

**RESPONSE OF THE AMERICAN FEDERATION OF LABOR AND CONGRESS
OF INDUSTRIAL ORGANIZATIONS TO THE DEPARTMENT OF LABOR'S
REQUEST FOR INFORMATION ON THE FAMILY AND MEDICAL LEAVE
ACT OF 1993**

Introduction

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO or Federation) submits these comments in response to the Request for Information (RFI) on the Family and Medical Leave Act of 1993 (FMLA), published by the Department of Labor (DOL or Department), Employment Standards Administration, Wage and Hour Division on December 1, 2006. 71 Fed. Reg. 69504. This response represents the views of the Federation and its 53 affiliated international and national unions, who collectively represent nearly nine million workers nationwide. Several AFL-CIO unions have also submitted individual comments to the Department because of the importance of the FMLA to American workers and their families. We embrace the views expressed in those comments, as well in the comments submitted by the National Partnership for Women and Families.

According to DOL, comments submitted in response to the issues raised in the RFI “will provide a basis for ascertaining the effectiveness of the current implementing regulations and the Department’s administration of the Act.” 71 Fed. Reg. at 69505. We have commented on a number of the issues most important to the Federation and the working families it represents, raised in Sections A through D and F through K of the RFI.

We strongly oppose any changes to the regulations that would limit the scope of the FMLA, a statute that confers modest rights on a bare majority of U.S. workers. The Department has not conducted any research on the FMLA since 2000. That study, BALANCING THE NEEDS OF FAMILIES AND EMPLOYERS, FAMILY AND MEDICAL LEAVE SURVEYS, 2000 UPDATE (2001) (2000 Westat Report), serves today as the most reliable and comprehensive source of information on the effect of the FMLA on both employees and employers. Coupled with smaller, more recent studies, the 2000 Westat Report shows that the FMLA, as implemented by the regulations, has worked as Congress intended. It does not reveal systemic issues that require tighter regulatory controls.

The Department should approach with extreme caution any regulatory changes that would curtail access to the FMLA’s critical worker protections. Responses to the RFI itself cannot substitute for current, comprehensive, and scientifically sound evidence as a basis for regulatory revisions that will affect the exercise of FMLA rights. Instead, the Department should focus its efforts on ensuring that employees who qualify for FMLA leave under the current regulatory scheme are, in fact, able to avail themselves of their statutory rights.

The FMLA's Role as a Worker Protection Statute

It is important to gauge the propriety of any regulatory revisions against the FMLA's fundamental purpose as one of a few employee protection statutes in the American workplace. This section briefly reviews precisely how minimal those standards are, particularly when compared to statutory leave provisions around the world. This section also highlights some data about FMLA usage. One measure of the FMLA's success is the number of employees who have availed themselves of their right to take qualifying leave. As a result, even if usage statistics showed that a high percentage of covered and eligible employees had taken FMLA leave, this would not support, standing alone, a need to revise the Act's implementing regulations. In fact, reliable statistics generally show modest use of the FMLA, particularly in light of the continued absence of employer-provided leave.¹ It would thwart Congress's intent in enacting the FMLA if the Department now made it more difficult for employees to take statutory leave.

The FMLA and its Global Counterparts

Congress enacted the FMLA in 1993 in response to the "demographic revolution in the composition of the workforce," as well as other significant changes in the American population as a whole. S. Rep. No. 103-3, at 5 (1993), reprinted in 1993 U.S.C.C.A.N. 2, 7. "The female civilian labor force" was growing "by about a million workers each year." The country was undergoing an "[e]qually dramatic" increase in the number of single parent households, many of which were headed by women, as well as "another . . . demographic shift: the aging of the American population." The FMLA "provide[d] a sensible response to the growing conflict between work and family" by providing covered workers with a right to unpaid leave. Id.

As a "respons[se] to changing economic realities," the FMLA "fits squarely within the tradition of the labor standards laws that . . . preceded it," such as the Fair Labor Standards Act, Occupational Safety and Health Act, and Veterans' Reemployment Rights Act. Id. As Congress explained:

There is a common set of principles underlying each of these labor standards. In each instance, a Federal labor standard directly addresses a serious societal problem Voluntary corrective actions on the part of employers had proven inadequate, with experience failing to substantiate the claim that, left alone, all employers would act responsibly. Finally, each law was enacted with the needs

¹ The same point holds with respect to data on the cost of the FMLA, since by itself, it indicates nothing about improper leave usage or unintended financial burdens on employers. Moreover, reliable estimates show the relatively low costs of FMLA usage. See e.g., S. Rep. No. 103-3, at 12-13, 16-19, reprinted in 1993 U.S.C.C.A.N. 2, 13-15, 18-21; Institute for Women's Policy Research, 2 (citing U.S. GENERAL ACCOUNTING OFFICE [NOW THE U.S. GOVERNMENT ACCOUNTING OFFICE], ESTIMATED COSTS OF H.R. 925, THE FAMILY MEDICAL LEAVE ACT OF 1987 (Washington, D.C.: U.S. General Accounting Office, 1987)).

of employers in mind. Care was taken to establish a standard that employers could meet.

Id. “The Family and Medical Leave Act was drafted with these principles in mind.” Id.

Congress acknowledged when it passed the FMLA that the U.S. lagged far behind the rest of the world in providing for family and medical leave:

The United States is one of the few remaining countries in the world that has not enacted a law setting a standard for family leave. With the exception of the United States, virtually every industrialized country, as well as many Third World countries, have national policies that require employers to provide some form of maternity or paternity leave.

S. Rep. No. 103-3 at 19, reprinted in 1993 U.S.C.A.N.N.3, 21. In addition, at the time of the statute’s enactment, “[t]he United States’ major competitors provide[d] some form of paid [maternity or paternity] leave,” “several countries . . . provide[d] leave for elder care,” and “[m]any countries . . . require[d] that all employees have a minimum amount of paid annual leave” that was available for family and medical absences. Id.

Although the U.S. has the highest gross domestic product in the world,² it continues to lag seriously behind virtually every other nation in its provision of family and medical benefits. In 2004, the Project on Global Working Families (Working Families Project) surveyed 168 countries to identify their public policies with respect to family leave and related benefits. Its report, THE WORK, FAMILY, AND EQUITY INDEX: WHERE DOES THE UNITED STATES STAND GLOBALLY (2004) (2004 Index) found that 163 countries guaranteed paid leave to women for childbirth. Id. at 1.³ Ninety-eight offered at least 14 weeks of maternity leave, 54 provided over 20 weeks of such leave, and 41 allowed a maximum of one year. Id. at 24. In addition, “139 countries provide[d] paid leave for short- or long-term illnesses” and “96 countries around the world in all geographic regions and at all economic levels mandate[d] paid annual leave.” Id. at 1. The United States did not then, nor does it now, mandate either form of paid leave.⁴

Just three years later, the United States has fallen further behind the rest of the world. In its update to the earlier study, released on February 1, 2007, the Project on Working Families found that 168 countries now guarantee leave with pay to women in connection with childbirth.⁵ The United States joins Lesotho, Liberia, Papua New Guinea and Swaziland in failing to provide any paid maternity leave whatsoever. Project on Global

² World Bank, World Development Indicators database, July 1, 2006.

<http://siteresources.worldbank.org/DATASTATISTICS/Resources/GDP.pdf>

³ <http://www.hsph.harvard.edu/globalworkingfamilies/image/report.pdf>.

⁴ Only two industrialized nations, Australia and the United States, did not provide paid maternity leave. Although unpaid, Australia’s maternity leave provides a significantly longer term of coverage – 52 weeks – than the FMLA. 2004 Index at 1.

⁵ This represents almost 85 percent of the world’s 193 independent countries. See <http://www.state.gov/s/inr/rls/4250.htm>.

Working Families, WORK, FAMILY, AND EQUITY INDEX: HOW DOES THE UNITED STATES MEASURE UP (2007) (2007 Index) at 1-2.⁶

The 2007 Index also found that 145 countries now provide paid sick leave for both short- or long-term illnesses; of these, 127 provide at least a week or more per year. 2007 Index at 5. In addition, 137 countries mandate paid annual leave and 121 of them guarantee at least 2 weeks annually. *Id.* at 3.⁷ Against this backdrop, the FMLA plays a heightened role in allowing workers to balance their family and medical needs with the requirements of their jobs.

Eligibility and Leave Usage Under FMLA

Despite the absence of alternative paid leave laws, the FMLA itself covers only a bare majority of U.S. workers. The 2000 Westat Report estimated that “[a] little more than 10 percent of U.S. establishments and slightly over half of all employees are covered under the Act.” 2000 Westat Report at 3-18. *See* Jane Waldfogel, *Family Friendly Policies for Families with Young Children*, 5 EMPL. R. & EMP. POL’Y J. 273, 274 & n.5 (2001) (“Two thirds of the U.S. labor force work for employers who are covered by the FMLA, and just over one half (55 percent) are both covered and eligible for FMLA leave”).

Estimates of actual FMLA usage vary widely. The Department emphasizes in its RFI, 71 Fed. Reg. at 69511, that the 2000 Westat Report produced two divergent estimates, based on the results of separate employee and employer survey components. According to the employee survey, “approximately 18.3 percent of covered and eligible leave-takers took leave under the Act” during the survey period. This figure “translates to between 2.2 and 3.3 million people.” 2000 Westat Report at 3-13. In contrast, under the employer survey “it is estimated that between 4.6 million to 6.1 million took advantage of the FMLA” during the survey period. *Id.* at 3-14.⁸

Employer surveys themselves vary widely. The Employment Policy Foundation claims that “[o]n average 14.5 percent of employees took FMLA leave during the past year,” but this does not indicate the proportion of eligible employees that do so. Employment Policy Foundation, *THE COST AND CHARACTERISTICS OF FAMILY AND MEDICAL LEAVE*, 2 (2005).⁹ In contrast, a survey by WorldatWork found that less than 10 percent of eligible employees used FMLA during the one-year period surveyed. WorldatWork, *FMLA*

⁶ <http://mcgill.ca/files/ihsp/WFEIFinal2007pdf>.

⁷ *See* <http://www.nationalpartnership.org/site/DocServer/GetWellSoonReport.pdf?docID=342>, National Partnership for Women and Families, *GET WELL SOON: AMERICANS CAN’T AFFORD TO BE SICK 1* (2004) (47 percent of all private sector workers lack employer-sponsored paid sick leave).

⁸ Westat points out in its report that several explanations may account for discrepancies in determining FMLA usage, including employer double-counting and employee lack of awareness of the type of leave they have taken. 2000 Westat Report at 3-14 n.25.

⁹ The methodological soundness of this survey has been criticized. Its findings were based on a relatively small sample consisting of 110 employers that were not randomly selected and represented less than half of one percent of the workforce. Institute For Women’s Policy Research, *ASSESSING THE FAMILY MEDICAL LEAVE ACT: AN ANALYSIS OF AN EMPLOYMENT POLICY FOUNDATION PAPER ON COSTS*, 1 (Jun. 29, 2005)

PERSPECTIVES AND PRACTICES- SURVEY OF WORLDATEWORK MEMBERS, 1 (2005)
(WorldatWork).

With the exception of Westat's employer survey, in which double counting may have occurred,¹⁰ the data tends to show that FMLA usage remains low. In addition, as we discuss in Section F of these comments, statistics on intermittent leave also demonstrate that usage is relatively low and occurs for short periods of time.

AFL-CIO Surveys

The AFL-CIO has conducted two surveys in the recent past that bear on the questions asked in the RFI, and a third directly in response to the RFI. A professional research firm conducted the first survey discussed. We surveyed large numbers of workers in the other two surveys and do not offer these as scientifically valid studies. However, all three surveys tend to support the weight of the existing and reliable data demonstrating generally low FMLA usage and the importance of the FMLA to America's working families.

1. AFL-CIO Labor Day Survey – August 2005

In August 2005, the Federation commissioned Peter D. Hart Research and Associates (Hart) to conduct a nation-wide survey (Labor Day Survey) with respect to workers' attitudes about a number of issues, as well as their workplace experiences. Hart surveyed a representative national sample of 805 union and non-union U.S. workers.

Twenty one percent of respondents stated that they did not receive paid vacation from their employer and 31 percent reported that they had no paid sick leave.¹¹ Thus, a significant minority of the workforce still lacks employer-paid leave that they can substitute for unpaid FMLA leave, despite the fact that Congress intended workers "to mitigate the financial impact of wage loss due to family and temporary medical leaves" through such substitution. S. Rep. No. 103-3, at 28 (1993), reprinted in 1993 U.S.C.A.N.N. 30. See discussion in Section D, below.

Second, the fact that so many employees still lack paid sick leave undermines Congress's intent that the FMLA cover only "short-term conditions for which treatment and recovery are very brief . . . [because] . . . such conditions will fall within even the most modest sick leave policies." S. Rep. No. 103-3, at 29, reprinted in 1993 U.S.C.A.N.N. 3, 31. Without the balance Congress envisioned between employer-provided sick leave for short-term conditions and government-mandated leave for serious health conditions, FMLA leave becomes an even more important labor protective provision for employees.

2. 2006 Ask a Working Woman Survey

The AFL-CIO has conducted its Ask A Working Woman Survey (Working Woman Survey) each year since 1997. In 2006, it distributed the survey online, and 26,000

¹⁰ See n.8, supra.

¹¹ In addition, over half of all respondents (51%) ranked as their "top" legislative priority, or a "high" legislative priority, expanding FMLA to provide paid leave.

working women responded. Of those who took the survey, 30 percent belong to unions, 35 percent are married and 20 percent have children younger than 18 at home.¹²

The results of the Working Woman Survey also confirm the importance of preserving and expanding FMLA leave. Twenty four percent of all respondents reported that they have no paid vacation. An even greater proportion -- 29 percent -- lack paid sick leave. In addition, 63 percent of respondents stated that their employer does not provide paid family and medical leave. Working Woman Survey at 5. These statistics confirm the 2005 Labor Day Survey: the FMLA provides millions of workers with their only means of taking leave to care for themselves or their family members when a serious health condition arises or in the event of birth or adoption.

The Working Woman Survey also shows that access to employer-provided paid vacation and family and medical leave varies little by age. Working Woman Survey at 16. Older employees who need to take care of their aging parents have a growing stake in the availability of FMLA leave. In fact, the Westat survey shows that the percentage of employees who took their longest FMLA-qualifying leave to care for an ill parent rose from zero to 10.6 percent between 1995 and 2000. 2000 Westat Report at 3-16. See *id.* at 2-8 (“[l]eave-takers were more likely to be ages 50-64 in the 2000 survey than in the 1995 survey (20.4% v. 15.1%)”). FMLA leave usage has expanded considerably in response to the “sandwich generation” phenomenon in which adult children take on increasing responsibilities to care for their aging parents.

3. Working America Survey

In preparation for the AFL-CIO’s response to the Request for Information, we conducted a two-part online survey among members of Working America, the Federation’s community-based affiliate. Working America’s members -- who number more than 1.5 million individuals -- are not represented by a union at their workplace. They join Working America to stay informed about and take action on economic, legislative, and other issues of importance to working families.¹³

We launched the first part of the survey on January 12 by asking 200,245 members of Working America -- those with whom we maintain electronic contact -- to “tell us about [their] . . . experiences” under the FMLA. Within a period of two weeks, over 1,660 members responded. Overwhelmingly, respondents told us how important FMLA has been to them, their colleagues, friends, and family members, and urged that the government impose no additional restrictions on their ability to take leave. The Appendix to this submission contains a representative sample of those comments.

¹² The survey results are available at <http://www.aflcio.org/issues/politics/labor2006/upload/AWWsurvey.pdf>.

¹³ One of our affiliated unions – the Communications Workers of America – conducted a sampling of its own members’ experiences with FMLA in response to the RFI. By surveying Working America’s members, we gained access to the views of a large group of individuals around the country without reference to contractual leave provisions.

We launched a second message on January 19, 2007, asking Working America members to complete a survey on their experiences under the FMLA, and provide any additional comments. As of January 26, 2,582 Working America members responded to the second survey.¹⁴ The Appendix contains a representative sample of their comments as well.

Key results from the survey include:

- **40.8%** of respondents have requested FMLA leave in the past;
- **39.2%** of those who requested FMLA leave have had their request granted;
- **53.9%** of respondents have been informed of their FMLA rights by their employers, but only **11.2%** were informed through a workplace poster;
- **31.9%** said that they had taken unpaid leave in the past to care for a spouse, child or parent, or to care for himself or herself during an illness, but did not know whether it was counted as FMLA leave;
- **27.4%** of respondents reported that their employer requires them to substitute paid leave; **25.5%** stated that their employer permits them to take paid leave, but **28.4%** stated that they did not know about the substitution rules applicable to them.
- **17.4%** of respondents reported having taken scheduled FMLA leave;
- **18.7%** of respondents reported having taken unscheduled FMLA leave;
- **12.1%** of respondents reported having taken intermittent FMLA leave;
- **97.5%** of respondents agreed with the following statement: “Employers should be required to give full-time workers at least seven days of paid sick leave annually.”

Many of these results confirm what other studies have shown. First, our survey shows that almost 16 percent (15.99%) of respondents have taken FMLA leave. These results are well within the general range of the Westat employee-based survey, as well as other surveys discussed above.

Second, although intermittent leave has now become a focal point of employer complaints about the FMLA, in our survey just 12 percent of all respondents reported having taken intermittent leave. This finding supports that available evidence, which shows that “intermittent leave is used infrequently and has imposed minimal burdens on

¹⁴ The demographic characteristics of respondents are significant. Almost forty percent (39.52%) of respondents were between the ages of 50 and 64 and 63 percent of respondents were women. This underscores the results of our previous studies, as well as the 2000 Westat study, with respect to the growing importance of the FMLA to older workers and to women. (See 2000 Westat Report at 2-8).

employers.” Anne Wells, Note, *Paid Family Leave: Striking a Balance Between the Need of Employees and Employers*, 77 S. CAL. L. REV. 1067, 1081 & nn.94-98 (2004). In fact, Westat found that “[a]bout a fourth of leave-takers (27.8%) had at least one intermittent leave during the [2000] survey reference period.” 2000 Westat Report at 2-18.

Third, as we discuss in Section J, below, the results of our survey confirm Westat’s findings (at 3-10 --3-11) that employees’ awareness of the FMLA remains consistently low. Employers are not fulfilling their notice responsibilities under the Act, and employees are confused about the Act’s requirements as applied to their own workplace.

Fourth, the comments we received from respondents in the Working America survey show that many employees voice concerns about the expense and difficulty of the medical certification/recertification procedures. In particular, they told us that their health care providers find it difficult to complete necessary paperwork on a timely basis. This may be an area that the Department should undertake to study in order to determine if its procedures have created burdens that undermine the effectiveness of the regulations in this area.

Fifth, many of the Working America respondents told us that they could not afford to take FMLA leave because it is unpaid. Typical comments include the following:

I have never used FMLA, mainly because I simply cannot afford to take unpaid time off work. A couple of years ago my mother had heart trouble. Unfortunately, taking unpaid leave was out of the question economically. If I had had the option of taking paid time to be with my mother, I would have been able to be with her.

I’m a single parent so I can’t afford to use [FMLA]. I lost my job shortly after my father was hospitalized and I was trying to visit him every evening after work. It was exhausting.

It’s not enough to have time off if I can’t afford to continue paying my bills, eating, and paying for my insurance.

I was unable to take FMLA because we couldn’t afford to go without my salary. I saved my vacation time and sick leave so that I would have enough time to see me through the first two months of my child’s life.

In conclusion, the data that exists continues to show that “a serious societal problem” persists, and the lack of “voluntary corrective actions on the part of employers” has not abated. S. Rep. No. 103-3, at 5 (1993), reprinted in 1993 U.S.C.C.A.N. 2, 7. Only if the Department conducts an updated, large-scale, statistically reliable survey of leave usage, and only if the results of that survey demonstrate that congressional intent has, in specific ways, become thwarted because of improper usage of FMLA leave on a broad scale, should DOL attempt to make changes in the regulations with respect to leave usage.

The Department should not yield to anecdotal evidence with respect to the purported burden of leave on employers as a basis for tightening the eligibility rules for FMLA leave. Anecdotes can never substitute for hard data, especially where, as here, Congress has enacted a labor standards statute to deal with the “important societal interest in assisting families” by providing them with minimum periods of leave. S. Rep. No. 103-3, at 4, reprinted in 1993 U.S.C.A.N.N. 3, 6.

Responses to Specific Issues Raised in the Request for Information

A. Eligible Employee

- **The Department seeks input on whether and how to address the treatment of combining nonconsecutive periods of service for purposes of meeting the 12 months requirement in Section 825.110.**

The FMLA defines “t[he] term ‘eligible employee’” as “an employee who has been employed . . . for at least twelve months by the employer with respect to whom leave is requested . . .” 29 U.S.C. § 2611. Interpreting that statutory provision, Section 825.110(b) of the regulations provides that “[t]he 12 months an employee must have been employed by the employer need not be consecutive months.” 29 C.F.R. § 825.110(b). The court correctly upheld this rule in Rucker v. Lee Holding Co., 471 F.3d 6 (1st Cir. 2006), a recent case of first impression among the courts of appeals.

In Rucker, the employer denied FMLA leave to an employee who had a five-year break in service that met the twelve-month requirement. Reversing the district court, the court of appeals held that “consistent with the DOL regulation, as interpreted by the DOL . . . a complete separation of an employee from his or her employer for a period of years, here five years, does not prevent the employee from counting earlier periods of employment toward satisfying the 12-month requirement.” 471 F.3d at 13.

