

TABLE 5.G

**Reason for Needing Leave Among Employees Who Needed
but Did Not Take Leave, by Demographic and Job Characteristics**
(NUMBER AND PERCENTAGE OF ALL LEAVE-NEEDERS REPORTING EACH REASON)

DEMOGRAPHIC AND JOB CHARACTERISTICS		All Leave- Needers	Own Health	Maternity- Disability	Care for Newborn Adopted or Foster Child	Care for Ill Child, Spouse, or Parent	Care for Ill Relative or Other
ALL RESPONDENTS	n=	4,129,261 100.0%	1,797,814 43.7%	19,762 0.5%	345,096 8.4%	1,721,782 41.7%	424,200 10.2%
GENDER							
Male		100.0%	41.6%	0.0%	14.4%	39.5%	10.0%
Female		100.0%	45.1%	1.0%	2.1%	44.0%	10.3%
AGE							
18-24		100.0%	52.8%	0.0%	16.7%	25.3%	5.6%
25-34		100.0%	45.0%	0.0%	14.4%	39.6%	4.5%
35-49		100.0%	36.4%	1.2%	5.2%	49.1%	12.7%
50-64		100.0%	51.9%	0.0%	2.5%	38.2%	15.2%
65 or over		100.0%	100.0%	0.0%	0.0%	0.0%	0.0%
RACE							
Non-Latino White		100.0%	42.6%	0.7%	7.7%	42.4%	11.3%
All Other		100.0%	44.5%	0.0%	10.9%	40.1%	8.2%
MARITAL STATUS							
Married/Living w/Partner		100.0%	35.6%	0.0%	11.7%	44.0%	12.9%
Separated/Divorced/Widowed		100.0%	54.7%	2.3%	0.0%	45.3%	4.7%
Never been Married		100.0%	68.6%	0.0%	3.9%	25.5%	3.9%
CHILDREN UNDER 18							
None		100.0%	56.8%	0.0%	1.0%	31.1%	15.1%
One or more		100.0%	31.6%	0.9%	15.1%	51.3%	6.1%
EDUCATION							
Less than High School		100.0%	67.6%	0.0%	0.0%	23.1%	10.8%
High School Graduate		100.0%	42.7%	1.9%	11.7%	38.5%	8.7%
Some College		100.0%	41.7%	0.0%	7.6%	45.5%	7.6%
4 Years of College or more		100.0%	39.5%	0.0%	8.4%	45.6%	15.1%
ANNUAL FAMILY INCOME							
Less than \$20,000		100.0%	52.8%	0.0%	9.0%	33.1%	9.0%
\$20-30,000		100.0%	48.6%	0.0%	2.9%	45.5%	12.9%
\$30-50,000		100.0%	39.4%	1.9%	7.7%	45.9%	10.6%
\$50-75,000		100.0%	32.6%	0.0%	17.4%	46.0%	4.3%
\$75,000 or more		100.0%	36.1%	0.0%	5.6%	53.2%	5.6%
COMPENSATION TYPE							
Salaried		100.0%	41.7%	0.0%	8.3%	40.7%	9.2%
Hourly		100.0%	44.2%	0.0%	9.1%	44.0%	9.9%
Other		100.0%	100.0%	4.8%	4.8%	31.6%	14.3%
UNION STATUS							
Union		100.0%	46.3%	0.0%	14.9%	31.2%	17.9%
Non-union		100.0%	42.8%	0.6%	7.2%	43.8%	9.0%

SOURCE: AGUIRRE INTERNATIONAL TABULATION OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN, SURVEY OF EMPLOYEES, 1995.

Note: Row totals do not add to 100% because respondents could choose more than one category.

Appendix E

TABLE 5. H

Reasons for Not Taking Leave Among All Leave-Needers by Reason for Needing Leave
(NUMBER AND PERCENTAGE OF EMPLOYEES)

REASONS	All	Might Lose Job	Might Hurt Job Advancement	Might Lose Seniority	Not Eligible	Employer Denied Request	Couldn't Afford	Wanted to Save Leave Time	Work Too Important
ALL RESPONDENTS	4,129,261	29.2%	22.0%	14.1%	13.9%	9.9%	63.9%	27.5%	39.4%
Own health	100.0%	37.5%	22.7%	15.3%	13.6%	10.8%	64.8%	15.9%	43.8%
Maternity- Disability	100.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	0.0%	0.0%
Care for Newborn, Adopted or Foster Child	100.0%	23.5%	29.4%	23.5%	5.9%	11.8%	64.7%	26.5%	44.1%
Care for Ill Child	100.0%	34.8%	33.3%	15.9%	18.8%	15.9%	72.5%	40.6%	34.8%
Care for Ill Spouse	100.0%	13.5%	35.1%	24.3%	24.3%	0.0%	64.9%	54.1%	59.5%
Care for Ill Parent	100.0%	17.6%	10.8%	5.4%	9.5%	10.8%	60.8%	35.1%	31.1%

SOURCE: AGUIRRE INTERNATIONAL TABULATION OF DATA FROM INSTITUTE FOR SOCIAL RESEARCH, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN, SURVEY OF EMPLOYEES, 1995.

Note: Percentages do not sum to 100% because respondents could choose more than one category.

U.S. Department of Labor

Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210FAX COVER SHEETOFFICE OF THE ADMINISTRATOR
WAGE AND HOUR DIVISIONFAX NUMBER (202)219-4753
COMMERCIAL (202)693-0051TO: Nicole RabnerDATE: 12/2/98FAX NUMBER: 456-9412PAGES: 12
(include cover sheet)

LOCATION: _____

FROM: Kathy Curran

If you do not receive all of the pages please call:

NAME: _____

NUMBER: ~~456~~

COMMENTS/INSTRUCTIONS:

Sorry it took so long - heris on draft
discussion - let's talk.K.

2
DRAFT 12/1/98, 3:20 p.m.

Federal Support for State Paid Parental Leave Initiatives

The Family Medical Leave Act, signed into law by President Clinton on February 5, 1993, signaled our nation's recognition that American workers face enormous obstacles in their struggle to balance work and family, and that the federal government can, and should, play a role in helping to achieve that balance. The FMLA enables millions of working Americans to care for a child after birth or adoption, by providing up to 12 weeks a year of unpaid, job-protected leave. But many of those workers are unable to take the full amount of time they need and are entitled to, because they simply cannot afford to go that long without a paycheck. Other workers who are not protected by FMLA but have access to unpaid leave can face the same dilemma.

Several state governments are exploring strategies to provide wage replacement for parents who have access to and want to take leave to care for a newborn or newly adopted infant but cannot afford to do so. The Administration could assist states in this effort, and encourage more states to consider their own paid leave initiatives, through a federally funded grant program. The funds could be used by states to support research and development activities; to subsidize benefits in a pilot or demonstration program; to underwrite the administrative and implementation costs of starting up a state-funded benefit program; and to evaluate the success of state initiatives.

Supporting these initiatives would not only benefit the working citizens of the individual states, but would also allow us to explore, through the "laboratory of the states," which approaches to paid parental leave work best and which approaches provide the most promising models for a nation-wide paid leave plan.

First, a caveat: any proposal to encourage paid leave should be considered in the context of proposals to raise the minimum wage and to expand FMLA (by lowering the coverage threshold to 25 and/or giving covered employees 24 hours/year for routine medical care for children/elderly parent or to attend school conferences). Also, we should be aware of, and avoid, the possibility that any policy decisions or funding decisions could create negative incentives for employers who currently, or might otherwise, provide paid leave for their employees.

I. What States are Doing: Initiatives States Have Implemented or are Considering:

Several states have taken or are considering taking steps to address the problem, either as employers themselves or as a state-wide policy. In almost all cases, these efforts are just beginning and could be encouraged and energized by federal support. These state efforts can be broadly categorized into four groups: state-as-employer; direct benefit; insurance model; and research:

We are still awaiting more information on current state efforts in this area.

Nevertheless, most states have not pursued paid leave proposals. We have not determined why there has been only modest interest in this area. Therefore, it is unclear if these proposals would be sufficiently interesting to states to pursue.

State as employer:

We have identified only one state that provides paid parental leave to its own employees. In **Ohio**, state employees can receive up to four weeks of paid parental leave at 70% of base salary.

Direct benefit:

One state currently provides some paid parental leave to low-income workers. Under **Minnesota's At-Home Infant Care Program**, working, low income parents not on welfare can receive up to 75% of the state child care subsidy as wage replacement.

Insurance model:

Several states are exploring whether to use existing state insurance programs as a means to provide working parents with paid leave. Currently, coverage varies among states.

California, New York and New Jersey all have looked into expanding their **Temporary Disability Insurance (TDI)** programs to cover parental leave. TDI plans provide paid leave to employees who must take leave due to a non-work related illness or injury¹:

California: Considered a plan to allow FMLA leave takers to qualify for TDI but tabled it pending additional research.

New Jersey: New Jersey's TDI currently provides women with a pregnancy-related disability benefit up to \$364 weekly (or 2/3 of their earnings) typically for 6 weeks following a normal delivery. A bill was introduced in 1997 to extend TDI coverage for parental leave (birth or adoption) and for leave to care for seriously ill spouse, child or parent. ("Paid Family Leave Act.")

New York has also considered a bill that would allow the use of **workers' compensation disability** benefits to cover FMLA leave.

Two states, **Vermont and Massachusetts**, have looked at using the **Unemployment Insurance** system to provide paid parental leave:

Massachusetts is exploring using both UI and TDI for family leave. Two bills are to be introduced in early December 1998. The first would provide unemployment

¹ Work-related illnesses are typically covered by state workers' compensation programs.

benefits for employees who must leave work for family or medical reasons (whether or not covered by FMLA or the state FML law), using monies in the unemployment solvency fund. The second would establish a TDI system in Massachusetts, which will include eligibility for up to 16 weeks of parental leave for the birth, adoption, foster care or placement of a child, and will provide partial wage replacement during the leave period. A Family and Employment Trust Fund would be established to pay the benefit, funded by employer contributions.

Vermont: Proposed legislation would have extended UI benefits to workers taking leave covered by the state family and medical leave law.

In addition, many employees have access to short-term or long-term disability insurance through their employers.

NB: In response to Vermont's request for an opinion on their proposed legislation, the Department of Labor has taken the position that use of UI trust fund monies for this purpose would violate the requirement under the Federal-State UI program that recipients must be involuntarily unemployed, and able and willing to work.

Research:

Maryland: A bill was introduced (when?) to set up a task force to study paid leave. (status/outcome?)

II. How the Federal Government Can Help: Federal Grants to Support/Assist State Initiatives/Demonstration Projects

Purpose and design of the grant program:

The Administration could propose a federal grant program that would assist states in developing or implementing paid leave initiatives or demonstrations by making federal funds available to state grantees for the following purposes:

- * To subsidize part or all of the benefit;
- * To cover some or all administrative costs of developing and implementing a paid leave program;
- * To conduct research and to develop paid leave proposals;
- * To evaluate impacts of programs.

States would be invited to submit proposals, and grants would be awarded competitively, with the size and number of awards dependent upon the amount of funding available. (See below for cost discussion.)

If the Administration decides to pursue this proposal, it would be necessary to consider exactly how we wish the program to work, what goals we want to achieve, and how to design an appropriate grant program. Among the issues/options to consider in designing a grant program would be:

- Identify specific policy goals to be served in addition to increasing workers' ability to take new parent leave, if any.
- Whether to make all the grants competitive, or to make a portion of the funding available to any state that applied, for example, for research activities.
- Decide how general or specific the grant criteria should be: should we make funding available to any project proposal that seems promising, and if so, how will we determine which proposals to select; or to develop specific grant criteria--for example:
 - size of population to be served
 - issues to be researched
 - participation of third parties (such as universities) to assist in evaluation activities
 - length or amount of benefit
- Whether to subsidize benefit amounts, for what groups, and in what amounts, for example:
 - subsidize 50%? 25%? 10%? Or a fixed dollar amount.
 - only for recipients under a certain income level?
 - only for recipients with a certain workforce attachment?
- How do we evaluate the success and/or consequences of various approaches to providing parental leave, and if so, by what criteria? For example:
 - at what benefit level/benefit duration are workers are various incomes more likely to take leave?
 - what impact does paid leave have on new parents' return to the

workforce?

- what impact does paid leave have on employer incentives to provide paid leave? unpaid leave (if not FMLA-covered)?
- Would we award grants to state proposals to develop paid leave plans for their own employees?
- Could substate governmental units also apply for grants, and if so, could they apply in their capacity as employers?
- What is the appropriate agency to administer the grant program.

Authority and appropriations:

In addition to new funds for the grants, we would need to have legislative authority for the grant program. It is possible that legislative authority for current DOL programs could be used for awarding grants to certain kinds of proposals. For example, Section 513 of ERISA (29 U.S.C. 1143) gives fairly broad authority to do research, surveys, and studies either by contract or grants related to employee benefit plans. Under this section we might be able to fund a state proposal to use, or explore using, employee benefit plans to provide paid parental leave. We may also be able to find limited authority under JTPA or other ETA programs.

Existing authority is likely to be quite limited, however, and new legislation would likely be necessary to authorize a more flexible and complete grant program.

III. Cost Estimates: Costs, Pros And Cons Of Grant Proposals

All figures are estimates based upon similar experiences. Actual costs may vary greatly. If any option is chosen for further consideration, more refined cost estimates must be developed.

1. Support research and development activities

OPTION I: fund academic, white paper type research focussing on existing paid leave plans: why they work; why there aren't more; impact on other benefits; etc. Could include a conference where papers are presented.

Costs: cost per review-type paper estimated at \$50,000. Additional funds would be necessary for an optional conference.

Pros: very helpful in laying groundwork for widespread provision of paid leave, e.g., there are a number of questions (such as those mentioned above) that should be answered before proposing any widely applicable, costly paid leave program; option works well with Rep. Woolsey's plans

Cons: not newsworthy until findings are made (and then only if at a high profile conference), but could be done in conjunction with #2 and #3 and/or Woolsey's plan

OPTION II: fund state paid leave commission(s)¹ including survey and review of existing paid leave plans (private or state-funded)

Costs: minimum funding for a single state commission including administration, travel and survey/review, assuming meets 6 times in one year: travel \$50,000; administration (2 staff persons) \$125,000; survey/review paper (1) \$50,000. This assumes no payment to commissioners other than per diem and travel cost reimbursements. For a paid executive director assume an additional \$125,000 for salary and benefits.

Pros: more newsworthy than option I if can provide sufficient money and chose high profile state(s); could be done in combination with option I to provide solid foundation (politically and factually) for implementing federally or state-funded paid leave programs or expansion of privately funded plans.

Cons: only slightly more newsworthy than option I (and only when findings are released). Research at this price will be relatively superficial, lacking new survey data.

OPTION III: update FMLA Commission national survey work with emphasis on collecting paid parental leave data

Costs: previous work included both an employee and an employer survey.

Either part or both could be updated. Minimum cost of employee survey is \$500,000. Both surveys previously cost \$1,200,000.

Pros: data would allow us to assess for the need for new programs and target programs to people who most need the help, revised surveys would also provide (currently unavailable) data needed to "cost-out" these program; as a side benefit would provide WH with much longed for data on FMLA

Cons: costly compared to previous two options; time consuming (probably 9 month) before results are available.

2. Subsidize benefits and administrative costs in a pilot or demonstration project

OPTION: state or employer funded paid parental leave (modeled after \$200 a week federally paid leave proposal)

Costs: For all states assume \$113m for start up costs based upon using UI system (ranging from \$250,000 to \$2,500,000 per state). For all states assume yearly operating costs for approximately \$162m - \$193m (\$3m to \$4m per state); benefit costs assuming \$200 standard weekly per person benefit varies from \$425m to \$1.8b (\$9m-\$38m per state) assuming between 4 and 12 weeks of paid leave to *women* with infants. Cost per state total for first year \$14m- \$42m:

Can therefore fund at:

\$50m 1-3.5 states

\$100m 2-7 states

\$250m 6-18 states

\$500m 12-36 states

Pros: provides some real benefits to real people in need; more cost effective way to test concept of paid leave; experience could help with passage of federal legislation or lead to more states and private employers providing paid leave

Cons: possible legal and political obstacles to the federal government providing benefits to a small set of persons through a grant mechanism; may be difficult to specify who is or isn't eligible for benefits (e.g., under a grant, can work force attachment requirements, income thresholds, etc. be specified?); may be difficult to find acceptable benefit delivery system that can process claims quickly. (could not mandate services in UI system or in workers' compensation system.); paid leave benefits (vs. just using federal funds to cover administration) does not lend itself well for a one-time intervention. would states be willing to pay for funding program (i.e. benefit) costs in the out years? state provided benefits may discourage employers from providing similar benefits.

3. Underwrite administrative/implementation costs of starting up a state-funded program

OPTION I: TDI expansion (to add expanded parental leave) in the five jurisdictions that currently have paid leave

Costs: Fund the administrative changes; less than \$10,000,000

Pros: expands benefit coverage when new paid leave programs are started, making a real difference for workers; may have fewer political/legal obstacles as well as less costly than directly funding benefits

Cons: paying for administrative costs may not be sufficient incentive for states to expand TDI; would probably require state legislative changes to include parental leave for men and for adoptions; may require higher premiums for employers and employees; not only not as newsworthy as paying for benefits but may not be newsworthy if seen as only a small change in benefits

OPTION II: TDI startup in non-TDI states

Cost: For all states assume \$113m for start up costs based upon using UI system (ranging from \$250,000 to \$2,500,000 per state). For all states assume yearly operating costs for approximately \$162m - \$193m (\$3m to \$4m per state); future years administrative costs would come from the insurance premiums.

Can therefore fund at:

\$50m 9-10 states

\$100m 17-20 states

\$250m all states

Pros: expands coverage to more states; minimal federal cost; provides new real benefits when paid leave programs are started; state TDI programs are employee/employer tax based and could be funded by states on a continuing basis not just for the period of the grant. this may have fewer political/legal obstacles and longer term impact than directly funding benefits; provides benefits in addition to parental leave benefits (such as illness or injury).

Cons: federally only paying for administration not as newsworthy as providing benefits; may not be sufficient incentive to states to start a TDI program – we have no indication of how many, if any states, would be interested; may need competitive grant process which would be difficult to set up given the varying costs that come with varying state sizes; could not mandate delivery of services through UI system or through workers' compensation system.;

OPTION III: state or employer funded paid parental leave (modeled after \$200 a week federally paid leave program)

Costs: For all states assume \$113m for start up costs based upon using UI system (ranging from \$250,000 to \$2,500,000 per state). For all states assume yearly

operating costs for approximately \$162m - \$193m (\$3m to \$4m per state); future years administrative costs would come from the insurance premiums.

