

Government Support for Working Families and for Communities: Family and Medical Leave as a Case Study

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Barriers to and opportunities for better federal government support for working families and communities are directly linked to governmental support at all other levels. In this era of renewed emphasis on federalism, work-family advocates cannot ignore state and local government venues, as illustrated in the nine-year effort to get the Family and Medical Leave Act (FMLA) enacted.

The FMLA, the first law signed by President Bill Clinton after his election in 1993, is an excellent example of recent 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 nine years, from 1984 to early 1993, of such a sustained and organized effort to enact such a modest policy—mere unpaid leave—is itself a metaphor for the difficulties confronting advocates for family policy in the United States today. The lessons learned from the FMLA effort can help current and future advocates of work-family policy changes.

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, they 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, and elder-care arrangements, as well as through such creative scheduling approaches as parents alternating their work schedules. But sometimes—when children are seriously ill, aging parents' health deteriorates suddenly, or a baby is born or adopted—these regular, daily arrangements simply cannot meet the needs. At such times, an employee himself or herself must take time off from work because substitute care arrangements are either not available, or are inadequate or inappropriate. At such times of compelling family need, accommodations by the workplace are necessary.

The FMLA addresses these most pressing and immediate conflicts by requiring such workplace accommodations of covered employers as a minimum labor standard. In the act, 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 the employee'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.³

Under the law, employers of fifty or more employees must guarantee their employees who are on "family and medical leave" their jobs, or equivalent jobs, for up to twelve weeks a year. Importantly, employers must also continue paying their share of employees' health insurance premiums during the period of leave.

According to estimates, the FMLA has helped more than thirty-five million employees since it went into effect in August 1993.⁴ Its most frequent—and perhaps least recognized—use is for employees' own serious health conditions: 58 percent of male leave takers and 49 percent of women leave takers take time off for that purpose.⁵ Indeed, an employee's own serious illness poses the most basic of work-family conflicts, because an employee's job loss due to illness results in the loss of financial and other supports. As yet, however, many U.S. workers remain unprotected by basic workplace policies such as sick leave to protect them against this eventuality.⁶ The FMLA has also been used, of course, for the more traditional reasons of caring for a newborn or a newly adopted child (26 percent of leaves), and caring for a seriously ill child (12 percent of leaves), spouse (6 percent), or parent (13 percent).

Interestingly, the gender distribution of leaves for these purposes is remarkably similar (although men in general take shorter leaves than women to care for newborns or newly adopted children). 23 percent of male leave takers take time off to care for a new child, while 29 percent of female leave takers take time off to care for a new child or for maternity disability reasons. 29 percent of male leave takers and 32 percent of female leave takers take time off to care for an ill child, parent or spouse.⁷

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, and its effectiveness is limited by a number of compromises. The act guarantees only unpaid leave; it excludes employees in most workplaces having fewer than fifty employees; it excludes employees who do not have sufficient tenure (as noted earlier); it covers only a few of the many reasons an employee might need leave to accommodate family needs (most notably, excluding care of children with nonserious illnesses and help for family members other than children, a spouse, or parents); and the remedies for its enforcement, and therefore the incentives for employers to comply, are limited.⁸ While these compromises were made to ensure the bill's passage, they significantly limit its accessibility and affordability for millions of American workers. The impact of these limitations, along with the strengths of the act, will need careful assessment so that families and communities can be supported more fully.

Assessing the FMLA's Financial Impacts

Although the use of the FMLA by millions of Americans testifies to the Act's importance for working families, its impact on business has been the subject of much controversy. While it was being debated in Congress, opponents claimed that it would be costly to business and undermine the United States' competitive economic position worldwide.⁹ During the first seven years of the FMLA's implementation (from 1993 to 2000), however, the U.S. economy was in one of the late twentieth century's most sustained periods of growth, and the FMLA's predicted dire economic effects did not occur. More to the point, nationally representative studies of the FMLA's impact specifically on business have shown clearly that the FMLA has either no or only a small effect on business productivity, profitability, and costs.¹⁰ Indeed, in its 1998 Business Work-Life Study, the Families and Work Institute found that the benefits of providing leave, such as decreased turnover and absenteeism, either outweigh or offset any costs associated with providing leave.¹¹

Less well researched is the aggregate impact of the FMLA (and of other family-friendly policies) on communities. Studies are needed, for instance, regarding how much money states and local areas have gained or lost in tax revenues when workers have taken FMLA-related leave time. Also, those results would need to be compared with the financial gains or losses that would have occurred if the employees had had to quit or change their jobs to better address family needs or had been fired after taking family-related leave time.

Research is also needed on the savings to a state or locality when employees who have been on family or medical leave can return to their jobs instead of losing them and relying on public assistance. Similarly, data are needed on the amounts of money that states and localities save when parents of newborns use the FMLA's guaranteed leave period of twelve weeks instead of drawing on publicly subsidized infant child-care. Cost/benefit assessments are also needed in regard to incapacitated seniors who, because of their adult children's FMLA-related leave, can stay in their own homes for twelve weeks longer than would be possible without home-based family assistance versus those whose care must be covered by other publicly supported arrangements and Medicaid payments.

FMLA-related assessment efforts, advocacy campaigns, and program developments are all affected by the history of the act's promotion and enactment. Advocates of work-family policy advances can benefit from a review of this history as they plan strategies to refine and expand the act's provisions.

What It Took to Get the FMLA Enacted

Since Congress passed the Pregnancy Discrimination amendments in 1978, if not before, the feminist legal community had been acutely aware that traditional maternity-leave programs were woefully inadequate. First, they were state- or employer-specific: there was no national policy; indeed, the United States stood alone among industrialized nations in not guaranteeing women their jobs after they had babies. Second, maternity-only leave programs might run afoul of principles of equality for which we

had fought dearly. And finally, such programs did not address women's (and men's) needs for family leave beyond periods of childbirth-related disability.

