

IMPLEMENTATION OF THE FAMILY AND MEDICAL LEAVE ACT: TOWARD THE FAMILY-FRIENDLY WORKPLACE

DONNA LENHOFF* AND CLAUDIA WITHERS**

INTRODUCTION

On February 5, 1993, President Clinton signed the first law of his Administration: the Family and Medical Leave Act ("FMLA").¹ While the FMLA is a labor standard, codifying requirements for covered employers, it is also a major milestone in the legal support of family life because it explicitly recognizes that family life events have an

* Ms. Lenhoff is General Counsel and Director of Work and Family Programs of the Women's Legal Defense Fund in Washington, D.C. She is the principal author of this paper.

The Women's Legal Defense Fund ("WLDF") is a national advocacy organization that, since its founding in 1971, has been a leading force in the drive to achieve equality for women in the United States. WLDF advocates for public policies to help women become full and equal participants in their public and private lives. WLDF led the 250-member broad-based coalition that lobbied for the Family and Medical Leave Act as well as the local effort that resulted in enactment of the D.C. Family and Medical Leave Act. Ms. Lenhoff presented this paper at *The American University Journal of Gender & the Law Symposium on Gender, Family & Change: Developments in the Legal Regulation of Family Life*. Ms. Lenhoff is indebted to Alma Henderson, Robin Runge, and Robin Walker for their valuable assistance in the preparation of this paper, as well as to her co-presenter, Claudia Withers. An earlier version of this paper was presented to the New England Work & Family Association in June, 1993.

** Ms. Withers is Executive Director of the Fair Employment Council of Greater Washington ("FEC"). She presented this paper with Ms. Lenhoff at *The American University Journal of Gender & the Law Symposium on Gender, Family & Change: Developments in the Legal Regulation of Family Life*.

The FEC is a civil rights, research and advocacy organization founded to promote equal opportunity in employment. It primarily relies on the tools of employment testing, demographic analysis, public education, and litigation to identify and challenge discriminatory employment practices and other barriers which impede full access to and participation in the labor market. FEC was founded due to a deep and continuing concern about the limitations of traditional civil rights enforcement and the impact of those limitations on job prospects for women, people of color, and, especially, young people.

1. Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601-2654 (Supp. V 1993).

impact on the workplace, and requires the workplace to accommodate those events—albeit in a fairly modest way. This article presents four bases for analysis of the legislation: 1) a summary of the FMLA; 2) a discussion of the main concepts underlying the FMLA, which should inform its implementation; 3) projections about the FMLA's implementation costs and its benefits; and 4) suggestions concerning what should be next on policymakers' agendas in the area of work and family.

I. SUMMARY OF THE FMLA

After years of coalition and support building,² congressional hearings with literally scores of witnesses, markups, and compromises,³ a carefully worded campaign promise by George Bush,⁴ followed by two Bush vetoes,⁵ the FMLA finally became law when President Clinton signed it on February 5, 1993.⁶ The Clinton Administration enacted the FMLA with remarkable speed. Indeed, United States Department of Labor ("DOL") Secretary Robert Reich remarked that he believed it was one of the quickest enactments of a major piece of legislation in a new administration in history.⁷

The FMLA's major provisions are as follows:

- It guarantees covered employees up to twelve weeks of leave per year:
 - to care for a newborn child or for a child newly placed for adoption or foster care;
 - to care for an employee's child, parent, or spouse with a serious health condition; or

2. Tom Kenworthy, *Senate Passes Bill Mandating Parental, Family-Care Leave; Administration Has Indicated Veto Is Likely*, WASH. POST, June 15, 1990, at A1 (stating that advocacy groups in support of the FMLA "have pushed the legislation for five years").

3. See *infra* Women's Legal Defense Fund Legislative Development of the Family and Medical Leave Act (1993) (reprinted at the end of this article) [hereinafter Legislative Development].

4. See David Hoffman, *Bush to Address Parental Leave, Wage Floor; Vice President Wants to Fill In Details of Convention Call for a 'Kinder, Gentler' Nation*, WASH. POST, Sept. 11, 1988, at A20 (reporting that Candidate Bush, prior to the 1988 presidential election, stated: "We also need to assure that women don't have to worry about getting their jobs back after having a child or caring for a child during a serious illness.").

5. President's Message to House of Representatives Returning Without Approval the Family and Medical Leave Act of 1990, 26 WEEKLY COMP. PRES. DOC. 1030-31 (June 29, 1990); President's Message to Senate Returning Without Approval the Family and Medical Leave Act of 1992, 28 WEEKLY COMP. PRES. DOC. 1722-23 (Sept. 22, 1992).

6. President's Statement on Signing the Family and Medical Leave Act of 1993, 29 WEEKLY COMP. PRES. DOC. 144 (Feb. 5, 1993). See *infra* Legislative Development (documenting the legislative evolution of family-friendly work policies).

7. Interview with Robert Reich, U. S. Secretary of Labor, in Washington, D.C. (Feb. 5, 1993).

— to care for an employee's own serious health condition.⁸

- The general effective date for the FMLA was August 5, 1993.⁹ If a collective bargaining agreement was in effect on that date, however, the FMLA took effect on the date on which the collective bargaining agreement ended or on February 5, 1994, whichever occurred sooner.¹⁰
- The federal government (including Congress), state and local governments, and all private employers with fifty or more employees who work within a seventy-five mile radius of the central office or headquarters are covered.¹¹
- An employee becomes eligible for leave under the FMLA after having worked for her or his employer for at least twelve months, and for at least 1,250 hours during the twelve month period immediately preceding the commencement of the leave.¹² (Over a twelve-month period, this computes to approximately twenty-four hours per week for employees who work the same number of hours each week.)
- An employer must maintain health insurance benefits during the period of leave at the level and under the conditions such coverage would have been provided if the employee had not taken leave.¹³
- When an employee returns from leave, she or he must be given her or his previous position, or a position with equivalent benefits, pay, and other terms and conditions of employment.¹⁴ There is, however, an exemption for "key employees": if the employee is among the highest paid ten percent of the employees within seventy-five miles of the site where she or he works and reinstatement would cause "grievous economic injury" to the employer, reinstatement may be denied.¹⁵
- Notice and certification requirements:
 - If an employee needs leave for the birth or adoption of a child or for planned medical treatment, she or he must provide the employer with thirty days' advance notice, or as much notice as is practicable under the circumstances of the need for leave.¹⁶ If the employee needs leave for a

8. Family and Medical Leave Act, 29 U.S.C. § 2612(a)(1).

9. 29 U.S.C. § 2601.

10. 29 U.S.C. § 2601.

11. 29 U.S.C. § 2611(4).

12. 29 U.S.C. § 2611(2)(A).

13. 29 U.S.C. § 2614(c)(1).

14. 29 U.S.C. § 2614(a)(1).

15. 29 U.S.C. § 2614(b).

