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Expanding Federal Family and Medical Leave Coverage:
Who Benefits from Changes in Eligibility Requirements?

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Executive Summary

The Family and Medical Leave Act provides job-protected, unpaid leave to employees in firms with 50 or more employees. However, coverage and eligibility restrictions result in 49.3 million employees (44.1 percent) in the private sector being ineligible for leave in 2012. This paper looks at eligibility by demographic characteristics and finds that the probability of being eligible increases with educational attainment. Young men with high school degrees or less had the lowest rate of FMLA eligibility of all the demographic groups. Our analysis of the FMLA Employee and Workplace surveys examines various proposals to expand eligibility coverage. We find that expanding FMLA coverage to smaller employers and to employees working fewer hours would increase access to job-protected leave for 1.4 million to 8.3 million more employees in the private sector. Women of childbearing age would especially benefit from an expansion in eligibility coverage.

Introduction

The Family and Medical Leave Act (FMLA) was implemented two decades ago to provide employees the right to job-protected leave.[1] The law met a growing need for legislated leave. With the erosion of employer-provided fringe benefits and weakened job security, employees are increasingly unable to take medical leave while struggling with a serious illness or temporary disability. Moreover, the demand for time off to care for a family member has increased as more women have joined the workforce. About 18 million employees take family and medical leave annually.[2] Nonetheless, unmet need for leave continues to be a concern to millions of employees who are not eligible for job protection or cannot afford to take leave.

The FMLA allows employees to take up to 12 weeks of leave for their own serious health condition, care for an immediate family member with a serious health condition, for childbirth and to bond with a new child, care for an injured military service member, and deployment of a family member. FMLA leave is unpaid and employees often rely on a patchwork of employer-provided benefits and public assistance to make ends meet while on leave. Small employers with less than 50 employees are exempt from the law, and employees with less than full-year tenure with their current employer or insufficient work hours are also not eligible. Due to these eligibility restrictions, our analysis found that access to job-protected leave is far from universal, and some demographic groups have less access than others. The main findings of our analysis are:

- Fifty-six percent of private-sector employees are eligible for job-protected leave under the FMLA.
- Employees with less educational attainment are less likely to be eligible for FMLA leave.
- Young men with a high school degree or less have considerably lower eligibility rates than other employees.
- Women of childbearing age have slightly above average eligibility rates regardless of educational attainment; nonetheless two-in-five women do *not* have access to family and medical leave under the FMLA.

Our analysis examines various proposals to expand eligibility coverage. Expanding FMLA coverage to smaller employers and to employees working fewer hours would increase access to protected leave for 1.4 million to 8.3 million more employees in the private sector. This would be a significant

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1   The FMLA was passed in February 1993 and took effect in August. Under the FMLA employers are required to hold the jobs of eligible employees on family or medical leave until their return, or offer these employees similar jobs when they come back to work.

2   Abt Associates 2013: Exhibit 4.1.2; and Bureau of Labor Statistics, Employment from the Current Employment Statistics Survey, annual employment data for 2012. Private and public sector employment.

improvement over the current law. However, with about 49 million private-sector employees currently ineligible for leave under the FMLA, these proposals fall short of providing universal access to job-protected leave.

FMLA Coverage

In 2012, the Department of Labor commissioned a pair of surveys on FMLA coverage and utilization: 1) A survey of worksites about the provision of family and medical leave benefits; and 2) a survey of employees about eligibility, use of leave and unmet need for the leave under the FMLA (see Appendix for description of the two surveys). Our analysis of the Employee Survey finds that 55.9 percent of employees in the private sector were eligible under the FMLA in 2012 (**Table 1**).[3]

In order for an employee to be eligible, s/he must work for a firm that employs 50 or more employees within a radius of 75 miles, have been with the firm for at least one year, and worked at least 1,250 hours over the past year. More than two-in-five (44.1 percent) employees do not meet those conditions and thus are not eligible for job-protected leave under the FMLA. About one-third of ineligible employees had been with their firm for less than 12 months. About half of ineligible employees worked less than a total of 1,250 hours over the past 12 months. Finally, two-thirds of ineligible employees worked in exempt firms with less than 50 employees or with less than 50 employees within 75 miles.[4]

TABLE 1

Eligibility rates of employees in the private sector by eligibility criteria, 2012 (percent)		
	Yes	No
Working for firms meeting the 50/75 rule	70.6	29.4
Job tenure 1 year or more	85.1	14.9
Working at least 1250 hours per year	78.2	21.8
Combined 50/75, job tenure, & 1250 hours/year	55.9	44.1

Source: Authors' analysis of the FMLA Employee Survey, 2012. Weighted estimates. Sample size 1,914.
Notes: The 50/75 rule is that a firm must employ a total of at least 50 employees across worksites within a 75-mile radius.

