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THIS IS TO CERTIFY THAT THE THESIS PREPARED UNDER MY SUPERVISION BY

CLAUDIA R. PREPARATA

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INTRODUCTION

The first policies that concerned employment and maternity originated on the state-level in Wisconsin in the 1880s with the passage of the first labor standards aimed at ameliorating the deplorable working conditions for women. Called protective labor laws, their manifest purpose was the protection of women's reproductive capacities (Spalter-Roth 2). They were based on the belief that long hours of work, especially if done while standing, stretching or making repetitive motions, would be detrimental to a women's health ("The Family Leave and Medical Act" 99). The passage of the legislation ultimately restricted their hours of paid employment and excluded them from jobs that were considered "dangerous" (Shalter-Roth 2).

Consequently, the first federal action came in 1908 when the Supreme Court upheld the Wisconsin state law by setting maximum working hours for women, while ruling that similar regulations for men violated the right to contract for their labor. As a justification for this distinction, the Court noted that, since healthy mothers were essential to healthy offspring, certain physical restrictions were essential for working women. By 1912, thirty-four states had enacted measures to restrict women's working hours ("The Family Leave and Medical Act" 99). The passage of these regulations ultimately proved to have a dramatic effect on many working women. While these protective policies were initially considered progressive for their time, they eventually came to be viewed as undesirable impediments for the advancement of women (Blau 264). The limits placed on their ability to earn a living forced many of them to
struggle for the right to work nights and overtime, to continue to work when pregnant, and to return to work after childbirth (Spalter-Roth 2).

The restrictions facing women to find employment were only exacerbated as the economy took a downward turn in the 1930s. The Depression caused many state legislatures to respond to the scarcity of jobs by further restricting the employment of women ("The Family Leave and Medical Act" 99). The passage of the Fair Labor Standards Act of 1938 covered such matters such as child labor, minimum wages, night work, rest breaks, overtime and safety. The language of the Act regarded women exclusively as temporary workers and was not concerned with their need to accommodate job and family responsibilities (Spalter-Roth 2). It granted employers the right to refuse to hire women and dismiss those who became married. While the married women who were fortunate enough to continue working were usually given a choice between resignation or dismissal once they became pregnant ("The Family Leave and Medical Act" 99).

With the onset of World War II, employment opportunities for women increased tremendously as their vital contribution to the workforce was acknowledged. With a large demand to relieve the labor shortages caused by the war, women were now being actively recruited to fill the available positions. Due to this dependence on their labor, employer practices affecting pregnant women soon became an issue of concern. A federal policy on women's right to work and to return to the job after childbirth was proposed by the Women's Bureau of the Department of Labor (Shalter-Roth 2). Standards were issued for maternity care for employed women in an attempt to provide a uniform guidance for employers with regard to pregnancy. The proposal stated
that "a woman who is expecting a child should give first consideration to her own health and to plans safeguarding the health and care of a child. Nevertheless, some women who are pregnant or who have young children may find it necessary to work" ("The Family Leave and Medical Act" 99). Consequently, a six-week prenatal period and a two-month post-natal leave were recommended over the usual policy of dismissing pregnant women workers. In addition, it also called for guarantees of reinstatement and maintenance of seniority rights (Shalter-Roth 2).

However, as men returned from overseas at the end of the war period to reclaim their former jobs, any progress women had made in getting recognition for their needs as wage earners, not only halted, but reversed. Even as a large majority of women remained in the laborforce, policies that were considered vital for working women during the war period were now perceived as being no longer necessary (Blau 103). As a result, the situation for pregnant employees did not significantly change as the recommendation proposed by the Women's Bureau of the Department of Labor never received serious consideration from policymakers (Spalter-Roth 2).

Fifteen years later, maternity leave policy was once again brought forth as an issue of concern, this time in 1963 by the President's Commission on the Status of Women. In addressing the problem of maternity benefit policies, the Commission recommended that employers, unions, and the government should explore the best means of providing a paid maternity leave, or comparable insurance benefits for at least six months without the loss of reemployment or seniority rights ("The Family Leave and Medical Act" 100). Although the Commission believed child care to be essentially a female
activity because of a woman's biological role as childbearer, its proposal was very progressive in viewing women as permanent, not temporary or secondary, members of the labor force. Unfortunately, the Commission's proposal met the same fate as previous attempts had by not resulting in federal policy (Spalter-Roth 3).

Nevertheless, new opportunities arose for women in the workplace as the Civil Rights Legislation passed by Congress in 1964 expanded the rights and protections of women workers. Title VII of the Civil Rights Act, which covered both public and private employment, prohibited discrimination on the basis of sex with respect to "compensation, terms, conditions, or privileges of employment" (Spalter-Roth 3). With these new legal protections, women all over the United States began to file claims of sex discrimination with regard to the issue of pregnancy disability. The Equal Employment Opportunity Commission (EEOC), the Commission charged with enforcing Title VII, encountered some ambiguities in its course of action since maternity benefits had not been specifically mentioned in Title VII ("The Family Leave and Medical Act" 100).

In response to the filed claims, the EEOC eventually published guidelines in 1972 stating that disabilities resulting from "pregnancy, miscarriage, abortion, childbirth and recovery therefrom are, for all job-related purposes, considered temporary disabilities" and must be treated as such with regard to leave, health, or temporary disability insurance, seniority rights and reinstatement. Subsequently, in conformance with the EEOC guidelines, 22 states and the District of Columbia passed legislation requiring coverage for pregnancy and
pregnancy-related disabilities similar to that provided for other disabilities ("The Family Leave and Medical Act" 100).

However, in 1976, as the issue reached the U.S. Supreme Court, the Court ruled that a company's disability benefits plan was not discriminatory under Title VII because of its failure to cover pregnancy-related disabilities. According to the Court, as long as both men and women were covered under the company's plan for the same risks, then the exclusion of pregnancy was not sex discrimination since the alleged discrimination was between pregnant and non-pregnant persons, and not between men and women ("The Family Leave and Medical Act" 100).