16. 29 U.S.C. § 2612(e).

serious health condition (that of a family member or the employee's own), the employer may require the employee to provide a certificate issued by a doctor or other health care provider, stating "the date on which the serious health condition commenced,"¹⁷ its "probable duration,"¹⁸ and other "appropriate medical facts."¹⁹

- An employee whose rights under the FMLA are violated can bring an action in federal or state court to recover damages²⁰ (including "wages, salary, employment benefits or other compensation" lost because of the violation, and actual monetary losses suffered by the employee with interest),²¹ equitable relief ("including employment, reinstatement, and promotion"),²² and "reasonable attorney's fees, reasonable expert witness fees, and other costs."²³ The employee's right to bring a private action ends, however, if the Secretary of Labor brings an action on her or his behalf.²⁴
- The FMLA is enforced by the United States Department of Labor.²⁵

The federal FMLA was not the first law setting out these or similar employment standards. Responding to public pressure, a number of states had previously enacted family or medical leave-type labor standards by the time Congress passed this federal bill. States often modelled their laws after the FMLA proposals then pending in Congress.²⁶ One in particular, the District of Columbia Family and Medical Leave Act,²⁷ has even broader coverage than the federal FMLA, specifically in the number of weeks of leave provided, and the family members for whose serious health conditions employees may take job-guaranteed leave.²⁸

17. 29 U.S.C. § 2613(b)(1).

18. 29 U.S.C. § 2613(b)(2).

19. 29 U.S.C. § 2613(b)(3).

20. 29 U.S.C. § 2617(a)(2).

21. 29 U.S.C. § 2617(a)(1)(A).

22. 29 U.S.C. § 2617(a)(1)(B).

23. 29 U.S.C. § 2617(a)(3).

24. 29 U.S.C. § 2617(a)(4).

25. 29 U.S.C. §§ 2617(b), (d), (e).

26. See Donna R. Lenhoff & Sylvia M. Becker, *Family and Medical Leave Legislation in the States: Toward a Comprehensive Approach*, 26 HARV. J. ON LEGIS. 403, 442-45 (1989) (providing an overview of state family and medical leave provisions as of March 1989).

27. D.C. CODE ANN. § 36-1301 (1993 & Supp. 1994).

28. D.C. CODE ANN. §§ 36-1301(4) - 1303 (stating that the District of Columbia provides two separate sixteen week periods of leave every two years for 1) an employee's own serious health condition, and 2) an employee to care for a family member who has a serious health condition). "Family member" includes not only employees' children, spouses, and parents, but also people to whom they are related by marriage and people with whom they "share[] or [have] shared, within the last year, a mutual residence and with whom [they] maintain[] a committed

To date, there has been little judicial interpretation of the federal FMLA, but the DOL has issued an extensive interim interpretative rule.²⁹ On March 10, 1993, the DOL issued a notice of proposed rulemaking in which it sought public comment on a variety of issues to be addressed in the regulations.³⁰ Subsequently, on June 4, 1993, the interim final regulations were issued; the DOL accepted public comment on those regulations through December 3, 1993.³¹ As of this writing, the Department is reviewing the more than 900 comments received and is planning some revisions to the interim regulations; it projects that final regulations will be issued later this year.³²

The interim final regulations provide fair and reasonable interpretations of the statute, which are, for the most part, consistent with the Act's text and legislative history.³³ Furthermore, the regulations are thorough and relatively easy to use.³⁴ In particular, the question and answer format greatly enhances their readability.³⁵ The DOL is to be commended for providing such comprehensive treatment in the short period allowed by the statute.

However, a few provisions of the interim final regulations contain inaccurate interpretations of the Act, or otherwise unduly limit employees' rights under the FMLA;³⁶ others fail to include information that would prove extremely useful for employers and employees implementing the FMLA's requirements.³⁷ These limiting provisions fall into six major categories: (1) leave based on serious health (medical) conditions; (2) rights and obligations during FMLA leave; (3) job restoration requirements; (4) notice requirements; (5) enforcement, posting, and recordkeeping requirements; and (6) special rules for certain educational employees. The Women's Legal Defense Fund ("WLDF") has urged the DOL to review and revise

relationship." D.C. CODE ANN. Id. § 1301(4).

29. Family and Medical Leave Act of 1993, 58 Fed. Reg. 31,794 (1993) (amending 29 C.F.R. pt. 825 (1991)).

30. Implementation of the Family and Medical Leave Act, 58 Fed. Reg. 13,394 (1993) (amending 29 C.F.R. pt. 825 (1991)).

31. Family and Medical Leave Act, 58 Fed. Reg. 31,794 (1993).

32. Telephone Interview with Hermelinda B. Pompa, Acting Executive Director of Family and Medical Leave Commission (Oct. 5, 1994) (stating that the Commission met on September 28, 1994 and heard a report on the status of the regulations).

33. Women's Legal Defense Fund, Comments of the Women's Legal Defense Fund on the U.S. Labor Department's Interim Final Rule Interpreting the Family and Medical Leave Act of 1993, 1 (December 3, 1993) [hereinafter Comments]. The complete text is on file at *The American University Journal of Gender & the Law* and the WLDF.

34. See Comments, *supra* note 33, at 1.

35. See Comments, *supra* note 33, at 1.

36. See Comments, *supra* note 33, at 1.

37. See Comments, *supra* note 33, at 1-2.

these problematic provisions.³⁸ The following are the highlights of WLDF's Comments:

1. Provisions relating to leave based on serious health (medical) conditions.³⁹

*Serious Health Condition*⁴⁰ - Section 825.114. The regulation imposes a minimum duration requirement—a 'three-day' rule—in the definition of serious health condition for which employees can take leave. This approach is contrary to the language and legislative history of the Act, and we urge the DOL to modify the section of the definition that covers conditions that may result in a period of incapacity greater than three days if not treated by including 'chronic or long term' conditions as nonexclusive examples of such conditions.

*Health Care Provider*⁴¹ - Section 825.118. The DOL's list of providers 'capable of providing health care services' is too limited. We suggest language to broaden the types of practitioners that will be covered under the Act.

*Certification of Physician or Practitioner Form*⁴² - Appendix B to Part 825. The DOL Physician Certification form requires more information than the FMLA authorizes, such as 'diagnosis' and unnecessary details about the regimen of treatment. Requesting or requiring such information may also violate the ADA.⁴³ We suggest that the model certification form be revised. We also highlight some possible confidentiality issues and suggest a signature line for the patient to authorize the provider to release the information contained in the form to the employer for FMLA purposes only.

38. See Comments, *supra* note 33, at 2. Portions of the highlights are reprinted herein.

39. WLDF's Comments were submitted in response to an interim final regulations implementing the 1993 FMLA. 58 Fed. Reg. 31,794 (1993). The section numbers in WLDF's Comments reflect the proposed section numbers of the interim rules.

40. Comments, *supra* note 33, at 9-12.

41. Comments, *supra* note 33, at 14-15.

42. Comments, *supra* note 33, at 61-62.

43. Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101-12213 (Supp. IV 1992), amended by Civil Rights Act of 1991, 42 U.S.C. §§ 1211(4), 12112, 12209 (Supp. IV 1992) (prohibiting employers from inquiring about an employee's medical condition, unless it involves the employee's ability to perform the job functions with, or without, reasonable accommodation).

*Adequacy of Medical Certification*⁴⁴ - Section 825.307. We recommend that a provision be added to clarify that if an employer requests a second medical opinion, and if a third medical opinion is necessary, the employer must not only pay for the health care providers' examinations, but also compensate the employee for time off work necessary for obtaining the additional opinions.

*Recertifications*⁴⁵ - Section 825.308. The regulations permit employers to ask employees on FMLA leave for medical recertifications as frequently as every thirty days. We urge the DOL to limit recertifications to circumstances in which employers have justifications for requesting them, and to provide expressly that these recertifications be paid for by employers.