3   Authors' analysis of the FMLA Employee Survey, 2012, weighted estimates. Estimated eligibility rates are for employees employed at the time of the survey.
4   In order for a firm to be covered under the law, it must have employed 50 or more employees in 20 or more workweeks in the current or preceding calendar year. Moreover, in order for the employees to be eligible, the number of employees across various worksites within 75 miles must also be at least 50 employees. For example, a hypothetical firm with 100 employees at two worksites in respectively San Francisco (25 employees) and Los Angeles (75 employees) would be covered under the law. However, the 25 employees in San Francisco would not be eligible regardless of their tenure or hours worked because of the 50/75 rule, while the 75 employees in Los Angles may be eligible.

The need for leave was fairly common. An estimated 19.9 percent of eligible employees took qualifying leave over the past 18 months (**Table 2**).[5] Leave rates were higher for eligible employees than ineligible employees, but the fact that 14.7 percent of non-eligible employees took leave over the past 18 months indicates that many firms do offer some family and medical leave benefits. An estimated 78.8 percent of non-covered establishments with less than 50 employees reported that they offered sick leave for the employee's own illness, and 75.3 percent of establishments reported they offered leave to care for a child, spouse or parent with a serious illness.[6]

TABLE 2

Leave rates and unmet leave rates for eligible and non-eligible employees in the private sector, 2012 (percent)		
	Leave rate	Unmet leave rate
All employees	17.6	6.1
Eligible employees	19.9	6.0
Non-eligible employees	14.7	6.2
Source: Authors' analysis of the FMLA Employee Survey, 2012. Weighted estimates.		
Notes: Qualifying leave in the past 18 months at the time of survey, and includes both longest leave and most recent leave.		

The FMLA only gives an employee the right to take *unpaid* leave for qualifying reasons, and some employees may not be able to afford leave.[7] Other employees may need leave for reasons that are not covered under the FMLA such as taking care of a grandparent, or needing a leave that exceeds the length of leave as guaranteed under the law.[8]

Unmet need for leave was a problem for about 6 percent of employees in the private sector. There were no differences in the rate of unmet leave for eligible and non-eligible employees.

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5   Qualifying FMLA leave reasons include own serious health condition, care for an immediate family member (spouse, child, parent) with a serious health condition, new child (birth, adoption, foster), care for a covered military service member with a serious injury or illness incurred or aggravated in the line of duty, and deployment of the employee's parent, spouse or child to covered active duty as a member of the U.S. armed forces.

6   Authors' analysis of the FMLA Worksite Survey, public use files, 2012, weighted estimates. The family and medical leave offered by non-covered firms may or may not meet standards set by the FMLA in terms of duration and type of leave.

7   An estimated 39.7 percent of firms reported offering paid sick and/or disability leave to at least some of their employees according to the 2012 Worksite Survey (Authors' analysis).

8   Length of protected FMLA leave is 12 weeks in a 12-month period, and 26 weeks to care for a covered military service member with a serious injury or illness.

The Demographics of Eligibility

Young workers and Hispanic workers have lower eligibility rates than other demographic groups. Further analysis, using probit modeling, found that differences in access to job-protected leave under the FMLA are primarily due to disparities in educational attainment and income.[9] Overall, employees with no high school degree were an estimated 13.6 percentage points less likely to be eligible, while employees whose highest educational attainment was college had a 10.7 percentage point higher probability of being eligible than employees with "some college" experience, after controlling for other personal characteristics (**Tables 3 & A3**). However, employees with a high school degree or equivalent and employees who continued onto grad school saw smaller effects similar to that of employees with "some college." The latter is probably due to the association of professional degrees with a greater likelihood of employment in smaller establishments. The same discrepancies in eligibility are reflected across income groups; employees with higher incomes were more likely to be eligible for job-protected leave.[10]