Seeking to rectify this interpretation, Congress passed the Pregnancy Discrimination Act (PDA) of 1978, as an amendment to Title VII (Spalter-Roth 3). It prohibited discrimination against pregnant women in any area of employment, including hiring, promotion, seniority rights and job security ("The Family Leave and Medical Act" 100). The PDA stated that "women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes... as other persons not so affected by similar conditions in their ability to work" (Spalter-Roth 3). The language required that employers adhere to two basic principles. First, they had to permit physically pregnant employees to continue to work just as any other physically fit employee would be permitted to work. Second, when a woman became physically unable to work because of a complication that arose from pregnancy or childbirth, she was entitled to the same sick leave, disability leave, health insurance or other benefits during her recovery period that were extended to other employees who were not able to work due to their physical
condition ("The Family Leave and Medical Act" 103). In other words, if an employer provided short-term disability leave, health insurance or other benefits for any medical conditions, then the employer had to do so for pregnancy and childbirth. In the same respect, if an employer did not provide such benefits, then pregnancy did not need to be covered.

The PDA, while requiring equal treatment, leaves disability policy at the mercy of individual employers. Except where regulated by states or covered by collective bargaining, an employer is currently free to provide no sick leave or temporary disability. Existing laws do not ensure that employees who have compelling family or medical reasons for taking temporary leave from work have jobs to return to when they are ready or able to resume (Spalter-Roth 41). As this country has undergone a demographic revolution in the composition of its workforce, there is a need to enact employment policies that provide greater job protection and security for employees. The PDA can no longer define the employment policies that employers pursue as it has become outdated in accommodating the existing needs of the contemporary labor force.

DEMOGRAPHIC CHANGES

The demographic changes that have taken place over the past four decades have dramatically transformed the composition of the American workforce ("The Family Leave and Medical Act" 102). One of the most important shifts that has occurred stems from the significant influx of women. According to the Bureau of Labor Statistics, after years of steady increases, the participation of women has risen from 19 percent of the female population in 1900 to more than 52 percent today. Overall, women today constitute over 44 percent of the
total U.S. labor force ("The Family Leave and Medical Act" 102). In addition, this trend is only expected to intensify. Even as the participation of women as leveled off in recent years, for the remainder of the 20th century, the majority of the new entrants in the workforce will be women ("The Family Leave and Medical Act" 118). Ultimately, it is expected that by the year 2000, 2 out of 3 will be women (Women's Legal Defense Fund 1990).

These changes have not been without profound consequences for the lives of both working men and women and their families ("The Family Leave and Medical Act" 102). The traditional family, in which the father works and the mother remains at home occupied almost exclusively with homemaking responsibilities, has been eclipsed by other family patterns ("The Family Leave and Medical Act" 102). Today, only 1 in 10 American families conform to this traditional pattern ("The Family Leave and Medical Act" 110).

Instead, the number of two-parent households and single-parent households in which both parents work or the single parent works has increased significantly. In the single-parent families, much pressure is placed upon the parent since he or she is solely responsible both for the family's economic well-being and for its physical and emotional care (Women's Legal Defense Fund 1990). This is attributed to the divorce rate that has sharply increased from .9 per 1000 population in 1910 to 2.0 in 1940 to 5.2 in 1980. Although data suggests a leveling off of the increase in the early 1980s, it is estimated that about 40 percent of new marriages may end in divorce (Blau 123). As a result, millions of women have become heads of households, supporting themselves and their children. Studies have shown that women today represent the sole parent in 16 percent of all families (Spalter-Roth 5).
Another demographic change has been the dramatic increase in number of elderly in our society. Thirty-two million Americans are currently of age 65 or over, comprising 12 percent of all Americans. This percentage is expected to increase, as older Americans are the fastest growing segment of the population. A trend away from institutionalization has resulted in increased care responsibilities for family members, many of whom are also of necessity wage earners. Only 5 percent of the elderly are in nursing homes. For the remaining 95 percent, the most critical factor preventing or delaying nursing home placement is the existence of family care. Currently more than 2.2 million family members provide unpaid help to ailing relatives, the most common caregiver being a child or a spouse (Women's Legal Defense Fund 1990).

IMPACT ON WORKING PARENTS

A dramatic impact of the substantial increase in the percentage of women in the labor force, the increase of elderly in our society, and the transformation of the family structure is the reduced ability for the family to provide the caretaking services that they have traditionally provided. These crucial unpaid caretaking services have become increasingly difficult to fulfill ("The Family Leave and Medical Act" 103). As a consequence, families routinely experience conflict between work and family demands.

In particular, women who enter the workforce are particularly at risk. Due to the nature of women's and men's role in our society, the primary responsibility for family caretaking typically falls upon women, and such responsibility affect their lives more than it affects the working lives of men.
(United States Cong. House). Even with the cultural trend towards a father's greater involvement in such responsibility, women are the ones who continue to assume the greater burden of providing these significant caretaking services, even while employed. They frequently find it necessary to take time off without pay to fulfill these caretaking responsibilities. This often results in their losing or quitting their job when they deliver or adopt a child, or when they encounter a compelling family need that makes them either temporarily unable to work at all or unable to maintain the hours designated by employers. In fact, this compels women to take jobs with shorter hours or less responsibility than their male counterparts because most fulltime, high-level jobs do not easily accommodate family responsibilities. As a result, women's overall earning capacities and their employment tenures suffer greatly (Lenhoff 404).

In such cases, lack of societal supports may have immediate economic consequence if the wage earner is forced to quit her or his job to take care of the family's needs. Without support, working women and men constantly struggle to balance their family and work responsibilities. It is important for the development of the child and for the family unit that fathers and mothers be able to participate in early childrearing and care of their family members who have serious health conditions. They cannot afford to lose their jobs when they must provide these caretaking services or when they are absent because of their own medical conditions (Lenhoff 405).

