



**United States
Office of
Personnel
Management**

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**OFFICE OF THE DIRECTOR
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Please

Deliver

To:

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From:

Name: **Janice Lachance**

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Director

Room:

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OFFICE OF THE DIRECTOR

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

MAY 17 1999

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

FROM: JANICE R. LACHANCE
DIRECTOR

A handwritten signature in cursive script, reading "Janice R. Lachance", is written over the printed name and title.

SUBJECT: New Tools for Parents in the New Economy

This memorandum describes the ideas I am proposing for new flexibilities to support Federal employees in their roles as parents in the new economy.

1. The President will direct OPM in an 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 condition. The sick leave would be used under the same conditions and for the same purposes as unpaid leave under the Family and Medical Leave Act (FMLA).

*adoption?
consecutive
leave req?*

[Option: could set a lesser maximum amount, e.g., 6 - 9 weeks]

Regulatory

timeline: 4 to 6 months for the development and publication of a proposed rule, a 30- to 60-day public comment period, analysis of comments, and development and publication of a final rule.

Q. How is this different from the current use of sick leave for family care?

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, 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 family care.

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

Q. Would this be in addition to regular sick leave for family care?

A. No. The total amount of sick leave that may be used for family care would be 12 weeks.

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, Alzheimer's disease, ongoing pregnancy, miscarriages, complications or illnesses related to pregnancy (such as severe morning sickness), the need for prenatal care, childbirth and recovery from childbirth.

2. The President will issue an Executive Memorandum to allow Heads of Agencies to excuse employees from work for up to 24 hours a year to keep abreast of the progress and status of the children for whom they have responsibility and guardianship. OPM will be responsible for issuing appropriate guidance.

[Option: The concept of providing "up to 24 hours per year" could be reduced to 16 hours per year; however parents/guardians of more than one child would face more difficulty using the time equitably for all of their children.]

Timeline: OPM will require 2 to 4 weeks to prepare guidance.

Q. What are the costs associated with this initiative?

A. We need additional information to develop a reasonable cost estimate. We hope to have this information tomorrow.

Q. What are the potential benefits associated with this initiative?

A. Employees will be more inclined to take the time to meet with teachers, guidance counselors, tutors, and others involved in the education and care of the children for whom they are responsible, in order to keep abreast of their developmental status. Time for such communication has the potential to improve home-school communication as well as communication between parents/guardians and their children. Attending events in which children participate will provide valuable insights into a child's behavior. The benefits to children are significant since this type of involvement can result in improving children's potential and self-esteem.

Q. Who is eligible?

A. Parents/guardians of infants through students in college.

Q. Does this establish a new entitlement for employees?

A. Although the President encourages agencies to excuse employees from work for these purposes, an employee does not have entitlement to excused absence. OPM

would make this clear in our guidance.

Q. What types of events would employees attend and what are the potential benefits?

A. Employees could attend meetings with teachers, caregivers, principals, counselors, child care center directors, and others who are involved in child care and education. They could attend special events such as field trips, school plays, science fairs, and parent orientation sessions.

3. The President will direct agencies to appoint a Family-Friendly Program Coordinator to promote and ensure that employees, as appropriate, have access to family-friendly workplace arrangements such as employee assistance programs, family-friendly leave, child and elder care resources and referral services, alternative work schedules, telecommuting, and part-time employment/job sharing.

Timeline: This can be achieved immediately through Presidential directive, at little or no cost.

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

A. The family-friendly coordinator will be responsible for:

- Making information regarding 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 Federal Executive Boards and Associations, to coordinate Federal and community resources.

Q. Why establish a point of contact for agency family-friendly initiatives?

A. This would establish an infrastructure for the Federal government's family-friendly workplace programs. Family-friendly initiatives could be more systematically and systemically introduced to the Federal workplace. While many Federal agencies have identified employees to prepare family-friendly reports, and

a few have appointed full-time employees to operate their family-friendly initiatives, this would firmly establish the Administration's commitment to changing the culture of the workplace to one that is supportive of working families.

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

A. Yes. The more visible the programs, and the more success stories that can be documented, the more likely that managers will support the programs and the greater the likelihood of employee participation.

GRAMBLING COMMENCEMENT SPEECH
INTERNAL Q&A
May 23, 1999

DOL DIRECTIVE

Q. What is this Directive to the Department of Labor?

A. 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. ~~In carrying out this effort, the Department of Labor (DOL) will evaluate the effectiveness of using the UI system for these or related purposes.~~

insurance to assist new parents to implement their plans to do so.

Q. Is this an unfunded mandate to the states?

A. No. Participation in this program will be wholly voluntary by the states. ~~The will simply allow states to their wish to an unemployment~~

Nicole -
Replace with the new language from the one paper

Q. Isn't this new benefit unfair to employers who are taxed to pay for this system of Unemployment Insurance? Why should employers have to pay for paid parental leave?

A. States today have significant flexibility in designing their own UI systems. In part responding to surpluses in UI Trust Funds, four states this year have introduced legislation to provide UI benefits to workers on some form of leave, and others have done so in prior years. These states have asked for guidance from the Department of Labor. The proposal being advanced by the President would enable states with regulations and model legislation to provide these benefits if the states elect to adopt this program.

new regulation

Q. What's your authority for advancing this proposal? Doesn't it require legislation?

A. The Department of Labor (DOL) has the authority to ~~respond to states regarding the UI program and to evaluate the effectiveness of this program.~~ Four states have asked for DOL guidance in this area, and DOL will work with them in the rulemaking process.

(determine how states can structure)

Q. When will individuals be able to receive benefits?

A. That is difficult to predict. The Department must first issue regulations and model state legislation, and States must then change their own laws.

This doesn't answer the question. You can put this material

in the answer to the first question if you want to, but you need a real answer here.

and for what purpose they can use their unemployment insurance programs.

Q. **Who would qualify for the new benefits?**

A. The President has directed the Secretary to enable States to provide these benefits to parents of newborns and newly-adopted children, who also meet State unemployment insurance law requirements.

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

A. In the process of rulemaking, DOL will address this issue.

Q. **If this new benefit were available to workers not covered by the FMLA, could they get fired for taking leave?**

A. This is a hypothetical case, since the DOL has not issued its regulation. However, if the benefit were available to workers not covered by the FMLA, they would not be guaranteed job-protected leave.

Q. **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?**

A. 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. Also, maternity leave tends to be unpaid or partially paid, while all other types of leave are significantly more likely to be fully paid. ~~Individuals with illnesses or other needs often have savings or insurance coverage which helps in providing for their care.~~ ✓

Q. **How long can these new benefits be collected?**

A. In the process of rulemaking, DOL will address ^{this issue. The} duration is not expected to exceed 12 weeks, which is the length of leave protected under the FMLA.

Q. **How many States can participate in the program?**

Any states that wish to will be able to take advantage of the
~~Participation is wholly voluntary and, we expect, not limited to particular States.~~
President's Directive.

Q. **Why are we doing the rule at this time?**

A. Interest has been shown this year in four State legislatures -- Maryland, Massachusetts, Washington, and Vermont -- as well as many others during the last two years. This rule will allow us to accommodate known interest and to ~~determine the extent of interest~~ *encourage other states to consider similar proposals.*

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

A. The Department will work with these states in the country is making its. It's premature to talk about the specifics of any of these proposals. However, regulation to none of these States could enact their proposals until the Department has issued ~~that~~ ^{its rules}. The States would have to assure that their proposals meet the ~~entire~~ ^{entire} requirements of the rules. ~~states can continue to~~ ^{states will be in a position to implement} ~~appropriate plans to use UI to assist new~~ ^{parents}.

Q. How would this proposal affect employers' State unemployment tax rates? Will this proposal be "experience-rated," meaning that employers pay into the system based on their workers' use of it?

A. The Department of Labor will address this ^{the} in its rulemaking process. We expect ^{issue more fully} that this new proposal would ~~not be~~ ^{will spread costs throughout} experience-rated. ^{individuals or} The system, rather than on the particular companies where employees

Q. Who is covered by the unemployment insurance system? ^{must use this benefit.}

A. 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.

Q. How does the unemployment insurance program work?

A. 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~~ ^{broadly} federal guidelines. States would need to amend their laws to participate in the program proposed by the President.

Q. Why use the unemployment insurance program for this purpose?

A. 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 ~~In some States, some~~ ^{workers remain eligible for benefits even if they become ill}

Q. How many people will benefit from this proposal?

A. That is difficult to estimate. The number of people who benefit, of course, ^{providing paid leave} depends on how many states elect to participate in this program. Across the ^{time away from the job is analogous to this} country, we know that there were over 3.3 million women with children under 1 ^{and other} in 1998; 57.9 percent of these mothers were in the workforce [1.9 m]. Depending ^{current use} on the design of the programs, if all 50 states passed such legislation, as many as 6 million parents a year could be eligible for assistance. ^{of the program}

~~Source: BLS CPS, 1998 average.~~

Q. **What will be the average benefit for a parent?**

A. The Department of Labor will address this ^{issue} in its rulemaking process. Today, a typical unemployed worker receiving benefits gets \$200 a week.

Q. **What will be the cost of providing this new benefit?**

A. It is premature to estimate, as the Department of Labor has not designed the parameters of the program. Since participation in this program by the States will be wholly voluntary, the cost will depend on the number of states that participate.

Q. **Is cost really an obstacle for parents who want to take leave following a birth or adoption?**

A. According to the Family and Medical Leave Commission, 65% of those who needed but did not take leave to care for their newborn or newly adopted or foster child said they did not take leave because they could not afford to. Cost was, by far, the biggest reason that they did not take leave.

~~Source: Report of the Family and Medical Leave Commission, p. 273~~

Q. **To what extent do leave takers receive pay for their leave for care of newborns, foster, adoption?**

A. Of those who are covered by FMLA: 46% of leave for this purpose was fully paid; 23% of leave for this purpose was partially paid; 30% of leave for this purpose was unpaid.

Of those not covered by FMLA: 37% of leave for this purpose was fully paid; 16% of leave for this purpose was partially paid; 47% of leave for this purpose was unpaid.

~~Source: Report of the Family and Medical Leave Commission, p. 280-281~~

Q. **How long do most people take off to care for a newborn, or newly adopted or foster child?**

A. According to the Family and Medical Leave Commission, of those not covered by FMLA, 37% took 1-7 days; 9% took 8-14 days; 11% took 15-28 days; 23% took 29-84 days; 20% took 85 or more days for the care of a newborn or new adopted or foster child.

Also, according to the Family and Medical Leave Commission, of those covered by FMLA: 24% took 1-7 days; 17% took 8-14 days; 7% took 15-28 days; 36% took 29-84 days; 16% took 85 or more for the care of a newborn or new adopted or foster child.

Source: Report of the Family and Medical Leave Commission, p.270

Q. How many workers are covered by the FMLA?

A. Some 90 million employees are covered by the Family and Medical Leave Act – which guarantees them job-protected unpaid leave for up to 12 weeks to care for a newborn or adopted child, to attend to their own health needs or to care for a seriously ill parent, child or spouse.

Q. Who is covered by the FMLA?

A. To be eligible for FMLA benefits, an employee **must**:

- (1) work for a covered employer;
- (2) have worked for the employer for a total of 12 months;
- (3) have worked at least 1,250 hours over the previous 12 months; and
- (4) work at a location in the United States or in any territory or possession of the United States where at least 50 employees are employed by the employer within 75 miles.

OPM DIRECTIVE

Q. How is the new sick leave policy for federal employees 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 will 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 – the amount of unpaid leave allotted for these purposes under the Family and Medical Leave Act (FMLA). *child,*

Q. Won't this proposal encourage the use of sick leave and therefore result in increased costs to the Government?

A. The cost of this program will be very small, *(about \$60 million annually).* and will not require any offsets in the budget for a number of reasons including: (1) This policy change will be absorbed by individual agencies, and therefore will not require any increase in an agency's budget. (2) We estimate that only a small percentage of the Federal workforce will have a need to use large amounts of sick leave for family care purposes. *(we*

This is primarily because

anticipate that only 0.5 percent of the Federal workforce will use the maximum amount of sick leave. Also, Federal workers will only be able to use the sick leave they have accrued over time for this purpose ~~(they will, however, have to maintain a balance of 80 hours of sick leave.)~~

BACKGROUND: OPM estimates that the new policy could cost roughly \$64 million annually.

Q. Doesn't this policy invite abuse of the leave system?

A. No. Under the new sick leave policy, the requirements for using paid sick leave to care for a spouse, ~~son, daughter,~~ ^{child,} 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. 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 also require an employee to provide administratively acceptable evidence of the need for sick leave to care for a family member. These requirements would need to be met under the new policy.~~

~~**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 will not be able retroactively to substitute paid leave for unpaid leave previously taken under the FMLA.~~

~~**Q. What is the current leave policy for Federal workers on maternity leave? Will this new policy affect them?**~~

~~A. By law, employees may use sick leave only for periods of sickness and other incapacitation, or for purposes related to birth or adoption. OPM has no authority to permit employees to use sick leave for purposes other than those permitted by law. 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.

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.

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.

Q. How will the new proposal affect Federal workers who are new fathers?

A. A new father will be entitled to use a total of up to 12 weeks of sick leave to care for an ill newborn and/or 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.

In addition, under current rules a 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 kinds of conditions qualify as "serious health conditions"?

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. 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 Federal employees, even new workers, 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. Why should OPM create an Interagency Family-Friendly Workplace Working Group?

A. The creation of a Working Group will establish an ^{entity} 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 Working Group. 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 serves as a coordinating body. OPM has a proven track record for disseminating information and developing guidance on family-friendly initiatives.

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 been slower to respond. 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 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.~~

Q. What ~~has~~ ^{other actions has} this Administration ~~done~~ ^{taken} to improve the quality of workplace arrangements and family life for Federal employees?

A. Today's action builds on a variety of initiatives the Administration has undertaken to make the workplace more family-friendly. This Administration has lead the way in introducing new work and family initiatives for the federal workforce.

- In February 1993, the President signed the Family and Medical Leave Act providing Federal employees with 12 weeks of job-protected unpaid leave each year weeks to care for a newborn or adopted child, to attend to their own health needs or to care for a seriously ill parent, child or spouse.
- On October 8, the President signed the Federal Employees Leave Sharing Act, 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.
- On July 11, 1994, the President issued a directive to Heads of Executive Departments and Agencies, 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.

