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POLICYMAKING AND PAID FAMILY LEAVE: REVITALIZING THE
FAMILY MEDICAL LEAVE ACT OF 1993

A Dissertation Presented
to
The Faculty of the School of Education
Department of Leadership Studies
Organization & Leadership Program

In Partial Fulfillment
of the Requirements for the Degree
Doctor of Education

by
Jasmeer Basi
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THE UNIVERSITY OF SAN FRANCISCO

Dissertation Abstract
Policymaking and Paid Family Leave: Revitalizing the
Family Medical Leave Act of 1993

The Family Medical Leave Act (FMLA) applies to all public agencies, public schools, private elementary schools, and companies with 50 or more employees. It is designed to help employees balance their work and family responsibilities by allowing them to take unpaid leave for certain family and medical reasons. Employees are eligible for leave if they have worked for their employer at least 12 months, at least 1,250 hours over the past 12 months, and work at a location where the company employs 50 or more employees within 75 miles. However, the FMLA has proven to be ineffective in meeting the needs of employees. This study examined 2012 U.S. Department of Labor FMLA surveys published by Abt Associates. The public-use file was examined to determine employee eligibility, employee awareness of the program, and leave-taking patterns. Following, this paper discussed the theoretical framework of public-policy intersectionality, social-movement theory, and political mediation to discuss best practices in passing enhanced FMLA legislation. The study found that an ideal combination of political conditions, Democratic Party control of both houses, and advocacy paired with unions would further policy adoption of an updated FMLA policy.

This dissertation, written under the direction of the candidate's dissertation committee and approved by the members of the committee, has been presented to and accepted by the Faculty of the School of Education in partial fulfillment of the requirements for the degree of Doctor of Education. The content and research methodologies presented in this work represent the work of the candidate alone.

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CHAPTER I

THE RESEARCH PROBLEM

Statement of the Problem

Many families become shocked by a sudden plunge from economic self-sufficiency to dependency, due to time off from employment for family and medical needs. The need to take time off for child care, elder care, or personal health needs should not place a person's job in jeopardy, and parents should not have to be forced to choose between caring for their family or keeping their employment. After nearly a decade of advocacy, President Clinton signed into law the 1993 Family and Medical Leave Act (FMLA), which guarantees up to 12 weeks of unpaid leave with employee benefits for qualified medical and family reasons. The act was an important step toward providing men and women with job-protected leave for a range of caregiving purposes, including care of a newborn, care of a newly adopted child, care of a sick family member, and leave for one's own serious illness.

However, although the FMLA is a statutory entitlement, it only provides a weak minimum standard of labor leave, and the policy has many gaps. The policy has not grown to accommodate the workforce, despite increasing demands on men and women to balance work and family responsibilities. Additionally, eligible workers reporting unmet need for leave often cite an inability to afford unpaid leave from work (Klerman, Daley, & Pozniak, 2014; Waldfogel, 2001a). Paid leave and flexible workplace policies have been slow to develop in relation to the pace of economic change. This gap is particularly severe among less educated and low-wage workers, whereas overall, a substantial fraction of U.S. workers lack access to paid leave and workplace flexibility.

Background and Need

The U.S. Department of Labor (USDOL) conducted a survey in 2012, asking participants if they took FMLA leave and the reasons they may not have done so. These data were used for internal purposes, technical reports, educational outreach, and publications. However, these quantitative data have not yet been analyzed to determine why employees are hindered from using the entitlements of the FMLA. This dissertation sought to analyze the data collected by the USDOL and assess employee eligibility and leave-taking patterns and address how updated policies can be adapted through social movements. This research can be used to strengthen the current minimal FMLA statutory entitlement and add to the collective voices advocating for stronger statutory paid-family-leave entitlements.

In addition, the data analyzed will allow policymakers to understand how the United States compares on a global scale. Internationally, the United States lags behind almost every nation in paid and unpaid job-protected workplace leave for personal or family use (Heymann, Earle, & Hayes, 2007; Kamerman & Kahn, 2001; Waldfogel, 2001b). Not having these programs causes workers to exit the workforce, return to work early, or not take leave at all. These extreme solutions ultimately impact the health and welfare of the public negatively (Rossin, 2011; Ruhm, 2000).

The FMLA provides up to 12 weeks of unpaid leave for self-care or family care to address a serious illness or health condition. To be eligible, employees must have worked 1,250 hours in the previous year. This study answers a need because currently, the law has too many exemptions that make many employees ineligible, or using leave becomes impractical if eligible. Unrepresented workers outside of FMLA's coverage are

dependent on employer-provided leave, which is rare for low-wage earners (Clemans-Cope, Perry, Kenney, Pelletier, & Pantell, 2008; Heymann, Earle, & Egleston, 1996; USDOL, 2011).

This policy is ineffective in addressing the practical needs of the U.S. workforce, due to its many exemptions. For example, a company with fewer than 50 employees is not mandated to offer FMLA. In addition, the law does not cover part-time employees and does not mandate that employees be paid during their leave. As a result, many workers have no access to leave or find it difficult to use the benefits provided by the FMLA. Even if workers are covered, a large portion cannot afford to take advantage of the FMLA's guarantee of unpaid leave, given the large loss of income it entails.

Moreover, the FMLA only covers about 60% of U.S. workers and less than a fifth of all new mothers (Klerman, Daley, & Pozniak, 2013). Paid family- and medical-leave policies can positively impact employees' physical and mental health, businesses' profit, and the overall economy by providing a system that allows workers to take paid leave when they need it. Other sectors have recognized the positive aspects of enacting a paid-family-leave program. Since 1993, 15 states adopted at least one leave law covering men and women in the private sector. Other states expanded access to unpaid, job-protected leave by lengthening leave durations, covering employees in smaller establishments, or broadening definitions of family caregiving leave to include siblings, grandparents, parents-in-law, and domestic partners (Bernstein, 2001; Milkman & Appelbaum, 2013).

Federal and presidential levels have provided some political advocacy, but this movement is in its stages of infancy, due to gaps in reports collected to lobby for this issue; the issue requires further analysis and statistical data to gain momentum. During

President Obama's administration, the President urged Congress to pass legislation giving all workers access to 7 paid sick days per year. During his January 2015 State of the Union address, Obama referenced this policy change as "the right thing to do" for the 43 million workers without such rights. President Trump stated, in a series of speeches, that families should receive 6 weeks of paid family leave for pregnancy, adoption, and other issues.

Purpose of the Study

Academics have published testimonials, articles, and opinion pieces; the USDOL has collected raw data; however, no recent quantitative reports analyzed the limitations of the FMLA and why constituents are hindered from using FMLA entitlements. The purpose of this study was to examine how to more effectively serve vulnerable employees in the workforce by examining the reasons they are prohibited from exercising their FMLA statutory entitlements through analysis of data collected by the USDOL through 2012 polled surveys. To analyze why the government should expand their FMLA policy to accommodate a greater portion of the workforce, the theoretical framework and literature review examine the role of government through public-policy-intersectionality theory, and the importance of the timing of social movements and political mediation in passing paid-family-leave legislation. In this framework, this paper addressed how FMLA fits into U.S. life, and why it is critical to push movement for change in the law immediately, discerning why the government should offer a paid-family-leave program, the place of government in the familial construct of society, and the obligations of government to its constituents.

The role of government is to serve its constituents. By its very nature, all levels of government exist out of concern for guarded public-service concerns. One sector of intense debate is health care, paid family leave, and caregiving related to children and elders. Eldercare and unpaid family caregiving are the most common sources of long-term care (Houser, Gibson, & Redfoot, 2010). In 2011 and 2012, about 16% of the population aged 15 and older provided unpaid eldercare (U.S. Bureau of Labor Statistics, 2013a). The “sandwich generation” describes people providing caregiving services for their elderly parents and their young children. In 2013, about 78% of the members of the “sandwich generation” worked part-time, and 62% worked full-time (U.S. Bureau of Labor Statistics, 2013b).

In addition to eldercare, the opportunity to take paid or unpaid leave has important implications for new mothers and fathers. Having access to maternity leave increases the likelihood that mothers return to work and progress professionally. Examination of California’s implementation of its state paid family leave showed that it increased the weekly hours and pay of employed mothers of 1- to 3-year-old children by almost 10% (Rossin-Slater, Ruhm, & Waldfogel, 2011a). Similarly, access to paid leave increased the likelihood of a new mother returning to her employer in the United States, Britain, and Japan (Waldfogel, Higuchi, & Abe, 1999). Statistics demonstrated that maternity, especially when job protection is legally mandated, has a great impact on a mother’s long-term employment because mothers are encouraged to return to their jobs after childbirth and are protected against the fear of retaliation for taking leave.

Theoretical Framework

This research centrally concerned the role of public-policy-intersectionality theory, the impact of social movements on policy, and the importance of political-mediation theory in passing legislation. This theoretical framework helped explain how the mission of governance can be achieved by strengthening FMLA policy, which includes (a) eliminating exemptions, (b) expanding FMLA coverage to encompass a greater workforce, and (c) offering paid compensation to make taking leave economically advantageous. A government should strive to serve the needs of its populace and elected officials are referenced as public servants. Typically, governments adopt a traditional, bureaucratic tradition of government and focus less on current trends and concerns. The government used a traditional bureaucratic format during the creation of FMLA policy, which failed to address many needs of its constituents.

To become an effective leader, the federal government needs to adhere to the tenets of public-policy-intersectionality theory to achieve its mission of being an effective public servant. This theory posits that the categories of race/ethnicity, gender, religion, sexual orientation, class, and other markers of identity and difference do not function independently, but rather act in tandem as interlocking or intersectional phenomena (Brewer, 1993; Crenshaw Williams, 1995; Hill Collins, 1993; D. K. King, 1988; Zinn & Dill, 1996). The overarching question of intersectionality theory explores understanding of how people pursue the “good life” by addressing the question of how gender, race, class, and other forms of identity and distinction, in different contexts, shape not only the way people view policies meant to improve lives and the choices people make in

response to those policies, but also the ability to envision the possibilities for living the good life.

This theory supports the movement for a stronger FMLA policy because many employees are facing increasing responsibilities from work and family/medical needs, and enhancing FMLA policy will help them pursue the “good life” by allowing greater work–life balance and job security. Overall, Americans are living longer lives, and policies that help employees manage family and career will become even more necessary. Although current FMLA policy does allow leave time to care for a parent, the definition of “family” is narrow and does not include additional parties. In addition, 9 of 10 Americans believe employers should try to offer workers flexibility to meet their families’ needs, so long as the work gets done (Harris Poll of 4,096 U.S. adults aged 18+, conducted online May 27–30, 2014). Also, more than half of workers think they could do their job better if they were allowed a more flexible schedule (Harris Poll of 4,096 U.S. adults aged 18+, conducted online May 27–30, 2014).

The ideal time for social mobilization for this issue is now, with a goal to enhance the chance that this proposal can move through Congress and become law. Social movements are “actors and organizations seeking to alter power deficits and to effect social transformations through the state by mobilizing regular citizens for sustained political action” (Amenta, Caren, Chiarello, & Su, 2010, p. 288). This definition emphasizes social-movement organizations. Under the definition offered by Amenta et al. (2010), social movements can include the use of extra-institutional tactics such as protest, as well as institutional channels of influence, such as lobbying.

Social movements can also increase the saliency of an issue. For example, the suffrage movement was able to put suffrage on the policy agenda by lobbying politically and campaigning for candidates in elections (B. G. King, Cornwall, & Dahlin, 2005). Getting a new bill introduced is easy compared to winning votes in one or both houses of Congress (B. G. King et al., 2005; Soule & King, 2006). By introducing legislation, elected representatives can respond to pressures from social-movement organizations, and perhaps appease activists, without much political risk (B. G. King et al., 2005). Because a large number of bills may be introduced in any one legislative session and many never emerge from house committees, introduced legislation may not receive much public attention (Soule & King, 2006). Although the early agenda-setting stage lacks immediate consequence, it is still quite important to policy outcomes as it sets the policymaking process in motion (Baumgartner & Mahoney, 2005). On a state level, this researcher has observed that states with a strong union presence have engaged in strong social movements to get state paid-family-leave programs passed.

Although social movements can attempt to influence public opinion, political parties, workplace practices, state bureaucracies, and legal decisions, they have a different impact at different stages in the policymaking process, including policy adoption. Looking at slow-moving policy processes, Skocpol (2003) argued that direct effects are restricted to social movements that have the capacity to mobilize over the long-term and geographically-dispersed membership structures that can be activated to pressure representatives from multiple districts.

However, as legislation ventures through the various stages of the policymaking process toward adoption, social-movement influence wanes (B. G. King et al., 2005,

Soule & King, 2006). B. G. King and colleagues (2005) offered a theory of legislative logic, opining that the different rules and consequences associated with each subsequent stage of the policymaking process explain the diminishing returns of social-movement activity. Breaking the policymaking process into bill introduction, a roll-call vote on the bill, bill passage in one house, and bill passage in the second house, stringent rules govern the later stages of the policymaking process. Additionally, this legislative content stage in the policymaking process may constitute a critical point of interaction between social-movement organizations and political conditions.

At this intermediate stage, policy advocates in and outside government may compromise on provisions of proposed legislation to assuage moderate opposition and garner the votes necessary for adoption. Soule and King (2006) used a quantitative approach, which permitted limited revelations about the mechanisms of social-movement influence and interactions with political conditions. The present study, thus, expands on previous findings by examining an incremental policy issue with broad and consistent public support and using a qualitative approach to understand interactions between social movements and potential mediating conditions at several stages in the policymaking process, including the stage at which legislative content is determined.

Based on the trajectory of social-movement outcomes through research, theoretically it is more advantageous to influence movement at earlier stages in the policymaking process to better assess when and how social movements influence policy (Amenta et al., 2010; Burstein & Linton, 2002). Because President Trump has called for some paid family-leave time, this is the ideal early stage to activate an FMLA movement. Drawing from previous research (Amenta et al., 2010; Amenta & Young, 1999; Andrews

& Edwards, 2004; Schumaker, 1975), policies succeed in infancy by (a) setting legislative agendas, (b) shaping legislative content, and (c) achieving policy adoption. Some have argued for greater attention specifically to the intermediate stages of policymaking: the stages between bill introduction (or agenda setting) and adoption of new legislation (B. G. King et al., 2005).

The leading alternative theory of movement outcomes, political-mediation theory, moves beyond the narrow focus of movement characteristics by situating movements and outcomes in their historical political contexts. Political-mediation theory recognizes that social-movement activity rarely has independent direct effects on desired policy change. Rather, for a social movement to succeed in its policy-change goals, it “must reinforce political action with strong organization of members under favorable political conditions” (Amenta, Carruthers, & Zylan, 1992, p. 308). Therefore, according to political-mediation theory, social-movement characteristics—their membership, strategies, and organizational structures—are still important to policy outcomes, but for state-oriented social movements to achieve their goals, they must also mobilize under favorable political conditions. Favorable political conditions include democratic political systems, open-party systems, and the presence of favorable regimes in power or sympathetic bureaucrats (Amenta, Dunleavy, & Bernstein, 1994) as well as the presence of strong allies in government (Soule & King, 2006). Given this description, an immediate call for action for expanding FMLA policy will succeed under the political-mediation model as well, because the United States is experiencing sympathetic bureaucrats who are lobbying for change to the FMLA policy.

Building on the political-mediation model, the influence of social movements and political conditions derive from their interaction (Soule & Olzak, 2004). Therefore, in addition to directly affecting policy adoption, political conditions favorable to a movement's cause can also amplify the effect of social-movement organizations on policy adoption (Soule & Olzak, 2004). In their comprehensive examination of ecology, antinuclear, and peace movements, Giugni (2007) and Giugni and Yamasaki (2009) advanced a joint-effect model of social-movement outcomes in which movement activity interacts with political conditions, including public opinion, which can amplify or inhibit their influence on policies and public spending. Burstein, Briche, and Einwohner (1995) offered a "bargaining perspective," contending that social movement outcomes are not simply the product of movement characteristics and activities, but ... the result of interactions among movement organizations, the organizations whose behavior they are trying to change and relevant actors in the broader environment, all struggling to acquire resources and use them to their best advantage vis-à-vis the others. (p. 277)

The bargaining perspective sees movement outcomes as extracted through a process of concessions among multiple parties, including the social movement and its targets for action.

Research Questions

The USDOL commissioned a quantitative survey in 2012 that focused on employer and employee eligibility, awareness, and leave-taking patterns related to the FMLA. Following the quantitative assessment of that survey, this paper reports the findings of that data collection and summarizes research that shows how unpaid FMLA

leave helped or hindered workers balancing obligations at home and in the workplace.

The following questions guided the research:

1. Under what conditions did employees exercise their FMLA rights, including what percentage were eligible, what percentage were aware of covered FMLA qualifying conditions, and what were the leave-taking patterns of covered employees?
2. How does the analyzed data from the USDOL 2012 survey inform policymaking under public-policy intersectionality, social movement theory, and political-mediation theory in strengthening statutory entitlements under the FMLA?

Limitations and Delimitations

Limitations are influences a researcher cannot control (Merriam, 2009). They include shortcomings, conditions, or influences that place restrictions on research methodologies and conclusions. Any limitations that might influence the results should be mentioned. One limitation of this paper is that it focused on gender-neutral leave legislation (family, parental, and sick leave), rather than female-targeted leave legislation (maternity or pregnancy disability leave), because these two types of laws are qualitatively different. Historically, advocates feared that female-targeted legislation would encourage gender discrimination and strongly favored family and medical leave that could be used by women and men equally (Elving, 1995). However, movement activists in some states, particularly those governed by Republican majorities, agreed to compromises leading to the adoption of female-targeted legislation in their states (Berstein, 2001). These previous findings, therefore, suggested two different types of

policy outcomes that involve different interactions between movement activity and political conditions. Although researchers should examine such interactions and compare policy outcomes, that endeavor is beyond the scope of this study.

Other limitations include (a) secondary source data, (b) generalization, (c) inability to interview participants, (d) survey mechanics, (e) outdated data, and (f) uncollected data from the State Department. For example, the data accrued from commissioned government researchers and the present researcher did not collect the data. In addition, secondary-source data did not include follow-up interviews; therefore, no interview records exist to clarify questions. It is unknown if participants were clear on the survey instructions. Also, it is unclear what type of instructions the survey delivered. Finally, the survey did not incorporate state information on this subject and the data collection stopped in 2012. The delimitations of the study are that it excluded local, state, and government employees.

Significance

The first significance of this research is that it ultimately helps serve vulnerable employees and supports their successful workforce outcomes. Employment helps define an individual's place in the community. Employment is how people are known, where they make connections, and how they make their mark on the world. When employees face a sudden medical or family crisis and need to take leave, they may jeopardize their economic independence and job security.

The second significance of this research is that it addressed gaps in research. Consistent measures of public opinion on leave policies are unavailable, and most polling data on the issue accrued from leave advocates rather than independent sources.

Additionally, quantitative data collected by the USDOL has not been analyzed to open a platform of dialogue as to why the 1993 FMLA policy needs expanding, which has added complications to incorporating a measure of public opinion in the quantitative historical analysis of policy adoption at the state level.