Applying the traditional analysis under Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984), the court concluded that the statute itself is ambiguous. Rucker, 471 F.3d at 8. It also concluded that “the legislative history [does not] demonstrate clear congressional intent” as to whether the 12-month period must be consecutive. Id. at 11. Thus, the court relied on the rule of statutory construction that “deference to a reasonable agency interpretation is appropriate” in such a situation. Id. However, the court found ambiguity in the regulation itself,¹⁵ and therefore set out to determine whether “the agency’s own interpretation of its regulation . . . is consistent with the regulation and ‘reflect[s] the agency’s fair and considered judgment on the matter in question’” so as to warrant deference. Id. at 12, citing Auer v. Robbins, 519 U.S. 452, 461-462 (1997).

¹⁵ The court reasoned that Section 110(b), taken as a whole, can reasonably be read to “mean that all periods of employment count toward the requirement,” and that “non-consecutive months count only when the employee maintains a continuing connection to the employer, as through the continuing provision of benefits.” Rucker, 471 F.3d at 12.

As the court noted, 471 F.3d at 12-13, the Department has consistently maintained that an employee need not work 12 consecutive months. DOL first took this position when promulgating the final FMLA regulations. Department of Labor, Wage and Hour Division, The Family and Medical Leave Act of 1993: Final Rule (Preamble), 60 Fed. Reg. 2180, 2185 (Jan. 6, 1995). The Department reiterated this position in Rucker. Brief for the Secretary of Labor as *Amicus Curiae* in Support of Plaintiff-Appellant (Secretary’s Brief) at 5 (“regulation, particularly as clarified by the regulatory preamble, provide[s] a . . . permissible interpretation of the [statutory] provision” and “is entitled to controlling Auer deference”); see Rucker, 471 F.3d at 12. Thus, the court concluded that “the DOL’s interpretation of its regulation is reasonable, and that regulation, so interpreted, is a reasonable exercise of the DOL’s statutory authority.” Id. at 13.

In the Preamble, DOL also rejected proposals to place various kinds of limits on the prior periods of work that count towards an employee’s 12 months of service. 60 Fed. Reg. at 2185. However, as the Department notes in the RFI, 71 Fed. Reg. at 69508 n.3, the DOL argued in Rucker that under the current regulation, “[a] break in service of five years . . . might very well constitute the outer bounds of eligibility.” Secretary’s Brief at 6. The court, mindful of the “administrative process[]” and wary of inappropriate judicial “policy decisionmaking,” correctly declined to place such a limitation on Section 825.110(b). Rucker, 471 F.3d at 13.

DOL asserted two rationales for its suggested five-year limit. First, it argued that anything more than five years “could well attenuate the connection between the employee and his employer to such a degree that it would be fatal to the 12-month criterion.” Secretary’s Brief at 24. Second, DOL argued that employers may not retain records for more than five years. Id. at 24-25.

Neither of these rationales holds up to scrutiny. First, it is sheer speculation that the time it takes to “attenuate” the connection between employer and employee is no more than five years. Indeed, employees may well maintain contact with their employers over a much longer period of time in the hope of reemployment. For example, a parent who leaves the workforce to take care of young children may deliberately maintain contact with an employer over the course of several years to facilitate reemployment when she is ready to enter the workforce again.¹⁶ Excluding such service would work a perverse result in a statutory scheme designed to assist employees balance their work and family needs.¹⁷

Second, while it is reasonable to require proof of prior employment, it is unreasonable to assume that such proof becomes hard to obtain after only five years have elapsed. In fact,

¹⁶ See Michael Selmi, *Family Leave and the Gender Wage Gap*, 78 N.C. L. REV. 707, 732-36 (2000) (discussing women’s temporary separation from workforce for childbirth and childrearing).

¹⁷ The Department posed the hypothetical situation of an employee who worked for an employer as a teenager and then returned as an adult. Secretary’s Brief at 24 n.9. We believe that such situations are far more rare than the one we suggest above, and in any event, fail to provide any basis for concluding that the “[o]uter [b]ounds[]” of the break in service should be no more than five years. Id. at 24.

in the Preamble, the Department rejected a two-year limitation on bridging of service during the rulemaking with this open-ended recognition that employers retain employee records for long periods of time:

Many employers require prospective employees to submit applications for employment which disclose employees' previous employment histories. Thus, the information regarding previous employment with an employer should be readily available and may be confirmed by the employer's records if a question arises.

60 Fed. Reg. at 2185. Regardless of the legal requirements on record retention, many employers, on the advice of counsel or under best practices, retain their records for more than five years after an employee has left the workplace.¹⁸ In addition, employees themselves may retain pay stubs, tax returns (with copies of a W-2) and other such documentation for periods longer than five years, and would thus be able to present proof of a past employment relationship.

Thus, we believe that DOL should adhere to its longstanding interpretation of the statute and its regulation by refusing to place a time limit on permissible breaks in service under Section 825.110(b). As long as reliable proof exists that an employee worked for a particular employer in the past, then the employee should be able to count nonconsecutive periods in meeting the 12-month service requirement.

- **Should employees who have worked for 1,250 hours be able to begin a block of leave before they have met the 12-month eligibility date? (Subsection 825.110(d))**

Section 825.110(d) of the regulations states that determining “whether an employee . . . has been employed by the employer for a total of at least 12 months must be made as of the date leave commences.” 29 C.F.R. § 825.110(d). Consistent with the nature of the FMLA as a labor standards statute, *see, e.g.*, Sen. Rep. No. 103-3 at 5, *reprinted in* 1993 U.S.C.A.N.N. 3, 7, this eligibility requirement must be read, as some courts have done, to provide employees with the broadest possible protection.

In Babcock v. BellSouth Advertising and Publishing Corporation, 348 F.3d 73 (4th Cir. 2003), an employee exhausted short-term disability leave before accruing twelve months of service. The employer placed her on unexcused absence when she did not return to work, but shortly thereafter she crossed the 12-month threshold. The court held that as

¹⁸ *See, e.g.*, <http://www.allbusiness.com/human-resources/workforce-management-employee-records/1515-1.html> (“To comply with IRS regulations, you must hang on to employee files for seven years after an employee leaves your company.”); http://www.twc.state.tx.us/news/eft/general_recordkeeping_requirements.html (“[M]ost employment law attorneys advise their clients to keep all employment-related records for at least seven years following the date of an employee's work separation.”); <http://www.ecouncil.org/records&time.htm> (“Ex-employee personnel records -- 7 years” “Payroll records and summaries, pensions, payroll taxes --7 years”).

soon as the employee satisfied that 12-month requirement, she became eligible to take FMLA leave:

Through the FMLA, Congress gave Babcock certain protections once she passed the one-year mark at BellSouth. Having allowed Babcock to remain employed for more than one year, and having cut off her short-term disability leave, BellSouth cannot now avoid its responsibilities under the statute.

Id. at 78. Similarly, in Ruder v. Maine General Medical Center, 204 F.Supp. 2d 16 (D. Me. 2002), the court held that an employee with 49 weeks of service who began a medical leave could use 2 weeks of paid vacation while on leave to meet the 12-month requirement, thereby making her eligible for FMLA leave. The court noted, *id.* at 18, that under Section 825.110(b), any part of a week in which an employee is maintained on an employer's payroll "counts as a week of employment." 29 C.F.R. § 825.110(b). Thus, the court reasoned that an employee on non-FMLA leave continues to accrue service towards the 12-month threshold.¹⁹ *Id.* at 8-19.

The import of these cases is clear: consistent with the purpose of the FMLA as a labor standards law, and DOL's implementing regulations, employees who have met the 1,250 hours requirement should be entitled to convert an absence to FMLA-protected leave after they meet the 12-month requirement. Additional issues, such as whether an employer may lawfully retaliate against an employee for requesting FMLA leave before he or has satisfied the 12-month threshold, must also be resolved in the employee's favor. Beffert v. Pa. Dep't of Pub. Works, 2005 U.S. Dist. LEXIS 6681, *9, 10 Wage & Hour Cas. 2d (BNA) 1755 (E.D. Pa. 2005) ("Since the FMLA contemplates notice of leave in advance of becoming an eligible employee, the statute necessarily must protect from retaliation those currently non-eligible employees who give such notice of leave to commence once they become eligible employees").

- **The Department seeks comment on the differing regulatory tests used for determining employee eligibility. (Section 825.110(d); Section 825.110(f))**

Under 29 C.F.R. § 825.110(d), determining whether or not an employee has worked for the employer for the requisite 1,250 hours and 12 months "must be made as of the date leave commences." In contrast, Section 825.110(f) provides that "[w]hether 50 employees are employed within 75 miles to ascertain an employee's eligibility for FMLA benefits is determined when the employee gives notice of the need for leave." 29 C.F.R. § 825.110(f). These different points in time for measuring eligibility both have rationales that are consistent with the labor protective nature of the FMLA. Therefore, we urge the Department to make no changes in these rules.

¹⁹ Willemsen v. The Conveyor Company, 359 F. Supp. 2d 813 (N.D. Iowa 2005), was decided incorrectly. In that case, the court held that plaintiff, whose leave began before she met the 12-month requirement, could not continue her absence by taking FMLA leave upon meeting that threshold.

Measuring an employee's length of service as of the date leave commences serves a two-fold purpose. First, an employee may take leave only after working for the requisite period of time, thus tying the employee's FMLA entitlement to the length of the employee's workplace connection. Second, it removes any incentive to delay making a request for leave, which would surely result if the 12-month/1,250 hour requirement were measured as of the date of the request. And, as the Department noted in the Preamble, the regulations further encourage advance notice by "providing [in Section 825.220(b)] that FMLA-covered employers that intentionally limit or manipulate employees' work schedules to foreclose their eligibility for FMLA leave will be held in violation of FMLA and the regulations." 60 Fed. Reg. at 2186.

On the other hand, it would defeat the notice provisions of the FMLA if employers could measure the 50 employee/75 mile requirement as of the date leave commenced. As the Department stated in the Preamble:

Tying the worksite employee-count to the date leave commences as suggested could create the anomalous result of both the employee and employer planning for the leave, only to have it denied at the last moment before it starts if fewer than 50 employees are employed within 75 miles of the worksite at that time. This would entirely defeat the notice and planning aspects that are so integral and indispensable to the FMLA leave process.

60 Fed. Reg. at 2186 (emphasis added). Thus, measuring the 50-employee requirement as of the date the employee requests leave insulates the employee from changes in the payroll that may occur, for whatever reason, between the request and the commencement of the leave and allows the employer to plan accordingly for the worker's absence. Moreover, we are not aware of any obstacles that employers face in measuring these two eligibility requirements as of different dates, and technological advances in human resources administration should remove any recordkeeping burdens. The Department should make no changes in these rules.

- **The Department seeks comment on the[] situations [raised in Harbert v. Healthcare Services Group Inc., 391 F.3d 1140 (10th Cir. 2004), cert. denied, 126 S. Ct. 356 (2005)] and any issues that may arise when an employee is jointly employed by two or more employers or when the employee works from home.**

Professional Employer Organizations

In promulgating the rules on joint employment set forth at 29 C.F.R. § 825.106, the Department gave careful and deliberate consideration to the situation of employees jointly employed by "temporary help and leasing agencies" to assure that their status as joint employees did not result in diminution of their FMLA rights. 60 Fed. Reg. at 2182-83. We believe these rules continue to represent a reasonable interpretation of the statute. Chevron v. Nat. Resources Def. Council, 467 U.S. 837, 843 (1984).

Nonetheless, we are taking this opportunity to address issues that may arise under the regulations when a Professional Employer Organization (PEO) and a client business “jointly employ” the client’s workers. This is a fast-growing employment relationship in the U.S. labor market today that warrants the Department’s attention.²⁰ We believe that the regulations may not provide sufficient protections to employees whose “primary employer” is deemed to be the PEO thereunder and suggest that the Department undertake a more thorough review of the impact of the PEO/client business relationship on fulfillment of employers’ FMLA responsibilities.²¹

Section 825.106(a) recognizes that “[w]here two or more businesses exercise some control over the work or working conditions of the employee, the businesses may be joint employers under FMLA,” and describes “situations” in which “a joint employment relationship generally will be considered to exist.” Subsection (b) provides a gloss on this guidance by stating that the joint employment determination must be based on the “the entire employment relationship . . . in its totality.” 29 C.F.R. § 825.106(b). As an example, it provides that “joint employment will ordinarily be found to exist when a temporary or leasing agency supplies employees to a second employer.” *Id.*

Subsection (c) apportions FMLA responsibilities between the “primary” and “secondary” employer. “Only the primary employer is responsible for giving required notices to its employees, providing FMLA leave, and maintenance of health benefits.” 29 C.F.R. § 825.106(c). That subsection also lists “[f]actors to be considered in determining which is the ‘primary’ employer . . . include[ing] authority/responsibility to hire and fire, assign/placed the employee, make payroll, and provide employment benefits.” *Id.* As is the case in subsection (b), this provision focuses on “employees of temporary help or leasing agencies” by providing that “[f]or employees of temporary help or leasing agencies . . . the placement agency most commonly would be the primary employer.” 29 C.F.R. § 825.106(c).

Subsection (e) elaborates on the responsibilities of joint employers and emphasizes that that the primary employer bears the “primary responsibility” to restore an employee returning from FMLA leave to the same or an equivalent job:

Job restoration is the primary responsibility of the primary employer. The secondary employer is responsible for accepting the employee returning from

²⁰ According to the website of the National Association of Professional Employer Organizations (NAPEO), “the PEO industry generates approximately \$51 billion in gross revenues annually. About 700 PEOs that offer a wide array of employment services and benefits are operating in 50 states.” PEOs serve a range of clients, including accounting, high tech, and small manufacturing firms.
<http://www.napeo.org/newscenter/industryfacts.cfm>.

²¹ In Opinion Letter FMLA-11, the Wage and Hour Division determined that a PEO was the primary employer for FMLA purposes, based on a list of its “rights, responsibilities and risks.” Dep’t of Labor Op. Ltr. FMLA-11 (Sept. 11, 2000). As we discuss in text, a closer examination of the facts, particularly with respect to a PEO’s claim that it has the right to hire, fire, assign, or direct the client’s employees, coupled with attention to the underlying reason for assigning primary responsibility to one entity over the other one, warrants another result.

FMLA leave in place of the replacement employee if the secondary employer continues to utilize an employee from the temporary or leasing agency, and the agency chooses to place the employee with the secondary employer.

29 C.F.R. § 825.106(e) (emphasis added).

In the Preamble, the Department addressed many comments that urged placing the responsibility for job restoration on the client employer as the entity that has “control over worksites and jobs.” 60 Fed. Reg. at 2182. DOL “agree[d] that joint employment relationships do present special compliance concerns for temporary help and leasing agencies.” *Id.* Nonetheless, the Department rejected proposals to place job restoration responsibilities on the client employer or to diminish the temp or leasing agency’s responsibilities when the employee’s original position was no longer available:

Our analysis of the statute and its legislative history in the context of the industry comments . . . revealed no viable alternatives that could be implemented by regulation that would not also have the unacceptable result of depriving eligible employees of their statutory rights to job reinstatement at the conclusion of FMLA leave.

Id. DOL emphasized that the statute’s guarantee of job restoration “is *central* to the entitlement provided by FMLA” (emphasis in original). Second, the Department reasoned that “it is the employment agency which is responsible for the employee’s pay and benefits, and is in the best position to provide the rights and benefits of the Act.” *Id.* at 2183 (emphasis added).

DOL correctly insisted on uniform rules on joint employment that do not result in the deprivation of employee rights under the FMLA. The Department also recognized that job restoration in the joint employment situation cannot occur if the secondary employer may lawfully thwart the primary employer’s attempt to restore an employee to the position she occupied prior to FMLA leave. Accordingly, the rules carefully describe the secondary employer’s responsibility to “accept the employee returning from FMLA leave” in effectuating job restoration. 29 C.F.R. § 825.106(e); see 60 Fed. Reg. at 2183.

We believe that these rules, taken as a whole, contemplate the situation in which a client business obtains its workers from a temporary staffing agency or other such third party (often, but not always for relatively short periods of time), and thus, where one of the agency’s primary functions is to place workers in appropriate positions at its clients’ worksites. For example, according to the American Staffing Association, staffing companies “match . . . people to . . . jobs”²² because they “offer a wide range of employment-related services, including temporary and contract staffing, recruiting and permanent placement, outsourcing, [and] outplacement.”²³ In that situation, the staffing agency, which has located and placed the worker, will be in the best position at the end of the worker’s leave to restore her to her job or to an equivalent one. If, as Section 106(e)

²² <http://www.americanstaffing.net/statistics/facts.cfm>.

²³ <http://www.americanstaffing.net/statistics/faqs.cfm>.

contemplates, the client employer does not “continue[] to utilize an employee from the temporary or leasing agency,” then the staffing agency is in the best position to restore the worker to an equivalent job. After all, it is that agency that has borne the responsibility in general to find employment for the individual. See 60 Fed. Reg. at 2183.

In contrast, PEOs operate differently. They engage in a practice known as “payrolling,” in which client employers transfer the payroll and related responsibilities for all or part of their existing workforce to the PEO, but do not rely on the PEO for placement services. See Center for a Changing Workforce, *PEOS AND PAYROLLING: A HISTORY OF PROBLEMS AND A FUTURE WITHOUT BENEFITS* (2001) (PEOs and Payrolling) at 1;²⁴ Snelling and Snelling v. ARICO, 83 Ohio App. 3d 89, 93 n.6, 613 N.E.2d 1107 (1993) (“Payrolling is a term which means one company funds the payroll of another company’s employees and then bills the company for reimbursement.”) Typically, PEOs also make payments on behalf of the client employer into the state workers’ compensation and unemployment insurance funds. See *Gulf Ins. Co. v. GFA Group, Inc.*, 251 Ga.App. 539, 541, 554 S.E.2d 746 (Ga. Ct. App. 2001) (PEO’s “role was limited to providing payroll services . . . and workers compensation insurance”).²⁵

According to the National Association of Professional Employee Organizations (NAPEO), PEOs provide “[relief from the burden of employment administration,” “[a] wide range of personnel management solutions,” “[i]mproved employment practices, compliance and risk management to reduce liabilities,” “[a]ccess to a comprehensive employee benefits package . . . ”and “[a]ssistance to improve productivity and profitability.”²⁶ Noticeably absent from this list of services is the matching of people to jobs performed by the traditional staffing agency.

Moreover, PEOs do not acknowledge that they jointly employ the workers whose wages and employment taxes they pay. Instead, according to NAPEO, PEOs and their clients become “co-employers” of the clients’ employees,²⁷ a term without legal significance

²⁴ <http://www.cfw.org/PEO.pdf>.

²⁵ The client employer thereby avails itself of the PEO’s lower experience rating with respect to unemployment and workplace injury when computing state taxes owed, a practice known as “SUTA (State Unemployment Tax Act) Dumping.” In a well-publicized case that arose in 2001, Michigan’s Unemployment Insurance Agency determined in 2005 that Simplified Employment Services, Inc., a Michigan-based PEO, failed to pay nearly \$10 million into the unemployment trust fund before declaring bankruptcy and shutting down. http://goliath.ecnext.com/coms2/gi_0199-4317612/This-Just-In-Bankruptcy-of.html.

PEOs have long sought to amend the Internal Revenue Code so that they, and not their clients, retain sole legal responsibility for the payment of workers compensation and/or unemployment taxes into the state funds, thus making it more attractive for businesses to contract for their services. The current version of this proposal, a provision in the “Small Business and Work Opportunity Act of 2007,” would make professional employer organizations sole employers of leased employees for purposes of employment taxes. None of the so-called safeguards in the bill, such as the posting of a small bond, would insulate the state funds from shortfalls that would occur when the PEO failed to meet its responsibilities. S.349, 110th Cong., 1st Sess. § 105 (2007).

²⁶ <http://www.napeo.org/newscenter/industryfacts.cfm>.

²⁷ <http://www.napeo.org/peoindustry/coemployers.cfm>.

whatsoever with respect to the responsibilities of employers. Even NAPEO's description of "co-employment" does not state clearly or definitively that PEOs hire employees for, or place them, with the client business. In contrast to the list of duties PEOs assume for the client as the "co-employer," such as "[p]ay[ing] wages and employment taxes of the employee out of its own accounts" and "[r]eport[ing], collect[ing] and deposit[ing] employment taxes with state and federal authorities," NAPEO only states that PEOs "retain a right to hire, reassign and fire the employees."²⁸

Thus, PEOs do not fit the model of the primary employer who should bear the FMLA's job restoration responsibilities in a joint employment situation, because there is no evidence to suggest that hiring and related functions fall to them, as opposed to the client employer. If, in fact, the PEO has not hired the employee and placed her with the client, and is not generally in the business of placing employees in appropriate positions among its clients, then designating it as the primary employer may actually jeopardize the employee's right to return to her same job or an equivalent one.

For example, Section 825.106(e) provides that the secondary employer must accept the employee back into her position "in place of the replacement employee if the secondary employer continues to utilize an employee from the temporary or leasing agency, and the agency chooses to place the employee with the secondary employer." But client businesses do not, as contemplated by the rule, "utilize . . . employee[s]" from a PEO where the PEO's function is to engage in "payrolling" rather than employee placement. In situations like this, the rationale for designating the leasing agency, rather than the client business, as the primary employer, does not hold. Instead, in these situations, it makes far more sense to hold the client business responsible for restoring the returning employee to her job or an equivalent one.

Furthermore, the Preamble explains that in cases where the client business no longer uses the services of the leasing company, or no longer contracts for the services that the returning employee furnished prior to FMLA leave, then using a "head of the line" approach, in which the leasing agency "giv[es] the returning employee priority consideration for possible placement in assignments with other client employers" is "consistent with the FMLA. 60 Fed. Reg. at 2183. However, for the reasons stated above, this approach is not consistent with the FMLA when the leasing company is a PEO that performs no placement functions for employees or client businesses.

Finally, we are concerned with designating the PEO as the primary employer in the face of the bankruptcies and dissolutions common in the industry. An employee returning from leave whose payrolling company had dissolved would find herself without an employer bearing the responsibility to restore her to her job or an equivalent one, despite the fact that the client employer may have employed her on a long-term basis and be in the better position to restore her to her job.

