

# **PARENTAL OR FAMILY LEAVE IN HAWAII**

WARREN IWASA  
Researcher

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Legislative Reference Bureau  
State Capitol  
Honolulu, Hawaii 96813

## FOREWORD

This study on parental and family leave was prepared in response to House Resolution No. 273, H.D. 1, adopted during the 1988 legislative session.

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Samuel B. K. Chang  
Director

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## Chapter 1

### INTRODUCTION

Statutorily mandated parental and family leave is a concept that in recent years has received close scrutiny in Congress. Proposals for Federal legislation that would require employers of a certain size to grant job-protected unpaid parental and family leave to qualified employees seem to have won considerable support in both houses of Congress. These proposals, however, have also gained formidable opponents. In the most recent session of Congress, for example, opponents in the Senate of a parental-and-family-leave proposal (which was part of a package of three proposals) were able to tie up the measure in debate as the session drew to a close.

Parental and family leave is not a novel concept. Most industrialized countries already require employers to provide job-protected unpaid leave for parents of newborn children. Parental leave can be regarded as "leave at the time of childbirth for which either parent may be eligible."<sup>1</sup> Family leave can be regarded as leave to care for a seriously ill child or parent.

Both parental and family leave, if statutorily mandated, would alter somewhat the relationship that American employers now have with their employees. According to Sheila B. Kamerman of Columbia University, one of the authors of Maternity Policies and Working Women, a frequently cited 1983 study, "most working women were permitted to take off perhaps two to three months at the time of childbirth as an unpaid leave; but many of these policies were informal and discretionary, without a formal guarantee of job protection."<sup>2</sup>

In a number of other countries, parental leave is provided as an entitlement through a national social security system, whereas in the United States it is something that is provided--in a variety of forms--by employers to employees or something that is provided through labor-management negotiations.<sup>3</sup>

Two issues have attached themselves to the debate concerning parental and family leave. One has to do with the role of the family in America--should families on their own be required to arrange for the care of children, or should society as a whole play a role in caring for children? The other has to do with the government's role in determining how private business conducts its affairs--should government establish a minimum standard regarding parental and family leave, or should parental and family leave be regarded as benefits offered by employers to their employees? Both of these issues are quite complicated, and in turn they complicate the debate over parental and family leave.

The debate over parental and family leave, at the federal level, is further complicated by a lack of useful data about leave benefits available to pregnant workers and their families. A recent Congressional Research Service report states that "There are no systematic or firm data about the availability of such benefits to workers in the public or private sectors, the duration and level of benefits, who is covered, at what cost, and with what consequences."<sup>4</sup> This lack of data is attributed in part to the lack of a



national policy mandating specific benefits during the period surrounding childbirth.

### House Resolution No. 273, H.D. 1

House Resolution No. 273, H.D. 1 (see Appendix A), adopted during the 1988 Regular Session, requests the Legislative Reference Bureau to "determine the feasibility of statutorily mandating employers to grant employees a parental or family leave." The committee report on the resolution mentions an interest in determining "the feasibility of one means of relieving employment pressures while strengthening family relationships."

An issue raised in House Resolution No. 273, H.D. 1, is the changes that have occurred in the composition of the work force in the United States over the past three decades. These changes can be seen vividly in Census Bureau figures on women's participation in the labor force. In 1950, 11.9 percent of married women with children under six participated in the labor force; in 1987, the figure increased to 56.8 percent. Moreover, in 1976, 31.0 percent of married women with children under one participated in the labor force; in 1987, the figure increased to 50.8 percent.<sup>5</sup> That is, more than half of the women who had a child in the year preceding the June 1987 survey were in the labor force. (See Table 1.) Commenting on this "newest milestone," an editorial in The New York Times stated: "What was once unusual is now the norm."<sup>6</sup>

Table 1

#### WOMEN'S PARTICIPATION IN THE LABOR FORCE

Married, with Children Under 6		With Children Under Age 1	
1950	11.9%	1976	31.0%
1955	16.2	1978	35.3
1960	18.6	1980	38.0
1965	23.3	1982	43.9
1970	30.3	1983	43.1
1975	36.6	1984	46.7
1980	41.5	1985	48.4
1985	53.4	1986	49.8
1987	56.8	1987	50.8

Source: The New York Times and Census Bureau.

In her testimony in favor of a parental-leave measure that was considered by the U.S. House of Representatives in 1985, Wendy W. Williams of the Georgetown University Law Center, pointed out that "The typical wage-earning woman in this country will have two children while in the work force. Over the course of a working lifetime, the leave time associated with

## INTRODUCTION

caring for those two infants is small indeed, particularly when the benefits to family and society are weighed in the balance."<sup>7</sup>

The effects of increased numbers of women in the work force on family life is another issue raised in House Resolution No. 273, H.D. 1. Citing figures provided by the Bureau of Labor Statistics, popular syndicated columnist Sylvia Porter commented that "The 'traditional family'--where the husband is the sole breadwinner and the wife stays at home with the kids under age 18--represents only 9.7 percent of all families."<sup>8</sup>

As more and more women join the work force, it has become increasingly difficult for families to meet the obligations of both work and family life--specifically, the care of a newborn child or a seriously ill child or parent. To enable working parents to achieve a better balance between work and family life, House Resolution No. 273, H.D. 1, proposes a parental or family leave program in which

workers would be entitled to take parental or family leaves without pay for up to eighteen weeks for: the birth of a child; the placement of a child with the employee for adoption or foster care; or the care of an employee's child or parent who has a serious health condition.

House Resolution No. 273, H.D. 1, recognizes two social benefits that could occur if such a proposal were enacted into law: (1) strengthening family relationships, and (2) in the long run, possibly reducing the need for a variety of services and programs that are "indirectly costly" to government.

The Resolution also recognizes that a parental or family leave proposal, if enacted into law, would be costly to employers, who would pass on additional costs to consumers. It also mentions that "some maintain that the provision of specific benefits should remain voluntary on the part of employers or be subject to labor-management negotiation."

### The Scope of the Study

Any proposal, whether on the federal or state level, to statutorily mandate parental and family leave faces two major difficulties. One is the way in which it quickly becomes entangled in "philosophical" issues. The other is the lack of data that could contribute to an objective evaluation of its rate of use, costs, and social benefits. Evaluating any such proposal, therefore, involves the weighing of uncertain social benefits against uncertain economic costs.<sup>9</sup>

The study will seek to assess the social benefits of unpaid parental and family leave primarily by reviewing federal proposals and the extensive and well-documented debates that have resulted from those proposals.

In assessing the economic costs, this study will concentrate on federal studies that were prepared in connection with Congressional debates on specific parental- and family-leave proposals.

Because parental and family leave can be provided in a bewildering variety of forms--as is the case right now throughout the country--this study will focus mainly on a proposal that would be limited to employers with 50 or more employees, as specified in the Resolution. In discussing the duration of leave, it will focus on unpaid leave of no more than 18 weeks and unpaid leave of no more than 10 weeks.

## Organization of the Report

This report consists of six chapters:

Chapter 1 introduces the study.

Chapter 2 discusses the benefits of parental and family leave. It offers a survey of how parental and family leave are currently dealt with in other industrialized countries and provides an overview of the progress of parental- and family-leave measures in the U.S. Congress.

Chapter 3 discusses the costs and consequences of parental and family leave. It offers a survey of concerns that have been expressed by representatives of business and discusses two approaches to the extremely difficult and, given the lack of data, probably impossible task of quantifying the costs of statutorily mandated parental and family leave.

Chapter 4 discusses a number of issues that are related to the implementation of unpaid leave.

Chapter 5 focuses on parental and family leave in Hawaii. It discusses current policies and practices regarding paid and unpaid leave, and through an evaluation of survey responses and interviews, it also discusses problems anticipated by employers who may be required to provide unpaid parental and family leave.

Chapter 6 discusses the appropriateness and cost implications of the unpaid-leave proposal contained in House Resolution No. 273, H.D. 1, and provides alternative proposals having different duration and timing variables.

## Chapter 2

### BENEFITS OF PARENTAL AND FAMILY LEAVE

#### Part I. A Comparative and Historical Overview

Proponents of parental leave have made it abundantly clear that there is nothing new about statutorily mandated unpaid leave for mothers during the period surrounding childbirth. They point out that over a hundred countries have some type of statutory maternity-leave program.<sup>1</sup> They also point out that the United States is the only industrialized nation that does not have a "national policy guaranteeing uniform maternity-related benefits."<sup>2</sup> Furthermore, they point out that women in other industrialized countries are allowed, on average, a minimum paid leave of 12 to 14 weeks.<sup>3</sup>

#### Maternity Benefits in Europe

Women in all 28 European countries receive paid maternity leave as a statutory entitlement. (See Appendix B.) Ninety-six percent of all European countries provide paid maternity leave of 12 to 14 weeks, and paid or unpaid leave beyond 14 weeks is provided by 71 percent. Sweden, which has the most-liberal policy, provides 360 days of paid leave--270 days at 90 percent of earnings followed by a flat-rate allowance for the next 90 days.<sup>4</sup>

In Europe, maternity benefits were first established in 19th-century Germany under Bismarck. By the outbreak of the First World War, the governments of Britain, France, and Italy also had mandated the provision of maternity benefits.<sup>5</sup>

A Congressional Research Service report calls attention to the low birth rate in Europe. "It might be surmised," the report states, "that part of the rationale for the European [maternity-benefits] programs is to encourage childbearing."<sup>6</sup>

#### Maternity Benefits in Japan

Women in Japan receive, as an entitlement, up to 14 weeks of partially paid maternity leave. They are entitled to receive 60 percent of their earnings, which is paid for by the government.<sup>7</sup>

Japan's maternity-leave program is augmented by a high level of maternal and infant health care. One benefit ascribed to Japan's leave program and national health coverage is the country's low infant-mortality rate, which at 6 per 1,000 births is comparable to those of Finland and Sweden and among the lowest in the world. The infant-mortality rate in the United States, by contrast, is 11 deaths per 1,000 births--the 19th worst. The mortality rate for black infants in the United States is 19 per 1,000 births, which is comparable to the infant-mortality rates of Costa Rica, Poland, and Portugal.<sup>8</sup>

Another benefit ascribed to the care that infants receive is the high percentage of high school graduates. In Japan 96 percent of the young people complete high school, whereas in the United States the percentage varies from state to state: from 92 percent in Minnesota to 54 percent in Louisiana.<sup>9</sup>

### Paternity Leave in Other Countries

The leave policies of many countries are limited to mothers. In countries where parental leave is mandated, a family usually receives only one leave entitlement. Finland, Norway, and Sweden provide single but sharable leaves, which allow couples to decide for themselves how they will use their time off from work: "A single divisible entitlement gives the couple the incentive to consider the relative value of each parent being at work versus being at home." There is, however, a drawback to this system; it may require information transfers between employers.<sup>10</sup>

### A Comparative View

A comparative view of the maternity and parental leave policies of the United States and seven other countries is provided in Table 2.

Table 2

#### MATERNITY AND PARENTAL LEAVE POLICIES: A COMPARATIVE VIEW

COUNTRY	DURATION	JOB SECURITY	AMOUNT/DURATION	RECIPIENT
CANADA	16-37 WEEKS	YES	60%/15 WEEKS	MOTHER
ITALY	8-12 WEEKS	YES	80%/24 WEEKS	MOTHER
GERMANY	14 WEEKS	YES	100%/14-18 WEEKS	MOTHER
SWEDEN	52 WEEKS	YES	90%/38 WEEKS	MOTHER OR FATHER
FINLAND	7-32 WEEKS	YES	80%/39 WEEKS	MOTHER OR FATHER
AUSTRIA	16-20 WEEKS	YES	100%/20 WEEKS	MOTHER
CHILE	18 WEEKS	YES	100%/18 WEEKS	UNSPECIFIED
USA*				

\*No Federal Policy.

Source: Opening statement of Congresswoman Mary Rose Oaker, Chair of the Subcommittee on Compensation and Employee Benefits, at a joint hearing before the Subcommittee on Civil Service and the Subcommittee on Compensation and Employee Benefits of the Committee on Post Office and Civil Service on H.R. 4300.

## Maternity Leave in the United States: Milestones

The federal government first became involved in employment and maternity in 1908, when the U.S. Supreme Court in Muller v. Oregon (208 U.S. 412) upheld state laws setting maximum working hours for women. The court also ruled that similar regulations for men were a violation of the right to contract for their labor: "As justification for the distinction, the court noted that, since healthy mothers are essential to healthy offspring, certain physical restrictions were essential for working women."<sup>11</sup>

By 1912, 34 states had enacted laws restricting women's working hours.<sup>12</sup>

In 1963, President John F. Kennedy's Commission on the Status of Women recommended that employers provide a paid maternity leave for at least six months without loss of reemployment or seniority rights.<sup>13</sup>

The Pregnancy Discrimination Act of 1978, which amended Title VII of the Civil Rights Act of 1964, required that pregnancy be treated no differently from any other short-term disability.<sup>14</sup> "In general," a Congressional Research Service report explains, "the basic premise of the Pregnancy Discrimination Act is that disabilities caused or contributed to by pregnancy, childbirth, or related medical conditions must be treated the same as any other temporary disability under health insurance, disability insurance, or sick-leave plan offered through employment."<sup>15</sup>

The Pregnancy Discrimination Act, however, has been cited frequently for its limitations. It does not require, in the first place, that employers provide disability insurance.<sup>16</sup> Moreover, it makes no provision for job and insurance protection once a mother's postchildbirth disability ends. "Thus," argues Stephen F. Webber, of the United Mine Workers of America, "a woman (including a nursing mother) who wishes to stay home with a newborn child for his/her early months--at a time when the child's schedule is normally exhausting--may be forced to choose between her child and her livelihood. In fact, one disheartening development after passage of the 1978 pregnancy discrimination legislation is that employers have forced this choice upon working mothers with more and more frequency."<sup>17</sup>

In 1983, the Bureau of the Census reported that 80 percent of the women of America were in their prime childbearing years (18 to 44 years old) and that 65 percent of the women in this age group were in the labor force.<sup>18</sup>

In 1986, the Bureau of the Census reported that families with children where the father was the sole provider comprised less than ten percent of all families.<sup>19</sup> This also was the year when hearings were held on the Parental and Medical Leave Act (H.R. 4300) before the Post Office and Civil Service and Education and Labor committees. H.R. 4300 (renamed the Family and Medical Leave Act) was subsequently reported by the Post Office and Civil Service and Education and Labor committees.<sup>20</sup>

An NBC-Wall Street Journal poll in 1986 found that 52 percent of the people polled were in favor of federal legislation that required the granting of

18 weeks of parental leave; 37 percent were opposed. An even larger majority, 72 to 19 percent, were in favor of such leave to care for a seriously ill child.<sup>21</sup>

In 1987, the Senate Labor and Human Resources Committee held hearings on the Parental and Medical Leave Act (S. 249). Also, the House Education and Labor and Post Office and Civil Service committees held hearings on the Family and Medical Leave Act (H.R. 925). The Post Office and Civil Service Committee reported H.R. 925 in May, and the Committee on Labor and Education reported it in November.<sup>22</sup>

In March of 1988, the Post Office and Civil Service and Education and Labor committees reported H.R. 925, as amended.<sup>23</sup>

As Congress began to take action on parental- and family-leave measures, a broad coalition of groups launched a campaign for family leave in August of 1987. The coalition consisted of groups representing the interests of labor, women, children, the elderly, and several religious denominations. In addition, state legislatures began introducing proposals calling for family leave.<sup>24</sup>

### Temporary Disability Insurance

At the state level, disability-insurance plans have proved to be an effective means of providing women with a brief period of maternity leave with partial wage-replacement:

Five states (California, Hawaii, New Jersey, New York, and Rhode Island) and Puerto Rico have statutory requirements governing the private sector for temporary-disability-insurance coverage (TDI) to provide income to employees unable to work because of nonjob-related illnesses or injuries, including inability to work due to maternity-related conditions. Although state TDIs affect only a minority of employees nationwide, they are important because they illustrate an alternative method of funding increased benefits, e.g., through public and private insurance contracts, for example, in which costs are shared by employers and employees. Since coverage is "nearly universal" in TDI states, almost all employees in the private sectors are entitled to at least a minimum level of wage replacement of up to 26 weeks. By contrast, only 50 percent of private employees in non-TDI states are covered by temporary-disability insurance.<sup>25</sup>

Although typical TDI coverage is for 26 weeks, the benefits cover only the actual period of incapacity--"estimated at 7.5 weeks by the Social Security Administration for a normal pregnancy."<sup>26</sup>

### Parental Leave Provided by State Governments

In September of 1986, the National Association of State Personnel Executives conducted a survey which revealed that 40 states treat maternity

leave as sick leave and/or annual leave without pay. In Hawaii, as in California, mothers can acquire "child-care" leave after using up sick leave.<sup>27</sup> (See Appendix C.)

## Part II. H.R. 925, The Family and Medical Leave Act

The debate in Congress on recent parental- and family-leave measures has been extensive. A review of this debate provides a clear idea of the arguments both for and against a national policy regarding parental and family leave. These arguments no doubt will be enlisted in debates over any similar measure introduced at the state level.

A chronology of recent Congressional activity is provided in Appendix D.

### H.R. 4300

Introduced in the 99th Congress, H.R. 4300, the Parental and Medical Leave Act of 1986 (along with S. 2278), would have established a national policy on family-related employee benefits by creating two types of unpaid and sex-neutral leaves. The first type of leave was to have been a parental or family leave, and it 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 preschool and school-age children is increasing." The second type of leave was to have been a temporary disability or medical leave, which would have provided 26 weeks of leave in any one calendar year for all workers temporarily disabled for health reasons, including pregnancy. "This provision was intended," according to a Congressional Research Service report, "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."<sup>28</sup>

The main provision of the parental- or family-leave benefit would have entitled an employee to an unpaid leave of 18 work weeks during any 24-month period to care for a newborn, newly adopted, or seriously ill child or parent. Other provisions ensured coverage for both full-time and regular part-time employees, the continuation of health-insurance benefits, and reemployment at either the same or a comparable job. H.R. 4300 and S. 2278 would have affected employees with five or more employees, and they included provisions for civil and administrative enforcement.<sup>29</sup>

### H.R. 925: Main Provisions

H.R. 4300, as amended by the House Committee on Education and Labor, was reintroduced in the 100th Congress as H.R. 925, the Family and Medical Leave Act of 1987. (See Appendix E.) A slightly different measure was introduced in the Senate as S. 249, the Parental and Medical Leave Act of 1987.



Both H.R. 925 and S. 249 differed from H.R. 4300 by increasing the exemption for small employers from 5 to 15 employees. A third bill, H.R. 284, the Family and Medical Leave Job Act, further increased the exemption to employers with fewer than 50 employees. According to Representative Marge Roukema (N.J.), who introduced H.R. 284, the "legitimately contentious issues are three: who is covered by the provisions of the bill, for how long, and for what size businesses.... The heart of the debate is the question of what size business can realistically be required to grant leaves without crippling the operations. Common sense dictates that a firm with as few as 15 employees could be paralyzed if 5 or more employees took simultaneous leaves."<sup>30</sup> (Representative Roukema, an advocate of family and medical leave, stated at a Congressional hearing on parental leave: "Family and medical leave is...a bedrock family issue, and I state that as a conservative Republican.... It is...the job-security issue of our day."<sup>31</sup>)

The House Committee on Education and Labor, in a compromise between H.R. 925 and H.R. 284, amended H.R. 925 in November, 1987; employers with fewer than 50 employees would be exempted for three years following enactment, after which the exemption would drop to 35 employees.

In its report, the committee noted that the compromise sought: "(1) to balance the demands of the work place with the needs of the family and in so doing, promote the stability and economic security of the family; (2) to entitle employees to take reasonable family or medical leave for certain critical periods in the life of the family; and (3) to accommodate the legitimate interests of employers."<sup>32</sup>

Additional amendments were made in 1988 by the House Committee on Post Office and Civil Service.<sup>33</sup>

As amended, H.R. 925, the Family and Medical Leave Act of 1988, in addition to the compromise on the exemption to employers, included the following provisions:

1. An eligible employee would be entitled to 10 weeks of family leave during any 24-month period to care for a newborn child, an adopted child, or a seriously ill child or parent;
2. The entitlement period to care for a newborn child or an adopted child expires at the end of the 12-month period after the birth or placement of the child;
3. An employer or employee may substitute any accrued paid vacation leave, personal leave, or paid family leave for any part of the 10-week period;
4. An employee is to provide his or her employer with reasonable prior notice;
5. An employer may require medical certification for a claim for leave;

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6. Where both a husband and wife are employed by the same employer, the combined period of family leave may be limited to 10 weeks, except in the case of a seriously ill child;
7. An eligible employee would be entitled to 15 weeks of unpaid medical leave in any calendar year;
8. An eligible employee would be someone with at least 1 year of service and who works at least 20 hours per week; and
9. An employer may deny reinstatement to the highest 10 percent or the 5 highest paid employees, whichever is greater, if necessary to prevent substantial injury to the employer.<sup>34</sup>

### Arguments in Favor of H.R. 925

In joint hearings on H.R. 925 before the Subcommittee on Labor-Management Relations and the Subcommittee on Labor Standards of the Committee on Education and Labor, a number of arguments were offered in favor of the measure. These hearings were held on February 25 and March 5, 1987.

#### The Need for a Minimum National Standard

"For the past 100 years, Congress has enacted minimum labor standards laws when important social values necessitated the protection of all workers. Laws have been enacted to mandate the payment of a minimum wage, restrict the use of child labor, provide minimum retirement benefits, prohibit discrimination, and establish work-place health and safety standards. These labor laws have been enacted to take social concerns out of the competitive process in order to ensure that all receive a floor of protection. When employers must comply equally, no employer is disadvantaged by the few who might otherwise act unscrupulously. Minimum standards benefit all workers and all businesses."<sup>35</sup> (Representative William Clay, Missouri, Chairman, Subcommittee on Labor-Management Relations)

"The question of minimum standards is I think the effort of Congress reflecting a developing societal consensus that no worker in this country should have to work under conditions worse than the minimum set forth, balancing a variety of different competing factors."<sup>36</sup> (Representative Howard L. Berman, California)

"It means that all American businesses will be subject to uniform minimum requirements, with none able to cut corners at the expense of their employees' family lives."<sup>37</sup> (Donna Lenhoff, Women's Legal Defense Fund)

"Concern about mandating benefits [i.e., government involvement] is outweighed by the very strong conviction that people in companies of all sizes should be able to have children and care for very sick children without having to face loss of their jobs."<sup>38</sup> (Mary Del Brady, National Association of Women Business Owners)

### **The Need to Meet the Demands of a Changing Work Force**

"The so-called typical American family of the past has virtually disappeared. The new norm is the dual earner family. At the same time the number of single-parent families has skyrocketed--now, 16 percent of all families. One of the most startling trends is the influx of mothers with preschool children in the labor force."<sup>39</sup> (John J. Sweeney, Service Employees International Union, AFL-CIO)

"The Family and Medical Leave Act would be an essential first step toward meeting the needs and realities of American families today. Though unpaid, the job-guaranteed leave it provides means security and certainty for the American family faced with the serious health problems of one of its bread-winners; this is essential protection for single-parent and low-income families."<sup>40</sup> (Donna Lenhoff, Women's Legal Defense Fund)

### **The Opportunity to Allow Fathers to Share in Parenting**

"It means that fathers, too, can begin to consider taking a period of time off to care for their newborn or newly adopted children."<sup>41</sup> (Donna Lenhoff, Women's Legal Defense Fund)

### **No Major Disruptions**

"The Catalyst Career and Family Center in 1986 found that the overwhelming majority of the companies surveyed routinely rerouted the work of employees on leave. Nearly 80 percent redirected managerial work, and 73.8 percent spread out nonmanagerial work. An overwhelming 86.4 percent said that setting up a leave period and arranging to continue benefits was easy. And 80 percent considered it reasonable for women to take time off beyond the disability of childbirth."<sup>42</sup> (John J. Sweeney, Service Employees International Union, AFL-CIO)

## Chapter 3

### COSTS AND CONSEQUENCES OF PARENTAL AND FAMILY LEAVE

#### Part I. The Case Against H.R. 925

On February 25 and March 5, 1987, joint hearings in Congress were held before the Subcommittee on Labor-Management Relations and the Subcommittee on Labor Standards of the Committee on Education and Labor on H.R. 925, the Family and Medical Leave Act of 1987. Although strong arguments both for and against a national policy regarding parental and family leave were offered at hearings on similar earlier measures (for example, H.R. 4300, the Parental and Medical Leave Act of 1986), testimony on H.R. 927 provides a clearer perspective of how the debate in Congress has developed and progressed. Just as the joint hearings resulted in a better understanding of the benefits of parental and family leave, they also provided an opportunity to consider the drawbacks of statutorily mandating both types of leave.

In general, opposition to H.R. 925 (and to similar earlier proposals) came from business groups. Their main reason for opposing the measure was that it would result in increased costs of doing business, which would have to be passed along to consumers. In addition, they argued that the measure would be especially burdensome for small businesses. Opponents of the measure also indicated displeasure at Congressional attempts to get involved in matters of maternity and employment. Such matters, they maintained should be left to negotiations between employers and employees.

The strongest opposition to H.R. 925, however, was expressed by the U.S. Chamber of Commerce. Its representative, Virginia B. Lamp, stated: "I think it is quite clear in our testimony that to most of our members, making modifications in this bill would be similar to rearranging the deck chairs on the Titanic. We cannot endorse any bill that mandates new benefits."<sup>1</sup>

#### Arguments in Opposition to H.R. 925

In addition to the U.S. Chamber of Commerce, opponents to H.R. 925 included the Concerned Alliance of Responsible Employers, CARE; the Independent Insurance Agents of America, Inc.; and Eagle Forum. The following extracts from both written and oral testimony are meant to show how the case against parental and family leave has been argued.

#### The Need for Flexibility

"The crux of our testimony is that flexibility, not Federal, rigid, government mandates, such as those contained in H.R. 925, is the most-appropriate answer to the work/family concerns in the work place."<sup>2</sup> (Virginia B. Lamp, U.S. Chamber of Commerce)

"Mandated benefits stifle the trend toward flexible benefits. 'Flexible' benefits or 'cafeteria plans' are the current trend that works well for both the employer and the employee."<sup>3</sup> (Virginia B. Lamp, U.S. Chamber of Commerce)

#### **Parental Leave Already Available**

"For large businesses, this legislation is redundant since studies indicate that 95 percent of the Fortune 500 companies already provide parental and disability leave."<sup>4</sup> (Virginia B. Lamp, U.S. Chamber of Commerce)

#### **Bonding Cannot Be Legislated**

"Federal legislation simply cannot make us 'bond' with our children. Legislation will not create responsible, caring parents."<sup>5</sup> (Virginia B. Lamp, U.S. Chamber of Commerce)

#### **High Cost of Employee Benefits**

"All told, the employee-benefits pie accounted for 37.7 percent of all payroll costs in 1985, up from 18.7 percent in 1951, according to the U.S. Chamber of Commerce's Annual Employee Benefits Survey."<sup>6</sup> (Virginia B. Lamp, U.S. Chamber of Commerce)

#### **High Rates of Unemployment for Women in European Countries**

"Maternity leave is frequently a state-granted leave in other industrialized countries. Interestingly enough, those European countries with the most generous maternity leaves are the same nations with the highest rates of unemployment for women of child-bearing age. And few countries can boast of a higher percentage of women in its work force than the U.S."<sup>7</sup> (Virginia B. Lamp, U.S. Chamber of Commerce)

#### **The Opportunity for Abuse**

"You can certainly provide leave periods, but we cannot look in the windows of all these people and see if they are, in fact, bonding with their child while they take this time off. We cannot tell that they are caring for an elderly parent just because we provide the time off. So, that is why we say it is subject to some abuse."<sup>8</sup> (Virginia B. Lamp, U.S. Chamber of Commerce)

#### **Erroneous Assumptions**

"Across-the-board mandates are based on erroneous assumptions. In fact, (1) all businesses are not alike, (2) economic and business climates are not stable, (3) all employee needs are not the same, and (4) the costs of

mandated family leaves will limit the availability of other benefits."<sup>9</sup> (Cynthia Grantz, Concerned Alliance of Responsible Employers, CARE)

### **Temporary Workers Become Eligible for Unemployment Insurance**

"In fact, in all but 14 states, an employee working the temporary family-leave period would be eligible for unemployment insurance based solely on an 18-week period."<sup>10</sup> (Cynthia Grantz, Concerned Alliance of Responsible Employers, CARE)

### **Weakness of European Economies**

"European economies burdened with mandated benefits are generating fewer jobs, have higher levels and longer periods of unemployment and typically boost their productivity by adding more capital rather than labor."<sup>11</sup> (Cynthia Grantz, Concerned Alliance of Responsible Employers, CARE)

### **Greater Effect on Small Businesses**

Small businesses "usually function with a minimum number of employees to do a job or produce a product, and the absence of even one long-term employee could require the hiring and training of a replacement, both costly expenses for a small firm."<sup>12</sup> (Marsha Burrridge, Independent Insurance Agents of America, Inc.)

