

Issue Brief

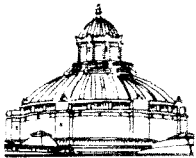
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PARENTAL LEAVE: LEGISLATION IN THE 100TH CONGRESS

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PARENTAL LEAVE: THE FAMILY AND MEDICAL LEAVE ACT

SUMMARY

Legislation introduced in the 100th Congress would require employers to grant a parental or family leave to parents to care for a newborn, newly adopted, or seriously ill child and a medical or disability leave to temporarily disabled workers, including those disabled because of pregnancy. Although varying leave benefits applicable to parental and temporary disability needs are commonly available to many American workers through public and private employment benefit plans, the United States is the only major industrialized country that does not have a national policy standardizing such benefits. During the last three decades, major changes have taken place in the composition of the U.S. work force and in the economics of the family. Greater numbers of married women with young children are now wage earners and many families are dependent on these wages. As a result, proposals addressing problems of working families with children have been suggested in Congress.

Hearings have been held by the Senate Committee on Labor and Human Resources Subcommittee on Children, Families, Drugs and Alcoholism and jointly by the House Education and Labor Subcommittees on Labor Management Relations and Labor Standards, and jointly by the House Post Office and Civil Service Subcommittees on Civil Service and on Compensation and Employee Benefits.

Those favoring the establishment of parental and temporary medical disability leave benefits cite the need to accommodate far-reaching changes in the family and the workforce. Proponents argue that although some States have provided statutory maternity leave benefits, a national standard is necessary so that a woman's access to such benefits will not depend on such factors as geographic location, industry, or company size. They further note that where leave benefits are not the same for all workers disabled for nonoccupational medical reasons, women may be disadvantaged in the workplace because they may be viewed by employers as potentially more expensive employees.

Opposition to the proposal comes primarily from businesses which note the difficulty of opposing a bill that has been labeled "pro-family" legislation. Nevertheless, they argue that all employee benefits, however socially desirable they may be, are costly for employers who must pass on these expenses to consumers. In addition, they state that guaranteeing the job of an employee on long-term parental or temporary medical disability leave may also be more burdensome for small business (representing the majority of business), with their limited personnel resources, than for large businesses. Those opposed also argue that provision of specific benefits should remain voluntary on the part of employers or be subject to labor-management negotiation, rather than be mandated by the Federal government.

ISSUE DEFINITION

Many other countries, including all of the major industrial nations, provide standard employee leave benefits for maternity and child care. In the United States some employers and some States provide various benefits, but there is no national standard. At issue is the question of whether such benefits in the United States should be mandated by Federal law or left to the States, to individual employers, and to the collective bargaining system, as is the current practice.

BACKGROUND AND ANALYSIS

Changes in the composition of the work force and in the economics of the family over the last three decades have heightened interest in the standardization of benefits to assist those balancing both employment and family responsibilities. According to 1986 Census data, the labor force was 44% female, with married women with young children comprising the majority of new entrants. In 1986, the median annual income for families was \$38,346 when the wife was in the labor force and \$26,803 when she was not. Currently, more than 80% of working women are in their prime childbearing years (ages 18-44), and 65% of all American women in this age group are in the labor force. Less than 10% of families are made up of a married couple with children where the husband is the sole provider, and thus most children in the United States have working parents. In addition, the proportion of single-parent households has been increasing due to the high rate of divorce and the growing frequency of out-of-wedlock births.

While many U.S. employers offer employment-related leave benefits which are applicable to pregnancy and childcare -- in the form of annual leave, temporary disability or sick leave, or leave without pay -- no national policy mandates specific family-related benefits for all workers. By contrast, at least 75 other countries, including all other Western industrialized nations, have policies requiring various standard family-related benefits. These benefits typically include a maternity leave for a specified time before and after the birth of a child, job protection during maternity leave, and wage replacement or a cash benefit. In addition, some countries provide a paid or unpaid parental leave, a leave granted for child care which is available to either parent and unrelated to physical disability resulting from childbirth. (For a discussion of current maternity-related policies and practices in the United States and overseas, see CRS Report 85-148 GOV, Maternity and Parental Leave Policies: A Comparative Analysis.)