It is important to educate the U.S. public on its current dynamics and correlation with the FMLA because workforce composition has changed dramatically over the last several decades. Almost 50% of the workforce comprises women, married couples are increasingly sharing childcare responsibilities, and people are living longer than in the past. Today's workers are trying to balance work, childcare, and eldercare, as well as other responsibilities, which contributes to the rise of dual-earner households. This change in the home family structure accompanies an evolving need for caregiving, which requires the ability to take time off from work. Formal sick-leave policies allow workers to take short periods of leave to recover from an illness, attend a doctor's appointment, or care for sick family members. Maternity and paternity leave allows parents to take an extended absence from work while guaranteeing they can return to their place of employment. Although unpaid leave can be an option, workers may be unable or unwilling to forego lost wages. In contrast, paid family leave allows mothers and fathers to take extended periods off work while receiving replacement wages, which is of particular importance for lower income parents who would not be able to take time off otherwise.

Studies on the impacts of paid family leave are important because they educate businesses on the positive economic impacts. Employee loyalty and retention can greatly reduce the excessive costs of training and hiring new employees. Rather,

providing paid leave will contribute to a healthy and productive workforce, leading to improved productivity, reduced employee turnover, improved morale, and employee loyalty.

Definition of Terms

The following definitions clarify the purposes of this research.

- *Family Medical Leave Act (FMLA)*: The Family Medical Leave Act of 1993 provides up to 12 weeks of unpaid, job-protected leave to eligible workers for certain medical reasons.
- *Paid family leave*: A paid state-administered or employer benefit that fully or partially replaces wages of workers who take leave to care for a seriously ill family member or new child.
- *Paid medical leave*: A paid state-administered or employer-provided benefit that fully or partially replaces wages of workers on leave for medical reasons. It may be provided through state disability insurance (SDI), a temporary-disability-insurance program, privately purchased or employer-provided short-term disability insurance, or employer-provided paid sick days or paid time off.

CHAPTER II

REVIEW OF THE LITERATURE

Although the 1993 FMLA passed after a decade of advocacy, it was a weak statutory entitlement with too many exemptions and gaps in the law to allow for adequate coverage. Currently, eligible employees can take job-protected leave for a serious health condition that makes the employee unable to perform the essential functions of his or her job. This can include care of the employee's newborn baby, adopted, or foster child, or to care for an immediate family member (spouse, child, or parent) with a serious health condition. Eligible employees, including mothers, fathers, adoptive parents, or someone else acting in *loco parentis*, are guaranteed (a) up to 12 weeks of unpaid leave annually, with family members of an injured service member able to take up to 26 weeks (taken all at once, intermittently, or for part or all of a day throughout the year); (b) continued health insurance benefits to the extent ordinarily provided by the employer; and (c) return to the same or an equivalent job (U.S. Bureau of Labor Statistics, 2013a, 2013b).

Only public agencies and private firms employing at least 50 workers within 75 miles are covered by the law. Most employees are either ineligible to take leave or will not exercise their leave due to concerns over job security and financial impracticalities. In addition, the mandates have many exceptions - any employee who works at a worksite with less than 50 employees is not covered. Employees are eligible for FMLA benefits if they work 1,250 hours in a year and have worked at least 12 months for their current employer, provided their current employer is covered; this exclusion prohibits part-time workers from becoming eligible. Finally, the FMLA does not require employers to provide pay; therefore, employees will not often exercise their leave due to financial

worries. These issues present problems that have yet to be addressed. Since 1993, little has been done to strengthen the law. In addition, very few political lobbyists have published studies or analyzed data to support this cause. For example, 2012 quantitative data collected by the USDOL was used to publish internal reports and fact sheets, but researchers did not use this vast database to lobby for enhancing FMLA policy, despite a strong need.

Given these problems, the purpose of the literature review below is to discuss the benefits of a paid leave policy, which supports the overarching conversation to build momentum for an enhanced policy. The literature review shows that through public policy intersectionality theory, social movement theory, and political mediation theory, FMLA policy can be passed through building momentum with government officials, paired with support from businesses and grassroots organizations. The literature review also discusses studies that show how a strong family and medical leave policy has many recognized health, business, and gender equity benefits; many states and other international communities have already enacted a paid family leave program based on this research.

Theoretical Rationale

All levels of government must work together to analyze social and political policies that benefit constituents, such as expanding coverage of existing family- and medical-leave policies. Traditionally, government has followed a bureaucratic model as a means and method of public governance. However, this management style is ineffective in expanding FMLA policies, as seen by the policy's many gaps and inadequacies in meeting constituent needs. No greater need exists than for an adequate family-leave

program because such a program impacts job security and emotional health and promotes work–life balance. In addition, public-policy-intersectionality theory posits that people must engage in this form of action to achieve social well-being and the “good life;” by achieving the qualities named above, society will have met this goal. To get to this stage, researchers need to study the “activities of government” to an appreciated body of knowledge that characteristically blends the theory and practice of public governance (Radin, 2000). This literature review addresses this need by analyzing the activities of government on a state level.

Although the theories described support a framework of enhanced FMLA legislation, one may question what the most successful means is of getting legislation passed through social movements and political mediation. Leave provisions are powerful because they can be negotiated into contracts, providing the opportunity to examine how activists conceive relationships between legislation and negotiation. Is legislation governing the workplace perceived as a threat? Are employers and businesses educated on its impact? or Are people concerned with business needs only?

Focusing primarily on the U.S. context and other affluent democracies, researchers have found a particularly important role for political conditions in relationships between social movements and policy. Many factors fit under the umbrella of political conditions including political structures, the strength and extent of alliances with other social movements (Amenta & Zylan, 1991), and the presence, absence, or actions of countermovements (Andrews, 2001). However, many recent studies that consider political conditions look specifically at the presence or absence of government allies for a given social movement (Amenta et al., 2005; Burstein & Linton, 2002; Meyer

& Minkoff, 2004; Soule & King, 2006). Party affiliations of elected representatives can indicate favorable or unfavorable political conditions from the perspective of social-movement goals (Amenta et al., 1994), and the representation of Democrats in U.S. legislatures amplify the effect of non-conservative social movements on policy outcomes (Meyer & Minkoff, 2004). In other words, the majority party controls the legislative agenda.

General consensus among social-movement scholars supports the political-mediation model of movement outcomes. Therefore, when movement scholars consider important conditions that may influence relationships between movements and their political consequences, considerations of political conditions dominate. However, researchers have found other factors that may intervene and influence policy outcomes: public opinion, cultural change, and women in elected government positions. Raising questions about the relevancy of social movements to policy outcomes, Burstein (1999) argued that public opinion is a key determinant of policy adoption. Elaborating on this argument, Burstein and Linton (2002) argued that social movements exert greater influence over policy outcomes when such policies are not favored by public opinion; or conversely, the relevancy of social movements to policy outcomes recedes when a majority of public opinion favors the policy change. Additionally, the influence of public opinion is strongest at the policy-adoption stage when elected representatives weigh constituent support for a policy in deciding how to vote (Soule & King, 2006).

According to political-mediation theory, for a movement to achieve its desired political outcome, its institutional strength and strategy must combine with favorable political conditions (Amenta et al., 1992). Social movements have most influence at the

early stages of the policymaking process (B. G. King et al., 2005). However, at the later stage of policy adoption, political conditions rise in importance as movement influence recedes (Soule & King, 2006). Through the lenses of intersectionality theory, political mediation provides a narrow understanding of how social movements and politics interact. The analyses of the data collected add support to a rising momentum in states to recognize the importance of an enhanced family-leave program, including paid leave

Considering the current dominant and progressive political attitudes toward enhanced FMLA leave, any proposal advancing this cause would politically dominate in these recent favorable conditions. Available public-opinion data show broad public support for leave policies, such as family and sick leave, and support for such laws span political ideology (Milkman & Appelbaum, 2013). Recent national polling data conducted by leave advocates show strong majority support for expanding the FMLA (Ness, 2008), paid leave (Institute for Women's Policy Research, 2010; National Partnership for Women and Families, 2014; Ness, 2008), and paid sick days (Institute for Women's Policy Research, 2010). In their survey of registered voters, the Institute for Women's Policy Research (2010) found that public support for paid leave spanned party affiliations with 73% of Republicans, 87% of Independents, and 96% of Democrats claiming the issue was important.

Typically, advocates perceived the FMLA as less than ideal but a step toward the more inclusive and affordable leave found in other affluent democracies (Elving, 1995). In this spirit, several states have made policy changes to their state-equivalent FMLA policies, understanding the changing political and economic conditions. Additionally, the content of leave legislation has varied by state and by bill, with some bills expanding job-

protected leave and others proposing paid leave for relatively long-term needs (family leave) or short-term illnesses (sick leave). Leave-policy issues have been gaining momentum, and of the 19 leave laws passed at the state level between 1993 and 2015, more than half passed in the last 5 years. (Schulte, 2015).

Understanding the factors that lead to policy change, including social-movement strength and strategy, is important in understanding power relationships and democracy. In the past decade, researchers have learned more about the political consequences of social movements, particularly in democratic contexts. The types of policies examined are not conducive to understanding how social movements and political conditions interact to shape the content of legislation. Social-movement scholars have called for processual accounts of social-movement influence (McAdam, Tarrow, & Tilly, 2001) and for systematic examinations of single-policy issues over time (Amenta et al., 2010).

FMLA and Health Rationale

Researchers have examined the impact of sick leave policies and found that these policies provide wider benefits to society. Workers with access to paid sick leave are more likely to use cost-effective methods to keep themselves (and those around them) healthy. The benefits largely extend to worker's children, as early as birth. A large number of researchers have identified a positive impact of maternity leave on infant outcomes relating to infant mortality and birth weight. In particular, for college-educated mothers able to take advantage of it, an expansion of unpaid leave increases birth weight, decreases premature birth, and leads to a substantial decrease in infant mortality (Rossin, 2011). Ruhm (2000) conducted an examination of European leave policies found that

paid leave programs are a relatively cost-effective way to reduce infant mortality because family leave allows parents to better care for their child and monitor their child's health. The Affordable Care Act honored these beneficial impacts to children and mandated that employers provide reasonable break time as well as a private place for nursing mothers to express breast milk. This policy helps nursing mothers return to work and makes it easier for mothers to continue nursing. Maternity leave increases women's likelihood of successfully nursing their infants (Baker & Milligan, 2008; Roe, Whittington, Fein, & Teisl, 1999). Also, children have shorter hospital stays when their parents are able to stay home and care for them (Heymann, 2001).

The current evidence on children's outcomes emphasizes the importance of the early childhood and prenatal environment, likely yielding large long-term benefits of policies that improve infant health (Almond & Currie, 2011). Children whose mothers used maternity leave had higher educational attainment, lower teen-pregnancy rates, higher IQ scores, and higher earnings in adulthood, suggesting paid-leave policies can have long-term benefits as well (Carneiro, Løken, & Salvanes, 2011). Children who do not have adequate parental care are more likely to arrive sick to school and infect others. Those with paid sick leave are more likely to use preventative health care such as cancer screening (Peipins, Soman, Berkowitz, & White, 2012).

FMLA and Business Rationale

A key argument posed by skeptics of paid family leave or flexible workplace policies is that the practices mentioned above are costly and place an unfair burden on employers. However, the birth of a child or a serious illness are not frequent events, and evidence from states that have paid-leave policies in place, as well as other developed

countries, shows that these policies do not cause undue interruptions in the workplace. In fact, these practices can benefit employers by improving their ability to recruit and retain talent, lower costly worker turnover, and minimize loss of firm-specific skills and human capital, as well as boost morale and worker productivity (Williams, 2001).

Paid-leave policies can help businesses recruit talented workers who plan to stay with a firm after having children. In a survey of 200 human-resource managers, two thirds cited family-support policies, including flexible schedules, as the single most important factor in attracting and retaining employees (Williams, 2001). Paid leave increases the probability that women continue in their job after having a child rather than quitting permanently, saving employers the expense of recruiting and training additional employees (Rossin-Slater, Ruhm, & Waldfogel, 2011b).

Following implementation of state programs, most businesses reported no negative impact on profitability. A survey of 253 employers affected by California's paid-family-leave initiative found that the vast majority, more than 90%, reported no noticeable or a positive effect on profitability, turnover, and morale (Appelbaum & Milkman, 2011). Paid sick leave also induces a healthier work environment by encouraging workers to stay home when they are sick. Workers who arrive sick are likely to infect others and cause further productivity losses. A recent study investigating the effects of the 2009 H1N1 pandemic found that employee absences fell more rapidly after the peak of the pandemic among public-sector workers (who had much higher access to paid sick leave) compared to private-sector workers who were much less likely to have paid sick leave (Drago & Miller, 2010).

Workers do not abuse paid sick days. A survey of 251 employers conducted after Connecticut implemented a paid-sick-leave program found that employees did not abuse the policy by taking unnecessary sick days (Appelbaum, 2014). About two thirds of employers reported no increase in cost (47%) or an increase of less than 2% (19%) and the report's authors concluded no business case exists for opposing paid sick days (Appelbaum, 2014). Another study examining the implementation of San Francisco's paid-sick-leave law in 2007 found no evidence of a negative effect on the economy. Unlike surrounding areas that did not have a paid-sick-leave law, San Francisco saw an increase in total employment after the implementation of the law (Petro, 2010). The number of businesses also grew more rapidly in San Francisco than in surrounding areas in the same time period (Petro, 2010).

Innovative family-first companies have, of course, known about these advantages for some time. A 1998 survey of large- and medium-sized firms found that almost half of surveyed firms reported a positive return on investment in their flexible work arrangements or caregiving-leave policies, and 80% found such policies to be at least cost neutral (Galinsky & Bond, 1998). In New York, following a survey of 120 employers in 2000 and 2001, researchers found that those with flexible leave policies experienced significantly lower turnover and concluded that these results are more likely to reflect causal impacts rather than simple correlations (Baughman, DiNardi, & Holtz-Eakin, 2003). In a 2002 survey, researchers from the University of Cambridge determined that businesses with family-friendly policies, which included either paid or unpaid leave, were more likely to have above-average labor productivity than those without such policies. In

that same survey, 90% of respondents characterized their family-friendly policies as cost-effective (Dex & Smith, 2002).

Enhanced State Paid Family Leave

Most pre-FMLA laws covered only women and disability related to pregnancy or childbirth, excluding time for bonding. As potential amendments to the FMLA were considered in Congress, advocates fought efforts to limit the law to maternity leave, fearing that such limitation would result in gender discrimination in employment practices. They framed pregnancy and childbirth as medical conditions, and argued that all workers—women and men—need time off to address serious health needs. They also defended a gender-neutral notion of caregiving and included care for spouses and parents, which had more gender-neutral appeal than bonding with newborns and had special resonance among aging workers.

At federal and state levels, advocates built support for job-protected leave by appealing to “family values” conservatives. Job-protected leave for female workers was particularly appealing because it encouraged women to leave work for family care, and some conservative lawmakers believed that job-protected leave would lead to a decrease in the number of abortions by removing the fear of job loss for pregnant workers. At the state level, some advocates believed that gender-neutral family leave was untenable, given their state’s specific political context, and opted instead to pass more moderate maternity-disability-leave laws that would at least provide some relief for workers (Bernstein, 2001; Elving, 1995).

In 2004, California became the first state to implement a paid family-leave policy. Since then several other states have created similar programs and a number of state and

local governments have introduced paid sick leave. Currently, even more state and local governments are considering ways to ensure all citizens have access to needed paid-leave policies. In California, paid-family-leave benefits are available to almost all private-sector workers, including nonprofit workers and public-sector workers in agencies that opt into the program. The program provides 6 weeks of paid leave at approximately 55% of usual weekly earnings with a maximum weekly benefit of \$1,067, as of 2014, indexed to the state's average weekly wage. The paid-family-leave program extends the existing SDI system to create a paid-family-leave system, allowing California to capitalize on the existing administrative and revenue-collection institutions. Pew Charitable Trusts (2014) estimated that 1.5 million workers have used the Paid Family Leave program since its inception. A survey of 253 employers affected by California's paid-family-leave initiative found that the vast majority, more than 90%, reported either positive or no noticeable impact on profitability, turnover, or morale (Appelbaum & Milkman, 2011).

Aside from California's 2011 law requiring continued health coverage for workers on pregnancy leave, all leave laws passed after the FMLA were gender-neutral, providing job-protected or paid leave for self-care or care for family members, regardless of the worker's sex or gender. Relative to other U.S. states, California has an active and long historical record of leave legislation dating back to the establishment of its SDI program in 1946. This insurance program—one of only five of its kind currently in the country—replaces workers' wages when they take leave to address a temporary disability. This program was extended in 1976 to cover pregnant women and new mothers by defining pregnancy- and childbirth-related health conditions as temporary disabilities in temporary-disability-insurance programs but do not guarantee workers will

be reinstated after taking leave. In other words, they provide wage replacement but no job protection. In 1978, California created job-protected leave, but only for pregnant workers.

This provision placed California law at the center of a broader historical debate about the need for laws that provide special accommodation or treatment of female workers and their potential to increase the practice of gender discrimination in employment. The special provision for pregnant employees also put the law in potential conflict with the 1978 Pregnancy Discrimination Act, which required equal treatment of female and male employees. On grounds of gender equality, the California law was successfully challenged in a lower court. However, this decision was overturned by the Supreme Court in 1987, which upheld laws that covered only female employees for the purpose of addressing pregnancy- and childbirth-related health conditions (Elving, 1995). Then, in 1991, California extended job-protected leave to all employees with its California Family Rights Act. This law provided family and medical leave with provisions very similar to what was enacted at the federal level 2 years later. California was one of seven states to adopt family- and medical-leave laws while Congress was debating the FMLA.

Private-sector workers in Pennsylvania have no legislated rights to leave—medical/maternity, family, or sick leave—and under state law, have never had those protections. Pennsylvania was not one of the states that passed maternity- or family-leave laws preceding and precipitating the passage of the FMLA at the federal level, but had a few attempts to pass leave legislation before and after the FMLA. After the FMLA, campaigns for workplace leave reemerged recently. Pennsylvania introduced its first leave legislation on July 17, 2007 with the Healthy Families, Healthy Workplaces Act

(HB 1155). This legislation would allow workers to accrue up to 52 hours of paid sick leave for self-care, family care, or to address issues related to domestic violence. It has been reintroduced and referred to the Committee on Labor Relations in every legislative session since 2007. The 2009 bill (HB 1830), introduced during a rare Democratic majority in the House, progressed furthest, receiving a committee hearing in 2010. In December 2008, soon after the paid-sick-leave bill was introduced for a second time in the Statehouse, the Philadelphia city council introduced a paid-sick-leave ordinance. The ordinance first passed a vote of the City Council in 2011, but Mayor Michael Nutter vetoed the ordinance, and again in 2013. In 2014, Nutter convened a task force to study the issue of paid sick time, and in 2015, signed the ordinance after it passed the city council by a veto-proof majority (Dunn, 2015). The ordinance allows workers to accrue 1 hour of sick leave for every 40 hours worked and up to 40 hours in 1 year. The law allows workers to begin accruing paid sick leave on their first day of work and covers employers with 10 or more employees.