Client employers should not be able to shed FMLA responsibilities when they have contractual relationships with entities such as PEOs that are not able to fulfill the

²⁸ <http://www.napeo.org/peoindustry/coemployers.cfm>.

FMLA’s job restoration responsibilities, despite how attractive it may be for the client to shift, and the PEO to “accept,” those responsibilities. For all of these reasons, we urge the Department to reconsider its joint employment rules as they apply to PEOs and similar organizations.

Issues Raised by Harbert v. Healthcare Services

Section 101(2)(B)(ii) of the FMLA excludes from the term “eligible employee”:

Any employee of an employer who is employed at a worksite at which such employer employs less than 50 employees if the total number of employees employed by that employer within 75 miles of that worksite is less than 50.

29 U.S.C. § 2611(2)(B)(ii). “The congressional purpose underlying th[is] provision was to remove the burden of providing FMLA leave from employers who do not have an abundant supply of temporary replacements in close geographic proximity to the employee requesting leave,” regardless of whether their total workforce reaches the 50-employee threshold. Harbert v. Healthcare Servs. Gp., 391 F.3d 1140, 1149 (10th Cir. 2004), cert. denied, 126 S. Ct. 356 (2005) (citing H.R. Rep. No. 102-135(I), at 37 (1991)).

The regulations provide a method of identifying the worksite of a jointly employed employee for purposes of determining if it meets the statute’s 50 employee/75 mile rule. Section 825.111(a)(3) states:

For purposes of determining that employee’s eligibility, when an employee is jointly employed by two or more employers (see § 825.106), the employee’s worksite is the primary employer’s office from which the employee is assigned or reports.

29 C.F.R. § 825.111(a)(3) (emphasis added).

In Harbert, the Court invalidated Section 825.111(a)(3) “as applied in this case to a jointly employed employee with a fixed worksite” located at the facility of the secondary employer that had contracted with a placement agency for the employee’s services. 391 F.3d at 1154; see 71 Fed. Reg. at 69500-09. Purporting to apply a traditional Chevron analysis, the court concluded that the rule was “arbitrary, capricious, and manifestly contrary to the FMLA.” 391 F.3d at 1149.

We agree with the dissent in Harbert that Section 825.111(a)(3) “is a permissible exercise of agency rulemaking.” 391 F.3d at 1155 (citing Chevron, 467 U.S. at 843).²⁹ The

²⁹ Our concerns about correctly identifying the “primary employer” of a jointly employed employee where one of the employers is a PEO are not in conflict with our view that Harbert was decided incorrectly. The fundamental issue in a joint employment situation is determining who is the primary employer under Section 825.106. Once that is done, as we discuss, it is reasonable to identify the employee’s “worksite” under Section 825.111(a)(3) as “the primary employer’s office from which the employee is assigned or

Department should not revise Section 825.111(a)(3) in response to the decision in that case.

In Harbert, the plaintiff began employment at a long-term care facility before the employer began using the services of a placement company. Three years later, the facility entered into a contract with defendant for the provision of services, including those encompassed by plaintiff's job.³⁰ The district court treated the regional office as plaintiff's worksite and, applying Section 825.111(a)(3) to that facility, determined that plaintiff worked at a worksite that met the 50 employee/75 mile rule. Refusing to give deference to the rule as applied to "a jointly employed employee with a fixed worksite," the court of appeals reversed. 391 F.3d at 1154. Thus, because the long-term care facility where plaintiff performed her work did not employ 50 employees within a 75 mile radius, the court ruled her ineligible for FMLA leave.

The majority concluded first that DOL's definition of "'worksite,' as applied to the facts of the case, runs contrary to the common meaning of that term . . ." Harbert, 391 F.3d at 1149. Second, although the court acknowledged Congress's "inten[t]" that "[t]he term 'worksite' . . . be construed in the same manner as the term 'single site of employment' under the Worker Adjustment and Notification Act, (WARN), 29 U.S.C. 2101(a)(3)(B), and regulations under that Act (20 C.F.R. Part 63)," it nonetheless rejected DOL's reliance on that term. 391 F.3d at 1152; see S. Rep. No.103-3, at 23 (1993), reprinted in 1993 U.S.C.A.N.N. 3, 25. In the view of the majority, the WARN Act's regulatory definition (20 C.F.R. § 689.3(i)) "governs only employees without a fixed place of work."³¹

Third, the majority opined that the regulation "creates an arbitrary distinction between sole employers and joint employers." A sole employer with fewer than 50 employees within 75 miles of its facility would not have an obligation to provide FMLA leave to an employee. However, a placement company that supplied the employee to the employer, and met the 50 employee/75 mile requirement at its "central office" would have such an obligation, even if "neither employer has an abundant supply of nearby employees to replace temporarily an employee taking leave." 391 F.3d at 1150.

reports." Our comments about the primary employer determination were directed at those specific situations in which a leasing agency such as a PEO has little or no responsibility over the hiring, firing, or assignment of the employee. In Harbert, by contrast, "[d]efendant assumed all responsibility for retaining, transferring, or firing Plaintiff and also paid her salary and provided her benefits." 391 F.3d at 1143.

³⁰ "Plaintiff's employment was transferred" to the agency, which "assumed all responsibilities for retaining, transferring, or firing Plaintiff and also paid her salary and provided her benefits." 391 F.3d at 1143. Plaintiff reported to a district manager at one of defendant's regional offices. Id.

³¹ The WARN Act's regulation provides that "[f]or workers whose primary duties require travel from point to point, who are outstationed, or whose primary duties involve work outside any of the employer's regular employment sites . . . the single site of employment to which they are assigned as their home base, from which their work is assigned, or to which they report will be the single site in which they are covered for WARN purposes." 20 C.F.R. § 639.3(i)(6).

In our view, the dissent correctly refuted each of these contentions, consistent with FMLA’s purposes. With respect to the meaning of the term “worksite” within the context of the entire regulation, it stated:

Joint employment comes in many forms. But the primary employer generally has control over the reassignment, placement, and hiring and firing of joint employees, not the secondary employer. *See* 29 C.F.R. § 825.106(c). Thus, an employee’s “worksite” is defined with reference to the employer retaining the most control over the employee, and the employer responsible for providing FMLA leave. *Id.*

391 F.3d at 1154.³²

We agree that under the regulations, read as a whole, identifying the employee’s worksite follows logically from determining which “employer retain[s] the most control over the employee” and is therefore the primary employer. *See FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (“The meaning . . . of certain words or phrases may only become evident when placed in context.”).

Second, we agree with the dissent that the Secretary’s interpretation of “single site of employment” under the WARN Act regulations as applying equally to employees with and without a fixed worksite is a “permissible and reasonable interpretation”:

[Interpreting the WARN Act regulation so that it] only applies to employees without a regularly fixed site of employment would seem to contravene the express language of the provision which mentions other categories, including employees who “travel from point to point, who are outstationed, or whose primary duties involve work outside any of the employer’s regular employment sites.”

391 F.3d at 1155 (quoting 20 C.F.R. § (emphasis added); *cf. Reiter v. Sonotone Corp.*, 442 U.S. 330, 339 (1979) (“Canons of construction ordinarily suggest that terms connected by a disjunctive be given separate meanings, unless the context dictates otherwise . . .”).

Third, we agree that application of the rule does not “result in arbitrary differences” between sole and joint employer liability under FMLA. 391 F.3d at 1155. Instead, it results in a rational distinction rooted in the very purpose of the 50 employee/75 miles rule where the placement agency locates and hires the worker for the client agency:

Basing FMLA eligibility on primary employers prevents confusion and provides certainty, because a temporary placement employee’s coverage could vary daily were he placed in different [locations of the client employer] on a rotating basis.

³² The dissent’s understanding of the primary employer as the employer who controls “reassignment, placement, and hiring and firing of joint employees,” 391 F.3d at 1154, underscores the reasons why we do not believe that PEO which engage primarily in payrolling should be treated as primary employers.

Further, contrary to the court’s assertion, the ability of a . . . [client employer] and a placement agency to find abundant nearby replacements probably is not identical, after all, the placement agency specializes in hiring and placing employees within the area.

Id. (emphasis added).

For all of the reasons, stated above, the Department’s worksite rule is a permissible construction of the statute. DOL should not revise the worksite regulation in Section 825.111(a)(3) in response to the decision in Harbert.³³

B. Definition of “Serious Health Condition”

- **Have the[] limitations in section 825.114(c) been rendered inoperative by the regulatory tests set forth in section 825.114(a)?**
- **Is there a way to maintain the substantive standards of section 825.114(a) while still giving meaning to section 825.114(c) and congressional intent that minor illnesses like colds, earaches, etc., not be covered by the FMLA?**

We do not agree, for the reasons discussed below, with the Department’s premise that Section 825.114(c) places “limitations” on Section 825.114(a)’s regulatory tests. Therefore, the issue is not whether those tests have been “rendered inoperative” by the purported limitations. Rather, the issue is whether these regulatory tests are “based on a permissible construction of the statute.” Chevron, 467 U.S. at 843, and continue to accomplish the purposes of the Act.³⁴

There is no evidence that the regulations, which courts have repeatedly upheld under Chevron, no longer effectuate the language of the statute and the intent of Congress. See, e.g., Miller v. AT&T Corp., 250 F.3d 820, 834-835 (4th Cir. 2001); Thorson v. Gemini, Inc., 205 F.3d 370, 380-381 (8th Cir.), cert. denied, 531 U.S. 871 (2000). The

³³ We agree with the regulation’s treatment of “employees who work at home, as under the new concept of flexiplace.” Under 29 C.F.R. § 825.111(a)(2), “their worksite is the office to which they report and from which assignments are made.” See e.g., Grimsley v. Fiesta Salons, Inc., 2003 U.S. Dist. LEXIS 298, *15-16 (E.D. Mich. 2003). It would be anomalous to conclude that the worksite is the leave-taker’s home. First, the employer has no reason to try to replace such a leave-taker with an employee who “telecommutes” from that leave-taker’s home vicinity. Second, the fact that an employee works from home has no bearing whatsoever on whether the employer will face any geographical difficulties either finding a replacement to work at the worksite or the replacement’s home.

³⁴ Nor do we agree with the Department’s statement that Congress “inten[ded] that minor illnesses like colds, earaches, etc., not be covered by the FMLA.” 71 Fed. Reg. at 69509. Rather, as discussed in text, Congress intended that “short-term conditions for which treatment and recovery are very brief” fall outside of the scope of the “serious health conditions” covered by the FMLA. S. Rep. No. 103-3, at 28 (emphasis added), reprinted in 1993 U.S.C.C.A.N. 3, 30. An illness that requires “continuing treatment by a health care provider” is one that the FMLA covers, regardless of the specific diagnosis. 29 U.S.C. § 2611(11); 29 C.F.R. § 825.114(a)(2).

Department should not modify the criteria set forth in Section 825.114(a) for determining a “serious health condition,” nor should it abandon this approach by providing a list of illnesses and injuries that meet or do not meet such criteria.

Section 101(11) of the FMLA defines a “serious health condition as:

an illness, injury, impairment, or physical or mental condition that involves—

- (A) inpatient care in a hospital, hospice, or residential medical care facility; or
- (B) continuing treatment by a health care provider.

29 U.S.C. § 2611(11). By defining a serious health condition with reference solely to “inpatient care” or “continuing treatment by a health care provider,” Congress soundly rejected an approach based on enumerated medical conditions. See S. Rep. No. 103-3 at 28, reprinted in 1993 U.S.C.C.A.N. 3, 30 (definition is “intended to cover various types of physical and mental conditions”).

The regulations correctly do not define “serious health condition” by relying on nonexhaustive “[e]xamples of serious health conditions” that Congress provided in the legislative history to the Act. S. Rep. No. 103-3, at 29, reprinted in 1993 U.S.C.C.A.N. 3, 31. As explained in the Preamble:

The Department did not consider it appropriate to include in the regulation the “laundry list” of serious health conditions listed in the legislative history because their inclusion may lead employers to recognize only conditions on the list or to second-guess whether a condition is equally “serious”, rather than apply the regulatory standard.

60 Fed. Reg. at 2195 (emphasis added). Instead, the regulations define a “serious health condition as an illness, injury, impairment, or physical condition that requires either “inpatient care” (§ 825.114(a)(1)) or “continuing treatment by a health care provider” (§ 825.114(a)(2)). These tests are “[c]onsistent with the statutory language” because they:

Establish a definition of “serious health condition” that focuses on the effect of an illness on the employee and the extent of necessary treatment rather than on the particular diagnosis. This policy decision is neither unreasonable nor manifestly inconsistent with Congress’s intent to cover illnesses that “require that the employee be absent from work on a recurring basis or for more than a few days for treatment or recovery and involve continuing treatment or supervision by a health care provider.”

Miller, 250 F.3d at 835 (citing S. Rep. No. 103-3, at 29, reprinted in 1993 U.S.C.C.A.N. 3, 31).

The rule “provides “an objective test for ‘serious health condition.’” Thorson, 205 F.3d at 380. In so doing, it creates a “brightline . . . for determining what illnesses qualify as serious health conditions.” Mell v. Weyburn-Bartel, Inc., 1997 U.S. Dist. LEXIS 15758, *10 (W. D. Mich. 1997). This definitional approach “avoids the need for employers – and ultimately courts – to make subjective decisions about statutory ‘serious health conditions.’” Thorson, 205 F.3d at 380 (emphasis added).³⁵

Congress also stated in the legislative history that “[t]he term ‘serious health condition’ is not intended to cover short-term conditions for which treatment and recovery are very brief . . . [because] [i]t is expected that such conditions will fall within even the most modest sick leave policies.” Id. However, “th[is] passage . . . is not reflected in the statutory language.” Miller, 250 F.3d at 835. Thus, no provision of Section 825.114 excludes particular diagnoses from the definition of “serious health condition.” Instead, subsection (b) clarifies whether certain types of treatment meet the standard under subsection (a). 29 C.F.R. § 825.114(b)³⁶ Following the same approach, subsection (c) clarifies that certain conditions are not serious health conditions for FMLA purposes unless they meet all of the regulatory measures of subsection (a). 29 C.F.R. § 825.114(c). However, these examples do not modify or limit the objective tests set forth in subsection (a), regardless of employees’ or employers’ “subjective” views about illnesses and injuries. Thorson, 205 F.3d at 380.

As long as a diagnosis meets the “objective criteria” of subsection (a), then subsection (c) makes it clear that the employee has a “serious health” condition that qualifies for FMLA leave.³⁷ The Department should not permit anecdotes to substitute for reliable data on this important definitional issue. Miller, 250 F.3d at 835 (even if the definition will, in some instances, “provide FMLA coverage to illnesses that Congress never envisioned would be protected,” the regulations “are [not] so manifestly contrary to congressional intent as to be considered arbitrary”).

³⁵ It is in this context that the Department should evaluate the assertion by the National Coalition to Protect Family Leave, that “[a]ccording to the Society for Human Resource Management (SHRM) 2003 FMLA Survey, half (50%) of human resource professionals indicated that they have had to grant FMLA requests that they did not believe were legitimate because of the Labor Department’s medical leave interpretations.” <http://www.fixfmla.org/issue.cfm> (emphasis added). As discussed in text, above, the statute and regulations deliberately substitute “objective” criteria for subjective views about serious health conditions. Thorson, 205 F.3d at 380.

³⁶ For example, the first sentence states that qualifying treatment includes “examinations to determine if a serious health condition exists.” The second sentence states that “[t]reatment does not include routine physical examinations.” The third sentence states that “a regimen of . . . over-the-counter medications . . . or bed rest, drinking fluids, exercise, and other similar activities . . . is not by itself sufficient to constitute a regimen of continuing treatment . . .” 29 C.F.R. § 825.114(b) (emphasis added).

³⁷ The Department issued an opinion letter in 1995 stating that “unless complications arise, the common cold [and other conditions enumerated in Section 825.114(c)] are examples of conditions that do not meet the definition of a serious health condition and therefore do not qualify for FMLA leave.” Dep’t of Labor Op. Ltr.-57 (Apr. 7, 1995). A year later, DOL withdrew that statement in another opinion letter, having determined that it was “an incorrect construction of the regulations.” Dep’t of Labor Op. Ltr. FMLA-86 (Dec. 12, 1996). Under the later opinion, illnesses listed in listed in Section 825.114(c) are serious health conditions “where the tests [in subsection (a)] are, in fact met . . .” See Thorson, 205 F.3d at 378-379. This reversal, which took place soon after passage of the Act, hardly reflects any subsequent or persistent confusion on the part of DOL, despite assertions to the contrary. See <http://www.fixfmla.org/issue.cfm>.

It is significant that the WorldatWork Survey found that 91 percent of employers do not “track FMLA absences by type of serious health condition.” WorldatWork at 4. This indicates that employers do not collect the kind of data that would lend itself to a reliable conclusion that employees who take FMLA leave for a serious health condition do not, in fact, have a medical condition that meets Section 825.114(a)’s objective tests. As we discuss in Section K, below, the regulations with respect to medical certification are adequate to assist employers with this eligibility requirement.

In addition, courts have had little trouble applying the criteria in Section 825.114(a) to determine whether the same illness is a serious health condition under one set of circumstances and simply a minor condition for which FMLA leave is not available under another. This is true with respect to physical conditions³⁸ as well as mental conditions,³⁹ because the regulatory criteria in Section 825.114(a) set forth brightline tests that both employers and courts can measure.

In short, we believe that the brightline tests set forth in Section 825.114(a) continue to provide the best means of determining what qualifies as a serious health condition. There is no reliable evidence of a systemic failure or weakness in the regulatory test to determine when an employee (or family member) suffers from a serious health condition. Imposing additional requirements on the nature or length of treatment, or the duration of incapacity, will inevitably exclude, with no basis whatsoever, serious medical conditions from the ambit of the FMLA. The Department should resist making any changes in the definition of serious health condition.

³⁸ Compare Miller v. AT&T, 250 F.3d 820 (physician diagnosed employee with flu, certified that she was incapacitated for at least three days, and treated her twice) and Nawrocki v. United Methodist Retirement Home, 174 Fed. Appx.

334, 2006 U.S. App. LEXIS 7939 (6th Cir. 2006) (employee whose doctor did not state on medical certification that earache left employee unable to work did not have serious health condition) with Mell v. Weyburn-Bartel, U.S. Dist. LEXIS 15758 (W.D. Mich. 1997) (employee with flu who did not receive continuing medical treatment and whose doctor did not certify incapacity to work was not entitled to FMLA leave); Sicoli v. Nabisco Biscuit Co., 1998 U.S. Dist. LEXIS 8429, *33, 4 Wage & Hour Cas. (BNA) 1265 (E.D. Pa. 1998) (employee who complained of migraines, but whose doctor certified that, although he “might get sudden headaches” he “was able to perform the functions of his position,” was properly denied FMLA leave).

³⁹ See e.g., Boyd v. State Farm Ins. Cos., 158 F.3d 326, 331 (5th Cir. 1998), cert. denied, 526 U.S. 1051 (1999) (evidence was “vague and conclusory” with respect to whether plaintiff’s stress and anxiety required leave of absence from work); Jones v. Willow Gardens, 2000 U.S. Dist. LEXIS at 38-39 (N. Dist. Iowa 2000) (genuine issue of fact as to whether employee’s emotional problems rendered her unable to work); mental condition rendered him incapacitated under unable to work; accord, Bailey v. Augustine Medical, Inc., 2003 U.S. Dist. LEXIS 1963, *33 (D. Minn. 2003) (employee who merely informed supervisor he was going to see psychiatrist and who requested time off did not invoke FMLA request).

C. Definition of a Day

- **Should scheduled holidays count against an employee's 12 weeks of FMLA leave when the employee is out for a full week as they do now?**

The FMLA entitles eligible employees to a total of “twelve work weeks” of leave. 29 U.S.C. § 2612(a)(1). DOL should revise its regulations so that holidays do not count against an employee's leave entitlement.

The length of entitlement is based on the “workweek,” rather than on a “particular number of days or hours of leave.” Dep't of Labor Op. Ltr. FMLA 2002-1 (May 9, 2002). If an employee works a regular 40-hour workweek, then she is entitled to 480 leave hours; if she normally works a 50-hour workweek, however, she is entitled to 600 leave hours. *Id.* Likewise, a part-time employee's leave entitlement is “determined on a pro rata or proportional basis,” depending on the amount of time she works in an average workweek. 29 C.F.R. § 825.205(b). “Thus, the focus is always on the workweek, and the employee's “normal” workweek (hours/day per week) prior to the start of FMLA leave is the controlling factor for determining how much leave an employee is entitled to use.” Op. Ltr. FMLA 2002-1.⁴⁰

For employees who take FMLA leave on an intermittent basis, “only the amount of leave actually taken” is counted toward the twelve-week total. 29 U.S.C. § 2612(2)(b); 29 C.F.R. § 825.205(a) (emphasis added). In other words, when an employee who is qualified for intermittent leave schedules a medically necessary appointment for a day when she is not required to work (e.g. weekend, day off, holiday, etc.), it does not cut into her total available leave time. Intermittent leave is counted in fractions of a week—an employee who works a five-day workweek and takes one day off has used one-fifth of a week of her 12-week entitlement. *Id.*

For employees taking continuous leave, however, days when leave has not “actually [been] taken” are sometimes counted as leave. If a holiday occurs during a full week of leave, that day is counted against the employee's twelve-week total. 29 C.F.R. § 825.200(f). Longer holidays, however, where an employer's business has “temporarily ceased” (such as school vacations or factory closings for repairs) do not count towards an employee's total leave time.

Thus, the regulations treat continuous leave in a way that is both internally inconsistent and inconsistent with the method of counting intermittent leave.⁴¹ Only the leave that an

⁴⁰ Cf. *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 690-91 (1946) (defining workweek in the FLSA context as including “all the time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed work place”).

