of employment in private firms with 50 or more employees within a 75 mile radius of each other, data from the U.S. Census Bureau, *Statistics of U.S. Business, 2004* (2005) were first obtained. As described above, the *Statistics of U.S. Business* is based on *County Business Patterns (CBP)*, but it is a *firm-size* based database rather than an *establishment-size* based database [as is the case with *County Business Patterns (CBP)*]. To examine firms with multiple establishments, CONSAD reviewed data on the number of establishments and employees in firms with 50 or more employees using *Statistics of U.S. Business*. Because the 2004 *Statistics of U.S. Business* only has the firm size category of 20-99 employees, a special run of the *Statistics of U.S. Business* (performed for SBA in 1996), which includes the firm size categories of 20-49 and 50-99, was used to determine the percentage of employees in each of these categories. These percentages were applied to the 2004 *Statistics of U.S. Business* 20-99 size category. Since the 1996 *Statistics of U.S. Business* is a Standard Industrial Classification (SIC)-based database, and the 2004 data are based on NAICS, estimates had to be aggregated at the major industry division level (using the mapping provided on the Census website, “1987 SIC Matched to 1997 NAICS, Major Groups (2-digit),” <http://www.census.gov/epcd/naics/nsic2ndx.htm>).

Next, the numbers of workers in establishments with 50 or more employees were obtained at the 2-digit NAICS level. These data are available directly from *County Business Patterns (CBP)*. These estimates are considered to be lower bound estimates of the number of covered workers because they do not consider firms that have multiple establishments, some of which have fewer than 50 employees but are located close enough to each other, such that, in combination, they have at least 50 employees within a 75 mile radius of each other. CONSAD

² It should be noted that revenues and net income estimates are *not* available for public sector employers, as well as for certain private employers (such as the forestry, fishing and hunting industries).

Table 2.2: Summary Statistics for Firms Covered by the Proposed Revisions to the Current FMLA Regulations at 29 CFR 825, by Industry, 2005

| NAICS Codes | Data Source | Industry Description | Number of Firms (9) | Number of Establishments | Number of Employees(1) | Annual Payroll (\$1,000) | Revenues (10) (\$1,000) | Profit Rate (10) | Net Income (10) (\$1,000) | Employees per Establishment | Payroll per Establishment (\$1,000) | Payroll per Employee |
|-------------|-------------|--|---------------------|--------------------------|------------------------|--------------------------|-------------------------|------------------|---------------------------|-----------------------------|-------------------------------------|----------------------|
| 11 | Blend | Agriculture: Forestry, Fishing and Hunting | 372 | 773 | 56,872 | \$1,663,749 | -- | -- | -- | 74 | \$2,151,288 | \$29,254 |
| 11 | Ag2002 | Agriculture: Farms (2) | 7,521 | 15,626 | 951,930 | \$5,821,187 | \$62,902,407 | 7.97% | \$5,016,266 | 61 | \$372,532 | \$6,115 |
| 21 | Blend | Mining, Quarrying, and Oil and Gas Extraction | 881 | 3,914 | 336,604 | \$21,389,362 | \$128,847,683 | 12.92% | \$16,650,712 | 86 | \$5,464,752 | \$63,545 |
| 22 | Blend | Utilities | 568 | 4,771 | 521,896 | \$39,617,638 | \$313,988,286 | 5.34% | \$16,779,900 | 109 | \$8,304,227 | \$75,911 |
| 22 | Govt2002 | Public Utilities (excluding transit) (3) | -- | -- | 259,000 | \$11,247,420 | -- | -- | -- | -- | -- | -- |
| 22 | BPA+TVA | Power generation and transmission (4) | 2 | 2 | 16,000 | -- | \$10,330,375 | 1.49% | \$153,475 | | | |
| 23 | Blend | Construction | 16,650 | 24,291 | 2,741,450 | \$133,635,281 | \$460,676,350 | 6.28% | \$28,936,943 | 113 | \$5,501,505 | \$48,746 |
| 31-33 | Blend | Manufacturing | 29,765 | 66,333 | 11,065,335 | \$501,497,984 | \$2,947,940,507 | 7.06% | \$208,209,689 | 167 | \$7,560,314 | \$45,322 |
| 42 | Blend | Wholesale Trade | 11,926 | 59,989 | 3,390,529 | \$184,437,535 | \$2,673,220,412 | 3.85% | \$103,003,158 | 57 | \$3,074,533 | \$54,398 |
| 44-45 | Blend | Retail Trade | 14,512 | 218,674 | 9,229,640 | \$206,363,676 | \$1,925,880,739 | 3.72% | \$71,628,938 | 42 | \$943,704 | \$22,359 |
| 48-49 | Blend | Transportation and Warehousing | 5,137 | 43,129 | 3,135,422 | \$118,162,839 | \$328,198,899 | 5.46% | \$17,922,654 | 73 | \$2,739,733 | \$37,686 |
| 48-49 | Govt2002 | Public Transit and Transportation (3) | -- | -- | 921,000 | \$35,099,376 | -- | -- | -- | -- | -- | -- |
| 482 | Rail2005 | Rail Transportation (5) | 37 | 37 | 169,760 | \$11,139,365 | \$17,769,552 | 5.46% | \$970,380 | 4,588 | \$301,063,923 | \$65,618 |
| 491 | USPS2006 | Postal Service (6) | 1 | 37,499 | 696,138 | \$49,207,978 | \$72,650,000 | 1.24% | \$900,000 | 19 | \$1,312,248 | \$70,687 |
| 51 | Blend | Information | 3,703 | 31,089 | 2,664,028 | \$164,742,946 | \$635,937,939 | 10.95% | \$69,663,414 | 86 | \$5,299,131 | \$61,840 |
| 52 | Blend | Finance and Insurance | 5,335 | 89,035 | 4,367,850 | \$325,030,962 | \$1,861,553,235 | 15.18% | \$282,596,567 | 49 | \$3,650,615 | \$74,414 |
| 53 | Blend | Real Estate and Rental and Leasing | 3,726 | 62,188 | 1,033,014 | \$39,437,097 | \$177,900,358 | 15.81% | \$28,130,207 | 17 | \$634,156 | \$38,177 |
| 54 | Blend | Professional, Scientific, and Technical Services | 17,492 | 70,715 | 4,315,079 | \$269,221,610 | \$528,341,961 | 9.34% | \$49,363,369 | 61 | \$3,807,137 | \$62,391 |
| 55 | Blend | Management of Companies and Enterprises | 2,800 | 11,322 | 2,500,373 | \$211,486,387 | \$104,681,715 | 16.97% | \$17,765,198 | 221 | \$18,679,964 | \$84,582 |
| 56 | Blend | Administrative and Support and Waste Management and Remediation Services | 12,945 | 52,333 | 7,428,951 | \$191,044,192 | \$367,610,542 | 6.27% | \$23,036,012 | 142 | \$3,650,555 | \$25,716 |
| 61 | Blend | Educational Services | 3,116 | 12,596 | 2,324,139 | \$69,027,751 | \$165,819,263 | 11.54% | \$19,142,175 | 185 | \$5,480,192 | \$29,700 |
| 61 | Govt2002 | Public Educational Services (7) | 15,014 | 15,014 | 10,331,000 | \$322,485,408 | -- | -- | -- | 688 | \$21,478,980 | \$31,215 |
| 62 | Blend | Health Care and Social Assistance | 22,161 | 89,592 | 11,330,723 | \$400,431,357 | \$908,805,986 | 8.68% | \$78,876,648 | 126 | \$4,469,497 | \$35,340 |
| 71 | Blend | Arts, Entertainment, and Recreation | 3,626 | 14,661 | 1,276,356 | \$34,242,707 | \$97,973,020 | 12.73% | \$12,474,535 | 87 | \$2,335,674 | \$26,828 |
| 72 | Blend | Accommodation and Food Services | 19,882 | 80,376 | 5,352,996 | \$80,221,155 | \$237,740,976 | 6.78% | \$16,119,426 | 67 | \$998,075 | \$14,986 |
| 81 | Blend | Other Services (except Public Administration) | 13,997 | 56,587 | 1,843,408 | \$44,489,323 | \$162,868,215 | 6.67% | \$10,857,059 | 33 | \$786,212 | \$24,134 |
| 92 | Govt2002 | Public Administration (8) | 74,067 | 74,067 | 7,534,000 | \$222,831,972 | -- | -- | -- | 102 | \$3,008,519 | \$29,577 |
| | | All Industry Sectors | 285,237 | 1,134,612 | 95,793,493 | \$3,693,976,256 | \$14,191,638,420 | | \$1,078,196,725 | 84 | \$3,255,718 | \$38,562 |
| | -- | Data Not Available. | | | | | | | | | | |

Notes:

- (1) Employment is estimated when data suppression exists in County Business Patterns.
- (2) The estimate for the number of covered employees includes an estimated 465,000 employees in the 15,626 covered farms working less than 150 days per year (on average 29.8 employees per farm), as well as those 486,775 workers working 150 days or more (and assumed to be eligible for FMLA leave).
- (3) No separate data for establishments in this sector exist in the Census of Governments. The data for payroll include only state and local governments. The numbers for establishments have been included in the Public Administration category (NAICS 92) using the summary table, Table 1, of the Compendium of Governments.
- (4) Data sources for the Bonneville Power Authority and Tennessee Valley Authority do not include payroll figures. These two establishments have been subtracted from the overall government (Public Administration) establishment number.
- (5) Represents only the freight railroad industry. Establishments represent individual companies. These payroll figures are estimates. These estimates only include the Class I railroads and regional linehaul railroads (on average, each has 50 or more employees). Local linehaul and switching and terminal carriers are excluded (on average, each has less than 50 employees).
- (6) Data for the U.S. Postal Service include all establishments. Employment figures include 696,138 career employees and exclude the 100,061 non-career employees. Payroll figures represent compensation and benefits.
- (7) Data include employment and payroll figures for educational services in the Census of Governments Table 7 and establishment figures for school districts in the Census of Governments Table 1.
- (8) Data include employment figures for all state governments, and local governments including counties, municipalities, townships, and special districts minus education services, transit, utilities, and transportation. Employment and payroll figures include all of the above except education services, which use data on School Districts. Each state is assumed to be a single establishment employer.
- (9) The number of firms were derived based on the average number of establishments per firm, for firms with 50 or more employees, calculated from data in the Statistics of U.S. Business, coupled with the number of establishments covered by the FMLA (as presented in this table).
- (10) See text for derivation of these estimates and the data sources used.

