

Re: paid leave



Debra J. Bond

09/14/2000 02:19:54 PM

Record Type: Record

To: Ann O'Leary/OPD/EOP@EOP

cc:

Subject: FMLA

See the attached proposal from DOL. Generally speaking I think that it is OK. I am not sure why they went for \$5 million versus say \$10 million but have placed a call to learn more. Regarding the write-up itself--I think that we need to be careful using phrases like "to find income sources for those taking unpaid leave" and instead say "making family leave more affordable." If we couple this too close to the UI rule, I have a feeling that it will be next to impossible to lift. Please let me know what you think. Thanks--



- FMLA\$5b option 2.wpd

*From A study is. Study 1- paid leave
↓
what number is states
↓
could we do this w/ \$10 million?*

FY2002 FMLA Proposal

Purpose: \$5,000,000 would be used for contract support services to provide for a strong program of research and analysis of the implementation and use of the Family and Medical Leave Act (FMLA). The \$5,000,000 includes a \$3,000,000 increase over the current base. This program of research and analysis would build on the survey and analytical work undertaken in CY2000. Funding would provide for further survey work designed to provide more in-depth information on the administration and operation of FMLA. Survey information would be carefully analyzed to address policy questions concerning how best to improve the administration of the Act and to address the problems of affordability and accessibility of leave.

Rationale: The passage of the Family and Medical Leave Act is the cornerstone of the Administration's work and family initiative. The Act allows covered and eligible workers to take up to 12 weeks of job-protected, unpaid leave to care for a newborn or adopted child, to attend to their own serious medical needs, or to care for a seriously ill parent, child or spouse.

Since the enactment of FMLA, the Department of Labor has gained increasing experience in its administration. Efforts have been made to increase the awareness of worker right's rights and responsibilities under the Act and to ensure that the burden of its operation on businesses is minimized. In addition, as a result of our experience and previous research, a number of changes and modifications have been proposed or are under study. For example, the President is on record supporting expansion of the FMLA to cover workers in firms with 25 or more employees, extending coverage to almost 12 million more workers. In addition, a 1996 study that found loss of wages was the most significant barrier to parents taking advantage of unpaid leave following the birth or adoption of a child, has led to efforts to find income sources for those taking unpaid leave.

Research as to FMLA's impact and operation was funded in the FY 2000 budget and findings of the major part of this research are expected to be made available by the end of calendar year 2000. Additional survey work and analysis of state, local and federal employers utilization of FMLA will be conducted in FY2001. All of these findings will provide the Department with insight into many operational aspects of FMLA, such as how much use was made of family and medical leave, and the problems encountered in administering FMLA. On the employee side, the data are expected to provide significant information on the type of leave needed and taken, the duration of leave, and what type of income, if any, was received during unpaid FMLA leave.

Budget Discussion/Implications: The \$5,000,000 will be used in part to do follow up surveys to the CY2000 surveys and do additional research using the 2000 data. It is expected that a number of the findings will point to areas where further research is

needed. The directions for such research or survey work will not become apparent until the first level results are available. These follow-up survey results, combined with this proposed research effort, will provide the Department with a robust understanding of the effectiveness of the Act and how it can best be expanded and/or improved. With three independent sets of survey results, analytical work can also explore early trend analysis.

Part of these funds will also be used to continue critical research into the operation of FMLA. This research would focus on developing a set of case studies to gather in-depth information from both individuals who have utilized FMLA and some who have not availed themselves even when they were covered under the Act. In addition, these funds would be applied to developing a number of industry specific studies. Such studies would identify certain industry-specific problems such as the difficulty or ease of temporarily replacing critical workers on assembly lines.

Finally, these funds will be used to study alternative sources and methods of providing income support to individuals wishing to avail themselves of family and medical leave but who are unable to do so because of income constraints. A special effort will be placed on examining States which have mounted Temporary Disability Insurance Programs. The effort, however, will not be limited to this method, but would seek to examine any promising approach.

Impact: Given the initial work done in 1996 on examining FMLA, coupled with the 2000 and 2001 survey and research effort, the research program outlined above would provide a wealth of information on the utilization trends as well as specialized information on specific questions. A robust research effort that builds on the earlier work will provide a strong foundation for policy direction as to what changes should be made to the administration of the Act or to the Act itself.

Anticipated Results/Outcome: There are significant and substantial results that can be anticipated from this FY 2001 research program. The baseline survey, coupled with the added information on federal, state and local sectors and case studies, will provide the Department with a matrix of information critical to policy making. In addition, the availability of such information will allow independent researchers with needed data to provide alternative analyses that would provide insight and direction as to how best to address the key policy issues facing the operation of the FMLA program.

