



A Family Perspective on the Family and Medical Leave Act of 1993

Mary Breidenbach
University of Wisconsin, Madison

Abstract:

In the year 2000, almost two-thirds (64%) of married-couples with children under age 18 were families in which both spouses were employed outside the home (Bureau of Labor Statistics, 2001). In that same year, nearly a third (31%) of families with children under 18 were single-parent households. These numbers show how many households must work to balance employment with family responsibilities. The Family and Medical Leave Act (FMLA) of 1993 is the first federal legislation in the United States to provide a comprehensive leave policy to employees. The law allows employees to take time off from work to care for new or seriously ill family members without the risk of losing their jobs or benefits. The Act states that employees who work in firms of more than 50 employees have the right to take a total of 12 weeks of unpaid leave per year. The Family and Medical Leave Act recognizes the important role family members can play in caring for one another, but lack of paid leave and eligibility limitations may hinder the effectiveness of the legislation's ability to aid family strength and functioning. Examining this piece of legislation from a family perspective highlights both positive and negative consequences that may arise from its implementation, as well as the possibilities for improving its ability to assist families in times of need.

Introduction:

Over the last 30 years, the number of two-parent, single-earner families has dramatically decreased. In the year 2000, almost two-thirds (64%) of married-couple families with children under age 18 were dual-earner families, or families in which both spouses were employed outside the home (Bureau of Labor Statistics, 2001). The number of single-parent families has also been growing. In the year 2000, 26% of families with children under age 18 were single-mother families (compared to 12% in 1970) and 5% were single-father families (compared to 1% in 1970) (Fields & Casper, 2001). Of these parents, more than three quarters (76%) of single mothers and almost nine out of 10 (87%) of single fathers were employed (Bureau of Labor Statistics, 2001). With these changes, most families no longer have an available parent to care for children when they are working outside the home.

More working families are also facing caregiving responsibilities for family members with physical or mental illnesses or disabilities. In the early 1990s, one Wisconsin study of employed white men and women ages 53-54, found that one of every eight people

reported caring for family or friends with physical or mental illnesses or disabilities for at least one month during the previous year (Marks, 1998). Approximately one in every three people reported caring for disabled or ill family or friends for at least one month at some point in their lives (Marks, 1998).

Thus, many working adults are struggling to balance employment with family responsibilities. The Family and Medical Leave Act of 1993 is designed to help ease this struggle for working families. It is the first federal legislation in the United States to provide a comprehensive leave policy to employees. The law allows employees to take time off from work to care for new or seriously ill family members without the risk of losing their jobs or benefits. Prior to the passage of the Family Medical Leave Act in 1993, 34 states had adopted varying versions of the similar laws. While states' statutes on coverage varied widely, some had language even stronger than that ultimately passed at the federal level.

Background:

Family leave became an important issue with the increase in the number of women entering the workforce. Although the issue arose during World War II, when many women entered the workforce while their husbands were abroad, a strong push for legislation did not begin until the late 1970s and early 1980s (Hayes, 2001). The first of this legislation was the Pregnancy Discrimination Act passed in 1978, which required employers to provide pregnancy disability leave to women if employers also offered other disability benefits to their employees. In 1984, a call for legislation that specifically guaranteed job reinstatement after maternity leave began after a California statute requiring employers to offer four months of maternity leave was invalidated because it discriminated against men. The Parental and Disability Leave Act, introduced to Congress in 1985, was intended to guarantee both mothers and fathers 18 weeks of unpaid leave for birth or adoption. The bill was subsequently reintroduced each year with various changes, including shorter amounts of leave, more eligibility requirements, and more exemptions for small businesses, although it was never actually passed. On two occasions a Family and Medical Leave Act passed the Congress but was vetoed by President George Bush in June 1990 and September 1992. In 1993, the first piece of legislation signed by newly-elected President Bill Clinton was the Family and Medical Leave Act.