Sources: U.S. Department of Commerce (USDOC, 2007), 2005 County Business Patterns; U.S. Department of Agriculture (USDA, 2004), 2002 Census of Agriculture; U.S. Department of Commerce (USDOC, 2004), Compendium of Public Employment: 2002; Bonneville Power Administration (BPA, 2003), "BPA Facts 2002"; Tennessee Valley Authority (TVA, 2003), "Ameded 2002 Information Statement"; Association of American Railroads (AAR, 2006), Railroad Service in the United States, 2005; U.S. Postal Service (USPS, 2006), 2006 Annual Report; U.S. Department of the Treasury, Internal Revenue Service (IRS, 2007), Statistics of Income, 2004, Table 7; U.S. Department of Commerce (USDOC, 2005), Statistics of U.S. Businesses 2000; U.S. Department of Commerce (USDOC, 2000), Statistics of U.S. Businesses 1996.

aggregated these data at the major industry division level and then calculated the difference between the *Statistics of U.S. Business* estimates of workers in firms with 50 or more employees and the *County Business Patterns (CBP)* estimates of workers in establishments with 50 or more employees. The difference obtained is considered to be the “best estimate” of those workers in establishments with less than 50 employees, but in firms with 50 or more employees (but *not* necessarily located within a 75 mile radius of each other).

Thus, the data on employment by firm size from *Statistics of U.S. Business* are considered to be upper bound estimates of the actual number of employees covered by FMLA because many of the establishments in firms with multiple worksites do not have 50 or more employees within a 75 mile radius of each other. Therefore, for this analysis, in order to develop a “best estimate” of the number of covered workers, recognizing that there are no data describing how many employees work in establishments with less than 50 employees but that are owned by the same firm with, in total, 50 or more employees working within a 75 mile radius of each other, it is assumed that half (50 percent) of these workers are employed at a worksite where the firm employs 50 or more employees within 75 miles of each other. (The same assumption was made concerning establishments and payrolls.)

Next, to apportion these workers at the 2-digit NAICS level, it was first necessary to determine, within each major industry division, the percentage distribution of workers, by 2-digit NAICS, in establishments with less than 50 employees. These percentages were then multiplied by the estimated number of workers assumed to be employed at a worksite of less than 50 employees, but where the firm employs a total of 50 or more employees across multiple worksites within 75 miles of each other. These estimates were then added to the *County Business Patterns* lower bound estimate of covered workers, to obtain a “blended” estimate of covered workers in private, non-agricultural industries. The second column of Table 2.2 identifies those industry sectors where this “blending” was performed. (This same type of “blending” was also done for establishments and payrolls.)

Added to these estimates were data from the *Census of Agriculture*, *Census of Governments*, U.S. Postal Service, Association of American Railroads, Bonneville Power Authority, and Tennessee Valley Authority to obtain estimates of all workers covered under FMLA by 2-digit NAICS. Again, the second column of Table 2.2, along with the series of footnotes, identify the data source for each of these industry sectors and the other assumptions that were made to produce these estimates.

It should be recognized that all employers in NAICS sectors 611110 (primary and secondary education) and 491 (U.S. Postal Service) are covered, although covered employees in these industries must work at worksites where 50 or more employees are employed by their employer within 75 miles of those locations. However, data for the U.S. Postal Service, classified by the employment size of the post office, are not available. For this analysis, it is estimated that all career postal workers are employed at worksites where 50 or more employees work for the U.S. Postal Service within 75 miles of those locations. Conversely, the non-career postal workers, which primarily include casual workers and workers at rural substations, likely do not meet the coverage and eligibility requirements relating to worksite location or to job tenure and working hours (and are not included in these estimates).

For the railroad industry (more specifically, the freight railroad industry, NAICS sector 482), data for 2005 from the Association of American Railroads include Class I railroads, regional line haul railroads, local line haul carriers, and switching and terminal carriers. Based on the average employment in each type of freight railroad, it is assumed that Class I railroads and regional line haul railroads are, in general, covered under the FMLA, while local line haul carriers and switching and terminal carriers are generally not covered.

Data for the agricultural sectors (NAICS sectors 111 and 112) are reported in the 2002 *Census of Agriculture* (USDA, 2004) for both crop production and animal production combined (see Table 2.3). These data identify those farms with 10 or more workers and those workers on these farms who are employed at least 150 days per year. To the extent that these farms have a total of 50 or more employees (and the data suggest that they likely would when the average number of workers employed on these farms working less than 150 days per year is added into the average number of workers employed on these farms working at least 150 days per year), these farms would then be covered under the FMLA. Their employees include those workers employed at least 150 days per year (and likely eligible for FMLA leave), as well as workers employed less than 150 days per year (and not eligible for FMLA leave). Thus, the data in Table 2.2 are considered to be upper bound estimates of covered workers in the agricultural crop production and animal production sectors.

In order to estimate the number of firms covered by the FMLA, the average number of establishments per firm, for firms with 50 or more employees by NAICS major industry division (obtained from the *Statistics of U.S. Business*), were coupled with the estimates of the number of establishments in firms covered by the FMLA (as derived above and presented in Table 2.2).

Similarly, the revenue and net income estimates for firms covered by the FMLA were derived in the same fashion as is described above for all industries covered by the FMLA. For the Bonneville Power Authority (2002), the Tennessee Valley Authority, and the U.S. Postal Service (2006), the revenue and net income estimates for firms covered by the FMLA are the same as for all firms since all firms are considered to be covered firms. Again, for certain industry sectors (for example, parts of NAICS 11 - Forestry, Fishing, and Hunting; NAICS 22 - Public Utilities, NAICS 48-49 - Public Transit and Transportation, and NAICS 61 - Public Educational Services; and NAICS 92 - Public Administration), revenue and net income estimates are not available.

2.4 Estimates of the Number of Workers Eligible to Take FMLA Leave, the Number of FMLA Leave Takers, and the Number of FMLA Leaves

Table 2.4 presents estimates of the number of workers eligible to take FMLA leave and those that actually took FMLA leave. Across all industry sectors, it is estimated, based primarily on 2005 employment data that 77.1 million workers are eligible to take FMLA and that 6.99 million workers actually take FMLA leave. Furthermore, 1.67 million workers take intermittent FMLA leave [i.e., leave for a few *hours* (or *days*) at a time because of ongoing family or medical reasons].

Table 2.3: Summary Statistics for Agricultural Industry Sectors Affected by the Proposed Revisions to the Current FMLA Regulations at 29 CFR 825, 2002

| | |
|---|--------------|
| Number of Farms | 2,128,982 |
| Market value of agricultural products sold (1000s) | 200,646,355 |
| Farms by Type of Organization | |
| Individual or family (sole proprietorship) | 1,909,598 |
| Partnership | 129,593 |
| Corporation | 73,752 |
| Other - cooperative, estate or trust, institutional, etc. | 16,039 |
| Hired Farm Labor | |
| Farms | 554,434 |
| Workers | 3,036,470 |
| Payroll (\$1,000) | \$18,568,446 |
| Payroll/Worker | \$6,115 |
| Sales per Worker | 66 |
| Farms with - | |
| 1 to 9 workers (farms) | 499,003 |
| 1 to 9 workers (workers) | 1,255,152 |
| 10 workers or more (farms) | 55,431 |
| 10 workers or more (workers) | 1,781,318 |
| Workers by Days Worked | |
| 150 Days or More | |
| Farms | 214,631 |
| Workers | 927,708 |
| Farms with - | |
| 1 to 9 workers (farms) | 199,005 |
| 1 to 9 workers (workers) | 440,933 |
| 10 workers or more (farms) | 15,626 |
| 10 workers or more (workers) | 486,775 |
| Less Than 150 Days | |
| Farms | 455,669 |
| Workers | 2,108,762 |
| Farms with - | |
| 1 to 9 workers (farms) | 417,344 |
| 1 to 9 workers (workers) | 967,903 |
| 10 workers or more (farms) | 38,325 |
| 10 workers or more (workers) | 1,140,859 |
| Estimate of Covered Workers | 951,930 |
| Estimate of Covered Farms | 15,626 |
| Estimated Payroll of Covered Workers (1000s) | 5,821,187 |

Note: Agriculture includes NAICs sectors 111 - Crop Production and 112 - Animal Production.

(1) The estimate for the number of covered employees includes an estimated 465,000 employees in the 15,626 covered farms working less than 150 days per year (on average 29.8 employees per farm), as well as those 486,775 workers working 150 days or more (and assumed to be eligible for FMLA leave).

Source: U.S. Department of Agriculture (USDA, 2004), *2002 Census Of Agriculture Volume 1: National, State, and County Tables*.

Table 2.4 Summary Statistics of the Estimated Numbers of Workers Eligible to Take FMLA Leave and Those Taking FMLA Leave, by Industry, 2005

| NAICS Codes | Industry Description | Number of Employees | | |
|-------------|--|-----------------------------|-------------------|--------------------------------|
| | | Eligible to Take FMLA Leave | Taking FMLA Leave | Taking Intermittent FMLA Leave |
| 11 | Agriculture, Forestry, Fishing and Hunting | 812,085 | 73,643 | 17,601 |
| 21 | Mining, Quarrying, and Oil and Gas Extraction | 270,966 | 24,572 | 5,873 |
| 22 | Utilities | 641,501 | 58,173 | 13,903 |
| 23 | Construction | 2,206,867 | 200,126 | 47,830 |
| 31-33 | Manufacturing | 8,907,594 | 807,769 | 193,057 |
| 42 | Wholesale Trade | 2,729,376 | 247,509 | 59,155 |
| 44-45 | Retail Trade | 7,429,860 | 673,764 | 161,030 |
| 48-49 | Transportation and Warehousing | 3,962,468 | 359,329 | 85,880 |
| 51 | Information | 2,144,543 | 194,474 | 46,479 |
| 52 | Finance and Insurance | 3,516,119 | 318,853 | 76,206 |
| 53 | Real Estate and Rental and Leasing | 831,576 | 75,410 | 18,023 |
| 54 | Professional, Scientific, and Technical Services | 3,473,638 | 315,001 | 75,285 |
| 55 | Management of Companies and Enterprises | 2,012,800 | 182,527 | 43,624 |
| 56 | Administrative and Support and Waste Management | 5,980,306 | 542,313 | 129,613 |
| 61 | Educational Services | 10,187,387 | 923,825 | 220,794 |
| 62 | Health Care and Social Assistance | 9,121,232 | 827,143 | 197,687 |
| 71 | Arts, Entertainment, and Recreation | 1,027,467 | 93,174 | 22,269 |
| 72 | Accommodation and Food Services | 4,309,162 | 390,769 | 93,394 |
| 81 | Other Services (except Public Administration) | 1,483,944 | 134,569 | 32,162 |
| 92 | Public Administration | 6,064,870 | 549,982 | 131,446 |
| | All Industry Sectors | 77,113,762 | 6,992,925 | 1,671,309 |

Sources: Cantor, David, et al. (Cantor, 2001), *Balancing the Needs of Families and Employers: Family and Medical Leave Surveys. 2000 Update*; and Table 2.2 of this report.