Can therefore fund at:

\$50m 9-10 states

\$100m 17-20 states

\$250m all states

Pros: provides real benefits when new paid leave programs are started; may have fewer political/legal obstacles than #2; less costly than #2

Cons: may still have some of the political/legal obstacles (mentioned earlier) when singling out a few employers/states; not as newsworthy as providing benefits; need to identify source of benefit funds; not likely to be sufficient incentive to states or employers to implement new paid leave plans which require large continuing benefit costs; could not mandate delivery of services through UI system or through workers' compensation system; might discourage private sector provision of paid leave benefits

Paid Parental Leave: the Federal Government as a Model Employer

Set forth below are estimates of what it would cost the federal government as an employer to implement a paid leave plan for parents of newly born or adopted infants, similar to the broader proposal we have been discussing: a paid leave benefit of \$200 available for parents of newly born or adopted infants. The Office of Personnel Management (OPM) calculated the cost of making the benefit available for either six weeks or twelve weeks, for a program with an income cap and a workforce attachment requirement.

To begin the calculations, you need to know how many federal employees are likely to need to take the leave, that is, how many federal employees have newly born or adopted infants, and what portion of those take leave. However, OPM tracks only the types of leave taken by federal employees (i.e., annual or sick leave or leave without pay). OPM has no data on the *reasons* federal employees take leave, nor do they have data on the rate at which federal employees take FMLA leave.

In 1997, approximately 2.8% of the employed female U.S. workforce had children under the age of 1 year. (CPS, 1997) Using that as a *very rough* proxy, we asked OPM to assume that at any given time 2.8% of the workforce (male and female) will have a newly born or adopted infant.

COST ESTIMATES:

The following are the costs of allowing full-time, permanent, executive branch employees to receive a \$200 per week benefit to take leave to care for a newly born or adopted infant, first with an income cap, and then with both an income cap and a workforce attachment requirement:

Income Eligibility Cap, No Workforce Attachment

COST ESTIMATE A: Full-time, permanent, executive branch employees at GS 9 or below: 563,390 employees.

Cost Estimate A-1: $563,390 \times .028 \times \$ 200 \times 6 \text{ weeks} = \$ 18,929,904$

Cost Estimate A-2: $563,390 \times .028 \times \$ 200 \times 12 \text{ weeks} = \$ 37,859,808$

COST ESTIMATE B: Full-time, permanent, executive branch employees earning \$ 36,626 or less: 606,804 employees.

Cost Estimate B-1: $606,804 \times .028 \times 200 \times 6 \text{ weeks} = \$ 20,388,614$

Cost Estimate B-2: $606,804 \times .028 \times 200 \times 12 \text{ weeks} = \$ 40,777,228$

Income Eligibility Cap, With 52 Week Workforce Attachment

COST ESTIMATE C: Full-time, permanent, executive branch employees at GS 9 or below: 563,390 employees.

Cost Estimate C-1: $543,745 \times .028 \times \$ 200 \times 6 \text{ weeks} =$ \$ 18,269,832

Cost Estimate C-2: $543,745 \times .028 \times \$ 200 \times 12 \text{ weeks} =$ \$ 36,539,664

COST ESTIMATE D: Full-time, permanent, executive branch employees earning \$ 36,626 or less: 606,804 employees.

Cost Estimate D-1: $585,471 \times .028 \times 200 \times 6 \text{ weeks} =$ \$ 19,671,825

Cost Estimate D-2: $585,471 \times .028 \times 200 \times 12 \text{ weeks} =$ \$ 39,343,650

Please note that, in addition to the cost implications, any serious consideration of such a proposal would require an analysis of non-cost issues, such as: how the federal workforce would react to providing such benefits only for leave related to new born or adopted children, and the impact on the private workforce of the federal government providing such benefits.

¹ Another option would be to create a national paid leave commission.

DRAFT**DRAFT****DRAFT****11/28/97 12:50 PM****Paid-Leave Plan for the Birth or Adoption of a Newborn**

Thanks to the Family Medical Leave Act, signed into law by President Clinton on February 5, 1993, millions of Americans can take unpaid leave from their jobs (up to 12 weeks per year) to care for an infant after birth or adoption -- and know that a job will be waiting for them when they return. But many of those workers are unable to take the full amount of FMLA-protected time they need, because they simply can't afford to go that long without a paycheck. And other workers who, although not protected by FMLA, have access to unpaid leave can face the same dilemma.

To address this obstacle, the Administration could propose the creation of a New Parent Paid Leave Plan, to provide eligible parents with partial wage replacement for up to six weeks. Careful consideration needs to be given as to whether this program would cause employers to cut their benefit plans, or decide not to offer new benefits. 

Design elements of a workable program would include:

Income eligibility: Eligibility to receive funds would be tied to income. The simplest approach would be to set a family income cap -- only parents with family earnings below a set amount would be eligible to receive new-parent paid leave. An alternative but more complicated approach would be to vary the benefit amount by family income.

Pros: - Assists the families that are most likely to face a financial barrier to taking family leave for a newborn/adopted infant.

- Limiting eligibility to workers protected by the FMLA would exclude those most likely to benefit from such a program.

Workforce attachment:

1. Prior to receiving benefit: New parent paid leave would be available to those qualifying parents who are authorized to work in the U.S. and have been in the workforce --- part time or full time -- for each of the fifty-two weeks prior to giving birth/adopting.

Pros: - Funds available to all working parents, regardless of FMLA coverage
 - Links eligibility to connection to the workplace and to the concept of wage replacement.
 - One year requirement demonstrates pre-pregnancy workforce participation.

- Minimum standard for amount of time in the workforce reflects FMLA concept and excludes from eligibility those whose workforce participation was minimal.
- If UI administers the program, they will have access to employment information for all UI-covered workers

Cons: - If UI administers the program, an alternative method of confirming eligibility would be necessary for non-UI covered workers (e.g., self-employed, independent contractors, etc.) -- for example, proof of receipt of wages during the time period. This would add cost to the proposal.

- If UI administers the program, it may be simpler if the eligibility requirement is the same as for UI - work in roughly 20 of the preceding 52 weeks. (Note, however, that states have discretion to have additional UI qualifying requirements.)

Note: If data indicates that workers most likely to need paid leave have generally worked for less than one year, we should change the one-year requirement as appropriate.

2. After receiving benefit: Workers could receive benefits regardless of whether they intend to return to their job, or whether they in fact return.

Pros: - Eligibility based on return to employment or the workforce would require a penalty/recovery scheme for those who -- for whatever reason -- fail to return to work in a timely manner.

- Commission data indicates that lower income workers, the ones most likely to need wage-replacement, are the least likely to return to work following the birth or adoption of an infant.

Cons: - Parents who voluntarily leave their jobs to care for newborn/adopted infants have presumably decided they are not financially dependent upon their wage, and therefore do not need a wage replacement benefit. (The lower any income requirement is set, the less this problem exists -- fewer eligible parents will be financially able to quit their job.)

Benefit duration and timing: Benefits would be available **only** for the first six weeks following birth/adoption. A worker with access to employer-paid leave who also wanted to participate in federal paid leave would have to use the federal benefit before using employer-paid leave.

Pros: - Simpler to administer
 - Minimizes disincentives on employers who might otherwise provide benefits or more generous benefits.

Cons: - To the extent that an employer benefit plan limits post-pregnancy use of sick leave to a period immediately following birth, female workers with accumulated paid sick leave who give birth may not be able to use paid sick leave after six weeks.

- May not cover time at home for newborn babies/mothers who have extended hospital stays.

Administration/Implementation: The program would be administered, and the benefits paid, through the state UI system. State participation would not be mandatory.

Pros: - State employment security agencies (SESAs) have experience in making payments as agents of the Federal government in the case of other programs, such as Trade Readjustment Allowances. In FY 98 there are about 40,000 TRA recipients collecting about \$230M in benefits at an administrative cost of about \$5 M per year, which would provide an order of magnitude in evaluating this proposal.

- States are able to perform these functions under agreement with a Federal agency assuming suitable arrangements can be made to meet the cost of administering this separate payment system.

Cons: - To the extent that SESAs are asked to make eligibility determinations that differ from those under the UI system, staff training and administrative costs would rise substantially.

- Since the costs of the benefits would be coming from a fund other than the State trust fund (unless Federal law is amended), it may be expensive for the States to establish the alternative procedures necessary to make the payments.

- States are currently underfunded for UI administration costs and would not be able to embark on a new program without some funding guarantees.

Benefit amount: Simplest approach would be to set one benefit amount available to all eligible workers: \$200 per week (based on UI average benefit of \$190.19, which represents 35% of the average weekly wage). Alternatives could include having one or two benefit levels, keyed to income ranges.

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QASP

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12/10/99

DRAP I				
FMLA PAID LEAVE OPTION: COST ESTIMATES	(1)	(2)	(3)	(4)
	all take 4 wks	all take 6 wks	all take 8 wks	all take 12 wks
No. of women w/ youngest child < 1 year old (1997 CPS)	3,170,000	3,170,000	3,170,000	3,170,000
Est. of the no. of these women in the labor force*	1,835,430	1,835,430	1,835,430	1,835,430
(57.9% LFPR of all women w/youngest child less 1 year old)				
Workforce attachment requirement **				
a. 35% ineligible	1,193,030	1,193,030	1,193,030	1,193,030
b. 10% ineligible	1,651,887	1,651,887	1,651,887	1,651,887
Assume 11 percent would not take time off ***				
a. 35% ineligible	1,061,796	1,061,796	1,061,796	1,061,796
b. 10% ineligible	1,470,179	1,470,179	1,470,179	1,470,179
Income requirement:	Cost = \$200 x (# of weeks) x 1/2 (# of persons taking leave)			
Est. cost of serving families below the median****				
a. 35% ineligible	\$424,718,502	\$637,077,753	\$849,437,004	\$1,274,155,506
b. 10% ineligible	\$588,071,772	\$882,107,658	\$1,176,143,544	\$1,764,215,316
ADD'L ADMINISTRATIVE COSTS*****				
1st year (start-up + change in base yr)	\$113 million	\$113 million	\$113 million	\$113 million
annual operating costs	\$162-193 million	\$162-193 million	\$162-193 million	\$162-193 million
Each scenario assumes all leave takers take full amount of paid leave				
* includes job seekers as well as employed				
**Based on 2/98 CPS tenure data for women 16 to 44 years of age				
and a guesstimate of the percent of women who would fail the UI eligibility rules				
*** Data from FMLA Commission: total leave takers for care of newborn/adopted/foster as percent of leave takers + leave needers				
Maybe too high of an estimate given the availability of paid leave.				
**** 1996 median income of primary families with children less than age 3 was	\$36,626			
***** Cost would be determined by States and could be considerably higher				

Op + cost 2
11/5/98

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Federally-funded Paid FMLA Leave to Care for a Newborn or Newly Adopted Child

2/98

Full funding for all parents who are eligible to take FMLA leave to care for their newborn or newly adopted child for the entire length of their leave is unlikely due to its high cost. However, there are a number of options that would reduce costs to the government by placing limits on the length of paid leave, on the amount of wage replacement, or on who would receive wage replacement. Examples of these options include:

Length of leave: Replace wages only if leave lasts more than X (e.g., three) weeks and only pay for weeks beyond the first X, pay for only the first X weeks of leave;

Amount of wage replacement: Limit the total amount paid to a worker or family in any given year, use a wage replacement formula that provides only a percentage of wages (like UI), or provide a flat weekly dollar amount;

Who is eligible: Limit payments to workers below a certain family income.

Only one option (with some sub-options) has been costed out. The option is paid leave for 6 weeks of care of a newborn (including adoption and foster care) at a flat \$200 a week. It was estimated that the cost to the Federal government would be between \$1.5 billion and \$1.8 billion in benefits only (annual administrative costs are estimated at \$162 to \$193 million). If one applied a "median family income test" to this option (any family above the median of \$36,626 would not be eligible for wage replacement), then the benefit costs to the Federal government would be somewhat more than half of the \$1.5 billion to \$1.8 billion. Other restrictions on availability, and additional assumptions on leave usage, result in total annual costs for this option ranging from \$600 million to almost \$2 billion.¹

Each of the options on paid "parent" leave has its own pros and cons. However, there are some general pros and cons on the concept of Federal wage replacement for workers taking "parent" leave under the FMLA:²

¹ A short paper detailing the costs (and assumptions) was done last December.

² The issues related to how to fund this proposed program or how it would be administered are not discussed here. Each of the options would have its own set of funding and administrative issues. For example, limiting wage replacement to families below certain incomes raises questions on 1) what is the proper income cut-off; 2) should there be a graduated payment scheme (you get more Federal monies if you make less); 3) should payments be made directly by the Federal government to workers, via advances on EITC, etc.; 4) should the cut-off be based on earnings or income; and so forth.

Pros

1. There is a need for paid leave. According to the Commission, among workers who needed leave, the most frequently cited reason for not taking leave (of any type) was that they couldn't afford it.
2. More parents would be able to stay home with their newborn or newly adopted child, or they would be able to stay home longer. Available research suggests that parental bonding during this early stage of development in a child's life is critical to its health and well-being.

Cons

1. Even with limits, most paid leave options have a high price tag. Thus the budget impact may be significant, requiring large program cuts elsewhere.
2. Federally-funded paid leave may lead to a decline in the number of companies who offer their own paid leave plans.³ This negative effect might be reduced under some options such as Federal payments only after 3 weeks of leave have been used.
3. Paid leave will not help workers who are not covered by the FMLA.
4. If paid leave leads to much greater use of FMLA or in much longer leaves, some businesses will claim it will increase their costs (e.g., for maintaining health benefits or paying replacement workers).

³ According to the Commission, 52 percent of leave takers at covered work sites reported they received full wage replacement (which could be in the form of vacation leave, personal leave or sick leave). An additional 22 percent received partial pay during their leave.

PAID PARENTAL LEAVE OPTIONS

There are a variety of options of proposal to advance in support of paid parental leave.

I. Create a Commission/Working Group:

- (1) A Paid Parental Leave Commission could conduct research necessary to assess existing paid leave proposals and develop additional options if appropriate.
- (2) The ERISA Advisory Council could be asked to study utilization of benefit practices -- e.g. disability insurance plans, savings plans and/or cafeteria plans -- to provide wage replacement without jeopardizing retirement savings.

II. Create a Research and Development Fund to support States to develop innovative paid parental leave policies. Approaches that States could adopt include:

- (1) Expansion of State Temporary Disability Insurance (TDI) programs as models for paid leave. TDI programs currently exist in 5 States (CA, HI, NJ, NY, RI) and Puerto Rico; these programs provide partial wage replacement for workers out of the workforce due to pregnancy complications. One or two States are looking at building on this benefit.
- (2) Creation of State wage replacement system for new parents, administered by U.I. systems but funded from general revenue or new payroll tax.
- (3) Use of State unemployment compensation programs to provide partial wage replacement for parental leave-takers. Vermont has asked DOL for authority to pursue this approach, and has been thwarted.

III. Create a Federally-Funded, State Administered Paid Parental Leave Proposal Administered by the U.I. System. Eligibility criteria would include:

- Income Eligibility. Tied to income (below median income) to assist the families that are most likely to face a financial barrier to leave-taking. Non-FMLA covered workers (likely benefit recipients) would be eligible.
- Workforce Attachment. Eligible new parents must be authorized to work in the U.S. and have been in the workforce -- full or part time -- for 1 year prior to birth or adoption. Linking eligibility to the workplace reinforces the purpose of the plan as a wage replacement plan, and one-year requirement demonstrates pre-pregnancy workforce participation. Workers could receive the benefit regardless of whether they intend to return to their job, or whether they in fact return.
- Benefit Duration, Timing, and Amount. Benefit would be available for a set time only immediately following birth or adoption. A worker with access to employer-paid leave

FMLA PAID LEAVE OPTION: COST ESTIMATES

	(1) all take 6 wks	(2) all take 4 wks*	(3) 89% ** take 6 wks	(4) 89% take 4 wks
assumptions				
number of women w/newborns	3,378,000	3,378,000	3,378,000	3,378,000
est. of women in workforce giving birth	1,834,000	1,834,000	1,834,000	1,834,000
54.3% LFPR of all women w/youngest child less 1 year old)				
less those not meeting workforce attachment requirement				
a. 33% ineligible	1,228,780	1,228,780	1,228,780	1,228,780
b. 20% ineligible	1,467,200	1,467,200	1,467,200	1,467,200
less those not taking leave (columns (3) and (4))				
a. 33% ineligible	1,228,780	1,228,780	1,093,614	1,093,614
b. 20% ineligible	1,467,200	1,467,200	1,305,808	1,305,808

eligibility thresholds for family income and workforce attachment

33% ineligible				
a. \$36,626 (median income of primary families w/child < age 6)	\$737,268,000	\$491,512,000	\$656,168,520	\$437,445,680
b. \$50,000 (62.6% of families with children < age 6 earn less)	\$923,059,536	\$615,373,024	\$821,522,987	\$547,681,991
c. \$60,000 (71.8% of families with children < age 6 earn less)	\$1,058,716,848	\$705,811,232	\$942,257,995	\$628,171,996
d. no income threshold	\$1,474,536,000	\$983,024,000	\$1,312,337,040	\$874,891,360
20% ineligible				
a. \$36,626 (median income of primary families w/child < age 6)	\$880,320,000	\$586,880,000	\$783,484,800	\$522,323,200
b. \$50,000 (62.6% of families with children < age 6 earn less)	\$1,102,160,640	\$734,773,760	\$980,922,970	\$653,948,646
c. \$60,000 (71.8% of families with children < age 6 earn less)	\$1,264,139,520	\$842,759,680	\$1,125,084,173	\$750,056,115
d. no income threshold	\$1,760,640,000	\$1,173,760,000	\$1,566,969,600	\$1,044,646,400

D/L ADMINISTRATIVE COSTS

1st year (start-up + change in base yr)	\$113 million	\$113 million	\$113 million	\$113 million
annual operating costs	\$162-193 million	\$162-193 million	\$162-193 million	\$162-193 million

data from FMLA Commission T. 5E leave takers at non-covered worksites: care for newborn, etc.

upper bound: $(.371 * 1 \text{ wk}) + (.092 * 2 \text{ wk}) + (.109 * 4 \text{ wk}) + (.429 * 12 \text{ wk}) = 6.139 \text{ weeks}$

lower bound: $(.371 * 1 \text{ wk}) + (.092 * 2 \text{ wk}) + (.109 * 3 \text{ wk}) + (.229 * 4 \text{ wk}) + (.2 * 12 \text{ wk}) = 4.198 \text{ weeks}$

data from FMLA Commission: total leave takers for care of newborn/adopted/foster as percent of leave takers + leave needers

December 2, 1997

DRAFT**COST ESTIMATE FOR FMLA OPTIONS****1. PAID LEAVE FOR 6 WEEKS OF NEWBORN/ADOPTION/FOSTER CARE**

Objective: Cost for a maximum of 6 weeks maternity or child care benefit (i.e., federal income replacement) at \$200 a week for mothers or fathers with workforce attachment. (See first column of attached table.)