New Jersey extended its own temporary-disability-insurance system to create its paid-family-leave program, called Family Leave Insurance, in 2009. Family Leave Insurance is available to workers with at least 20 calendar weeks of covered employment who earned at least \$145 per week (or \$7,300 annually) in the 52 weeks preceding leave. Covered workers are eligible for 6 weeks of partial wage replacement in the 12 months after becoming a parent or any time for the care of an ailing family member. The wage replacement is paid at two thirds of the worker's average weekly wage, up to \$595 per week.

Rhode Island followed California and New Jersey's lead by extending its temporary-disability-insurance program in 2014 to provide paid leave for new parents and workers who need to care for a sick family member. All private-sector employers are covered by the law, in addition to some public employers. The Rhode Island program, called Temporary Caregiver Insurance, leverages the benefits of extending the temporary-disability-insurance program to incorporate new benefits for caregiving. Weekly Temporary Caregiver Insurance benefits are paid at a rate equal to 4.6% of weekly wages from the highest quarter of the claimant's base period, up to \$752. Workers with children under the age of 18 and disabled children over 18 may have additional benefits. This weekly "dependency allowance" is paid as the greater of \$10 or 7% of the standard benefit rate.

In 2012, Connecticut became the first state to implement legislation that required certain employers to offer paid sick leave to their workers. The law covers hourly (nonexempt) workers in the service sector employed by firms with at least 50 employees. Manufacturers and most nonprofit organizations are not required to provide paid leave; also, the legislation does not cover per diem and temporary workers. Although only about one in five Connecticut workers are covered, due to the many exceptions, a majority of part-time workers benefit from the earned-leave law. Covered workers in Connecticut earn 1 hour of paid leave for every 40 hours worked, up to a total of 40 hours of paid leave (5 days) in a calendar year.

New York, Hawaii, and Puerto Rico also have temporary-disability-insurance systems and could implement programs similar to those in California, New Jersey, and Rhode Island. Washington State was the first state to pass a paid-leave law not

administered through a disability-insurance program. Although the bill passed in 2007, it faced a number of budgetary issues and implementation has been delayed three times (Heymann & McNeill, 2013).

Cities across the country have enacted statutes providing covered employees with the opportunity to accrue paid sick leave. In 2006, San Francisco became the first locality to pass a law enabling all workers in the city, including part-time and temporary workers, to accrue 1 hour of paid sick leave for every 30 hours worked, beginning 90 days after employment. Under the law, San Francisco workers can earn up to a maximum of 5 to 9 days of sick leave per year, depending on employer size, to care for themselves, a family member, or another designated person.

The District of Columbia followed suit in 2008, enabling qualified workers to accrue paid sick leave from 3 to 7 days per calendar year, depending on employer size. The District's law went a step further, enabling eligible workers to use sick leave to obtain social or legal services if they or their family member is a victim of domestic violence, stalking, or sexual abuse. The law was expanded in 2014 to allow tipped restaurant and bar employees, a group previously ineligible to accrue sick leave, to earn 1 hour of leave per every 43 hours worked, up to 5 days annually. The recent change to the law also enables workers to begin accruing leave as they are employed rather than after 1 year with the same employer and 1,000 hours worked, as had been required under the 2008 law.

International Sentiment on Paid Family Leave

Of 186 countries examined in Heymann and McNeill's (2013) analysis of the World Policy Analysis Centre Adult Labour Database, 96% provide some pay to women

during maternity leave. The United States is the only high-income country, and one of only eight countries in the world (Heymann & McNeill, 2013), that does not mandate paid leave for mothers of newborns. Nearly every member of the European Union provides at least 14 weeks of job-guaranteed paid maternity leave during which workers receive at least two thirds of their regular earnings (Heymann & McNeill, 2013). Fathers have paid leave in 81 countries through paternity leave (specific to fathers) though parental leave that can be taken by either parent or through some combination with maternity leave (Heymann & McNeill, 2013). Of these countries, 60 pay fathers at least 75% of their wages for at least part of the leave taken, yet only 37 provide fathers with the option of taking 14 weeks or more of paid time off (Heymann & McNeill, 2013). Several high-income countries also provide workers with the option to combine part of the paid-parental-leave entitlement with paid employment, facilitating a gradual return to work for mothers as well as greater participation in leave provisions by fathers (Fagan & Hebson, 2006).

Summary

The composition of the workforce has drastically changed over the last half-century. An enhanced FMLA program will encourage more employees to take time off for the above reasons by allowing more people to be covered under the law, reduce financial woes by implementing a paid leave component, and assuage employee stress about job security but continuing the job-protected leave status component. Many states and businesses have adopted enhanced policies, but more work needs to be done on a federal level. This work starts with social movement, partnering with government officials, and rallying grassroots organization.

CHAPTER III

METHODOLOGY

What legacy will the United States choose to leave behind for children? What example does the federal government want to set in how it regards work–life balance, family medical leave, and job security? This dissertation aspired to analyze data from private employees throughout all sectors to determine how many people had FMLA eligibility, and reasons people took or did not take leave aligned with the FMLA. It is this researcher’s hope that policymakers will use this research for future agenda setting and expansion of the FMLA. Given the ripe political climate and potential for agenda setting, this dissertation adds to that momentum to get leadership engaged in conversations on a federal level. This study accomplished this goal by analyzing USDOL raw data covering FMLA usage, collected from over 2,000 employees over the span of a decade.

State and private entities have made positive strides to address the issue, but a greater call to action is necessary on a federal level (Williams, 2001). The FMLA of 1993 guarantees qualifying U.S. parents 12 weeks of family leave to care for a new child. Although the law requires companies with 50 or more employees to provide new parents with 12 weeks of leave, it does not require this leave to be paid. Only nine states removed these barriers to leave taking by creating paid-leave programs or by loosening eligibility requirements. Three states—California, New Jersey, and Rhode Island—created paid-family-leave programs by expanding their state’s agenda.

Since 1993, 12 states have passed a total of 19 leave laws that offer wage replacement (paid family or sick leave), cover smaller establishments, lengthen leave durations, or expand definitions of “family” in caregiving leave. According to a recent

study commissioned by the USDOL, broadening coverage to smaller establishments to include 20 or more employees, or reducing the minimum hours worked requirement (would increase eligibility from 59% of the workforce to approximately two thirds of the workforce (Klerman et al., 2014). In 2004, California became the first state to implement a paid-family-leave policy. As a result, Californians to receive 55% of their usual weekly salary for six weeks, capped at \$1,104. In the private sector, currently only about 12% of U.S. companies offer paid maternity or paternity leave, according to the Society for Human Resource Management (Van Giezen, 2013).

Research Setting

The United States now has nearly 2 decades of experience with the FMLA. However, few quantitative federal and state-specific studies considered paid family and medical leave. Quantitative research is the systematic empirical investigation of observable phenomena through statistical, mathematical, or computational techniques (Fowler, 1993). Studying the FMLA through a quantitative lens is important because this law is an investment in the U.S. future and youth. For example, countless studies showed that baby bonding helps the health of the infant, and women are able to return the workplace more readily after bonding (Roe et al., 1999).

To date, only various informal surveys of worksites and employees were conducted in 1995 and in 2000 by the USDOL to collect data. In 2012, Abt Associates conducted a formal, lengthier survey for the USDOL, which is responsible for administering and enforcing the FMLA. A survey is a study in which researchers collect data to describe the characteristics of a population. Unlike an experiment, in which treatments are given to influence the participants, in a survey, researchers avoid

influencing participants. This is because a researcher's goal in conducting a survey is to describe respondents as they naturally exist without intervention (Orcher, 2007). Surveys are information-collection methods used to describe, compare, and explain individual and societal knowledge, beliefs, feelings, and values (Fowler, 1993).

Population

The population affected by the 2012 survey addressed a general population at large, regardless of race, ethnicity, gender, or economics. The USDOL solicited the general population. Initially, USDOL Notice of Proposed Information Collection on April 1, 2011 (76 FR 18254) proposing surveys were necessary to provide a greater understanding of family and medical leave in the United States. Following, the 2012 Employee Survey was conducted by random-digit dial and computer assisted telephone interviewing to cell phones and landlines.

Instrumentation

The 2012 USDOL survey, conducted by ABT Associates, included two surveys. The employee survey was conducted by RDD using CATI, calling landlines and cell phones. As a result, between February to June 2012, 260,463 telephone numbers were dialed, 95,461 were valid, and the final sample included 2,852 completed surveys. The worksite survey was conducted by a respondent-selected combination of phone (using CATI) or Web between March and June of 2012, yielding 1,812 completed interviews with worksites. The present analysis was based on the use of sampling weights to adjust for stratified sampling and survey nonresponse.

Validity and Reliability

The 2012 USDOL survey considered the validity and reliability of the data reported. First, the Worksite Survey asked directly whether a worksite believed it was covered. The Worksite Survey used this response to determine which worksites were asked FMLA-specific questions. Surveyors also imputed FMLA coverage if the worksite reported that, across all worksites, its parent firm employed at least 50 employees. Second, the FMLA statute allows worksites to require medical certification and recertification for those taking leave (Public Law 103-3, § 103) and FMLA regulations at 29 C.F.R. 825.305–825.313 clarified those requirements. Employers are allowed to require that an employee provide medical certification of the need for leave. Employees are required to pay the cost of obtaining an initial medical certification and of recertification. An employer may request a second opinion, but the employer pays. Finally, if the leave continues for an extended period of time, the employer may require an updated certification.

The survey questions also considered eligible leave takers' responses to questions about their use of various certification procedures or certification requirements. About half of leave takers reported they were required to provide medical certification for their most recent leave (55.0%). If a worksite doubted the validity of the certification, it could request a second or third opinion (Public Law 103-3, §103(c)). However, few leave takers reported their worksite required multiple doctor visits for that certification. Just under half of those required to get medical certification paid for it themselves (45.6%); the others paid nothing out of pocket.

Researcher's Background

This researcher was employed by the USDOL for 4 years, during which time the researcher received training on FMLA policy. Through these lenses, the researcher engaged in conversation regarding policy agenda setting affecting the expansion of the FMLA. As observed by the researcher, the FMLA's shortcomings are due, in part, to compromises made in its journey through five congressional sessions. Initially, a version of the FMLA was first introduced in 1985. It originated in meetings between Democratic Congress member Howard Berman, a government staff member, labor union representatives, leaders of women's advocacy organizations, most notably the Women's Legal Defense Fund (which later became the National Partnership for Women and Families), and other organizations. It also included the U.S. Catholic Conference, which believed that providing job-protected family leave would remove the fear of job loss as a reason for seeking abortion (Asher & Lenhoff, 2001; Elving, 1995).

Researchers have found that social movements have a greater impact at the early stages of the policymaking process, particularly the agenda-setting stage (Johnson, 2008; B. G. King, Bentele, & Soule, 2007; B. G. King et al., 2005; Olzak & Soule, 2009; Soule & King, 2006), and their influence wanes as bills travel through the different stages of the policymaking process (B. G. King et al., 2005). Additionally, political-mediation models show that for movements to have an impact, they must operate under favorable political conditions. As seen by the movements in California and Pennsylvania, the success levels between leave campaigns and political conditions accrue with attention to three stages in the policymaking process: (a) agenda-setting, (b) legislative content, and (c) policy

adoption. If the timing was not ideal, less rights were achieved, as seen in Pennsylvania. Movement efforts benefited from the presence of government allies.

Much of the interaction between movements and political conditions occur when lawmakers consider amendments to proposed legislation. Coalition activists often wrote legislation and, based on their assessment of potential opposition to specific provisions, made adjustments in the bill's language before it was even introduced. Additionally, coalition activists were often consulted about potential amendments. As a law emerged from committees to votes in houses, coalition actors and their allies in government considered compromises to win votes from political moderates.

It is imperative for research and agenda setting to occur at levels in the current U.S. condition. At the policy-adoption stage, favorable political conditions were a necessary condition for leave-policy adoption. At the intermediate stage, when legislative content is shaped, social movements and political conditions interact to affect the type of policy ultimately adopted. Second, the "agenda-setting" stage should include a bill's movement through committees and houses in addition to its introduction. As B. G. King et al. (2005) noted, it is relatively easy for a lawmaker to introduce a bill; any further action on a bill requires more commitment from legislators, as such action becomes more consequential. In California and Pennsylvania, several elected representatives introduced leave bills independent of movement interest. These bills, however, did not move through the policymaking process without attention from coalition activists. Therefore, moving legislation was an important point of influence for leave coalitions, thereby changing the labor market with its increased female labor-force participation, particularly women with

young children, and led to strong public support for family leave and affordable childcare.

Among voters, such support extended across partisan lines and advocates hoped family-leave legislation would appeal to conservative congressional members who opposed abortion and espoused “family values.” Despite these perceived political openings, family-leave advocates saw their bill killed repeatedly, twice by Presidential veto (Elving, 1995). When finally signed into law in 1993, the FMLA still had the support of many of its original advocates. Although cognizant of the law’s limitations, advocates viewed it as a first step in establishing policy that could be expanded with subsequent legislation (Berstein, 2001; Elving, 1995). At the federal level, this has not happened.

Data Collection

This research involved analyzing quantitative data published by the USDOL. The data-collection plan created by Abt Associates involved surveying (up to) one employee per household (excluding those who are self-employed). The sample was divided into four groups: those who (a) took leave (39.7% of completed interviews); (b) needed but did not take leave (7.7% of completed interview); (c) took leave and needed but did not take leave (7.0% of completed interviews); and (d) neither took nor needed to take leave (45.6% of completed interviews).

Data Analysis

Although workers may have access to general leave, it cannot always be used for all purposes. For instance, paid vacation days may be impractical to use for illness

because an employer might require scheduling the time in advance. This researcher used data collected from this research setting to analyze the following research questions:

1. Under what conditions did employees exercise their FMLA rights, including what percentage were eligible, what percentage were aware of covered FMLA qualifying conditions, and what were the leave-taking patterns of covered employees?
2. How does the analyzed data from the USDOL 2012 survey inform policymaking under public-policy intersectionality, social movement theory, and political-mediation theory in strengthening statutory entitlements under the FMLA?

CHAPTER IV

RESULTS

Employers hire employees to do certain job functions. However, challenges can arise when employees opt to take leave for personal or familial issues, resulting in employers finding alternate methods to get the job done. The purpose of this research was to consider how to more effectively serve Americans with an enhanced FMLA program. This goal was achieved by analyzing the particular domains of the law and determining the deterrents that prevent employees from exercising their rights. The United States now has nearly 2 decades of experience with the FMLA. The USDOL, the enforcer of the FMLA, employed Abt Associates in 2012 to assess employer workplace practices and employee-leave-taking patterns. Following, Abt Associated compiled this data into a public-use file. This researcher examined quantitative variables from the survey; studying the public-use file informs decision making on how to effectively promote passage of increased FMLA protections through the lenses of public-policy intersectionality and social-movement theories.

The public data-use file created by Abt Associates included two surveys: an employee survey and a worksite survey. The employee survey was conducted by RDD using CATI. Surveys were completed between February 1 and June 24, 2012, calling landlines and cell phones and yielding 2,852 completed interviews (including oversamples of “leave takers” and those with “unmet need for leave”). The worksite survey, conducted between March 12 and June 15, 2012, used a respondent-selected combination of phone or Web and included 1,812 completed interviews with worksites. The analysis builds on the use of sampling weights to adjust for stratified sampling and

survey nonresponse. The tool used to perform statistical analysis on this data was the Statistical Package for the Social Sciences (SPSS). SPSS is one of the more popular statistical tools to perform complex data manipulation and analysis with simple instructions. It is designed for interactive and noninteractive (batch) uses.

Findings

This chapter documents participants' responses from the 2012 Abt Associates employee survey and worksite survey. In addition, this chapter contains the following subheadings: (a) participant characteristics; (b) research question 1 responses; (c) research question 2 analyses; and (d) summary of the chapter. Not all participants at the worksites were eligible. Eligible employees may take up to 12 weeks of leave in a single 12-month period for a serious injury or illness of a covered service member who is the employee's parent, spouse, or child. FMLA-qualifying reasons include (a) serious health condition of self, spouse, parent, or child; (b) new child (birth, adoption, or foster); and (c) deployment of the employee's parent, spouse, or child to covered active duty as a member of the regular armed forces or reserves.

Participant Characteristics

This section offers a brief demographic overview of the participants included in the employee survey and the worksite survey. The 2012 employee survey involved interviewing (up to) one employee per household (excluding those who are self-employed). The survey screener conducted interviews to determine whether the household contained at least one person 18 years of age or older who had been employed during the last 12 months. For all people in the household meeting these criteria, the interviewer attempted to determine if they have taken or needed without taking family or

medical leave during the reference period. Following, Abt Associates, the screener divided participants into four categories:

1. Took leave (1,133 completed interviews).
2. Needed but did not take leave (219 completed interviews).
3. Took leave and needed but did not take leave (199 completed interviews).
4. Neither took nor needed to take leave (1,301 completed interviews).

The employee survey was as an overlapping, dual-frame landline and cell-phone RDD telephone survey. It featured 2,852 completed extended interviews, including 2,060 from the landline sample and 792 from the cell-phone sample. Numbers for the landline sample were drawn with equal probabilities from active blocks (area code + exchange + two-digit block number) that contained one or more residential directory listings. The cellular sample was drawn through a systematic sampling of 1,000 blocks dedicated to cellular service according to the Telcordia database. The target population were U.S. adults age 18 or older who were employed for pay in the past 12 months. It was designed to sample U.S. adults who had been employed for pay in the private or public sectors at any time during the 12 months prior to the interview. The sample did not include those who were self-employed because they are not subject to the FMLA. The survey featured a screener and an extended interview. The worksite survey was a mixed-mode telephone and internet survey of U.S. businesses conducted to obtain estimates of the use of leave under the FMLA and examine the impact on U.S. private-business establishments. The coverage rate provided by this design was approximately 98.1%, based on the most recent estimates from the National Health Interview Survey (Blumberg & Luke, 2012). Interviews were conducted in English and Spanish.

Research Question 1

In 2012, Abt Associates surveyed 1,812 worksites and 2,852 employees about experiences with family and medical leave. The worksite survey included sites covered by the FMLA and those that are not covered. The employee survey included employees who took leave, those who had an unmet need for leave, those who met both of these conditions, and those who met neither. It also included employees who were eligible for the FMLA and those who were not. These factors guided the following parameters under Research Question 1: Under what conditions did employees exercise their FMLA rights, including what percentage were eligible, what percentage were aware of covered FMLA qualifying conditions, and what were the leave-taking patterns of covered employees?