### **Unfair Use of Parental and Family Leave**

"H.R. 925 does not protect me if I unknowingly hire someone who is either pregnant, contemplating adoption, or has a sick parent, and once entitled to the benefit, takes unpaid leave."<sup>13</sup> (Marsha Burrridge, Independent Insurance Agents of America, Inc.)

### **Favors "Yuppie" Couples**

"The proposed bill is highly discriminatory in favor of highly paid, two-earner yuppie couples who, as a practical matter, would be the only ones able to benefit.

"The proposed bill is highly discriminatory against every other type of employee: the men whose wives are full-time homemakers and mothers, the single parents and all low-income workers who could not afford to take off unpaid time, women over child-bearing age, all singles, self-employed persons, women who work at home, and all temporary workers including the one who replaces the one who receives the parental leave."<sup>14</sup> (Phyllis Schlafly, Eagle Forum)

## Part II. Consequences for Small Businesses

Statutorily mandated parental and family leave, it should be obvious, would have a greater effect on small businesses than on large corporations. At a hearing on parental leave before the House Committee on Small Business, John Motley III of the National Federation of Independent Business, pointed out some of the practical problems for small businesses that would be caused by mandated parental leave. He mentioned that small businesses tend to be labor intensive--"and in many small businesses, you have a lot of people who wear many different hats." Another problem is that if companies had to replace an employee on 18 weeks of leave with a temporary employee they would be responsible--in all but 14 states--for providing the temporary with unemployment compensation. And a third problem is that certain collective-bargaining agreements do not permit the use of a temporary employee in an assigned job for more than 60 days.<sup>15</sup>

Replacing an employee in a small business becomes especially difficult if the employee were in a "particularly important or highly skilled position." "No company," argued Francis R. Carroll of the Small Business Service Bureau, Inc., in a speech before the National Conference of State Legislators, "could be expected...to operate effectively without a comptroller for four months. The problem becomes even more complicated if the employee who takes a leave deals regularly with confidential company information. Such an employee cannot be replaced by a temporary employee."<sup>16</sup>

This concern was recognized in H.R. 284, which was introduced by Representative Marge Roukema. In November, 1987, the House Committee on Education and Labor reached a compromise between H.R. 925 and H.R. 284 which amended H.R. 925 to include a business-necessity exemption. According to Representative Roukema, "There are, under some circumstances, employees with whom you cannot do without. You may have one engineer, or one computer specialist in a given location, and there would be a business-necessity exemption there, although admittedly it would require some administrative hoops to go through."<sup>17</sup>

Another burden that would be greater for small businesses to bear is the cost of providing health insurance for employees on leave. "Health insurance is often as much as 200 percent more expensive for small firms than it is for large firms," stated Francis Carroll. "Let's say an employee takes a 17-week parental leave. That's a third of a year. Annual health-insurance premiums for small business people are as high as \$10,000 a year per family and going higher. So the employer would pay out \$3,300--an expense that would come right off his or her bottom line."<sup>18</sup>

## Part III. The Cost of H.R. 925-- The U.S. Chamber of Commerce Study

As part of her testimony against H.R. 925, Virginia B. Lamp presented two cost analyses that were meant to show that "The contention that 'unpaid leave' would not cost anything is not true."<sup>19</sup> (See Appendix F.)

## COSTS AND CONSEQUENCES OF PARENTAL AND FAMILY LEAVE

The first cost analysis purported to show the annual cost of H.R. 925 to employers and the economy--a macro estimate based on a "worst cause [sic] scenario." According to Lamp, the analysis showed that

The cost of H.R. 925, as currently written (excluding eldercare costs), would result in a cost to the economy and to employers of \$27.2 billion. This does not include an offset for benefits that currently are being furnished by employers. The largest costs incurred by employers would be the cost of hiring temporary replacements for workers who are on leave and the lower productivity that would result from replacing regular employees with temporary replacements. The \$27.2 billion would add 1.4 percent to the nation's employment costs and about 0.7 percent to the general price level of goods and services sold in order to pay for these benefits.<sup>20</sup>

The second cost analysis purported to show the cost of replacing a single employee (a word-processing employee) in Washington, D.C., who, it was assumed, would take 4.5 months of leave for parenting purposes. Other assumptions were made regarding the employee's earnings over a 4.5-month period, which would not have to be paid by the employer (\$6,882.65), and the cost of employee benefits over the same period, which would have to be paid by the employer (\$666.76). Still other assumptions were made about hiring a temporary replacement through a temporary-employment agency in Washington, D.C. The temporary would be paid an average hourly wage of \$15.50 and work 39.5 hours a week for 4.5 months. The cost of the temporary employee would be \$11,938.87, and the net additional cost to the employer for the permanent employee's unpaid parental leave would be \$5,722.98.<sup>21</sup>

The Chamber of Commerce's cost analysis was criticized by representatives of Service Employees International Union, AFL-CIO. "The Chamber study," John J. Sweeney asserted, "relies on faulty assumptions which grossly inflate costs. It assumes that every eligible employee takes the full 18 weeks off. Most importantly, it also assumes that businesses always replace workers on leave with expensive agency temps."<sup>22</sup> He concluded that "payroll costs could actually decline for many companies during the period of unpaid parental leave."<sup>23</sup>

Karen Nussbaum, a representative of 9 to 5, the National Association of Working Women, and District 925 of the Service Employees International Union, was also critical of the cost analysis prepared by the Chamber of Commerce:

We aren't saying H.R. 925 is cost free. But we challenge the claim that unpaid family leave would bankrupt business--with the tab running into the tens of billions of dollars each year.

But the real facts are these:

--every study shows that women take less time off than allotted, often because they can't afford to be out for long on an unpaid leave;



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- companies are much more likely to hire temps directly, rather than through agencies, and therefore avoid the hefty mark-up fee--often 40 percent or more;
- Although 9 to 5 and SEIU would have it otherwise, the pay for temporary workers is notoriously low, averaging \$2 an hour less than pay for other employees. In addition, employers pay virtually no benefits--it is a rare temp who gets health insurance, sick leave, vacation time, or pension;
- more commonly still, employers re-direct the work and hire no temporaries at all....

The Chamber's estimates are further reduced when you take into consideration the exemption of small employers, the 14 states which already have temporary-disability-insurance programs and/or parental-leave policies, and the many large companies which already have disability policies.<sup>24</sup>

### **Part IV. The Cost of H.R. 925--The GAO Report to the Subcommittee on Labor-Management Relations, Committee on Education and Labor, House of Representatives**

On November 10, 1987, the General Accounting Office (GAO) responded to a request for a cost estimate of H.R. 925, the Family and Medical Leave Act of 1987, as amended. The request was made by Representative William L. Clay, Chairman, and Representative Marge Roukema, ranking minority member, of the Subcommittee on Labor-Management Relations, of the Committee on Education and Labor. As understood by the GAO, H.R. 925

permits employees to take up to 10 weeks of unpaid leave over a 2-year period upon the birth, adoption, or serious illness of a child or parent and up to 15 weeks every 2 years for their own illness. Upon returning to work an employee is guaranteed the same, or an equivalent, job. In the first 3 years after enactment, firms employing 35 or more people must provide these benefits. The legislation also specifies that employers must continue health benefits for workers while on unpaid leave on the same basis as if the employee were still working, but does not require the continuance of other employee benefits. To qualify for the unpaid leave, employees must have worked in the firm 20 or more hours per week for 1 year, but a firm's highest 10 percent or 5 employees, whichever is greater, may be excluded from coverage.<sup>25</sup>

The GAO estimate, according to Richard L. Fogel, assistant comptroller general, is that the cost to employers with 50 or more employees will be about \$188 million annually.<sup>26</sup> (See Appendix G.) Fogel also mentioned that the estimates contained in the GAO report "likely overstate" the costs of H.R. 925

because we have not adjusted them to reflect the fact that some firms already have parental-leave policies similar to the provisions of this legislation and that other employers make accommodations to

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workers who are ill or have children who are ill for extended periods of time, even in the absence of a formal leave policy. In addition, several states already have disability- and/or parental-leave statutes containing provisions similar to those in the legislation.<sup>27</sup>

The estimates arrived at by the GAO are based on assumptions that are a good deal less simplistic than those used in the U.S. Chamber of Commerce's cost analyses. To determine the universe of people who might make use of the bill's provisions, the GAO, using the March 1987 supplement to the Current Population Survey, estimated the number of women who worked in 1986 and who had children under the age of one.<sup>28</sup> It also assumed that parental leave for the care of newborn children will be used "predominantly" by women: "Studies in the U.S. and in other countries of companies that allow such leave for men as well as women, in addition to our own survey of companies, support this position."<sup>29</sup>

Two interesting estimates deal with the rate of usage and the average weekly cost to employers. It was estimated that, under the provisions of H.R. 925, less than 1 in 300 workers would be absent at any time: "thus, we do not expect this legislation to cause major disruptions to employers."<sup>30</sup> The average weekly cost to employers, it was estimated, would be about \$25 per worker in firms affected by H.R. 925.<sup>31</sup>

In addition to preparing cost estimates, the GAO conducted a survey of 80 firms in two cities, Detroit, Michigan, and Charleston, South Carolina. The survey provided results that indicate the inappropriateness of some of the assumptions used--and conclusions reached--in the U.S. Chamber of Commerce's cost analyses:

Clerical workers were most frequently replaced (46 percent), while management and professional staff were seldom replaced. For those replaced, about three-quarters were hired directly by the firms, while the others were hired through temporary-employment agencies.

Employers indicated that some disruption occurred as the result of the temporary absence of workers but, in general, they were able to adjust to the situation. More than half stated that their handling of the absence resulted in no delays, and more than three-quarters reported that essentially all work was performed. This was true for both large and small firms.

The net replacement cost to firms is essentially zero. An employer's savings in worker salary and benefits for those on unpaid leave exceeds an employer's cost of replacement. The impression we got from our discussions with employers was that any additional costs associated with disrupted routines or postponed work was likely offset by these savings. Thus, we found little evidence of increased costs to firms.<sup>32</sup>

Both the U.S. Chamber of Commerce's cost analyses and the GAO report attempt to estimate the cost of a federally mandated parental-and-family-leave policy. The Chamber acknowledges that its macro analysis is based on a

"worst case scenario," and the GAO acknowledges that its estimates "likely overstate" the cost of H.R. 927. The difference between the two estimates--\$27.2 billion and \$188 million annually--is significant; both figures, however, are estimates, and the value of an estimate is critically dependent on the assumptions that were used in its preparation. The assumptions that were used in the Chamber's cost analyses have been shown to be flawed; as a result, there can be little doubt that the Chamber's estimate is similarly flawed--an exaggeration of the cost of mandating unpaid parental and family leave.

## Chapter 4

### UNPAID PARENTAL AND FAMILY LEAVE: A SURVEY OF RELATED ISSUES

#### Part I. The Uses of Parental and Family Leave

Parental and family leave, as formulated in the proposal contained in House Resolution No. 273, H.D. 1, would be used for several different purposes: the care of a newborn child, the care of a newly adopted child, and the care of a seriously ill child or parent. Parental and family leave would be available to both male and female employees, and it would be unpaid leave. Because leave that is not accompanied by a wage-replacement program imposes a financial burden on employees, it is likely to be used prudently. In fact, part of the argument for unpaid parental and family leave is that it will be used only for purposes--and at times--that are critical in the life of a family.

#### Childbirth and Bonding

The idea that women need time following childbirth to establish a close relationship--or bond--with their newborn infants has been advanced by child-development specialists. Research into the attachment process whereby a mother and child "bond" has shown that not only is the process itself important but that it requires a certain amount of time. One of the most widely recognized authorities in this field is Dr. T. Berry Brazelton, M.D., associate professor of pediatrics at Harvard Medical School and chief of the child development unit at the Children's Hospital.

"We need to help working parents prepare for their roles and to preserve the positive forces in strong attachments--to the baby and to each other," Dr. Brazelton urged at a Congressional hearing on the Parental and Disability Act of 1985 (H.R. 2020). "We certainly must protect the period in which the attachment process is solidified and stabilized by new parents. With the new baby, this is likely to demand at least four months in which the new mother can feel herself free of competing demands of the work place."<sup>1</sup>

Dr. Brazelton maintained that the development of a sense of competency and a sense of autonomy is important for babies. He believes that research shows that it is possible to determine when this critical stage of development is reached:

At the point where the mother or nurturing parent can indeed permit the baby to be the leader or signal-giver, when the adult can recognize [and] encourage the baby's independent search for and response to environment or social cues and games--to initiate them to reach for and play with objects, etc.--the small infant's own feeling of competence and of voluntary control over his or her environment is strengthened. This sense of competency is at a more complex level of awareness and is constantly influenced by the baby's feedback systems. We see this at 4-5 months in normal infants during feeding, when the infant stops to look around and to

process the environment. When a mother can allow for this and even foster it, she and the infant become aware of the baby's burgeoning autonomy.<sup>2</sup>

At a 1985 conference on parental leave that was sponsored by the Association of Junior Leagues, Edward F. Zigler, Ph.D., who is the director of the Yale Bush Center in Child Development and Social Policy, argued in favor of child-care leave. His position, as summarized in a report titled "Parental Leave: Options for Working Parents," included the following reasons:

(1) It is better for the health of the mother. (2) Having a child is a major transition point for the whole family; providing leave diminishes accompanying stress. (3) Home care is better for the health of the baby, helping to prevent infectious diseases. (4) Bonding of the newborn and the mother occurs more readily.<sup>3</sup>

Zigler, who regards infant-care leaves as a reasonable social objective, said, "Given the fact that most parents spend 40 years each in the labor force and have two children during that time, I don't think it is unreasonable to suggest that there be two six-month periods for a mother and a father to be away from the job."<sup>4</sup> On out-of-home care for three-week-old, six-week-old, and two-month-old babies, Zigler said, "I honestly did not think that I would ever live to see this phenomenon."<sup>5</sup>

Dr. Brazelton also cautions against the use of secondary caregivers. In his testimony on H.R. 2020, he stated that "When a mother must share her small baby with a secondary caregiver, she will almost inevitably experience a sense of loss. Her feelings of competition with the other caregiver may well be uppermost in her consciousness. But underneath this conscious feeling of competition is likely to be a less-than-conscious sense of grief."<sup>6</sup>

The argument that parental leave of a certain duration is necessary for the attachment process is not universally accepted. At a hearing on parental leave before the House Committee on Small Business, Representative Marge Roukema said, "I might say to you that in 18 weeks you can't bond with a child. But you, in 8 weeks, or 10 weeks, or 12 weeks, can make your adjustment to a new family structure, make the adjustments and make the proper arrangement for the care of that child."<sup>7</sup>

### **Paternity Leave**

Paternity leave is still not very common in the United States. A major survey of large firms conducted in 1980-1981 by Catalyst, a nonprofit research group, showed that 36.8 percent of the reporting companies offered paternity leaves; it also found that few men took advantage of such leaves.<sup>8</sup> A more-recent study by the research group found that men had taken unpaid parental leave at only 9 of 384 companies that offered it. "Men have a fear that if they stay home with the baby, it will have a negative impact on their careers," reported a researcher at Catalyst.<sup>9</sup>

According to Sheila B. Kamerman and Alfred J. Kahn, professors at the Columbia University School of Social Work, "Male employees who actually took a significant amount of time off, to actually participate in child care and parenting, remain very rare. What most male workers say they want and do not have is the right to take off a few days--at most two weeks--without losing pay, or being stigmatized."<sup>10</sup>

The role of fathers in parenting, nonetheless, is important. According to Yale psychologist Kyle Pruett, the author of The Nurturing Father, "Many studies have shown that children who have the opportunity to be loved and physically nurtured by more than just one human being respond to stress and life's difficulties better later on than children who have had only one nurturer." By nurturer Pruett does not mean the day-care worker. "I'm talking, of course, about people who are deeply involved with the child."<sup>11</sup>

Men may take parental leave in order to participate actively in parenting. But they may use the leave period for other reasons related to childbirth. In testimony on H.R. 925, Joseph H. Pleck, Henry R. Luce, Professor of Families, Change, and Society at Wheaton College, pointed out that "fathers in the relatively small group who take longer-term leave" do so, in some instances, for parenting purposes and, in other instances, because their wives cannot get leaves from their jobs. In other instances, medical complications following childbirth make it necessary for a father to care for the newborn child or his wife.<sup>12</sup>

As a result of his research, Pleck believes that parental leave of the kind that was proposed in H.R. 925 will be used by fathers. "A few percent will take paternity leave of a few months, and another 15 to 30 percent will take paternity leave of a few days or weeks," he concluded. "The needs of these two groups of fathers, not already covered by existing policies, can be met at relatively low cost and inconvenience to employers."<sup>13</sup>

### Needs of Adoptive Parents and Their Children

In his testimony on H.R. 2020, the Parental and Disability Leave Act of 1985, Dr. T. Berry Brazelton expressed concern about the needs of adoptive parents and their children--"a group too often neglected." He pointed out the importance and intricacy of the attachment process, which normally begins long before the birth of a child, "as parents prepare for the arrival of a child." The case of adoptive parents, however, requires a special kind of preparation:

While adoptive parents may have waited years for the arrival of a child, they may have had only days to prepare for this child. And the child they are welcoming may come from an entirely different culture, may have special medical needs, may have experienced life as frustrating and painful. Certainly these newly created adoptive families deserve concern and support. They too need protected time to get to know the new baby and themselves as a family.<sup>14</sup>

### Care of Seriously Ill Parents

At the 1985 conference on parental leave that was sponsored by the Association of Junior Leagues, Edward F. Zigler, director of the Yale Bush Center in Child Development and Social Policy, offered projections that indicated that, by 1990, 67 percent of women in their prime childbearing years (25 to 34) would be "participants in the out-of-home work force" and that more than 80 percent of working women would become pregnant during their working lives. "There is no question," he further stated, "That demographics drive social policy. We have to know the numbers and what they mean for individuals."<sup>15</sup>

Similar demographic changes are anticipated regarding the elderly. In a special report on "Human Capital: The Decline of America's Work Force," the September 19, 1988, issue of Business Week provided an important example of how changing demographics will result in changes in the work place:

As the U.S. population becomes older--and by 2000, 51 percent will be between 35 and 54--more people must take responsibility for their parents. Americans are living longer, thanks to better nutrition and medical breakthroughs, but those beyond the age of 75 are often ill or infirm. Services are expensive, so care usually falls to family members--many of whom work. About 40 percent of workers over the age of 40 already provide care to parents, according to Anthony Gajda of Mercer-Meidinger-Hansen, an employee-benefits firm. About 12 percent of women who care for aging parents must quit their jobs to do so.<sup>16</sup>

In 1960, approximately 3.1 percent of the total U.S. population was 75 years old and older; by 1980, the percentage increased to 4.4 per cent. By 2010, people 75 years old and older may comprise 6.7 percent of the population.<sup>17</sup>

The social stigma that is attached to men who take parental leave to care for a newborn child is "not associated with caring for an elderly parent," according to Margaret Meiers, a senior associate at Catalyst. "And because so many more men--including those in senior positions--have that experience, it is bringing more credibility to the idea of such leaves of absence."<sup>18</sup>

### Part II. Contentious Issues

In a Congressional hearing on H.R. 925, the Family and Medical Leave Act of 1987, Representative Marge Roukema, who as a conservative Republican supported family leave as a "bedrock family issue," maintained that there were three "legitimately contentious issues": "who is covered by the provisions of the bill, for how long, and for what size businesses." (See page 10.) A consideration of these three issues--and others--is important.

## Qualified Employee

The period required for an employee to qualify for parental leave, as stipulated by H.R. 925, as it was originally proposed, is "not less than 3 consecutive months or not less than 500 hours, whichever occurs earlier." As amended, however, and as understood by the General Accounting Office when it prepared its cost estimates of H.R. 925, the qualifying period was one year's employment in a firm for 20 or more hours a week.

The qualifying period is an important requirement. If the period is too long, an unnecessarily large group of workers may be denied the use of an otherwise well-formulated leave proposal. But if the period is too short, employers no doubt will object to the proposal, and if the proposal becomes law, they may be reluctant to hire workers--young married women--who are most likely to make use of an unpaid period of leave.

In 1983, 56.7 percent of women workers between the ages of 16 and 24 remained with an employer for one year or less. Those who were older, 25 to 34 years, comprised a smaller group--33.1 percent. Women workers between the ages of 35 and 44 comprised an even smaller group--24.3 percent.<sup>19</sup> A leave requirement of a year may prevent many women workers between the ages of 16 and 24 from taking unpaid leave for parenting purposes. It is this youngest group of workers that probably would be the least able to make full use of an unpaid leave proposal.

## Duration of Leave

One well-regarded study of maternity-leave policies offered by companies in the United States found that maternity leaves of more than six months were exceptional; it also found that 60 percent of the firms that responded to its survey limited maternity leave to two or three months. In addition, the study found that 37 percent of women returned to work after less than 8 weeks of leave following childbirth and that 32 percent returned after 9 to 18 weeks.<sup>20</sup>

In a study of paid leave applicable to maternity in the private sector, a Congressional Research Service report found that, for a normal pregnancy, temporary-disability insurance was used for an average of 7.5 weeks.<sup>21</sup>

In preparing its cost estimates of H.R. 925, the General Accounting Office reviewed various studies and conducted its own survey on maternity-leave policies. It found that women prefer to use available paid leave instead of unpaid leave. Also, its survey showed that over 84 percent of women taking leave returned to work within 10 weeks. Other findings were that "About 40 percent of women in firms providing disability leave were provided 6 weeks of such leave. In addition, some women have paid sick and vacation leave available to use after childbirth. Women had an average of about 3.5 weeks of such leave."<sup>22</sup>

One of the participants at the 1985 conference on parental leave that was sponsored by the Association of Junior Leagues was Phyllis Silverman, vice president of Career and Family Programs at Catalyst. In its study of



maternity- and parental-leave policies and practices, Catalyst organized 15 discussion groups that included women in both managerial and nonmanagerial positions. The findings from these discussion groups were summarized in a report on the conference:

Employees do not necessarily want longer leaves; the average amount of leave desired was 3 months. Those whose companies gave them only 6- to 8-weeks leave reported problems making the transition back to work, including fatigue, lack of productivity, and a general unreadiness to leave their babies.<sup>23</sup>

Silverman also reported that women in the discussion groups did not request more leave time; instead, they wanted a more gradual transition back to work, especially in the form of part-time or flexible-time employment.<sup>24</sup>

In 1985, U.S. News and World Report conducted an interview with Dr. T. Berry Brazelton, in which he was asked: "How long do you recommend that a mother stay home with a newborn?" "At least the first four months," Dr. Brazelton replied:

We know the first year is critical to a child's development. A woman also ought to realize that the capacity to nurture needs development. It doesn't come with the snap of a finger. Most women--and men--need to learn about themselves in this role, and they must give themselves enough time.

If you have a choice, it's best not to go back to work until you feel you're in control at home. Then go back part-time, gradually increasing the amount of time spent on the job. That way the mother can keep her career going but not be overwhelmed by the dual demands of work and child rearing.<sup>25</sup>

### Size of Employer

If parental leave is statutorily mandated because it provides important and very basic social benefits, it seems unfair to deny these benefits to a group of workers simply because they work for firms of one size rather than another size.

In her testimony on H.R. 925, the Family and Medical Leave Act of 1987, Mary Del Brady, president of the National Association of Women's Business Owners, argued that the "real concern" is not the granting of leave but the duration of the proposed leave. She said that her association favored a shorter period of leave--"a floor of six weeks mandated leave for the birth or adoption of a child"--and an extension of the leave policy to firms employing fewer than 15 employees.<sup>26</sup>

At a Congressional hearing on parental leave, however, Representative Marge Roukema argued that firms with fewer than 50 employees should not be required to grant unpaid parental leave. "Although any number is admittedly somewhat arbitrary," she said, "I must tell you that there is no firm data that anybody seems to have on the subject. We have reviewed all the

literature, worked with all the agencies. There is no magic number. But in my own random survey of business in my district, 50 employees or more seem to be a workable and feasible number with which my small-business community seems to be able to work."<sup>27</sup>

In Europe smaller firms generally are not exempt from providing parental and maternity leave. In California all employers with five or more employees are affected by the State's maternity-disability provision, which has been in effect for nine years.<sup>28</sup> In Hawaii, temporary-disability insurance--which includes a wage-replacement provision for pregnancy--must be provided by virtually all employers.

A recent study on parental leave in California pointed out that small firms are less affected by a parental-leave requirement, at any given period of time, than large firms. It also pointed out that the usual turnover experienced by small firms is a greater burden than employee absence due to parental leave. "On the average," the study found, "an employer with 10 workers who has to replace two or three employees a year will have a maternity-disability case once in nine years--and a request for lengthier unpaid parental leave no more often and probably less often."<sup>29</sup>

### Serious Illness

As defined by H.R. 925, the Family and Medical Leave Act of 1987, "serious health condition" means "an illness, injury, or physical or mental condition which involves--(A) inpatient care in a hospital, hospice, or residential health-care facility, or (B) continuing treatment or continuing supervision by a health-care provider."

For the purposes of its cost estimate of H.R. 925, however, the General Accounting Office interpreted "serious health condition" to mean 31 days or more of bed rest for the child. It pointed out that if its assumption had been changed to 21 days or more of bed rest, the cost of the legislation would increase by nearly \$120 million.<sup>30</sup>

### Continuation of Employee Benefits

H.R. 925 states that "The taking of leave under this title shall not result in the loss of any employment benefit accrued before the date on which the leave commenced."

A Congressional Research Service report on "Maternity and Parental Leave Policies" pointed out that even though "no precise data are available" the continuation of seniority and pension benefits during maternity leave is believed to be common.<sup>31</sup> The same report also noted that

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 are rehired so that they do not lose time accrued for pension participation.<sup>32</sup>

## Chapter 5

### PARENTAL AND FAMILY LEAVE IN HAWAII

#### Part I. The 1985 Parenting Leave Study

In 1985, the state Department of Labor and Industrial Relations and the Office of Collective Bargaining prepared a study on "the effects of legally allowing working parents to take unpaid leave of up to six months to care for their newborn." The study was requested by Senate Resolution No. 102, adopted during the 1985 Regular Session. The principal means of collecting information for the study was a Parenting Leave Survey, which was mailed to three different target groups throughout the State: employers, unions, and recent parents.<sup>1</sup> (See Appendix H.)

