

Family and Medical Leave in the United States: Historical and Political Reflections*

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Donna R. Lenhoff†

Abstract

The FMLA, the first law signed by President Bill Clinton after his inauguration in 1993, is an excellent example of national policy designed to help employees navigate the complex shoals of the work-family conflicts occasioned by the revolutionary influx of women into the workforce.¹ It is also an excellent example of a sustained and organized effort to achieve such policies, and of the process involved in doing so.² Indeed, the fact that it took so long to enact such a modest policy-- mere *unpaid* leave—shows the difficulties confronting advocates for family policy in the United States today. The lessons learned from the FMLA effort can inform current and future efforts to adopt work-family policies.

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† The author is an independent public-interest attorney and consultant specializing in women’s, labor, and health issues. She was with the National Partnership for Women & Families (formerly the Women’s Legal Defense Fund), ultimately as its General Counsel, from 1978 through 2001.

The Family and Medical Leave Act: A Crucial Support for Working Families

Working families face conflicts between their work responsibilities and their families every day. While at work, employees must find suitable and reliable arrangements for their children and for frail elderly family members who need help with daily living tasks. They generally address these conflicts through a variety of child-care, after-school, elder-care arrangements, and creative scheduling approaches. But sometimes—when children are seriously ill, aging parents' health deteriorates suddenly, or babies are born or adopted—employees themselves must take time off from work; substitute care arrangements are not available, inadequate, or inappropriate. Moreover, an employee's own serious illness poses the most basic of work-family conflicts, because when an employee is ill she by definition cannot be at work, and an employee's job loss due to illness results in the direct loss of financial and other supports.³

The FMLA addresses these most pressing and immediate conflicts by requiring workplace accommodations as a minimum labor standard. "Family and medical leave" is defined as leave to care for a newborn or newly adopted child or a child, spouse, or parent who has a serious health condition, or to recover from one's own serious health condition. Employees are eligible if they have worked for their employer for a year, and for 1,250 hours during the immediately preceding year.⁴

Under the law, employers of 50 or more employees must guarantee their employees who are on family or medical leave their jobs, or equivalent jobs, for up to 12 weeks a year. Employers must continue paying their share of employees' health insurance premiums during these leaves.

The FMLA has helped millions of employees since it went into effect in August 1993. Its most frequent use is for employees' own serious health conditions: 58% of male leave-takers and 49% of women leave-takers took time off for that purpose. The FMLA was also used, of course, for caring for a newborn or newly adopted child, including maternity disability (26% of leaves) and caring for a seriously ill child (12%), spouse (6%), or parent (13%). Although men in general take shorter leaves to care for newborn or newly adopted children, 23% of male leave-takers took time off to care for a new child, while 29% of female leave-takers took time off to care for a new child or for maternity disability reasons. Twenty-nine percent of male leave-takers and 33% of female leave-takers took time off to care for an ill child, parent or spouse.⁵

The fact remains, however, that the FMLA is only a first step toward the kind of comprehensive work-family policy needed in the United States. The act guarantees only *unpaid* leave; excludes employees in most workplaces having fewer than 50 employees; excludes employees who do not have sufficient tenure; and covers only a few of the many reasons an employee might need leave to accommodate family needs (*e.g.*, an employee's or her child's recovery from a non-serious illness; help for extended-family members such as siblings or grandparents). The remedies for FMLA violations, and therefore the incentives for employers to comply, are limited. These compromises were made to ensure the act's passage, but they significantly limit its accessibility and affordability.

As advocates plan strategies to expand the FMLA or otherwise advance work-family policy, we have much to learn from the FMLA's development and promotion.

Defining the Solution, Building the Support

Even after the Pregnancy Discrimination Act was enacted in 1978, traditional maternity-leave programs in the U.S. were woefully inadequate. First, they were state- or employer-specific: virtually alone among industrialized nations, the U.S. had no national policy guaranteeing women their jobs after maternity. Second, existing “mommies only” leave programs violated principles of gender equality, reifying traditional gender roles and giving employers an excuse for not hiring or promoting women. Finally, such programs did not address women's (and men's) needs for family leave beyond periods of childbirth-related disability. The FMLA was thus conceived and structured as a way of both addressing women's maternity-leave needs and establishing broader, gender-neutral job protections for workers (women and men) dealing with family or medical needs that similarly took them temporarily out of their jobs.