CEA REPORT

Q. What does the Report say?

- A. The President released a report by his Council of Economic Advisers that details the factors that have led to decreased amounts of time available for parents to spend with their children. The Report 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 ~~parental~~ ^{parents} time that they can spend with their children since 1969. ~~Virtually all of the increase in total hours families spent on paid work has come from increases in women's working hours.~~ 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.

Q. What about the burden on women?

- A. Virtually all of the increase in total hours ^{now} families spend on paid work has come from increases in women's hours. While annual hours of paid work by all wives increased greatly – by 576 hours, or 93 percent – husbands' hours of paid work decreased slightly from 1969 to 1996. ~~The "time crunch" falls heavily on employed women, who~~ spend over one third less time on child care and household tasks than women without paid jobs, but still have 25 to 30 percent less free time.

Q. Do single parents have a different experience?

- A. The Report shows that the share of families with a single parent has expanded greatly since 1969. Single parents have half as much total time as two parents have and typically have less than half as much ~~potential~~ income. The rising number of single parents has increased the proportion of families that are "cash-strapped" and "time-poor."

~~Q. What does the Report say about the amount of time parents are working, and the increased number of working mothers specifically?~~

- A. ~~The Report shows that the hours American parents work in paid jobs have increased enormously since 1969 due to a dramatic shift of mothers' time from the household to the labor market. The Report shows that in 1969, 38 percent of married mothers worked for pay; in 1996, 68 percent did so. Both married mothers and single parents are working more for pay today than 30 years ago.~~

Q. What does the Report say about changes in the amount of time available for children?

- A. Although the evidence on ^{that} time use within families is limited and needs further study, the Report shows an increase in work from 1969 to 1996 has produced a reduction in the time available for parents to spend with children. The increase in hours mothers spend in paid work, combined with the shift toward single-parent families, resulted in families on average experiencing a decrease of 22 hours a week (14 percent) in ~~parental~~ ^{parent} time available outside of paid work that they could spend with their children.

Q. What does the Report recommend?

- A. The Report suggests that policy-makers must seek to ^{help} promote policies that help families in this challenging environment. These policies include ~~the need for~~ flexibility in paid work hours, ~~the need for~~ available and affordable child care, ~~the need for effective ways to~~ support the earnings of families with low-wage earning parents, and ~~the need to~~ encourage two-parent families to form and stay together.

proposals ways to

THE WHITE HOUSE
WASHINGTON

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 by 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 more workers to spend 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." Limiting these new benefits primarily to leave following birth and adoption would alleviate 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 limit states to using UI only for parental leave (and, perhaps, other analogous categories). The DOL Solicitor's Office is still reviewing whether it has the legal authority to impose these limits; there is a question whether it can distinguish between parental leave and other FMLA categories. If the Department cannot do so, we would rely on model legislation to guide states toward this relatively modest expansion. This course has some risk; states, after all, could choose to ignore our direction and guidance. We are relatively confident, however, that few states would elect to impose far greater burdens on their own UI systems than we would recommend in our model legislation.

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

May 18, 1999

D.L. - ID 3-4 approaches that might get

Mass wants a

I

UI usually asks "what is cause for separation?"

rather other reasons, (e.g. good cause

[2 yrs ago we put a good cause option

We could affirm that this is a good cause reason

2 other issues

II

1. question of work search requirement

our interprey looking for jobs there are a #
illness, pregnancy

III

available for work

This is narrow

1 exceptn - if you're in job training you don't
available - in that case fed law would be
equivalent to ready + available

have
states did
not

that requirement is where we place it to VT

~~how would we~~

Ek where now you have a person who falls under good cause emergency - that person is not available for work

UI good cause for separation, but does it waive usual requirement

when overruling personal requirement ^{and get opened a pb} _{any more}
• can you get it

~~graph~~
How would we potentially pursue the third piece?
3 approaches

1. write to MA saying you
+ say ready + avail is not a test that applies to
2. States are free to interpret ready + available
Issue: question of when we give blanket guidance
of public letter open flood gates - how to we ensure
concerns like tax + housing
political post + conf re: employers
Legal questions

oo: can do this test + draft letter

3. If write letter that ready + avail ^{will be met} ~~applies~~
for some time period
q. opened the door, ^{do it quickly}
open things up to ready + available

Does state FMLA law have to mirror Fed. FMLA law
leaves

OK but we can limit it to Fed law

DR: Given do we have the rt to have sick w/ their resdy travel
once we open that we might work or
work him

neither of these options allow for other things

② if I think @ these events

reg. 1 ~~by~~

→ let's you put himself on the table have
more control?

Regs ~ best: 4-6 months

what would the rationale of the reg be:
tie it into operation of FMLA

OK seems availability to conform to FMLA is the best way to
do this because we can't do leg + we can't +
gov. stability doesn't matter (+ then try to put fences
around it)

I would say to MA you can't do anything new, but
you can later follow their guidelines

Treas Fed trust?

UI \$208 million this would cost FMLA

currently \$750 million reg. benefits

we would need to ask for more \$ for admin cost

Treas unemployment ↑ ^{\$0} we need to separate them at

UI no, once you allow a state to define them as unemployed you
can't sep. them out

Treas ↓ support for FMLA - employers will not like it

EK SM 1. go employer over problems

EK Nicole write an options memo tomorrow on the basis of these discussions

① letter to mass interagency social regos - deemed to be met in FMLA
circumstances

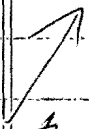
② do this in terms of a reg.

③ should do this by reg & letter, but this probably not.

Can us to say states should do in sep. And

4th option

DOL the issue guidance, encouragement - to lower UI 5% +
dev. a separate trust level
the pro: a set of trust w/ UI criteria
con:



ER think this is doing nothing no states want to do option #4

UI Pro option 4 ^{send model legs} Weston: pol. landscape - ppl pro-job search

ER combine 1b + 4?

ER $\downarrow$ continue trust to states w/ a report?

UI ~~the~~ but we don't have the authority to do that

DOL the more requests you add the more likely 2, 3, 4

we prefer 2, 4

1a: opposed to

1b: " " ~~but~~ better $\rightarrow$ a lot of people are concerned that we can't write better w/ law

3: add

2: no more ctrl g. unintended consequences

Answers to Follow-up Questions on New Sick Leave Policy

Q. In your draft of the Executive memorandum you wrote that the President would direct OPM to take this action "as soon as possible." Can we specify a date certain [60 days, for example] for the effective start of this policy? Or get a better sense of the timing?

A. Because the implementation of a new sick leave policy requires changes in OPM's Governmentwide sick leave regulations, we must follow the procedural requirements of the Administrative Procedure Act (APA), under which proposed changes must be published in the *Federal Register* for a public comment period of 30 to 60 days. Following the public comment period, we are required to analyze and respond to all public comments in a subsequent notice of final rulemaking, which must also be published in the *Federal Register*. By Executive order, both the proposed and final regulations must be reviewed and approved by OMB before publication. Finally, the APA calls for a 30-day delay in the effective date of any regulatory change following the publication of final regulations. Based on past experience with the regulatory process, we estimate that it will take 4 to 6 months to complete the process and make these changes effective. This includes staff time to prepare the necessary *Federal Register* notices and clear them within OPM and OMB.

Q. Also in the Memorandum you say that "most federal employees" would be eligible under this policy. Who exactly does this refer to? Who would not be eligible?

A. This statement reflects our current regulations regarding the use of up to 13 days of sick leave each year for family care purposes, which require that, in order to use the full 13 days, an employee must maintain a balance of at least 80 hours (2 workweeks) of accrued sick leave in his or her account at all times. If an employee has fewer than 80 hours of sick leave in his or her account, the total amount of sick leave that may be used for family care purposes is limited to 5 days a year. Since the vast majority of employees do maintain a sick leave balance of at least 80 hours, the memo says, "[u]ntil now, . . . 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.**" [Emphasis added.]

As stated in an earlier Q & A, we would expect to retain this restriction under the new sick leave policy. Its purpose is to ensure that all employees retain a minimum balance of sick leave in their account to provide them with short-term disability income protection in the event of their own incapacitation.

Q. Another point in the Memorandum notes that "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." This seems to mean that employees who adopt can use more leave th[a]n parents who give birth to their children. Is this a federal statute? Do you know what law this is from?

A. Under the law governing sick leave for Federal employees (5 U.S.C. 6307), employees may use sick leave "for purposes relating to the adoption of a child." Some adoption agencies may require one or both adoptive parents to stay home with the adoptive child for a specified period of time following the adoption. In addition, some adoptions require time off to travel to a foreign country to complete adoption procedures. Where one or both of these conditions exist, it is possible for adoptive parents to use a greater amount of sick leave than would be available to a natural mother, since the natural mother is entitled to use sick leave only for periods of time for which she is incapacitated by pregnancy or childbirth and for periods of time that may be needed to provide care for the newborn child if the child is ill or requires medical examination or treatment (up to 12 weeks a year under the new sick leave policy). The use of sick leave for adoption purposes represents a statutory exception to the general rule that sick leave may be used only for purposes related to physical or mental illness; injury; pregnancy; childbirth; or medical, dental, or optical examination or treatment.

email back

I just want to be clear
that it would mean
no for maternity leave
we don't have authority
to by reg. it's asked
how -

May 14, 1999

MEMORANDUM

TO: Elena Kagan
FROM: Nicole Rabner
SUBJECT: Unemployment Insurance and Paid Leave Background

This memo and the attachments that follow serve as background for the meeting on Monday at 1pm with Ed Montgomery (Acting Deputy Secretary of Labor), Karen Tramentano, Barbara Chow, and others.

The question at issue is whether it is permissible under Federal law for States to allow individuals taking FMLA-leave to qualify for unemployment insurance benefits through some change to the State requirement that claimants be "available" for work. In 1997, Vermont introduced legislation to allow UI payments to individuals who were on leave under Vermont's family and medical leave law by "deeming" them available for work. Through a letter to the bill sponsors, the Department of Labor's Employment and Training Agency (ETA) objected to the pending legislation, asserting that it violates Federal law.

This year, in four State legislatures – Massachusetts, Vermont, Maryland, and Washington – bills have been introduced that would provide UI benefits to individuals on some form of FMLA-leave. These bills respond to growing surpluses in the states' UI trust funds, due to steady declines in unemployment. Senators Kennedy, Dodd, Leahy, and Murray (as well as groups such as the AFL-CIO, the National Partnership for Women and Families and the National Employment Law Project) have pressed Secretary Herman to withdraw DOL's objections. Secretary Herman reportedly has told Senator Kennedy that she would like to "find a way to get to yes."

Below is an overview of the case on either side of this debate, and attached are the following documents: (1) a DOL background paper prepared for an earlier meeting convened by Barbara Chow; (2) a briefing submitted to DOL by AFL-CIO and others (the executive summary of which is sufficient reading); and (3) letters from Senators Leahy and Murray on this issue.

The DOL Case

DOL maintains that statutory change is necessary to give States the authority to waive the "availability" requirement. Even though this requirement is not defined in Federal law, DOL argues that the Department has long interpreted the law to require that a claimant's unemployment is involuntary and due to a lack of work. They insist that exceptions made by DOL in the past (such as to allow claimants to receive benefits if they are on jury duty, on lay-offs and subject to recall, or in a medical emergency) do not violate the principle of being "available for work." And, they argue that because Congress amended Federal law to allow UI payments for temporary disability and self-employment, Congress reserves to itself "waivers" of the availability requirement.

It is clear, however, that DOL also thinks this is a bad idea. They suggest that allowing UI payments in FMLA-type situations would set a dangerous precedent, making it difficult to prevent other types of payments from the UI fund, such as to individuals on vacation, sick leave or sabbatical, or retirees. Further, they fear that eroding the basic tenet of the program would generate significant employer opposition, perhaps even instigating action to limit the scope of the program (i.e. a rider or legislation that sets a Federal definition of availability, thereby undermining DOL's future flexibility).

The Case of the Advocates

The advocates argue that the approach by Massachusetts and other States (to provide UI benefits to workers who are separated from their jobs for reasons that qualify for protection under their family and medical leave laws) is consistent with the broad discretion given to States to design and implement their own UI programs. They argue that the legislative history of the Social Security Act (which created the UI program) does not require States to adopt a particular definition of "availability" for work and that DOL does not have authority to impose limitations on a State's determination of UI eligibility. Further, they argue that there is ample precedent for State authority, with DOL approval, to carve exceptions to availability requirements. For instance, before Federal law was amended to speak to the issue, 22 States exempted workers who become disabled while unemployed from disqualification due to availability. And, employees on temporary lay-off need not be available for other jobs while on recall status. The advocates argue that while the proposed Massachusetts bill varies from these precedents in some ways, none of the differences distinguishes their validity under Federal law.

Most important, the advocates point to the fact that over one-third of all States cover compelling, personal circumstances as nondisqualifying reasons for leaving work, and these reasons also constitute "good cause" for the refusal of otherwise suitable work. These State laws, they argue, demonstrate that it is well-established that leaving for family and medical reasons render the leaving "involuntary" or not truly "initiated" by the employee.

Finally, the advocates argue that broad State discretion over availability requirements is supported not only by law but by sound public policy considerations, as well. States, they maintain, are best suited to determine their eligibility and disqualification requirements based on their differing economic and social circumstances. And, they argue, this experimentation is consistent with the UI program's underlying mission of employment stabilization.

Greater Boston Legal Services

197 Friend Street • Boston, Massachusetts 02114 • Telephone (617) 371-1234 • TDD 371-1228 • Fax 371-1222

March 16, 1999

Ms. Kitty Higgins
Deputy Secretary of Labor
U.S. Department of Labor
200 Constitution Ave., N.W.
Washington, D.C. 20210

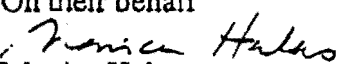
Re: The Massachusetts Unemployment Insurance/Family Leave Recall Bill

Dear Deputy Secretary Higgins:

I am writing to bring to your attention our response to the issues raised by Grace Kilbane after our meeting in your office. After thorough research, we are pleased to report that the Massachusetts legislation falls within the states' prerogative to determine unemployment eligibility including amending "availability" under specific circumstances as presented in our proposed legislation. This conclusion is supported after a careful review of federal law, legislative history, and state precedents which have received prior DOL approval.

In addition to a growing coalition in Massachusetts, several other partners in this initiative, including the offices of Senator Kennedy and Senator Dodds, the AFL-CIO, the National Partnership for Women and Families and others look forward to your response. As indicated in our letter to Ms. Kilbane, we are hopeful that a meeting can be quickly arranged to resolve any outstanding issues.