Three different survey forms were prepared by the Department of Labor and Industrial Relations:

The employer survey was designed to obtain information regarding their present company policy toward parenting, the number of workers asking for such a leave, and the impact on the company should such a law pass. The labor organizations were asked if they had any unpaid-leave agreements with employers for parenting and the effects on negotiating new contracts. The parents answered questions regarding whether they would want and use the parenting-leave provision.<sup>2</sup>

The employers survey was mailed to all unemployment-insurance-covered employers with 250 or more employees and to a random 5 percent sample of employers with fewer than 250 employees. The total number of surveys mailed was 1,179, and 428 responses (36.3 percent) were received. The employers who responded to the survey employed (as of March, 1983) approximately 122,320 employees, or 32.3 percent of the workforce.<sup>3</sup>

The labor-organizations survey was mailed to 89 unions listed in the Department of Labor and Industrial Relations' 1985 Labor Organizations and Affiliates publication. Responses were received from 37 organizations, or 41.6 percent of the labor organizations.<sup>4</sup>

The Parents survey was mailed to 1,356 parents who had a newborn child in June of 1985. Responses were received from 345 parents, providing a response rate of 25.5 percent.<sup>5</sup>

#### Results of the Employers Survey

The survey sent to employers provided the following results:

--65.9 percent of the employers allow between 1-4 weeks vacation, which could be used for parenting if the employee planned for it.

## PARENTAL AND FAMILY LEAVE IN HAWAII

- Approximately 52.6 percent of the employers give unpaid leave to their female employees.
- Length of unpaid leaves are granted at management's discretion based on reason for leave, workload, employee performance, etc.
- Of those employers who provide unpaid leave, 72.4 percent do so without labor-management agreements.
- Some employers who have no unpaid-leave policy granted unpaid leave to mothers and fathers. A majority of the leaves allowed were less than one week.
- Majority of the leaves without pay were in the public sector.
- In 1984, 3.8 percent and 1.4 percent of the unpaid-leave requests to care for a newborn by males and females, respectively, were denied.<sup>6</sup>

### Results of the Labor-Organizations Survey

The survey sent to labor organizations provided the following results:

- 83.9 percent (26) of the unions have no bargaining agreement with a parenting-leave provision.
- A majority of the employees who are covered by an agreement with a parenting-leave provision have it on the basis of management discretion.
- 17 out of the 31 unions (54.8 percent) felt that the employees they represented would want them to bargain for this provision.<sup>7</sup>

### Results of the Parents Survey

The survey sent to recent parents provided the following results:

- 70.6 percent of those [who] responded were employed.
- 75.1 percent of the fathers did not take unpaid leave.
- Only 53.5 percent of the mothers took unpaid leave.
- A majority of the mothers and fathers who took unpaid leave signed out for 1 to 4 weeks.
- Mothers took unpaid leave for love and bonding, while fathers took off to care for their wives.
- The main reason why parents did not take leave without pay was that they could not afford to.

## PARENTAL OR FAMILY LEAVE IN HAWAII

--Nine (12 percent out of the 74 fathers in the professional field) took unpaid leave, while 55.7 percent (34) of the mothers in that same occupation took unpaid leave.

--A majority of the employed mothers were in the 25-29 age group, while most of the fathers were between 30 and 34 years old.<sup>8</sup>

The Parents Survey included the following question: "Considering your living expenses, how many weeks without pay would you take off for 'parenting leave'?" The answers to this question revealed that

--Most of the mothers would take between 0 and 13 weeks unpaid leave, while the fathers would take 0 to 4 weeks.

--Should the law pass, only 5 percent of the mothers and 1 percent of the fathers would take the full 26 weeks leave without pay to care for the newborn.<sup>9</sup>

### Part II. The 1988 Parental or Family Leave Survey

In September of 1988, the Legislative Reference Bureau mailed a Parental or Family Leave Survey to 1,170 unemployment-insurance-covered employers throughout the State with 50 or more employees. (See Appendix I.) The survey was prepared in response to House Resolution No. 273, H.D. 1, which called for a study of "the feasibility of statutorily mandating employers to grant employees a parental or family leave to care for: a newborn child of the employee; a child placed with the employee for adoption or foster care; or the employee's seriously ill child or parent."

The proposal contained in House Resolution No. 273, H.D. 1, also contained the following provisions: "an employer is defined as an individual or organization with fifty or more employees including the state and county governments; a qualified employee must have been employed for fourteen consecutive weeks and may be employed on a part-time or full-time basis; and the duration of the leave is a maximum of eighteen weeks without pay."

The Parental or Family Leave Survey called attention to an area of ambiguity in the proposal. It asked respondents to note that

The proposal under consideration is somewhat ambiguous. No mention is made of how often a qualified employee would be able to take advantage of unpaid parental or family leave--only once a year? More than once a year?

Because the purpose of the Legislative Reference Bureau's 1988 survey was similar to that of the Department of Labor and Industrial Relations' 1985 Parenting Leave Survey, it used the earlier survey as a model. Its principal differences were that it focused on: (1) gaining a sense of current policies regarding unpaid parental or family leave; (2) gathering information about the effects of unpaid leave of 10 and 18 weeks; and (3) gauging the acceptability or unacceptability of the unpaid-leave proposal contained in House Resolution No. 273, H.D. 1.

# PARENTAL AND FAMILY LEAVE IN HAWAII

Although 1,170 surveys were mailed, only 222 surveys were completed and returned, for a response rate of 19.0 percent. However, the survey did prove to be extremely useful, as many of the respondents provided detailed commentary on Question 10: "Should the [proposal contained in House Resolution No. 273, H.D. 1] become law, what effects, including costs, do you foresee for: (a) Your company? (b) Your employees?"

Table 3

## NUMBER OF SURVEYS MAILED AND RECEIVED

The sample included all unemployment-insurance-covered employers with 50 or more employees.

Number of Surveys Mailed and Received	Number	Percent
Total No. of Surveys Sent	1,170	100.0
Responses	222	19.0
Returned But Not Included*	112	1.0
No Response	937	80.0

\*Not filled out, unusable data, received after survey cut-off date.

## Company Policy

The survey first attempted to learn whether or not unpaid leave could be used for the purposes listed in House Resolution No. 273, H.D. 1: to care for a newborn child, a recently adopted child, a seriously ill child, or a seriously ill parent. In Table 4 below, positive responses were divided into two categories, Yes and Judgmental. The Judgmental category means "Yes with the approval of the employer or the employee's supervisor."<sup>10</sup>

Table 4

## QUESTION 1

Can unpaid leave be used for any one of the following purposes?

	YES Allowed (Y)	Judgmental (Y)	NOT Allowed (N)	RESPONSE Response (Blank)	TOTAL
Birth of Child	71	139	8	4	222
Adoption of a Child	49	128	31	14	222
Illness of a Child	59	143	15	5	222
Illness of a Parent	59	140	17	6	222

# PARENTAL OR FAMILY LEAVE IN HAWAII

Practically all of the respondents (94.6 percent) indicated that unpaid leave could be used to care for a newborn child. The granting of unpaid leave for the care of a newborn child appears to be common practice among employers in Hawaii, even though such leave may require company approval.

The granting of unpaid leave to care for a recently adopted child, however, appears to be a less-common practice. Roughly 80 percent of the respondents indicated that unpaid leave could--as company policy or with the approval of the company--be used for the care of a recently adopted child. It should be mentioned that a significant number of respondents (14.0 percent) indicated that unpaid leave could not be used to care for a newly adopted child.

Approximately 90 percent of the respondents indicated that unpaid leave could be used to care for a seriously ill child or parent.

Table 5

## TYPE OF LEAVE ALLOWED FOR PARENTING

Leave	Female	Male
Sick - Full	166	NA
-Partial	50	NA
TDI	166	NA
Other - Partial	15	2
Vacation	193	188
Unpaid Leave - Yes	69	28
- Judgmental	125	56

Table 5 shows that various types of leave, including unpaid leave, are currently used for childbirth and parenting. In the responses regarding Unpaid Leave, Yes refers to a circled "Y" or to indications in the statement of company policy that unpaid leave may be granted. However, not all of these Yes responses mean that unpaid leave is automatically granted. The responses listed as Judgmental are those where unpaid leave "may be granted" or where an employer does not have a written policy.

# PARENTAL AND FAMILY LEAVE IN HAWAII

Table 6

## UNPAID LEAVE BY NUMBER OF EMPLOYERS AND WEEKS

Number of Weeks Allowed	YES (Y)		JUDGMENTAL (J)		NOT ALLOWED (N)		NO RESPONSES (Blank)	
	Female	Male	Female	Male	Female	Male	Female	Male
Under 10 weeks	20	13	31	16	0	0	0	0
10-18 weeks	21	8	30	9	0	0	0	0
Over 18 weeks	16	7	31	19	0	0	0	0
Variable	8	0	24	10	0	0	0	0
No Response (blank)	<u>4</u>	<u>0</u>	<u>9</u>	<u>2</u>	<u>14</u>	<u>67</u>	<u>14</u>	<u>71</u>
	69	28	125	56	14	67	14	71

In Table 6, the number of Yes responses for men and women differ because it was found that sick leave was often grouped together with unpaid leave. Employers, it seems, frequently grant female employees unpaid leave to care for a child after they use up their sick leave.

"No Response (blank)" includes instances where unpaid leave was not granted because it was not requested.

Table 6 shows that employers' policies regarding unpaid leave for parenting vary in terms of duration of leave. It also shows that women more than men are more frequently granted unpaid leave for parenting, and for longer periods.

### Employee Demand

This section of the Parental or Family Leave Survey tried to gain a better understanding of the demand for unpaid leave for the various purposes set forth in House Resolution No. 273, H.D. 1. In general, it was found that many employers do not keep records regarding employee demand for unpaid leave. The responses to the four questions asked in this section, therefore, are often incomplete.



# PARENTAL OR FAMILY LEAVE IN HAWAII

Table 7

## QUESTION 6

In 1987, how many of your employees took leave (other than sick leave and/or TDI) to care for a newborn?

### UNPAID LEAVE GRANTED IN 1987

Unpaid Leave Allowed	Employers	Females	Employers	Males
Total	49	169	9	26
Yes	16	49	1	3
Judgmental	28	111	3	7
No	1	4	1	8
No Response	4	5	4	8

Because of insufficient data, it would be difficult to generalize from the responses received. However, it seems clear that there is a greater demand among female employees than among male employees for this type of unpaid leave./4

Table 8

## QUESTION 7

In 1987, how many of your employees asked for leave without pay to care for an infant?

	Female		Male	
	Employers	Employees	Employers	Employees
Granted:				
Asked	32	99	10	15
Did Not Ask	72	-	89	-
No Response	118	-	123	-
Denied:				
Asked	1	1	-	-
Did Not Ask	83	-	81	-
No Response	138	-	141	-

The responses varied considerably in terms of the number of employees who were granted leave by different employers. On the one hand, 15 employers indicated that they each granted leave without pay to a single female employee. On the other hand, one employer indicated that leave without pay was granted to 15 female employees, and another employer indicated that leave without pay was granted to 20 female employees.

# PARENTAL AND FAMILY LEAVE IN HAWAII

Table 9

## QUESTION 8

In 1987, how many of your employees asked for leave without pay to care for a seriously ill child?

	Female		Male	
	Employers	Employees	Employers	Employees
Granted:				
Asked	15	67	8	16
Did Not Ask	92	-	96	-
No Response	115	-	118	-
Denied:				
Asked	-	-	-	-
Did Not Ask	91	-	87	-
No Response	131	-	135	-

As in Table 8, responses varied considerably. In five instances, employers granted leave without pay to a single female employee. In one instance, however, an employer granted leave without pay to 30 female employees. This type of leave, it seems clear, is not frequently used by male employees.

Table 10

## QUESTION 9

In 1987, how many of your employees asked for leave without pay to care for a seriously ill parent?

	Female		Male	
	Employers	Employees	Employers	Employees
Granted:				
Asked	12	19	6	7
Did Not Ask	96	-	100	-
No Response	114	-	116	-
Denied:				
Asked	-	-	-	-
Did Not Ask	90	-	89	-
No Response	132	-	133	-

## PARENTAL OR FAMILY LEAVE IN HAWAII

Table 10 shows either that there was little demand for this type of unpaid leave or that employers tend not to keep records of unpaid leave used to care for seriously ill parents.

### Effects

In order to gain a sense of how acceptable or unacceptable the unpaid-leave proposal contained in House Resolution No. 273, H.D. 1, would be, Question 11 asked: "Assume the proposal discussed above was being considered by the Legislature. Assume also that the maximum leave allowed was 18 weeks/year. What would your company's position be? Choose only one."

Although companies were asked to choose only one of five responses, some respondents indicated more than one choice. One company added a response category: "Will comply."

Table 11

#### QUESTION 11

Assume the proposal discussed above was being considered by the Legislature. Assume also that the leave allowed was 18 weeks/year. What would your company's position be?

#### FAVOR

It's a good idea	26
Benefits exceed costs	5
Good idea and benefits exceed costs	4

#### OPPOSED

Costs exceed benefits	66
Bad idea	72
Bad idea and costs exceed benefits	7

#### OTHER

Good idea, but costs exceed benefits	1
Will comply	1
Don't care	10
No response (blank)	<u>30</u>

222

As expected, a large majority of the respondents (65.3 percent) indicated opposition to the unpaid-leave proposal. Somewhat surprising was the number of respondents who were in favor of the proposal (15.8 percent).

The respondents favoring the proposal were varied. They included a large insurance company, a law firm, a bank, a loan company, a car-rental

firm, a travel agency, a tour company, two tourist facilities, two hotels, a medical group, a hospital, two retail stores, a food-processing company, a fast-food outlet, a private preschool, a private secondary school, a social-services agency, a construction company, and a county government. It was not the case that the proposal was favored only by very large companies or by companies that already had policies providing for generous periods of unpaid leave.

### Part III. Further Effects of the Unpaid-Leave Proposal

The Parental or Family Leave Survey sought to gain not only information in the form of data that could be easily tabulated but also extended commentary on several questions. The question that elicited the most commentary was Question 10: "Should the above proposal become law, what effects, including costs, do you foresee for: (a) Your company? (b) Your employees?"

Extended commentary was also received elsewhere on the survey form. In answer to Question 4 ("Please describe any NON-POLICY practices regarding unpaid leave. Include areas where managers are allowed to exercise their own judgment"), a contracting-company respondent wrote:

I don't mind taking care of people who [have] been employed for at least a couple of years and have proven their loyalty and worth, and who [look] forward to long-term employment. What bothers me is having to take care of, by law, short timers of less than 4 months employment who [are] still learning, and who [haven't] proven their worth to the company, and with no proven desire to remain with the company.

Question 5 ("Please add any additional comments or pertinent information") also elicited extended commentary:

Some 60 or more of our 70 current employees are covered under union agreements. We pay vacation, holiday, health, and other fringe benefits to the union trust funds. It is union policy as to when the funds are released and under which conditions. As far as we are concerned, the men in the field are paid only for hours worked plus fringes. Days they do not work are unpaid, for whatever reason they are not working. (Construction company)

Most companies realize the importance of keeping good employees and recognize that a reasonable unpaid-leave policy is important to achieve that goal. We do not need the Legislature to tell us what to do when it is obvious to us that employees require unpaid leaves. Since it is to the benefit of both the employer and employee to arrive at a mutually reasonable unpaid-leave time, it would be cumbersome to "stick" to the letter of the law. (Service company)

Employees who can't work during pregnancy are given up to 52 weeks of full-pay sickness time off. After delivery the employee remains on "Sickness and Accident" full pay until they are able to return to

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work. After that a nonpaid leave of up to 52 [weeks] may be provided. (Manufacturing and sales company)

We oppose mandated leave policies because [they] eliminate the flexibility necessary to manage the business. It is an inappropriate employment "guarantee." Such mandates are subject to expansion, thus taking away from the goodwill that is built up between management and its employees. It preempts balanced compensation/benefits design. Companies should be encouraged to grant parental leave, but it should not be mandated. (Manufacturing and sales company)

We have deleted the terms "Maternity" and "Paternity." We grant medical leave, military leave and personal leave on the same basis to males and females. Pregnancy is regarded the same as any other medical condition. Leave taken by either parent after a child is born is regarded as Personal Leave for "dependent care." (The mother generally remains on medical leave until the doctor certifies she is no longer disabled.) (Chain of department stores)

The personnel services director of the chain of department stores quoted immediately above also noted:

We recognize the need for employees to take leave to care for newborn children or seriously ill relatives (i.e., spouse, child, parent, or other dependent relative). We generally grant such leave. We do not believe, however, that we should be mandated to provide leave of up to 18 weeks duration to employees who have only 14 weeks of service, nor do we believe we should be required to return these employees to the identical position. Consideration should be given to the employee's length of service, the type of position the employee holds (i.e., whether or not he or she can feasibly be replaced on a temporary basis), business conditions, the length of time the employee has been back from any previous leave and the amount of paid or unpaid leave granted immediately prior to the mandated leave.

The vice president for administration of a large corporation added the following:

This legislation, if any, should be left at the federal level so that Hawaii is not placed at a competitive disadvantage to states without similar legislation.

**Question 10 (a): Should the above proposal become law, what effects, including costs, do you foresee for your company?**

It was this question that elicited the greatest amount of commentary. Most of the comments referred to the difficulty and cost of hiring temporary workers and to the currently low unemployment rate. Other concerns included the scarcity of workers with certain kinds of knowledge or skills, scheduling difficulties, and related administrative costs.

DIFFICULTY OF FINDING REPLACEMENTS:

In view of the current labor situation, it is difficult to hire a replacement on a temporary basis, and if our staff is not at full strength, the granting of such leave would create a morale problem for the rest of the employees. (Chain of retail stores)

We are a small company, but have over 50 employees. With a small office staff of 3, if one employee went on leave, it is extremely difficult to find a temporary replacement. (Food-processing company)

As there is already a labor shortage and labor costs have increased, this proposal would add increased costs of doing business. Our business cannot afford it. (Food-processing company)

LENGTH OF LEAVE:

Of main concern is the length of the leave, which will require us to replace temporarily the employee with another new hire, which in today's tight labor market is not always easily done and will increase our labor costs. (Chain of supermarkets)

Mandated leave of 18 weeks is too long. Should be 12 weeks max. Small companies haven't the flexibility to cover. Would have to hire a temporary person. If hired over 12 weeks would be subject to unemployment insurance on letting person go. (Clothing manufacturer)

SCARCITY OF SKILLED WORKERS:

As a small (approximately 100 regular employees) hospital that operates 24 hours, we probably can anticipate hardships especially in patient-care areas. There are many shortage positions (RNs, physical therapists, etc.) and to fill them with even temporary help would be difficult and expensive if we could. We try to help employees in short-term situations, but 18 weeks would be very difficult. (Hospital)

Increased costs if we're able to find qualified replacements in a work force of 3.1 percent unemployed. Realistically, we won't find qualified personnel who would be willing to work on an interim basis. The result would be operating with reduced staffing in violation of the State's rules and regulations. Shutting down is unthinkable--parents still have to have child care or they can't work. (Preschool)

It would be very disruptive to our company. We are a wholesale baking company (24 hours a day, 365 days per year). There are no trained bakers unemployed in Hawaii. Between the labor shortage and the "fertility" of our employees, this would be very detrimental. (Baking company)

ADDITIONAL OVERTIME, OVERSTAFFING, AND  
ADMINISTRATIVE AND OTHER COSTS:

Hiring expenses for temporary replacement in almost all cases since staffing is on minimal basis to handle nonpeak loads. Overtime for existing employees pitching in to cover workload because of labor shortage. (Travel agency)

Dependent upon what leave period was requested, the proposal would necessitate hiring additional employees to cover the shift, resulting in overstaffing when business slows down. Costs of benefits and administration of same would likewise increase, as would the time necessary to train new employees. (Baking company)

Additional costs due to the necessity of hiring a replacement, making revisions to policy manuals, consultation with attorneys, etc. Some departments have 3 employees, making it difficult to operate without a replacement. Difficult to hire someone for a temporary position. More possibility of lawsuits due to misunderstanding or people taking advantage of the situation. (Service company)

It depends on whether or not we are required to continue health coverage during the leave. If so, average cost = \$75/employee on leave/month. Also, will we be required to guarantee return to work at same pay and status? Not too much effect from that financially since our employees are hourly. (Fast-food outlet)

Higher costs due to hiring, screening, and unemployment-insurance taxes re layoff due to return of employees from leave. Higher uniform costs. Increased administrative overhead. (Guard agency)

LARGE NUMBER OF FEMALE WORKERS IN CHILDBEARING  
YEARS:

The cost to maintain the proposed mandated program would be prohibitive. Our company employs 95 percent women which is not proportionate with other sectors of the business community. The types of leave in this proposed legislation will be requested by female employees. The company will need a roster of backup employees to continue operations with overtime. (Clothing manufacturer)

We have a very young work force (average age 31) in childbearing years. Providing 18 weeks parental leave could have severe impact on operations of our company. (Service company)

Our work force is largely made up of women in their childbearing years and loss of staff for 18-week periods would seriously affect our ability to meet our customers' needs because many of our branches and departments have six (6) or less employees. (Savings and loan company)

HARDSHIPS FOR SMALLER DEPARTMENTS AND STORES  
AND FOR SHIFT WORKERS:

Mandatory leaves without consideration allowed for operating requirements could create hardships for smaller departments. Given the acute personnel shortages in hospitals, we might not be able to find replacements. Dealing with leave is already a problem. Adding mandatory leaves will only add to problems. (Hospital)

Particularly within our retail unit, which employs only a couple of employees per store, absence for up to 18 weeks for a nonpersonal medical-disability reason would cause a significant interruption in servicing customers. (Chain of retail stores)

Mandating employers to grant such leaves could have an adverse impact upon operations especially in the smaller departments or work units where the work involves knowledge of highly technical materials such as the various codes and ordinances in the building-construction field, engineering, etc., thereby possibly affecting services provided. (County government)

Certain departments--in particular those with shift work--are concerned that there may be an adverse impact on their operations if they are required to grant such a leave. (County government)

QUALIFYING PERIOD:

14 weeks seem like a very short period of employment to qualify. (Hotel)

LOSS OF COMPETITIVE ABILITY:

In a manufacturing business such as ours where our competition is from the mainland where costs are far less, this law could add \$30,000 to \$100,000/year in costs and easily take us out of competition. (Manufacturing company)

Unfair advantage to nonqualifying firms with less than 50 employees. (Contracting company)

UNNECESSARY GOVERNMENT INTERFERENCE:

Government should not dictate the benefit policies of private business. Only the management knows who should be granted leave and for what duration. I do believe in unpaid leave, but decision must be made by the company. (Tourism-related service company)

PART-TIME EMPLOYEE:

Why part-time workers, who have time to do both work and take care of other responsibilities? (Anonymous)



CHILD/ELDERLY CARE FACILITIES PREFERRED:

Additional costs for on-call staff. Serious staffing shortages at the present time make it doubly hard to find coverage for extended maternity coverage. This is why rather than provide the time off, we have elected to open an infant/toddler center to assist our employees with qualified child-care arrangements. (Hospital)

Your other alternative is to develop more child and elderly care facilities that will take sick kids or elderly at reasonable cost. (Advertising company)

MINIMAL EFFECT:

"We would supercede company policy requiring supervisor approval to follow state law as passed. We currently do this in 6 states, following our policy in the other 44 states. (Insurance company)

See no problem--we are basically following that guideline now. (Car-rental company)

Very difficult to judge costs but do not see them as significant to our operation. (Tour company)

Feel that our leave-of-absence policy complies with proposal. Have not had any problems with our policy. (Hotel)

No major costs foreseen. (Social-services agency)

As for our company, since the leave program is in existence, we will not be affected in a serious manner. However, it would make our employees with 6 months-1 year eligible for a longer [leave] than we are granting time off. (Scientific laboratory)

Minimal effect on operations as we do not anticipate a significant number of employees on such leaves at a given time. (County government)

The economic impact on the company would be insignificant if employees were required to exhaust any vacation/advance-vacation benefits available. The company has the right to hire temporary employees to fill vacancies; however, the operational impact could be significant if key personnel were affected. (Utility company)

For one or, perhaps, two critical employees, the cost differential would be that of hiring a temporary. For everyone else, the chores would be passed around, making a net cost saving. (Construction company)

Question 10 (b): Should the proposal become law, what effects, including costs, do you foresee for your employees?

The most important concern was that mandated unpaid leave would benefit some employees and adversely affect others and that employees might not be able to afford to go on unpaid leave. Other concerns included how "serious illness" would be defined, the fear that employees would "take advantage" of a mandated-leave policy, and the possibility that lengthy leaves may result in the deterioration of worker skills.

#### INCREASE WORKLOAD FOR SOME EMPLOYEES:

Remaining workers would be forced to "cover" for absent employees, which could involve lost days off, extra-long work shifts, and possible resentment between workers. (Agricultural-produce company)

Employees who are at work will be penalized if they are required to carry the load just to keep a position open for 18 weeks. (Clothing manufacturer)

Job responsibilities of leave taker would have to be divided among coworkers. Thus, placing additional workload on many of our employees. (Service company)

Less flexibility for management in granting leaves would result in certain employees unfairly carrying a burden of work. Also, new costs of the legislation would probably have to be made up from other employee benefits, especially since often employee-benefit costs are rising out of sight (e.g., medical insurance). (Tourism-related service company)

Overworked due to extended additional coverage; additional burden if temporary hire lacks experience; frustrated workers if employee requesting leave takes advantage; poor morale and bickering foreseen. (Restaurant)

Our employees would be adversely affected due to lowered employee benefits. Furthermore, only a small percentage of employees may take advantage of the leave while the whole group would have to suffer the lowered benefits. (Building-supply company)

Higher liability risks since [employee] workload will be heavier in covering for employees off on unpaid leave. (Preschool)

#### LOSS OF INCOME FOR EMPLOYEES:

Economic impact of loss of wages could be significant. (Utility company)

At the present time, the hardship to employees would be financial. Our employee population is primarily female; sometimes many are the

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major income source to families; therefore, would be a hardship financially because most people need the income. (Hotel)

Practically speaking, most employees...cannot afford to take 18 weeks off without pay; however, it would be nice to know that if you were forced to take time off due to a serious illness in the family your job would be protected. (Agricultural-produce company)

### INCREASED, POSSIBLY EXCESSIVE USE OF LEAVE:

Employees would take advantage, and because so many employees have large families, this policy would get out of hand. (Hotel)

It would give [employees] one more avenue to be away from work, especially since the employer wouldn't have any say in determining whether a leave is justified. (Hospital)

More male employees would take advantage [of] unpaid leave. (Car dealership)

### DEFINITION OF "SERIOUS ILLNESS":

Possible abuse of the law is not clearly defined. Many employees have an elderly parent living at home. If the law says "seriously ill child/parent," it could be interpreted that a "handicapped" parent is "seriously ill." (Medical group)

Unless explanatory language is provided, conflicts in interpretation can arise as to when and how often leave can be taken. Of the opinion that a definition of "serious illness" needs to be included in the legislation to alleviate these problems. (County government)

### LOSS OF SKILLS:

Many production positions require the development of manual skills which are kept at optimum through daily repetition. If an employee were on leave for 18 weeks, these skills would surely suffer. (Baking company)

### INCREASED COST OF HEALTH INSURANCE:

I don't believe employees would be affected other than issues regarding health insurance--if our health-insurance costs increased as a result of continuing coverage for inactive employees, all employees' wages will be affected in the long term. (Fast-food outlet)

### COLLECTIVE-BARGAINING ISSUE:

If it was a significant concern, such a proposal would be addressed in collective bargaining. (County government)

UNNECESSARY GOVERNMENT INTERVENTION:

I personally feel that more companies today will be faced with having to evaluate their policies and benefit packages due to the changing conditions of the labor market. It may be best to let the natural socio-economic forces bring about these changes rather than government intervention. (Moving company)

MINIMAL EFFECT OR POSSIBLE POSITIVE EFFECT:

Would have a positive effect on most employees. However, for "marginal" employee, there would be potential for abuse. (Contracting company)

Since we essentially already accommodate employee requests for unpaid maternity or paternity leave, this legislation would have no effect on employees. (Manufacturing and sales company)

No major problem foreseen. (Social-service agency)

Nothing much different from our present "hang loose" policy governing unpaid leave. (Tour company)

**Additional Costs and Other Consequences**

To make clear the effects of the unpaid-leave proposal, two respondents provided estimates of what the mandated employee benefit would cost in terms of dollars and work days.