- a. Number of women¹ with newborns in a given year: 3,378,000 [from 1996 CPS]
Excludes some adoptions/foster care.

Maximum program cost for all newborn providers: $3,378,000 \times \$1200 =$
\$4,053,600,000.

- b. Assume that 1,834,000 mothers will return to work. [Based on 54.3% LFPR of all women with youngest child less than 1 year old.]

This is a proxy for working women who give birth and would be eligible for this benefit. Note that this number does not include those that worked prior to giving birth but (without this new incentive) did not return to work within a year.

- c. Assume maximum 33% will be ineligible for benefit because they did not work full-time previous year. [Per February 1996 tenure data for 16-44 year old women.]

Lots of potential bias problems here. Younger women more likely to give birth and less likely to be attached. However, the tenure data is not just for those employed, but for those employed with their current employer for a year. (Work experience data does not have this problem. It could be examined at a later date.) The 1.8 million women who returned to work are more likely than most to have been previously attached to the workforce (because returned early, likely to have health benefits attached to job and wouldn't want to quit during a pregnancy, etc). Therefore, it may also be useful to assume a lower percent being ineligible -- 20% has been arbitrarily chosen for this purpose.

¹ The number of women/mothers is used to estimate costs because only one parent of a newborn would be eligible for paid leave and women/mothers are more likely to take leave than men/fathers.

Using these bounds implies there would be between **1,228,780 and 1,467,200** potential leave takers who would pass the workforce attachment requirement.

- d. Without means testing, this implies a cost of between **\$1,474,536,000 and \$1,760,640,000** (at \$200 x 6 weeks = \$1200 for each mother). These costs are for benefits only, i.e., without program/administrative costs
- e. How many of these women would meet an income eligibility cut? (The test would be on family income, not the income of the leave taker.)

Median income for primary families with children under 3 is \$36,626. If the population was ½ below and ½ above, then the cost would be half – between **\$737,268,000 and \$880,320,000**. However, the actual cost is likely higher since most of the women who would be in the workforce full-time for at least a year would be over this mean (i.e., the lower part of the distribution would be cut off by the workforce attachment criterion).

See the table for costs at family income thresholds of \$50,000 and \$60,000.

- f. To the extent that families would choose to use their firms' paid leave over the \$200 a week benefit provided by the government (they need to use the federal benefit first or forfeit it), this would reduce the number of users and, therefore, costs. However, this reduction may not be significant (and cannot be reliably estimated).

Only a very small number of employees receive paid family leave (2 to 3%), although most receive paid vacation (88 to 97%) and paid sick leave (50 to 65%) that could be used during the first six weeks after having a child. (Mothers would likely be the only ones who could use paid sick leave.) The number who choose paid company leave over federal wage replacement would be reduced by the percent that would be allowed to take off enough leave (i.e. those covered and eligible for FMLA) to use the reduced federal benefit first and then use company provided paid leave. (Note that since many low income women are disqualified by the workforce attachment test, those that are least likely to be eligible for extended leave are also eliminated.)

However, data from the 1995 survey by the Commission on Family and Medical Leave would indicate that a good portion of mothers and fathers do not receive sufficient paid leave from their companies and thus would likely take advantage of the federal leave program. About 65% of all child care "leave needers" (as defined and surveyed by the Commission) say the reason for not taking leave is that they can not afford to do so. Yet, for those covered by the FMLA, the Commission reports 46% get fully paid child care leave (23% get partially paid

leave); for those not working at covered worksites, the percent getting paid leave drops to 37% (16% get partially paid leave).²

- g. Related to the discussion above is the possibility that some eligible mothers/fathers will not take time off to care for newborn/adopted/foster child. Based on data from the Commission (the percent "leave takers" who took leave to care for a child as a percent of "leave takers" plus "leave needers"), it was estimated 11% would not use the leave (or 89% of eligible workers would). This assumes the provision of a partial wage replacement will have no effect on the behavior of the 11%. See columns 3 and 4 of attached table.
- h. Based on data from the Commission (T. 5E), weighted averages were constructed for the number of weeks "leave takers" at non-covered worksites take off to care for newborn/adopted/foster children. The upper bound is 6.1 weeks (same as maximum allowable) and the lower bound is 4.2 weeks. See columns 2 and 4 of attached table for cost estimates which assume an average leave of 4 weeks.
- i. For all of these variations, ETA estimates administrative costs would be about \$162 to \$193 million per year. In addition, there would be startup costs of approximately \$113 million (to change the UI base period and to create a benefit payment system).

Bottom line: Under these assumptions, total costs (administrative and benefit) would range from around \$600 million if the higher ineligibility rate is assumed and the benefits were used for four weeks by parents who met the 1 year work-force attachment and \$36,626 family income tests -- to almost \$2 billion if there was no income test, all eligible parents took the full 6 weeks, and the lower 20% ineligibility rate is used. These costs do not include the estimated \$113 million for start-up.

Note: This estimate is very suspect. Mixed and matched data sources of various years which do not neatly correspond to the proposed groupings have been used. In total, it is unclear to the direction or size of these biases.

2. EXPAND FMLA LEAVE PERIOD FROM THREE TO SIX MONTHS

No benefit cost involved.

² Of interest is the Commission finding that of all low-income leave takers, 21% are receiving public assistance.

This proposal extends the maximum benefit received under FMLA. All covered and eligible individuals could potentially benefit from such an expansion. The size of the group that is likely to benefit can be estimated from looking at the FMLA employee survey leave takers who took more than 12 weeks of leave. Most likely to benefit would be the 10% - 20% of leave takers who took more than 12 weeks of leave (according to data from the 1995 survey by the Commission on Family and Medical Leave). The Commission estimated that between 1 and 2 million took FMLA during their survey period -- thus the number of "long leave" takers is estimated at 100,000 to 400,000 a year.

3. LOWER FMLA'S 50-EMPLOYEE COVERAGE THRESHOLD

No benefit cost involved.

If one assumes a 83% eligibility rate and decreases the threshold to firms 25 and larger (see note below), than this would increase the number of employees covered and eligible by about 10 million. BLS has provided information to NEC on the impact of thresholds between 25 and 50.

Note the source is ES 202 data, whose estimates would not include employees covered by FMLA who work in establishments with less than 25 employees but within 75 miles of other establishments owned by the same firm that in total employ more than 25 workers.

4. USE THE UI PROGRAM TO PROVIDE PARTIAL WAGE REPLACEMENT

It is not known how many states would amend their laws under either of these two UI options. Therefore, the number of potential recipients is unknown. In any event, the maximum pool of recipients will range from 1.2 to 1.5 million. (See discussion 1a. to 1d. above.)

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**PROPOSALS TO ASSIST PARENTS OF
NEWLY BORN OR ADOPTED INFANTS**

1. Expand FMLA Leave Period From Three to Six Months

Under current law, private employers of 50 or more employees must provide up to 12 workweeks of unpaid, job-protected leave a year to "eligible" employees for qualifying family and medical reasons, including care of a newborn, newly adopted child, or newly placed foster child. Employees are "eligible" if they have worked for the employer for at least 12 months and for at least 1,250 hours over the previous 12 months, and if the employer has at least 50 employees working within 75 miles of the employee's worksite.

Expanding the law in this way would allow the approximately 12 million workers who take leave in a given year to take a longer period of FMLA protected leave if they need it. About 100,000 to 400,000 leave takers who use the maximum amount of time (85 plus days in the survey by the Family and Medical Leave Commission) would be most likely need to take extra time off.

Pros: - Guaranteeing FMLA covered and eligible working parents up to six month of job-protected leave would give them additional time to bond with their newborns and to make adequate child care arrangements for when they return to work.

- Such an expansion of FMLA would benefit all covered and eligible workers, not just new parents.

Cons: - This will not help workers who currently cannot afford to take even the full 12 weeks of job-protected leave. According to the Commission's survey, about 65 percent of those who wanted to take leave to care for their newborn, foster or adopted child said they did not take leave because they could not afford to do so.

- This would do nothing to help parents who are not now FMLA covered and eligible. According to the Commission, about one-half of workers are not covered and eligible for FMLA leave. (The number of covered and eligible parents is likely lower because younger workers have shorter average job tenure.)

2. Lower FMLA's 50-employee Coverage Threshold

Under current law, *private sector* employers are not covered by the FMLA unless they employ 50 or more employees during 20 or more calendar workweeks in either the current or preceding calendar year. (Public agencies are covered by FMLA regardless of size -- but employees must still meet the eligibility requirements, including working at a worksite where 50 employees are employed within 75 miles.)

The employee coverage threshold could be dropped from 50 to 25, or to some point between those numbers, and could be accomplished in one step or several. Another approach would be to drop it to some point between 50 and 25, and establish a commission to study the impact and recommend whether a further lowering of the threshold would be warranted.

The best approach would be to drop the threshold immediately to 25, in conjunction with a paid-leave plan (see separate paper).

Pros: - Accomplishes two goals: giving more people FMLA protections, and providing partial-wage replacement for new parents, including those still not protected by FMLA.

Cons: - Likely to meet with strong opposition.

- To the extent we might be able to win support for one but not both proposals, combining expansion and a paid-leave proposals could unite in opposition those who might agree with one of the options but oppose the other.

3. Use the Unemployment Insurance (UI) Program to Provide Partial Wage Replacement for New Parents

Option 1: Encourage States to amend their UI laws to permit payment of benefits to individuals who, having left their jobs (and, temporarily, the workforce) for compelling personal reasons, such as adoption of an infant, are unable to find employment when they are able to return to work. Such benefits would only be available when the individual is again able and willing to work. The laws of 14 States (AK, CA, HI, NB, NV, NY, OR, PA, PR, RI, SC, UT, VA, VI) currently recognize some compelling personal reasons for leaving work. However, none of these laws specifically reference leaving work for reasons connected to family or medical leave.

Pros: - States should recognize compelling personal reasons for leaving work in order to modernize the UI program to reflect current work realities.
- Expands participation rates in the UI program, thus increasing its

ability to provide wage replacement to workers while they are unemployed as well as increasing its economic stabilizing effect.

- Cons:
- States view Federal recommendations in the areas of eligibility and disqualification as an infringement on their rights and responsibilities.
 - The UI program is employer-financed. Employers would oppose financing benefits to those who leave work voluntarily for non-work-connected reasons.

Option 2 : Amend Federal law to allow States to use UI Trust Fund balances to finance leave taken for family and medical leave reasons.

Pros: - Would give States specific authority to recognize family and medical leave needs, at State discretion.

- Would utilize an existing system that does a good job of paying benefits.

Cons: - Paying benefits to individuals who are not able to work and available for work, as in the case of family and medical leave, is completely contrary to the basic purpose and law of the UI program; i.e., to pay benefits to individuals with respect to their unemployment while they are temporarily unemployed and searching for work.

- Would require legislative change to allow UI eligibility of individuals on FMLA leave, who are not able to work and available for work as required under the current UI law.

- If the authorization is applied only to "healthy" balances, UI benefits paid due to family and medical leave will only apply when State trust funds are building up in good economic time. The benefits would not be available during recessionary periods.

- The UI program is employer-financed. Employers will strongly object to using funds generated for UI purposes to be used to finance benefits to individuals who have withdrawn from the labor force and are unable or unavailable for work, even if only temporarily.

- 23 States currently have solvency levels below the point that they should be prepared for a recession.

- ETA opposes this option. (DOL is on record as opposing State enactment of such a proposal.)

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Paid-Leave Plan for the Birth or Adoption of a Newborn

Thanks to the Family Medical Leave Act, signed into law by President Clinton on February 5, 1993, millions of Americans can take unpaid leave from their jobs (up to 12 weeks per year) to care for an infant after birth or adoption -- and know that a job will be waiting for them when they return. But many of those workers are unable to take the full amount of FMLA-protected time they need, because they simply can't afford to go that long without a paycheck. And other workers who, although not protected by FMLA, have access to unpaid leave can face the same dilemma.

To address this obstacle, the Administration could propose the creation of a New Parent Paid Leave Plan, to provide eligible parents with partial wage replacement for up to six weeks. Careful consideration needs to be given as to whether this program would cause employers to cut their benefit plans, or decide not to offer new benefits. / *

Design elements of a workable program would include:

- Income eligibility: Eligibility to receive funds would be tied to income. The simplest approach would be to set a family income cap -- only parents with family earnings below a set amount would be eligible to receive new-parent paid leave. An alternative but more complicated approach would be to vary the benefit amount by family income.

Pros: - Assists the families that are most likely to face a financial barrier to taking family leave for a newborn/adopted infant.

- Limiting eligibility to workers protected by the FMLA would exclude those most likely to benefit from such a program.

- Workforce attachment:

1. Prior to receiving benefit: New parent paid leave would be available to those qualifying parents who are authorized to work in the U.S. and have been in the workforce -- part time or full time -- for each of the fifty-two weeks prior to giving birth/adopting.

Pros: - Funds available to all working parents, regardless of FMLA coverage
 - Links eligibility to connection to the workplace and to the concept of wage replacement.
 - One year requirement demonstrates pre-pregnancy workforce participation.

- Minimum standard for amount of time in the workforce reflects FMLA concept and excludes from eligibility those whose workforce participation was minimal.
- If UI administers the program, they will have access to employment information for all UI-covered workers

- Cons:
- If UI administers the program, an alternative method of confirming eligibility would be necessary for non-UI covered workers (e.g., self-employed, independent contractors, etc.) — for example, proof of receipt of wages during the time period. This would add cost to the proposal.
 - If UI administers the program, it may be simpler if the eligibility requirement is the same as for UI - work in roughly 20 of the preceding 52 weeks. (Note, however, that states have discretion to have additional UI qualifying requirements.)

Note: If data indicates that workers most likely to need paid leave have generally worked for less than one year, we should change the one-year requirement as appropriate.

2. After receiving benefit: Workers could receive benefits regardless of whether they intend to return to their job, or whether they in fact return.

- Pros:
- Eligibility based on return to employment or the workforce would require a penalty/recovery scheme for those who — for whatever reason — fail to return to work in a timely manner.

- Commission data indicates that lower income workers, the ones most likely to need wage-replacement, are the least likely to return to work following the birth or adoption of an infant.

- Cons:
- Parents who voluntarily leave their jobs to care for newborn/adopted infants have presumably decided they are not financially dependent upon their wage, and therefore do not need a wage replacement benefit. (The lower any income requirement is set, the less this problem exists — fewer eligible parents will be financially able to quit their job.)

Benefit duration and timing: Benefits would be available only for the first six weeks following birth/adoption. A worker with access to employer-paid leave who also wanted to participate in federal paid leave would have to use the federal benefit before using employer-paid leave.

- Pros:
- Simpler to administer
 - Minimizes disincentives on employers who might otherwise provide benefits or more generous benefits.

Cons: - To the extent that an employer benefit plan limits post-pregnancy use of sick leave to a period immediately following birth, female workers with accumulated paid sick leave who give birth may not be able to use paid sick leave after six weeks.

- May not cover time at home for newborn babies/mothers who have extended hospital stays.

Administration/Implementation: The program would be administered, and the benefits paid, through the state UI system. State participation would not be mandatory.

Pros: - State employment security agencies (SESAs) have experience in making payments as agents of the Federal government in the case of other programs, such as Trade Readjustment Allowances. In FY 98 there are about 40,000 TRA recipients collecting about \$230M in benefits at an administrative cost of about \$5 M per year, which would provide an order of magnitude in evaluating this proposal.

- States are able to perform these functions under agreement with a Federal agency assuming suitable arrangements can be made to meet the cost of administering this separate payment system.

Cons: - To the extent that SESAs are asked to make eligibility determinations that differ from those under the UI system, staff training and administrative costs would rise substantially.

- Since the costs of the benefits would be coming from a fund other than the State trust fund (unless Federal law is amended), it may be expensive for the States to establish the alternative procedures necessary to make the payments.

- States are currently underfunded for UI administration costs and would not be able to embark on a new program without some funding guarantees.

Benefit amount: Simplest approach would be to set one benefit amount available to all eligible workers: \$200 per week (based on UI average benefit of \$190.19, which represents 35% of the average weekly wage). Alternatives could include having one or two benefit levels, keyed to income ranges.

or
income
how

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est. of women in workforce giving birth	1,834,000	1,834,000	1,834,000	1,834,000
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less those not meeting workforce attachment requirement				
a. 33% ineligible	1,228,780	1,228,780	1,228,780	1,228,780
b. 20% ineligible	1,467,200	1,467,200	1,467,200	1,467,200
less those not taking leave (columns (3) and (4))				
a. 33% ineligible	1,228,780	1,228,780	1,093,614	1,093,614
b. 20% ineligible	1,467,200	1,467,200	1,305,808	1,305,808

eligibility thresholds for family income and workforce attachment

a. 33% ineligible				
1. \$36,626 (median income of primary families w/child < age 6)	\$737,268,000	\$491,512,000	\$656,168,520	\$437,445,680
2. \$50,000 (62.6% of families with children < age 6 earn less)	\$923,059,536	\$615,373,024	\$821,522,987	\$547,681,991
3. \$60,000 (71.8% of families with children < age 6 earn less)	\$1,058,716,848	\$705,811,232	\$942,257,995	\$628,171,996
4. no income threshold	\$1,474,536,000	\$983,024,000	\$1,312,337,040	\$874,891,360
b. 20% ineligible				
1. \$36,626 (median income of primary families w/child < age 6)	\$880,320,000	\$586,880,000	\$783,484,800	\$522,323,200
2. \$50,000 (62.6% of families with children < age 6 earn less)	\$1,102,160,640	\$734,773,760	\$980,922,970	\$653,948,646
3. \$60,000 (71.8% of families with children < age 6 earn less)	\$1,264,139,520	\$842,759,680	\$1,125,084,173	\$750,056,115
4. no income threshold	\$1,760,640,000	\$1,173,760,000	\$1,566,969,600	\$1,044,646,400

D/L ADMINISTRATIVE COSTS

first year (start-up + change in base yr)	\$113 million	\$113 million	\$113 million	\$113 million
annual operating costs	\$162-193 million	\$162-193 million	\$162-193 million	\$162-193 million

data from FMLA Commission T. 5E leave takers at non-covered worksites: care for newborn, etc.

upper bound: $(.371 * 1 \text{ wk}) + (.092 * 2 \text{ wk}) + (.109 * 4 \text{ wk}) + (.429 * 12 \text{ wk}) = 6.139 \text{ weeks}$

lower bound: $(.371 * 1 \text{ wk}) + (.092 * 2 \text{ wk}) + (.109 * 3 \text{ wk}) + (.229 * 4 \text{ wk}) + (.2 * 12 \text{ wk}) = 4.198 \text{ weeks}$

data from FMLA Commission: total leave takers for care of newborn/adopted/foster as percent of leave takers + leave needers

December 2, 1997

DRAFT**COST ESTIMATE FOR FMLA OPTIONS****1. PAID LEAVE FOR 6 WEEKS OF NEWBORN/ADOPTION/FOSTER CARE**

Objective: Cost for a maximum of 6 weeks maternity or child care benefit (i.e., federal income replacement) at \$200 a week for mothers or fathers with workforce attachment. (See first column of attached table.)