These estimates were developed by coupling estimates from the Westat survey with the estimates of the number of workers covered by the FMLA (presented in Table 2.2, above). Specifically, the number of workers *eligible* to take FMLA leave, by industry, was calculated based on the Westat estimate that 80.5 percent of workers employed at establishments covered by the FMLA are eligible to take FMLA leave.³

Next, to estimate the percentage of these workers who actually took leave in 2005, CONSAD extrapolated data from the Westat surveys conducted in 1995 and 2000 on the percentages of workers at establishments covered by FMLA who took leave in those years. In the Westat Report (2001, p.3-15) it is reported that in 1995 3.6 percent of covered employees took FMLA leave, and that in 2000 the percentage had increased to 6.5 percent. CONSAD plotted these percentages as the vertical coordinates in a graph on which the year was plotted as the horizontal coordinate. In addition, the vertical coordinate for 1993, the year when FMLA was enacted, was plotted as 0.0 percent. A smooth, monotonically increasing curve was then plotted manually through those three points [i.e., (1993, 0.0), (1995, 3.6), and (2000, 6.5)] and extrapolated through 2005 [i.e., through the point (2005, 7.3)]. On this basis, it was estimated that the percentage of workers in covered establishments who took FMLA leave in 2005 was 7.3 percent. Even if employers voluntarily allowed some employees to take equivalent leave in 1993, the percentage extrapolated for 2005 would not differ appreciably from 7.3 percent so long as the percentage taking FMLA-equivalent leave in 1993 was nearer to 0.0 than to 3.6 percent.

Although the Westat Report (2001, p.3-15) asserts that this increase did not appear to be due to an increased awareness that unpaid job-protected leave was available since August 1993 to those who qualified under the FMLA, the employer comments submitted in response to the RFI (DOL, ESA, 2007, pp. 129-134) suggest that as more employees become aware of their coverage under FMLA, their use of job-protected FMLA leave has also increased (among employers reporting rates of FMLA leave usage, the median rate is between 7 percent and 10 percent).

The number of workers who took *intermittent* FMLA leave in 2005 in each industry was estimated by multiplying Westat's estimate that 23.9 percent of workers who take FMLA leave take some of the leave intermittently [i.e., they repeatedly took leave for a few *hours* (or *days*) at a time because of ongoing family or medical reasons⁴], by the estimated number of workers taking FMLA leave in each industry.

It should be noted that these estimates are very similar to those presented in the Department of Labor's RFI. This results because these estimates were derived using a similar methodology (i.e., Westat percentages of FMLA eligible workers and FMLA leave takers were applied to estimates of the number of covered employees); and the number of covered employees presented in this report and in the DOL's RFI, although

³ This estimate was taken from the 2000 Survey [Westat Report (2001), Table A2-3.2, p. A-2- 21].

⁴ Those that answered "Yes" to Question A5B of the 2000 Survey *employee* questionnaire in the Westat Report (2001).

based upon different methodologies and data sources, are very similar to one another (in the aggregate across all industry sectors).

To calculate the number of FMLA leaves and the number of FMLA leave takers in 2005, CONSAD used a two step process utilizing data from the 2000 Westat Survey and the current Industry Profile.

In the first step, CONSAD used data from Westat to estimate the number of leaves that are taken per leave taker. This estimate is based on the 2000 data. From the 2000 survey data, CONSAD calculated that 8,849,968 FMLA leave takers took 13,270,789 leaves in 1999.⁵ Therefore, each leave taker took an average of 1.50 leaves. As shown in Table 2.5, CONSAD also estimated that of the 8,849,968 leave takers in 1999, 78.1% used one leave, 11.1% used two leaves, and 10.8% used three or more leaves.⁶

TABLE 2.5 – Estimates from Westat Data based on 2000 survey

| | |
|--|--------|
| Average # of FMLA leaves taken per FMLA leave taker ⁷ | 1.50 |
| % of leave takers taking 1 leave | 78.10% |
| % of leave takers taking 2 leaves | 11.10% |
| % of leave takers taking 3 or more leaves | 10.80% |

In the second step, the distribution estimated from the 2000 Westat Survey and presented in Table 2.5 was applied to employment figures from the current Industry Profile to determine the most recent number of FMLA leave takers and FMLA leaves. The estimated current number of leave takers and leaves is shown in Table 2.6. CONSAD estimated there are 95,793,394 FMLA covered employees, as shown in the Industry Profile. As explained above, CONSAD estimated that 7.3% of these FMLA covered employees were eligible and took FMLA leave.

Applying 7.3% to the 95,793,493 FMLA covered employees from the current Industry Profile, CONSAD estimates that there are 6,992,925 leave takers. Assuming 1.5 leaves per leave taker (from Table 2.5), CONSAD estimates that there are 10,486,098

⁵ To identify leave takers in the Westat Survey database, CONSAD used the variables FMLAFLAG = 1, COVELIG = 1, # of leaves in 1999 > 0. The 2000 survey covered 18 months, January 1999 to June 2000, rather than one year. To calculate the number of leaves taken by each leave-taker during 1999, the number taken during the six months of 2000 was subtracted from the total number of leaves the employee reported taking in the entire 18 months. The formula for this calculation from the Westat database was (HA2 – HA2A).

⁶ The distribution of leaves was obtained by first selecting employees who took FMLA leave (FMLAFLAG = 1, COVELIG = 1, # of leaves in 1999 > 0) and then calculating the frequency of leaves taken by each selected employee.

⁷ The explanation for this calculation is presented in the above paragraph. However, we could also arrive at the estimate of 1.5 leaves per leave taker if we calculate 78.1% of leave takers take 1 leave, 11.10% take two leaves, and then assume a declining % of leave takers for each additional number of leaves. For example, 3% take 3 leaves, 2.5% take 4 leaves, 2.2% take 5, 2% take 6, and 1.1% take 7. We would arrive at 1.5 leave per leave taker (.781*1 + .111*2 + .030*3 + .025*4 + .022*5 + .020*6 + .011*7 = 1.5).

leaves being taken. The table below illustrates how these leaves are distributed among leave takers of one, two, and three or more leaves, using the distribution that was estimated in Table 2.5. Leave takers using three or more leaves, on average, took 4.6 leaves.⁸

TABLE 2.6 – Estimates of Current Leave Taking and Leaves

| | |
|--|------------|
| # of FMLA covered employees | 95,793,493 |
| % of covered employees who are eligible <u>and</u> take leave | 7.3% |
| # of FMLA leave takers | 6,992,925 |
| Current # of FMLA leaves | 10,486,098 |
| Current # of FMLA leaves | 5,461,474 |
| # of FMLA leaves accounted for by FMLA leave takers that take 2 leaves | 1,552,429 |
| # of FMLA leaves accounted for by FMLA leave takers that take 3 or more leaves | 3,472,194 |
| # of FMLA leaves per leave taker of 3 or more leaves | 4.60 |

⁸ Calculated by dividing the number of FMLA leaves accounted for by FMLA leave-takers of 3 or more leaves by the number of FMLA leave takers of three or more leaves (3,472,194 / (6,992,925 x 10.80%).

3.0 DESCRIPTION OF PROPOSED REVISIONS TO THE FMLA REGULATIONS AND THE ASSOCIATED ECONOMIC IMPACTS

3.1 High Impact Industries

Comments from the Department of Labor’s RFI indicated that some industries are more vulnerable to unexpected and unplanned employee absences than other industries. These vulnerable industries include manufacturing, health care, transportation, food services, public safety, and communications. Unexpectedly absent employees in these industries can disrupt assembly lines for manufacturing, cause inadequate health to be provided to patients, and delay the take-off of commercial airliners.

Table 3.1 provides the percentage of employment in each industry that is composed of high impact occupations. The selection of occupations as “high-impact” within the manufacturing, health care, transportation, food services, and public safety industries was based on CONSAD’s judgment and responses to the Department of Labor’s RFI. The occupations designated as high-impact are qualitatively different from non high-impact occupations. Work not accomplished because of the absence of a non high-impact employee can be made up at a later time when the employee is back to work. Whereas, the absence of a high-impact employee can result in lost productivity that cannot be recaptured. Based on CONSAD’s judgment and responses to the RFI, some examples include:

- the absence of bus drivers can delay public transportation services for riders;
- the absence of adequate airline staffing (pilots, mechanics, and stewards) can have the same impact on airline passengers;
- the absence of factory/assembly line workers can either slow down production or require other workers to take ‘double duty’ to fill in for their missing co-workers;
- the absence of health care professionals can cause reduced health services in a time of need; and
- the absence of emergency response personnel can reduce the response time in time of crisis; and
- the absence of adequate food service staff can disrupt the time-sensitive nature of the restaurant business.

The number of employees in high impact occupations in each industry was divided by the total employment in each industry.⁹ Communication is not a specific industry and, therefore, a proportion of high-impact communications employees could not be calculated.

⁹ Current Population Survey (CPS) data were used.

TABLE 3.1 – Industries highly impacted by unforeseeable and intermittent FMLA leaves

| Industry | % of Industry that is Highly Impacted |
|--|--|
| Food Services and Accommodation | 56.0% |
| Health Care and Social Assistance | 44.8% |
| Transportation | 31.3% |
| Manufacturing | 21.7% |
| Public Safety Occupations (within Public Administration) | 19.5% |

CONSAD believes that absences of employees in high-impact occupations, particularly in the types of situations listed above are more costly to employers than the absence of employees in other occupations. However, CONSAD was unable to quantify the estimated the impact of the proposed provisions with regard to high impact occupations in each of these industries. While responses to the Department of Labor’s RFI identified situations in which an absence of a worker in a particular occupation significantly reduced productivity, the impact of these FMLA-related absences was difficult to quantify. The high impact occupations include:

Registered nurses; Health diagnosing and treating practitioners; Dental hygienists; Diagnostic related technologists and technicians; Emergency medical technicians and paramedics; Health diagnosing and treating practitioner support technicians; Licensed practical and licensed vocational nurses; Medical records and health information technicians; Miscellaneous health technologists and technicians; Other healthcare practitioners and technical occupations; Nursing, psychiatric, and home health aides; Medical assistants and other healthcare support occupations; Supervisors, protective service workers; Fire fighters; Police and sheriff's patrol officers; Transit and railroad police; Lifeguards and other protective service workers; Chefs and head cooks; Cooks; Food preparation workers; Bartenders; Combined food preparation and serving workers, including fast food; Counter attendants, cafeteria, food concession, and coffee shop; Waiters and waitresses; Gaming services workers; Transportation attendants; Child care workers; Personal and home care aides; Personal care and service workers, all other; Customer service representatives; Hotel, motel, and resort desk clerks; Reservation and transportation ticket agents and travel clerks; Dispatchers; Postal service mail carriers; Aircraft mechanics and service technicians; Signal and track switch repairers; Aircraft structure, surfaces, rigging, and systems assemblers; Electrical, electronics, and electromechanical assemblers; Engine and other machine assemblers; Extruding and drawing machine setters, operators, and tenders, metal and plastic; Forging machine setters, operators, and tenders, metal and plastic; Rolling machine setters, operators, and tenders, metal and plastic; Cutting, punching, and press machine setters, operators, and tenders, metal and plastic; Drilling and boring machine tool setters, operators, and tenders, metal and plastic; Grinding, lapping, polishing, and buffing machine tool setters, operators, and tenders; Lathe and turning machine tool setters, operators, and tenders, metal and plastic; Milling and planing machine setters, operators, and tenders, metal and plastic;

Machinists; Metal furnace and kiln operators and tenders; Molders and molding machine setters, operators, and tenders, metal and plastic; Welding, soldering, and brazing workers; Heat treating equipment setters, operators, and tenders, metal and plastic; Plating and coating machine setters, operators, and tenders, metal and plastic; Textile bleaching and dyeing machine operators and tenders; Textile cutting machine setters, operators, and tenders; Textile knitting and weaving machine setters, operators, and tenders; Textile winding, twisting, and drawing out machine setters, operators, and tenders; Extruding and forming machine setters, operators, and tenders, synthetic and glass fibers; Sawing machine setters, operators, and tenders, wood; Woodworking machine setters, operators, and tenders, except sawing; Power plant operators, distributors, and dispatchers; Packaging and filling machine operators and tenders; Cementing and gluing machine operators and tenders; Cleaning, washing, and metal pickling equipment operators and tenders; Production workers, all other; Aircraft pilots and flight engineers; Air traffic controllers and airfield operations specialists; Ambulance drivers and attendants, except emergency medical technicians; Bus drivers; Locomotive engineers and operators; Railroad brake, signal, and switch operators; Railroad conductors and yardmasters; Subway, streetcar, and other rail transportation workers; Service station attendants; Conveyor operators and tenders; Crane and tower operators; Dredge, excavating, and loading machine operators; Hoist and winch operators; Laborers and freight, stock, and material movers, hand; Machine feeders and offbearers; Packers and packagers, hand; Shuttle car operators.

3.2 Cost of Reviewing and Implementing New Provisions

For any change in regulation, companies must take time to read the new regulations and then revise their policies accordingly. CONSAD estimates that, on average, an HR professional at each firm with FMLA covered establishments will spend a total of six hours to review the revised FMLA provisions, adjust existing company policies accordingly, and disseminate information to managers and staff. CONSAD does not believe that it will take a great deal of time since most of the proposed regulations are minor adjustments or clarifications of definitions.

The Industry Profile indicates that 285,237 firms have FMLA covered establishments. Each of these firms is responsible for reviewing changes to FMLA. Given that the average hourly wage and benefits rate of an HR compensation and benefits specialist is \$36.51,¹⁰ the total one-time cost per covered firm is \$219.06 (6 hours x \$36.51). The total cost to all employers is \$62,484,017 (\$219.06 x 285,237).

3.2.1 Estimated Impacts of the Proposed Revisions

¹⁰ Bureau of Labor Statistics, National Compensation Survey: Occupational Wages in the United States, June 2006. Rate assumes hourly wage plus 40% for benefits.

COMPLIANCE WITH EMPLOYER CRITERIA FOR VACATION/PERSONAL LEAVE PAY (SECTION 825.207)

FMLA leave is unpaid, but the law allows workers to combine FMLA leave with other kinds of paid leave they may have available. The current regulations prohibit employers from applying their normal leave policies to employees substituting paid vacation or personal leave for unpaid FMLA leave, and thus may encourage employers to scale back on their provision of paid leave. Moreover, by allowing employees to substitute such paid leave for unpaid FMLA leave without meeting their employer’s normal leave rules, the regulations have placed employees using FMLA leave in a more favored position regarding the use of employer provided paid leave than their coworkers taking vacation or personal leave for non-FMLA reasons. The proposed change to Section 825.207 requires an employee to follow the employer’s established procedures for requesting paid leave if the employee requests FMLA leave combined with paid leave. With the revision to Section 825.207 employees will still be eligible for protected FMLA leave, but not paid leave, if he or she does not follow the employer’s procedures for paid leave. FMLA only guarantees job protected leave, not paid leave.

Table 3.2 estimates the potential number of leave takers and leaves that this provision may impact. There are 6,992,925 FMLA leave-takers. According to data from Westat, 65.8% of FMLA leave-takers received some type of pay during their longest FMLA leave.¹¹ This proposed provision applies only to those leave-takers who received vacation or personal paid leave. Sick and medical paid leave are already treated in this manner. Using data from the Westat report, CONSAD estimates that 55.0% of leave-takers who received some sort of pay during their longest FMLA leave received paid vacation or personal leave.¹² Therefore, CONSAD estimates that 2,530,740 FMLA leave-takers receive paid vacation or personal leave during their FMLA leave.

TABLE 3.2 –Provision 825.207 - Substitution of paid leave

| Statistic | Value |
|---|-----------|
| # of FMLA leave-takers | 6,992,925 |
| % of leave-takers that received pay during some of their leave | 65.8% |
| % of these paid leave-takers that received vacation or personal paid leave | 55.0% |
| # of leave-takers that received paid vacation or personal leave during some of their FMLA leave | 2,530,740 |
| % of leave-takers with difficult time getting time off from employer | 14.0% |
| # of leave-takers who received paid vacation or personal leave who might be impacted by provision | 354,304 |

¹¹ 2000 West Report, Table 4.4.

¹² The Westat report indicated that of leave-takers who received paid leave during their longest FMLA leave, 39.4% received paid vacation leave and 25.7% received paid personal leave. Using probabilities, 55.0% = 39.4% + 25.7% - (39.4% x 25.7%).

The provision would not affect all FMLA leave-takers receiving paid vacation or personal leave during their FMLA leave. Not all employers will make a change in their policies as a result of this provision. Most employers won't care when paid leave is taken.¹³ Employees most likely impacted by this provision are those who work for employers who have strict vacation policies, such as requiring employees to take their vacation benefits during a factory shut-down during the summer or during a Holiday break.

The 2000 Westats Survey indicates that only 14% of FMLA leave-takers reported that it was somewhat difficult or very difficult to obtain time off from their employer.¹⁴ These leave-takers, having difficulty obtaining time off, are those most likely to be affected by this provision. Therefore, an estimated 354,304 FMLA leave-takers are those most likely to be affected by this provision.

*PROVIDING ANNUAL GENERAL NOTICE TO COVERED EMPLOYEES
(Section 825.300 and 825.301)*

A proposed change for Section 825.300 mandates that FMLA covered employers inform their employees about FMLA on an annual basis. Current 825.301(a)(1) requires an employer to place in an employee handbook, if one exists, a notice of FMLA rights and responsibilities and the employer's policies on FMLA. Current 825.301(a)(2) states that an employer without a handbook must provide written guidance to an employee concerning all the employee's rights and obligations under FMLA when the employee gives specific notice of the need for leave. Proposed 825.300(a)(3) states that covered employers with eligible employees must distribute a general notice of information about the FMLA to employees either by including it in an employee handbook or by distributing a copy to each employee at least once a year, either in paper or electronic format, regardless of whether the employee requests leave.

A significant aspect of the proposed change is that employers without an employee handbook will be required to send general notices about FMLA to employees, annually. Covered employers will have greater notification costs as they will be required to send notifications every year. Currently, covered employers only have to provide notice of FMLA employee's rights and obligations when leave is requested. The only covered employers who will not experience additional notification costs are those with employee handbooks. If FMLA information is included in its handbook, an employer is not required to send annual FMLA notices.

Table 3.3 provides the increase in notification costs as a result of the proposed provision. Currently, only covered employees who request leave and do not have access to FMLA information in an employee handbook are given FMLA general notices of

¹³ Employees are entitled to their employer's uniformly applied vacation and personal leave benefits, regardless of FMLA leave.

¹⁴ 2000 Westat Report, Table 4.2.

rights and obligations. Using data from Westat, CONSAD estimates that 13.27% of the 95,793,493 FMLA covered employees request FMLA leave.¹⁵ Therefore, 12,708,603 FMLA covered employees will request leave. The 2000 Westat Survey indicates that only 8.1% of FMLA covered employees do not receive FMLA information from their employee handbook.¹⁶ Therefore, only 1,029,397 general FMLA notices are required under the current provision.

TABLE 3.3 – Section 825.300 – Additional Annual Cost of Annual Notification

| Current Provision of General Notice | | | |
|--|--------------|-----------------------|---------------------|
| # of FMLA covered employees | | 95,793,493 | |
| % of employees requesting leave | | 13.27% | |
| # of FMLA leave requests per year | | 12,708,603 | |
| % without FMLA in Employee Handbook | | 8.1% | |
| # of FMLA general notices | | 1,029,397 | |
| New Provision for General Notice | | | |
| # of FMLA covered employees | | 95,793,493 | |
| % of employees <u>without</u> employee handbook | | 8.1% | |
| # of employees who need FMLA notification | | 7,759,273 | |
| # of additional FMLA notices after new provision | | 6,729,876 | |
| Method of Notice Distribution | | | |
| | <u>Email</u> | <u>Hand-Delivered</u> | <u>Regular Mail</u> |
| % of employees | 32% | 62.5% | 5.5% |
| # of employees receiving FMLA notice | 2,153,560 | 4,206,173 | 370,143 |
| Cost of notice per employee | NA | 0.08 | 0.49 |
| Total variable cost for emailing notifications | \$0.00 | \$336,494 | \$181,370 |
| Establishments | | | |
| # of covered establishments | | 1,134,612 | |
| % of establishments without an employee handbook | | 8.1% | |
| # of establishments without an employee handbook | | 91,904 | |
| % of establishments | 32% | 62.50% | 5.50% |
| # of establishments | 29,409 | 57,440 | 5,055 |
| Cost of FMLA notification per establishment | \$ 36.51 | \$ 54.77 | \$ 73.02 |
| Total fixed establishment costs | \$1,073,728 | \$3,145,687 | \$369,094 |
| Total cost of additional notices | \$5,106,373 | | |

¹⁵ The Westat report indicates that 18.9% of employees request leave. 1% was added to account for the growth in awareness and usage of FMLA leave since 1999. 19.9% was divided by 2/3 because the Westat survey covered 18 months.

¹⁶ 2000 Westat Report, Table A2-6.1. CONSAD assumes that the distribution of the means of communication among employees is the same as the distribution of means of communication among establishments.