This struggle to make ends meet has the most dramatic effect on single parents. These parents, particularly at lower income levels, are most often the least likely to have access to alternative care arrangements and their children
are most in need of the kind of support that family and medical leave would provide ("The Family Leave and Medical Act" 113). Leave is especially crucial because families cannot afford to lose the health insurance coverage that often accompanies the job. Parents who are without medical leave and lose their jobs and health insurance during a pregnancy or family crisis risk spiralling downward into "debt, destitution, and even homelessness". This is particularly significant for single women, as the majority of these workers remain in female intensive, relatively low-paid jobs and are less likely than men to have adequate job protection and benefits. Therefore, their employment is often critical to keeping their families above the poverty line (Women's Legal Defense Fund 1990).

Generally, all workers lose enormous amounts in earnings for absences due to their own illness, childbirth or adoption, or caring for elderly parents. However, the potential risks on single parent families are dramatic due to the likelihood of little or no job protection and benefits. It is estimated that Childbirth and adoption cost American women $331 billion annually. And women without leave bare a disproportionate amount compared to women with leave. In a study conducted by the Institute of Social Research at the University of Michigan on the current costs of parenting and illness, estimates gathered from a sample of nearly 7,000 households showed that single women who did not have some form of leave lost an additional $607 million of earnings due to childbirth compared to single women who had some form of leave (Spalter-Roth x). The annual earnings of women workers without job-protected leave were reduced by 29.1 percent in the first year after giving birth,
while those with leave lost significantly less, only 18.2 percent (Women's Legal Defense Fund 1990).

This reduction in earnings is further exacerbated by the difficulty of finding employment once a worker without job protection is able and ready to re-enter the labor force. A Census Bureau study found that 70 percent of women giving birth who had leave were re-employed within six-months of the birth, compared to only 43 percent of those without leave (Lenhoff 405).

In addition, the lack of leave for illness-related absences cost workers $12.2 billion in lost earnings due to unemployment. Women and men who are absent for illness for more than 6.25 days, or 50 hours, lose $100 billion in earnings. And those who care for elderly parents, mostly women, lose $4.8 billion in earnings, assuming the same loss as for illness (Spalter-Roth 28). Furthermore, there is an additional disparity in the reduction in earnings between black and white workers. Race differences are significant in both childbirth and illness because black workers suffer more unemployment as a result of these events (Spalter-Roth 30).

Ultimately, these costs cannot be added together because the categories are overlapping: women who gave birth probably missed more than six days due to illness and some who cared for elderly parents also were ill themselves. Compared to a total wage bill in the U.S. economy of approximately $2.1 trillion in 1986, not including benefits, these losses are not trivial (Spalter-Roth 36).

Despite the drastic potential risks that workers face as a result of the changes in the demographics in the workforce, there is no comprehensive national leave policy to accommodate all the needs of the contemporary workforce.
The growing participation of women in the workforce has meant that more families need to coordinate child care and other family responsibilities with their labor activities and their career goals ("The Family Leave and Medical Act" 119). Even with a cultural trend towards fathers more active involvement in the caretaking responsibilities, these family responsibilities are still often faced primarily by women. Therefore, these long awaited employment policies have yet to accommodate the important care-taking responsibilities for the achievement of meaningful equality for women in the workforce (Lenhoff 406). A fair and productive society must adjust its policies to reflect the recognition of women as permanent members in the labor force.

Nonetheless, the need for family and medical leave policies is not intended solely for the advancement of women, but also for the well-being of the American family. The obligations that employees face affect both men and women. When special circumstances arise that require reasonable periods of leave from work, both men and women should not have to decide between their responsibilities to their families and their obligations to their work. Parents should be able to deal with the family crisis without the prospect of losing their jobs. Therefore, employees are entitled to have access to both family leave to care for a new child or a seriously ill family member and medical leave for the employee's own serious health condition, which includes pregnancy and childbirth ("The Family Leave and Medical Act" 119). Employment policies have to catch up to the unprecedented cultural and demographic changes that this country has undergone to ensure that workers remain productive members of the labor force while still providing care to their families at critical times.
Up until now, there has been little effort in resource allocation to adjust to these changes. In many respects, our society continues to operate as if mothers stay at home to care for their children and father’s wages are sufficient to support the entire family. Adequate day care is scarce; needed family services are often only available, or easily accessible, during working hours; jobs traditionally held by women often do not offer benefits, such as health and disability insurance; and jobs are structured to require that employees work all day, and all but a few days a year (Lenhoff 403).

LACK OF EXISTING POLICIES

Despite the increasing need for employment policies that ensure job security for workers, few employers have addressed these concerns in their personnel practices. Studies show that a sizable majority of workers do not work for employers who offer family and medical leave. While a significant number of the country’s largest employers do provide some leave benefits, at least for their employees’ own serious health conditions, smaller firms are unlikely to grant job-guaranteed leave for family or medical reasons. Among the companies that do offer leave, most limit it to unpaid pregnancy disability leave (Women’s Legal Defense Fund 1990). Parental leave for fathers and for adoptive parents is less common. Family leave policies that allow workers to care for ill family members are extremely rare, and medical leave policies guaranteeing jobs during an absence resulting from an employee’s own medical condition vary widely (Lenhoff 408).

The Bureau of Labor Statistics (BLS) compiled a study in 1990 to estimate how many companies provided their employees with leave. For the survey,
the definition of leave was to care for a newborn child and did not include other kinds of leave such as leave for short-term disabilities and paid vacation, which might have also been used for this purpose ("The Family Leave and Medical Act" 128). The BLS found that only 37 percent of all female workers in companies of 100 or more were covered by unpaid maternity leave. Only 18 percent of male employees in companies of 100 or more were covered by unpaid paternity leave. In addition, the U.S. Chamber of Commerce reported a survey which revealed that 82 percent of all employers provide no leave for elder care and 75 percent offer no leave for fathers (Women's Legal Defense Fund 1990). Only six states and about a quarter of employers offer leave time for adoption, which most adoption agencies require if you are going to adopt an infant (United States Cong. Senate).

