



The Family and Medical Leave Act (FMLA): Policy Issues

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Summary

The Family and Medical Leave Act (FMLA) requires covered employers to allow eligible employees to take up to 12 weeks of leave during any 12-month period to care for a newborn, adopted, or foster child; to care for a family member with a serious health condition; or because of the employee's own serious health condition. The act allows eligible employees to take up to 12 weeks of leave because of "qualifying exigencies" when a family member who is in the Armed Forces or National Guard is deployed overseas. An employee may also take up to 26 weeks of leave during a single 12-month period to care for a servicemember who was seriously injured while on active duty.

To assist Congress in evaluating proposals to expand or limit the availability of FMLA leave, this report uses data from two household surveys. The Annual Social and Economic (ASEC) supplement to the monthly Current Population Survey (CPS) is used to estimate the number of employees who may or may not be *eligible* for FMLA leave. Data from a 2012 survey conducted for the U.S. Department of Labor (DOL) are used to compare the *use* of leave for FMLA-related reasons by employees who may or may not be eligible for leave.

- An analysis of employees ages 18 and over shows that a majority of employees may be eligible for FMLA leave. Based on responses from 91,349 employees to the ASEC supplement, in 2011 an estimated 56.5% of employees were likely eligible for FMLA leave. According to the 2012 DOL survey of 2,852 employees, approximately 59.2% of employees may be eligible for FMLA leave.
- According to the 2012 DOL employee survey, an estimated 15.9% of employees who may have been eligible for FMLA leave used leave for FMLA-related reasons in the year before they were surveyed. By contrast, approximately 10.2% of employees who were likely ineligible for FMLA leave took leave for FMLA-related reasons.
- According to the ASEC supplement, in 2011 men were more likely than women to be eligible for FMLA leave (57.2% compared to 55.6%). However, according to the 2012 DOL employee survey, women were more likely than men to take leave for FMLA-related reasons. Among employees who were likely eligible for leave, 17.9% of women and 14.1% of men took leave in the past year.
- Employees between the ages of 34 and 49 were more likely (62.7%) than younger (48.5%) or older (57.9%) workers to be eligible for FMLA leave. But, workers ages 50 and over were more likely (17.9%) to have taken leave in the past year for FMLA-related reasons.
- Married employees were more likely (60.4%) than employees who were not married to be eligible for FMLA leave. Married workers were also more likely (16.8%) than unmarried workers to have taken FMLA-related leave in the past year.
- For a majority of employees (56.6%), the most recent medical reason for taking leave was for the employee's own illness.
- Employees with a Bachelor's or advanced degree were more likely than other employees to be eligible for FMLA leave. By contrast, employees with a high

school degree or less were more likely than other employees to have taken FMLA-related leave in the past year.

- An estimated 91.0% of federal, 80.5% of state, and 73.5% of local government employees may be eligible for FMLA leave, compared to 52.1% of private-sector employees.
- The percentage of employees who may be eligible for FMLA leave increased with annual earnings. On the other hand, among employees who were likely ineligible for FMLA leave, the percentage who took leave for FMLA-related reasons in the past year was higher among employees with lower incomes.
- Approximately 75.3% of employers with FMLA-eligible employees report that it is “very” or “somewhat” easy to comply with the FMLA, while 14.6% report that it is “very” or “somewhat” difficult to comply with the FMLA.

In the years before 1993, when the FMLA was enacted, the U.S. workforce and American family had changed. The labor force participation rate for women had been rising steadily, more married women with children were working, and more families were headed by single parents. For employees who did not have job-protected family or medical leave, the FMLA was intended to address these changes. Since it was enacted, supporters of the FMLA have proposed different ways to expand the program. Among the changes are proposals to expand employee eligibility, cover more employers, allow eligible employees to take leave to care for more family or household members, or expand the types of FMLA leave. On the other hand, others have proposed changes that would narrow the definition of a serious health condition or curtail the use of intermittent leave for a chronic health condition.

In general, those who favor expanding the FMLA argue that these changes would further the objectives of the act. For a number of reasons, some employers and policymakers may oppose an expansion of FMLA leave. For instance, expansion could increase employer administrative and operating costs. If additional employees become eligible for, and take, FMLA leave, employers may have to make more adjustments to work schedules. In order to maintain the same level of output of goods or services, some employers may need to hire more workers or pay more workers for overtime. An expansion of FMLA leave could create an incentive for employers to hire more part-time workers. Extending FMLA coverage to smaller employers could impose greater costs on those employers than on larger employers.

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The Family and Medical Leave Act (FMLA, P.L. 103-3) requires covered employers to provide job-protected leave to eligible employees. The act allows employees to take up to 12 weeks of leave during any 12-month period to care for a newborn, adopted, or foster child; to care for a family member with a serious health condition; or because of the employee's own serious health condition. The act allows employees to take up to 12 weeks of leave for reasons called "qualifying exigencies" when a family member who is in the Armed Forces or National Guard is deployed overseas. An employee may also take up to 26 weeks of leave during a single 12-month period to care for a military servicemember who has been seriously injured while on active duty.

This report begins with a brief description of the FMLA.¹ Proposals have been made to expand or limit the FMLA. To help identify some of the potential effects of these proposals, the report analyzes data on changes over time in the percentage of employees ages 18 and over who meet some of the main employee eligibility criteria for FMLA leave. The report then compares selected characteristics of employees who may be eligible for FMLA leave with employees who are likely ineligible for leave. The report also compares the use of leave for FMLA-related reasons by employees who may be eligible for leave and employees who are likely ineligible for leave.

The report ends with a discussion of several FMLA policy issues. In recent Congresses, legislation has been introduced that would amend the FMLA to expand employee eligibility or employer coverage, allow eligible employees to take leave to care for additional family or household members, and expand the types of FMLA leave.² Other proposals would limit access to FMLA leave.³

Basic Provisions of the Family and Medical Leave Act (FMLA)

The FMLA was enacted in 1993. As amended, the act requires covered employers to provide eligible employees with two types of job-protected leave: regular leave and military family leave. Military family leave consists of qualifying exigency leave and military caregiver leave.

¹ For a more detailed description of the Family and Medical Leave Act, see CRS Report R42758, *The Family and Medical Leave Act (FMLA): An Overview*, by (name redacted).

² For example, in the 113th Congress, the Family and Medical Leave Inclusion Act (S. 846, S. 857, and H.R. 1751) would allow an employee to take FMLA leave to care for an adult child, sibling, grandchild, grandparent, or parent-in-law who has a serious health condition. It would also allow an employee to take leave to care for a domestic partner (including a same-sex spouse) or a partner's family member who has a serious health condition. The legislation would allow an employee who is the domestic partner, son-in-law, daughter-in-law, grandparent, or sibling of a servicemember with a serious illness or injury to take leave to care for the servicemember. The Parental Bereavement Act of 2013 (S. 226 and H.R. 515) would allow parents to take FMLA leave because of the death of a child.

³ For example, in the 108th Congress, the Family and Medical Leave Clarification Act (H.R. 35) would have amended the FMLA to revise the definition of serious health condition to exclude short-term illnesses from FMLA coverage and include a list of examples of the types of illnesses covered by the FMLA. The act would have also required that intermittent leave be taken in increments of up to half a work day. In the same Congress, similar legislation was introduced in the Senate (S. 320).

Eligible Employees

Under the FMLA, an eligible employee is an employee who has worked for an employer for at least 12 months (the 12 months need not be consecutive) and for a minimum of 1,250 hours in the 12 months preceding the start of FMLA leave. An employee must be employed at a worksite where the employer has at least 50 employees or there are at least 50 employees who work for the employer within 75 miles of the employee's worksite.

Covered Employers

The FMLA covers both private and public sector employers. Private employers who employed at least 50 employees for at least 20 weeks in the preceding or current calendar year are covered by the FMLA. Public employers are covered regardless of the number of employees. Although the FMLA covers public employers of all sizes, to be eligible for leave, public employees must meet the above employee eligibility requirements.

Job-Protected Leave

After returning from FMLA leave, employees generally have the right to return to the same, or an equivalent, job with the same pay, benefits, and working conditions.

Paid Versus Unpaid Leave

FMLA leave is generally unpaid leave. But, an employee may substitute paid leave for FMLA leave. Private employers may require an employee to substitute paid leave for unpaid FMLA leave. Federal agencies cannot require employees to substitute paid leave for unpaid FMLA leave. When paid leave is substituted for unpaid FMLA leave, the employee receives pay while on leave and receives the job protections of the FMLA. While an employee is on FMLA leave, an employer must maintain the employee's group health insurance coverage.

Regular FMLA Leave

An eligible employee may take up to 12 weeks of leave during any 12-month period for the birth and care of a child; to care for an adopted or foster child; to care for a spouse, child under the age of 18, or parent with a serious health condition; or if the employee is unable to work because of the employee's own serious health condition.

The 12 weeks of FMLA leave may be continuous or "intermittent." The FMLA requires an employer to allow an employee to take intermittent leave or work part-time if the employee has a medical need for leave. Although it is not required by the FMLA, an employer may voluntarily allow an employee to take intermittent leave or work part-time due to the birth of a child or to care for an adopted or foster child.

Military Family Leave

Covered employers must allow eligible employees to take two types of military family leave. First, eligible employees may take up to 12 weeks of leave during a 12-month period for a

“qualifying exigency.” Eligible employees include the spouse, son or daughter of any age, or parent of a member of the regular Armed Forces who is deployed to a foreign country or a member of the National Guard or Reserves who has been called to active duty and is deployed to a foreign country. A qualifying exigency includes a “short notice deployment” (which is a notice that a member of the employee’s family will be deployed in seven days or less); time for the employee to arrange for childcare, make financial or legal arrangements, or attend official ceremonies; or up to five days of leave to spend time with a member of the military who is on temporary leave for rest and recuperation during a deployment.

Second, eligible employees may take up to 26 weeks of military caregiver leave during a single 12-month period. An employee who is the spouse, son or daughter of any age, parent, or next of kin of a covered servicemember may take military caregiver leave to care for a servicemember who has suffered a serious injury or illness while on active duty. A covered servicemember is either a current member of the regular Armed Forces or the National Guard or Reserves or a veteran who was a member of the regular Armed Forces or National Guard or Reserves during the five years before the date on which the veteran receives treatment.