*Fitness-for-Duty Reports*⁴⁶ - Section 825.310. The regulations permit employers, before employees on medical leave return to work, to require fitness-for-duty reports of only certain classes of employees. The FMLA says, however, that such fitness-for-duty report requirements have to be 'uniformly applied.' This section may also violate the Americans with Disabilities Act in that it may permit discrimination *among* disabilities.⁴⁷

2. Provisions relating to rights and obligations during FMLA leave:

*Substitution of Paid Leave*⁴⁸ - Section 825.207. The regulation allows substitution of paid annual leave for FMLA leave relating to the birth or placement of a child or to care for a family member *only* under circumstances permitted by the employer's family leave plan; and allows substitution of paid sick/medical leave for FMLA leave to care for an employee's family member's serious health condition *only* for situations in which the employer would normally allow such paid leave. These limitations on the employee's ability to substitute paid leave are supported by neither the Act's text nor its legislative history.

44. Comments, *supra* note 33, at 46-47.

45. Comments, *supra* note 33, at 47.

46. Comments, *supra* note 33, at 48-50.

47. Americans with Disabilities Act, 42 U.S.C. §§ 12101-12213.

48. Comments, *supra* note 33, at 21-24.

*Recovery of premiums paid during leave*⁴⁹ - Section 825.213. The regulations appear to require that an employee return to and remain at work for at least 30 days after FMLA leave or risk the employer recovering, under FMLA section 104(c)(2), health insurance premiums made on the employee's behalf during the leave. This 30 day period has no basis in the FMLA; we urge its deletion or at least its substitution with a one-work week period.

3. Provisions relating to job restoration requirements:

*Equivalent Position*⁵⁰ - Section 825.215. The regulation's treatment of the employer's obligation to restore the employee to the same or an 'equivalent' position is confusing because it uses the terms 'equivalent' and 'substantially similar' without clarifying whether these terms have the same meaning. The regulation also arbitrarily excludes potential for future promotions or layoffs from the terms or conditions of employment that must be substantially equivalent. In addition, the regulation's statement that employees on leave are not entitled to increases based on seniority, length of service, or work performance may be inconsistent with the principle behind the restoration provisions of the FMLA. Employees on leave should still be entitled to seniority or merit increases that are not affected by the fact that the employee took leave.

4. Provisions relating to notice requirements:

*Required Notice to Employers*⁵¹ - Sections 825.302 and 825.303. We recommend that the regulations state explicitly that employees wishing to take FMLA leave not be required to give notice to top company officials and that notice to a supervisor or other appropriate person to whom the employee would ordinarily report will suffice.

49. Comments, *supra* note 33, at 26-30.

50. Comments, *supra* note 33, at 30-34.

51. Comments, *supra* note 33, at 42-44.

*Effect of Employee's Failure to Provide Notice*⁵² - Section 825.304. We recommend that the regulations provide that an employee who did not give 30 days' [sic] advance notice of foreseeable FMLA leave not be penalized unless his or her failure actually prejudices the employer.

5. Provisions relating to enforcement, posting, and record-keeping requirements:

*Enforcement*⁵³ - Section 825.400. We suggest that the regulations set forth a complaint procedure providing for expedited relief and that they include equitable relief as one of the available remedies.

*Recordkeeping Requirements*⁵⁴ - Section 825.500. We urge the DOL to clarify that both the FMLA and ADA require employers to keep confidential, separate files of employees' medical records.

*Posting Requirements*⁵⁵ - Section 825.300. We recommend that the DOL develop state-specific notices of FMLA rights for use in states that have more generous family or medical leave policies than the FMLA, mention collectively bargained rights in the notice, and provide versions of the notices in other commonly used languages.

6. Special rules for certain educational employees:

*Determination of leave taken for educational employees*⁵⁶ - Section 825.603. We strongly object to the provision in § 825.603 that counts any leave that an affected educational employee is required to take for 'periods of a particular duration' or until the end of the school term as FMLA leave. This interpretation is unsupported by both the statute or [sic] the legislative history.

52. Comments, *supra* note 33, at 44-45.

53. Comments, *supra* note 33, at 53.

54. Comments, *supra* note 33, at 54-55.

55. Comments, *supra* note 33, at 36-37.

56. Comments, *supra* note 33, at 56.

The FMLA also sets up a Commission on Leave.⁵⁷ The Commission's main charge is to study existing family and medical leave benefits provided by employers who are not covered by FMLA, and their potential costs, benefits, and impact on productivity, job creation, and business growth.⁵⁸ It will also explore "the impact on employers and employees of policies that provide temporary wage replacement during periods of family and medical leave," i.e., paid leave.⁵⁹ The Commission on Leave must report to Congress within two years of its first meeting.⁶⁰ Perhaps the Commission's report will encourage Congress to reexamine FMLA's thresholds—for example, its failure to cover employees who work at companies with fewer than fifty employees within a 75-mile radius of the central office, or who have not worked 1,250 hours in the previous year.

II. CONCEPTS UNDERLYING FMLA

Three major concepts motivated the FMLA's drafters. First, the FMLA was drafted to respond to the changing face of the American workforce and to recognize employees' needs to balance their family and job responsibilities.⁶¹ The so-called nuclear family in which the father works outside the home as the sole breadwinner and the mother stays at home to care for the children is a thing of the past. As the House Education and Labor Committee found when it considered the FMLA, sixty-five percent of mothers and ninety-six percent of fathers are in the paid labor force.⁶² Fifty-one percent of mothers with children under age one work outside of the home.⁶³ These statistics indicate that most American parents, in either single-parent or two-parent households, have both job responsibilities and families to nurture. Further, with the aging of our population,⁶⁴ an increasing number of Americans are becoming responsible for caring for their parents⁶⁵ and other family members.⁶⁶

57. Family and Medical Leave Act of 1993, 29 U.S.C. § 2631.

58. 29 U.S.C. § 2632(1).

59. 29 U.S.C. § 2632(1)(H).

60. 29 U.S.C. § 2632(2).

61. 29 U.S.C. § 2601.

62. H.R. REP. NO. 8, 103d Cong., 1st Sess., pt. 1, at 23 (1993) (referring to Bureau of Labor Statistics' figures).

63. *Id.*

64. *Id.* ("[D]ue to advances in medical technology and health care . . . the fastest growing segment of the American population is the elderly.").

65. *Id.* at 16 ("[A]s our population ages, many working people are becoming responsible for their care of the aging parents.").

66. *Id.* at 24 (stating that "20 to 25 percent [sic] of the more than 100 million American workers have some caregiving responsibility to an older relative").

The FMLA responds to these changes by giving employees job security and health-insurance in situations when they must put their family needs before their job responsibilities. This is the underlying purpose of the law,⁶⁷ and should inform all attempts to implement and interpret the FMLA.