RESPONSE ON THE STATE LEVEL

Recognizing the inadequacy of leave policies granted solely at the discretion of employers, a number of states have enacted leave legislation. Only five states, however, address the full range of family crises for which employees need job-guaranteed, temporary leave for work. Wisconsin, Maine, Connecticut, Pennsylvania, Rhode Island and the District of Columbia have recently passed leave policies that would guarantee private employees a right to both family leave and medical leave (Lenhoff 419). Laws passed in other states, to protect workers who take leave, significantly limit the circumstances in which they are entitled to job guarantees. However, most states have not addressed the leave issue at all. Only eighteen states have mandated that employers provide job-guaranteed leave for any kind of duration. Of these,
most have followed California's example of providing only pregnancy
disability leave for mothers who are temporarily unable to work due to
pregnancy or childbirth. Only a few of the eighteen have enacted legislation
that allows either parent time off to care for newborn or adopted children, and
only three recognize the importance of providing job-guaranteed leave for
employees who need to care for ill family members or who themselves suffer
from temporary disabling medical conditions other than pregnancy (Lenhoff
412).

As laws in each state differ over different levels of coverage, only a federal
minimum standard can ensure that all workers will be treated fairly at times of
a family and medical crisis. In absence of a generally accepted business standard
of conduct toward employees, a congressional mandate not only ensures the
fair treatment of workers, but also nullifies the advantage that employers who
do not treat their employees fairly would have over those who do ("The
Family Leave and Medical Act" 120). However, a federal minimum is not
without benefits for corporate America and its employees. This is particularly
of interest for those companies in highly competitive industries with multi-
state operations that are subject to varying and sometime unequal state leave
legislation. From a competitive standpoint, uniformity is a desirable goal
(Grinstein).

**RECENT CONGRESSIONAL ACTION**

In response to these disparities, Congress has made a number of attempts
over the past decade to enact comprehensive legislation that would establish a
national policy on employee benefits for maternity, paternity, child care and
serious illness ("The Family Leave and Medical Act" 109). The first major federal legislative proposal to address such needs for working families was the Prenatal and Disability Leave Act, introduced by Representative Patricia Schroeder (D-Colo.) on April 4, 1985. The bill proposed the establishment of a new federal minimum labor standard where all employees would be guaranteed their jobs, or equivalent jobs, if they temporarily took unpaid leave for no more than a specified number of weeks, either for their own serious health conditions or to care for newborn or newly adopted children, or children with serious health conditions (Lenhoff 412). Schroeder's original bill was actively considered by the House, as was its successor, the Parental and Medical Leave Act introduced in 1986 (Lenhoff 413). However, its Senate counterpart, introduced by Senator Christopher Dodd (D-Conn.), did not receive the same amount of enthusiastic support as it was set aside after supporters failed to cut off a filibuster on the Senate floor ("The Family Leave and Medical Act" 108).

Since its initial introduction, new versions of the bill have appeared in each Congress, each receiving continually increasing support as legislators have arrived at a modest, bipartisan compromise in order to gain more recognition for the bill from Republicans and conservative Democrats. Although the original version has been redefined and compromised primarily on such matters as coverage and length of permissible leave period ("The Family Leave and Medical Act" 102), each version of the proposed Act incorporates Representative Schroeder's basic framework and view of the problems faced by working families. Despite the changes, the centerpiece provision of the bill has remained unaltered; job protection for covered employees who must be absent
from work for a specified, temporary period to attend to various, specific, compelling family or medical needs (Lenhoff 413).

The Family Leave and Medical Act (FLMA) is on the fast track. Last year, the legislation was considered again in the 101st Congress, receiving the most bipartisan support since its introduction. For the first time, the legislation passed committee scrutiny from both chambers to move to the floor for debate (Palmer). In fact, once it reached the floor, the legislation passed in both Houses. It was approved by the House on May 10, 1990 by a 237 to 187 vote ("The Family Leave and Medical Act" 109), as it had gained support from wavering Republicans and conservative Democrats. A total of 39 Republicans voted for the bill. In addition, of the 28 female members, 22 voted in favor (Pytte). In the other chamber, the Senate approved it on June 14 by a voice vote. However, despite the new ground covered in both Houses, on June 29, 1990, President Bush vetoed the legislation (Palmer).

As a result, a partisan clash resulted as Democrats tried to pin an anti-family label on Bush, while trying to convince enough Republicans and conservatives in their own party to override (Cloud). However, on July 25, 1990, despite intense lobbying, the House failed to override the President's veto, voting 232 to 195, 54 votes short of the required two-thirds majority ("The Family Leave and Medical Act" 109). Due to the President's opposition to the bill, eight members had reversed their 'aye' votes in support of the president's veto (Palmer). Nonetheless, despite the major upset, backers of the legislation remained hopeful for the prospect of gaining enough votes to override the veto in the 102nd Congress because bipartisan support for the legislation virtually had not wavered. Thirty-eight of the 39 Republicans who had voted
in favor of the legislation, reaffirmed their position by voting to override the 
president's veto (Palmer).

In the current Congress, the FMLA is once again top priority. The bill was 
among a half a dozen measures chosen for early introduction and fast action by 
Senate Democratic leaders when the Congress convened in January. Senate 
leaders saw this as a way of demonstrating Democratic concern for family-
related issues and drawing a contrast between the Republican administration 
and congressional Democrats on a popular cause (Bernstein). However, this 
bill has not been dictated purely by partisan ties.