Airline Flight Crews

Special FMLA rules apply to airline pilots, flight attendants, and other airline crewmembers. A member of an airline flight crew is eligible for FMLA leave if he or she worked (a) at least 504 hours during the previous 12-month period for the employer and (b) at least 60% of the minimum number of hours that the employee was scheduled to work in any given month or, for an employee who is in “reserve status,” at least 60% of the hours that an employee was paid for any given month. The hours that airline flight crews work include the hours spent in flight and the hours that a crewmember is on duty but not in flight. The hours that a crewmember is on duty may include hours between flights or hours during which a crewmember is on reserve status waiting to be called to duty.⁴

Eligibility for FMLA Leave

Proposals have been made to expand or restrict employee eligibility for FMLA leave. One proposal would eliminate the requirement that employees must work 1,250 hours or more during the preceding 12 months for the same employer. Other proposals would expand employer coverage to include more employers or allow leave to care for additional members of an employee’s family or household. A proposal aimed at restricting employee eligibility would narrow the definition of a serious health condition.

To assist Congress in evaluating how these proposals may affect the availability of FMLA leave, this section analyzes data from two household surveys: The Annual Social and Economic (ASEC) supplement to the monthly Current Population Survey (CPS) and a survey of employees conducted in 2012 by Abt Associates for the U.S. Department of Labor (DOL). Data from the

⁴ Prior to enactment of the Airline Flight Crew Technical Corrections Act (AFCTCA, P.L. 111-119), hours worked by airline flight crews only included hours while in flight. Under AFCTCA, hours worked include hours while in flight and hours on duty but not in flight. Final regulations implementing the amendments to the FMLA in AFCTCA were published on February 6, 2013. U.S. Department of Labor, Wage and Hour Division, The Family and Medical Leave Act; Final Rule, *Federal Register*, vol. 78, February 6, 2013.

ASEC supplement are used to estimate the number of employees who may or may not be *eligible* for FMLA leave, while data from the 2012 DOL employee survey are used to examine the *use* of leave for FMLA-related reasons by employees who may or may not be eligible for leave.

Estimates of the Number of Employees Who May be Eligible for FMLA Leave

Data from the ASEC supplement for the years 1993 to 2011 are used to estimate the number of employees ages 18 and over who may be eligible for FMLA leave. The ASEC supplement is a nationally representative survey that is conducted each year. Data from the supplement can be used to determine if employees worked 1,250 hours or more during the previous calendar year and worked for an employer with 50 or more employees. Data from the supplement can also be used to compare the characteristics of workers who may or may not be eligible for FMLA leave. A disadvantage of the ASEC supplement is that it does not ask respondents if they are eligible for FMLA leave. (See the **Appendix** for more information on the data used in this report.)

Using data from the ASEC supplement, employees are categorized as “may be eligible” for FMLA leave if they worked at least 1,250 hours in the previous calendar year and worked for an employer with 50 or more employees. This methodology is subject to certain limitations. First, to be eligible for FMLA leave an employee must have worked 1,250 or more hours for at least 12 months for his or her current employer. Data from the ASEC supplement may show that an employee worked more than 1,250 hours in the previous *calendar* year, but eligibility for FMLA leave is based on the number of hours worked during the 12 months before the start of FMLA leave. In addition, if a person worked for more than one employer, he or she may not have worked for more than 1,250 hours for his or her current employer. On the other hand, an employee who worked 1,250 hours or more during the previous year for his or her current employer may not have worked for that employer for 12 months.

To be eligible for FMLA leave an employee must work for an employer with at least 50 employees working within 75 miles of the employee’s worksite. The ASEC supplement asks employees how many persons work for their employer, but it does not ask how many persons are employed by their employer within 75 miles of the employee’s worksite.

Information on the number of employees who work for employers with 50 or more employees is only available from the ASEC supplement beginning in 2010.⁵ Therefore, for years before 2010, it is not possible to estimate how many persons worked for employers with 50 or more employees. For that reason, the estimates in this section, for the years 1993 to 2011, of the number of employees who may be eligible for FMLA leave include all employees, regardless of the size of their employer.

⁵ The question in the ASEC supplement is: “Counting all locations where this employer operates, what is the total number of persons who work for your employer?” Responses to this question are reported in intervals. Starting in 2010, the intervals are: under 10, 10 to 49, 50 to 99, 100 to 499, 500 to 999, and 1,000 and above. Before 2010, the first two intervals were: under 10 and 10 to 99. Therefore, before 2010, it is not possible to estimate how many employees worked for employers with 50 or more employees. U.S. Census Bureau, *Current Population Survey, 2011 Annual Social and Economic (ASEC) Supplement*, <http://www.census.gov/apsd/techdoc/cps/cpsmar11.pdf>, p. 5-1. (Hereinafter cited as Census Bureau, *Current Population Survey, 2011 Annual Social and Economic (ASEC) Supplement*.)

Changes over time in the percentage of employees who work for employers with 50 or more employees could affect the estimates of the number of employees ages 18 and over who may be eligible for FMLA leave. For example, according to data published by the Small Business Administration (SBA), from 2000 to 2010, the percentage of employees in the private sector who worked for firms with 50 or more employees increased from 70.4% to 71.3%.⁶ If information were available from the ASEC supplement for the years before 2010 of the number of employees who worked for employers with 50 or more employees, this information could affect the change in the number of employees who may be eligible for FMLA leave.

Estimates of the Percentage of Employees Who Work 1,250 Hours or More

Data from the 2012 DOL employee survey are used to compare the use of FMLA leave by employees who may or may not be eligible for FMLA leave. These comparisons are also for employees ages 18 and over. The DOL survey was conducted from February to June 2012 and covers the period from January 2011 to June 2012.⁷

The DOL employee survey asked employees if they took family or medical leave in the past year. The sample for the survey was smaller than the sample for the ASEC supplement, which limits the comparisons that can be made between workers who took or did not take leave for FMLA-related reasons. In the DOL survey, employees are categorized as “may be eligible” for FMLA leave if they were employed at a worksite with at least 50 workers employed by the employer within 75 miles of the worksite, worked for the employer for 12 consecutive months, and worked at least 1,250 hours for that employer in the past year. However, an employee who did not work for his or her employer for 12 consecutive months may have worked for that employer for 12 nonconsecutive months and, therefore, may have been eligible for FMLA leave.

The Trend in the Number of Employees Who May be Eligible for FMLA Leave

Demographic, social, and economic changes can affect the number of employees who may be eligible for FMLA leave. Some of these changes may reflect longer-term trends, while others may be due to shorter-term factors. For example, the size of the U.S. population is increasing, but it is also getting older.⁸ Also, the labor force participation rate for men has decreased in recent decades. After rising for several decades, the labor force participation rate for women has been falling since about 1999.⁹ Employment and hours worked generally rise during an economic

⁶ U.S. Small Business Administration, Office of Advocacy, *Establishments and Employment by Employment Size of Firm*, <http://www.sba.gov/advocacy/849/12162>.

⁷ Jacob Alex Klerman, Kelly Daley, and Alyssa Pozniak, *Family and Medical Leave in 2012: Technical Report*, Abt Associates, Cambridge, MA., September 7, 2012, updated February 4, 2013, <http://www.dol.gov/asp/evaluation/fmla/FMLATEchnicalReport.pdf>, pp. i, 62. (Hereinafter cited as Abt Associates, *Family and Medical Leave in 2012*.)

⁸ CRS Report RL32701, *The Changing Demographic Profile of the United States*, by (name redacted) and (name redacted).

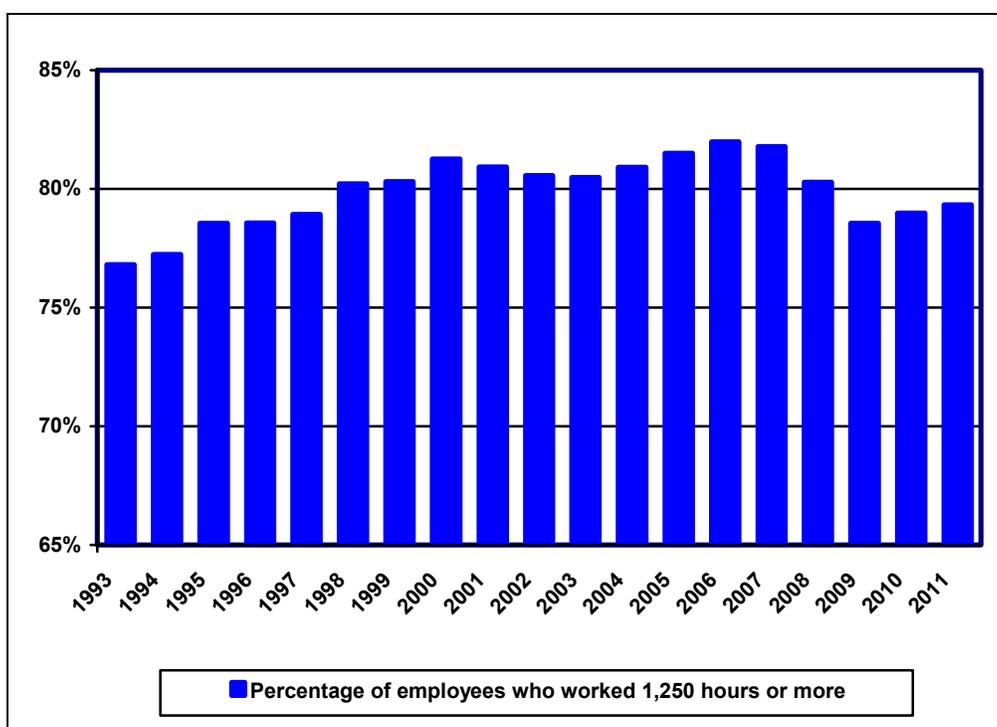
⁹ The labor force participation rate is the number of persons in the labor force divided by the population in the same age range. The labor force consists of persons who are employed or are officially counted as unemployed. U.S. Department of Labor, Bureau of Labor Statistics, *Labor Force Statistics from the Current Population Survey*, <http://stats.bls.gov/cps/data.htm>. (Hereinafter cited as BLS, *Labor Force Statistics from the Current Population Survey*.)

expansion. But, during a recession, employers may lay off workers and reduce the average number of hours worked. Thus, the number of employees who may be eligible for FMLA leave may change over the course of the business cycle.

Employees Ages 18 and Over

An analysis of employees ages 18 and over shows that, from 1993 to 2000, the percentage of employees who worked 1,250 hours or more in the preceding year increased by 4.4 percentage points (after rounding, from 76.8% to 81.3%). From 2006 to 2011, the percentage of employees who worked 1,250 hours or more fell by 2.7 percentage points (from 82.0% to 79.3%). See **Figure 1**.

Figure 1. Percentage of Employees Ages 18 and Over Who Worked 1,250 Hours or More, 1993 to 2011



Source: CRS analysis of data from the Annual Social and Economic (ASEC) supplement to the monthly Current Population Survey (CPS).