I have enclosed our letter to Ms. Kilbane and the memorandum setting forth our research and our conclusions. Thank you again for your interest in and assistance with this matter which is so critical to working families.

Sincerely,
The Family Leave Coalition
On their behalf

Monica Halas
Senior Attorney

enc(2)

Greater Boston Legal Services

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March 15, 1999

Grace A. Kilbane
Director, Unemployment Insurance Service
Employment and Training Administration
Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Dear Grace:

I am writing once again on behalf of my colleagues Ann Bookman, Maurice Emsellem and Linda Johnson, to continue our correspondence concerning the proposed Massachusetts law which provides time-limited partial wage replacement through the unemployment system to individuals who must temporarily leave employment for family or medical reasons. As we indicated in our prior letter, we appreciate your thoughtful response to the issues we had discussed and your invitation to engage in further dialogue about how best to proceed.

Although we are late in reply, and we apologize for this, we felt your letter deserved the most careful review and a response based on thorough research of all materials relevant to the issues you addressed. We appreciate your understanding that the ability to enact this or similar legislation is so critical for working families. We took most seriously the charge to essentially look afresh at unemployment law and make sure that our approach is consistent with federal law.

To address the issues you raised, we reviewed the original Social Security Act, its legislative history, including statements of the drafters, opinions of the Department's chiefs of the former Bureau of Employment Security, and the opinions of legal experts including a comprehensive published work on the availability for work requirement. We also searched for examples where current state law waives availability as an eligibility criteria. In addition to our combined over 35 years of experience with unemployment law, we consulted other legal experts in this field. This in-depth research has resulted in some new conclusions that can be made about whether the concept of availability is a creature of federal or state law.

As the enclosed memorandum details, all of these sources definitively document the conclusion that the availability test is one that is determined by state law rather than federal law. None of the original or secondary sources controverts this conclusion in any way. In addition, over the years there have been numerous examples where states have waived availability as a factor in determining eligibility, and in each instance, DOL has not found an inconsistency with its directives. This is very good news for us all, as it permits the unemployment laws to continue to

operate on the local level, responding to the needs of the states' particular economic condition and, in that context, their ability to best address the needs of its unemployed workers.

However, we recognize that on an issue of such importance to the underlying policies of unemployment insurance, the Department's role in guiding the states is vitally important. As you are aware, the Massachusetts statute is just one approach to this issue and at least Vermont, Maryland, and Washington have also filed legislation which suggests that other approaches are possible.

We look forward to your response to our memorandum and, more importantly, to your suggestions as we continue our work on this type of legislation. We believe that another face-to-face meeting would facilitate coming to agreement on the parameters of state legislation. Thank you.

Sincerely,

Ann Bookman (mt)

Professor Ann Bookman
Holy Cross College

Maurice Emsellem (MH)

Maurice Emsellem
National Employment Law Project

Monica Halas

Monica Halas
Greater Boston Legal Services

Linda Johnson (mt)

Linda Johnson
Women's Statewide Legislative Network

enc (1)

cc: Cathy Curran, Wage & Hour Division
Suzanne Day, Office of Senator Chris Dodd
Cheryl Dorsey, Women's Bureau
Robert J. Haynes, President, Massachusetts AFL-CIO
Jonathan Hiatt, AFL-CIO General Counsel
✓ Donna Lenhoff, National Partnership for Women and Families
Senator Stephen Lynch, Massachusetts Joint Committee on Commerce and Labor
Representative Anne Paulsen, Massachusetts House of Representatives
Stephanie Robinson, Democratic General Counsel
Bill Samuel, Associate Deputy Secretary

March 15, 1999

**MEMORANDUM IN SUPPORT OF MASSACHUSETTS BILL
AMENDING ITS UNEMPLOYMENT COMPENSATION LAW
TO INCLUDE ELIGIBILITY FOR FAMILY AND MEDICAL LEAVE**

**Prepared by
Greater Boston Legal Services
National Employment Law Project¹**

Executive Summary

The Massachusetts Legislature has introduced a bill that would provide unemployment insurance (UI) for no longer than 12 weeks to workers who are separated from their jobs for reasons that qualify for protection under family and medical leave laws. Similar legislation has been introduced in Maryland, Vermont and Washington, raising the issue of whether federal UI law imposes any obligations on the states that would interfere with their broad discretion to enact this UI legislation.

This memorandum seeks to advance the on-going dialogue with DOL that has been extremely valuable to the development and improvement of the proposed state laws. As a result of these communications, the legal issues also have been significantly clarified. The question now boils down to whether the DOL has the authority to impose limitations on a state's eligibility requirements -- in particular a state's determination whether an individual must always be "available" for work at the time she applies for benefits. Based on the research described below, we conclude that the Massachusetts bill is consistent in all respects with the intent of the federal law (allowing states' broad authority to expand UI eligibility) and with past precedents in state UI laws.

We also believe that the state family leave bills are consistent with DOL's interpretation of the federal UI law. The proposed laws retain a genuine test of availability, as required by DOL, but allow for exceptions in particular circumstances just as the states have routinely done in other areas of UI eligibility. We therefore look forward to a continuation of the dialogue, informed by this most recent research, to address DOL's remaining concerns and to modify the Massachusetts proposal if necessary.

¹ For further information, please contact Maurice Emsellem, NELP, 212/285-3025, ext. 106, or email: emsellem@nelp.org; or Monica Halas, GBLS, 617/371-1234, ext. 621, or email: mhalas@gbls.org.

- **The legislative history of the Social Security Act does not require states to adopt any particular definition of availability for work and grants broad discretion to states to develop their eligibility requirements.**

Neither the plain language of the Social Security Act nor its legislative history provides any basis for a federal restriction on states' prerogatives to determine availability requirements. Ralph Altman, a senior official of the Bureau of Employment Security in 1950, provides the most comprehensive published survey of the availability for work requirement and concludes that "determination of availability for work under American unemployment compensation laws is *exclusively a state function*." This conclusion is supported by numerous statements from the initial drafters and enforcers of the federal unemployment laws, including the President, legislators, the Committee on Economic Security, and the Social Security Board itself. *Additionally, legislation which would have injected a federal availability requirement into the unemployment laws was rejected by Congress.*

- **The states' adoption of numerous exceptions to their availability requirements with prior DOL approval demonstrates that states have the authority to enact these exceptions.**

There is ample precedent for states' authority, with DOL approval, to carve exceptions to their availability requirements. Even before federal law was amended to speak to the issue, 22 states exempted trainees from the availability requirement. Numerous states have at one time or another exempted workers who become disabled while unemployed from disqualification due to unavailability. Most importantly, employees on temporary lay-off need not be available for other jobs while on recall status. The proposed bill varies from these precedents in some ways, but none of the differences distinguishes their validity under federal law. The leave bill maintains the state's availability requirement and preserves the unemployment system's focus on involuntary unemployment, applying a genuine test of availability. DOL's approval of this bill would thus be entirely consistent with past practice.

- **We have addressed the concerns that DOL has raised in connection to the scope of the bill and its relation to existing recall statutes and have provided analogous examples under numerous state precedents.**

DOL has raised concerns about the scope of the bill and seeks to explore several distinctions between the Massachusetts bill and other recall statutes. We conclude that these concerns and distinctions, where they exist, do not vitiate the legality of the Massachusetts bill under the federal/state statutory scheme, as they do not affect the fundamental availability requirement nor Massachusetts' ability to create exceptions to that requirement. For example, DOL questions the distinction between an employer initiated layoff as opposed to a family leave taken by the employee. However, federal law does not limit unemployment compensation to only those cases where an employer initiates the layoff. Over one-third of all states, including Massachusetts, cover compelling, personal circumstances as nondisqualifying reasons for leaving work, and these reasons also constitute "good cause" for the refusal of otherwise suitable work.

These state laws demonstrate that it is well-established that leaving for family and medical reasons --- the same reasons that qualify employees under the proposed Massachusetts law for family and medical leave --- render the leaving "involuntary" or are not truly "initiated" by the employee. Consequently, the fundamental availability requirements remain intact.

- **Compelling policy considerations support deference to the right of states to expand UI eligibility under their availability rules without federal restraints.**

Broad state discretion over availability requirements is supported not only by law but by sound public policy considerations as well. States are best suited to determine their eligibility and disqualification requirements based on their differing economic and social circumstances. Experimentation among states is not only allowed by the unemployment scheme but encouraged to discover new ways to adapt unemployment laws to further the goal of employment stabilization. Now more than any time in recent history, the opportunity exists for states to promote long-overdue reforms in the UI system, as reserves in UI trust funds have increased with the sustained decline in unemployment. Finally, the proposed bill itself furthers important federal and state policy interests, including the unemployment scheme's goals of employment stabilization and the FMLA's goals of providing access to family and medical leave.

I. Introduction

The Massachusetts Legislature has introduced a bill that would provide unemployment insurance (UI) for no longer than 12 weeks to workers who are separated from their jobs for reasons that qualify for protection under family and medical leave laws. Similar legislation has been introduced in Maryland, Washington and Vermont, raising the issue of whether federal UI law imposes any obligations on the states that would interfere with their broad discretion to enact this UI legislation.

This memorandum seeks to advance the on-going dialogue with DOL that has been extremely valuable to the development and improvement of the proposed state laws. As a result of these communications, the legal issues have also been significantly clarified. The question now boils down to whether DOL has the authority to impose limitations on a state's eligibility requirements -- in particular a state's determination whether an individual must always be "available" for work at the time she applies for benefits. Based on the research described below, we conclude that the Massachusetts bill is consistent in all respects with the intent of the federal law (allowing states' broad authority to expand UI eligibility) and with past precedents in state UI laws.

We also believe that the state family leave bills are consistent with DOL's interpretation of the federal UI law. The proposed laws retain a genuine test of availability, as required by DOL, but allow for exceptions in particular circumstances just as the states have routinely done in other areas of UI eligibility. We therefore look forward to a continuation of the dialogue, informed by this most recent research, to address DOL's remaining concerns and to modify the Massachusetts proposal if necessary.

II. Federal Law Grants States the Authority To Define Availability in Seeking to Expand UI Eligibility.

A. The Plain Wording Of The Applicable Federal Statutes Does Not Require States To Adopt Any Particular Availability Requirement.

No federal statute or regulation requires states to adopt any particular availability requirement. The applicable federal unemployment insurance laws, the Federal Unemployment Tax Act (FUTA) and the Social Security Act (SSA), contain no provisions regulating the substantive eligibility and disqualification requirements to be included in state unemployment legislation. See 26 U.S.C. §§ 3304, 3306; 42 U.S.C. §§ 503, 504 (1998). As Dr. Edwin Witte, Executive Director of the Committee on Economic Security, whom President Roosevelt appointed to draft the Social Security Act, points out, "[a]t the very outset of its final deliberations, the committee decided against federal dictation regarding the content of state unemployment compensation laws. It reached the conclusion that the federal bill should contain only a few necessary standards. . . ." Edwin Witte, *The Development of the Social Security Act* 125 (1962). These standards do not include any definition of availability for work to be followed by the states.

B. The Early History Of The Unemployment Laws Demonstrates That Availability Requirements Were Intended To Be Defined Solely By The States.

Despite the absence of statutory language authorizing federal control over state laws, DOL suggests that a federal availability requirement can be implied from the overall structure of the statutes and their legislative history. However, a review of the legislative history of FUTA and the SSA and contemporaneous commentary by those responsible for enforcing the newly-enacted laws demonstrates that states were intended to possess complete discretion in defining their eligibility and disqualification requirements. Federal law was envisioned as providing only a floor on the coverage and amount of unemployment benefits a state could grant; it was never intended to create a ceiling limiting a state's ability to provide for its citizens under its unemployment laws.

Indeed, availability for work is one area of law over which states have vast discretion. Ralph Altman, a senior official of the Bureau of Employment Security in 1950 (and with the Unemployment Insurance Service for many years thereafter), provides the most comprehensive published survey of the availability-for-work requirement and concludes that states can define availability for work in whatever manner they wish. He writes:

"The Social Security Act and the federal unemployment tax provisions of the Internal Revenue Code, which prompted almost all the state unemployment compensation laws, make no provision for payment of benefits to claimants. Neither do they establish any eligibility requirements which claimants must satisfy. . . . [T]he only [provisions] that affect state laws and administration on availability problems are those which protect labor standards . . . and those which provide that all compensation must be paid through public employment offices or such other agencies as the Labor Department may approve. The practical result is that determination of availability for work under American unemployment compensation laws is exclusively a state function." Ralph Altman, *Availability for Work* 74-5 (1950) (emphasis added).

1. Congress Expressly Rejected On Numerous Occasions The Imposition Of Specific Federal Definitions And Standards On State Eligibility And Disqualification Rules.

Notably, legislation imposing specific federal requirements on state unemployment laws was proposed and rejected on numerous occasions during the formative years of the unemployment scheme. Senator Woodrum proposed in 1939 a number of specific requirements in connection with new unemployment legislation that would constrain states and the federal government in their ability to grant unemployment benefits, including a requirement that an eligible worker must be available for and seeking work. See H.R.J. Res. 151, 76th Cong. (1939) (printed in 84 Cong. Rec. 1160 (1939)). Senator Murray proposed a bill in 1940 which would have amended the Social Security Act to require states to follow specific guidelines in making

determinations of whether work is suitable. See S. 3365, 76th Cong. (1940). Other proposals would have imposed varying specific requirements on state unemployment laws. See S. 2203, 76th Cong. (1939) (Byrne amendments); H. R. 7762, 76th Cong. (1940) (McCormack bill).

All of these proposals were rejected in favor of maintaining a system of minimal federal control over state eligibility standards. See Edwin E. Witte, *Development of Unemployment Compensation*, 55 Yale L.J. 21, 46-7 (1945). While the Woodrum proposal arose in the context of a Works Progress Administration appropriation, it is notable that a comparable availability requirement never made its way into the general federal unemployment laws. Since Congress expressly declined at the outset to limit states' discretion over the details of their unemployment laws, including the specific area of availability for work, it would be inappropriate for a federal agency to adopt a contrary view sixty years later. See *Johnson v. Mississippi*, 421 U.S. 213, 228 (1975) ("[t]he absence of any evidence or legislative history indicating that Congress intended to accomplish . . . what it has failed or refused to do directly through amendment . . . necessitates our considered rejection of the [asserted claim] in this case.").²

2. The Initial Drafters And Enforcers Of The Unemployment Laws Believed That States Alone Should Define Eligibility And Disqualification Requirements, Including Availability For Work.