A second major concept underlying the FMLA is that family and medical emergencies happen to all employees, not just females.⁶⁸ Men, as well as women, need family and medical leave. Men, like women, have lost their jobs because they were forced to miss work following the birth or adoption of a child, or because of their own serious illness or that of a family member. In fact, at some point in their working lives, any employee, male or female, can find herself or himself in need of family or medical leave. Furthermore, men and women are equally likely to have, and to take time to care for, seriously ill children, parents, and spouses. Thus, according to the General Accounting Office ("GAO"), of the more than 1.63 million employees a year who will potentially benefit from the FMLA, more than 800,000 men stand to benefit from the law each year.⁶⁹

By granting both female and male employees the right to family and medical leave, the FMLA may help to change society's perception of child care, elder care, and other dependent care as "women's work." It may even encourage men to help care for their families. In Sweden, for example, which guarantees male and female employees eighteen months of family leave at approximately ninety percent of gross pay, a significant percentage of married Swedish men—almost twenty-nine percent—took time off to care for their children born in 1981.⁷⁰

67. See 29 U.S.C. § 2601(b)(2) (stating that the purpose of the FMLA is "to entitle employees to take reasonable leave for medical reasons, for the birth or adoption of a child, and for the care of a child, spouse, or parent who has a serious health condition . . .").

68. See 29 U.S.C. § 2601(a)(2) (stating as a preliminary finding that "it is important for the development of children and the family unit that fathers and mothers be able to participate in early childrearing and the care of family members who have serious health conditions.").

69. Letter from United States GAO to Sen. Nancy Kassenbaum and Rep. John Porter (Feb. 1, 1993) (GAO/HRD 93-14-R at 2) [hereinafter GAO Report] (estimating that 1,631,000 employees were potential beneficiaries of the FMLA's provision for leave to care for a seriously ill child, spouse, or parent and for employees' own temporary medical leave); *The Parental and Medical Leave Act of 1988: Report on S. 2488, Estimated Cost of Revised Parental and Medical Leave Act: Report Before the Subcomm. on Children, Family, Drugs and Alcoholism of the Senate Comm. on Labor and Human Resources*, 100th Cong., 2d Sess. 3-4 (1988) (estimating that half of the employees taking such types of leave can be expected to be men; and leave by women will be only for leave to care for newborn children, not for other types of leave covered by the Act).

70. Marianne Sundstrom, *Sweden: Supporting Work, Family and Gender Equality*, in *CHILD CARE, PARENTAL LEAVE, AND THE UNDER 3S: POLICY INNOVATION IN EUROPE 171, 186* (Sheila B. Kamerman & Alfred J. Kahn eds., 1991).

The law may also encourage men to care for some family members for a very practical reason: while women have traditionally cared for their parents and their spouse's parents when they fall ill, the FMLA only gives an employee the right to take leave to care for her or his own seriously ill parent.⁷¹ Therefore, a female employee cannot take leave under the law to care for her mother- or father-in-law. In these situations, the burden of taking time off to care for ailing family members may shift from women, i.e., the daughters-in-law, to men, i.e., the sons, who have the right to take leave to care for their ill parents.

Regardless of whether the FMLA encourages men to shoulder more family caretaking responsibilities, men will use the FMLA a great deal. Based on the GAO's estimates, which assume that men will take no leave for newborn or newly-adopted children, fully one-half of the leaves taken under FMLA will be taken by men.⁷² This means that employers will soon see that "family leave" will be used extensively by all their employees, not just the women. Thus employers will not be able to use the FMLA or women's roles as family caretaker as an excuse for refusing to hire women or otherwise discriminating against them in employment.

The final concept underlying the FMLA is that it—like child labor, minimum wage, employment discrimination, safety and health, and pension and welfare benefit laws—creates a minimum labor standard. In general, such minimum labor standards are not put into place until three conditions are met:

1. A serious social problem is recognized, such as, in the case of the minimum wage laws, the payment of exploitative wages;
2. Employers' voluntary corrective actions do not adequately address the social problem; and,
3. The laws establish standards that employers can meet.⁷³

The FMLA follows in the tradition of these now widely accepted minimum labor standards. First, as previously mentioned, the FMLA responds to dramatic changes in the composition of the workforce that have created a crisis for working families. Second, although some businesses had adopted adequate leave policies, many had not—and

71. 29 U.S.C. § 2612(a)(1)(C).

72. See GAO Report, *supra* note 69.

73. S. REP. NO. 3, 103d Cong., 1st Sess. 4-5 (1993), *reprinted in* 1993 U.S.C.C.A.N. 3, 6-7 (discussing minimum labor standards).

arguably would not have done so without a federal standard. Third, like these other minimum labor standards, the FMLA creates a standard that employers can meet: employers that already had adopted family and medical leave policies found them neither costly nor burdensome to implement.⁷⁴

In the authors' opinion, in ten years, family and medical leave will be considered fundamental to an employee's decent working environment. The authors take it for granted, just as we today consider employees' rights to minimum wages, pensions and other benefits, and a safe work environment free of employment discrimination, to be fundamental to a decent workplace.

III. THE ECONOMIC IMPACT OF THIS NEW MINIMUM LABOR STANDARD

Data strongly suggest that the FMLA can and will be cost-effective; it will accommodate employees' needs while making businesses more productive.⁷⁵ Indeed, the bottom line is that the FMLA actually *saves* employers money. The FMLA allows employees who need leave to return to their jobs, thereby avoiding the extra costs employers incur in replacing them with new employees. Furthermore, family and medical leave policies reduce the need to recruit, hire, and train workers to replace employees on leave—increasing employee morale and productivity.

Empirical evidence demonstrates the cost-effective benefits of the FMLA.

- A nationwide survey of business executives, commissioned by the Small Business Administration ("SBA"), found that the costs of permanently replacing employees are, on average, significantly greater than those of granting requests for leave. The study found that employee terminations due to illness, disability, pregnancy, or childbirth cost employers from \$1,131 to \$3,252 per termination, while the average cost of providing unpaid leave ranged from only \$.97 to \$97.78 per week.⁷⁶ Further, employers routinely cope with employees on leave by re-routing work to other employees, sending work home to the employees on leave,

74. See *infra* notes 75-84 and accompanying text (identifying the benefits of family-friendly leave policies).

75. See H.R. REP. NO. 8, 103d Cong., 1st Sess. 30 (1993) (citing the Families and Work Institute's argument that the FMLA economically benefits both employers and employees).

76. Eileen Trzcinski & William T. Alpert, *Leave Policies In Small Business: Findings from the U.S. Small Business Administration Employee Leave Survey 55-57* (1990) (unpublished survey, on file with the WLDF). The authors of this paper calculated the \$.97 and \$97.78 figures from the study's results.

hiring temporary employees, and saving nonessential work until the employees' return.⁷⁷

- Another study conducted by the Families and Work Institute also found that it is much more costly to replace employees who need family or medical leave than to accommodate their requests for leave.⁷⁸ The study, a survey of 331 supervisors at a large high-technology company, found that the cost of accommodating generous unpaid leave averaged twenty percent of employees' annual salary, as compared to seventy-five percent to one hundred fifty percent for the cost of permanently replacing them.⁷⁹ The study also found that ninety-four percent of the leave-takers returned to the company, and that seventy-five percent of the supervisors believed that the parental leave policy had a positive overall effect on the company's business.⁸⁰
- Experiences of individual businesses also confirm the cost-effectiveness of family and medical leave. For example, Aetna Life & Casualty Company reports that its family and medical leave policy saved the company \$2 million in 1991 by reducing employee turnover, and consequently, hiring and training costs.⁸¹ Before Aetna implemented its six-month family leave policy, seventy-seven percent of its female employees who took leaves for childbirth returned to work.⁸² Under the new policy, ninety-one percent of female workers who took family leaves returned to their jobs.⁸³ Approximately half said that they would not have returned to work if they had been entitled to take only six weeks of disability leave.⁸⁴

Empirical data also show that employers have experienced little difficulty in implementing family and medical leave. A survey of employers in four states that require parental leave found that ninety-one percent of respondents said that they did not have problems implementing the state leave laws.⁸⁵ Thirty-nine percent found implementation extremely easy, while only nine percent found

77. *Id.* at 30 (asserting that saving nonessential work until the employees' return is the most prevalent technique used in dealing with employees' leave).