Notes: Estimates are for wage and salary workers in both the private and public sectors. Estimates include all employees, regardless of the size of their employer.

From 1993 to 2000, the percentage of employees ages 18 and over who may have been eligible for FMLA leave may have increased because of both longer-term and shorter-term changes. First, the economic expansion of the 1990s was the longest expansion since business cycle data were first collected at the end of the 19th century.¹⁰ More people were working in 2000 than in 1993.

¹⁰ An eight-month recession that lasted from July 1990 to March 1991 was followed by a 120-month expansion from March 1991 to March 2001. The U.S. economy experienced another eight-month recession from March 2001 to November 2001. This recession was followed by a 73-month expansion from November 2001 to December 2007. After (continued...)

The total number of jobs increased by 20.9 million (from 110.8 million to 131.8 million, after rounding). Although the average number of hours worked per week by private nonfarm workers was the same in 2000 as in 1993 (34.3 hours), more workers were employed full-time, year-round (63.1% in 1993 and 69.4% in 2000).¹¹

The decline, from 2006 to 2011, in the percentage of employees who may have been eligible for FMLA leave, may also have been due to both longer-term and shorter-term changes. The recession that officially began in December 2007 and ended in June 2009 was the longest and one of the deepest since the Great Depression of the 1930s. From 2006 to 2011, the number of jobs fell by 4.6 million (from 136.1 million to 131.5 million). The average number of hours worked was falling before, and continued to fall after, the recession (from 34.3 hours in 2000 to 33.6 hours in 2008 and 33.4 hours in 2010). The number of employees working full-time, year round fell from 70.4% in 2006 to 67.4% in 2011.¹²

The Percentage of Employees Who Are Married and the Percentage of Employees Who Have Children Under the Age of 18

According to the 2012 DOL employee survey, among all employees who took medical leave in the previous year, the most common reason for taking leave was for the employee's own illness. An estimated 56.6% of employees said that the reason for their most recent use of medical leave was for their own illness.¹³

The percentage of employees who take medical leave for their own illness may have been affected by two longer-term demographic trends. First, from 1993 to 2011, among employees who may have been eligible for FMLA leave, the percentage who were married fell by 3.2 percentage points (after rounding, from 61.9% to 58.6%). The percentage of eligible employees who had never been married increased by 3.0 percentage points (from 22.8% to 25.8%). Thus, the percentage of employees eligible for FMLA leave with a spouse has fallen.

Second, from 1993 to 2011, among employees who may have been eligible for FMLA leave, the percentage who had children under the age of 18 fell by 5.4 percentage points (after rounding, from 26.8% to 21.5%).

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the 2001 recession officially ended, the unemployment rate continued to rise until June 2003 (from 5.5% in November 2001 to 6.3% in June 2003). National Bureau of Economic Research, *U.S. Business Cycle Expansions and Contractions*, <http://www.nber.org/cycles/cyclesmain.html>. BLS, *Labor Force Statistics from the Current Population Survey*.

¹¹ U.S. Department of Labor, Bureau of Labor Statistics, *Current Employment Statistics*, <http://stats.bls.gov/ces/>. (Hereinafter cited as BLS, *Current Employment Statistics*.) Bureau of Labor Statistics, *Employment and Earnings*, vol. 58, January 11, 2011, <http://www.bls.gov/opub/ee/empearn201101.pdf>, table B-2. (Hereinafter cited as BLS, *Employment and Earnings*, table B-2.) CRS analysis of data from the Annual Social and Economic (ASEC) supplement to the monthly Current Population Survey (CPS).

¹² BLS, *Labor Force Statistics from the Current Population Survey*; BLS, *Current Employment Statistics*. BLS, *Employment and Earnings*, table B-2. CRS analysis of data from the Annual Social and Economic (ASEC) supplement to the monthly Current Population Survey (CPS).

¹³ Abt Associates, *Family and Medical Leave in 2012*, p. 70.

Comparison of Employees Who May Be Eligible for FMLA Leave With Employees Who Are Likely Ineligible for Leave

To further understand the potential impact of proposals to expand or limit the availability of FMLA leave, this section uses data from the ASEC supplement for 2011 to compare employees who may or may not have been eligible for leave. This information is then compared to data from the 2012 DOL employee survey, which provides estimates of the percentage of employees who took leave for FMLA-related reasons in the past year. The latter estimates are provided for employees who may have been eligible for FMLA leave and for employees who were likely ineligible for leave.

Using data from the ASEC supplement, **Table 1** shows the estimated percentages of employees who may have been *eligible* or *ineligible* for FMLA leave. Unlike the data in **Figure 1**, the estimates of the number of employees who may have been eligible for FMLA leave include employees who worked at least 1,250 hours in the previous year *and* worked for an employer with at least 50 employees. Employees who are categorized as ineligible for FMLA leave worked fewer than 1,250 hours, worked for an employer with fewer than 50 employees, or both.

Columns 1 through 3 of **Table 1** show the estimated number of wage and salary workers who may have been eligible or were likely ineligible for FMLA leave. The table shows two different percentage calculations. In columns 4 through 6, the percentage calculations, by row, show the percent of employees who may have been eligible and the percent who were likely ineligible for FMLA leave. In columns 7 through 9, the percentage calculations, by column, show the percent of employees by characteristic who may or may not have been eligible for FMLA leave.

Using data from the 2012 DOL employee survey, **Table 2** shows, for both eligible and ineligible employees, the percentage of employees who used leave in the past year for FMLA-related reasons. Employees who may have been eligible for FMLA leave were employed at a worksite with at least 50 workers employed within 75 miles of the worksite, worked for their current employer for at least 12 consecutive months, and worked at least 1,250 hours in the past year for that employer.¹⁴

The estimates in **Table 1** and **Table 2** are for employees ages 18 and over. All estimates are for wage and salary workers in the private and public sectors. The estimates do not include self-employed workers. Their jobs are presumably protected after returning from family or medical leave.

The remainder of this section summarizes the data in **Table 1** and **Table 2**.

All Employees. Estimates from both the ASEC supplement and the 2012 DOL employee survey indicate that a majority of employees are eligible for FMLA leave. Data from the ASEC supplement show that, in 2011, an estimated 80.9 million wage and salary employees (56.5%) may have been eligible for FMLA leave because they worked 1,250 hours or more for an employer with at least 50 employees. An estimated 62.3 million employees (43.5%) were likely

¹⁴ Abt Associates, Family and Medical Leave in 2012, p. 19.

ineligible for leave. Data from the DOL employee survey show that approximately 59.2% of employees may have been eligible, and 40.8% ineligible, for FMLA leave.¹⁵

Data from the 2012 DOL employee survey show that an estimated 15.9% of eligible employees took leave for FMLA-related reasons in the past year, compared to 10.2% of ineligible employees who took leave for FMLA-related reasons.¹⁶

Gender. In 2011, among employees who may have been eligible for FMLA leave, a majority were men (52.9%).¹⁷ Men were also more likely than women to be eligible for leave (57.2% compared to 55.6%). However, the DOL employee survey shows that women were more likely than men to take leave for FMLA-related reasons. Among employees eligible for leave, 17.9% of women and 14.1% of men took leave in the past year.

Age. Employees between the ages of 34 and 49 were more likely than younger or older workers to be eligible for FMLA leave. While 62.7% of workers ages 34 to 49 may have been eligible for leave, 48.5% of workers ages 18 to 33 and 57.9% of workers ages 50 to 82 may have been eligible for leave.

Based on the DOL employee survey, among workers likely eligible for FMLA leave, older workers were more likely than younger workers to have taken leave in the past year; 17.8% of workers 50 and over took leave, compared to 15.6% of workers ages 34 to 49 and 14.7% of workers ages 18 to 33. By contrast, among employees likely ineligible for leave, younger workers were more likely than older workers to have taken leave; 11.2% of workers ages 18 to 33 took leave, compared to 10.0% of workers ages 34 to 49 and 9.2% of workers ages 50 and over.

Marital Status. Almost three-fifths (58.8%) of employees who may have been eligible for FMLA leave were married. Married workers were also more likely (60.4%) than workers who have never been married (48.1%) to be eligible for leave. An estimated 58.8% of employees who were widowed, divorced, or separated may have been eligible for leave (see **Table 1**).

Among employees who were likely eligible for leave, married workers were more likely than unmarried workers to have taken leave in the past year: 16.8% and 14.9%, respectively. Among employees likely ineligible for leave, equal percentages of married (10.2%) and unmarried (10.1%) workers took leave (see **Table 2**).

Differences in the use of leave between married and unmarried workers may not fully account for the need for leave. For married couples, one spouse may not be working or may be working part-time. He or she may, therefore, be available to care for a newborn, adopted, or foster child or to care for a child with a serious health condition. For single employees, there may not be anyone else in the household who can care for a newborn child or a child with a serious health condition.

¹⁵ Ibid., p. 19.

¹⁶ The report on the DOL employee survey cautions that, although the survey concluded that leave taking is higher among employees who may be eligible for FMLA leave than among employees who are likely ineligible, the difference may or may not have been caused by the FMLA. Some of the difference may be due to factors that affect eligibility but would be present in the absence of the FMLA; for example, larger employers may be more likely to offer employees leave for family and medical reasons. Ibid., pp. ii, 14, 59.

¹⁷ The percentage comparisons from the ASEC supplement in this section are significant at the 90% confidence level or better.

Children Under the Age of 18 in the Household. In 2011, approximately 29.1 million, or 20.4%, of employees had children under the age of 18 in the household. Among these employees, an estimated 60.5% may have been eligible for FMLA leave. Among employees with children, married employees (62.6%) and employees who were widowed, divorced, or separated (60.5%) were more likely than employees who had never been married (52.1%) to be eligible for leave.

Among employees with children, those who had never been married represented a disproportionate share of employees who were likely ineligible for FMLA leave. Among employees with children, an estimated 16.3% had never been married. But, these employees accounted for approximately 19.8% of employees who were likely ineligible for leave.

According to the DOL employee survey, in the past year, employees with children in the household were more likely than employees with no children to have taken leave for FMLA-related reasons. This was the case both among employees who may have been eligible for leave (19.5% versus 13.2%) and employees who were likely ineligible for leave (13.4% versus 7.7%).

Race. Almost four-fifths (79.4%) of employees who may have been eligible for FMLA leave were white. But, African American employees (61.4%) were more likely than white employees (55.9%) or employees of other races (55.6%) to have been eligible for leave. Among employees who were likely eligible for FMLA leave, roughly equal percentages of whites (16.0%) and nonwhites (15.6%) took leave in the past year. By contrast, among employees who were likely ineligible for leave, whites (11.1%) were more likely than nonwhites (7.7%) to have taken leave.

