



Expanding Family and Medical Leave to Small Firms

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Introduction

The Family and Medical Leave Act of 1993 (FMLA) gives eligible employees the right to take job-protected, unpaid leave to bond with a new child, care for a family member or military service member, or for one's own serious illness for up to 12 weeks in a year. About 60 million private sector employees (55.9 percent) were eligible for family and medical leave under the FMLA in 2012.¹ However, more than two-in-five private sector employees do not have access to job-protected leave because they are employed by small employers, which are exempt from the FMLA, and/or because they do not meet the tenure and hours worked requirements for eligibility. If the FMLA were amended to cover all firms and worksites regardless of size, an estimated 34.1 million private-sector employees would gain access to job-protected family and medical leave, if they otherwise meet the eligibility requirements relating to length of tenure and hours of work.²

Small firms with less than 50 employees were exempt from the law because of concerns that family and medical leave events would create a heavy burden on these firms. Specifically, business interest groups argued that small firms have less flexibility in reassigning work to other employees due to the fact they employ fewer people, and typically have fewer financial resources to draw upon to pay for temporary replacement. However, our analysis of the 2012 FMLA Worksite Public Use File found little evidence in support of the “heavy burden” argument. In 2012, most small firms offer some family and medical leave, and very few firms reported any negative effects on their business performance from providing leave to employees.

- A surprisingly large share of worksites of small firms with less than 50 employees provided some family and medical leave. An estimated 84.5 percent of worksites had a policy allowing for medical leave and 82.9 percent allowed for leave to care for a family member.
- The leaves do not necessarily conform to the requirements of the FMLA. Only 9.6 percent of worksites of small firms allowed for leave lasting 12 weeks or more.
- An estimated 75.4 percent of covered worksites (50 or more employees) reported it was “very easy” or “somewhat easy” to comply with the FMLA.³
- An estimated 37.8 percent of covered worksites reported the FMLA had a positive effect on employee productivity, turnover, and profitability; and 54.2 percent reported no effect.

1 Jorgensen and Appelbaum, 2014: Table x; and Klerman, Daley and Pozniak, 2013: Exhibit 2.2.1.

2 Klerman, Daley and Pozniak, 2013: Exhibit 2.1.1; and Bureau of Labor Statistics, Employment from the Current Employment Statistics Survey, annual employment data for 2012, private sector employment.

3 An estimated 13.6 percent of covered worksites found it “somewhat difficult” and 1 percent found it “very difficult” to comply with the FMLA.

- The positive impact of family and medical leave extended to the small firms that complied with the FMLA. Of worksites of small firms that stated they provided family and medical leave in compliance with the FMLA, 34.4 percent reported a positive effect; 64.8 percent reported no noticeable effect, and less than 1 percent reported a negative effect.

Though many small firms do provide some family and medical leave, the leave does not necessarily meet the standards of the FMLA. Only one in every ten worksites of small firms provides up to 12 weeks or more of leave. Though most worksites stated that there was a guarantee for the same or an equivalent job upon return from leave, employees who are not eligible under the FMLA may not legally be protected against job loss unless their employment contract explicitly specifies so. Thus in order to ensure that employees employed by small firms have access to up to 12 weeks of leave without the risk of job loss, the FMLA could be expanded to cover firms and worksites with less than 50 employees without imposing an undue financial hardship on these firms.

Background on the Incidence of Family and Medical Leave

In 2012, the Department of Labor commissioned a survey of employers (worksites) about the provision of family and medical leave benefits, experience with implementation of FMLA leave, and the effects of compliance (see the Methodological Appendix for a description of the survey). Our analysis of the FMLA Worksite Survey found that the vast majority of worksites had a site policy allowing employees to take leave for at least one qualifying reason (**Table 1**). Leave for an employee’s own serious health condition was the most widespread leave reason, with 85.7 percent of worksites allowing employees to take such a leave; however family leave was also fairly common, with over 80 percent of worksites allowing for some family leave. A worksite’s leave policy may or may not be in compliance with the FMLA in terms of providing leave for all qualifying leave reasons or in terms of duration of leave.

TABLE 1

Percentage of all worksites that had policies in place allowing for family and medical leave, by leave reason, 2012

	% of worksites
Employee’s own serious health condition	85.7
Care for a family member with a serious health condition	84.2
Pregnancy-related reason	78.6
Care for a new child (newborn, adopted and/or foster)	81.7
Care of an injured military service member or deployment-related reason	80.7
Sample size	1,812