A recent public opinion poll on family and medical leave, conducted by the 
Wall Street Journal and NBC, found that 71 percent of American voters 
support the FMLA. Broken down further by party affiliation, the findings 
show that 77 percent of all Democrats support it and 64 percent of all 
Republicans (Women's Legal Defense Fund 1990). In the light of this 
widespread support that goes beyond party lines, this has put a lot of pressure 
on congressional Democrats and Republican alike to answer to their 
constituents. Senator Edward M. Kennedy (D-Mass) states that support for the 
legislation has grown as "caring for one's family, especially newborn children 
and frail elderly, are values that our society cherishes. And the protections in 
this bill will encourage, not discourage, working and coping with these 
responsibilities" ("Providing Family Leave Cheaper"). Presently, there are 
officially 40 cosponsors of the legislation in the Senate and 179 in the House 
who have committed themselves in support for the legislation (Women's 
After hearings on the subcommittee level, the legislation passed to full committees in both chambers. The legislation was approved from the Post Office and Civil Service Committee on March 13, 1991 as members approved its portion of the measure that included the title in the bill concerning comprehensive leave benefits for federal workers. In addition, the House Education and Labor Committee, which has jurisdiction over the majority of the legislation, approved H.R.2 on March 20, 1991. The panel members agreed to an amendment requiring that a sick family member must be 'seriously' ill before and employer will grant the employee leave ("House.Education...Committee"). Although the measure was approved by voice vote, two other Republicans announced their support for the legislation. For the remaining Republicans who opposed the legislation, Marge Roukema (R-N.J.), a leading proponent of the measure warned her GOP colleagues, "I don't think you want to oppose such a distinguished 'pro-family' bill as this. This bill endorses - and I use these works advisedly - endorses in a very concrete way, the lip service that we members so often give to family values" ("House Committee Approves FMLA"). On the Senate side, the Labor and Human Resources Committee approved S.5 on April 24, 1991. Presently, both bills have been reported out of their respective committees. As the next congressional action on the Senate side will occur when the bill comes to the floor for a vote, the House is awaiting action by the Rules Committee to set up conditions and regulations for floor debate before the legislation can be brought to the floor (Zuchman).

As the issue of leave has come to signify concern over the welfare of today's American family, Senator Hatch (R-Utah) and Representative Stenholm (D-
Texas) have collectively worked on an alternative to the current measures in an attempt to provide members of Congress something "pro-family" to vote. They plan to introduce the alternative as a substitute once the FMLA reaches the floor. Unlike the current leave legislation that ensures job protection for employees who take leave, H.R. 1270 and S. 418 would require businesses to give hiring preference to workers who have left to raise a child for up to six years or to care for a sick family member for up to two years. It would require employers to reinstate workers in the same or similar job if one became available. In order to apply for reinstatement, a worker would have to provide documentation that demonstrated that he or she remained qualified for the position. However, the employer would not be required to fire the replacement workers or create a new position to rehire the former employee. If the appropriate position was not open when the worker was ready to return, the worker would be entitled to the first available position (Zuchman).

This substitute has underscored the coalition of business groups that have worked together in the past five years to oppose any sort of family leave mandate. It has caused divisions among groups due to differing reactions to the language of the measures. Subsequently, business groups have not taken an official position on the alternative (Zuchman).

The U.S. Chamber of Commerce, a member of the coalition, supports the substitute as an alternative for members of Congress who may feel the pressure from their constituents to support "pro-family" legislation. Dammon P. Tobias, the Chamber's manager of human resources policy stated that the measure "doesn't tell the employee all your rights terminate after 12 weeks, and it doesn't tell the employer we don't care if you have a work force to plan
for." In support, Mary Tavenner, head of the coalition and a lobbyist for the National Association of Wholesale-Distributors, said that she could appreciate the measure in "a strategic sense" for giving some members of Congress something to vote for (Zuchman).

Further, even though the Associated General Contractors, which represent the construction industry, does not officially support the substitute, lobbyists for the organization emphasize the need for Congress to take a closer look at this particular measure. While a mandate is still proposed, it is an good alternative to what is currently out there (Zuchman).

On the other hand, there are some business groups that are adamant in their opposition to any type of federal mandate. John Motley, representing the National Federation of Independent Business, reaffirmed that "the area that has always been critical from the business community standpoint is that mandate, and there was no attempt to change that." As long as the mandate remains in the language of the legislation, there will be no support for any alternative measures (Pytte). This view reflects the position that the administration has taken in response to the substitute. President Bush will not be supportive of the Hatch-Stenholm measure, despite the laxity in its measures, because it still constitutes a mandate (Zuchman).

However, conservative "pro-family" groups adamantly support the alternative. William Mallot, an official of the Family Research Council, purports that while the FLMA approach is designed to get women back to their jobs as soon as possible after childbirth, this approach is designed to help parents stay at home and raise their children. "Instead of rewarding fast-track
careerists, this substitute legislation works for the 'stay-at-home' mothers" ("A Substitute Bill May Reach the Floor").

In the meantime, supporters of the Family Leave and Medical Act are equally adamant about their opposition to the alternative. Backers quickly denounced the proposal as ineffective. Senator Dodd said the intention of the measure was not to protect the average worker. "It does nothing for a vast majority of working parents who cannot afford long stretches of time out of the paid labor force" ("A Substitute Bill May Reach the Floor"). On the contrary, only the individuals who could afford long periods of time away from their jobs, without the guarantee that the job would be available once they returned, would take the leave (Women's Legal Defense Fund 1990).

Lobbyists for the Women's Legal Defense Fund purport that the Hatch-Stenholm bills do not provide job security of any kind to workers facing family and medical emergencies. Employers have obligation to ensure the continued availability of those jobs and are free to permanently replace those workers who need to take leave to attend to family medical emergencies. Most importantly, a provision that further absolves an employer from any obligations to his employees is that , even if a similar position is available when the worker is ready to return, employers are exempt from its language, "if circumstances have so changed as to make reemployment unreasonable."

The bill makes no attempt to define the circumstances in which reemployment would be considered "unreasonable." Further, the alternative makes absolutely no provision for workers who are temporarily unable to work because of their own serious health condition. Nor does it guarantee a worker's continued health insurance coverage during time of family and
medical emergencies. In conclusion, the bill does not provide any protections for workers who depend on the security of being able to return to their jobs once they are forced to take family or medical leave due to compelling family obligations (Women's Legal Defense Fund 1990).

Proponents of the FLMA do not fear that this alternative bill will get enough support to substitute the language of the present version of the legislation. In fact, Congress is expected to pass the FMLA once again when the bill comes to the floor. However, President Bush has already promised he will veto the bill if it reaches his desk. What remains unclear is whether the House or the Senate will be able to muster the needed two-thirds majority to override a presidential veto. While the Senate is relatively close to the two-thirds threshold, House supporters acknowledge that they have picked up only a fraction of the 53 votes which they fell short of last year for overriding the veto ("Family Leave Measure Gets Committee OK"). Therefore, with the possibility of sustaining the veto, Democrats have indicated a willingness to modify the language of the vote in an effort to gain votes. Presently, the length of leave is being considered for adjustment to obtain more votes from Republicans and conservative Democrats (Bernstein). With these adjustments, House Democrats remain hopeful of receiving the needed widespread bipartisan support to override the veto.