Legislation:

The Family and Medical Leave Act states that employees have the right to take a total of 12 weeks of unpaid leave per year in order to care for a newborn son or daughter during his or her first year of life or to care for an adopted or foster care child during the first year after placement (29 U.S.C. § 2612(a)(1)). Leave may also be taken in order to care for a spouse, child, or parent with a serious health condition, or if an employee's own serious health condition prevents the employee from working. A serious health condition is defined in the act as an illness that requires inpatient care at a hospital, hospice, or residential medical care facility, or that requires continuing treatment by a

doctor of medicine or osteopathy (29 U.S.C. § 2611(11)). Intermittent or reduced leave may be taken when caring for a spouse, child, or parent with a serious health condition or when the employee has a serious health condition if it is medically necessary (29 U.S.C. § 2612(b)(1)). However, intermittent or reduced leave is not permitted in order to care for a newborn, adopted, or foster child unless the employer and employee agree that this is the best arrangement.

To be eligible for leave, employees must work for an employer that has at least 50 employees at their worksite for at least 20 weeks during the year, or has a total of at least 50 employees at all of the employer worksites within a 75 mile radius (29 U.S.C. §§ 2611(4)(A)(i), 2611(2)(B)(ii)). Due to these restrictions, the FMLA covers only about 6% of corporations in the United States, and approximately 60% of the labor force (Dr. Steven Wisensale, personal communication, 9/10/2002). Additionally, eligible employees must also have been employed with the employer for at least 12 months and have worked at least 1250 hours during the previous 12-month period (29 U.S.C. §2611(2)(A)).

During leave, employees retain all of the employment benefits that they have accrued prior to the leave, including health insurance coverage (29 U.S.C. §§ 2614(a)(2), 2614(c)(1)). When employees return to work, employers must restore to them the position that they held before they left or an equivalent position in terms of benefits, pay, and the terms and conditions of employment (29 U.S.C. § 2614(a)(1)). The only exception is for salaried employees who are among the highest paid 10% of employees at all of the employer worksites within a 75 mile radius (29 U.S.C. § 2614(b)(2)). Employers are not required to reinstate high-level positions after leave if protecting these positions during leave would result in considerable economic loss, as long as employees are notified of this decision (29 U.S.C. § 2614(b)(1)).

Family Impact:

Because the Family Medical Leave Act targets families at crucial junctures in the life cycle, it is worth considering how the legislation might impact the strength, stability, and functioning of family life. In the following, the Family Impact checklist (Bogenschneider & Mills, 2002, adapted from Ooms and Preister, 1988) is used to assess the degree to which the Family and Medical Leave Act is supportive of families. The questions following each Family Impact principle were selected from the Family Impact checklist based on their relevance to the legislation.

Principle 1. Family support and responsibilities.

- Does the policy support and supplement parents' and other family members' ability to carry out their responsibilities?

The Family and Medical Leave Act supports families' caregiving responsibilities for new or ill immediate family members. Because of the legislation, employees who qualify for leave no longer have to make the difficult decision between losing their jobs to care for family members or finding alternative care. However, it does not allow family members

to care for relatives other than parents, spouses, or children. For example, if an individual wanted to take unpaid family leave to care for an extended family member—including a sibling, parent-in-law, or grandparent—he or she would be unable to do so under this legislation. This could be very problematic for families if eligible relatives live too far away, are unwilling or cannot afford to take leave from work, or if no family member meets the eligibility criteria.

- Does the policy set unrealistic expectations for families to assume financial and/or caregiving responsibilities for dependent, seriously ill, or disabled family members?

Since the Family and Medical Leave Act does not provide for paid leave, it requires families to have saved enough money in order for an individual to take time off from work to care for other members of the family. This requirement seems inappropriate because in many cases the expenses of substitute care would fall on the government if families did not provide care for their dependent and seriously ill members. For many families, the assumption that the family should bear both the financial and caregiving burdens may be unrealistic. In 1996 and in 2000, the U.S. Department of Labor conducted studies that revealed two out of three people who said they did not use FMLA leave but wanted to, cited financial reasons for doing so (Wisensale, 2001). These studies also found that the average length of leave taken is seven weeks, which is only slightly more than half of the time allowed under the legislation. Shorter leave time is often necessitated by financial constraints.