This dissimilarity in employment policies related to family needs between the United States and other countries has been attributed by some researchers to differences in philosophic and cultural attitudes with regard to methods of providing protective benefits. In most countries, such benefits are an entitlement provided through a national social security system, while maternity and parental benefits in the United States have been developed primarily in the private sector, voluntarily, and on an ad hoc basis, as well as through labor-management agreements.

Current Federal and State Family-Related Leave Policies

While family-related policies in many countries are directed toward women primarily and are intended to address broad issues related to maternal and child health, Federal policy in the United States has been directed toward the prohibition of discrimination in the provision of employment-related benefits. Employment benefits in the United States are governed by the requirements of Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act of 1978. Under Title VII, as amended, employers are not required to provide specific benefits of any kind, but if employers do provide benefits, they may not discriminate between protected classes of workers or on the basis of pregnancy. Title VII prohibits discrimination on the basis of race, color, religion, sex, or national origin with respect to "compensation, terms, conditions, or privileges of employment" (P.L. 88-352, 78 Stat. 241, 42 U.S.C. 2000e). The Pregnancy Discrimination Act (PDA) requires that women "affected by pregnancy, childbirth, or related medical conditions be treated the same for all employment purposes, including receipt of benefits under fringe benefit programs, as persons not so affected but similar in their ability or inability to work" (P.L. 95-555, 92 Stat. 2076, 42 U.S.C. 2000e[K]). Federal, State, and local governments are covered by these statutes, as are private employers with 15 or more employees.

In addition to the requirements of Title VII, five States (California, Hawaii, New Jersey, New York, and Rhode Island) and Puerto Rico have enacted legislation requiring nearly universal coverage of private sector employees under temporary disability insurance plans. Although not all these State plans initially included coverage of pregnancy and maternity, all now treat such conditions the same as other disabilities in conformance with the Pregnancy Disability Act. Specific benefits provided under the State and Puerto Rican statutes include guaranteed leave up to a specified maximum number of weeks and partial wage replacement based on a percentage of the employee's earnings.

Federal employees also are entitled to certain benefits which may be applied to family needs under the Civil Service leave system. Guidelines regarding maternity and parental benefits in the Federal Civil Service, issued by the Office of Personnel Management (see "Federal Personnel Manual: Leave for Parental and Family Responsibilities," Chapter 630), do not include a separate maternity or parental leave. However, the guidelines specify that leave for childbirth is chargeable to a combination of sick leave, annual leave, or leave without pay, while parental leave may be charged to annual leave or leave without pay with the permission of the agency affected.

Family-Related Leave Benefits in Private Employment

Other than requirements mandated by the Federal government and the States, as noted above, little in the way of aggregated data is available about employment-related maternity and parental benefits for other workers, especially those in the private sector, where most workers are employed. In the absence of a need to monitor compliance with a national policy of family-related benefits, no data have been regularly and

comprehensively collected showing the availability of such benefits, their duration and level, who is covered, at what cost, and with what consequences. Few surveys of maternity-related benefits in the United States have been made, and those available tend to be limited, particularly in regard to self-selection of respondents and focus on large and medium-sized firms. As a result, the data gathered tends to overstate the extent of benefits available to workers generally, since benefits provided by larger firms tend to be more generous than those available at smaller companies which employ the majority of workers.

Since these surveys, despite their limitations, are the best information to date on maternity-related benefits, the following summation of their findings may be useful. [Data derived from Kamerman, Sheila B., Alfred J. Kahn, and Paul Kingston, *Maternity Policies and Working Women* (1983) and *Catalyst, Corporate Guide to Parental Leaves* (1986).]

-- The practice of providing maternity leave, including reinstatement in the same or a comparable job and protection of seniority, would seem to be fairly common. However, it seems to be most common in large companies and in the banking, insurance, and financial industries and least common in small companies and in retail trade and service industries. Job-protected maternity leave seems to be least likely in firms with less than 25 employees and only slightly more likely in firms with between 26 and 99 employees.