⁴¹ Additionally, it is noteworthy that for purposes of establishing whether an employee has worked the required 1,250 hours, only “hours actually worked” count towards the total. 29 C.F.R. § 825.110 (citing FLSA legal standards at 29 C.F.R. § 785). Holidays do not count toward an employee's total hours for determining eligibility. *See* Dep't of Labor Op. Ltr. FMLA-70 (Aug. 23, 1995).

employee actually takes should count towards an employee's twelve-week total. The Department should revise its regulations accordingly.

- **Should “more than three consecutive calendar days” for a serious health condition in section 825.114(a)(2)(i) mean four days or three days and any part of the fourth day?**

One of the definitions of “serious health condition” under Section 825.114 requires “continuing treatment” and a period of incapacity of “more than three consecutive calendar days.” This rule does not require a full four days of incapacity.

Only one court has explicitly considered the question of whether partial days count in determining the period of incapacitation under section 825.114(a)(2). In Russell v. North Broward Hospital, the Eleventh Circuit interpreted the regulation's language regarding “three consecutive calendar days” to mean three full consecutive days. 346 F.3d 1335, 1344 (11th Cir. 2003). The court also held that although partial days of incapacity did not contribute to the core “three consecutive days,” they did count toward establishing the regulation's requirement of “more than” three days. Id. Thus, the court gave the regulation its literal meaning: the requirement of “more than three consecutive calendar days” is satisfied if an employee's incapacity lasts for three full days plus at least part of a fourth day.

Other courts have summarily interpreted the regulation to require at least four full days of incapacity, rather than the stated period of “more than” three days, but none of these cases has turned on this specific issue. See Murray v. Red Cap Indus., Inc., 124 F.3d 696, 698 (5th Cir. 1997) (eight-day absence due to respiratory infection was not excused because doctor said employee could return to work after five days), Bond v. Abbott Laboratories, 7 F. Supp. 2d 967 (1998) (incapacity of two days due to emergency tooth extraction, and absence from work for three days, without incapacity, for tendonitis); Henderson v. Cent. Progressive Bank, 2002 WL 31086086 at *3 (E.D. La. Sept. 17, 2002) (respiratory infection requiring employee to miss work for only three days was not a serious health condition).⁴² None of the cited cases involved a period of incapacity that was more than three full days but less than four full days.

Congress intended for the term “serious health condition” to cover those illnesses which “meet the general test that either the underlying health condition or the treatment for it requires that the employee be absent from work on a recurring basis or for more than a few days for treatment or recovery.” H.R. Rep. No. 103-8, pt.1 at 29 (1993) (emphasis added). In contrast, minor health conditions are not grounds for FMLA leave because,

⁴² The Request for Information, 71 Fed. Reg. at 69509, misstates the holding in Seidle v. Provident Mutual Life Insurance. Co., 871 F. Supp. 238, 243–44 (E.D. Pa. 1994). In Seidle, a mother was not eligible for FMLA leave from work because her son's ear infection incapacitated him for only three days and because he did not receive “continuing treatment.” There was no discussion of whether the regulations required the incapacity to last at least four days. The court found that, even though the plaintiff missed four full days of work, her son “was not absent from his day-care center for more than three days because of an incapacity.” Id. at 244.

according to Congress, they should be covered by an employer’s sick leave policy. Id. at 28. Thus, Congress sought to exempt “minor illnesses that last only a few days and surgical procedures which typically do not require hospitalization and require only a brief recovery period.” Id.

A requirement of “more than” three days accurately implements Congress’s intent to draw a line between qualifying health conditions that last “more than a few days” and minor illnesses that last “only a few days.” Extending the required period of incapacity to at least four day -- nearly an entire workweek -- excludes more than just the minor illnesses Congress assumed would be covered by ordinary sick leave policies.

The regulation should be given its plain and literal meaning, in accordance with the Eleventh Circuit’s interpretation: a health condition that involves a period of incapacity lasting for three full days plus a portion of a fourth day, and that requires continuing treatment, qualifies as a serious health condition.

D. Substitution of Paid Leave

- **What is the impact of section 825.207 which prohibits employers from applying their normal leave policies to employees substituting paid vacation and personal leave for unpaid FMLA leave?**

Section 102(d)(2) of the FMLA provides that “[a]n eligible employee may elect, or an employer may require the employee, to substitute” appropriate accrued paid leave for FMLA-protected leave.⁴³ 29 U.S.C. § 2612(d)(2). This provision satisfies Congress’s intent “to mitigate the financial impact of wage loss due to family and temporary medical leaves.” S. Rep. No. 103-3, at 28, reprinted in 1993 U.S.C.A.N.N. 3, 31.

The statute specifies that an employer is under no requirement “to provide paid sick leave or paid medical leave in any situation in which such employer would not normally provide any such leave. 29 U.S.C. § 2612 (d)(2)(B). However, no such limitations exist on the employee’s substitution of paid vacation or personal leave.⁴⁴

The regulations at Section 825.207 implement the FMLA’s substitution provisions as well as Congress’s intent. Subsection 207(e) provides that:

Paid vacation or personal leave, including leave earned or accrued under plans allowing “paid time off,” may be substituted, at either the employee’s or the employer’s option, for any qualified FMLA leave. No limitations may be placed

⁴³ Section 102(d)(2)(A), 29 U.S.C. § 2612(d)(2)(A), provides for substitution of accrued paid vacation, personal, or family leave for FMLA-qualifying leave under Section 102(a)(1)(A)-(C), 29 U.S.C. § 2612 (a)(1)(A)-(C). Section 102(d)(2)(B), 29 U.S.C. § 2612(d)(2)(B), provides for substitution of accrued paid vacation, personal, family or sick leave for FMLA-qualifying leave under Section 102(a)(1)(C) and (D), 29 U.S.C. § 2612 (a)(1)(C) and (D).

⁴⁴ The WorldatWork survey found that 60 percent of the employers it surveyed “require use of paid leave if available)” while 40 percent simply permit employees to take such leave. WorldatWork at 12.

by the employer on substitution of paid vacation or personal leave for these purposes.

29 C.F.R. § 825.207(e) (emphasis added). When promulgating the FMLA’s final rules, the Department specifically rejected proposals to limit employees’ substitution rights. For example, one commenter suggested “restrict[ing] substitution of paid vacation if the employer policy normally restricts vacations to certain times during the year.” 60 Fed. Reg. at 2205. Relying on the statutory language, the Department stated that:

There are no limitations . . . on the employee’s right to elect to substitute accrued paid *vacation* or *personal* leave for qualifying FMLA leave, and the employer may not limit the timing during the year in which paid vacation may be substituted for FMLA-qualifying absences or impose other limitations.

Id. (emphasis in original).

The ability to substitute paid vacation or personal leave has had a significant impact on employees’ ability to take FMLA leave. As we discuss below with respect to the existence of paid leave policies on the nature and type of FMLA leave used, the lack of paid leave presents a significant obstacle for those who cannot afford to take FMLA leave. Moreover, we are not aware of any data regarding the impact of substitution on employers. Even if such data existed, it would not change the statutory prohibition on limiting employees’ ability to substitute paid leave.

Despite some employer assertions to the contrary,⁴⁵ the prohibition on employer limitations applies solely to substituting paid vacation and personal leave for FMLA. Employers remain free to limit the use of “paid sick leave or paid medical leave” as a substitute for FMLA leave, because the Act provides that they have no obligation to allow employees to take such leave “in any situation in which such employer would not normally provide” it.” 29 U.S.C. § 2612(d)(2)(b); see 29 C.F.R. § 207(c). In addition, the Department’s regulations also permit employers to limit the substitution of accrued paid “family leave” to those situations in which the employer’s paid leave “cover[s] the particular circumstances for which the employee seeks leave.” Thus, employers retain control over their family and sick leave benefits.

⁴⁵ See e.g., National Coalition to Protect Family Leave, “The FMLA Issue” (Jan. 26, 2007) <http://www.fixfmla.org/issue.cfm>. (“FMLA application problems have actually undermined paid leave programs. . . . This has resulted in organizations rethinking progressive sick leave programs and the voluntary expansion of paid leave programs”).

- **Does the existence of paid leave policies affect the nature and type of FMLA leave used?**

Importance of Paid Leave

The Department's own data shows that the availability of paid leave not only affects whether employees take FMLA leave, but is the most important determinant of whether someone who needs leave actually takes it. According to Westat, "[i]n the 2000 survey, the most commonly noted reason for not taking leave was being unable to afford it, reported by 77.6 percent of leave-needers." 2000 Westat Report at 2-16. This represents an almost 12 percent increase over those in the 1995 study who listed this as their reason for not taking FMLA leave. *Id.* In order "[t]o further clarify the impact of financial obstacles to leave-taking," the 2000 survey asked an additional question: "if you had received some or additional pay, would you have taken leave?" The results show that "the vast majority (87.8%) of these leave-needers would have taken leave had they been able to receive some/additional pay while away from work." *Id.* at 2-16 – 2-17. *See* n.7, *supra* (47 percent of private sector workers lack employer-provided sick leave).

These statistics demonstrate that inability to afford unpaid leave has become an increasing problem in the workplace. Congress accurately gauged the difficulties associated with taking unpaid leave when it gave employees the right to substitute paid leave for FMLA-qualifying leave. The Department should not revise these regulations.

Interplay Between FMLA and Collective Bargaining Agreements

We expressly incorporate the comments of the Transportation Communications International Union, the Transport Workers Union, the United Transportation Union and the International Association of Machinists and Aerospace Workers with respect to the issue which they and several other rail unions are currently litigating in the federal courts. Brotherhood of Maintenance of Way Employees v. CSX Transportation, Inc., 2005 U.S. Dist. LEXIS 37950, *15 (N.D. Ill. 2005), appeal pending, No. 06-2744 (7th Cir.) (argued Jan. 3, 2007). In that case, the district court held that nothing in the permissive language of Section 102(d)(2), 29 U.S.C. § 2612(d)(2), "suggests employers are free to ignore or abrogate existing contractual terms." Therefore, employers cannot require employees to substitute paid leave for FMLA leave in a manner that contravenes existing collective bargaining agreements under the Railway Labor Act.⁴⁶ Thus, we agree with the unions that the Department should make no changes in its regulations governing substitution of paid leave for FMLA leave in the collective-bargaining context.

⁴⁶ The same principle of law applies to agreements governed by the National Labor Relations Act, 29 U.S.C. § 151 *et seq.*

F. Different Types of FMLA Leave

- **Does intermittent leave present different problems or benefits from leave taken for one continuous block of time? (Section 825.203)**

Congress explicitly provided that employees have the right to take leave “intermittently or on a reduced leave schedule when medically necessary.” 29 U.S.C. § 2612(b). The FMLA treats intermittent and continuous leave equally—employees are entitled to leave whether that leave is taken at one time or “on a recurring basis.” H.R. Rep. No. 103-8, pt.1 at 29 (1993).

Only one fifth of FMLA leave is taken intermittently. In the Westat survey, employees reported that 19.1 percent of FMLA leave is intermittent, and employers reported 20 percent. 2000 Westat Report at 3-15. Similarly, the WorldatWork study found that chronic conditions are responsible for 18.7 percent of FMLA leave hours. WorldatWork at 7.⁴⁷ The most common type of FMLA leave is taken for care of a newborn or adopted child,⁴⁸ and the FMLA specifies that this type of leave may be taken intermittently only with the employer’s permission. 29 U.S.C. § 2612(b) (2005). 29 C.F.R. § 825.203 (a).

The availability of intermittent leave is crucial for families who struggle to balance work and family demands and is necessary for employees who suffer from chronic health conditions or who must provide care for family members with chronic illnesses. Congress’s concern in 1995 for the difficult choices employees must make when faced with a healthcare crisis is even more relevant today: a growing number of employees find themselves in the “sandwich generation,” faced with the dual responsibilities of caring for children and for elderly parents. From 1995 to 2000, the number of employees taking FMLA leave in order to care for parents increased tremendously, from 0 percent in 1995 to 10.6 percent in 2000. 2000 Westat Report at 3-16. Of all employees who took intermittent leave from work in 2000 for FMLA reasons, 18.7 percent did so to care for a parent. *Id.* at 2-12.

Many of the responses to Working America’s 2007 online survey on FMLA stressed the importance of intermittent leave. See Appendix, attached to these comments. A Human Services Supervisor in Easton, Pennsylvania, relied on intermittent leave to care for his terminally ill father:

By using the intermittent leave provisions of FMLA, I was able to help care for my Dad in the final stages of his terminal cancer, in his own home. I was grateful that he was able to spend his last days in the comfort of his house, as he desired, while I was able to maintain my employment status, which I desperately needed for my own family. Weakening this law, will only lead to the further breakdown of already stressed family support systems.

⁴⁷ Although the Economic Policy Foundation suggests that chronic conditions are responsible for 27percent of FMLA leave time (Employment Policy Foundation, THE COST AND CHARACTERISTICS OF FAMILY AND MEDICAL LEAVE, 3 (2005)), that study’s methodology has been criticized. See n.9, supra.

⁴⁸ Forty two percent of FMLA leave is taken for care of a new child. WorldatWork at 1, 7.

A payroll and benefits administrator in Euclid, Ohio also cares for a sick parent:

My mother suffered a severe stroke 4 years ago. I use FMLA time to care for her at home and keep her out of a nursing home. I have two siblings who help with her care, so I only have to take intermittent leave. It's hard enough to care for a disabled parent without having to worry about losing your job.... [My mother's generation] worked hard to get this country to where it is, I don't think it's right that every time you turn around, they're taking another benefit from them. It would break my heart and my mother's if I had to put her in a nursing home. The government should be finding ways to make it easier to take this leave, not make it harder.

A nurse in Linwood Pennsylvania uses intermittent leave to care for her handicapped daughter:

As a registered nurse and a single mom with a severely handicapped child—Sarah is 15 years old and can not even sit up without assistance, requires care for all activities of daily living—FMLA has allowed me to balance full time work with her care. Without FMLA I would have been faced with the choice of either placing her in a state run facility so I could continue working in my profession, or quitting my job and living in poverty to be able to stay home and care for her. As it is now I can work as a nurse, which I love. Work provides insurance that covers some of her needs and income to cover the rest of her needs. Unfortunately, sometimes those who provide her in-home care do call out on short notice, and as Sarah can not be left alone, ever, I am required to miss work to care for her until a replacement can be found. There is also the endless stream of Doctor Appointments, PT, OT, speech and language and cognitive therapies that Sarah must be taken to, as well as frequent hospitalizations. Without FMLA our lives would be very different and we would have to face choices that no family in America should have to make.

The Department must weigh employer complaints about intermittent leave against the available empirical evidence. This data shows that intermittent leave does not create significant burdens for employers. The Westat study found that intermittent leave had no effect on productivity for 81percent of covered employers. 2000 Westat Report at 6-12. And for nearly 94 percent of covered employers, intermittent leave had no effect on profitability. *Id.* at 6-12.

Employers complain that intermittent leave creates complications for payroll administration, requiring adjustments to an employee's paycheck to subtract payment for leave time. They also complain that employees do not give sufficient notice before taking leave. Employment Policy Foundation, *THE COST AND CHARACTERISTICS OF FAMILY AND MEDICAL LEAVE*, 3 (2005). Again, the data provides no support for these complaints.

A majority of covered employers surveyed by Westat reported that “most aspects of administering FMLA are very or somewhat easy.” 2000 Westat Report at 6-7. The study also found that 89 percent of covered establishments experienced either no increase or only a small increase in administrative costs due to the FMLA. *Id.* at 6-13, Appendix Table A2-6.14. The total amount of administrative time that employers spend on providing notice, determining eligibility, requesting and reviewing medical documentation, and requesting a second opinion is between 30 to 120 minutes per FMLA leave episode. WorldatWork at 2, 6-7.

Despite the evidence showing that intermittent leave does not create a significant burden for employers, roughly 50 percent of employers agreed that employees who take intermittent leave should have less protection than they are afforded under the current regulations. WorldatWork at 11. The main complaint that employers raise concerning intermittent leave is that employees allegedly abuse this type of leave. Employment Policy Foundation at 2. There is no reliable empirical evidence, however, that widespread abuse of intermittent leave occurs. To the extent that individual employers question the legitimacy of an employee’s leave, the regulations adequately provide procedures for ensuring that intermittent leave is not abused. “[T]he answers to FMLA enforcement challenges are not found in the promulgation of new regulations when the vast majority of current regulations afford acceptable protections for both employers and employees.” John Matejkovic & Margaret Matejkovic, *If It Ain’t Broke...Changes to FMLA Regulations Are Not Needed*, 42 WILLAMETTE L. REV. 413, 438 (2006).

The medical certification procedures give employers considerable control over an employee’s ability to take FMLA leave. In fact, Congress “designed [them] as a check against employee abuse of leave.” S. Rep. No. 103-3, at 25-26, reprinted in U.S.C.C.A.N. 3, 27-28. As noted in Section B of these comments, the presence of a serious health condition sufficient to qualify an employee for FMLA leave is based on an objective, medical standard. Employees accordingly must provide certification from their health care professionals. If an employer requires clarification or suspects fraud, it may hire its own health care professional to contact the employee’s health care provider with the employee’s permission. 29 U.S.C. 2613(d)(2005); 29 C.F.R. § 825.307(a). It may also request a second, and even a third medical opinion if there is reason to doubt whether an employee actually has a serious health condition. *Id.* § 825.307(c)(1993). See Diaz v. Fort Wayne Foundry Corp., 131 F. 3d 711, 713 (1997) (discharge did not violate FMLA where employee missed appointment with medical professional for second opinion).

The rules generally allow employers to seek recertification every thirty days, and more frequently if the facts described in the previous medical certification have changed significantly or if the employer receives information casting doubt on the employee’s stated reason for absence. 29 C.F.R. § 825.308(a). The recertification process allows an employer to ask an employee’s doctor, through its own health care professional, if particular patterns of absence are consistent with the employee’s serious health condition. Dep’t of Labor Op. Ltr. FMLA 2004-2-A (May 25, 2004) (quoting 29 C.F.R. § 825.308(a)(2)). A suspicious pattern of absences -- such as consistently missing Fridays

and Mondays due to a chronic condition -- is sufficient to cast doubt upon the employee's stated reason for absence, unless there is evidence of a medical reason for the pattern. Id.⁴⁹

Furthermore, the regulations currently permit employers to discipline employees, even when they are eligible for leave, if they fail to follow the rules. Employees are required to make reasonable efforts to schedule intermittent leave so as not to "disrupt unduly the operations of the employer." 29 U.S.C. § 2612(e)(2)(a); 29 C.F.R. § 825.117 . Employees must also give advance notice of thirty days before taking leave, or at least give notice as soon as practicable. 29 U.S.C. 2612(e)(2)(b) (2002); 29 C.F.R. § 825.302 (a)-(b). If an employee could have given proper notice but did not, the employer may delay the commencement of leave for thirty days until after notice. See Gilliam v. United Parcel Serv., Inc., 233 F.3d 969, 971 (7th Cir. 2000) (employer entitled to delay leave 30 days where employee did not give notice of intent to take paternity leave until day after child's birth). See also Kaylor v. Fannin Reg'l Hosp., Inc., 946 F. Supp. 988, 998 (1996) ("It is plaintiff's failure to adhere to the FMLA procedures for informing his employer of intermittent leave that is ultimately fatal to his claim.") An employer may deduct points under an attendance control policy from an employee who could have given advance notice and failed to comply with FMLA regulations. Dep't of Labor Op. Ltr. FMLA-101 (Jan. 15, 1999).

Moreover, as we discuss in Section J, the evidence shows that employers have not communicated with employees about their FMLA rights and employees remain largely unaware of the statute and how it works. Effective communication with respect to such issues as notice may well alleviate some of the problems employers claim to experience.

The current regulations on intermittent leave should not be changed.⁵⁰ The right to take intermittent leave is central in achieving the FMLA's purpose "to balance the demands of the workplace with the needs of the family." 29 U.S.C. § 2601(b). There is no empirical evidence of widespread abuse of intermittent leave, and the current regulations provide employers with procedures to ensure that only eligible employees take intermittent leave, that the leave taken is medically necessary, and that leave is scheduled at convenient times and as far in advance as possible. See n.49, supra.

⁴⁹ The comments of the Communications Workers of America (CWA) discuss several ways in which employers are misusing the medical certification procedures under the FMLA. For example, employers violate employee privacy by speaking directly to their health care providers, deny leave because of minor differences between the health care provider's prediction as to the amount of leave necessary and the amount actually taken, and insist on 30-day recertification under Section 825.308 for chronic conditions that are unlikely to change during this interval. We agree with CWA that this behavior has a chilling effect on employees' exercise of their FMLA rights and urge the Department to provide guidance to employers on the reasonable and effective use of medical certification and recertification procedures.

⁵⁰ Some employers have suggested that the Department should permit intermittent leave only in increments of half-days. Given the available statistics on administrative costs, there is no justification for forcing employees to miss more work than is medically necessary. Requiring employees to take a minimum leave of four-hours has negative financial consequences and arbitrarily reduces their twelve-week FMLA leave time allotment. The proposed change is also contrary to employers' interests because they would have longer absences to cover.

G. Light Duty

- **Should “light duty” work count against the employee’s FMLA leave entitlement and/or reinstatement rights? (Section 825.220(d))**

DOL notes that two courts, in unpublished decisions, have held that under Section 825.220(d), 29 C.F.R. § 825.220(d), “an employee uses his or her 12-week entitlement [to FMLA leave] while on a light duty assignment.” 71 Fed. Reg. at 69509.⁵¹ We urge the Department to make no changes to this provision, particularly in response to unpublished decisions that clearly ignore the plain meaning of the statute and regulations.

