ISSUE BRIEF

Family and Medical Leave

The Family and Medical Leave Act (FMLA) of 1993 only partially addressed the growing need of workers for more flexibility to take leave from work during times of family need. Congress should strengthen the FMLA to cover more workers and more family activities, follow California's example of providing for paid leave and vigorously oppose any effort to curtail existing leave protections.

The FMLA requires state agencies and private employers with more than 50 employees to provide up to 12 weeks annually of job-protected unpaid leave to care for a newborn or newly adopted child or seriously ill family member or to recover from the employee's own serious medical condition. Workers may take all 12 weeks at once, or may take intermittent leave in the smallest block of time their employer already uses to account for absences. Since 1993, more than 35 million Americans have taken advantage of unpaid leave under the FMLA. Nearly half of all states have enacted leave protections beyond those provided by the FMLA, and unions also have negotiated various forms of paid leave and additional unpaid leave.

The FMLA is a success. The FMLA has had virtually no negative effects on productivity, profitability or growth, according to a 2000 U.S. Labor Department survey, and support for the FMLA is extraordinarily high among workers and their families.

The FMLA has limitations. The effectiveness of the FMLA is constrained by its limited coverage and the inability of millions of workers to afford leave without pay. Almost 41 million workers—more than 40 percent of the private-sector workforce—are not covered by the FMLA. And according to a 2001 Labor Department study, 78 percent of workers who needed leave but did not take it said they could not afford to take it (up from 66 percent in 1995).

Congress should strengthen the FMLA. According to the AFL-CIO's *Ask a Working Woman Survey 2002,* 88 percent of women and 85 percent of men support expanding family and medical leave. The FMLA should be strengthened to cover more workers, including employees of companies with fewer than 50 employees. The FMLA should also be strengthened to meet more family needs, such as parental involvement in school activities, family literacy training and nonemergency care of children and elderly parents.

Congress should enact paid family leave. The United States is the only industrialized nation that fails to provide paid family leave with a guaranteed right to return to work. At the state level, California recently enacted the first comprehensive paid family leave program in the country. Beginning in 2004, California workers who pay into the State Disability Insurance system will be eligible for up to six weeks of paid leave to care for a new child or seriously ill family member. At the federal level, Congress should enact legislation to provide for wage replacement during periods of family leave.

Partial wage replacement for family leave through state unemployment insurance programs should be protected. The Clinton administration's Birth and Adoption Unemployment Compensation Rule—called Baby UI—allowed states to use their unemployment insurance (UI) programs to provide partial wage replacement for parents taking leave to care for a newborn or newly adopted child. The Bush administration had requested comments on a proposed rescission of the Baby UI regulation.

Congress should enact paid sick leave. Only 56 percent of full-time employees enjoy paid sick leave, though 95 percent of the public thinks it is unacceptable for employers not to provide paid sick leave (and 60 percent think it is illegal). Congress should enact legislation to provide for wage replacement during periods of medical leave.

Congress should oppose any curtailment of FMLA rights. The Family and Medical Leave Clarification Act would seriously curtail FMLA protections for workers. First, it would deny intermittent leave to workers with chronic but serious health problems by excluding short-term conditions (such as those associated with asthma, diabetes and arthritis)—no matter how serious—from the FMLA definition of "serious medical condition."

Second, it would further curtail workers' ability to take intermittent leave by allowing employers to require that such leave be taken in blocks of no less than four hours, no matter how short the leave actually taken.

Third, it would allow employers to force workers to choose between job-protected (but unpaid) FMLA leave and accrued paid (but non-job-protected) leave, which under current law workers may take concurrently. As a result, many low-wage workers, especially, would have to take paid leave first, effectively forfeiting their FMLA job protection and becoming more vulnerable to dismissal.

Finally, this bill would impose unreasonable and unrealistic notice requirements on employees seeking FMLA leave. For the first time, workers would have to provide a written application for leave and would have to do so within five days of notifying their employer of the need for leave. However, workers may not be able to meet this five day deadline if their application requires a medical certification and their health insurance precludes them from gaining prompt access to a health care provider.

Sources: U.S. Department of Labor, "Balancing the Needs of Families and Employers: The Family and Medical Leave Surveys 2000 Update" (2001); National Partnership for Women and Families, "Private Sector FMLA Coverage Data" (citing U.S. Department of Labor, Bureau of Labor Statistics "Covered Employees and Wages (ES-202) Program (1995)); AFL-CIO, *Ask a Working Woman Survey 2002* (2002); *Workers' Rights in America,* Peter D. Hart Research Associates poll 2001, pp. 17–18; U.S. Department of Labor, Bureau of Labor Statistics, "Employee Benefits Survey: Incidence of Paid Sick Leave, Medium and Large Private Establishments" (1997).