-- Approximately half of the companies responding were flexible regarding commencement of leave, depending on individual circumstances, while others limited leave before childbirth to four to six weeks. Most firms limited duration of leave to two to three months, although the Kamerman study indicated that approximately 37% of women returned to work in less than eight weeks after childbirth and another 32% returned after nine to eighteen weeks.

-- Continuation of seniority and pension benefits during maternity leave is also common, since employers who divest women of their accumulated seniority merely because they take maternity leave are in violation of Title VII, according to a 1977 Supreme Court ruling, Nashville Gas Co. v. Satty (434 U.S. 136). Legislation passed by the 98th Congress, the "Retirement Pension Equity Act" (P.L. 98-397), allows employees on "maternity or paternity leave" to be absent from a job for up to five years and to retain credit for their initial period of employment if they return to the same employer so that they do not lose time accrued for pension participation.

-- While the Catalyst survey of large firms showed that paternity leave, e.g., leave permitted a father to assist with family care needs, was offered by approximately 37% of responding companies, few men took advantage of such leaves. No information was available on the number of workers covered, the length of paternity leaves in companies offering this benefit, or whether the leave was paid or unpaid.

Since the Social Security Administration (SSA) monitors cash benefits for short-term sickness, data on the availability of paid maternity leave is available from that source. The most recent available data (1981)

showed that 63% of all workers in private industry and government employment were under some sort of formal plan offering sick pay or income replacement during periods of temporary disability. According to the SSA, duration of sick leave benefits varies according to length of employee service, but seldom exceeds 15 days per year. Duration of the typical temporary disability insurance plan is 26 weeks, but benefits cover only the actual period of incapacity, estimated at 7.5 weeks on average by the SSA for a normal pregnancy.

Activity in the 99th Congress

Legislation introduced in the 99th Congress (H.R. 4300/S. 2278) would have established a national policy on family-related employee benefits, affecting both public and private sectors. Created would have been two kinds of employee leave benefits that were sex-neutral in conformance with Title VII (see discussion above). The leaves would have been unpaid, although either the employer or the employee could have elected the substitution of paid leave for part of the unpaid leave. The first, a parental or family leave, was intended to address the issue of limited availability of dependent care at a time when the number of mothers in the labor force with pre-school and school-age children is increasing. The proposed leave, by definition, would have been available to both parents. Since adoptive parents have the same family-bonding needs as biological parents, they also would have been eligible for parental leave. Under H.R. 4300/S. 2278, an employee would have been entitled to a parental leave of 18 workweeks during any 24-month period to care for a new-born, newly adopted, or seriously ill child. Workers on a reduced leave schedule could have taken 18 workweeks over a period of 36 consecutive workweeks.

The second leave benefit to have been established, a temporary disability or medical leave, would have allowed all workers who were temporarily disabled for health reasons, including pregnancy, a leave benefit of 26 weeks for use in any one calendar year. This provision was intended to resolve the issue of differential treatment of pregnant workers, who have been granted more generous benefits than other temporarily disabled workers under some State statutes. The practice of differential treatment was recently upheld by the Supreme Court in California Federal Savings and Loan v. Guerra (55 U.S.L.W. 4077).

[The U.S. Supreme Court in California Federal Savings and Loan Association v. Guerra found that a California statute that requires employers covered by Title VII to grant employees up to four months of job-protected pregnancy disability leave is not preempted by the Pregnancy Discrimination Act (PDA), an amendment to Title VII which generally provides that pregnant workers must be treated the same as workers with other non-employment-related disabilities. Noting that the PDA only preempts State laws that are inconsistent with its purposes, the Court agreed with the court of appeals that the PDA was intended to extend benefits, not contract them, e.g., to be "a floor beneath which pregnancy disability benefits may not drop, not a ceiling above which they may not rise." The Court observed that the intent of Title VII and the California statute are to make women equal in the workplace, not to give them favored

treatment over men. By taking pregnancy into account, the Court observed, the California statute allows women, as well as men, to have families without losing their jobs. The Court noted that since employers are free to give comparable benefits to other employees, the California statute does not compel employers to treat pregnant workers better than other disabled workers -- it merely sets a minimum level of benefits for pregnant workers.]