The opportunity to advocate for the establishment of comprehensive, gender-neutral family and medical leave on a national basis came in 1984 when a federal district court struck down California's maternity-leave law as sex discrimination against men. This decision precipitated a meeting between representatives of the organized women's movement and Congressman Howard Berman from California and then-California state legislator Maxine Waters. The advocates present at this meeting were: Diann Rust-Tierney, then of the National Women's Law Center, Wendy Webster Williams, a feminist law professor at Georgetown University Law Center, who had also been an architect of the Pregnancy Discrimination Act half a dozen years earlier, and Donna Lenhoff, Legal Director of the then-Women's Legal Defense Fund. After the meeting, Donna Lenhoff, along with a Berman staffer, sat down and outlined a legislative proposal. That draft was the basis of what eventually became the FMLA, of which Berman, along with Representatives Patricia Schroeder and William Clay and Senator Christopher Dodd, were original cosponsors.

The FMLA was conceived both as a way of ensuring that women would not lose their jobs when newborns' care or other family caregiving responsibilities took them out of the workforce temporarily and as a way to establish protections that would apply equally to women and men who were dealing with certain family circumstances or serious personal health conditions. The FMLA's gender neutrality was built in so that the act would pass muster legally; women would not be the only ones taking time off from work to care for new children or seriously ill relatives, and employers would not have women's right to take leave time as an excuse not to hire or promote them. The best way of accommodating these concerns was to create a new minimum labor standard applicable to male and female employees equally.

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. This meant that, realistically, there was no chance of the bill's passage during that Congress. Instead, the strategy was to raise it as an issue and to educate members of Congress and the public about it.

With the House of Representatives under Democratic control, it was possible to get committee hearings on the bill there. But even for that to happen, support from organized labor was required, since no new labor standard could be seriously considered without labor's support. At first, labor's support was lukewarm at best, and some of the more traditional, male-dominated unions' representatives scoffed at the bill as trivial, a mere "girl" bill—an attitude shared by some members of Congress. This view was overcome slowly through the organizing efforts of women within the trade union movement. As public support for the FMLA grew, union members began to demand family leave. When unions began to understand work-family issues as potent organizing tools as well as a political issues, they became more firmly committed to the FMLA efforts. By 1991, the FMLA had become one of the top two or three demands that the labor movement presented to Congress.¹²

Building Support: the FMLA Coalition

The National Partnership for Women & Families, which had written the FMLA's first draft, now organized a coalition to promote passage of the act. Founded in 1971 as the Women's Legal Defense Fund, the National Partnership is committed to ensuring that women and men enjoy the same employment opportunities, a goal that requires workplace policies that address the issues of work/family balance. The coalition promoting the FMLA developed a multi-pronged campaign. The elements of this campaign included outreach both to communities with common interests and to unlikely allies, commitment of substantial resources to grassroots support in key states and congressional districts (including state legislation), research and public education, and a sophisticated media strategy to build public support. Of course fundraising was another key element of the campaign, and several unions and foundations, the American Association for Retired Persons (AARP), and the National Partnership's individual donors were major supporters.

To begin building support for this bill, the National Partnership for Women & Families established and led a diverse national coalition of women's, labor, disability, children's, religious, senior citizens' groups, and even the United States Catholic Conference. The conscious effort to include in the coalition not only organizations with significant grassroots lobbying membership and political clout but also organizations that may have seemed unlikely allies for the FMLA cause was instrumental to the act's ultimate passage. Most important among those allies were the AARP and the U.S. Catholic Conference. Both were brought into the coalition because of how the problem at hand was framed and how the solution (the FMLA) was designed. Ultimately, both organizations were able to persuade significant members of Congress to support the FMLA—especially Missouri's Senator Chris Bond, who both had a large elderly population in his constituency and was a major anti-abortion rights figure in the Senate.

Actually, the AARP was a likely ally in that many of its members stood to benefit from the FMLA, as originally drafted, when they needed leave to recover from their own serious health conditions. Initially, however, the proposal did not include elder-care leave and, although the AARP endorsed early versions of the legislation, it did not expend significant lobbying resources until the proposal was amended to include such leave. At that point, the act took on new significance because it would help elderly people (that is, actual or potential AARP members) who might become seriously ill and need their working adult children to take leave to help care for them.

The U.S. Catholic Conference, on the other hand, was an unlikely ally for a coalition founded and run by a strongly pro-choice women's group like the National Partnership. Its involvement was compelled, however, because of another aspect of the FMLA's framing—namely, a focus on how mothers of new babies are treated in the United States. One focus of the anti-abortion movement at that time was to provide as many incentives as possible for women to choose not to abort. Thus, anti-abortion activists simply could not insist that women carry babies to term and simultaneously ignore the issue of whether new mothers would be likely to lose their jobs. Since the FMLA was the vehicle then pending in

Congress that provided job-guaranteed maternity leave, many people in the anti-abortion movement (and many anti-abortion members of Congress) could not well oppose it.