The Social Security Board recognized early on that in constructing the federal-state unemployment scheme, Congress required only a limited number of specific standards to be satisfied for state unemployment laws to be approved, and that all of those standards ensured only that states provide adequate compensation. In its first annual report, the Board explained that "[t]he amount of assistance and practically all the conditions under which assistance is granted are determined by the States. In unemployment compensation *the primary role of the Federal Government is to remove obstacles to State action.*" United States Social Security Board, *Annual Report* 8 (1936) (emphasis added). In a 1936 circular, the Board outlined the main features of the federal-state relationship in administering unemployment laws. Notably, in a section entitled "Essential Features of Unemployment Compensation," the Board never even hints at a federal requirement that states define availability to work in a particular manner. To the contrary, the Board goes on to conclude that "It is desirable that a State law should be at least as broad in its coverage as the Federal act. . . . *The State may, of course, go further and adopt a*

² There were also sound practical reasons why Congress would choose to leave the issue of availability for the states to decide. Although the Department's objection in the current controversy centers on a specific piece of proposed legislation, its interpretation necessarily entails a dramatic expansion in federal jurisdiction over state unemployment disputes. DOL argues that federal law imposes a requirement that individuals seeking unemployment compensation must be available for work in order to receive benefits. If valid, this rule applies not only to proposed legislative enactments but also to individual benefits determinations. The consequence is that a federal question potentially arises in any state unemployment dispute where availability for work is at issue. A federal question definitely arises in a case where a worker is erroneously deemed available for work, giving the U.S. Supreme Court jurisdiction over appeals from decisions of the Massachusetts Supreme Judicial Court on these issues. Absent an express statutory mandate, a federal agency should not adopt an interpretation of federal law which would inject federal courts into the review of state benefits determinations.

wider coverage . . . This is a matter of policy for the State to decide." United States Social Security Board, *The Federal-State Program for Unemployment Compensation* 5, 9 (1936) (emphasis added).

Thus, the constraints that federal law placed on state action were viewed as creating select minimum standards, not maximums limiting states' abilities to provide benefits. President Roosevelt transmitted this very message to the Senate during the floor debates on the SSA: "[i]n order to encourage the stabilization of private employment Federal legislation should not foreclose the States from establishing means for inducing industries to afford an even greater stabilization of employment." 79 Cong. Rec. 545 (1935) (introduced by Sen. Smith).

Federal officials recognized from the very beginning that states enjoy considerable discretion in crafting eligibility guidelines, including availability for work. In its report to the president, the Committee on Economic Security recommended that any federal unemployment legislation give states near-total discretion over their unemployment laws. The Committee stated that "[t]he plan for unemployment compensation that we suggest contemplates that the States shall have broad freedom to set up the type of unemployment compensation they wish. We believe that all matters in which uniformity is not absolutely essential should be left to the States." Committee on Economic Security, Report to the President 20 (1935) (quoted in Murray Rubin, *Federal-State Relations in Unemployment Insurance* 22 (1983)). Ten years later, in its 1945 Annual Report, the Social Security Board reviewed the contents of all the states' laws and similarly concluded that "[t]he extent to which . . . claimants received benefits, and the amount and duration of their payments, depended entirely on the applicable State law," including whether "a claimant was considered unavailable for work." United States Social Security Board, *Annual Report* 87 (1945) (emphasis added).

The U.S. Supreme Court acknowledged the broad discretion enjoyed by states in enacting unemployment laws in one of its decisions upholding the constitutionality of the federal-state unemployment system. In *Steward Machinery Co. v. Davis*, 301 U.S. 548, 593 (1937), the Court found that "[a] wide range of judgment is given to the several states as to the particular type of statute to be spread upon their books." Though the Court conceded that states may not "depart from those standards which in the judgment of Congress are to be ranked as fundamental," *id.* at 594, the standards deemed "fundamental" in this case were those explicitly codified by Congress.

State courts adopt the same position. In *Teledyne Columbia-Summerill Carnegie v. Unemployment Compensation Board of Review*, 634 A.2d 665 (Pa. Commw. Ct. 1993), the court upheld an order by the state unemployment compensation board of review determining that amounts received by employees in liquidation of pension benefits when a plant closed were not to be offset against unemployment benefits. In reaching this result, the court held that absent explicit federal definitions, states are free to define FUTA requirements as they see fit: "Beyond meeting these minimum standards, a state is free to design its unemployment compensation law and establish its own eligibility requirements. . . . [Federal statutes do not define] 'pension,' 'retirement pension,' or 'annuity,' and Employer does not cite any authority for the proposition that a state may not define these terms or that the Board's regulation is in direct conflict with

Section 3304(a)(15)." *Id.* at 669.

III. State Precedents Supporting the Massachusetts Bill Have Broadly Defined Availability For Work to Expand UI Eligibility.

Numerous states have enacted UI laws broadly defining their availability requirements, thus establishing ample precedent for the state family leave recall proposals. These state laws have been left undisturbed by DOL even where states enacted provisions eliminating their availability requirement in particular circumstances.

A. Recall.

The precedents in UI state laws that are the most directly analogous to family and medical leave are the recall statutes authorizing workers who are temporarily laid off from their jobs to be exempted from the state's availability rules. The Massachusetts bill is thus modeled on the state recall statutes and on Massachusetts' recall policy.³ These statutes, which exist in seven states (Arkansas, Delaware, Michigan, Missouri, New Mexico, Ohio and South Dakota), vary significantly in scope.⁴ Some states statutes, including the Michigan law and Massachusetts recall policy, are worded such that they allow for a waiver not only of the work-search obligations but also of the entire "availability" requirement. Thus, the state recall statutes and policies clearly illustrate the vast authority that states have to determine their availability rules. These states have concluded that it is bad policy to force workers to search for work or be available for work when they are only temporarily separated from their jobs. The Department has conceded that these state recall statutes, which provide the model for the Massachusetts bill, comply with federal UI law.

B. Training.

States have also dramatically altered their availability requirements to extend benefits to individuals in approved training programs. Prior to 1976, FUTA did not contain its current provision prohibiting states from disqualifying otherwise eligible workers from unemployment eligibility on the basis of their participation in a vocational training program. *See id.* at 549-50. Nevertheless, by 1966, twenty-two states had enacted provisions exempting unemployed workers in training or retraining programs from availability requirements if otherwise eligible. *See*

³ "A claimant who is temporarily unemployed because of a vacation shutdown or a brief layoff not to exceed four weeks with a definite date to return to work with the same employer *is not required to be available for work or actively seeking work with other employers...*" (Emphasis added). *See* Massachusetts Division of Employment and Training, *Service Representative Handbook*, section 1051, Vacation Shutdown or Brief Layoff (Rev. 10/96).

⁴ *See* Ark. Stat. Ann. sec. 11-10-507 (3)(E); 19 Del. C. sec. 3314(3)(1997); MSA sec. 17.531 (1998), sec. 23(1)(a); R.S. Mo. sec. 288.040.1(2)(1997); N.M. Stat. Ann. sec. 51-1-5-A. (1998); ORC Ann. 4141.29 (1996); ARSD 47:06:04:11.

William Haber & Merrill G. Murray, *Unemployment Insurance in the American Economy* 114 (1966). These states chose this policy based on their view of "unemployment insurance as part of a comprehensive labor market program." *Id.*

Such workers were clearly not available for work in any literal sense, since they were allowed to turn down work during their training periods. They were certainly no more available for work than an individual taking leave under the proposed Massachusetts bill. With over twenty state training laws already on the books, Congress amended FUTA to expressly require such availability exceptions to be followed in each state. This demonstrates not only that the availability requirement has been sharply limited by states in the past, but also that Congress limits state discretion only where it wishes to provide certain minimum benefit coverage, not to prevent higher levels of coverage from being granted. States are free to develop "comprehensive labor market programs" such as that implemented in part by the proposed Massachusetts bill.

C. Disability.

States are currently allowed to exempt disabled workers from availability requirements if the disability or illness arises after the worker applies for benefits.⁵ The only difference between these laws and the proposed Massachusetts legislation is that the proposed bill would exempt workers from the availability requirement at the time they apply for benefits. However, it is not clear why this difference should determine the legality of the state scheme under federal law. If states' abilities to define availability for work are constrained by federal law, then that constraint should presumably apply at any time the worker is receiving benefits. Under federal law, a state cannot provide benefits to a healthy worker who has become fully employed after applying for benefits; the law does not change merely because the worker has already applied for benefits. Similarly, if states may make disability and illness exceptions applicable after a worker applies for benefits, as DOL concedes they may, there is no appropriate basis for imposing a different standard at the benefits application stage.

D. Inverse Seniority Layoff.

Another relevant precedent in state law supporting the validity of the Massachusetts bill is the exemption that applies to workers who "choose" a layoff as authorized by a collective bargaining agreement. These laws, which exist in at least three states (Pennsylvania, Ohio and Michigan), typically apply where a collective bargaining agreement gives senior employees the option to choose a layoff and permits less senior employees to continue to work. Normally,

⁵ Notably, according to a study of utilization of leave under the federal Family and Medical Leave Act (FMLA) by the Commission on Family and Medical Leave, the major reason for leave-takers was the individual's own illness (59%) followed by 13.3% of all leave-takers where the individual left due to childbirth, adoption or placement of a foster child. These numbers were closely mirrored in non-covered worksites where 56.1% of all individuals left due to their own illness, and 14.7% left due to childbirth, adoption or foster child placement. See Commission on Family and Medical Leave, *A Workable Balance: Report to Congress on Family and Medical Leave Policies* 93 - 96 (1996).

these are used in temporary layoff situations, and they give workers input into which specific employees are going to be laid off in a particular layoff situation. The employer "initiates" the layoff and determines the overall number of employees laid off, but the employees' seniority system and individual choice determines which employees are laid off. The state statutes (and case law in selected states) exempt those workers who "choose" to be laid off in these situations from the "voluntary" quit disqualification. While not addressing the "availability" requirement per se, these state statutes make clear that not all layoffs can be neatly characterized as either employer or employee "initiated". As discussed below, the same is true in the case of workers taking family and medical leave.⁶

IV. Responses to DOL Questions Raised In Prior Correspondence

A number of concerns were raised in the letter from Grace Kilbane, Director of UIS, dated January 15, 1999, regarding the scope of the proposed bill and its relation to existing recall statutes. We will address each of these considerations in turn.

A. Query: For the purposes of a state's availability requirement, is there a relevant distinction between an employer initiated layoff as opposed to a family leave taken by the employee?

⁶ There are several other relevant precedents worth noting. First, there is the deduction for retirement pay from UI that is required by federal law in specific circumstances. Although receipt of retirement pay while unemployed would appear to raise a question whether the individual is available for work, Congress focused instead on other objections. "Under these amendments, Congress appeared less interested in the retirement payment as a test of availability than with preventing duplicate payments attributable to the same employer." Gerald Hildebrand, *Federal Law Requirements for the Federal-State Unemployment Compensation System: Interpretation and Application*, 29 U.Mich.J.L. Ref. 527, 557 (1996). Second, DOL has authorized unemployed seasonal workers to refuse work that would interfere with their ability to return to their seasonal jobs. Department of Labor Manual of Precedent Decisions, AA 450.45© ("A seasonal worker who regularly works for one employer in one industry and who has definite prospects of recall to work may restrict the employment acceptable to him during the off-season to work which will permit him to return to his regular employment when the season begins."). Other examples that exist in Massachusetts and elsewhere include exemptions for acceptance of suitable work for workers receiving UI in work-sharing situations, the provisions allowing workers to recover UI on jury duty and refuse an offer of suitable work, and the part-time worker availability rules allowing workers to limit their availability to part-time rather than full-time work. For example, the Massachusetts statutory law provides that "[a]n otherwise eligible affected individual shall not be denied worksharing benefits for any week by reason of application of provisions relating to availability for work, active search for work or applying for or accepting suitable work with other than the worksharing employer. (Emphasis added). Massachusetts General Laws ch. 151A, §29D(h)(1). Under Massachusetts policy, the statutory provision which requires availability for work is deemed satisfied when an otherwise eligible claimant is summoned for jury duty during a period of unemployment. See Massachusetts Division of Employment Security, *Service Representative Handbook*, section 1039, Jury Duty (Rev. 10/96). Under recently promulgated Massachusetts regulations, various provisions are set forth as "conditions for limiting availability" to part-time employment which include a history of part-time work for "good cause" encompassing family and medical reasons. 430 Code of Massachusetts Regulations 4.42 - 4.45 (4/5/96).

⁷ This statement paraphrases DOL's letter, dated January 15, 1999, which specifically states: "[W]e would like your views on the distinctions between employees on temporary lay-off, where the employer initiates the
(continued...)

First, it is well established that federal law does not limit unemployment compensation only to cases where an employer terminates its relationship with an employee. There are countless examples of state laws deeming an employee's initiation of his separation from work involuntary under certain circumstances, expanding unemployment coverage beyond the category of workers laid off through no fault of their own. Over one-third of the states cover compelling personal circumstances requiring an individual to leave his or her job, and such circumstances are not limited to those directly connected with the employment. See Advisory Council on Unemployment Compensation, *Unemployment Insurance in the United States: Benefits, Financing, Coverage* 110-2 (1995). These laws, conceded to be valid, cover claimants who leave their jobs due to compelling family circumstances. Another twenty-three states have special provisions for employees who quit work due to an illness or disability not necessarily connected with the individual's employment. See United States Department of Labor, *Comparison of State Unemployment Insurance Laws* Table 401.1 (1996). Thus, an employee-initiated temporary leave should not automatically be invalid under federal law when employees in so many other circumstances are allowed to collect benefits despite their employers playing no role in their separation from work.

Furthermore, the distinction between layoffs initiated by an employer and those initiated by an employee is ambiguous at best. For example, as described above, several states have laws that specifically allow workers to choose to take a lay-off and still qualify for unemployment benefits, as occurs with many layoff schemes authorized by collective bargaining agreements. The cases on this issue also make the point that states have vast discretion to fashion different solutions to the same problem. Compare *Ford Motor Co. v. Ohio Bureau of Employment Services*, 571 N.E.2d 727, 729 (Ohio 1991) (holding that an employee who elects voluntary termination under a plan or policy adopted by the employer to reduce the number of employees due to a lack of work in the employer's overall work force is entitled to unemployment compensation) with *Goewert v. Anheuser Busch, Inc.*, 919 P.2d 106, 111 (Wash. 1996) (holding that early retirement, even after a 10 percent reduction-in-force announcement, constitutes a voluntary quit without cause). The *Ford* case illustrates that a quit is sometimes considered involuntary even where the employee accepts, and even formally initiates, the separation. This demonstrates further that whether an employer or employee initiates a layoff is not the *sine qua non* of an employee's eligibility under federal law for unemployment benefits.