78. JAMES T. BOND, ELLEN GALINSKY, MICHELE LORD, GRAHAM L. STAINES & KAREN R. BROWN, *FAMILIES AND WORK INSTITUTE, BEYOND THE PARENTAL LEAVE DEBATE: THE IMPACT OF LAWS IN FOUR STATES* 52-53 (1991) (reporting the results of surveys used to discover the relative cost and difficulty of implementing family leave policies).

79. *Id.*

80. *Id.*

81. Carol Kleiman, *Aetna's Family-Leave Plan keeps Workers, Saves Money*, CHI. TRIB., Dec. 16, 1991, at C1 (relying on Aetna's first analysis of its savings).

82. *Id.* (quoting Sherry Herchenroether, Manager of Aetna's family-services department).

83. *Id.*

84. *Id.*

85. BOND, *supra* note 78, at ii.

implementation difficult.⁸⁶ Further, seventy-one percent of the respondents reported that the laws caused "no increase" in training costs;⁸⁷ fifty-five percent reported "no increase" in administrative costs;⁸⁸ and eighty-one percent reported "no increase" in the cost of unemployment insurance.⁸⁹ Only a small minority reported "significant" cost increases in training (four percent),⁹⁰ administration (six percent),⁹¹ and unemployment insurance (two percent).⁹² Regarding health insurance costs, seventy-three percent of the respondents reported "no increase."⁹³

Thus, family and medical leave policies create a rare win-win situation: they help employees juggle their family and work responsibilities while increasing business productivity.

IV. POLICYMAKERS' FUTURE AGENDA

A. Paid Leave

To make the right to family and medical leave a meaningful one to all workers, policymakers must devise a method to provide workers with *paid* family and medical leave. Under the current system, only the workers who can afford to take unpaid family and medical leave will be able to exercise their full rights under the FMLA.

What *is* the appropriate public mechanism for making sure that people maintain not only their jobs, but also their incomes when their family responsibilities mandate temporary work absence?

One method of providing paid family and medical leave would be to extend existing Temporary Disability Insurance ("TDI") programs. These programs pay employees' salaries when they need time off for non-work-related illnesses, to cover situations when employees need time off for family leave or to care for an ill family member. California,⁹⁴ Hawaii,⁹⁵ and Rhode Island⁹⁶ all have TDI programs. Under the existing programs, a small percentage of employees' salaries goes

86. BOND, *supra* note 78, at ii.

87. BOND, *supra* note 78, at iii.

88. BOND, *supra* note 78, at iii.

89. BOND, *supra* note 78, at iii.

90. BOND, *supra* note 78, at iii.

91. BOND, *supra* note 78, at iii.

92. BOND, *supra* note 78, at iii.

93. BOND, *supra* note 78, at 53, figure 3.13.

94. CAL. GOV'T CODE § 12945.2 (1992 & Supp. 1994).

95. HAW. CODE ANN. § 392 (1985 & Supp. 1992).

96. R.I. GEN. LAWS §§ 28-39-1 to 28-41-33 (1986 & Supp. 1993).

into an insurance fund from which employees are paid if they become seriously ill.⁹⁷

The percentage of employees' salaries paid into the fund varies by state, but all states that have TDI set forth minimum and maximum benefit levels. The programs cover a large number of workers: eleven million in California,⁹⁸ six million in New York,⁹⁹ and two and one-half million in New Jersey,¹⁰⁰ at a relatively low cost to employers and employees, and at no cost to taxpayers.¹⁰¹

The TDI programs can serve as models for states to provide employees with paid family and medical leave. Existing TDI programs already provide paid leave for workers to care for their own serious illnesses. The programs could be expanded to provide paid leave for workers to care for seriously ill family members and for newborn or newly adopted children.

An alternative method of providing paid family and medical leave would be to follow Canada's example. Canada uses its unemployment insurance system to provide its workers with paid family and medical leave.¹⁰² In the United States, states' current unemployment insurance systems could be expanded to allow workers to draw from the fund not only when they cannot find work, but also when they cannot return to work because of the need for family or medical leave.¹⁰³

B. Other Family-friendly Policies

Most workers will need to take FMLA leave only a few times during their working lives, i.e., during serious medical emergencies. Other "family-friendly" workplace policies help employees balance work and family on a daily basis. Such policies are necessary for the health and

97. CAL. GOV'T CODE § 12945.2 (1992 & Supp. 1994); HAW. REV. STAT. § 392-67 (1985); R.I. GEN. LAWS § 28-40-1 (Supp. 1993). These code sections provide the formula used by each state, respectively, to determine the percentage of employee's contributions to the insurance fund.

98. Institute for Women's Policy Research, *What is Temporary Disability Insurance?*, Research-in-Brief, Table IIa (1993) (unpublished study, on file with the Institute for Women's Policy Research and the WLDF).

99. *Id.*

100. *Id.*

101. *Id.*

102. *See Study Finds New Mothers Get Limited Time Off From Work*, N.Y. TIMES, Dec. 25, 1983, at 48 (citing a study which compares temporary disability insurance programs in the United States with programs of other countries).

103. *See* Rochelle Sharpe, *Family Leave Law Should Be Broader, Study Group Says*, WALL ST. J., Apr. 18, 1994, at A1 (reporting the efforts of a policy task force which explored the possibility of partial wage replacement financed through an employer's unemployment and/or pension systems).

stability of our families, and also to ensure true equal opportunity for women.

From the perspective of our families, such policies can help alleviate the time crunch that creates so much stress in family life. Indeed, one of the biggest concerns women face is the difficulty of combining work and family.¹⁰⁴ This difficulty and the low wages often associated with women's work represent two of the top three problems women report as affecting them personally and professionally.¹⁰⁵

Family-friendly policies are also necessary to enhance equal employment opportunity for women. Subtle barriers to women's advancement in the workplace arise from the fact that women are still the primary family caretakers, even when they also work outside the home. While women have increasingly become productive members of both the public and private spheres, they still bear a "double burden"; men, however, have yet to take on their fair share of work inside the home. This uneven division of labor in the private sphere limits women's opportunities in the public sphere and contributes to the "glass ceiling" phenomenon.¹⁰⁶

The following are some examples that employers can adopt to help employees balance work and family:

- Part-time work with pro-rated benefits and equal pay, or job-sharing, or even shorter work weeks for all;
- Alternative work schedules like flex-time or four and one-half day work weeks;
- Telecommuting or work-at-home options, without loss of minimum standards like health and safety and minimum wage protections;
- Dependent care assistance for employees' parents as well as employees' children, or at a minimum, dependent care referrals and information.

Increasingly, evaluations show the value of these policies. The Fel-Pro Company, for example, recently conducted a study in conjunction with the University of Chicago Business School that showed the tangible results of Fel-Pro's very generous work-and-family programs on Fel-Pro employees' job satisfaction, loyalty to the company, and

104. Ms. Foundation for Women and Center for Policy Alternatives, A Polling Report: Women's Voices: A Joint Report 12-16 (1992) (unpublished report, on file with the WLDF).