The FMLA coalition included many other groups and, over its nine-year evolution, grew to include major mainstream constituency groups-representing:

- * women, including Business and Professional Women USA and, at least for a time, the League of Women Voters;
- * children and parents, including the National PTA and the Children's Defense Fund;
- * workers and organized labor, including unions ranging from the Service Employees International Union to the National Education Association to the United Steel Workers
- * seniors, including, in addition to the AARP, the National Senior Citizens Council;
- * disabled people, including the Epilepsy Foundation and its network of parents of children with disabilities;
- * health professionals, including the American Academy of Pediatricians, the National Association of Social Workers, and the American Nurses Association (but not the American Medical Association);
- * religious organizations, including the Catholic Conference, the United Methodist Church and the Union of American Hebrew Congregations;
- * progressive businesses, including Businesses for Social Responsibility, Ben & Jerry's, Stride-Rite, and Fel-Pro, as well as Burlington Northern Railway and Control Data Corporation;

Many of these organizations were enthusiastic supporters with highly motivated grassroots activists who urged their members of Congress to support the FMLA. Even with such a list of supporters, however, the sheer number of pro-FMLA contacts with Congress was heavily outweighed by the anti-FMLA contacts organized by businesses.

This discussion of the FMLA coalition begs the question of what motivated these many diverse groups to get involved in this effort. The answer to this question varied widely from group to group and was complex, but in general, each group was motivated by some combination of ideology (e.g., the Catholic Conference), a desire to help its members or the constituency it represented (e.g., the AARP), and politics (e.g., the FMLA was widely seen as a winning issue for Democrats). It was the job of the coalition leaders to identify and "bring in" disparate groups with such widely varying agendas to build support for the FMLA. As the coalition expanded in number and diversity, it more effectively moved the FMLA through the legislative process.

Media Strategy and Public Education

There is no doubt that the framing of the problem, the design of the solution, and the development of a values-based message about the problem and solution were key to the success of the entire campaign. Proponents developed a two-part message to support the FMLA. One part focused on the traditional concept of maternity leave so widely associated with blue and pink ribbons, lullabies, and, emotionally laden images of newborns cradled by their mothers. But since the FMLA was not limited to maternity leave, the message was carefully not limited to that concept. Instead, the message included a broader, values-based theme as well, best summarized by the slogan “Employees shouldn’t have to choose between the jobs they need and the families they love.” This theme emphasized the needs of employees, not of babies, and it described the problem as one involving a continuum of family needs, from care of newborns to care of hospitalized children and ailing seniors. By framing the issue in this multifaceted way, the potent political symbols of motherhood became defined as one part of the much broader program encompassed by family and medical leave. Furthermore, the language meant that social conservatives found it difficult, if not impossible, to argue that job needs should trump family needs.

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. But proponents were able successfully to respond to this assertion—often compelling in American political discourse—by using it to emphasize the values underlying the FMLA. The FMLA backers agreed that new minimum labor standards (or “mandates”) needed to mesh with existing standards that are central, widely accepted, highly valued ones, including the minimum wage, overtime, and occupational safety laws. FMLA supporters thus argued that ensuring against job loss for working mothers and fathers who had newborns, sick children, or compelling family medical emergencies was consistent with the basic standards supported by the vast majority of Americans. This argument proved highly persuasive.

Finally, FMLA proponents had to overcome the strong undercurrent running throughout American public opinion that women should not work outside the home when they have children. The FMLA message, as just described, did this in two ways. First, it tapped into that very undercurrent by initially emphasizing support of mothers (and fathers) caring for their babies at home. As noted earlier, this message also fit with anti-abortion activists’ agenda, and the discrepancies in conservative ideology helped insulate the FMLA from the usual anti-working-mother sentiment. Second, the FMLA message treated the working-mother issue as but one aspect of broader family caretaking concerns, especially the need for adult sons and daughters to have leave time to care for their aging parents—already a widely accepted notion.

Thus, it is not surprising that public opinion research showed strong support for the FMLA throughout the years when it was wending its way through the legislative process and thereafter. In fact, The National Partnership’s 1998 Family Matters poll showed that both Democrats and Republicans were more likely to vote for a member of Congress who favored expanding the FMLA. In addition, 56

percent of men and 68 percent of women were more likely to vote for a candidate who favored expanding the FMLA.

State Action

A third key element was the influence of state FMLA models on the congressional process. The debates over federalism aside, in so large and complex a democracy as the United States, sweeping new federal policies cannot realistically be adopted without some evidence that they work—and the best such evidence can often come from state experience with similar models. (See Linda Tarr-Whelan’s and Jane Gruenebaum’s paper in this collection for a discussion of other pluses, and some minuses, of a state-focused approach.) As “laboratories of democracy,” states can yield valuable information about the development and implementation of these models that can inform policymaking at the state and national levels.¹³ Led by the Center for Policy Alternatives, coalition partners worked on organizing support for state family and medical leave laws. That effort was advanced by a 1989 Harvard Journal on Legislation article containing a proposed state FMLA, which was modeled on the draft of the FMLA then pending in Congress. As a result of this article, many state FMLAs were adopted over the next several years.¹⁴ In 1991, the Families and Work Institute published an influential review of five state FMLA-type laws that showed they were working well.¹⁵ These findings further supported proponents’ contention that the FMLA would work at the national level as well.

The precedent of the state FMLAs refuted the FMLA opponents’ predictions of economic doom and energized state coalitions of FMLA proponents, who subsequently lobbied their senators and representatives for the federal program. Also, the state FMLAs made new allies among senators and representatives from the states that had enacted them. Many federal lawmakers concluded that what had been deemed good for their respective states would be good, as well, for the nation as a whole.