Lastly, it is inappropriate to characterize family and medical leave as always being "initiated" by an employee. In fact, it is unfortunately quite common for employers to coerce workers into taking family leave. For example, this often occurs when pregnant women seek an accommodation to stay on their jobs during the course of their pregnancy rather than go on unpaid family leave. The employer then denies the accommodation and the worker is forced to

⁷(...continued)

unemployment and the employee must return to work upon recall or have his or her UC terminated, and those on family leave, where the individual initiates the unemployment and is unavailable to return to work until the leave ends."

take unpaid family leave or else lose her job. See, e.g., *Harvender v. Norton Co.*, 4 Wage & Hour Cas.2d (BNA) 560 (N.D.N.Y. 1997) (holding that there is no right under FMLA to bring an action against an employer for placing an eligible employee on leave in a case where the employer denied a pregnant worker an accommodation to avoid being exposed to chemicals during her pregnancy and instead placed her on 12 weeks unpaid FMLA leave which ended four months before her due date). Employees take family and medical leave in many, if not most, cases due to circumstances beyond their control. Allowing employees to receive unemployment compensation during such leaves is thus fully consistent with the goals of compensating involuntary unemployment.

B. Query: Under what circumstances is an employee on temporary lay-off with no available work and a definite recall date required to return to work pursuant to federal UI law, and are the employee's obligations under federal UI law any different when the leave is based on the FMLA?⁸

Here, it is necessary to distinguish between what states are permitted to do under federal UI law and what current state laws require under their recall statutes. As described above, many states provide that employees are exempt from work-search requirements if they are on temporary layoff and will be recalled within a certain period of time. In certain circumstances, the recall statutes also allow for the availability requirements to be waived. The rationale for such an exception parallels that justifying the proposed recall bill. See Olga S. Halsey, *Claimants Awaiting Recall - Their Special Problems of Availability and Suitability for Work*, Social Security Bulletin, Oct. 1946, at 13 (evaluating state unemployment laws deeming employees on recall to be unavailable for work and finding that "[t]he practical result for the claimant is a denial of benefits which places economic pressure on him to sever an employment relationship, perhaps of years' standing, which has proved satisfactory to both the worker and his employer."). Such employees clearly need not seek work from other employers during this period or accept an offer of work, even of a vastly better paying job, from another employer.

Despite these very broad state statutory limitations on the availability rules, the question is whether federal law still requires that the workers be available during their layoff to return to work with their existing employer. This question appears to presume that an obligation exists under federal law to require availability in all circumstances. We, of course, take issue with this premise, as described in Section II. Nonetheless, there are indeed precedents in state law allowing workers who refuse suitable work to continue receiving UI benefits. For example, while not specific to the recall situation, the state training laws described above exempted workers in approved training from having to accept an offer of suitable work. See, e.g., *Alaska Department of Labor v. Boucher*, 581 P.2d 660 (Alaska, 1978) (quoting Alaska's 1974 training

⁸ Specifically, the DOL letter dated January 15, 1999, states: "In the case of employer initiated lay-offs, it has always been the Department's position that the individual must be available to return to work with the employer, particularly if the lay-off ends earlier than assumed. We are not aware of any State which does not require this of the individual. There is no similar requirement in the family leave recall proposals, and in fact, the employer is prohibited from recalling the employee for a minimum period."

provision as exempting "workers attending a training or retraining course with the approval of the employment security division or because, while attending the course, he is not available for work or refuses an offer of work." (Emphasis added). The Massachusetts bill, like the state training statutes, simply makes adjustments to its suitable work requirements as permitted by federal law.

The case of *U.S. Steel v. Unemployment. Compensation Bd. of Review*, 389 A.2d 249, 250 (Pa. Cmwlth. 1978), involved a collective bargaining agreement which also allowed the workers to turn down certain offers of suitable work while on recall. In *U.S. Steel*, the court found that a collective bargaining agreement which restricted the employer's ability to recall workers during their vacation period while on an indefinite recall did not disqualify the workers from receiving benefits. The court noted that although the employees were to be deemed available unless they turned down an offer of suitable work, the collective bargaining agreement precluded any offer of suitable work during their vacation period. In holding that the employer's argument that the claimants were "unavailable for suitable work" was not dispositive of the claimants' eligibility for benefits while receiving vacation pay, the Court relied on the "social purposes" of the state's unemployment law. The social purposes behind providing unemployment outweigh the fact that during the vacation period the employees are, in fact, available. 389 A. 2d at 252. Similarly, under the family leave provisions, the goal of partial wage replacement (for a limited set reasons and limited period of time) satisfies the availability criteria.

C. Query: For the purposes of determining availability, is there a relevant distinction between a leave required by law and a leave authorized by the employer?⁹

As the purpose of the Massachusetts legislation is to provide partial wage replacement for reasons that satisfy the criteria of the Family and Medical Leave Act, we believe that it is unnecessary to distinguish between statutorily required leave and employer-provided leave as the defining issue in both is the *reason* for the leave. This is certainly consistent with current Massachusetts unemployment law. Both statutory and case law provide that an individual does not leave employment for disqualifying reasons where the *reason* for leaving is for an "urgent, compelling, and necessitous nature." See Massachusetts General Laws, chapter 151A, § 25(e). It is well-established that this provision includes child care and family responsibilities. *Manias v. Director of Div. of Employment Sec.*, 445 N.E.2d 75 (Mass. 1983).

⁹ The DOL letter states: "We would also appreciate your thoughts on the distinctions between leaves required under family leave laws and leaves merely authorized by employers. Is it your assumption that the fact that the leave is granted under a leave law creates a statutory presumption of availability? If so, how does this carry over into cases where an employer authorizes leave without a statutory requirement to do so?"

D. Query: Does the proposed exemption for workers on family and medical leave effectively eliminate a genuine test of availability under Massachusetts UI law?¹⁰

Massachusetts currently applies a genuine test of availability, and the proposed bill does not interfere with such a test. Federal law permits states to make generalized determinations concerning eligibility disqualifications in the interests of efficiency and administration so long as the unemployment laws target involuntary unemployment. The training and disability precedents in the various states demonstrate that such determinations are acceptable. Massachusetts as well has exercised a great deal of latitude in this area, including adjustments to availability covering training, illness, temporary lay-offs, jury duty, and other selected circumstances.¹¹ Furthermore, the proposed legislation contains such an individualized test. Though the bill itself creates a statutory presumption of availability, this presumption only arises if a variety of individual factors specified in the relevant leave legislation is satisfied (i.e., a worker must qualify for reasons acceptable under the FMLA leave first, which entails an individualized determination of the worker's circumstances).

Finally, it is important to emphasize that the proposed leave bill does not eliminate the state's general availability for work requirement. It leaves the existing structure in place, adjusting it to allow benefits to be granted in particular situations and simply creating time-limited exceptions based on illness or disability and family circumstances.

E. Query: What does federal UI law say specifically about compensation for individuals who are "involuntarily unemployed", defined by DOL to include a "suitable work" requirement?¹²

We have explained and illustrated previously in this memorandum that states are free to define what constitutes "involuntary" unemployment and have adopted broad definitions in a variety of circumstances. The suggestion that federal law requires a suitable work standard *in all circumstances* is not supported by either an explicit statutory mandate or legislative history.

¹⁰ In response to a memorandum written in support of the proposed Vermont law, DOL wrote a letter dated July 17, 1997. The letter restates the memorandum's conclusion ("States have latitude to determine what constitutes availability for work") and continues as follows: "Although this is true, States must still have a genuine test of availability. The Vermont proposal eliminates any test for workers on family leave by substituting a conclusive statutory presumption of availability even where facts demonstrate the individual is unavailable. No examination of the individual's circumstances is made."

¹¹ See Massachusetts General Laws, chapter 151A, §§ 24(c), 30 waiving availability requirements for participation in an approved training program or due to illness; and note 4, *infra*.

¹² In its letter dated January 15, 1999, DOL stated: "Lastly, Federal UC law limits withdrawals from a State's unemployment fund to 'compensation' for 'unemployment.' (Sections 3304(a)(4) and 3306(h) of the Federal Unemployment Tax Act and Section 303(a)(5) of the Social Security Act). We believe the legislative history of the original Social Security Act is clear that only involuntary unemployment, that is, where no suitable employment is available, is to be compensated."

As required by the basic rules of statutory construction, it is necessary to rely primarily on the plain language of the statute to determine its legislative intent. The main provisions of the federal law relied on by DOL are Section 3304(a)(4) of FUTA, which states that "all money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment compensation," and Section 3306(h) defining "compensation" to mean "cash benefits payable to individuals with respect to unemployment." These limited statutory references to "unemployment" certainly do not rise to the level of a federal mandate preventing the states from waiving their suitable work requirements in selected circumstances. If anything, we believe these references to "unemployment" in the federal law support our position since it is conceded by DOL that states have the authority to define "unemployment" under state law.

Furthermore, it is notable that FUTA alludes to suitable work only once, in Section 3304(a)(5). Consistent with other aspects of federal UI law, Section 3304(a)(5) works to *prevent* states from denying compensation where no suitable work is available, again establishing a floor rather than a ceiling on state benefits. In addition, as discussed earlier, the Murray bill would have imposed specific standards for suitable work upon the states, but this bill was rejected, indicating congressional reluctance to dictate state policy in this field. Relying then on legislative history, DOL quotes from the draft state laws prepared by the Committee on Economic Security. However, as the Committee itself concluded, these provisions were absolutely never intended to constrain the states.¹³

Even if the federal law could be interpreted to impose a suitable work requirement on the states despite this limited statutory authority, nowhere has the case been made that the states must also require all workers to accept suitable work in all circumstances. To be clear, the Massachusetts bill should not be interpreted by DOL to eliminate the state's "suitable work" requirement. Therefore, we believe it is entirely consistent with DOL's interpretation of the federal law. In this sense, the Massachusetts bill is no different from the many other examples

¹³ In its letter to Senator Patrick Leahy, dated July 17, 1997, DOL references provisions of the Committee on Economic Security's original draft of a state unemployment statute as if they were substantive limitations on state legislative discretion. This draft was never enacted. Moreover, even if the draft had been enacted, as the Committee itself points out, these provisions were never intended to constrain the states:

"This draft is merely suggestive and is intended to present some of the various alternatives that may be considered in the drafting of the State unemployment compensation acts. Therefore, it cannot properly be termed a 'model' bill or even a 'recommended' bill. This is in keeping with the policy of the Social Security Board of recognizing that it is the final responsibility and the right of each state to determine for itself just what type of legislation it desires and how it shall be drafted." United States Social Security Board, *Draft Bills for State Unemployment Compensation of Pooled Fund and Employer Reserve Account Types 1* (1937) (quoted in Rubin at 23-4).

Although most states enacted the provisions of the draft bill, they did not do so because they thought the draft was binding. Rather, the enactment of the federal unemployment legislation was such that states had to move extremely quickly and had no alternative but to adopt the federal government's suggestions to assure compliance within the required time. See Raymond C. Atkinson, *The Federal Role in Unemployment Compensation Administration* 30 (1941).

of state legislation that define the contours of what is "involuntary unemployment" and whether an individual must accept all suitable work.

In fact, in Massachusetts as in many other states, the concept of suitability already covers most FMLA situations. For example, Massachusetts law allows a worker to refuse an offer of work for "good cause", which is defined to cover appropriate family circumstances.¹⁴ And the Massachusetts law permits workers to refuse an offer of work that does not meet the State's high standards of "health, safety and morals," which is entirely consistent with the concept of partial wage replacement for individuals on family and medical leave.¹⁵

As described above, there are also selected state laws that allow workers to refuse any offer of suitable work. For example, in some states, a worker on temporary lay-off with a definite date of recall has the right to reject any offer of work from another employer, even the most generous offer of employment. The state training exemptions in effect before the 1976 Amendments also allowed workers in approved training to refuse all suitable work. Here too, the Massachusetts bill would still retain its general requirement that UI claimants accept suitable work. In choosing where to draw the line to expand eligibility for a select group of workers, the Massachusetts Legislature would thus be exercising its clear authority under the federal-state UI scheme.

V. The Massachusetts Bill Significantly Advances the Basic Goals of the UI and FMLA Programs

A. States Need Flexibility to Fit Their Particular Unemployment Laws and Labor Policies to Meet the Economic Needs of Their Particular Economy

State discretion over availability standards is appropriate because states have different economic structures, budget surpluses or deficits, and job markets, and they should thus be allowed latitude to design unemployment laws which best serve their individual needs. A state with an unemployment funds surplus and many workers left uncovered when taking leave should be able to decide what scope of unemployment compensation coverage is appropriate. Thus, while DOL should continue to vigilantly guard against new state interpretations of availability

¹⁴ *Conlon v. Director of Div of Employment Sec.*, 413 N.E.2d 727 (Mass. 1980) (holding that good cause for the refusal of "suitable work" under Massachusetts law includes the refusal of work to the day shift in order to permit a claimant to fulfill her responsibilities to her children.)

¹⁵ See Massachusetts General Laws chapter 151A, §25(c); see also: *Carney Hospital v. Director of the Div of Employment Sec.*, 414 N.E. 2d 1007 (Mass. 1981) (holding as sufficient to overturn a disqualification of benefits that an employee had a reasonable belief that a severe skin infection was caused by the work environment; the claimant did not have to prove that this was in fact the case.)

laws that lower the floor,¹⁶ expansions of UI eligibility should be encouraged as recognized by the Social Security Board. United States Social Security Board, *The Federal-State Program for Unemployment Compensation* 5, 9 (1936) ("It is desirable that a State law should be at least as broad in its coverage as the Federal act . . . The State may, of course, go further and adopt a wider coverage.")¹⁷

Part of the rationale for implementing a federal-state unemployment compensation system rather than a completely federalized system was to encourage state experimentation with various compensation systems so that various methods could be tried and tested. In President Roosevelt's message to Congress during the SSA floor debates, he explained: "We believe, further, that the Federal act should require high administrative standards, but should leave wide latitude to the States in other respects, as we deem varied experience necessary within particular provisions in unemployment compensation laws in order to conclude what types are most practicable in this country." 79 Cong. Rec. 546 (1935).