Section 825.220(d) provides that “employees cannot waive, nor may employers induce their employees to waive, their rights under FMLA.” The provision also states that the prohibition against waiver:

does not prevent an employee’s voluntary and uncoerced acceptance . . . of a “light duty” assignment while recovering from a serious health condition. . . . In such a circumstance the employee’s right to restoration to the same or an equivalent position is available until 12 weeks have passed within the 12-month period, including all FMLA leave and the period of “light duty.”

As we note with respect to job modifications in Section H, below, employers and employees may decide that a light duty assignment satisfies their mutual interests. However, there is nothing in either the statute or the regulations that authorizes an employer to treat a light duty assignment as the equivalent of FMLA leave.

The FMLA guarantees an eligible and covered employee the right to take up to 12 weeks of leave for a serious health condition” 29 U.S.C. § 2612(a)(1)(D). It also makes it unlawful for an employer to “interfere with, restrain, or deny the exercise of” that right. Id. § 2615(a)(1). Treating light duty as the equivalent of FMLA leave falls squarely within this prohibition.

In addition, an employer who “accommodates” an employee with light duty as a way of denying the employee’s request for FMLA leave violates the regulations. First, as quoted above, employers cannot “induce employees to waive their FMLA rights.” 29 C.F.R. § 825.220(d). Section 825.220(b)(2) also prohibits employers from interfering with their employees’ FMLA rights by “changing the essential functions of the job in order to preclude the taking of leave.”

Section 825.220(d) guarantees employees their FMLA job restoration rights “until 12 weeks have passed within the 12-month period, including all FMLA leave taken and the

⁵¹ Roberts v. Owens-Illinois, Inc., 2004 U.S. Dist. LEXIS (S.D. Ind. 2004); Artis v. Palos Community Hosp., 2004 U.S. Dist. LEXIS 20150, 9 Wage & Hour Cas. 2d (BNA) 1729 (N.D. Ill. 2004). See 71 Fed. Reg. at 69506.

period of “light duty.” Thus, an employee who returns to a light duty position from FMLA leave prior to the full 12 weeks does not, as a result, shorten the statutory period in which he or she is entitled to job restoration. The Department specifically dealt with this issue in the Preamble, 60 Fed. Reg. at 2219, and reiterated this rule in an early opinion letter. Dep’t of Labor Op. Ltr. FMLA-55 (Mar. 10, 1995) (“‘cumulative’ period of job restoration rights measured by the time designated as FMLA leave . . . and the time employed in a light duty assignment”). Any other interpretation of this provision would work a penalty on the employee who comes back to work before he or she is able to perform the essential functions of the unmodified job.

The Department should not change its regulations in order to have light duty assignments count against an employee’s full right to 12 weeks of leave under the FMLA and to job restoration after the full 12 weeks. To do so would contradict both the clear language of the FMLA, as interpreted under the regulations, as well as the purpose of the statute.

H. Essential Functions

- **What are the implications of permitting an employer to modify an employee’s existing job duties to meet any limitations caused by the employee’s serious health condition as specified by a health care provider, while maintaining the employee’s same job, pay, and benefits? (Section 825.115)**

An eligible employee may take FMLA leave “[b]ecause of a serious health condition that makes the employee unable to perform the functions of the position of such employee.” 29 U.S.C. § 2612(a)(1)(D). The regulations provide that “the essential functions of the employee’s position are to be determined with reference to the position the employee held at the time notice is given or leave commenced, whichever is earlier.” 29 C.F.R. § 825.115. They also provide that an employer may not lawfully “chang[e] the essential functions of the job in order to preclude the taking of leave.” *Id.* § 825.220(b)(2).

The import of these provisions is clear: An employee who qualifies for FMLA leave because of a serious health condition has no obligation to accept a modified position in lieu of leave. And, an employer cannot deny FMLA leave to such an employee because of the availability of the modified position.

In addition, neither the statute nor the regulations provides a basis for treating a modified position as the equivalent of FMLA leave. An employee who accepts a modified job does not forfeit his or her entitlement to a full 12 weeks of leave if the employee remains unable to perform the essential functions of the unmodified job. Indeed, gauging an employee’s right to take FMLA leave by reference to the essential functions of the modified job would violate the express prohibition of Section 825.220(b)(2).

Of course, there are circumstances in which employees would prefer to stay at work in a modified position in lieu of taking unpaid FMLA leave.⁵² We encourage employers to consider whether job modifications will permit employees to remain at the workplace under mutually agreeable arrangements.⁵³

I. Waiver of FMLA Rights

- **The Department seeks input on whether a limitation should be placed on the ability of employees to settle their past FMLA claims.**

DOL's regulation on waiver of FMLA rights states that "[e]mployees cannot waive, nor may employers induce employees to waive, their rights under FMLA." 29 CFR § 825.220(d). As the Department's question indicates, current disputes over the meaning of this regulation focus on the difference between waiving rights prospectively and waiving them retrospectively. DOL now takes the position that the regulation's prohibition should refer to prospective waivers only. 71 Fed. Reg. at 69509.

We disagree with the Department. The FMLA prohibits both prospective and retrospective waivers.

As we have discussed, the FMLA sets a minimum standard for family and medical leave, and "fits squarely within the tradition of the labor standards laws that have preceded it," such as the FLSA and OSHA. S. Rep. No. 103-3, at 5 (1993), reprinted in 1993 U.S.C.C.A.N. 3, 7. Sloop v. ABTCO, Inc., 1999 U.S. App. LEXIS 8600 at 8 (quoting Manuel v. Westlake Polymers Corp., 66 F.3d 758, 763 (5th Cir. 1995)). Indeed, the FMLA's "enforcement scheme is modeled on the enforcement scheme of the FLSA" and "relies on the time-tested FLSA procedures already established by the Department of Labor." S. Rep. No. 103-3, at 35, reprinted in 1993 U.S.C.C.A.N. at 37.

Under the FLSA, waivers are permitted only if approved by a court or the Department of Labor. Lynn's Food Stores, Inc. v. U.S., 679 F.2d 1350, 1352 (11th Cir. 1982). Therefore, the Fourth Circuit decided correctly in Taylor v. Progress Energy, Inc., 415 F.3d 364 (4th Cir. 2005) (vacated for rehearing), that "in the absence of prior approval of DOL or a court, 29 C.F.R. § 825.220(d) bars the waiver of both substantive and proscriptive FMLA rights. . . . regardless of whether waiver is executed before or after the employer commits the FMLA violation." 415 F.3d at 371 (emphasis added). See also Dierlam v. Wesley Jessen Corp., 222 F. Supp. 2d 1052 (N.D. Ill. 2002); Bluitt v. Eval Co. of Am., 3 F. Supp. 2d 761 (S.D. Tex. 1998); but see Faris v. Williams WPC-I Inc., 332 F.3d 316 (5th Cir. 2003).

⁵² Job modifications must be consistent with the terms of any applicable collective bargaining agreements. 29 C.F.R. § 825.204(b).

⁵³ Where the Americans with Disabilities Act, 29 U.S.C. § 12101 et seq., requires an employer to provide an employee with a reasonable accommodation because of an ADA-qualifying disability, the FMLA still imposes obligations on the employer to provide leave to the employee if the disability is also a "serious health condition" under that statute.

Section 825.220(d) does not make a distinction between prospective and retrospective waivers. And, the Department itself explicitly rejected this distinction when promulgating the final rules. Some employers “recommended explicit allowance of waivers and releases in connection with settlement of FMLA claims and as part of a severance package.” 60 Fed. Reg. at 2218. In response, DOL stated that:

The Department has given careful consideration to the comments received on this section and has concluded that prohibitions against employees waiving their rights and employers inducing employees to waive their rights constitute sound public policy under the FMLA, as is also the case under other labor standards statutes such as the FLSA.

Id. (emphasis added).

In fact, there is no distinction whatsoever between a general release that occurs prospectively -- as when an employee signs away her FMLA rights as a condition of employment -- or retrospectively -- as when an employee, as a condition of obtaining a severance package or other termination benefit, waives her right to challenge FMLA entitlements that she may not even know exist.

The Supreme Court addressed the unknowing waiver under the FLSA in Brooklyn Savings Bank v. O’Neil, 324 U.S. 697 (1945). There, an employee offered an employee who had left employment two years earlier a check for “the statutory overtime compensation due [him] . . . in return for a release of all of his rights under the Act.” 324 U.S. at 700. When the employee sued to recover liquidated damages under Section 16(b) of the FLSA, 29 U.S.C. § 216(b), the district court granted judgment for the employer on the basis of the release and the court of appeals affirmed. The Supreme Court reversed and held that an employee cannot waive his right to recover liquidated damages under the FLSA. 324 U.S. at 707.

As a preliminary question, the Court resolved “whether respondent’s release was given in settlement of a bona fide dispute between the parties with respect to coverage or amount due under the Act or whether it constituted a mere waiver of his right to liquidated damages.” O’Neil, 324 U.S. at 703. “There was no discussion or dispute prior to [the employee’s] acceptance of the check...as to the existence of liability under the Act or as to the amount of such liability.” Id. at 704 n.12. Thus, the employee had agreed to a general waiver of his claims under the FLSA.

Stating that “a statutory right conferred on a private party, but affecting the public interest, may not be waived or released if such waiver or release contravenes the statutory policy,” id. at 704, the Court examined the FLSA right at stake in the case. The Court held that just as employees cannot waive their right to the minimum wage under the FLSA, they cannot waive their right to liquidated damages for the withholding of that wage. The Court emphasized that passage of the FLSA “show[ed] an intent on the part of Congress to protect certain groups of the population from sub-standard wages and

excessive hours which endangered the national health and well-being and the free flow of goods in interstate commerce.” *Id.* at 706. Allowing waiver of the minimum wage by agreement would “nullify the purposes of the Act.” “The same policy considerations . . . also prohibit waiver of the employee’s right to liquidated damages.” *Id.* at 707. Thus, “[i]n the absence of a bona fide dispute between the parties as to liability, respondent’s written waiver of his rights to liquidated damages” did not bar his subsequent action to recover such damages in court. *Id.* at 704.

The general waiver that O’Neil makes impermissible under the FLSA is precisely the type of waiver at issue in Taylor. In that case, an employee of seven years received a bad performance evaluation for health-related absences in the preceding year. Although she repeatedly asked for FMLA leave, her employer improperly denied all but one of her requests. After contacting DOL and learning that she was in fact qualified for FMLA leave, Taylor requested that her performance evaluation be corrected. Her employer denied this request as well and laid Taylor off. The company offered Taylor its standard termination package but went one step further. It gave Taylor money in exchange for a general release of liability waiving her rights under a number of statutes (not including the FMLA) as well as under a catchall for “any other federal, state, or local law.” When Taylor later brought suit for illegal discharge based on FMLA violations, the employer argued that Taylor had waived her rights by signing the severance agreement.

The general release in Taylor clearly demonstrates the need for a prohibition against retrospective waivers. The employer repeatedly violated Taylor’s FMLA rights. However, it managed to insulate itself from liability by paying her in exchange for a release that failed to place her on notice that she was abandoning her FMLA claims. As the Fourth Circuit opined in that case, without a ban on waivers of retrospective rights, “the unscrupulous employer could systematically violate the FMLA and gain a competitive advantage [over the conscientious employer] by buying out FMLA claims at a discounted rate.” 415 F.3d at 375. *See* S. Rep. No. 103-3, at 5, *reprinted in* 1993 U.S.C.C.A.N. 3, 7; O’Neil, 324 U.S. at 710 (“An employer is not to be allowed to gain a competitive advantage by reason of the fact that his employees are more willing to waive claims for liquidated damages [under the FLSA] than are those of his competitor.”)

The FLSA not only prohibits general releases, as discussed above, but in D.A. Shulte, Inc. v. Gangi, 328 U.S. 108 (1946), the Court rejected the private settlement of bona fide disputes under the statute. “In a bona fide adjustment on coverage, there are the same threats to the public purposes of the Wage-Hour Act that exist when the liquidated damages are waived.” *Id.* at 115.

Under Section 16(c) of the FLSA, however, the Secretary may approve settlements:

The Secretary is authorized to supervise the payment of the unpaid minimum wages or the unpaid overtime compensation owing to any employee or employees under [the Act] . . . and the agreement of any employee to accept such payment shall upon payment in full constitute a waiver by such employee of any right he

may have under [Section 216(b)] . . . to such unpaid minimum wages or unpaid overtime compensation and an additional equal amount as liquidated damages.

29 U.S.C. § 216(c). Thus, the FLSA enforcement “model” has several components with respect to waivers. First, no one disputes that prospective waivers are impermissible. Second, purely private waivers – whether the general release in O’Neil or the dispute settlement in D.A. Schulte – are prohibited. This leaves “only two ways” to “settle or compromise” wage claims. Lynn’s Food Stores, 679 F.2d at 1352. The Secretary may approve a settlement under Section 16(c), quoted above. Or, the court may supervise a settlement of litigation under Section 16(b), 29 U.S.C. § 16(b).

Adherence to the FLSA model leads to the Taylor court’s conclusion, 415 F.3d at 371, that “in the absence of prior approval of DOL or a court, 29 C.F.R. § 825.220(d) bars the waiver of both substantive and proscriptive FMLA rights. . . . regardless of whether waiver is executed before or after the employer commits the FMLA violation.” In fact, Congress gave the Secretary precisely the same authority that she has under the FLSA to settle private disputes. Section 107(b)(1) of the FMLA provides that:

The Secretary shall receive, investigate, and attempt to resolve complaints of violations of section 2615 of this title in the same manner that the Secretary receives, investigates, and attempts to resolve complaints of violations of sections 206 and 207 of this title.

29 U.S.C. § 2617(b)(1). See S. Rep. No 103-3, at 35, reprinted in 1993 U.S.C.C.A.N. 3, 37 (FMLA “creates no new agency or enforcement procedures, but instead relies on the time-tested FLSA procedures already established by the Department of Labor”). Given the proscription against non-supervised settlements under the FLSA, there is no basis to conclude that the Secretary’s authority under the FMLA is simply permissive, allowing the Secretary, but not requiring her, to supervise settlements.⁵⁴

The FMLA is a labor standards statute in the tradition of the FLSA, enacted like that statute in response to a crisis in “the national health and well-being” and its effect on the American workplace. S. Rep. No. 103-3, at 5, reprinted in 1993 U.S.C.C.A.N at 7. The public policies behind the FMLA require that employers not be allowed to buy out their employee’s statutory rights absent the approval of the Secretary or a court.

J. Communications Between Employers and Their Employees

- **The Department requests information on whether employees continue to be unaware of their rights under the Act and, if so, what steps could be taken to improve this situation.**

⁵⁴ Of course, employers are free to settle FMLA claims with employees, but such settlements would not bar subsequent litigation over the employee’s statutory entitlement.

The FMLA requires covered employers to “post and keep posted, in conspicuous places on the premises of the employer where notices to employees and applicants for employees are customarily posted, a notice” informing employees of their FMLA rights. 29 U.S.C. § 2619(a). The Department’s regulation at 29 C.F.R. § 825.300(a) implements this requirement and also directs employers to “incorporate information on FMLA rights and responsibilities and the employer’s policies regarding the FMLA” in “any written guidance to employees concerning employee benefits or leave rights, such as in an employee handbook.” *Id.* § 825.301(a)(1).

Available evidence shows that employer communication to employees concerning their FMLA rights has remained relatively poor from 1995 to 2000. According to Westat, “[employees’ general awareness of the FMLA increased slightly and significantly between 1995 and 2000, but only among those working in non-covered establishments” where awareness increased eight percent. 2000 Westat Report at 3-10. However, [a]wareness among employees in covered establishments did not change significantly, 59.0 percent in 1995 and 59.3 percent in 2000 reported having heard of the law.” *Id.*

The Working America survey confirms that a high level of confusion exists as to whether an employee’s leave is, in fact, FMLA leave. We asked respondents the following: “Have you taken unpaid leave in the past to care for a spouse, child or parent, or to care for yourself during an illness, but don’t know whether or not it was considered FMLA leave?” Sixty eight percent answered yes to this question.

In addition, the Working America survey tends to show that today, employers are still not fulfilling their notice obligations under the FMLA. Almost half of all respondents – 46 percent -- said that their employer had not informed them of their rights. Of those who said that their employer had done so, only 11 percent listed a workplace poster as the method by which notification had occurred.⁵⁵

Once commentator has proposed that “the DOL . . . should issue regulations requiring notice to employees at the point of hiring and annually thereafter” in “clear, specific language with the agenc[y] creating [a] model notice in a manner calculated to ensure that the employee receives the notice.” Deborah Greenberger, Note, *Toward Increased Notice of FMLA and ADA Protections*, 80 N.Y.U. L. REV. 1797, 1820 (citation omitted) (2005). In fact, the WARN Act requires precisely such individualized notice to employees before “plant closings and mass layoffs” where the employees do not have a “workplace representative.” *Id.* at 1819, citing 29 U.S.C. § 2102(a)(1). Since Congress relied on the WARN Act to define “worksite” under the FMLA, borrowing from that statute to achieve greater compliance with the FMLA’s notice provisions may well represent a reasoned approach to a significant problem. We urge the Department to give serious consideration to requiring employers to provide an individualized notice provision to employees on an annual basis.⁵⁶

⁵⁵ A little over 38 percent reported that they had learned of the FMLA through an employer handbook.

⁵⁶ While the WARN Act permits notice to the workers’ representative in lieu of individualized notice, we do not believe that this exception should apply with respect to individualized FMLA notice. Employers must give notice under the WARN Act of a single event, namely, a “plant closing or mass layoff,” that

K. FMLA Leave Determinations/Medical Certifications

The FMLA’s medical certification regulations give employers flexible options for considering the seriousness of an employee’s health condition: employers may accept the opinion of the employee’s physician, request a second or a third medical opinion, hire a health care professional to contact the employee’s physician to ask for clarifications, and ask for recertification. 29 C.F.R. §§ 825.305-825.308. The certification process, particularly the employer’s right to obtain a second opinion from a health care provider (*id.* § 825.307(a)(2)), “is designed to prevent employee abuse of the Act.” *Thorson v. Gemini, Inc.*, 205 F.3d at 381 (employer that never requested medical certification when employee presented physician’s notes stating that she not work until certain dates, “may have been able to determine” that the employee did not have a serious health condition by invoking the Act’s certification procedures).

In light of these procedures, it is unclear why employers who question whether an employee has a bona fide serious health condition cannot resolve this issue in most instances by insisting on medical certification. As the court stated in *Thorson*:

It is true that honest (or less than honest) errors by health care providers and fraud or abuse by employees are potential problems, given the objective nature of the test. Yet . . . in further defining “serious health condition” to require an “incapacity requiring absence from work,” Congress and the DOL have devised protections for the employers that choose to use them.

Id. at 380 (emphasis added). However, “an employee [who] does not fulfill his or her obligation to provide such information upon the employer’s request . . . will not qualify for FMLA leave.” 71 Fed Reg. at 69506 (citing 29 C.F.R. § 827.307-.308).

Statistics from the WorldatWork survey help dispel any notion that requesting or reviewing medical certification imposes an undue burden on employers. Thirty-nine percent of survey respondents reported that it took them less than ten minutes per episode of leave to request and review documentation and an additional 21 percent reported that it took them between 10 and 30 minutes. Thirteen percent reported that it took them less than ten minutes to request a second or third opinion, and an additional 39 percent reported that this step took them between ten and 30 minutes. WorldatWork at 6. Nor do medical certification procedures create significant expense for employers: according to the Westat study, 89 percent of employers experienced either no increase or only a small increase in administrative costs due to the FMLA. Table A.2-6.14. Thus, employers have relatively easy means at their disposal to verify the reason why an employee has taken FMLA leave.

involves large numbers of workers. In that context, it makes sense to rely on the workers’ representative to receive the single notice, but that rationale does not apply here.

- **Does section 825.307 result in unnecessary expenses for employers?**

The current regulations strike a balance between providing necessary medical information to employers while protecting the privacy rights of employees. Therefore, we oppose any change that would allow employers to contact employees' health care providers directly. Employers already have sufficient means, and expend minimal administrative resources, to evaluate medical certification forms. Any expense caused by the requirement that employers use their own health care professional to contact the employee's treatment provider, rather than making contact directly, is necessary to preserve employee privacy. The statute itself provides only for the employer's right to require a second medical opinion, at the employer's expense. 29 U.S.C. § 2613(c). Thus, the regulatory option of using a private health care professional to contact an employee's doctor for clarification, rather than paying for a second medical examination, actually provides employers with a way to avoid expense in the certification process. Allowing direct contact between employers and employees' health care providers is unnecessary and imposes needlessly on an employee's right to keep medical information confidential.

Relationship with the ADA

The RFI seeks comments on the differences between medical certification procedures for employees who request FMLA leave and for disabled employees who are entitled to workplace accommodations under the Americans with Disabilities Act (ADA). 71 Fed. Reg. at 69510. Although ADA regulations do not contain the same limitations as FMLA regulations regarding contact of health care providers, both statutes recognize an employee's right to keep personal medical information private. See 42 U.S.C. § 12112(d)(3)(b); see also comments submitted by the National Partnership for Women and Families.

As DOL has previously noted, the “[l]eave provisions of FMLA are wholly distinct from the reasonable accommodation obligations of employers covered under the ADA.” Dep’t of Labor Op. Ltr. FMLA-97 (July 10, 1998); Dep’t of Labor Op. Ltr. FMLA-55 (March 10, 1995). Whereas the FMLA protects absence from work, the ADA focuses on making accommodations in the workplace so that employees with disabilities may continue to work. Under the ADA, employers may require medical examinations relating to an employee's disability when they are “job-related” and “consistent with business necessity.” 29 U.S.C. § 12112(d)(4)(A). Since only “known physical or mental limitations” trigger an employer's obligation to make reasonable accommodations under the ADA (§ 12112(b)(5)(A)), it is reasonable for employers to have direct contact with employees' health care providers in certain limited situations. An ADA employer may require detailed medical knowledge of an employee's disability in order to accommodate that disability in the workplace. Furthermore, it is advantageous for employees with disabilities if their employers understand their limitations.