Influence of External Factors

Of course, a number of factors outside the immediate control of the coalition were influential, if not determinative, in both the FMLA’s legislative course and its ultimate shape. Three warrant a more detailed discussion. First, the political configuration and climate played a key role, as noted earlier. As long as either house of Congress was under Republican control, the FMLA efforts could not progress. Senator Dodd introduced the FMLA’s predecessor in the Senate in 1986, but no Senate hearings on the issue were held, and no markups (where committee members propose and vote on amendments) or other votes were scheduled until 1987, after the Democrats regained control of the Senate and Dodd became the chairman of the Children and Families Subcommittee of what was then the Labor and Education Committee. At that point, Dodd held a series of hearings around the country and in Washington on the FMLA, involving dozens of witnesses for and against the proposal. And at that point, the hearings that had been held in the House in 1985 and 1986 as public education exercises became the beginning of a serious legislative effort, ultimately resulting in enactment of a major new federal public policy. Still, in

the end, it was not possible to enact the FMLA into law until the political configuration in Washington entailed a Democratic House and Senate and a Democratic president.

Occasionally, issues such as the FMLA can rise to the level of influencing congressional elections, but, for the most part, that did not happen in the case of the FMLA. In fact, despite the 1985 and 1986 House hearings, the FMLA did not have the support of even enough of the Democrats to be brought to the House floor until 1990 or to have any significant influence on the 1986 elections, in which the Senate shifted back to Democratic control, or the 1988 presidential election. Indeed, it was not a significant factor in until the 1992 presidential election.

Party affiliations also made a big difference in direct support for the FMLA. Perhaps the best illustration of this came on the veto override vote in September 1992. After seven years of effort, the FMLA had passed both houses of Congress (for the second time). As expected, then-President Bush vetoed it. The Senate overrode the veto. So the key vote came on September 30, 1992, on the motion to override the veto in the House. Only 60 percent of the representatives voted to override—not quite the two-thirds majority required to override a veto. Of the Democrats, however, 82 percent voted to override; of the Republicans, 23 percent did.¹⁶

Second, the opposition response, primarily involving the organized business lobby, strongly influenced the FMLA's lengthy consideration process. This opposition lobby was represented especially by the U.S. Chamber of Commerce, the Society for Human Resource Management (SHRM), and the National Federation of Independent Businesses (NFIB). These groups, joined by various trade associations such as the National Restaurant Association, formed a coalition to squelch the FMLA.¹⁷ The key element of their strategy was to oppose the FMLA on principle as a government mandate—regardless of its shape, cost, or limitations. Thus, there were no serious negotiations between business representatives and proponents of the legislation.

It is true that a number of compromises were made in the course of the FMLA's winding legislative path, but these compromises were made by congressional sponsors to woo their more conservative colleagues, not to achieve business support. Several of these compromises were significant—notably, the increase in the threshold for coverage to fifty employees, the reduction of the number of weeks of leave to twelve for all family and medical reasons in a year, and the contraction in the family members covered to only children, parents, and spouses. And the compromises led to significant new support, most notably from then-Representative Jeffords (then-Republican, Vermont), Representatives Marge (Republican, New Jersey) and Weldon (Republican, Pennsylvania), and Senator Bond (Republican, Missouri). However, not one of them changed the major business lobbies' implacable opposition to the bill.

Once the bill was passed by both chambers of Congress, the opponents' scorched-earth strategy meant that then-President Bush (senior) had to veto it (which he did, twice—in 1991 and again in 1992), despite such action being a risky political strategy for him. This all-or-nothing approach worked for the

opponents in the short run, since it prevented the FMLA from becoming law for at least three years. But it allowed the Democrats to set up a very clear, concrete difference between the parties in Congress and in the public's mind: politicians had to be either for or against the FMLA. It meant that business representatives had no significant hand in shaping the bill that finally became law, and it ultimately did have an impact on the outcome of the 1992 presidential election.

Third, individual lawmakers' motivations and commitment levels also shaped the FMLA process. The FMLA had many highly committed cosponsors, and the efforts of three of them—Senators Dodd and Bond, and Representative Roukema—were particularly important. Their efforts also illustrate the various factors that affected legislators' different responses to the FMLA, including personal ideology, personal experience, electoral politics, and gender.

Dodd was not married at the time and had no children, yet he believed in the importance of supporting children and families and sought out the chairmanship of the Children and Families Subcommittee. During the mid-1980s he used that pulpit to champion not only the FMLA but also the Act for Better Child-Care, enacted in 1991, which was the first federal law to provide new funding for quality child-care programs nationwide. In his advocacy for the FMLA, he was tenacious, committed, and endlessly optimistic. He personally has been credited with bringing in enough Republican cosponsors to overcome the 1992 Bush veto with a two-thirds majority in the Senate. Dodd's 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 anticipated presidential veto in the Senate.¹⁸ As noted above, Missouri's population is aging, and certainly one of the reasons Bond was interested in supporting the FMLA was to please this constituency (represented by the AARP). In addition, Bond, a strong anti-abortion voice in Congress, viewed support of the FMLA as consistent with that agenda. But Bond was also facing reelection in 1992, and in the previous senatorial election in that state, his Missouri colleague Senator Danforth had been challenged by a woman candidate who accused him of being insufficiently sensitive to women's issues. Perhaps, then, Bond's motivation included a desire to avert similar charges in his own upcoming contest.

For Representative Roukema, personal experience was a main motivator. Before she was elected to Congress—indeed, while she was still a stay-at-home spouse—she took care of her ailing mother-in-law and thus understood how time-consuming and exhausting caregiving can be. This experience made her particularly sympathetic to the plight of working people who also shoulder family caregiving responsibilities, and it led her not only to cosponsor the FMLA but to add the provisions covering workers who must take leave temporarily to care for an aging parent (spouses were added later). Roukema's support was also key because she was the ranking Republican on the Labor-Management Subcommittee, which had jurisdiction over the main portions of the FMLA in the House. She clearly

also felt that her FMLA support would win votes among her constituents, although her seat in the House appeared to be safe regardless of her FMLA role.