Murray A. Rubin, former chief of the Division of Program Policy and Legislation of the Labor Department's former Bureau of Employment Security, offers the following observations based on his 29 years of government service: "An important advantage of a dual system was that it permitted wide latitude for experimentation by the states, needed because of the nation's lack of experience with unemployment insurance at the time. In the process, mistakes made by individual states could be confined within the boundaries of those states, while successful measures could be adopted and shared elsewhere." Rubin at 13. The benefits of such experimentation are great, and the costs are borne only by the experimenting states. Indeed, "[t]he entire unemployment insurance system would not be damaged if ideas which are tried out in individual states do not work." Haber & Murray at 441.

Massachusetts unemployment compensation law, which has as its statutory purpose "to lighten the burden on the worker and his family," exemplifies the beneficial result of permitting state experimentation in order to best serve the needs of unemployed workers. Massachusetts General Laws, chapter 151A, §74. Not only does Massachusetts law provide for the longest duration of benefits (30 weeks) and one of the most generous amounts (currently \$402 a week, plus a potential addition of \$200 in dependency allowance), it has long provided benefits for

¹⁶ See, e.g., Letter from Larry Heasty, Regional Director, U.S. Department of Labor, Employment Services and Unemployment Service to Videna Crosley, Director, State of Oregon, Employment Department, dated September 25, 1998 (correspondence discussing the legality of restrictions on UI under the state's JOBS Plus program); Unemployment Insurance Program Letter 41-98, dated August 17, 1998 (describing the minimum federal standards under which a claimant shall be denied UI for refusing to accept new work under Section 304(a)(5)(B)).

¹⁷ The Social Security Board held this view during the formative years of unemployment legislation. In its first annual report, the Board noted that "[t]he several State laws reflect the needs of a particular State, the manner of administering other labor laws within a State, the character of State government, and the demands of local public opinion." United States Social Security Board, *Annual Report* 44 (1936). That same year, the Board also explained that "[t]he State may enact the type of law which it judges best designed for the local conditions within the State." United States Social Security Board, *Functions and Progress of the Social Security Board* 36 (1936).

leaving for non-work connected reasons, including domestic responsibilities. Individuals are not only exempt from availability requirements while participating in approved training, but up to an additional eighteen times the weekly benefit amount are available for continued participation in training. Massachusetts General Laws, chapter 151A, § 30(c).

Although many states have closed offices for intake of claims, recently enacted state law requires that regional offices remain open and that multilingual orientations and forms are provided to facilitate access to newcomers. Massachusetts General Laws, c. 151A, §62A. In addition, interpreters are provided at no cost to claimants for all unemployment hearings concerning eligibility for benefits. Eligibility and higher benefits for low-wage workers is assured by both requiring a movable base period, and by including the most recent earnings in the calculation of the weekly benefit amount if the result is a 10% or greater amount. See Massachusetts General Laws, chapter 151A, §§ 1(a), 24(b), 25(e), 30. Benefits are provided to workers who reduce hours to preserve jobs through worksharing¹⁸ and benefits are also provided to workers who reduce their hours because of new or worsening disabilities. Massachusetts General Laws, chapter 151A, §29D; 430 Code of Massachusetts Regulations 4.45 (4/5/96).

Massachusetts is also the only state to provide health insurance benefits for unemployed workers and their families through a modest tax on employers. Massachusetts General Laws, chapter 151A, § 14G(j). Although the medical security plan is paid for out of a separate trust fund, it is administered by the Massachusetts Division of Employment Security as a needs based program of COBRA continuation benefits or direct coverage available to those families with an unemployed worker whose income is 400% or less of the federal poverty guidelines. And most recently, a portion of the employer tax was diverted to provide incumbent worker training targeted to low-wage, low-skilled workers. Massachusetts General Laws chapter 29, § 2RR; 430 CMR § 8.01 *et seq.* These numerous provisions, like the proposed benefits for family and medical leave further the purpose of the Massachusetts law to benefit "the worker and his family."

Experimental programmatic additions to the Massachusetts unemployment scheme are possible due to the solvency of the Massachusetts unemployment trust fund. Currently, the Massachusetts Trust Fund has a balance of \$1.694 billion. According to John King, Deputy Director of the Massachusetts Division of Employment and Training, this balance "represents far and away the largest balance the Fund has ever attained. Reserves are now large enough, even after excluding all anticipated 1999 contribution income, to pay benefits for twenty-nine month at current levels of unemployment and for more than one year at a severe recessionary level."¹⁹ This is precisely the time for the state to expand its efforts to help workers during times of difficulty. The trust fund is solvent, yet at the same time, there are sobering statistics that the

¹⁸ The administration is currently proposing providing lump sum unemployment benefits to individuals seeking self-employment. See Massachusetts House Bill No. 590 (filed 12/2/98).

¹⁹ Letter to Monica Halas, Greater Boston Legal Services, from John A. King, Deputy Director of Massachusetts Division of Employment and Training dated February 17, 1999.

Massachusetts boom economy has not reached all its citizens, particularly low wage workers. Added to this fact is the impact of the state's two-year time limit on welfare which means that many working poor heads of households will no longer be able to rely on public assistance when they are forced to take an unpaid leave. All of these factors, unique to the state, are best resolved at the state level where the needs of workers can be evaluated in the context of the particular state's economic condition.

The case for experimentation is particularly strong as applied to the proposed recall bill. The FMLA is a fairly recent federal enactment, and even more recent are findings that the FMLA's benefits are not enjoyed by a substantial number of the citizens the Act targets.²⁰ The proposed Massachusetts bill is an ideal opportunity to test a creative and innovative means for implementing the letter and spirit of the federal mandate. Just as Massachusetts was on the cutting edge as the first state to consider unemployment legislation in 1916, its willingness to consider such a bold modification constitutes exactly the type of experimentation that the federal-state scheme is designed to encourage.

B. The Proposed Legislation Furthers Important Federal Policies And Promotes The Exercise Of Federal Rights.

Extending unemployment compensation to workers on unpaid leave promotes stability in employment and strengthens the national economy, two key policy objectives of the unemployment system, since workers are able to return to work rather than be forced to search for new jobs. See Advisory Council on Unemployment Compensation, *Defining Federal and State Roles in Unemployment Insurance* 27. The policy underlying such legislation parallels the justification for defining availability to account for workers on recall status. The proposed recall bill effectively creates less unemployment by allowing workers to keep their jobs while on leave

²⁰ Other states are also attempting to pick up where the FMLA left off. For example, under proposed legislation introduced in Vermont, individuals who are eligible for leave under Vermont state law, as well as individuals who work for smaller employers who are not required to give leave who intend to return to employment within the timeframe of the leave are eligible for unemployment benefits. See Vermont Senate Bill 179. The statement of purpose which addresses the critical need to provide unemployment benefits for family and medical leave provides:

"The General Assembly finds that many low wage employees, those most in need of the protection of family leave laws, are least able to afford to take time from work without pay. These employees effectively are presented with the Hobson's choice of either taking unpaid leave from work for the birth of a child or the illness of themselves or a family member or having enough employment income to pay for basic necessities of life. Therefore, it is the purpose of this act to provide a real choice for these employees by making unemployment compensation available to those for whom family and parental leave has been merely an illusory right."

Under legislation proposed in the state of Maryland, an individual who voluntarily leaves employment immediately following the birth or adoption of a child has good cause for leaving and is deemed to be in compliance with availability requirements. See Maryland House Bill 1124. The State of Washington has pending legislation to qualify for unemployment those individuals who leave to care for a newborn child under one month old and who request reemployment at the end of the leave. See Washington House Bill 2074.

and less hardship on those separated from work when necessary to care for themselves or their families.

Furthermore, any doubts as to whether the proposed recall bill complies with federal law should be resolved in favor of the legislation's validity since the bill facilitates the exercise of federally-created rights. The bill is premised on findings that most workers are unable to take advantage of leave available under FMLA since it is currently unpaid and since it applies only to companies of 50 employees or more (a concern which the administration has most recently highlighted). The bill does not create an impediment to any federal right; to the contrary, it removes an obstacle to its exercise, by providing limited compensation to allow medium and low income workers to be able to enjoy family and medical leave as much as higher-income workers. Congress apparently contemplated such state legislation when it included a non-preemption provision in the FMLA. See 29 U.S.C. § 2651 (expressly permitting states to provide more protective family and medical leave guarantees, but not less, than that provided by FMLA).

A bipartisan congressional commission reached the same conclusion. According to the Commission on Family and Medical Leave, established by Congress to study the impact of the FMLA, the major reason why employees in FMLA-covered businesses do not take FMLA leave is that they cannot afford to do so. To make it possible for such workers to take needed leave, the Commission recommended that consideration be given to a uniform system of wage replacement. Specifically, the Commission suggested that states extend unemployment compensation qualifications to employees on family and medical leave. See Commission on Family and Medical Leave, *A Workable Balance: Report to Congress on Family and Medical Leave Policies* 199 (1996).²¹

Finally, the approach to availability that we suggest is not without precedent, as other states have carved out similar exceptions based on identical policy considerations. For example, in *Missouri Division of Employment Security v. Jones*, 679 S.W.2d 413, 415 (Mo. App. Ct. 1984), the claimant conceded that she was unable to work for a week due to the sickness and death of her mother. However, the court nonetheless awarded benefits, explaining that "[t]he meaning of 'available for work' varies, depending on the circumstances of each case," and holding that the availability requirement "do[es] not apply when a claimant is not available for work due to an unfortunate family emergency beyond her control. Any other result would be inconsistent with the policy of the Missouri Employment Security Law . . ." *Id.*

²¹ Specifically, the Commission recommended that "States should consider voluntarily extending unemployment compensation qualifications to employees on family and medical leave . . ." Commission on Family and Medical Leave, *A Workable Balance: Report to Congress on Family and Medical Leave Policies* 199 (1996). In its letter to Senator Leahy, dated July 17, 1997, DOL narrowly interprets the Commission's statement to cover only those situations in which a worker takes family and medical leave but remains available to accept work and where the individual quits work for family or medical circumstances (i.e., the situation where an individual is most likely separated from the job and is no longer eligible for FMLA leave).

VI. Conclusion

Based on the research described above, we conclude that the Massachusetts bill is consistent in all respects with the broad discretion to fashion state laws guaranteed under federal UI law and with past precedents in state UI laws. We also believe that the state family leave bills are consistent with DOL's interpretation of the federal UI law. The proposed laws retain a genuine test of availability, as required by DOL, but allow for exceptions in particular circumstances just as the states have routinely done in other areas of UI eligibility. We therefore look forward to a continuation of the dialogue, informed by this most recent research, to address DOL's remaining concerns and to modify the Massachusetts proposal if necessary.

Dodd
Murray
Leahy
Kennedy

UI FOR FMLA

ISSUE

- Is it permissible under Federal law for states to change their laws so that individuals on FMLA leave qualify to receive unemployment benefits by some change to the UI "availability test"? Do individuals who quit their jobs to care for children following childbirth or adoption meet this test?

BACKGROUND

- In 1997, Vermont introduced legislation which would allow UI payment to individuals who were on leave under Vermont's Family and Medical Leave Act. These individuals would be "deemed" to be available for work. ETA objected, saying that Federal UI law requires individuals to be available for work. "Deeming" an individual to be available simply avoids determining whether the individual actually is available.
- This year four bills have been introduced which would use UI to pay individuals on some form of FMLA. Three of the four States, anticipating conformity problems, have asked for the Department's comments. (Only the Massachusetts and Vermont bills are alive.)

Massachusetts would, using the "recall" approach, pay UI to individuals who were on leave under the FMLA and the State's maternity law. It would also pay individuals who could not take FMLA because the FMLA did not apply to their employers. A hearing is scheduled April 17. The agency will oppose the bill. The governor is expected to oppose the bill.

Vermont has introduced a bill that would pay individuals on leave under Vermont's FMLA law. It is similar to last year's, except that it also uses the "recall" approach. It appears that the agency will oppose the bill, but the Governor may not take any position at this time.

Maryland has introduced a bill that would pay individuals who quit their jobs to take care of a newborn or adopted child. Under the bill, individuals would be "deemed" to be available. A hearing is scheduled for March 16. The agency is opposing the bill. The governor has not taken any position. *(see over new)*

Washington has introduced a bill that would pay individuals 4 weeks of benefits if they are on leave following giving birth.

UI vs FMLA - A BRIEF COMPARISON

- UI is an **insurance** program that insures against the risk of **involuntary** unemployment. The worker loses employment through no fault of his/her own and continues to be unemployed through no fault of his/his own because no other work is available.
- Employers pay taxes which fund the system and pay benefits. Employers willingly pay these when payment is made for involuntary unemployment. Employers object to being "charged" for benefits for workers on leave. *cf to address*
- Workers who leave jobs voluntarily due to good personal cause may receive UI. However, these workers must also be available for new work.

- Under the FMLA, the unemployment is not involuntary. The worker makes a choice between unemployment and work. The worker is generally not available for work. The employer is holding a job for the worker. When a worker quits to care for a child following childbirth or adoption, the worker is generally not available for work.

FEDERAL LAW AND AVAILABILITY

- Two provisions of Federal law have long been interpreted to require that the worker be available for work to receive UI:

1. The **“withdrawal standard”** limits the use of unemployment fund moneys to payments with respect to an individual’s unemployment. We have interpreted “unemployment” to be limited to that which is involuntary and due to a lack of work. This means the individual must be “able and available” for work to receive UI benefits.

2. UI must be paid through public employment offices. This requirement is not just organizational: since the earliest days of the program, it has been interpreted to require that the worker be “available”—the employment office finds work for the available worker. Otherwise, the requirement would not amount to much.

- The Senate Committee Report for the 1935 the Social Security Act (SSA), which created the Federal-State UI program, is a basis for these interpretations:

The essential idea in unemployment compensation is the creation of reserves . . . from which compensation is paid to workmen **who lose their positions when employment slackens and cannot find other work**. Unemployment compensation . . . payments are made . . . **only while the worker is involuntarily unemployed**. [Emphasis added.]

- The 1935 legislative history is replete with similar statements. In addition, subsequent Congressional actions also indicate UI is to be paid only to individuals who are unemployed due to lack of work. For example, in 1939 Senator Wager (who introduced the SSA in the Senate) introduced a bill to pay individuals with temporary disabilities because UI was paid only to workers who “unemployed due to a lack of a job.”