One reason why African Americans may have been more likely than white employees to be eligible for FMLA leave is that 19.8% of African Americans worked in the public sector, compared to 15.6% of whites. Public sector employees are more likely than private sector employees to be eligible for FMLA leave. (See the paragraph below on the “Private and Public Sectors.”)

Ethnicity. An estimated 86.4% of employees who may have been eligible for FMLA leave were non-Hispanic. Non-Hispanics were also more likely than Hispanics to be eligible for leave (57.6% compared to 50.4%).

Education. Among employees who may have been eligible for FMLA leave, an estimated 39.3% had a Bachelor’s, advanced, or professional degree. But, these employees were significantly more likely than employees with less education to be eligible for leave. An estimated 70.2% of employees with a post-graduate degree and 64.6% of employees with a Bachelor’s degree may have been eligible for leave. By contrast, just over half of employees with an Associate’s degree or some college (53.5%) or a high school diploma (53.4%) may have been eligible for leave. Employees with less than a high school diploma were the least likely (38.4%) to have been eligible for leave.

Although workers without a college degree were less likely than other workers to have been eligible for leave, they were more likely to have taken leave in the past year. This was the case both among employees who may have been eligible for leave and employees who were likely ineligible for leave. Among employees who may have been eligible for FMLA leave, 16.5% of employees with a high school degree or less and 18.5% of employees with some college took leave, compared to 13.7% of employees with a Bachelor’s or advanced degree. Among employees who were likely ineligible for leave, 11.0% of employees with a high school degree or

less and 9.9% of employees with some college took leave, compared to 8.9% of employees with a Bachelor's or advanced degree.

Private and Public Sectors. Almost four-fifths (77.6%) of employees who may have been eligible for FMLA leave worked in the private sector. But public sector employees (i.e., federal, state, or local governments) were more likely to be eligible for leave. While 91.0% of federal, 80.5% of state, and 73.5% of local government employees may have been eligible for leave, 52.1% of private-sector employees may have been eligible for leave.

Industry. Employee eligibility for FMLA leave varies significantly by industry. The industry with the highest percentage of employees who may have been eligible for leave was Public Administration (84.0%). While an estimated 76.1% of employees in the Mining industry may have been eligible for leave, these employees accounted for only 0.8% of all employees who may have been eligible for leave. Other industries with above average percentages of employees who may have been eligible for leave included Information (71.6%), Manufacturing (71.5%), Educational Services (69.9%), Transportation and Utilities (68.9%), Financial Activities (65.1%), and Health Services (63.7%). Industries with below-average percentages of employees who may have been eligible for leave were Wholesale and Retail Trade (53.1%), Professional and Business Services (46.8%), Leisure and Hospitality (38.5%), Social Assistance (37.6%), Construction (33.1%), Agriculture, Forestry, Fishing, and Hunting (26.0%), and Other Services (22.0%).

Occupation. The percentage of employees who may be eligible for FMLA leave also varies significantly by occupation. The occupations with the highest percentages of employees who may have been eligible for leave were employees in Professional and Related occupations (67.3%) and Management, Business, and Financial occupations (65.0%), and Production occupations (63.7%). Occupations with lower shares of employees who may have been eligible for leave were Sales and Related (49.1%), Services (43.1%), Construction and Extraction (36.0%), and Farming, Fishing, and Forestry occupations (28.5%).

Annual Wages and Salary. The percentage of employees who may be eligible for FMLA leave increases with earnings. An estimated 39.8% of employees with annual wages and salary of less than \$35,000 may have been eligible for leave, compared to 73.4% of employees with earnings of \$35,000 to \$75,000 and 77.8% of employees with earnings of more than \$75,000.

Results from the DOL employee survey show that, among employees who may have been eligible for FMLA leave, those with higher family incomes were more likely to have taken leave in the past year. An estimated 17.4% of employees with family incomes of more than \$75,000 took leave in the past year, compared to 15.2% of employees with family incomes of less than \$35,000. On the other hand, among employees who were likely ineligible for leave, those with lower incomes (13.9% of those with incomes below \$35,000) were more likely than those with higher incomes (8.0% of those with incomes above \$75,000) to have taken leave.

Table I. Comparison of Employees Who May or May Not Be Eligible for FMLA Leave, 2011

| Characteristic | Number of Employees by Characteristic and Eligibility (in 1,000s) | | | Distribution of Employees by Eligibility | | | Distribution of Employees by Characteristic | | |
|---|---|---------------------|-----------------------|--|---------------------|-----------------------|---|---------------------|-----------------------|
| | All Employees (1) | May Be Eligible (2) | Likely Ineligible (3) | All Employees (4) | May Be Eligible (5) | Likely Ineligible (6) | All Employees (7) | May Be Eligible (8) | Likely Ineligible (9) |
| Gender | 143,196 | 80,868 | 62,329 | 100.0% | 56.5% | 43.5% | 100.0% | 100.0% | 100.0% |
| Male | 74,685 | 42,748 | 31,937 | 100.0% | 57.2% | 42.8% | 52.2% | 52.9% | 51.2% |
| Female | 68,512 | 38,120 | 30,391 | 100.0% | 55.6% | 44.4% | 47.8% | 47.1% | 48.8% |
| Age | 143,041 | 80,787 | 62,254 | 100.0% | 56.5% | 43.5% | 100.0% | 100.0% | 100.0% |
| 18-33 | 47,285 | 22,937 | 24,348 | 100.0% | 48.5% | 51.5% | 33.1% | 28.4% | 39.1% |
| 34-49 | 49,575 | 31,099 | 18,476 | 100.0% | 62.7% | 37.3% | 34.7% | 38.5% | 29.7% |
| 50-82 | 46,181 | 26,751 | 19,430 | 100.0% | 57.9% | 42.1% | 32.3% | 33.1% | 31.2% |
| Marital Status | 143,196 | 80,868 | 62,329 | 100.0% | 56.5% | 43.5% | 100.0% | 100.0% | 100.0% |
| Married | 78,742 | 47,547 | 31,196 | 100.0% | 60.4% | 39.6% | 55.0% | 58.8% | 50.1% |
| Widowed, divorced, or separated | 21,803 | 12,822 | 8,982 | 100.0% | 58.8% | 41.2% | 15.2% | 15.9% | 14.4% |
| Never married | 42,651 | 20,500 | 22,151 | 100.0% | 48.1% | 51.9% | 29.8% | 25.3% | 35.5% |
| Employees with Children in the Household Under the Age of 18 by Marital Status | 29,149 | 17,638 | 11,511 | 100.0% | 60.5% | 39.5% | 100.0% | 100.0% | 100.0% |
| Married | 19,369 | 12,123 | 7,246 | 100.0% | 62.6% | 37.4% | 66.4% | 68.7% | 62.9% |
| Widowed, divorced, or separated | 5,025 | 3,038 | 1,987 | 100.0% | 60.5% | 39.5% | 17.2% | 17.2% | 17.3% |
| Never married | 4,754 | 2,476 | 2,278 | 100.0% | 52.1% | 47.9% | 16.3% | 14.0% | 19.8% |

| Characteristic | Number of Employees by Characteristic and Eligibility (in 1,000s) | | | Distribution of Employees by Eligibility | | | Distribution of Employees by Characteristic | | |
|------------------------------------|---|---------------------|-----------------------|--|---------------------|-----------------------|---|---------------------|-----------------------|
| | All Employees (1) | May Be Eligible (2) | Likely Ineligible (3) | All Employees (4) | May Be Eligible (5) | Likely Ineligible (6) | All Employees (7) | May Be Eligible (8) | Likely Ineligible (9) |
| Race | 143,196 | 80,868 | 62,329 | 100.0% | 56.5% | 43.5% | 100.0% | 100.0% | 100.0% |
| White only | 114,901 | 64,182 | 50,719 | 100.0% | 55.9% | 44.1% | 80.2% | 79.4% | 81.4% |
| African American only | 16,649 | 10,215 | 6,434 | 100.0% | 61.4% | 38.6% | 11.6% | 12.6% | 10.3% |
| Other | 11,646 | 6,471 | 5,175 | 100.0% | 55.6% | 44.4% | 8.1% | 8.0% | 8.3% |
| Ethnicity | 143,196 | 80,868 | 62,329 | 100.0% | 56.5% | 43.5% | 100.0% | 100.0% | 100.0% |
| Hispanic | 21,744 | 10,964 | 10,780 | 100.0% | 50.4% | 49.6% | 15.2% | 13.6% | 17.3% |
| Non-Hispanic | 121,453 | 69,904 | 51,549 | 100.0% | 57.6% | 42.4% | 84.8% | 86.4% | 82.7% |
| Education | 143,196 | 80,868 | 62,329 | 100.0% | 56.5% | 43.5% | 100.0% | 100.0% | 100.0% |
| Less than high school | 12,520 | 4,806 | 7,714 | 100.0% | 38.4% | 61.6% | 8.7% | 5.9% | 12.4% |
| High school graduate | 39,381 | 21,011 | 18,371 | 100.0% | 53.4% | 46.6% | 27.5% | 26.0% | 29.5% |
| Associate's degree or some college | 43,559 | 23,294 | 20,264 | 100.0% | 53.5% | 46.5% | 30.4% | 28.8% | 32.5% |
| Bachelor's degree | 31,199 | 20,140 | 11,059 | 100.0% | 64.6% | 35.4% | 21.8% | 24.9% | 17.7% |
| Advanced or professional degree | 16,537 | 11,617 | 4,920 | 100.0% | 70.2% | 29.8% | 11.5% | 14.4% | 7.9% |
| Private and Public Sectors | 143,196 | 80,868 | 62,329 | 100.0% | 56.5% | 43.5% | 100.0% | 100.0% | 100.0% |
| Private | 120,296 | 62,718 | 57,577 | 100.0% | 52.1% | 47.9% | 84.0% | 77.6% | 92.4% |
| Federal | 4,794 | 4,363 | 431 | 100.0% | 91.0% | 9.0% | 3.3% | 5.4% | 0.7% |
| State | 6,855 | 5,517 | 1,338 | 100.0% | 80.5% | 19.5% | 4.8% | 6.8% | 2.1% |
| Local | 11,252 | 8,270 | 2,982 | 100.0% | 73.5% | 26.5% | 7.9% | 10.2% | 4.8% |