The FMLA had many strong, active, and committed male cosponsors in addition to Dodd and Bond. Indeed, since men held the vast majority of the leadership positions controlling the legislative timetable and agenda, the FMLA's proponents had to assiduously solicit the support of those men. But gender still made a difference in the deliberations. On the key veto override vote, 79 percent of the 28 women voting in the House of Representatives, compared to 59 percent of the 399 men, chose to override. Specifically, among House Republicans, the gender gap was even greater: 73 percent of the women, compared to 21 percent of the men, voted to override.

Factors in Achieving Better Government Support for Working Families and Communities

The campaign to enact the FMLA illustrates how opportunities were seized and barriers overcome to achieve a major new pro-working family governmental policy. Work-family advocates can glean from this history key factors that must be taken into account in any such policy-related campaigns.

Nature of the Policy

The first and most important consideration in work-family efforts is, of course, the nature of the policy—that is, the type of governmental support being sought. The problem that work-family activists are still trying to solve is massive and multifaceted—nothing less than a major misalignment of society's resources, institutions, and structures that renders family caregiving “invisible.”¹⁹ Thus, the possible solutions must also be massive and multifaceted, though some will have a greater impact than others. Yet advocates must choose among them and must consider more than just efficacy, because the selected solutions will vary in their public appeal, their draw among supporters, their likely types of opposition, and ultimately, their political viability.

The FMLA's broad-based design is particularly instructive for other efforts, and in general, that design was the act's biggest strength. The design targeted the daily concerns of a range of working families—not just those with newborns but those facing eldercare needs and other kinds of work-family conflicts. It also addressed values deeply held by the majority of workers and even by some of the strongest anti-FMLA voices (e.g., the importance of mothers staying home with babies). Furthermore, the FMLA was a modest bill, merely setting out a narrow set of minimum requirements for employers. These characteristics enabled the FMLA's proponents to gather extensive support, split the opposition, and craft extremely effective values-based messages.

On the other hand, because the FMLA was crafted as a minimum labor standard, its opposition—predictably—was a coalition of business interests that had strong support among members of Congress and in the (first) Bush White House. As noted earlier, that opposition was sufficient to keep the bill from being enacted from 1985 (when it was introduced) through 1992. 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, of course. 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, as well.

Federal versus State or Local Policies

Strategic choice of forum is another crucial factor that must be considered in any effort to strengthen supports for working families. In the final analysis, the choice of forum will depend primarily on the nature of the policy being sought (and similarly, the nature of the policy will depend on the likely forum in which it will be considered).

Federal policy has the advantages of being likely to influence the greatest number of people and of requiring a lobbying effort aimed at only one legislative body (Congress), rather than fifty different ones. But as the FMLA campaign showed, efforts to affect federal policy require a significant investment in coalition organizing, lobbying both in Washington and at the grassroots level, media relations, and public education—and that investment must be duplicated in many key states. Since the likelihood of winning is enhanced if state-level models are put in place first, however, efforts in the state capitols may be a prerequisite for federal policy changes. Of course, in a nation of more than 280 million people, it is hardly surprising that major effort is involved in achieving national consensus for any new policy.

Moreover, the current political configuration and climate at the federal level are not very promising for most work-family or work-life policies. A closely divided Senate, a Republican-dominated House, a president elected without a popular majority but with the support of an active and vocal right wing, and a highly partisan Republican party decrease the likelihood of success for progressive legislative proposals. It is true that the party switch by Senator Jeffords (Independent, Vermont) has vastly improved the ability of Democrats in that body to stop the right-wing agenda and to force committee action on work-family legislation. But once a bill is out of committee, opponents can easily filibuster it, meaning that sixty, not fifty-one, votes would be required for final action to be taken by the entire Senate. And even should that occur, Republican leaders on the House side would be unlikely to schedule action. Furthermore, if they did, the president could veto it, requiring two-thirds approval in both houses to overcome the veto. And in this post-“9/11” period, with the current President’s sky-high popularity ratings, movement of initiatives he or his Congressional allies oppose is extremely challenging.

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 enough related to traditional Republican goals (such as tax relief) that they or some acceptable versions of them have been or are likely to be enacted even in this political climate. One such example is tax relief for some of a family’s expenses for long-

term caregiving for elderly or disabled family members at home (but note that while it certainly would benefit working families, this policy is not targeted to that population). Other such issues could include appropriations to expand existing programs that help working families or even to establish new ones, because appropriations have to be enacted every year. Sometimes appropriations are less political, and they can be more easily negotiated as part of a bigger bill. Thus, one of the challenges work-family advocates face is identifying the best appropriations opportunities to be pursued.

Moreover, well-placed individual legislators committed to a particular idea or with sufficient political motivation—like Dodd, Bond, and Roukema in the FMLA history—may well have the ability to advance policies that otherwise could not be moved forward. Thus, advocates also need to consider individual legislators’ committee assignments, electoral strategies, and personal motivations when assessing legislators’ potential influence on the process and when choosing the optimum venue for potential policy change.

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 (although those states with severe budget shortfalls will probably need to dig themselves out from under before more ambitious proposals can be realized). Indeed, a number of state or local governments reflect much more liberal constituencies, and thus have much more hospitable political climates than the federal government.²⁰ Because state and local government units are smaller, the price tag of innovative policies at those levels may be more manageable. Because state and local officials represent fewer people than their federal counterparts, moreover, it could be argued that they are more in touch with their constituencies’ needs. At the very least, it is probably cheaper to reach and influence them than their federal counterparts. And, as noted earlier, state-level policies can set the pace for later federal policies.