ARE THERE ALREADY EXCEPTIONS TO THE AVAILABILITY REQUIREMENT?

- Some argue that the Department has in cases “waived” the availability requirement. Three of these are:

Payments to Ill Claimants. In 11 States claimants who are ill may receive UI. This occurs only if the individual is initially available following separation **and** there is no work for the individual to perform. The notion is that an individual who is involuntarily unemployed should not be disqualified if no work is available. There is still an “availability” test since the individual must accept any offered work which is suitable.

Life threatening conditions. The Federal Extended Benefit (EB) law contains an exception to its work search requirement for claimants who are hospitalized for an emergency or life-threatening condition. This is an exception to the EB work search requirement only. It does not authorize an exception to the availability requirement. Like payments to ill claimants, the individual must accept any offered work which is suitable.

Jury Duty. The Department has approved waiving work search for claimants on jury duty and the Federal EB law also provides for this. The notion is that the individual who is involuntarily unemployed should not be denied for failing to look for work when the failure is created by the government. This is an exception to the work search requirement only. Availability for jury duty has been accepted as proof of availability for work. This is reasonable since employed individuals (who are certainly available) must go on jury duty.

- **Lay-offs and Recalls.** Some also argue that workers on "recall" are not available. There are differences between traditional recall situations and the FMLA situation:

In lay-offs, unemployment generally is caused by lack of work. The employer initiates the unemployment and the individual must be available for recall. For example, auto workers on lay-off must be available--if their recall date is moved up, they must report immediately. In FMLA situations, the worker initiates the unemployment and is responsible for its continuation. Also, the employer has no option to recall the worker and the individual is not available for other work. Although laid off auto workers may not be required to actively seek work, they are still available for recall. In FMLA situations, the individual never has to be available for work even though the employer is holding a position open.

Employers are willing to pay workers on lay-off to preserve their work force. This is consistent with the UI principle that employers bear the cost of unemployment they create. In FMLA situations, the employer obtains no benefit since it has created no unemployment and must hold the job open for the worker.

IMPLICATIONS

- Allowing payment in FMLA-type situations is a major change to the UI availability requirement. By setting this precedent, it may be difficult to prevent other types of payments from the unemployment fund where no current labor market attachment exists. For example: individuals on vacation, sick leave or sabbatical, or retirees. Eroding this basic tenet of the program would generate opposition by employers who may seek some program limitations in response--for example, a Federal definition of availability or means testing.
- DOL has consistently held that exceptions to the "withdrawal standard" may only be made by Congress. Congress amended Federal law to allow payments for temporary disability and self-employment which suggests Congress reserves to itself "waivers" of the availability requirement.

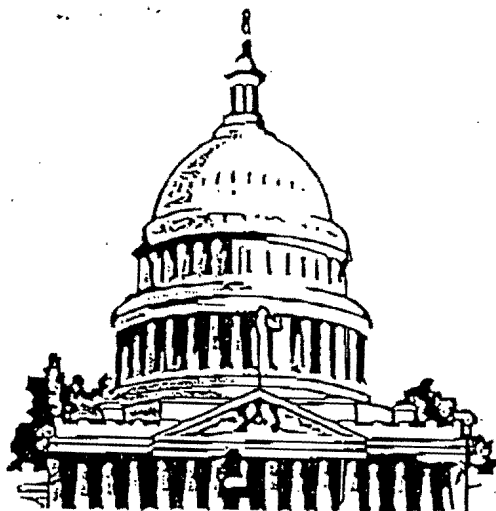
Isabel

ALTERNATIVES

- States could establish a separate tax used to fund these payments. DOL has already presented this option to Vermont. The payments could be delivered through the UI system. DOL could provide "model legislation" for the States. This approach is disfavored because of the concern that legislatures would balk at setting up a new program.
- If the State has a temporary disability system, the State could use that system. However, only six States have such systems. Last year, California introduced a bill which would use its temporary disability system for FMLA purposes.
- Potentially, a pilot program to pay the administrative costs could be funded from the \$10 million FY 2000 request.
- Federal UI law could be amended to allow for a limited pilot authorizing payment of benefit from UI funds in FMLA-type situations. This would be similar to the self-employment pilot from several years ago. Consideration must be given to the policy statement this would make, however, and the strong opposition this would generate from stakeholders at a time when we are engaging them to help us develop a comprehensive, bi-partisan legislation reform proposal.

DECISIONS NEEDED

- Whether the Administration wants to change the UI policy on availability to enable States to use the UI trust fund to pay benefits to workers on FMLA.
- Whether some other option should be pursued to encourage paid leave for FMLA.



U.S. SENATOR PATTY MURRAY WASHINGTON

COMMITTEES

Appropriations
Labor and Human Resources
Budget
Veterans Affairs

Date: 5-13-99

To: Nicole Rabner

202-456-2878

From: Barbara Greene

Number of Pages (including cover sheet): 3

Message: Please see attached letter from
Sen. Murray on FMLA issue.
I can be reached in our Seattle
office, or contact Greg Williamson
in our DC office with questions.

2988 Jackson Federal Bldg.
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Seattle, WA 98174
(206)553-5545 phone
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PATTY MURRAY
WASHINGTON

COMMITTEES:
APPROPRIATIONS
BUDGET
LABOR AND HUMAN RESOURCES
VETERANS' AFFAIRS

United States Senate

WASHINGTON, DC 20510-4704

April 8, 1999

The Honorable Alexis Herman
Secretary
U.S. Department of Labor
200 Constitution Ave NW
Washington D.C. 20210

Dear Sec. Herman,

I am writing regarding legislation that has been introduced in Washington and other states (Massachusetts, Vermont, and Maryland) to provide for partially paid family and medical leave by expanding the state's unemployment insurance program to cover workers in these situations.

I understand that the Department is in the process of reviewing its policy in this area to determine whether federal law would interfere with the states' traditional discretion to determine unemployment insurance eligibility. I have reviewed the detailed correspondence between the Department and Massachusetts contingent on this issue. Based on my review, I believe that the legislative history of the federal UI law is clear that it is within the purview of the states to define issues of eligibility, including whether individuals on family leave are "available" for work and eligible for UI.

As you know, I have long been involved in the efforts to provide families with assistance in balancing the demands of work with the responsibilities of family. The Washington bill and the other state initiatives offer critical benefits to their citizens as well as a valuable opportunity to experiment in the area of paid leave. I believe the Family Medical Leave Act of 1993, as key as it is to many workers and their families, does not meet the needs of all workers, particularly those at the lower income level. I am committed to finding solutions to this problem to allow all working families to be able to take family leave.

I am excited that so many states are in the process of considering how best to meet this challenge. While states are exploring different mechanisms, in many instances the expansion of the state unemployment insurance systems offers the most viable and affordable approach. It is also consistent with the goals of the unemployment compensation system to stabilize employment and evolve to meet the changing needs of the labor market. I believe that this state experimentation is well within Congress' intent to assist working Americans stay in the workforce through temporary unemployment insurance.

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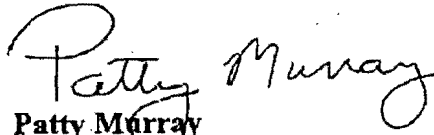
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I hope that your policy review will ultimately allow for state innovation in this key area. I believe it is justified by the law as well as our shared commitment to assisting working families.

Sincerely,

A handwritten signature in cursive script that reads "Patty Murray". The signature is written in dark ink and is positioned above the printed name and title.

Patty Murray
United States Senator



OLCOTT_E@A1
05/24/99 07:18:00 AM

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Subject: 1999-5/23 POTUS commencement remarks Grambling State

THE WHITE HOUSE

Office of the Press Secretary
(Grambling, Louisiana)

For Immediate Release

May 23, 1999

REMARKS BY THE PRESIDENT
IN COMMENCEMENT ADDRESS TO
GRAMBLING STATE UNIVERSITY GRADUATES

Eddie Robinson Stadium
Grambling, Louisiana

9:47 A.M. CDT

THE PRESIDENT: Thank you. Good morning.

THE AUDIENCE: Good morning.

THE PRESIDENT: I thank you for the wonderful, wonderful welcome. President Favors, thank you for the degree --I'm beginning to feel smarter already. (Laughter.)

My good friend, Reverend Jones, thank you for your wonderful invocation and reminding us why we are here on this Lord's day. Mayor Williams, thank you for making me feel welcome, and I thank the other mayors and councilmembers who met me. Dr. Jindal, thank you for your remarks. I must say, I was especially impressed by the remarks of your student government president, Tony Easton; and Miss Grambling, Martha Fondel. (Applause.) After they spoke I wasn't quite sure I wanted to give my speech. (Laughter.)

Let me also say that I am delighted to be joined today by your distinguished Senator, Mary Landrieu, and Congressman William Jefferson, from New Orleans. (Applause.) By our Secretary of Transportation and, like me, a

neighbor of yours to the north, from Arkansas, Secretary Rodney Slater, I thank him. (Applause.)

You know, when I heard that I might be able to come to Grambling, there was very little discussion about this in the White House. Now, usually, when the President has a chance to go someplace, there's always an argument about it because they think you should be somewhere else. Somebody who works for you thinks you should be somewhere else.

But I told my staff that I wanted to take a day away from Washington, D.C. Now, Washington is a town where everybody thinks they're somebody -- (laughter and applause) -- and I wanted to come to the place where everybody is somebody. (Applause.) I also was not about to miss a chance to hear the best band in the land. (Applause.) And I thank you for the musical tribute. And I'm glad at least the tuba players were standing up and dancing, I would have missed that, too. (Applause.)

I also -- (laughter) -- hey, I'm just getting warmed up, you know? Come on. (Laughter.)

To the last Grambling class of the 20th century -- (applause) -- this is an important day in your lives. In so many ways --

AUDIENCE MEMBER: I need a job.

THE PRESIDENT: Well, you'll be able to get one, now. (Laughter.)

In so many ways, the story of this institution embodies the whole 20th century experience of African Americans. In 1901, not a single public school in this part of Louisiana would welcome an African American into its classes. But the visionary farmers of this community, the children and grandchildren of slaves, were determined to give their children the education and pride and power to rise above bigotry and injustice. (Applause.) And so, even though they didn't have much, they scrounged around and raised some money and wrote a letter to Booker T. Washington, asking him to send a teacher to help build a school in the piney woods.

Out of that determination, Grambling has truly grown into a university for the 21st century. (Applause.) You have nurtured some of our nation's best educators and lawyers, pastors and public servants, nurses and business leaders. Of course, the NFL recruits here, thanks to Eddie Robinson and his successor, Superbowl MVP Doug Williams. (Applause.) Of course, you're known for your band and your other athletic teams.

But America's top technology firms recruit here, too -- because Grambling confers more computer and information science degrees to African Americans than any other university in the nation. (Applause.)

So you join a proud tradition today and I congratulate you all. You have gained knowledge that will enrich you for the rest of your lives and I can just see by looking at you, you've made friends who will stay with you for the rest of your lives. Through long hours in the class and late nights in the library, through moments of both self-doubt and triumph, you have today gained the prize -- an education that will help you succeed in one of the most exciting eras in all of human history.

I'd also like to congratulate and honor today your parents, your grandparents, your aunts and uncles -- (applause) -- all those who had a hand in raising you. They should be proud of you; but they should also be proud of themselves. To raise a child from infancy to college graduate is no small feat -- you hear the "amens" from the audience on that one. (Laughter.)

One of the most beloved Presidents of Grambling, Ralph Waldo Emerson Jones, I understand often said to his students, when you go home, be sure to kiss everybody -- including the mule -- (laughter) -- because the mule is the one who pulls the plow and keeps the family going. Well, I'm not going to ask the graduates to kiss any mules today, but I do ask each of you before this day is over to say a special thank you to the people who kept your families going.

I asked for some research on some of the families -- I'd just like to mention two. People like Joyce Gaines of Vallejo, California. Listen to this: even through the pain of five ruptured disks in her back, she worked three jobs and commuted 200 miles a day to put her daughter, Tieaasha, through Grambling. (Applause.) Where are you? Stand up there. (Applause.) Today, she's graduating with a degree in sociology and she plans to open a home for abused children. She is a tribute to her mother's love and sacrifice. (Applause.)

People like James and Lilly Bedford of Shreveport. James is a plumber, Lilly is a cook. Both took on extra work at night and on weekends to help their youngest son, Terrence, pay for college. She was a student at Grambling back in the '50s, but Lilly had to leave before graduating. Now Terrence is the second of the seven Bedford children to earn a Grambling degree, and he's the senior class president. Congratulations to the Bedfords. Where are you? Thank you. (Applause.)

Stories like this remind of us what people can achieve when they set their minds to it, but they also remind us of how hard it can be to raise a child right, especially today in our very busy society with its very demanding economy. Now, this is the

serious part of the talk. I want you to have a good time today, but I want you to listen to this. This spring I'm going to speak to seniors about how this new economy is transforming every aspect of our lives.

Next month, at the University of Chicago, I'll talk about how we must put a human face on the dynamic but often disruptive international marketplace. But today I want to talk to you about what we as a nation must do to help families like those I just mentioned -- and those will be your families -- master the challenges of the new economy.

I've been thinking a lot about family lately, and I expect a lot of you have. In the aftermath of the terrible tragedy at Littleton and the other school shootings we've had in our country, they've forced us to confront the need not only to make guns less available to criminals and children, not only to make our culture less violent and our schools safer, but also to make the bonds that tie parents to children stronger. (Applause.)

The spate of hate crimes that we have seen, taking the lives of James Byrd Jr. in Texas, Matthew Shepard in Wyoming, and others force us to confront the need to raise our children to respect others who are different from themselves -- (applause) -- and to recognize that all hard-working, law-abiding people are part of our national family. The horrible ethnic cleansing of this decade in Bosnia, then Rwanda, now Kosovo, demonstrate in stark terms what can happen when a people raise their children without the fundamental premise embodied in our Declaration of Independence -- that we are all created equal, equally endowed by God with the right to life and liberty and the pursuit of happiness. (Applause.)

It all begins with family, with parents who love their children more than life and raise them to live their dreams. Most of you today are probably thinking more about the adventures of the work that awaits you at this marvelous time in your lives. And well you should be. But most of you also will become parents. When that happens, it will be the most important work you'll ever do. You will have the awesome responsibility of your children's physical, intellectual, emotional and spiritual development, while at the same time pursuing your own lives in a society that will reward your knowledge and skills in power, and entertain you with its explosions of technology and mobility, and keep you very, very busy.