TABLE 3

Change in the marginal probability of FMLA eligibility by education, private sector, 2012	
	Percentage point difference in eligibility rate
Less than high school	-13.6
High school degree	3.4
Some college	Reference group
College degree	10.7
Graduate school	3.0
Source: Authors' analysis of the FMLA Employee Survey, 2012.	
Notes: The estimated coefficients are marginal effects at the multivariate point of means derived from a probit model, after controlling for other personal characteristics. Eligibility is defined as the percentage of employees that meets the 50/75 rule, reports having tenure of 12 months or more, and worked 1,250 or more hours in the past year. The eligibility rate is the percentage of current employees (at time of survey) who are eligible under the FMLA. See Appendix Table A3.	

A combination of factors contributes to the shortfall in FMLA eligibility coverage facing low-income workers. Low-income workers typically have lower educational attainment and thus lower wages. Low-income workers disproportionally work in jobs that are associated with higher rates of turnover, seasonal fluctuations, and less income security. Moreover, a higher share of low-income workers works part-time either by choice or involuntarily. Some workers work multiple jobs to earn

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9 A probit model is a type of regression analysis used when the outcome variable is a YES/NO variable rather than continuous. In our model, the outcome variable is "Eligible" or "Not eligible". A probit regression accounts for personal and employment characteristics to estimate the contribution of each factor to eligibility.

10 The comparison group is individuals with annual family incomes between $50,000 and $75,000. Not all the estimates were statistically different from zero due to small sample sizes. See Table A1.

a living and might put in more than fulltime hours, but because eligibility is determined at the firm level, it may be that no single job meets the hours and tenure eligibility requirements.

TABLE 4

Eligibility rates by selected personal characteristics, private sector employees, 2012
(percent)

	All	Women	Men
All private sector	55.9	55.8	56.0
Ages 18-44	53.4	57.4	50.3
Ages 45 and up	59.1	54.1	64.5
For Ages 18-44			
High school and less	48.9	60.7	41.9
Some college or more	56.2	55.9	56.4
Family income $0-39,999	48.5	52.3	45.5
Family income $40,000 and up	59.5	61.0	58.3

Source: Authors' analysis of the FMLA Employees Survey, 2012. Weighted estimates.

Notes: Eligibility is defined as the percentage of employees that meets the 50/75 rule, reports having tenure of 12 months or more, and worked 1,250 or more hours in the past year. The eligibility rate is the percentage of current employees (at time of survey) who are eligible under the FMLA.

FIGURE 1

Percentage of private-sector employees who are not eligible for FMLA, 2012
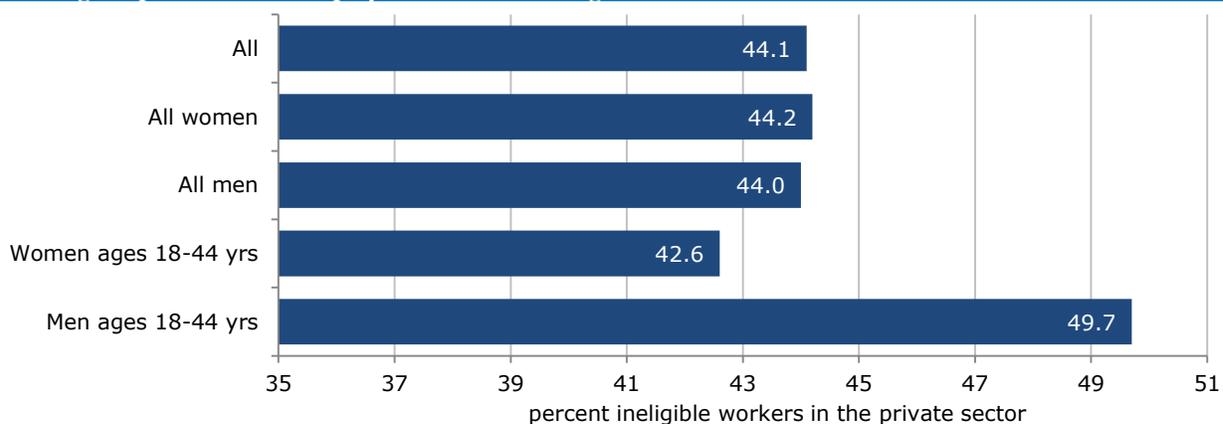
Sources: FMLA Employee Survey, 2012, weighted estimates. Employees in the private sector.