- a. Number of women¹ with newborns in a given year: 3,378,000 [from 1996 CPS]
Excludes some adoptions/foster care.

Maximum program cost for all newborn providers: $3,378,000 \times \$1200 =$
\$4,053,600,000.

- b. Assume that 1,834,000 mothers will return to work. [Based on 54.3% LFPR of all women with youngest child less than 1 year old.]

This is a proxy for working women who give birth and would be eligible for this benefit. Note that this number does not include those that worked prior to giving birth but (without this new incentive) did not return to work within a year.

- c. Assume maximum 33% will be ineligible for benefit because they did not work full-time previous year. [Per February 1996 tenure data for 16-44 year old women.]

Lots of potential bias problems here. Younger women more likely to give birth and less likely to be attached. However, the tenure data is not just for those employed, but for those employed with their current employer for a year. (Work experience data does not have this problem. It could be examined at a later date.) The 1.8 million women who returned to work are more likely than most to have been previously attached to the workforce (because returned early, likely to have health benefits attached to job and wouldn't want to quit during a pregnancy, etc). Therefore, it may also be useful to assume a lower percent being ineligible -- 20% has been arbitrarily chosen for this purpose.

¹ The number of women/mothers is used to estimate costs because only one parent of a newborn would be eligible for paid leave and women/mothers are more likely to take leave than men/fathers.

Using these bounds implies there would be between **1,228,780 and 1,467,200** potential leave takers who would pass the workforce attachment requirement.

- d. Without means testing, this implies a cost of between **\$1,474,536,000 and \$1,760,640,000** (at \$200 x 6 weeks = \$1200 for each mother). These costs are for benefits only, i.e., without program/administrative costs
- e. How many of these women would meet an income eligibility cut? (The test would be on family income, not the income of the leave taker.)

Median income for primary families with children under 3 is \$36,626. If the population was ½ below and ½ above, then the cost would be half -- between **\$737,268,000 and \$880,320,000**. However, the actual cost is likely higher since most of the women who would be in the workforce full-time for at least a year would be over this mean (i.e., the lower part of the distribution would be cut off by the workforce attachment criterion).

See the table for costs at family income thresholds of \$50,000 and \$60,000.

- f. To the extent that families would choose to use their firms' paid leave over the \$200 a week benefit provided by the government (they need to use the federal benefit first or forfeit it), this would reduce the number of users and, therefore, costs. However, this reduction may not be significant (and cannot be reliably estimated).

→ Only a very small number of employees receive paid family leave (2 to 3%), although most receive paid vacation (88 to 97%) and paid sick leave (50 to 65%) that could be used during the first six weeks after having a child. (Mothers would likely be the only ones who could use paid sick leave.) The number who choose paid company leave over federal wage replacement would be reduced by the percent that would be allowed to take off enough leave (i.e. those covered and eligible for FMLA) to use the reduced federal benefit first and then use company provided paid leave. (Note that since many low income women are disqualified by the workforce attachment test, those that are least likely to be eligible for extended leave are also eliminated.)

However, data from the 1995 survey by the Commission on Family and Medical Leave would indicate that a good portion of mothers and fathers do not receive sufficient paid leave from their companies and thus would likely take advantage of the federal leave program. About 65% of all child care "leave needers" (as defined and surveyed by the Commission) say the reason for not taking leave is that they can not afford to do so. Yet, for those covered by the FMLA, the Commission reports 46% get fully paid child care leave (23% get partially paid

leave); for those not working at covered worksites, the percent getting paid leave drops to 37% (16% get partially paid leave).²

- g. Related to the discussion above is the possibility that some eligible mothers/fathers will not take time off to care for newborn/adopted/foster child. Based on data from the Commission (the percent "leave takers" who took leave to care for a child as a percent of "leave takers" plus "leave needers"), it was estimated 11% would not use the leave (or 89% of eligible workers would). This assumes the provision of a partial wage replacement will have no effect on the behavior of the 11%. See columns 3 and 4 of attached table.
- h. Based on data from the Commission (T. 5E), weighted averages were constructed for the number of weeks "leave takers" at non-covered worksites take off to care for newborn/adopted/foster children. The upper bound is 6.1 weeks (same as maximum allowable) and the lower bound is 4.2 weeks. See columns 2 and 4 of attached table for cost estimates which assume an average leave of 4 weeks.
- i. For all of these variations, ETA estimates administrative costs would be about \$162 to \$193 million per year. In addition, there would be startup costs of approximately \$113 million (to change the UI base period and to create a benefit payment system).

Bottom line: Under these assumptions, total costs (administrative and benefit) would range from around \$600 million if the higher ineligibility rate is assumed and the benefits were used for four weeks by parents who met the 1 year work-force attachment and \$36,626 family income tests -- to almost \$2 billion if there was no income test, all eligible parents took the full 6 weeks, and the lower 20% ineligibility rate is used. These costs do not include the estimated \$113 million for start-up.

Note: This estimate is very suspect. Mixed and matched data sources of various years which do not neatly correspond to the proposed groupings have been used. In total, it is unclear to the direction or size of these biases.

2. EXPAND FMLA LEAVE PERIOD FROM THREE TO SIX MONTHS

No benefit cost involved.

² Of interest is the Commission finding that of all low-income leave takers, 21% are receiving public assistance.

This proposal extends the maximum benefit received under FMLA. All covered and eligible individuals could potentially benefit from such an expansion. The size of the group that is likely to benefit can be estimated from looking at the FMLA employee survey leave takers who took more than 12 weeks of leave. Most likely to benefit would be the 10% - 20% of leave takers who took more than 12 weeks of leave (according to data from the 1995 survey by the Commission on Family and Medical Leave). The Commission estimated that between 1 and 2 million took FMLA during their survey period -- thus the number of "long leave" takers is estimated at 100,000 to 400,000 a year.

3. LOWER FMLA'S 50-EMPLOYEE COVERAGE THRESHOLD

No benefit cost involved.

If one assumes a 83% eligibility rate and decreases the threshold to firms 25 and larger (see note below), than this would increase the number of employees covered and eligible by about 10 million. BLS has provided information to NEC on the impact of thresholds between 25 and 50.

Note the source is ES 202 data, whose estimates would not include employees covered by FMLA who work in establishments with less than 25 employees but within 75 miles of other establishments owned by the same firm that in total employ more than 25 workers.

4. USE THE UI PROGRAM TO PROVIDE PARTIAL WAGE REPLACEMENT

It is not known how many states would amend their laws under either of these two UI options. Therefore, the number of potential recipients is unknown. In any event, the maximum pool of recipients will range from 1.2 to 1.5 million. (See discussion 1a. to 1d. above.)

50TH STORY of Level 1 printed in FULL format.

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November 8, 1999, Monday, Late Edition - Final

SECTION: Section A; Page 1; Column 6; National Desk

LENGTH: 1461 words

HEADLINE: Dispute Over Plan To Use Jobless Aid For Parental Leave

BYLINE: By ROBERT PEAR

DATELINE: WASHINGTON, Nov. 7

BODY:

A bitter struggle has erupted over a plan by President Clinton to allow states to pay unemployment benefits to workers who take time off to care for newborn infants.

White House officials said the change in policy, subsidizing unpaid leave for parents of newborns, could help millions of people struggling to balance the demands of work and family.

But employers and many state officials said Mr. Clinton was exceeding his legal authority, circumventing Congress and reversing six decades of government policy, which has held that people can get jobless benefits only if they are actively seeking work.

Just two years ago, the Labor Department told states they could not use the federal unemployment insurance trust fund to pay for maternity and paternity leave. Now, the administration is preparing new regulations that would allow the states to do so if they chose.

Employers said the president's policy would take money meant for jobless workers and give it to people who had jobs but chose to leave them temporarily.

Government data suggests that more than 650,000 people a year take parental leave under a 1993 law, the Family and Medical Leave Act. But the potential demand is much greater. The Labor Department says that 1.9 million working women have children under the age of 1.

Patrick J. Cleary, vice president of the National Association of Manufacturers, said of the president's plan: "This is the nuttiest idea we've seen in a long time. The administration is looking for a pile of cash to fulfill a political promise, and they found it in the unemployment trust fund. But that's an insurance fund, not a slush fund. It's for unemployed people. Workers on family leave are employed, not unemployed. We'll see bad times again some day, and when we go back to the trust fund, it'll be bust."

Legislators in several states, including Vermont and Massachusetts, have introduced bills to provide unemployment insurance to workers taking family leave. But officials who run the state programs are generally cool to the idea, fearing that it would change the focus of unemployment insurance and harm the trust fund.

The New York Times, November 8, 1999

James E. Finch, the unemployment insurance director in Utah, said: "President Clinton's plan represents a very substantial change in the bedrock core principles of the unemployment insurance program as it has been operated for 60 years. The foundation of the program is that benefits are paid to people who are unemployed through no fault of their own and who are actively seeking full-time work."

Under the 1993 law, people who work for a company with 50 or more employees are generally entitled to 12 weeks of unpaid leave to care for newborn children or sick relatives or to tend to medical problems of their own. Workers who take leave are legally entitled to return to their jobs or to equivalent positions with equivalent pay.

Jobless benefits vary from state to state, but average \$200 a week. Under the current system, state officials said, the cost of any additional benefit payments would be passed on to employers because they pay the taxes that finance the unemployment insurance program.

State officials estimate that paid leave for new parents could increase their unemployment insurance costs by 15 percent to 20 percent, depending on how many people seek benefits.

Advocates of paid family leave said the cost would be much lower. Moreover, they said, paid leave would benefit the economy by reducing absenteeism and the need for new parents to go on welfare.

Senior Republicans in Congress said the president should not make such a momentous change in policy by unilateral action. And they have sent letters to the White House urging him to reconsider.

In one such letter, Representative Bill Archer of Texas, the chairman of the Ways and Means Committee, and Representative Nancy L. Johnson of Connecticut told the president, "Your decision allowing states to use unemployment compensation to provide paid family leave pits out-of-work Americans against their neighbors who have jobs."

Mr. Clinton signaled his intention to rewrite federal policy in May, in a commencement address at Grambling State University in Louisiana, but he gave no details. Now the administration is preparing to announce the details, many of which have become known to experts in the field as the Labor Department writes new rules for the unemployment insurance program.

In announcing the rules, White House officials said, Mr. Clinton will present himself as the champion of a popular political cause, helping hard-pressed families while Congress sits on the sidelines.

Mr. Clinton is relying on an expansive view of executive authority. An analysis by the nonpartisan Congressional Research Service raises questions about that authority. Under federal law, it says, money withdrawn from the trust fund must be used "solely in the payment of unemployment compensation." Conceivably, it says, states could define "unemployment compensation" to include family leave, but that would conflict with the "legislative history and historical interpretation" of the program.

The New York Times, November 8, 1999

Business groups said they would challenge the new policy in court if the president formally adopted it.

The federal unemployment insurance program was created in 1935 as part of the Social Security Act. Under longstanding interpretations of the law, people are eligible for jobless benefits only if they are involuntarily unemployed, able to work and available for work.

The Labor Department's Web site describes who is eligible: "You must be available for work. This means that you are ready to start a job immediately. It also means you have transportation and do not have to remain at home to care for children."

Supporters of paid family leave like Maurice Emsellem, a lawyer at the National Employment Law Project, said states could make exceptions to this requirement. Within the framework of federal law, those supporters said, states have wide latitude in setting eligibility standards, benefit levels and tax rates. Moreover, they said, since the New Deal, states have been allowed and even encouraged to experiment with unemployment compensation.

Senator Christopher J. Dodd, an author of the 1993 family leave law, said it had been a boon to millions of new parents, allowing them to bond with their children before returning to work. But Mr. Dodd, Democrat of Connecticut, said that many people who needed family leave did not take it because they could not afford to go without a paycheck.

Low-wage workers who take unpaid leave often "wind up on public assistance," he said.

Labor unions and women's groups, led by the National Partnership for Women and Families, are lobbying state legislators to provide some type of income, subsidies or tax breaks for workers who take family leave. The new federal policy clears the way for such state action.

Richard A. Hobbie of the Interstate Conference of Employment Security Agencies, a national organization of state labor officials, said: "In general, our members have been opposed to the president's proposal, not because they oppose the concept of paid family leave, but because they believe it's inappropriate to use the unemployment insurance system for that purpose. State officials would argue that workers on family leave ought to be able to get benefits under some other government program or from employers."

Thomas W. Douse, the unemployment insurance director for Vermont, said that paying jobless benefits to new parents "would lead to an automatic increase in employer taxes" because benefit payments in the state would probably increase by 20 percent, or \$9 million a year.

"To be sure," Mr. Douse said, "we have a strong trust fund right now, but the whole purpose of the trust fund is that you raise money in good times so it will be available in bad economic times."

Employers said the president's proposal could deplete the trust fund. But Mr. Emsellem, from the National Employment Law Project, said that with the jobless rate at a 29-year low, many states had healthy surpluses in their trust fund accounts and could afford to expand unemployment insurance.

The New York Times, November 8, 1999

"Businesses criticize the president's proposal as a raid on the trust fund, even as they lobby successfully for cuts in state unemployment insurance taxes," Mr. Emselem said. "That's hypocritical."

Thomas S. Whitaker, deputy chairman of the North Carolina Employment Security Commission, said he liked Mr. Clinton's initiative because it allowed states to decide for themselves whether to pay unemployment compensation to workers taking parental leave.

"If states don't want to do it, they don't have to," Mr. Whitaker said. "I hope the Labor Department takes that approach on other issues."

<http://www.nytimes.com>

LANGUAGE: ENGLISH

LOAD-DATE: November 8, 1999



Bergman Terry <bergman-terry@dol.gov>

11/09/99 06:14:46 PM

Record Type: Record

To: Ann O'Leary/OPD/EOP

cc:

Subject: FW: Presidential remarks

This is the Q & A from President Clinton's news availability with reporters yesterday afternoon (11-8-99) following his remarks to reporters about the budget and efforts to reduce class size in U.S. schools.

Q The Department of Labor, at your direction, is drafting regulations to change the use of unemployment insurance so that it could be used for family leave purposes. Opponents of this idea say you don't have the authority to do this, that any such change should be done by federal legislation. How do you respond to that?

THE PRESIDENT: Well, I was informed that we did have the authority to do it in the narrow way that we're doing it. And I think if you want more information on what the arguments are, you will have to talk to either the Labor Department Counsel or the appropriate people at the White House. But I obviously would not have done it if I hadn't been told that we had the authority to do it.

As I mentioned, our press office has been fielding inquiries. The ones I remember are the Daily Labor Reporter, Knight Kiplinger, Fox News and the Beacon Journal (Akron, OH).



Carole Kitt

11/12/99 10:11:00 AM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: DOL Developing Plan to Allow States to Use Unemployment Funds to Back Family Leave

----- Forwarded by Carole Kitt/OMB/EOP on 11/12/99 10:11 AM -----

BNA, Inc.

Daily Report for Executives

No. 218

Friday November 12, 1999

ISSN 1523-567X

Page A-32

Regulation, Law & Economics

Employment

DOL Developing Plan to Allow States to Use Unemployment Funds to Back Family Leave

The Labor Department is poised to propose regulations aimed at encouraging states to develop ways of using their unemployment insurance systems to support parents taking leave to care for newborns or newly adopted children.

The proposed regulations, which will be published in the "near future," would permit states to adopt legislation establishing a "demonstration-kind" of program to determine if providing unemployment insurance to otherwise eligible individuals who have given birth to or adopted a child "strengthens their connection to the workforce," Henry L. Solano, solicitor of labor, told BNA Nov. 10. The unemployment insurance program has been deemed by President Clinton as an "appropriate vehicle within which to test" this currently "unresolved matter," Solano explained.

President Clinton first outlined the plan for making family and medical leave more affordable for employees in a May 23 commencement speech at Grambling State University in Grambling, La., issuing an executive memorandum a day later directing Labor Secretary Alexis M. Herman to issue a rule to allow states to use their unemployment insurance systems to offer paid leave to new mothers and fathers. Clinton also directed the Labor Department to develop model state legislation that states can follow.

Business Opposition

The plan immediately was greeted by opposition from the business community, which maintains that allowing workers who are on family or medical leave to collect unemployment insurance would undermine the federal/state unemployment program. House Republicans joined in criticizing the plan, with both Reps. William Goodling (R-Pa.), chairman of the Education and the Workforce Committee, and Bill Archer (R-Texas), chairman of the Ways and Means Committee, complaining that the proposal would pit the unemployed against those workers that have jobs.

The business community "will litigate any proposal by the Department of Labor to change the fundamental

purpose" of the unemployment insurance system by allowing those who are not able and willing to work to collect benefits, Eric J. Oxfeld, president of UWC-Strategic Services on Unemployment & Workers' Compensation, a business advocacy group, told BNA Nov. 10. Describing the pending proposal as both contrary to the Federal Unemployment Tax Act and the Family and Medical Leave Act, Oxfeld argued that "allowing the misuse" of unemployment compensation benefits for family and medical leave will "shred the safety net" the UI system is intended to provide.

"Grafting onto the unemployment insurance system the wholly alien responsibility to finance and deliver paid family and medical leave to workers who by definition have jobs and are not available for employment will financially and administratively burden the UI system and those whom it sustains," Oxfeld maintained during an oversight hearing on the FMLA last July. Similar concerns have been raised by the nonpartisan Congressional Research Service, which last June questioned whether the Labor Department has the authority to allow states to offer unemployment compensation to applicants who fail to meet the requirement that UI recipients be "able and available for work."

The authority of the secretary of labor "to allow the use of UI for FMLA workers will likely depend on whether courts will look solely" to the relevant statutory language or whether the UI program's "legislative history and historical interpretation will be considered," the June 15 CRS memorandum said. The memorandum pointed out that the language of the unemployment compensation statutes--the Social Security Act and the Federal Unemployment Tax Act--does "not appear to answer the question of inclusion of FMLA coverage in state programs."