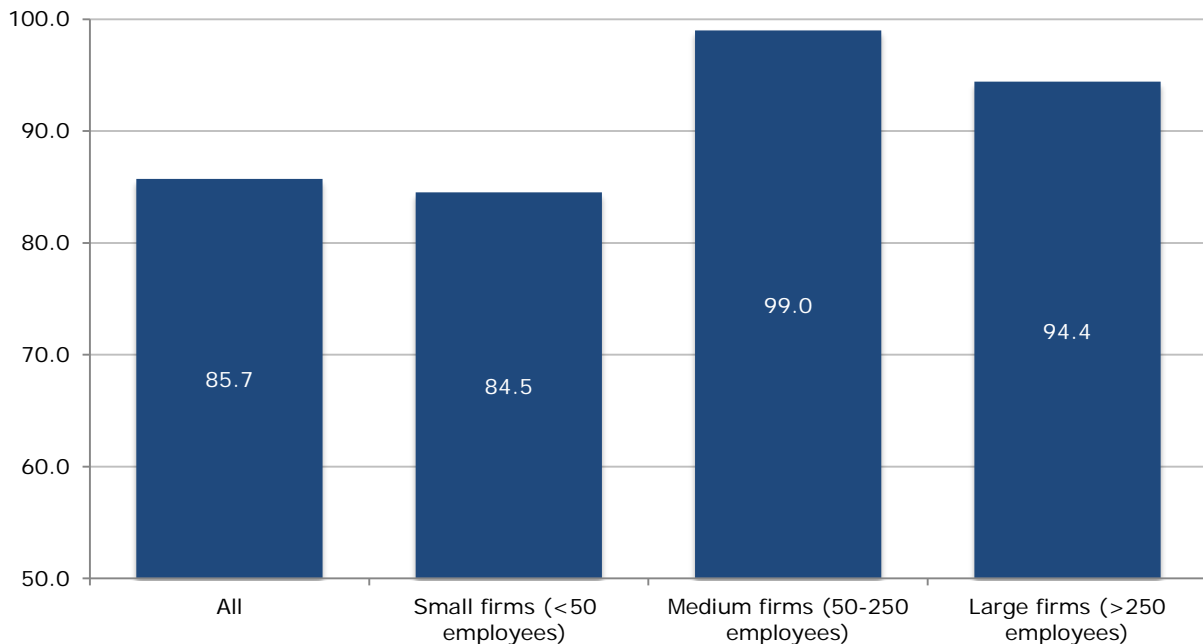
Source: Authors’ analysis of the FMLA Worksite Public Use File, 2012. Weighted estimates.

Notes: The estimates assume that non-respondents did not allow for leave.

Worksites of medium and large firms were more likely to have policies that allowed for family and medical leave than worksites of small firms employing less than 50 workers across worksites. An estimated 84.5 percent of worksites of small firms allowed for medical leave, compared to 94.4 percent of worksites of large firms (**Chart 1**). Worksites provided family leave at slightly lower rates than medical leave, but the vast majority of firms provided family leave regardless of firm size (**Table 2**). Worksites in the wholesale, retail, transportation, utility industry grouping were more likely to provide family and medical leave. Worksites in the information, finance and management service industries were typically part of small firms, and were less likely to provide family and medical leave.

CHART 1

Percentage of worksites that had a policy allowing medical leave (own illness) by firm size, 2012



Source: Authors' analysis of the FMLA Worksite Public Use File, 2012. Weighted estimates.

Note: The survey is of worksites, not firms, and a firm may have multiple worksites. Firm size is determined as the number of employees across all worksites. The estimates assume that non-respondents did not provide medical leave.

Worksites of firms that reported union presence at one or more worksites were more likely to offer medical and family leave than worksites of firms with no union presence (Table 2). For instance, over 99 percent of worksites within firms with union presence offered medical leave, leave to care for a family member with a serious medical condition, and to care to a new child, compared to 81-85 percent of worksites of firms with no union presence. This suggests that collective bargaining agreements guide leave policies for the firm beyond the unionized employees covered by the agreement.

TABLE 2

Percentage of worksites that had policies in place allowing for leave by firm characteristics, 2012

	Own illness	Family member's illness	Care for new child	Pregnancy related
All	85.7%	84.2%	81.7%	78.6%
Small firms (1-49 employees)	84.5%	82.9%	80.2%	76.7%
Medium firms(50-250 employees)	99.0%	97.9%	97.4%	97.3%
Large firms(251 and more employees)	94.4%	94.0%	93.7%	94.4%
Construction and Manufacturing	83.5%	81.0%	80.7%	74.5%
Wholesale, retail, utilities and transportation	92.7%	89.4%	88.6%	86.2%
Information, finance and management	81.5%	79.5%	75.8%	72.3%
Health, education and other services	85.7%	86.1%	82.9%	80.8%
Union presence	99.3%	99.3%	99.3%	87.4%
No union presence	85.3%	83.7%	81.2%	78.3%
High share of female employees (>=70)	90.1%	89.9%	88.8%	88.8%
Low share of female employees (<=30)	79.3%	77.1%	74.3%	66.4%

Source: Authors' analysis of the FMLA Worksite Public Use File, 2012. Weighted estimates.