It took nine years, from 1984 to early 1993, of sustained and organized effort to enact this modest policy of unpaid leave for serious family and medical conditions. The next sections of this paper will review the key elements that influenced the FMLA's legislative progress and ultimate success.⁶

Coalition-Building

In 1984, when the FMLA was first drafted, Ronald Reagan was just completing his first term as President, and the Senate was under Republican control; realistically, there was no chance of the bill's passage during that Congress. Even to educate Congress and the public about the issue through hearings in the Democratic-controlled House of Representatives, support from organized labor was required, since no new labor standard could be seriously considered without it. At first, representatives of some of the more traditional, male-dominated unions scoffed at the bill as trivial, but this view was overcome in great part through the efforts of women within unions. Indeed, as public support for the FMLA grew and union members began to demand family leave, unions ultimately understood the FMLA as a potent organizing tool and political issue.

In addition to garnering labor support, the National Partnership for Women & Families (then the Women's Legal Defense Fund), which had written the FMLA's first draft, organized a broad coalition (external to Congress) to promote passage of the bill. The FMLA coalition ultimately included many mainstream women's, labor, disability, children's, religious, and senior citizen' groups, such as the League of Women Voters, the National PTA, the Epilepsy Foundation, the American Academy of Pediatricians (but not the American Medical Association), the American Nurses Association, and Businesses for Social Responsibility. The conscious effort to include in the coalition not only organizations with significant grassroots lobbying membership and political clout, but also those that may have seemed unlikely allies for the cause, was instrumental. Significant among those allies were the AARP and the U.S. Catholic Conference, groups that were able to persuade key members of Congress—especially Missouri's Senator Kit Bond (R-MO), who both had a large elderly population in his state and was a major anti-choice figure in the Senate—to support the FMLA.

These groups were motivated by ideology, a desire to help their constituency, or politics.

The U.S. Catholic Conference, for example—an extremely unlikely ally for a coalition founded and run by a strongly pro-choice women’s group—was involved because of the FMLA’s focus on how mothers of new babies are treated in the U.S. Anti-choice activists simply could not insist that women carry babies to term and simultaneously ignore the economic consequences for those women. The AARP, on the other hand, became significantly involved when the proposal was amended to include elder-care leave—and the bill would specifically help elderly, seriously ill AARP members who needed their working adult children to take leave to help care for them. And as noted above, labor unions supported the FMLA because they saw it as a winning issue for Democrats; by 1991, its passage had become one of labor’s top Congressional demands.⁷

Many of these coalition groups were enthusiastic supporters with highly motivated grassroots activists. But the number of pro-FMLA contacts with Congress was nevertheless heavily outweighed by the anti-FMLA contacts organized by business opposition.

A Values-Based Message

To support the FMLA, proponents developed a two-part message. One part focused on the traditional concept of maternity leave so widely associated with emotionally laden images of newborns cradled by their mothers. But since the FMLA was not limited to maternity leave, the message included a broader theme—best summarized by the phrase “Employees shouldn’t have to choose between the jobs they need and the families they love”—that emphasized the needs of employees, not of babies, and described the problem as a continuum of family needs, from care of infants to care of hospitalized children and ailing seniors. Thus, the potent political symbols of motherhood became defined as one part of a much broader program encompassing family and medical leave.

Because it was drafted as a minimum labor standard, the FMLA was perhaps most vulnerable to attack as an “intrusive government mandate” into the way business is done. Proponents were able successfully to respond to this assertion—often compelling in American political discourse-- by persuasively arguing that ensuring against job loss for working mothers and fathers who had newborns, sick children, or compelling family medical emergencies was as important as existing popular labor standards like the minimum wage and overtime.

FMLA proponents also had to overcome the strong undercurrent in American public opinion that women with children (and certainly with infants) should not work outside the home. The FMLA message did this in two ways. First, it tapped into that very undercurrent by initially emphasizing support of mothers (and fathers) caring for their newborns at home. Second, it linked the working-mother issue with the need for working adults to be able to care for their aging parents—already a widely accepted notion. Social conservatives found it very difficult to argue that job needs should trump family needs.

Thus, it is not surprising that public opinion research showed strong support for the FMLA throughout the years when it was pending in Congress. A 1998 poll showed that both Democrats and Republicans, and 56% of men and 68% of women overall, were more likely to vote for a member of Congress who favored FMLA expansion.⁸

State Models

State FMLAs were another key influence on the federal bill's progress. In so large and complex a democracy as ours, sweeping new federal policies cannot realistically be adopted without some evidence that they work—and the best such evidence often comes from state experience. As “laboratories of democracy,” states can yield valuable information about development and implementation of new social models.⁹ FMLA proponents organized support for state family and medical leave laws along the lines of that proposed in a 1989 *Harvard Journal on Legislation* article, and many state (and a few local) FMLAs were adopted over the next several years.¹⁰ Not only did the precedent of successful state FMLAs refute federal opponents' predictions of economic doom, they also energized state coalitions, who lobbied their Senators and Representatives for the federal bill.

