

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Terry Bergman to Ann O'Leary re: The Birth and Adoption Regs [partial] (1 page)	11/12/1999	b(6)

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Ann O'Leary
OA/Box Number: 19580

FOLDER TITLE:

Paid Parental Leave [Folder 2] [2]

2013-0436-S
rc1295

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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

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 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 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 weighed in strongly against opening up UI for this purpose.

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.

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." Ideally, the binding regulations would confine States' authority in these important ways. The DOL Solicitor's office advises that while issuing regulations will enable us to set important parameters for State programs, we may not have this full authority (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 ^{my} a directive to DOL initiating the regulatory process, and (b) DOL accompanies the regulation with ~~this~~ model State legislation that guides States in program design.

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

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 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 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 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 (~~estimates begin at \$2 billion annually~~). **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 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 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 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.”

This construct does not mitigate **all 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 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**

DRAFT DRAFT DRAFT DRAFT DRAFT DRAFT

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 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 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 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

3

Employers - State taxes - Over a long time - 10 yrs - 20 yrs - def. neutral, but at some fed. state

be significant (estimates begin at \$2 billion annually). 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 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 women of child-bearing age.

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

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."

5 c

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.

(only MD of new State) (which is in fact) MA, VT & WA does

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.

innovative

meet this test)

___ PROCEED

___ HOLD OFF AT THIS TIME

___ LET'S DISCUSS

long app. or riders

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?]

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.

This construct does not mitigate all danger of unintended consequences. We cannot ensure, for instance, that 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. 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
- (could perhaps other analogous + limited categories)*
- ~~After considering this set 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, authority... Think we can...

seminar
and
unleash

FGP/low
structure
below, although
may not
some of
this way

At 10:00
in
initial
dec.
+ say
currently
we
of your
advising
(name)
Name
agrees
agree
an approp
Director
in

Even if
more
up.

DRAFT

May 20, 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 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.

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.

Need more here { 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. *begin a r*

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 range from \$2 to \$9 billion annually). 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

~~DRAFT DRAFT DRAFT DRAFT DRAFT DRAFT~~

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 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 ^(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 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 ^{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 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

immediately

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.

that we may not have authority to impose all these limits (although we clearly will have sufficient authority to set important rules and parameters for the state programs)

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." Ideally, the binding regulations would confine States' authority in these important ways. The DOL Solicitor's office advises that while issuing regulations will enable us to set important parameters for State programs, we may not have this full authority (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 relatively broad regulation encompassing all FMLA applications if (a) you focus on new parents in the directive to DOL initiating the regulatory process, and (b) DOL accompanies the regulation with this model State legislation that guides States in program design.

entirely eliminates our goals by combining

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.

Assuming we cannot limit the states by rule to providing UI benefits to new parents, a state could choose to ignore our model legislation

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).

us to take a significant step toward

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,

is still reviewing whether we would have regulatory authority to impose all these limits. Even if we do, however, we believe we can accomplish our goals with a broader regulation encompassing all FMLA applications

~~The conclusion~~

The limitation of these new benefits primarily to leave following birth and adoption alleviates 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 kinds of leave are much more likely to be fully paid.

Ideally, the ~~regulation~~ DOL's ~~regulation~~ ^{regulation} ~~will~~ ^{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, ~~however~~ we would rely on the model legislation to guide states toward this relatively modest expansion. Although ~~not eliminating the risk of~~ this course has some risk (states, ^{ultimately,} could choose to ignore our direction and guidance), we are relatively confident that few states would choose to impose far greater burdens on their own UI systems.

general

~~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.}

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 ^{your} 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.

☐ **PROCEED**

☐ **HOLD OFF AT THIS TIME**

☐ **LET'S DISCUSS**

~~still is still in
(They are still not)~~

Even if we
do not
have
broad auth,
however,

~~DRAFT - ~~for review~~~~

1
May 20, 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 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.

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 ^{very} argue is likely), advancing a proposal that would allow States to experiment in this way would ~~carry~~ ^{send} a strong message that making leave affordable for workers is a priority and that States should be thinking of creative ways to provide paid leave benefits for workers. new

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).

pay into
the
system
based
on their
workers'
use of
it)

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.

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 the ~~costs~~ of such a program are ~~borne by all employers (i.e. not "experience rated")~~. The DOL Solicitor's office advises that while regulations provide us with significant ability to set parameters for State programs, we may not have ~~this~~ authority to limit the 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 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."

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

bold

___ LET'S DISCUSS

DRAFT

May 20, 1999

DECISION MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED

SUBJECT: POLICY ANNOUNCEMENTS FOR GRAMBLING SPEECH

address
Your commencement 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.

That would do this.
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 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). 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 against opening up UI for this purpose.

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 (~~estimates~~^{estimates} 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 ~~as~~ 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 addition, DOL would develop model legislation that guides States in implementing this change.~~ ^{promulgate} ~~To the fullest extent possible, DOL would address in 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 development

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

DRAFT

DRAFT

DRAFT

DRAFT

11/26/97 3:00 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. 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

113 FEB NOV 20 97 12:01

DRAFT

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.

↑ \$600,000?
\$60,000?

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

assumes all cut
eligible take
find 6 cuts?
not looking at

Unemp. Ins. system

6 wks

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
--------------------------	---------------	------	-------------

001. email	Terry Bergman to Ann O'Leary re: The Birth and Adoption Regs [partial] (1 page)	11/12/1999	b(6)
------------	--	------------	------

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Ann O'Leary
OA/Box Number: 19580

FOLDER TITLE:

Paid Parental Leave [Folder 2] [2]

2013-0436-S

rc1295

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]



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. (b)(6) [001]
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



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.

Notification of key stakeholders on UI-FMLA announcement

I. Advance Notification by White House

Senator Edward Kennedy -- Massachusetts is one of 4 states with pending legislation. The Senator has written to the Secretary on the issue and staff (Michael Myers) has followed this issue aggressively.

Senator Chris Dodd -- Served on Family and Medical Leave Commission which recommended use of UI for paid leave; co-signed Kennedy letter to Secretary Herman.

Senator Patrick Leahy -- Has supported VT legislation in past two legislative sessions; has written to Secretaries Reich and Herman; previous DOL letter raised conformity issues and suggested that the State use the separate fund method.

Senator Patty Murray -- Has also written on this subject.

Leadership -- courtesy calls to Senator Daschle and Rep. Gephardt are also recommended.

Labor -- Gerry Shea of the AFL-CIO

Women's groups -- Judith Lichtman of the National Partnership for Women and Families.

NOTE: The likely reaction from Senator Kennedy and other advocates will be twofold:

- 1) Policy does not go as far as they would have liked (States could not adopt pending legislation and must await DOL regulations, which would also limit the scope of the experiment.)
- 2) They had expected to be consulted on the range of options prior to a policy announcement.

II. Advance Notification by DOL

Rep. Nancy Johnson -- Secretary Herman has an appointment with the Ways & Means Human Resources Subcommittee Chair next week on the issue of the proposed Welfare-to-Work reauthorization, and significant good will could be lost if a heads-up to staff is not provided. Ways & Means staffer Ron Haskins, who has advocated *strengthening the work requirements in UI* will likely oppose this policy, especially given the opposition of employer groups.

Rep. Ben Cardin -- Staff call also recommended. Not only is he the subcommittee ranking minority member, but Maryland is one of the states where legislation has been filed and reaction from parties on both sides of the issue is likely to be swift. We do not know if he has taken a position on the state legislation.

III. Monday Follow-up by DOL

Remaining authorizers; key members: Senators Roth and Moynihan; Reps Levin and English (sponsors of Administration UI Reform bill)

State groups -- Interstate Conference of Employment Security Agencies (ICESA) and National Governors Association (NGA) should be called; new policy will shift the pressure to the States.

Business/Employer Organizations -- UWC has been spearheading a letter-writing campaign against a change in policy. Significant co-signers have been: US Chamber of Commerce, NFIB and NAM.

Prepared 5/21/99

**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:

DPC

FACSIMILE NUMBER: 456-2878

FROM: DARLA LETOURNEAU

NUMBER OF PAGES INCLUDING COVER:

FACSIMILE REPLIES:

CONGRESSIONAL AFFAIRS

202/219-5120

INTERGOVERNMENTAL AFFAIRS

202/219-5736

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 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.

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

05/21/99 FRI 10:40 FAX 202 219 5120
05/20/99 15:44 FAX 202 842 2556
MAY 20 '99 16:54 FR

OCIA

UWC & NATL POUND
TD 92629422556

P.03

003
003

Laundon 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

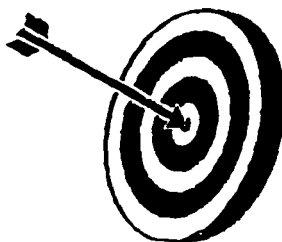
FAX TRANSMITTAL COVER SHEET

NUMBER OF PAGES TRANSMITTED (INCLUDING COVER SHEET) 3ATTN: NICOLE
RADMER

BUS. PHONE: _____

FAX NO.: 456 - ~~5709~~ 2878FROM: GRACE
KILBANE

BUS. PHONE: _____

FAX NO.: 202-219-8506MESSAGE:URGENTJUST 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

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 Oxfield 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

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 ***



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 Gambling 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

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.



Carole Kittl

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



Leonard.Burman@do.treas.gov
05/20/99 02:06:59 PM

Record Type: Record

To: Nicole R. Rabner/WHO/EOP
cc: See the distribution list at the bottom of this message
Subject: UI/Paid Leave

Date: 05/20/1999 12:55 pm (Thursday)
From: Leonard Burman
To: ex.mail("Nicole_R._Rabner@who.eop.gov")
CC: plattj,knittel,m,faucherg,walkerd,mikrutj
Subject: UI/Paid Leave

Comments on yesterday's draft:

In short, Treasury is supportive of the policy thrust of the paper. Offering states flexibility in this area seems desirable if it does not subvert other important policy objectives.

One concern that should be raised is that the policy might require an increase in the FUTA tax rates if administrative costs increase significantly. We are working with DOL to try to determine whether this is likely to happen. I'll let you know what we find out.

The sentence on unemployment data should clarify that the data we are talking about are initial claims for unemployment insurance, which are an important leading economic indicator. I assume that the actual estimates of the unemployment rate would not change if FMLA people were allowed to claim UI benefits.

If the data are readily available, it would be useful in the memo to estimate the number of people who would be affected by the policy options. Similarly, the family incomes of eligible and non-eligible workers might be germane. Because small employers are exempt from FMLA, and they are also paid less, it might be that this benefit would primarily help higher income people. Doing a full-blown distributional analysis would require estimates of who would take advantage of the proposal, which could be difficult, so I am not suggesting that.

I will not be able to attend the 3pm meeting.

Len

Leonard Burman
Deputy Assistant Secretary, Tax Analysis
U.S. Department of the Treasury
15th and Pennsylvania Ave.
Washington, DC 20220
Voice: 202-622-0120
Fax: 202-622-0605
Pager: 800-819-0693

Note new e-mail address: leonard.burman@do.treas.gov

Message Copied To:

Gus.Faucher@do.treas.gov
Matthew.Knittel@do.treas.gov
Joseph.Mikrut@do.treas.gov
Joel.Platt@do.treas.gov
Deborah.Walker@do.treas.gov



Leonard.Burman@do.treas.gov
05/20/99 02:06:59 PM

Record Type: Record

To: Nicole R. Rabner/WHO/EOP
cc: See the distribution list at the bottom of this message
Subject: UI/Paid Leave

Date: 05/20/1999 12:55 pm (Thursday)
From: Leonard Burman
To: ex.mail("Nicole_R._Rabner@who.eop.gov")
CC: plattj,knittel,m,faucherg,walkerd,mikrutj
Subject: UI/Paid Leave

Comments on yesterday's draft:

In short, Treasury is supportive of the policy thrust of the paper. Offering states flexibility in this area seems desirable if it does not subvert other important policy objectives.

One concern that should be raised is that the policy might require an increase in the FUTA tax rates if administrative costs increase significantly. We are working with DOL to try to determine whether this is likely to happen. I'll let you know what we find out.

The sentence on unemployment data should clarify that the data we are talking about are initial claims for unemployment insurance, which are an important leading economic indicator. I assume that the actual estimates of the unemployment rate would not change if FMLA people were allowed to claim UI benefits.

If the data are readily available, it would be useful in the memo to estimate the number of people who would be affected by the policy options. Similarly, the family incomes of eligible and non-eligible workers might be germane. Because small employers are exempt from FMLA, and they are also paid less, it might be that this benefit would primarily help higher income people. Doing a full-blown distributional analysis would require estimates of who would take advantage of the proposal, which could be difficult, so I am not suggesting that.

I will not be able to attend the 3pm meeting.

Len

Leonard Burman
Deputy Assistant Secretary, Tax Analysis
U.S. Department of the Treasury
15th and Pennsylvania Ave.
Washington, DC 20220
Voice: 202-622-0120
Fax: 202-622-0605
Pager: 800-819-0693

Note new e-mail address: leonard.burman@do.treas.gov

Message Copied To:

Gus.Faucher@do.treas.gov
Matthew.Knittel@do.treas.gov
Joseph.Mikrut@do.treas.gov
Joel.Platt@do.treas.gov
Deborah.Walker@do.treas.gov

Comments on Preliminary Draft of UI/FMLA Options Memorandum**Page 1.****General Comment**

We may want to add the fact that three of the four States adjourned with two taking no action and one reported its bill unfavorably.

1st paragraph

1. Second sentence. We recommend adding "responding in part to surpluses in the UI trust funds."

3rd paragraph

2. Second sentence. We recommend rewriting the sentence as follows:

Because DOL does not interpret federal law as setting specific requirements for the first two tests, States are free to carve exceptions as they see fit (e.g., claimants who are going to be recalled to their old employer need not seek work; claimants may quit work if they have good personal cause such as illness; temporarily ill claimants need not seek work).

The rewritten parenthetical is intended to provide a fuller description for those not familiar with UI. The current version suggests that States are carving exceptions to a Federal requirement which does not exist. The revision is intended to correct that impression.

3. Fourth paragraph, fourth sentence. Change "ready and available" to "able and available."
4. Fifth sentence change "DOL has used this interpretation" to "DOL has used interpretations of the same Federal law provisions."

Explanation: The "availability" interpretation does not, by itself, wall off regressive proposals. However, the same provisions of Federal law (and the same legislative history) which are interpreted to require availability are interpreted to preclude, for example, means testing and the introduction of other factors unrelated to the fact or cause of the individual's unemployment. The point is still worth retaining since, absent a rule, DOL could lose its ability to fence off these proposals.