Past DOL Interpretation at Odds

If, however, "the legislative history is considered, and the historical interpretation of the UI program by the Department of Labor followed, it may be difficult to show that a worker on FMLA leave meets the requirements of being involuntarily unemployed and willing and able to work," according to CRS. In such a case, CRS said, Clinton's proposal "could arguably be seen as violative of the scope and purpose of the UI program, particularly the FUTA provision that the UI fund be used solely for unemployment compensation."

The Labor Department has published numerous interpretations directing state unemployment agencies to deny unemployment compensation to workers who are voluntarily unemployed or who are unwilling and unavailable for work, according to CRS, and most state laws provide unemployment compensation to those workers who involuntarily lose their employment for reasons other than misconduct and who are willing and available to work. "The objection to allowing UI for workers on FMLA leave is that they are voluntarily, not involuntarily unemployed, and not willing and available to work when they are on FMLA leave," according to the CRS memorandum.

Solano, however, argued that there is "no connection" between the upcoming UI proposal and the FMLA, a 1993 law that requires employers of 50 or more employees to provide up to 12 weeks of unpaid leave a year for the care of seriously ill family members, the birth or adoption of a child, or an employee's own serious health problem. The Labor Department proposal, the solicitor explained, would allow states the flexibility to determine that employees who are not available and able to work due to the birth or adoption of a child are eligible for UI benefits.

State Legislation Necessary

This flexibility could only be offered "pursuant to substantive legislation adopted at the state level," Solano emphasized. Consistent with the general structure of the federal-state UI program, the proposal leaves it up to individual states to determine if they want to participate in the demonstration project, Solano said. This is "not a mandate," he said. Massachusetts, Vermont, Maryland, and Washington have explored legislative proposals similar to the one coming from DOL.

Solano likened the upcoming proposal to a situation in the mid-1960s when the Labor Department allowed states to adopt programs permitting individuals participating in "state sanctioned training" programs to receive unemployment insurance benefits. The latest proposal "can be a very parallel program," he said, observing that Congress ultimately codified changes allowing a link between participation in training and receipt of UI benefits. ▽

By Deborah Billings

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Bergman Terry <bergman-terry@dol.gov>

11/09/99 06:30:57 PM

Record Type: Record

To: Seto Chung <seto-chung@dol.gov>, KILBANE GRACE A-ETA <GKILBANE@DOLETA.GOV>, "Hildebrand, Gerard W" <GHILDEBRAND@DOLETA.GOV>, Ann O'Leary/OPD/EOP

cc:

Subject: FW: yesterday's NY Times piece on using UI for family-leave income e

FYI...

From: Donna Lenhoff[SMTP:dlenhoff@nationalpartnership.org]
Sent: Tuesday, November 09, 1999 6:09 PM
To: Bergman Terry; Green Susan; Palast Geri; Ross Lisa; saltz-david@dol.gov
Subject: yesterday's NY Times piece on using UI for family-leave income

As many of you know, yesterday the Times published a piece by Robert Pear, "Dispute Over Plan to Use Jobless Aid for Parental Leave." I thought you'd be interested in seeing the letter to the editor that we sent today in response:

To: Letters to the Editor, The New York Times (fax 212/556-3622)
From: Judith L. Lichtman, President, National Partnership for Women & Families
Date: November 9, 1999
Re: Response to November 8 article,
ADispute Over Plan to Use Jobless Aid for Parental Leave@

In "Dispute Over Plan to Use Jobless Aid for Parental Leave" (Robert Pear, November 8), several employers and state officials insisted that letting working Americans collect unemployment insurance while on unpaid family leave would jeopardize the unemployment system. These knee-jerk scare tactics needlessly pit people temporarily out of work against each other, and they deliberately ignore the urgent need for income during family leave, the economic reality of state unemployment trust funds, and the weight of public opinion.

Although the unpaid leave provided by the Family and Medical Leave Act has helped many Americans, cost is the main reason why people who need leave do not take it. Nearly one in ten of those who take unpaid leave must resort to public assistance to make ends meet.

Meanwhile, many state unemployment funds are flush enough to cover not only unemployment in a recession, but also the cost of this small

expansion --with no additional levies on employers. In Massachusetts, using unemployment insurance to provide some income during both family and medical leave is estimated to cost a mere \$1.25 per covered worker per week. In fact, unemployment tax cuts sought by Massachusetts business interests could cover the entire cost.

No wonder most Americans --79% --support giving states the chance to extend unemployment or temporary disability insurance to workers on unpaid family leave. Given the strength of our economy and our unemployment system, there is no reason why so many working women and men must still "choose" between their families and financial crisis.

contact information: Judith L. Lichtman, President
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1875 Connecticut Ave., NW, Suite 710
Washington, DC 20009
(o) 202/986-2600, (h) 202/686-9448

EXPANDING THE FAMILY AND MEDICAL LEAVE ACT TO HELP FAMILIES BALANCE WORK AND FAMILY RESPONSIBILITIES

January 27, 1998

In the new economy, most parents work harder than ever. They face a constant struggle to balance their obligations to be good workers -- and their even more important obligations to be good parents. The Family and Medical Leave Act was the very first bill I was privileged to sign into law as President in 1993. Since then, about 15 million people have taken advantage of it, and I've met a lot of them all across this country. I ask you to extend that law to cover 10 million more workers, and to give parents time off when they have to go see their children's teachers or take them to the doctor.

--President Bill Clinton

State of the Union Address, 1/27/98

In his State of the Union Address, President Clinton called on Congress to extend the benefits of the Family and Medical Leave Act -- the first piece of legislation that the President signed into law -- to ten million more American workers.

BIPARTISAN REPORT SHOWS THE LAW IS WORKING. Since the Family and Medical Leave Act was enacted in 1993, at least fifteen million Americans have taken FMLA-covered leave. Today, workers are eligible for FMLA-protected leave if they work at a business with 50 or more employees and if they have worked at least twelve months and 1,250 hours for the employer. FMLA allows eligible employees to take up to 12 weeks unpaid, job-protected leave to care for a newborn or adopted child, to attend to their own serious health needs, or to care for a seriously ill parent, child or spouse. The bipartisan Commission on Leave -- chaired by Senators Craig and Dodd -- reported that the law is working:

- **67 million Americans -- over half of all workers -- are guaranteed they can take leave from their job to care for a sick relative or a newborn child without fear of losing their job or health insurance.**
- **Millions of Americans have taken leave since the enactment of FMLA.** During the 18-month period covered by the Commission's study (1/94 - 6/95), an estimated 12 million Americans took leave for FMLA-covered purposes.
- **40% of all workers think they will need to take leave for a covered reason at some time in the next five years.**
- **Despite its opponents' claims, compliance is easy and costs are low for most employers now covered by the law:**
 - **Nine out of ten employers find the law "very" or "somewhat" easy to administer.**
 - **Compliance entails either little or no costs for 89%-99% of businesses.**
 - **Smaller covered worksites found it easier to comply than larger sites.**
- **Some businesses have reported reduced employee turnover, enhanced productivity and improved morale which they attribute to the Act.**

NOW IS THE TIME TO EXPAND THE LAW TO COVER MORE WORKERS AND BETTER HELP WORKERS CARE FOR THEIR CHILDREN AND PARENTS. The President believes that it is time to expand the benefits of the law. He is urging the Congress to:

- **Enable workers at businesses with 25 or more workers to take unpaid, job-protected leave -** current law covers businesses of 50 or more employees. Lowering the employer coverage threshold from 50 to 25 workers will mean that FMLA will cover up to ten million more American workers, allowing them to take up to twelve weeks unpaid, job-protected leave to care for a newborn or adopted child, to attend to their own serious health needs, or to care for a seriously ill parent, child or spouse.
- **Allow FMLA-eligible workers to take up to 24 hours of additional leave each year to meet specified family obligations,** including routine doctors appointments and parent-teacher conferences. Leave could be taken to: (1) participate in school activities, such as parent-teacher conferences; (2) accompany your child to routine dental or medical appointments; and (3)

accompany an elderly relative to routine medical appointments or other professional services.

May 21, 1999

MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED

SUBJECT: POLICY ANNOUNCEMENTS FOR GRAMBLING SPEECH

Your Grambling State University commencement address this Sunday focuses on the need to empower parents with greater tools to balance their responsibilities to their jobs and their families. You will release a new study by the Council of Economic Advisors that analyzes the "time crunch" that parents increasingly feel. In addition, you will announce a new policy that addresses this challenge for federal workers. You will direct the Office of Personnel Management to revise its regulations to allow federal workers to use up to 12 weeks of accrued sick leave to care for a spouse, child, or parent with a "serious health condition," as defined under the Family and Medical Leave Act (FMLA). Currently, federal workers are allowed to use only 13 days of sick leave to care for an ill relative. This new policy will enable federal workers to use the sick leave they have earned on the job to take care of a loved one with a serious health condition.

The DPC also has led a policy process to examine non-legislative options for action to enable States on a voluntary basis to use their Unemployment Insurance systems to provide benefits to workers on some form of FMLA-covered leave. This year, in part responding to UI trust fund surpluses, four States – Massachusetts, Vermont, Maryland, and Washington – had bills introduced in their state legislatures that would do this. Three of the four States, anticipating conformity problems, have asked for comment from the Department of Labor (DOL). While many question the prospects of State legislative efforts, DOL has been pressured from Senators Kennedy, Dodd, Leahy, and Murray, the AFL-CIO, and women's groups to allow States this flexibility; business groups have weighed in strongly against opening up UI for this purpose.

Taking a non-legislative step to advance paid leave for American workers would be a way to enable workers to spend more time with their families during important times. The 1996 FMLA Study, *A Workable Balance*, found that lost wages are a significant barrier to taking leave, particularly for lower income workers. Even if no State immediately elected to use its UI system in this way (as many argue is very likely), advancing a proposal that would allow State experimentation would send a strong message that making leave affordable for workers is a new priority and that States should consider creative ways to provide paid leave benefits.

However, the challenges and risks to embracing an expansive change to the UI system are considerable. First, the expense of such a system, if ever fully implemented in all States, would be significant. It is not deficit neutral in the short term since taxes will not match benefit spending which is estimated to begin at \$2 billion annually, but will likely be deficit neutral in

the long term (10-20 years). Second, the breadth of purposes covered by the FMLA raises concerns. The majority of FMLA-covered leave is taken by workers caring for their *own* serious health conditions, and advancing a policy of providing UI benefits for this category of leave might transform the UI system into a paid sick leave program and lead to significant and regressive substitution effects (employers might abandon their sick leave benefit programs). Third, while today most UI tax collection is “experience rated” (meaning that employers pay into the system based on their workers’ use of it), the cost of this new policy should be borne as broadly as possible to guard against possible employer discrimination against women of child-bearing age.

Your advisors have come to a consensus recommendation that would enable you to advance the policy of paid leave, while mitigating the potential for unintended negative consequences. You would direct the Department of Labor (1) to issue regulations and (2) develop model legislation that together would guide the States to confine the allowance of new UI benefits to parents following birth or adoption (and, perhaps, other analogous categories) and that would ensure that these new benefits are not “experience rated.” The limitations of these new benefits primarily to leave following birth and adoption alleviates some concerns about expanding the uses of the UI system while responding to the area of greatest need. The 1996 FMLA report found that maternity-disability leave tends to be unpaid or partially paid, while all other types of leave are significantly more likely to be fully paid.

Ideally, DOL’s regulation would be able to confine States to this kind of expansion of the UI system. The DOL Solicitor’s Office is still reviewing whether it has the legal authority to do this; it may not be able to distinguish between parental leave and other FMLA categories. In this case, we would rely on model legislation to guide States toward this relatively modest expansion. Although this course has some risk (States, after all, could choose to ignore our direction and guidance and only Maryland of the four States previously mentioned would meet this construct), we are relatively confident that few States would elect to impose far greater burdens on their own UI systems.

This general approach would allow you to send a very clear signal about moving forward on unpaid leave for new parents, while also making clear that you will not countenance other, less appropriate uses of UI benefits. The action, however, will not be uncontroversial. Business groups and Republican allies on the Hill may object even to this limited expansion of the UI system and attempt to halt the regulatory process through appropriations riders.

All of the offices involved in this process – the DPC, NEC, OMB, DOL, the Department of Treasury, CEA, and First Lady’s Office – agree that the recommendation presented in this memorandum is an innovative and responsible approach to addressing this issue.

☐ **PROCEED**

☐ **HOLD OFF AT THIS TIME**

☐ **LET’S DISCUSS**

DRAFT DRAFT DRAFT DRAFT DRAFT DRAFT

May 21, 1999

DECISION MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED

SUBJECT: POLICY ANNOUNCEMENTS FOR GRAMBLING SPEECH

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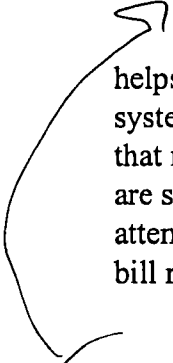
keep in part the UI trust fund surplus

Taking a non-legislative step to advance paid leave for American workers would be a bold way to enable workers to spend more time with their families in important times. The 1996 FMLA Study, *A Workable Balance*, found that lost wages are a significant barrier to taking leave, particularly for lower income workers. Even if no State elected to use its UI system in this way (as many argue is very likely), advancing a proposal that would allow State experimentation would send a strong message that making leave affordable for workers is a new priority and that States should consider creative ways to provide paid leave benefits.

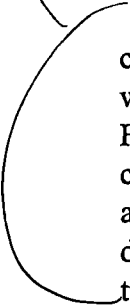
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The confinement of these new benefits to leave following birth and adoption not only helps to address some of the potential negative effects and criticisms of opening up the UI system, it also addresses an important challenge for new parents. The 1996 FMLA report found that maternity-disability leave tends to be unpaid or partially paid, while all other types of leave are significantly more likely to be fully paid. Still, this action may be seen on the Hill as an attempt to circumvent the legislative process to expand FMLA coverage, and it could result in bill riders (arguably a good fight to have).



This construct, however, does not mitigate many of the dangers of unintended consequences. We cannot ensure, for instance, that States would follow the model legislation we would propose and elect only to grant UI benefits to new parents, rather than the full category of FMLA covered leave (only Maryland of the four States previously mentioned would meet this construct). However, we would send clear signals about what the Administration believes is an appropriate new use of UI benefits and use the model State legislation to guide States in the right direction. Furthermore, you would only be on record as supporting this narrow new use of UI trust funds.

This option allows us the benefit of moving forward the important debate of making leave affordable for new parents, while also mitigating many potential downsides. All of the offices involved in this process – the DPC, NEC, OMB, DOL, the Department of Treasury, CEA,

and the First Lady's Office – agree that this is an innovative and responsible approach to addressing this issue.

____ **PROCEED**

____ **HOLD OFF AT THIS TIME**

____ **LET'S DISCUSS**

DRAFT DRAFT DRAFT DRAFT DRAFT DRAFT

May 21, 1999

DECISION MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED

SUBJECT: POLICY ANNOUNCEMENTS FOR GRAMBLING SPEECH

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Your advisors have considered various ways of advancing the policy of paid leave while also mitigating the potential for unintended negative consequences. Ideally, we would issue a regulation that confines the allowance of new UI benefits to parents following birth or adoption (and, perhaps, other analogous, limited categories) and ensures that these new benefits are not “experience rated.” The DOL Solicitor’s office advises that, while issuing regulations will enable us to set important parameters for State programs, we may not have the authority to limit them in these ways (the question is under review). Even if we do not have this authority, however, we believe that we can accomplish much the same goal with a broader regulation encompassing all FMLA applications if (a) you focus on new parents in a directive to DOL initiating the regulatory process, and (b) DOL accompanies the regulation with model State legislation that guides States in program design, confining this program to new parents and ensuring that the new benefit is not “experience rated.”

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3

5-10 yrs - state taxes -

Over a long time - 10 yrs - def. neutral, but at some fed. state

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a consensus rec to (1) direct DOL to (1) ^{rec} (2) model lg.

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(only MD of new state) (which is facing) MA, VT & WA does

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innovative

meet this test)

- ___ PROCEED
- ___ HOLD OFF AT THIS TIME
- ___ LET'S DISCUSS

long app. or riders

DRAFT

May 20, 1999

DECISION MEMORANDUM FOR THE PRESIDENT

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~~DRAFT DRAFT DRAFT DRAFT DRAFT DRAFT~~

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This construct, however, does not mitigate many of the dangers of unintended consequences. We cannot ensure, for instance, that States would follow the model legislation we would propose and elect only to grant UI benefits to new parents, rather than the full category of FMLA covered leave (only Maryland of the four States previously mentioned would meet this construct). However, we would send clear signals about what the Administration believes is an appropriate new use of UI benefits and use the model State legislation to guide States in the right direction. Furthermore, you would only be on record as supporting this narrow new use of UI trust funds.

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This option allows us to move forward with the important debate of making leave affordable for new parents, while also mitigating many potential downsides. All of the offices involved in this process - the DPC, NEC, OMB, DOL, the Department of Treasury, CEA,

is still reviewing whether we would have regulatory authority to impose all these limits. Even if we do not, however, we believe

we can accomplish our goals with a broader regulation encompassing all FMLA applications

Adopt in initial Dec. + say (current) we 7 year advisory (current) Name: agree agree an approp. Div. in war bonding

remind
and
under

leave benefit programs). Third, while today most UI tax collection is "experience rated" (meaning that employers whose workers claim UI benefits pay into the system proportionately), it would be important that the cost of this new policy is borne as broadly as possible to guard against unintended labor force repercussions on women of child-bearing age. Fourth, paid FMLA leave could lead employers to police workers taking FMLA-covered leave to a new extent. [Finally, data collection of initial claims or maintaining DOL authority as best possible? Abuse?]

FOI/w structure below, although may not be this way

Your advisors have devised a proposal to take significant action in this area, while mitigating the potential for unintended negative consequences. You would direct the Department of Labor to work with States on ways to use their UI systems to fund paid leave for parents only following birth or adoption. You might also ask DOL to consider whether other categories of leave would be appropriate, but birth and adoption are two easily verifiable and attractive conditions to embrace. You would direct DOL to develop regulations that define the scope of States' authority to provide this new benefit and sets parameters for program design. In addition, DOL would develop model legislation that guides States in program development. To the fullest extent possible under executive authority, DOL would address ~~the~~ the issues discussed above in the regulation, which would be binding for States, such as a separate data collection requirement. Remaining policy issues would be addressed in the model State legislation that would accompany the regulation.

no it's

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This option allows us the benefit of moving forward the important debate of making leave affordable for new parents, while also mitigating many potential downsides. Even if no State chooses to adopt this significant change in State UI policy, this step would be an important signal that States should be thinking of creative ways to provide paid leave benefits for American workers.

secretary of labor

more up.

- ___ PROCEED
- ___ HOLD OFF AT THIS TIME
- ___ LET'S DISCUSS (could perhaps other analyses + limited categories)

~~After considering the cost of and other, most of your advisors (name) have agreed~~

Your advisors have considered various ~~ways~~ of advancing the policy of paid leave while mitigating ...