This is not to underestimate the constraints on state or local policymaking, which are significant. Unlike Congress, most state legislatures do not meet full-time, and most state legislators are still “citizen legislators” (paid little or nothing) whose “real” jobs keep them busy most of the time.²¹ 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 many excellent proposals compete for legislators’ very limited time and attention. Ensuring that particular supports for working families receive such time and attention is often the biggest hurdle at the state level, even in states that advocates might otherwise expect to be hospitable.

Applying the FMLA Lessons: The National Partnership’s Family Leave Benefits Campaign

Eager to expand people’s access to family and medical leave by providing at least some income during otherwise unpaid leaves, the National Partnership for Women and Families (NPWF) launched a Family

Leave Benefits Campaign in 1999. Attempting to take into account the factors discussed thus far, the NPWF designed the campaign as a multilevel one, promoting a range of state, local, and private models. While the campaign does not (at this point, at least) call for an amendment of the FMLA to require paid leave, it does encourage facilitation of state and other innovations by the federal government via research, provision of a regulatory framework, and funding. Such federal facilitation is designed in part to provide incentives for states to act and thus to overcome the practical constraints of getting new programs passed in state legislatures. The campaign also attempts to replicate the original FMLA's success in defining the issue broadly, and thus appealing to a correspondingly broad audience of potential supporters.²² The campaign has the advantage of the FMLA's compelling and unifying message, as evidenced by the fact that at least two state coalitions (New Jersey and Massachusetts) already include the state Catholic Conferences as active participants.

To date, the primary models that states are considering, and that the campaign has floated, are models that build on existing state-level benefits systems, such as unemployment compensation and temporary disability insurance. But to maximize the chances of success, the campaign encourages state policymakers to explore other innovations as well. In Minnesota, for example, family leave benefits are provided to low-income families through the state's child-care assistance program. In Washington State, advocates and legislators have designed a payroll-based system, administered through the state's workers' compensation system, that costs each employee and employer one cent per hour worked. And in Vermont, consideration has been given to a new state-funded benefit, administered by the unemployment system. Thus, the nature of the policy can be matched with the political climate in a given state. The varying mechanisms also permit eventual comparative evaluations, after the programs have been in effect for a sufficient period.

Like the original FMLA, these policies enjoy extensive public support. For example, 82 percent of women and 75 percent of men support expanding state unemployment or disability insurance programs to provide some income to people on family and medical leave.²³ Furthermore, 89 percent of parents of young children and 84 percent of all adults support expanding disability or unemployment insurance as a vehicle for paid family leave.²⁴ But also like the original FMLA, the Family Leave Benefits Campaign faces a major barrier in the strident opposition from a well-organized and well-funded business community. The federal FMLA history shows, however, that work-family advocates can succeed if they have 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 shift in their favor.

Appendix

Legislative Timeline For Development Of The Family And Medical Leave Act

THE 99th CONGRESS

- * April 4, 1985—H.R. 2020, Parental and Disability Leave Act of 1985 introduced in House of Representatives by Representative Patricia Schroeder, et al. Provided 18 weeks over a 24-month period of unpaid parental leave for the birth, adoption, or serious illness of a child, and 26 weeks over a 12-month period of unpaid medical leave for employees' own serious health conditions. Applied to employers with 5 or more employees.
- * October 17, 1985—First Joint House Oversight Hearings on issue of parental and disability leave held by the subcommittees on Labor-Management Relations and Labor Standards of the Committee on Education and Labor, and the subcommittees on Civil Service and Compensation and Employee Benefits of the Committee on Post Office and Civil Service.
- * March 4, 1986—H.R. 4300, Parental and Medical Leave Act of 1986 introduced by Representatives William Clay, Patricia Schroeder, et al. Provided 18 weeks of unpaid parental leave over a 24-month period for the birth, adoption, or serious illness of a child, and 26 weeks of medical leave over a 12-month period for employees' own serious health condition. Applied to employers with 15 or more employees.
- * April 6, 1986—S. 2278, Parental and Medical Leave Act of 1986 introduced in Senate by Senators Christopher Dodd, Ted Kennedy, et al. Provided 18 weeks over a 24-month period of unpaid parental leave for the birth, adoption, or serious illness of a child, and 26 weeks over a 12-month period of medical leave for employees' own serious health conditions. Applied to employers with 15 or more employees.
- * April 9, 1986—Joint Hearings on H.R. 4300 held by the House Post Office and Civil Service subcommittees on Civil Service and Compensation and Employee Benefits.
- * April 22, 1986—Joint Hearings on H.R. 4300 held by the House Education and Labor subcommittees on Labor-Management Relations and Labor Standards.
- * May 8, 1986—H.R. 4300 Reported out of Subcommittee on Compensation and Employee Benefits by voice vote.
- * June 11, 1986—H.R. 4300 reported out of full House Committee on Post Office and Civil Service by roll-call vote of 18 to 0.
- * June 12, 1986—H.R. 4300 reported out of House Subcommittee on Labor-Management Relations by roll-call vote of 8 to 6.

- * June 26, 1986—H.R. 4300, as amended, reported out of House Committee on Education and Labor. Amendment adopted by roll-call vote of 22 to 10.
- * September 17, 1986—Open rule approved for consideration of H.R. 4300 by the Committee on Rules, but 99th Congress adjourned before action was taken.