Under the new provision, all FMLA covered employees without access to information in an employee handbook must receive a FMLA general notice at least annually, regardless of whether they request leave. Of the 95,793,493 FMLA covered employees, only 8.1% require FMLA notices as the other 91.9% receive information in their employee handbooks. Therefore, 7,759,273 FMLA covered employees require notices, an increase of 6,729,876 notices per year.

The cost of sending these additional notices, annually, is the sum of variable costs which are the per unit cost of a notice and fixed costs which do not vary regardless of the number of employees receiving the notice. To calculate the variable costs, CONSAD assumes that the additional notices will be distributed in three different ways. Based on the 2000 Westat Survey, CONSAD assumes that 32% of the notices will be distributed to employees by email, 62.5% will be distributed by hand or interoffice mail, and the remaining 5.5% will be distributed by regular mail.¹⁷ Therefore, CONSAD estimates that 2,153,560 (6,729,876 x 32%) employees will receive their additional FMLA notice via email, 4,206,173 (6,729,876 x 62.5%) via hand-delivery or interoffice mail, and 370,143 (6,729,876 x 5.5%) by regular mail.

CONSAD assumes there are no variable costs associated with the sending of email notices. The cost of sending an email is the same whether it is sent to 100 or 1,000 employees at a time. CONSAD assumes that the variable cost for hand-delivery or interoffice mail is 8 cents, which is the cost of a paper copy of a notice. CONSAD estimates that the cost of mailing a notice by regular mail is 49 cents, representing the 41 cent cost of a stamp and 8 cents for a copy of the notice. CONSAD estimates that the total variable cost is \$0 for the email distribution of notices, \$336,494 for the hand-delivered notices, and \$181,370 for the regularly mailed notices.

The fixed costs of sending the notices are the cost of preparing them before they are sent to employees. CONSAD estimates there are 1,134,612 FMLA covered establishments (see the Industry Profile). Of these establishments, only 8.1% will not include FMLA information in an employee handbook and will be responsible for sending annual notices to employees. This represents 91,904 establishments. 32% (29,409) of these establishments will send annual notices by email, 62.5% (57,440) will use hand-delivery or interoffice mail, and 5.5% (5,055) will use regular mail. For email notices, CONSAD estimates that it will take 1 hour for a “compensation and benefits” specialist to prepare a notice (or find a pre-made one from the Department of Labor’s website) and email the notice to employees. CONSAD estimates that it will take a similar specialist 1 ½ hours to prepare the notice, make copies, and distribute it by hand or interoffice to employees. CONSAD assumes the notice will be distributed simultaneously with other materials, such as paychecks. CONSAD assumes that it will take two hours to prepare a notice to be mailed by regular mail. This time includes preparing the notice, printing mailing labels, and putting the notices in envelopes. Based on data from the Bureau of Labor Statistics, the average cost for wage and benefits of a “benefits and compensation

¹⁷ 2000 Westat Report, Table A2-6.1.

specialist” is \$36.51 per hour.¹⁸ Based on these figures, 29,409 establishments will spend 1 hour at \$36.51 per hour to prepare and send the notices via email for a total of \$1,073,728; 57,440 establishments will spend \$54.77 (1.5 x \$36.51) each to prepare and send the notices via hand or interoffice mail for a total of \$3,145,687, and 5,055 establishments will spend \$73.02 (2 hours x \$36.51 per hour) to prepare and the send the notices via regular mail for a total of \$369,094.

Adding the total variable costs to the total fixed costs, CONSAD estimates that the total annual additional cost of the new provision requiring annual FMLA general notices to covered employees is \$5,106,373.

There are other proposed provisions which CONSAD estimates will have an impact on administrative costs. Currently, the employer is required to provide information regarding an employee’s eligibility status for FMLA within two business days of the employee’s leave request. Additionally, the employer is required to give designation notice to an employee within two business days after enough information is obtained to make the determination of whether the leave is designated as FMLA leave. Proposed provisions 825.300(b)(2), 825.300(c), and 825.300(c)(3) modify these requirements. Proposed 825.300(b)(2) increases the allowable time for eligibility notice to five business days. Proposed 825.300(c) increases the allowable time for designation notice to five business days. Proposed 825.300(c)(3) allows the employer to provide both eligibility and designation notice at the same time in situations where the employer has enough information to designate leave as FMLA leave at the time the eligibility notice is sent. Administrative costs will decline as the employer is given additional time (an additional three days) to determine eligibility. This will result in fewer errors that will have to be corrected later. The additional time, combined with the provision allowing the employer to give eligibility and designation notice simultaneously, will save up to ½ hour of a “compensation and benefits specialist’s” time. Based on a cost of \$36.51 per hour and 10,486,098 leaves, CONSAD estimates that annual savings from these provisions will be \$191,488,973 ($\$36.51 \times .5 \times 10,486,098$).

At the same time, the proposed provisions cause employers to have other, additional responsibilities which will increase costs. Proposed provision 825.300(b)(2) requires employers to provide additional information regarding eligibility in their eligibility notices. The employer is required to notify the employee whether leave is available in the applicable 12 month period. If the employee is not eligible or does not have FMLA leave available, the eligibility notice must specify the reasons why the employee is not receiving leave. CONSAD estimates that this additional requirement will take an additional 15 minutes of time for each leave request. CONSAD estimates that there are 12,708,603 FMLA leave requests per year. Therefore, CONSAD estimates that the additional cost of this provision is \$116,004,128 based on a cost of \$36.51 per hour for a “compensation and benefits specialist” ($\$36.51 \times .25 \times 12,708,603$).

¹⁸ National Compensation Survey: Occupational Wages in the United States, June 2006. Based on hourly wage of 26.08 plus 40% for benefits.

Proposed provision 825.300(c)(1) requires employers to provide additional information regarding the number of hours, days, or weeks designated as FMLA leave to employees. This additional information will require employers to spend additional time on each designation notice. CONSAD estimates that each designation will take approximately 10 additional minutes to complete. CONSAD estimates the additional cost of this provision to be \$63,807,906 based on a cost of \$36.51 per hour for a “compensation and benefits specialist” ($\$36.51 \times 10/60 \times 10,486,098$).

Another proposed provision in Section 300(c)(1) requires employers to provide designation notice to FMLA leave takers with chronic conditions, and where the amount of future leave needed by the employee is unknown, notice every 30 days, to the extent that the employee took leave for the condition in the prior 30 day period. The current FMLA regulations do not specifically address the designation of unforeseen, intermittent leave, such as those for chronic health conditions, but requires that notice must be provided no less than once every six months. The additional and more frequent notices will increase administrative costs for employers. To estimate this increased cost, CONSAD assumes that workers with chronic conditions take intermittent FMLA leave once a month. Assuming that the employer currently gives two notices per year (the current requirement), then the employer will have to send an additional 10 notices to each FMLA leave taker for chronic conditions. A recent WorldAtWork survey found that 28.6% of absences are the result of chronic or permanent/long term conditions.¹⁹ Therefore, CONSAD estimates that 1,999,977 ($6,992,925 \times 28.6\%$) FMLA leave takers use their leave for chronic conditions. Assuming 10 additional notices to each of these leave takers, CONSAD estimates that 19,999,770 additional notices will have to be sent. The estimated time to send each notice is 10 minutes at a cost of \$36.51 per hour for a compensation and benefits specialist. Therefore, the estimated additional administrative costs due to this provision is \$121,698,573 ($19,999,770 \text{ notices} \times 10/60 \times \36.51).

CONSAD estimates that the annual costs of the proposed provisions within 825.300 are \$115,128,007 ($\$5,106,373 - \$191,488,973 + \$116,004,128 + \$63,807,906 + \$121,698,573$).

*COMPLIANCE WITH EMPLOYER PROCEDURES FOR NOTIFICATION
(SECTIONS 825.302, 825.303 AND 825.304)*

The FMLA requires an employee to notify his or her employer of the need for leave and, generally, to schedule leave for planned medical treatments in a way that any absences do not unduly disrupt the employer’s business operations if the leave is foreseeable. Responses to the Department of Labor’s RFI indicated that unscheduled and unforeseeable leave was disruptive and potentially costly to employers. Without timely notices of absences, employers cannot adequately plan for an adjustment to work schedules. Unlike foreseeable leave for planned events, the FMLA does not address notice with respect to leave that is not foreseeable.

¹⁹ WorldAtWork, FMLA Perspectives and Practices: Survey of WorldAtWork Practices, Figure a.

The proposed provisions in 825.302, 825.303 and 825.304 require employees to comply with their employers' usual call in procedures to request leave, except when extraordinary circumstances exist such as when the employee needs emergency medical treatment. The proposed provisions expect notice to be provided as soon as practicable, meaning feasible under the circumstances, in these emergency situations. Calling in with the simple statement that the employee or the employee's family member is "sick" without providing more information will not be considered sufficient notice to trigger an employer's obligations under the Act in the case of unforeseeable leave.

The proposed changes to the notification requirements will likely impact the takers of unforeseeable leave more so than the takers of foreseeable leave. By its very definition, takers of foreseeable FMLA leave are aware of their need in advance and can easily notify their employer prior to taking FMLA leave. Even in cases where the exact timing of the leave is unknown 30 days in advance, the Department of Labor believes that most employees taking foreseeable FMLA will easily be able to comply with their employers' leave policies. On the other hand, by its very nature, unforeseeable leave presents difficulties for both employees and their employers, particularly when it comes to the requirement that the employee provide notice of the need for leave as soon as practicable. The proposed provisions should reduce some of the disruptions caused by unforeseeable and unscheduled leave as employees will be required to notify their employer of an absence as soon as practical.

Table 3.4 estimates the number of FMLA leaves potentially impacted by the proposed notification requirements. There were 6,992,925 FMLA leave-takers in 2005 who took 10,486,098 leaves. According to the Society for Human Resource Management (SHRM), FMLA leave takers did not notify their employer prior to the day of their work shift 46% of the time.²⁰ Applying this 46% to the 10,488,098 leaves, CONSAD estimates that 4,823,605 leaves are taken with the employer being notified on the day of the work shift, or after the work shift began.

