



2010

Family and Medical Leave: Selective Background Information

Workplace Flexibility 2010, Georgetown University Law Center

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WORKPLACE FLEXIBILITY 2010

FAMILY AND MEDICAL LEAVE: Selective Background Information[†]

I. FMLA Eligibility & Coverage

- Who is currently working for a “covered employer” under the FMLA and, of those employees, how many are eligible for FMLA-related leave?

	Working for Covered Employers	Working for Covered Employers & Eligible	Working for Employers Not Covered under the FMLA	Total Employees
Total Weighted No. Respondents	110,398,726	88,920,791	33,620,570	144,019,296*
Percent	77%	62%	23%	100%

*Weighted population estimate of 2,558 telephone survey respondents representing individuals 18 or older in US households employed in the public and private sector as of January 1, 1999. (Table A2-3.3, p. A-2-22 of Appendix A-2.)¹

- Since 1993, DOL estimates that 35M employees working for entities covered under the FMLA have met the eligibility requirements of the law and have benefited from FMLA-related leave.
- As noted above, the DOL 2000 employee survey indicates that slightly less than a quarter of the private and public employee respondents work for establishments not covered by the FMLA. However, this represents the effect of the broader coverage available to public sector employees. When the private sector alone is reviewed in the DOL establishment survey section, 42% are estimated to work in non-covered establishments (p. 3-3, Table 3.1).²

II. FMLA Utilization

- Of eligible individuals who work for covered employers, how many used leave rights under the FMLA?

[†] Baseline data for this summary are drawn from the following U.S. Department of Labor sponsored report: Cantor, D., Waldfogel, J., Kerwin, J., McKinley-Wright, M., Levin, K., Rauch, J., Hagerty, T., & Stapleton-Kudela, M. (2001). *Balancing the Needs of Families and Employers: Family and Medical Leave Surveys 2000 Update*. Rockville, MD: Westat. Weighted numbers of respondents are included in some sections to provide an estimated population profile. In most cases, percentages are rounded up to the nearest percent. Table and page numbers from the report are provided within the text. The employee survey includes both public and private employees while the establishment survey addresses the private sector only. Other data sources are included to provide additional insight into some of the coverage and utilization concerns. All other references can be found in the endnotes section of this report.

- 23.8M or 16.5% of employees in the 2000 DOL survey used FMLA-related leave during the survey period, approximately the same percent as in the 1995 survey. Individuals using FMLA do not differ substantially from their counterparts in the workforce in terms of age, race, education, and income status or compensation type (salaried, hourly, and other). They are, however, more likely to be female (58.1% vs. 46.8%). Additionally, they are more likely to be currently married (75% vs. 65.7%) and to have one or more children in the household (59.6% vs. 36.7%) (Appendix A2, Table A2-2.4, p. A-2-3).
- While the percentage of employees taking leave in the 2000 survey period changed very little in comparison to 1995, the actual number taking leave increased significantly (p. 2-18).
- Most leave (54.1%) was taken for less than 10 workdays and most employees took leave only once during the survey period (p. 2-18).
- **Of those using FMLA benefits, what were their reasons for taking leave?**

FMLA Use, DOL Employee Survey 2000 (Weighted N=23.8M)	
<u>Covered Reason for Leave</u>	<u>Percent of Leave Takers*</u>
Own health	52.4%
Maternity-disability	7.9%
Care for a newborn, newly adopted, or newly placed foster child	18.5%
Care for ill child	11.5%
Care for ill spouse	6.4%
Care for ill parent	13.0%

*Percentages add up to more than 100% b/c some respondents took more than 1 leave in survey period (Table 2.3, p. 2-5)