The first estimate was prepared by the controller of a large retail store:

18 weeks is a very long time. Already with the 6 weeks TDI a department manager must go to continuous O.T. to make up the 40 hours per week lost (40 x 6 weeks = 240 hours). We try to keep the job open, but it is difficult. Under the 6-week program, the cost is

Wage	4.50	5.50	7.50
O.T.	6.75	8.05	11.25
per hour diff	2.25	2.75	3.75
hours/ 6 weeks	240	240	240
COST	\$540.00	\$660.00	\$900.00

Under the 18-week program, the cost is

hours/ 18 weeks	720	720	720
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COST	\$1,620.00	\$1,980.00	\$2,700.00
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If paternity is allowed under the law, the probability of the situation happening would almost double.

If HMSA (for an employee) is requested to be paid during this leave, the cost of the HMSA is

6 weeks	1.38 months X 90.26 = \$124.56
18 weeks	4.15 months X 90.26 = \$374.58

As an employer, we would like to see no additional laws passed.

The second estimate--and extended statement--was prepared by the vice president/human resources of a chain of discount stores:

Employers already provide benefits equal to about 1/3 of an employee's monthly wages. Benefits should not be continued at an employer's expense for an unproductive employee on leave.

### Additional Costs:

Administration of COBRA for employees on leave who may lose medical and dental coverages.

Recruitment, training, and providing limited benefits to temporary replacement employee.

Administration of COBRA for temporary employees when their employment ends.

Temporary employees may incur large health expenses during their tenure which will be reflected in increased premiums for regular work force. Other expenses: TDI, workers' compensation, unemployment insurance.

Overtime pay to other employees who may have to cover for employees on leave.

### Problems:

With the current labor shortage, employers have many job vacancies that they cannot fill. For retail and other employers who are open around the clock and year-round (hotels, hospitals, etc.), scheduling is already difficult with the labor shortage. Regular employees are overworked and often lost due to an employer's inability to fill vacancies with qualified people. Loss of workers through additional leave granted would be disastrous.

There is already so much abuse of paid sick leave, workers' compensation, and TDI that one more leave would be a gold mine for the employees who abuse both paid and unpaid leaves without risking termination. How can the employer control parental leave? Would we require an employee to

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provide a doctor's certificate for a seriously ill child or parent? What is the definition of "child"--i.e., the maximum age? What is the definition of "seriously ill"? A fever for a child?

What about care of a seriously ill spouse?

The biggest problem for business is the total number of absentee days per year that an employee can spend away from work without jeopardizing his/her job. Employers are already overly burdened with recordkeeping on attendance, leave requests, and related pay.

If an employee were granted 18 weeks for parental leave, an employee at the combined maximum allowed by our company could conceivably not work 71 percent of the year--or conversely, only work 29 percent of the year and still retain his/her job:

260 work days a year

25 unpaid leave of absence

20 vacation

10 sick leave

9 holidays

3+ funeral leave

90 proposed parental leave

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154+ days off (not including jury duty or reserve duty)

154 + 104 (weekends) = 258

258/365 = 71 percent not working, or

29 percent of year working

I think a more practical approach would be on a discretionary, case-by-case basis. Include parental leave in the unpaid leave-of-absense policy an employer has to set up. Set a minimum amount which can be included, but do not specifically establish or earmark a set period for parental leave, or it may be construed as an additional leave. Some companies already have leaves of absence granted for up to 6 months or longer.

What about eligibility--for example, after 1,000 hours of service?

### Part IV. Interviews with Employers

The Parental or Family Leave Survey asked respondents if they would be willing to meet with a researcher from the Legislative Reference Bureau "to discuss the impact of the proposed legislation, should it become law, on your company or organization." In selecting employers or organizations to interview, it was one of the aims of the researcher to provide a range of opinion.

The first organization to be interviewed was the Hawaii Employers Council, and the second was Local 142 of the International Longshoremen's

and Warehousemen's Union. Later, an interview was conducted with the personnel program manager of the state Department of Personnel Services. Finally, representatives of the following employers were interviewed: a chain of retail stores, a chain of supermarkets, and two food-processing companies.

### **Hawaii Employers Council**

Although the Hawaii Employers Council (HEC) was not mailed a copy of the Parental or Family Leave Survey, it did learn of the survey, and the Legislative Reference Bureau study, through its membership. The HEC is composed of approximately 600 employers; most of the larger employers in the State, except hotels, are members. One of its publications, "A Guide to Hawaii Employers Council," states that

The Council acts as a central agency for the coordination of labor-relations policies in industry, to provide expertise in industrial relations, and finally to be a stabilizing force in the State of Hawaii by balancing the power of organized labor.

The HEC is first of all concerned about the length of the unpaid leave proposed in House Resolution No. 273, H.D. 1. TDI, or temporary disability insurance, provides a maximum of 26 weeks of leave (with partial income replacement). Adding 18 weeks of unpaid leave would permit a female employee to stay out for a total of 44 weeks.

Another concern is seasonality--the greater-than-usual labor demands that certain employers face at certain times during the year. Requiring an employer to grant unpaid leave of 18 weeks during a peak season would create problems for the employer.

The HEC is also concerned about part-time employees being eligible for unpaid leave. In addition, it believes that the eligibility period of 14 weeks is too short: "Someone could work for 14 weeks and get 18 weeks off."

The basic concern of the HEC, according to its director of government regulations and communications, is that "Employers are attempting to deal with [the granting of unpaid leave] on their own." Employers recognize that there is a labor shortage in Hawaii.

A basic question still has to be answered: "Is there a real demand for this proposal?"

The HEC would oppose any proposal that mandated unpaid leave of any length. What would make a leave proposal more palatable, however, is a business-necessity exemption.

### **International Longshoremen's and Warehousemen's Union**

The ILWU, as an employer, is flexible. It believes that it already provides ample leave of various kinds. In addition, the ample vacation time offered by the union can be used quite freely by its employees. The flexible

way in which vacation time can be used is preferable to unpaid leave. "Not many people want to take leave without pay," a union official commented.

The union would be in favor of a business-necessity exemption. It pointed out that one person does all of its in-house printing and that no one else is qualified to run the equipment. With that person out on extended leave, the union would not be able to do any printing.

When asked about requiring employers to continue health-insurance benefits for employees on unpaid leave and to restore employees to their original or equivalent positions upon returning to work, the union official said that that would be "hard to sell to the business community."

The union wondered whether there was a strong demand for the type of unpaid leave proposed by House Resolution No. 273, H.D. 1. It also thought that the unpaid-leave proposal might undercut the work of the union.

### **State of Hawaii**

The State of Hawaii employs approximately 43,500 people, including part-time and temporary employees. As a major employer, it would be affected in many ways should the proposal contained in House Resolution No. 273, H.D. 1, become law.

Because the state Department of Personnel Services (DPS) does not currently collect information regarding unpaid leave in the form requested by the Parental or Family Leave Survey, it was not able to return the survey in time for the data to be tabulated along with the other survey results. The survey information provided by the DPS is contained in Appendix J.

In providing information requested by the Parental or Family Leave Survey (Questions 6, 7, 8, and 9), the DPS limited its data gathering to the state civil service, which consists of 18,070 employees. Not all departments were able to provide the requested information, however. So the answers to Questions 6 through 9 are based on the unpaid-leave experience of 10,234 employees.

In 1987, 119 female employees took 2,766.45 days of unpaid leave to care for their newborn infants. In the same year, 11 male employees took 41.63 days of unpaid leave for the same purpose.

In 1987, 64 females employees and 1 male employee were granted leave without pay to care for an infant. No employee, female or male, was denied such leave.

In 1987, 13 female employees were granted leave without pay to care for a seriously ill child. No male employee either asked for or was denied such leave.

In 1987, 5 female employees and 2 male employees were granted leave without pay to care for a seriously ill parent. No employee was denied such leave.



## PARENTAL OR FAMILY LEAVE IN HAWAII

In its answer to Question 11 ("Assume the proposal discussed above was being considered by the Legislature. Assume also that the maximum leave allowed was 18 weeks/year. What would your company's position be? Choose only one"), the DPS indicated that it was "Opposed because costs exceed benefits." In a note to its choice, the DPS explained that

Although we cannot be as definitive as we would like regarding the dollar cost, we still believe that the across-the-board granting of the leave would be more costly than beneficial for both the employee and the employer.

In its answers to Question 10 ("Should the above proposal become law, what effects, including costs, do you foresee for [a] Your company? [b] Your employees?"), the DPS explained that:

- (a) Overtime costs would be a factor to consider. However, definitive dollar cost cannot be determined since the overtime costs would be incurred by the fellow worker(s) of the employee who was granted the leave without pay. Lost time due to the loss of a productive/journeyman employee would be another cost factor to consider, but again definitive dollars would depend on the salary of the absent employee and perhaps the cost of hiring a replacement employee if the absence were long enough to warrant the cost.
- (b) The idea may be generally acceptable at this time. However, with the current high cost of living, employees may not find it feasible to go without their income regardless of the reason. In certain jobs, keeping up with technological and/or program changes is a must if the employee is to perform satisfactorily.

A state employee currently may be granted an unpaid leave in accordance with statute (see Appendix J), personnel rules, or bargaining-unit agreements. Present leave policies, however, do not take into account the care of a newborn child or spouse.

The State no longer has a class of leave called "maternity leave." A female employee who has just given birth and who is confined by a physician would be eligible for sick leave. When her period of sick leave came to an end, she would be able to use vacation time to care for her newborn child. (Both sick leave and vacation time are determined by length of employment.) And when her vacation time was exhausted, she would become eligible to take "leave without pay, child care." The duration of this type of leave is no more than 12 months.

The unpaid-leave proposal contained in House Resolution No. 273, H.D. 1, would be disruptive because state "line agencies" are required to "backfill" crucial positions when employees go on leave. Backfilling occurs when an employee who is currently in the civil service system temporarily fills the vacant position. This often involves a temporary promotion, or a series of temporary promotions.

## PARENTAL AND FAMILY LEAVE IN HAWAII

The proposed unpaid-leave period of 18 weeks would create problems for the state civil service. A leave period of no more than 10 weeks would be more acceptable.

Another concern of the DPS was the 14-week qualifying period. Although the DPS could not recommend an appropriate qualifying period, it thought that 14 weeks were not long enough.

### Chain of Retail Stores

The vice president of a chain of retail stores indicated on the Parental or Family Leave Survey that he was opposed to the unpaid-leave proposal contained in House Resolution No. 273, H.D. 1, "because it's a bad idea."

In the chain of retail stores, female employees greatly outnumber male employees.

"We usually try to help employees out," he said in an interview. "In almost every case, we grant them leave. In the case of childbirth, we usually grant three weeks before birth and three weeks after birth. In some cases, employees were allowed to take six months off."

He was opposed to the proposal, in part, because it is now very difficult to find temporary employees. The retail chain consists of six stores on Oahu, each of which is staffed by three full-time employees and three or four part-time employees. The unpaid-leave proposal may require the chain to hire a full-time "floater."

He was also opposed to the proposal because he believed that "employers can negotiate with employees." He wanted, in some instances, to be able to offer employees part-time work while they were on leave.

The vice president of the retail chain did not think the qualifying period of 14 weeks was long enough. He proposed at least a year of employment.

### Chain of Supermarkets

The manager for employment and training of a chain of supermarkets indicated that he was opposed to the proposal contained in House Resolution No. 273, H.D. 1, "because costs exceed benefits."

The current practice of the supermarket chain is to set a time limit on unpaid leave, which often lasts for 30 to 90 days. Depending on the type of work the employee did, he or she may be replaced with a temporary employee. If the person worked in the store, that person normally would be replaced by a floater. When the employee returned to work, the employee would regain his or her former job.

A leave proposal of 10 weeks also would create problems for the supermarket chain. "In our type of business," the manager explained, "we have to man with a certain minimal number of people. Ours is a service

industry. It makes a lot of difference whether we have two cashiers on line or three cashiers."

Any mandated-leave proposal would create problems. The supermarket chain would have to revise its "benefits structure": "If a person is not working, can we charge them the full cost of the premiums for health insurance?"

The manager for employment and training said that the unpaid-leave proposal would create "an administrative headache." "There will be administrative costs involved," he maintained. "Pensions, seniority, and vacations are all based on hours worked."

The qualifying period of 14 weeks was too short. The manager for employment and training recommended a qualifying period of at least a year. He also thought that the unpaid-leave proposal should have a cap. It should be limited, whether parental or family leave is involved, to a certain number of days a year or to a certain number of leave requests a year.

## Two Food-Processing Companies

Two food-processing companies which produce a meat product requested a meeting with the researcher. Although neither company completed the Parental or Family Leave Survey, they both maintained in letters to the Legislative Reference Bureau that the unpaid-leave proposal contained in House Resolution No. 273, H.D. 1, would create serious problems for their business.

One company stated that

Proposed legislation regarding parental or family leave would have an effect that may force us out of business. Our industry is not a strong and prosperous one as we are forced to compete with mainland...companies that sell their products wholesale for approximately the same as our production costs. This is not because we operate inefficiently but mainly because of our higher feed and land costs.

The president and chief executive officer of the other company stated that

I would like to state to you that any proposal that would expand on what's referred to as parental or family leave would probably create a disastrous effect on our operation.

The researcher met with representatives from both companies, each of which employs between 60 to 70 workers.

The representatives of the two companies agreed that their main problem was recruiting workers and controlling labor costs. They pointed out that their business was "not glamorous, like hotel work." Yet many of the positions required workers who had been trained for two to two and a half

months. At certain times of the year, work began at 4 a.m., too early for workers to ride city buses to work. Most employees are recent immigrants. Roughly 75 percent of their workers are female employees. For the most part, however, their female employees are not in their childbearing years.

They argued that the only way they could compete with mainland companies was by controlling their labor costs. They pointed out that land costs in Hawaii are higher than they are on the mainland. Also, they had to import feed (70 percent of their expenses), which costs approximately 40 percent more in Hawaii than it does on the mainland.

One result of competition from the mainland has been a decline in their market share. In the period from 1968 to 1973, together they enjoyed a 25 percent share of the market. Their present share is now down to 18 percent.

They also maintained that a leave proposal of 10 weeks would be as onerous as one of 18 weeks. If an employee goes on leave for 10 weeks, it would take the companies 10 weeks to train a temporary. But once a temporary is trained to do the job, they felt that given the scarcity of trained labor the temporary should be hired as a permanent employee.

They both were against government intervention. The unpaid-leave proposal would reduce further their low-profit margins. If they could not make a profit, they could not exist as a business.

## Chapter 6

### FINDINGS AND RECOMMENDATIONS

House Resolution No. 273, H.D. 1, requested the Legislative Reference Bureau (LRB) to study "the feasibility of statutorily mandating employers to grant employees a parental or family leave to care for: a newborn child of the employee; a child placed with the employee for adoption or foster care; or the employee's seriously ill child or parent." The Resolution also asked that the study consider "various leave designs having duration and timing variables" and "the appropriateness of the following provisions: an employer is defined as an individual or organization with fifty or more employees including the state and county governments; a qualified employee must have been employed for fourteen consecutive weeks and may be employed on a part-time or full-time basis; and the duration of the leave is a maximum of eighteen weeks without pay." Finally, the Resolution asked that the study consider "the cost implications of this proposal as well as alternative solutions."

In its report on House Resolution No. 273, H.D. 1, the Committee on Human Services pointed out that the state Department of Labor and Industrial Relations (DLIR)--"while in general support of the measure"--indicated in its testimony that the unpaid-leave proposal set forth in the Resolution was "unclear."

In its testimony on House Resolution No. 273 (and a related measure, House Concurrent Resolution No. 214), the DLIR stated that it was "in support of these resolutions which request a study on the feasibility of statutorily mandating employers to grant employees a parental or family leave" for the purposes specified in the Resolution. The Department explained that it had conducted a parenting-leave survey in 1985 in response to Senate Resolution No. 102:

This survey included a sample of all employers with 250 or more employees and five percent of all other employers. It also surveyed labor unions and parents with newborn children. The survey found that 52.6 percent of the 428 employers who responded allowed unpaid leave to their female employees for newborn childcare. Of those employers who provided unpaid leave, 72.4 percent did so without labor-management agreements. The length of unpaid leaves was granted at management's discretion based on reason for leave, workload, and employee performance. Although the study did not examine the actual costs of providing parental leave to employees, employers were asked what they would foresee as effects of such a mandated unpaid leave for employees. Fifty-six percent felt that such a law would have a negative effect on them. They felt that it would be costly in terms of hiring and training of temporary employees, benefit costs for both the temporary worker and those on unpaid leave, and increased unemployment-insurance costs because the employer would be laying off temporary workers who were hired to cover those employees on leave.

## FINDINGS AND RECOMMENDATIONS

The DLIR also mentioned its concern about the duration of the leave: "Is the 'maximum of eighteen weeks without pay' for each occurrence or per year?"

### Changing Work Force

House Resolution No. 273, H.D. 1, expressed concern about the changing composition of the work force in the United States. As more women join the ranks of the employed, "working parents today face new challenges in trying to achieve a balance between the responsibilities of work and family life, especially relating to the care of a newborn or a seriously ill child or parent."

Figures provided by the Bureau of the Census show the extent to which women are now very much a part of the labor force. As of 1984, approximately 70 percent of American women between the ages of 20 and 44 were in the labor force. By 1995, however, over 80 percent of women in the same age group are expected to be in the labor force.<sup>1</sup>

Married women with children are also very much a part of the labor force. In 1950, 11.9 percent of married women with children under six participated in the labor force; in 1987, the figure increased to 56.8 percent. Moreover, in 1976, 31.0 percent of married women with children under one participated in the labor force; in 1987, the figure increased to 50.8 percent. Commenting on these figures, an editorial in The New York Times stated: "What was once unusual is now the norm."

Popular syndicated columnist Sylvia Porter has also commented on the effects of the changing composition of the work force. "The 'traditional family,'" she observed, "where the husband is the sole breadwinner and the wife stays at home with the kids under age 18, represents only 9.7 percent of all families."

### Philosophical Issues

Two "philosophical" issues complicate the discussion of the appropriateness of any parental- or family-leave proposal. One has to do with the role of the family in America: should families be required to arrange for the care of children on their own, or should society as a whole play a role in caring for children? The other has to do with the government's role in determining how private business conducts its affairs: should government establish a minimum standard regarding parental and family leave or should parental and family leave be regarded as benefits offered by employers to their employees?

### Lack of Data

Serious discussion of the feasibility of any parental- or family-leave proposal is complicated by a lack of useful data about leave benefits available

to pregnant workers and their families. A recent Congressional Research Service report points out that

There are no systematic or firm data about the availability of such benefits to workers in the public or private sectors, the duration and level of benefits, who is covered, at what cost, and with what consequences.

This lack of data is due in part to the lack of a national policy mandating specific benefits during the period surrounding childbirth. Because useful data are in short supply, evaluating any parental-leave proposal involves the weighing of uncertain social benefits against uncertain economic costs.

### Parental Leave in Europe and in Japan

Proponents of parental leave argue that there is nothing new about statutorily mandated unpaid leave for mothers during the period surrounding childbirth. They point out that over a hundred countries have some type of statutory maternity-leave program. They also point out that the United States is the only industrialized country that does not have a "national policy guaranteeing uniform maternity-related benefits." Furthermore, they point out that women in other industrialized countries are allowed, on average, a minimum paid leave of 12 to 14 weeks.

Women in Japan receive, as an entitlement, up to 14 weeks of partially paid maternity leave. One benefit ascribed to Japan's leave program and national health coverage is the country's low infant-mortality rate. Another benefit is Japan's high percentage of high-school graduates.

### Maternity Leave in the United States

The federal government first became involved in employment and maternity in 1908, when the U.S. Supreme Court in Muller v. Oregon (208 U.S. 412) upheld state laws setting maximum working hours for women. The court also ruled that similar regulations for men were a violation of the right to contract for their labor: "As justification for the distinction, the court noted that, since healthy mothers are essential to healthy offspring, certain physical restrictions were essential for working women."

The Pregnancy Discrimination Act of 1978 (PDA), which amended Title VII of the Civil Rights Act of 1964, required that pregnancy be treated no differently from any other short-term disability. "In general," a Congressional Research Service report explains, "the basic premise of the Pregnancy Discrimination Act is that disabilities caused or contributed to by pregnancy, childbirth, or related medical conditions must be treated the same as any other temporary disability under health insurance, disability insurance, or sick-leave plan offered through employment."

The PDA, however, has been cited frequently for its limitations. It does not require, in the first place, that employers provide disability

insurance. Moreover, it makes no provision for job and insurance protection once a mother's postchildbirth disability ends.

### Parental Leave and Popular Opinion

An NBC-Wall Street Journal poll in 1986 found that 52 percent of the people polled were in favor of federal legislation that required the granting of 18 weeks of parental leave; 37 percent were opposed. An even larger majority, 72 to 19 percent, were in favor of such leave to care for a seriously ill child.

### Temporary Disability Insurance

At the state level, disability-insurance plans have proved to be an effective means of providing women with a period of maternity leave with partial wage-replacement:

Five states (California, Hawaii, New Jersey, New York, and Rhode Island) and Puerto Rico have statutory requirements governing the private sector for temporary-disability-insurance coverage (TDI) to provide income to employees unable to work because of nonjob-related illnesses or injuries, including inability to work due to maternity-related conditions....Since coverage is "nearly universal" in TDI states, almost all employees in the private sectors are entitled to at least a minimum level of wage replacement of up to 26 weeks.

In a study of paid leave applicable to maternity in the private sector, a Congressional Research Service report found that, for a normal pregnancy, temporary-disability insurance was used for an average of 7.5 weeks.

### H.R. 925, The Family and Medical Leave Act

The debate in Congress on recent parental- and family-leave measures has been extensive. One proposal, H.R. 925, the Family and Medical Leave Act of 1988 (as amended), includes the following provisions:

1. An eligible employee would be entitled to 10 weeks of family leave during any 24-month period to care for a newborn child, an adopted child, or a seriously ill child or parent;
2. The entitlement period to care for a newborn child or an adopted child expires at the end of the 12-month period after the birth or placement of the child;
3. An employer or employee may substitute any accrued paid vacation leave, personal leave, or paid family leave for any part of the 10-week period;
4. An employee is to provide his or her employer with reasonable prior notice;



5. An employer may require medical certification for a claim of leave;
6. Where both a husband and wife are employed by the same employer, the combined period of family leave may be limited to 10 weeks, except in the case of a seriously ill child;
7. An eligible employee would be entitled to 15 weeks of unpaid medical leave in any calendar year;
8. An eligible employee would be someone with at least 1 year of service and who works at least 20 hours per week; and
9. An employer may deny reinstatement to the highest 10 percent or the 5 highest-paid employees, whichever is greater, if necessary to prevent substantial injury to the employer.

### Arguments in Favor of H.R. 925

In joint hearings on H.R. 925 before the Subcommittee on Labor-Management Relations and the Subcommittee on Labor Standards of the Committee on Education and Labor, a number of arguments were offered in favor of the measure. One argument set forth the need for a minimum national standard:

For the past 100 years, Congress has enacted minimum labor-standards laws when important social values necessitated the protection of all workers. Laws have been enacted to mandate the payment of a minimum wage, restrict the use of child labor, provide minimum retirement benefits, prohibit discrimination, and establish work-place health and safety standards. These labor laws have been enacted to take social concerns out of the competitive process in order to ensure that all receive a floor of protection. When employers must comply equally, no employer is disadvantaged by the few who might otherwise act unscrupulously. Minimum standards benefit all workers and all businesses. (Representative William Clay, Missouri, Chairman, Subcommittee on Labor-Management Relations)

### Opposition to H.R. 925

The U.S. Chamber of Commerce is opposed to H.R. 925. "I think it is quite clear in our testimony," stated Virginia B. Lamp, "that to most of our members, making modifications in this bill would be similar to rearranging the deck chairs on the Titanic. We cannot endorse any bill that mandates new benefits."

The main reason business groups are opposed to the measure is that it would result in increased costs of doing business, which would have to be passed along to consumers. In addition, the measure would be especially burdensome to small businesses. Opponents of the measure also are against Congressional attempts to get involved in matters of maternity and

## FINDINGS AND RECOMMENDATIONS

employment. Such matters, they maintain, should be left to negotiations between employers and employees.

### The Cost of H.R. 925

The U.S. Chamber of Commerce estimated that the cost of H.R. 925 would be \$27.2 billion dollars. As an estimate based on a "worst-case scenario," it no doubt exaggerates the cost of the measure.

A General Accounting Office (GAO) estimate was a good deal less--only \$188 million annually. The assumptions used by the GAO were less simplistic than those used by the U.S. Chamber of Commerce.

The GAO also estimated that, under the provisions of H.R. 925, less than 1 in 300 workers would be absent at any time: "thus we do not expect this legislation to cause major disruptions to employers." The GAO also estimated that the average weekly cost to employers would be about \$25 per worker in firms affected by H.R. 925.

### The Bonding Issue

Child-development specialists argue that women need time following childbirth to establish a close relationship--or bond--with their newborn infants. One of the most widely recognized authorities in the field is Dr. T. Berry Brazelton, M.D., associate professor of pediatrics at Harvard Medical School. "We need to help working parents prepare for their roles and to preserve the positive forces in strong attachments--to the baby and to teach other," Dr. Brazelton urged at a Congressional hearing. "We certainly must protect the period in which the attachment process is solidified by new parents. With the new baby, this is likely to demand at least four months in which the new mother can feel herself free of competing demands of the work place."

Another view is that of Representative Marge Roukema: "I might say to you that in 18 weeks you can't bond with a child. But you, in 8 weeks, or 10 weeks, or 12 weeks, can make your adjustment to a new family structure, make the adjustments and make the proper arrangement for the care of that child."

### Other Issues

In a Congressional hearing on H.R. 925, Representative Roukema, who as a conservative Republican supported family leave as a "bedrock family issue," maintained that there were three "legitimately contentious issues": "who is covered by the provisions of the bill, for how long, and for what size businesses."