- Does the policy provide incentives for other persons to take over family functioning when doing so may not be necessary?

If families can afford for one member to take time off from work, the legislation is supportive in that it allows family members to provide care without the risk of losing their jobs. However, since many families may not be able to afford for one of their members to take unpaid time off from work, the legislation indirectly provides incentives for families to hire others to care for their family members. Family members may find that it is less expensive to use childcare or nursing care rather than to take family leave, even if they would prefer to be the caregivers for their children or seriously-ill family members.

Principle 2. Family membership and stability.

- Does the policy provide incentives or disincentives to give birth to, foster, or adopt children?

The FMLA supports family growth. It may be easier to decide to have or adopt children or provide foster care for children if employees know that they have the option of taking time off from work in order to care for their new children without the risk of losing their jobs.

- Does the policy strengthen marital commitment or parental obligations?

By allowing parents to take leave during the first year after the birth, adoption or placement of a foster care child, the legislation is promoting parental involvement with

their children. Parents' feelings of competence as child-rearers might be enhanced by spending more time with their children, especially while their children are young and the parent-child attachment relationship is just beginning to develop. Supporting strong early parent-child bonds may help get children off to a good start and may cement parents' obligations to their children in the future.

The FMLA does not specifically target marital commitment, although spouses are granted leave time to care for one another. However, if one partner is ill enough to require care from the other, this may leave some families with no source of income, thus threatening financial security. On the other hand, for partners able to afford to take leave to care for one another, this could strengthen marital bonds.

- Does the policy recognize that major changes in family relationships such as divorce or adoption are processes that extend over time and require continuing support and attention?

At the employer's discretion, the FMLA legislation permits parents to take intermittent or reduced leave in order to care for their newborn, adopted, or foster children over the first year after a child's birth or adoption. The law also allows parents to take leave at any time during these first 12 months (29 C.F.R. 825.203). Thus, in two-parent households, one parent can take the first three months after the child's birth or adoption, and the other can take leave for the three months afterward. In those cases where employers allow intermittent leave, new parents may benefit from the extended time allowed to adjust to new relationships and family structures. However, by leaving the decision about intermittent leave up to employers, the law does not offer the same support that it would were intermittent leave a required provision. Intermittent or reduced leave may make it easier for both parents to take some leave to spend with their new child, rather than requiring one parent to continue to work while the other takes a full-time leave.

Principle 3. Family involvement and interdependence.

- To what extent does the policy recognize the complexity and responsibilities involved in caring for family members with special needs (e.g., physically or mentally disabled, or chronically ill)?

This legislation recognizes that caring for seriously ill family members may require employees to take intermittent or reduced leave that is extended over a longer period of time. However, the FMLA excludes family members who want to take family leave to care for disabled relatives who do not have a serious health condition requiring inpatient care or regular care by a physician. Because of the lack of paid leave, the act also fails to acknowledge that balancing financial and caregiving responsibilities can present a substantial challenge to many families.

- To what extent does the policy respect family decisions about the division of labor?

The FMLA implicitly supports only a separate division of labor since it does not require employers to allow employees to take intermittent or reduced leave for the birth,

adoption, or foster placement of a child. Since full-time leave is unpaid, families who can afford it are forced to choose one member to provide the full-time, unpaid caregiving while another is employed full-time. Additionally, given that male wage earners are better compensated than female wage earners, the FMLA lends support to the traditional gender norms of women as caregivers and men as breadwinners. However, many family members may wish to share caregiving and breadwinning responsibilities. The FMLA would be more supportive of these families' decisions if it would require employers to allow part-time leave, so that family members could alternate care-giving responsibilities.

- To what extent does the policy assess and balance the competing needs, rights, and interests of various family members?