4th paragraph

We recommend the third sentence be replaced by the following:

For instance, how FMLA leave-takers would be accounted for in the count of initial claims (a leading economic indicator), is an issue that must be considered.

Explanation: DOL has not had an opportunity to do research, but we know of no basis on which claims from FMLA leave-takers could be excluded from this important statistics.

Page 2**Option 1**

Post-It [®] Fax Note	7671	Date	5/20/99	# of pages	2
To	Nicole Rabner		From	Bill Samuel	
Co./Dept.			Co.		
Phone #	456 7263		Phone #	693 6043	
Fax #	456 2878		Fax #	693 6143	

Second pro. Insert "could" before assert.

Second con. Add "and may prevent other regressive State proposals" to end of sentence.

Option 2: Second con - If the questions is "would DOL be the agency to do the rules?", the answer is "yes."

Option 3

Replace the sentence explaining the proposal with the following:

DOL would encourage States to divert a portion of UI taxes to fund special benefits for workers on FMLA leave. DOL would also develop voluntary model State legislation for such a tax-neutral approach, separate from , but administered by the State UI authority, to provide wage replacement benefits for FMLA-covered leave.

Add the following pro:

About two dozen States have already created separate funds, many using tax neutral mechanisms, for the payment of income support such as temporary disability and other employment related programs.

Rewrite the first con as follows:

Could be ineffective promoting State action, as States may be concerned about appearance of creating a new tax structure to cover FMLA benefits.

Explanation: The revisions reflect our understanding of why some States have been able to create special funds - emphasizing tax neutrality - while others have not due to the perception of a new tax.

Comments on Preliminary Draft of UI/FMLA Options Memorandum**Page 1.****General Comment**

We may want to add the fact that three of the four States adjourned with two taking no action and one reported its bill unfavorably.

1st paragraph

1. Second sentence. We recommend adding "responding in part to surpluses in the UI trust funds."

3rd paragraph

2. Second sentence. We recommend rewriting the sentence as follows:

Because DOL does not interpret federal law as setting specific requirements for the first two tests, States are free to carve exceptions as they see fit (e.g., claimants who are going to be recalled to their old employer need not seek work; claimants may quit work if they have good personal cause such as illness; temporarily ill claimants need not seek work).

The rewritten parenthetical is intended to provide a fuller description for those not familiar with UI. The current version suggests that States are carving exceptions to a Federal requirement which does not exist. The revision is intended to correct that impression.

3. Fourth paragraph, fourth sentence. Change "ready and available" to "able and available."
4. Fifth sentence change "DOL has used this interpretation" to "DOL has used interpretations of the same Federal law provisions."

Explanation: The "availability" interpretation does not, by itself, wall off regressive proposals. However, the same provisions of Federal law (and the same legislative history) which are interpreted to require availability are interpreted to preclude, for example, means testing and the introduction of other factors unrelated to the fact or cause of the individual's unemployment. The point is still worth retaining since, absent a rule, DOL could lose its ability to fence off these proposals.

4th paragraph

We recommend the third sentence be replaced by the following:

For instance, how FMLA leave-takers would be accounted for in the count of initial claims (a leading economic indicator), is a an issue that must be considered.

Explanation: DOL has not had an opportunity to do research, but we know of no basis on which claims from FMLA leave-takers could excluded from this important statistics.

Page 2**Option 1**

Post-It [®] Fax Note	7671	Date	5/20/99	# of pages	2
To	Nicole Rabner		From	Bill Samuel	
Co./Dept.			Co.		
Phone #	456 7263		Phone #	6936043	
Fax #	456 2878		Fax #	6936143	

Second pro. Insert "could" before assert.

Second con. Add "and may prevent other regressive State proposals" to end of sentence.

Option 2: Second con - If the questions is "would DOL be the agency to do the rules?", the answer is "yes."

Option 3

Replace the sentence explaining the proposal with the following:

DOL would encourage States to divert a portion of UI taxes to fund special benefits for workers on FMLA leave. DOL would also develop voluntary model State legislation for such a tax-neutral approach, separate from , but administered by the State UI authority, to provide wage replacement benefits for FMLA-covered leave.

Add the following pro:

About two dozen States have already created separate funds, many using tax neutral mechanisms, for the payment of income support such as temporary disability and other employment related programs.

Rewrite the first con as follows:

Could be ineffective promoting State action, as States may be concerned about appearance of creating a new tax structure to cover FMLA benefits.

Explanation: The revisions reflect our understanding of why some States have been able to create special funds - emphasizing tax neutrality - while others have not due to the perception of a new tax.

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~~, *[while this may be true for these four States, surpluses are not a fact of life for many States – NY is a prime example of what we would consider an underfunded State]* four States WITH SURPLUSES IN THEIR UI TRUST FUNDS -- 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~~ COULD *[we are not aware that DOL is completely open to this, suggest being less definite in the description]* 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. THIS IS, HOWEVER, NOT A SIMPLE AND STRAIGHTFORWARD EXERCISE. *[the presentation suggests this is a slam-dunk idea; there are complications, noted below, so that we believe a transition sentence is needed to be clear that accomplishing the policy isn't quite as simple as suggested above]*

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 3.4 PERCENT OF RESPONDENTS DID NOT TAKE LEAVE WHEN NEEDED. OF THOSE 64~~

percent ~~of workers who did not take leave~~ (OR 2 PERCENT OF THE OVERALL SAMPLE) cite cost as a barrier [*In the report (pages xix and 84) the study uses the above 3.4% figure to report what it found. The 2% figure is a clarification of what the 64% figure used in the report means. We have found it difficult to wade through the way the data are presented in the report, and offer this as a clearer way to explain what the report actually says. We can't find the 40% figure, although it may be accurate.*] 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. OTHER PROGRAM DESIGN ISSUES WOULD NEED TO ADDRESS THE SUBSTITUTION EFFECT, WHEREBY WORKERS OR EMPLOYERS MIGHT TRY TO SHIFT FROM CURRENTLY PAID LEAVE (E.G., SICK LEAVE, VACATION) TO THE NEW UI-FMLA PROGRAM. IN ADDITION IT WOULD NEED TO ADDRESS IMPLICATIONS FOR THE UI PROGRAM SUCH AS: THE POTENTIAL FOR OPENING UP UI TO OTHER PEOPLE "NOT AVAILABLE FOR WORK" (E.G., THOSE ON SIVCK LEAVE, ON SABBATICALS), MOVES TO MEANS TEST THE PROGRAM, AND GENERALLY REDUCING THE CONTROL WE CURENTLY HAVE OVER THE PROGRAM.

ON THE POLICY AND BUDGET FRONT, SOME MIGHT SEE THIS AS AN ATTEMPT TO CIRCUMVENT THE LEGISLATIVE PROCESS IN ORDER TO EXPAND FMLA COVERAGE, AND COULD RESULT IN BILL RIDERS (POSSIBLY AN ISSUE WE WOULD BE WILLING TO TACKLE). THE BUDGET COSTS ARE UNCERTAIN, BUT POTENTIALLY LARGE IN THE NEAR TERM SINCE THE INTENDED EFFECT OF THESE OPTIONS IS TO INCREASE ON-BUDGET FEDERAL SPENDING. COSTS COULD RANGE FROM \$2 TO \$9 BILLION ANNUALLY (COMPARED TO ABOUT \$23 BILLION NATIONWIDE IN UI ANNUALLY). SEVERAL ESTIMATES OF THE EFFECT OF THE MASSACHUSETTS PROPOSAL PUT IT IN THE \$200 MILLION RANGE. HOWEVER, OVER THE LONGER TERM, STATE UI TAXES WILL BE ADJUSTED UPWARDS TO RESPOND TO THE INCREASED BENEFITS SO THE PROGRAM WILL BE DEFICIT NEUTRAL.

THESE NON-LEGISLATIVE APPROACHES WILL ALSO BE SUBJECT TO CONGRESSIONAL REVIEW UNDER THE SMALL BUSINESS REGULATORY ENFORCEMENT FAIRNESS ACT (SBREFA) PRIOR TO GOING INTO EFFECT.

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.
- PROVIDES OPPORTUNITY FOR PUBLIC COMMENT, MORE INVOLVEMENT OF OTHER FEDERAL AGENCIES, AND TIME FOR FINE TUNING THE MANY PROGRAM ISSUES.

CONS:

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

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.

- MODEL LEGISLATION WOULD BE BASED ON SUCCESSFUL STATE EFFORTS TO CREATED SEPARATE FUNDS FOR TRAINING AND REEMPLOYMENT ASSISTANCE.
- ACHIEVES STATE OBJECTIVES AND IS EASIER SINCE NO ADMINISTRATIVE OR REGULATORY ACTIONS ARE NEEDED.

CONS:

- ~~Ineffective in promoting State action, as States are unlikely to create a separate tax structure to cover FMLA benefits~~ LESS ATTRACTIVE TO STATES DUE TO REQUIREMENT FOR NEW TAX.
- The very groups supporting DOL action may well prefer that the Administration do nothing than advance this approach. [IS THIS TRUE? IS SUPPORTING A FREE-STANDING PROGRAM HARMFUL?] GROUPS SUPPORTING DOL POLICY CHANGE WILL VIEW THIS OPTION AS WEAK
- POTENTIAL FOR MISINTERPRETATION AS AN “NEW” TAX.

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

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,~~ *[while this may be true for these four States, surpluses are not a fact of life for many States – NY is a prime example of what we would consider an underfunded State]* four States WITH SURPLUSES IN THEIR UI TRUST FUNDS -- 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 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~~ COULD *[we are not aware that DOL is completely open to this, suggest being less definite in the description]* 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. THIS IS, HOWEVER, NOT A SIMPLE AND STRAIGHTFORWARD EXERCISE. *[the presentation suggests this is a slam-dunk idea; there are complications, noted below, so that we believe a transition sentence is needed to be clear that accomplishing the policy isn't quite as simple as suggested above]*

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~~ 3.4 PERCENT OF RESPONDENTS DID NOT TAKE LEAVE WHEN NEEDED. OF THOSE 64

percent of workers who did not take leave (OR 2 PERCENT OF THE OVERALL SAMPLE) cite cost as a barrier [*In the report (pages xix and 84) the study uses the above 3.4% figure to report what it found. The 2% figure is a clarification of what the 64% figure used in the report means. We have found it difficult to wade through the way the data are presented in the report, and offer this as a clearer way to explain what the report actually says. We can't find the 40% figure, although it may be accurate.*] 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. OTHER PROGRAM DESIGN ISSUES WOULD NEED TO ADDRESS THE SUBSTITUTION EFFECT, WHEREBY WORKERS OR EMPLOYERS MIGHT TRY TO SHIFT FROM CURRENTLY PAID LEAVE (E.G., SICK LEAVE, VACATION) TO THE NEW UI-FMLA PROGRAM. IN ADDITION IT WOULD NEED TO ADDRESS IMPLICATIONS FOR THE UI PROGRAM SUCH AS: THE POTENTIAL FOR OPENING UP UI TO OTHER PEOPLE "NOT AVAILABLE FOR WORK" (E.G., THOSE ON SIVCK LEAVE, ON SABBATICALS), MOVES TO MEANS TEST THE PROGRAM, AND GENERALLY REDUCING THE CONTROL WE CURENTLY HAVE OVER THE PROGRAM.

ON THE POLICY AND BUDGET FRONT, SOME MIGHT SEE THIS AS AN ATTEMPT TO CIRCUMVENT THE LEGISLATIVE PROCESS IN ORDER TO EXPAND FMLA COVERAGE, AND COULD RESULT IN BILL RIDERS (POSSIBLY AN ISSUE WE WOULD BE WILLING TO TACKLE). THE BUDGET COSTS ARE UNCERTAIN, BUT POTENTIALLY LARGE IN THE NEAR TERM SINCE THE INTENDED EFFECT OF THESE OPTIONS IS TO INCREASE ON-BUDGET FEDERAL SPENDING. COSTS COULD RANGE FROM \$2 TO \$9 BILLION ANNUALLY (COMPARED TO ABOUT \$23 BILLION NATIONWIDE IN UI ANNUALLY). SEVERAL ESTIMATES OF THE EFFECT OF THE MASSACHUSETTS PROPOSAL PUT IT IN THE \$200 MILLION RANGE. HOWEVER, OVER THE LONGER TERM, STATE UI TAXES WILL BE ADJUSTED UPWARDS TO RESPOND TO THE INCREASED BENEFITS SO THE PROGRAM WILL BE DEFICIT NEUTRAL.

THESE NON-LEGISLATIVE APPROACHES WILL ALSO BE SUBJECT TO CONGRESSIONAL REVIEW UNDER THE SMALL BUSINESS REGULATORY ENFORCEMENT FAIRNESS ACT (SBREFA) PRIOR TO GOING INTO EFFECT.

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.
- PROVIDES OPPORTUNITY FOR PUBLIC COMMENT, MORE INVOLVEMENT OF OTHER FEDERAL AGENCIES, AND TIME FOR FINE TUNING THE MANY PROGRAM ISSUES.

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.
- ALSO SUBJECT TO SBREFA PROCESS.

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.

- MODEL LEGISLATION WOULD BE BASED ON SUCCESSFUL STATE EFFORTS TO CREATED SEPARATE FUNDS FOR TRAINING AND REEMPLOYMENT ASSISTANCE.
- ACHIEVES STATE OBJECTIVES AND IS EASIER SINCE NO ADMINISTRATIVE OR REGULATORY ACTIONS ARE NEEDED.

CONS:

- ~~Ineffective in promoting State action, as States are unlikely to create a separate tax structure to cover FMLA benefits~~ LESS ATTRACTIVE TO STATES DUE TO REQUIREMENT FOR NEW TAX.
- The very groups supporting DOL action may well prefer that the Administration do nothing than advance this approach. [IS THIS TRUE? IS SUPPORTING A FREE-STANDING PROGRAM HARMFUL?] GROUPS SUPPORTING DOL POLICY CHANGE WILL VIEW THIS OPTION AS WEAK
- POTENTIAL FOR MISINTERPRETATION AS AN "NEW" TAX.

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

Carl Haacke 05/19/99 07:53:51 PM

Record Type: Record

To: Nicole R. Rabner/WHO/EOP@EOP

cc:

Subject: Re: DRAFT MEMORNDUM ON UI / PAID LEAVE 

I think it would be worth while to raise the question of how much benefit moving forward in the POTUS speech would really produce.

I think you need to make a bigger deal of the UI claims data issue.

You do not mention UI solvency or the UI dialogue as factors.

Carl Haacke 05/19/99 08:08:53 PM

Record Type: Record

To: Nicole R. Rabner/WHO/EOP@EOP

cc:

Subject: Re: DRAFT MEMORNDUM ON UI / PAID LEAVE 

You description of the policy issues if extremely general and not really addressed in the Pros and Cons. I do not know if that is normal, but I'm not sure a principal would be fully informed by the description given here.