Under H.R. 4300/S. 2278, both kinds of proposed leave would have included continuation of health insurance benefits and the right to re-employment at either the same or a comparable job. The bill would have covered full-time and regular part-time employees and employers in both the private and public sectors. Employers of five or more employees would have been affected by the provisions of the Act. Excluded from coverage would have been persons elected to public office and their immediate policy advisors. To the extent possible, employees would have been required to provide reasonable notice and to make an effort to accommodate the needs of the employer.

H.R. 4300/S. 2278 further would have provided both civil and administrative enforcement. Remedies for violations would have included reinstatement, back-pay and benefits, and general damages.

The bill also would have established a commission to recommend means of providing salary replacement for employees taking parental and medical disability leaves.

H.R. 4300 was voted out by House Committees on Education and Labor and Post Office and Civil Service. Before voting out the bill, the Education and Labor Committee amended the sections under its jurisdiction. Although a rule was granted (H.Res. 552) providing for consideration of H.R. 4300, the 99th Congress adjourned before taking further action.

Activity in the 100th Congress

The bill amended by the House Education and Labor Committee (Titles I, III, and IV) and voted out by the Post Office and Civil Service Committee (Title II) was reintroduced in the 100th Congress as H.R. 925, the "Family and Medical Leave Act of 1987." A variation was introduced in the Senate as S. 249, the "Parental and Medical Leave Act of 1987." Both these proposals differ from H.R. 4300, as originally proposed, by increasing the exemption for small employers from 5 to 15 workers (an estimated 78% of the private work force is employed by firms with 15 or more employees) and requiring certification of medical conditions before leave could be taken. Employees also would have to provide prior notice and to schedule leave to accommodate the employer when the need for leave is foreseeable, and it is medically feasible to do so.

H.R. 925 and S. 249 also differ with each other on several points. H.R. 925 would allow employees unpaid family leave to care for a seriously ill parent as well as for a seriously ill child, would institute a vesting period of three months before a worker could become eligible for leave, would limit the combined parental and disability leave an employee might

take to 36 weeks per year, and would limit the entitlement to parental leave to the 12-month period following the birth or placement of a child. S. 249, on the other hand, would cover all full and part-time employees without a vesting period, would not permit parental leave to be used to care for a child over age 18 who is incapable of self-care because of a physical or mental disability, and would set up an advisory panel rather than a commission to recommend means of providing salary replacement for employees taking leave.

A third bill concerning parental leave, H.R. 284, the "Family and Medical Leave Job Act," also has been introduced in the 100th Congress. H.R. 284 would entitle employees to family leave in cases involving the birth, adoption, or serious health condition of a son, daughter, or parent and temporary medical leave in cases involving inability to work because of a serious health condition. Exempted from coverage would be employers with less than 50 employees (an estimated 56% of the private work force is employed by firms with 50 or more employees). Congressional employees would be covered under rules established by Congress and related to the principles of the Act. Family leave would be limited to eight workweeks in any 24-month period. Entitlement to medical leave would be limited to 13 workweeks in any 12-month period. The first three weeks after childbirth would be considered medical leave, with additional weeks provided if a medical care provider certified the need. Spouses employed by the same employer could take eight aggregate workweeks in any 24-month period. An employer could deny reinstatement to the same or a comparable job to the highest paid 20 percent of his or her employees if necessary to prevent substantial injury to the employer's operations. The legislation would set up a task force to study and to report to Congress regarding the feasibility of requiring small employers to provide a minimum number of protected family and temporary medical leave periods to their employees.

Pro-Con Analysis

Those who favor the establishment of parental and temporary medical disability leave benefits cite the need to accommodate far-reaching changes in the family and the workforce. They believe that Federal legislation is necessary to insure that all workers have equal access to such benefits, eliminating inequalities based on such factors as geography, industry, or company size. Proponents also argue that although some States have provided statutory maternity leave benefits, where such leave benefits do not include the same benefits for all workers disabled for nonoccupational medical reasons, women may be disadvantaged in the workplace because they may be viewed by employers as potentially more expensive employees. They note that the bill includes a small employer exemption to ease the burden of covering personnel absences for those businesses. They also believe that estimates of costs should take into consideration societal benefits and such factors benefitting employers as improved workforce stability due to increased morale and loyalty.