THE 100th CONGRESS

- * January 6, 1987—S. 249, Parental and Temporary Medical Leave Act of 1987 introduced. Provided 18 weeks of unpaid parental leave over a 24-month period and 26 weeks of unpaid medical leave over a 12-month period. Applied to employers with 15 or more employees.
- * February 3, 1987—H.R. 925, Family and Medical Leave Act of 1987 introduced. Provided 18 weeks of unpaid family leave over a 24-month period for the birth, adoption, or serious illness of a child or parent, and 26 weeks of unpaid medical leave over a 12-month period for an employees' own serious health condition. Applied to employers with 15 or more employees.
- * February 19, 1987—Hearing on S. 249 held in Washington, D.C., by Senate Subcommittee on Children, Families, Drugs, and Alcoholism.
- * February 25 and March 5, 1987—Joint hearings held by House Committee on Education and Labor subcommittees on Labor-Management Relations and Labor Standards.
- * March 13, 1987—H.R. 925 reported out of Subcommittee on Labor-Management Relations by voice vote.
- * April 2, 1987—Hearing on H.R. 925 held by House subcommittees on Civil Service and Compensation and Employee Benefits of the Committee on Post Office and Civil Service.
- * April 23, 1987—Hearing on S. 249 held in Washington, D.C., by Senate Subcommittee on Children, Families, Drugs, and Alcoholism.
- * May 5, 1987—H.R. 925 reported out of House Subcommittee on Civil Service by vote of 3 to 0.
- * May 19, 1987—H.R. 925 reported out of House Subcommittee on Compensation and Employee Benefits by voice vote.
- * June 15, 1987—Hearing on S. 249 held in Boston by Senate Subcommittee on Children, Families, Drugs, and Alcoholism.
- * July 20, 1987—Hearing on S. 249 held in Los Angeles by Senate Subcommittee on Children, Families, Drugs, and Alcoholism.
- * September 14, 1987—Hearing on S. 249 held in Chicago by Senate Subcommittee on Children, Families, Drugs, and Alcoholism.

- * October 13, 1987—Hearing on S. 249 held in Atlanta by Senate Subcommittee on Children, Families, Drugs, and Alcoholism.
- * October 29, 1987—Hearing on S. 249 held in Washington, D.C., by Senate Subcommittee on Children, Families, Drugs, and Alcoholism.
- * November 17, 1987—H.R. 925 reported out of House Committee on Education and Labor by roll-call vote of 21 to 11. Committee approved amendment “in nature of a substitute to” H.R. 925, offered by subcommittee ranking minority member Marge Roukema. Provided 10 weeks of unpaid family leave over a 24-month period and 15 weeks of unpaid medical leave over a 12-month period. Applied to employers with 50 or more employees for the first 3 years after enactment, and 35 employees thereafter.
- * February 3, 1988—H.R. 925 reported out of House Committee on Post Office and Civil Service by voice vote.
- * June 8, 1988—S. 2488, Parental and Medical Leave Act of 1988, introduced. Provided 10 weeks of unpaid parental leave for 24-month period and 13 weeks of medical leave for any 12-month period. Applied to employers with 20 or more employees.
- * July 14, 1988—S. 2488 reported out of Senate Committee on Labor and Human Resources.
- * September 26, 1988—S. 2488 brought to Senate floor for debate and filibustered.
- * October 7, 1988—Senate failed to end filibuster on S. 2488 by cloture vote of 50 to 46.

THE 101st CONGRESS

- * February 2, 1989—S. 345, Family and Medical Leave Act of 1989, introduced. Provided 10 weeks of family leave in any 24-month period for the birth or adoption of a child and for the care of a child or parent with a serious illness, and 13 weeks of medical leave in any 12-month period for employees’ own health conditions. Applied to employers with 20 or more employees.
- * February 2, 1989—H.R. 770, Family and Medical Leave Act of 1989, introduced. Provided 10 weeks of family leave in any 24-month period and 15 weeks of medical leave in any 12-month period. Applied to employers with 50 or more employees for 3 years after enactment, and 35 or more employees thereafter.
- * February 7, 1989—Hearing on H.R. 770 held by House Subcommittee on Labor-Management Relations.
- * February 28, 1989—H.R. 770 reported out of House Subcommittee on Labor-Management Relations by vote of 11 to 5.

- * March 8, 1989—H.R. 770 reported, as amended, out of full House Committee on Education and Labor by vote of 23 to 12. The amendments extended coverage to congressional employees and addressed the coverage of public elementary and secondary schoolteachers, as negotiated by National School Board Association and teachers' unions, among others.
- * April 19, 1989—S. 345 reported out of Committee on Labor and Human Resources by roll-call vote of 10 to 6.
- * May 8, 1990—Modified open rule consideration for H.R. 770 granted by House Committee on Rules.
- * May 10, 1990—First floor vote: H.R. 770 passed by a vote of 237 to 187, as amended by the Gordon-Weldon substitute, which reduced the period of leave from 15 weeks per year for medical leave and 10 weeks every 2 years for family leave to 12 weeks per year for all circumstances covered in the bill, expanded the small-employer exemption from 35 (effective 3 years after enactment) to 50 employees, and expanded the conditions of family leave to cover spouses with serious health conditions.
- * June 14, 1990—H.R. 770 approved by Senate, by unanimous consent.
- * June 29, 1990—H.R. 770 vetoed by President George Bush.
- * July 25, 1990—Attempt to override veto failed in House of Representatives by vote of 232 to 195.

THE 102nd CONGRESS

- * January 3, 1991—H.R. 2, Family and Medical Leave Act of 1991 (identical to the bill vetoed by President Bush) introduced. Provided that employers with 50 or more employees grant 12 weeks of unpaid family and medical leave.
- * January 14, 1991—S. 5, Family and Medical Leave Act of 1991, introduced. Provided that employers with 50 or more employees grant 12 weeks of unpaid family and medical leave.
- * January 24, 1991—Hearing on S. 5 held by Senate Subcommittee on Children, Families, Drugs, and Alcoholism.
- * February 2, 1991—Hearing on H.R. 2 held by House Subcommittee on Labor-Management Relations.
- * March 7, 1991—H.R. 2 reported out of House Subcommittee on Labor-Management Relations by vote of 16 to 7.
- * March 20, 1991—H.R. 2 reported out of House Committee on Education and Labor, as amended, by voice vote.
- * May 30, 1991—S. 5 reported out of Senate Committee on Labor and Human Resources.
- * June 27, 1991—H.R. 2 reported out of Committee on Post Office and Civil Service.