To be eligible to use the FMLA, a participant must have (a) worked for a firm with 50 employees within 75 miles of the employee's worksite, (b) have 12 months of tenure with their employer, and (c) have 1,250 hours of service in the past year. As referenced below, 73.6% of employees worked at a worksite with 50 or more employees within 75 miles, which is the first parameter of FMLA eligibility. Following, 64.0% of employees worked in covered FMLA worksites and had 12 months' tenure. However, as seen in Table 1, meeting all the parameters of coverage are difficult, and the percentage of employees eligible gradually diminishes. Only 59.2% of employees work in covered FMLA worksites, worked continuously for the previous 12 months, and worked at least 1,250 hours in the past 12 months (approximately 24 hours per week). Thus, approximately 40% of the U.S. population is not eligible to use the entitlements of the FMLA and are left vulnerable without protections.

Table 1

Current Employees as a Percentage of All Employees

Current employees	All employees %	95 CI
Percent of employees whose worksites have 50 or more employees within 75 miles	73.6	70.6–76.6
... and continuously worked for the same worksite for 12 months	64.0	61.0–67.0
... and were always a full-time employee or worked at least 1,250 hours over the past 12 months (this is the percentage of employees who are eligible for FMLA)	59.2	56.3–62.1
Unweighted <i>N</i>		2.572

The United States can increase coverage and make more employees eligible by changing the criteria of policy coverage shown in Table 1. The data below show that through minimal adjustments, a greater percentage of the U.S. population would qualify. Figures 1 and 2 demonstrate that, 63.2% of employees would be eligible if the cutoff were lowered to 30 employees, or 66.6% with a 20-employee threshold (see Figure 1). Approximately 62.7% of employees would be eligible if the minimum hours of service requirement were dropped to 780 hours and 54.5% would be eligible if the minimum hours were raised to 1,820 hours (see Figure 2).

A policy is only effective if the citizenry has broad awareness of its existence. Employee knowledge and understanding of the FMLA is crucial to its use. The public-use file also included questions to examine workers' awareness of the FMLA, and an understanding of the rights and protections afforded to them. Data shown in Table 2 indicates that only 66.2% of all employees have heard of the FMLA, regardless of eligibility. Of the 59.2% employees who are eligible, more employees at covered worksites have heard of the FMLA than those who work at uncovered worksites (70.9% vs. 53.1%).

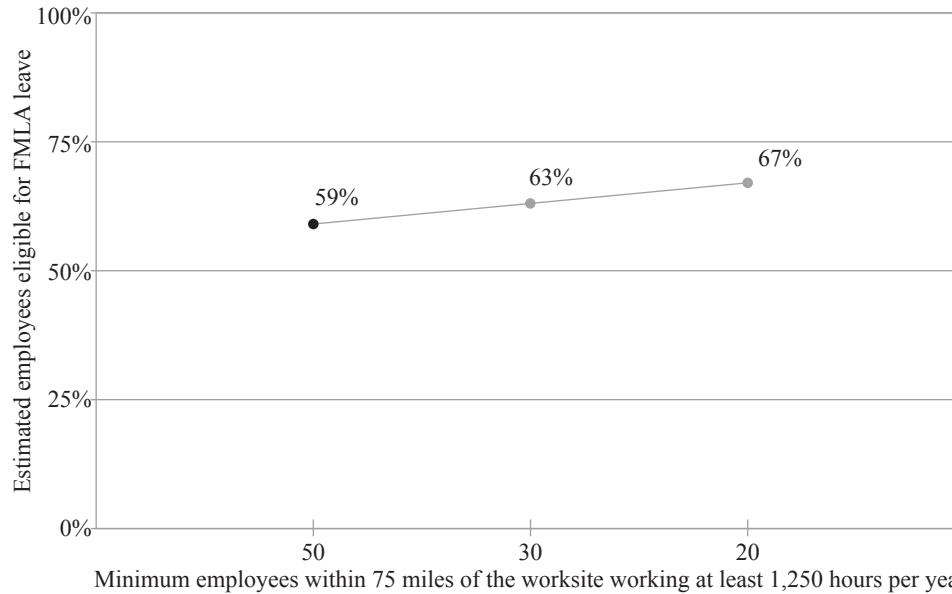


Figure 1. Expected portion of employees eligible for Family Medical Leave by census.
Note. The Family Medical Leave Act requires a minimum number of employees within 75 miles of the worksite maintaining 12 months' tenure in the last year.

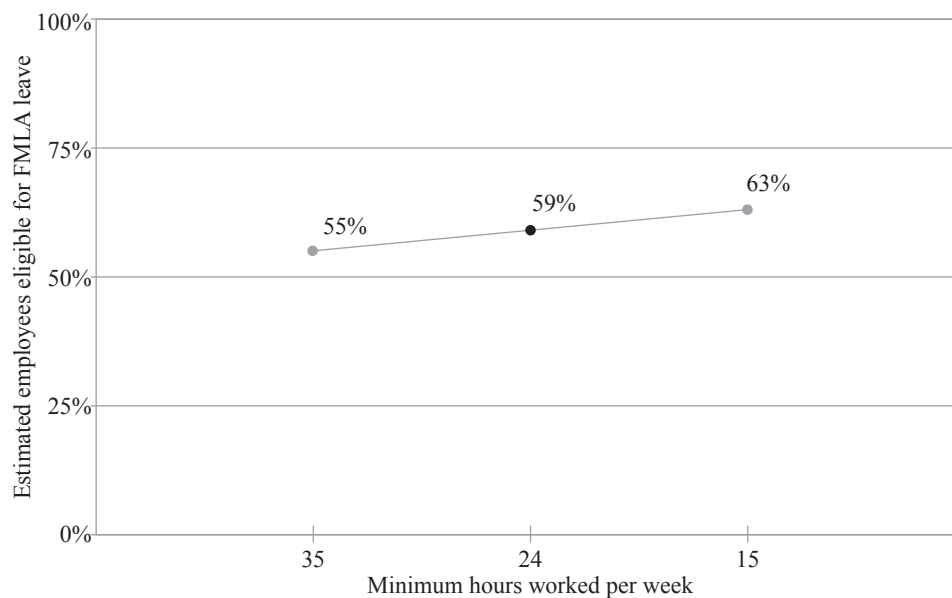


Figure 2. Expected portion of employees eligible for Family Medical Leave by hours.
Note. The Family Medical Leave Act requires a minimum hours worked per week.

Table 2 also demonstrates that employers need to be more proactive in creating awareness of the policy. The most common sources of knowledge of the FMLA are

gained through a poster or other posted notice and communication from the worksite (including the human-resources department), each reaching about 40% of employees. In conclusion, fewer than 50% of eligible employees are aware of their protected FMLA rights through communication from their employer. Of the 59.2% of employees who are eligible, less than 50% are informed of their eligibility through their employer. Therefore, one can assume that execution of the policy has been not been effective because awareness of policy protections is imperative to its use.

Table 2

Employee Awareness of the Family Medical Leave Act

Employee awareness of FMLA	All employees		Employees at covered worksites		Employees at uncovered worksites	
	%	95% CI	%	95% CI	%	95% CI
Have heard of the federal FMLA	66.2	63.0–69.4	70.9	67.1–74.6	53.1	47.1–59.2
How employee learned about FMLA						
Media	11.6	10.0–13.3	11.0	9.1–12.8	13.6	10.1–17.1
Coworker	3.1	2.2–4.0	3.8	2.6–5.0	1.1	0.0–2.2
Employer or human-resource department	36.5	33.7–39.4	41.1	37.7–44.5	23.8	19.3–28.4
Saw a poster (includes notice posted)	44.3	41.0–47.6	48.6	44.9–52.3	32.4	26.0–38.9
Family member	3.8	2.7–4.9	4.2	2.8–5.5	2.7	1.1–4.3
Friend or neighbor	1.8	1.0–2.6	1.8	0.8–2.9	1.7	0.5–2.9
Union	0.7	0.4–1.1	1.0	0.5–1.5	0.0	0.0–0.1
Other	11.0	9.1–12.9	11.0	8.7–13.3	11.0	7.6–14.4
Don't know/refused	1.7	0.8–2.6	1.4	0.6–2.1	2.7	0.2–5.1

Note. FMLA = Family Medical Leave Act.

Awareness of the FMLA is crucial to its use, however, employers should also be able to effectively communicate the nuances of the policy. As seen on Table 3, most employees incorrectly believe that the FMLA provides protected leave for the care of family members that FMLA does not actually cover (last three rows). Knowledge of the

military-family-leave provisions is substantially lower than other provisions: below 65% versus knowledge of other provisions, which is well above 75%. Employees appear to believe the FMLA is broader than it actually is, which can cause great frustration when exercising one's rights. It can be concluded that this frustration can even act as a deterrent to going through the process of applying.

In addition to discussing employee eligibility and awareness of FMLA policy parameters, it is also important to analyze leave-taking patterns. Although 59.2% of employees are eligible, this does not mean all of these employees opt to take leave. Why would someone who felt that they needed leave not take leave? The data (see Figure 3) demonstrates the most common reasons a person who felt they needed leave did not take it was because they could not afford to take leave (46%). The only other common response was fear of losing one's job (17%). Of those who could not afford to take leave, employees with unmet need for leave used several strategies. As seen in Table 4, the most commonly reported strategies were someone else took over caregiving responsibilities (65.4%), they deferred or forewent medical care (52.3% and 50.3% respectively), some other family member(s) took leave (41.1%), and they paid others to provide care (31.6% for childcare; 35.1% for eldercare).

Table 3

Employee Knowledge of the Family Medical Leave Act

Employee knowledge of FMLA	All		Employees at covered worksites		Employees at uncovered worksites	
	%	95%CI	%	95% CI	%	95% CI
Percent of respondents who correct answered that FMLA applies to the following covered reasons:						
FMLA is available for the care of a newborn.	91.7	86.2–97.3	92.8	88.5–97.1	88.1	76.1–100.1
FMLA is available for an employee’s own serious health condition.	88.7	84.2–93.1	90.5	85.7–95.4	80.5	68.8–92.2
FMLA is available for the care of a child with a serious health condition.	86.8	82.2–91.4	89.1	84.9–93.4	80.0	66.7–93.3
FMLA is available for the care of a spouse with a serious health condition.	85.8	81.0–90.5	86.5	81.0–92.0	82.8	72.2–93.3
FMLA is available for the care of a parent with a serious health condition.	83.1	78.4–87.9	83.5	78.2–88.7	81.9	70.8–93.0
FMLA is available for the care of an adopted child or foster child.	80.1	74.3–85.9	81.1	75.2–86.9	76.4	63.8–89.1
FMLA is available for the care of a military service member.	62.8	57.8–67.8	63.7	58.0–69.5	59.9	48.9–70.9
FMLA is available for reasons related to the deployment of a military service member.	59.8	55.1–64.5	59.6	54.4–64.8	60.5	49.2–71.8
Percent of respondents who correctly answered that FMLA does not apply to the following reasons:						
FMLA is available for the care of a grandparents with a serious health condition.	17.5	12.5–22.4	13.9	8.9–18.9	27.2	11.6–42.7
FMLA is available for the care of a grandchild with a serious health condition.	18.2	13.7–22.8	17.4	12.5–22.2	22.6	8.3–36.8
FMLA is available for the care of a sibling with a serious health condition.	16.6	11.0–22.2	15.9	10.1–21.8	19.3	7.3–31.4
Unweighted <i>N</i>	938					

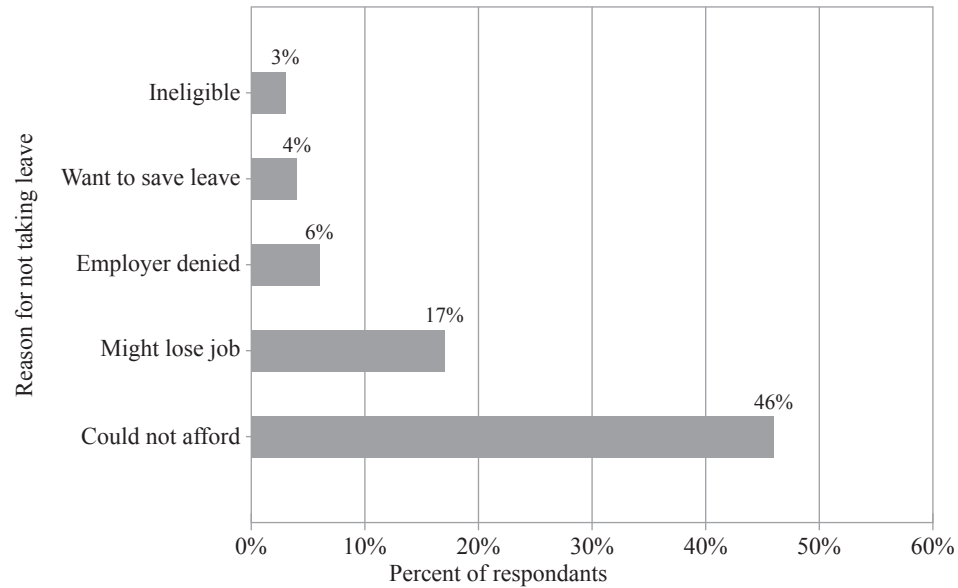


Figure 3. Why employees do not take leave.

Table 4

Action Taken in Lieu of Leave

	All employees with unmet need for leave		Eligible and covered employees		All employees with unmet need for leave	
	%	95%CI	%	95% CI	%	95% CI
Recipient forewent medical treatment	50.3	41.7–58.9	51.7	40.3–63.0	48.7	35.5–61.9
Recipient postponed treatment	52.3	44.5–60.0	55.8	46.5–65.2	47.8	35.1–60.5
Someone else in the family took leave	41.1	27.5–54.8	44.4	26.6–62.1	37.1	22.2–51.9
Someone else took over caregiving responsibilities	65.4	55.8–75.0	63.7	52.8–74.6	67.5	51.5–83.5
Paid for eldercare	35.1	19.6–50.5	21.9	4.2–39.7	44.4	21.8–67.0
Paid for childcare	31.6	17.1–46.1	31.5	13.2–49.8	31.9	14.3–49.5
Other solution	22.0	16.3–27.6	19.8	12.5–27.0	24.5	16.1–33.0
Unweighted <i>N</i>		27		169		128

Research Question 2

As seen in answering Research Question 1, only 59.2% of employees were eligible for FMLA coverage, leaving 40% of employees unprotected, often causing them to go from economic self-sufficiency to dependency as they juggled personal and familial

health issues. Employees who were covered demonstrated they were not aware of their rights, or many opted not to take the unpaid leave because they could not financially afford to do so. These factors guide the discussion of Research Question 2: How does the analyzed data from the USDOL 2012 survey inform policymaking under public-policy intersectionality, social movement, and political-mediation theory in strengthening statutory entitlements under the FMLA?

Public-Policy Intersectionality

Public-policy intersectionality scholars often ask, how do we advance the good in society? Much of what functions as debate about discrete policy problems is essentially deliberation about the structure of society and the institutions that preserve it; a steadfast commitment to the idea the people ought to have the right and the audacity to pursue “the good life”; and ideological differences regarding how best to use finite resources to ensure people can reach that goal. With this mind frame, change agents may approach a variety of allies to gain momentum for an enhanced FMLA Policy

Firstly, in their examination of paid family leave in California, Milkman and Appelbaum (2013) argued that Democratic Party control of the state legislature was a necessary though insufficient condition for passage of the country’s first paid-family-leave program. Secondly, female government officials may be approached to garner support. Female legislators are more likely to support leave policies, which are often framed in intersectional terms as women’s issues. Eileen Appelbaum and Ruth Milkman (2011) found that women care more about work–life balance issues than any other issue, including the economy. Female legislators, regardless of ideology and party affiliation, are more likely to support women’s issues than male legislators (Swers, 1998). Historical

accounts of the years-long political process for passing the federal FMLA support such findings (see Elving, 1995). When Congress debated the FMLA, House Representative Margaret Roukema, a moderate Republican representing New Jersey, played a key role in negotiating compromises in the bill's language. Most importantly, she proposed limiting the law's reach to establishments with 50 or more employees to make the bill more acceptable to other Republican legislators.

Thirdly, in addition to female legislators, labor unions also negotiate contracts that secure better wages and working conditions for their members, and this union benefit overflows to the unrepresented workforce. Union-negotiated contracts set labor standards, and nonunion employers respond to the implicit threat of unionization by raising working standards to remove worker incentives to organize (Freeman & Medoff 1984). This union-avoidance strategy on the part of employers is most evident in highly unionized sectors (Western & Rosenfeld, 2011). Additionally, the share of national wealth that goes to labor rather than to capital increases with union organizational strength (Kristal, 2010; Lin & Tomaskovic-Devey, 2013). A similar redistributive effect has been found in firms (Shin, 2014). Through political mechanisms, unions facilitate equity by supporting redistributive social policies that extend to unemployed and low-wage nonunion workers.

Social Movement and Political Mediation

From the 2012 USDOL data collected from the public-use file, statistics demonstrated that enhanced FMLA coverage is necessary. One method political activists, government, and change agents use to achieve this goal is by understanding how public-policy intersectionality, social-movement theories, and political mediation impact

legislation in government. Social-movement researchers concerned with policy outcomes have consistently found democratic control of legislatures to be an important factor in the adoption of liberal or progressive policies (Amenta et al., 1992; Amenta & Halfmann, 2000; Soule & Earl, 2001; Zylan & Soule, 2000). Having control of both houses is also key in that majority parties determine chair positions in standing committees and set the legislative agenda (see Chen, 2007). This scenario is ideal, and Republican President Trump has expressed interest in passing a paid-FMLA policy. Therefore, current political climates are ripe for passage of a new FMLA policy.

Although the FMLA has received much media attention, political-mediation models show that movements rarely have direct impact on policy (Burstein & Linton 2002). Although movement strategy and organizational strength are important, political conditions moderate their consequences (Amenta et al., 1992). Therefore, political conditions have included support from government allies (Amenta, Caren, & Olasky, 2005; Burstein & Linton, 2002; Meyer & Minkoff, 2004), the party composition of legislative bodies (Amenta et al., 1994), and the strength of alliances with other social movements (Amenta & Zylan, 1991).

Building on political-mediation models, researchers have argued that neither movement mobilization nor political conditions influence outcomes independently, but their influence derives from their interaction (Burstein & Linton, 2002; Soule & Olzak, 2004). For change agents to bring about passage of an enhanced FMLA policy, a partnership with government allies and grass roots will have to combine with current political conditions. Although President Trump is interested in a paid policy, it is important to change agents to protect other provisions in the policy that are beneficial; for

example, the President has suggested reducing the time granted from 12 weeks unpaid, to 6 weeks paid.

Based on Research Question 1, an enhanced FMLA policy would include reducing the number of employee requirements per employer (from employers needing 50 employees to offer FMLA coverage to needing 30), to ensure that more employees could be eligible. It would also include a paid-leave component and implementation of an outreach program to ensure employers that they communicate FMLA uses effectively. Once this enhanced FMLA policy has been drafted, it can be argued that at the policy adoption stage, political conditions and the political-party composition of state houses is critical to the passage of leave bills. Favorable political conditions—in the form of Democratic Party majorities—tend to be necessary conditions rather than mediators. However, President Trump’s interest in enhanced FMLA coverage is imperative to the passage of a new FMLA policy.