Notes: The survey is of worksites, not firms, and firms may have multiple worksites. "Union presence" was defined as firms that had one or more percent unionized workers across all worksites, thus the surveyed worksite may not necessarily have employees represented by a union. "High share of female employees" was defined as firms with 70 percent or more female employees across all worksites, not necessarily the surveyed worksite. "Low share of female employees" was defined as firms less than 30 percent female employees across all worksites. See the methodological appendix (Table A4) for a description of industry categories. Non-respondents were assumed not to provide leave.

Interestingly, worksites within firms that reported a high share of female employees allowed family and medical leave at higher rates. In the case of pregnancy-related leave, 88.8 percent of worksites of firms whose workforce was comprised of three-quarters or more female employees offered leave to pregnant employees, compared to only 66.4 percent of worksites of firms with less than one-quarter female workers (Table 2). Thus it may be that a more prominent presence of female employees puts pressure on compensation policies to include more family-friendly benefits; and/or women self-select into industries that traditionally offer benefits at higher rates.⁴

The Family and Medical Leave Act does not mandate paid leave, but about one-third of firms provided some degree of paid leave to some or all employees. The most common leave reason for which employees received pay was sick leave, with 33.9 percent of firms providing full or partial pay during sick leave (Table 3). About one-fifth (21.1percent) of firms provided paid maternity leave and one-seventh (14percent) of firms provided paid paternity leave. Medium-sized and large firms were much more likely to provide paid leave than small employers.

4 Due to the categorization of industries into four main industries in the public use file, we were not able to explore this further.

TABLE 3**Percentage of firms that provided paid leave, by leave reason, 2012**

	Sick leave	Disability	Maternity	Paternity
All	33.9%	21.8%	21.1%	14.0%
Small firms w. < 50 employees	30.7%	18.3%	19.0%	13.0%
Medium firms w. 50-250 employees	63.4%	50.6%	34.3%	22.6%
Large firms w. >250 employees	64.8%	59.0%	46.9%	23.2%

Source: Authors' analysis of the FMLA Worksite Public Use File, 2012. Weighted estimates.

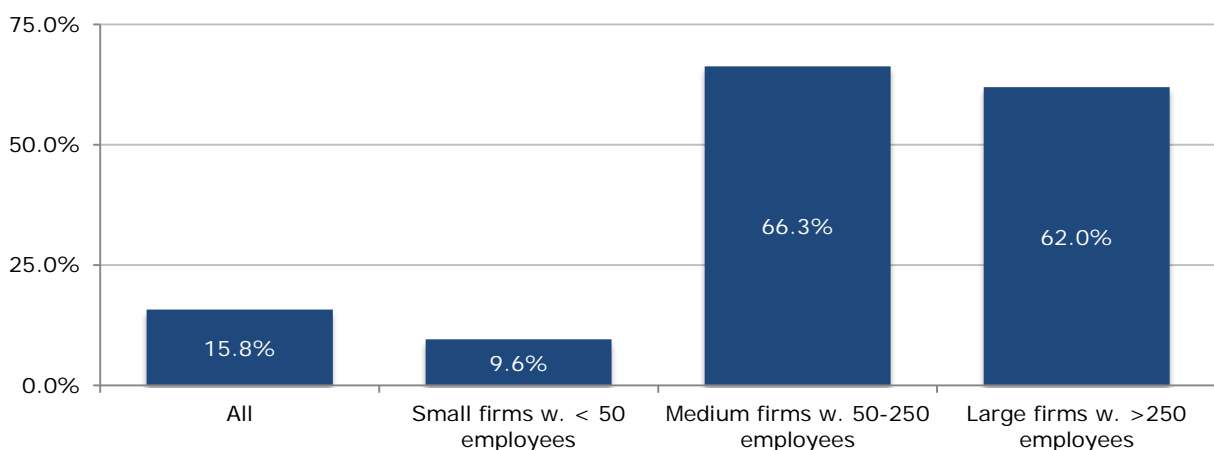
Notes: The estimates assume that non-respondents did not provide paid leave. Paid leave was defined as providing paid leave to "all" or "most" employees, and included both full and partial pay during leave.

Coverage, degree of wage replacement and duration of paid leave varied considerably across firms. At the worksite level, 7.5 percent of worksites covered by the FMLA offered full pay during leave and 21.7 percent offered partial pay.⁵ Moreover, 37.6 percent of covered worksites offered some other form of pay, such as allowing employees to take paid vacation in lieu of family and medical leave.

Job-protected leave

While a majority of small firms do provide for some family and medical leave, the duration of leave may not necessarily meet the 12-week requirement of the FMLA. Our analysis of the FMLA Worksite Survey found that 68.6 percent of worksites of small firms that offered medical and/or family leave did not have a formal policy that allowed for any days off. Overall, only 9.6 percent of worksites of small firms offering family and medical leave allowed for 12 or more weeks of family and medical leave (**Chart 2**). In comparison, 66.3 percent of worksites of medium-sized firms and 62.0 percent of large firms were in compliance with the FMLA duration standards. There are a number of reasons why worksites of larger firms do not allow for up to 12 weeks of leave as mandated by the FMLA, including no employees are eligible at the worksite because the worksite does not meet the 50/75 rule (50 employees across worksites within a 75-mile radius), the worksite is primarily seasonal work and/or employing only temporary employees, lack of a formal leave policy or leave policy is not in compliance with the law, or misreporting.