Brian V. Kennedy
05/19/99 06:39:27 PM

Record Type: Record

To: Nicole R. Rabner/WHO/EOP@EOP

cc:

Subject: Re: DRAFT MEMORNDUM ON UI / PAID LEAVE 

Nicole, while I tend to support your policy goal, there are a few general con arguments that probably should be mentioned.

1. Changing the DOL policy could very well have the result of sparking harsh criticism in the business community, without improving conditions for anyone. Many people question the prospects of the state legislative efforts.
2. The change in policy is inconstant with UI reform, and DOL's general policy of promoting solvency in the UI system
3. As mentioned by Treasury, if states do change their laws, it could result in dramatic increases in Unemployment Claims, and increased Administrative burdens could put pressure on the federal account.

Record Type: Record

To: Nicole R. Rabner/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: DRAFT MEMORNDUM ON UI / PAID LEAVE 

One point that is needs to be made in the Background section is that paid FMLA is likely to increase UI benefit outlays and administrative costs considerably. I think Grace Kilbane gave an estimate of a quarter or a third yesterday. Just because states happen to have a current surplus in their trust fund does not mean they can finance FMLA leave out of UI on an ongoing basis without raising their tax rate. FMLA leave can't be turned on and off with the business cycle. The surplus in good times is supposed to cushion the UI system during future downturns in the economy, not be spent during the good times. Based on past experience, on their own States don't take care to ensure the long-range solvency of their trust funds, but rely on borrowing when they get in trouble. CEA, as Becky and I said in the meetings, think the tax structure should be changed, too, if UI is used for FMLA leave, so that the tax that pays for FMLA leave is not experience rated. These are important reasons not to give States a blanket permission with no strings attached.

Also in the Background section, 2nd paragraph --

1. Clarify the next-to-last sentence: It's not the official "unemployment rate" that could artificially rise -- that comes from the Current Population Survey, not the UI system. Instead, say something like this: "if States did not collect unemployment insurance data for FMLA leave-takers separately, insured unemployment and initial UI claims could artificially rise and fall, destroying the usefulness of these important statistics as indicators of the state of the economy."

2. Expand and clarify the last sentence. It would of course be illegal for employers to discriminate against women in hiring and salary. The issue is broader than whether or not one thinks employers would/could actually discriminate and get away with it. CEA's view is that FMLA is good for society as a whole, and so the cost should be borne as broadly as possible. Above all, it should not fall narrowly on employers whose workforces are disproportionately women of child-bearing age -- as would be the case if the regular, experience-rated UI tax is used to finance FMLA. This would be basically unfair. A secondary point is that insofar as FMLA leave benefit costs were reflected in the employers' experience-rated UI tax bills, those employers would have an incentive either to pass such extra costs back to their workers or to hire fewer women of child-bearing age. The result could be lower wages and fewer employment opportunities for women, despite efforts to enforce the equal pay and employment discrimination laws.

Does the "Pro" for Option 2 mean that DOL could set standards for the tax structure and rate (solvency) and separate data collection equally well under regs and model state legislation?

Nicole R. Rabner

Nicole R. Rabner

05/19/99 04:44:27 PM

Record Type: Record

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

cc:

Subject: DRAFT MEMORNDUM ON UI / PAID LEAVE

Per last night's meeting, attached please find a preliminary draft of a decision memorandum on enabling States to use their UI systems to provide benefits to workers on FMLA-covered leave. Elena has not yet had a chance to review, so it might change considerably, but I would appreciate your edits and reactions as soon as possible - preferably by close of business today. I would appreciate if each agency could respond with one set of comments. Please feel free to forward your comments by e-mail, by fax (202-456-2878), or by phone (202-456-2878).

Thank you very much.

Distribution

Barbara Chow, OMB
Ed Montgomery, DOL
William Samuel, DOL
Grace Kilbane, DOL
Len Berman, Treasury
Caroline Fredrickson, WH Leg. Affairs
Cordelia Reimers, CEA
Carl Haacke, NEC
Brian Kennedy, NEC



uipotusmem.051999.

Message Sent To:

Barbara Chow/OMB/EOP
Carl Haacke/OPD/EOP
Brian V. Kennedy/OPD/EOP
Caroline R. Fredrickson/WHO/EOP
Cordelia W. Reimers/CEA/EOP

Message Copied To:

Barbara Chow/OMB/EOP@EOP
Carl Haacke/OPD/EOP@EOP
Brian V. Kennedy/OPD/EOP@EOP
Caroline R. Fredrickson/WHO/EOP@EOP
Montgomery-Edward@dol.gov
kilbaneg@doleta.gov
Leonard.burman@ms01.do.treas.gov

Carl Haacke 05/19/99 07:53:51 PM

Record Type: Record

To: Nicole R. Rabner/WHO/EOP@EOP

cc:

Subject: Re: DRAFT MEMORNDUM ON UI / PAID LEAVE 

I think it would be worth while to raise the question of how much benefit moving forward in the POTUS speech would really produce.

I think you need to make a bigger deal of the UI claims data issue.

You do not mention UI solvency or the UI dialogue as factors.

Carl Haacke 05/19/99 08:08:53 PM

Record Type: Record

To: Nicole R. Rabner/WHO/EOP@EOP

CC:

Subject: Re: DRAFT MEMORNDUM ON UI / PAID LEAVE 

You description of the policy issues if extremely general and not really addressed in the Pros and Cons. I do not know if that is normal, but I'm not sure a princpal would be fully informed by the description given here.



Brian V. Kennedy
05/19/99 06:39:27 PM

Record Type: Record

To: Nicole R. Rabner/WHO/EOP@EOP

cc:

Subject: Re: DRAFT MEMORNDUM ON UI / PAID LEAVE 

Nicole, while I tend to support your policy goal, there are a few general con arguments that probably should be mentioned.

1. Changing the DOL policy could very well have the result of sparking harsh criticism in the business community, without improving conditions for anyone. Many people question the prospects of the state legislative efforts.
2. The change in policy is inconstant with UI reform, and DOL's general policy of promoting solvency in the UI system
3. As mentioned by Treasury, if states do change their laws, it could result in dramatic increases in Unemployment Claims, and increased Administrative burdens could put pressure on the federal account.

Record Type: Record

To: Nicole R. Rabner/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: DRAFT MEMORNDUM ON UI / PAID LEAVE 

One point that is needs to be made in the Background section is that paid FMLA is likely to increase UI benefit outlays and administrative costs considerably. I think Grace Kilbane gave an estimate of a quarter or a third yesterday. Just because states happen to have a current surplus in their trust fund does not mean they can finance FMLA leave out of UI on an ongoing basis without raising their tax rate. FMLA leave can't be turned on and off with the business cycle. The surplus in good times is supposed to cushion the UI system during future downturns in the economy, not be spent during the good times. Based on past experience, on their own States don't take care to ensure the long-range solvency of their trust funds, but rely on borrowing when they get in trouble. CEA, as Becky and I said in the meetings, think the tax structure should be changed, too, if UI is used for FMLA leave, so that the tax that pays for FMLA leave is not experience rated. These are important reasons not to give States a blanket permission with no strings attached.

Also in the Background section, 2nd paragraph --

1. Clarify the next-to-last sentence: It's not the official "unemployment rate" that could artificially rise -- that comes from the Current Population Survey, not the UI system. Instead, say something like this: "if States did not collect unemployment insurance data for FMLA leave-takers separately, insured unemployment and initial UI claims could artificially rise and fall, destroying the usefulness of these important statistics as indicators of the state of the economy."

2. Expand and clarify the last sentence. It would of course be illegal for employers to discriminate against women in hiring and salary. The issue is broader than whether or not one thinks employers would/could actually discriminate and get away with it. CEA's view is that FMLA is good for society as a whole, and so the cost should be borne as broadly as possible. Above all, it should not fall narrowly on employers whose workforces are disproportionately women of child-bearing age -- as would be the case if the regular, experience-rated UI tax is used to finance FML. This would be basically unfair. A secondary point is that insofar as FMLA leave benefit costs were reflected in the employers' experience-rated UI tax bills, those employers would have an incentive either to pass such extra costs back to their workers or to hire fewer women of child-bearing age. The result could be lower wages and fewer employment opportunities for women, despite efforts to enforce the equal pay and employment discrimination laws.

Does the "Pro" for Option 2 mean that DOL could set standards for the tax structure and rate (solvency) and separate data collection equally well under regs and model state legislation?

Nicole R. Rabner

Nicole R. Rabner

05/19/99 04:44:27 PM

Record Type: Record

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

cc:

Subject: DRAFT MEMORNDUM ON UI / PAID LEAVE

Per last night's meeting, attached please find a preliminary draft of a decision memorandum on enabling States to use their UI systems to provide benefits to workers on FMLA-covered leave. Elena has not yet had a chance to review, so it might change considerably, but I would appreciate your edits and reactions as soon as possible - preferably by close of business today. I would appreciate if each agency could respond with one set of comments. Please feel free to forward your comments by e-mail, by fax (202-456-2878), or by phone (202-456-2878).

Thank you very much.

Distribution

Barbara Chow, OMB
Ed Montgomery, DOL
William Samuel, DOL
Grace Kilbane, DOL
Len Berman, Treasury
Caroline Fredrickson, WH Leg. Affairs
Cordelia Reimers, CEA
Carl Haacke, NEC
Brian Kennedy, NEC



uipotusmem.051999.

Message Sent To:

Barbara Chow/OMB/EOP
Carl Haacke/OPD/EOP
Brian V. Kennedy/OPD/EOP
Caroline R. Fredrickson/WHO/EOP
Cordelia W. Reimers/CEA/EOP

Message Copied To:

Barbara Chow/OMB/EOP@EOP
Carl Haacke/OPD/EOP@EOP
Brian V. Kennedy/OPD/EOP@EOP
Caroline R. Fredrickson/WHO/EOP@EOP
Montgomery-Edward@dol.gov
kilbaneg@doleta.gov
Leonard.burman@ms01.do.treas.gov

MEMORANDUM FOR THE DIRECTOR

FROM: Barbara Chow

SUBJECT: UI and Paid Family and Medical Leave

We have spoken briefly about the idea of using the unemployment insurance (UI) system to pay Family and Medical Leave Act (FMLA) benefits. DPC is now pushing for a decision on this issue due to the President's upcoming speech at Grambling University on Monday. Below is the background on this issue as well as the policy, operational, budgetary and regulatory questions regarding this proposal.

Background on Paid Parental Leave and State UI Proposals.

The idea of paid parental leave was discussed the last two years as a possible budget initiative, but did not make it through the process in either year. As it was developed in 1997, the Administration's paid parental leave proposal would have provided eligible new parents \$200 a week in paid leave, funded by the Federal government, for up to six weeks. Eligibility was based on income and time in the workforce. This initiative would have used the UI system to deliver the leave payments, but would not have used UI funds to pay for these benefits. The policy goal was to offer persons who cannot afford to take leave after the birth or adoption of a child an option to stay at home, versus child care. It was estimated to cost \$1 billion annually.

DOL raised the issue again recently because of interest by the Hill, specifically Sen. Kennedy, in the Administration's position on paid parental leave. Four states have introduced legislation that would allow use of UI trust funds to pay individuals some form of family and medical leave (Vermont, Massachusetts, Maryland, and Washington). DOL has opposed this proposed use in the past because the individuals receiving the benefit are not available for work -- a fundamental requirement of the UI program known as the "availability test." Federal law does not contain an explicit requirement that UI claimants be available for work, and DOL has relied for many years on the legislative history of the UI program to enforce its availability interpretation.

Absent a change in its long-standing interpretation, DOL would declare any State law using UI trust funds for family and medical leave to be "out of conformity" with Federal requirements.

DPC is currently running a policy process to determine if States should have the flexibility to use UI funds for paid family and medical leave. The options for implementing this policy are laid out later in this memo (see DPC Options).

Policy Questions

What is the size of the problem that we are trying to address with this policy? The data on the

need for or use of paid parental leave are scant and were collected very soon after FMLA was passed. We do not have data on recent experience. I understand that a survey conducted by the Commission on Family and Medical Leave found that 3.4 percent of respondents did not take unpaid leave when needed. Of those 64 percent (or 2 percent of the overall sample) cited affordability as the main reason they did not take advantage of unpaid leave when they needed it. Of the respondents who stated they did not take unpaid leave for birth or adoption of a child, 100 percent (0.2 percent of the overall sample) cited affordability as the main reason. By offering paid leave, the Administration could try to address this problem. It is also important to note that while the policy under consideration may be characterized as a paid parental leave proposal, only 17% of those who took FMLA covered leave did so for maternity leave..

Is there a substitution effect? If States implement this proposal, employers may decide to offset their costs by decreasing current benefits such as annual leave, paid parental leave, or even lowering wages. In addition, employers may lobby States to modify their state workers compensation programs to only allow for maternity disability after the UI benefit is exhausted. At one of the meetings, CEA raised the possibility that this policy could result in increasing hiring discrimination against women in the child bearing years.

What are the implications for the UI program? The UI system is designed to pay benefits only to workers who lose a job through no fault of their own and who continue to be unemployed because no other work is available. The major concern of DOL is that a change in the Department's long-standing position on availability -- because it is not in Federal law -- would create a "slippery slope" for other aspects of the UI program. States might decide to pay benefits to other people not available for work because of vacations, sick leave, sabbaticals, or retirement. In addition, DOL believes that employers may push to turn UI into a mean-tested program to reduce costs. DOL also fears that any attempt to create limited State flexibility in using UI funds for family and medical leave will end up eliminating any DOL control over State UI programs except for provisions explicitly in Federal law.

Will this be seen as circumventing the legislative process in order to expand FMLA coverage? The Administration has tried to lower the current 50 employee threshold for coverage under FMLA to 25. Administration support for paid leave may undercut support for expansion of unpaid leave under FMLA. Given UI covers all employers regardless of size, with limited exceptions, employees not currently covered by FMLA could receive paid leave benefits.

Operational Questions.

The following questions must be addressed in designing a program for paid family and medical leave. These questions can be left to individual States to answer as they design their own family and medical leave programs or they can be addressed through Federal policy guidance or model legislation. However, if we decided to issue guidance or regulations, it is unclear whether we have the legal authority to compel States to follow these guidelines.

Should this benefit be universal or targeted to lower income persons? UI is a non-means tested program – it is insurance against wage loss when involuntarily unemployed regardless of current family income or assets. The FMLA proposals discussed in 1997 and 1998 would have limited the benefit to those with incomes below a certain amount – as initially discussed the limit was a family income of \$50,000, then it was \$36,000. An income test could be interpreted as the first step to welfarizing UI. This may be preferable from a policy perspective, but is inconsistent with UI policy.