The FMLA recognizes that children and seriously ill family members need to be cared for and that employed family members who are willing to provide care need to be assured of continuing benefits and job protection. It is supportive of these needs by allowing children and ill family members to be cared for by their families while making sure that individuals will not have to choose between providing care and keeping the positions within their work organizations that may have taken years to achieve. However, the act does implicitly pit financial responsibilities against those related to caregiving. Additionally, it does not address extended family members' potential needs or rights to be involved in caregiving for new or seriously ill family members.

Principle 4. Family partnership and empowerment.

- In what specific ways does the policy provide full information and a range of choices to families?

The FMLA requires that employers post employees' entitlements under the legislation in a conspicuous location at the worksite. Information about the employer's guidelines and employees' obligations must also be included in employee handbooks or manuals or must be given upon request. However, more employees might be reached if information related to the FMLA was discussed during training or orientation meetings. This would give employees the opportunity to ask questions about the FMLA when they are in a less vulnerable position instead of when they are considering whether to take leave.

- In what specific ways does the policy prevent participating families from being devalued, stigmatized, or subjected to humiliating circumstances?

The legislation requires that employees be returned to their original positions or equivalent ones, which should guard against demotions or loss of status for employees who choose to take family leave. However, it does not address how to protect employees from stigma or humiliation when they choose to take leave. This may be particularly important for men who wish to take leave, since prevailing assumptions often view caregiving as women's work. In fact, the Family and Medical Leave Act states that women will be more likely to need family leave provisions than men because "the primary responsibility for family caretaking often falls on women"(29 U.S.C. §

2601(a)(5)). It further states that the primary reason for offering family leave to men as well as women is to avoid discrimination against women by employers (29 U.S.C. § 2601(a)(6)). Men may be discouraged from taking leave because the legislation is written in this manner. The legislation would have guarded against humiliation and stigmatization if it had instead acknowledged that men also have responsibilities to care for their families and had encouraged training for supervisors or managers on how to be supportive of all employees' right to take family leave.

Principle 5. Family diversity.

- How does the policy affect various types of families?

Commendably, the law does recognize the formation of families through adoption or foster care, which can be seen as supportive of different types of families. However, several potential barriers exist for diverse families under this law. First, only legally married couples are eligible to take family leave to care for each other in the event that one of them develops a serious health condition. This legislation excludes gay and lesbian couples, as well as long-time cohabiting couples. If gay and lesbian couples have children that have not been legally adopted by one of the partners, the unrelated partner would not be able to take family leave to care for the child. Similarly, later in life the child would not be able to take family leave to care for the unrelated partner, even if the child considered the partner to be a parent.

Additionally, it might be more feasible for married dual-earner families to take unpaid leave than married single-earner families or divorced/separated families, because the former would have at least one person's income to rely upon during the leave. This being said, if both partners work for the same employer, they can receive only twelve total family leave weeks that must be split between them (29 U.S.C. § 2612(f)).

Finally, families who are at early or late stages in their development may not be able to utilize the FMLA under its current restrictions. Young couples may not have worked for more than a year with the same employer when they have their first child. If this is the case, they are not eligible to take family leave under the FMLA. Also, it is unlikely that young couples will have saved enough money to be able to take unpaid leave, which may prevent them from utilizing the FMLA. On the other hand, older individuals who have built a solid career with the same employer over a lifetime and as a result are among the highest paid 10% of the employees at their workplace may be denied restoration of their positions if they take leave under the FMLA. This may make it infeasible for them to take leave, which could be detrimental to their relationships with their children and families.

- How does the policy acknowledge intergenerational relationships and responsibilities among family members?

While the FMLA supports connections between parents and children, it does not support relationships among extended family members. The legislation only allows immediate relatives to take leave to care for each other (i.e. spouse, child, parent), rather than extended family members. Families who maintain close ties with their

extended family and want to care for each other are not able to take family leave under this legislation.

- How does the policy identify and respect the different values, attitudes, and behavior of families from various racial, ethnic, religious, cultural, and geographical backgrounds that are relevant to program effectiveness?