Interestingly, the disparities in eligibility coverage across education and income were more pronounced for young men than for young women (**Table 4**). Only 41.9 percent of young men (ages 18-44) with a high school degree or less were eligible for leave under the FMLA, compared to an average of 55.9 percent across all private sector employees. Young women, on the other hand had slightly above average eligibility rates regardless of educational attainment.[11] Nonetheless, about two in every five women of childbearing age do not have job-protected leave under the FMLA.

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11 Young women with a high school degree or less were found to have a higher eligibility rate than young women with some college or more. According to the survey data this is due to young women with no college experience being

Expanding Access to Medical and Family Leave

In 2012, an estimated 44.1 percent of employees in the private sector were ineligible for FMLA coverage, because they worked at a small worksite, had been with the employer for less than a year, and/or worked less than full-time. Relaxing the eligibility rules would increase eligibility rates and expand coverage for millions of workers (**Table 5**).

- Lowering the employee threshold from 50 to 30 employees across worksites within a 75-mile radius (30/75) is estimated to increase the eligibility rate from 55.9 percent to 60.1 percent, equal to an additional 4.7 million employees becoming eligible.
- Lowering the hours restriction from 1,250 (e.g. 24 hours per week) to 1,050 hours (e.g. 20 hours per week) is estimated to increase the eligibility rate to 58.3 percent. A decrease in the hours threshold to 750 hours (e.g. 14.4 hours per week) could increase the eligibility rate to 59.1 percent.
- The combined effect of relaxing the employee threshold to 30/75 and hours threshold to 750 hours could increase the number of eligible employees by 8.3 million. While millions of workers would become newly eligible for job-protected leave, these proposed changes fall far short of providing universal coverage. With 49 million *in*eligible employees in the private sector, only one-in-six employees who do not currently have coverage would gain coverage by the combined expansion.

TABLE 5

Simulation of eligibility rates for various eligibility thresholds of number of employee and hours worked, private sector, 2012		
Eligibility Thresholds	Eligibility Rate (percent)	Change in number of eligible employees
Current	55.9	-
40 employees within 75 miles	57.2	1,398,893
30 employees within 75 miles	60.1	4,652,589
1050 hours per year	58.3	2,675,297
750 hours per year	59.1	3,597,716
Combined effect of 30/75 and 750 hours	63.4	8,321,368
Source: Authors' analysis of the FMLA employee survey, 2012; and Bureau of Labor Statistics, Current Employment Survey, private-sector employment, annual data, 2012. Weighted estimates. Notes: The estimates for employee thresholds underestimate the number of employees affected due to non-responses. See Methodological Appendix.		

more likely to have been with the same employer for at least 12 months. Young women with a high school degree or less were also more likely to work in a unionized establishment.

Currently, women and men have similar eligibility rates; however, women would disproportionally benefit from an expansion in eligibility (**Table 6**). This is due to women being more likely to work for smaller employers (size 30-50 employees) and to work part time.

TABLE 6

Change in the eligibility rate for various eligibility thresholds of worksite size and hours worked, private sector employees, 2012
(percent)

Eligibility Thresholds	Current	30/75	750 hours	Combined effect of 30/75 and 750 hours
All	55.9	60.1	59.1	63.4
Women	55.8	61.0	60.0	65.2
Men	56.0	59.3	58.4	61.7
Women ages 18-44	57.4	63.6	60.8	67.1
Men ages 18-44	50.3	53.6	52.9	56.3
High school or less	51.3	53.8	53.6	56.2
Some college	53.6	60.0	58.7	65.0
College degree or more	63.6	67.6	66.2	70.2

Source: Authors' analysis of the FMLA employee survey, 2012. Weighted estimates.

Notes: The estimates for employee thresholds underestimate the number of employees affected due to non-responses. See Methodological Appendix.