What should the length of benefits be? Currently, FMLA provides job-protected unpaid leave for 12 weeks. UI benefits are available for up to 26 weeks. The State proposals we have seen would have chosen the shorter duration but there is no particular reason to adopt that duration.

What type of leave will be covered? The Administration's budget initiatives were focused on paid parental leave. Some of the State proposals (including Massachusetts) cover all family and medical leave under State law, which is much broader than parental leave – including leave for the person's own health or to care for a sick parent or child. Of those who took FMLA covered leave in 1995, 60 percent did so due to personal illness. UI coverage for intermittent leave may be very difficult to administer and enforce.

Should the individual be required to exhaust current leave options first prior to seeking UI benefits? Currently, most employees receive annual and sick leave from their employers. FMLA does not require the individual to exhaust other avenues prior to taking advantage of unpaid leave. Any requirement that individuals use all of the leave available to them for this purpose prior to seeking the UI benefit would be difficult to track and enforce.

Budgetary and Regulatory Questions.

What would the proposed program cost the Federal Government? The options under consideration are designed to permit interested States to provide paid family and medical leave; there will be no Federal mandate. Because there will be no Federal legislation, there will be no legislative PAYGO requirements. The intended effect of these options is to increase spending from the Unemployment Trust Fund, which is on budget. But State UI taxes will increase over time in response to the higher benefit outlays, so over the longer term paid family and medical leave will be deficit neutral. We are trying estimate the effects of this policy on a year by year basis but the estimate will be very soft and difficult to construct.

Only rough estimates of potential program costs are available. If paid family and medical leave were implemented in every State with the current Federal thresholds, DOL estimates that the costs would be \$2-\$9 billion a year, compared with current UI benefits of \$23 billion a year. The low end assumes no behavioral changes; the high end assumes behavioral changes by workers and employers, including shifts from currently paid leave to the new program. For the Massachusetts proposal, which covered all family and medical leave for all sizes of firms for 12 weeks, three independent estimates concluded costs would be about \$200 million a year, compared with current UI benefit payments of \$750 million in that State. We would anticipate

that over time States would increase taxes, so over the years the program would be deficit neutral.

Would this be subject to Congressional review under the Small Business Regulatory Enforcement Fairness Act (SBREFA)? Yes. If DOL issued either a program letter or a proposed regulation, it would be subject to Congressional review.

DPC Options.

DPC is currently developing three options. All are permissive, not mandates, and would rely on State legislation to change State UI laws.

1. Instruct DOL to Issue New Program Guidance (interpretative rule).

- Pros:*
- Guarantees a specific policy outcome.
 - Could be done quickly and does not require public comment.
 - Could include Federal parameters on the structure of the program.

- Cons:*
- Compromises DOL's "availability" standard.
 - More susceptible to legal challenge and therefore could be easily overturned.
 - Subject to Congressional review under SBREFA and would likely be categorized as "major."
 - More susceptible to future policy changes.
 - Could provoke an appropriations rider or other legislative action.

2. Instruct DOL to Issue New Regulations.

- Pros:*
- Creates a sounder legal basis and is less susceptible to legal challenge.
 - Provides for public comment.
 - Offers time for "fine tuning" Federal guidance on the parameters of UI coverage of family and medical leave.
 - Less susceptible to future policy changes.

- Cons:*
- Compromises DOL's "availability" standard.
 - Could result in changes to the policy based on public comment.
 - Regulations require more time – delays State adoption of program and allows opposition to mobilize.
 - Subject to Congressional review under SBREFA and would likely be categorized as "major."
 - Could provoke an appropriations rider or other legislative action.

3. Instruct DOL to Produce Model State Legislation for Separate UI-FMLA Fund. States could create a separate State tax to fund parental leave (that would not be part of the UI trust fund) and could reduce their State UI taxes to make this new program revenue-neutral for employers. Several States have already established separate taxes for training or for employment security administration. DOL could use the UI system to administer this new program.

- Pros:*
- Achieves States objective of providing paid leave.
 - Provides assistance to States without compromising DOL's "availability" standard.
 - Easier because no Federal administrative actions are necessary.
 - Designing model legislation could be done relatively quickly.

- Cons:*
- Appears less pro-active.
 - Less responsive to State initiatives in this area.
 - Less attractive to States due to the requirement of a new tax.

Recommendation. I recommend Option 3. By supporting this option, the Administration can show its strong support for paid parental leave without compromising the fundamental requirements of the UI program. In addition, other alternatives should be explored such as creation of a new tax credit, use of State temporary disability programs, or creation of a Federal program of paid parental leave like the 1997 proposal.

DRAFT #2 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, four States with surpluses in their UI trust funds – 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). 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 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 preserving DOL's authority to guard against ill-advised changes that States might propose (such as restricting benefits).

Background

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, States are free to carve exceptions as they see fit (e.g., claimants who are going to be recalled to their old employer need not seek work; claimants may quit work if they have good personal cause such as illness; temporary ill claimants need not seek work). However, DOL has long interpreted federal law as mandating a specific "availability" requirement, i.e. workers have to be able and available for work to claim benefits. DOL has used this interpretation of the same Federal law provisions 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. This is, however, not a simple and straightforward exercise. *no ital*

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 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.

Proper design of a State system to provide these new benefits would be critical. For instance, how FMLA leave-takers would be accounted for in the count of initial claims (a leading economic indicator) is an issue that must be considered. Also, while currently 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. Other program design issues would need to address the substitution effect, whereby workers or employers might try to shift from currently paid leave to the new UI-FMLA program. In addition, there would be important implications for the UI program, such as: the potential for opening up UI to other people "not available for work" (e.g., those on sick leave or sabbaticals), moves to means test the program, and generally reducing the control we have over the program.

for all states?

On the policy and budget front, some might see this as an attempt to circumvent the legislative process in order to expand FMLA coverage, and it could result in bill riders (arguably a good fight to have). The budget costs are uncertain, but potentially are large in the near term, if States took this option (costs could range from \$2 to \$9 billion annually, compared to about \$23 billion nationwide in UI annually). Several estimates of the effect of the effect of the Massachusetts proposal put it in the \$200 million range. However, over the longer term, State UI taxes would be adjusted upwards to respond to the increased benefits so the program be deficit neutral. These non-legislative approaches will also be subject to congressional review under the Small Business Regulatory Enforcement Fairness Act prior to going into effect.

would

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 could 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 ~~to be set as required by law.~~

PROS:

- Empowers DOL ~~to design program parameters and data collection requirements.~~ *to the extent a standard is set*
- Provides DOL with greater leverage to guard against future objectionable State efforts.
- Provides opportunity for public comment, more involvement of other federal agencies, and time for fine tuning the many program issues.

CONS:

- Could also provoke strong congressional opposition and legislative riders.
- Would be a time-intensive process, taking ~~at least a year~~ *at least* to finalize and requiring States to wait for regulations to take action. *SET*
- Also subject to SBREFA process of congressional review.

OPTION THREE: Instruct DOL to Produce Model State Legislation for Separate UI-FMLA Fund. DOL would encourage States to divert a portion of UI taxes to fund special benefits for workers on FMLA leave and develop voluntary model State legislation for such a tax-neutral approach, which would be 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.
- Model legislation would be based on successful State efforts to create separate funds for training and reemployment assistance.
- No administrative or regulatory actions are needed.

CONS:

- Could be ineffective *in* promoting State action, as States may be concerned about the appearance of creating a new tax structure to cover FMLA benefits.
- Groups supporting DOL policy change will view this option ~~as~~ *weak* (they may well prefer that the Administration do nothing than advance this approach). *as*

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

DRAFT #2 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, four States with surpluses in their UI trust funds – 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). 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 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 preserving DOL's authority to guard against ill-advised changes that States might propose (such as restricting benefits).

Background

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, States are free to carve exceptions as they see fit (e.g., claimants who are going to be recalled to their old employer need not seek work; claimants may quit work if they have good personal cause such as illness; temporary ill claimants need not seek work). However, DOL has long interpreted federal law as mandating a specific "availability" requirement, i.e. workers have to be able and available for work to claim benefits. DOL has used this interpretation of the same Federal law provisions 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. This is, however, not a simple and straightforward exercise. no ital

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 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.

Proper design of a State system to provide these new benefits would be critical. For instance, how FMLA leave-takers would be accounted for in the count of initial claims (a leading economic indicator) is an issue that must be considered. Also, while currently 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. Other program design issues would need to address the substitution effect, whereby workers or employers might try to shift from currently paid leave to the new UI-FMLA program. In addition, there would be important implications for the UI program, such as: the potential for opening up UI to other people "not available for work" (e.g., those on sick leave or sabbaticals), moves to means test the program, and generally reducing the control we have over the program. *for all states?*

On the policy and budget front, some might see this as an attempt to circumvent the legislative process in order to expand FMLA coverage, and it could result in bill riders (arguably a good fight to have). The budget costs are uncertain, but potentially are large in the near term, if States took this option (costs could range from \$2 to \$9 billion annually, compared to about \$23 billion nationwide in UI annually). Several estimates of the effect of the effect of the Massachusetts proposal put it in the \$200 million range. However, over the longer term, State UI taxes would be adjusted upwards to respond to the increased benefits so the program be deficit neutral. These non-legislative approaches will also be subject to congressional review under the Small Business Regulatory Enforcement Fairness Act prior to going into effect. *would*

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 could 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 ~~to be set as required by law.~~

PROS:

- ~~to the extent a federal law states~~
- Empowers DOL to design program parameters and data collection requirements.
 - Provides DOL with greater leverage to guard against future objectionable State efforts.
 - Provides opportunity for public comment, more involvement of other federal agencies, and time for fine tuning the many program issues.

CONS:

- ~~at least~~ ~~to~~
- Could also provoke strong congressional opposition and legislative riders.
 - Would be a time-intensive process, taking ~~at least~~ a year to finalize and requiring States to wait for regulations to take action. ~~SET~~
 - Also subject to SBREFA process of congressional review.

OPTION THREE: Instruct DOL to Produce Model State Legislation for Separate UI-FMLA Fund. DOL would encourage States to divert a portion of UI taxes to fund special benefits for workers on FMLA leave and develop voluntary model State legislation for such a tax-neutral approach, which would be 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.
- Model legislation would be based on successful State efforts to create separate funds for training and reemployment assistance.
- No administrative or regulatory actions are needed.

CONS:

- ~~in~~
- Could be ineffective promoting State action, as States may be concerned about the appearance of creating a new tax structure to cover FMLA benefits.
 - Groups supporting DOL policy change will view this option ~~as~~ weak (they may well prefer that the Administration do nothing than advance this approach).
- ~~as~~

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

DRAFT OPTIONS MEMORANDUM

May 20, 1999

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, four States with surpluses in their UI trust funds – 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). 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 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 preserving DOL's authority to guard against ill-advised changes that States might propose (such as restricting benefits).

Background

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, States are free to carve exceptions as they see fit (*e.g.*, claimants who are going to be recalled to their old employer need not seek work; claimants may quit work if they have good personal cause such as illness; temporary ill claimants need not seek work). However, DOL has long interpreted federal law as mandating a specific "availability" requirement, *i.e.* workers have to be able and available for work to claim benefits. DOL has used this interpretation of the same Federal law provisions 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. This is, however, not a simple and straightforward exercise.

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 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.

Proper design of a State system to provide these new benefits would be critical. For instance, how FMLA leave-takers would be accounted for in the count of initial claims (a leading economic indicator) is an issue that must be considered. Also, while currently 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. Other program design issues would need to address the substitution effect, whereby workers or employers might try to shift from currently paid leave to the new UI-FMLA program. In addition, there would be important implications for the UI program, such as: the potential for opening up UI to other people “not available for work” (e.g., those on sick leave or sabbaticals), moves to means test the program, and generally reducing the control we have over the program.

On the policy and budget front, some might see this as an attempt to circumvent the legislative process in order to expand FMLA coverage, and it could result in bill riders (arguably a good fight to have). The budget costs are uncertain, but potentially are large in the near term, if States took this option (fully implemented in all States, costs could range from \$2 to \$9 billion annually, compared to about \$23 billion nationwide in UI annually). Several estimates of the effect of the Massachusetts proposal put it in the \$200 million range. However, over the longer term, State UI taxes would be adjusted upwards to respond to the increased benefits so the program would be deficit neutral. These non-legislative approaches will also be subject to congressional review under the Small Business Regulatory Enforcement Fairness Act prior to going into effect.

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 could 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.
- Provides opportunity for public comment, more involvement of other federal agencies, and time for fine tuning the many program issues.

CONS:

- Could also provoke strong congressional opposition and legislative riders.
- Would be a time-intensive process, taking at least a year to finalize and requiring States to wait for regulations to take action.
- Also subject to SBREFA process of congressional review.

OPTION THREE: Instruct DOL to Produce Model State Legislation for Separate UI-FMLA Fund. DOL would encourage States to divert a portion of UI taxes to fund special benefits for workers on FMLA leave and develop voluntary model State legislation for such a tax-neutral approach, which would be 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.
- Model legislation would be based on successful State efforts to create separate funds for training and reemployment assistance.
- No administrative or regulatory actions are needed.

CONS:

- Could be ineffective in promoting State action, as States may be concerned about the appearance of creating a new tax structure to cover FMLA benefits.
- Groups supporting DOL policy change will view this option as weak (they may 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



Paul D. Glastris
05/20/99 11:50:53 AM

Record Type: Record

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

cc:

Subject: latest grambling draft

Draft 5/20/99 11:45 am

Glastris/Shih

**PRESIDENT WILLIAM J. CLINTON
"NEW TOOLS FOR PARENTS IN THE NEW ECONOMY"
COMMENCEMENT ADDRESS
GRAMBLING STATE UNIVERSITY
GRAMBLING, LOUISIANA
MAY 23, 1999**

When I heard that I'd been invited to Grambling State University, there wasn't much discussion about whether or not I would be here today. I told my staff in Washington, a place where everybody **thinks** they're somebody, that I wanted to go to a "Place Where Everybody **is** Somebody." [*school motto*] And I was not about to miss a chance to see the "Best Band in the Land" -- the Grambling State Marching Tigers -- play without having to buy a ticket to the Super Bowl [*they have played in four*].

It is an honor to join the last Grambling class of the 20th Century on this very important day in your lives. In so many ways, the story of this fine institution embodies the African American experience in our 20th century. In 1901, not a single school in this part of Louisiana would welcome an African-American student into its classrooms.