| Characteristic | Number of Employees by Characteristic and Eligibility (in 1,000s) | | | Distribution of Employees by Eligibility | | | Distribution of Employees by Characteristic | | |
|---|---|---------------------|-----------------------|--|---------------------|-----------------------|---|---------------------|-----------------------|
| | All Employees (1) | May Be Eligible (2) | Likely Ineligible (3) | All Employees (4) | May Be Eligible (5) | Likely Ineligible (6) | All Employees (7) | May Be Eligible (8) | Likely Ineligible (9) |
| Industry | 142,351 ^a | 80,066 | 62,284 | 100.0% | 56.2% | 43.8% | 100.0% | 100.0% | 100.0% |
| Agriculture, forestry, fishing, and hunting | 1,608 | 418 | 1,190 | 100.0% | 26.0% | 74.0% | 1.1% | 0.5% | 1.9% |
| Mining | 890 | 677 | 213 | 100.0% | 76.1% | 23.9% | 0.6% | 0.8% | 0.3% |
| Construction | 8,582 | 2,843 | 5,738 | 100.0% | 33.1% | 66.9% | 6.0% | 3.6% | 9.2% |
| Manufacturing | 15,103 | 10,804 | 4,298 | 100.0% | 71.5% | 28.5% | 10.6% | 13.5% | 6.9% |
| Wholesale and retail trade | 20,413 | 10,835 | 9,577 | 100.0% | 53.1% | 46.9% | 14.3% | 13.5% | 15.4% |
| Transportation and utilities | 7,154 | 4,930 | 2,223 | 100.0% | 68.9% | 31.1% | 5.0% | 6.2% | 3.6% |
| Information | 3,103 | 2,223 | 880 | 100.0% | 71.6% | 28.4% | 2.2% | 2.8% | 1.4% |
| Financial activities | 9,429 | 6,139 | 3,290 | 100.0% | 65.1% | 34.9% | 6.6% | 7.7% | 5.3% |
| Professional and business services | 15,279 | 7,151 | 8,127 | 100.0% | 46.8% | 53.2% | 10.7% | 8.9% | 13.0% |
| Social assistance | 3,078 | 1,156 | 1,922 | 100.0% | 37.6% | 62.4% | 2.2% | 1.4% | 3.1% |
| Leisure and hospitality | 13,674 | 5,266 | 8,408 | 100.0% | 38.5% | 61.5% | 9.6% | 6.6% | 13.5% |
| Education services | 13,815 | 9,656 | 4,159 | 100.0% | 69.9% | 30.1% | 9.7% | 12.1% | 6.7% |
| Health services | 16,368 | 10,425 | 5,943 | 100.0% | 63.7% | 36.3% | 11.5% | 13.0% | 9.5% |
| Other services | 6,604 | 1,451 | 5,153 | 100.0% | 22.0% | 78.0% | 4.6% | 1.8% | 8.3% |
| Public administration | 7,252 | 6,090 | 1,162 | 100.0% | 84.0% | 16.0% | 5.1% | 7.6% | 1.9% |

| Characteristic | Number of Employees by Characteristic and Eligibility (in 1,000s) | | | Distribution of Employees by Eligibility | | | Distribution of Employees by Characteristic | | |
|---|---|---------------------|-----------------------|--|---------------------|-----------------------|---|---------------------|-----------------------|
| | All Employees (1) | May Be Eligible (2) | Likely Ineligible (3) | All Employees (4) | May Be Eligible (5) | Likely Ineligible (6) | All Employees (7) | May Be Eligible (8) | Likely Ineligible (9) |
| Occupation | 142,351 ^a | 80,066 | 62,284 | 100.0% | 56.2% | 43.8% | 100.0% | 100.0% | 100.0% |
| Management, business, and financial occupations | 20,694 | 13,457 | 7,237 | 100.0% | 65.0% | 35.0% | 14.5% | 16.8% | 11.6% |
| Professional and related occupations | 30,940 | 20,836 | 10,104 | 100.0% | 67.3% | 32.7% | 21.7% | 26.0% | 16.2% |
| Service occupations | 25,782 | 11,115 | 14,667 | 100.0% | 43.1% | 56.9% | 18.1% | 13.9% | 23.5% |
| Sales and related occupations | 15,232 | 7,476 | 7,756 | 100.0% | 49.1% | 50.9% | 10.7% | 9.3% | 12.5% |
| Office and administrative support occupations | 19,383 | 11,157 | 8,227 | 100.0% | 57.6% | 42.4% | 13.6% | 13.9% | 13.2% |
| Farming, fishing, and forestry occupations | 1,139 | 324 | 815 | 100.0% | 28.5% | 71.5% | 0.8% | 0.4% | 1.3% |
| Construction and extraction occupations | 6,829 | 2,457 | 4,372 | 100.0% | 36.0% | 64.0% | 4.8% | 3.1% | 7.0% |
| Installation, maintenance, and repair occupations | 4,593 | 2,659 | 1,935 | 100.0% | 57.9% | 42.1% | 3.2% | 3.3% | 3.1% |
| Production occupations | 8,850 | 5,634 | 3,216 | 100.0% | 63.7% | 36.3% | 6.2% | 7.0% | 5.2% |
| Transportation and material moving occupations | 8,907 | 4,952 | 3,955 | 100.0% | 55.6% | 44.4% | 6.3% | 6.2% | 6.3% |
| Annual Wages and Salary | 143,196 | 80,868 | 62,329 | 100.0% | 56.5% | 43.5% | 100.0% | 100.0% | 100.0% |
| Less than \$35,000 | 74,717 | 29,745 | 44,972 | 100.0% | 39.8% | 60.2% | 52.2% | 36.8% | 72.2% |
| \$35,000 to \$75,000 | 48,729 | 35,755 | 12,974 | 100.0% | 73.4% | 26.6% | 34.0% | 44.2% | 20.8% |
| More than \$75,000 | 19,750 | 15,368 | 4,382 | 100.0% | 77.8% | 22.2% | 13.8% | 19.0% | 7.0% |

Source: CRS analysis of data from the 2012 Annual Social and Economic (ASEC) supplement to the monthly Current Population Survey (CPS). The 2012 supplement collected data for 2011.

Notes: Estimates are for wage and salary workers ages 18 and over who were employed in either the private or public sectors. For the characteristic of “Age,” employees over the age of 82 are not included. The intervals for age in **Table 1** conform to those in **Table 2**. Employees categorized as “may be eligible” are employees who worked at least 1,250 hours for employers with at least 50 employees.

a. In the ASEC supplement, information on the occupation and industry of some employees is not available.

Table 2. Comparison of Employees Who May or May Not Be Eligible for FMLA Leave and Who Took Leave, January 2011 to June 2012

| Characteristic | Percentage of Employees Who Took Leave | | |
|---|--|---------------------|-----------------------|
| | All Employees (1) | May Be Eligible (2) | Likely Ineligible (3) |
| Total | 13.2% | 15.9% | 10.2% |
| Gender | | | |
| Male | 11.4% | 14.1% | 8.3% |
| Female | 15.1% | 17.9% | 12.1% |
| Age | | | |
| 18-33 | 12.7% | 14.7% | 11.2% |
| 34-49 | 13.3% | 15.6% | 10.0% |
| 50-82 | 13.9% | 17.8% | 9.2% |
| Marital Status | | | |
| Married | 13.9% | 16.8% | 10.2% |
| Not married | 12.4% | 14.9% | 10.1% |
| Children in Household | | | |
| None | 10.5% | 13.2% | 7.7% |
| One or more | 16.7% | 19.5% | 13.4% |
| Race | | | |
| White | 13.8% | 16.0% | 11.1% |
| Nonwhite | 11.6% | 15.6% | 7.7% |
| Ethnicity | | | |
| Hispanic | 10.7% | 14.2% | 7.7% |
| Non-Hispanic | 13.6% | 16.2% | 10.6% |
| Education | | | |
| Less than high school and high school graduates | 13.5% | 16.5% | 11.0% |
| Some college | 14.2% | 18.5% | 9.9% |
| College graduates and graduate school | 11.9% | 13.7% | 8.9% |

| Characteristic | Percentage of Employees Who Took Leave | | |
|----------------------|--|---------------------|-----------------------|
| | All Employees (1) | May Be Eligible (2) | Likely Ineligible (3) |
| Family Income | | | |
| Less than \$35,000 | 14.4% | 15.2% | 13.9% |
| \$35,000 to \$75,000 | 14.4% | 17.6% | 10.2% |
| More than \$75,000 | 13.9% | 17.4% | 8.0% |

Source: Jacob Alex Klerman, Kelly Daley, and Alyssa Pozniak, *Family and Medical Leave in 2012: Technical Report*, Abt Associates, Cambridge, MA, September 7, 2012, <http://www.dol.gov/asp/evaluation/fmla/FMLATechnicalReport.pdf>, pp. 64-65.

Notes: Estimates are for wage and salary workers ages 18 and over who were employed in either the private or public sectors. Employees categorized as “may be eligible” are workers who were employed at a worksite with at least 50 workers employed within 75 miles of the worksite, worked for 12 consecutive months for the employer, and worked at least 1,250 hours for the employer in the past year.

FMLA Policy Issues

The U.S. workforce and American family were changing in the years before the FMLA was enacted in 1993. The labor force participation rate of women had been rising steadily, more married women with children were working, and more families were headed by single parents.¹⁸ For employees who did not have job-protected family or medical leave, the FMLA was a response to these changes. Other policymakers may question whether the leave employers are required to allow under the FMLA is a proper role for the federal government. Some may believe that this is an issue that should be left to the states, a matter between individual employees and their employer, or a subject for collective bargaining. Instead of mandated leave, some policymakers may favor government incentives to encourage employers to provide family and medical leave.

Supporters of the FMLA have proposed amendments to the act that would expand employee coverage. Some of these suggestions would make it easier for employees to qualify for leave, allow employees to take leave to care for more members of their family or household, expand the types of leave, or expand employer coverage to include employees of smaller employers. On the other hand, others have proposed changes in the law that would narrow the definition of a serious health condition or curtail the use of intermittent leave for a chronic health condition. This section examines some of these proposals.