**LEGISLATIVE MEASURES**

The House and Senate versions (H.R.2 and S.5) of the Family Leave and Medical Act are virtually identical. The General requirements of both versions would entitle employees to take up to 12 weeks a year of unpaid leave for any
combination of family or medical leave. Family Leave is available to a worker upon the birth or adoption of a child, or upon the serious condition of a child, parent or spouse. The definition of parent for elder care is limited to the biological parent or the person who has raised the employee. Medical leave is available when a worker is temporarily unable to work because of his or her serious health condition, including pregnancy and childbirth. One restriction is that only one parent at a time may take leave to care for a newborn or an adopted child ("The Family Leave and Medical Act" 107).

The employment and benefits protection is that an employee must be reinstated to the same or equivalent position, with the continuation of pre-existing health insurance during the period of leave. In order for employees to qualify for this leave period, they would be required to have worked for at least one year and at least 1000 hours. Thus, a part-time employee, working on the average less than 20 hours per week is not covered by the bill (United States Cong. House). However, this provision of the legislation does not have any effect on existing collective bargaining agreements for at least one year.

An eligible employee may elect, or an employer may require the employee, to substitute for leave any of the employees's paid vacation leave, personal leave, or family leave for any part of the 12-week period. However, if such paid leave is less than the 12 weeks leave, then the employer must provide the employee with such additional weeks of leave as may be necessary to attain the 12 weeks. In order for an employee to be granted leave by his or her employer, a doctor's certification is necessary to verify a serious illness. The employer has the option to request a second or third medical opinion if there is any reason to
doubt the validity of the certification ("The Family Leave and Medical Act" 107).

There is also a provision that allows exemptions for small businesses. Any business with fewer than 50 employees would be exempt from coverage. As a result, this would exempt 95 percent of all businesses, and cover only 40 percent of the total labor force ("The Family Leave and Medical Act" 101). In the meantime, the legislation provides for the establishment of a Commission on Leave to study existing and proposed policies on leave and the effects on small businesses and to report the findings to Congress within two years ("The Family Leave and Medical Act" 107).

In addition, in the House version, there are certain key employees who are exempt from coverage of the Act. An exemption clause concerns certain highly compensated employees. An employee whose salary is among the highest 10 percent of all employees employed by the employer within 75 miles of the facility is not eligible for leave. An employer has the right to deny an employee leave if such denial is necessary to prevent substantial and grievous economic injury to the employer. If in any case the leave has started, then the employer must notify the employee of his or her intent to deny the employee restoration at the time the employer determines that such economic injury would occur. At that point, the employee has the opportunity to decide whether or not to return to work after receiving the notice (United States Cong. House).

Further, the legislation would give federal workers more comprehensive benefits: 18 weeks over two years of parental leave and 26 weeks a year for medical leave. Employees in the House and Senate would get the same protections as private employees ("The Family Leave and Medical Act" 107).
There are also special rules that could be applied in the case of employees of local educational agencies and private elementary and secondary schools. It would grant schools the flexibility in determining when a teacher should return to work in order to minimize classroom disruption (United States Cong. House).

If an employer interferes with, restrains or denies the exercise of any right provided under the legislation, the Act authorizes the Secretary of Labor to issue rules and regulations to enforce the provisions. The person alleging the violation by an employer may file a charge with the Secretary within one year after the occurrence of the alleged violation. When the charge is received, the Secretary has 60 days to investigate the charge and subsequently either issue a complaint or dismiss the charge. If the Secretary issues a complaint, an administrative law judge will start hearings within 60 days. The decision and order of the judge will be the final decision and order of the agency, unless the person who has filed a complaint appeals the judge's ruling or the Secretary modifies the decision. If action is taken by the Secretary, then his or her modification will be the final decision. If at that time, the employee is still not satisfied with the decision, an final order may be obtained to be considered for review in the United States court of appeals within 60 days. Subsequently, the employer who is found guilty of violations is liable to the pay the employee up to three times the amount of wages, salary, employment benefits, or other compensation that were denied (United States Cong. House).

**OPPOSITION TO THE FMLA**
There is much debate in Congress, the business community, and women's and labor groups over the effect and impact that the Family and Medical Leave Act would have on American society. While supporters of family and medical leave are adamant in their determination to enact what they see as a modest first step toward enlightened Federal policy, opponents are just as convinced that the bill represents a dangerous precedent that will lead to further government intervention that will prevent companies for competing in the global market place.

Philosophically, opponents object to the legislation as constituting federal intrusion in the workplace and a departure from the government's traditional policy of not mandating employee benefits ("The Family Leave and Medical Act" 98). Businesses are concerned that Congress is "heading down a long and slippery slope" of government intervention in the workplace. "What we're fearful of is a deluge of these proposals similar to what was enacted in the 1930s, when Social Security, workers compensation and other federal minimum standards were enacted", said John J. Motley, vice president for federal government relations at the National Federation of Independent Business (Pytte).

Overall, Bush's administration claims to support the objective of parental and medical leave but prefers a voluntary arrangement worked out through management-labor negotiations (Cloud). The President stated in his veto message that, while he was in favor of giving workers time off to take care of family members, he was opposed to mandating federal benefits ("Providing Family Leave Cheaper"). This position is in stark contrast to his presidential
campaign statement in 1988 made in support of unpaid leave for workers (Palmer) at a time when child care was a heated issue in the campaign debates.

The Chamber of Commerce, the Administration and the conservative Republicans oppose requiring companies to provide parental or medical leave because they argue that mandated leave will take away employers' flexibility to adjust benefits according to the needs of their employees and lead them to cut other benefits which workers may prefer (Pytte). Therefore, rather than mandating employee benefits, conservatives believe that policymakers should look for ways to encourage the proliferation of cafeteria benefit plans which give workers the opportunity to select from an array of wage and benefit option which suits best their individual family needs ("The Family Leave and Medical Act" 123). As more families need to coordinate childcare and other family responsibilities with their labor activities and their career goals, the increase in diversity in the workforce further promotes the flexibility in designing wage and benefit packages to accommodate the different values that individual workers place on specific benefits ("The Family Leave and Medical Act" 119).