For those without your level of education in your time just earning enough to pay the bills may be a chore, especially if there are children to be raised.

Now, the class of 1999 is entering an era of unparalleled opportunity and possibility with, for example, the lowest African

American unemployment and poverty rates ever recorded and the highest African American homeownership in history. To give more people like you a chance to participate fully in this economy, we've opened the doors of college to more and more Americans, with the HOPE Scholarship tax credit, larger Pell grants, lower-cost student loans -- tools many of you have used to finance your education.

Now, with your diplomas in hand, you will have the chance to reap the benefits and shape the future of this new era -- your time; to lead lives of greater accomplishment and affluence than most of your parents even dreamed of. But as you form your own families you will no doubt feel the pressure of trying to balance the demands of work and family; and doing a good job at both in a world that moves faster and faster, and often leaves parents less and less time and energy for their children.

Today's working parents too often feel enormous stress, and bring the stress home with them. This is a problem not confined -- I want to emphasize this to you -- it is not confined just to people who work for low and modest incomes. Most of the parents I know have had problems balancing work and family. And as you move through your careers, unless we act now, this problem will get worse. Therefore, I believe it is imperative that your country give you the tools to succeed not only in the work place, but also at home. If you or any American has to choose between being a good parent and successful in your careers, you have paid a terrible price, and so has your country.

I asked the President's Council of Economic Advisors to study the sweeping changes the modern economy has brought to our families. Now, no offense to anybody on the faculty here, but you know, it's been said that if every economist on Earth were laid end to end, they still would not reach a conclusion. (Laughter.)

But on this question, these economists did reach a conclusion, one that conforms to common-sense and common experience. They found that because more and more parents were working outside the home, they have less and less time for their children. The percentage of married mothers in the work force has nearly doubled in a generation, from 38 percent in 1969 to 68 percent in 1996. Because more mothers are working outside the home, and because the number of single parent families has grown -- listen to this, because this will be your life -- parents in the average family now have 22 fewer hours each week to spend at home, that's nearly one full day less time per week for parents to devote to their children. That means by the time a child reaches the age of 18 in today's world those 22 hours a week amount to over two years more the parents are away from home.

We as a nation must find a way to give your generation of parents some of that time back even as you've gotten an education to succeed in the work force. (Applause.)

Most of today's parents, the vast majority, are doing everything they can to do right by their kids but they still worry that no matter how hard they try it won't be enough. They worry that waking up early and staying up late to make time for their children may not be enough, when a child still has to come home to an empty house after school.

They worry that all those Sunday morning sermons about a world of love might not be enough when TV and movies their children watch, the music they listen to, the video games they play show too much 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 the same Internet can also lead them to recipes for pipe bombs and explosives, or to website discussions of dark visions of life and society so very different from the ones the parents have tried to impart.

Last week Hillary and I took a sad journey to Colorado to visit with the students and the families of Columbine High School. I came away from that experience more certain than ever that as we work to strengthen our gun laws we also have to work to strengthen our families. (Applause.)

Now, it seems to me that the modern economy you're going to be a part of poses four great challenges for you as parents. The greatest and most obvious, as I've said, is time. In our around-the-world, around-the-clock economy, there just don't seem to be enough hours in the day for parents to do everything they need to do. I'm proud that the first bill I signed as President was the Family and Medical Leave Act, and since 1993, millions of Americans have used it to take up to 12 weeks of unpaid leave to care for a newborn or a sick relative without losing their jobs. It has been a great thing. (Applause.)

But to be truthful, the current law just meets a fraction of the need. Too many people, too many family obligations aren't covered at all. Too many families can't take advantage of the law because they can't afford to take the time off because they can't live without their paychecks. For all of this nation's pro-family rhetoric, the hard truth is that other countries with advanced economies do a lot more to support working parents than we do. We must think bigger and do better.

On the eve of the 21st century, we ought to set a goal that all working Americans can take time when they need it to care for their families without losing the income they need to support their families. (Applause.) Achieving that goal cannot come overnight and will require a significant shift in how our nation helps families to succeed at home and work. But it can make all the difference in your lives. It will demand thought and creativity, a willingness to experiment; it has to be done in a way that gives families flexibility and doesn't undermine our

dynamic and growing economy.

Today, using my executive authority as President, we're going to take an important step toward that goal. I am directing the Office of Personnel Management, whose director, Janice LaChance, came down here with me today, to allow all federal workers to use the sick leave they've earned to take time off to care for other sick family members. (Applause.)

Now, what this means is on sick leave you get paid. Currently, the most sick leave a worker can use in these kinds of cases is 13 days a year. With the new policy I propose 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. (Applause.) If every company in America that offers sick leave to its workers adopted the same policy we're adopting today, half of all the American work force would have this important benefit for their families.

We have to find other creative ways to help Americans use benefits they've worked for to finance the time off they need for their families. Let me give you another example. A few states have asked the federal government if it would be possible to try a bold idea: allow workers who have earned unemployment insurance coverage to collect unemployment payments while they're on leave caring for a newborn or a newly adopted child. This is a very promising idea.

Today, I'm directing the Secretary of Labor to issue a rule to allow states to offer paid leave to new mothers and fathers. We can do this in a way that preserves the soundness of the unemployment insurance system and continues to promote economic growth. As the First Lady said in her book, "It Takes a Village," those first weeks of life are critical to the bonding of parents and children, and they can have long-term positive developments for the children. No parent should have to miss them.

I also am challenging Congress to help. I have proposed expanding unpaid family leave to cover more workers and more parental responsibilities, and Congress ought to respond positively. Parents should not have to fear a boss's wrath because they left work to take a child to the doctor. They shouldn't have to call in sick to attend a parent-teacher conference at the school. (Applause.)

The second challenge parents face is finding affordable high-quality child care, and a lot of you will face that. Low income families spend up to a quarter of their income on child care. Studies show that only one in seven child care centers meet all the standards of good quality. Now, I'm supporting subsidies for child care and tax credits, better training for care-givers, stronger enforcement of safety standards. And I want business to do more by helping their own workers find and

afford quality child care. (Applause.)

In addition to that, you know, today millions of working parents -- and a lot of them right here in north Louisiana -- start looking at the clock every day about 3:00 p.m. in the afternoon, wondering if their kids have come home from school; wondering how they'll fare at home, alone. The hours after the school bell rings and before parents come home are a perilous time for children, the time they're most tempted to try drugs and alcohol, most likely to become victims of a crime. That's why I have asked Congress to triple our investment in quality after-school programs. I challenge school districts all across this country: unlock those empty classrooms in the late afternoon, fill them with the sounds of children playing and learning. (Applause.)

The third challenge parents face, since they're more and more at work, is that they're literally physically apart from their children more. Now, because of some modern developments in the work force we can actually close that distance by bringing back a very old idea -- letting children who can be, be with their parents more at work. When I was a young child I often went to work with my grandfather, who worked as a night watchman in a sawmill outside Hope, Arkansas. And I often went to the little grocery store he ran. And I tried not to be in the way too much, or to eat too many cookies that I didn't pay for. (Laughter.)

But I learned lessons there that have stayed with me for the rest of my life. As I became President I realized that as a father, with a daughter who was then still in junior high school, I had the privilege of, in effect, living above the store. The place where I worked was only a two or three minute walk to have dinner every night with my family. When I was governor -- I still remember when I was governor, I had a little desk over in the corner of my office for my daughter. And I still have vivid memories -- I would be at my desk, she would be at hers with her crayons drawing me little pictures.

Now, because of changes in the work force we can't do this for everybody, but we can do it for more. More of America's employers can use technology to bring workers and children closer together by allowing more employees to telecommute at work; that is, work at home with a modem where it's feasible. More employers can open more on-site child care centers, and I have seen them working very well in this country. I support tax breaks to help them afford to do that.

More employers can team up with school districts to build public schools at work sites if they're large enough. Dozens of companies have already built innovative public schools. That's what you've done here at Grambling, that's what the lab school is, isn't it? It's a school at a work site, especially friendly

to education. (Applause.) These are good things to do. And I challenge the employers of this country to look at them closely.

Finally, the last great challenge 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 media entertainment, and it sure is interesting. But too often, TV, radio, the Internet bombard our children with images and ideas that no parent would ever want them to see.

We need tools to protect free speech and give parents more control over what their young children see, hear and read. Under the leadership of Vice President Gore, those tools are now being crafted. Soon, half of all the TV sets sold in our country will come with V-chips, so parents can basically make the most of the new TV ratings systems. These devices enable parents to screen out violence, sex, or any program they don't want their children to see. Soon, with just a click of a mouse, parents who have the courage to learn how to use a computer will be able to take offensive websites off their children's screens.

The entertainment industry must also do its part. They should stop showing guns and violence in ads children can see, when they can't see the movies in the first place. (Applause.) They should enforce the movie rating system more strictly, and they ought to reexamine that rating system to see whether it's too loose when it comes to giving a PG-13 rating to films full of gratuitous violence. These are tools that can help working parents succeed at the most important job you'll ever have, raising children. But government's responsibility is to make tools available; your responsibility is to use them.

Doctor King once wrote, "It is quite easy for me to think of a God of love, mainly because I grew up in a family where love was central, and loving relationships were ever present." I hope and pray that the class of 1999 will have the chance to build those ever present loving relationships with your children. To raise your children well, you will have to make many sacrifices. But, then, as we learned again today and as you showed by your applause for them, your parents made many for you.

I ask you to think one more time about how you got here today, to be sitting in the hot sun. (Laughter.) I'm sort of sorry I'm in the shade; I ought to be in the sun and you ought to be in the shade, since I'm talking.

But think about this. How many of you would be here today if it weren't for one or more people in your families -- who were reading to you, or telling you stories when you were little; who were helping with your homework; who were attending your school events, even if they were dog-tired after work; imparting wisdom over dinner; working with you to give you chances they didn't have; giving you that unconditional love, support and faith that says, you are the most important person in the world to me. Your

parents have worked and sacrificed. If you ask them today, was it worth it, you know what they would say.

But until you watch your own children grow up, you can't really know how proud your parents are of you today, and how sure they are that all the sacrifices were more than worth it. No matter what else you accomplish in life, and many of you will accomplish a very great deal, your children will still matter most. We have to make sure that you and they get all the benefits of this fabulous modern world and still keep the enduring gift of your devotion and love.

As you journey into the new millennium I wish you success and fulfillment at work and with your children. Congratulations, good luck and God bless you. (Applause.)

Let me say -- I must say when I was invited to come back and teach and I was told all about the food and all the perks of the job and then the President said he wasn't serious, I was getting into this. (Laughter.) I've got a good pension, I can work pretty cheap. (Laughter.)

Let me say one thing seriously -- I very much hate that I have to go back now but I have -- as you know, we have got a lot going on overseas and it's six hours ahead there and I have to make a lot of phone calls today and do a lot of work, otherwise I wouldn't leave. I would like to stay here until midnight -- not talk until midnight, just stay here until midnight. (Laughter.)

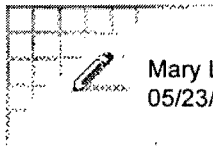
This has been a wonderful thing for me. I have had a lot more fun than you have so far at this. I cannot thank you. I'm so proud of you. And I like looking out there and seeing your faces and your eyes and your self-confidence. And I want you to go out and do a great job with your lives.

Thank you. God bless you.

END

10:30 A.M. CDT

Message Sent To:



Mary L. Smith
05/23/99 02:18:56 PM

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cc:

Subject: Family speech

Clinton Pushes Family Help Plan

By SONYA ROSS Associated Press Writer

GRAMBLING, La. (AP) -- Seeking a balance between Americans' work and home life, President Clinton said Sunday states could tap unemployment surplus funds for paid leave for new parents and federal workers could use sick days to care for an ailing family member.

"We as a nation must find a way to give your generation of parents some of that time back," Clinton told 477 graduates of Grambling State University.

"For all of this of this nation's pro-family rhetoric, the hard truth is that other countries with advanced economies do a lot more to support working parents than we do. We must think bigger and do better."

The president said the "round-the-world, round-the-clock economy" was putting more demands than ever on working parents, and a new study by the Council of Economic Advisers showed families today are spending an average of 22 fewer hours per week together than families did 30 years ago.

Clinton directed the Labor Department to develop rules so states could use surplus unemployment funds -- which are administered by the states -- to pay for leave for parents of newborns and adopted children.

The move comes in response to requests from Maryland, Massachusetts, Vermont and Washington. The majority of states now have surplus unemployment funds, said White House spokesman Barry Toiv. The proposal was expected to cost about \$60 million, spread over various federal agencies.

Federal workers also drew the president's attention.

He said that while the 1993 federal family leave law has helped ease the strain on workers who must care for a sick parent, spouse or child, it did not provide relief for those unable to take time off without pay.

"We ought to set a goal that all working Americans can take time when they need it to care for their families, without losing the income they need to support their families," he said.

As a start, Clinton directed the Office of Personnel Management to allow federal employees to use up to 12 weeks of accrued sick leave annually to care for a seriously ill family member.

Most federal employees now can take only 13 days of sick leave each year for such a need.

"If every company in America that offers sick leave to its workers adopted the same policy we're adopting today, half of all the American work force would have this important benefit," Clinton said.

The family leave law says all employers with 50 or more workers must allow up to 12 unpaid weeks off to care for a new baby or seriously ill family member. The law also allows workers to use sick time and vacation so they can get paid during their leave.

Clinton told the graduates they were successful mainly because of their parents' sacrifices. He singled out the parents of two graduates as other parents and families in the stands clustered under umbrellas and fanned themselves with programs in the heat.

Clinton cited his own childhood days beside his grandfather, who ran a small community store. He also recalled giving that same exposure to his daughter Chelsea: watching her draw pictures at a little desk across from his in the Arkansas governor's mansion, and set aside time in the evenings so he could eat with her and his wife Hillary.

"I've been thinking a lot about family lately, and I expect a lot of you have," Clinton said.

Weighing on his mind have been the school shootings in Littleton, Colo. and Conyers, Ga., the hate crimes that killed James Byrd Jr. in Texas and Matthew Shepard in Wyoming, and ethnic cleansing in Bosnia, Rwanda and Kosovo.

Those events, Clinton said, "force us to confront the need to raise our children to respect others who are different from themselves. ... It all begins with family, with parents who love

their children more than life and raise them to live their dreams."

The speech was the first of three commencement addresses Clinton plans this year on the impact of the nation's booming economy. He also is scheduled to address graduates of the Air Force Academy on June 2 and the University of Chicago on June 12.

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