FIGURE 5

3.1 million women of childbearing age would gain access to family and medical leave under the FMLA, if the FMLA were expanded to cover smaller employers and more part-time workers
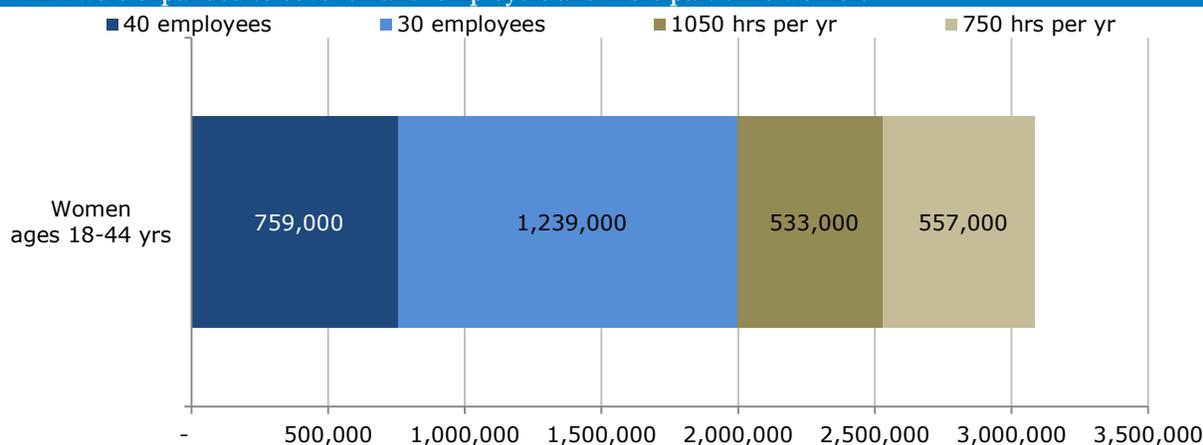
Sources: FMLA Employee Survey, 2012; and Bureau of Labor Statistics, Employment from the Current Employment Statistics Survey, annual employment data for 2012, weighted estimates. Employees in the private sector. The simulation estimates the total impact of expanding coverage to firms with 30 and more employees (from 50 employees) across worksites within 75 miles; and to employees working 750 hours or more a year (from 1250 hours).

The FMLA provides leave for maternity-related illness and for new parents to care for and bond with a newborn baby, newly adopted child and newly placed foster child. Under current rules, 57.4 percent of childbearing-age women (18-44 years old) are eligible for leave under the FMLA. Lowering the employee and/or hours thresholds could raise the eligibility of women of child-

bearing years to as much as 67.1 percent for the combined effect for 30/75 and 750 hours, equal to 3.1 million more female employees being covered by job-protected leave. Women of childbearing age are disproportionally employed by smaller employers, and therefore would especially benefit from a change in the law to lower the employee cutoff.

Finally, the analysis found a disparity in eligibility across educational attainment and family income. This disparity would increase, as employees with at least some college experience would benefit to a greater degree than employees with a high school degree or less. For instance, an additional 2.0 million more employees with no college experience (increase of 9.5 percent) would become eligible for leave under the FMLA, if the employee threshold was lowered to 30 employees and hours threshold to 750 hours; while 3.9 million more employees (increase of 21.2 percent) with some college experience but not a four-year college degree would become eligible. A number of factors contribute to insufficient coverage of workers with lower educational attainment, including that they are more likely to work in the type of jobs associated with higher job turnover, and thus are more likely not to meet the tenure requirement, regardless of changes in the employer size and hours thresholds. Moreover, ineligible employees may use unemployment as a substitute for unpaid leave, further contributing to non-stable employment relationships.

Conclusion and Policy Recommendations

The Family and Medical Leave Act was implemented two decades ago to provide employees the right to job-protected, unpaid leave for up to 12 weeks. However, coverage and eligibility restrictions result in 49.3 million employees (44.1 percent) in the private sector being ineligible for leave in 2012. Though many non-covered small firms do provide some leave, the coverage and duration of leave do not necessarily meet the standards set by the law. (A forthcoming policy paper by CEPR further explores leave benefits provided by firms.)

Our analysis of the FMLA surveys examines various eligibility expansion proposals. An estimated 8.3 million more employees would become eligible for FMLA leave if the employee threshold were to be reduced from 50 to 30 employees *and* the hours threshold reduced from 1,250 to 750 hours per year. However, even with these changes an estimated 41.0 million private-sector employees would remain ineligible.