However, the belief that companies will fulfill the individual needs of the workforce in fact contradicts the evidence. A March 1990 survey of 253 corporations by Buck Consultants found that 62 percent of companies which did not offer leave said that they would offer such a program only if required to do so by the state or federal government (Women's Legal Defense Fund 1990). With such reluctance to provide benefits to employees, there is a strong sense that a Federal minimum standard is needed to ensure that employers will respond to the existing needs of both working men and women. The intention is to enact a Federal minimum requirement to bring business in line with the
changing demographics of the work place (Pytte). The federal standard need not discourage states or individual businesses from enacting measures with greater protection plans to suit the specific needs of their employees. State legislation may go beyond the baseline requirements of the federal law and tailor their law to meet state-specific needs for achieving effective work and family policy goals. Further, if employers believe that the minimum standard does not fully suit the needs of their individual workers, then they can offer greater, but not fewer protections (Lenhoff 416).

In addition, opponents of the leave legislation argue that leave requirements, are in practice, likely to be applicable primarily to women in their childbearing years. To avoid additional costs if the policy is mandated by the federal government, employers may be more selective in their hiring policy. If so, the result would be fewer jobs and lower wages for women. Such selectivity on the part of the employers would operate contrary to the interest of employees who place a greater value on the particular benefit that is being mandated ("The Family Leave and Medical Act" 117).

However, the recommended leave legislation does not focus exclusively on the needs of women of childbearing age. Rather, it addresses the needs of all family members. Because the legislation covers medical leave for all employees with serious health conditions and includes pregnancy among these conditions, it treats a woman's temporary inability to work due to pregnancy- and childbirth-related disabilities the same as any employee's inability to work because of a temporary medical condition. Therefore, the proposal covers family leave for all employees' family-related needs, on a gender-neutral basis: both male and female employees may need time off from work to care for a
seriously ill child or another family member. It takes into account the desire and need of many men to take an active role in caring for their children and other family members. Furthermore, the legislation recognizes that even younger workers occasionally face unpredictable medical emergencies, which render them temporarily unable to work, but should not cost them and their families their sources of income (Lenhoff 417).

Ultimately, the proposed legislation addresses the needs of the majority of the workforce. Therefore, the legislation discourages, rather than encourages, sex discrimination. Thus, employers will not be reluctant to hire women because leave requirements will not be more applicable to women rather than men. Thus, men and women will be almost equally likely to need and take some kind of family or medical leave available, removing any incentive that employers may have to discriminate against one group or the other (Lenhoff 418).

COSTS TO BUSINESSES

A cost to businesses that critics of the legislation attribute to parental and medical leave is the costs incurred by having to replace a worker temporarily, instead of permanently. When an employer replaces an absent worker, he or she must arrange for the work to be done in another way by reallocating work among the remaining workforce or replacing the worker temporarily or permanently. Opponents argue that the costs to businesses of mandating the maintenance of "shadow workforces" to cover for employees on leave would be significant and disruptive to the economy, and that other benefits might
have to be reduced in order to compensate ("The Family Leave and Medical Act" 98).

However, studies have shown that there would be little measurable net cost to employers associated with replacing workers temporarily while they are on unpaid leave ("The Family Leave and Medical Act" 105). A study conducted for the Small Business Administration (SBA) found, in a national wide survey of approximately 3,300 business executives, that the cost of permanently replacing an employee is significantly greater than that of granting a worker's request for unpaid leave. Termination due to illness, disability, pregnancy, or childbirth cost employers $1,131 to $3,152 per termination, while the average cost of providing unpaid leave varies from 97 cents per week for companies with 16 to 99 employees, to $97.78 per week for companies with more than 100 workers ("Providing Family/Medical Leave Cheaper"). While some inconveniences resulted, firms also experienced savings in wages not paid to absent employees ("The Family Leave and Medical Act" 105). An employer's savings in worker salary and benefits for those on unpaid leave exceeded replacement costs and productivity losses (Lenhoff 39). Therefore, while there would always be costs to firms mandated to offer leave by the federal government, these costs would be relatively small as compared to the cost of terminating the worker who desires the leave (Women's Legal Defense Fund 1990).

Obviously, there are economic benefits that accrue to employers from retaining absent workers and taking back former workers after their absences that overshadow the costs. Otherwise they would not do it (Spalter-Roth 40). According to the 1985 U.S. Chamber of Commerce Employee Benefits Survey,
of the 50 percent of the responding employers who reported that they had some type of formal parental leave plan, 61 percent said they have it because it improves their ability to recruit and retain workers (Women’s Legal Defense Fund 1990). The experience of individual employees further supports these findings. For example, Aetna Life & Casualty Co.’s unpaid family leave policy cut turnover due to family demands nearly in half. After instituting its family leave policy in 1988, Aetna found that 12 percent of the women who needed family leave ended up leaving the company, compared with 23 percent the year before, when family leave was not an option ("Aetna Life Finds Employee Retention Improved"). Therefore, providing leave may help employers compete, through hiring and retaining workers. Leave policies encourage longevity and reduce turnover, allowing employers to benefit from the skill, experience, and institutional knowledge that workers with job tenure have gained (Women’s Legal Defense Fund 1990).

In addition, as employers routinely cope with employees on leave, firms have responded by developing cost-effective systems to manage worker’s absences by re-routing work to others, sending work home to the employee on leave, hiring temporary help, and saving non-essential work until the employee returns. Thus, with appropriate planning, most businesses are expected to be able to absorb family and medical leave with little or no disruption of their normal operations ("The Family Leave and Medical Act" 116). Employers institute sick and disability leave policies because it is cost effective to do so. In fact, studies have shown that this legislation would not drastically change the current policies of replacing temporarily or permanently their employees. The U.S. General Accounting Office (GAO), an investigative
arm of Congress, conducted field interviews with 80 businesses in two metropolitan labor markets, Detroit, Michigan, and Charleston, South Carolina to find out the current policies that employers pursued. They found that employers generally do not replace absent workers who are expected to return; fewer than 1 in 3 absent workers are replaced (Spalter-Roth 39). Therefore, a federal mandate would not disrupt drastically employment practices that are currently in use.