The inability to care for extended family members under the FMLA may be particularly problematic for people who have strong and extensive family bonds, among them many families of diverse racial and ethnic backgrounds. The FMLA requirement that relatives be inpatients at medical facilities or be seen regularly by a physician may also be problematic for people of diverse backgrounds. In some cultures or religions, physicians may not be as relied upon as in the mainstream culture and those with serious medical conditions may refuse to see a physician. Finally, because the FMLA denies family leave to employees who work for small employers, it is more likely that employees in rural communities or small towns will be ineligible for family leave.

Principle 6. Support of vulnerable families.

- Does the policy identify and publicly support services for families in the most extreme economic or social need?

The FMLA legislation recognizes that there has been an increase in single-parent and dual-earner households and that there is a “lack of employment policies to accommodate working parents” (29 U.S.C. § 2601(a)(1)). However, single parents, who most likely have the greatest difficulty balancing work and family responsibilities, will be unlikely to be able to take advantage of the FMLA since it does not provide paid family leave. Similarly, even though low-income families are the least likely to be able to afford alternative care for their family members, family leave will not be feasible because it is unpaid.

- Does the policy give support to families who are most vulnerable to breakdown and have the fewest resources?

Families who care for seriously disabled or chronically ill family members may be the most in need of family leave support. However, because the leave is available for only twelve weeks per year, it is possible that individuals who choose to care for family members with long-term special needs could be forced to quit their jobs, thus compounding financial and emotional risks for the entire family network.

The extent to which welfare-to-work participants are covered by FMLA, or, if they are covered, how often they take advantage of this right has yet to be documented. Additionally, there is insufficient data on how often these individuals are forced to quit their jobs to take on caregiving responsibilities that extend beyond the limits of FMLA leave. Because of the economic and accompanying social vulnerability of transitioning for welfare assistance, these individuals may be in particular need of additional attention and support.

Policy Considerations:

Overall, the Family and Medical Leave Act of 1993 is a first step in recognizing the importance of caregiving by family members and making sure that employees who take time off from work to care for family members will not lose their jobs. However, legislators and policy analysts might do well to consider these two ways that the FMLA might be made more applicable to and supportive of all families.

1. *Paid leave.* Because the leave is unpaid, it is likely that many family members are still unable to provide care. Financial constraints are particularly likely when care is needed most, i.e. when babies are born, children are adopted, or when family members are extremely ill. For many low-income or single-parent families who are facing financial difficulties and cannot afford alternative care, taking unpaid leave is not an option. Without paid family leave, family members will continue to be burdened with financial and caregiving responsibilities.
2. *Eligibility.* Since the FMLA allows only immediate family members to provide care, family members most willing or able to take leave may not be eligible. If the FMLA was amended to include more eligible relatives, families could make their own decisions about who should provide care, rather than be constrained by the current family member definitions.
3. *Intermittent leave.* As the law currently stands, flexible or reduced leave is available to parents at the discretion of the employer. If employers were more rigorously encouraged to offer flexible leave options, it could make it more feasible for both parents in dual earner families to take some leave time to spend with their children. Intermittent or reduced leave would also be more practical for families adopting or fostering older children, who may need to spend more time with their new parents throughout the first year, but do not require the intensive care of a newborn.

For families with new children or seriously ill members, the opportunity to take time away from work for caregiving without the risk of losing employment security is a crucial support to family well-being. The Family Medical Leave Act recognizes the important role family members can play in caring for one another, but lack of paid leave and eligibility limitations may hinder the effectiveness of the legislation's ability to aid family strength and functioning. Examining this piece of legislation from a family perspective highlights both positive and negative consequences that may arise from its implementation, as well as the possibilities for improving its ability to assist families in times of need.

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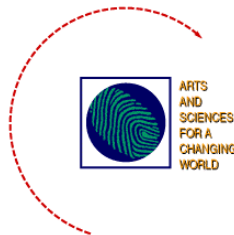
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