- The primary use of the FMLA continues to overwhelmingly be for one's own health care needs, including health conditions associated with maternity, with over 60% of leave being attributed to these categories. Care for children after birth, adoption, foster placement or for children who are sick constitutes another 20% of all leave reasons (p. 2-5).
- 99.1% of leave-takers who took FMLA-related leave for their own or a family member's serious health condition required a doctor's care (p. 3-17). 67% were in the hospital overnight.
- Persons taking leave for maternity-disability reasons took the longest leaves with 28.7% of them being on leave for more than 12 weeks.
- Intermittent leave permits the 12 weeks of allotted FMLA leave to be taken in small increments. Both the employee and establishment surveys indicate that about 20% of leave taken under the FMLA is intermittent (Tables 3.6 and 3.7 on pgs. p. 3-15 & 16).
- **For those using leave for family and medical reasons, what compensation did they have available for their leave time?**
 - Among the DOL 2000 public and private employee survey respondents who took leave, 34% received no compensation. This is approximately the same

as in 1995. (For this and the following data, see p. 4-5 and Table 4.5 on p. 4-6)

- Of the 66% who received compensation:
 - 61% received paid sick leave
 - 39% received paid vacation leave
 - 26% received personal leave
 - 8% received paternity leave
 - 18% received temporary disability insurance
 - 11% received other benefits
- Of those receiving compensation, 72.2% were paid for the entire leave period at their full pay and another 21.6% were paid for the entire period at partial pay. Half of those who received less than full pay would have extended their leave if some additional pay had been made available.

III. Barriers to Using the FMLA

- **Who needed the type of leave offered by the FMLA but did not take such leave?**
 - Approximately 3.5 million people in the 2000 DOL survey, or 3.2% of employees who work for covered employers, needed the type of leave guaranteed by the FMLA but did not take such leave.
- **Why did people who needed the FMLA-guaranteed leave not take it?**

Reasons for Not Taking Leave: DOL Employee Surveys 1995 & 2000 (Table 2.17; p. 2-16)		
	Percent of Those Needing Leave	
Reasons	1995	2000
Thought job might be lost	29.7%	31.9%
Thought job advancement might be hurt	22.8%	42.6%
Did not want to lose seniority	15.1%	27.8%
Not eligible – worked part time	14.3%	12.3%
Not eligible – hadn't been working long enough	N/A	18.4%
Employer denied request	9.9%	20.8%
Could not afford to take leave	65.9%	77.6%
Wanted to save leave time	28.5%	34.3%
Work is too important	40.8%	52.6%
Some other reason	N/A	13.2%

- As the previous chart shows, the financial costs of taking leave are by far the biggest reason respondents didn't use the leave guaranteed to them by the FMLA. This barrier is reported even more frequently than it was in 1995. 87.8% of these respondents reported that they would have taken leave if some or additional pay had been available for the leave period.
- Management and job security pressures regarding FMLA utilization have also increased markedly during this period. Almost twice as many people who needed FMLA in 2000 vs. 1995 thought their job security and advancement could be negatively impacted by taking leave. Over 50% thought work was too important.

- The number being denied leave has also increased significantly. At least some of that number includes individuals who had not yet worked enough hours to be eligible or had already exceeded their FMLA leave limit. A complete breakdown was not available.