## Findings

1. Practically all of the respondents to the LRB survey indicated that unpaid leave could be used to care for a newborn child. The granting of unpaid leave for the care of a newborn child appears to be common practice among employers in Hawaii, even though such leave may require company approval. The survey was not able to determine with any clarity the average length of the leaves that were taken for the care of a newborn child. Records kept by the state Department of Personnel Services (DPS), however, show that, in 1987, 119 female state employees took 2,766.45 days of unpaid leave to care for their newborn children; the average length of leave for each female employee was 4.65 weeks. In the same year, 11 male employees took 41.63 days of unpaid leave for the same purpose.

2. The granting of unpaid leave to care for a recently adopted child appears to be a less-common practice. Roughly 80 percent of the respondents to the LRB survey indicated that unpaid leave could--as company policy or with the approval of the company--be used for the care of a recently adopted child. However, it should be noted that a significant number of respondents (14.0 percent) indicated that unpaid leave could not be used to care for a newly adopted child.

3. Approximately 90 percent of the respondents to the LRB survey indicated that unpaid leave could be used to care for a seriously ill child or parent.

DPS records show that, in 1987, 13 female employees were granted leave without pay to care for an infant. No male employee either asked for or was denied such leave.

In 1987, according to DPS records, 5 female employees and 2 male employees were granted leave without pay to care for a seriously ill parent. No employee was denied such leave.

4. The 1985 DLIR survey sent to recent parents included the following question: "Considering your living expenses, how many weeks without pay would you take off for 'parenting leave'?" According to a report on the survey prepared by the DLIR, "Most of the mothers would take between 0 to 13 weeks unpaid leave, while the fathers would take 0 to 4 weeks."

5. In order to gain a sense of the acceptability or unacceptability among employers of the unpaid-leave proposal contained in House Resolution No. 273, H.D. 1, the LRB survey asked: "Assume the proposal discussed above was being considered by the Legislature. Assume also that the maximum leave allowed was 18 weeks/year. What would your company's position be? Choose only one." As expected, a large majority of the respondents (65.3 percent) indicated opposition to the unpaid-leave proposal because it was "a bad idea" or because "costs exceed benefits."

Somewhat surprising was the number of respondents who were in favor of the proposal (15.8 percent). The respondents favoring the proposal included a large insurance company, a law firm, a bank, a loan company, a car-rental firm, a travel agency, a tour company, two tourist facilities, two

## FINDINGS AND RECOMMENDATIONS

hotels, a medical group, a hospital, two retail stores, a food-processing company, a fast-food outlet, a private preschool, a private secondary school, a social-services agency, a construction company, and a county government. It was not the case that the proposal was favored only by very large companies or by companies that already had policies providing for generous periods of unpaid leave.

6. Hawaii, like five other states, requires companies to provide temporary disability insurance (TDI). The law requiring TDI has been in effect since January 1, 1970, and it covers at least 90 percent of all employees in Hawaii, except for federal workers. TDI provides partial income replacement for maternity, which is regarded in the same way as other illnesses. The duration of coverage is limited to 26 weeks; in practice it is determined by a doctor, who takes into consideration (1) when a female employee is unable to perform her regular duties, (2) the actual delivery, and (3) the length of her recovery period.<sup>2</sup>

7. Most employers, including the State of Hawaii, do not keep records of how employees use unpaid leave. The State of Hawaii has no uniform policy on how to monitor leave forms. Although the state government attempted to monitor leaves several years ago, the technology to do so was inadequate. This sort of monitoring could be done today.<sup>3</sup>

8. Many employers who responded to the LRB survey and who were interviewed by a researcher were very concerned about the effects of a statutorily mandated leave during a period of low unemployment. According to a newspaper article that appeared while this study was being prepared, "Hawaii's unemployment in September [1988] tied the State's record low at 2.9 percent and remained below 4 percent for the 14th consecutive month.... Unemployment for the nation as a whole was 5.2 percent."<sup>4</sup>

9. Employers who were interviewed by a researcher questioned the 14-week qualifying period. They maintained that it was too short and that a more appropriate length would be 1 year.

10. The cost of the proposal contained in House Resolution No. 273, H.D. 1, is impossible to determine. Data regarding leave practices both in Hawaii and throughout the nation are inadequate. Also, different companies are affected in different ways. Temporary employees are required when some regular employees go on leave, but are not required when others go on leave. In some cases, the additional costs would include overtime pay. In other cases, the additional costs would include diminished productivity. Administrative costs of some kind would be incurred by almost all companies. The proposal contained in House Resolution No. 273, H.D. 1, does not require the continuation by the employer of an employee's health benefits; the cost of maintaining health insurance would be a possible additional cost.

### Recommendations

1. It would be feasible for the Legislature to mandate employers statutorily to grant employees a parental leave to care for: "a newborn child

of the employee" or "a child placed with the employee for adoption or foster care."

Most industrialized countries already have national policies guaranteeing uniform maternity-related benefits--benefits that often include some type of income replacement during the leave period. Although the United States is one of the few industrialized countries without a national policy regarding maternity/parental leave, Congress has been considering various unpaid-leave measures. Even though final action was not taken in the 100th Congress on either H.R. 925, the Family and Medical Leave Act of 1987, or S. 2488, the Parental and Medical Leave Act of 1988, "the prominence given child-care issues by both parties in the 1988 presidential election seems to assure that the bills will be reintroduced in the 101st Congress."<sup>5</sup>

A number of states (11 as of September 1988) already have statutes that "require many or most private employers to provide disability leave for pregnancy and childbirth with a guarantee of reinstatement to the same or an equivalent job at the end of the leave period."<sup>6</sup>

Feasibility is a major consideration. Additional considerations, however, are political acceptability and timing. During a period of unusually low unemployment, a parental- or family-leave proposal will receive substantial opposition.

2. While the proposal contained in House Resolution No. 273, H.D. 1, may be feasible, not all of its provisions are appropriate.

- The employer exemption seems appropriate. S. 2488 exempts companies with fewer than 20 employees, and H.R. 925 exempts companies with fewer than 50 employees.
- The qualifying period should be longer than 14 weeks. In order to qualify for the leave benefits provided by H.R. 925, an employee would be required to have at least 1 year of service; in addition, the employee would have to have worked at least 20 hours per week. A more appropriate qualifying period would be either 6 months or 1 year. It is unlikely that a qualifying period of 1 year would meet with much opposition.
- The duration of the unpaid leave should be between 10 and 12 weeks. Leave of this duration will not permit the type of bonding that child-development specialists recommend, but it will provide the parents of a newborn--or a recently adopted--child with time off to make adjustments for the care of the child.

A leave period of 10 to 12 weeks, however, should not include the disability period. Unpaid parental leave for female employees should be provided in addition to the currently required medical-disability leave. This means that unpaid leave would be granted in addition to the period covered by TDI, a period of, say, 7.5 weeks. However, as provided by H.R. 925, an employer or employee should be able to substitute any accrued paid vacation leave, personal leave, or paid family leave for any part of the 10- or 12-week period.

## FINDINGS AND RECOMMENDATIONS

The type of leave being recommended is unpaid leave. One constraint on its use will be the lack of income during the mandated leave period.

3. An unpaid parental-leave proposal should include several of the provisions contained in H.R. 925.

- An eligible employee should be entitled to 10 to 12 weeks of leave during any 24-month period to care for a newborn child or an adopted child. This provision would remove a major area of ambiguity from the unpaid-leave proposal contained in H.R. No. 273, H.D. 1.

- The entitlement period to care for a newborn child or a recently adopted child should be limited. In H.R. 925, the entitlement period expires at the end of the 12-month period after the birth or placement of the child.

- An employee should be required to provide his or her employer with reasonable prior notice.

4. The taking of unpaid parental leave should not result in the loss of any employment benefit (including health-insurance benefits) accrued before the commencement of the leave period.

5. An employee who takes unpaid parental leave should be guaranteed reemployment at either the same or a comparable job. However, some type of business-necessity exemption also should be considered. If a business-necessity exemption is provided, the employer should be required to demonstrate that an exemption is in fact necessary to prevent substantial injury to the business.

6. A parental-leave proposal should be formulated separately from a family-leave proposal. The proposal contained in H.R. No. 273, H.D. 1, provides for a uniform leave period for a variety of purposes, even though the needs of recent parents may differ significantly from the needs of an employee with a seriously ill child or parent. While there is a lack of useful data regarding the leave benefits available to pregnant workers and their families, there are even fewer data regarding the needs of employees with seriously ill children or parents and the benefits that currently are available to them.

7. The family-leave proposal contained in House Resolution No. 273, H.D. 1, should be expanded to include the parents-in-law and spouses of eligible employees.

8. The family-leave proposal contained in House Resolution No. 273, H.D. 1, should define "serious illness." It also should provide a definition of "child." At what age does a son or a daughter of an eligible employee no longer remain a "child"?

9. The duration of a family-leave proposal may not have to be the same as that of a parental-leave proposal. In Wisconsin, for example, the new Family and Medical Leave Act "requires employers to allow up to 2 weeks

unpaid leave within a 12-month period for an employee to care for a sick spouse, parent, or parent-in-law."<sup>7</sup>

10. To gain a better understanding of the needs of employees in their various roles as parents with newborn or young children, spouses, children of aging parents, and sons- and daughters-in-law of aging parents-in-law, the Legislature should require state departments and agencies to monitor leaves of absence without pay for child care and other purposes. Statutorily mandated family leave, according to a recent study, could have substantial and costly effects on employers:

Guaranteeing leave to employees to provide care for seriously ill parents and parents-in-law is a potentially...far-reaching issue in a society in which the fastest-growing age group is those over 75. A large percentage of employees may eventually require long-term leave to care for aging parents; many may elect to take the maximum leave if they have reached a stage in their careers where they can afford to take leave without pay. The need for this type of leave [could] be less predictable in occurrence and duration and potentially would involve a much wider segment of the work force than maternity/parental leave. It could eventually have a much more disruptive effect on business than the provision of limited periods of maternity and new-parent leave.<sup>8</sup>

In order to formulate a socially beneficial and politically acceptable family-leave proposal, especially as it pertains to the care of elderly family members, legislators will need more information on current care-giving needs and practices. The Executive Office on Aging should begin the task of collecting data that will help to provide answers to questions such as: How many employees have had to give up their jobs to care for their aging parents or parents-in-law? How many employees have taken time off (vacation time or unpaid leave) to care for their parents or parents-in-law? How much time off did they need? How old are the elderly persons receiving care? How old are the currently employed caregivers? This data collection should begin with employees in the government sector. Once suitable data-gathering procedures are established and the types of essential information to be obtained for policy-making are determined, then data collection should be extended to employees in the private sector.

## FOOTNOTES

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3. Maternity and Parental Leave Policies, p. 6.
4. Ibid., p. 2.
5. The New York Times, June 19, 1988.
6. Ibid.
7. Joint Hearings on Parental and Disability Leave, p. 13.
8. Honolulu Star-Bulletin and Advertiser, April 17, 1988.
9. California, Legislature, Senate, Office of Research, Time Off for Parents: The Benefits, Costs, and Options and Parental Leave, September, 1987, p. 26.

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3. "Family and Medical Leave Policy: Pro and Con," Congressional Digest, May, 1980, p. 131.
4. Maternity and Parental Leave Policies, pp. 69 and 64.
5. Ibid., p. 31.
6. Ibid., p. 42.
7. Linda Tarr-Whelan, "A Lesson from Japan: Sound Family Policies Underlie Economic Strength," Ways and Means, Spring, 1988, p. 6.
8. Ibid.
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11. Maternity and Parental Leave Policies, p. 8.

12. "Family and Medical Leave Policy," p. 130.
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18. "Family and Medical Leave Policy," p. 130.
19. Ibid.
20. Ibid.
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22. "Family and Medical Leave Policy," p. 130.
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25. Maternity and Parental Leave Policies, p. 23.
26. Ibid.
27. "Baby Bonding or Business Efficiency: Mandated Parental Leave" (CSG Backgrounder, States Information Center, The Council of State Governments, January, 1988). (Mimeographed)
28. U.S., Library of Congress, Congressional Research Service, Parental Leave: Legislation in the 100th Congress, Updated July 15, 1988 (Washington: 1988), p. 5.
29. Ibid., pp. 5 and 6.
30. U.S., Congress, House, Subcommittee on Labor-Management Relations and Subcommittee on Labor Standards of the Committee on Education and Labor, Joint Hearings on the Family and Medical Leave Act of 1987, 100th Cong., 1st Sess., 1987, p. 3.
31. U.S., Congress, House, Committee on Small Business, Hearing on Parental Leave Act, 100th Cong., 1st Sess., 1987, p. 10.
32. "Family and Medical Leave Policy," p. 160.
33. Parental Leave, p. 8.
34. Ibid., p. 7, and "Family and Medical Leave Policy," pp. 134 and 135.
35. Joint Hearings on the Family and Medical Leave Act of 1987, p. 2.



36. Ibid., p. 18.
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38. Joint Hearings on the Family and Medical Leave Act of 1987, p. 95.
39. Ibid., p. 44.
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### Chapter 3

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17. Hearing on Parental Leave, p. 13.
18. Carroll, pp. 1-2.
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26. Ibid.
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29. Ibid., p. 12.
30. Ibid., p. 10.
31. Ibid., pp. 8-9.
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3. "Parental Leave: Options for Working Parents," a report of a conference sponsored by the Association of Junior Leagues, March, 1985, p. 4.
4. Ibid.
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7. U.S., Congress, House, Committee on Small Business, Hearing on Parental Leave, 100th Cong., 1st Sess., 1987, p. 24.
8. U.S., Library of Congress, Congressional Research Service, Maternity and Parental Leave Policies: A Comparative Analysis (Washington: 1985), p. 21.
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15. "Parental Leave," p. 4.
16. "For American Business, a New World of Workers," Business Week, September 19, 1988, p. 113.
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25. "Getting the Best Child Care--Other Than Mom," U.S. News and World Report, October 21, 1985, p. 70.
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28. Time Off for Parents, p. 41.
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30. Parental Leave: Estimated Costs of H.R. 925, p. 4.
31. "Maternity and Parental Leave Policies," p. 20.
32. Ibid., p. 21.

## Chapter 5

1. Hawaii, Department of Labor and Industrial Relations, Parenting Leave Study, December, 1985, p. 1.
2. Ibid., p. 2.
3. Ibid.
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6. Ibid., p. 4.
7. Ibid., p. 5.
8. Ibid., p. 6.
9. Ibid., p. 11.
10. Positive responses had to be separated into two categories, Yes and Judgmental, because Questions 1 and 2 did not make clear that a Yes response meant that unpaid leave for the seriously ill child or parent would, as written company policy, be granted automatically.

## Chapter 6

1. Linda B. Samuels, Richard L. Coffinberger, and Susan C. Fouts, "Responding to Social and Demographic Change: Family and Medical Leave Proposals," Law Labor Journal, November, 1988, p. 748.
2. Telephone conversation with Edward Tokuda of the state Department of Labor and Industrial Relations, December 9, 1988.
3. Interview with Edwin Young, personnel program manager, of the state Department of Personnel Services, December 8, 1988.
4. The Honolulu Advertiser, October 27, 1988.
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HOUSE OF REPRESENTATIVES  
FOURTEENTH LEGISLATURE, 1988  
STATE OF HAWAII

H.R. NO.

## HOUSE RESOLUTION

REQUESTING A STUDY TO DETERMINE THE FEASIBILITY OF STATUTORILY  
MANDATING EMPLOYERS TO GRANT EMPLOYEES A PARENTAL OR FAMILY  
LEAVE.

WHEREAS, during the last three decades, major changes have taken place in the composition of the work force in the United States as greater numbers of married women have joined the employment ranks; and

WHEREAS, as one consequence of this change, working parents today face new challenges in trying to achieve a balance between the responsibilities of work and family life, especially relating to the care of a newborn or a seriously-ill child or parent; and

WHEREAS, because working parents are less able to spend time to care for their own family members, there are less opportunities for parents to establish and maintain a close bond with their loved ones; and

WHEREAS, one way to assure more of this type of bonding and care is permitting qualified workers to take unpaid leaves for parenting purposes; and

WHEREAS, under a proposed parental or family leave program, workers would be entitled to take parental or family leaves without pay for up to eighteen weeks for: the birth of a child; the placement of a child with the employee for adoption or foster care; or the care of an employee's child or parent who has a serious health condition; and

WHEREAS, such a parental or family leave program could greatly strengthen family relationships and, in the long run, possibly even reduce the need for a variety of services and programs that are indirectly costly to government; and

WHEREAS, at the same time, such leaves, however socially desirable they may be, would be costly to employers who must pass on these expenses to consumers; in addition, rather than be mandated by law, some maintain that the provision of specific benefits should remain voluntary on the part of employers or be subject to labor-management negotiation; and

H.R. NO.

WHEREAS, because such a program could have far-reaching economic as well as social consequences, it is important that the proposal be carefully studied before any law is considered that would permit working parents to take extended leaves for parenting purposes; now, therefore,

BE IT RESOLVED by the House of Representatives of the Fourteenth Legislature of the State of Hawaii, Regular Session of 1988, that the Legislative Reference Bureau is hereby requested to study the feasibility of statutorily mandating employers to grant employees a parental or family leave to care for: a newborn child of the employee; a child placed with the employee for adoption or foster care; or the employee's seriously ill child or parent; and

BE IT FURTHER RESOLVED that the study consider various leave designs having duration and timing variables, and the appropriateness of the following provisions: an employer is defined as an individual or organization with fifty or more employees including the state and county governments; a qualified employee must have been employed for fourteen consecutive weeks and may be employed on a part-time or full-time basis; and the duration of the leave is a maximum of eighteen weeks without pay; and

BE IT FURTHER RESOLVED that the study also consider the cost implications of this proposal as well as alternative solutions; and

BE IT FURTHER RESOLVED that the Legislative Reference Bureau submit a report of its findings and recommendations to the Legislature no later than twenty days prior to the convening of the Regular Session of 1989; and

BE IT FURTHER RESOLVED that a certified copy of this Resolution be transmitted to the Legislative Reference Bureau.

## Appendix B

TABLE 5. Countries Explicitly Establishing More Than 14 Weeks' Maternity Leave--Continued

Region and country	Duration of leave	To whom granted	Amount and duration of cash benefits
<u>Europe</u>			
Albania	5 weeks prenatal, 7 weeks postnatal, plus 3 weeks if necessary	unspecified	75-95 percent of earnings (depending on length of employment) for 12-15 weeks
Austria	8 weeks prenatal, 8 weeks postnatal, plus 4 weeks for premature, Caesarean, or multiple birth; extended leave until the child is a year old	mother <u>6/</u>	100 percent of earnings for 16-20 weeks; flat-rate monthly allowance until the child is a year old
Bulgaria	45 days prenatal, 120-180 days postnatal (depending on rank-order of birth), plus 10 days' postnatal leave for medical reasons or for the birth of twins; extended leave until the child is 6-8 months old, depending on rank-order of birth <u>7/</u>	unspecified	100 percent of earnings for 165-225 days; flat-rate monthly allowance until the child is 6-8 months old
Czechoslovakia	26 weeks (4-8 weeks prenatal, 6-22 weeks postnatal), plus 9 weeks' postnatal leave for multiple birth or for single mother; extended leave until the child is 2 years old	mother <u>8/</u>	90 percent of earnings for 26-35 weeks; flat-rate monthly allowance (amount depends on number of children) until the child is 2 years old

6/ Kamerman, Kahn, and Kingston, Maternity Policies and Working Women, p. 21. The authors state that the father is eligible for the same leave and benefits if his wife dies in childbirth or within a year of the birth.

7/ ILO, Conditions of Work, p. 11. According to the SSA, Social Security Programs, p. 37, paid leave may be followed by unpaid leave until the child is three years old. Whether unpaid leave is available to either parent or just to the mother is not specified.

8/ Kamerman, Kahn, and Kingston, Maternity Policies and Working Women, p. 18.

TABLE 5. Countries Explicitly Establishing More Than 14 Weeks' Maternity Leave--Continued

Region and country	Duration of leave	To whom granted	Amount and duration of cash benefits
<u>Europe (cont'd)</u>			
Denmark	4 weeks prenatal, 14 weeks postnatal	mother <u>9/</u>	90 percent of earnings for 18 weeks <u>10/</u> (nonmanual worker receives 50 percent of basic wage up to 5 months)
Finland	48 days prenatal, 234 days postnatal, plus 66 days' postnatal leave under some circumstances <u>11/</u>	father qualifies for 75-100 days of this leave <u>12/</u>	80 percent of earnings for 282 days
France	16-26 weeks, depending on rank-order of birth (6-10 weeks prenatal, 10-18 weeks postnatal), plus 2 weeks' prenatal leave and 4 weeks' postnatal leave if complications occur and 2 weeks' postnatal leave for multiple birth	mother <u>13/</u>	90 percent of earnings for 16-34 weeks

9/ Kamerman, Kahn, and Kingston, Maternity Policies and Working Women, p. 18.

10/ SSA, Social Security Programs, p. 69.

11/ ILO, Conditions of Work, p. 12. Kamerman, Kahn, and Kingston, Maternity Policies and Working Women, p. 18, give the duration of leave as 43 weeks, or 10 months, plus an optional year of unpaid leave.

12/ ILO, Conditions of Work, p. 15. According to Kamerman, Kahn, and Kingston, Maternity Policies and Working Women, p. 18, fathers are eligible for a maximum of two weeks' paid postnatal leave; the additional year of unpaid leave may be used by either parent or shared.

13/ Kamerman, Kahn, and Kingston, Maternity Policies and Working Women, p. 19. The authors state that either parent may take up to two years of unpaid leave to care for the child; eligibility for unpaid leave is contingent on certain types of work experience.

TABLE 5. Countries Explicitly Establishing More Than 14 Weeks' Maternity Leave--Continued

Region and country	Duration of leave	To whom granted	Amount and duration of cash benefits
<u>Europe (cont'd)</u>			
German Democratic Republic	6 weeks prenatal, 20 weeks postnatal, plus 2 weeks if complications occur or for multiple birth; extended leave until the child is a year old (for second and subsequent children)	mother <u>14/</u>	100 percent of earnings for 26 weeks; benefits equivalent to sickness benefits until the child is a year old
Germany, Federal Republic of	6 weeks prenatal, 8 weeks postnatal, plus 4 weeks for premature, Caesarean, or multiple birth; extended leave until the child is 6 months old	mother <u>15/</u>	100 percent of earnings for 14-18 weeks; maximum monthly allowance of 750 DM until the child is 6 months old
Hungary	4 weeks prenatal, 16 weeks postnatal, plus 4 weeks' postnatal leave if complications occur; extended leave until the child is 3 years old	mother <u>16/</u>	65-100 percent of earnings (depending on length of participation in the social security system) for 20-24 weeks; flat-rate monthly allowance until the child is 3 years old
Ireland	14 weeks (minimum of 4 weeks prenatal, minimum of 4 weeks postnatal), plus 4 weeks' postnatal leave	unspecified	80 percent of earnings for 14 weeks

14/ Kamerman, Kahn, and Kingston, Maternity Policies and Working Women, p. 20.

15/ Kamerman, Kahn, and Kingston, Maternity Policies and Working Women, p. 19.

16/ *Ibid.*

TABLE 5. Countries Explicitly Establishing More Than 14 Weeks' Maternity Leave--Continued

Region and country	Duration of leave	To whom granted	Amount and duration of cash benefits
<u>Europe (cont'd)</u>			
Italy	2 months prenatal, 3 months postnatal, plus 1 month of prenatal leave if the woman's work is arduous; 17/ if requested, extended leave for 6 months during the child's first year	mother 18/	80 percent of earnings for 5-6 months; 30 percent of earnings for 6 months during the child's first year
Luxembourg	8 weeks prenatal, 8 weeks postnatal, plus 4 weeks postnatal leave for premature or multiple birth or for nursing mother	unspecified	100 percent of earnings for 16-20 weeks
Norway	108 working days (maximum of 72 days prenatal, 36-108 days postnatal) 19/	father may care for the child up to 72 days; benefit is based on his earnings 20/	100 percent of earnings for 108 days

17/ ILO, Conditions of Work, p. 13. The SSA, Social Security Programs, p. 131, gives the duration of leave as a maximum of 18 weeks prenatal (6 weeks in commerce and 8 weeks in agriculture) and 13 weeks postnatal.

18/ Kamerman, Kahn, and Kingston, Maternity Policies and Working Women, p. 21. According to the ILO, Conditions of Work, p. 16, the father is eligible for extended leave (6 months during the child's first year) if he has custody of the child.

19/ ILO, Conditions of Work, p. 13. Kamerman, Kahn, and Kingston, Maternity Policies and Working Women, p. 21, state that paid leave may be followed by up to a year of unpaid leave.

20/ SSA, Social Security Programs, p. 189. Kamerman, Kahn, and Kingston, Maternity Policies and Working Women, p. 21, state that unpaid leave may be used by either parent or shared by both parents.



TABLE 5. Countries Explicitly Establishing More Than 14 Weeks' Maternity Leave--Continued

Region and country	Duration of leave	To whom granted	Amount and duration of cash benefits
<u>Europe (cont'd)</u>			
Poland	16-18 weeks (minimum of 2 weeks prenatal, minimum of 12 weeks postnatal for the first child and 14 weeks for subsequent children), plus 26 weeks' postnatal leave (including the normal leave) for multiple birth <u>21/</u>	mother	100 percent of earnings for 16-26 weeks
Romania	52 days prenatal, 60 days postnatal	unspecified	50-94 percent of earnings (depending on length of employment and rank-order of birth) for 112 days
Sweden	360 days (maximum of 60 days prenatal, minimum of 6 weeks postnatal); first 180 days must be taken before the child is 270 days old; second 180 days may be taken until the child is 8 years old	father does not qualify for prenatal leave, but either parent qualifies for postnatal leave <u>22/</u>	90 percent of earnings for 270 days; flat-rate daily allowance of 37 Kronor for the next 90 days

21/ ILO, Conditions of Work, p. 14, 16. According to Kamerman, Kahn, and Kingston, Maternity Policies and Working Women, p. 21, the mother may take additional leave, without cash benefits.

22/ Kamerman, Maternity and Parental Benefits and Leaves, p. 41-42. Kamerman states that the father is eligible for 210 days of postnatal leave.

TABLE 5. Countries Explicitly Establishing More Than 14 Weeks' Maternity Leave--Continued

Region and country	Duration of leave	To whom granted	Amount and duration of cash benefits
<u>Europe (cont'd)</u>			
Union of Soviet Socialist Republics	8 weeks prenatal, 8 weeks postnatal, plus 2 weeks' postnatal leave for difficult or multiple birth; extended leave until the child is a year old <u>23/</u>	unspecified	100 percent of earnings for 16-18 weeks; flat-rate monthly allowance until the child is a year old
United Kingdom	11 weeks prenatal, 7 weeks postnatal; extended leave until 29 weeks after childbirth (33 weeks if sickness or incapacity for work occurs)	mother <u>24/</u>	lump-sum maternity grant; flat-rate weekly allowance for 18 weeks; woman who meets qualifying criteria receives 90 percent of earnings (minus the flat-rate weekly allowance) for 6 weeks
Yugoslavia	105-210 days, depending on province or region	unspecified	100 percent of earnings for a minimum of 105 days

23/ ILO Conditions of Work, p. 14. The SSA, Social Security Programs, p. 263, states that paid leave may be followed by a year of unpaid leave.

24/ Kamerman, Kahn, and Kingston, Maternity Policies and Working Women, p. 22.

Source: U.S., Library of Congress, Congressional Research Service, Maternity and Parental Leave Policies: A Comparative Analysis (Washington: 1985).