Ideally, we would issue a reg. confined to parents following birth... Dept of L's solicitor's office says this may not have authority... Think we can

Even if

~~The continuation~~

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Ideally, the ~~regulation~~ DOL's ~~regulation~~ ^{regulation} ~~would~~ ^{be able to} continue states to this kind of expansion of the UI system. The DOL Solicitor's Office is still reviewing whether it has legal authority to do this; it may not be able to distinguish between parental leave and other FMLA categories. In this case, ~~we would rely~~ we would rely on the model legislation to guide states toward this relatively modest expansion. Although ~~not eliminating the risk of~~ ^{latency} this course has some risk (states could choose to ignore our direction and prudence), we are relatively confident that few states would choose to impose far greater burdens on their own UI systems.

several

~~but~~ This approach would allow you to send a very clear signal about moving forward on paid leave for new parents, while also making clear that you will not countenance other, less appropriate uses of ~~your~~ UI benefits. ^{The action, however, will not} ~~Add of the offices~~ be uncontroversial. ^{groups} ~~The~~ Business and their Republican allies on the Hill may object to ~~the regulation~~ even this limited expansion of the UI system and attempt to halt the regulatory process through appropriations riders.

All of the...

The recommendation presented in this memo
and the First Lady's Office – agree that ~~this~~ is an innovative and responsible approach to
addressing this issue.

___ **PROCEED**

___ **HOLD OFF AT THIS TIME**

___ **LET'S DISCUSS**

May 21, 1999

DECISION MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED

SUBJECT: POLICY ANNOUNCEMENTS FOR GRAMBLING SPEECH

Your Grambling State University commencement address this Sunday focuses on the need to empower parents in this new economy with greater tools to balance their responsibilities to their jobs and their families. You will ~~announce~~^{release} a new study by the Council of Economic Advisors that analyzes the "time crunch" that parents increasingly feel. In addition, you will announce a new policy that addresses this challenge for federal workers. You will direct the Office of Personnel Management to revise its regulations to allow federal workers to use up to 12 weeks of accrued sick leave to care for a spouse, child, or parent with a "serious health condition," as that term is defined ~~for the purpose of applying~~^{under} the Family and Medical Leave Act (FMLA). Currently, federal workers are allowed to use only 13 days of sick leave to care for an ill relative. This new policy will enable federal workers to use the sick leave they have earned on the job to take care of a loved one with a serious health condition.

The DPC has also led a policy process to examine non-legislative options for action to enable States on a voluntary basis to use their Unemployment Insurance systems to provide benefits to workers on some form of FMLA-covered leave. This year, four States with surpluses in their UI trust funds – Massachusetts, Vermont, Maryland, and Washington – had bills introduced in their State legislatures that would do this. Three of the four States, anticipating conformity problems, have asked for comment from the Department of Labor (DOL). While many question the prospects of State legislative efforts, DOL has been pressured from Senators Kennedy, Dodd, Leahy, and Murray, the AFL-CIO, and women's groups to allow States this flexibility; business groups have predictably weighed in strongly against opening up UI for this purpose.

Taking a non-legislative step to advance paid leave for American workers would be a bold way to enable workers to spend more time with their families in important times. The 1996 FMLA Study, *A Workable Balance*, found that lost wages are a significant barrier to taking leave, particularly for lower income workers. Even if no State elected to use their UI system in this way (as many argue is very likely), advancing a proposal that would allow State experimentation would send a strong message that making leave affordable for workers is a new priority and that States should be thinking of creative ways to provide paid leave benefits ~~for~~^{workers.}

5 billion annually

category 3

However, the challenges and risks to embracing an expansive change to the UI system are considerable. First, the expense of such a system, if ever fully implemented in all States, would be significant (estimates begin at \$2). Second, the breadth of purposes covered by the FMLA raises concerns. The majority of FMLA-covered leave is taken by workers caring for their *own* serious health conditions, and advancing a policy of providing UI benefits for this leave might transform the UI system into a paid sick leave program ~~and~~ ^{lead to} significant and regressive substitution effects (employers may abandon their sick leave benefit programs). Third, while today most UI tax collection is "experience rated" (meaning that employers pay into the system based on their workers' use of it), the cost of this new policy should be borne as broadly as possible to guard against unintended labor force repercussions ~~on~~ ^{on} women of child-bearing age.

Your advisors have considered various ways of advancing the policy of paid leave while also mitigating the potential for unintended negative consequences. Ideally, we would issue a regulation that confines the allowance of new UI benefits to parents following birth or adoption (and, perhaps, other analogous, limited categories) and ensuring that these new benefits are not "experience rated." The DOL Solicitor's office advises that while regulations provide us with significant ^{ability} ~~leverage~~ to set parameters for State programs, we may not have the authority to limit their scope as much as we would like. Nonetheless, we believe that we can accomplish much the same thing with a broader regulation encompassing all FMLA applications if (a) you focus on new parents in the ^{new} Presidential Directive to DOL initiating the regulatory process, and (b) DOL accompanies the regulation with model State legislation confining State programs to new parents and ensuring that the new benefit is not "experience rated."

This construct does not mitigate all danger of unintended consequences. We cannot ensure, for instance, that States would follow the model legislation we would propose and elect only to grant UI benefits to new parents, rather than the full category of FMLA covered leave. However, we would send clear signals about what the Administration believes is an appropriate new use of UI benefits and use the model State legislation to guide States in the right direction. Furthermore, you would only be on record as supporting this narrow new use of UI trust funds.

This option allows us the benefit of moving forward the important debate of making leave affordable for new parents, while also mitigating many potential downsides. All of the offices involved in this process – the NEC, OMB, DOL, CEA, and the First Lady's Office – agree that this is an exciting and responsible approach to addressing this issue.

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☐ LET'S DISCUSS

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DRAFT ~~SECRET~~

May 20, 1999

DECISION MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED

SUBJECT: POLICY ANNOUNCEMENTS FOR GRAMBLING SPEECH

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However, the challenges and risks to embracing an expansive change to the UI system are considerable. First, the expense of such a system, if ever fully implemented in all States, would be significant (estimates begin at \$2). Second, the breadth of purposes covered by the FMLA

raises concerns. The ~~vast~~ majority of FMLA-covered leave is taken by workers caring for their own serious health conditions, and advancing a policy of providing UI benefits for this leave might transform the UI system into a paid sick leave program and lead to significant and regressive substitution effects (employers may abandon their sick leave benefit programs).

Third, while today most UI tax collection is "experience rated" (meaning that employers whose workers claim UI benefits pay into the system proportionately), ~~it would be important that the cost of this new policy is borne as broadly as possible to guard against unintended labor force repercussions on women of child-bearing age.~~

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Make
new
benefit

This construct does not mitigate all danger of unintended consequences. We cannot ensure, for instance, that States would follow the model legislation we would propose and elect only to grant UI benefits to new parents, rather than the full category of FMLA covered leave. However, we would send clear signals about what the Administration believes is an appropriate new use of UI benefits and use the model State legislation to guide States in the right direction. Furthermore, you would only be on record as supporting this narrow new use of UI trust funds.

This option allows us the benefit of moving forward the important debate of making leave affordable for new parents, while also mitigating many potential downsides. All of the offices involved in this process – the NEC, OMB, DOL, CEA, and the First Lady's Office – agree that this is an exciting and responsible approach to addressing this issue.

___ PROCEED

___ HOLD OFF AT THIS TIME

___ LET'S DISCUSS

bold

DRAFT

May 20, 1999

DECISION MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED

SUBJECT: POLICY ANNOUNCEMENTS FOR GRAMBLING SPEECH

*Too often they exhaust
themselves*

Your commencement ^{address} speech this Sunday at Grambling State University focuses on the need to empower parents in this new economy with greater tools to balance their responsibilities to their jobs and their families. You will announce a new study by the Council of Economic Advisors that analyzes the "time crunch" that parents increasingly feel. In addition, you will announce a new policy that addresses this challenge for federal workers. You will direct the Office of Personnel Management to revise its regulations to allow federal workers to use up to 12 weeks of accrued sick leave to care for a spouse, child, or parent with a "serious health condition," as that term is defined for the purpose of applying the Family and Medical Leave Act (FMLA). Currently, federal workers are allowed to use only 13 days of sick leave to care for an ill relative. This new policy will enable federal workers to use the sick leave they have earned on the job to take care of a loved one with a serious health condition.

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strongly

Taking a non-legislative step to advance paid leave for American workers would be a bold way to enable workers to spend more time with their families in important times. The 1996 FMLA Study, *A Workable Balance*, found that 40 percent of leave-takers report that they cut their leave short due to lost wages, and 64 percent of respondents who did not take leave when needed (3.4 percent of respondents) cite cost as a barrier. Furthermore, the study found that lower-skilled, poorer workers are far less likely to have any wage replacement for FMLA leave; for instance, hourly employees, who are more likely to have lower incomes and lower levels of education, are four times as likely as salaried leave-takers to report receiving no pay during their leaves. And, most of the wage replacement that workers do report for their FMLA leave is in the form of sick, personal, or vacation pay.

*lost wages are a significant
barrier to taking leave, particularly
for lower income workers.*

Making empl. bear the cost of this new benefit could lead empl. to

However, the challenges and risks to embracing an expansive change to the UI system are considerable. First, the expense of such a system, if ever fully implemented in all States, would be significant (ranging from \$2 to \$9 billion annually) ^{in the form of higher tax on business}. Second, the breadth of purposes covered by the FMLA raises concerns. The vast majority of FMLA-covered leave is taken by workers caring for their own serious health conditions, and advancing a policy of providing UI benefits for this leave might transform the UI system into a paid sick leave program and lead to significant and regressive substitution effects (employers may abandon their sick leave benefit programs). ~~Covering sick leave could also lead to abuse of this policy.~~ Third, paid FMLA leave could lead employers to police workers taking leave to a new extent. ~~Fourth~~, while today most UI tax collection is "experience rated" (meaning that employers whose workers claim UI benefits pay into the system proportionately), it would be important that the cost of this new policy is borne as broadly as possible to guard against unintended labor force repercussions on women of child-bearing age. [Finally, data collection of initial claims or maintaining DOL authority as best possible? Abuse?]

FMLA-covered

Your advisors have devised a proposal to take significant action in this area, while mitigating the potential for unintended negative consequences. You would direct the Department of Labor to work with States on ways to use their UI systems to fund paid leave for parents only following birth or adoption. (You might also ask DOL to consider whether other categories of leave would be appropriate). In so doing, you would direct DOL to develop regulations that define the scope of States' authority to provide this new benefit and set parameters for their action. ^{in program design} ~~developing a new program~~ ^{in program design} in implementing this change. To the fullest extent possible, DOL would address the issues discussed above in the regulation, such as a separate data collection requirement. Remaining policy issues would be addressed in the model State legislation that would accompany the regulation.

in program design

which would be binding for States.

This construct does not mitigate all danger of unintended consequences. We cannot ensure, for instance, that, ~~to the extent States would adopt any of this policy~~, States would elect only to grant UI benefits to new parents, rather than the full category of FMLA covered leave. However, we would send clear signals about what the Administration believes is an appropriate new use of UI benefits and use the model State legislation to guide States in the right direction. Furthermore, you would only be on record as supporting this narrow new use of UI trust funds.

This option allows us the benefit of moving forward the important debate of making leave affordable for new parents, while also mitigating many potential downsides of such an. Even if no State chooses to adopt this significant change in State UI policy, this step would be an important signal that States should be thinking of creative ways to provide paid leave benefits for American workers.

☐ PROCEED

☐ HOLD OFF AT THIS TIME

☐ LET'S DISCUSS

under executive authority

John Frazier

- Chuck Marr
- Barbara Chow
- Larry Matlack
- Mark McFellon
- Emil

- Barry White
CEA XX



Barry White
10/22/98 07:44:01 PM

Record Type: Record

To: Nicole R. Rabner/WHO/EOP
cc: Larry R. Matlack/OMB/EOP
bcc:
Subject: Re: Paid Parental Leave

Nice to know you are still in there pitching. I suppose for a first meeting, it would be me and Larry Matlack and a couple of his examiners (we'll pick them), and at the policy level, Chow. Pls invite Barbara to the first discussion.

To be sure to get us, don't schedule your meeting Monday 9-12 or 2:30-4; Tuesday 10-1 or 3:30 - 4:30; Wednesday 9-11:30 or 2-3. There is lots of '00 Budget stuff going on.

Nicole R. Rabner

Nicole R. Rabner

10/22/98 06:53:04 PM

Record Type: Record

To: Barry White/OMB/EOP@EOP
cc:
Subject: Paid Parental Leave

Barry, we are exploring, in the "new ideas" category of budget-related initiatives, a paid parental leave proposal with the DOL using the UI system (you'll remember this proposal discussed in conjunction with the child care initiative last year this time). Early next week, we plan to call a preliminary meeting to discuss the proposal, which, I suspect, will help us prepare for a DPC Deputies or Principals meeting in the coming weeks. Who at OMB should we include in the preliminary discussion meetings?

→ 3 pm ~~Wed~~ Thursday

F10/7/98

January 5, 1998 Final

MEMORANDUM FOR EMIL PARKER
 AMY FINKELSTEIN
 GUS GAUCHER

FROM: JOHN FRASER

SUBJECT: FMLA Estimates

Per this morning's request, here is an estimate of the number of covered and eligible leave takers whose longest leave was for maternity-disability or care of a newborn, adopted or foster child whose leave was over 12 weeks. This comes from the 18 - month long FMLA survey.

Estimated are (1) the number of covered employees whose longest leave was for (a) maternity disability or (b) care for a newborn, adopted or foster child; (2) the number of these leave takers who took leave for more than 12 weeks (85+ days); (3) an adjustment to factor out those leave takers who, although at a covered site, would have been ineligible for FMLA; and (4) an estimate of the number of covered and eligible leave takers whose longest leave was for maternity-disability or care of a newborn, adopted or foster child whose leave was over 12 weeks.

A. Maternity-Disability	B. Newborn, Adopted, Foster	Totals
1. From table 5B covered worksites		
563,153	1,972,861	17.1 % of all leave
2. From table 5D leave takers at covered worksites taking more than 85 days		
x 0.424	x 0.162	
238,777	319,603	
3. Eligibility Adjustment*		
x 0.83	x 0.83	
4. Estimated leave takers		
198,185	265,270	463,000

* eligibility adjustment is an average for all covered leave takers and does not distinguish differences in eligibility among those taking parental leave and other types of leave.

11/26/97

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11/26/97 3:00 PM

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Paid-Leave Plan for the Birth or Adoption of a Newborn

Thanks to the Family Medical Leave Act, signed into law by President Clinton on February 5, 1993, millions of Americans can take unpaid leave from their jobs (up to 12 weeks per year) to care for an infant after birth or adoption -- and know that a job will be waiting for them when they return. But many of those workers are unable to take the full amount of FMLA-protected time they need, because they simply can't afford to go that long without a paycheck. And other workers who, although not protected by FMLA, have access to unpaid leave can face the same dilemma.

To address this obstacle, the Administration could propose the creation of a New Parent Paid Leave Plan, to provide eligible parents with partial wage replacement for up to six weeks. While careful consideration needs to be given to the effect of such a program on employer benefit plans, design elements of a workable program would include:

- Income eligibility: Eligibility to receive funds would be tied to income. The simplest approach would be to set a family income cap -- only parents with family earnings below a set amount would be eligible to receive new-parent paid leave. An alternative but more complicated approach would be to vary the benefit amount by family income.

Pros: - Assists the families that are most likely to face a financial barrier to taking family leave for a newborn/adopted infant.

- Limiting eligibility to workers protected by the FMLA would exclude those most likely to benefit from such a program.

- Workforce attachment:

1. Prior to receiving benefit: New parent paid leave would be available to those qualifying parents who are authorized to work in the U.S. and have been in the workforce --- part time or full time -- for each of the fifty-two weeks prior to giving birth/adopting.

Pros: - Funds available to all working parents, regardless of FMLA coverage
- Links eligibility to connection to the workplace and to the concept of wage replacement.

- One year requirement demonstrates pre-pregnancy workforce participation.

- Minimum standard for amount of time in the workforce reflects FMLA concept and excludes from eligibility those whose workforce

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participation was minimal.

- If UI administers the program, they will have access to employment information for all UI-covered workers

Cons: - If UI administers the program, an alternative method of confirming eligibility would be necessary for non-UI covered workers (e.g., self-employed, independent contractors, etc.) -- for example, proof of receipt of wages during the time period. This would add cost to the proposal.

- If UI administers the program, it may be simpler if the eligibility requirement is the same as for UI - work in roughly 20 of the preceding 52 weeks. (Note, however, that states have discretion to have additional UI qualifying requirements.)

Note: If data indicates that workers most likely to need paid leave have generally worked for less than one year, we should change the one-year requirement as appropriate.

2. After receiving benefit: Workers could receive benefits regardless of whether they intend to return to their job, or whether they in fact return.

Pros: - Eligibility based on return to employment or the workforce would require a penalty/recovery scheme for those who -- for whatever reason -- fail to return to work in a timely manner.

- Commission data indicates that lower income workers, the ones most likely to need wage-replacement, are the least likely to return to work following the birth or adoption of an infant.

Cons: - Parents who voluntarily leave their jobs to care for newborn/adopted infants have presumably decided they are not financially dependent upon their wage, and therefore do not need a wage replacement benefit. (The lower any income requirement is set, the less this problem exists -- fewer eligible parents will be financially able to quit their job.)

- Benefit duration and timing: Benefits would be available only for the first six weeks following birth/adoption. A worker with access to employer-paid leave who also wanted to participate in federal paid leave would have to use the federal benefit before using employer-paid leave.

Pros: - Simpler to administer
- Minimizes disincentives on employers who might otherwise provide benefits or more generous benefits.

DRAFT

- Cons: - To the extent that an employer benefit plan limits post-pregnancy use of sick leave to a period immediately following birth, female workers with accumulated paid sick leave who give birth may not be able to use paid sick leave after six weeks.
 - May not cover time at home for newborn babies/mothers who have extended hospital stays.
- Administration/Implementation: The program would be administered, and the benefits paid, through the state UI system. State participation would not be mandatory.
 - Pros: - State employment security agencies (SESAs) have experience in making payments as agents of the Federal government in the case of other programs, such as Trade Readjustment Allowances. In FY 98 there are about 40,000 TRA recipients collecting about \$230M in benefits at an administrative cost of about \$5 M per year, which would provide an order of magnitude in evaluating this proposal.
 - States are able to perform these functions under agreement with a Federal agency assuming suitable arrangements can be made to meet the cost of administering this separate payment system.
 - Cons: - To the extent that SESAs are asked to make eligibility determinations that differ from those under the UI system, staff training and administrative costs would rise substantially.
 - Since the costs of the benefits would be coming from a fund other than the State trust fund (unless Federal law is amended), it may be expensive for the States to establish the alternative procedures necessary to make the payments.
 - States are currently underfunded for UI administration costs and would not be able to embark on a new program without some funding guarantees.
- Benefit amount: Simplest approach would be to set one benefit amount available to all eligible workers: \$200 per week (based on UI average benefit of \$190.19, which represents 35% of the average weekly wage). Alternatives could include having one or two benefit levels, keyed to income ranges.