Previous researchers have similarly found that political conditions matter more than advocacy to policy outcomes at this final stage of policy adoption (B. G. King et al., 2005; Soule & King 2006). Adding to this previous research, I argue that at the intermediate stage when legislative content is shaped, movement activists and lawmakers interact most as they consider amendments to make the bill more appealing to moderate representatives. Given that factors such as public opinion or cultural change can mediate movement-outcome relationships, it is proposed that we a move away from political-mediation models and toward a more general-mediation model that considers political and economic conditions and others.

Labor Unions

Although labor scholarship lacks attention to organized labor's relationship to social policy, social-movement-outcomes research has predominantly focused on policy as a potential type of political consequence of movement mobilization. Thus, social-movement theories are instructive in examining the potential policy effects of union movements. As social-movement organizations, unions may be potentially influential. Though unions represent a decreasing proportion of the overall workforce, the union movement—with more than 14.5 million members in 2013 (Hirsch & Macpherson 2014)—is relatively sizeable compared to other social-movement organizations. Additionally, unions provide a substantial volunteer base for candidates, pulling members and nonmembers to the polls. They also provide an important organizational base for coalition work with other community organizations that advocate policies with broader and more direct voter appeal, such as family leave and paid sick days.

Taking a broad view of organized labor's social-policy agenda, some evidence suggests continued influence. First, organized labor's political activity has not run parallel to its organizational strength. In its peak years of membership, the labor movement did not advocate a broad social agenda (Lichtenstein, 2002). Instead, it focused on traditional industrial relations, winning “bread-and-butter” issues for its members through contract negotiations and enforcement. Unions remained focused on this narrow form of industrial relations throughout the 1970s and 1980s, as membership steadily declined. In the 1990s, in a context of continued decline, labor scholars documented the rise of social-movement unionism (Clawson, 2003; Fantasia & Voss,

2004; Frege & Kelly, 2004); a strategy that moves beyond industrial relations and into the realm of politics and policy (Engeman, 2015; von Holdt, 2002).

Recent examples include active union participation in the 2006 immigrant-rights marches (Engeman, 2015; Fink, 2010; Milkman, 2006), health care reform through the Affordable Care Act, support of the Dodd–Frank financial-reform law, and city-level campaigns for increasing the minimum wage. Additionally, unions have long been involved in campaigns for family leave (Dark, 2001; Elving, 1995; Milkman & Appelbaum, 2013). Some union-supported social policies establish compensation and protections that can be negotiated into contracts with employers, and union leaders have expressed openness to using legislation as a means of raising working standards (see Lichtenstein, 2014, p. 56). Although negotiation through legislation may not directly strengthen unions institutionally (Lichtenstein, 2014), it is important to examine union effects on legislation because this is one way that unions encourage labor market equity, culturally, politically, and institutionally (Western & Rosenfeld, 2011).

It is possible that union representation, which is particularly high in the public sector, results in more workers having access to negotiated leave policies, which in turn results in an easier path toward policy adoption. Unions may create favorable political conditions for leave legislation, particularly in their support of Democratic Party candidates in elections. Democratic Party control of state houses, which has a significant positive effect on state policy adoption, may therefore be endogenous with historical unionization rates.

Summary of Findings

From Research Question 1, quantitative accounts show that many areas of the FMLA need change. First, approximately 40% of the workforce are exempt from the policy, those covered are not aware of the parameters of the FMLA, and many employees opted not to take unpaid leave simply because they could not afford to do so. To change these parameters and enhance FMLA coverage, change agents need to assess social movements to craft a strategy in gaining allies with unions and government officials. Partnering with female allies and Democratic Party candidates is one solution because they typically favor generous leave policies. In addition, leave-legislation campaigns at the state and federal levels attest to the important role of organized labor in facilitating passage of family leave.

Qualitative accounts of leave-legislation campaigns at state and federal levels attest to the important role of organized labor in facilitating passage of family-, maternity/parental-, and sick-leave legislation at state and municipal levels of government (Dark, 2001; Elving, 1995; Milkman & Appelbaum, 2013). In many campaigns, labor organizations were involved early. For example, the American Federation of Labor and Congress of Industrial Organizations (the largest federation of labor unions in the United States) supported federal family-leave law that became the FMLA in very early iterations of the bill (Elving, 1995), and the California Labor Federation's active involvement in the campaign for California's Paid Family Leave program was instrumental in gaining support from elected representatives (Milkman & Appelbaum, 2013).

CHAPTER V
SUMMARY, DISCUSSION, CONCLUSIONS, IMPLICATIONS, AND
RECOMMENDATIONS

Summary

When caregiving needs arise, workers must find individualized solutions to manage tensions in work and family obligations, often at the expense of their economic security, personal, and family health. The FMLA, signed into law by President Clinton in 1993, grants up to 12 weeks of unpaid leave for eligible workers and remains the only federal legislation providing job-protected leave. This dissertation study explored the public-use file published by the agency to study employee eligibility under the FMLA, employee awareness of the FMLA, and leave-taking patterns to assess the strength of FMLA policy.

Following, these factors were tied to public-policy intersectionality theory, social movements, and political mediation to determine best strategies to enhance FMLA coverage through updated policy adoption. In line with these theories, favorable political and economic conditions are necessary for the adoption of leave legislation. Social movements (or union community coalitions) exerted the most influence at the agenda-setting stage of the policymaking process. While some elected representatives introduced bills independent of movement pressures, these bills only emerged from house committees with attention from movement actors.

Discussion

The United States lags behind many countries in family and medical leave policies that allow workers to address personal illness or family caregiving

responsibilities. According to a 2012 study commissioned by the USDOL (Klerman et al. 2014), the law's restrictive eligibility requirements exclude over 40% of America's workforce from coverage. Those who are eligible are sometimes unable to afford unpaid leave from work (Klerman et al., 2014; Waldfogel 2001a). Quantitative research conducted in Chapter 4 demonstrates that of the employees eligible for leave, a whopping 46% of employees opted out of leave since they couldn't afford to be unpaid. A paid family leave would allow employees to take extended periods off work while receiving replacement wages, an important distinction, especially for lower income parents who would not be able to take time off otherwise. Currently, in lieu of taking FMLA leave, further research in Chapter 4 established that 51.7% of employees forwent medical treatment, 55.8% postponed treatment, and 63.7% had to find someone else to take over caregiving duties.

Through these lenses, these statistics do not promote a well-balanced lifestyle. Clearly, these individualized employee solutions are detrimental to their health, all to compensate for a poorly constructed family and medical policy. Essentially, employees are opting to forego treatment, due to them being unable to afford the financial burdens of unpaid leave. Currently, eligible employees have not attained well-being and the "good life" under this policy. The aim of public policy intersectionality is to better illuminate how policy constructs individuals' and groups' relative power and privileges vis-à-vis their socio-economic-political status, health and well-being.

In order to argue that updates are needed to the FMLA policy, understanding the factors that lead to policy change, including social movement strength and strategy, is important for understanding power relationships and democracy. Through social

movement theories, a change for the better is possible. Previously in this dissertation, I argued that Democratic Party control of at least one state house was necessary for the movement of legislation through the policymaking process and that Democrats, female politicians, and unions play a key role in sponsoring, supporting, and signing leave legislation. Typically, female politicians, regardless of party affiliation, are keener to pass generous family leave policies. In addition, Unions offer a prime platform in which to discuss, rally, and mobilize support in large numbers. Unions have been successful in adding momentum to conversations held with media and politicians. They have also been involved in successfully negotiating general leave provisions into Union contracts. The beneficial effects of these negotiations will often spill over to non-Union employees as well.

Conclusions

First, this research extends social-movement theory by arguing that social movements and political conditions interact to jointly impact policy outcomes at the intermediate stage when legislative content is negotiated. Findings confirmed previous research showing that social movements have the greatest influence at the early stages of the policymaking process (i.e., bill introduction) rather than later stages (i.e., policy adoption) and that political conditions mediate relationships between movements and policy outcomes at the policy-adoption stage. Social-movement researchers argued that movements are most influential at setting legislative agendas, and that influence wanes as proposed legislation ventures toward adoption (B. G. King et al., 2005).

Consistent with previous research, movements are most impactful at the early stages of introduction and at moving bills through committees and onto house floors for a

vote. B. G. King and colleagues (2005) argued that legislators may be more receptive to pressures from social-movement organizations at earlier stages, particularly a bill's introduction. Introducing new legislation requires little effort on the part of a representative whose action may appease constituents without having to commit much political capital (B. G. King et al., 2005). In the present study, introducing new legislation took so little effort that legislators introduced bills without pressure from social-movement organizations and at times out of a personal commitment to the issue. This sort of independent action from legislators may be unique to leave policies, as they are strongly favored in public opinion across political ideologies. Social-movement activity in this case becomes particularly instrumental in moving legislation through committees and to house floors for votes.

Social movement change agents can also successfully move legislation by demonstrating that simplistic changes to FMLA policy, with massive impacts to the public, are possible. As Chapter 4 research shows, minimal adjustments are needed so that a greater percentage of the U.S. population would qualify for FMLA. Considering the effect of varying the statutory eligibility requirements, 63.2% of employees would be eligible if the cutoff were lowered to 30 employees (within 75 miles), or 66.6% with a 20-employee threshold (within 75 miles). In addition, approximately 62.7% of employees would be eligible if the minimum hours of service requirement were dropped to 780 hours (average of 15 hours per week); approximately 54.5% would be eligible if the minimum hours were raised to 1,820 hours. Change agents can also offer successful case studies to show that an updated policy has beneficial effects on businesses. They can look

to the strong U.S. state-level adoption and private-sector adoption of paid or unpaid leave.

Implications

The FMLA defines workplace-leave policy to include gender neutral, job-protected paid or unpaid leave to address personal illnesses or family-caregiving responsibilities. Establishing workplace leave in the United States has proven incredibly difficult (Berstein, 2001), making adoption of any leave law or expansion of existing law a notable accomplishment. As a result, the patchwork of state and private sector workplace-leave policy in the United States is, in part, a response to the lack of sufficient federal legislation. These patchwork policies are driven by localized, state-level policy processes negotiating which workers should be covered, the types of leave that should be offered, and the duration of leave periods. For the pre- and post-FMLA periods, states varied in their timing of legislative adoption. The federal government is largely absent in these conversations. Although states have been strides in enacting a more generous policy, it is important to note that only a handful of states have opted to have these conversations. In order to increase protections for all citizenry, an updated federal FMLA policy needs to be implemented so that it can have impact across all fifty states.

Recommendations

Organized campaigning is integral to the adoption of gender-neutral leave policies. Union strength has a significant positive influence on leave-policy adoption. Rather than being mediated by political conditions, this relationship is direct and remains significant when controlling for other factors. Also, Democratic Party control and the percent of female legislators in upper and lower state houses also have significant

positive relationships with leave-policy adoption. Findings therefore support social-movement theories that demonstrate the relevance of movements to social policy as well as the importance of political opportunities in the form of government allies. The union effect may also relate to its role in industrial relations and in elections. In industrial relations, unions negotiate working conditions that set standards for other sectors.

For Future Research

In future research, additional measures of economic conditions should be considered, including: annual changes in unemployment rates, the per capita gross domestic product, and the annual rate of change in the state's real gross domestic product. Additionally, if available, measures of state budgets would also be useful, given that this case study of California showed that a bill's state fiscal impact estimates—specifically high estimates at a time of state budget deficit—obstructed its progress. Also, given that movements have greater influence over early stages of the policymaking process, as evident in present case studies as well as other social-movement research (Johnson, 2008; B. G. King et al., 2005, 2007; Olzak & Soule 2009; Soule & King 2006), a study of movement agendas (how ambitious their goals are, how they frame policy issues) are an important component of policy adoption. Other social-movement scholars found that movements strategically adapt to conditions, adjusting their goals and tactics in response to the presence or absence of government allies, public support, or strong oppositional movements (McCammon et al., 2008).

For Future Practice

Attention to leave-policy issues from union–community coalitions and presence of government allies are not always enough to assure passage of leave legislation. Weak

economic conditions—recessions, higher rates of unemployment, fragile state budgets—erode policymakers’ support for leave laws and impede progress of proposed leave legislation through the stages of the policymaking process. Organized business consistently opposed efforts to pass leave laws in California and Philadelphia, most often by local Chambers of Commerce. These opponents framed their opposition with a concern about job loss resulting from what they argued would be high costs of providing leave to workers. Therefore, conversations with private sector allies must be held to establish consistent support for the issue, independent of economic conditions.

Closing Remarks

The 1993 FMLA was signed into law by President Clinton and passed after nearly a decade of advocacy. States and the private sector have progressed significantly in enacting efficient paid-leave programs that allow employees to address personal and familial medical issues, childcare, and eldercare. However, no changes have occurred over the last two decades on a federal level. Quantitative research in Chapter 4 established that employees could not afford to take unpaid leave, and as a result were foregoing medical treatment.

This researcher asserted that the need to take time off for child care, elder care, or personal health needs should not place a person’s job in jeopardy. Parents should not have to be forced to choose between caring for their family or keeping their employment. Given the dearth of federal policy on this issue, workplace-leave advocates have campaigned for family, parental, and paid sick-leave legislation at the state level. Such campaigns were active leading up to and following passage of the FMLA, with some success.

However, despite challenges, family and medical leave is again receiving more attention at the national level. In 2016, two bills had been introduced in Congress that would open access to workplace leave: the Healthy Families Act (H.R.932) and the Family and Medical Insurance Leave Act (S.786). The Healthy Families Act, first introduced in 2004, would allow workers to accrue up to 56 hours of paid leave per year. The Family and Medical Insurance Leave Act, first introduced in December 2013, would create a federal paid-leave program funded by employer and employee contributions and administered through the Social Security Administration. With no eligibility requirements, it would provide partial wage replacement for up to 12 weeks of family leave. In order for bills such as these to be successful, strong alliances between government officials, organized labor groups, and grassroots efforts must be built so that FMLA policy can be enhanced. In conclusion, although policy alone cannot transform society, it does have an important but not yet fully understood role in the creation of more just and equitable societies.

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APPENDIX A: FEDERAL—U.S. DEPARTMENT OF LABOR FMLA GUIDE

U.S. Department of Labor
Wage and Hour Division



Fact Sheet #28: The Family and Medical Leave Act

The Family and Medical Leave Act (FMLA) entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons. This fact sheet provides general information about which employers are covered by the FMLA, when employees are eligible and entitled to take FMLA leave, and what rules apply when employees take FMLA leave.

COVERED EMPLOYERS

The FMLA only applies to employers that meet certain criteria. A **covered employer** is a:

- Private-sector employer, with 50 or more employees in 20 or more workweeks in the current or preceding calendar year, including a joint employer or successor in interest to a covered employer;
- Public agency, including a local, state, or Federal government agency, regardless of the number of employees it employs; or
- Public or private elementary or secondary school, regardless of the number of employees it employs.

ELIGIBLE EMPLOYEES

Only eligible employees are entitled to take FMLA leave. An **eligible employee** is one who:

- Works for a *covered employer*;
- Has worked for the employer for at least *12 months*;
- Has at least *1,250 hours* of service for the employer during the 12 month period immediately preceding the leave*; and
- Works at a location where the employer has at least *50 employees within 75 miles*.

* Special hours of service eligibility requirements apply to airline flight crew employees. *See Fact Sheet 28J: Special Rules for Airline Flight Crew Employees under the Family and Medical Leave Act.*

The 12 months of employment do not have to be consecutive. That means any time previously worked for the same employer (including seasonal work) could, in most cases, be used to meet the 12-month requirement. If the employee has a break in service that lasted seven years or more, the time worked prior to the break will not count *unless* the break is due to service covered by the Uniformed Services Employment and Reemployment Rights Act (USERRA), or there is a written agreement, including a collective bargaining agreement, outlining the employer's intention to rehire the employee after the break in service. *See "FMLA Special Rules for Returning Reservists".*

LEAVE ENTITLEMENT

Eligible employees may take up to **12 workweeks** of leave in a 12-month period for one or more of the following reasons:

- The birth of a son or daughter or placement of a son or daughter with the employee for adoption or foster care;
- To care for a spouse, son, daughter, or parent who has a serious health condition;
- For a serious health condition that makes the employee unable to perform the essential functions of his or her job; or
- For any qualifying exigency arising out of the fact that a spouse, son, daughter, or parent is a military member on covered active duty or call to covered active duty status.

An eligible employee may also take up to **26 workweeks** of leave during a "single 12-month period" to care for a covered servicemember with a serious injury or illness, when the employee is the spouse, son, daughter, parent, or next of kin of the servicemember. The "single 12-month period" for military caregiver leave is different from the 12-month period used for other FMLA leave reasons. *See [Fact Sheets 28F: Qualifying Reasons under the FMLA](#) and [28M: The Military Family Leave Provisions under the FMLA](#).*

Under some circumstances, employees may take FMLA leave on an intermittent or reduced schedule basis. That means an employee may take leave in separate blocks of time or by reducing the time he or she works each day or week for a single qualifying reason. When leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt the employer's operations. If FMLA leave is for the birth, adoption, or foster placement of a child, use of intermittent or reduced schedule leave requires the employer's approval.

Under certain conditions, employees may choose, or employers may require employees, to "substitute" (run concurrently) accrued paid leave, such as sick or vacation leave, to cover some or all of the FMLA leave period. An employee's ability to substitute accrued paid leave is determined by the terms and conditions of the employer's normal leave policy.

NOTICE

Employees must comply with their employer's usual and customary requirements for requesting leave and provide enough information for their employer to reasonably determine whether the FMLA may apply to the leave request. Employees generally must request leave 30 days in advance when the need for leave is foreseeable. When the need for leave is foreseeable less than 30 days in advance or is unforeseeable, employees must provide notice as soon as possible and practicable under the circumstances.

When an employee seeks leave for a FMLA-qualifying reason for the first time, the employee need not expressly assert FMLA rights or even mention the FMLA. If an employee later requests additional leave for the same qualifying condition, the employee must specifically reference either the qualifying reason for leave or the need for FMLA leave. *See* Fact Sheet 28E: Employee Notice Requirements under the FMLA .

Covered employers must:

- (1) Post a notice explaining rights and responsibilities under the FMLA. Covered employers may be subject to a civil money penalty for willful failure to post. For current penalty amounts, see www.dol.gov/whd/fmla/applicable_laws.htm;
- (2) Include information about the FMLA in their employee handbooks or provide information to new employees upon hire;

- (3) When an employee requests FMLA leave or the employer acquires knowledge that leave may be for a FMLA-qualifying reason, provide the employee with notice concerning his or her eligibility for FMLA leave and his or her rights and responsibilities under the FMLA; and
- (4) Notify employees whether leave is designated as FMLA leave and the amount of leave that will be deducted from the employee's FMLA entitlement.

See [Fact Sheet 28D](#): Employer Notice Requirements under the FMLA.