Political Configuration and Climate

Senator Christopher Dodd (D-CT) introduced the FMLA's predecessor in 1986, but no Senate legislative action was taken until 1987, after the Democrats regained control of the Senate and Dodd became the chairman of the relevant subcommittee. In the end, it was not possible to enact the FMLA into law without a Democratic House and Senate *and* a Democratic president.

Party affiliations also influenced direct support for the FMLA. For example, on the key veto-override vote in the House, 60% of the Representatives voted to override (not quite the required two-thirds). Of the Democratic Representatives, however, 82% voted to override; of the Republicans, only 23% did.¹¹

Opposition Response

Because the strategy of the FMLA opposition (represented especially by the U.S. Chamber of Commerce, the Society for Human Resource Management, and the National Federation of Independent Businesses)¹² was to oppose the FMLA on principle as a government mandate regardless of its provisions, cost, or limitations, there were no serious negotiations between business representatives and proponents of the legislation during the bill's consideration in Congress. While significant compromises (notably, the increase in the threshold for coverage to 50 employees) were made, they were made to woo more conservative legislators; not one of them changed the business lobbies' implacable opposition to the bill.

Once the bill was passed by both chambers of Congress, the opponents' all-or-nothing strategy meant they had to rely on the President's veto, despite the political risk for him. This approach worked for the opponents in the short run, preventing the FMLA from becoming law for several years. But it meant that business representatives had no significant input into the bill that finally became law. And it allowed the Democrats to set up a clear, concrete difference between the parties on the issue, ultimately having an impact on the outcome of the 1992 presidential election.

Individual Lawmakers' Motivations and Commitment

Of the FMLA's many highly committed cosponsors, the efforts of three—Senators Dodd and Bond, and Representative Marge Roukema (R-NJ)—were particularly important, and illustrate factors that affected legislators' impact on the FMLA, including ideology, electoral politics, personal experience, and gender.

Dodd was (then) not married and had no children, yet he believed in the importance of supporting children and families and sought the chairmanship of the Children and Families Subcommittee. In his advocacy for the FMLA, he was tenacious, committed, and endlessly optimistic. His efforts, rooted in his personal ideology, enhanced his home-state and national political stature as a Senate leader on behalf of children and families.

Senator Bond did not come on as a supporter of the FMLA until 1991, when he negotiated a compromise bill with Dodd—a bill that, because of his support, garnered enough votes to override the presidential veto in the Senate.¹³ Certainly one of the reasons Bond was interested in supporting the FMLA was to please his growing constituency of seniors. Bond was facing reelection in 1992, and, as a strong anti-choice Senator, perhaps he also did not want to be accused of being insufficiently sensitive to women's issues in this upcoming contest.

For Representative Roukema, personal experience was a main motivator. While an at-home spouse, she had taken care of her ailing mother-in-law and thus understood how time-consuming and exhausting care-giving can be. This experience led her to add the FMLA's provisions covering workers who must take leave temporarily to care for an aging parent (spouses were added later).

The FMLA had many strong, active, and committed male cosponsors in addition to Dodd and Bond. Nevertheless, gender made a big difference to members' votes. On the key veto-override vote, 79% of the 28 women voting in the House of Representatives, compared to 59% of the 399 men, chose to override. Among House Republicans, the gender gap was even larger: 73% of the women, compared to 21% of the men, voted to override.

Factors in Achieving Better Government Support for Working Families and Communities

The first and most important consideration in work-family efforts is, of course, the nature and scope of the type of governmental support being sought. The problem that work-family activists are still addressing is massive and multifaceted—nothing less than the major misalignment of society's resources, institutions, and structures that renders family care-giving “invisible”¹⁴—and thus the possible solutions are many and complex. Yet these solutions vary in their public appeal, their draw among supporters, their likely opposition, and ultimately, their political viability.

In general, the FMLA's broad design was its biggest strength. It targeted the daily concerns of a *range* of working families, and addressed values deeply held by the public and even by some of the strongest anti-FMLA voices. At the same time, the FMLA's provisions were fairly modest, merely setting out a narrow set of minimum requirements for employers. These characteristics enabled proponents to gather extensive support, split the opposition, and craft effective messages. On the other hand, because the FMLA *was* a minimum labor standard, its opposition – predictably—was a business lobby that had very strong support in Congress and the White House.

Policies that do not regulate employment practices—such as tax incentives or the creation of federal programs—are less likely to draw organized business opposition. But they may mean opposition (or at least lack of support) from other interests that have other priorities for government appropriations. The creation of new programs would also certainly run up against the anti-“big government” arguments that have proven so successful in many elections, and anything that complicates the tax code is sure to be criticized on those grounds.