Many of the employees not helped by these changes in the employee and hours thresholds have strong labor market attachment, but do not meet the 12-month tenure requirement because they work in industries associated with high job turnover, seasonal fluctuations, and contingent work arrangements. In particular, young men with less educational attainment have lower eligibility rates

than young women and older men because they disproportionally work in industries such as construction, landscaping and transportation that are associated with shorter job tenures.

With FMLA eligibility requirements tied to the duration and place of employment, rather than an employee's attachment to the labor force, many near-full-year employees remain uncovered by the law. One approach to make the FMLA more universal in coverage would be to base eligibility on earnings, while setting the earnings threshold at a level that does not exclude low-wage workers. This could be modeled after the California Paid Family Leave program implemented in 2004. To be eligible for partial wage replacement during a family or medical leave, California workers need only to have earned $300 or more in State Disability Insurance-covered jobs in the "base period," and do not need to have been with their employer for any specific period of time.[12]

Unlike the California Paid Family Leave program, the federal FMLA guarantees only *un*paid leave. Six percent of all private-sector employees report having unmet need for leave in the past 18 months, where nearly half of these employees stated they could not afford to take leave.[13] Especially low-income employees, with fewer economic resources to draw upon, cannot afford to take time off from work without wage replacement. (A forthcoming paper by CEPR examines inequality in access to and use of leave benefits.)

In order to make family and medical leave more universally available across income groups, the FMLA should be amended to offer partial wage replacement. On December 12, 2013 the Family and Medical Insurance Leave (FAMILY) Act, which would establish a national paid family and medical leave program, was introduced in Congress. Modeled after the California, New Jersey and Rhode Island paid medical and family leave programs, it would provide up to 12 weeks of partially paid leave.[14] The program would be funded by combined employer-employee contributions and would apply to nearly all employees regardless of firm size, including the self-employed. Employees taking leave would receive about 66 percent of their monthly wage earnings or self-employment income up to $4,000 per month.[15]

California and New Jersey's paid leave programs demonstrate that paid leave is achievable without undue hardship for employers.[16] Both states have had paid medical leave through a state disability insurance program since the 1940s. More recently, these states have implemented paid family leave.

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12   Appelbaum and Milkman, 2011. The California Paid Family Leave Act requires that an employee earned $300 or more in an SDI-covered job during any quarter in the base period, which is five to seventeen months before filing a PFL claim.

13   Abt Associates, 2013: Table 6.4.1.

14   U.S. Congress, S.1810, December 2013; and Center for American Progress, 2013.

15   The monthly benefit is determined as 1/18 of annual wage earnings or self-employment income for the calendar year with the highest earnings/income in the most recent three years.

16   The Rhode Island Paid Family Leave program was implemented in January 2014.

In a survey of California employers that examined their experiences with the state's paid family leave program, an overwhelming majority reported no impact or a positive impact of paid leave on productivity, performance, and profitability.[17] The experience from California suggests that paid family and medical leave has the potential to generate cost savings due to reduced turnover and by enabling employers that already provide such benefits to coordinate company benefits with the state program. Passage of the FAMILY Act would enable workers who are eligible for a family or medical leave but who can't afford to take unpaid leave to take the time to care for themselves and their families when a serious illness strikes.

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17   Milkman and Appelbaum, 2013: Chapter 4.

References

Abt Associates. 2012. *Family and Medical Leave in 2012: Methodology Report*. Prepared for the U.S. Department of Labor, Wage and Hour Division. Submitted September 6, 2012.

Abt Associates. 2013. *Family and Medical Leave in 2012: Technical Report*. Prepared for the U.S. Department of Labor, Wage and Hour Division. Submitted September 7, 2012, updated September 13, 2013.

Appelbaum, Eileen and Ruth Milkman. 2011. "Leaves That Pay: Employer and Worker Experiences with Paid Family Leave in California." Washington, DC: Center for Economic and Policy Research.

Farrell, Jane and Sarah Jane Glynn. 2013. "The FAMILY Act: Facts and Frequently Asked Questions." Fact sheet. Washington, DC: Center for American Progress, December.

Milkman, Ruth and Eileen Appelbaum. 2013. *Unfinished Business: Paid Family Leave in California and the Future of U.S. Work-Family Policy*. Ithaca and London: ILR Press.

Ruhm, Christopher J. 1997. "Policy Watch: The Family and Medical Leave Act." *Journal of Economic Perspectives*, Vol. 11, No.3, Summer, pp. 175-86.