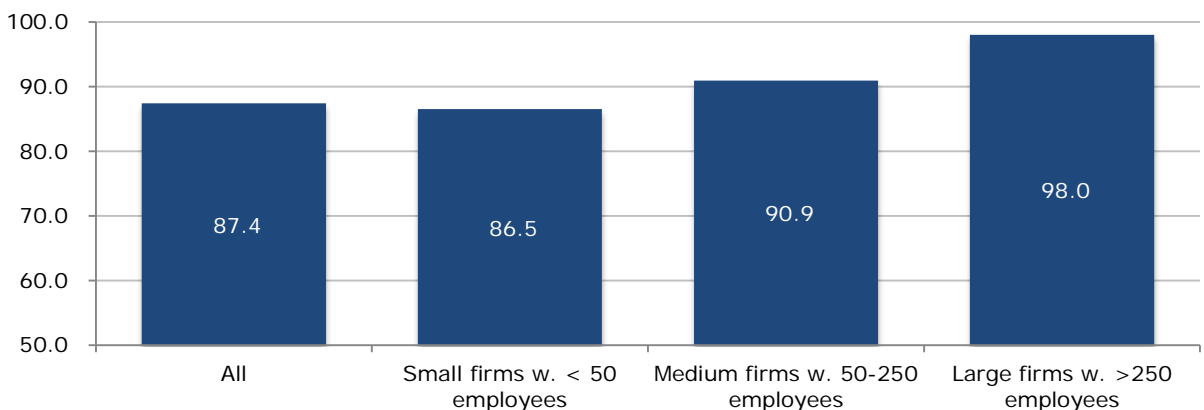
5 The estimates assume that worksite respondents who did not respond to the question did not offer pay during leave. Covered worksites were defined as worksites of firms that employed 50 or more employees across worksites within a 75-mile radius of the worksite (the 50/75 rule).

CHART 2**Percentage of worksites that allowed employees to take 12 or more weeks of leave, 2012**

Source: Authors' analysis of the FMLA Worksite Public Use File, 2012. Weighted estimates.

Note: The survey is of worksites, not firms, and a firm may have multiple worksites. Firm size is determined as the number of employees across all worksites. The estimates include only worksites that offered some family and medical leave, and assume that non-respondents offered less than 12 weeks of leave in a year.

The FMLA requires covered firms to guarantee the same or an equivalent job to leave takers upon their return. Our analysis found that the majority of worksites within small firms (86.5percent) that provided family and medical leave stated they assured job protection – almost the same rate as medium (90.9percent) (**Chart 3**). In an accompanying survey of employees, 96.8 percent of leave takers reported that they returned to the same job or an equivalent job following leave, and an additional 1.5 percent returned to a better position.⁶

CHART 3**Percentage of worksites that guarantee the same or an equivalent job upon return from leave, 2012**

Source: Authors' analysis of the FMLA Worksite Public Use File, 2012. Weighted estimates.

Note: The survey is of worksites, not firms, as a firm may have multiple worksites. Firm size is determined as the number of employees across all worksites. The estimates include only worksites that offered some family and medical leave, and assume that non-respondents did not offer job-protected leave.

⁶ Klerman, Daley and Pozniak, Technical Report, 2013: Exhibit 5.5.4. Large firms have typically more leave takers, and therefore the experience of leave takers will in general reflect the pattern of leave policies of large firms.

Ease of compliance

The vast majority of worksites, both covered and complying, found implementation and compliance with the FMLA to be easy.⁷ Three out of every four worksites (75.4percent) reported that they found it “very easy” or “somewhat easy” to comply with the FMLA (Table 4). Only 1.0 percent reported it to be “very difficult” to comply. About 72 percent of worksites reported that it was “very easy” or “somewhat easy” to coordinate FMLA leave with other federal and state laws as wells as with the worksite’s other leave policies. Worksites with a union presence also generally reported ease of coordinating with the collective bargaining agreement.

TABLE 4
Ease of compliance and coordination for FMLA-covered worksites, 2012

	Ease of compliance	Coordinating with federal and state laws	Coordinating with other leave policies	Coordinating with collective bargaining agreements
Very easy	26.1%	14.2%	16.1%	17.3%
Somewhat easy	49.3%	58.2%	56.6%	50.2%
Somewhat difficult	13.6%	13.9%	19.1%	11.3%
Very difficult	1.0%	5.0%	2.5%	4.8%
No noticeable effect/not applicable	10.1%	8.7%	5.8%	16.4%
Sample size	807	796	799	124

Source: Authors’ analysis of the FMLA Worksite Public Use File, 2012. Weighted estimates.
Notes: The estimates included only worksites that met the 50/75 rule and stated that the FMLA applied to the worksite. The question relating to ease of compliance included the response category of “no noticeable effect”, while the questions on coordination did not include a neutral response category but instead allowed for the option “not applicable”. Respondents who did not know or refused to answer the questions were not included.