But the visionary farmers of this community -- the children and grandchildren of slaves -- were determined to give their children the education, the pride, and the power to rise above bigotry and injustice. They raised some money for a school -- and wrote to Booker T. Washington, asking him to send a teacher from the Tuskegee Institute to establish it.

Out of that determination and vision, Grambling has grown into a university for the 21st Century. This beautiful campus has nurtured some of America's best educators and lawyers, pastors and public servants, nurses and business leaders. Of course the NFL recruits here -- a legacy of your legendary coach Eddie Robinson and his successor, Superbowl MVP Doug Williams. America's top technology firms do too, because Grambling State is first among all four-year colleges in conferring Computer and Information Science degrees to African-Americans.

You join in a proud tradition and I congratulate each of you on your achievement. This day marks years of hard work, long hours and late nights. The friends you've made will be your friends for life. The knowledge you have gained will enrich you for life. The possibilities before you are limited only by your dreams.

-- some of you joining your parents and grandparents, others of you the first in your families to earn a college degree.

And I congratulate and honor your parents, who should be proud not only of you, but of themselves. I understand that one of the most beloved Presidents of Grambling, Ralph Waldo Emerson Jones would often say to his students, "When you go home, be sure to kiss everybody, including the mule. Because the mule is the one who pulls the plow and keeps the family going." Well, I'm not asking you to kiss any mules today, but I am asking each of you to thank the people who kept your families going.

To raise a child from infancy to college graduation is no small feat. Every parent has a story -- a story of sacrifice, of love, of late night worries and silent hopes. Joyce Gaines of Vallejo, California, who took on two extra jobs so that her daughter Tieaasha could go to college. Even though she was suffering from five ruptured disks, Ms. Gaines commuted 100 miles each way to work for a company in Sacramento. It was worth it. Today Tieaasha is graduating with a degree in Sociology and plans to open a home for abused children ***[Tk other heroic stories of Grambling parents...a husband and wife who worked double shifts; a "sandwich generation" parent caring for both children and elderly relatives.]*** Today, the burdens of parents are often doubled, as they care not only for growing children but for aging parents. We must do more to lighten their load and help parents succeed at home and at work -- especially now, as we face the new challenges of the new economy.

This spring, in commencement addresses to the class of '99, I will be speaking about how a bold new economy is transforming virtually every facet of our lives. Next

month, at the University of Chicago, I will talk about how we must put a human face on the dynamic but sometimes disruptive international marketplace. And today, I want to talk about how we as a nation must respond to the new challenges facing families in the new economy. We must reshape our institutions in ways that give parents more time at home. No government can raise a child. Mothers and fathers do. But we have a duty to help parents -- to give them the tools they need to meet their responsibilities at home and work; and to pass on their values to their children.

The class of '99 is entering an era of unparalleled opportunity and possibility. We all know that this is the strongest peacetime economy in American history. We all know that it is an economy driven by information and fast-paced technological change. But what we are now beginning to understand is that the best may be yet to come. A productivity explosion, powered by technology -- from the E-mail that links offices around the world to the computers used to track warehouse inventory -- is now being fully felt throughout the economy. America has a tremendous capacity for more growth, greater investment, higher salaries, and even faster technological innovation. With your diplomas in hand, you will have the opportunity to help shape these times, and to lead lives of greater accomplishment and affluence than your parents ever dreamed of.

But as your parents can attest, we still have far to go before we have fully adapted to the demands of this new era. In our modern economy, companies compete not just with others down the street, but with firms across the globe. To stay competitive,

X goz
have

they have had to produce more with fewer employees -- and the pace of work has picked up. Jobs today feel like two jobs. And to make ends meet, many people have had to take on yet another job. Working parents are feeling enormous stress -- and they are bringing that stress home with them.

This will only get worse as the Class of '99 moves through its careers. It may seem a million years away to those of you graduating today, but soon, many of you will become parents -- some of you may already be parents. Working at nine at night may seem routine to you now, but soon enough, you will want to be home at nine at night, putting your children to bed. We must have an economy that allows you to do that.

Last year, I asked the President's Council of Economic Advisers to study the sweeping changes the new economy has brought to our families. It has been said that if every economist on Earth were laid end to end they still wouldn't reach a conclusion. But on this question a team of the nation's top economists has reached a conclusion, one that confirms our common sense and common experience. They found that because more and more parents are working outside the home, they have less time for their children. The percentage of married mothers in the workforce has nearly doubled in a generation, from 38 percent in 1969 to 68 percent in 1996. To African Americans, that is nothing new. African American mothers have always had to work outside the home. Today, all of America is experiencing challenges African Americans have always known.

Because more mothers are working outside the home, and because the number of single parent families has grown, parents in the average family have 22 fewer hours per week to spend at home.

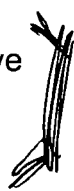
The vast majority of today's parents are doing everything they can to give their children whole and happy childhoods. But no matter how hard they try, they worry that it is still not enough. They worry that waking up early and staying up late to make time for a child might not be enough, when that child still has to go home alone to an empty house after school. They worry that all those Sunday morning sermons about a world of love might not be enough, when the movies their children watch, the music they listen to, the video games they play show a world of hate and violence. They worry that all those nights working overtime to buy a computer so that a child can visit some of the world's finest libraries on the Internet might not be enough, when that same Internet can also lead them to recipes for pipe bombs and explosives. These challenges to parents will soon become challenges to the Class of 1999, as you start your own families. We will have to find ways of solving these challenges, and history will call upon you to be part of the solution.

America has experienced sweeping technological and wrenching social change before -- change that called our government to act to protect families. In the previous century, America moved from farm to factory. Families migrated to cities, husbands

went to work in factories, and wives were left alone in cramped apartments, their children roaming the streets or, worse, toiling in dangerous factories. Alarmed by the condition in the cities, America responded with big, practical solutions -- labor unions, settlement houses, child labor laws, and universal elementary education. One hundred years ago, America made the industrial age safe for families. Today, we must make the information age safe for families.

The modern economy has created four great challenges for families.

The greatest and most obvious of these is time. In our round-the world, round-the-clock economy, there just don't seem to be enough hours in the day for parents to do everything they need to at home and at work. I am proud that the first bill I ever signed into law was the Family and Medical Leave Act. Since 1993, millions of Americans have used it to take up to 12 weeks of unpaid leave to care for a newborn or sick relative without losing their jobs. But the current law meets just a fraction of the need. Too many people and too many family obligations are not covered by this law. And nearly two-thirds of all eligible workers do not take advantage of family leave because they simply cannot survive without their paychecks.



We must think bigger. In 1935, the federal government created the national unemployment insurance system, which has kept tens of millions of families from losing their homes or falling into poverty when their breadwinners are between jobs. **Another**

example tk. Today, we must set a goal that every working American can take the time they need to care for their families without losing the income they need to support their families. In the 21st Century, American working people deserve paid family leave.

Today, using my executive authority as President, I am taking important steps toward that vision. Just as the federal government was the first major employer to desegregate its workplaces, federal agencies can blaze the path towards paid family leave. That is why I am directing the Office of Personnel Management to allow all federal workers to use the sick leave they have earned for themselves to take time off to care for their sick family members. Currently, the most sick leave a worker can take in these cases is 13 days. With the new policy I am proposing today, federal employees will be able to take up to 12 weeks paid sick leave to nurse an ailing child or parent back to health.

I believe the private sector should do the same. If every company in America that offers sick leave to its workers adopted the policy we are adopting today, TK percent of all American families would have this important benefit.

We must find other creative new ways to help more Americans use 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 the unemployment insurance balances they have accumulated so that they can

guidance / authority

b

have some income while they are on family leave. This is a promising experiment and today, I am taking the first steps toward granting states that permission. [precise action TK]

I also challenge Congress to do its part. I have proposed expanding family leave to cover more workers and more parental responsibilities. And I call on Congress to act. Parents should not have to fear a boss' wrath because they left work to take a child to the doctor – or call in sick to attend a parent teacher conference or volunteer in a school.

Americans believe in hard work. They put in long hours to get their jobs done -- and they're proud of it. This work ethic is the reason our economy is one of the strongest in the history of the world. But, we clearly need to find new ways to give workers more time off families.

The second challenge parents face in the modern economy is finding affordable, high-quality child care. Today, low-income families spend up to a quarter of their income on child care, and studies show that the quality of that care is usually mediocre. When parents are lucky enough to locate affordable and nurturing care for their children, they face waiting lists that take weeks and months to move. I am supporting child care subsidies and tax credits, better training for caregivers and higher standards of care. And I challenge businesses to do their part by helping their own workers find and afford quality child care.

one in seven
good.

✓

uneven

greater move

inequality, the training & inspection

tax breaks

Today, millions of working parents start eyeing the clock every day at three in the afternoon, wondering if their children have made it safely back from school, and wondering how they will fare, at home alone. The hours after the schoolbell rings and before parents come home from work are a perilous time for children, the time they are most tempted to try drugs and alcohol, and most likely to become victims of a crime. That is why I have called for tripling our investment in quality after school care. Too often, the safest, best equipped buildings for children are kept locked and shuttered in the afternoon. I challenge school districts all across America to unlock these empty classrooms and fill them with the sounds of children playing and reciting their multiplication tables.

The third challenge parents face in the modern economy is that they are physically separated from their children for longer and longer periods of time. We can close that distance by bringing back an old idea: that children can be with parents when they work. I have experienced the benefits of this myself. When I was a boy, living with my widowed mother and her parents in Hope, Arkansas, I spent many happy hours in my grandfather's tiny grocery store. I'd watch him with his customers, black and white, and usually poor. He'd give credit to whoever needed it, and they always paid him back. In that little family business, I absorbed lessons and values that have stayed with me all my life.

As a father, I have had the privilege of living, as it were, "above the store," first in the Governor's Mansion, then in the White House. I can "commute" from my office to the family

dinner table in about three minutes when the lights are with me. So I challenge more of America's employers to bring workers and their children closer together during the day, by allowing employees to telecommute -- that is, work from home with a modem. I challenge employers to opening more on-site child care centers. And I challenge them to team up with school districts to build public schools at worksites. Dozens of companies have already built such innovative public schools and I have called for a new federal program to encourage more of them. Employees who enroll their children at these workplace schools can spend more time with their children -- they can commute to work together in the mornings and do homework on the ride home at night. Workplace schools can bring parents and children closer together.

ding
smith

The fourth great challenge that parents face in the modern economy is cultural. The new economy has enriched our lives with lower-priced electronic gear and a growing variety of medial entertainment. But too often, TV, radio, and the Internet bombard our children with images and ideas that no parent would ever want them to see or learn. We need tools that can protect free speech but also give parents more control over what their children see and read and hear. We are creating these tools. Soon, half of all TV sets sold in America will come with V-chips: devices parents can use to screen out sex, violence, or any program they don't want their children to see. And soon, with just the click of a mouse, 95 percent of all Internet users will be able to make offensive web-sites off-limits to their children.

Creating these kinds of tools is the responsibility of government. But the entertainment industry must do its part. I challenge the industry to stop showing guns in any ads children

might see, to enforce more strictly their movie rating systems; and to determine whether that system is allowing children to see too much gratuitous violence.

If we provide these tools -- to screen out bad influences, to bring home and work closer, to improve child care, to spend more time at home -- we can help working parents succeed at the most important job of all: the job of raising children.

It is the responsibility of government to make these tools available. But is the responsibility of parents to use them. More working parents must take advantage of tools already available, such as family leave. And all across American society, we must get serious about putting our children first.

In a few years, many of you graduating today will be parents, and some of you already are. To raise your children well, you will have to make many sacrifices. But then, your parents made many sacrifices for you. I want all of you to take a minute to think of how you got to this day. How many of you would have made it if it weren't for your families? If it weren't for the precious hours your mom or dad found between shifts to help you with your homework, or read you a story. If it weren't for mornings your mother rose at the crack of dawn to go to work so that she could be home when you got back from school. If it weren't for the hugs and home-cooked meals that conveyed more powerfully than words, unconditional love, support and faith. Ask your parents today: "Was it worth it?"

Just good
done in this
century

Until you watch your own child graduate from school, you may never know just how proud your parents are today. But let me just add that all America is proud today. Congratulations.

Message Sent To:

Bruce N. Reed/OPD/EOP@EOP
Cathy R. Mays/OPD/EOP@EOP
Elena Kagan/OPD/EOP@EOP
Laura Emmett/WHO/EOP@EOP
Nicole R. Rabner/WHO/EOP@EOP
Gene B. Sperling/OPD/EOP@EOP
Melissa G. Green/OPD/EOP@EOP
Karen Tramontano/WHO/EOP@EOP
Carolyn T. Wu/WHO/EOP@EOP



Paul D. Glastris
05/20/99 11:50:53 AM

Record Type: Record

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

cc:

Subject: latest grambling draft

Draft 5/20/99 11:45 am

Glastris/Shih

**PRESIDENT WILLIAM J. CLINTON
"NEW TOOLS FOR PARENTS IN THE NEW ECONOMY"
COMMENCEMENT ADDRESS
GRAMBLING STATE UNIVERSITY
GRAMBLING, LOUISIANA
MAY 23, 1999**

When I heard that I'd been invited to Grambling State University, there wasn't much discussion about whether or not I would be here today. I told my staff in Washington, a place where everybody **thinks** they're somebody, that I wanted to go to a "Place Where Everybody is Somebody." [*school motto*] And I was not about to miss a chance to see the "Best Band in the Land" -- the Grambling State Marching Tigers -- play without having to buy a ticket to the Super Bowl [*they have played in four*].

It is an honor to join the last Grambling class of the 20th Century on this very important day in your lives. In so many ways, the story of this fine institution embodies the African American experience in our 20th century. In 1901, not a single school in this part of Louisiana would welcome an African-American student into its classrooms.

But the visionary farmers of this community -- the children and grandchildren of slaves -- were determined to give their children the education, the pride, and the power to rise above bigotry and injustice. They raised some money for a school -- and wrote to Booker T. Washington, asking him to send a teacher from the Tuskegee Institute to establish it.

Out of that determination and vision, Grambling has grown into a university for the 21st Century. This beautiful campus has nurtured some of America's best educators and lawyers, pastors and public servants, nurses and business leaders. Of course the NFL recruits here -- a legacy of your legendary coach Eddie Robinson and his successor, Superbowl MVP Doug Williams. America's top technology firms do too, because Grambling State is first among all four-year colleges in conferring Computer and Information Science degrees to African-Americans.

You join in a proud tradition and I congratulate each of you on your achievement. This day marks years of hard work, long hours and late nights. The friends you've made will be your friends for life. The knowledge you have gained will enrich you for life. The possibilities before you are limited only by your dreams.

-- some of you joining your parents and grandparents, others of you the first in your families to earn a college degree.