Opponents note that all employee benefits, however socially desirable they may be, are costly for employers who must pass on these expenses to customers. Because this proposal would have wide impact, its

economic costs would be high, they argue. In addition, they observe that guaranteeing the job of an employee on long-term parental or temporary medical disability leave may also be more burdensome for small businesses (representing the majority of businesses), with their limited personnel resources, than for large businesses. Those opposed also argue that provision of specific benefits should remain voluntary on the part of employers or be subject to labor-management negotiation, rather than be mandated by the Federal Government.

LEGISLATION

H.R. 925 (Clay)

Family and Medical Leave Act of 1987. Applies to employers with 15 or more employees. Entitles employees to 18 weeks of parental leave during any 24-month period in cases involving the birth, adoption, or serious illness of a child or the serious health condition of a parent; and 26 weeks of temporary medical leave during any one calendar year in cases involving the inability to work due to a serious health condition. Provides that such leave may be leave without pay. Provides for protection of employees' employment and benefit rights during and after such leaves. Covers employers in the public and private sectors. Provides for administrative and civil enforcement. Authorizes a commission to determine ways of providing salary replacement for employees who take parental and disability leaves. Introduced Feb. 3, 1987; referred jointly to the Committees on Education and Labor and Post Office and Civil Service. Joint hearings held Feb. 25 and Mar. 5, 1987 by the Education and Labor Subcommittees on Labor-Management Relations and on Labor Standards.

S. 249 (Dodd)

Parental and Medical Leave Act of 1987. Applies to employers with 15 or more employees. Entitles employees to 18 weeks of parental leave during any 24-month period in cases involving the birth, adoption, or serious illness of a child; and 26 weeks of temporary medical leave during any one calendar year in cases involving inability to work due to a serious health condition. Provides that such leave may be leave without pay. Provides for protection of employees' employment and benefit rights during and after such leave. Covers employers in the public and private sectors. Provides civil and administrative remedies. Establishes an advisory panel to study and recommend systems for providing salary replacement for employees who take parental and medical leaves. S. 249 introduced Jan. 6, 1987; referred to Committee on Labor and Human Resources.

H.R. 284 (Roukema)

Family and Medical Leave Job Security Act of 1987. Applies to employers with 50 or more employees. Entitles employees to eight weeks of parental leave during any 24-month period because of the birth of a child, placement of a child for foster care of adoption, or illness of a child or parent with a serious health condition; and, in the case of a female employee, three weeks of temporary disability leave after the birth of a child. Provides that such leave may be leave without pay. Permits an

employer to limit the aggregate number of workweeks of all types of leave to not less than 26 workweeks in any 24-month period. Provides for the protection of employees' employment and benefit rights during and after such leave. Covers employers in the public and private sectors. Provides civil and administrative remedies. Establishes a Task Force on Family and Medical Leave for Employees of Small Employers. Includes coverage of employees of Congress. Introduced Jan. 6, 1987; referred to Committee on Education and Labor.

CONGRESSIONAL HEARINGS, REPORTS, AND DOCUMENTS

- U.S. Congress. House. Committee on Education and Labor. Family and Medical Leave Act of 1986. Washington, U.S. Govt. Print. Off., 1986. 57 p. (99th Congress, 2d session. House. Report no. 99-699, Part 2).
- U.S. Congress. House. Committee on Education and Labor. Subcommittee on Labor-Management Relations and the Subcommittee on Labor Standards. The Parental and Medical Leave Act of 1986. Joint hearing, 99th Congress, 2nd session. Washington, U.S. Govt. Print. Off., 1986. 248 p.
- U.S. Congress. House. Committee on Post Office and Civil Service. Parental and Medical Leave Act of 1986. Washington, U.S. Govt. Print. Off., 1986. 21 p. (99th Congress, 2d session. House. Report no. 99-699, Part 1).
- U.S. Congress House. Committee on Post Office and Civil Service. Subcommittee on Civil Service and the Subcommittee on Compensation and Employee Benefits. Parental and Medical Leave Act of 1986. Joint hearing, 99th Congress, 1st session. Washington, U.S. Govt. Print. Off., 1986. 102 p.