U.S. Senate. 113th Congress, 1st Session. *S. 1810, Family and Medical Insurance Leave Act of 2013*, [introduced December 12, 2013]. http://www.gpo.gov/fdsys/pkg/BILLS-113s1810is/html/BILLS-113s1810is.htm.

U.S. House. 113th Congress, 1st Session. *H.R. 3712, Family and Medical Insurance Leave Act of 2013*, [introduced December 12, 2013]. http://thomas.loc.gov/cgi-bin/bdquery/z?d113:h.r.03712:

Williams, Joan C. and Heather Boushey. 2010. *The Three Faces of Work-Family Conflict: The Poor, The Professionals, and the Missing Middle*. Washington, DC: Center for American Progress and Work Life Law, UC Hastings College of the Law, January.

Methodological Appendix

The Department of Labor (DOL) contracted with Abt Associates to conduct a pair of surveys on the provision of FMLA leave, utilization of leave, unmet need for leave, and public awareness about the program. The surveys were conducted between February and June of 2012. The Worksite Survey surveyed 1,812 worksites (establishments) across the United States; while the Employee Survey interviewed 2,852 individuals, age 18 or older, who had worked at some point during the past year (prior to the time of the survey).

Employee Survey

The Employee Survey divided respondents into three groups: 1) 'Leave takers' who took family or medical leave in the prior 18 months; 2) 'leave needers' who wanted leave but did not take leave in the prior 18 months, and 3) 'employed only' in the prior 12 months. Some respondents were both leave takers and leave needers. The total sample size was 2,852, with a response rate of 15.1 percent. The respondents were asked a set of questions about their personal and employment characteristics, and depending on their leave status group, they were asked a set of questions pertaining to their leave experience and/or their unmet need for leave. The survey over-sampled individuals who took family and medical leave (leave takers) and individuals with unmet leave (leave needers). To account for over-sampling and non-responses, the sampling weights were benchmarked to the March 2011 Current Population Survey, Annual Social and Economic Supplement. The assigned sampling weights ranged from 3,211 to 334,493, resulting in some respondents' outcomes having a relatively large impact on estimates, in particular in the analysis of outcomes by demographic subgroups.

TABLE A1

Sample sizes by subgroups				
	Leave takers	Leave needers	Leave takers and needers	Employed only
Sample size	1,133	219	199	1,301
Source: Abt Associates, Technical Report, 2012: p. 4-5.				

The Employee Survey asked a series of questions in order to determine respondents' FMLA eligibility status. In order for a given respondent to be considered eligible for analysis purposes, he/she must have answered affirmative to the following questions: 1) there are 50 or more employees at his/her worksite, or there are 50 or more employees in the organization within a 75-mile radius (the 50/75 rule); 2) have worked continuously for the same employer for the past year; and 3) was a fulltime employee for the past year, or worked, on average, 25 or more hours per week in the past year. We adopted the methodology developed by Abt Associates to estimate eligibility rates. The Abt methodology assumes that non-respondents are not eligible. For example, a

respondent who did not answer the question about working continuously for the same employer over the past year was assumed to have tenure of less than 12 months. This assumption about non-responses results in the underestimation of the eligibility rates, compared to an estimation of eligibility rates that excludes non-respondents. Other factors that may contribute to an underestimation of the eligibility rate are: 1) continuous tenure versus total tenure; and 2) the hours question for non-fulltime workers did not specify to include overtime.

The analysis further considered the effects of varying the statutory eligibility requirements pertaining to hours worked and worksite size. The public use files categorized the answers thus limiting the simulations to pre-determined cutoffs. The simulation for hours worked estimated the number of non-fulltime employees who worked an average of between 21 and 24 hours and between 17 and 24 hours per week over the past year. The simulation on worksite size estimated the number of employees who worked for a firm that employed between 40 and 49 employees and between 30 and 49 employees within a 75-mile radius. The responses relating to the number of employees across worksites within a 75-mile radius should be expected to be associated with a degree of uncertainty, since employees may not be aware of other worksites or know how many employees these worksites employ. Moreover, the simulation relating to worksite size under-estimated the number of employees impacted, because some respondents who worked at worksites with between 30 and 50 employees did not answer the question about number of employees across worksites within 75 miles (62 respondents who worked at worksites with less than 50 employees were non-respondents). The analysis assumed that non-respondents were not affected by a change in eligibility requirements.

