

employers similarly allowed fathers time off for newborns. Among other highlights from the survey, 91 percent of employers interviewed in the four States reported no difficulty with implementation of the State parental leave laws; the majority of employers reported no increase in costs for training, administration or unemployment insurance as a result of the State laws; 67 percent reported they most often relied on other employees to do the work of an employee on leave, while 23 percent reported they most often hired a temporary replacement; 94 percent reported that the leave laws had not forced them to reduce other benefits in order to pay for maintaining the health benefits of parents on leave; the percentage of working women who took unpaid leave for the birth of a child (78 percent) was unaffected by the enactment of the State laws; and the average duration of the leaves remained virtually unchanged by enactment of the State laws.

In a 1990 study by Professors Eileen Trzcinski and William Alpert commissioned by the SBA, a nationwide survey of business executives examined the impact on businesses of providing family and medical leave. The SBA study found that the costs of permanently replacing an employee are significantly greater than the costs of granting an employee's request for leave—terminations due to illness, disability, pregnancy, and childbirth cost employers from \$1,131 to \$3,152 per termination, compared to \$.97 to \$97.78 per week for granting workers' requests for leave (dependent on size of employer and managerial status of employee). *Ibid.*, p. 17.

A 1992 study by the Families and Work Institute also concluded that providing unpaid parental leave is more cost-effective for employers than permanently replacing employees—20 percent of the employee's annual salary, compared to 75 percent to 150 percent for permanently replacing an employee (*Ibid.*).

The Senate Committee Report concluded that additional costs to employers as a result of FMLA are minimal; that there is no evidence of greater business losses where State laws require similar family and medical leave; and, based on a 1989 GAO study of similar legislation, there would be no measurable net costs to business from replacing workers or lost productivity (costs result exclusively from continuation of health insurance coverage for employees on unpaid leave). *Ibid.*, p. 42.

In addition to the findings of the studies identified by the Senate

committee report, according to a September 1993 survey of benefit managers by Hewitt Associates, an international consulting firm, most employers offer more generous leave policies than required by the FMLA. Nearly all (95 percent) of the 628 participants indicated that their policies go beyond the minimum requirements of the law. Nine of ten employers (92 percent) continue benefits other than health care for employees while on FMLA leave. Nearly half of the employers (45 percent) extend FMLA leave to employees at locations with fewer than 50 employees within 75 miles, 44 percent allow longer than 12 weeks of leave, and 30 percent allow FMLA leave for employees with less than 12 months of service. Most employers expect only a small percentage of employees to avail themselves of their FMLA policies in any given year. Nine of ten employers expect less than 5 percent of their employees to take FMLA leave in a given year; three of ten employers expect less than one percent of their employees to take FMLA leave in a year.

In addition, as discussed above, William M. Mercer, Incorporated and the Institute of Industrial Relations at the University of California, Berkeley jointly conducted a survey of nearly 300 employers on the FMLA in November 1993. The only employers that reported any "major costs" associated with California-mandated leave were those that employed 5,000 or more employees. A greater percentage of large employers had experienced disagreements with employees over family leave issues. Large employers, however, were also most likely to note a beneficial effect on absenteeism, employee morale, public relations, and supervisory relationships as a result of mandated leave. Small employers, in contrast, were most likely to note a beneficial effect on worker productivity and co-worker relationships.

A full discussion of alternatives considered is included in the preamble to the regulations, set forth above, under each of the relevant sections.

XI. Document Preparation

This document was prepared under the direction and control of Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

XII. List of Subjects in 29 CFR Part 825

Employee benefit plans, Health, Health insurance, Labor management relations, Maternal and child health, Teachers.

Signed in Washington, DC, this 30th day of December, 1994.

Robert B. Reich,
Secretary of Labor.

Title 29, Chapter V, Subchapter C, "Other Laws", is amended by revising Part 825 to read as follows:

PART 825—THE FAMILY AND MEDICAL LEAVE ACT OF 1993

Subpart A—What is the Family and Medical Leave Act, and to Whom Does It Apply?

Sec.

- 825.100 What is the Family and Medical Leave Act?
- 825.101 What is the purpose of the Act?
- 825.102 When was the Act effective?
- 825.103 How did the Act affect leave in progress on, or taken before, the effective date of the Act?
- 825.104 What employers are covered by the Act?
- 825.105 In determining whether an employer is covered by FMLA, what does it mean to employ 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year?
- 825.106 How is "joint employment" treated under FMLA?
- 825.107 What is meant by "successor in interest"?
- 825.108 What is a "public agency"?
- 825.109 Are Federal agencies covered by these regulations?
- 825.110 Which employees are "eligible" to take leave under FMLA?
- 825.111 In determining if an employee is "eligible" under FMLA, how is the determination made whether the employer employs 50 employees within 75 miles of the worksite where the employee needing leave is employed?
- 825.112 Under what kinds of circumstances are employers required to grant family or medical leave?
- 825.113 What do "spouse," "parent," and "son or daughter" mean for purposes of an employee qualifying to take FMLA leave?
- 825.114 What is a "serious health condition" entitling the employee to FMLA leave?
- 825.115 What does it mean that "the employee is unable to perform the functions of the position of the employee"?
- 825.116 What does it mean that an employee is "needed to care for" a family member?
- 825.117 For an employee seeking intermittent FMLA leave or leave on a reduced leave schedule, what is meant by "the medical necessity for" such leave?
- 825.118 What is a "health care provider"?