The discussion in this section uses data from different sources. These include responses from the 2012 DOL employee survey discussed in the previous section, a 2012 survey of 1,812 employers

¹⁸ From 1948 to 1993, the labor force participation rate for women increased from 32.7% to 57.9%. In 2011 and 2012, these rates stood at 58.1% and 57.7%, respectively. (BLS, *Labor Force Statistics from the Current Population Survey*.) Among married couples with children under the age of 18 and where one or both spouses were in the labor force, the percentage of couples where both spouses were in the labor force increased from 60.8% to 66.4% from 1986 to 1993. In 2011 and 2012, these percentages were at 66.2% and 65.7%, respectively. From 1970 to 1993, among families with children under the age of 18, the percentage that were headed by a single parent increased from 12.8% to 30.2%. The percentages in 2011 and 2012 were 30.7% and 31.8%, respectively. U.S. Department of Commerce, Census Bureau. *Families and Living Arrangements*, <http://www.census.gov/hhes/families/data/families.html>.

conducted by Abt Associates for DOL, and information collected by the Society for Human Resource Management (SHRM).¹⁹

Eligibility for FMLA Leave

The FMLA is intended to help employees balance work and family life. Proponents of the objectives of the FMLA have suggested ways to expand employee eligibility. These proposals would (1) eliminate the requirement that employees must work 1,250 hours or more during the preceding 12 months for the same employer, (2) prorate the 12 weeks of leave based on the number of hours worked, (3) eliminate or reduce the requirement that employees must work for the same employer for at least 12 months, and (4) lower employee eligibility from the current threshold of 50 employees who work within 75 miles of an employee's worksite.

Other proposals would allow eligible employees to take leave to care for additional members of the family or household. These additional persons may include grandparents, grandchildren, nondisabled children ages 18 or older, domestic partners, or same-sex spouses.²⁰

Some employers may oppose an expansion of employee eligibility for FMLA leave. Such an expansion could increase employer administrative and operating costs. Employers may need to make additional adjustments to work schedules if more employees become eligible for, and take, FMLA leave. To maintain the same level of output of goods and services, some employers may need to hire more workers or pay more workers for overtime. Employers must continue health insurance coverage while employees are on FMLA leave, which could increase employer costs if more employees take FMLA leave. An expansion of FMLA coverage could create an incentive for employers to hire more part-time workers, who may not be eligible for FMLA leave.²¹

¹⁹ SHRM is an association devoted to human resource management. Society for Human Resource Management, <http://www.shrm.org>.

²⁰ According to current regulations that implement the FMLA for private sector and state and local government employees, a "Spouse means a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides, including common law marriage in States where it is recognized." (29 C.F.R. §825.122(a).) Regulations that implement the FMLA for federal employees state that a "Spouse means an individual who is a husband or wife pursuant to a marriage that is a legal union between one man and one woman, including common law marriage between one man and one woman in States where it is recognized." (5 C.F.R. §630.1202.)

Until June 26, 2013, the federal definitions of 'marriage' and 'spouse' as established under the Defense of Marriage Act (DOMA) applied to the FMLA. Section 3 of DOMA defines 'marriage' as only a legal union between one man and one woman as husband and wife and defines 'spouse' as only a person of the opposite sex who is a husband or wife. On June 26, 2013, the U.S. Supreme Court, in *United States v. Windsor*, ruled that Section 3 of DOMA is unconstitutional. OPM has said that, as a result of the Supreme Court decision, OPM "will now be able to extend certain benefits to Federal employees ... who have legally married a spouse of the same sex, regardless of the employee's ... state of residency." (U.S. Government, Office of Personnel Management, *Fact Sheet: Family and Medical Leave*, <http://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/family-and-medical-leave/>.) On August 9, 2013, DOL announced that FMLA leave is available to care for a same-sex spouse. (Bureau of National Affairs, Daily Labor Report, *FMLA Protection Extends to Gay Spouses as DOL Updates Policies Following Windsor*, August 12, 2013.) Under current regulations, an employee who stands "in loco parentis" (i.e., in the place of a parent) may be able to take FMLA leave to care for a newborn or adopted child or to care for the son or daughter with a serious health condition of a same-sex spouse or domestic partner. U.S. Department of Labor, Wage and Hour Division, *Administrator's Interpretation No. 2010-3*, June 22, 2010, http://www.dol.gov/WHD/opinion/adminIntrprtn/FMLA/2010/FMLAAI2010_3.pdf.

²¹ For a discussion of the FMLA from the employer perspective, see Peter A. Susser, "The Employer Perspective on Paid Leave and the FMLA," *Journal of Law and Policy*, vol. 15, 2004, pp. 169-192.

Types of FMLA Leave

Some proposals to amend the FMLSA would expand the reasons for which employees could take FMLA leave. One proposal would allow employees to take “parental leave,” where employees could take limited amounts of leave to attend parent-teacher conferences, participate in their children’s educational and extracurricular activities, or take children (or other family members) to routine medical or dental appointments. Other proposals would allow employees to take leave to participate in activities that result from domestic violence or because of a death in the family.

Using data from the 2012 DOL employer survey, **Table 3** shows the percentage of employers that offer parental leave to their employees. An employer is defined as a unique worksite. A firm may have one or more worksites.²² Column 1 shows the percentage of all worksites that offered parental leave. Column 2 shows the percentage of worksites with FMLA-eligible employees, which are worksites with at least 50 employees within 75 miles of the worksite.²³ **Table 3** shows that, compared to all worksites, employers with FMLA-eligible employees are more likely to offer parental leave.

Again, for the reasons discussed above, some employers may oppose an expansion of the FMLA to cover additional types of leave.

Table 3. Percentage of Employers That Offer Parental Leave to All or Most of Their Employees

| Type of Leave | All Worksites (1) | Worksites With FMLA-Eligible Employees (2) |
|-------------------------------------|-------------------|--|
| To attend a child’s school meetings | 79.8% | 89.2% |
| For elder care reasons | 77.2% | 91.5% |
| For routine medical appointments | 82.8% | 92.0% |
| For nonroutine medical appointments | 84.5% | 91.2% |

Source: Jacob Alex Klerman, Kelly Daley, and Alyssa Pozniak, *Family and Medical Leave in 2012: Technical Report*, Abt Associates, Cambridge, MA., September 7, 2012, <http://www.dol.gov/asp/evaluation/fmla/FMLATEchnicalReport.pdf>, pp. 37-38.

Paid Leave

FMLA leave is generally unpaid leave. Some policymakers favor legislation to provide employees with paid leave. These proposals may not involve amendments to the FMLA, however.

At least three approaches have been suggested to provide employees with paid time off while taking leave for reasons covered by the FMLA.²⁴

²² Abt Associates, *Family and Medical Leave in 2012*, p. 10.

²³ *Ibid.*, p. 18.

²⁴ For a discussion of paid leave to care for a new child, see Linda Houser and Thomas P. Vartanian, *Policy Matters*: (continued...)

- One approach would require employers to provide leave with pay to employees to care for their own health or the health of other eligible individuals. Two different methods have been proposed: one would require employers to offer their employees a paid sick leave benefit. The other would use a payroll tax to fund a wage-replacement program for eligible employees while on leave.
- A second approach would create a grant program to assist states interested in supplementing the income of individuals who take leave for family-related reasons.
- A final approach would amend the Fair Labor Standards Act (FLSA). Private sector employers would be required to pay an overtime premium to hourly employees who work more than 40 hours in a week. Instead of paying employees in cash for overtime, employers would be allowed to offer them compensatory time, which employees could use as they choose.²⁵

Requiring employers to provide paid leave may raise a number of concerns. First, many employers already provide their employees with paid leave. These paid leave programs may not be subject, however, to minimum federal standards. **Table 4** shows the percentage of employers who offer different types of paid leave. Compared to all worksites, employers with FMLA-eligible employees are more likely to offer paid leave.

Table 4. Percentage of Employers That Offer Paid Leave to All or Most Employees

| Type of Leave | All Worksites (1) | Worksites With FMLA-Eligible Employees (2) |
|-----------------------|-------------------|--|
| Paid sick leave | 33.9% | 70.1% |
| Paid disability leave | 21.9% | 57.3% |
| Paid vacation | 45.9% | 82.5% |
| Paid maternity leave | 21.0% | 41.8% |
| Paid paternity leave | 14.0% | 19.1% |

Source: Jacob Alex Klerman, Kelly Daley, and Alyssa Pozniak, *Family and Medical Leave in 2012: Technical Report*, Abt Associates, Cambridge, MA, September 7, 2012, <http://www.dol.gov/asp/evaluation/fmla/FMLATEchnicalReport.pdf>, pp. 37-38.

Those employers that do not offer paid sick leave may oppose a federal mandate that would require them to provide it. Some employees may oppose a payroll tax to fund a program for paid leave. Some employers and employees may not favor a federal program to provide employees with paid leave, even if the cost is offset by a reduction in taxes or spending elsewhere. For instance, as may be the case if employee eligibility for FMLA leave were expanded, legislation to require employers to offer paid leave may raise concerns about the potential effects on employer

(...continued)

Public Policy, Paid Leave for New Parents, and Economic Security for U.S. Workers, Center for Women and Work, Rutgers University, April 2012, <http://smlr.rutgers.edu/sites/smlr/files/Policy%20Matters%20Final%204.29.pdf>.

²⁵ For more information on compensatory (“comp”) time, see CRS Report R42713, *The Fair Labor Standards Act (FLSA): An Overview*, by (name redacted), (name redacted), and (name redacted).

administrative and operating costs. Some may argue that government-required paid leave is not a federal, but a state, issue or that it is an issue that should be left to negotiations during collective bargaining.²⁶ Instead of mandated paid leave, some policymakers may prefer government incentives to encourage employers to provide such leave. For their part, some employees may prefer to choose the types of benefits they receive. Requiring employers to offer paid leave may result in the substitution of paid leave for some other type of compensation (whether other benefits or wages) that some workers may prefer.

Covered Employers

To make FMLA leave available to more employees, some have suggested an expansion of employer coverage. Currently, the FMLA covers private sector employers who employed at least 50 employees for at least 20 weeks in the preceding or current calendar year. Proposals have been made to expand employer coverage to include employers with, perhaps, 25 or 15 employees.

According to the report on the 2012 DOL employee survey, an estimated 59.2% of employees may be eligible for FMLA leave. According to the report, if the threshold for employer coverage were lowered from 50 to 30 employees, approximately 63.2% of employees could be eligible for leave. If the threshold were lowered to 20 employees, approximately 66.6% of employees could be eligible for leave.²⁷

²⁶ In Connecticut, effective January 1, 2012, employers with 50 or more employees must provide “service workers” with up to 40 hours of paid leave annually. The law does not apply to manufacturers or nonprofit employers. An employer is in compliance with the law if the employer offers other paid leave (such as paid vacation or personal days) that accrues at a rate at least as great as the rate for paid sick leave and the leave can be used for sick leave as defined by the act. State of Connecticut, *An Act Mandating Employers Provide Paid Sick Leave to Employees*, Public Act No. 11-52, <http://www.cga.ct.gov/2011/act/pa/2011PA-00052-R00SB-00913-PA.htm>. For a survey of the early experience of employers with the law, see Michael Saltsman, *Paid Sick Leave in Connecticut: A Pilot Study of Businesses’ Responses to the Law*, February 2013, Employment Policies Institute, http://epionline.org/studies/2013_EPI_PaidSickLeaveInConnv4.pdf.