Worksites of large firms (more than 250 employees) reported slightly greater ease with compliance than worksites of medium sized firms (50-250 employees), where 81.3 percent and 71.6 percent respectively found it “very easy” or “somewhat easy” to comply with the FMLA (Appendix table A5). This may be due to more flexibility in covering work by reassignment of work to other employees. Employers adopted various strategies to cover work during employees’ leave absences. Assigning work to other employees was the most common approach used, with 68.4 percent of worksites citing it (Table 5). Hiring a temporary replacement and putting work on hold until the employee returns were two other common approaches.

⁷ Covered worksites were defined as worksites that met the 50/75 rule (50 or more employees within a 75-mile radius); and complying worksites were those that stated the FMLA applied to them, whether or not the law in fact did.

TABLE 5**Strategies adopted by worksites to cover work during family and medical leaves, 2012**

	Yes	It depends
Assign work temporarily to other employees	68.4%	29.0%
Call in an employee on vacation	5.3%	8.9%
Hire temporary replacement	30.2%	22.7%
Hire a permanent replacement	2.3%	8.5%
Put work on hold until the employee returns	13.2%	20.5%
Employee performs some work while on leave	8.8%	6.1%

Source: Authors' analysis of the FMLA Worksite Public Use File, 2012. Weighted estimates.

Notes: Estimates included only worksites that met the 50/75 rule and stated that the FMLA applied to the worksite. The "Yes" total adds to more than 100% as since worksites may adopt multiple strategies.

Because of the resourceful strategies adopted by employers, family and medical leave was found to have little to no negative effect on businesses. In a broad question about the effect of complying with the FMLA on "employee productivity, absenteeism, turnover, career advancement, morale, as well as business profitability," slightly over half (54.2 percent) of worksites found compliance to have "no effect." An additional 37.8 percent of worksites reported a "very positive" or "somewhat positive" effect (**Table 6**). This suggests that the Family and Medical Leave Act serves both employees and employers. The law encourages employers to develop strategies to deal with leave events. For workers in firms covered by the law, a serious medical condition of oneself or a close relative does not equate to loss of job; this, in turn, translates into longer job tenures, lower employee turnover, and a reduction in costs related to hiring.⁸

One form of leave allowed under the FMLA is intermittent leave, where leave takers have two or more episodes of leave for the same reason. Intermittent leave is often a pattern of shorter and unanticipated leaves due to a chronic medical condition.⁹ Negative effects from intermittent leave on businesses' bottom line were relatively rare, with only two in every ten worksites reporting a negative effect on productivity and one in every ten worksites reporting a negative effect on profitability (**Table 6**). Intermittent leave may be less disruptive because it is typically of shorter duration, thus allowing employers to put work on hold. But its unanticipated nature and recurrence may pose a challenge for employers looking to reassign work.

⁸ Bassanini and Venn, 2008; and Hinkin and Tracey, 2006.

⁹ Klerman, Daley and Pozniak, Technical Report, 2013: p. 14, 75. The FMLA Worksite Survey asked specifically about the effects on productivity and profitability from intermittent leave, not other types of leave that tend to be of longer duration.

TABLE 6**Effect of compliance with the FMLA on business operation, productivity, and profitability, covered worksites, 2012**

	Overall effect	Profitability	Productivity
Very positive	6.5%	46.9%	49.1%
Somewhat positive	31.3%		
Somewhat negative	7.0%	9.3%	18.6%
Very negative	1.0%		
Both positive and negative	n.a.	2.3%	8.0%
No effect	54.2%	41.5%	24.3%

Source: Authors' analysis of the FMLA Worksite Public Use File, 2012. Weighted estimates.

Notes: Subsample sizes are 794 worksites for ease of compliance and 316 for intermittent leave. Estimates included only worksites that met the 50/75 rule and stated that the FMLA applied to the worksite. The effects on productivity and profitability refer specifically to intermittent leave, e.g. multiple leave episodes for the same leave reason. Respondents who did not know or refused to answer the questions were not included.

Expanding the FMLA to Small Firms

Small firms with less than 50 employees are currently exempt from the FMLA. However, some small firms comply with the FMLA in order to compete with other firms in attracting highly-qualified employees, or because they incorrectly believe that law applies to them. In the FMLA Worksite Survey, a total of 138 worksites of small firms with less than 50 employees across all worksites responded that the FMLA applied to them. This allowed us to specifically analyze the ease/difficulty of implementation and the effects of compliance if the FMLA were to be extended to small firms with less than 50 employees. Overall, complying worksites of small firms reported ease of implementation and few negative effects.