And I congratulate and honor your parents, who should be proud not only of you, but of themselves. I understand that one of the most beloved Presidents of Grambling, Ralph Waldo Emerson Jones would often say to his students, "When you go home, be sure to kiss everybody, including the mule. Because the mule is the one who pulls the plow and keeps the family going." Well, I'm not asking you to kiss any mules today, but I am asking each of you to thank the people who kept your families going.

To raise a child from infancy to college graduation is no small feat. Every parent has a story -- a story of sacrifice, of love, of late night worries and silent hopes. Joyce Gaines of Vallejo, California, who took on two extra jobs so that her daughter Tieaesha could go to college. Even though she was suffering from five ruptured disks, Ms. Gaines commuted 100 miles each way to work for a company in Sacramento. It was worth it. Today Tieaesha is graduating with a degree in Sociology and plans to open a home for abused children ***[Tk other heroic stories of Grambling parents...a husband and wife who worked double shifts; a "sandwich generation" parent caring for both children and elderly relatives.]*** Today, the burdens of parents are often doubled, as they care not only for growing children but for aging parents. We must do more to lighten their load and help parents succeed at home and at work -- especially now, as we face the new challenges of the new economy.

This spring, in commencement addresses to the class of '99, I will be speaking about how a bold new economy is transforming virtually every facet of our lives. Next

month, at the University of Chicago, I will talk about how we must put a human face on the dynamic but sometimes disruptive international marketplace. And today, I want to talk about how we as a nation must respond to the new challenges facing families in the new economy. We must reshape our institutions in ways that give parents more time at home. No government can raise a child. Mothers and fathers do. But we have a duty to help parents -- to give them the tools they need to meet their responsibilities at home and work; and to pass on their values to their children.

The class of '99 is entering an era of unparalleled opportunity and possibility. We all know that this is the strongest peacetime economy in American history. We all know that it is an economy driven by information and fast-paced technological change. But what we are now beginning to understand is that the best may be yet to come. A productivity explosion, powered by technology -- from the E-mail that links offices around the world to the computers used to track warehouse inventory -- is now being fully felt throughout the economy. America has a tremendous capacity for more growth, greater investment, higher salaries, and even faster technological innovation. With your diplomas in hand, you will have the opportunity to help shape these times, and to lead lives of greater accomplishment and affluence than your parents ever dreamed of.

But as your parents can attest, we still have far to go before we have fully adapted to the demands of this new era. In our modern economy, companies compete not just with others down the street, but with firms across the globe. To stay competitive,

A goh
new

they have had to produce more with fewer employees -- and the pace of work has picked up. Jobs today feel like two jobs. And to make ends meet, many people have had to take on yet another job. Working parents are feeling enormous stress -- and they are bringing that stress home with them.

This will only get worse as the Class of '99 moves through its careers. It may seem a million years away to those of you graduating today, but soon, many of you will become parents -- some of you may already be parents. Working at nine at night may seem routine to you now, but soon enough, you will want to be home at nine at night, putting your children to bed. We must have an economy that allows you to do that.

Last year, I asked the President's Council of Economic Advisers to study the sweeping changes the new economy has brought to our families. It has been said that if every economist on Earth were laid end to end they still wouldn't reach a conclusion. But on this question a team of the nation's top economists has reached a conclusion, one that confirms our common sense and common experience. They found that because more and more parents are working outside the home, they have less time for their children. The percentage of married mothers in the workforce has nearly doubled in a generation, from 38 percent in 1969 to 68 percent in 1996. To African Americans, that is nothing new. African American mothers have always had to work outside the home. Today, all of America is experiencing challenges African Americans have always known.

Because more mothers are working outside the home, and because the number of single parent families has grown, parents in the average family have 22 fewer hours per week to spend at home.

The vast majority of today's parents are doing everything they can to give their children whole and happy childhoods. But no matter how hard they try, they worry that it is still not enough. They worry that waking up early and staying up late to make time for a child might not be enough, when that child still has to go home alone to an empty house after school. They worry that all those Sunday morning sermons about a world of love might not be enough, when the movies their children watch, the music they listen to, the video games they play show a world of hate and violence. They worry that all those nights working overtime to buy a computer so that a child can visit some of the world's finest libraries on the Internet might not be enough, when that same Internet can also lead them to recipes for pipe bombs and explosives. These challenges to parents will soon become challenges to the Class of 1999, as you start your own families. We will have to find ways of solving these challenges, and history will call upon you to be part of the solution.

America has experienced sweeping technological and wrenching social change before -- change that called our government to act to protect families. In the previous century, America moved from farm to factory. Families migrated to cities, husbands

went to work in factories, and wives were left alone in cramped apartments, their children roaming the streets or, worse, toiling in dangerous factories. Alarmed by the condition in the cities, America responded with big, practical solutions -- labor unions, settlement houses, child labor laws, and universal elementary education. One hundred years ago, America made the industrial age safe for families. Today, we must make the information age safe for families.

The modern economy has created four great challenges for families.

The greatest and most obvious of these is time. In our round-the world, round-the-clock economy, there just don't seem to be enough hours in the day for parents to do everything they need to at home and at work. I am proud that the first bill I ever signed into law was the Family and Medical Leave Act. Since 1993, millions of Americans have used it to take up to 12 weeks of unpaid leave to care for a newborn or sick relative without losing their jobs. But the current law meets just a fraction of the need. Too many people and too many family obligations are not covered by this law. And nearly two-thirds of all eligible workers do not take advantage of family leave because they simply cannot survive without their paychecks.



We must think bigger. In 1935, the federal government created the national unemployment insurance system, which has kept tens of millions of families from losing their homes or falling into poverty when their breadwinners are between jobs. **Another**

example tk. Today, we must set a goal that every working American can take the time they need to care for their families without losing the income they need to support their families. In the 21st Century, American working people deserve paid family leave.

Today, using my executive authority as President, I am taking important steps toward that vision. Just as the federal government was the first major employer to desegregate its workplaces, federal agencies can blaze the path towards paid family leave. That is why I am directing the Office of Personnel Management to allow all federal workers to use the sick leave they have earned for themselves to take time off to care for their sick family members. Currently, the most sick leave a worker can take in these cases is 13 days. With the new policy I am proposing today, federal employees will be able to take up to 12 weeks paid sick leave to nurse an ailing child or parent back to health.

I believe the private sector should do the same. If every company in America that offers sick leave to its workers adopted the policy we are adopting today, TK percent of all American families would have this important benefit.

We must find other creative new ways to help more Americans use 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 the unemployment insurance balances they have accumulated so that they can

guidance/authority



have some income while they are on family leave. This is a promising experiment and today, I am taking the first steps toward granting states that permission. [precise action TK]

I also challenge Congress to do its part. I have proposed expanding family leave to cover more workers and more parental responsibilities. And I call on Congress to act. Parents should not have to fear a boss' wrath because they left work to take a child to the doctor – or call in sick to attend a parent teacher conference or volunteer in a school.

Americans believe in hard work. They put in long hours to get their jobs done -- and they're proud of it. This work ethic is the reason our economy is one of the strongest in the history of the world. But, we clearly need to find new ways to give workers more time off families.

The second challenge parents face in the modern economy is finding affordable, high-quality child care. Today, low-income families spend up to a quarter of their income on child care, and studies show that the quality of that care is usually mediocre. When parents are lucky enough to locate affordable and nurturing care for their children, they face waiting lists that take weeks and months to move. I am supporting child care subsidies and tax credits, better training for caregivers and higher standards of care. And I challenge businesses to do their part by helping their own workers find and afford quality child care.

one in seven
good.

?

uneven

great more

investing in quality, the training & inspection

tax incen

Today, millions of working parents start eyeing the clock every day at three in the afternoon, wondering if their children have made it safely back from school, and wondering how they will fare, at home alone. The hours after the schoolbell rings and before parents come home from work are a perilous time for children, the time they are most tempted to try drugs and alcohol, and most likely to become victims of a crime. That is why I have called for tripling our investment in quality after school care. Too often, the safest, best equipped buildings for children are kept locked and shuttered in the afternoon. I challenge school districts all across America to unlock these empty classrooms and fill them with the sounds of children playing and reciting their multiplication tables.

The third challenge parents face in the modern economy is that they are physically separated from their children for longer and longer periods of time. We can close that distance by bringing back an old idea: that children can be with parents when they work. I have experienced the benefits of this myself. When I was a boy, living with my widowed mother and her parents in Hope, Arkansas, I spent many happy hours in my grandfather's tiny grocery store. I'd watch him with his customers, black and white, and usually poor. He'd give credit to whoever needed it, and they always paid him back. In that little family business, I absorbed lessons and values that have stayed with me all my life.

As a father, I have had the privilege of living, as it were, "above the store," first in the Governor's Mansion, then in the White House. I can "commute" from my office to the family

dinner table in about three minutes when the lights are with me. So I challenge more of America's employers to bring workers and their children closer together during the day, by allowing employees to telecommute -- that is, work from home with a modem. I challenge employers to opening more on-site child care centers. And I challenge them to team up with school districts to build public schools at worksites. Dozens of companies have already built such innovative public schools and I have called for a new federal program to encourage more of them. Employees who enroll their children at these workplace schools can spend more time with their children -- they can commute to work together in the mornings and do homework on the ride home at night. Workplace schools can bring parents and children closer together.

The fourth great challenge that parents face in the modern economy is cultural. The new economy has enriched our lives with lower-priced electronic gear and a growing variety of medial entertainment. But too often, TV, radio, and the Internet bombard our children with images and ideas that no parent would ever want them to see or learn. We need tools that can protect free speech but also give parents more control over what their children see and read and hear. We are creating these tools. Soon, half of all TV sets sold in America will come with V-chips: devices parents can use to screen out sex, violence, or any program they don't want their children to see. And soon, with just the click of a mouse, 95 percent of all Internet users will be able to make offensive web-sites off-limits to their children.

Creating these kinds of tools is the responsibility of government. But the entertainment industry must do its part. I challenge the industry to stop showing guns in any ads children

might see, to enforce more strictly their movie rating systems; and to determine whether that system is allowing children to see too much gratuitous violence.

If we provide these tools -- to screen out bad influences, to bring home and work closer, to improve child care, to spend more time at home -- we can help working parents succeed at the most important job of all: the job of raising children.

It is the responsibility of government to make these tools available. But is the responsibility of parents to use them. More working parents must take advantage of tools already available, such as family leave. And all across American society, we must get serious about putting our children first.

In a few years, many of you graduating today will be parents, and some of you already are. To raise your children well, you will have to make many sacrifices. But then, your parents made many sacrifices for you. I want all of you to take a minute to think of how you got to this day. How many of you would have made it if it weren't for your families? If it weren't for the precious hours your mom or dad found between shifts to help you with your homework, or read you a story. If it weren't for mornings your mother rose at the crack of dawn to go to work so that she could be home when you got back from school. If it weren't for the hugs and home-cooked meals that conveyed more powerfully than words, unconditional love, support and faith. Ask your parents today: "Was it worth it?"

1st grad
down this
century

Until you watch your own child graduate from school, you may never know just how proud your parents are today. But let me just add that all America is proud today. Congratulations.

Message Sent To:

Bruce N. Reed/OPD/EOP@EOP
Cathy R. Mays/OPD/EOP@EOP
Elena Kagan/OPD/EOP@EOP
Laura Emmett/WHO/EOP@EOP
Nicole R. Rabner/WHO/EOP@EOP
Gene B. Sperling/OPD/EOP@EOP
Melissa G. Green/OPD/EOP@EOP
Karen Tramontano/WHO/EOP@EOP
Carolyn T. Wu/WHO/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 Lanhoff'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 02133-1023

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
COURTIES
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

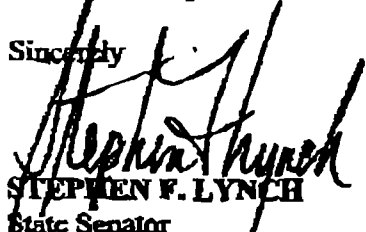
May 7, 1999

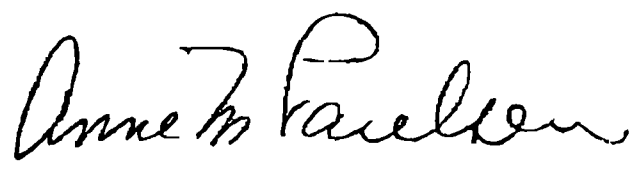
The Honorable Alexis M. Herman
Secretary of Labor
Page 2

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 tests, 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. that

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.



**United States
Office of
Personnel
Management**

**FAX
TRANSMITTAL
SHEET**

**OFFICE OF THE DIRECTOR
1900 E STREET, NW., ROOM 5H09
WASHINGTON, DC 20415-0001**

Date: 5/18

Number of Pages
(including this one)

11

Please

Deliver

To:

Name: NICOLE BABNER

Office:

DPC

Room:

Telephone:

456-2878

From:

Name: Janice Lachance

Office:

Director

Room:

Telephone:

(202) 606-1000

FAX Number: (202) 606-2076

Remarks



OFFICE OF THE DIRECTOR

UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, D.C. 20415

MEMORANDUM FOR: KAREN A. TRAMONTANO
ASSISTANT TO THE PRESIDENT

NICOLE RABNER
SPECIAL ASSISTANT TO THE PRESIDENT FOR
DOMESTIC POLICY AND SENIOR ADVISOR TO THE
FIRST LADY

Janice R. Lachance

FROM: JANICE R. LACHANCE
DIRECTOR

SUBJECT: New Tools for Parents in the New Economy

Attached, as requested, are 1) the draft Executive memorandum to revise Federal regulations to allow employees to use a total of up to 12 weeks of sick leave each year to care for a spouse, son, daughter, or parent with a serious health conditions, and to establish an Interagency Family Friendly Workplace Task Force, and 2) an expanded set of Questions and Answers supporting these initiatives.

Attachments (2)

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES**SUBJECT: New Tools for Parents and Families in the New Economy**

Since my Administration took office in 1993, I have encouraged Federal agencies to adopt a number of family friendly initiatives that would help Federal employees successfully balance their work and family responsibilities. In 1994, I directed the head of each executive department or agency to establish a program to encourage and support the expansion of flexible family friendly work arrangements. In 1996, I directed executive departments and agencies to review their personnel practices and develop a plan of action to use the flexible policies already in place and expand their ability to provide their employees with additional family friendly flexibilities and services.

Initiatives currently being implemented by a number of agencies include on-site child care; flexible working arrangements, including flexible schedules, job sharing, part-time employment; telecommuting; elder care information and referral services; child care resource and referral services; support groups; and policies that promote active inclusion of fathers as well as mothers. Taken together, these family friendly policies provide employees with a range of flexibilities, services, and options that can be utilized throughout one's Federal career.