The same concerns are not present with respect to FMLA medical determinations—employers are not required by the FMLA to make changes in the workplace to

accommodate the serious health conditions of employees, and they therefore need less information than employers under the ADA in order to fulfill their statutory obligations. In the FMLA context, an employer does not need access to information beyond a doctor's certification of the factors establishing the presence of a serious health condition under the statute and a doctor's estimate of likely absences or duration of treatment.

- **Does the two-day timeframe for providing notifications to employees that their FMLA leave request has been approved or denied provide adequate time for employers to review sufficiently the information and make a determination? (Section 825.308(e))**

Given the minimal amount of time and resources employers spend on reviewing and requesting medical certification (see p. 41, supra), the current two-day regulatory time frame for employers to approve or deny requests for FMLA leave is quite reasonable. There is no reason for employees to wait longer than two days for a determination when employers spend on average less than one hour reviewing medical information. WorldatWork at 6.

- **Recertification issues (Section 825.308)**

After the initial medical certification is approved, employers may require "subsequent recertifications on a reasonable basis." 29 U.S.C. §2613(e). The regulations currently allow an employer to request recertification every thirty days in connection with an employee's absence. 29 C.F.R. § 829.308(e). If circumstances change or the employer has reason to believe that the employee is abusing leave, the thirty-day rule does not apply and an employer may ask for recertification immediately after the employee's absence.

The frequency of recertification requests creates a burden for employees with chronic conditions, and increases the likelihood that eligible employees with serious health conditions will be denied leave based on administrative mistakes. Recertification is at the employee's expense, 29 C.F.R. § 829.308(e), and employees run the risk of being denied protected leave because health care professionals are often resistant to filling out numerous and repetitive certification forms. For employees with chronic conditions or for those with diseases that require ongoing treatment frequent recertification requests cause unnecessary hardship and further no statutory purpose.

The current regulations sufficiently protect employer interests by allowing recertification requests at any time if circumstances change or if there is evidence that an employee's stated reason for leave is fraudulent. Routine monthly recertification requests serve no legitimate purpose and needlessly saddle chronically ill employees with excessive administrative burdens. The Department should encourage employers not to pursue recertification routinely or overzealously, but rather when, as the statute provides, recertification is reasonable.

Employers who have doubts about the initial certification offered by the employee may require a second opinion; this is currently not an option for subsequent recertifications. Congress provided the option of second opinions only for initial certification. 29 U.S.C. § 2613(c); 60 Fed. Reg. 2225 (“Because the statute does not provide for second or third opinions for recertifications, no such opinions may be required.”) Changing the regulation to allow employers to require second medical opinions for recertification is unwarranted and would create unnecessary hardship. Requiring second or third opinions for recertifications within a twelve-month leave period is counterproductive because it unnecessarily forces employees to miss work for medical appointments that are unrelated to direct treatment of their serious health condition. This imposes an additional cost on employees who are already struggling to balance work and health demands, and requires employers and co-workers to cover avoidable absences. Additionally, the regulations currently permit employers to reinitiate the medical certification process twelve months after leave commences, including requests for second and third opinions, regardless of past certification for the same health condition. Dep’t of Labor Op. Ltr. FMLA 2005-2-A (Sept. 14, 2005).

- **What are the benefits and burdens of permitting fitness for duty certifications in the case of a worker who is absent intermittently? (Section 825.310(g))**

When an employee has taken continuous FMLA leave and requests to return to her previous position, the employer may require a physician’s certification of fitness for duty before she is reinstated. Fitness for duty certifications are inapplicable, however, where an employee has taken only short periods of leave. 29 C.F.R. § 825.308(e). Any change in the regulations to allow employers to require fitness for duty certifications for employees who are already working is unwarranted. The FMLA’s protection of intermittent leave is premised on the fact that some serious health conditions do not require constant treatment or care, and that an employee may work productively around a schedule of intermittent periods of leave for treatment. Requiring employees who take intermittent leave to present fitness for duty certifications for potentially every absence is burdensome and unnecessary.

- **Burdens on Employees**

While statistics suggest that employers experience little trouble with the medical certification procedures, employees have found the process more difficult to navigate successfully. Eligible employees find themselves discouraged from taking leave due to certification expenses, demanding employers, administrative mistakes and uncooperative doctors. The following comments from the Working America survey illustrate common employee concerns:

When my husband was ill the company required numerous forms. The doctor was receiving FMLA forms requests daily from patients and stated it was taking away from time he felt he should be spending with his patients. I took personal leave if I needed time off and let the company discipline me for it. It wasn't worth the hassle to get the FMLA approved.

According to my doctor, the additional information required by my company is unlawful. My company rejects the FMLA application at least one time for each situation before finally approving. This requires more work from the doctor, his staff and myself. It is harassing to us all.

Employers are extremely pushy about the paperwork. I can't help it if my doctor doesn't fill out the paperwork immediately. I was threatened with having to leave work because my doctor hadn't done their paperwork yet.

I have diabetes, so I take FMLA intermittently, however my employer requires new certification every 90 days, even though my condition will never change, not for the better anyway... [M]y doctor charges to fill these papers out everytime. As a widow this can become a real hardship on me.

I have suffered from migraine headaches and chronic bronchitis.... I am very dependent upon FMLA to cover my absence when I am too ill to work. My doctor, who is very good at treating me, hates having to fill out all the forms and if the forms are not filled out entirely and correctly, my request will be denied. I am also charged money for each time I have to get an FMLA form filled out. I just wish it were easier to get the process taken care of because if I get one more denial, I am fired from my job.

In general, the certification regulations provide employers with flexible and satisfactory methods of confirming an employee's eligibility for leave. Any burdens caused by the certification process fall more heavily on employees than employers. The current regulations on medical certification should not be changed to strip employees of privacy rights or to allow further administrative requirements that might discourage employees from exercising their rights to leave under the FMLA.

Conclusion

The Family and Medical Leave Act provides crucial protections to American workers as they struggle to balance their work and family needs. No current, reliable evidence exists to justify making it more difficult for employees to take FMLA leave. The Department should refrain from making any changes in its regulations that restrict access to these important rights. Instead, efforts should focus on making sure that employees fully understand their FMLA rights and that employers permit their employees to take FMLA qualified leave when they are so qualified.

**Response of the
American Federation of Labor and
Congress of Industrial Organizations
to the Department of Labor's
Request for Information on the
Family and Medical Leave Act of 1993**

Appendix: Comments from the Working America Survey

Several years ago, my father was terminal ill, and my mother had many medical problems and was not in the best of health to take care of him. So, I had used FMLA until he had passed away.

My employer last year only let me have 6 days of leave and he chose the days. even though I had vacation time coming he he refuse to let me take it and my year came around and I lost some vacation. My Boss said that I 'wasn't going to do this to him'. This was for an adoption and my boss didn't think it applied even though the FMLA notice states it. After I Quit in September I tried to turn them in. The 'Wage & Hour' handles it in Oregon. Even though it's a Federal Law...they said nobody ever get prosecuted for it.

I was able to take FMLA leave with the birth of both my children and it was wonderful knowing that I did not have to worry about the security of my job. Without the FMLA I would not have been able to go back to work because most daycares do not except infants under 6 weeks of age.

I have had two babies and used my FMLA leave with both. I didn't entirely trust the company I worked for, so I felt VERY confident taking time off to be with my newborns because of FMLA. It is an absolute NECESSITY for working moms to get at LEAST 12 weeks with their new babies without needing to worry about their job being there when they return.

I have used FMLA twice since I have been at my current job, which I began in 2002. I had a child in 2004 and one in 2006. I would not have been able to take as long of a medical leave as I did, without FMLA. I wanted to take more than the six weeks that my work pays for, and I wanted to come back to the job that I had. FMLA made it possible for me to take care of myself and my babies, and to give my family the chance to grow, as well as bbalance my work, which I love.

FMLA made it possible for me, the father, to stay home at the birth of my 3 children. I am very grateful for this time and the time to truly bond with my children. It is an amazing time holding a new life in your hands and watching them grow and learn, even at that young age. The time also served to build the bond between my wife and myself sharing all the quiet moments of each young child's life together.

FMLA leave nearly was the only real time that I got to spend with my last child as he was diagnosed with cancer at the age of 4.5 months. The good news is that he is now 5 and considered cured. The bad news would have been that without the FMLA I would have barely known him and would have had to struggle to attend to his care.

I want to add that I worked for a very large employer and witnessed many of my coworkers struggle with sick and dying family members. I have also watched them struggle with our employer who made it very difficult for them when they were unaware of the FMLA.

Yes, it allowed my daughter to take the necessary time off after the birth of her premature infant. And I, as a physician, have been able to help many needy people get the leave they so deserved to care for themselves or their loved ones.

I used the FMLA benefit for the birth of my child. Medical professionals and, more so today, insurance companies tell patients how long they are required to 'heal'. In my situation, I was gestational diabetic, in my late 30's and the pregnancy was unexpected. The thought of only being permitted 4-6 weeks with my newborn was and is outrageous. While I was financially unable to take advantage of the entire 12 week period, I was able to spend another 4-6 weeks with my son prior to farming him out to a daycare facility. Without the security of FMLA, I would have had to return to work prematurely before I felt ready to face the world again. If the Bush administration makes changes to this policy they are simply reaffirming my belief in their support of Corporate America vs. the American worker.

I used FMLA when I had my daughter. At the time, I was the sole breadwinner in my family. Therefore, without FMLA, I might have been forced either to not have a child or we may have had to sell our house or declare bankruptcy. The government needs to consider the fact that more and more women are the top-paid workers in their marriage, and FMLA makes an important difference in keeping their jobs. It would be even more significant if FMLA were PAID leave, not just supplemented with disability payments.

I used FMLA when I gave birth to my son. This time I spent with him allowed me to get to know him, to understand his needs, without any pressure from meetings and deadlines. So once I went back to work, I was able to interact with my son in a more responsive way once the workday was over because I had a basic familiarity with him. This actually benefitted my work too as I was not as worried about my role at home. Time spent with your newborn is an important aspect of developing a strong and secure child. The more uninterrupted the time, the better. This is supported and recommended by the medical profession. The government believes that many social ills are caused by lack of family unity and general family interaction. So it seems reasonable to allow people to take time to interact with their families at the most crucial moments in their lives, such as in birth, illness, and death. Each of these are moments of great transition which entails working through enormous amounts of stress and emotional pain.

FMLA made a huge difference to me, it allowed me time off to spend with my newborn child. I was able to have time to heal from my cesarean section and also some time to bond with my new little baby. If it were not for FMLA I would missed out on so many precious moments and would have had to go back to work before I was physically or mentally ready. Please make sure this very important act does not disappear it is vital for so many people.

After my baby was born, FMLA was critical - even as a college-educated, two-income couple, we never could have made the financial life commitment to have a family if we were assured that our jobs would be waiting after we adjusted to a newborn. Both of us have parents headed toward their elder years, and with the cost of health care becoming more astronomical, FMLA will be critical to us again. What are our options otherwise? 'Cheap' (i.e., unlicensed and risky) daycare and eldercare? American families are in a double bind. Keep and expand FMLA!

Yes, FMLA has made a difference to me, personally. I have a son who has asthma, sometimes severe. If I weren't able to use FMLA to care for him, I might have been fired! I am a single mother, raising 3 kids with little or NO child support. I do NOT use any government assistance. No food stamps, medicaid, etc. I pay for everything for myself and my children needed to live in the world today. Does the Bush Administration want me to be dependent on 'the system?' FMLA has allowed me to keep my job, pay all of our bills, and NOT get fired for taking time off to care for my son. FMLA IS NECESSARY for those of us who need it! Please don't take it away.

My daughter was born in 1983 with Spina Bifida and Hydrophalus. Up until we were able to use FMLA it came close so many times to being fired because I didn't have enough time to cover all her medical appointments, hospital stays and counseling appointments. In 1999 we were finally able to take our first vacation using my vacation time.

I think FMLA is a great idea, but the people I have known that have had FMLA at my company have either been harassed or have eventually been fired because of taking FMLA. I would be afraid to try and take it.

I donated a kidney to my father. At first my boss tried to tell me I'd have to take unpaid leave for the entire time, but it turned out that was untruthful.

Another time with another employer I had an L&I injury (which would now qualify as FMLA, I believe - herniated disks) and was forced to take ALL leave (sick, personal, vacation) before going on unpaid leave. That was two years ago and I am still waiting to be paid for all those hours - L&I lost the paperwork FOUR TIMES.

On the days where used against me when my yearly performance came up I was told by a HR rep that sometimes you have to choose between my family and job

MY MOTHER Was dying from kidney failure, I was told I had to work at least 3 days a week to keep my job. the other 4 days I spent taking care of my mother. There was no compassion or sympathy on the part of my employer. I did this for 8 weeks sometimes going on no sleep or 2-3 hours sleep. Not counting that I was driving over 100 miles to take care of my mom each way.

No. I do think companies with less than 50 people should be required to provide FMLA or pay for employees short term disability. I had twins, born at 30 weeks, who spent 45 days in the hospital and that was after I was put in the hospital at 26 weeks. I almost lost my babies stressing over weather I was going to lose my job and I was the only income coming in. I had to go back to work after having a c-section and while my babies were still in the hospital, so I would have time to take-off and care for them when they came home. They came home on monitors, had to go to several doctors appt. I could go on and on and tell the whole story. I still feel guilty for them being born early, even though that was out of my control. I stressed to much over what if I lose my job. I was informed by my employer after they were born that I had X number of hours left and if I went over that it could result in unpaid leave or termination. You have no idea how I felt. I think NO company should have the right to treat anyone that way

As a woman, I have had to use it for delivery of my kids. I have also used it for mental health. Though using it got me passed up for promotion, and in one case fired for 'poor attendance'. My husband is required to use his personal and vacation time when he uses it when the kids or I are ill. He has not chosen to use it for sleep apnea care because he gets the flack and passed over for promotion

My father had a critical heart attack which required my immediate presence in another state. I did not realize it would be such a long recovery so I was squeezed between taking care of my 12 year old adopted daughter and my 84 year old father. My daughter took the greatest hit. I am currently in litigation about my family leave as I was asked to resign as a result of having taken it. This is such a sham and I am not the only person going through the crunch between a child and a parent. I had been a loyal employee at my employer for 15 years when asked to resign during FMLA.

I have had to use FMLA three different times and two of those were within one year with the same employer. The problems I incurred with both employers was that I knew more about the law than the employers HR Directors.

I worked in a factory and although the HR Director was good about giving me paperwork for medical certification, (unscheduled) I was never told about my rights under FMLA although they did have a poster on the bulletin board. This company also told me I could not take intermittent leave. I told them I could and I printed out the law and took it to them. The HR Director sent it to the corporate headquarters attorney for clarification and the attorney told him I was right! The company made it very difficult for me after that and I was eventually fired for absenteeism!

I now work for a state government agency and my boss is also the HR Director. I have had to use FMLA for two different surgeries within less than one year. These were scheduled leaves.

Of course it made a difference... gave me the protection to be able to take time off with my new baby. However, I feel that I was treated differently upon returning - like I shouldn't have taken the time off. The attitudes associated with taking FMLA are what should improve above all.

i have suffered from migraine headaches and chronic bronchitis for years and my employer will not excuse an absence unless it can be covered by FMLA. i am very dependent upon FMLA to cover my absence when i am too ill to work. my doctor, who is very good at treating me, hates having to fill out all the forms and if the forms are not filled out entirely and correctly, my request will be denied. i am also charged money for each time i have to get an FMLA form filled out. i just wish it were easier to get the process taken care of because if i get one more FMLA denial, i am fired from my job. when FMLA is used the way it should be, however, it is a lifesaver to families, especially those with a chronically ill member. to take away FMLA would further erode our health care system and force people to work even while they are very ill and perhaps even very contagious or have to leave a family member unattended with no way to a doctor appointment or hospital stay while the caregiver has to work with no other possible time

My Wife was suffering from OCPD a lung condition that meant she needed trips to her Doctor and sometimes to the Hospital when we couldn't do her treatments at home when i asked for the time off some times a day sometimes two or three i was denied because my Dr could not give them a date when her condition would end. Well it ended on January 29 2004 at 8:15 am when she died and i blame my work because there were times we had to postpone her treatments till i could get a day off or the weekends when i would stay home instead of doing overtime. And now i have the same problem with my Mother who is 85 years old and a blood pressure problem that may or may not take her out of my life because i can't be there when she has a spell of very low or High pressure.

As a Union Delegate I have had many discussions with my employer about FMLA. We have a very generous vacation, sick, and personal time accrual, however, they require us to use this for any time taken and they have a very difficult standard on unforeseen circumstances with penalties for failure to provide advanced notice. In some instances it is understandable, in others it isn't. FMLA is a law that is difficult to utilize because of the unpaid nature. It does nothing to permit putting family in a priority capacity. It is essentially meaningless. It is better for women, in that it protects their jobs, but does nothing to permit survival on a day to day basis.

I have a son that is juvenile diabetic. I have needed FMLA more than once and with more than one company. Even though my son is chronically ill and I have desperately needed this leave time for hospital stays and time to care for his condition, I have always gone back to a lower position within my company upon my return. I worked for Federated (Macy's) for 5 years as a manager and had to step down, once they knew my son was that ill and then recently upon taking FMLA with my new company, I have also had to come back to a different position, and use all of my vaca and personal and sick time. No one ever knows anything about the leave, ever offers to help, no posters are ever posted. It is a 'fight' to take time to be with my 'dying' child.. can you imagine an America with 'no' protection? I'd be homeless, jobless and who knows how I would survive.. All we want to do is be treated equal.. But wait, that won't happen but just let us keep a job!! Sincerely, Lee Valerio.

Absolutely! I am a salaried worker who consistently puts in extra time each and every day. I know I am very valuable to my company. Still, I know that I am only valuable when I am 'producing.' When my son was sick and required hospitalization, I felt much less uneasy knowing that my job would be held until I returned in a few weeks. The financial challenges caused by the missed wages was challenging enough. Add to that the stress of dealing with my son's illness. Worrying about losing my job would have sent me over the edge!

One of my responsibilities at my workplace involves insuring compliance with employment laws. First hand, I have dealt directly with the owner of my company on the necessity of providing FMLA to an employee who requested leave for maternity. This employee had been with us for a few years and she had always been a very dedicated, intelligent worker. Yet when she became pregnant for the second time in three years, he asked me if we could find a way to fire her.

My friend and co worker recently had to use FMLA. I have watched what a nightmare the company puts you through. She had to get doctor letters detailing her dying daughter in law's illness. She has to call in to both her manager and the HR office to confirm she is still taking care of her ill daughter in law and her infant grandchild. When someone in your family is dying having to check in is one more stress no one needs. I glad she was able to use FMLA but the rules seem cruel and stressful.

Had to use up all my accrued vacation, sick, personal and comp time before they granted me FMLA for temporary disability due to medical emergency. FMLA held my position so that they couldn't fill it with anyone else until I could return to work. During this temporary time, I was almost continuously badgered about applying for permanent disability so that they could take my position away from me. When I returned to work and advanced enough to a full time work schedule, my employer and supervisor made it so difficult to do my job that I was forced to apply for permanent disability and eventually was granted it with a little help from my attorney.

My daughter was mauled by a dog. I had to take 2 months of leave (permitted under FMLA). Had FMLA not been in place, I would have lost my job for sure. Accidents and sickness do not stop just because, big business, thinks they can benefit from lobbying to have the law changed. If the FMLA is changed for the worse it will only result in many hard working people to choose between their family or their job.

I strongly agree with FMLA. It assures families that it's okay to care for sick, or injured family. I can attest to being bullied by a past employer who made the attempt to deny me my rights to FMLA. Thankfully I was informed of this act, given by president of the United States of America. In my opinion, if I had not known of this act, they would not have given me any paper work on such rights to any of their employees. There seems to be FAR too MANY employers who would sacrifice the rights of uninformed employees.