CERTIFICATION

When an employee requests FMLA leave due to his or her own serious health condition or a covered family member's serious health condition, the employer may require certification in support of the leave from a health care provider. An employer may also require second or third medical opinions (at the employer's expense) and periodic recertification of a serious health condition. See [Fact Sheet 28G](#): Certification of a Serious Health Condition under the FMLA. For information on certification requirements for military family leave, see [Fact Sheet 28M\(c\)](#): Qualifying Exigency Leave under the FMLA; [Fact Sheet 28M\(a\)](#): Military Caregiver Leave for a Current Servicemember under the FMLA; and [Fact Sheet 28M\(b\)](#): Military Caregiver Leave for a Veteran under the FMLA.

JOB RESTORATION AND HEALTH BENEFITS

Upon return from FMLA leave, an employee must be restored to his or her original job or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment. An employee's use of FMLA leave cannot be counted against the employee under a "no-fault" attendance policy. Employers are also required to continue group health insurance coverage for an employee on FMLA leave under the same terms and conditions as if the employee had not taken leave. See [Fact Sheet 28A](#): Employee Protections under the Family and Medical Leave Act .

OTHER PROVISIONS

Special rules apply to employees of local education agencies. Generally, these rules apply to intermittent or reduced schedule FMLA leave or the taking of FMLA leave near the end of a school term.

Salaried executive, administrative, and professional employees of covered employers who meet the Fair Labor Standards Act (FLSA) criteria for exemption from minimum wage and overtime under the FLSA regulations, 29 CFR Part 541, do not lose their FLSA-exempt status by using any unpaid FMLA leave. This special exception to the "salary basis" requirements for FLSA's exemption extends only to an eligible employee's use of FMLA leave.

ENFORCEMENT

It is unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise any right provided by the FMLA. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any

proceeding, related to the FMLA. See [Fact Sheet 77B: Protections for Individuals under the FMLA](#). The Wage and Hour Division is responsible for administering and enforcing the FMLA for most employees. Most federal and certain congressional employees are also covered by the law but are subject to the jurisdiction of the U.S. Office of Personnel Management or Congress. If you believe that your rights under the FMLA have been violated, you may file a complaint with the Wage and Hour Division or file a private lawsuit against your employer in court.

For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4-USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

1-866-4-USWAGE
TTY: 1-866-487-9243
[Contact Us](#)

APPENDIX B: STATE OF CALIFORNIA PAID FAMILY LEAVE GUIDE

Division of Labor Standards Enforcement

Office of the Labor Commissioner

THIS POSTER MUST BE DISPLAYED WHERE EMPLOYEES CAN EASILY READ IT*(Poster may be printed on 8 1/2" x 11" letter size paper)***HEALTHY WORKPLACES/HEALTHY FAMILIES ACT OF 2014
PAID SICK LEAVE****Entitlement:**

- An employee who, on or after July 1, 2015, works in California for 30 or more days within a year from the beginning of employment is entitled to paid sick leave.
- Paid sick leave accrues at the rate of one hour per every 30 hours worked, paid at the employee's regular wage rate. Accrual shall begin on the first day of employment or July 1, 2015, whichever is later.
- Accrued paid sick leave shall carry over to the following year of employment and may be capped at 48 hours or 6 days. However, subject to specified conditions, if an employer has a paid sick leave, paid leave or paid time off policy (PTO) that provides no less than 24 hours or three days of paid leave or paid time off, no accrual or carry over is required if the full amount of leave is received at the beginning of each year in accordance with the policy.

Usage:

- An employee may use accrued paid sick days beginning on the 90th day of employment.
- An employer shall provide paid sick days upon the oral or written request of an employee for themselves or a family member for the diagnosis, care or treatment of an existing health condition or preventive care, or specified purposes for an employee who is a victim of domestic violence, sexual assault, or stalking.
- An employer may limit the use of paid sick days to 24 hours or three days in each year of employment.

Retaliation or discrimination against an employee who requests paid sick days or uses paid sick days or both is prohibited. An employee can file a complaint with the Labor Commissioner against an employer who retaliates or discriminates against the employee.

For additional information you may contact your employer or the local office of the Labor Commissioner. Locate the office by looking at the list of offices on our website <http://www.dir.ca.gov/dlse/DistrictOffices.htm> using the alphabetical listing of cities, locations, and communities. Staff is available in person and by telephone.

DLSE Paid Sick Leave Posting

11/2014

APPENDIX C: STATE OF NEW JERSEY PAID FAMILY LEAVE GUIDE

Your Guide to Family Leave Insurance in New Jersey

You can claim Family Leave Insurance benefits to:

- Bond with a newborn child during the first 12 months after the child's birth. You, your domestic partner, or your civil union partner must be the biological parent of the child.
- Bond with an adopted child during the first 12 months after the child's placement.

Bonding leave must be taken for a period of more than seven consecutive days, unless the employer permits the leave to be taken in non-consecutive periods. In this case, each leave period must be at least seven days.

- Care for a family member with a serious health condition. A health care provider must certify the condition. Care leave may be taken:
 - for six consecutive weeks
 - for intermittent weeks, or
 - for 42 intermittent days

during a 12-month period beginning with the first date of the claim.

"Family member" means your child, spouse, domestic partner, civil union partner, or parent.

"Child" means your:

- biological, adopted, or foster child; stepchild, or legal ward, or
- domestic partner's or civil union partner's child.

The child must be:

- less than 19 years old, or
- 19 years of age or older but incapable of self-care because of mental or physical impairment.

Family Leave Insurance Facts

- Family Leave Insurance provides a monetary benefit, not a leave entitlement.
- This program does not give workers the right to return to their job after a period of family leave. Your job may be protected if your employer is subject to the federal Family and Medical Leave Act (FMLA) or the New Jersey Family Leave Act (NJFLA).
- Your employer may require you to use up to two weeks of sick leave, vacation time, or other paid time off. Employers who do this must provide full pay for this leave time.
- If your employer requires you to use up to two weeks of sick leave, vacation time, or other paid time off, the maximum Family Leave Insurance allowance may be reduced by up to 14 days.
- If you claim family leave benefits to care for a family member with a serious health condition, you must give your employer reasonable advance notice unless:
 - you need to take leave time unexpectedly, or
 - the time of the leave changes for reasons you could not foresee.
- If you claim family leave benefits intermittently, you must give your employer 15 days' notice.
- If you claim benefits to bond with a newborn or newly adopted child, you must give your employer 30 days' notice before the leave starts. If you do not give your employer the proper notice, your benefit entitlement may be reduced by 14 days.
- If you are taking intermittent leave for bonding, you must take the leave in periods of seven days or more. You and your employer must both agree to the intermittent schedule.

Coverage

Employment covered under the New Jersey Unemployment Compensation Law, including state and local government employment, is also covered for Family Leave Insurance. We call this "covered employment."

Employees may be covered under:

- the State Plan;
- an approved Private Plan; or
- Family Leave During Unemployment (if the period of leave begins more than 14 days after the last day of covered employment).

Employers must post information about the type of coverage provided at the worksite.

Cost

The program is financed by worker payroll deductions. Starting January 1, 2016, each worker contributes 0.08% of the taxable wage base. For 2016, the taxable wage base is \$32,600, and the maximum yearly deduction for Family Leave Insurance is \$26.08. The taxable wage base changes each year.

Employers do not contribute to the program.

Applying for Benefits

You can get an application for Family Leave Insurance benefits:

- online: www.nj.gov/labor
- by mail:
Division of Temporary Disability Insurance
PO Box 387, Trenton, NJ 08625-0387
- by phone (Customer Service Section): (609) 292-7060

If you are receiving State Plan temporary disability benefits for a pregnancy-related disability, we will automatically send you instructions for claiming Family Leave Insurance benefits for bonding with your newborn child.

Important: DO NOT submit applications until your family leave claim begins. Filing early can delay your claim.

Please allow 14 days' processing time before inquiring about a claim.

The claimant's Social Security number must appear on any correspondence or inquiry about a claim.

A claim cannot be located without the Social Security number.

People with a hearing impairment may contact us Telecommunication Device for the Deaf (TDD)
609-292-8319
New Jersey Relay Service: TT user 1-800-852-7899

STATE PLAN – FAMILY LEAVE INSURANCE BENEFITS

Wage Requirements

To establish a valid claim, you must have earned a certain amount in New Jersey covered employment during your "base year." The base year is the 52 weeks immediately before the week in which the family leave begins.

You must have either:

- worked 20 calendar weeks in the base year, each being a week in which you had New Jersey earnings of \$168 or more **OR** a week (up to 13 weeks) in which you were separated from employment due to a declared state of emergency during the base year; or
- earned \$8,400 or more during the base year.

Benefit Duration

You may receive up to six weeks of Family Leave Insurance benefits in a 12-month period. The 12-month period is the 365 consecutive days that begins on the first day that you file a valid first claim for Family Leave Insurance benefits.

A "first claim" is the first claim you file for Family Leave Insurance benefits. The 12-month period starts when you file your first claim.

A "re-established claim" is another claim filed within the same 12-month period. You may re-establish a claim:

- to care for a different family member, or
- during or following employment with a different employer.

You cannot receive more than six weeks of benefits during the 12-month period, for any reason.

Benefit Amounts

The weekly benefit rate for a Family Leave Insurance claim is based on your average weekly wage. The average weekly wage is generally based on how much you earn in the eight weeks immediately before your claim begins. For claims beginning January 1, 2016, the weekly benefit rate is two-thirds (2/3) of your average weekly wage, up to \$615.

The daily benefit rate is one-seventh (1/7) of the weekly benefit rate. You can receive benefits for up to six weeks (42 days) during a 12-month period, or until you receive benefits equal to one-third (1/3) of your earnings during your base year, whichever is less.

If you file a State Plan claim for Family Leave Insurance benefits immediately after an eligible State Plan temporary disability claim, in most cases, the weekly benefit amount you receive will be the same as your State Plan temporary disability benefit amount. No one may receive more than the maximum weekly benefit amount allowed by law.

Benefit Limitations

The seven days after you file a claim is the "waiting week." You will not receive benefits for this week (or any part of the first week) until benefits have been paid for the three weeks following the waiting week. However, if your family leave immediately follows leave for your own illness under State Plan temporary disability, there is no waiting period for Family Leave Insurance benefits.

If you are receiving a pension that your most recent employer contributed to on your behalf, your weekly benefit amount will be reduced by the pension payment you received.

Family Leave Insurance benefits are not payable under the State Plan for:

- Any period when you receive temporary disability benefits, workers' compensation benefits, or any benefits from a disability or cash sickness program or similar law of New Jersey or any other state or the federal government;
- Any period when you receive unemployment insurance benefits;
- Any period when you receive full salary or paid time off (however, your employer may not require you to use more than two weeks of paid sick leave, vacation time, or other leave at full pay);
- Any period when you are working;
- Any period of family leave that did not start while you were a covered employee or within 14 days of your last day of covered employment;
- Any period of family leave to care for a family member who was not under the care or supervision of a health care provider;
- Any period you are out of work due to a labor dispute at your place of work;
- Any period after being fired by your most recent employer for gross misconduct connected with the work because you committed a criminal act punishable under the New Jersey Code of Criminal Justice; or
- Employees of educational institutions during any period between academic years or terms or during a school-wide recess, when you have a reasonable assurance of returning to work in the same or similar capacity when school resumes.

Impartial Examinations

An examination may be needed to support your claim for Family Leave Insurance. We may require that the person you are caring for get a physical examination by a state-appointed physician. There is no cost to you or the care recipient. If the care recipient refuses an examination, benefits will be denied.

Tax Information

Family Leave Insurance benefits are subject to federal income tax and to federal rules on reporting income and paying taxes. Family Leave Insurance benefits are not subject to New Jersey state income tax. You may choose to have 10% of your benefits withheld for federal income tax. After the end of each calendar year, form 1099G will be sent to you. This form lists the total benefits received that year. We also give this information to the Internal Revenue Service (IRS).

Appeals

The Division of Temporary Disability Insurance will make a determination of eligibility on your claim. If you or your employer disagree with the determination, you or the employer may file a formal appeal. You must file the appeal in writing within seven calendar days after delivery of the determination, or within 10 calendar days after the decision is mailed. The appeal costs nothing. You do not need a lawyer.

PRIVATE PLAN – FAMILY LEAVE INSURANCE BENEFITS

The law allows employers to use an approved Private Plan for Family Leave Insurance, instead of the State Plan. Private Plans must be equal to or better than the State Plan with regard to benefit amount and duration. Eligibility requirements may be no more restrictive than the State Plan. Workers may not pay more for Private Plan coverage than for State Plan coverage. The Division of Temporary Disability Insurance must approve all Private Plans.

Employers may use a Private Plan for temporary disability benefits and the State Plan for Family Leave Insurance benefits. Employers must post information about the type of coverage provided at the worksite.

If you are covered by a Private Plan and want to file a claim for Family Leave Insurance benefits, you must give your employer the required notice. (See "Family Leave Facts" section for requirements.) Your employer can provide the information you need to claim benefits.

The Private Plan insurer will make the decision on eligibility.

If you disagree with a decision on the Private Plan claim, you may file a complaint with:

Private Plan Compliance Section
Claims Review Unit
P.O. Box 957, Trenton, NJ 08625-0957

FAMILY LEAVE INSURANCE BENEFITS DURING UNEMPLOYMENT

If you apply for Family Leave Insurance benefits more than 14 days after your last day of covered employment, you can apply for benefits under the Family Leave During Unemployment program. People who claim Family Leave During Unemployment must meet all the eligibility requirements for unemployment benefits, but are not required to show their availability for work.

Benefits under the Family Leave During Unemployment program are paid for full weekly periods from Sunday through Saturday. Benefits are not payable for intermittent days under this program.

Division of Temporary Disability Insurance
PO Box 387
Trenton, New Jersey
08625-0387

Claims Information:
609-292-7060
609-292-2700

FAX:
609-984-4138

WPR-119 (1/16)

APPENDIX D: STATE OF RHODE ISLAND PAID FAMILY LEAVE GUIDE

RHODE ISLAND PARENTAL AND FAMILY MEDICAL LEAVE ACT

ADMINISTRATIVE REGULATIONS

RIGL 28-48

R.I. Department of Labor and Training
Labor Standards Division

**ADMINISTRATIVE REGULATIONS FOR THE
RHODE ISLAND PARENTAL AND FAMILY MEDICAL LEAVE ACT
CHAPTER 28-48 OF THE RHODE ISLAND GENERAL LAWS**

RULES AND REGULATIONS

1. DEFINITIONS

- (a) "Employer" means
 - (1) any person, sole proprietorship, partnership, corporation or other business entity that employs fifty (50) or more employees,
 - (2) the State of Rhode Island (including the executive, legislative and judicial branches), and any state department or agency that employs persons, and
 - (3) any city or town or municipal agency that employs thirty (30) or more employees, and
 - (4) any person who acts directly or indirectly in the interest of any employer.
- (b) "Employee" means any full time employee who has been employed by the same employer for twelve (12) consecutive months averaging at least thirty (30) hours per week prior to the effective date of the leave.
- (c) "Parental leave" means leave by reason of (1) the birth of a child of an employee, or (2) the placement of a child sixteen (16) years of age or less with an employee in connection with the adoption of such child by the employee.
- (d) "Serious illness" means a disabling physical or mental illness, injury, impairment or condition that involves inpatient care in a hospital, nursing home or hospice, or outpatient care requiring continuous treatment or supervision by a health care provider.
- (e) "Family member" means a parent, spouse, child, mother-in-law, father-in-law, or the employee him or herself.
- (f) "Family leave" means leave by reason of the serious illness of a family member.

2. PARENTAL AND FAMILY MEDICAL LEAVE - RIGHTS AND DUTIES

- (a) The employee shall be entitled, upon reasonably advanced notice to his or her employer, to thirteen (13) consecutive work weeks of parental leave or family leave in any two (2) calendar years.

- (b) The employee shall give at least thirty (30) days' notice of the intended date upon which parental leave or family leave shall commence and terminate, unless prevented by medical emergency to provide said notice.
- (c) If an employer provides paid parental leave or family leave or fewer than thirteen (13) weeks, the additional weeks of leave added to attain the total of thirteen (13) weeks required by Chapter 28-48 of the General Laws may be unpaid.
- (d) The employee shall provide upon the request of the employer written certification from a physician caring for the person who is the reason for the employee's leave specifying the probable duration of the employee's leave.

3. EMPLOYMENT AND HEALTH BENEFITS PROTECTION

- (a) Upon the expiration of parental leave or family leave an employee shall be entitled to be restored by the employer to the position held by the employee when the leave commenced, or to a position with equivalent seniority, status, employment benefits, pay and other related terms and conditions of employment, including fringe benefits and service credits that the employee had been entitled to at the commencement of leave.
- (b) During any period of parental or family leave the employer shall maintain any existing health benefits of the employee in force for the duration of such leave as if the employee had continued in employment continuously from the date he or she commenced such leave until the date he or she returns to employment. The maintenance of health benefits shall be governed by R.I.G.L. 28-48-3.
- (c) An employee on parental leave or family leave shall not suffer the loss of any benefit accrued before the date on which the leave commenced, nor shall any employee who takes parental leave or family leave be entitled to any benefit other than benefits to which the employee would have been entitled had he or she not taken the leave.

4. EMPLOYEE'S NOTICE TO THE EMPLOYER--FORM AND CONTENT

- (a) An employee's notice to the employer indicating his or her intent to exercise the right to parental leave or family leave shall be in writing and shall verify the truthfulness of the factual representations made by said employee. The notice shall include information which reasonably identifies the employee and his or her employment relationship to the employer, as well as a detailed description of the circumstances supporting his or her entitlement to parental leave or medical leave.

5. ENFORCEMENT

- (a) An employee may file a written complaint alleging violations of the Rhode Island Parental and Family Medical Leave Act, R.I.G.L. 28-48-1, et. seq.
- (b) Upon receipt of an employee's complaint the Director of the Rhode Island Department of Labor or his or her designee shall give the employer written notice and an opportunity to respond in writing to said complaint. If the Director or his or her designee finds probable cause that the employer has failed to comply with the provisions of the Rhode Island Parental and Family Medical Leave Act, id., a hearing shall be scheduled wherein the Director or his or her designee shall determine by a preponderance of the evidence whether the employer committed the alleged violations.
- (c) If after hearing it is found that the employer has failed to comply with the provisions of the Parental and Family Medical Leave Act, id., the Director or his or her designee may issue such orders as he or she deems necessary to protect the rights of the employee, including reinstatement of the employee and/or retroactive wages and applicable benefits.

In accordance with R.I.G.L. 42-35-3, these rules and regulations shall remain in effect permanently until modified or repealed.

APPENDIX E: SAMPLE UNION FMLA OUTREACH



Published on UE (<https://www.ueunion.org>)

[Home](#) > Using the FMLA

Using the FMLA

It's the kind of problem most of us will face sooner or later. How do we get time off from work for urgent family matters? Perhaps you and your spouse have just had a new baby, or maybe one of your parents is seriously ill with no one to give needed care and attention.

The Family and Medical Leave Act (FMLA) may provide the answer. FMLA covers public employees as well as private sector workers who have at least one year of service, have worked at least 1,250 hours in the past 12 months, and whose employer has at least 50 employees at worksites within a 75 mile radius. The law is enforced by the Department of Labor's Wage and Hour Division.