*file: paid
leave*

UNITED STATES DEPARTMENT OF LABOR
FACSIMILE TRANSMISSION

OFFICE OF CONGRESSIONAL AND INTERGOVERNMENTAL AFFAIRS

200 Constitution Avenue,
N.W.
Room 5-1325
Washington, DC 20210

Confirmation:

~~202/219-6141~~
693-4600

To:

Ann O'Leary

DEPARTMENT/COMPANY:

WH DPC

FACSIMILE NUMBER:

456 2878

FROM: TERI BERGMAN *B*

NUMBER OF PAGES INCLUDING COVER:

4

FACSIMILE REPLIES: CONGRESSIONAL AFFAIRS

202/693-4642

INTERGOVERNMENTAL AFFAIRS

202/693-4644

IMMEDIATE OFFICE OF THE ASSISTANT SECRETARY

202/693-4641

MESSAGE:

here's the letter.

JONES, DAY, REAVIS & POGUE

31 LOUISIANA AVENUE, N.W.

WASHINGTON, D.C. 20001-2113

TELEPHONE: 202-878-3988 • FACSIMILE: 202-626-1700

WIRELESS DIRECT NUMBER:

202-879-4660

867388:dhb
671339-600001

June 15, 2000

VIA HAND DELIVERYHon. Alexis M. Herman
Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210**Re: Birth and Adoption Unemployment Compensation Regulations**

Dear Secretary Herman:

We represent LPA, Inc., the Society for Human Resource Management; the Chamber of Commerce of the United States of America, and individual businesses opposed to the Birth and Adoption Unemployment Compensation Regulations recently issued by the Department of Labor. See 65 Fed. Reg. 37210 (June 13, 2000). In our clients' view, by extending unemployment compensation benefits to hundreds of thousands of individuals who choose temporarily to leave their jobs, these regulations threaten to deplete the resources of the nation's unemployment insurance system and thereby endanger the safety net for individuals who lose their jobs involuntarily. Our clients also believe that these regulations are unlawful, and they intend to challenge the regulations in court.

This challenge will be powerful and substantial. As our clients demonstrated in comments submitted in opposition to the birth-and-adoption (BAA) regulations, those regulations are illegal because, among other things, they contradict the plain language of the Federal Unemployment Tax Act, 26 U.S.C. § 3301 *et seq.*, conflict with the history and long-standing interpretation of FUTA and other federal unemployment compensation law, and run afoul of the intent and purpose of the Family and Medical Leave Act, 29 U.S.C. § 2601 *et seq.* Moreover, the Department used to be of the same opinion. As the regulations themselves acknowledge, only three years ago, the Department informed the State of Vermont that federal unemployment compensation law forbids States from paying unemployment compensation to individuals on BAA leave. In addition, it is our understanding that the Solicitor of Labor informed the Department last year that BAA regulations would be unlikely to survive a judicial challenge. Thus, the Department cannot deny the substantial possibility that the BAA regulations will be overturned in court as a result of our clients' challenge.

WA 1201635-2

ATLANTA • BRUSSELS • CHICAGO • CLEVELAND • COLUMBUS • DALLAS • FRANKFURT • GENEVA • HONG KONG • LONDON • LOS ANGELES
NEW DELHI • NEW YORK • PARIS • PITTSBURGH • RITADY • SHANGHAI • SYDNEY • TAIPEI • TOKYO • WASHINGTON

JONES, DAY, REAVIS & POGUE

Hon. Alexis M. Herman

June 15, 2000

Page 2

The public interest demands prompt resolution of this challenge. As the BAA regulations acknowledge, more than a dozen States are currently considering legislation providing unemployment compensation to individuals on BAA leave, and several are expected to enact such legislation within a year. The legality of these regulations should be resolved before energy and resources that could be devoted to valid programs are wasted on designing, debating, and implementing BAA unemployment compensation programs that in our opinion will be struck down as illegal. Furthermore, the Department should not let individuals planning to have or adopt children build up false expectations that they will receive unemployment compensation if they temporarily leave or, even worse, quit their jobs. The legality of the BAA regulations should instead be resolved as deliberately and expeditiously as possible.

Accordingly, we propose placing our challenge to the BAA regulations on a fast track in order to bring the case to a final resolution in an expedited matter. Rather than wasting time and money engaged in unnecessary discovery and other trial disputes, we would suggest meeting with attorneys representing the Department to identify any factual issues that need to be developed, stipulating to undisputed facts, and voluntarily exchanging information concerning any other relevant facts. Then, the parties can file expedited briefing on the merits, thereby ensuring that the trial court will enter judgment on the legality of the BAA regulations in a matter of weeks rather than months or years. If necessary, appellate briefing should be conducted on a similarly expedited schedule.