F11/26/97

DRAFT**POTENTIAL CHANGES FOR FMLA****ADD PAID LEAVE COVERAGE FOR 6 WEEKS OF NEWBORN CARE**

Maximum number of women 3,378,000 with newborns in a given year (CPS)

Assume that 1,834,000 will return to work (LFPR of those with <1 year olds)

Assume between 20-33% will be ineligible (tenure data) [will be checking lower bound with work experience data]

Using bounds implies between 1,467,200 and 1,228,780 would make tenure cut and may want leave to take care of infant

Without means testing implies cost of (at \$200x6weeks=1200 each mother) = \$1,760,640,000 and \$1,474,536,000 (w/o administrative costs)

How many of these women would meet an income eligibility cut?

Median income for families with children under 3 -- \$36,626. If this was the cut off than 1/2 of potential above would not qualify so cost would be half -- so between \$880,320,000 and \$737,268,000.

Add administrative costs of approximately \$200,000 (\$60m to change UI base period and \$140m to add payment system to UI [no basis for this number]) and proposal costs out at \$1B.

↑ 80,000?
\$6,000,000?

EXTEND COVERAGE FROM 50 TO 25 PERSON ESTABLISHMENTS**EXTEND BENEFITS FROM 12 WEEKS TO 26 WEEKS**

assumes all
eligible take
find 6 wks
not looking at
cut

Unemp Ins. system

6 wks



Bergman Terry <bergman-terry@dol.gov>
11/12/99 01:05:45 PM

Record Type: Record

To: Ann O'Leary/OPD/EOP

cc:

Subject: The Birth and Adoption regs

I don't know if you saw the Daily labor report article today on the upcoming regs, but I thought I would flag it for you. In addition, I understand that Robert Pear of the NY Times has asked to speak to our Solicitor today on the issues raised in his earlier article.

We're concerned that these press reports (which key on business oppositions and the reversal of our old position on "able and available") are framing the debate on the regs, when the proposed rules themselves would answer a number of the more difficult questions. I was at the dentist this morning when this issue came up in a staff meeting, but I understand that our Deputy COS was going to make some calls to the White House (my guess is through Cabinet Affairs) trying to get clarification on the timing of the regs.

We really want to get them out....can you give me any update on the thinking about an event? Without WH clearance our Dep Sec will not allow the package to be signed and sent to the Federal Register.



HUMAN
RIGHTS
CAMPAIGN

919 18th Street, NW
Washington, D.C. 20006
phone 202 628 4160
fax 202 347 5323

MEMO

DATE: May 26, 1999

TO: Winnie Stachelberg, Political Director

FROM: Seth Kilbourn, Deputy Director for Health and Family Policy
Barbara Menard, Senior Policy Advocate

SUBJECT: Federal Government Family-Friendly Workplace Policies

In the past month, the President has announced two new policies that will greatly assist Federal employees who have a family member with a serious medical condition. We applaud the President's efforts to set an example for the private sector by creating new family-friendly workplace policies for Federal government employees. We are concerned, however, that if these policies are specifically linked to a particular definition of family, many federal employees will be unnecessarily denied those benefits.

Last week, the President proposed to extend from 13 days to 12 weeks the amount of accrued sick leave a Federal government employee may take in order to care for a sick family member. (See attached Executive Memorandum) The 12-week cap appears to be based on the Family and Medical Leave Act (FMLA) and the President's memorandum specifically refers to "serious illness as defined by the FMLA". Our concern is that FMLA, which defines a spouse as a "husband or wife as recognized by a state", will be similarly used to define the particular family members for whom a Federal employee can take his or her sick leave.

It is our understanding that the current policy allowing the use of 13 days of sick leave to care for an ill family member is governed by each agency individually and is not restricted by definitions in the FMLA. Thus, it is possible that employees whose agencies had previously allowed them to take sick time to care for an ill partner may not even be able to use any sick time to care for their partner under the new policy.

The Office of Personnel Management has not yet proposed formal regulations that would implement the President's Executive Memorandum. We recommend that the Domestic Policy Council to work closely with OPM to ensure that, at the very least, Federal employees do not take a step backward in their ability to care for their families under this new policy. Further, we would like to encourage the DPC to ensure that the new 12-week sick leave expansion include a more broad definition of family member than what is currently in the FMLA. Again, while we applaud the President's efforts to make the Federal government a more family-friendly workplace, we want to ensure that all employees are included in that effort.

On a separate but related issue, we also recommend encouraging the DPC to work with OPM on the definition of "eligible relative" in implementing the President's proposal to allow Federal

government employees to purchase group long-term care insurance for themselves and eligible relatives. The authorizing legislation for this program includes language that allows an "eligible relative" to be defined by the Office of Personnel Management or by the individual insurance companies with which the Federal government chooses to contract. We sincerely hope that OPM and at least one of the insurance companies available for this program will define "eligible relative" appropriately.

We recommend a meeting with key White House staff next week (anytime June 1 – 4) to discuss these two policies and the broader issue of definitions of family during the formulation of future family-friendly initiatives.

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

May 24, 1999

May 24, 1999

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: New Tools to Help Parents Balance Work and Family

Since I became President, my Administration has worked hard to make sure that parents have the tools they need to meet their obligations at home and at work. I am proud that the very first bill I signed into law was the Family and Medical Leave Act (FMLA). Since 1993, the FMLA has allowed millions of Americans to take up to 12 weeks of unpaid leave -- without fear of losing their jobs -- to care for a newborn or adopted child, to attend to their own serious health needs, or to care for a seriously ill parent, son, daughter, or spouse. Too many American workers, however, have been unable to take the leave they need because they simply cannot afford to go without a paycheck.

Therefore, I am taking new steps toward enabling workers to take the leave they need.

First, I hereby direct the Secretary of Labor to propose regulations that enable States to develop innovative ways of using the Unemployment Insurance (UI) system to support parents on leave following the birth or adoption of a child. In addition, I direct the Secretary to develop model State legislation that States could use in following these regulations. In this effort, the Department of Labor is to evaluate the effectiveness of using the UI system for these or related purposes. In a 1996 study conducted by the Commission on Family and Medical Leave, lost pay was the most significant barrier to parents taking advantage of unpaid leave after the birth or adoption of a child. This new step will help to give States the ability to eliminate a significant barrier that parents face in taking leave.

Second, I direct the Director of the Office of Personnel Management to propose government-wide regulations to allow Federal employees to use up to 12 weeks of accrued sick leave each year to care for a spouse, son, daughter, or parent with a "serious health condition," as that term is defined for the purpose of applying the FMLA. Currently, the amount of sick leave that can be used to care for a family member who is ill is limited to 13 days each year for most Federal employees. By enabling Federal workers to use the sick leave they have earned, we will eliminate a significant barrier to caring for a family member with a serious health condition. The use of paid sick leave under this policy will be subject to the same conditions as the use of unpaid leave for these purposes under the FMLA. In particular, the same notification and certification requirements that govern the use of unpaid leave to care for a spouse, son, daughter, or parent under the FMLA will apply to Federal employees who use paid sick leave for this purpose. I believe the Federal Government has an important role to play in setting an example for the Nation.

Finally, I direct the Director of the Office of Personnel Management to establish an Interagency Family Friendly Workplace Working Group within 90 days to promote, evaluate, and exchange information on Federal family-friendly workplace initiatives. I also direct the head of each executive department and agency to appoint a family-friendly work/life coordinator to serve as a member of this Working Group. Working Group representatives will be responsible for making sure that Federal employees are aware of the full range of options available to them to meet their personal and family responsibilities (such as alternative work schedules, telecommuting, part-time employment, and job sharing).

The coordinators also will provide employees with information about child and elder care resources currently available in their communities, and establish and promote parent support groups, elder care support groups, and on-site nursing mothers' programs.

WILLIAM J. CLINTON

#

**PRESIDENT CLINTON: HELPING PARENTS
MEET THEIR RESPONSIBILITIES AT HOME AND AT WORK**

May 23, 1999

Today, in a commencement speech at Grambling State University, President Clinton announced new steps to help workers meet their responsibilities to their jobs, and their more important responsibilities to their families. The President put forward two new proposals to make leave more affordable for American workers. In addition, he released a new report that examines the "time crunch" that parents increasingly feel as they struggle to balance their responsibilities at home and at work.

Working to Make Parental Leave More Affordable. A 1996 study by the Commission on Family and Medical Leave found that loss of wages was the most significant barrier to parents taking advantage of unpaid leave following the birth or adoption of a child. Today, President Clinton directed the Secretary of Labor to propose new regulations and model state legislation to enable states to develop innovative ways of using the Unemployment Insurance (UI) system to support parents taking leave to care for a newborn or adopted child. Several States recently have asked the Administration whether they could use the UI system for this purpose consistent with federal law. The new regulations will authorize this expansion of the UI system, thereby allowing states that wish to use unemployment insurance to assist new parents to put their plans into effect.

Enabling Federal Workers to Take Paid Leave to Care for Sick Family Members. In an effort to set an example for all employers, President Clinton also today directed the Office of Personnel Management (OPM) to revise its government-wide regulations to allow federal employees to use up to 12 weeks of accrued sick leave each year to care for a spouse, son, daughter, or parent with a "serious health condition," as that term is defined for the purpose of applying the Family and Medical Leave Act. Currently, the amount of sick leave that can be used to care for a family member who is ill is limited to 13 days each year for most federal employees. By enabling federal workers to use more of the sick leave they have earned, according to conditions established by the FMLA, this measure will remove a significant barrier to caring for an ill family member. The President also has directed the OPM to establish an Interagency Family Friendly Workplace Working Group to develop, promote, and evaluate federal family-friendly workplace initiatives. The President previously has taken other actions to ensure that federal government is a model employer, including: allowing federal employees to donate annual leave to other employees; expanding flexible family-friendly work arrangements, such as job sharing, career part-time employment, alternative work schedules, telecommuting, and satellite work locations; and directing improvements in the quality of federally sponsored child care.

A New Study on the Amount of Time Available for Families. The President released a report by his Council of Economic Advisers (CEA) today that details the factors that have led to decreased amounts of time available for parents to spend with their children. The report, *Families and the Labor Market, 1969-1999: Analyzing the "Time Crunch,"* demonstrates that the increase in hours mothers spend in paid work, combined with the shift toward single-parent

families, has resulted in families experiencing an average decrease of 22 hours a week (14 percent) in time that parents spend with their children. The report concludes that the increased time at work among parents requires policy-makers to seek new ways to promote strong families, including greater flexibility in paid work hours, more affordable child care, better support for families with low-wage earning parents, and methods for encouraging two-parent families to form and stay together.

Advancing An Agenda To Help Parents Balance Their Responsibilities At Home And At Work. In his balanced budget request, the President put forward a bold agenda to provide families with greater tools to meet their responsibilities at home and at work. This agenda includes: an historic initiative to make child care better, safer, and more affordable for working families; a tripling of our investment in after-school programs through the 21st Century Community Learning Center program; a new tax credit to help Americans struggling with long-term care costs; and proposals to expand the Family and Medical Leave law to cover more workers and allow leave for more parental activities, including parent-teacher conferences and routine doctor's visits.

**URGENT****UNITED STATES DEPARTMENT OF LABOR****FACSIMILE TRANSMISSION****OFFICE OF CONGRESSIONAL AND INTERGOVERNMENTAL AFFAIRS**

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

Confirmation: 202/219-6141

5/21

To: Nicole

DEPARTMENT/COMPANY:

① PC

FACSIMILE NUMBER:

456-2878

FROM: DARLA LETOURNEAU

NUMBER OF PAGES INCLUDING COVER:

FACSIMILE REPLIES:

CONGRESSIONAL AFFAIRS

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IMMEDIATE OFFICE OF THE ASSISTANT SECRETARY

202/219-5288

MESSAGE:

On UI/FMLA issue - just wanted
to make sure you'd seen this
letter from business groups to
Secretary.

May 18, 1999

The Honorable Alexis M. Herman
Secretary of Labor
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Dear Secretary Herman:

We understand that the Department's longstanding position with respect to the Family and Medical Leave Act (FMLA) and Unemployment Insurance (UI) is under review. Specifically, we understand that you are being urged to change federal FUTA standards to permit states to provide workers who are already on leave under the FMLA to simultaneously collect UI.

The DOL Bureau of Employment Security (now the Unemployment Insurance Service) stated in 1962 that: "The qualifying requirement and the requirement that claimants be able and available for work are the two halves of a single requirement that protection be limited to unemployed members of the labor force." Allowing workers on FMLA leave to collect UI would undermine both the spirit and the law of the Federal/state unemployment program. It is inappropriate to even consider advancing such a fundamental philosophical change of this magnitude through a "back door" change in a longstanding DOL interpretation. Most unfortunately, for workers who find themselves out of work, this proposal would divert UI tax dollars by paying benefits to claimants who are not even looking for work. The proposal would escalate UI costs and result in employers who are exempt from the FMLA subsidizing those who are not.

We urge you to maintain the Department's current position that states must require claimants to be available for work in order to qualify for Unemployment Insurance. Allowing for Unemployment Insurance for workers on Family and Medical Act Leave would undermine both the spirit and the letter of both the FMLA and the UI program. If you have any questions concerning this issue, please feel free to have your staff contact Eric Oxford at UWC-Strategic Services on Unemployment & Workers' Compensation at (202) 682-1515, Deanna Gelak at the Society for Human Resource Management at (703) 535-6027 or any of the associations, companies and organizations listed below.

Sincerely,

Associated Builders and Contractors
American Hotel & Motel Association
American Rental Association
American Trucking Association
Americans for Tax Reform
Associated General Contractors
Association of International Automobile Dealers
Association of International Automobile Manufacturers
Food Marketing Institute
Goodyear Tire & Rubber Company
International Mass Retail Association

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P.03

Laurdan Associates, Incorporated
Maryland Chamber of Commerce
Mitsubishi Motor Manufacturing of America
Montgomery Maryland Chapter of the Society for Human Resource Management
National Association of Manufacturers
National Association of Retailers
National Federation of Independent Business
National Mining Association
National Restaurant Association
Printing Industries of America
Society for Human Resource Management
Small Business Survival Committee
UWC-Strategic Services on Unemployment & Workers' Compensation
United States Chamber of Commerce
University of Chicago Hospital System

** TOTAL PAGE.03 **

05/20/99 15:41 TX/RX NO.2142 P.003

DATE: 5/20/99

U.S. DEPARTMENT OF LABOR



UNEMPLOYMENT INSURANCE SERVICE

FAX TRANSMITTAL COVER SHEET

NUMBER OF PAGES TRANSMITTED (INCLUDING COVER SHEET) 3

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KILBANE

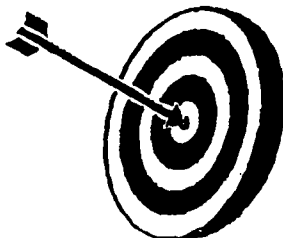
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FAX NO.: 202-219-8506

MESSAGE:

URGENT

JUST RECEIVED, FYI



May 18, 1999

The Honorable Alexis M. Herman
Secretary of Labor
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

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We urge you to maintain the Department's current position that states must require claimants to be available for work in order to qualify for Unemployment Insurance. Allowing for Unemployment Insurance for workers on Family and Medical Act Leave would undermine both the spirit and the letter of both the FMLA and the UI program. If you have any questions concerning this issue, please feel free to have your staff contact Eric Oxfeld at UWC-Strategic Services on Unemployment & Workers' Compensation at (202) 682-1515, Deanna Gelak at the Society for Human Resource Management at (703) 535-6027 or any of the associations, companies and organizations listed below.

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Goodyear Tire & Rubber Company
International Mass Retail Association

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Mitsubishi Motor Manufacturing of America
Montgomery Maryland Chapter of the Society for Human Resource Management
National Association of Manufacturers
National Association of Retailers
National Federation of Independent Business
National Mining Association
National Restaurant Association
Printing Industries of America
Society for Human Resource Management
Small Business Survival Committee
UWC-Strategic Services on Unemployment & Workers' Compensation
United States Chamber of Commerce
University of Chicago Hospital System

*** TOTAL PAGE.03 ***



Carole Kittl

05/21/99 03:45:20 PM

Record Type: Record

To: Barbara Chow/OMB/EOP@EOP, Nicole R. Rabner/WHO/EOP@EOP

cc: Iratha H. Waters/OMB/EOP@EOP, Larry R. Matlack/OMB/EOP@EOP, Debra J. Bond/OMB/EOP@EOP

Subject: President's Speech at Grambling on UI and Parental Leave

I just got a call from a White House speechwriter (Paul Glastris, I think), who was pushing back on my edits to the paragraph on UI and parental leave. He understood my point, but still wanted to suggest in the speech that the benefits were "earned" and not a give-away.

What I want to flag for you is that the arguments the speechwriter was making move into the area of policy making. The most troublesome was his claim that this program would have no costs. I told him that his suggestions in the cost-control area had not been discussed in any of the policy meetings and told him that nothing should be said about costs in the President's speech.

The speechwriter raised issues like the person claiming UI for parental leave would be taking some risks in that he would have less of his UI entitlement left if he later lost his job. This could be true, but it depends a lot on how the parental leave program is designed and how it fits into the regular UI benefit system. Then he wanted to claim that this proposal would be revenue neutral. He described a situation that would require the person taking parental leave to give up more weeks in UI benefits (say 24 weeks of UI would given up to offset 12 weeks of parental leave). Obviously, nothing in this detail had been discussed at any policy meeting on the parental leave proposal, and such suggestions might well be rejected.

What's our authority for this proposal?

DOL has the authority to respond to states regarding the UI program and to evaluate the effectiveness of this program. DOL will address state flexibility in the rulemaking process.

When will individuals be able to receive benefits?

The Department must issue regulations governing the experimental program, and States must change their laws, before benefits can be paid.

Who would qualify?

The President has directed the Secretary to enable parents of newborns and newly-adopted children to receive benefit payments, who also meet State unemployment insurance law requirements.

Will this effort cover the same people as the Family Medical Leave Act (FMLA)?

In the process of rulemaking, DOL will address.

Why is the proposal limited only to parents of newborn or newly-adopted children rather than extending, for example, to individuals attending ill family members?