Twelve Weeks of Leave

FMLA provides for unpaid medical leave of up to 12 weeks a year for employees themselves or to care for *immediate* family members (spouse, child or parent) who have a "serious health condition." In addition an FMLA leave may be taken to care for a newborn child or a child newly adopted or placed in foster care.

Despite the continued opposition of employers to it, FMLA is in fact a modest piece of legislation. European countries, for example, provide far more liberal amounts of time off, usually fully paid, for family and medical leaves. In addition, because private employers with fewer than 50 employees are exempt, only about two thirds of the workforce are covered by FMLA.

Whatever its inadequacies, FMLA does represent a step forward for workers. If you qualify for an FMLA leave, the boss cannot deny it based on inconvenience or other grounds. Additionally, an employee's **medical benefits** must be continued during the leave, and he or she is guaranteed



Issues

The Family and Medical Leave Act (FMLA) allows workers to take unpaid time off for serious health conditions or urgent family matters - and it cannot be counted against them.

MORE INFORMATION

Department of Labor Regulations on FMLA are on the Web at: www.dol.gov

[1]

their old job or an equivalent position upon returning to work without loss of seniority.

Scheduling

An FMLA leave need not be taken in one continuous block of time. Say an employee periodically goes for chemotherapy or kidney dialysis. Leave can be scheduled on an *intermittent* (blocks of hours or days separated by work time) or *reduced schedule* (fewer hours than a regular shift) basis depending on medical necessity as a matter of right until the 12 weeks is exhausted.

The same holds true in caring for qualifying relatives. An example would be dividing the care of an ill parent with your brothers and sisters. If you are responsible only for certain days or hours, a reduced schedule or intermittent leave is the answer. To care for newborns however, leave must be taken all at once unless the employer gives permission otherwise.

Some Pitfalls

The FMLA has some serious shortcomings and pitfalls that workers and local unions should avoid if possible. One of the worst is that the boss can plug in accumulated paid leave days or unused vacation time that you may have coming and apply it to your leave. This can mean, for example, that if you take a leave to care for an ill child that you have no paid time off coming for the rest of the year. Some vacation!

However, employers may not force workers to take vacation time if the collective bargaining agreement provides otherwise. If the contract allows workers the right to *choose* their vacation days via language such as, "Vacations will be scheduled according to individual choice," then the boss cannot apply your vacation time against FMLA leave unless you agree. The union can also grieve vacation substitution if the contract provides that leaves-of-absence are unpaid.

Additionally, the employer must also comply

Family and Medical Leave Act Provisions

FMLA Rights at a Glance

- The right to take up to **12 weeks of medical leave** each year on a consecutive or intermittent basis.
- The right to take up to **12 weeks of family leave** each year to care for a seriously ill child, parent or spouse.
- The right to a **part-time work schedule** when necessitated by medical problems or to care for an ill family member.
- The right to **decline a light duty job** for the first 12 weeks of an injury or illness.
- FMLA absences cannot be used as points under a "no fault" attendance policy.
- The employer must continue to provide **insurance coverage** for the duration of the leave.

What is Covered?

- **Medical Leave** – Up to 12 workweeks of consecutive or intermittent leave in a one-year period as a result of a **serious health condition** (see box) which makes you unable to do your job.
- **Family Leave** – Consecutive or intermittent leave up to 12 weeks per year to care for a family member with a **serious health condition** (see box).
- **Childbirth Leave** – Up to 12 consecutive weeks off, at childbirth or prior if unable to work because of pregnancy.
- **Newborn Child Leave: Birth**

with the following rules before it can force a worker into using paid vacation during an FMLA leave:

- An employer may not force a worker to use paid leave that is not yet available to the employer, such as next years vacation leave;
- An employer may not substitute vacation or personal leave during absences covered by workers compensation, disability insurance, or sick pay; and
- An employer must notify the employee that it will impose paid leave by the second day after the employee gives notice that s/he needs FMLA leave. If the employer does not have sufficient information to make an FMLA determination until later, it must notify the employee within two days of gaining knowledge that the FMLA applies.

If your leave was foreseeable, you must give the employer at least 30 days notice or the leave can be denied until 30 days has elapsed. The boss can also require a second (and, in the case of a dispute, a third) medical opinion at company expense over whether a serious medical condition exists. And though insurance is continued during the leave, it is the *employee's* responsibility to make any required contributions at the risk of having coverage canceled.

Negotiating Family Leave

MORE INFORMATION

The UE Steward wishes to acknowledge the contribution of and thank Bob Schwartz for his useful book *The FMLA Handbook*.

It can be ordered for \$9.95 plus \$3.00 shipping and handling from Work Rights Press, Box 391887,

FMLA provides *minimum* standards and levels of benefits for family and medical leaves. If your contract or state law has provisions superior to

Mothers – Up to 12 weeks off to care for a child under one year of age. A birth mother can take up to 12 weeks of newborn care leave in the leave year following the one in which she took her childbirth leave. **Fathers** – Up to 12 consecutive weeks of newborn care leave at any time until the child is one year old.*

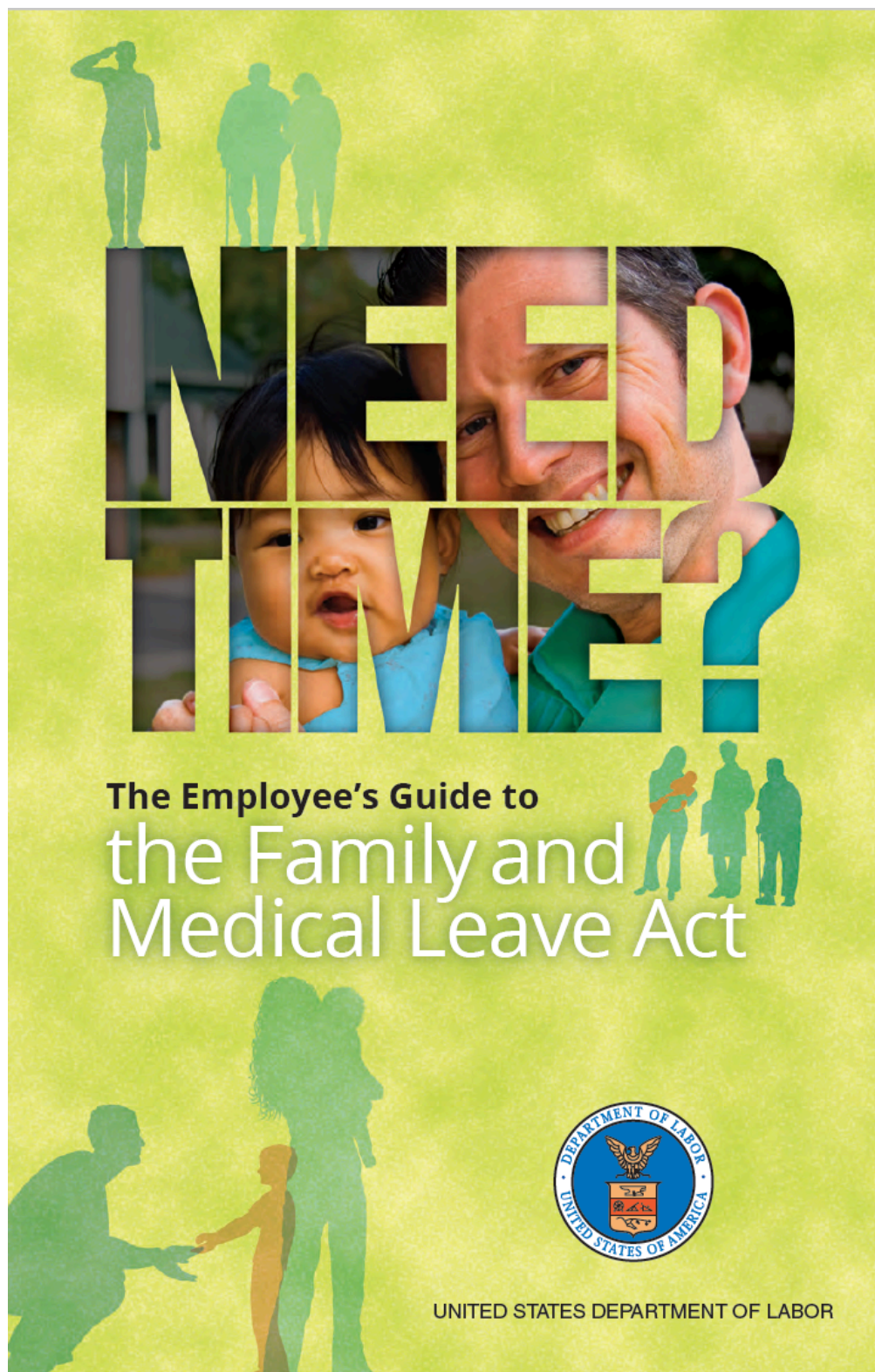
- **Adoptive Care Leave** – Up to 12 consecutive weeks for adoption or if a foster child is placed in the home for the first year of placement.
* If spouses work for the same employer, total leave for both can be limited to 12 weeks/year

What's a "Serious Health Condition"?

- A condition which requires **inpatient hospital care** (*i.e. an overnight stay*);
- An injury, illness or other condition lasting more than three consecutive calendar days that involves **continuing treatment** by a health care provider; *Examples:*
 - pneumonia
 - tonsillitis
 - broken bones
- Pregnancy or prenatal care
- A **chronic** serious health condition; *Examples:*
 - arthritis (severe)
 - asthma
 - back injuries
 - cancer
 - colitis
 - diabetes
 - epilepsy
 - lupus
 - migraine headaches
- A **long-term** or permanently disabling health condition for which treatment may not be effective; *Examples:*
 - severe stroke
 - Alzheimer's
- A condition requiring **multiple treatments** to prevent a period of

<p>Cambridge, MA 02139 (or 1-800-576-4552).</p>	<p>FMLA, then they apply. Nearly all UE members for example</p>	<p>incapacity of more than three consecutive days; <i>Examples:</i></p> <ul style="list-style-type: none"> o chemotherapy o radiation
<p>receive weekly Sickness and Accident benefits for absences due to medical reasons under negotiated insurance plans. Many UE contracts also have good leave of absence provisions.</p> <p>UE Locals and members then should not only be familiar with and make use of FMLA, but should use the law as a <i>floor</i> from which to negotiate better and additional benefits, and to nail down by contract those areas left to the boss's discretion under the law (<i>see box below</i>). That's a family value worth fighting for!</p>		<p>Examples of FMLA Grievances</p>
<p>[Page Top]</p>		<p><i>Make sure your contract incorporates the FMLA. Here are a few examples of grievances filed to protect an employee's FMLA rights:</i></p>
<p>Family and Medical Leave: Negotiable Items</p>	<ul style="list-style-type: none"> • To restore an employee to an original or equivalent position when returning from FMLA leave; • To obtain approval for an employee who requests time off to care for an ill family member; • To obtain a reduced schedule for an employee who can only work on a part-time basis; • To obtain health benefits for an employee on FMLA leave; • To remove attendance points from personnel records of an employee absent for FMLA reasons. 	
<p>FMLA provides <i>minimum</i> standards and levels of benefits for some workers. Use FMLA as a <i>floor</i> from which to negotiate better and additional benefits. Here are some areas to consider:</p>		
<ul style="list-style-type: none"> • Coverage for part-timers; or workers with less than one year of service; or for your workplace if under 50 employees. • Extended leaves beyond 12 weeks for legitimate family or medical reasons including those not covered under FMLA; or right to borrow against future leave entitlement. • Paid leave and continuing accrual of seniority and all benefits for the length of the leave. • Elimination of boss's right under FMLA to automatically apply vacation or sick days to leave. Option should rest with employee. • Payment of all insurance contributions by employer during leave to avoid any cutoff of benefits. • Eliminate second or third medical opinions. • Use of intermittent or reduced schedule leaves as a matter of right for all types of family and medical leave. • Guarantee of old job (not just equivalent position) upon return to work. 		
<p>© 1997-2018 United Electrical, Radio & Machine Workers of America One Gateway Center, Suite 1400, Pittsburgh PA 15222 (412) 471 8919 ue@ueunion.org Privacy Policy</p>		
<p>Source URL: https://www.ueunion.org/stwd_fmla.html</p>		
<p>Links: [1] http://www.dol.gov</p>		

APPENDIX F: EMPLOYER/EMPLOYEE FMLA OUTREACH GUIDE



An Introduction to the Family and Medical Leave Act

When you or a loved one experiences a serious health condition that requires you to take time off from work, the stress from worrying about keeping your job may add to an already difficult situation.

The Family and Medical Leave Act (FMLA) may be able to help. Whether you are unable to work because of your own serious health condition, or because you need to care for your parent, spouse, or child with a serious health condition, the FMLA provides unpaid, job-protected leave. Leave may be taken all at once, or may be taken intermittently as the medical condition requires.

This guide provides a simple overview of how the FMLA may benefit you. In your time of need, sometimes you just *need time*.

This Guide Explains:

- Who Can Use FMLA Leave?
- When Can I Use FMLA Leave?
- What Can the FMLA Do for Me?
- How Do I Request FMLA Leave?
- Communication with Your Employer
- Medical Certification
- Returning to Work
- How to File a Complaint
- Website Resources

Who Can Use FMLA Leave?

In order to take FMLA leave, you must first work for a covered employer. Generally, private employers with at least 50 employees are covered by the law. Private employers with fewer than 50 employees are not covered by the FMLA, but may be covered by state family and medical leave laws. Government agencies (including local, state and federal employers) and elementary and secondary schools are covered by the FMLA, regardless of the number of employees.

If you work for a covered employer, you need to meet additional criteria to be eligible to take FMLA leave. Not everyone who works for a covered employer is eligible.

First, you must have worked for your employer for at least 12 months. You do not have to have worked for 12 months in a row (so seasonal work counts), but generally if you have a break in service that lasted more than seven years, you cannot count the period of employment prior to the seven-year break.

Second, you must have worked for the employer for at least 1250 hours in the 12 months before you take leave. That works out to an average of about 24 hours per week over the course of a year.

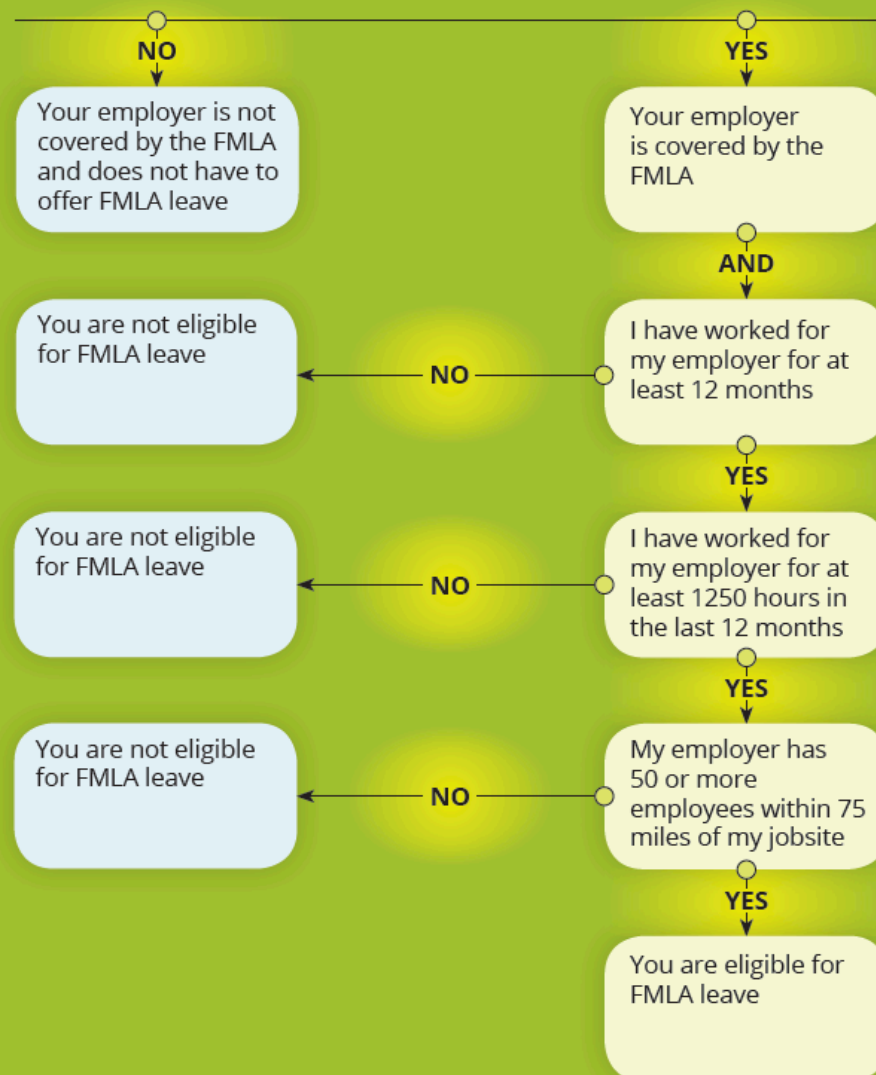
Lastly, you must work at a location where the employer has at least 50 employees within 75 miles of your worksite. So even if your employer has more than 50 employees, if they are spread out and there are not 50 employees within 75 miles of where you work, you will not be eligible to take FMLA leave.

Airline Flight Attendants/Flight Crew Employees

Due to non-traditional work schedules, airline flight attendants and flight crew members are subject to special eligibility requirements under the FMLA. You meet the hours of work requirement if, during the 12 months prior to your need for leave, you have worked or been paid for at least 60% of your applicable monthly guarantee, and have worked or been paid for at least 504 hours, not including personal commute time, or time spent on vacation, medical or sick leave.

Am I Eligible for FMLA Leave?

I work for an employer who has 50 or more employees
OR
 I work for a public agency, elementary, or secondary school



When Can I Use FMLA Leave?

If you work for an employer that is covered by the FMLA, and you are an eligible employee, you can take up to 12 weeks of FMLA leave in any 12-month period for a variety of reasons, including:

Serious Health Condition

You may take FMLA leave to care for your spouse, child or parent who has a serious health condition, or when you are unable to work because of your own serious health condition.

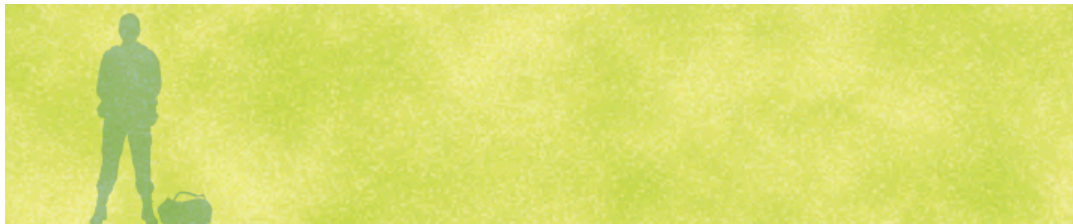
The most common serious health conditions that qualify for FMLA leave are:

- 1) conditions requiring an overnight stay in a hospital or other medical care facility;
- 2) conditions that incapacitate you or your family member (for example, unable to work or attend school) for more than three consecutive days and require ongoing medical treatment (either multiple appointments with a health care provider, or a single appointment and follow-up care such as prescription medication);
- 3) chronic conditions that cause occasional periods when you or your family member are incapacitated and require treatment by a health care provider at least twice a year; and
- 4) pregnancy (including prenatal medical appointments, incapacity due to morning sickness, and medically required bed rest).