There are three anticipated behavioral responses among leave-takers in response to the proposed provision. The first, and probably most prevalent, response is for leave-takers to simply change notification behavior and notify employers of leaves prior to the day of their work shift. Most leaves will still be taken because employees are able to follow the procedures of their employer. This proposed provision simply modifies notification behavior for employees, and, because the behavior modification is so slight, CONSAD expects that the cost or added effort required of the employee will be negligible. In instituting this provision, the government effectively minimizes many of the costs of unscheduled, intermittent FMLA leaves by allowing employers adequate time to cover for the shift of an FMLA leave taker. CONSAD assumes that 95% of the 4,823,605 current leaves with inadequate notice to the employer are such that the leave taker can and will provide sufficient notice. Therefore, 4,582,425 FMLA leaves will continue with adequate notice to the employer prior to the day of the work shift. Savings will result from the reduction in uncertainty and disruptions caused by unscheduled, intermittent FMLA leave. To estimate these savings, CONSAD assumed that timely

²⁰ Society for Human Resource Management. 2007. 2007 FMLA Survey.

notification of each FMLA leave would decrease disruptions by 1 hour. Using the average earnings of production and nonsupervisory workers on nonfarm payrolls plus 40% for benefits ($17.57 + 40\% = \$24.60$), the savings are estimated to be \$112,727,655 ($\$24.60 \times 4,582,425$).²¹

TABLE 3.4 - Provision 825.302 & 825.303 & 825.304 - Notification

| | | | |
|---|----------------------|--------------------|-----------|
| # of FMLA leaves | 10,488,098 | | |
| % of FMLA leaves for which employee gives notice on day of work shift | 46% | | |
| # of FMLA leaves for which employee likely gives inadequate notice | 4,823,605 | 4,823,605 | 4,823,605 |
| % of FMLA leaves that will continue but for which the employee will give more timely notice | 95% | | |
| % of workers avoiding discipline for absences (through FMLA) | | 4.9% | |
| % of FMLA leaves that are legitimate but for which the employee is unable to give adequate notice | | | .01% |
| # of FMLA leaves that will continue but for which the employee will give adequate notice | 4,582,425 | 236,357 | 4,824 |
| Savings per leave | \$24.60 | \$36.51 | |
| Total Savings | \$112,727,655 | \$8,629,394 | |

A second expected response is that some workers who continue to avoid compliance with their employer's attendance policies may be subject to their employer's disciplinary procedures for being absent. However, it should be noted that no workers with a legitimate need for FMLA leave will be in this category or decide not to take the leave in response to a last-minute emergency because the proposed revisions provide for "extraordinary circumstances" (see below), and employees are likely to take leave regardless of the interpretation of "as soon as practicable" during a serious health condition. CONSAD assumes that 4.9% of the 4,823,605 FMLA leaves with inadequate notice to the employer are these types of leaves. Therefore, 236,357 leaves will no longer qualify for FMLA. Assuming that it takes 1 hour for a "compensation and benefits specialist" to administer each FMLA leave designation, there will be a reduction in administrative costs of \$8,629,394 ($236,357 \times \36.51).

The total reduction in administrative and lost productivity costs from the 236,357 leaves no longer qualifying for FMLA and the 4,582,425 FMLA leaves for which there will be more timely notice to the employer total \$121,357,049.

A third expected response is that some leave-takers will still take leave without adequate notice prior to their leave. At times, an FMLA leave taker may need leave and be unable to notify his or her employer prior to the start of the work shift, such as in the case of employees with a serious health condition (or providing care to a family member with a health condition). However, the number of leaves for which adequate notice

²¹ Bureau of Labor Statistics, Tables From Employment and Earnings Data, October 2007. Table B-11. See <ftp://ftp.bls.gov/pub/suppl/empsit.ceseeb11.txt>.

cannot be given is likely very small because employees with a serious health need will take the FMLA leave, with the new requirement clarifying that the employer should be notified “as soon as practicable.” In addition, the proposed provision makes allowances for “extraordinary circumstances” when the employee cannot comply with the employer’s usual and customary notice and procedural requirements. CONSAD assumes that .1% of the 4,823,605 FMLA leaves with inadequate notice are these types of situations, or 4,824 leaves. These leaves will continue to occur without notice to the employer prior to the start of the employee’s work shift.

Untimely notification of an absence of a high-impact employee can have a more costly effect in time-sensitive industries than other industries. Absences of high-impact employees in the industries of manufacturing, health care, transportation, food services, public safety, and communications are likely to disrupt production (manufacturing) or the provision of services to clients (health care, transportation, food services, public safety, and communications). If an employer is unable to plan for an absence of a high impact employee in one of these industries because of late notification, the following disruptive events can occur:

- Manufacturing assembly lines may be interrupted if there is not a stand-by employee to take the absent employee’s place.
- Proper and adequate health care may not be provided to patients if a nurse or nurses’ aid does not show up for work and adequate provisions were not made because there was no notification to the employer.
- Passengers are delayed and productivity losses increase if an airline pilot or steward, bus driver, or train engineer do not show up for work at their expected time.
- Adequate public safety may not be provided when police officers, emergency dispatch workers, fire fighters, and paramedic shifts are not fully covered because of inadequate notification.

The reduction in productivity losses is likely to be greater within these high-impact occupations. Quantifying this reduction is difficult at best as there is very little occupation-specific and industry-specific data. In addition, most of these industries offer time-sensitive services which experience cycles of peak demand. An unexpected absence of an employee during a period of high demand would have a much greater impact than the absence during a period of low demand. For example, the food service industry is time-sensitive and experiences its highest demand at specific times of day. An absent employee results in greater productivity losses at a time of peak demand (such as lunch or dinner time in the food service industry) than at other times of day. This makes it difficult to quantify the productivity loss of an absent employee. There is little, if any, quantitative data regarding the level of employee absences during high demand versus low demand periods. Therefore, CONSAD did not estimate potential savings for these individual occupations and industries for the final report.

MODIFICATIONS TO CERTIFICATION REGULATIONS (Section 825.306 and 825.307)

Proposed provision 825.306 revises the Department of Labor's optional form (WH-380) which employees or their families may use to obtain medical certifications and second and third opinions. The new form clarifies the requirements for a "sufficient" medical certification. The new form will make it easier for health care providers to understand the form and complete it with sufficient information to make FMLA determination.

Proposed provision 825.307 has three significant proposed changes. First, the new provision clarifies the limited nature of the authentication process and removes the requirement that employees consent to the authentication of the certification. Second, the new provisions allow the employer to contact the employee's health care provider directly, rather than through a third-party health care provider which represents the employer. The current regulation requires the employer to use another health care provider to verify the information provided by the employee's medical certification. And third, the new provision extends the time allowed for an employer to provide the results of second and third opinions of medical certifications from two business days to five.

These proposed changes in 825.306 and 825.307 will decrease administrative costs of obtaining medical certifications for serious health conditions. First, employers will be more likely to obtain sufficient information from the employee's health care provider with the revised optional form. Second, the changes in 825.307 allow an employer's own staff to verify a medical certification rather than coordinating with a third party.

Table 3.5 provides the estimates of the savings. Using the 2000 Westat Survey, CONSAD assumes that 73.6% of leave-takers take leave for a serious health condition (either their own or of a covered family member's).²² Therefore, 5,146,793 FMLA leave takers take leave for a serious health condition. Using the 2000 Westat Survey, CONSAD assumes that 92% of these leave takers work at an establishment which requires medical certification for serious health conditions.²³ Therefore, 4,735,049 FMLA leave takers are required to obtain a medical certification for FMLA leave. Assuming 1.5 leaves per leave-taker, 7,102,574 leaves require a medical certification.

The proposed provisions will reduce the administrative costs of medical certifications for the reasons previously mentioned. CONSAD assumes that the new optional form and direct communication between the employer and employee's health care provider if a clarifying question arises will reduce the time needed for employers to administer medical certifications by 1/2 an hour. At \$36.51 per hour for a "compensation and benefits specialist" (or \$18.26 per 1/2 hour), the proposed provision will reduce administrative costs by \$129,657,490.

²² 2000 Westat Report, Table 2.3. Calculated by subtracting the 18.5% taking leave for the care of a new child and 7.9% taking leave for maternity or disability from 100%.

²³ 2000 Westat Report, Table A2-6.3.

TABLE 3.5 – Section 825.306 & 825.307 – Modifications to certification regulations

| Proposed Provision: | |
|--|---------------|
| # of FMLA leave takers | 6,992,925 |
| % with serious health condition | 73.6% |
| % required to get medical certification | 92.0% |
| # of FMLA leave takers needing medical certification | 4,735,049 |
| # of leaves per leave-taker | 1.5 |
| # of leaves affected by provision | 7,102,574 |
| Cost savings per leave | \$18.26 |
| Total Administrative Cost Savings | \$129,657,490 |

*CERTIFICATIONS ON FITNESS-FOR-DUTY
(SECTION 825.310)*

Provision 825.310 addresses two concerns in response to the Department of Labor’s RFI regarding fitness-for duty-certification. Current 825.310 states that the certification itself need only be a simple statement of the employee’s ability to return to work. The provision allows an employee to obtain a cursory statement of his or her ability to return to work without addressing the employee’s ability to perform his or her job. Comments in response to the RFI indicated that a simple statement may not adequately address whether or not the employee can safely return to work, particularly in an occupation in which safety is a significant concern.²⁴ To address this issue, the new provision requires a fitness-for-duty certification similar to that of the initial medical certification of the FMLA leave. The employee must obtain a certification from his or her health care provider that the employee is able to resume work. The employer must inform the employee of this requirement in the FMLA leave notification.

The second concern expressed in the responses to the RFI is that the current provision prevents an employer from obtaining a fitness-for-duty certification when an employee returns from an intermittent leave. Responses to the RFI indicated that the same safety concerns exist for intermittent leaves as they do for leaves taken in a block of time.²⁵ The proposed provision to 825.310 allows for employers to require fitness-for-duty certification when an employee returns from intermittent leave. The Department proposes that an employer be permitted to require an employee to furnish a fitness-for-duty certificate every 30 days if an employee has used intermittent leave during that period and reasonable safety concerns exist.

The proposed provision 825.310 will have some cost impacts. The additional information required for each fitness-for-duty certification will increase costs for health care providers because the certification takes more time than the current practice of making a cursory statement of fitness. According to the 2000 Westat Survey, 52.4% of

²⁴ U.S. Dept. of Labor, Family and Medical Leave Act Regulations: A Report on the Department of Labor’s Request for Information, 2007 Update, pages 79 – 81.

²⁵ Ibid.

FMLA leave takers take leave for their own serious health condition.²⁶ Therefore, 3,664,293 FMLA leave takers can be subject to the fitness-for-duty certification. However, only a small portion of these leave takers are actually required to submit such a certification. CONSAD assumes 10% are required to submit fitness-for-duty certification, or 366,429 FMLA leave takers. CONSAD assumes the cost of the proposed fitness-for-duty certification is 15 minutes of a health care provider's time. This time costs \$52.98 per hour or \$13.24 for 15 minutes.²⁷ Therefore, the cost for this additional information is \$4,851,524.