# Appendix C

## TABLE 1 SELECTED EMPLOYEE LEAVE POLICES

State or Jurisdiction	Annual Leave Accrual (in days per year)		Sick Leave Accrual (days per year)	Paid Holidays	Maternity Leave	Paternity Leave	Child Care on State Property
	First Year	Fifth Year			Treated as Sick Leave and/or Annual Leave or Leave Without Pay or Other Provisions	Treated as Sick Leave and/or Annual Leave or Leave Without Pay or Other Provisions	
Alabama	13	16.25	13	13	*	---	
Alaska	15	18	15	10	(a)	---	
Arizona	12	15	12	12	*	---	
Arkansas	12	18	12	11	*	---	
California	10	15	12	13	(a)	(b)	
Colorado	12	15	15	11	*	*	
Connecticut	12	15	15	12	*	*(c)	*(g)
Delaware	15	15	15(i)	13	*	*	
Florida	13	16	13	9	*	---	*(h)
Georgia	15	15	15	12	*	---	
Hawaii	21	21	21	13	(a)	(b)	
Idaho	12	15	12	9	*	---	*
Illinois	10	10	12	12	*	---	
Indiana	12	15	6(d)	12	*	---	
Iowa	12	15	18	10	*	(b)	
Kansas	12	15	12	11	*	(b)	
Kentucky	12	12	12	12	*	(b)	
Louisiana	12	18	12	12	---	---	
Maine	12	15	12	11	(a)	---	
Maryland	10	10	15	14	*	---	
Massachusetts	10	15	15	13	*	---	*(g)
Michigan	13	15	13	13	---	*	
Minnesota	13(e)	13(e)	13	11	*	*	*(g)
Mississippi	18	21	12	10	---	*	
Missouri	15	15	15	11	*	---	
Montana	15	15	12	11	*	---	
Nebraska	12	15	12	12	*	(b)	
Nevada	15	15	15	9	*	*	
New Hampshire	12	15	15	12	*	---	
New Jersey	12	15	15	13	*	*	
New Mexico	15	15	12	9	---	---	
New York	14	18	13	12	*	*	*
North Carolina	11.75	16.75	12	11	*	(b)	
North Dakota	12	15	12	9	*	---	
Ohio	10	10	7	10	*	*	*(h)
Oklahoma	15	18	15	---	*	*	
Oregon	10	15	12	10	*	*	
Pennsylvania	10.4(f)	15.6(f)	13	10	*	*	
Rhode Island	10	15	15	11	(a)		(b)
South Carolina	15	15	15	11 to 13	*	---	
South Dakota	15	15	14	9	*	*	
Tennessee	12	18	12	11	*	---	
Texas	10.5	13.5	12	14	*	*	
Utah	13	13	13	11	*	---	*(h)
Vermont	12	15	12	13	(a)	*	
Virginia	12	15	15	11	*	*	
Washington	12	15	12	11	*	*	*
West Virginia	15	18	18	14	*	---	
Wisconsin	10	15	13	11.5	*	*	
Wyoming	12	15	12	9	---	---	
Puerto Rico	30	30	18	19	(a)	---	

SOURCE: Information derived from a survey of state personnel offices conducted by The Council of State Governments for the National Association of State Personnel Executives (NASPE).

KEY:

- (a) Formal provision for maternity leave - Alaska, California, Vermont, Puerto Rico, Rhode Island. After using sick leave, employee can acquire "child care" leave - California, Hawaii. Determined by union contract - Maine, Rhode Island.
- (b) After using sick leave, employee can acquire "child care" leave - Hawaii. Annual leave available for family needs - Iowa and Kansas (five days), Kentucky (varies). Contingent upon approval of agency head - Nebraska, North Carolina and Rhode Island. California provides up to 12 months unpaid parental leave to care for new born child.
- (c) Three days of sick leave as paternity leave.
- (d) Full-time employees with over five years of service who have used all annual and sick leave, may apply for sick leave at the rate of one week for each year of service.
- (e) Managerial personnel receive 19 1/2 days.
- (f) As part of a collective bargaining agreement, new state employees (those hired since July 1, 1985) receive only 5.2 annual leave days in their first year of employment and 10.4 in their fifth year.
- (g) Limited.
- (h) Pilot study - Ohio, Utah Department of Health and Florida Department of Administration.
- (i) Increased to 18 days and 21 days after 10 years and 15 years of service, respectively.

Appendix D  
CHRONOLOGY

07/14/88 --- S. 2488, a revised version of S. 249, reported, as amended, to the Senate by the Committee on Labor and Human Resources.

03/09/88 --- H.R. 925, the Family and Medical Leave Act of 1987, reported, as amended, to the House (H.Rept. 100-511, Part II) by the Committee on Education and Labor.

03/08/88 --- H.R. 925, reported, as amended, to the House (H.Rept. 100-511, Part I) by the Committee on Post Office and Civil Service.

02/03/88 --- H.R. 925 ordered reported, as amended, by the House Committee on Post Office and Civil Service.

11/17/87 --- H.R. 925 ordered reported, as amended, by the House Committee on Education and Labor.

10/29/87 --- Hearings on S. 249 concluded before the Senate Labor and Human Resources Subcommittee on Children, Family, Drugs, and Alcoholism.

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 Services 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 5 to 15 workers, (2) instituted a vesting period of 3 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, ordered reported (18-0) 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.

Source: U.S., Library of Congress, Congressional Research Service, Parental Leave: Legislation in the 100th Congress, Updated July 15, 1988 (Washington: 1988).

## Appendix E

I

### 100TH CONGRESS 1ST SESSION H. R. 925

To entitle employees to family leave in certain cases involving a birth, an adoption, or a serious health condition and to temporary medical leave in certain cases involving a serious health condition, with adequate protection of the employees' employment and benefit rights, and to establish a commission to study ways of providing salary replacement for employees who take any such leave.

#### IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 3, 1987

Mr. CLAY (for himself, Mrs. SCHROEDER, Ms. OAKAR, Mr. MURPHY, Mr. MILLER of California, Mr. ACKERMAN, Mr. AKAKA, Mr. BERMAN, Mr. BIAGI, Mr. BILBRAY, Mr. BONIOR of Michigan, Mrs. BOXER, Mr. COELHO, Mrs. COLLINS, Mr. COYNE, Mr. CROCKETT, Mr. DE LUCA, Mr. DELLUMS, Mr. DOWNEY of New York, Mr. DYMALLY, Mr. EDWARDS of California, Mr. EVANS, Mr. FASCELL, Mr. FAUNTROY, Mr. FAZIO, Mr. FOOLBETTA, Mr. FORD of Tennessee, Mr. FORD of Michigan, Mr. GARCIA, Mr. GERDENSON, Mr. GERHARDT, Mr. GILMAN, Mr. GONZALEZ, Mr. GREEN, Mr. HAYES of Illinois, Mr. JONES of North Carolina, Mr. JONTZ, Mr. KASTENMEIER, Mrs. KENNELLY, Mr. KOLTER, Mr. LEHMAN of Florida, Mr. LELAND, Mr. LEVIN of Michigan, Mr. LOWEY of Washington, Mr. MANTON, Mr. MARKEY, Mr. MARTINEZ, Mr. MCFARLANE, Mr. MINETA, Mr. MOAKLEY, Mr. MOODY, Mr. MORRISON of Connecticut, Mr. OWENS of New York, Mr. RANGEL, Mr. RODINO, Mr. ROYBAL, Mr. SABO, Mr. ST GERMAIN, Mr. SAVAGE, Mr. SCHEUER, Mr. SCHUMER, Mr. SIKORSKI, Mr. SOLARZ, Mr. STABEK, Mr. TOWNS, Mr. VISLOSKY, Mr. WAXMAN, Mr. WEISS, Mr. WHEAT, Mr. YATES, Mr. HOVER, Mr. MCKINNEY, Mr. CONTE, and Mr. OBERSTAE) introduced the following bill; which was referred jointly to the Committees on Education and Labor and Post Office and Civil Service

## A BILL

To entitle employees to family leave in certain cases involving a birth, an adoption, or a serious health condition and to

temporary medical leave in certain cases involving a serious health condition, with adequate protection of the employees' employment and benefit rights, and to establish a commission to study ways of providing salary replacement for employees who take any such leave.

1 *Be it enacted by the Senate and House of Representa-*  
 2 *tives of the United States of America in Congress assembled,*  
 3 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

4 (a) SHORT TITLE.—This Act may be cited as the  
 5 “Family and Medical Leave Act of 1987”.

6 (b) TABLE OF CONTENTS. —

#### TITLE I—GENERAL REQUIREMENTS FOR FAMILY LEAVE AND TEMPORARY MEDICAL LEAVE

- Sec. 101. Definitions.
- Sec. 102. Inapplicability.
- Sec. 103. Family leave requirement.
- Sec. 104. Temporary medical leave requirement.
- Sec. 105. Limitation on combined leave periods.
- Sec. 106. Certification.
- Sec. 107. Employment and benefits protection.
- Sec. 108. Prohibited acts.
- Sec. 109. Administrative enforcement.
- Sec. 110. Enforcement by civil action.
- Sec. 111. Investigative authority.
- Sec. 112. Relief.
- Sec. 113. Notice.

#### TITLE II—FAMILY LEAVE AND TEMPORARY MEDICAL LEAVE FOR CIVIL SERVICE EMPLOYEES

- Sec. 201. Family and temporary medical leave.

#### TITLE III—COMMISSION ON PAID FAMILY AND MEDICAL LEAVE

- Sec. 301. Establishment.
- Sec. 302. Duties.
- Sec. 303. Membership.
- Sec. 304. Compensation.
- Sec. 305. Powers.
- Sec. 306. Termination.

#### TITLE IV—MISCELLANEOUS PROVISIONS

- Sec. 401. Effect on other laws.

- Sec. 402. Effect on existing employment benefits.
- Sec. 403. Encouragement of more generous leave policies.
- Sec. 404. Regulations.
- Sec. 405. Effective dates.

#### 1 SEC. 2. FINDINGS AND PURPOSES.

2 (a) FINDINGS.—The Congress finds that—

3 (1) the number of single-parent households and  
 4 two-parent households in which the single parent or  
 5 both parents work is increasing significantly,

6 (2) it is important to the development of the child  
 7 and to the family unit that fathers and mothers be able  
 8 to participate in early childrearing and the care of their  
 9 family members who have serious health conditions,

10 (3) the lack of employment opportunities to ac-  
 11 commodate working parents can force individuals to  
 12 choose between job security and parenting, and

13 (4) there is inadequate job security for some em-  
 14 ployees who have serious health conditions that pre-  
 15 vent them from working for temporary periods.

16 (b) PURPOSES.—The Congress therefore declares that  
 17 the purposes of this Act are—

18 (1) to balance the demands of the workplace with  
 19 the needs of families, and to promote stability and eco-  
 20 nomic security in families,

21 (2) to entitle employees to take reasonable leave  
 22 for medical reasons, for the birth or adoption of a child,



1 and for the care of a child or parent who has a serious  
 2 health condition, and  
 3 (3) to accommodate the legitimate interests of  
 4 employers.

## 5 TITLE I—GENERAL REQUIREMENTS FOR FAMILY

### 6 LEAVE AND MEDICAL LEAVE

#### 7 SEC. 101. DEFINITIONS.

8 For purposes of this title the following terms have the  
 9 following meanings:

10 (1) The terms "commerce" and "industry or ac-  
 11 tivity affecting commerce" mean any activity, business,  
 12 or industry in commerce or in which a labor dispute  
 13 would hinder or obstruct commerce or the free flow of  
 14 commerce, and include "commerce" and any activity  
 15 or industry "affecting commerce" within the meaning  
 16 of the Labor Management Relations Act, 1947 (29  
 17 U.S.C 141 et seq.).

18 (2) The terms "employ", "person", and "State"  
 19 have the meanings given such terms in sections 3(g),  
 20 3(a), and 3(c), respectively, of the Fair Labor Stand-  
 21 ards Act (29 U.S.C. 203(g), 203(a), 203(c)).

22 (3) The term "employee" means any employee as  
 23 defined in section 3(e) of such Act who is employed (by  
 24 the employer with respect to whom benefits are sought  
 25 under this section) for not less than 3 consecutive

1 months or not less than 500 hours, whichever occurs  
 2 earlier, except that such term does not include any  
 3 Federal officer or employee covered under subchapter  
 4 III of chapter 63 of title 5, United States Code (as  
 5 added by title II of this Act).

6 (4) The term "employer"—

7 (A) means any person who (i) employs 15 or  
 8 more employees for each working day during each  
 9 of 20 or more calendar workweeks in the current  
 10 or preceding calendar year, and (ii) is engaged in  
 11 commerce or in any industry or activity affecting  
 12 commerce;

13 (B) includes (i) any person who acts directly  
 14 or indirectly in the interest of an employer with  
 15 respect to one or more employees, and (ii) any  
 16 successor in interest of such an employer; and

17 (C) includes any public agency, as defined in  
 18 section 3(x) of the Fair Labor Standards Act (29  
 19 U.S.C. 203(x)); and employees of any such em-  
 20 ployer shall be deemed to be employees engaged  
 21 in commerce.

22 (5) The term "employment benefits" means all  
 23 benefits (other than salary or wages) provided or made  
 24 available to employees by an employer, and includes  
 25 group life insurance, health insurance, disability insur-

1      ance, sick leave, annual leave, educational benefits,  
 2      and pensions, regardless of whether such benefits are  
 3      provided by a policy or practice of an employer or by  
 4      an employee benefit plan as defined in section 3(3) of  
 5      the Employee Retirement Income Security Act of  
 6      1974 (29 U.S.C. 1002(1)).

7      (6) The term "health care provider" means—

8              (A) any person licensed under Federal, State,  
 9              or local law to provide health care services, or

10             (B) any other person determined by the  
 11             Secretary to be capable of providing health care  
 12             services.

13      (7) The term "reduced leave schedule" means  
 14      leave scheduled for fewer than an employee's usual  
 15      number of hours per workweek or hours per workday.

16      (8) The term "Secretary" means the Secretary of  
 17      Labor.

18      (9) The term "serious health condition" means an  
 19      illness, injury, impairment, or physical or mental condi-  
 20      tion which involves—

21             (A) inpatient care in a hospital, hospice, or  
 22             residential health care facility, or

23             (B) continuing treatment or continuing super-  
 24             vision by a health care provider.

1      (10) The term "son or daughter" means an indi-  
 2      vidual who is—

3              (A) a biological, adopted, or foster child, a  
 4              stepchild, a legal ward, or a child of a person  
 5              standing in loco parentis, and

6              (B)(i) under 18 years of age, or  
 7              (ii) 18 years of age or older and incapable of  
 8              self-care because of mental or physical disability.

9      (11) The term "parent" means a biological, foster,  
 10      or adoptive parent, a parent-in-law, a stepparent, or a  
 11      legal guardian.

12      SEC. 102. INAPPLICABILITY.

13      The rights provided under this title shall not apply with  
 14      respect to employees of any facility of an employer at which  
 15      fewer than 15 employees are employed if the combined  
 16      number of employees employed by the employer within 200  
 17      miles of the facility is fewer than 15.

18      SEC. 103. FAMILY LEAVE REQUIREMENT.

19      (a) IN GENERAL.—(1) An employee shall be entitled to  
 20      a total of 18 workweeks of family leave during any 24-month  
 21      period—

22             (A) because of the birth of a son or daughter of  
 23             the employee,

24             (B) because of the placement of a son or daughter  
 25             with the employee for adoption or foster care, and

1 (C) in order to care for the employee's son,  
2 daughter, or parent who has a serious health condition.

3 (2) The entitlement to leave under paragraphs (1)(A)  
4 and (1)(B) shall expire at the end of the 12-month period  
5 beginning after the date of such birth or placement.

6 (3) In the case of a son, daughter, or parent who has a  
7 serious health condition, such leave may be taken intermit-  
8 tently when medically necessary.

9 (b) **REDUCED LEAVE.**—Such leave may be taken on a  
10 reduced leave schedule, in which case—

11 (A) the total period during which the 18 work-  
12 weeks may be taken may not exceed 36 consecutive  
13 workweeks, and

14 (B) such leave shall be scheduled so as not to dis-  
15 rupt unduly the operations of the employer.

16 (c) **UNPAID LEAVE PERMITTED.**—Such leave may con-  
17 sist of unpaid leave, except as provided in subsection (d).

18 (d) **RELATIONSHIP TO PAID LEAVE.**—(1) If an employ-  
19 er provides paid family leave for fewer than 18 workweeks,  
20 the additional weeks of leave added to attain the 18-work-  
21 week total may be unpaid.

22 (2) An employee or employer may elect to substitute  
23 any of the employee's paid vacation leave, personal leave, or  
24 family leave for any part of the 18-week period.

1 (e) **FORESEEABLE LEAVE.**—(1) In any case in which  
2 the necessity for leave under this section is foreseeable based  
3 on an expected birth or adoption, the employee shall provide  
4 the employer with prior notice of such expected birth or  
5 adoption in a manner which is reasonable and practicable.

6 (2) In any case in which the necessity for leave under  
7 this section is foreseeable based on planned medical treat-  
8 ment or supervision, the employee—

9 (A) shall make a reasonable effort to schedule the  
10 treatment or supervision so as not to disrupt unduly  
11 the operations of the employer, subject to the approval  
12 of the health care provider of the employee's son,  
13 daughter, or parent, and

14 (B) shall provide the employer with prior notice of  
15 the treatment or supervision in a manner which is rea-  
16 sonable and practicable.

17 **SEC. 104. TEMPORARY MEDICAL LEAVE REQUIREMENT.**

18 (a) **IN GENERAL.**—(1) Any employee who, because of a  
19 serious health condition, becomes unable to perform the func-  
20 tions of such employee's position, shall be entitled to tempo-  
21 rary medical leave. Such entitlement shall continue for as  
22 long as the employee is unable to perform such functions,  
23 except that it shall not exceed 26 workweeks during any  
24 12-month period.

1 (2) Such leave may be taken intermittently when medi-  
2 cally necessary.

3 (b) UNPAID LEAVE PERMITTED.—Such leave may con-  
4 sist of unpaid leave, except as provided in subsection (c).

5 (c) RELATIONSHIP TO PAID LEAVE.—(1) If an employ-  
6 er provides paid temporary medical leave or paid sick leave  
7 for fewer than 26 weeks, the additional weeks of leave added  
8 to attain the 26-week total may be unpaid.

9 (2) An employee or employer may elect to substitute the  
10 employee's accrued paid vacation leave, sick leave, or medi-  
11 cal leave for any part of the 26-week period, except that  
12 nothing in this Act shall require an employer to provide paid  
13 sick leave or medical leave in any situation in which the em-  
14 ployer does not normally provide such leave.

15 (d) FORESEEABLE LEAVE.—In any case in which the  
16 necessity for leave under this section is foreseeable based on  
17 planned medical treatment or supervision, the employee—

18 (1) shall make a reasonable effort to schedule the  
19 treatment or supervision so as not to disrupt unduly  
20 the operations of the employer, subject to the approval  
21 of the employee's health care provider, and

22 (2) shall provide the employer with prior notice of  
23 the treatment or supervision in a manner which is rea-  
24 sonable and practicable.

1 SEC. 105. LIMITATION ON COMBINED LEAVE PERIODS.

2 An employer may limit the combined number of work-  
3 weeks of family leave and temporary medical leave provided  
4 under this title to not less than 36 workweeks during any  
5 12-month period.

6 SEC. 106. CERTIFICATION.

7 (a) IN GENERAL.—An employer may require that a  
8 claim for family leave under section 103(a)(1)(C), or tempo-  
9 rary medical leave under section 104, be supported by certifi-  
10 cation issued by the health care provider of the son, daugh-  
11 ter, or parent, or of the employee, whichever is appropriate.  
12 The employee shall provide a copy of such certification to the  
13 employer.

14 (b) SUFFICIENT CERTIFICATION.—Such certification  
15 shall be sufficient if it states—

16 (1) the date on which the serious health condition  
17 commenced,

18 (2) the probable duration of the condition, and

19 (3) the medical facts within the health care pro-  
20 vider's knowledge regarding the condition.

21 (c) EXPLANATION OF INABILITY TO PERFORM JOB  
22 FUNCTIONS.—The employer may request that (for purposes  
23 of section 107(c)) certification under this section that is issued  
24 in any case involving leave under section 104 include an ex-  
25 planation of the extent to which the employee is unable to  
26 perform the functions of the employee's position.

1 (d) SECOND OPINION.—The employer may require, at  
2 its own expense, that the employee obtain the opinion of a  
3 second health care provider concerning any information certi-  
4 fied under subsection (b).

5 SEC. 107. EMPLOYMENT AND BENEFITS PROTECTION.

6 (a) RESTORATION TO POSITION.—(1) Upon return  
7 from leave under section 103 or 104, the employee shall be  
8 entitled—

9 (A) to be restored by the employer to the position  
10 of employment held by the employee when the leave  
11 commenced, or

12 (B) to be restored to an equivalent position with  
13 equivalent employment benefits, pay, and other terms  
14 and conditions of employment.

15 (2) The taking of leave under this title shall not result in  
16 the loss of any employment benefit accrued before the date  
17 on which the leave commenced.

18 (3) Except as provided in subsection (b), nothing in this  
19 section shall be construed to entitle any restored employee to  
20 (A) the accrual of any seniority or employment benefits  
21 during any period of leave, or (B) any right, employment ben-  
22 efit, or position of employment other than any right, employ-  
23 ment benefit, or position to which the employee would have  
24 been entitled had the employee not taken the leave.

1 (b) MAINTENANCE OF HEALTH BENEFITS.—During  
2 any period an employee takes leave under section 103 or  
3 104, the employer shall maintain coverage under any group  
4 health plan (as defined in section 162(j)(3) of the Internal  
5 Revenue Code of 1954) for the duration of such leave at the  
6 level and under the conditions coverage would have been  
7 provided if the employee had continued in employment con-  
8 tinuously from the date the employee commenced the leave  
9 until the date the employee is restored under subsection (a).

10 (c) NO BAR TO AGREEMENT CONCERNING ALTERNA-  
11 TIVE EMPLOYMENT.—Nothing in this title shall be construed  
12 to prohibit an employer and an employee with a serious  
13 health condition from mutually agreeing to alternative em-  
14 ployment for the employee throughout the duration of such  
15 condition. Any such period of alternative employment shall  
16 not cause a reduction in the period of temporary medical  
17 leave to which the employee is entitled under section 104.

18 SEC. 108. PROHIBITED ACTS.

19 (a) INTERFERENCE WITH RIGHTS.—(1) It shall be un-  
20 lawful for any employer to interfere with, restrain, or deny  
21 the exercise of or the attempt to exercise, any right provided  
22 under this title.

23 (2) It shall be unlawful for any employer to discharge or  
24 in any other manner discriminate against any individual for  
25 opposing any practice made unlawful by this title.

1 (b) INTERFERENCE WITH PROCEEDINGS OR INQUIRIES.—It shall be unlawful for any person to discharge or in  
2  
3 any other manner discriminate against any individual because  
4 such individual—

5 (1) has filed any charge, or has instituted or  
6 caused to be instituted any proceeding, under or relat-  
7 ed to this title,

8 (2) has given or is about to give any information  
9 in connection with any inquiry or proceeding relating  
10 to any right provided under this title, or

11 (3) has testified or is about to testify in any in-  
12 quiry or proceeding relating to any right provided  
13 under this title.

14 SEC. 109. ADMINISTRATIVE ENFORCEMENT.

15 (a) IN GENERAL.—The Secretary shall issue such rules  
16 and regulations as are necessary to carry out this section,  
17 including rules and regulations concerning service of com-  
18 plaints, notice of hearings, answers and amendments to com-  
19 plaints, and copies of orders and records of proceedings.

20 (b) CHARGES.—(1) Any person (or person, including a  
21 class or organization, on behalf of any person) alleging an act  
22 which violates any provision of this title may file a charge  
23 respecting such violation with the Secretary. Charges shall  
24 be in such form and contain such information as the Secre-  
25 tary shall require by regulation.

1 (2) Not more than 10 days after the Secretary receives  
2 notice of the charge, the Secretary—

3 (A) shall serve a notice of the charge on the  
4 person charged with the violation, and

5 (B) shall inform such person and the charging  
6 party as to the rights and procedures provided under  
7 this title.

8 (3) A charge may not be filed more than 1 year after the  
9 last event constituting the alleged violation.

10 (4) The charging party and the person charged with the  
11 violation may enter into a settlement agreement concerning  
12 the violation alleged in the charge before any determination  
13 is reached by the Secretary under subsection (c). To be effec-  
14 tive such an agreement must be determined by the Secretary  
15 to be consistent, generally, with the purposes of this title.

16 (c) INVESTIGATION; COMPLAINT.—(1) Within the 60-  
17 day period after the Secretary receives any charge, the Sec-  
18 retary shall investigate the charge and issue a complaint  
19 based on the charge or dismiss the charge.

20 (2) If the Secretary determines that there is no reasona-  
21 ble basis for the charge, the Secretary shall dismiss the  
22 charge and promptly notify the charging party and the person  
23 charged with the violation as to the dismissal.

24 (3) If the Secretary determines that there is a reasona-  
25 ble basis for the charge, the Secretary shall issue a complaint

1 based on the charge and promptly notify the charging party  
2 and the respondent as to the issuance.

3 (4) After issuance of a complaint, the Secretary and the  
4 respondent may enter into a settlement agreement concern-  
5 ing a violation alleged in the complaint, except that any such  
6 settlement shall not be entered into over the objection of the  
7 charging party.

8 (5) If, at the end of the 60-day period referred to in  
9 paragraph (1), the Secretary—

10 (A) has not made a determination under para-  
11 graph (2) or (3),

12 (B) has dismissed the charge under paragraph (2),  
13 or

14 (C) has not approved a settlement agreement  
15 under subsection (b)(4) or has not entered into a settle-  
16 ment agreement under paragraph (4) of this subsection,  
17 the charging party may elect to bring a civil action under  
18 section 110. Such election shall bar further administrative  
19 action by the Secretary with respect to the violation alleged  
20 in the charge.

21 (6) The Secretary may issue and serve a complaint al-  
22 leging a violation of this title on the basis of information and  
23 evidence gathered as a result of an investigation initiated by  
24 the Secretary pursuant to section 111.

1 (7) The Secretary shall have the power to petition the  
2 United States district court for the district in which the viola-  
3 tion is alleged to have occurred, or in which the respondent  
4 resides or transacts business, for appropriate temporary relief  
5 or restraining order. Upon the filing of any such petition, the  
6 court shall cause notice of the petition to be served upon the  
7 respondent, and the court shall have jurisdiction to grant to  
8 the Secretary such temporary relief or restraining order as it  
9 deems just and proper.

10 (d) RIGHTS OF PARTIES.—(1) In any case in which a  
11 complaint is issued under subsection (c), the Secretary shall,  
12 not more than 30 days after the complaint is issued, cause to  
13 be served on the respondent a copy of the complaint.

14 (2) Any person filing a charge alleging a violation of this  
15 title may elect to be a party to any complaint filed by the  
16 Secretary alleging such violation. Such election must be  
17 made before the commencement of the hearing.

18 (3) The failure of the Secretary to comply in a timely  
19 manner with any obligation assigned to the Secretary under  
20 this title shall entitle the employee to elect, at the time of  
21 such failure, to bring a civil action under section 110.

22 (4) Nothing in this section shall be construed to entitle  
23 the respondent to interfere with the performance of the func-  
24 tions assigned to the Secretary under this title, notwithstand-

1 ing any failure by the Secretary to strictly comply with any  
2 requirements relating to the exercise of such functions.