At our clients' recent meeting at the Office of Management and Budget, Department of Labor officials raised questions concerning standing and ripeness. In our view, these questions are without merit. The provision of BAA unemployment compensation benefits will have an obvious impact on our clients and the businesses represented by them because it will, among other things, burden them with additional contributions to State unemployment compensation funds, increase both the frequency and duration of absenteeism, and impose new administrative burdens on them. In addition, the Department's actions are final and complete, and, as the regulations themselves recognize, one or more States are likely to enact legislation authorizing payment of unemployment compensation to individuals on BAA leave within the next year, with at least a dozen more doing the same in the following years. Moreover, even if a ripeness challenge had merit, it would only delay, not avoid, consideration of our clients' challenge to the legality of the BAA regulations, thereby thwarting the public's interest in prompt resolution of that challenge. We therefore trust that the Department will resist the temptation to raise such wasteful and counterproductive issues and instead seek to resolve the legality of the BAA regulations as soon as possible, as the public interest demands.

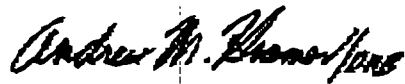
We are, of course, interested in any suggestions that you may have concerning how the legality of the BAA regulations may be resolved deliberately and expeditiously. We request the courtesy of your reply within five business days.

JONES, DAY, REAVIS & POGUE

Hon. Alexis M. Herman
June 15, 2000
Page 3

Thank you for your consideration.

Sincerely,



Andrew M. Kramer

cc: Stephen A. Bokor, Esq.
Gerald J. Cicci
Donald J. Danneman
James M. Knott, Sr.
Susan R. Meisinger, Esq.
Daniel Yager, Esq.

He: paid leave

FY 2001 Family Leave Research Proposal

Purpose: \$10,000,000 would provide for a strong, comprehensive family leave research program to analyze key issues facing employees balancing work and family, as well as the implementation and use of the Family and Medical Leave Act (FMLA). The \$10,000,000 includes an **\$8,000,000** increase over the current base funding level. The program of research and analysis would build on the recent work by the Department of Labor (DOL) that will serve as the prelude to the detailed analytical work envisioned under this proposal. Survey information would be carefully analyzed to address policy issues on improving the administration of FMLA, identifying current barriers to taking leave—such as affordability and accessibility, and developing ideas of how to address these barriers. In addition, funding would be used for a public education campaign to inform employers and employees about their rights and responsibilities under the FMLA and about family policies of model employers.

Rationale: The passage of the FMLA is the cornerstone of the Administration's work and family initiative. The Act allows covered and eligible workers to take up to 12 weeks of job-protected, unpaid leave to care for a newborn or adopted child, to attend to their own serious medical needs, or to care for a seriously ill parent, child or spouse.

The most important research to date is the 1996 Bipartisan Commission's study on family and medical leave, titled "A Workable Balance: Report to Congress on Family and Medical Leave Policies." New research as to the FMLA's impact and operation was funded in the FY 2000 budget and findings of the principal part of this study are expected to be made available by the end of calendar year 2000. Additional survey work and analysis of state, local and federal employers' utilization of FMLA would be conducted in FY2001 under this proposal. All of these findings will provide the Department with insight into many operational aspects of FMLA, such as how much use was made of family and medical leave, and the problems encountered in administering FMLA. On the employee side, the data are expected to provide significant information on the type of leave needed and taken, the duration of leave, and what type of income, if any, was received during unpaid FMLA leave. These findings will be compared to those of the 1996 study.

Since enactment of FMLA, DOL has gained increasing experience in its administration. Efforts have been made to increase the awareness to the rights and responsibilities under the Act and to ensure that the burden of its operation on businesses is minimized. But more needs to be done.

Budget Discussion: \$4,500,000 will be used (in part) to do follow-up surveys to the FY2000 work and do additional research using this data. It is expected that a number of the findings will point to areas where further research is needed. The follow-up survey results, combined with the research effort described below, will provide the Department with a robust understanding of the effectiveness of the Act and how it can best be improved. With three independent sets of survey results, analytical work can also explore early trend analysis. In addition, these funds would be applied to developing a number of industry specific studies. Such studies would identify certain

FY 2001 Family Leave Research Proposal

industry-specific problems such as the difficulty or ease of temporarily replacing critical workers on assembly lines.

\$4,500,000 will be used to fund research projects by States, foundations, and other entities. This part of the budget initiative would enable such entities to identify the issues facing employees balancing work and family at a grassroots level. Research projects would likely focus on defining barriers to workers needing leave, exploring options employers currently offer to employees, and developing a localized view of the issues facing employees who are balancing work and family on a daily basis.

The remaining \$1,000,000 will be used for a public education campaign to inform employers and employees about their rights and responsibilities under the FMLA and about practices of model employers. Many employers have creative programs and benefits that help employees balance work and family. This part of the budget initiative focuses on informing employees and employers about the various options and family policies that are in practice today.