There will also be additional costs for intermittent leave-takers as the proposed change allows employers to require fitness-for-duty certification from them. An estimated 23.9% of FMLA leave takers use intermittent leave.²⁸ Of the 3,664,293 FMLA leave takers for their own serious health condition, 875,766 (3,664,293 x 23.9%) take intermittent FMLA leave. CONSAD assumes that 5% (or 43,788) of these leave takers work in an environment in which safety concerns exist. Not all of these employers will require a fitness-for-duty certification, although most likely will. Therefore, CONSAD assumes that, on average, these 43,788 FMLA leave takers will be required to submit three fitness-for-duty certifications. Previously, intermittent leave takers did not need a fitness-for-duty certification. Therefore, the cost of certification is the cost the health care provider charges the leave taker for a doctor's appointment. CONSAD assumes this cost to be, on average, \$50. Therefore, the estimated total additional cost for these certifications is \$6,568,200 (43,788 x 3 x \$50). CONSAD also believes that some of this cost will be transferred to employers through employer provide health insurance.

The proposed provision also increases costs for the employer. There is additional administrative time associated with requesting and processing the newly required fitness-for-duty certifications for intermittent leave takers. CONSAD estimates it takes 30 minutes of a "compensation and benefits specialist" to process these new certifications. At a cost of \$36.51 per hour, or \$18.26 per ½ an hour, CONSAD estimates that it will cost employers a total of \$2,398,707 to process the newly required certifications of 131,364 (43,788 leave takers x 3 leaves) intermittent FMLA leaves.

The total cost of the proposed 825.310 is \$11,419,724 (\$4,851,524 + \$6,568,200) to employees and \$2,398,707 to employers.

3.2.2 Summary

In this analysis, CONSAD estimated the impacts of proposed changes to provisions of the Family and Medical Leave Act. Table 3.6 summarizes the estimated costs and savings to employers and employees as a result of the proposed revisions. The cost savings to employers are substantial, with annual savings of \$133.6 million after the

²⁶ 2000 Westat Survey, Table 2.3.

²⁷ Average wage of a physician's assistant (\$37.84) plus 40% for benefits from the BLS National Compensation Survey, June 2006.

²⁸ U.S. Dept. of Labor, Family and Medical Leave Act Regulations: A Report on the Department of Labor's Request for Information, 2007 Update, page 134.

1st year. First year savings to employers will be \$71.1 million. This is likely a lower bound estimate of the total savings to be expected from the proposed provisions. As mentioned previously (and shown in Table 3.1), some time-sensitive industries have a large proportion of high-impact workers whose unexpected absence is more costly than other industries. CONSAD believes that the savings estimated from the proposed provisions would be higher, particularly the provision which encourages more timely notification to the employer of an absence, if the analysis could quantify the additional savings in these industries.

TABLE 3.6 – Summary of Impacts

| Provision | Cost to Employers (in Millions) | Cost to Employees (in Millions) |
|--|--|--|
| Reviewing and Implementing New Provisions | \$62.5 | 0 |
| 825.300, 825.301 | \$115.1 | 0 |
| 825.302, 825.303, 825.304 | -\$121.4 | 0 |
| 825.306, 825.307 | -\$129.7 | 0 |
| 825.310 | \$ 2.4 | \$11.4 |
| First Year Impact Major Revisions | -\$ 71.1 | \$11.4 |
| Annually Recurring Impact of Major Revisions | -\$133.6 | \$11.4 |

At the same time, the costs to employees are minimal at \$11.4 million. Not all of these costs will be placed on the employee as these costs are the result of need to obtain fitness-for-duty certifications among intermittent leave-takers and additional information required of leave takers needing a fitness-for-duty certification. Costs may be lower for employees with health insurance. The Kaiser Family Foundation’s Employer Health Benefits 2005 Annual Survey indicated that 60% of employees receive health insurance through their employer.²⁹ According to data from the Kaiser Family Foundation’s Update on Individual Health Insurance, another 6% of non-elderly individuals purchase their own health insurance.³⁰

²⁹ Kaiser Family Foundation. 2005. Employer Health Benefits 2005 Annual Survey, Figure 3.1 on page 41.

³⁰ Kaiser Family Foundation. 2004. Update on Individual Health Insurance, page 1.

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Appendix A: Estimates of the Number of Workers Eligible to Take FMLA Leave under S. 1894

Estimators were developed for (1) the numbers of parents, spouses, guardians and adult children who might serve as caregivers for military service members in specified age ranges, (2) the proportions of those potential caregivers who are employed, regardless of the size of their employers, and (3) the proportions who are employed by employers who are covered by FMLA (essentially, firms with at least 50 employees) and are eligible for job-protected leave under FMLA.

The number of seriously injured military service members has been estimated from the data contained in July 2007 report by the Dole-Shalala Commission (the President's Commission on Care for America's Returning Wounded Warriors), which estimates that there have been 3,082 seriously injured military service members since the beginning of hostilities in Iraq. Thus, during that roughly 4.5 year period, there have been about 750 seriously injured service members per year. If it is assumed that an approximately equal number of service members have been seriously injured during preparation or training for combat, the total annual number is about 1,500. Consequently, at any time there will be about 3,000 seriously injured service members whose potential caregivers would be eligible for job-protected leave under the provisions of the proposals under consideration.

CONSAD assumed that the age distribution of these seriously injured service members is the same as the distribution for all military service members who were wounded in action, with both serious and less serious injuries. Using injury data about Operation Iraqi Freedom from the Defense Manpower Data Center (MPDC) and the age distribution of military service members in general, CONSAD estimated the age distribution for all injured military service personnel and then applied this distribution to the approximately 3,000 seriously injured military service members. These numbers are shown in Table A.1.

Table A.1 – Estimated Number of Seriously Injured Military Service Members, by Age Range

| Age Range | Estimated Proportion | Projected Number |
|------------------|-----------------------------|-------------------------|
| 17 - 18 | 4.18% | 125 |
| 19 - 20 | 19.87% | 596 |
| 21 - 22 | 15.50% | 465 |
| 23 - 24 | 13.56% | 407 |
| 25 - 26 | 10.96% | 329 |
| 27 - 28 | 8.49% | 255 |
| 29 - 30 | 6.87% | 206 |
| 31 - 32 | 4.24% | 127 |
| 33 - 34 | 4.19% | 126 |
| 35 - 36 | 3.26% | 98 |
| 37 - 39 | 3.49% | 105 |
| 40 - 44 | 3.71% | 111 |
| 45 - 49 | 1.25% | 37 |
| 50+ | 0.44% | 13 |
| Total | 100.00% | 3,000 |

The restrictions on the categories of people who would be authorized to take job-protected leave if they serve as caretakers for seriously injured military service members makes analysis of the availability of potential caretakers to wounded warriors amenable to modeling. The restrictions place bounds on the numbers of people who might be stimulated to serve as caretakers that allow the distributions of the numbers of people in each category (parent, spouse, and adult children) to be estimated on the basis of data from the Current Population Survey (CPS) and the decennial Census of Population (COP).

CONSAD estimated the distribution of 0, 1, 2, 3, 4, and 5 or more parental, spousal, and dependent children caregivers for military service members of the specific age ranges shown in Table A.1 using the following method and assumptions. First, the distribution of the number of living parents was estimated by first computing, for CPS reference persons in a set of parental age ranges that are compatible with the age ranges of military members listed in Table A.1, the numbers and proportions of married males living with spouses, married females living with spouses, married males living separately, married females living separately, separated males, separated females, divorced males, divorced females, widowed males, widowed females, never married males, and never married females reported in the CPS for each age range.

Next, an adjustment was made for the expected separate inclusion of both parents of the same military member(s) in two different categories (married living separately, separated, or divorced), for the expected remarriage of widowed or divorced parents, and for the expected death of both parents of some children. Then, the adjusted estimates were appropriately summed, within each age range, to produce estimates of the

proportion of people with parents in that age range who can be expected to have zero, one, or two living parents.

The proportion of service members with spouses was estimated using data from the Defense Manpower Data Center (DMDC).

The numbers of dependent children among service members in different age ranges was estimated using data from the CPS. Based on those data, the number of adult children with parents in the age range was estimated for the potentially injured military service members to produce estimated distributions of the numbers of dependent adult children among service members in each age range.

Finally, for the estimator of guardians and persons in loco parentis, we assumed that all service members age 17 and 18 with no living parents would have one guardian or a person in loco parentis.

CONSAD then estimated the proportion of caregivers who would be employed. To do so, CONSAD used data from the CPS to calculate employment rates for caregiving parents, spouse, and dependent children. For parents and spouses, CONSAD calculated employment rates for age ranges expected to be associated with the age range of the military service members. Table A.2 provides the estimated age range and employment rates of parents and spouses of military service members of a particular age. CONSAD assumed that the employment rate of caregivers who were adult children was 66%. CONSAD then assumed that 60% of employed caregivers would be FMLA eligible.

Table A.2 – Estimated Employment Rates for Caregiving Parents and Spouses

| Age Range of Military Member | Parents' Age Range | Parents' Employment Rate | Spouse's Age Range | Spouse's Employment Rate |
|-------------------------------------|---------------------------|---------------------------------|---------------------------|---------------------------------|
| 17 - 18 | 35 - 53 | 0.797 | 17-21 | 0.569 |
| 19 - 20 | 37 - 55 | 0.790 | 17-23 | 0.610 |
| 21 - 22 | 39 - 57 | 0.783 | 18-25 | 0.683 |
| 23 - 24 | 41 - 59 | 0.771 | 20-27 | 0.743 |
| 25 - 26 | 43 - 61 | 0.755 | 22-29 | 0.772 |
| 27 - 28 | 45 - 63 | 0.729 | 24-31 | 0.793 |
| 29 - 30 | 47 - 65 | 0.690 | 26-33 | 0.796 |
| 31 - 32 | 49 - 67 | 0.649 | 28-35 | 0.794 |
| 33 - 34 | 51 - 69 | 0.600 | 30-37 | 0.798 |
| 35 - 36 | 53 - 71 | 0.546 | 32-39 | 0.796 |
| 37 - 39 | 55 - 74 | 0.487 | 34-41 | 0.801 |
| 40 - 44 | 58 - 79 | 0.363 | 36-43 | 0.804 |
| 45 - 49 | 63 - 84 | 0.208 | 38-45 | 0.800 |
| 50+ | 68+ | 0.119 | 47+ | 0.511 |

Source: 2007 Current Population Survey

The following discussion regarding parental caregivers gives an example of how these proportions of caregivers who were employed and FMLA eligible were used in CONSAD's estimates. CONSAD estimated that the probability of a military service member between the ages of 17-18 having 1 or 2 parents (or guardian) was .089 and .911, respectively. The probabilities are shown in Table A.3. CONSAD assumed that these parents would be between the ages of 35-53 and estimated their employment rate as 79.7%. The probability of a military member (age 17-18) having 2 working parents is equal to .578 (.911 x .797 x .797). The probability of the military member having 2 working FMLA eligible parents is .208 (.578 x .60 x .60). The probability of the military member having 1 employed parent would be equal to the probability of 1 out of 1 parent working (.089 x .797) plus the probability of 1 out of 2 parents working (.911 x .797 x (1-.797) x 2), which equals .366. The probability of the military member having 0 employed parents would be equal to the probability of 0 of 1 parent working (.089 x (1 - .797) plus the probability of 0 of 2 parents working (.911 x (1 - .797) x (1 - .797), which is equal to .056. Similar calculations were then used to determine the probability of the military member having 1 or 0 FMLA eligible caregivers. The probability of the military member having 1 FMLA eligible parent caregiver was .497 ((.578 x 0.6 x (1-0.6) x 2) + (0.366 x 0.6)) and the probability of having 0 FMLA eligible parent caregivers was .295 ((.0578 x .4 x .4) + (.366 x .4) + .056).