IV. Private Industry Responses to FMLA³

- **What percentage of private sector establishments are covered under the FMLA?**
 - 199 or 11% of the 1,839 establishments responding to the 2000 DOL Survey were covered employers. While large establishments were over-sampled for the survey, reported data reflect weighting designed to produce unbiased estimates of all private business establishments in the United States.⁴
 - Covered establishments represent all economic sectors; approximately half are in retail (19.6%) or service (29.1%) industries (p. 3-3).
 - The DOL estimates that covered establishments employ 58 % of the private industry workforce, 45% of whom are FMLA eligible as a result of work hours and tenure (p. 3-3, Table 3.1).
- **Does the FMLA have a harmful effect on business performance or cost?**
 - Of covered establishments in the 2000 DOL Survey (p. 6-11 table 6.5):
 - 84% said FMLA has either no effect or a positive effect on productivity;
 - 90% said it has either no effect or a positive effect on both profitability and growth;
 - 89% experienced either no increase or only a small increase in administrative costs and in costs associated with continuing benefits for leave takers;
 - 81% said intermittent family and medical leave has had no effect on productivity; and
 - 94% said intermittent family and medical leave has no effect on profitability.
 - A slightly earlier non-governmental survey of companies with 100+ employees (Galinsky & Bond 2000) asked similar questions, finding:
 - 42% of companies think leave programs are cost-neutral;
 - 17% of companies think the cost of leave programs exceed the benefits; and
 - 42% perceive positive return on investments in these programs.⁵
 - Non-covered entities (N=1,640 DOL 2000 survey respondents) feared negative effects on cost, productivity, profitability and morale well in extent of the actual impact experienced by covered entities. Nonetheless, 60% of non-covered entities with 25-49 employees voluntarily provide family and medical leave for all FMLA reasons (p. A-2-73).
 - Another example of establishments providing leave benefits beyond those required under the FMLA is found in the 2004 Benefits Survey Report from the Society for Human Resource Management. Below is a summary of their 459 respondents from predominantly private for-profit and not-for-profit

establishments.⁶ These are dispersed nationally, represent diverse industries, and report a mean of 500 employees.

SHRM, 2004 Benefits Survey Report Percent of Employers Offering Leave Benefits by Organization Staff Size				
Benefit	Overall N = 459	Small (0-99 Employees) N = 156	Medium (100-499 Employees) N = 197	Large (500 Employees and over) N = 89
Family leave above required FMLA leave	39%	35%	41%	41%
Family leave above required state FMLA I	28%	23%	31%	30%
Paid family leave	24%	23%	23%	31%
Parental leave above and beyond FMLA	19%	16%	18%	24%
Eldercare leave above and beyond FMLA	13%	10%	13%	17%
Emergency/sick childcare	9%	8%	8%	12%

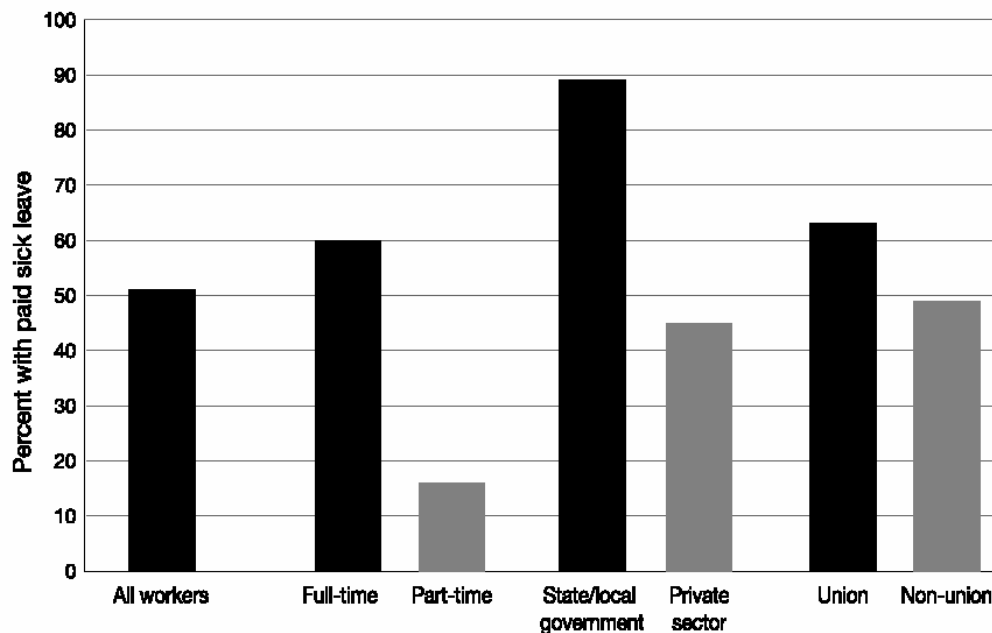
V. Paid Sick Leave[‡]