Military Family Leave

The FMLA also provides certain military family leave entitlements. You may take FMLA leave for specified reasons related to certain military deployments. Additionally, you may take up to 26 weeks of FMLA leave in a single 12-month period to care for a covered servicemember with a serious injury or illness.





Expanding Your Family

You may take FMLA leave for the birth of a child and to bond with the newborn child, or for the placement of a child for adoption or foster care and to bond with that child. Men and women have the same right to take FMLA leave to bond with their child but it must be taken within one year of the child's birth or placement and must be taken as a continuous block of leave unless the employer agrees to allow intermittent leave (for example, a part-time schedule).

Parent

Parent means a biological, adoptive, step or foster father or mother, or any other individual who stood *in loco parentis* to the employee when the employee was a child. This term does not include parents-in-law.

Son or Daughter

Son or daughter (or child) means a biological, adopted, or foster child, stepchild, legal ward, or child of a person standing *in loco parentis*, who is either under age 18, or age 18 or older and "incapable of self-care because of a mental or physical disability" at the time that FMLA leave is to commence.

Spouse

Spouse means a husband or wife as defined or recognized in the state where the individual was married and includes individuals in a common law marriage or same-sex marriage.

In Loco Parentis

A person stands *in loco parentis* if that person provides day-to-day care or financial support for a child. Employees with no biological or legal relationship to a child can stand *in loco parentis* to that child, and are entitled to FMLA leave (for example, an uncle who cares for his sister's children while she serves on active military duty, or a person who is co-parenting a child with his or her same-sex partner). Also, an eligible employee is entitled to FMLA leave to care for a person who stood *in loco parentis* to that employee when the employee was a child. (See *Administrator's Interpretation No. 2010-3 and Fact Sheets 28B and C.*)

What Can the FMLA Do for Me?



If you are faced with a health condition that causes you to miss work, whether it is because of your own serious health condition or to care for a family member with a serious health condition, you may be able to take up to 12 weeks of job-protected time off under the FMLA.

If you take FMLA leave, your employer must continue your health insurance as if you were not on leave (you may be required to continue to make any normal employee contributions).

As long as you are able to return to work before you exhaust your FMLA leave, you must be returned to the same job (or one nearly identical to it). This job protection is intended to reduce the stress that you may otherwise feel if forced to choose between work and family during a serious medical situation.

Time off under the FMLA may not be held against you in employment actions such as hiring, promotions or discipline.

You can take FMLA leave as either a single block of time (for example, three weeks of leave for surgery and recovery) or in multiple, smaller blocks of time if medically necessary (for example, occasional absences due to diabetes). You can also take leave on a part-time basis if medically necessary (for example, if after surgery you are able to return to work only four hours a day or three days a week for a period of time). If you need multiple periods of leave for planned medical treatment such as physical therapy appointments, you must try to schedule the treatment at a time that minimizes the disruption to your employer.

FMLA leave is unpaid leave. However, if you have sick time, vacation time, personal time, etc., saved up with your employer, you may use that leave time, along with your FMLA leave so that you continue to get paid. In order to use such leave, you must follow your employer's normal leave rules such as submitting a leave form or providing advance notice. Even if you don't want to use your paid leave, your employer can require you to use it during your FMLA leave. For example, if you are out for one week recovering from surgery, and you have two weeks of paid vacation saved up, your employer can require you to use one week of your vacation time for your FMLA leave. When you use paid leave for an FMLA-covered reason (whether at your request or your employer's), your leave time is still protected by the FMLA.

How Do I Request FMLA Leave?

To take FMLA leave, you must provide your employer with appropriate notice. If you know in advance that you will need FMLA leave (for example, if you are planning to have surgery or you are pregnant), you must give your employer at least 30 days advance notice. If you learn of your need for leave less than 30 days in advance, you must give your employer notice as soon as you can (generally either the day you learn of the need or the next work day). When you need FMLA leave unexpectedly (for example, if a family member is injured in an accident), you **MUST** inform your employer as soon as you can. You must follow your employer's usual notice or call-in procedures unless you are unable to do so (for example, if you are receiving emergency medical care).

While you do not have to specifically ask for FMLA leave for your first leave request, you do need to provide enough information so your employer is aware it may be covered by the FMLA. Once a condition has been approved for FMLA leave and you need additional leave for that condition (for example recurring migraines or physical therapy appointments), your request must mention that condition or your need for FMLA leave. If you don't give your employer enough information to know that your leave may be covered by the FMLA, your leave may not be protected.

You do not have to tell your employer your diagnosis, but you do need to provide information indicating that your leave is due to an FMLA-protected condition (for example, stating that you have been to the doctor and have been given antibiotics and told to stay home for four days).

Communication with Your Employer

Ongoing communication between you and your employer will make the FMLA process run much more smoothly. Each of you has to follow guidelines about notifying the other when FMLA leave is being used.

You will need to inform your employer if your need for FMLA leave changes while you are out (for example, if your doctor determines that you can return to work earlier than expected). Your employer may also require you to provide periodic updates on your status and your intent to return to work.

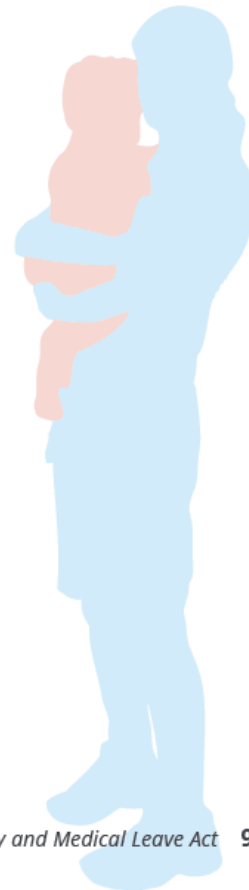
Your employer must notify you if you are eligible for FMLA leave within five business days of your first leave request. If the employer says that you are not eligible, it has to state at least one reason why you are not eligible (for example, you have not worked for the employer for a total of 12 months).

At the same time that your employer gives you an eligibility notice, it must also give you a notice of your rights and responsibilities under the FMLA. This notice must include all of the following:

- A definition of the 12-month period the employer uses to keep track of FMLA usage. It can be a calendar year, 12 months from the first time you take leave, a fixed year such as your anniversary date, or a rolling 12-month period measured backward from the date you use FMLA leave. You need to know which way your employer measures the 12-month window so that you can be sure of how much FMLA leave you have available when you need it.
- Whether you will be required to provide medical certification from a health care provider.
- Your right to use paid leave.
- Whether your employer will require you to use your paid leave.
- Your right to maintain your health benefits and whether you will be required to make premium payments.
- Your right to return to your job at the end of your FMLA leave.



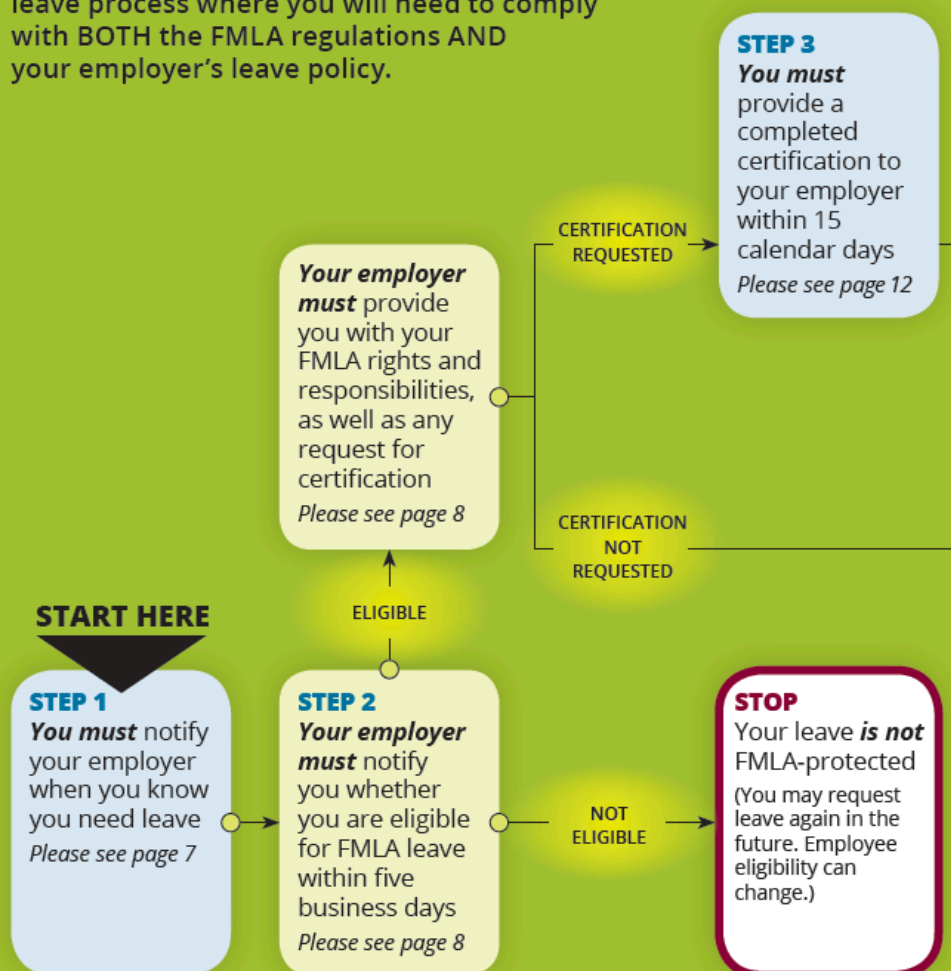
When your employer has the information necessary to determine if your leave is FMLA protected, it must notify you whether the leave will be designated as FMLA leave and, if possible, how much leave will be counted against your FMLA entitlement. If your employer determines that your leave is not covered by FMLA, it must notify you of that determination.

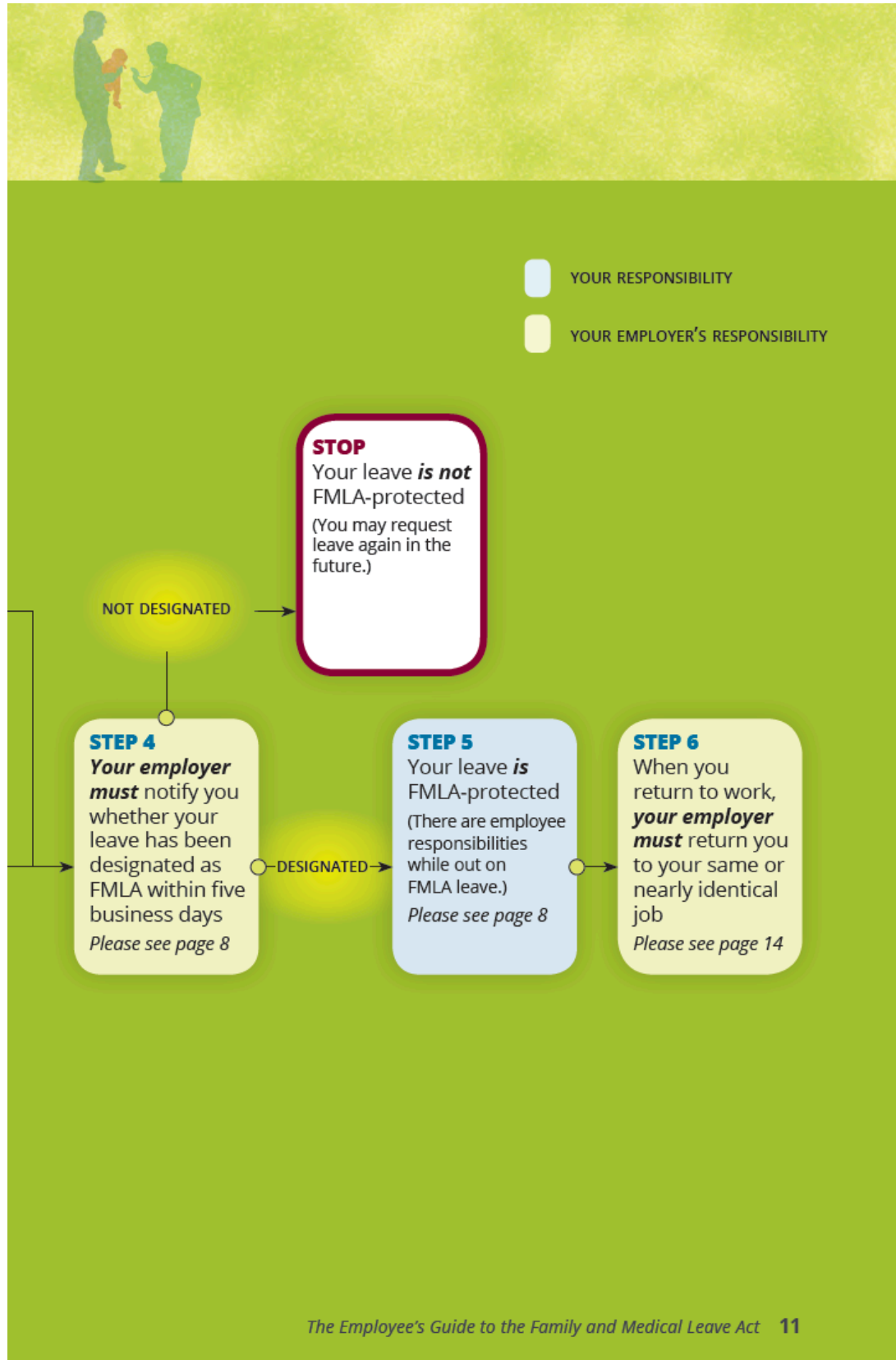


The FMLA Leave Process

This flowchart provides general information to walk you through your initial request for FMLA leave step by step, and help you navigate the sometimes complicated FMLA process.

Please note, it is **ESSENTIAL** for you to be familiar with your employer's leave policy. There are several instances throughout the FMLA leave process where you will need to comply with **BOTH** the FMLA regulations **AND** your employer's leave policy.





Medical Certification

If your employer requests medical certification, you only have 15 calendar days to provide it in most circumstances. You are responsible for the cost of getting the certification from a health care provider and for making sure that the certification is provided to your employer. If you fail to provide the requested medical certification, your FMLA leave may be denied.

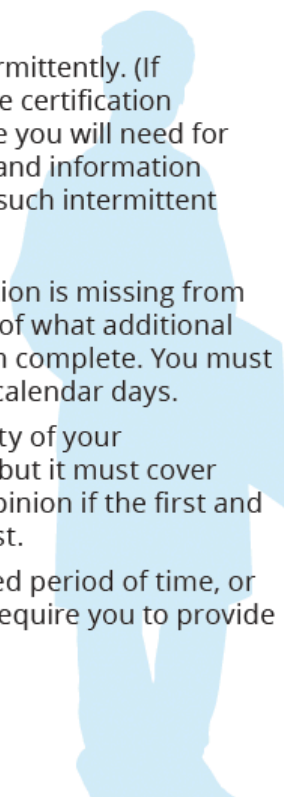
The medical certification must include some specific information, including:

- contact information for the health care provider;
- when the serious health condition began;
- how long the condition is expected to last;
- appropriate medical facts about the condition (which may include information on symptoms, hospitalization, doctors visits, and referrals for treatment);
- whether you are unable to work or your family member is in need of care; and
- whether you need leave continuously or intermittently. (If you need to take leave a little bit at a time, the certification should include an estimate of how much time you will need for each absence, how often you will be absent, and information establishing the medical necessity for taking such intermittent leave.)

If your employer finds that necessary information is missing from your certification, it must notify you in writing of what additional information is needed to make the certification complete. You must provide the missing information within seven calendar days.

If your employer has concerns about the validity of your certification, it may request a second opinion, but it must cover the cost. Your employer may request a third opinion if the first and second opinion differ, but it must cover the cost.

If your need for leave continues for an extended period of time, or if it changes significantly, your employer may require you to provide an updated certification.



Certification at a Glance



STEP 1

Your employer *must* notify you if a certification is required

STEP 2

You *must* provide a completed certification to your employer within 15 days

STEP 3

Your employer *must* designate your leave if it is FMLA-protected

YOUR EMPLOYER MAY REQUIRE YOU TO:

- Correct any deficiencies in your certification identified by your employer within seven days
- Obtain a 2nd medical opinion if your employer doubts the validity of your certification
- Obtain a 3rd medical opinion if the 1st and 2nd opinions differ

YOUR EMPLOYER MAY DENY FMLA LEAVE IF YOU FAIL TO PROVIDE A REQUESTED CERTIFICATION



YOUR RESPONSIBILITY



YOUR EMPLOYER'S RESPONSIBILITY

Returning to Work



When you return to work, the FMLA requires that your employer return you to the same job that you left, or one that is nearly identical.

If you are not returned to the exact same job, the new position must:

- involve the same or substantially similar duties, responsibilities, and status;
- include the same general level of skill, effort, responsibility and authority;
- offer identical pay, including equivalent premium pay, overtime and bonus opportunities;
- offer identical benefits (such as life insurance, health insurance, disability insurance, sick leave, vacation, educational benefits, pensions, etc.); and
- offer the same general work schedule and be at the same (or a nearby) location.

Please keep in mind that if you exhaust your FMLA leave entitlement and are unable to return to work, your employer is not required to restore you to your position.

SPECIAL CIRCUMSTANCES:

Key Employees

Certain *key employees* may not be guaranteed reinstatement to their positions following FMLA leave. A *key employee* is defined as a salaried, FMLA-eligible employee who is among the highest paid 10 percent of all the employees working for the employer within 75 miles of the employee's worksite.

Teachers

Special rules apply to employees of local education agencies. Generally, these rules apply when you need intermittent leave or when you need leave near the end of a school term.

Please visit our website for more complete information.

How to File a Complaint

The U.S. Department of Labor's Wage and Hour Division (WHD) is responsible for administering and enforcing the Family and Medical Leave Act for most employees.

If you have questions, or you think that your rights under the FMLA may have been violated, you can contact WHD at 1-866-487-9243. You will be directed to the WHD office nearest you for assistance. There are over 200 WHD offices throughout the country staffed with trained professionals to help you.

The information below is useful when filing a complaint with WHD:

- your name
- your address and phone number (how you can be contacted)
- the name of the company where you work or worked
- location of the company (this may be different than the actual job site where you worked)
- phone number of the company
- manager or owner's name
- the circumstances of your FMLA request and your employer's response

Your employer is prohibited from interfering with, restraining, or denying the exercise of FMLA rights, retaliating against you for filing a complaint and cooperating with the Wage and Hour Division, or bringing a private action to court. You should contact the Wage and Hour Division immediately if your employer retaliates against you for engaging in any of these legally protected activities.

**To contact the WHD office nearest you, visit:
www.dol.gov/whd/america2.htm**