3 (e) CONDUCT OF HEARING.—(1) The Secretary shall  
4 have the duty to prosecute any complaint issued under sub-  
5 section (c).

6 (2) An administrative law judge shall conduct a hearing  
7 on the record with respect to any complaint issued under this  
8 title. The hearing shall be commenced within 60 days after  
9 the issuance of such complaint, unless the judge, in the  
10 judge's discretion, determines that the purposes of this Act  
11 would best be furthered by commencement of the action after  
12 the expiration of such period.

13 (f) FINDINGS AND CONCLUSIONS.—(1) After the hear-  
14 ing conducted under this section, the administrative law  
15 judge shall promptly make findings of fact and conclusions of  
16 law, and, if appropriate, issue an order for relief as provided  
17 in section 112.

18 (2) The administrative law judge shall inform the par-  
19 ties, in writing, of the reason for any delay in making such  
20 findings and conclusions if such findings and conclusions are  
21 not made within 60 days after the conclusion of such hearing.

22 (g) FINALITY OF DECISION; REVIEW.—(1) The deci-  
23 sion and order of the administrative law judge shall become  
24 the final decision and order of the agency unless, upon appeal  
25 by an aggrieved party taken not more than 30 days after

1 such action, the Secretary modifies or vacates the decision, in  
2 which case the decision of the Secretary shall be the final  
3 decision and the order of the agency.

4 (2) Not later than 60 days after the entry of such final  
5 order, any person aggrieved by such final order may seek a  
6 review of such order in the United States court of appeals for  
7 the circuit in which the violation is alleged to have occurred  
8 or in which the employer resides or transacts business.

9 (3) Upon the filing of the record with the court, the  
10 jurisdiction of the court shall be exclusive and its judgment  
11 shall be final, except that the same shall be subject to review  
12 by the Supreme Court of the United States upon writ of cer-  
13 tiarari or certification as provided in section 1254 of title 28,  
14 United States Code.

15 (h) COURT ENFORCEMENT OF ADMINISTRATIVE  
16 ORDERS.—(1) If an order of the agency is not appealed  
17 under subsection (g)(2), the Secretary may petition the  
18 United States district court for the district in which the viola-  
19 tion is alleged to have occurred, or in which the respondent  
20 resides or transacts business, for the enforcement of the order  
21 of the Secretary, by filing in such court a written petition  
22 praying that such order be enforced.

23 (2) Upon the filing of such petition, the court shall have  
24 jurisdiction to make and enter a decree enforcing the order of



1 the Secretary. In such a proceeding, the order of the Secretary shall not be subject to review.

3 (3) If, upon appeal of an order under subsection (g)(2), the United States court of appeals does not reverse such order, such court shall have the jurisdiction to make and enter a decree enforcing the order of the Secretary.

#### 7 SEC. 110. ENFORCEMENT BY CIVIL ACTION.

8 (a) RIGHT TO BRING CIVIL ACTION.—(1) Subject to the limitations in this section, an employee or the Secretary may bring a civil action against any employer to enforce the provisions of this title in any appropriate court of the United States or in any State court of competent jurisdiction.

13 (2) Subject to paragraph (3), a civil action may be commenced under this subsection without regard to whether a charge has been filed under section 109(b).

16 (3) If the Secretary—

17 (A) has approved a settlement agreement under section 109(b)(4), no civil action may be filed under this subsection if such action is based upon a violation alleged in the charge and resolved by the agreement, or

22 (B) has issued a complaint under section 109(c)(3) or 109(c)(6), no civil action may be filed under this subsection if such action is based upon a violation alleged in the complaint.

1 (4) Notwithstanding paragraph (3)(A), a civil action may be commenced to enforce the terms of any such settlement agreement.

4 (5)(A) Except as provided in subparagraph (B), no civil action may be commenced more than 1 year after the date on which the alleged violation occurred.

7 (B) In any case in which—

8 (i) a timely charge is filed under section 109(b), and

10 (ii) the failure of the Secretary to issue a complaint or enter into a settlement agreement based on the charge (as provided under section 109(c)(5)) occurs more than 11 months after the date on which any alleged violation occurred,

15 the employees may commence a civil action not more than 60 days after the date of such failure.

17 (6) The Secretary may not bring a civil action against any agency of the United States.

19 (7) Upon the filing of the complaint with the court, the jurisdiction of the court shall be exclusive.

21 (b) VENUE.—An action brought under subsection (a) in a district court of the United States may be brought—

23 (1) in any appropriate judicial district under section 1391 of title 28, United States Code, or

25 (2) in the judicial district in the State in which—

1 (A) the employment records relevant to such  
 2 violation are maintained and administered; or  
 3 (B) the aggrieved person worked or would  
 4 have worked but for the alleged violation.

5 (c) NOTIFICATION OF THE SECRETARY; RIGHT TO IN-  
 6 Tervene.—A copy of the complaint in any action by an em-  
 7 ployee under subsection (a) shall be served upon the Secre-  
 8 tary by certified mail. The Secretary shall have the right to  
 9 intervene in a civil action brought by an employee under such  
 10 subsection.

11 (d) ATTORNEYS FOR THE SECRETARY.—In any civil  
 12 action under subsection (a), attorneys appointed by the Secre-  
 13 tary may appear for and represent the Secretary, except that  
 14 the Attorney General and the Solicitor General shall conduct  
 15 any litigation in the Supreme Court.

#### 16 SEC. 111. INVESTIGATIVE AUTHORITY.

17 (a) IN GENERAL.—To ensure compliance with the pro-  
 18 visions of this title, or any regulation or order issued under  
 19 this title, the Secretary shall have, subject to subsection (c),  
 20 the investigative authority provided under section 11(a) of the  
 21 Fair Labor Standards Act of 1938 (29 U.S.C. 211(a)).

22 (b) OBLIGATION TO KEEP AND PRESERVE  
 23 RECORDS.—Any employer shall keep and preserve records  
 24 in accordance with section 11(c) of such Act and in accord-  
 25 ance with regulations issued by the Secretary.

1 (c) REQUIRED SUBMISSIONS GENERALLY LIMITED TO  
 2 AN ANNUAL BASIS.—The Secretary may not under the au-  
 3 thority of this section require any employer or any plan, fund,  
 4 or program to submit to the Secretary any books or records  
 5 more than once during any 12-month period, unless the Sec-  
 6 retary has reasonable cause to believe there may exist a vio-  
 7 lation of this title or any regulation or order issued pursuant  
 8 to this title, or is investigating a charge pursuant to section  
 9 109.

10 (d) SUBPOENA POWERS, ETC.—For the purposes of  
 11 any investigation provided for in this section, the Secretary  
 12 shall have the subpoena authority provided under section 9 of  
 13 the Fair Labor Standards Act of 1938 (29 U.S.C. 209).

14 (e) DISSEMINATION OF INFORMATION.—The Secretary  
 15 may make available to any person substantially affected by  
 16 any matter which is the subject of an investigation under this  
 17 section, and to any department or agency of the United  
 18 States, information concerning any matter which may be the  
 19 subject of such investigation.

#### 20 SEC. 112. RELIEF.

21 (a) INJUNCTIVE.—(1) Upon finding a violation under  
 22 section 109, the administrative law judge shall issue an order  
 23 requiring such person to cease and desist from any act or  
 24 practice which violates this title.

1 (2) In any civil action brought under section 110, the  
2 court may grant as relief any permanent or temporary injunc-  
3 tion, temporary restraining order, and other equitable relief  
4 as the court deems appropriate.

5 (b) **MONEY.**—Any employer that violates any provi-  
6 sion of this title shall be liable to the injured party in an  
7 amount equal to—

8 (1) any wages, salary, employment benefits, or  
9 other compensation denied or lost to such employee by  
10 reason of the violation, plus interest on the total mone-  
11 tary damages calculated at the prevailing rate, and

12 (2) an additional amount equal to the greater of  
13 (A) the amount determined under paragraph (1), or (B)  
14 consequential damages.

15 (c) **ATTORNEYS' FEES.**—The prevailing party (other  
16 than the United States) may be awarded a reasonable attor-  
17 neys' fee as part of the costs, in addition to any relief award-  
18 ed. The United States shall be liable for costs the same as a  
19 private person.

20 (d) **LIMITATION.**—Damages awarded under subsection  
21 (b) may not accrue from a date more than 2 years before the  
22 date on which a charge is filed under section 109(b) or a civil  
23 action is brought under section 110.

1 **SEC. 112. NOTICE.**

2 (a) **IN GENERAL.**—Each employer shall post and keep  
3 posted, in conspicuous places upon its premises where notices  
4 to employees and applicants for employment are customarily  
5 posted, a notice, to be approved by the Secretary, setting  
6 forth excerpts from, or summaries of, the pertinent provisions  
7 of this title and information pertaining to the filing of a  
8 charge.

9 (b) **PENALTY.**—Any employer that willfully violates this  
10 section shall be assessed a civil money penalty not to exceed  
11 \$100 for each separate offense.

12 **TITLE II—FAMILY LEAVE AND TEMPORARY**  
13 **MEDICAL LEAVE FOR CIVIL SERVICE EM-**  
14 **PLOYEES**

15 **SEC. 201. FAMILY AND TEMPORARY MEDICAL LEAVE.**

16 (a) **IN GENERAL.**—(1) Chapter 63 of title 5, United  
17 States Code, is amended by adding at the end thereof the  
18 following new subchapter:

19 **“SUBCHAPTER III—FAMILY AND TEMPORARY**  
20 **MEDICAL LEAVE**

21 **“§ 6331. Definitions**

22 **“For purposes of this subchapter—**

23 **“(1) ‘employee’ means—**

24 **“(A) an employee as defined by section**  
25 **6301(2) of this title (excluding an individual**

1 employed by the government of the District of  
2 Columbia); and

3 "(B) an individual under clause (v) or (ix) of  
4 such section;

5 whose employment is other than on a temporary or  
6 intermittent basis;

7 "(2) 'serious health condition' means an illness,  
8 injury, impairment, or physical or mental condition  
9 which involves—

10 "(A) inpatient care in a hospital, hospice, or  
11 residential health care facility; or

12 "(B) continuing treatment, or continuing su-  
13 pervision, by a health care provider;

14 "(3) 'child' means an individual who is—

15 "(A) a biological, adopted, or foster child, a  
16 stepchild, a legal ward, or a child of a person  
17 standing in loco parentis, and

18 "(B)(i) under 18 years of age, or

19 "(ii) 18 years of age or older and incapable  
20 of self-care because of mental or physical disabil-  
21 ity; and

22 "(4) 'parent' means a biological, foster, or adop-  
23 tive parent, a parent-in-law, a stepparent, or a legal  
24 guardian.

1 "§ 6332. Family leave

2 "(a) Leave under this section shall be granted on the  
3 request of an employee if such leave is requested—

4 "(1) because of the birth of a child of the  
5 employee;

6 "(2) because of the placement for adoption or  
7 foster care of a child with the employee; or

8 "(3) in order to care for the employee's child or  
9 parent who has a serious health condition.

10 "(b) Leave under this section—

11 "(1) shall be leave without pay;

12 "(2) may not, in the aggregate, exceed the equiv-  
13 alent of 18 administrative workweeks of the employee  
14 during any 24-month period; and

15 "(3) shall be in addition to any annual leave, sick  
16 leave, temporary medical leave, or other leave or com-  
17 pensatory time off otherwise available to the employee.

18 "(c) An employee may elect to use leave under this  
19 section—

20 "(1) immediately before or after (or otherwise in  
21 coordination with) any period of annual leave, or  
22 compensatory time off, otherwise available to the  
23 employee;

24 "(2) under a method involving a reduced workday,  
25 a reduced workweek, or other alternative work  
26 schedule;

1       “(3) on either a continuing or intermittent basis;

2       or

3       “(4) any combination thereof.

4       “(d)(1) In any case in which the necessity for leave  
5 under this section is foreseeable based on an expected birth  
6 or adoption, the employee shall provide the employing  
7 agency with prior notice of such expected birth or adoption in  
8 a manner which is reasonable and practicable.

9       “(2) In any case in which the necessity for leave under  
10 this section is foreseeable based on planned medical treat-  
11 ment or supervision, the employee—

12       “(A) shall make a reasonable effort to schedule  
13 the treatment or supervision so as not to disrupt  
14 unduly the operations of the employing agency, subject  
15 to the approval of the health care provider of the em-  
16 ployee's child or parent; and

17       “(B) shall provide the employing agency with  
18 prior notice of the treatment or supervision in a  
19 manner which is reasonable and practicable.

#### 20   “8 6333. Temporary medical leave

21       “(a) An employee who, because of a serious health con-  
22 dition, becomes unable to perform the functions of such em-  
23 ployee's position shall, on request of the employee, be enti-  
24 tled to leave under this section.

25       “(b) Leave under this section—

1       “(1) shall be leave without pay;

2       “(2) shall be available for the duration of the seri-  
3 ous health condition of the employee involved, but may  
4 not, in the aggregate, exceed the equivalent of 26 ad-  
5 ministrative workweeks of the employee during any  
6 12-month period; and

7       “(3) shall be in addition to any annual leave, sick  
8 leave, family leave, or other leave or compensatory  
9 time off otherwise available to the employee.

10       “(c) An employee may elect to use leave under this  
11 section—

12       “(1) immediately before or after (or otherwise in  
13 coordination with) any period of annual leave, sick  
14 leave, or compensatory time off otherwise available to  
15 the employee;

16       “(2) under a method involving a reduced workday,  
17 a reduced workweek, or other alternative work  
18 schedule;

19       “(3) on either a continuing or intermittent basis;  
20 or

21       “(4) any combination thereof.

22       “(d) In any case in which the necessity for leave under  
23 this section is foreseeable based on planned medical treat-  
24 ment or supervision, the employee—

1       “(1) shall make a reasonable effort to schedule the  
 2       treatment or supervision so as not to disrupt unduly  
 3       the operations of the employing agency, subject to the  
 4       approval of the employee's health care provider; and  
 5       “(2) shall provide the employing agency with  
 6       prior notice of the treatment or supervision in a  
 7       manner which is reasonable and practicable.

#### 8   **“§ 6334. Certification**

9       “(a) An employing agency may require that a request  
 10      for family leave under subsection (a)(3) or (a)(4) of section  
 11      6332 or temporary medical leave under section 6333 be sup-  
 12      ported by certification issued by the health care provider of  
 13      the employee or of the employees' child or parent, whichever  
 14      is appropriate. The employee shall provide a copy of such  
 15      certification to the employing agency.

16      “(b) Such certification shall be sufficient if it states—

17      “(1) the date on which the serious health condi-  
 18      tion commenced;

19      “(2) the probable duration of the condition;

20      “(3) the medical facts within the provider's knowl-  
 21      edge regarding the condition; and

22      “(4) for purposes of section 6333, a statement  
 23      that the employee is unable to perform the functions of  
 24      the employee's position.

#### 1   **“§ 6335. Job protection**

2       “An employee who uses leave under section 6332 or  
 3       6333 of this title is entitled to be restored to the position held  
 4       by such employee immediately before the commencement of  
 5       such leave.

#### 6   **“§ 6336. Prohibition of coercion**

7       “(a) An employee may not directly or indirectly intimi-  
 8       date, threaten, or coerce, or attempt to intimidate, threaten,  
 9       or coerce, any other employee for the purpose of interfering  
 10      with such employee's rights under this subchapter.

11      “(b) For the purpose of this section, ‘intimidate, threat-  
 12      en, or coerce’ includes promising to confer or conferring any  
 13      benefit (such as appointment, promotion, or compensation), or  
 14      effecting or threatening to effect any reprisal (such as depri-  
 15      vation of appointment, promotion, or compensation).

#### 16   **“§ 6337. Health insurance**

17      “An employee enrolled in a health benefits plan under  
 18      chapter 89 of this title who is placed in a leave status under  
 19      section 6332 or 6333 of this title may elect to continue the  
 20      employee's health benefits enrollment while in such leave  
 21      status and arrange to pay into the Employees Health Bene-  
 22      fits Fund (described in section 8909 of this title), through that  
 23      individual's employing agency, the appropriate employee  
 24      contributions.

1 "§ 6338. Regulations

2 "The Office of Personnel Management shall prescribe  
3 regulations necessary for the administration of this subchap-  
4 ter. The regulations prescribed under this subchapter shall be  
5 consistent with the regulations prescribed by the Secretary of  
6 Labor under title I of the Family and Medical Leave Act of  
7 1987."

8 (2) The table of contents for chapter 63 of title 5,  
9 United States Code, is amended by adding at the end thereof  
10 the following:

"SUBCHAPTER III—FAMILY AND TEMPORARY MEDICAL LEAVE

"6331. Definitions.

"6332. Family leave.

"6333. Temporary medical leave.

"6334. Certification.

"6335. Job protection.

"6336. Prohibition of coercion.

"6337. Health insurance.

"6338. Regulations."

11 (b) EMPLOYEES PAID FROM NONAPPROPRIATED  
12 FUNDS.—Section 2105(c)(1) of title 5, United States Code, is  
13 amended by striking out "53" and inserting in lieu thereof  
14 "53, subchapter III of chapter 63,".

15 TITLE III—COMMISSION ON PAID FAMILY AND  
16 MEDICAL LEAVE

17 SEC. 301. ESTABLISHMENT.

18 There is established a commission to be known as the  
19 Commission on Paid Family and Medical Leave (hereinafter  
20 in this title referred to as the "Commission").

1 SEC. 302. DUTIES.

2 The Commission shall—

- 3 (1) conduct a comprehensive study of existing and
- 4 proposed methods designed to provide workers with
- 5 family leave and temporary medical leave and with full
- 6 or partial salary replacement or other income protec-
- 7 tion during periods of such leave, and
- 8 (2) within 2 years after the date on which the
- 9 Commission first meets, submit a report to the Con-
- 10 gress, including legislative recommendations concerning
- 11 implementation of such a system of salary replacement
- 12 for family leave and temporary medical leave.

13 SEC. 303. MEMBERSHIP.

14 (a) COMPOSITION.—The Commission shall be composed  
15 of 15 members appointed not more than 60 days after the  
16 date of the enactment of this Act as follows:

17 (1) Three Senators shall be appointed by the ma-  
18 jority leader of the Senate, in consultation with the mi-  
19 nority leader of the Senate.

20 (2) Three members of the House of Representa-  
21 tives shall be appointed by the Speaker of the House of  
22 Representatives, in consultation with the minority  
23 leader of the House of Representatives.

24 (3) The Secretary of Health and Human Services.  
25 (4) The Secretary of Labor.

1 (5) Seven members shall be appointed jointly by  
 2 the majority leader of the Senate and the Speaker of  
 3 the House of Representatives. Such members shall be  
 4 appointed by virtue of demonstrated expertise in rele-  
 5 vant family, temporary disability, and labor-manage-  
 6 ment issues.

7 (b) VACANCIES.—Any vacancy on the Commission  
 8 shall be filled in the manner in which the original appoint-  
 9 ment was made.

10 (c) CHAIRPERSON AND VICE CHAIRPERSON.—The  
 11 Commission shall elect a chairperson and a vice chairperson  
 12 from among its members.

13 (d) QUORUM.—Eight members of the Commission shall  
 14 constitute a quorum for all purposes, except that a lesser  
 15 number may constitute a quorum for the purpose of holding  
 16 hearings.

#### 17 SEC. 304. COMPENSATION.

18 (a) PAY.—Members of the Commission shall serve with-  
 19 out compensation.

20 (b) TRAVEL EXPENSES.—Members of the Commission  
 21 shall be allowed reasonable travel expenses, including a per  
 22 diem allowance, in accordance with section 5703 of title 5,  
 23 United States Code, when performing duties of the  
 24 Commission.

#### 1 SEC. 305. POWERS.

2 (a) MEETINGS.—The Commission shall first meet not  
 3 more than 30 days after the date on which members are ap-  
 4 pointed, and the Commission shall meet thereafter upon the  
 5 call of the chairperson or a majority of the members.

6 (b) HEARINGS AND SESSIONS.—The Commission may  
 7 hold such hearings, sit and act at such times and places, take  
 8 such testimony, and receive such evidence as the Commission  
 9 considers appropriate. The Commission may administer oaths  
 10 or affirmations to witnesses appearing before it.

11 (c) ACCESS TO INFORMATION.—The Commission may  
 12 secure directly from any Federal agency information neces-  
 13 sary to enable it to carry out this title. Upon the request of  
 14 the chairperson or vice chairperson of the Commission, the  
 15 head of such agency shall furnish such information to the  
 16 Commission.

17 (d) EXECUTIVE DIRECTOR.—The Commission may ap-  
 18 point an Executive Director from the personnel of any Feder-  
 19 al agency to assist the Commission in carrying out its duties.

20 (e) USE OF SERVICES AND FACILITIES.—Upon the re-  
 21 quest of the Commission, the head of any Federal agency  
 22 may make available to the Commission any of the facilities  
 23 and services of such agency.

24 (f) PERSONNEL FROM OTHER AGENCIES.—Upon the  
 25 request of the Commission, the head of any Federal agency



1 may detail any of the personnel of such agency to assist the  
 2 Commission in carrying out its duties.

### 3 SEC. 306. TERMINATION.

4 The Commission shall terminate 30 days after the date  
 5 of the submission of its report to the Congress.

## 6 TITLE IV—MISCELLANEOUS PROVISIONS

### 7 SEC. 401. EFFECT ON OTHER LAWS.

8 (a) FEDERAL LAWS.—Nothing in this Act shall be con-  
 9 strued to modify or affect any Federal law prohibiting dis-  
 10 crimination on the basis of race, religion, color, national  
 11 origin, sex, age, or handicapped status.

12 (b) STATE AND LOCAL LAWS.—Nothing in this Act  
 13 shall be construed to supersede any provision of any State  
 14 and local law which provides greater employee family or  
 15 medical leave rights than the rights established under this  
 16 Act.

### 17 SEC. 402. EFFECT ON EXISTING EMPLOYMENT BENEFITS.

18 (a) MORE PROTECTIVE.—Nothing in this Act shall be  
 19 construed to diminish an employer's obligation to comply  
 20 with any collective-bargaining agreement or any employment  
 21 benefit program or plan which provides greater family and  
 22 medical leave rights to employees than the rights provided  
 23 under this Act.

24 (b) LESS PROTECTIVE.—The rights provided to em-  
 25 ployees under this Act may not be diminished by any collec-

1 tive bargaining agreement or any employment benefit pro-  
 2 gram or plan.

### 3 SEC. 403. ENCOURAGEMENT OF MORE GENEROUS LEAVE 4 POLICIES.

5 Nothing this Act shall be construed to discourage em-  
 6 ployers from adopting leave policies more generous than any  
 7 policies which comply with the requirements under this Act.

### 8 SEC. 404. REGULATIONS.

9 The Secretary shall prescribe such regulations as are  
 10 necessary to carry out title I of this Act.

### 11 SEC. 405. EFFECTIVE DATES.

12 (a) TITLE III.—Title III shall take effect on the date of  
 13 the enactment of this Act.

14 (b) OTHER TITLES.—(1) Except as provided in para-  
 15 graph (2), titles I, II, and IV shall take effect 6 months after  
 16 the date of the enactment of this Act.

17 (2) In the case of a collective bargaining agreement in  
 18 effect on the date of the enactment of this Act, title I shall  
 19 apply on the earlier of—

20 (A) the date of the termination of such agreement,  
 21 or

22 (B) the date which occurs 12 months after the  
 23 date of the enactment of this Act.

## Appendix F

### G. Legislation Is Not Cost Free

The contention that "unpaid leave" would not cost anything is not true. The costs are substantial, as the following estimates of both the overall cost, as well as the cost in one specific instance, demonstrate.

The following cost analysis is a conservative estimate prepared by the U.S. Chamber's Economic Policy staff. Admittedly, this macro estimate is based on a "worst cause scenario" that can be modified based on actual utilization statistics.

#### COST OF H.R. 925 TO EMPLOYERS AND ECONOMY (annually)

<u>BENEFIT</u>	<u>COST</u> (millions)
Parental Leave:	
- continued health insurance	\$ 1,235.2
- higher cost of replacing workers on unpaid leave	\$ 9,431.9
- federal government cost to administer new law	\$ 40.2
- regulatory cost to employers of administration and paperwork	(cannot be determined at this time)
- lost productivity resulting from shift from experienced help	\$ 5,507.5
<u>Potential Cost of Parental Leave</u> <u>Portion of H.R. 925</u>	<u>\$16,214.8</u>
Short-Term Disability Benefits:	
- continued health insurance	\$ 835.5
- net cost of replacement personnel	\$ 6,378.3
- lost productivity resulting from inexperienced personnel	\$ 3,743.2
<u>Potential Cost of Short-Term Disability</u> <u>Portion of H.R. 925</u>	<u>\$10,957.0</u>
<u>Total Potential Costs of H.R. 925 as</u> <u>Currently Written</u>	<u>\$27,171.8</u>

ADDITIONAL COSTS FROM POTENTIAL EXPANSION OF BENEFITS

<u>BENEFIT</u>	<u>COST</u> (millions)
Paid benefits for parental leave -- at full pay	\$29,311.2
Paid benefits for short-term disability benefits -- at full pay	\$19,118.1
Paid benefits for parental leave -- at unemployment insurance rates	\$10,100.0
Paid benefits for temporary disability -- at unemployment insurance rates	\$ 6,888.5

The cost of H.R. 925, as currently written (excluding eldercare costs), would result in a cost to the economy and to employers of \$27.2 billion. This does not include an offset for benefits that currently are being furnished by employers. The largest costs incurred by employers would be the cost of hiring temporary replacements for workers who are on leave and the lower productivity that would result from replacing regular employees with temporary replacements. The \$27.2 billion would add 1.4 percent to the nation's employment costs and about 0.7 percent to the general price level of goods and services sold in order to pay for these benefits.

Expansion of the benefits to include full pay for workers on parental leave and short-term disability benefits could raise the cost to employers to \$75.6 billion. This would raise the wage bill for the nation by 3.7 percent.

The treatment of the "parental" and the "temporary disability" parts of H.R. 925 as insurable risks -- treated the same way as we treat unemployment and using the same tax base as the unemployment insurance tax base -- would have resulted in a more than doubling of the unemployment insurance tax on employers in 1984 (from an average rate of 2.8 percent to an average rate of 5.7 percent). The cost of the "child care" provision of H.R. 925 could add as much as 1.7 percent to the tax rate and the cost of the "disability" part of H.R. 925 would add 1.2 percent to the payroll tax. The total cost would be reduced by the cost of temporary disability benefits that currently are being provided by employers.

## A MICRO LEVEL COST ASSESSMENT

The example below is based upon a word processing employee in Washington, D.C. The assumption is that the employee will take 4.5 months of leave for parenting purposes.

Average pay for word processors = \$315.25 per week for a 39.5 hour week, based on U.S. Department of Labor Area Wage Survey, Bulletin 3030-7. The cost of 4.5 months of pay would be \$6,147.37.

In addition, the direct cost to the employer of legally required benefits, such as Social Security and workers' compensation, amounts to 9.6 percent of payroll. Other benefits amount to 2.4 percent of direct pay (from the U.S. Chamber of Commerce's Annual Employee Benefits Survey, 1984). This leads to a total of 12 percent of direct pay-linked costs, adding \$735.28.

Total pay and direct pay-linked costs = \$6,147.37 + \$735.28 = \$6,882.65.