The main cost that critics argue the proposed legislation would incur on employers is the cost of carrying health insurance for workers on leave. This represents the cost to employers for the continuation of health insurance coverage for employees who take unpaid leave. However, according the the GAO's report, the estimate cost of the Family Leave and Medical Act to employers having 50 or more employees would be less than $236 million. This would amount to only $4.35 per covered worker per year ("The Family Leave and Medical Act" 112), or less than 2 cents a day. On the average, a benefit package that would cost employers $8,101 a year (United States Cong. Senate).

In conclusion, it appears that the studies by various organizations and agencies cited above reveal that those employers who do not already provide leave may find that they will gain economically from providing the required leave. While providing leave is not costless, as the GAO notes, the costs are not high. The cost of carrying health insurance, the only significant identifiable cost of the proposed legislation, may be more than made up by the productivity gains associated with easy recruitment, lower turnover, and increased longevity (Spalter-Roth 40). Thus, many employers have already found that these policies are economically sound for their individual
businesses. If requiring employers to return former experienced or trained workers to the job improves their productivity in the long run, as it seems likely, then the bill reduces, not increases their costs (Spalter-Roth 43).

**IMPACT OF LEAVE LEGISLATION ON THE STATE LEVEL**

A study conducted by the Families and Work Institute further supports that the family and medical leave legislation is neither costly nor burdensome. A May 1991 study, "Beyond the Parental Leave Debate: The Impact of Laws in Four States," examined the impact of the leave legislation in Minnesota, Oregon, Rhode Island, and Wisconsin (Women's Legal Defense Fund 1990). In order to blunt charges of bias, the panel was convened with two dozen experts in each state from all sides of the issue, including chambers of commerce and local arms of the National Federation of Independent Business, two strong opponents of mandatory parental leave. The panels devised questions for the survey using samples of more than 1,000 employers from each state (Bernstein). The study asked the employers of these states to assess the economic impact of state leave laws on their businesses. By a wide margin, the employers reported that they were able to implement family and medical leave legislation easily and inexpensively, with little or no effect on other existing employee benefits. Ninety-one percent of the employers reported that they did not have problems with implementation. In fact, 39 percent found implementation "extremely easy" while only 9 percent found it difficult. Company size seemed to have no effect on the difficulty or cost of implementing the leave policies. Small companies with under 50 employees
were not more likely to report increased costs related to their compliance with state leave laws (Women's Legal Defense Fund 1990).

In addition, 93 percent of the employers did not feel pressured to reduce health insurance benefits because of the leave legislation due to economic constraints. In actuality, the majority of employers reported that the new leave policies caused no increase in costs for unemployment insurance, health insurance, training or administration. Eighty-one percent reported that the state laws resulted in no increase in costs related to unemployment insurance; 73 percent reported no increase in health benefit costs; 71 percent reported no increase in training costs; and 55 percent reported no increase administrative costs. Only a small minority reported "significant increases". Two percent reported "significant increases" in unemployment insurance; 4 percent reported such increases in training costs; and 6 percent reported in administrative costs. Further analysis suggests that for those employers who did report cost increases, many of the costs reflected general cost increases, especially in health insurance, rather than costs due to family and medical leave laws (Women's Legal Defense Fund 1990).

COSTS DUE TO LACK OF LEAVE POLICIES

In further evaluating the need for the Family Leave and Medical Act, the costs that a lack of a national leave policy incurs on society must be analyzed. Aside from the costs that working parents presently face for providing caretaking services to the family, to adequately examine the cost of any new public policy, it is important to determine other costs being borne by taxpayers (Spalter-Roth 12). One financial cost that is particularly important is the cost
being paid by taxpayers. Financial costs, as distinct from economic costs, arise for society, employers and workers. The costs of health insurance and income assistance are examples of such costs (Spalter-Roth 11). These, however, do not generally represent new economic costs because they are considered to be transfers from one group in society to another. The study conducted by the Institute of Social Research at the University of Michigan showed that the taxpayer currently pays an additional $4.3 billion annually in payments for such public benefit programs as welfare, unemployment compensation, food stamps and Medicaid to support workers who have lost their jobs due to the lack of job guaranteed leave (Women's Legal Defense Fund 1990). These public income assistance programs are most likely used more by workers whose employers do not provide them with job-protected leave than by those whose employers do. As a consequence, this assistance to workers and their families can be viewed as a hidden subsidy to businesses from taxpayers, who, in effect, are the ones to bear the financial burden due to the employer's failure to provide consistent job protection. Although the costs of transfers are not directly addressed by the proposed legislation, it is likely that a decrease will occur if workers have the job protection mandated by the FMLA (Spalter-Roth 12).

In addition, because workers are likely to experience more unemployment and wage loss without parental and medical leave, productivity is lost to the economy. Even if the employer were to find equally productive employees to replace the absent one, and so minimize loss in her or his own workplace, society would still lose productivity because the former trained and skilled workers would have to find new jobs. Workers without job-protected leave
are often unemployed for long periods in search for new jobs or employed at new jobs below their capability. Thus, the employer's action in terminating an ill or pregnant worker can be viewed as creating a cost for all of society. By requiring reinstatement, the proposed legislation addresses this social cost. Because the former workers will experience less unemployment and wage loss, the productivity lost by the economy when they are unemployed, or employed below their capability, would be saved (Spalter-Roth 10).

In conclusion, a national leave policy would, therefore, serve long-term productivity needs. It would ultimately prevent or reduce losses in productivity that are not necessarily measured or noted by employers, but which are borne by society as a whole. Given our nation's long-term economic problems and the shortage of workers, especially trained and experienced workers, that are anticipated by the year 2000, these are costly losses that our nation cannot afford (Spalter-Roth 43)
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Civilian Labor Force Participation Rates of Women by Age, Selected Years, 1940-1984.

### Divorce Rate per 1000 Population, 1910-1982

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