A number of Federal agencies have taken comprehensive approaches to the challenge of establishing family friendly work environments. Programs include one-stop-service centers, resource centers, information available on the Internet, the formation of mentoring programs, and the establishment of on-site child development centers.

These initiatives have a proven track record for their ability to attract and retain a skilled workforce. Recent evidence suggests that greater loyalty to the agency is an added positive outcome. These policies that are good for families are clearly good for the business of the Federal Government.

My Administration has been particularly supportive of changes in Federal leave policy that are designed to help Federal employees meet their family and medical needs. These efforts began with the enactment of the Family and Medical Leave Act in February 1993. This legislation included separate provisions for Federal employees under which they, like their counterparts outside the Federal Government, may use a total of up to 12 weeks of unpaid leave during any 12-month period for (a) the birth of a son or daughter and care of the newborn; (b) the placement of a son or daughter with the employee for adoption or foster care; (c) the care of a spouse, son, daughter, or parent with a serious health condition; or (d) a serious health condition of the employee that make the employee unable to perform the duties of his or her position. I also supported legislation that authorized a permanent Federal leave sharing program, under which employees may donate their annual (vacation) leave individually or through a leave bank to other Federal employees who need additional *paid* time off because of a medical emergency affecting themselves or a family member.

2

In 1994, I supported legislation that established a permanent program under which Federal employees may use their paid sick leave for purposes related to the adoption of a child and a separate bill that authorized Federal employees to use up to 7 days of additional paid leave each year to serve as a bone-marrow or organ donor. My Administration issued Governmentwide regulations in late 1994 that authorized ~~most~~ Federal employees for the first time to use up to 13 days of their paid sick leave each year to provide care for a family member who is ill or to arrange for or attend the funeral of a family member. ?

In 1997, I asked Federal agencies to take action to ensure that Federal employees may schedule and be granted up to 24 hours of leave without pay each year for school and early childhood educational activities, routine family medical purposes, and attention to elderly relatives' health or care needs. In addition, Congress enacted legislation proposed by my Administration that authorized the establishment of an emergency leave transfer program for Federal employees affected by a major disaster or emergency.

Today I am taking action to demonstrate more clearly than ever before that the Federal Government, as an employer, is committed to helping its employees meet their obligations to their families. In addition, I am taking action to make sure that both managers and employees are aware of the benefits available to employees to assist them in balancing their work and family needs.

A New Sick Leave Policy for Federal Employees

First, I am directing the Office of Personnel Management to revise its Governmentwide regulations as soon as possible to allow Federal employees to use a total of 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 of 1993 (FMLA).

The Federal Government already provides its employees with generous amounts of *paid* leave for many of the purposes for which *unpaid* leave is authorized by the FMLA. For example, Federal employees may use a combination of paid annual and sick leave, as appropriate, for absences related to the birth of a child. They may use an unlimited amount of paid sick leave for absences related to the adoption of a child. And, of course, they may use any available paid sick leave for absences necessitated by their own illness or injury and for routine medical, dental, and optical examination or treatment.

Until now, however, the amount of sick leave that could be used to care for a family member who is ill was limited to 13 days a year for most employees. The policy I am directing the Office of Personnel Management to implement by regulation will provide for the use of a total of up to 12 full weeks each year of paid sick leave for the care of a spouse, son, daughter, or parent with a serious health condition—an amount that is equivalent to the amount of *unpaid* leave mandated by the FMLA for this same purpose.

The use of paid sick leave under this policy will be subject to the same conditions as the use of unpaid leave for these same 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 wish to use paid sick leave for this same purpose.

Coordinating Family Friendly Human Resources Programs

Second, I am directing the Office of Personnel Management to establish an Interagency Family Friendly Workplace Task Force within 90 days to be responsible for the promotion, development, and evaluation of Federal family friendly workplace initiatives. The head of each executive department and agency will appoint a family friendly work/life coordinator who will be a member of this task force. The names of these individuals will be forwarded to the Office of Personnel Management (OPM). Agency family friendly work/life coordinators will periodically report on their initiatives, progress, and status to OPM's Interagency Family Friendly Workplace Task Force. Agencies will work collaboratively with OPM to develop and assess new initiatives that support agencies as they create more family friendly work environments.

Conclusion

I believe the new sick leave policy described above, together with a much more visible focal point for the coordination of family friendly programs within each Federal agency, will be a wise investment in the most important resource of the Federal Government—the people who make the Government work on a day-to-day basis. In addition, I believe it is essential for the Federal Government, as the largest employer in the United States, to set an example for other employers to follow. The Family and Medical Leave Act was an important first step in recognizing the needs and protecting the interests of all employees who have family and medical needs that require time away from work. But while much has been gained from these policies, we must continue the momentum into the new millennium. I therefore urge all employers, both public and private, to follow the example I am setting today and begin the search for ways to ensure that our employees can meet their family obligations without serious financial disruption or hardship.

William J. Clinton

New Tools for Parents in the New Economy

Questions and Answers: A New Sick Leave Policy for Federal Employees

- Q.** How is the new sick leave policy different from the current policy on using sick leave for family care purposes?
- A..** Currently, most Federal employees may use a total of up to 13 days of sick leave for family care purposes, and then must use either annual leave, donated annual leave, or leave without pay, even when they still have sick leave available. The revised regulations would permit employees caring for a spouse, son, daughter, or parent with a serious health condition to use a total of up to 12 weeks of sick leave for this purpose.

This benefit would broaden the options available for employees to meet their family responsibilities. Mothers, fathers, grandparents (who are raising their grandchildren), and employees caring for their spouses and parents would all greatly benefit from this more generous leave benefit. This benefit also would address the dilemmas faced by parents of special needs children when trying to balance their work and family responsibilities.

- Q.** What is the current leave policy for pregnant employees? How will the new sick leave policy affect pregnant employees?
- A.** Pregnant employees are entitled to use sick leave for prenatal and postnatal medical appointments, hospitalization, and recovery from childbirth. Complicated conditions may require additional sick leave for periods of incapacitation. In addition, a mother or father is entitled to use up to 12 weeks of unpaid leave under the Family and Medical Leave Act (FMLA) for the birth of the newborn. Unpaid leave under the FMLA may be used within 1 year following the date of birth. In addition, a mother or father may use up to 13 days of sick leave for well baby appointments and to care for a newborn child during minor illnesses.

Under the new policy as well as under the current policy, a new mother may use any available sick leave for any period during which she is incapacitated by pregnancy and childbirth. Under the new policy, a new mother or father may use up to 12 weeks of sick leave to care for a newborn child with a serious health condition. If the new parent has already used 13 days of sick leave for family care purposes, he or she will be entitled to use the balance of the new 12-week entitlement to sick leave.

- Q.** Does the new proposal permit the use of 12 weeks of sick leave to care for a newborn child?

A. By law, employees may use sick leave only for periods of sickness and other incapacitation or for purposes related to the adoption of a child. OPM has no authority to permit employees to use sick leave for purposes other than those permitted by law. Employees may use annual leave or leave without pay to care for a healthy newborn or newly adopted child.

Q. What is a "serious health condition?"

A. A "serious health condition" is an illness, injury, impairment, or physical or mental condition that involves--

- (1) inpatient care in a hospital, hospice, or residential medical facility;
- (2) continuing treatment by a health care provider for a condition that results in **incapacity of more than 3 calendar days**, or would likely result in such incapacity in the absence of medical intervention, and incapacity caused by:
 - a. chronic serious health conditions, even if the individual episodes of incapacity are not more than 3 days in duration;
 - b. pregnancy and childbirth; and
 - c. permanent or long-term conditions for which treatment may not be effective.

Examples of serious health conditions include, but are not limited to, heart attacks, heart conditions requiring heart bypass or valve operations, most cancers, back conditions requiring extensive therapy or surgical procedures, kidney dialysis, physical therapy, strokes, severe respiratory conditions, spinal injuries, appendicitis, pneumonia, emphysema, severe arthritis, severe nervous disorders, injuries caused by serious accidents on or off the job, clinical depression, recovery from major surgery, final stages of a terminal illness, and Alzheimer's disease.

A "serious health condition" includes ongoing pregnancy, miscarriages, complications or illnesses related to pregnancy (such as severe morning sickness), the need for prenatal care, childbirth, and recovery from childbirth.

Q. How is "son or daughter" defined?

A. A "son or daughter" includes a biological, adopted, or foster child; a step child; a legal ward; or a child of a person standing in *loco parentis* who is under 18 years of age or 18 years or older and incapable of self care because of a mental or physical disability. Children incapable of self care require active assistance or supervision in activities of daily living, such as caring appropriately for one's grooming and hygiene, cooking and/or eating, using a telephone, maintaining a

residence, taking public transportation, etc.

Q. How will the new proposal affect new fathers?

A. A new father will be entitled to use a total of up to 12 weeks of sick leave to care for the biological mother while she is incapacitated. This includes prenatal and postnatal doctor's examinations, hospitalization, and recovery from childbirth. In most cases, however, the biological mother's period of incapacitation will not require 12 weeks.

The new father may use up to a total of up to 13 days of sick leave for well baby appointments and to care for the newborn during minor illnesses. If the father has already used 13 days of sick leave for family care purposes, he will be entitled to use the balance of the new 12-week entitlement to sick leave to care for the biological mother or newborn child with a serious health condition.

Q. What requirements apply when an employee requests 13 days of sick leave for family care purposed under the current sick leave policy?

A. An agency may require an employee to receive advance approval to use sick leave to care for a family member receiving medical, dental, or optical examination or treatment, and to the extent possible, for the care of a family member incapacitated by illness or injury. An agency may require an employee to provide administratively acceptable evidence of the need for sick leave to care for a family member.

Q. What must an employee do to request sick leave to care for a spouse, son, daughter, or parent with a serious health condition?

A. Under the new sick leave policy, the requirements for using paid sick leave to care for a spouse, son, daughter, or parent with a serious health condition will be the same as the requirements for using unpaid leave for this same purpose under the FMLA. Generally, an employee must give 30 days advance notice of his or her intent to use FMLA leave, if practicable. In addition, an agency may require an employee to provide medical certification for a serious health condition. If necessary, a second or third opinion from a health care provider may be requested.

Q. Are there any restrictions on the use of sick leave to care for a spouse, son, daughter, or parent with a serious health condition?

A. All employees may use up to 40 hours of sick leave for family care purposes. To use more than 40 hours, an employee must maintain a sick leave balance of 80 hours at all times. This limitation applies to any employee using sick leave to care for a family member.

- Q. Will employees who have previously taken leave without pay under the FMLA to care for a spouse, son, daughter, or parent with a serious health condition be able to substitute sick leave retroactively for the leave without pay?
- A. No. Under OPM's regulations, an employee may not retroactively substitute paid leave for unpaid leave previously taken under the FMLA. An employee must notify his or her agency in advance of his or her intent to substitute sick leave for unpaid leave under the FMLA.
- Q. Won't this proposal encourage the use of sick leave and therefore result in increased costs to the Government?
- A. We anticipate that only a small percentage of the Federal workforce will have a need to use large amounts of sick leave for family care purposes. In addition, not all Federal employees will have 12 weeks of sick leave available to use for this purpose. We believe the ability to use additional sick leave will encourage employees to conserve their sick leave as insurance against the possibility that they will need to care for their spouse, son, daughter, or parent in the future.
- Q. What is the estimated cost of the new sick leave policy?
- A. Based on our experience under the current sick leave program, we estimate that the total cost of the new sick leave policy will be less than \$80 million annually. This estimate is based on the assumption that 0.5 percent of the total Federal workforce will use the maximum amount of sick leave provided under the new policy.

Questions and Answers: New Family Friendly Workplace Initiatives

Q. What has this Administration done to improve the quality of workplace arrangements and family life for Federal employees?

A. This Administration has lead the way in introducing new work and family initiatives.

- In his first official act, the President William J. Clinton signed *The Family and Medical Leave Act* in February 1993 which entitles employees to a minimum of 12 weeks of unpaid leave within a 12-month period.
- The President signed the *Federal Employees Leave Sharing Act* on October 8, 1993, which allows Federal employees to donate annual leave to other employees who have personal or family medical emergencies and who have exhausted their own leave.
- The President issued a directive to Heads of Executive Departments and Agencies on July 11, 1994, calling for expanded use of "flexible family-friendly work arrangements, including job sharing; career part-time employment; alternative work schedules; telecommuting and satellite work locations."
- In February 1995, the President issued Executive Order 12953, calling upon the Federal government to become a model employer in promoting and facilitating the establishment and enforcement of child support.
- On June 16, 1995, President Clinton directed Heads of Executive Departments and Agencies to review all of their programs, policies, and initiatives pertaining to families to ensure that they are father-friendly.
- On June 21, 1996, President Clinton reaffirmed his commitment to creating a family-friendly workplace by issuing a second memorandum to Heads of Executive Departments and Agencies to expand their programs and report back to him.
- On March 10, 1998, President Clinton issued a memorandum to Heads of Executive Departments and Agencies, "Steps to Improve Federally Sponsored Child Care" which directed the General Services Administration, Department of Defense, and OPM to take improved the quality and affordability of Federally sponsored child care centers.

Q. Why should family-friendly work/life coordinators be appointed at every agency?

A. Until now, agencies have had varying successes in implementing family-friendly initiatives. Some have enthusiastically embraced a family-friendly workplace culture while others have actively resisted such change. Even when Federal agencies have adopted family-friendly initiatives, it is not uncommon to learn that managers oftentimes find reasons for not permitting their utilization. Having a coordinator at every agency, will result in an efficient mechanism for disseminating information about family friendly policies and programs and sharing information about overcoming resistance to the adoption of such policies.

Q. What responsibilities will the new family-friendly program coordinator undertake?

- **Making the full range of flexibilities available to employees to meet their personal and family responsibilities (such as alternative work schedules, telecommuting, part-time employment and job sharing).**
- **Establishing and promoting parent support groups, elder care support groups, and on-site nursing mothers' programs.**
- **Providing employees with information about child and elder care resources currently available in their communities.**
- **Working with local interagency groups, like the Federal Executive Boards, to coordinate Federal and community resources.**

Q. Will this encourage more managers to support family-friendly workplace arrangements?

A. Yes, managers will have a contact person who can advise them on the various workplace options, calm their fears, explain their responsibilities as well as those of the employees, and, if the arrangement does not work out for either of the two parties, be there to help dissolve it.