- **Who has access to paid sick leave in the public sector?**
 - 100% of all full time federal employees
 - 96% of all full time state and local employees⁷
 - 43% of part time state and local employees⁸
- **Who has access to paid sick leave in the private sector?**
 - 53% of private sector workers have paid sick days⁹
 - 58% of employees in medium-large establishments (those with either 100 or 250 employees or more)
 - 50% of those in small establishments that employ fewer than 100 workers

[‡] DOL data from the National Compensation Survey (2001; 2003) and the reports on Employee Benefits in Private Establishments and State and Local Governments (1998, 1999, 2000) provide the baseline information for this section. These reports, as well as the supplementary non-governmental information included in this section, represent data collected or analyzed over different timeframes and population samples and, therefore may not be comparable.

- Recent assessments of private sector sick leave coverage by various public and private entities identify coverage rates that vary from 51% - 68% reflecting different survey sample frames and, potentially, changing workforce benefit patterns.¹⁰
- **How does paid sick leave vary by work sector, status, and allowable use?**
 - Paid sick leave variation within private industries is considerable and is strongly associated with job characteristics. Utilities, and educational, financial, and information services lead with the best coverage. Retail, manufacturing, and service industries offer the least. Similarly, administrative, technical, and other professional occupations are almost twice as likely to have paid sick leave as service workers, machine operators, and other blue-collar employees, 62% or whom are likely to lack any paid sick leave.¹¹

Figure 2. Percent of workers with paid sick leave, by work hours, sector, and union status, 1996-1998



Notes: Work hours are as defined by the individual reporting establishment. "Union" includes all workers whose working conditions are collectively bargained. Dataset excludes federal, military, agricultural, household, and self-employed workers.

Source: Institute for Women's Policy Research analysis of the 1996-1998 Employee Benefits Surveys.

*This recent IWPR report¹² uses Department of Labor 1996-1998 sick leave data for non-agricultural employees in the public and private sectors excluding those in federal, military, self- or household employment. The report then adjusts the workforce population to 2003 participation levels in order to arrive at these graphs and numbers.

- **How many paid sick days do workers have per year?**
 - Of non-federal, non-agricultural workers:
 - 18.5% have 1-6 paid sick days¹³
 - 48% have 0 paid sick days¹⁴

- This includes 76% of low-wage workers¹⁵
 - 41% of working parents with incomes below 200% of poverty have no paid leave of any kind, including sick leave¹⁶
- Most federal, state, and local employees have 13 days/yr¹⁷
- **Are there restrictions on the use of paid sick leave for the care of a sick child?**
 - While over half of workers have some kind of paid sick leave, only 33% report being able to use that leave for their own doctor's appointments and 30% may use it to care for a sick child. Private industry is considerably more restrictive than public sector employment in this arena.¹⁸

¹ According to the methods section of the Survey of Employees, the survey was conducted with a sample of 2,558 individuals aged 18 or older in U.S. households who were employed at any time between January 1, 1999 and the time of the survey (between 18 and 20 months, depending on when the interview occurred). The sample was drawn from the universe of all known U.S. households with telephones. Weighting procedures inflated the population estimates from the survey to reflect all households in the country, including those without telephones. Then, by using the U.S. Census totals, the estimates incorporated a correction for undercounting particular subgroups in the population. The resulting workforce population estimate was 144,019,296. Households that refused to complete the 2000 screener tended to consist of persons that were not employed during the reference period. All other things being equal, this may have lead to a higher estimate of the total number of employed persons in the 2000 survey.

² A clarification in the methods section of the establishment survey indicates that multi-establishment employers with 50 or more employees beyond 75 miles (but less than 50 within 75 miles) were not counted as covered, while some employers with a large number of seasonal employees may also have been classified as non-covered. Thus, the number of covered employers is likely under-estimated buy the 2000 Survey of Establishments.