Washington State is scheduled to begin a Family Leave Insurance program on October 1, 2015. The program will provide up to five weeks of partial wage replacement for an employee to care for a newborn or adopted child. The legislation was enacted in 2007, but implementation was postponed until 2015 because of state budget concerns. State of Washington, Employment Security Department, *Family Leave Insurance*, <http://www.esd.wa.gov/newsandinformation/legresources/family-leave-insurance.php>.

As part of their Temporary Disability Insurance Programs, three states provide partial wage replacement for sick leave, family leave, or both. (1) California maintains a State Disability Insurance (SDI) fund, which provides partial wage replacement for a Paid Family Leave program. Under the program, benefits are paid to workers while on leave to care for a newborn, adopted, or foster child or to care for a child, spouse, parent, or registered domestic partner with a serious health condition. Benefits are financed through an employee payroll tax. (State of California, Employment Development Department, “About the Program,” Disability Insurance, http://www.edd.ca.gov/disability/About_the_Program.htm.) (2) New Jersey has a Family Leave Insurance program that provides up to six weeks of partial wage replacement for an employee to care for a newborn or adopted child or to care for a family member with a serious health condition. The program is financed through an employee payroll tax. (State of New Jersey, Department of Labor and Workforce Development, Family Leave Insurance, <http://lwd.dol.state.nj.us/labor/fli/fliindex.html>.) (3) In July 2013, Rhode Island expanded its TDI program to include the Temporary Caregiver Insurance (TCI) program. The TCI program will become effective January 1, 2014. The TCI program provides up to four weeks of paid leave for an employee to care for a newborn or adopted child or to care for a child, spouse, parent, parent-in-law, grandparent or domestic partner who has a serious illness. The program is financed through an employee payroll tax. Unlike California or New Jersey, the Rhode Island Program includes job protect for workers who use the leave. State of Rhode Island, Department of Labor and Training, Temporary Disability Insurance. <http://www.dlt.ri.gov/tdi/>. http://www.edd.ca.gov/Payroll_Taxes/State_Disability_Insurance_Tax.htm.

²⁷ Abt Associates, *Family and Medical Leave in 2012*, p. 20.

In addition to the questions that could be raised about expanding employee eligibility or the types of FMLA leave, expanding FMLA coverage to smaller employers may raise other concerns. In particular, smaller employers may have less flexibility than larger employers in adjusting to employee absences (of up to 12 weeks, or up to 26 weeks for military caregiver leave). The absence of one or more employees may impose a greater burden on smaller than larger employers.²⁸

Administration of FMLA Leave

Concerns have been raised about the administration of FMLA leave. In particular, some have argued that DOL regulations have expanded the meaning of a serious health condition beyond the intent of Congress and that the application of intermittent leave imposes undue administrative burdens on employers.

The 2012 DOL survey of employers asked covered employers how easy or difficult it is to comply with the FMLA. These findings are shown in **Table 5**. The data in column 1 are for covered worksites, which are employers that reported that they were covered by the FMLA. Because some of these employers did not have 50 workers employed within 75 miles, column 2 is a subset of covered worksites.²⁹ These are employers who reported that they were covered by the FMLA and had at least 50 employees employed within 75 miles.³⁰

Table 5. Covered Employers' Ease of Complying with FMLA-Related Reasons for Taking Leave

| Ease of Complying | All Covered Worksites (1) | Worksites With FMLA-Eligible Employees (2) |
|----------------------|---------------------------|--|
| No noticeable effect | 27.7% | 10.1% |
| Very easy | 35.7% | 26.1% |
| Somewhat easy | 29.8% | 49.2% |
| Somewhat difficult | 5.5% | 13.6% |
| Very difficult | 0.6% | 1.0% |

Source: Jacob Alex Klerman, Kelly Daley, and Alyssa Pozniak, *Family and Medical Leave in 2012: Technical Report*, Abt Associates, Cambridge, MA., September 7, 2012, <http://www.dol.gov/asp/evaluation/fmla/FMLATEchnicalReport.pdf>, p. 48.

²⁸ According to a statement by the National Federation of Independent Business (NFIB), an “Expansion of the FMLA would create considerable burdens on small business. ... Expanding FMLA mandates would drastically increase the amount of paperwork and money spent complying.” National Federation of Independent Business, *Proposed FMLA Expansion Limits Flexibility, Increases Burdens*, <http://www.nfib.com/advocacy/item?cmsid=518>.

The NFIB is a business association representing small and independent businesses. National Federation of Independent Business, *What is NFIB?* <http://www.nfib.com/about-nfib>.

²⁹ Abt Associates reported that some worksites said they were covered by the FMLA but may not have been covered. Conversely, some worksites that reported they were not covered, may have been covered. Abt Associates, *Family and Medical Leave in 2012*, pp. 16-17.

³⁰ *Ibid.*, pp. 10-11, 18, 48.

Among all covered employers, 65.5% reported that it was “very” or “somewhat” easy to comply with the FMLA. A larger percentage, 75.3%, of employers with FMLA-eligible employees reported that it was very or somewhat easy to comply with the FMLA. Conversely, among all employers, 6.1% said that it was “very” or “somewhat” difficult to comply with the FMLA, compared to 14.6% of employers with FMLA-eligible employees.

The Definition of a Serious Health Condition

Currently, regulations define a serious health condition as an illness, impairment, injury, or mental or physical condition that involves:

- inpatient care, which means an overnight stay in a hospital, hospice, or residential mental facility; or
- continuing treatment by a health care provider, which includes (1) a period of incapacity of more than three consecutive days and any subsequent treatment or period of incapacity due to the same condition; (2) any period of incapacity due to pregnancy or for prenatal care; (3) any period of incapacity or treatment due to a chronic serious health condition that requires visits at least twice a year for treatment by (or under the supervision of) a health care provider, continues over an extended period, and may cause episodic (rather than continuing) periods of incapacity (e.g., asthma or diabetes); (4) a period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer’s disease or terminal stages of a disease); and (5) any period of absence to receive multiple treatments (including any period of recovery there from) by a health care provider for a condition that likely would result in incapacity of more than three consecutive days absent medical intervention (e.g., chemotherapy, physical therapy for severe arthritis, or dialysis for kidney disease).³¹

Some have argued that DOL regulations expanded the meaning of a serious health condition beyond the kinds of health problems envisioned by lawmakers.³² For example, the U.S. Chamber of Commerce has said that it supports reforms of the FMLA, including “restoring the original definition of ‘serious health condition’ to clarify that the FMLA does not cover minor ailments such as the common cold....”³³ At a February 2008 hearing before the Subcommittee on Children and Families of the Senate Committee on Health, Education, Labor, and Pensions, Kathryn Elliott, Assistant Director of Employee Relations at Central Michigan University, stated:

³¹ 29 C.F.R. §825.114-825.115.

³² Deborah Billings, “Business Groups Tell OMB Manufacturers Would Benefit From Overhaul of FMLA Rules,” *Daily Labor Report*, August 5, 2004. (Hereinafter cited as Billings, *Groups Tell OMB Manufacturers Would Benefit From Overhaul of FMLA Rules*.)

³³ U.S. Chamber of Commerce, *Absence Abuse and Medical Leave*, <http://www.uschamber.com/issues/labor/absence-abuse-and-medical-leave>.

The U.S. Chamber of Commerce is a business organization that represents more than 3 million businesses of all sizes. U.S. Chamber of Commerce, *About the U.S. Chamber of Commerce*, <http://www.uschamber.com/about>.

Although Congress intended medical leave under the FMLA to be taken only for serious health conditions, SHRM [Society for Human Resource Management] members regularly report that individuals use this leave to avoid coming to work even when they are not experiencing a serious health condition.³⁴

Changes in the FMLA have been proposed to remedy this possible problem. One suggestion is that the law should be amended to explicitly state that an illness, injury, impairment, or condition for which treatment and recovery are brief (e.g., fewer than 7 or 14 days) does not constitute a serious health condition. It has also been suggested that the FMLA should be amended to provide specific examples of serious health conditions.³⁵

But, others contend that an overnight stay in a hospital is an indicator of a serious health condition. For instance, at a 1999 hearing before the Subcommittee on Children and Families of the Senate Committee on Health, Education, Labor, and Pensions, the Deputy Administrator of the DOL's Wage and Hour Division expressed concern that, under a narrower definition of serious health condition, some illnesses that "everyone would agree are normally not serious conditions" could never warrant FMLA leave. He argued that the flu—an often-used example of a nonserious condition for which FMLA leave can be taken—kills tens of thousands of people each year.³⁶

According to the 2012 DOL survey of employers, 17.4% of those with FMLA-eligible employees said it was "very" or "somewhat" difficult to determine if a health condition was a serious health condition. By contrast, 70.0% of employers with FMLA-eligible employees said it was "very" or "somewhat" easy to determine if a health condition was a serious health condition.³⁷

Among employers with FMLA-eligible employees, employers suspected that 2.9% of leave involved the misuse of the FMLA.³⁸

According to DOL's 2012 employee survey, among employees who took leave, 85.7% of the most recent leave taken required a doctor's care, and 46.9% of that leave required an overnight stay in a hospital.³⁹

³⁴ U.S. Senate, Committee on Health, Education, Labor, and Pensions, Subcommittee on Children and Families, *Writing the Next Chapter of the Family and Medical Leave Act: Building on a 15-Year History of Support for Workers*, S. Hrg. 110-851, 110th Cong., 2nd Sess., February 13, 2008 (Washington, DC: GPO, 2009), p. 48.

³⁵ In the 108th Congress, Representative Judy Biggert introduced H.R. 35, the Family and Medical Leave Clarification Act. The act would have amended the FMLA to revise the definition of serious health condition to exclude short-term illnesses from FMLA coverage and include a list of examples of the types of illnesses covered by the FMLA. The act would have also required that intermittent leave be taken in increments of up to half a work day (see the discussion of "Intermittent Leave" later in this section of the report). In the same Congress, similar legislation, S. 320, was introduced in the Senate by Senator Judd Gregg.

³⁶ U.S. Senate, Committee on Health, Education, Labor, and Pensions, Subcommittee on Children and Families, *The Family and Medical Leave Act: Present Impact and Possible Next Steps*, S. Hrg. 106-156, 106th Cong., 1st Sess., July 14, 1999 (Washington, DC: GPO, 1999), pp. 53-54.