Q. What role will the Office of Personnel Management's new Family-Friendly Workplace Advocacy Office play?

A. The new Family-Friendly Workplace Advocacy Office (FFWAO), established on March 1, 1999, will provide the family-friendly program coordinator with the tools and advice necessary to establish or improve comprehensive family-friendly

programs by aggressively supporting the use of flexible work schedules and sites; leave programs; part-time employment/job sharing; telecommuting; Employee Assistance Programs; on-site child development centers; as well as child and elder care issues. In addition, FFWPO has provided technical information to agencies; convened a national summit on child care issues; has made annual awards to agencies with the most comprehensive and progressive family-friendly initiatives; and has served as the Federal leader in promoting the development of these initiatives.

Also, the FFWAO will work with the agency family-friendly program coordinators to respond to their employees' concerns and suggestions regarding the agency implementation of family-friendly programs. The FFWAO will provide information on the laws and regulations which govern family-friendly policies as well as avenues of redress available for complaints. Working with the agency family-friendly program coordinator, it will assist in resolving problems with family-friendly workplace policies; identify administrative or regulatory obstacles to implementing family-friendly policies and practices; and propose regulatory or legislative changes where needed.

- Q. Why should OPM create an Interagency Family-Friendly Workplace Task Force?
- A. The creation of a Task Force would establish an infrastructure within the Federal government for disseminating information about family-friendly initiatives and for receiving status reports from the agencies. Family-friendly coordinators can successfully network with each other through membership on the Task Force. Mentoring programs can help agencies learn lessons from the past and efficient ways to implement initiatives.

The current system is a hit-or-miss approach since no one agency has the authority to request feedback information. OPM has a proven track record for disseminating information and developing guidance on family-friendly initiatives.

The Task Force can routinely assess the Federal government's response to the President's directives on family-friendly initiatives and can use the results of such studies to broadly disseminate the Federal initiative to make the government a more family-friendly place to work. The results can also be used by the agencies as benchmarks against which their own practices can be measured.

U.N. Surveys Paid Leave For Mothers

U.S. Among Nations Without a Policy

By ELIZABETH OLSON

GENEVA, Feb. 15 — A United Nations survey of 152 countries has found that the United States is one of only six that does not have a national policy requiring paid maternity leave.

Such disparate countries as the Sudan, Cameroon, and Nepal, for example, mandate that a woman receive her salary while she is caring for her newborn. The majority of countries surveyed provide benefits through social welfare systems, some require the employer to pay, and still others combine both financing sources.

Only the United States, Australia, New Zealand, Lesotho, Swaziland and Papua New Guinea do not require paid leave, according to the review of International Labor Organization member countries.

The 114-page study, "Maternity Protection at Work," is being issued on Monday. It was undertaken, its authors said, because of the importance of women's salary for family survival.

The study found that women contribute half or more of family income in about 30 percent of households in the nations studied. In the United States, the figure is 55 percent, and in Europe, 59 percent.

The agency estimated that by 2010, the figure for women who work during their childbearing years in industrialized countries would rise to about 81 percent, from the current 73 percent. In less developed regions, the study indicated, the figure would rise to 68 percent, from 63 percent.

While rights are written into law in many countries, all is not rosy for women worldwide, said one of the study's authors, Ann Herbert. "There is a huge gap between law and practice," she said, adding that widespread discrimination was found to exist on the job against women who become pregnant.

The study found that only 29 countries, most of them in Africa and Asia, absolutely bar dismissal of a worker during her maternity leave. There is even less protection against

6411
"Working women who become pregnant are faced with the threat of job loss, suspended earnings and increased health risks due to inadequate safeguards for their employment," said F. J. Dy-Hammar, the study's chief author.

The study found that maternity benefits are contingent on a variety of conditions. In some countries, including Britain, benefits can be denied if the pregnancy is not reported by a specified stage. Other conditions include the number of children already in the family, how close they are in age, the length of time a woman has been in the job and whether she works full-time. For example, several countries — Barbados, Egypt, Grenada, Jamaica and Zimbabwe — allow a woman to take maternity leave no more than three times in her working life.

Gambia and Zambia require two years on the job. And some countries require a minimum social security contribution, which can eliminate part-time and temporary workers.

Women who are covered by collective bargaining agreements usually fare better, the study found. Spain's public school teachers in the Basque region, for example, who are unionized, receive more maternity leave than their private school counterparts, who are not, and more than required by Spanish law.

The labor agency adopted its first global standard in 1919 to protect working women who become pregnant. In 1952, the standard was strengthened to call for a minimum 12-week leave with a woman being paid at a certain minimum rate and receiving full health insurance while she is on leave.

But only 36 countries have signed the international accord. The United States, which has outlawed discrimination against pregnant women, is not one of them.

Currently, 119 countries meet the standard of 12 weeks of leave. Of those, 62 allow for a leave of 14 weeks or more.

The countries providing the most paid maternity leave by law are the Czech Republic, with 28 weeks; Italy and Canada, with 17 weeks each, and Spain and Romania, with 16 weeks each. Denmark, Norway and Sweden each provide for paid leave that may be taken by either parent, although a portion must be taken by the mother.

In the United States, the 1993 Family and Medical Leave Act provides for 12 weeks of unpaid leave. Some states — including New York, New Jersey, California, Hawaii and Rhode Island — mandate paid maternity benefits, often treating them as a form of disability compensation.

A1 Work Week

A Special News Report About Life On the Job — and Trends Taking Shape There

EMPLOYERS' PIERCING Issue: to tolerate or ban body jewelry and tattoos.

Seattle-based Starbucks Corp.'s employee manual says earrings must be small, no more than two per ear. No nose rings, other pierced ornaments or visible tattoos are allowed, so as to present "a clean . . . appearance." People seeking work at a clothing store near Pittsburgh who bear tongue or eyebrow piercings are told to remove or cover them, a manager says.

At Powell's City of Books, Portland, Ore., piercings and tattoos abound. The staff's strength is in knowing books, not "physical presentation," says manager Chris Dermody. BankBoston expects employees to look professional and not offend anyone.

An employer can "go quite far" in rules but must be uniform; banning earrings for men, for instance, is arguably sex discrimination, says Victor Schachter, a San Francisco labor lawyer.

FIRING THE YOUNG bank officer could be age discrimination.

So said New Jersey's Supreme Court in ordering a new trial in a case brought by a 25-year-old whom Bergen Commercial Bank in Paramus, N.J., hired as vice president for credit-card operations at a \$70,000 salary, then fired five months later. After the young man was hired, the bank's chairman seemed "shocked" to learn his age, the young executive had said. Notified the young man was suing, Bergen Bank charged him with wrongdoing, the court said.

The bank expects to be vindicated, but the decision "opens the door to a flood of age cases," said Angelo Genova, an attorney for Bergen Bank. The court said the state's antidiscrimination law, which lacks a minimum qualifying age, is "broad enough" to cover a claim based on youth. The decision is like ones in some other states with age-discrimination laws that don't designate a minimum, employment attorneys say. The minimum age in many states, and in the federal law, is 40.

SOME HIGH-TECH start-ups eschew recruiters, preferring referrals from staff.

Most companies use recruiters to get new people fast, but OffRoad Capital, a San Francisco firm that uses the Internet to line up investments for business, recently hired 33 of its 40 employees in 61 business days, relying on founders' and staffers' contacts. The firm thus avoided search fees; also, OffRoad's people can better convey excitement about the company's goals, says Denise Thomas, an executive vice president. Ann Senechal, an OffRoad senior writer in Seattle, says she signed on because she had worked with Ms. Thomas before.

PostX Corp., Cupertino, Calif., which provides companies with secure e-mail bill-payment services, has more than doubled its staff since January, using few outside searchers. PostX people can zero in on top-quality people they know, while recruiters "are just looking for heads," says Sheryl Ross, vice president for marketing.

Samantha Phillips, hired away from Visa as PostX product-marketing director, says she made the switch because Ms. Ross impressed her as a "go-getter" when they met at a health club.

THE GLASS CEILING: In a survey of 389 members of the Society for Human Resource Management, 89% of human-resource professionals said they believe women face barriers to career advancement, and 74% said the same about minorities.

EMPLOYERS' prescription-drug benefit costs are expected to climb an average 11.5% for workers and 15.7% for retirees over the next year, a poll of 35 major employers by consultant Watson Wyatt Worldwide, Bethesda, Md., and the Washington (D.C.) Business Group on Health shows.

LATINA STYLE, a Washington, D.C., magazine for Hispanic working women, picks U S West, a Denver regional telephone company, as its No. 1 employer for Latinas' professional opportunities. The magazine's list of top-50 companies is based largely on surveys of more than 500 CEOs, looking at factors like mentoring and the presence of Latina board members.

WOMEN'S GROUP stirs controversy, pushing state payment for family leave.

Lobbying by the National Partnership for Women & Families, with AFL-CIO backing, is largely behind pending legislation in Massachusetts, Vermont, Maryland and Washington state to let anyone taking unpaid family leave get unemployment insurance. Other lobbying efforts have begun in California, Iowa and New York. The Labor Department had said states couldn't pay unemployment for family leave, but President Clinton has told the department to change that rule—as applied to new parents.

Sharon McDougale, who repairs astronauts' suits for a Houston company, used up paid vacation and sick leave in 1994 and 1998 to have babies. (Her employer didn't provide paid maternity leave.) She says she would rather have taken six weeks of family leave but couldn't afford it. Employer groups, fearing unemployment-insurance tax increases, oppose the idea.

Republican congressional leaders also protest and expect to introduce soon a bill blocking the plan.

THE CHECKOFF: America's Job Bank, the Labor Department's big Internet job-listing service, posts its one-millionth job today: video-conferencing engineer for a Reston, Va. company. . . . Ford Motor Co. becomes the first U.S. auto maker to make the list of top 100 businesses for policies favorable to gay and lesbian workers, says GLVReports & Communications, New York, a news service for gay men and lesbians.

—ALBERT R. KARR

THE WALL STREET JOURNAL

TUESDAY, JULY 13, 1999

file family
leave

Nicole -

Good
work

-BR

U.S. and Boeing May Try to Limit Airbus

Pact With Europe on Size Of Jet Maker's Subsidies Could Be Renegotiated

By JEFF COLE and JOHN SIMONS
Staff Reporters of THE WALL STREET JOURNAL
The Clinton administration is expected to push for tougher limits on subsidies that European governments can provide to commercial-jet maker Airbus Industrie, according to people familiar with the emerging U.S. position.

The U.S. government's stance is based on complaints of unfairness made by Seat-

Clipped Wings?

The House Appropriations Committee is moving to cut all production money for Lockheed Martin's F-22 fighter from the Pentagon budget. Article on page A4.

le-based Boeing Co., the Airbus consortium's primary rival, according to several officials and executives. Any U.S. initiative would require a renegotiation of a controversial 1992 bilateral trade agreement with the European Union. The U.S. government is likely to broach the matter in detail during the next round of World Trade Organization talks in November in Seattle.

The 1992 pact, which helped avert a trade war, permits European governments to provide low-cost loans equal to a third of the cost of developing new jetliners. It also commits both sides to "progressively reducing government support." Boeing officials contend that Airbus isn't sticking to its side of that agreement.

If the administration does reopen the terms of the seven-year-old agreement, it would leap beyond any of its efforts to date to force European compliance with the U.S. interpretation of the pact, and would delve into an especially delicate matter for Europeans.

Threat to Airbus's 'Super-Jumbo'

In the near term, a renegotiation would disrupt plans by the European Airbus consortium to develop a new "super-jumbo" airliner capable of carrying 480 to 650 passengers. Airbus is tapping governments in Britain, France and Germany for about \$3.6 billion in loans to help develop the new plane, which would compete with the Boeing 747.

The consortium says the new Airbus A-3XX would cost about \$11 billion to develop. First deliveries are planned for 2005. The 747 jumbo jet—with about 400 seats in a three-class seating configuration—is the only jumbo jet available for now.

Some Clinton administration officials have already begun broaching the issues

with their European trade counterparts. U.S. officials have asked for "improved transparency and getting tighter rules on government support that make sure that the burdens of risk faced by U.S. companies and the European Airbus partners are more equivalent," a U.S. government official said.

Barshefsky's Unsuccessful Efforts

During the last eight months, Boeing has been nervously watching unsuccessful efforts by U.S. Trade Representative Charlene Barshefsky, who has pushed for increased disclosures by European governments to ensure that they are in compliance with the bilateral agreement. One such case involves European support for new, long-range versions of the 300-seat Airbus plane known as the A-340.

U.S. officials say Boeing representatives have stopped short of demanding that the 1992 agreement be scrapped altogether. However, they say Boeing officials are making a case for a significant reduction in the EU aid that is allowed to flow to Airbus.

Chris Hanson, Boeing's vice president of Washington operations, declined to comment on whether the U.S. aerospace giant has urged the government to negotiate tougher limits on subsidies to the four-na-

Please Turn to Page A8, Column 5

Continued From Page A3

tion Airbus consortium. Mr. Hanson said Boeing feels that Airbus isn't honoring the 1992 agreement, or other overarching multilateral agreements, and "we simply want them to be honored. That's the issue."

Several other officials familiar with the Boeing view say company officials believe that the 30-year-old consortium, based in Toulouse, France, is no longer an adolescent enterprise, but rather is "a mature company" that should no longer require any direct subsidies.

A U.S. spokeswoman for the European Union said that the organization "does not believe" that any of Boeing's financial problems in recent years are related to the subsidy provisions of the 1992 agreement.

A U.S. spokesman for Airbus declined to comment directly on the prospect of action by the U.S. government. The spokesman noted that Boeing agreed to the 1992 terms regarding subsidies, and that any effort to rescind the terms could take all sides "right back to square one."

In a recent interview, the chief executive of Airbus, Noel Fourgeard, dismissed Boeing's complaints about the subsidy agreement as "a difficult matter." As for the U.S. complaints about the Airbus A340, Mr. Fourgeard said they were "just ridiculous." In 1992, the European governments contended that Boeing is also subsidized, by virtue of its many defense contracts with the Pentagon.

People familiar with the exchanges between Boeing and the U.S. government said company executives worry that as Airbus proceeds with its planned conversion to a fully private corporation during the next 18 months, certain past loans may be "forgiven" as the new organization is set up.

Another Boeing fear is that as new subsidy loans for the Airbus A-3XX are put in place, any renegotiation of subsidy limits or rules will be increasingly difficult to achieve, say people familiar with the Boeing view. The government of Britain recently began actions toward approving about \$700 million in loans for the new plane.

U.S. officials are said to have taken a cautious tack in part because a new administration is taking over in mid-September at the European Union's executive commission, and those officials may be more open to renegotiation of the 1992 bilateral accord. The newly named president of the commission, Romano Prodi, has promised an "era of change."

The Airbus consortium includes British Aerospace PLC; Aerospatiale Matra SA of France; the aerospace unit of Daimler-Chrysler AG of Germany; and Construcciones Aeronauticas SA of Spain.