105. *Id.*

106. See generally Bettina B. Plevan & Pamela Davis-Clarke, *Sexual Stereotyping, "The Glass Ceiling" and Other Employment Law Issues for Lawyers*, in PRACTICING LAW INSTITUTE, COMMERCIAL LAW AND PRACTICE COURSE HANDBOOK SERIES (1994) (discussing the "glass ceiling," a reference to artificial barriers to advancement into management positions by qualified women or minorities).

productivity.¹⁰⁷ Similarly, the Washington State Energy Office found that telecommuting alone yielded a host of benefits for its employees, and estimated that 1991's figure of more than 5 million telecommuters nationwide would swell to 11 million—almost ten percent of the adult civilian workforce—by 1995.¹⁰⁸

These policies may not lend themselves to government requirements, but governments certainly should adopt them for their own workforces. More broadly, this is an area in which business leaders themselves will have to take the initiative. And, of course, many have. Forward-thinking employers have been at the forefront of developing policies that help employees balance their day-to-day work and family duties. Among large companies, such practices are quite common: in 1991 eighty-eight percent of large employers surveyed offered part-time work, ninety-seven percent offered flex-time, and fifty-five percent offered child-care resource and referral.¹⁰⁹ For instance:

- Aetna Life & Casualty Company permits its employees to have a variety of flexible work arrangements, ranging from part-time work, to compressed work weeks, to working from home, to job sharing.¹¹⁰
- NYNEX, a New York-based telecommunications firm, has a program for employees responsible for caring for elderly family members. The company publishes handbooks on topics ranging from Alzheimer's disease to long-distance caregiving. In addition, NYNEX offers seminars on Medicaid, Medicare, HMOs, and long-term care insurance.¹¹¹
- Hewlett-Packard, an electronics company, and the Santa Rosa City School District opened a public school, called the Hidden Valley Satellite School, at Hewlett-Packard's Santa Rosa plant. Having their children nearby allows Hewlett-Packard employees the opportunity to increase their involvement in their children's education. In addition, because the employees have flex-time, and therefore can set their own schedules, they often have lunch with their children and volunteer in their classroom.¹¹²

107. See generally SUSAN J. LAMBERT, *ADDED BENEFITS: THE LINK BETWEEN FAMILY-RESPONSIVE POLICIES AND WORK PERFORMANCE AT FEL-PRO, INC.* (1993).

108. 6 THE NATIONAL REPORT ON WORK & FAMILY No. 10, at 6 (1993).

109. ELLEN GALINSKY, DANA E. FRIEDMAN & CAROL A. HERNANDEZ, *THE CORPORATE REFERENCE GUIDE TO WORK-FAMILY PROGRAMS* 111 (1991).

110. GALINSKY, *supra* note 109, at 68-71; see also BUREAU OF NATIONAL AFFAIRS, *BNA'S DIRECTORY OF WORK & FAMILY PROGRAMS* 26 (1991) (describing briefly Aetna's family and medical leave programs).

111. 6 THE NATIONAL REPORT ON WORK & FAMILY No. 7, at 4 (1993).

112. 6 THE NATIONAL REPORT ON WORK & FAMILY No. 5, at 1, 6, 7 (1993).

CONCLUSION

Envision the future: workplaces will accommodate family needs, creating more productive and loyal staff. This is a team approach to work: what employers put into their workforce; they get back. It is not overly optimistic to believe that we are entering a new, cooperative era in which employers and employees will begin to think creatively about the many ways that workplaces can become more "friendly" to the needs of working families. By doing so, employers will continue the trend, begun with the FMLA, of accommodating workplaces to family needs.

LEGISLATIVE DEVELOPMENT
OF THE FAMILY AND MEDICAL LEAVE ACT

THE 99TH CONGRESS

April 4, 1985 - H.R. 2020, Parental and Disability Leave Act of 1985 first introduced in House of Representatives by Representative Patricia Schroeder, et al. Provided 18 weeks over a 24-month period of unpaid parental leave for the birth, adoption, or serious illness of a child, and 26 weeks over a 12-month period of unpaid medical leave for employees' own serious health conditions. Applied to employers with 5 or more employees. H.R. 2020, 99th Cong., 1st Sess. (1985) [The text of all proposed legislation is published in the *Congressional Quarterly Almanac* by corresponding year].

October 17, 1985 - First Joint House Oversight Hearings on issue of parental and disability leave held by the subcommittees on Labor-Management Relations and Labor Standards of the Committee on Education and Labor, and the subcommittees on Civil Service and Compensation and Employee Benefits of the Committee on Post Office and Civil Service. 131 Cong. Rec. D678 (1985).

March 4, 1986 - H.R. 4300, Parental and Medical Leave Act of 1986 introduced by Representatives William Clay, Patricia Schroeder, et al. Provided 18 weeks of unpaid parental leave over a 24-month period for the birth, adoption, or serious illness of a child, and 26 weeks of medical leave over a 12-month period for employees' own serious health condition. Applied to employers with 15 or more employees. H.R. 4300, 99th Cong., 2d Sess. (1986).

April 6, 1986 - S. 2278, Parental and Medical Leave Act of 1986 first introduced in Senate by Senators Christopher Dodd, Ted Kennedy, et al. Provided 18 weeks over a 24-month period of unpaid parental leave for the birth, adoption, or serious illness of a child, and 26 weeks over a 12-month period of medical leave for employees' own serious health conditions. Applied to

employers with 15 or more employees. S. 2278, 99th Cong., 1st Sess. §§ 103, 104 (1985).

April 9, 1986 - Joint Hearings on H.R. 4300 held by the House Post Office and Civil Service, subcommittees on Civil Service and Compensation and Employee Benefits. *Parental and Medical Leave Act of 1986: Hearings on H.R. 4300 Before the Subcomms. on Civil Service and Compensation and Employee Benefits of the House Comm. on Post Office and Civil Service*, 99th Cong., 2d Sess. (1986).

April 22, 1986 - Joint Hearings on H.R. 4300 held by the House Education and Labor subcommittees on Labor-Management Relations and Labor Standards. *Parental and Medical Leave Act of 1986: Hearings on H.R. 4300 Before the Subcomms. on Labor-Management Relations and Labor Standards of the House Comm. on Education and Labor*, 99th Cong., 2d Sess. (1986).

May 8, 1986 - H.R. 4300 Reported out of Subcommittee on Compensation and Employee Benefits by voice vote. H.R. 4300, 99th Cong., 2d Sess. (1986).

June 11, 1986 - H.R. 4300 Reported out of full House Committee on Post Office and Civil Service by roll call vote of 18 to 0. H.R. 4300, 99th Cong., 2d Sess. (1986).

June 12, 1986 - H.R. 4300 Reported out of House Subcommittee on Labor-Management Relations by roll call vote of 8 to 6. H.R. 4300, 99th Cong., 2d Sess. (1986).

June 26, 1986 - H.R. 4300, As Amended, Reported out of House Committee on Education and Labor. Amendment adopted by roll call vote of 22 to 10. H.R. 4300, 99th Cong., 2d Sess. (1986).

September 17, 1986 - Open Rule Approved for Consideration of H.R. 4300 by the Committee on Rules, but 99th Congress adjourned before action was taken. H.R. 4300, 99th Cong., 2d Sess. (1986).