Employers are extremely pushy about the paperwork. I can't help it if my doctor doesn't fill out the paperwork immediately. I was threatened with having to leave work because my doctor hadn't done their paperwork yet. Then it works against the individual!
my company makes it so difficult to use family leave that i don't use it.
It did not make a difference for me my employer would not even responde to me when I was trying to get maternity leave approved before my delivery. So I hade to go back to work a few days after the birth of my daughter. When I again requestd leave I was ignored. After a few months I decided to seek legal advice and parted from my employer with a signed agreement to be paid 3 months to avoid legal action. I believe there are many employers out there that hold employees jobs against them because the need for FMLA exist for them.
I have fmla intermitten for rheumatoid arthritis .only problem i have with employer, they charge our vacations hours toward fmla. then when your out of vacation days and hours, they don't charge you. i think that its unfair.i feel like if i dont want to be paid for that time off,it's up to me. i need my vacation time for family especially if children are sick and for activities, that they are involved i can use my time for that.sometimes if i'm in pain i'll go to work anyway to keep them from them taking my vacation time away.
According to my doctor, the additional information required by my company is unlawful. My company rejects the FMLA aplication at least one time for each situation before finally aproving. This requires more work from the doctor,his staff and myself. It is harassing to us all.
YES. DURING HURRICANE RITA I NEEDED IT TO CARE FOR MY MOTHER WHILE EVACUATED.I HAD TO CARE FOR HER MEDICAL NEEDS,COOK,AND BUILD A HANDICAP RAMP FOR SHOWER AND FRONT DOOR.ALSO, DURING EVACUATION MY MOTHER BECAME ILL AND WAS PLACED ON A RESPIRATOR AND DIED 3 1/2 WEEKS LATER WHILE STILL EVACUATED. MY EMPLOYER WANTED TO CONSIDER MY ABSENCE AN UN-EXCUSAED 'OCCURANCE' SUBJECT TO DISCIPLINE.ALSO, I HAVE SEVERE HYPERTENSION FOR WHICH I NEED OCCASIONAL OFFICE VISITS FOR CHECK-UPS AND ALTERING MY MEDS.
It is difficult to broach to subject because you are afraid you are going to lose your job. Not that they would say it had a direct impact, but they would fire you because of something else in retaliation.
Yes FMLA has made a difference for me. The only problem I am having now is that my company is trying to interpret FMLA the way they see fit. They even came up with a policy that undermines FMLA and they tell myself and my co-workers that they can have a policy that undermines the FMLA just as long as it benefits the company.
Yes! But its still needs improvement, working employee are made to pay for the paper work, Doctor have to file out. When employees are in a hardship/or out of work with no pay. It makes it harder on ones family.
If I had been granted FMLA and not forced to use sick pay I could've been there more for my mother when she needed me before she passed away. Also, at one point, I could've concentrated on my health more when I was in the hospitalbut, instead I was worried about having my job when I was able to go back to work.
I wanted a part-time schedule after the birth of my first child and my employer denied me that chance. I ended up leaving my job so I could do what I wanted with my family.
Yes, I was able to take advantage of FMLA almost immediately after it was enacted by Clinton. I used it to extend my maternity leave. We can not afford to scale back on this program because our maternity leave in this country is pitiful. It is difficult to afford to take off time when a family member is ill, so we need to include paid time off! Several industrial nations have much better programs than our country, it is a disgrace!
When I was hired at my employer I was informed that we had fully paid maternity leave. After working for the company for eight years the time was right for me to have a baby. After budgeting and planning (and getting pregnant) I contacted my HR department to inform them of my leave plans. I was told that the benefit had been cut without any notice given to employees. I was still able to take unpaid leave in accordance with FMLA law (however, my company decided that they were going to follow Federal law rather than the tougher DC law (where the company is located)). I am livid that a company can 1) change policies with regards to such a crucial benefit without informing employees and 2) pick and choose jurisdiction in order to avoid longer FMLA benefits.
Most other developed countries around the world have longer FMLA benefits which are at least partially paid. It's time for America to catch up and protect its families and working parents.
FMLA is helpful, but not enough. When we look at what other industrialized nations do for their families, it's really pathetic to see our own policy.
When I was pregnant with my son, I was living in Europe. All pregnant women are required to leave work two months before their due date and not return to work for at least two months following delivery. You receive full pay during this leave. When the baby arrives, you are given a cash gift from the state for expenses. Finally, you or your husband may take up to two years away from you job with partial pay throughout. At the end of the two year period, you are guaranteed your job or a comparable job back with your employer. It works fine because everyone knows about it and everyone shares the benefit. We are so far behind in this country!
The promise of FMLA makes a difference for me when thinking about making decisions regarding having children, or taking care of sick family members. However, it's not nearly enough- we need guaranteed income during that time and longer leave- like most every other industrialized country in the world.

I appreciate FMLA, but can't believe how poor a program it is compared to other countries. It is too short in duration, and does not require companies to offer short-term disability insurance, which would help cover the cost of lost pay. I would have paid for this insurance, if it had been an option. The length of time is entirely too short.

I lost 4 family members within a one year period all of whom were out of state. Mother was the last to pass. She was in intensive care and I was ordered back to work. I could not leave her. The moment my FMLA expired, I was told I had lost my job. I was a Benefits Manager at a large luggage manufacturer and am now faced with losing my home and filing bankruptcy. This policy needs improvement!!!

When I had my children this was unpaid leave-when my mother was sick and dying I was too afraid to loose my job-I did not take off. When my father in law was sick I asked for the day off I was Fired.I have been a loyal ,hard working employee who has not been treated very well. It is just better to not care anymore.

Well, I wish it had protected me MORE, since after my maternity leave, my company forced me to resign.

The Family Medical Leave (FMLA) act has been a life-saver for my family. We have needed to use it four times over a five-year period to care for our children. As 'Mom' I used the leave for the birth of each of our two children. My husband used the leave after the birth of our second daughter, following my use of leave. When our 9-month old needed surgery in another state, I used the benefit to care for her many post-surgical needs: medications, numerous doctors' appointments, wound care, etc. Yet, unfortunately the accessing of this benefit cost me two jobs. After my daughter's surgery, when I returned to work, my supervisor and department head began a retaliation campaign against me. Despite having an excellent performance record, and being highly regarded by my colleagues, each day I was subject to escalating harassment. It came to the point where the stress was so overwhelming that I left a job that I loved and had worked at for 8 years.

I have lost three jobs due to having to care for my elderly mother. One time she had a shattered knee and I had to be at the hospital while she was having surgery and having complications. My employer told me to CHOOSE either my job or my family. She was much younger than I at the time and she had NO elderly parents and no children so she did not understand.

The second job involved my mother breaking a hip and I had to be with her until the surgery and one day after that -- a total of two working days. My employer told me to CHOOSE my work OR my family. I chose my family and lost my job.

The third time involved my husband, who had been having digestive problems and ended up having surgery but my employer did not understand that I had to be with him and could do my work on-line and communicate with my fellow workers. My employer did not understand telecommuting and told me again to CHOOSE my JOB first or he would show me out the door, which he did.

I am a professional with a B.S. degree in Biology.

I took a leave of absence following the birth of my first child in 1989. I was to return to my job after some time off without pay. I can't recall the time period we agreed upon. When I called to return to work, I was told my job had been filled by another person and there was no work for me.

My employer didn't inform me about FMLA til I had already been ill for months. Then, bosses continually harassed me about needing intermittent leave. Never once did a supervisor ever ask what my illness was. The forms were geared toward distinct leaves, such as for pregnancy, etc. and almost incomprehensible and unusable for my condition. My doctor said it was the most difficult and useless form she'd ever seen in 15 years of practice. The timing of the leave was not explained correctly and I was eventually fired for requesting two additional weeks after the 12 I had taken, thinking it was for a calendar year and not just for any continuous 12-month period. I needed this one quick surgery and recovery -- to have 2 wisdom teeth removed and some other oral surgery for TMJ -- and I would have been able to recover and get back to work without having the constant headaches that made my condition -- Meniere's disease -- worse. But they wouldn't grant it. I lost everything.

when i requested the forms it took to long and i ended up losing my job of 6 years because of to many days off without it

I am a single mother of two. My son is extremely mentally ill and I had many appointments with Psychiatrists, Pshychologists, Neurologists and Doctors at the facilities he was in throughout the years. (age 8-present).

My job finally held it against me and found reasons to write me up; such as taking too much time off etc. When my son was sick at school and they called me to come and get him, I was told that I either came to work or I didn't have a job there any longer. I chose my son, and sought a lawyer. In the legal correspondence, they simply lied and that was that. FMLA does not protect anyone from being discriminated against. They simply find other ways.

No, because I don't know enough about family medical leave and if it applies to me when I'm ill or a family member is ill. Didn't know anything about it and don't remember if our employer has given us any information.

My son was diagnosed with Brain cancer Jan 06 ~ I was not informed about FMLA or any other benefits my boss simply insisted I work. Then he made me beg for my pay which was 6 weeks late and my bonus because I too time off to be with my son after his brain surgery. There needs to be mandated policies in effect to protect people like myself. I lost my job over this situation.

I haven't taken FMLA leave, but there has been several cases where I would have if I had known about it. The fact that I'd never heard of it up until now shows that it should be made open and obvious policy in every company.

FMLA has made a big difference to me. I have a chronic health condition along with being a single mother and have my aging mother living with me. I can't imagine not being able to use this so that I know that my job will still be there whether I have a reoccurrence of my health condition or like when my 4 year old broke his leg. I also used FMLA a couple of years ago when my mother fell down and shattered her shoulder and required surgery. This is an important benefit so that at least when you are burdened with health issues, family member issues you know that your job will be there, especially when you are the primary financial support in your household.

I AM THE PRIMARY CARE GIVER FOR BOTH MY 35 YR OLD DISABLED CHILD AND MY 83 YR OLD MOTHER AND I HAVE SOME OF MY OWN HEALTH ISSUES. WITHOUT FMLA I WOULD HAVE LOST MY JOB. I ONLY USE 2 OR 3 WEEKS OF FMLA A YEAR BUT WITHOUT IT I WOULD BE UNEMPLOYED. I USE VACATION WHEN POSSIBLE BUT I NEED SOME R AND R MYSELF WITH SO MUCH TO TAKE CARE OF THAT I DON'T WANT TO BE PUT INTO A POSITION OF USING ALL MY VACATION IN PLACE OF FMLA.

Yes, I was able to stay home with my daughter for the her first 9 weeks of life. I only wish it had been a little longer. But unfortunately, I had to start my leave 3 weeks before she was born and my employer was unwilling to let me extend my time home to be with her until she was at least 12 weeks.

My second child was born 7 weeks premature, then was hospitalized for 3 weeks. I was supposed to return to work after 6 weeks, but Jeffy's doctor said he should remain at home until he was at least 8 weeks old. I couldn't get the FMLA because I worked part-time (20 hours per week). I had worked full time at this company for over a year, then switched to part-time. My supervisor implied that the leave wouldn't be granted anyway because my job was so essential that they couldn't hold it open for me that long. So I used up all my vacation time for that year. My son Jeffy was born in February. I went back to work in April and didn't take a day off for over 8 months. It was an extremely difficult time and I wouldn't wish it on anyone.

I am currently 9 months pregnant and have been out on FMLA leave for almost 12 weeks already due to complications with my pregnancy. Although my FMLA protection status will expire right as I give birth, I will need to be out another 8 weeks, which will now be unprotected. It would be nice, in certain circumstances, to be able to extend the 12 week protection period. Obviously, it would be based upon medical certification and communication between all parties.

Yes, my mother used it for both me and my sister, both of us having chronic conditions that require many specialist visits a year. I wanted to return the favor when my stepdad contracted a serious illness earlier this year. I was unable to take off time with FMLA because I had not worked for 12 months yet, therefore I substituted my personal leave. However, if I need FMLA after my one year tenure, I hope it is still available.

It wasn't available when I needed it, so I quit my jobs.

Several years ago, my father was terminal ill, and my mother had many medical problems and was not in the best of health to take care of him. So, I had used FMLA until he had passed away.

After a long hospitalization in late 1993 and early 1994, my mother's insurance carrier denied coverage for the skilled nursing facility care that she needed in order to fully recover. I had no choice but to bring her home and care for her myself. I used FMLA to do this, but my then employer required that I use all accrued vacation and sick leave before FMLA kicked in. I was home with her for several months. When I returned to work, I could only do so part-time, at a significantly reduced income, because I was my mother's sole caregiver and needed to be with her as much as possible. Sadly, she died at home a few months later. I will always believe that if her insurer had allowed her the weeks of therapy and recuperation that she needed in a skilled nursing facility, she would have regained her strength and would be alive today. She's been gone now for over 12 years, and I miss her every day. I'm grateful for what FMLA gave me to help her, but it could have been so much more.

Definitely. My step mother had a debilitating stroke. Since I work in social services, I was best person in the family to assist her with setting up her benefits such as SSDI, Medicaid and Occupational, Physical and Speech therapy. I needed to take several weeks off work to do this because she lives in another state. My direct supervisor did not like it, but my request could not be denied. Human Resources was more than helpful in telling me how much vacation and sick time I had accrued. It was required that I use that up while I was on FMLA. I was paid for all but a week and a half of my leave. Without FMLA, I could not have taken the 5 weeks off of work. It is so vital that we be allowed to care for ourselves and family members. Life is not about work, but about relationships.

Yes. When my mother was diagnosed with lung cancer, my brother and I decided I would be the one to take her to all her appointments and therapy. I would have lost my job or had to leave it without FMLA. It was difficult for the people I worked with because it put a strain on the office, however, they were, for the most part, emotionally supportive as well. FMLA was and is a God send and such a humane way for our government, which is really our selves, to take care of ourselves and our loved ones and still maintain our jobs. Too often, people have lost ALL behind illnesses and managing them. That shouldn't be the case. Eventually, the situation ends and the employee returns to full time work. And when they have the support of FMLA, they can, essentially, be good, hardworking employees when it is all said and done. I feel blessed to have had that time with my mother. Thank you for the opportunity to share my FMLA Story.

When my dad was dying from lung cancer, my mom needed to work to maintain income and healthcare coverage from her employer.

I took scheduled leave and took care of my dad while my mom went to work. My supervisor was very reluctant to allow me to do this because I was needed at work. For the first month, I worked 1/2 days and took care of my dad and then went to my home and took care of my personal family duties. It was too much on me. Then I decided to take time off all together from my employer - which they were not happy with (I trained a summer intern to do all of my work in my absence, so there wouldn't be any problems as far as getting my work done).

My dad died another month later. I would not take that time back for anything. I was needed by my mom and my dad, and I wanted to fill that family need. My dad died peacefully and quietly in his home as he wished without having to go to a hospice or some strange place. He died with dignity, and with a sense of family around him - and that meant the world

I'm a firefighter for the City of Columbus. In 1996 I was diagnosed with a brain tumor. After 7 months off and one-year on light duty, I was able to return to my full assignment. After this recovery period I suffered through several relapses. If I didn't use FMLA during these times, I would have been facing departmental charges for excessive use of sick leave. Now that I've completely recovered, I understand the importance of having FMLA.

I have Multiple Sclerosis, and without FMLA I would have been out of a job going through testing and treatment when I have an exacerbation (episode). I have to go through high dose I.V. steroids that make me sick so working/traveling is not an option during that time. So I am out of commission for around a month any time that happens. Without it my self and my family would have really been in trouble, with it we were able to get by without as much added stress. That helps me a lot because stress is another factor for causing disease progression with MS.

FMLA has made a difference for me. I am single and was diagnosed with Stage 3 Breast Cancer. I underwent several surgeries and extensive treatment as a result. My sisters (2) used FMLA to care for me in my own home immediately following more than 1 of my surgeries. I'm thankful that they were willing and able to do that because it made my recuperation and my battle to overcome the cancer much easier.

I have end stage renal disease (kidney disease). Before I went on total disability, I tried hard to keep working for as long as possible. In the last year, I lost over \$19,000.00 in revenue, but because I had FMLA, I did not lose my disability insurance, health insurance or my job security. I thank God for FMLA! I do admit it was a huge hassle with getting the right paperwork and medical info and everything, and it seemed like 12 weeks was far too little in that last year, but I am very thankful I had it! I think that making it easier on the employees who need it would go a very long way in helping. When you are severely ill and can barely stand, dealing with paperwork and red tape is a nightmare.

FMLA saved my job the last 5 years; from having a massive heart attack to knee and foot surgeries, I wouldn't have had a job to return to had it not been for FMLA. Now, I suffer from uncontrolled diabetes and have to use FMLA once in a while when my sugar decides to go really low. I sincerely hope that President Bush doesn't go messing around with FMLA. If he does, I foresee many people losing their jobs when forced to choose between life saving surgery or a job.

during a recent battle with breast cancer, i was able to use FML which helped me during the six months i had to undergo chemotherapy. i would not have been able to work during this time due to the many germs, dust & dirt that are present in my workplace as well as the many people who often come to work sick. i would have been at risk to contract infections from my co-workers when my immune system was impacted from the chemotherapy.

I have MS and have been on intermittent FMLA for about three years. It has allowed me to keep my job, even though several hospitalizations have taken chunks out of my work time. Without FMLA, I wouldn't have had a job to come back to.

My wife became seriously ill and required multiple surgical procedures and months of hospitalization over several years.

Without FMLA I would most certainly have lost my job, my insurance benefits, and my ability to care for my wife immediately as well as in the future.

Yes, it allowed me to care for my wife when she lost what would have been our second child. Emergency surgery saved her life but not the child. She was bed ridden for 2 weeks and I was able to use the FMLA to care for both her and our first child, age 2, until she was able to care for herself.

My wife and I birthed our children at home together. First employer tried to tell us that we didn't get leave, then FMLA was brought into the conversation and they backed right off. Second child the company tried the same thing, only this time they stated that their company policy was to use up vacation time before using FMLA. As soon as I made it clear that they were wrong, and copied-out FMLA rules that stated otherwise, my request was granted and I kept my vacation time. Its assinine how little employers know and how much they assume when it comes to FMLA. I would like more stringent rules and better governmental regulations on FMLA instance training to be put into play.

I have not had to use FMLA leave to date, but just knowing that it's there for me to use if needed is a great relief. I'm a single parent, and it's great knowing that I don't have to choose between keeping my job and caring for my child, if she were to become ill, because obviously my daughter comes first.

I have three wonderful children. I work to share the finances with my husband so he doesn't have to take it all upon himself and so he can be home to enjoy our family. It is hard juggling work and family and the FMLA has helped a great deal in easing the two roles. Please do not change this!!!

I am pregnant and due in August of this year. FMLA is important to me because I need to be home with our baby. My husband wants to be with me for some of the time that I am home, so he will be taking Family leave as well.

I have never had to use this but I think it is definitely necessary since things could come up and you definitely don't want to lose your job because of circumstances beyond your control!

I am grateful that FMLA is available to my and other Americans' families. I am grateful for the benefit, but FMLA as it stands now seems to be somewhat limited, and any further limitations or cutbacks in this benefit would in my opinion be severely detrimental to the health of the nation. I am strongly opposed to consideration of cutting back on this benefit. If anything, I support expanding this benefit. Some American workers have more problems than I do as far as the utility of this program as it stands now. I believe that consideration of further decreasing this benefit would be another example of how the Bush Administration has little compassion for the average American, and should not be allowed to detrimentally affect the FMLA program.

As a Human Resource professional for over 20 years, I feel FMLA is one of the most important benefits an employee can receive.

In my years of administering FMLA, it was never abused and helped so many get through some really tough times.

One company I worked for became a major player and awarded for their Work/Life initiatives.

Some needed to take paid leave first, others just took family leave. It was the employees decision and it was monitored and documented to prevent any mishaps.

Great, important benefit.

Yes, I felt assured I would have a job to come back to when I was off work. FMLA is great !!! It does not need to be taken away, then you are taking away our hope for our jobs, our lives, our way of living and providing for our families.

FMLA has allowed me to keep my job. My employer has a strict attendance policy and without it I would have been terminated.

absolutely....in an industry where seniority counts for alot, my seniority would have dropped along with a possible firing....I am a single parent and depend on my job to survive.....I am so thankful and grateful, for my job and fmla

In 2006 I had several illnesses pop up that required me to take some time off. Because of the FMLA, I was able to return to my job a healthier individual. My stress level was greatly decreased d/t FMLA because I didn't have to worry about losing my job while I recovered. Since I have returned to work, I haven't used one sick day in 4 months. My employer is really wonderful when it comes to working with employees on this. I have seen it help many other working class individuals. Something like this HAS to be in place for the common man.

Yes, it allowed me to return to my job with no loss of seniority or fear of retaliation from company.

FMLA made a difference to me because my husband had voice box cancer two 1/2 years ago and I needed to help get him to appointments, feed him through a feeding tube 4 X a day and my employer allowed me the time to do that. I flexed some time, used sick leave and they were cooperative in adjusting my schedule. Appointments would change sometimes without much notice as doctor was called out for emergencies. It would have never worked so smooth if not for FMLA. I'm a long time union president for 2 AFSCME bargaining units in one local, and from experience with other employees, FMLA has saved a lot of people from losing their jobs! Grievances have been won with the backing of FMLA. Keeping FMLA is one of the best things that we can do for workers in America, and affordable health care should be next.

At present, I am the main support to my family; I have an elderly father whom I provide assistance to regularly and am responsible for getting him to his medical care, my husband has congestive heart failure and I recently began experiencing some health problems. I may need FMLA at some point soon. Without it, if I lost my job, I would end up costing the government in either unemployment compensation, Medicaid costs or something similar....it would cost this country more for people to get out of the workforce, because all of those people will be applying for Medicaid, food stamps and TANF!

It has not made a difference for my job, but it has been a godsend for a friend of mine. His daughter was involved in an accident that required a week's hospital stay out of state, weekly visits upon returning home, and several surgeries. He was able to be there for her and not worry about the status of his job because of FMLA. Working families do their best to provide for their loved ones. In crisis, we need something to ensure our jobs that we work so hard at. The legislators must maintain the benefits of FMLA to ensure the well-being of our working families. I believe there are very few people out there who would take advantage so we must meet the needs of the masses.

No, but as a Benefits Manager for a large corporation, I have seen first hand how important FMLA is for employees. I can't imagine how the average American worker could manage their lives without it.

Although I have not needed it yet, I represent my co-workers with our employer and several have needed to use the FMLA. Our employees have to use all their paid leave before they can use the FMLA. As our work population ages and we are called upon to care for our children, grandchildren or aging parents, we all will need some assistance with the responsibilities placed upon our time, energy and capacity to leave our jobs and yet still have one when we can return to our jobs.

I was unable to take FMLA because we couldn't afford to go without my salary. I saved my vacation time and sick leave so that I would have enough to see me through the first 2 months of my child's life. I would have had to take my vacation and sick leave first before I could use FMLA leave anyway.

I have never used FMLA, mainly because I simply cannot afford to take unpaid time off work. A couple of years ago my mother had heart trouble. Unfortunately, taking unpaid leave was out of the question economically. If I had had the option of taking paid time to be with my mother, I would have been able to be with her.

The FMLA should be PAID leave. It does absolutely no good to be able to take 12 weeks off if it's unpaid - most people can't pay their bills that way. FMLA is only worth something if it requires employers to pay their employees leave, even if it is a reduced rate of pay.

FMLA is very important but it is not enough. Unpaid leave is a hardship for families that rely on two incomes. Since very few employers offer paid maternity leave, FMLA is the only policy many women have to take leave to have a baby. Three unpaid months in a pittance!