³ Much of the DOL 2000 survey data in this section is expertly excerpted in Casta, N. (Ed.) (n.d.). *Highlights of the 2000 U.S. Department of Labor Report, Balancing the Needs of Families and Employers: Family and Medical Leave Surveys*. Washington, D.C: National Partnership for Women and Families.

⁴ The 2000 Survey of Establishments notes in its methods section 2.2 the following: "The sample... was designed to cover all private business establishments excluding self-employed without employees, government and quasi-government units (federal, state, and local governments, public educational institutions, and post offices). The sample frame was the Dun and Bradstreet's Dun's Market Identifiers (DMI). This is considered to be the most comprehensive commercially available list of U.S. businesses. Most All estimates in this report adjust for over-sampling large establishments by weighting establishments by their probability of selection in order to produce unbiased estimates of establishments in the United States."

⁵ Galinsky, E. & Bond, J.T. (1998). *The 1998 Business Work-Life Study – Executive Summary*. New York: Families and Work Institute, p. iv.

⁶ Society for Human Resource Management (SHRM) (2004). *2004 Benefits Survey Report*. Alexandria, Virginia: Author, p.4.

⁷ U.S. Department of Labor (2000). *Employee Benefits in State and Local Governments, 1998*. Washington, D.C. Bureau of Labor Statistics. Retrieved September 2004, from <http://www.bls.gov/ncs/ebs/home.htm>

⁸ U.S. Department of Labor (2000). *Employee Benefits in State and Local Governments, 1998*.

⁹ U.S. Department of Labor (2001). *Employee Benefits in Private Industry, 1999*. Washington, DC. Bureau of Labor Statistics. Retrieved September 2004, from <http://www.bls.gov/ncs/ebs/home.htm>

¹⁰ See, for example, Bond, J.T., Galinsky, E., & Hill, E.J. (2004). *Workplace Flexibility: What is it? Who has it? Who wants is? Does it make a difference?* New York: Families and Work

Institute; Lovell V. (2000). *No Time to be Sick: Why Everyone Suffers When Workers Don't have Paid Sick Leave*. Washington, DC: Institute for Women's Policy Research; U.S. Department of Labor (2001). *National Compensation Survey: Employee Benefits in Private Industry in the United States, 1999, Supplementary Tables*. Washington, D.C.: Bureau of Labor Statistics. Retrieved September 2004, from <http://www.bls.gov/ncs/ebs/home.htm>

¹¹ National Research Council and the Institute of Medicine (2001). *Working Families and Growing Kids, Caring for Children and Adolescents*. Smolensky, E., and Gootman, J.A. (Eds.). Committee on Family and Work Policies. Washington, D.C: The National Academies Press. p. 237.

¹² Lovell V. (2000). *No Time to be Sick: Why Everyone Suffers When Workers Don't have Paid Sick Leave*.

¹³ Lovell V, Gault, B., & Hartmann H. (2004). *Expanded Sick Leave Would Yield Substantial Benefit to Business, Employers and Families*. Washington, D.C: Institute for Women's Policy Research.

¹⁴ Lovell V. (2000). *No Time to be Sick: Why Everyone Suffers When Workers Don't have Paid Sick Leave*, p.7.

¹⁵ Heymann J. (2000). *The Widening Gap: Why America's Working Families Are in Jeopardy and What Can Be Done About It*. NY: Basic Books, p. 62.

¹⁶ Phillips K.. (2004). *Getting Time Off: Access to Leave among Working Parents*. Washington, DC: The Urban Institute.

¹⁷ U.S. Department of Labor (2000). *Employee Benefits in State and Local Governments, 1998*.

¹⁸ Lovell V. (2000). *Time to be Sick: Why Everyone Suffers When Workers Don't have Paid Sick Leave*, p.9.