THE 100TH CONGRESS

January 6, 1987 - S. 249, Parental and Temporary Medical Leave Act

of 1987 introduced. Provided 18 weeks of unpaid parental leave over a 24-month period and 26 weeks of unpaid medical leave over a 12-month period. Applied to employers with 15 or more employees. S. 249, 100th Cong., 1st Sess. (1987).

February 3, 1987 - H.R. 925, Family and Medical Leave Act of 1987 introduced. Provided 18 weeks of unpaid family leave over a 24-month period for the birth, adoption, or serious illness of a child or parent, and 26 weeks of unpaid medical leave over a 12-month period for an employees' own serious health condition. Applied to employers with 15 or more employees. H.R. 925, 100th Cong., 1st Sess. (1987).

February 19, 1987 - Hearing on S. 249 held in Washington, DC by Senate Subcommittee on Children, Families, Drugs and Alcoholism. *Parental and Temporary Medical Leave Act of 1987: Hearings on S. 249 Before the Subcomm. on Children, Family, Drugs and Alcoholism of the Senate Comm. on Labor and Human Resources*, 100th Cong., 1st Sess. (1987).

February 25 and March 5, 1987 - Joint Hearings held by House Committee on Education and Labor subcommittees on Labor-Management Relations and Labor Standards. *Family and Medical Leave Act of 1987: Hearings on H.R. 925 Before the Subcomms. on Labor-Management Relations and Labor Standards of the House Comm. on Education and Labor*, 100th Cong., 1st Sess. (1987).

March 13, 1987 - H.R. 925 Reported out of Subcommittee on Labor-Management Relations by voice vote. H.R. 925, 100th Cong., 1st Sess. (1987).

April 2, 1987 - Hearing on H.R. 925 held by House subcommittees on Civil Service and Compensation and Employee Benefits of the Committee on Post Office and Civil Service. *Family and Medical Leave Act of 1987: Hearings on H.R. 925 Before the Subcomms. on Civil Service and Compensation and Employee Benefits of the House Comm. on Post Office and Civil Service*, 100th Cong., 1st Sess. (1987).

- April 23, 1987 - Hearing on S. 249 held in Washington, DC by Senate Subcommittee on Children, Families, Drugs and Alcoholism. *Parental and Temporary Medical Leave Act of 1987: Hearings on S. 249 Before the Subcomm. on Children, Family, Drugs and Alcoholism of the Senate Comm. on Labor and Human Resources*, 100th Cong., 1st Sess. 277 (1987).
- May 5, 1987 - H.R. 925 Reported out of House Subcommittee on Civil Service by vote of 3 to 0. H.R. 925, 100th Cong., 1st Sess. (1987).
- May 19, 1987 - H.R. 925 Reported out of House Subcommittee on Compensation and Employee Benefits by voice vote. H.R. 925, 100th Cong., 1st Sess. (1987).
- June 15, 1987 - Hearing on S. 249 held in Boston, Massachusetts by Senate Subcommittee on Children, Families, Drugs and Alcoholism. *Parental and Temporary Medical Leave Act of 1987: Hearings on S. 249 Before the Subcomm. on Children, Family, Drugs and Alcoholism of the Senate Comm. on Labor and Human Resources*, 100th Cong., 1st Sess. 427 (1987).
- July 20, 1987 - Hearing on S. 249 held in Los Angeles, California by Senate Subcommittee on Children, Families, Drugs and Alcoholism. *Parental and Temporary Medical Leave Act of 1987: Hearings on S. 249 Before the Subcomm. on Children, Family, Drugs and Alcoholism of the Senate Comm. on Labor and Human Resources*, 100th Cong., 1st Sess. (1987).
- September 14, 1987 - Hearing on S. 249 held in Chicago, Illinois by Senate Subcommittee on Children, Families, Drugs and Alcoholism. *Parental and Temporary Medical Leave Act of 1987: Hearings on S. 249 Before the Subcomm. on Children, Family, Drugs and Alcoholism of the Senate Comm. on Labor and Human Resources*, 100th Cong., 1st Sess. 141 (1987).
- October 13, 1987 - Hearing on S. 249 held in Atlanta, Georgia by Senate Subcommittee on Children, Families, Drugs and Alcoholism. *Parental and Temporary Medical Leave Act of 1987: Hearings on S. 249 Before the Subcomm. on Children, Family, Drugs and Alcoholism of the Senate Comm. on Labor and Human Resources*, 100th Cong., 1st Sess. 327 (1987).

October 29, 1987 - Hearing on S. 249 held in Washington, DC by Senate Subcommittee on Children, Families, Drugs and Alcoholism. *Parental and Temporary Medical Leave Act of 1987: Hearings on S. 249 Before the Subcomm. on Children, Family, Drugs and Alcoholism of the Senate Comm. on Labor and Human Resources*, 100th Cong., 1st Sess. 459 (1987).

November 17, 1987 - H.R. 925 Reported out of House Committee on Education and Labor by roll call vote of 21 to 11. Committee approved amendment in nature of a substitute to H.R. 925, offered by subcommittee Ranking Minority Member Marge Roukema. Provided 10 weeks of unpaid family leave over a 24-month period and 15 weeks of unpaid medical leave over a 12-month period. Applied to employers with 50 or more employees for the first 3 years after enactment, and 35 employees thereafter. H.R. 925, 100th Cong., 1st Sess. (1987).

February 3, 1988 - H.R. 925 Reported out of House Committee on Post Office and Civil Service by voice vote. H.R. 925, 100th Cong., 2d Sess. (1988).

June 8, 1988 - S. 2488, Parental and Medical Leave Act of 1988 introduced. Provided 10 weeks of unpaid parental leave for 24-month period and 13 weeks of medical leave for any 12-month period. Applied to employers with 20 or more employees. S. 2488, 100th Cong., 2d Sess. (1988).

July 14, 1988 - S. 2488 Reported out of Senate Committee on Labor and Human Resources. S. 2488, 100th Cong., 2d Sess. (1988).

September 26, 1988 - S. 2488 Brought to Senate floor for debate, and filibustered. S. 2488, 100th Cong., 2d Sess. (1988).

October 7, 1988 - Senate Failed to end filibuster on S. 2488 by cloture vote of 50 to 46. S. 2488, 100th Cong., 2d Sess. (1988).

THE 101ST CONGRESS

February 2, 1989 - S. 345, Family and Medical Leave Act of 1989 introduced. Provided 10 weeks of family leave in any 24-month period for the birth or adoption of a child and for the care of a child or parent with a serious illness, and 13 weeks of medical leave in any 12-month period for employees' own health

conditions. Applied to employers with 20 or more employees. S. 345, 101st Cong., 1st Sess. (1989).

February 2, 1989 - H.R. 770, Family and Medical Leave Act of 1989 introduced. Provided 10 weeks of family leave in any 24-month period and 15 weeks of medical leave in any 12-month period. Applied to employers with 50 or more employees for 3 years after enactment, and 35 or more employees thereafter. H.R. 770, 101st Cong., 1st Sess. (1989).

February 7, 1989 - Hearing on H.R. 770 held by House Subcommittee on Labor-Management Relations. *Family and Medical Leave Act of 1989: Hearings on H.R. 770 Before the Subcomm. on Labor-Management Relations of the House Comm. on Education and Labor*, 101st Cong., 1st Sess. (1989).