An estimated 55.8 percent of worksites of small firms reported compliance with the FMLA to be “very easy” or “somewhat easy”, compared to 75.4 percent of covered worksites for which the FMLA applied.¹⁰ A much higher share of worksites of small firms were neutral and reported neither compliance ease nor difficulty (43.5percent of worksites of small firms versus 10.1percent of covered worksites). Thus, less than one percent of worksites of small firms reported difficulty (very or somewhat difficult) in complying with the law.

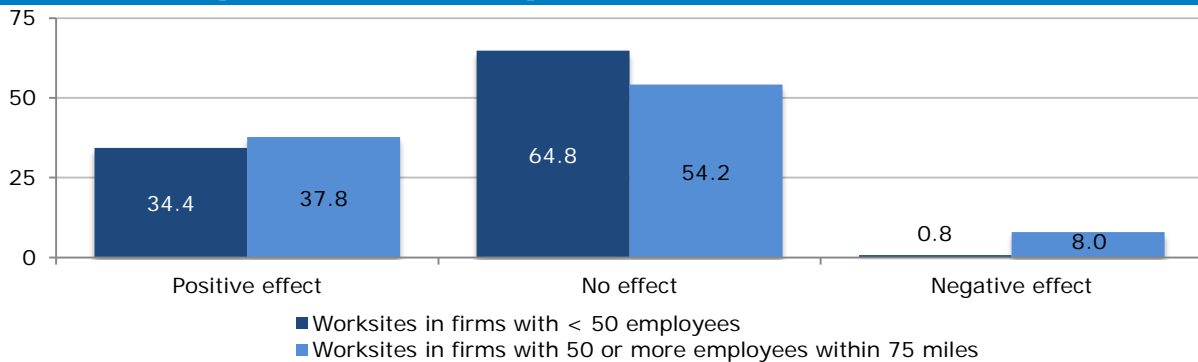
More importantly, our analysis found no evidence that expanding the FMLA to firms with less than 50 employees would pose a financial hardship for these firms. Less than one percent of complying worksites of firms employing less than 50 employees reported a negative effect of providing family and medical leave that met the standards of the FMLA. Almost two-thirds (64.8percent) of

¹⁰ Covered worksites were defined as worksites with 50 or more employees within a 75-mile radius (50/75 rule) that stated that the FMLA applied to them.

worksites of small firms that complied with the FMLA reported no effects from complying with the FMLA (**Chart 4**). An additional one-third (34.4percent) of worksites of small firms reported a positive effect. A higher share of worksites in small firms than in larger firms reported no effect. Small firms may have less flexibility in terms of reassigning work to other employees, but reported that they adapt by hiring replacements and putting off work. In small firms that do not allow leave, employees may be forced to quit their job if they are no longer able to work. Thus providing FMLA leave could help small firms with employee retention by lowering employee turnover, supporting career advancement, and improving employee morale.

CHART 4

Effects on business performance of FMLA compliance for worksites of small firms, 2012



Source: Authors’ analysis of the FMLA Worksite Public Use File, 2012. Weighted estimates.

Notes: The estimates for firms with less than 50 employees included only worksites that stated the FMLA applied to the worksite and the firms employed less than 50 employees across all worksites. The estimates for firms with 50 or more employees included only covered worksites that met the 50/75 rule and stated that the FMLA applied to the worksite. Effect on business performance related to employee productivity, profitability, absenteeism, turnover, career advancement, and morale.

California Case Study

The state of California implemented a paid family leave (PFL) program in 2004. The PFL program provides employees up to six weeks of leave with wage replacement at 55 percent of usual weekly earnings.¹¹ It is structured as an insurance benefit, similar to short-term disability, and is funded by an employee-paid payroll tax that is deducted from employees’ wages. This means that there are no direct costs to employers if an employee takes paid leave. Nearly all private-sector employees in California are eligible for paid leave, including employees working part time and employed by small firms.¹²

11 Benefits are indexed to inflation and maximum benefits were capped at \$1,075 per week in 2014 (Employment Development Department, State of California, 2014).

12 The only eligibility requirement is that a person have earned \$300 or more in State Disability Insurance-covered jobs in the “base period,” which is five to seventeen months before filing a PFL claim.

A 2010 survey of California businesses six years after the implementation of the PFL program looked at the law's impact on turnover, productivity and profitability/performance.¹³ The survey found that that an overwhelming majority of employers reported no impact or a positive impact of paid leave on business performance. Specifically, 98.6 percent of employers assessed the effects on morale to be positive or not noticeable, resulting in lower turnover and higher productivity. Fully 88.5 percent of employers said that the effect on productivity was either positive or not noticeable, and 91.1 percent said that the effect on profitability and performance was positive or not noticeable.¹⁴ Employers offering paid leave benefits often coordinated their own leave policy with the PFL program, thus generating cost-savings by reducing their own benefit costs.