Table A.3. Probability Distribution of Number of Parent Caregivers, Employed Parent Caregivers, and FMLA Eligible Parent Caregivers, for military member of 17 to 18 years of age

| | # = 2 | # = 1 | # = 0 |
|--|-------|-------|-------------------|
| Probability of # of Parent Caregivers | .911 | .089 | .000 ^a |
| Probability of # of Employed Parent Caregivers | .578 | .366 | .056 |
| Probability of # of FMLA Eligible Caregivers | .208 | .497 | .295 |

a. Probability is 0 because CONSAD assumed a 17 or 18 year old without parents would have one guardian.

A similar process was used to calculate the number of employed and FMLA eligible spousal and adult children caregivers. Joint probabilities were then used to calculate the distribution of 0, 1, 2, 3, 4, and 5 or more FMLA eligible caregivers for military members by age range. Table A.4 provides this distribution.

Table A.4 – Distribution of FMLA Eligible Parent (or Guardian), Spouse, and Children Caregivers by Age of Military Member

| Age Range | Number of FMLA-Eligible Caregivers | | | | | |
|-----------|------------------------------------|--------|--------|-------|-------|-------|
| | 0 | 1 | 2 | 3 | 4 | 5+ |
| 17 - 18 | 29.38% | 49.64% | 20.91% | 0.07% | 0.00% | 0.00% |
| 19 - 20 | 29.25% | 49.26% | 21.09% | 0.40% | 0.00% | 0.00% |
| 21 - 22 | 28.90% | 48.65% | 21.50% | 0.95% | 0.00% | 0.00% |
| 23 - 24 | 27.75% | 47.45% | 22.71% | 2.09% | 0.00% | 0.00% |
| 25 - 26 | 26.64% | 46.24% | 23.91% | 3.21% | 0.00% | 0.00% |
| 27 - 28 | 26.50% | 45.45% | 24.23% | 3.81% | 0.00% | 0.00% |
| 29 - 30 | 27.12% | 44.88% | 23.93% | 4.06% | 0.00% | 0.00% |
| 31 - 32 | 27.97% | 44.58% | 23.41% | 4.05% | 0.00% | 0.00% |
| 33 - 34 | 30.48% | 44.51% | 21.55% | 3.46% | 0.00% | 0.00% |
| 35 - 36 | 32.17% | 44.03% | 20.35% | 3.35% | 0.09% | 0.00% |
| 37 - 39 | 33.70% | 43.28% | 19.27% | 3.47% | 0.26% | 0.02% |
| 40 - 44 | 36.95% | 41.31% | 17.23% | 3.83% | 0.60% | 0.08% |
| 45 - 49 | 38.61% | 39.42% | 16.47% | 4.51% | 0.87% | 0.13% |
| 50+ | 45.25% | 35.44% | 14.57% | 3.93% | 0.71% | 0.10% |

Assuming that the age distribution of those seriously wounded personnel is the same as the age distribution of all military service members wounded in action during the hostilities in Iraq or Afghanistan, we have computed the numbers of seriously injured service members who will have 0, 1, 2, 3, 4, or at least 5 potential caregivers who will be eligible for job-protected leave under various coverage options (e.g., all caregivers, all employed caregivers, and FMLA eligible caregivers). The results of this analysis are presented in Table A.5.

Table A.5: Estimated Number of Caregivers Eligible for Job-Protected Leave

| PARENTS, GUARDIANS, SPOUSES, CHILDREN AS CAREGIVERS | | Number of Wounded Warriors with n Job-Protected Caregivers, where n = | | | | | |
|---|------------------------|---|-------|-------|-----|----|-----------|
| Eligibility for job-protected leave | Total Wounded Warriors | 0 | 1 | 2 | 3 | 4 | 5 or More |
| All potential caregivers | 3,000 | 1 | 197 | 1,943 | 804 | 35 | 21 |
| All employed caregivers | 3,000 | 210 | 1,020 | 1,466 | 295 | 7 | 2 |
| FMLA-eligible employees | 3,000 | 872 | 1,402 | 658 | 67 | 1 | 0 |

Tables A.6a through A.6c on the following pages provide the number of wounded military service members with 0, 1, 2, 3, 4, or 5 or more caregivers, working caregivers, and FMLA-eligible caregivers, respectively.

Table A.6a – Distribution of Number of ALL Parent (or Guardian), Spouse, and Children Caregivers, by Age of Military Member

| Age Range | Total Wounded Warriors | Number of Wounded Warriors with n Caregivers, where n = | | | | | |
|-----------|------------------------|---|----------|----------|----------|----------|-----------|
| | | <u>0</u> | <u>1</u> | <u>2</u> | <u>3</u> | <u>4</u> | <u>5+</u> |
| 17 - 18 | 125 | 0 | 11 | 113 | 1 | 0 | 0 |
| 19 - 20 | 596 | 0 | 49 | 517 | 29 | 0 | 0 |
| 21 - 22 | 465 | 0 | 37 | 379 | 49 | 0 | 0 |
| 23 - 24 | 407 | 0 | 27 | 290 | 89 | 0 | 0 |
| 25 - 26 | 329 | 0 | 19 | 199 | 111 | 0 | 0 |
| 27 - 28 | 255 | 0 | 13 | 135 | 107 | 0 | 0 |
| 29 - 30 | 206 | 0 | 10 | 94 | 102 | 0 | 0 |
| 31 - 32 | 127 | 0 | 5 | 50 | 71 | 0 | 0 |
| 33 - 34 | 126 | 0 | 6 | 50 | 70 | 0 | 0 |
| 35 - 36 | 98 | 0 | 5 | 35 | 55 | 3 | 0 |
| 37 - 39 | 105 | 0 | 5 | 35 | 55 | 7 | 2 |
| 40 - 44 | 111 | 0 | 6 | 33 | 48 | 15 | 9 |
| 45 - 49 | 37 | 0 | 2 | 9 | 12 | 7 | 6 |
| 50+ | 13 | 0 | 1 | 3 | 4 | 3 | 3 |
| Total | 3,000 | 1 | 197 | 1,943 | 804 | 35 | 21 |

Table A.6b - Distribution of Number of WORKING Parent (or Guardian), Spouse, and Children Caregivers, by Age of Military Member

| Age Range | Total Wounded Warriors | Number of Wounded Warriors with n Working Caregivers, where n = | | | | | |
|-----------|------------------------|---|----------|----------|----------|----------|-----------|
| | | <u>0</u> | <u>1</u> | <u>2</u> | <u>3</u> | <u>4</u> | <u>5+</u> |
| 17 - 18 | 125 | 7 | 46 | 72 | 0 | 0 | 0 |
| 19 - 20 | 596 | 34 | 215 | 336 | 11 | 0 | 0 |
| 21 - 22 | 465 | 27 | 165 | 253 | 21 | 0 | 0 |
| 23 - 24 | 407 | 23 | 135 | 210 | 39 | 0 | 0 |
| 25 - 26 | 329 | 18 | 102 | 160 | 49 | 0 | 0 |
| 27 - 28 | 255 | 15 | 77 | 118 | 45 | 0 | 0 |
| 29 - 30 | 206 | 14 | 63 | 90 | 39 | 0 | 0 |
| 31 - 32 | 127 | 9 | 40 | 54 | 24 | 0 | 0 |
| 33 - 34 | 126 | 12 | 43 | 51 | 20 | 0 | 0 |
| 35 - 36 | 98 | 11 | 35 | 38 | 14 | 1 | 0 |
| 37 - 39 | 105 | 13 | 38 | 38 | 14 | 2 | 0 |
| 40 - 44 | 111 | 18 | 42 | 34 | 13 | 3 | 1 |
| 45 - 49 | 37 | 7 | 14 | 10 | 5 | 2 | 0 |
| 50+ | 13 | 4 | 4 | 3 | 1 | 0 | 0 |
| Total | 3,000 | 210 | 1,020 | 1,466 | 295 | 7 | 2 |

Table A6c. – Distribution of Number of FMLA Eligible Parent (or Guardian), Spouse, and Children Caregivers, by Age of Military Member

| Age Range | Total Wounded Warriors | Number of Wounded Warriors with n FMLA-Eligible Caregivers, where n = | | | | | |
|-----------|------------------------|---|----------|----------|----------|----------|-----------|
| | | <u>0</u> | <u>1</u> | <u>2</u> | <u>3</u> | <u>4</u> | <u>5+</u> |
| 17 - 18 | 125 | 37 | 62 | 26 | 0 | 0 | 0 |
| 19 - 20 | 596 | 174 | 294 | 126 | 2 | 0 | 0 |
| 21 - 22 | 465 | 134 | 226 | 100 | 4 | 0 | 0 |
| 23 - 24 | 407 | 113 | 193 | 92 | 9 | 0 | 0 |
| 25 - 26 | 329 | 88 | 152 | 79 | 11 | 0 | 0 |
| 27 - 28 | 255 | 68 | 116 | 62 | 10 | 0 | 0 |
| 29 - 30 | 206 | 56 | 92 | 49 | 8 | 0 | 0 |
| 31 - 32 | 127 | 36 | 57 | 30 | 5 | 0 | 0 |
| 33 - 34 | 126 | 38 | 56 | 27 | 4 | 0 | 0 |
| 35 - 36 | 98 | 32 | 43 | 20 | 3 | 0 | 0 |
| 37 - 39 | 105 | 35 | 45 | 20 | 4 | 0 | 0 |
| 40 - 44 | 111 | 41 | 46 | 19 | 4 | 1 | 0 |
| 45 - 49 | 37 | 14 | 15 | 6 | 2 | 0 | 0 |
| 50+ | 13 | 6 | 5 | 2 | 1 | 0 | 0 |
| Total | 3,000 | 872 | 1,402 | 658 | 67 | 1 | 0 |