My prior employer required me to apply for FMLA for my maternity leave. At this time of my life, my mother-in-law has major health problems and my husband and son both have serious health issues as well. Knowing that FMLA is available if any of them get sicker and I need to be off work is a bit of a relief. Making FMLA leave paid, even at a partial rate would be an even larger relief as I have no sick time or vacation at my current job. Thank you.

Yes it made a great big difference if had not been for the FMLA I would have not been able to take care of my seriously ill husband & mother before they passed away. It would have been easier if I could have been paid but just being able to be with them made all the difference in the world Thanks to the FMLA

It's difficult to take an unpaid leave of absence. Sometimes you take a chance of losing a specific job you were doing when you had to take FMLA

I have never requested Family Leave myself, but I do know people who didn't take it because they could not afford to go without a paycheck. I think paid sick leave is a much better option to try and get for workers.

I appreciate I've been able to use FMLA. I wish that some leave was paid to care for a new born child. If FMLA did not exist it would have devastated our family to simply have children.

FMLA has been extremely important to my husband and I in trying to do eldercare for our parents who live a long distance away. I also have used it for the adoption of our child. In no case was I paid for the time I took off (our company's rules), but I was allowed the time off which helped me considerably. This regulation is one of the best things that happened for working people. I believe it comes down to basic decency, and respect for people's family life in this country. It's what separates us from the animals in the workplace.

I am a single father with custody of my two daughters, ages three and ten. My oldest daughter has asthma and severe allergies. My employer is very strict on attendance, and getting FMLA has been almost next to impossible. I have accumulated several occurrences at my place of employment due to my absenteeism regarding my daughter's illness. My employer does not excuse any type of absence, whether it be sickness, sick family, etc. Without my FMLA I would have lost my job. FMLA needs to be extended to cover the hardships single parents endure. Many times I have been forced to choose between leaving my kids home alone, or face occurrences and loss of job.

I am a working mother of 3. My middle child was very ill for the first four years of his life and had nearly lost his life on several occasions. I was needed many times to rush him to the hospital, sit in the hospital with him, or to care for him at home by keeping him on a breathing machine and many other medicines. Without FMLA I would have lost my job. Sadly I eventually did lose my job after nearly 10 years at the same place because the company had failed to keep correct FMLA records and they had given me points for attendance when it should have been FMLA. I later won before the unemployment board and the In. State review board but did not get my job back. If I would not have had FMLA I would have lost it much sooner. This is a needed policy in so many cases. We need laws in place to help us keep our jobs in these situations and there needs to be more accurate recordkeeping as well.

I have just returned to work after being home for three months after the birth of my second child. I also was able to stay home for three months with my first son. I realize that being able to do this also involved my family's being able to afford for me to do it, but without FMLA I would have been left with the possibility of not having a job to return to. What a gift to be able to be home for a while when my children are very little and I am recovering from childbirth. As a social worker I work with caregivers of older and disabled persons, including those with Alzheimer's disease. Many of these caregivers must miss work to provide help for their loved ones. It is imperative that these folks have the option of being able to take some time off when needed, knowing that they can be assured their job will remain open to them. It is my hope that eventually our country will catch up to other "developed" nations by not only offering FMLA, but also mandating some paid leave options. For now FMLA stands among few other policies in this nation that actually support our families in a useful, practical way.

At 36 years of age I had my first child. Luckily FMLA was in place for me to take 12 weeks of leave to care for myself and my child. Additionally work let me use vacation and sick time to cover my pay while gone. If we didn't have the leave, and the ability to collect a paycheck, I would have either had to choose to not have a child or to quit my job--and lose my health insurance. FMLA also protected my job while on leave so I had income when I return. How can Bush take away something so basic as letting a new mother have time to recover from child birth as well as protect her job while gone? I thought he was pro-family.

Being able to take 4 months of leave after the birth of my son was crucial to my physical, mental, and emotional well-being, and allowed me to really bond with my child. I feel that I was a better employee upon returning to work having had this time off to focus on my new role as a parent. I was fortunate that I was in a position to take some of this leave unpaid; many families are not as lucky. I think the government could do more to ensure that working families receive paid parental leave. In the UK, working mothers are given the right to 26 weeks of paid leave for each child, 6 weeks at 90% of full pay and 20 weeks at a fixed amount. Other European countries are even more generous. Shouldn't we be doing the same?

As a working Mom of 2 small children, FMLA allowed me the time to bond with my children after they were born for more than the 8 weeks I received from my employer. It also allowed me the time I needed to take care of my Mother when she became ill. I feel that the FMLA should be changed but for the better and allow more time for new mothers and fathers to bond with their new born children. The US has one of the worst maternity leave and already does not allow enough time home with their children.

I had taken my sister to the emergency room for a health problem. This put me out of guide lines because FMLA doesn't cover sisters, brothers. Why is that? I understand most families siblings are married or have others to take care of them, but in MY family, I'm the only one that can take care of my sister who is unmarried. IF she was to need taking care of because of health issues. Am I to tell her she is on her own? My Job told me the FMLA covers parents, spouses, children even grandParents but not siblings. Is this correct? Thanks for your attentions

FMLA is extremely important to health of our nation. Many countries in the world offer paid maternity and paternity leave and require that their employees and citizens use that time. Those countries have put the importance of family and children above corporate profits. This is absolutely essential regulation and should be strictly enforced if not improved to follow our mouth service of family values in this country. Consider this: Japan and Germany (the US's greatest economic competitors) each guarantee at least three months of paid leave with additional unpaid leave if desired. Most of the other industrialized nations offer 4 months to one year at 80 to 90% of their normal salary. They also offer parental leave to care for sick children (from 10 weeks to 3 years usually with low or no pay. (Eitzen and Baca Zinn, Social Problems, 10th ed. Pearson. 2005)

People should not be fired for being compassionate enough to take care of their family. After all, if we don't have the time to have and raise children and take care of our elderly, where will big companies find the next generation of workers to work at their big company?? FMLA should be expanded and extended. We have the shortest maternity leave of any developed country and its shameful that new mothers should have to choose between their baby and their job. Wake up America and get the priorities straight.

This is a great program for the working people of this Great country!!!! I have used it for the birth of both of my children and for my father's complete heart transplant operation miles away from our homes and if not for the FMLA program I may have not been there for any of them!

The Family Medical Leave (FMLA) act has been a life-saver for my family. We have needed to use it four times over a five-year period to care for our children. As 'Mom' I used the leave for the birth of each of our two children. My husband used the leave after the birth of our second daughter, following my use of leave. When our 9-month old needed surgery in another state, I used the benefit to care for her many post-surgical needs: medications, numerous doctors' appointments, wound care, etc. Yet, unfortunately the accessing of this benefit has cost me two jobs. One initially refused to grant me the leave. In both cases, the employer waged a retaliation campaign against me after I returned to work. Despite having an excellent performance record, and being highly regarded by my colleagues in both jobs, I was subject to daily, escalating harassment. It came to the point where the stress was so overwhelming that I resigned. We are caring human beings and we need this law! We mustn't let those with big-business interests strip us of this right. The FMLA act needs to be strengthened to protect against retaliation, and it should require some financial payment for the time out of work (if no other pay is provided by the employer.)

I am told I don't qualify for FMLA because I only work part time. I work 2 part time jobs totalling 52 hours a week and care for a Mother who is a dialysis patient and has numerous medical problems and a father who has had a heart attack and stroke and is paralyzed on the right side and bed/chair bound. I think the law should include people who work part time also. I have only taken 2 days off last year for their care which I don't think is excessive, however I had to take my vacation/sick time which I don't think is fair. I had to cancel both my vacations last year because I can't afford to go without getting paid for it.

FMLA has been so important to me since I am a Baby Boomer and am in the "sandwich generation" that takes care of their parents as well as their children. FMLA was so important when taking care of my dying Mother this past year and in helping take care of my blind Father since my Mother has passed away. It relieves much stress and allows me to take time off to care for my Father and not worry about my job still being there for me. It is a VERY NECESSARY benefit for working people in this nation.

I am an only child and my father is recovering from cancer and the FMLA was a big help for me and my family. Leave it alone. The only change that is needed is make it paid leave instead of unpaid leave

My mother was diagnosed with cancer and she had a stroke which left her paralyzed and wheelchair bound. With the help of FMLA I was able to take her to her appointments and tell the doctors what was going on with her since I was her primary caregiver. I was able to be with her when she took her last breath and was grateful for the time I was able to spend with her until her death. Now I find myself in this situation again with my father who is very ill. I am now his primary caregiver and I am praying that I am not watching him slip away like my mother. Please don't change FMLA for any reason. Unless you have been in my shoes it is hard to understand and truly only people who have been in my shoes know what I am talking about. There are people who really need this. I really need this.

My father was diagnosed with pancreatic cancer in Feb. 2004. Thanks to my older sister being able to take FMLA, we were able to keep him at home until he passed away in July 2004. Staying home and not in a hospital helped to make his last days better for the whole family. I would hate to see any restrictions made to FMLA. If anything, it should possibly be longer than 12 weeks.

In 2003 My mother at age 75 began serious renal failure which required care by her only living child. Without FMLA I could not have taken the time to take her to her numerous doctor's appointments, to and from her dialysis treatments, and probably would have resulted in my mother's placement into a nursing home facility. Because of FMLA mother lived another 2 and 1/2 years at her home of 46 years. I was able to maintain my employment, pay my bills, avoid bankruptcy, and provide food, medication, house cleaning and general safety to my mother. Modifying FMLA could result in people dying prematurely due to the lack of family support systems, or loved ones being placed into nursing homes at a higher level of cost to the state and federal gov't. Let's face it.....when we are sick there is nothing like the care you get from your immediate family. FMLA is not a partisan program. It is bipartisan and should not be watered down from its initial language.

I live and work in Oregon. When my parents who lived in Texas grew old, FMLA was invaluable for me. For a couple of years - using FMLA - I was able to assist my Mother off and on (giving respite) when my father became ill until he died at 87 yrs. old in 2003. Afterwards, my Mother moved to Oregon to live with me and a couple of years later, she became ill. Once again, I was able to use FMLA to assist with her care until she died at 90 yrs. old in 2006. Being able to take FMLA in both of these instances, made it so much easier for me to stay on top of things with my parents and continue working as well. In both cases, I took intermittent leave. I can attest that FMLA is a wonderful program and I fully support whatever can be done legislatively or otherwise that results in a continuation of the FMLA program in its' current, or a better, format. An FMLA that is less than the current program (status quo), or no FMLA at all, is not acceptable!

My Mother was diagnosed with breast cancer and there was no one to take care of her. I still had to leave her too early, but at least I got to be with her for a while.

As a working man, I have worked for 32 years in the work force. I have raised 2 sons and am now finding that my parents need more time and help with getting to medical appointments. As with many other workers in the same situation, this means missing work to help. We need laws to help us keep our jobs when illness happens. I also am married and my wife has had to use FMLA because a chronic condition if it were not for FMLA they would have fired her because of this condition. Workers in this country need this protection.

My mother was diagnosed with end stage renal disease a few years ago. She has been on dialysis for two years now and is in assisted living for 2 1/2 years. She is unable to drive herself to dialysis or doctors appointments. Although her sister has done a lot for her, I have to share the load of her care, and as an only child that means I must use FMLA a lot. I must commute 2 1/2 hours to her home in Georgia to take her to doctors appointments, dialysis, or to handle financial responsibilities. I don't know what I would have done without having FMLA available to me.

I can tell you the Family Medical leave has in the past, Helped me and My family when my father in law had been taken ill and had to be hospitalized for a period of over 2 month. My wife also being a federal employee was granted family leave and it was approved for the period of approximately 1 month. My father in law did survive and at the ripe old age of 85 is still going strong. The dr's had all but written him off, But they stated that it was the fact that he had so much support around him that, this is what pulled him through.

So far I have not had to use FMLA but as my 78 year old mother gets older she may need my assistance and it would be nice to know that FMLA would help in keeping my job open.

My mother is 76 y.o. and in declining health. I will be needed time off to care for her in the upcoming years. I'm 55 y.o. I can't afford losing my job. Too many people my age aren't finding work and not qualifying for government assistance.

WHEN MY MOTHER HAD OVARIAN CANCER I WAS ABLE TO CARE FOR HER AFTER HER SURGERY. SHE ONLY LIVED ONE YEAR AND 10 DAYS AFTER GOING THROUGH CHEM AND ALL THE SIDE EFFECTS. THEY ARE THE MOST PRECIOUS MEMORIES EVEN THROUGH ALL HER PAIN. NOT LONG AFTER MY FATHER HAD FURTHER COMPLICATIONS FROM HIS BYPASS SURGERY. HE DIED FROM THE FOLLOW UP SURGERY AND I WAS ABLE TO COMFORT HIM IN HIS FINAL HOURS. WITHOUT FAMILY LEAVE I WOULD NOT HAVE BEEN ABLE TO BE WITH THEM WHEN THEY NEEDED ME THE MOST. I WAS ABLE TO GET CLOSER WITH THEM AND HONOR THEM FOR GIVING ME LIFE. THEY MADE SACRIFICES RAISING OUR FAMILY AND GIVING US A GOOD LIFE. IT WAS ONLY FITTING THAT WE COULD BE BY THEIR SIDE WHEN THEY NEEDED US THE MOST.

My parents have been in need of my services rather extensively in the last 3 years after my father broke his hip. Because of my father's condition and the need to watch over mom I have used FMLA to provide needed various degrees of care for my parents. This has allowed them to live rather independently for the last three years despite my father being diagnosed with Multiple Myeloma recently. I have had to step up to the plate even more with my mother's needs as she has fallen and at this time is unable to walk on her own and is getting rehabilitation leaving a less than mobile father to fend for himself. FMLA along with caring medical personnel, friends, and other relatives have kept them going and has allowed me to provide the services I am capable of without discipline from my employer.

I have taken FMLA in the past due to my own illness and also, for a loved one. My mother was on kidney dialysis and suffered with this for six years. We both knew her time was very limited. Thanks to FMLA, I was able to care for her and share some of those sad and critical moments with her. I didn't have to worry about getting fired or placed on a "disciplinary step" due to my intermittent absences. FMLA should be available to everyone. No one is immuned to a serious illness. It could happen to anyone at any given point and time. This eliminates stress and heartache. God Bless and Thank You!!

When FMLA first started, my employer did not make it very well known as an option. My father died of an HIV related illness, and I was not able to take time off to be with him because I was not made aware of my options under FMLA. Then I had to take maternity leave for both of my pregnancies, and my manager at the time (for my first pregnancy) called and left me a nasty voicemail message at home regarding my choice to take an additional 2 weeks (still within FMLA guidelines). I reported her to HR, and she was reprimanded, but she retaliated against me when I returned to work. It affected me emotionally and increased my post partum depression

Yes- I took FMLA following an urgently needed back surgery as I was losing the ability to use my legs. I was off 8 weeks and my job was held for me. Otherwise without FMLA I would have lost a job I had been in for 5 years. Yes- I had been in a job as a nurse for a short period of time (12 weeks) and was not able to use FMLA. There was a traumatic incident involving the death of a patient on the unit where I worked. I suffered from Post Traumatic Stress Disorder and asked for unpaid leave because my MD recommended that I take time off. I was told that I could take all the time I needed as they had replaced me.

FMLA has been invaluable to me. As a Breast Cancer survivor, I still occasionally have days where putting in a full days work is not possible. Due to Chemo and radiation, I take incidental FMLA when my body dictates. By doing so, I avoid becoming seriously ill, requiring an extended medical leave and high medical bills. Furthermore, incidental leave allows me to perform my job efficiently and with excellent productivity. FMLA has allowed me to keep my job and my healthcare benefits, which as a cancer survivor is of great importance. I recently took FMLA for my spouse who was hospitalized after surgery. Hospitals are seriously understaffed and it is not safe to leave a loved one by themselves in the hospital until they are off of pain meds and IV. Fortunately, I was there the second day after surgery when the staff disconnected his IV the night before and "forgot" to hook up a new one. My husband is hypoglycemic and was headed for shock when I got there in the morning. They had also forgot to remove his cathator. He was too incoherent to help himself. No one wants to be sick or spend days in the hospital with a loved one, but we're human. We owe our employer a fair's day work for a fair's day wage. We do not owe them our life or our health.

In 1996, my wife suffered a severe spinal cord injury (SCI) which left her 100% disabled and intermittently unable to care for herself. At that time, I was working for a company and my manager was predatory, to say the least. If not for FMLA, I would have lost that job AND the insurance which paid for my wife's medical needs.

My wife died of cancer in 2004, but, because of Family Leave, I was able to spend the last couple of months by her side as she needed more and more attention. Without that leave, someone else would have had to have been there, leaving her without my support and me without being able to see her through to the end

My wife was sick with cancer. If it were not for the FMLA, I would have lost my job. I am retired now, but I would have not been able to retire if it wasn't for the FMLA.

My wife had a complete breakdown. I had to be home as she was suicidal and was on a tremendous amount of medication. I had to do all the things around the house such as groceries, cooking, cleaning taking her to her 3 time weekly doctor visits. I was unable to work during this three month period. It was great to not have to worry about my employment. I had no choice but to stay home with her. I am 58 and could not afford to lose my job, however my wife comes first. Glad I did not have to lose my job!!

I have three children and work full-time. It is very hard being a female, having children, and trying to share the financial role of providing for a family with my husband. The FMLA helps the working families tremendously!!! I cannot stress that enough. We need the FMLA to remain the same and in affect.

Many of our employees have been approved for FMLA, most for care of a parent or maternity leave, some for serious illnesses and injuries of their own. If the employee's only other options were to terminate, or take unpaid leave, we would lose many qualified employees who would be hard to replace. This is a win-win situation for the employer and employees.

As a working woman contemplating having a child, weakening or abolishing FMLA could result in considerable hardship for both me and my spouse.

While I have never needed to take Family of Medical Leave, this is an important protection workers should have in a developed country. The FMLA allows people to focus on their families and loved ones without the fear of losing their jobs. As far as I'm concerned FMLA doesn't cover ENOUGH workers and ought to be expanded, if not increased to allow for some pay during the leave. It is hard enough to save to invest in your future, not to mention if you decide to have a child, or have a sudden family illness and suddenly lose your paycheck for up to 3 months. Please do not diminish this meager protection for American workers. It will not make our economy more robust, but it will remove stability and what little security the American worker has today.

FLMA is essential. I used FLMA when my son was born. I have co-workers who needed it for spouses dying of cancer or for their own serious illnesses. Aging parents will continue to need our assistance. I cannot express in words how important FLMA is. We need to have our priorities straight in this country and that is the care of our family, NOT corporate profits. I think the FLMA act is one of the most important rights that we have as working Americans. We are already behind many other western countries in the time we are allowed off to be with our families. As it is, we must use the FLMA without pay. It is vital to so many people, and most of us will need to use it at some time in our lives.

FMLA is important for new parents. The US is only one of a very few industrialized nations that do not provide PAID maternity leave. Please don't take away our UNPAID leave, too. Moreover, in our economy, families are already living paycheck to paycheck. An unexpected illness of a family member can cause lost wages which can already cripple a family. At least the knowledge that your job will not be lost is somewhat of a comfort as you scramble to make ends meet during your unpaid leave. Where do we place value? Only in business and capitalism? Is family life unimportant to us?

FMLA has saved the jobs of myself and my mother in the face of discrimination. Employers are all too eager to use chronic medical ailments to oust an employee and FMLA has made sure that we keep our jobs while being able to deal with our medical issues in a way that in the long run keeps us healthier.

I did not have to use it yet, but being part of the "sandwich generation" which is having a small child at home and an elderly mother-in-law living with us. It's almost inevitable that somewhere down the road I will need it and I hope it will still be there. This is crucial for the working families to have this benefit. This helps with good people losing their jobs and being disciplined for taking care of their families

I have used the F.M.L.A. twice, both times for the birth of a child by my wife. It is a wonderful thing for us because I was guaranteed by federal law to be able to be at the hospital for the birth of my children. If not for the F.M.L.A., I may not have been able to be at the hospital and/or be at home to help take care of both the children and my wife. The reason I say I may have not been there is because my employer has always "conveniently had a manpower shortage." When there is a manpower shortage they then have a right to deny vacation or personal leave. Although it should never be morally acceptable to deny a person's vacation or personal leave, they have done this. The F.M.L.A. allows for the employees protection in any of the coverable medical provisions and it would be a shame if any one with a clear conscience would want to do away with it.

I have five children and thankfully have never had to use FMLA, however, I feel good about knowing that it is there for me to use in case of an emergency. It is better to have it and not need it, than to need it and not have it. Please consider the workers when making any suggestions/changes. We do MATTER.

I have never taken Family or Medical Leave, but simply because I couldn't afford the loss in pay. A couple of years ago my mother had some cardiac problems. If I had had paid leave, I would have taken time off to be with her. She'll be turning 75 this month, and I dread the thought of her falling ill and my being unable to be with her. Please make FMLA better, not worse. Expand it to include a provision for PAID time off!

FMLA is the best thing ever done for working families, I have used it when necessary. One aspect that I dislike is that is unpaid leave, when it is necessary it usually at a hard time and without pay it is hard to utilize.

I gave birth Nov 2nd 2006 and did not take FMLA because I could not afford to take unpaid leave. I was fortunate in that I was able to save my vacation time and sick leave to cover the two months I was off after her birth. I would have loved to have taken the full 3 months that we are allowed under the FMLA, but unpaid leave is not an option for a single income family. I believe that the FMLA should be expanded, not reduced. Mothers who are able to stay at home until their child is 3 months old or older will have a happy & healthier child, will be less worried about leaving their child home, and will be more prepared to return to the work force with fewer distractions, benefiting the employer more than if she came back sooner.

I am shocked that in many cases, maternity or family leave is not PAID LEAVE! This is just another example how corporations are only concerned about profits and not the health and longevity of workers, present and future. Don't make maternity and family leave worse, make it better!