Another finding from the survey was that paid family leave was not particularly burdensome for small businesses with less than 50 employees. Over 90 percent of small businesses reported a positive or no noticeable effect on profitability and performance. While small businesses do face special challenges since fewer co-workers are available to cover work during leaves of absences due to their smaller size, they adjusted by adopting various methods, such as voluntary overtime and temporary replacement. The researchers behind the survey concluded that “predictions that small businesses would find it especially difficult to adapt to PFL were not borne out; on the contrary, among the few employers that did report negative effects, large businesses predominated.”¹⁵

Discussion and Conclusion

The findings from our analysis of the FMLA Worksite Survey indicate that expanding the FMLA to cover small firms with less than 50 employees would not pose an undue financial hardship for these firms. The majority of small firms already offers some family and medical leave. Our analysis estimated that 84.5 percent of worksites of small firms have a policy allowing for medical leave and 82.9 percent allowed leave to care for a family member. Of worksites of small firms that did provide family and medical leave, 86.5 percent offered job-protected leave, meaning employees taking leave were given a guarantee that they could return to the same or an equivalent job.

One area in which worksites of small firms fell short in terms of meeting the requirements of the FMLA was the number of weeks employees could take leave. Only 9.6 percent of worksites of small firms allowed for 12 weeks or more of leave per year as mandated by the FMLA.¹⁶ More than half

13 Milkman and Appelbaum, 2013.

14 Non-profit employers, who made up about one-fifth of the overall sample, were asked about performance rather than profitability.

15 Appelbaum and Milkman, 2011: 29.

16 An estimated 64.2 percent of worksites of firms employing 50 or more employees were in compliance with the FMLA.

(54.1percent) of worksites of small firms did not have a policy specifying an allowed number of leave days. This means that many employees in small firms do not necessarily have access to meaningful family and medical leave for a sufficient period of time.

Expanding the Family and Medical Leave Act to apply to all employers regardless of firm size and worksite size could give an estimated 34.1 million more employees access to 12 weeks of job-protected family and medical leave (if they meet other eligibility requirements).¹⁷ This could be accomplished by 1) expanding the FMLA coverage to all firms regardless of firm size; combined with 2) eliminating the eligibility requirement that an employee must work at a location where there are at least 50 employees within 75 miles (the 50/75 rule). Currently, the 50/75 rule creates an unfair discrepancy in access to leave within a firm, where employees working at small worksites may not be eligible for family and medical leave, while employees at the firm's larger worksites are. Therefore, eliminating the 50/75 rule could make determination of eligibility easier for employers, reduce administrative costs relating to notification and designation, and create more equal access to leave.

Surveys of employers have documented neutral to positive effects of family and medical leave to both employees and employers in terms of job security, turnover, and employee morale.¹⁸ Our analysis suggests that the documented positive effects of family and medical leave do extend to small employers as well. Of the worksites of small firms that stated the FMLA applied to them 55.8 percent reported it was very or somewhat easy to comply with the FMLA. Less than 1 percent reported difficulty with compliance. Moreover, 34.4 percent of worksites reported a positive effect of complying with the FMLA on employee productivity, turnover, and business profitability, only slightly lower than the 37.8 percent of worksites meeting the 50/75 rule. Less than 1 percent of complying worksites of small firms reported a negative effect.

Given that 1) the majority of small firms already provides some job-protected leave, 2) firms typically found it easy to comply with the law, and 3) reported effects of compliance are mostly positive or neutral, the economic evidence indicates that an expansion of the FMLA to cover all employers would not pose a financial hardship on small firms. While some very small firms may initially find it a challenge to cover work during leave events, many small employers will adapt by applying similar strategies already used to deal with unplanned absenteeism and turnover. Indeed, with a likelihood of improved employee morale, they are likely to see a reduction in absenteeism and turnover.

17 Klerman, Daley and Pozniak, 2013: Exhibit 2.1.1; and Bureau of Labor Statistics, Employment from the Current Employment Statistics Survey, annual employment data for 2012, private sector employment, as well as Jorgensen and Appelbaum, 2014.

18 Appelbaum and Milkman, 2011; Bassanini and Venn, 2008; and Hinkin and Tracey, 2006.

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Methodological Appendix

The Department of Labor (DOL) contracted with Abt Associates to conduct a pair of surveys on the provision of FMLA leave, utilization of leave, unmet need for leave, and public awareness about the program. The surveys were conducted between February and June of 2012. The sampling frame of the worksite survey of employers is the establishment or worksite rather than the firm (a firm may have multiple worksites). Only private sector worksites were included. A total of 6,873 worksites were contacted, and 1,812 interviews were completed. Stratified sampling by the cross-classification of firm size and industry grouping (NAICS) generated oversampling of larger worksites and oversampling of agriculture, construction and manufacturing industries, combined with undersampling of service industries (not including education and healthcare). Sampling weights ranged from 98 to the 46,907.