In a 1996 study conducted by the Commission on Family and Medical Leave, lost wages was the most significant barrier to parents taking advantage of unpaid leave after the birth or adoption of a child. Individuals with illnesses or other needs often have savings or insurance coverage which helps in providing for their care.

How long can a benefits be collected?

In the process of rulemaking, DOL will address. Duration is not expected to exceed 12 weeks.

How many States can participate in the program?

Participation is not limited to particular States.

Four States have introduced legislation that would pay all or some of these individuals. How does the proposal affect them?

It's premature to talk about the specifics of any of these proposals. However, none of these States could enact their proposals until the Department has issued its rules. The States would have to assure that their proposals meet the requirements of the rules.

Why are we doing the rule at this time?

Interest has been shown by the State legislatures and many others during the last two years. This rule will allow us to accommodate known interest and to determine the extent of interest.

How would this proposal affect employers' State unemployment tax rates?

The Department anticipates that individual employers will not be expected to bear the costs of their own employees taking leave. The costs, instead, will be shared by all employers which could increase their taxes depending on the take-up rate and its impact on the State's unemployment trust fund.

How does an individual qualify for unemployment insurance?

Specific qualifying rules vary from State to State, but individuals must generally show a certain attachment to the workforce in both length of employment and amount of earnings.

How does the unemployment insurance program work?

The unemployment insurance program provides partial wage replacement to workers who are unemployed. It is authorized under the Social Security Act and the Federal Unemployment Tax Act but operates under laws specific to each State. These State laws determine how workers qualify for benefits within broad federal guidelines. States would need to amend their laws to participate in this experiment.

Why use the unemployment insurance program for this purpose?

States interested in paying unemployment insurance to parents on leave following birth or adoption believe this is a logical application of the unemployment insurance program. All States already pay unemployment insurance to workers who are laid off but who the employer expects to recall. In some States, some workers remain eligible even if they become ill.

UI AND NEW PARENTS

Talking Points

- The President may announce that he has directed the US Department of Labor to explore using the Unemployment Insurance (UI) system to support parents on leave following birth or adoption. The Department would propose regulations and develop model legislation that States could use to enact State laws.
- The care of our children is uppermost in the minds of new parents and recent events have brought it even more to the forefront. Many parents are unable to take off work during those first few critical weeks of a child's life because of financial constraints. This policy direction will help those parents meet their family responsibilities without fear of financial ruin.
- We are proposing this program at this time because of the interest shown by the State legislatures during the last two years. The experiment will allow us to accommodate known interest and to determine the extent of interest.
- The policy direction is to enable the parents of newborns and newly-adopted children, who also meet State eligibility requirements, to be eligible beneficiaries.
- Through the rulemaking process, DOL will address issues such as the number of weeks that benefits would be available. (There is no formal connection between this effort and the FMLA.)
- The Department must issue regulations governing the experimental program, and States must change their laws before benefits can be paid.
- The experiment is not limited to particular States. Any State meeting the requirements of the Department's regulations can participate.
- It's premature to talk about the specifics of any of this program; however, no State could enact its proposal until the Department has issued its rules. The States would have to assure that their proposals would meet the requirements of the rules.
- The Department anticipates that individual employers will not be expected to bear the costs of their own employees taking leave. Instead, the costs will be shared by all employers. This could increase their taxes depending on the take-up rate and its impact on the State's unemployment trust fund balances.

UI AND NEW PARENTS

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Carole Kitt

05/21/99 01:11:47 PM

Record Type: Record

To: Nicole R. Rabner/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
Subject: Edit for President's Speech at Grambling

I want to suggest the following factual edits for the UI and paid parental leave paragraph in the President's speech at Grambling. These edits are in addition to the sentence that Barbara Chow sent you earlier today on the President's action (to replace the last sentence in the paragraph).

Bottom of p. 6 of 5/19 draft:

But we must also find creative new ways to allow private sector employees to ~~use the benefits they have earned to~~ finance the time off they need for their families. Several states have asked the federal government for permission to try a bold experiment: allow employees to ~~tap~~ use the unemployment insurance ~~balances they have accumulated~~ program so that they can have some income while they are on family leave. [This is a promising experiment and today, I am granting states that permission to conduct it.] ~~substitute Barbara's sentence~~

The reason for these edits is that the UI program does not have balances tied to individual workers (like accrued sick leave or a retirement program). UI taxes are set to generate enough money to support the small subset of workers who become unemployed, not enough to pay all workers.

Message Copied To:

Barbara Chow/OMB/EOP@EOP
Iratha H. Waters/OMB/EOP@EOP
Barry White/OMB/EOP@EOP
Larry R. Matlack/OMB/EOP@EOP
Debra J. Bond/OMB/EOP@EOP

NATIONAL EMPLOYMENT LAW PROJECT, INC.

55 John Street, 7th Floor

New York, NY 10038

Tel. (212) 285-3025

Fax (212) 285-3044

FAX TRANSMITTALDATE: May 20, 1999TO: Nicole RabnerFROM: Maurice Emsellem

TO FAX NUMBER: (202) 456-2878

MESSAGE OR COMMENTS:

As per Donna Lunkhoff's request.

Total number of pages: 4 (including cover memorandum)

If you experience any problems receiving this Fax,
please call Maurice at (212) 285-3025, ext. 106.

Nicole --

We understand that an issue has come up regarding the best process DOL should follow in communicating its decision to Massachusetts regarding the proposed UI law providing benefits to claimants on family leave. Our recommendation is that DOL respond to the Massachusetts inquiry immediately by letter given the strict deadlines of the Massachusetts Legislature (as described in the attached letter from the sponsors of the bill). In our view, the letter from DOL should simply state that the Massachusetts bill has been reviewed as requested and found to be consistent with federal UI law. In addition, since this bill raises issues of national UI policy, DOL should also indicate that it plans follow-up the letter with an Unemployment Insurance Program Letter (UIPL) describing DOL's position in more detail. UIPLs are subregulatory guidances used by the Unemployment Insurance Service to communicate national UI policy to the states.

Hope this helps with tomorrow's meeting.

Maurice



COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS SENATE
STATE HOUSE, BOSTON 02133-1059

SENATOR STEPHEN F. LYNCH
FIRST SUFFOLK DISTRICT
STATE HOUSE, ROOM 424
TEL. (617) 722-1150
FAX (617) 722-2191

COMMITTEES:
COMMERCE AND LABOR
(CHAIRMAN)

WAYS AND MEANS
EDUCATION
PUBLIC SERVICE
COURTICES
ETHICS

May 7, 1999

The Honorable Alexis M. Herman
Secretary of Labor
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Dear Madam Secretary:

As the lead Senate sponsor of Senate Bill 61, *An Act to Provide Unemployment Benefits for Family and Medical Leave Recall*, along with Representative Anne Paulsen, the lead House sponsor of the identical bill, House Bill 1890, we are writing in reference to the U.S. Department of Labor's ("the Department's") interest in these matters.

As you know, the National Employment Law Project and Greater Boston Legal Services, the proponents of this legislation, have been corresponding with your office regarding potential Federal law preemptions posed by these bills. More specifically, we are writing to follow up on their request that the Department issue an opinion regarding these issues. This opinion will allow us to work with the proponents of this legislation to address your concerns.

It is our understanding that the Department's concerns center around a state's authority to define when an employee is "available for work" while collecting unemployment insurance benefits. We have carefully reviewed the March 15, 1999 legal memoranda submitted to the Department and prepared by the National Employment Law Project and Greater Boston Legal Services. Based on these arguments, we are confident that Federal law does not prevent Massachusetts from allowing employees to collect unemployment while on family leave. We further believe that this legislation will more accurately respond to the reality of working life and will enhance the Commonwealth's ability to assist working families while building a strong business climate.

The Joint Committee on Commerce and Labor, of which I am the Senate Chairman, held a well attended public hearing on the legislation on April 7, 1999. The Committee received testimony from a range of experts in the field of family leave, including Dr. Jody Heymann from the Harvard School of Public Health, Dr. Francoise Carre from the Radcliffe Public Policy Institute, and Dr. Ann Bookman, the Executive Director of the bipartisan Family Leave Commission

RE

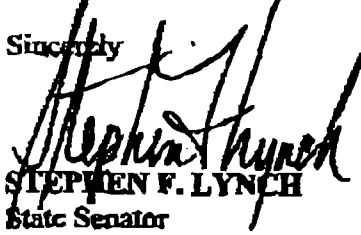
May 7, 1999

The Honorable Alexis M. Herman
Secretary of Labor
Page 2

which prepared the 1996 report *A Workable Balance* for Congress. As a result of the hearing, we are in the process of establishing a Working Sub-Committee comprised of legislators, representatives from labor and business, as well as experts in the employment and human resources fields to examine the issues raised by the legislation.

In order for our work to proceed, we respectfully request that you issue a ruling within the next few weeks, as to the legality of this piece of legislation. Due to our Legislative calendar, the deadline for reporting bills from the Committee is fast approaching. Your timely response is very important and appreciated. Should you have any further questions or concerns regarding these matters, please contact our respective offices.

Sincerely


STEPHEN F. LYNCH
State Senator


ANNE M. PAULSEN
State Representative

cc: The Honorable Edward Kennedy
Robert J. Haynes, President, Massachusetts AFL-CIO

PRELIMINARY DRAFT OF OPTIONS MEMORANDUM

The purpose of this memorandum is to outline non-legislative options for action to enable States on a voluntary basis to use their Unemployment Insurance systems to provide benefits to workers on FMLA-covered leave. This year, responding to surpluses in the UI trust funds, four States -- Massachusetts, Vermont, Maryland, and Washington -- had bills introduced in their State legislatures to use Unemployment Insurance (UI) to pay individuals on some form of FMLA-covered leave. Three of the four States, anticipating conformity problems, have asked for comment from the Department of Labor (DOL). DOL has been pressured from Senators Kennedy, Dodd, Leahy, and Murray, the AFL-CIO, and women's groups to allow States this flexibility; business groups have weighed in against opening up UI for this purpose.

The DPC has led a policy process to explore what responsible action the Administration could take to promote this approach, while also protecting the integrity of the UI system and ~~and~~ preserving DOL's authority to guard against ill-advised changes that States might propose (such as restricting benefits).

Background on Unemployment Insurance and FMLA

States have flexibility in designing and running their own UI systems. With some variation in implementation, the States determine UI eligibility with three general tests: (1) involuntary separation from work; (2) ongoing work search; and (3) availability for suitable work. Because DOL does not interpret federal law as setting specific requirements for the first two tests, the Department has allowed States to carve exceptions to them in the past (e.g. for illness, "good cause," and recalls). Therefore, the Department is prepared to allow a further exception to these tests for FMLA-covered leave. However, DOL has long interpreted federal law as mandating a specific "availability" requirement, *i.e.* workers have to be ready and available for work to claim benefits. DOL has used this interpretation to wall off regressive proposals by States to limit benefits. DOL *could* revise its policy to address FMLA by constructing a rationale that asserts that the UI availability requirement is met during FMLA-covered leave. States would then have the option of providing UI benefits to this new category of claimants, through some change to State law.

Taking a non-legislative step to advance paid FMLA-protected leave for American workers would be a bold way to enable workers to spend more time with their families in important times -- to care for a newborn or adopted child, to attend to their own serious health needs, or to care for a seriously ill parent, child or spouse. The 1996 FMLA Study, *A Workable Balance*, found that 40 percent of leave-takers report that they cut their leave short due to lost wages, and 64 percent of workers who did not take leave cite cost as a barrier. Proper design of such a State system, however, would be critical -- for instance, if States did not collect unemployment data for FMLA leave-takers separately, the unemployment rate could artificially rise. Also, if States did not share the cost of this new UI benefit across all employers, businesses that disproportionately employ women in their childbearing years could discriminate against them hiring and salary decisions.

Options for non-legislative action

OPTION ONE: Instruct DOL to Issue New Program Guidance. DOL would issue a program letter that revises DOL's position on the UI availability requirement by deeming the requirement met for FMLA-covered leave. The guidance would cabin as closely as possible the future ability of States to make other policy modifications to the availability requirement.

PROS:

- Represents the fastest way to allow States the option of providing UI benefits to FMLA-covered leave takers.
- Carefully crafted guidance could interpret narrowly the DOL policy shift and assert DOL's authority to reject future applications for policy modifications.

CONS:

- Administration recommendations for the design of the State program, *i.e.* in data collection and cost-sharing, would not be binding.
- May undercut DOL's future ability to stave off States attempts to carve objectionable exceptions to the availability requirement.
- Could provoke considerable congressional opposition and legislative riders.

OPTION TWO: Instruct DOL to Issue New Regulations. DOL would promulgate regulations that set parameters for providing UI benefits to FMLA-covered leave takers. The rule would allow States to deem the UI availability requirement met during FMLA-covered leave and would set specific program design requirements.

PROS:

- Empowers DOL to design program parameters and data collection requirements.
- Provides DOL with greater leverage to guard against future objectionable State efforts.

CONS:

- Could also provoke strong congressional opposition and legislative riders.
- Would be a time-intensive process, taking at least a year to finalize [DOL -- is that right?] and requiring States to wait for regulations to take action.

OPTION THREE: Instruct DOL to Produce Model State Legislation for Separate UI-FMLA Fund. DOL would develop voluntary, model State legislation for creating a fund, separate from but administered by the State UI authority, to provide wage replacement benefits for FMLA-covered leave.

PROS:

- Provides DOL with the greatest ability to minimize risks to the solvency and integrity of the UI system.

CONS:

- Ineffective in promoting State action, as States are unlikely to create a separate tax structure to cover FMLA benefits
- The very groups supporting DOL action may well prefer that the Administration do nothing than advance this approach.

Recommendations:

TO COME

___ INSTRUCT DOL TO ISSUE REVISED PROGRAM GUIDANCE

___ INSTRUCT DOL TO PROMULGATE REGULATIONS

___ INSTRUCT DOL TO DEVELOP MODEL LEGISLATION FOR STATES

___ LET'S DISCUSS

early draft

DRAFT OPTIONS MEMORANDUM

The purpose of this memorandum is to outline the non-legislative options for action to enable States on a voluntary basis to use the Unemployment Insurance system to provide benefits to workers on FMLA-covered leave. This year, four bills were introduced in State legislatures – Massachusetts, Vermont, Maryland, and Washington – which would use Unemployment Insurance (UI) to pay individuals on some form of FMLA-covered leave. Three of the four States, anticipating conformity problems, have asked for comment from the Department of Labor (DOL).

The DPC has led a policy process to explore what responsible action the Administration could take if a decision were made to promote this approach. The challenge is to protect the integrity of the UI system and DOL's authority to guard against ill-advised changes that States might propose (such as restricting benefits).

Background on Unemployment Insurance

States have flexibility in designing and running their own UI systems. With some variation in implementation, the States determine UI eligibility with three general tests: (1) involuntary separation from work; (2) ongoing work search; and (3) availability for suitable work. Because DOL does not interpret federal law as setting specific requirements for the first two test, the Department has approved States carving exceptions to them (e.g. illness, "good cause" for separation, and recalls). Therefore, the Department is prepared to allow an exception to these tests for FMLA-covered leave. However, DOL has long interpreted federal law as mandating a specific "availability" requirement. DOL has used this interpretation to wall off regressive proposals by States to limit benefits. DOL *could* revise its policy by deeming the UI availability requirement met during FMLA-covered leave.

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Below please find a discussion of pros and cons of any Presidential action in this area, and a discussion of three specific options for action.

Presidential Action in this Area:

PROS:

- Responds to significant barrier to leave-taking: 1996 FMLA Study, *A Workable Balance*, shows that of employees who needed but didn't take leave (only 3.4 percent of sample), 64 percent cited cost as the barrier; also 40 percent of leave-takers reported that they cut their leave short to cover lost wages.
- Encourages State innovation at a time when some States have healthy UI surpluses
- Represents a visionary approach to helping families spend more time with their families.
- DOL has received significant pressured for action by State AFL-CIO, some women's groups, and Senators Dodd, Kennedy, Leahy and Murray.

CONS:

- Presidential visibility on this issue is likely to provoke strong opposition by the business community and may motivate congressional legislative riders. Less visible Department-level action that advances this issue runs less risk.
- Without setting strong parameters for DOL shift in policy, could undercut DOL's future authority to guard against unfavorable changes to UI eligibility criteria.
- This new category of UI benefits could raise national unemployment rates if States counted FMLA claimants as "unemployed" and this could have dramatic effects on the markets and those who depend on the data for monitoring trends in the economy.
- Policy implementation could cause some employers to revise or eliminate current worker benefit programs.
- Without cost-sharing of this policy among all employers, women in their child-bearing years could be discriminating against in the workplace in hiring or wages.
- Policy implementation would necessitate greater investment in UI's administrative budget.
- May undercut efforts to promote State UI trust fund solvency and broader UI reform.

Non-Legislative Options for Action:

- (1) **DOL Letter**. DOL would issue a program letter that revises DOL's position by deeming the UI availability requirement met during FMLA-covered leave and narrows the parameters of this interpretation.

PROS:

- Timely way of implementing change (avoiding the time-intensity and complexity of rule-making).
- A carefully crafted program letter could attempt to narrowly interpret DOL policy shift in this area and maintain authority DOL authority to reject future applications for exceptions.

CONS:

- A letter risks undercutting DOL's future ability to limit effectively the "slippery slope" effect of States carving other exceptions to the availability requirement which the Administration may oppose.
- Because a letter is only permissive and not binding, DOL recommendations on data collection or design would likely be ignored due to administrative costs.

- (2) **DOL Rule-Making**. DOL would promulgate regulations that set the parameters for providing UI benefits to FMLA-covered leave takers. The rule would deem UI availability requirement met during FMLA-covered leave.

PROS:

- Empowers DOL to design program parameters and data collection requirements, and to preserve integrity of DOL history of interpreting the law.

CONS:

- Public comment likely to generate aggressive opposition from business and Governors
- Runs risk of provoking strong congressional opposition and legislative riders, particularly from those who opposed the FMLA as the first step to paid leave.
- Senate Democrats and advocates may prefer doing nothing to promulgating regulations in this area (NEED TO CHECK).

(3) **DOL Produces Model State Legislation for Separate UI-FMLA Fund.** DOL would develop voluntary, model State legislation for creating a fund, separate from but administered by the State UI authority, to provide wage replacement benefits for FMLA-covered leave.

PROS:

- Provides DOL with the greatest ability to minimize risks to the integrity of the UI system by crafting

CONS:

- Unlikely to inspire State action to create a separate tax structure for FMLA benefits
- May inflame the very groups supporting DOL action on the Massachusetts proposal (the Massachusetts State ALF-CIO, Women's groups and various Senate Democrats) who would see this action as effectively disallowing the Massachusetts approach – may be seen as worse than doing nothing.