CHRONOLOGY

- 05/19/87** --- H.R. 925 approved for full committee action by the House Post Office and Civil Service Subcommittee on Compensation and Employee Benefits.
- 05/13/87** --- H.R. 925 approved for full committee action by the House Education and Labor Subcommittee on Labor-Management Relations.
- 05/05/87** --- H.R. 925 approved for full committee action by the House Post Office and Civil Service Subcommittee on Civil Service.
- 04/23/87** --- Hearings on S. 249 continued before the Senate Labor and Human Resources Subcommittee on Children, Family, Drugs, and Alcoholism.
- 04/02/87** --- Joint hearings on H.R. 925 held before the House Committee on Post Office and Civil Service Subcommittees on Civil Service and on Commerce and Employee Benefits.

- 03/05/87 --- Joint hearings continued on H.R. 925 before the House Committee on Education and Labor Subcommittees on Labor Management Relations and Labor Standards.
- 02/25/87 --- Joint hearings on H.R. 925 held before the House Committee on Education and Labor Subcommittees on Labor Management Relations and Labor Standards.
- 02/19/87 --- Hearings on S. 249 held before the Senate Labor and Human Resources Subcommittee on Children, Families, Drugs, and Alcoholism.
- 10/18/86 --- 99th Congress adjourned without consideration of H.R. 4300.
- 09/17/86 --- Committee on Rules granted modified open rule providing two hours of general debate in H.R. 4300.
- 06/24/86 --- The House Education and Labor Committee ordered reported by a voice vote H.R. 4300 as amended in the nature of a substitute. The committee renamed H.R. 4300 the "Family and Medical Leave Act of 1986" and made the following changes: (1) increased the exemption for small employers from five to fifteen workers, (2) instituted a vesting period of three months before workers could become eligible for leave, (3) limited the combined family and medical leave an employee might take to 36 weeks per year, (4) limited entitlement to parental leave to the 12 month period following the birth or placement of a child, (5) required certification of medical conditions before leave could be taken, (6) required employees to give prior notice and to schedule leave to accommodate the employer when possible, and (7) expanded the concept of "parental" leave to "family" leave to allow employees leave to care for a seriously ill parent.
- 06/11/86 --- The House Post Office and Civil Service Committee, by a vote of 18-0, ordered reported provisions of H.R. 4300 relating to Federal Employees.
- 04/22/86 --- Joint hearings on H.R. 4300 held before the House Education and Labor Subcommittees on Labor-Management Relations, and Labor Standards.
- 04/10/86 --- Joint hearings on H.R. 4300, the "Parental and Medical Leave Act of 1986," held before the House Post Office and Civil Service Subcommittees on Civil Service, and Compensation and Employee Benefits.
- 10/17/85 --- Joint hearings on H.R. 2020, the "Parental and Disability Leave Act of 1985," held before the House Post Office and Civil Service Subcommittees on Civil Service, and Compensation and Employee Benefits, and the Education and Labor Subcommittees on Labor-Management Relations, and Labor Standards.

FOR ADDITIONAL READING

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----- The judicial and legislative treatment of pregnancy: a review of developments from unprotected status to anti-discrimination -- equal treatment and special treatment [by] Charles Dale and Karen J. Lewis. [Washington] 1987. 32 p.

----- Maternity and parental leave policies: a comparative analysis, by Leslie W. Gladstone, Jennifer D. Williams, and Richard S. Belous. [Washington] 1985. 97 p.
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----- Parental leave: a comparison of H.R. 4300 (99th Congress) and H.R. 925, S. 249, and H.R. 284 (100th Congress), by Leslie W. Gladstone. [Washington] 1987. 31 p.
CRS Report 87-223 GOV