February 28, 1989 - H.R. 770 Reported out of House Subcommittee on Labor-Management Relations by vote of 11 to 5. H.R. 770, 101st Cong., 1st Sess. (1989).

March 8, 1989 - H.R. 770 Reported, as amended, out of full House Committee on Education and Labor by vote of 23 to 12. The amendments extended coverage to Congressional employees and addressed the coverage of public elementary and secondary school teachers, as negotiated by the National School Board Association and teachers' unions, among others. H.R. 770, 101st Cong., 1st Sess. (1989).

April 19, 1989 - S. 345 Reported out of Committee on Labor and Human Resources by roll call vote of 10 to 6. S. 345, 101st Cong., 1st Sess. (1989).

May 8, 1990 - Modified Open Rule Consideration for H.R. 770 granted by House Committee on Rules. H.R. 770, 101st Cong., 2d Sess. (1990).

May 10, 1990 - First Floor Vote: H.R. 770 Passed by a vote of 237 to 187, as amended by the Gordon-Weldon substitute which reduced the period of leave from 15 weeks per year for medical leave and 10 weeks every two years for family leave to 12 weeks per year for all circumstances covered in the bill, expanded the small-employer exemption from 35 (effective three years after

enactment) to 50 employees, and expanded the conditions of family leave to cover spouses with serious health conditions. H.R. 770, 101st Cong., 2d Sess. (1990).

June 14, 1990 - H.R. 770 Approved by Senate by unanimous consent. H.R. 770, 101st Cong., 2d Sess. (1990).

June 29, 1990 - H.R. 770 Vetoed by President George Bush. H.R. 770, 101st Cong., 2d Sess. (1990).

July 25, 1990 - Attempt to Override Veto Failed in House of Representatives by vote of 232 to 195. H.R. 770, 101st Cong., 2d Sess. (1990).

THE 102D CONGRESS

January 3, 1991 - H.R. 2, Family and Medical Leave Act of 1991 (identical to the bill vetoed by President Bush) introduced. Provided that employers with 50 or more employees grant 12 weeks of unpaid family and medical leave. H.R. 2, 102d Cong., 1st Sess. (1991).

January 14, 1991 - S. 5, Family and Medical Leave Act of 1991 introduced. Provided that employers with 50 or more employees grant 12 weeks of unpaid family and medical leave. S. 5, 102d Cong., 1st Sess. (1991).

January 24, 1991 - Hearing on S. 5 held by Senate Subcommittee on Children, Families, Drugs, and Alcoholism. *Family and Medical Leave Act of 1991: Hearings on S. 5 Before the Subcomm. on Children, Families, Drugs and Alcoholism of the Senate Comm. on Labor and Human Resources*, 102d Cong., 1st Sess. (1991).

February 2, 1991 - Hearing on H.R. 2 held by House Subcommittee on Labor-Management Relations. *Family and Medical Leave Act of 1991: Hearings on H.R. 2 Before the Subcomm. on Labor-Management Relations of the House Comm. on Education and Labor*, 102d Cong., 1st Sess. (1991).

March 7, 1991 - H.R. 2 Reported out of House Subcommittee on Labor-Management Relations by vote of 16 to 7. H.R. 2, 102d Cong., 1st Sess. (1991).

March 20, 1991 - H.R. 2 Reported out of House Committee on Education and Labor, as amended, by voice vote. H.R. 2, 102d Cong., 1st Sess. (1991).

May 30, 1991 - S. 5 Reported out of Senate Committee on Labor and Human Resources. S. 5, 102d Cong., 1st Sess. (1991).

June 27, 1991 - H.R. 2 Reported out of Committee on Post Office and Civil Service. H.R. 2, 102d Cong., 1st Sess. (1991).

October 2, 1991 - S. 5 Passed in Senate by vote of 65 to 32, as amended by the Bond-Ford-Coats substitute, which tightened notice and eligibility requirements and created enforcement mechanism parallel to Fair Labor Standards Act, among other things. S. 5, 102d Cong., 1st Sess. (1991).

November 13, 1991 - H.R. 2 Passed in House of Representatives by vote of 253 to 177, as amended by the Gordon-Hyde substitute, which incorporated the Bond substitute passed by the Senate. H.R. 2, 102d Cong., 1st Sess. (1991).

August 5, 1992 - House-Senate Conference Committee met. S. 5, 102d Cong., 1st Sess. (1992).

August 11, 1992 - Conference Report passed in the Senate by unanimous consent. S. 5, 102d Cong., 1st Sess. (1992).

September 10, 1992 - Conference Report passed in the House by vote of 241 to 161. S. 5, 102d Cong., 1st Sess. (1992).

September 22, 1992 - President Bush vetoed the bill. S. 5, 102d Cong., 1st Sess. (1992).

September 24, 1992 - Senate Overrode Veto by vote of 68 to 31. S. 5, 102d Cong., 1st Sess. (1992).

September 30, 1992 - House of Representatives Failed to override veto by vote of 258 to 169. H.R. 2, 102d Cong., 1st Sess. (1992).

THE 103D CONGRESS

- January 5, 1993 - H.R. 1, Family and Medical Leave Act of 1993 (similar to the bill vetoed by President Bush in the 102nd Congress) introduced. Provided that employers with 50 or more employees grant up to 12 weeks of unpaid family and medical leave. H.R. 1, 103d Cong., 1st Sess. (1993).
- January 21, 1993 - S. 5, Family and Medical Leave Act of 1993 introduced. Provided that employers with 50 or more employees grant up to 12 weeks of unpaid family and medical leave. S. 5, 103d, Cong., 1st Sess. (1993).
- January 22, 1993 - Hearing on S. 5 held by Senate Subcommittee on Children, Families, Drugs and Alcoholism. For the first time, Administration (Labor Secretary Robert Reich) testifies in favor of FMLA. *Family and Medical Leave Act of 1993: Hearings Before the Subcomm. on Children, Family, Drugs and Alcoholism of the Senate Comm. on Labor and Human Resources*, 103d Cong., 1st Sess. (1993).
- January 26, 1993 - Hearings on H.R. 1 held by House Subcommittee on Labor-Management Relations and Senate Committee on Labor and Human Resources. *Family and Medical Leave Act of 1993: Hearings on H.R. 2 Before the Subcomm. on Labor-Management Relations of the House Comm. on Education and Labor & Family*, and *Medical Leave Act of 1993: Hearings on S. 5 Before the Senate Comm. on Labor and Human Resources*, 103d Cong., 1st Sess. (1993).
- January 26, 1993 - S. 5 Reported out of Committee on Labor and Human Resources by vote of 13 to 4. S. 5, 103d Cong., 1st Sess. (1993).
- January 27, 1993 - H.R. 1, as Amended, Reported out of full House Committee by a vote of 29 to 13. Two substitute amendments offered en bloc by Congressman Pat Williams were adopted to conform H.R. 1 to S. 5. H.R. 1, 103d Cong., 1st Sess. (1993).
- February 4, 1993 - H.R. 1, Family and Medical Leave Act of 1993 Passed in the House of Representatives by vote of 247 to 152. H.R. 1, 103d Cong., 1st Sess. (1993).

February 4, 1993 - S. 5, Family and Medical Leave Act of 1993 Passed in the Senate by vote of 71 to 27. S. 5, 103d Cong., 1st Sess. (1993).

February 5, 1993 - Family and Medical Leave Act signed into law by President Bill Clinton.

August 5, 1993 - FMLA Effective date.