- * October 2, 1991—S. 5 passed in Senate by vote of 65 to 32, as amended by the Bond-Ford-Coats substitute, which tightened notice and eligibility requirements and created enforcement mechanism parallel to Fair Labor Standards Act, among other things.
- * November 13, 1991—H.R. 2 passed in House of Representatives by vote of 253 to 177, as amended by the Gordon-Hyde substitute, which incorporated the Bond substitute passed by the Senate.
- * August 5, 1992—House-Senate Conference Committee met.
- * August 11, 1992—Conference report passed in the Senate by unanimous consent.
- * September 10, 1992—Conference report passed in the House by vote of 241 to 161.
- * September 22, 1992—President Bush vetoed the bill.
- * September 24, 1992—Senate overrode veto by vote of 68 to 31.
- * September 30, 1992—House of Representative failed to override veto by vote of 258 to 169.

THE 103rd CONGRESS

- * January 5, 1993—H.R. 1, Family and Medical Leave Act of 1993 (similar to the bill vetoed by President Bush in the 102nd Congress), introduced. Provided that employers with 50 or more employees grant up to 12 weeks of unpaid family and medical leave.
- * January 21, 1993—S. 5, Family and Medical Leave Act of 1993, introduced. Provided that employers with 50 or more employees grant up to 12 weeks of unpaid family and medical leave.
- * January 22, 1993—Hearing on S. 5 held by Senate Subcommittee on Children, Families, Drugs, and Alcoholism. For the first time, administration (Labor Secretary Robert Reich) testifies in favor of FMLA.
- * January 26, 1993—Hearings on H.R. 1 held by House Subcommittee on Labor-Management Relations and Senate Committee on Labor and Human Resources.
- * January 26, 1993—S. 5 reported out of Committee on Labor and Human Resources by vote of 13 to 4.
- * January 27, 1993—H.R. 1, as amended, reported out of full House committee by a vote of 29 to 13. Two substitute amendments offered en bloc by Congressman Pat Williams were adopted to conform H.R. 1 to S. 5.
- * February 4, 1993—H.R. 1, Family and Medical Leave Act of 1993, passed in the House of Representatives by vote of 247 to 152.
- * February 4, 1993—S. 5, Family and Medical Leave Act of 1993, passed in the Senate by vote of 71 to 27.

* February 5, 1993—Family and Medical Leave Act signed into law by President Bill Clinton.

* August 5, 1993—FMLA effective date.

End Notes

- 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 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 www.nationalpartnership.org.
- 4 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.
- 5 *Ibid.*, p. A-2-5.
- 6 Jody Heymann, *The Widening Gap: Why America’s Working Families Are in Jeopardy-and What Can Be Done about It* (New York: Basic Books, 2000).
- 7 The 26% figure also includes those who listed leave for “maternity-disability.” U.S. Department of Labor, p. A-2-5.
- 8 The remedies for employees include equitable relief (e.g., reinstatement or promotion) and attorneys’ fees and costs. They also include (1) damages equal to the amount of back wages and employment benefits (or other compensation denied to the employee) plus interest, or (2) any actual monetary loss by the employee as a direct result of the violation (e.g., the cost of providing care), up to a sum equal to 12 weeks of wages, plus interest, and liquidated damages equal to the total of (1) or (2) above. (If the employer can show good faith, however, the remedy does not include liquidated damages). The incentives, such as they are, boil down to having to pay the remedies. 29 USC sec. 2617.
- 9 For more information on arguments in this vein made against the FMLA, see Elving, *Conflict and Compromise*.
- 10 U.S. Department of Labor, pp. A-2-58, A-2-62.
- 11 *Business Work-Life Study* (New York, NY: Families and Work Institute, 1998).
- 12 The 102nd Congress spanned 1991-1992.
- 15 Justice Brandeis, *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932).
- 16 Donna R. Lenhoff and Sylvia M. Becker, “Family and Medical Leave Legislation in the States: Toward a Comprehensive Approach,” *Harvard Journal on Legislation*, Vol. 26, No. 403, 1989, pp. 410-12.
- 15 James T. Bond, Ellen Galinski, Michele Lord, Graham L. Staines, Karen R. Brown, “Beyond the Parental Leave Debate, the Impact of Laws in Four States,” (New York: Families and Work Institute, 1991).
- 16 The House override vote, and not the Senate vote, is used because the larger numbers in the House permit a more accurate analysis.
- 17 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 only the latter to oppose the FMLA.

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

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

20 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.

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

22 This is particularly important because parents of young children represent a minority of voters. At the same time, this approach helps prevent a backlash against working women of child-bearing age. If job and income protection are guaranteed not only for new parents but for employees caring for ailing family members—a group that includes a rapidly increasing percentage of men—then employers have less incentive to discriminate against young women, who are perceived as needing leave when they give birth. More generally, the campaign avoids contributing to a backlash against parents of young children, since many employees who are not themselves parents would be able to take advantage of broadly defined family leave benefit policies.

23 “Family Matters: A National Survey of Women and Men”, conducted by Lake Snell Perry & Associates for the National Partnership for Women and Families, February 1998.

24 *What Grown-Ups Understand about Child Development: A National Benchmark Survey*, conducted by DYG, Inc., for Zero to Three: The National Center for Infants, Toddlers, and Families, Civitas, and the Brio Corporation, October 2000.