TABLE A1

Subsample sizes

	Subsample sizes
Full sample	1,812
Subsample of worksites that allowed for some family and medical leave	1,661
Subsample of worksites that stated the FMLA applied	988
Subsample of worksites with 50 or more employees within a 75-mile radius	883
Subsample of worksites with 50 or more employees within a 75-mile radius that said the FMLA applied	808
Subsample of worksites of firms with less than 50 employees that said the FMLA applied	138

Source: Authors' analysis of the FMLA Worksite Public Use File, 2012.

The series of questions on worksite leave policies and leave types were asked to all respondents (1,812). Questions relating specifically to respondents' experiences with implementation, coordination with other leave policies, and effects on the business of the FMLA were asked only to respondents who answered affirmatively to the question "does the FMLA apply to the worksite, does it not apply, or are you not sure if it applies?" (Q17). A total of 988 respondents stated that the FMLA applied to the worksite. For our analysis of worksites' experiences with the FMLA, the subsample included only covered worksites with eligible employees (the 50/75 rule) that stated that the FMLA did apply. The 50/75 rule is that the firm employs 50 or more employees at the worksite or across all worksites within a 75-mile radius of the worksite.

The Worksite Survey asked worksites several questions to determine FMLA coverage. A weighted 16.6 percent of respondents stated the FMLA did apply, while 29.7 percent were "not sure". Abt Associates furthermore imputed a FMLA coverage rate based on the number of employees currently on payroll at the firm. The imputed rate of 9.7 percent (weighted) is substantially lower than the self-reported rate of 16.6 percent.¹⁹ In Abt Associates' technical report (p. 17-8), the authors discuss

¹⁹ Klerman, Daley and Pozniak, Technical Report, 2013: Exhibit 2.1.1.

some of the reasons behind the discrepancy between the self-reported rate and the imputed rate. Our analysis of self-reporting by firm size reveals that a number of worksites of smaller firms (less than 50 employees across all worksites) incorrectly thought that the FMLA applied to them, while a number of large employers incorrectly believed that the law did not apply to them or stated they did not know.²⁰

TABLE A2

Percentage of responding worksite stating the FMLA applied, by firm size, 2012

# of employees on payroll at firm level	% of respondents who stated the FMLA did apply	Law applies
1-10	8.8	No
11-24	17.2	No
25-49	27.8	No
50-99	82.6	Yes
100-250	87.2	Yes
251-999	93.0	Yes
1000 +	93.6	Yes

Source: Authors' analysis of the FMLA Worksite Public Use File, 2012: Q1_CAT, A17. Unweighted estimates. Sample size is 1,805 due to non-responses.

A total of 138 worksites of small firms with less than 50 employees across all worksites self-identified as being covered by the FMLA, which allowed us to specifically analyze the ease/difficulty of implementation and effects of compliance if the FMLA were to be extended to small firms with less than 50 employees. The reported compliance with the FMLA by non-covered worksites of small firms may be due to 1) worksites incorrectly believed they were covered and complied with the FMLA; 2) the worksite is in fact covered because the firm employed 50 or more employees in the base period for determination of coverage; or 3) misreporting.

TABLE A4

Industry classification

Industry classification	2-digit NAICS codes
Construction and Manufacturing	Agriculture, Forestry, Fishing and Hunting; Mining, Quarrying, and Oil and Gas Extraction; Construction; Manufacturing
Wholesale, retail, utilities and transportation	Utilities; Wholesale Trade; Retail Trade; Transportation and Warehousing
Information, finance and management	Information; Finance and Insurance; Real Estate and Rental and Leasing; Professional, Scientific, and Technical Services; Management of Companies and Enterprises; Administrative Support and Waste Management and Remediation Services
Health, education and other services	Educational Services; Health Care and Social Assistance; Arts, Entertainment, and Recreation; Accommodation and Food Services; Other Services

Source: Daley, Kennedy et al. 2012: Exhibit 2.1.1.

20 Some of the inconsistencies relating to whether or not the law applies may be due some worksites not having a single eligible employee though the worksite may be covered; or worksites of small firms may have employed 50 or more employees within the last 18 months.

TABLE A5**Ease of compliance with the FMLA by firm size, 2012.**

	Covered worksites meeting the 50/75 rule	Covered worksites of large firms (>250 employees)	Covered worksites of medium firms (50-250 employees)	Non-covered worksites of small firms (<50 employees)
Very easy	26.1%	29.5%	24.0%	39.1%
Somewhat easy	49.3%	51.8%	47.6%	16.7%
Somewhat difficult	13.6%	8.7%	16.6%	0.6%
Very difficult	1.0%	1.5%	0.7%	0.1%
No noticeable effect	10.1%	8.4%	11.2%	43.5%
Sample size	807	413	394	135

Source: Authors' analysis of the FMLA Worksite Public Use File, 2012. Weighted estimates.

Notes: Estimates for medium and large firms included only worksites that met the 50/75 rule and stated that the FMLA applied to the worksite. Estimates for non-covered worksites of small firms included worksites with firms with less than 50 employees that stated that the FMLA applied.