The analysis looked at eligibility and leave in the private sector. The question identifying sector of employment referred to main or most recent employment over the past year, and included respondents who were not currently employed. The questions pertaining to eligibility were asked only to respondents who were currently employed. Thus the base unit for the calculation of eligibility rates is number of current employees. Moreover, the FMLA Employee Survey was benchmarked to employment in 2010 using the Current Population Survey (March supplement). In order to update the estimates to 2012 (the year of the FMLA survey), our analysis used the Bureau of Labor Statistics' private-sector employment data from the Current Employment Survey (CES), 2012 annual numbers, to calculate the total number of employees eligible and ineligible, and the change in the number of employees affected by a change in eligibility requirements.

Worksite Survey

In the Worksite Survey of employers, the sampling frame is the worksite rather than the firm (a firm may have multiple worksites). Only private sector establishments were included. A total of 6,873 worksites were contacted, and 1,812 interviews were completed. Stratified sampling by the cross-

classification of employer size and industry grouping (NAICS) generated oversampling of larger establishments and oversampling of agriculture, construction and manufacturing industries, combined with undersampling of service industries (not including education and healthcare). Sampling weights ranged from 98 to the 46,907.

The Worksite Survey asked establishments several questions relating to FMLA coverage, including a question about whether or not the respondent thought the FMLA applied to their firm. A weighted 16.6 percent of respondents stated that the FMLA did apply, while 29.7 percent (weighted) were "not sure". Abt Associates furthermore imputed the FMLA coverage rate based on the number of employees currently on payroll at the firm. The imputed rate of 9.7 percent (weighted) is substantially lower than the self-reported rate (16.6 percent). In Abt Associates' technical report (pp. 17-18), the authors discuss some of the reasons behind the discrepancy between the self-reported rate and the imputed rate. Our further analysis of self-reporting by employer size reveals that many smaller employers (less than 50 employees across all worksites) incorrectly thought that the FMLA applied to them, while a number of large employers incorrectly believed that the law did not apply to them, or stated they did not know. Some of the confusion over whether or not the law applies may be due to the possibility that employees at a given worksite may not be eligible, though the worksite may be covered. Nonetheless, it suggests a degree of inaccuracy in the responses relating to coverage and provision of FMLA benefits.

TABLE A2

Percentage of responding worksites stating the FMLA applied to them, by firm size, 2012		
Number of employees on payroll at firm level	Percent of respondents who stated the FMLA did apply to the firm	FMLA applies to the firm
1-10	8.8	No
11-24	17.2	No
25-49	27.3	No
50-99	82.6	Yes
100-250	87.2	Yes
251-999	93.0	Yes
1000 +	93.6	Yes
Source: Authors' analysis of the FMLA Worksite Survey, 2012: Q1_CAT, A17. Total sample size is 1,805. Unweighted estimates.		

Change in marginal probability of FMLA eligibility by personal characteristics, private sector, 2012

	Probit estimates	z-statistics
Sample size	1,883	
Age 18-29	-0.078	-1.090
Age 30-44	-0.032	-0.740
Age 45-59	Reference group	
Age 60 and up	-0.016	-0.360
Male	Reference group	
Female	0.001	0.030
White	Reference group	
African American	0.066	0.940
Other	0.050	0.880
Hispanic/Latino	-0.022	-0.340
Less than high school	-0.136	-1.350
High school degree	0.034	0.690
Some college	Reference group	
College degree	0.107	1.940
Graduate school	0.030	0.530
Married or living with partner	0.062	1.140
Separated, divorced, widowed, or never married	Reference group	
Family income $0-19,999	-0.302	-4.210
Family income $20,000-29,999	-0.115	-1.340
Family income $30,000-39,999	0.017	0.260
Family income $40,000-49,999	0.031	0.340
Family income $50,000-74,999	Reference group	
Family income $75,000-99,999	0.002	0.040
Family income $100,000 and up	0.025	0.400

Source: Authors' analysis of the FMLA Employee Survey, 2012. Weighted estimates using statistical jackknife method. Notes: The estimated coefficients are marginal effects at the multivariate point of means derived from a probit model.