Choice of forum—federal, state, or local—is another crucial factor that must be considered in any effort to strengthen supports for families. Federal policy has the advantages of affecting the greatest number of people and of requiring a lobbying effort aimed at only one legislative body rather than 51. But as the FMLA campaign showed, efforts to affect federal policy require a significant national investment in organizing, lobbying both in Washington and at the grassroots level, and public education. Since the likelihood of winning is enhanced if state-level models are in place, however, state efforts may in any event be a prerequisite for federal policy changes. Moreover, the current political configuration and climate at the federal level are not very promising for most work-family or work-life policies.

This is not to say that *no* legislation supportive of working families is possible in the current Congress. Some issues are less polarizing than others or are closely related to traditional Republican goals (such as tax relief). Sometimes appropriations are less polarizing, and might be negotiable as part of a bigger bill.

Nevertheless, for explicitly pro-work-family policies, during the next several years state and local governments may well present better opportunities for innovative policymaking than the federal government. State or local governments may reflect more liberal constituencies than Congress,¹⁵ and the price tag of innovative policies at those levels may be more manageable. And it is probably cheaper to reach and influence state or local policymakers than their federal counterparts.

Constraints on state or local policymaking are nevertheless significant. Most state legislatures do not meet full-time, and most state legislators are “citizen legislators” (paid little or nothing) whose “real” jobs keep them busy most of the time.¹⁶ Nor do state legislators have the kind of full-time professional staffs—the people who can help them develop legislation, build support for it, and shepherd it through the legislative process—that members of Congress have. These very practical limitations mean that work-family proposals would have to compete for legislators’ limited time and attention, even in states that advocates might otherwise expect to be hospitable.

At both the federal and state venues, well-placed legislators committed to a particular idea or with political motivation may be able to advance policies that otherwise would not progress. Advocates must consider individual legislators’ committee assignments, electoral strategies, and personal motivations when assessing key policymakers’ potential influence and when choosing the optimum venue for a policy campaign.

Conclusion

The FMLA campaign illustrates how opportunities were maximized and barriers overcome to achieve a major new pro-working family governmental policy. With a well-

developed legislative strategy, a broad coalition, a solid lobbying and public education infrastructure, a well-developed message, and a readiness to seize opportune moments—especially when the political winds shifted in their favor—advocates were finally successful. Work-family advocates can glean from this history key factors that must be taken into account in future policy-related campaigns.

¹ Thanks to Ellen Galinsky, President, Families and Work Institute, for the “navigation” metaphor.

² This effort has been thoroughly documented in Ron Elving’s excellent review of the legislative process leading to enactment of the FMLA. Ron Elving, *Conflict and Compromise: How Congress Makes the Law* (New York: Simon & Schuster, 1995).

³ Even today, however, many U.S. workers remain unprotected by basic workplace policies such as sick leave to protect them against this eventuality. J. Heymann, *The Widening Gap: Why America’s Working Families Are in Jeopardy—and What Can Be Done about It* (New York: Basic Books, 2000).

⁴ For more information about the FMLA, go to www.nationalpartnership.org. For a primer on the law itself, see *Guide to the Family and Medical Leave Act: Questions and Answers*, 5th Edition, (Washington, D.C.: National Partnership for Women & Families, 2002), also available at this website.

⁵ U.S. Department of Labor, *Balancing the Needs of Families and Employers: Family and Medical Leave Surveys 2000 Update* (Washington, D.C.: Government Printing Office, 2000). Figures cited in the text are from this report unless otherwise noted.

⁶ A complete legislative timeline for the FMLA can be found in Donna Lenhoff and Lissa Bell, “Government Support for Working Families and for Communities: Family and Medical Leave as a Case Study,” *Learning from the Past – Looking to the Future* (Christopher Beem and Jody Heymann, eds.) (Racine, WI: Work, Family, and Democracy Project, 2002), at pp. 24-26.

⁷ The 102nd Congress spanned 1991–1992.

⁸ National Partnership for Women & Families, *Family Matters* (1998).

¹¹ *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

¹² Donna Lenhoff and Sylvia Becker, “Family and Medical Leave Legislation in the States: Toward a Comprehensive Approach,” 26 *Harvard Journal on Legislation* 403 (1989).

¹¹ The House and not the Senate override vote is used because the larger numbers in the House permit a more accurate analysis.

¹² As noted previously, the appeal of the FMLA to anti-choice activists split the usual conservative coalition of social conservatives and special-business interests, leaving mostly the latter to oppose the FMLA.

¹³ The compromises were relatively minor at that point and did not affect the underlying business objection to the bill, which was that it was a so-called mandate on employers.

¹⁴ Nancy Folbre, *The Invisible Heart: Economics and Family Values* (New York: The New Press, 2001).

¹⁵ Of course, the flip side of this statement is also true: many state legislatures reflect particularly conservative and hostile electorates, so that a strategy focused solely on states by definition excludes those states.

¹⁶ The exceptions are the populous states such as California, New York, New Jersey, and Massachusetts.