³⁷ Abt Associates, *Family and Medical Leave in 2012*, p. 50.

³⁸ Alyssa Pozniak et al., *Family and Medical Leave in 2012: Detailed Results Appendix*, Abt Associates, September 6, 2012, <http://www.dol.gov/asp/evaluation/fmla/FMLADetailedResultsAppendix.pdf>, p. 29.

³⁹ Abt Associates, *Family and Medical Leave in 2012*, p. 73.

Intermittent Leave

Some have argued that the use of intermittent leave under the FMLA is both difficult to administer and disruptive to both employers and other employees.⁴⁰ One argument against intermittent leave is that it can be difficult for employers to respond to employee absences, especially when employees provide little advance notice.⁴¹ Others maintain that intermittent leave may lead to the misuse of FMLA leave.⁴²

According to FMLA regulations, employers must account for intermittent or part-time leave in the smallest increment that the employer uses to account for other types of leave. But, an employer must account for FMLA leave in increments of no more than an hour.⁴³

The 2012 DOL employee survey defined intermittent leave as two or more episodes of FMLA-related leave for the same condition in the previous year.⁴⁴ Among FMLA-eligible employees, 35.3% said they had taken leave five or more times for the same condition. By contrast, 26.6% of ineligible employees said they had taken leave at least five times in the past year. FMLA-eligible employees took leave an average of 4.8 times, compared to an average of 5.0 times among ineligible employees. Most intermittent leave was for six days or more. Among FMLA-eligible employees, 75.9% of the most recent absences were for six days or more, compared to 73.1% among ineligible employees. Among FMLA-eligible employees, an estimated 2.5% of the most recent absences were for a day or less, compared to an estimated 0.0% for ineligible employees.⁴⁵

According to a 2007 SHRM report, 80% of human resources (HR) professionals reported that tracking intermittent leave was the most difficult part of the FMLA to administer.⁴⁶

According to the 2012 DOL survey of employers, 31.3% of all employers said it was “very” or “somewhat” difficult to deal with planned intermittent leave, but 50.9% said it was very or somewhat difficult to deal with unplanned intermittent leave. Among employers with FMLA-

⁴⁰ For example, see U.S. House, Committee on Education and Labor, Subcommittee on Workforce Protections, *The 15th Anniversary of the Family and Medical Leave Act: Achievements and Next Steps*, Serial No. 110-86, 110th Cong., 2nd Sess., April 10, 2008 (Washington, DC: GPO, 2008), pp. 43-44.

According to one study, because of the FMLA, first-time mothers who work full-time during pregnancy may be more likely to work part-time than full-time when they return to work. Whitney Schott, “Going Back Part-Time: Family Leave Legislation and Women’s Return to work,” *Population Research and Policy Review*, vol. 31, no. 1, 2012, pp. 23-24.

⁴¹ According to a 2007 SHRM report, HR professionals said that employees provided an average of 61 days of advance notice when requesting FMLA leave for the birth or adoption of a child or for the placement of a foster child. Survey respondents also said that employees provided notice of less than a week or on the same day for a serious health condition resulting from a catastrophic event or an ongoing illness. Society for Human Resource Management, *FMLA and Its Impact on Organizations*, July 2007, <http://www.shrm.org/research/surveyfindings/documents/fmla%20and%20its%20impact%20on%20organizations%20survey%20report.pdf>, pp. 6, 16-17. (Hereinafter cited as SHRM, *FMLA and Its Impact on Organizations*, July 2007.)

⁴² At a June 2005 roundtable before the Senate Health, Education, Labor, and Pensions (HELP) Committee, a management attorney said that intermittent leave for employees with permanent medical conditions creates the biggest problem for employers. The attorney said “I’m seeing serious abuses.” Fawn H. Johnson, “‘Roundtable’ Panel Debates Usefulness of ‘Intermittent Leave’ in Family Leave Law,” *Daily Labor Report*, June 24, 2005.

⁴³ 29 C.F.R. §825.205.

⁴⁴ Abt Associates, *Family and Medical Leave in 2012*, pp. iii, 77.

⁴⁵ *Ibid.*, pp. 75-78.

⁴⁶ SHRM, *FMLA and Its Impact on Organizations*, July 2007, pp. 20-21.

eligible employees, 35.8% said it was very or somewhat difficult to deal with planned intermittent leave. But, 59.3% of employers said it was very or somewhat difficult to deal with unplanned intermittent leave.⁴⁷

In order to lessen the record-keeping burden for employers, some have suggested that the minimum increment of leave be increased.⁴⁸ Others have countered that expanding the increment would substantially penalize leave-takers by withholding, for example, half a day's pay when the employee only needs to be absent for an hour or less. The size of the penalty could potentially discourage some employees from taking intermittent leave.

Effect of FMLA Leave on Other Employees

Concerns have been raised about effect of the FMLA on employees who must fill in for employees who are on leave. These effects may differ if FMLA leave is intermittent or for a longer period. The burden on co-workers could also change if FMLA leave is expanded.

In the above-mentioned 2007 report, SHRM reported that 66% of HR professionals said that there are morale problems when employees are asked to cover for employees who take FMLA leave.⁴⁹ The HR professionals also reported that employees may be more likely to have a negative view of FMLA leave when it is taken intermittently as opposed to leave taken to care for a newborn or newly placed adopted or foster child or for a catastrophic health condition.⁵⁰

According to the 2012 DOL survey of employers, the most common response when an employee is taking leave for a week or more is to assign work temporarily to other employees. Among all employers, 64.5% said that they assigned work to other employees, while 17.8% said that they put work on hold until the employee returned to work. Among employers with FMLA-eligible employees, 83.3% said that they assigned work to other employees, but 6.3% said that they hired a temporary worker.⁵¹

The 2012 DOL employee survey asked employees how their work changed when their coworkers took leave. The responses were virtually the same among all employees and FMLA-eligible employees. Among all employees 51.0% said there was no change in their work, 34.1% said they took on more duties, 26.0% said they worked more hours, and 25.7% said they took on different job responsibilities. Among FMLA-eligible employees, 53.3% said there was no change, 34.3% said they took on more duties, 24.5% said they worked more hours, and an identical 25.7% said they took on different responsibilities.⁵²

⁴⁷ Abt Associates, *Family and Medical Leave in 2012*, p. 155.

⁴⁸ Billings, *Groups Tell OMB Manufacturers Would Benefit From Overhaul of FMLA Rules*.

⁴⁹ SHRM, *FMLA and Its Impact on Organizations*, July 2007, p. 18.

⁵⁰ See *Family Medical Leave*, SHRM Weekly Online Survey, January 9, 2007, and *Leave Administration Under the FMLA*, SHRM Weekly Online Surveys, November 7 and 15, 2006.

⁵¹ Abt Associates, *Family and Medical Leave in 2012*, p. 146.

⁵² *Ibid.*, p. 153.

Appendix. Data and Methodology

This appendix provides additional information on the data and methodology used in this report.

Annual Social and Economic Supplement to the Monthly Current Population Survey

This report uses data from the Annual Social and Economic (ASEC) supplement to the monthly Current Population Survey (CPS). The CPS is a household survey conducted by the U.S. Census Bureau for the Bureau of Labor Statistics (BLS).

The sample for the ASEC supplement is representative of the civilian, noninstitutional population of the United States. The sample for the supplement includes members of the Armed Forces living in civilian housing units on a military base or in a household not on a military base. The sample does not include persons living in institutions (such as psychiatric hospitals, nursing homes, or correctional facilities). Approximately 76,000 households are interviewed for the supplement.⁵³

In this report, data from the ASEC supplement are for employees ages 18 and over. For 2011, the survey includes 91,349 wage and salary workers ages 18 and over. When weighted to represent the noninstitutional U.S. population, the sample represents 143.2 million wage and salary workers.

The ASEC supplement collects information on the longest job a person held during the previous calendar year. In this report, data by sector, occupation, and industry are for the longest job a person held in the previous year. From 1993 to 2011, job growth in Health Services accounted for over three-fifths of the increase in jobs in the major industry of Educational and Health Services.⁵⁴ Therefore, in this report, the Educational and Health Services industry is separated into three industries: Health Services, Educational Services, and Social Assistance.

The ASEC supplement asks respondents how many persons worked for their employer at their longest job. Data on the number of weeks worked and usual hours worked are for all jobs held during the previous year.

In the ASEC supplement, wages and salary are defined as money earnings received by persons who are employees (i.e., wage and salary workers). Money earnings include wages, salary, commissions, tips, piece-rate pay, and bonuses. Earnings are before taxes or other deductions.⁵⁵

Employees with children under the age of 18 in the household include employees who have a child under the age 18 who has a child of his or her own. Otherwise, employees under the age of 18 with children are not included in the analysis.

⁵³ Census Bureau, *Current Population Survey, 2012 Annual Social and Economic (ASEC) Supplement*, pp. 1-1, 9-3, and G-3.

⁵⁴ From 1993 to 2011, the number of jobs in “Educational and Health Services” increased by 7.8 million (from 12.3 million to 19.9 million). Employment in “Health Services” accounted for 4.8 million, or 63.2%, of these jobs. BLS, *Current Employment Statistics*.

⁵⁵ Census Bureau, *Current Population Survey, 2011 Annual Social and Economic (ASEC) Supplement*, p. 9-4.

U.S. Department of Labor 2012 Surveys of Employers and Employees

In 2012, Abt Associates of Cambridge Associates, under contract with the U.S. Department of Labor, conducted surveys of employers and employees to determine employee eligibility and use of FMLA-related leave. According to the final report, the definition of leave used in the surveys “aligns” with the types of leave covered by the FMLA.⁵⁶

The DOL employee survey consisted of 2,852 completed interviews and includes employees 18 and over who were employed for pay in the previous 12 months. The worksite survey consisted of 1,812 completed interviews and included employers who had at least 50 employees on the payroll at the time of the survey. The employee survey included both private and public sector employees, while the employer survey included only private sector worksites. The interviews were conducted between February and June 2012.⁵⁷

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⁵⁶ Abt Associates, *Family and Medical Leave in 2012*, pp. 1, 5.

⁵⁷ Kelly Daley et al., *Family and Medical Leave in 2012: Methodology Report*, Abt Associates, Cambridge, MA., September 6, 2012, <http://www.dol.gov/asp/evaluation/fmla/FMLAMethodologyReport.pdf>, pp. 2-3. Abt Associates, *Family and Medical Leave in 2012*, p. 17.

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