Cost of employee benefits to be continued for employees on paid or unpaid leave, for life, health, disability, and dental benefits to an employer is \$148.17 per month (based on the U.S. Chamber of Commerce's Annual Employee Benefits Survey, 1984). The cost of these employee benefits for 4.5 months would be \$666.76.

Cost of a replacement, based on a survey of temporary employment agencies in Washington, D.C., is \$14.00 to \$17.00 per hour -- an average of \$15.50 per hour. The cost of the replacement for 39.5 hours per week would be \$612.25 per week or \$11,938.87 for 4.5 months.

### COST OF REPLACING WORD PROCESSING EMPLOYEE FOR 4.5 MONTHS OF UNPAID PARENTAL LEAVE IN WASHINGTON, D.C.

Cost of trained replacement	\$11,938.87
+ Cost of benefits paid for employee on either paid or unpaid leave	\$ 666.76
Less: Savings from employee on unpaid leave	-\$ 6,882.65
Equals: <u>Net additional cost for unpaid parental leave</u>	<u>\$ 5,722.98</u>

### COST OF REPLACING AN EMPLOYEE ON PAID PARENTAL LEAVE

Net cost of replacing employee on unpaid parental leave	\$ 5,722.98
Plus: Pay and pay-linked costs of employee on paid leave	\$ 6,882.65
Equals: <u>Net additional cost for paid parental leave</u>	<u>\$12,605.63</u>

SEVEN-CITY SURVEY OF NET ADDITIONAL COST OF  
PARENTAL LEAVE FOR ONE WORD PROCESSING  
EMPLOYEE FOR 18 WEEKS

<u>CITY</u>	<u>ESTIMATED COST</u>	
	<u>UNPAID LEAVE</u>	<u>PAID LEAVE</u>
CHICAGO	\$3,913.47	\$10,687.23
HOUSTON	\$3,363.21	\$11,114.73
LOS ANGELES	\$1,802.97	\$ 9,352.89
MINNEAPOLIS	- 705.19	\$ 6,088.73
NEW YORK	\$3,175.65	\$10,030.05
ST. LOUIS	\$1,747.17	\$ 7,916.13
WASHINGTON	\$5,722.98	\$12,605.63
<u>SEVEN-CITY AVERAGE</u>	\$2,717.18	\$ 9,685.39
Less: Cost of benefits calculated above	-\$ 666.76	-\$ 666.76
Equals: <u>Net additional cost</u> <u>per worker</u>	<u>\$2,050.42</u>	<u>\$ 9,018.63</u>

A seven-city survey conducted by the U.S. Chamber of the additional costs related to the replacement of one word processing employee indicates that the average additional cost to an employer would be \$2,717.18 in order to give that one employee 18 weeks of unpaid leave. This would include the cost of the medical benefit calculated above separately. After deducting the cost of medical benefits calculated above, the net cost to the employer for each employee taking off the maximum 18 weeks of leave would be \$2,050.42. It is more difficult to determine the cost for other less-defined jobs because of the difficulty of finding replacements as easily as word processors.

Source: U.S., Congress, House, Subcommittee on Labor-Management Relations and Subcommittee on Labor Standards of the Committee on Education and Labor, Joint Hearings on the Family and Medical Leave Act of 1987, 100th Cong., 1st Sess., 1987, pp. 108-111.

## Appendix G

### Parental Leave: Estimated Costs of H.R. 925, the Family and Medical Leave Act of 1987

Figure 1.1: Summary of Costs of H.R. 925,  
the Family and Medical Leave Act of 1987

<u>Provision</u>	<u>Cost (millions)</u>	<u>Likely Beneficiaries</u>
For Firms With 50 or More Employees		
Birth or Adoption of Child	\$90	840,000
Care for Seriously Ill Child	10	60,000
Care for Seriously Ill Parent	35	165,000
Temporary Medical Leave	<u>53</u>	<u>610,000</u>
Total	\$188	1,675,000
For Firms With 35 or More Employees		
Birth or Adoption of Child	\$102	931,000
Care for Seriously Ill Child	11	66,000
Care for Seriously Ill Parent	38	182,000
Temporary Medical Leave	<u>61</u>	<u>676,000</u>
Total	\$212	1,855,000

Source: U.S., General Accounting Office, Parental Leave: Estimated Costs of H.R. 925, The Family and Medical Leave Act of 1987, November, 1987, p. 11.

# Appendix H

## EMPLOYER PARENTING LEAVE SURVEY

### \* COMPANY POLICY \*

- I. Circle Y (Yes), N (No) or NA (Not Applicable) for any or all of the following MATERNITY and PATERNITY POLICIES which are currently practiced by your company. Complete additional information where appropriate.

<u>COMPANY POLICY</u>			<u>MATERNITY</u> (Female Employee)	<u>PATERNITY</u> (Male Employee)
Y	N	UNPAID LEAVE	_____ weeks	_____ weeks
Y	N	Return to work guarantee	Up to _____ weeks	Up to _____ weeks
Y	N	Same position/job held open	Up to _____ weeks	Up to _____ weeks
Y	N	Seniority status affected	Up to _____ weeks	Up to _____ weeks
 FULL SALARY LEAVE				
Y	N	Sick	_____ weeks	_____ weeks
Y	N	Vacation/personal	_____ weeks	_____ weeks
 PARTIAL SALARY LEAVE				
Y	N	TDI	_____ weeks, _____ % of Salary	
Y	N	Sick	_____ weeks, _____ % of Salary	
Y	N	Other	_____ weeks, _____ % of Salary	_____ weeks, _____ % of salary
Y	N	Continuance of company benefits while on leave	For how long? _____ weeks Which benefits? _____ _____	For how long? _____ weeks Which benefits? _____ _____
Y	N	Same policies for all employees (clerical/professional, technical)	If no, describe: _____ _____ _____	If no, describe: _____ _____ _____

2. Y N Are these leaves granted under a collective bargaining agreement?

If yes, please provide name of union and the number of employees covered by the contract.

Union/Local	No. of Employees

3. Please describe any non-policy practices currently being employed. Include areas where managers have judgemental flexibility.

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4. Please add any additional comments or pertinent information.

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\* EMPLOYEE DEMAND \*

If you are unable to gather the information for questions 5 & 6, please go on to question 7.

5. In 1984, how many of your employees took leave (other than sick leave and/or TDI) to care for a newborn?

	Female		Male	
	No. of Employees	Average Days	No. of Employees	Average Days
Vacation				
Leave Without Pay				
Other (List)				

6. In 1984 how many of your employees asked for leave without pay to care for an infant?

	Granted	Denied
Number of Females		
Number of Males		



\* E F F E C T S \*

7. Six Month Parenting Leave: "Employers shall allow employees who are parents to take, without detriment \* to the employment of the employee, unpaid parenting leaves during the infancy (0-6 months old) of a child who lives or is expected to live with the employee."

\*WITHOUT DETRIMENT is defined to be no deprivation of any employment benefits of any type, including salary, position, longevity, or seniority and is not to be considered a break in employment service.

Should the above proposal become Law, what effects if any do you foresee for:

1) your company?

Please explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2) your employees?

Please explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Official to be contacted if questions arise regarding this survey:

RESPONDENT: \_\_\_\_\_

TITLE: \_\_\_\_\_

PHONE NO.: \_\_\_\_\_ DATE: \_\_\_\_\_

LABOR ORGANIZATION  
PARENTING LEAVE SURVEY

The following terms will be used in this survey:

PARENTING LEAVE is defined to be unpaid leave given to an employee (male or female) without detriment\* to the employment of the employee during the infancy of a child who lives or is expected to live with the employee.

\*WITHOUT DETRIMENT is defined to be no deprivation of any employment benefits of any type, including salary, position, longevity, or seniority and is not to be considered a break in employment service.

1. Are you a party to a bargaining agreement which contains a parenting leave provision in the State of Hawaii?

Yes

No

If yes, please specify the company you have the agreement with and/or the occupational group you represent, the number of employees affected, the number of days allowed, and whether it is granted at managements' discretion.

Company/ Employer	Occupational Group (I.e. Roofers, Clerical, etc.)	No. of Employees Affected	No. of Days Allowed	Management Discretion (Yes or No)

The following questions refer to the proposal below, which may become Law.

Six Month Parenting Leave: "Employers shall allow employees who are parents to take, without detriment to the employment of the employee, unpaid parenting leaves during the infancy (0-6 months old) of a child who lives or is expected to live with the employee."

2. Should this proposal become law, what effects if any do you foresee for collective bargaining?

Please explain: \_\_\_\_\_

\_\_\_\_\_

3. Do you think the employees you represent would want you to bargain for this provision?

Yes

No

Already Have

Official to be contacted if questions arise regarding this survey:

RESPONDENT: \_\_\_\_\_

TITLE: \_\_\_\_\_

PHONE NO.: \_\_\_\_\_ DATE: \_\_\_\_\_

PARENT  
PARENTING LEAVE SURVEY

We would appreciate the opinions of both mother and father.

Your Opinions

The following questions refer to the proposal below, which may become law.

Six Month Parenting Leave: "Employers shall allow employees who are parents to take, without detriment\* to the employment of the employee, unpaid parenting leaves during the infancy (0-6 months old) of a child who lives or is expected to live with the employee."

\*WITHOUT DETRIMENT is defined to be no loss of any employment benefits of any type, including salary, position, longevity, or seniority and is not to be considered a break in employment service.

	<u>Mother</u>		<u>Father</u>	
	Yes	No	Yes	No
Would you like this proposal to become law?				
Please explain why you are in favor or why you are against this proposal.	_____		_____	
	_____		_____	
	_____		_____	
	_____		_____	
	_____		_____	
Considering your living expenses, how many weeks without pay would you take off for "parenting leave"?	_____ weeks		_____ weeks	
IF EMPLOYED, did you take any leave without pay to care for your baby?	Yes	No	Yes	No
		_____ weeks		_____ weeks
Please explain why.	_____		_____	
	_____		_____	
	_____		_____	

Demographics

For analysis, we would like to group similar households. The following questions are for classification purposes only.

	<u>Mother</u>	<u>Father</u>
How Old Are You?	_____ years	_____ years
Are You Employed? (please circle)	Yes No	Yes No
What Is Your Occupation?	_____	_____
What Is Your Annual Gross Income?	(Please check one)	(Please check one)
less than \$ 4,999	_____	_____
\$ 5,000 - \$ 9,999	_____	_____
\$ 10,000 - \$ 14,999	_____	_____
\$ 15,000 - \$ 19,999	_____	_____
\$ 20,000 - \$ 24,999	_____	_____
\$ 25,000 and over	_____	_____
What is your highest level of education?	_____	_____
What is your ethnic identification (if more than one, with which do you identify the most)?	_____	_____
Residence?	Own Rent	Own Rent
	Other _____	Other _____

## Appendix I

Samuel B. K. Chang  
Director



LEGISLATIVE REFERENCE BUREAU  
State of Hawaii  
State Capitol  
Honolulu, Hawaii 96813  
Phone (808) 548-6237

September 14, 1988

3957-A

Dear Director of Personnel:

I am writing to you for some help. I know that you frequently receive requests to answer surveys of various kinds. Although the enclosed survey was designed to be filled out easily, answering it will require *some of your time*.

This survey is an important one, as it may affect a proposal that almost certainly will be considered by the State Legislature next year. And that proposal will have a direct impact on the personnel matters of your company or organization.

Because we are working against a fairly tight deadline, your prompt attention to this survey will be greatly appreciated. Please return it to us by September 30.

House Resolution No. 273, H.D. 1, requests that the Legislative Reference Bureau prepare a study "to determine the feasibility of statutorily mandating employers to grant employees a parental or family leave." The concept that underlies parental or family leave is probably familiar to you, for both the U. S. House of Representatives and the U. S. Senate are considering Federal legislation along similar lines.

The proposal that the State Legislature is interested in can be described simply. It would mandate employers (that is, individuals or organizations, including the state and county governments, with 50 or more employees) to grant qualified employees a parental or family leave to care for: a newborn child of the employee; a child placed with the employee for adoption or foster care; or the employee's seriously ill child or parent. Qualified employees must have been employed on a part-time or full-time basis for 14 consecutive weeks. Leave would be without pay and would last no longer than 18 weeks.

The proposal under consideration is unclear about how often unpaid parental or family leave will be permitted. For example, it is uncertain whether parental leave would be permitted early in the year to care for a newborn child, along with family leave later in the year to care for a seriously ill parent.

At the end of the survey, we also ask if you would be willing to discuss with one of our researchers the impact of this sort of legislation on your company or organization. While we will only be able to interview a few personnel directors representing a range of organizations and businesses, we would appreciate your letting us know if you wish to be interviewed.

We very much appreciate your help and cooperation. Mahalo!

Sincerely,

A handwritten signature in dark ink, appearing to read 'Samuel B. K. Chang'. Below the signature, the name and title are printed.  
Samuel B. K. Chang  
Director

SBKC:jv  
Enc.

# PARENTAL OR FAMILY LEAVE SURVEY

## Company Policy

1. What is the general policy of your company regarding unpaid leave?

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Can unpaid leave be used for any of the following purposes? Please circle Y (Yes) or N (No).

- Y    N    Birth of a child
- Y    N    Adoption of infant
- Y    N    Serious illness of a child
- Y    N    Serious illness of a parent

2. Circle Y (Yes), N (No) or NA (Not Applicable) for any or all of the following MATERNITY and PATERNITY POLICIES that currently are in use at your company. Complete additional information where appropriate.

<u>COMPANY POLICY</u>			<u>MATERNITY</u> <u>(Female Employee)</u>	<u>PATERNITY</u> <u>(Male Employee)</u>
Y	N	UNPAID LEAVE	Up to ____ weeks	Up to ____ weeks
Y	N	Return to work guaranteed	Up to ____ weeks	Up to ____ weeks
Y	N	Same position/ job held open	Up to ____ weeks	Up to ____ weeks
Y	N	NA Seniority status affected	Up to ____ weeks	Up to ____ weeks

### FULL SALARY LEAVE

Y	N	Sick	Up to ____ weeks	Up to ____ weeks
Y	N	Vacation/personal	Up to ____ weeks	Up to ____ weeks

### PARTIAL SALARY LEAVE

			<u>MATERNITY</u> <u>(Female Employee)</u>	<u>PATERNITY</u> <u>(Male Employee)</u>
Y	N	TDI	Up to ____ weeks, ____% of salary	
Y	N	Sick	Up to ____ weeks, ____% of salary	
Y	N	Other	Up to ____ weeks, ____% of salary	Up to ____ weeks, ____% of salary
Y	N	Continuance of company benefits while on leave	For how long? ____ weeks Which benefits? _____	For how long? ____ weeks Which benefits? _____
Y	N	Same policies for all employees (clerical/profes- sional, technical)	If no, describe: _____ _____ _____	If no, describe: _____ _____ _____

3. Y N Are these leaves granted under a collective bargaining agreement?

If yes, please provide name of union and the number of employees covered by the contract.

Union/local	No. of employees

4. Please describe any NON-POLICY practices regarding unpaid leave. Include areas where managers are allowed to exercise their own judgment.

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5. Please add any additional comments or pertinent information.

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#### Employee Demand

If you are unable to gather the information for questions 6, 7, 8, and 9, please go on to question 10.

6. In 1987, how many of your employees took leave (other than sick leave and/or TDI) to care for a newborn?

	<u>Female</u>		<u>Male</u>	
	<u>No. of employees</u>	<u>Average days</u>	<u>No. of employees</u>	<u>Average days</u>
Vacation	—	—	—	—
Leave without pay	—	—	—	—
Other (list)				

7. In 1987, how many of your employees asked for leave without pay to care for an infant?

	<u>Granted</u>	<u>Denied</u>
Number of females	—	—
Number of males	—	—

8. In 1987, how many of your employees asked for leave without pay to care for a seriously ill child?

	<u>Granted</u>	<u>Denied</u>
Number of females	_____	_____
Number of males	_____	_____

9. In 1987, how many of your employees asked for leave without pay to care for a seriously ill parent?

	<u>Granted</u>	<u>Denied</u>
Number of females	_____	_____
Number of males	_____	_____

#### Effects

10. Proposed legislation regarding parental or family leave:

One proposal that is being considered would statutorily mandate employers having 50 or more employees to grant employees an unpaid parental or family leave to care for: a newborn child of the employee; a child placed with the employee for adoption or foster care; or the employee's seriously ill child or parent.

A qualified employee would be required to have been employed for 14 consecutive weeks. The employee may be employed on a part-time or full-time basis.

The duration of the unpaid leave would be no longer than 18 weeks.

Please note: The proposal under consideration is somewhat ambiguous. No mention is made of how often a qualified employee would be able to take advantage of unpaid parental or family leave--only once a year? More than once year?

Should the above proposal become law, what effects, including costs, do you foresee for:

- (a) Your company?

Please explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- (b) Your employees?

Please explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

11. Assume the proposal discussed above was being considered by the Legislature. Assume also that the maximum leave allowed was 18 weeks/year. What would your company's position be? Choose only one.

☐ In favor because it's a good idea  
☐ In favor because benefits exceed costs  
☐ Opposed because costs exceed benefits  
☐ Opposed because it's a bad idea  
☐ Don't care

12. Would you be willing to meet with a researcher from the Legislative Reference Bureau to discuss the impact of the proposed legislation, should it become law, on your company or organization? Please circle one.

Yes                      No

Official to be contacted if questions arise regarding this survey:

Respondent: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

Phone No.: \_\_\_\_\_ Date: \_\_\_\_\_

Thank you for your help!



# Appendix J

## PARENTAL OR FAMILY LEAVE SURVEY

### Company Policy

1. What is the general policy of your company regarding unpaid leave?

Employees may be granted a leave of absence without pay as provided for by statute, personnel rules and regulations or bargaining unit agreements. A xeroxed copy of the personnel rules and regulations is attached for your reference. Collective bargaining agreements either reference the attached rules and regulations or have different types of leaves without pay in

addition to those provided by the rules and regulations.

Can unpaid leave be used for any of the following purposes? Please circle Y (Yes) or N (No).

- Y ☒ N ☐ Birth of a child We believe that some of our managers will approve child birth under the child care provisions when the employee does not have sufficient sick or vacation leave credits to cover the period of confinement.
- Y ☐ N ☐ Adoption of infant
- Y ☐ N ☐ Serious illness of a child
- Y ☐ N ☐ Serious illness of a parent

2. Circle Y (Yes), N (No) or NA (Not Applicable) for any or all of the following MATERNITY and PATERNITY POLICIES that currently are in use at your company. Complete additional information where appropriate.

COMPANY POLICY		MATERNITY (Female Employee)	PATERNITY (Male Employee)
<input checked="" type="radio"/> Y	N UNPAID LEAVE	Up to ___ weeks	Up to ___ weeks
<input checked="" type="radio"/> Y	N Return to work guaranteed	Up to ___ weeks	Up to ___ weeks
<input checked="" type="radio"/> Y	N Same position/ job held open	Up to ___ weeks	Up to ___ weeks
<input checked="" type="radio"/> Y	<input checked="" type="radio"/> N NA Seniority status affected	Up to ___ weeks	Up to ___ weeks

Up to 12 months for all responses.

Some bargaining unit agreements may or may not count the leave of absence without pay towards eligibility for temporary assignments or promotions.

### FULL SALARY LEAVE

Y	N	Sick	Up to ___ weeks	Up to ___ weeks
Y	N	Vacation/personal	Up to ___ weeks	Up to ___ weeks

Sick - up to as many hours as the employee has earned.  
Vacation - up to a maximum of 90 days or 720 hours.

PARTIAL SALARY LEAVE		MATERNITY (Female Employee)	PATERNITY (Male Employee)
Y	N	TDI	Up to ___ weeks, ___% of salary
Y	N	Sick	Up to ___ weeks, ___% of salary
Y	N	Other	Up to ___ weeks, ___% of salary
Y	N	Continuance of company benefits while on leave	For how long? ___ weeks Which benefits? _____
Y	N	Same policies for all employees (clerical/professional, technical)	If no, describe: _____ _____ _____

3. ☒ Y ☐ N Are these leaves granted under a collective bargaining agreement?

If yes, please provide name of union and the number of employees covered by the contract.

Union/local	No. of employees
See attached xeroxed copy of department's annual report for FY 86-87 which shows the information requested.	

4. Please describe any NON-POLICY practices regarding unpaid leave. Include areas where managers are allowed to exercise their own judgment.

As indicated in our response to the second part of question number 1 our managers will sometimes grant child care leave to an employee who does not have sufficient sick leave credits to cover the period of confinement prescribed by the physician.

5. Please add any additional comments or pertinent information. (continuation of no. 4)

Managers have exercised their judgement in approving leaves of absence without pay for employees who are taking care of seriously ill spouses or parents. There have also been instances where such leaves were granted to enable parent(s) to care for a new born child that had developed complications.

**Employee Demand** Leaves are administered at departmental level. Unable to provide data at this time. Expect to have data by 11-15 and to you by 11-17. If you are unable to gather the information for questions 6, 7, 8, and 9, please go on to question 10. All leaves for calendar year 1987 have to be manually researched, tallied and reported by each department.

6. In 1987, how many of your employees took leave (other than sick leave and/or TDI) to care for a newborn?

	<u>Female</u>		<u>Male</u>	
	<u>No. of employees</u>	<u>Average days</u>	<u>No. of employees</u>	<u>Average days</u>
Vacation	—	—	—	—
Leave without pay	—	—	—	—
Other (list)				

7. In 1987, how many of your employees asked for leave without pay to care for an infant?

	<u>Granted</u>	<u>Denied</u>
Number of females	—	—
Number of males	—	—

8. In 1987, how many of your employees asked for leave without pay to care for a seriously ill child?

	<u>Granted</u>	<u>Denied</u>
Number of females	—	—
Number of males	—	—

9. In 1987, how many of your employees asked for leave without pay to care for a seriously ill parent?

	<u>Granted</u>	<u>Denied</u>
Number of females	—	—
Number of males	—	—

#### Effects

10. Proposed legislation regarding parental or family leave:

One proposal that is being considered would statutorily mandate employers having 50 or more employees to grant employees an unpaid parental or family leave to care for: a newborn child of the employee; a child placed with the employee for adoption or foster care; or the employee's seriously ill child or parent.

A qualified employee would be required to have been employed for 14 consecutive weeks. The employee may be employed on a part-time or full-time basis.

The duration of the unpaid leave would be no longer than 18 weeks.

Please note: The proposal under consideration is somewhat ambiguous. No mention is made of how often a qualified employee would be able to take advantage of unpaid parental or family leave--only once a year? More than once year?

Should the above proposal become law, what effects, including costs, do you foresee for:

- (a) Your company?

Please explain: Overtime costs would be a factor to consider. However, definitive dollar cost cannot be determined since the overtime costs would be incurred by the fellow worker(s) of the employee who was granted the

leave without pay. Lost time due to the loss of a productive/journeyman

- employee would be another cost factor to consider, but again definitive dollars would depend on the salary of the absent employee and perhaps the cost of hiring a replacement employee if the absence were long enough to warrant the cost.
- (b) Your employees?

Please explain: The idea may be generally acceptable at this time. However, with the current high cost of living, employees may not find it feasible to go without their income regardless of the reason. In certain jobs, keeping up with technological and/or program changes is a must if the employee is to perform satisfactorily.

11. Assume the proposal discussed above was being considered by the Legislature. Assume also that the maximum leave allowed was 18 weeks/year. What would your company's position be? Choose only one.

☐ In favor because it's a good idea  
☐ In favor because benefits exceed costs  
☒ Opposed because costs exceed benefits  
☐ Opposed because it's a bad idea  
☐ Don't care

Although we cannot be as definitive as we would like to be regarding the dollar cost, we still believe that the across-the-board granting of the leave would be more costly than beneficial for both the employee and the employer.

12. Would you be willing to meet with a researcher from the Legislative Reference Bureau to discuss the impact of the proposed legislation, should it become law, on your company or organization? Please circle one.

☒ Yes

☐ No

Official to be contacted if questions arise regarding this survey:

Respondent: Edwin Y.M. Young\*/ Yukie N. Hirata

Title: Personnel Program Manager \*/ Personnel Program Administrator

Company: Department of Personnel Services

Phone No.: 548-4157 / 7618 Date: November 7, 1988

Thank you for your help!

ATTACHMENT FOR QUESTION NO. 1 - PARENTAL OR FAMILY  
LEAVE SURVEY

TITLE 14 DEPARTMENT OF PERSONNEL SERVICES

SUBTITLE 1 STATE OF HAWAII PERSONNEL RULES

CHAPTER 8

LEAVES OF ABSENCE

- \$14-8-1 Purpose
- \$14-8-2 Applicability
- \$14-8-3 Educational and certain other leaves of  
absence without pay
- \$14-8-4 Leave without pay for officer or employees  
on loan to other governments or for  
government programs administered by private  
or public agencies
- \$14-8-5 Leave without pay to work at the State  
Legislature
- \$14-8-6 Leave without pay to delay layoff
- \$14-8-7 Military leave without pay
- \$14-8-8 Sabbatical leave
- \$14-8-9 Vacation leave
- \$14-8-10 Sick leave
- \$14-8-11 General provisions affecting vacation and  
sick leave
- \$14-8-12 Special leave provisions for employees  
receiving workers' compensation
- \$14-8-13 Industrial injury leave
- \$14-8-14 Accidental injury leave
- \$14-8-15 Funeral leave
- \$14-8-16 Temporary intergovernmental assignment of  
employees
- \$14-8-17 Military leave with pay
- \$14-8-18 Leave for employee summoned as witness or  
juror
- \$14-8-19 Unauthorized leave of absence
- \$14-8-20 Employee rights

Historical Note: Chapter 8 of Title 14 is based  
substantially on Chapter 9 of the Rules of the Director  
of Personnel Services. [Eff. 2/5/62; am and ren 1/13/64;  
am 10/18/65; am 6/13/67; am 12/13/68; am 12/26; 69;  
am 11/12/70; am 1/19/74; am 6/18/74; am 12/1/75; am and  
ren 5/1/78; am 12/30/78; am 3/27/80; R JUN 22 1981 ]

§14-8-1 Purpose. The purpose of this chapter is to establish a uniform and equitable system where employees may be reasonably excused from work for rest, recreation, health, education, welfare and other purposes without an appreciable decrease in the productivity of and services provided by the State government. [Eff. JUN 22 1981 ] (Auth: HRS §§26-5, 76-17, 79-12, 83-3) (Imp: HRS §§76-32, 76-33, 79-1, 79-2, 79-5, 79-7, 79-8, 79-9, 79-12, 79-13, 79-14, 79-16, 79-17, 79-19, 79-20, 79-21, 79-24)

§14-8-2 Applicability. These rules shall apply to exempt and civil service employees, unless otherwise specified. [Eff. JUN 22 1981 ] (Auth: HRS §§26-5, 76-17, 79-12, 83-3) (Imp: HRS §§76-32, 76-33, 79-1, 79-2, 79-5, 79-7, 79-8, 79-9, 79-12, 79-13, 79-14, 79-16, 79-17, 79-19, 79-20, 79-21, 79-24)

§14-8-3 Educational and certain other leaves of absence without pay. (a) An appointing authority may grant a leave of absence without pay to a regular employee for any of the following purposes:

- (1) Pursue a course of instruction which is related to the employee's field of work.
- (2) Engage in research which has a direct beneficial effect on the skills or knowledges required in the employee's field of work.
- (3) Improve the employee's ability and increase the employee's fitness for public employment.

(b) An appointing authority may grant regular or non-regular employees leaves of absence without pay for any of the following:

- (1) Physical or mental health reasons.
- (2) Death in the family, other than funeral leave as provided in section 79-13, HAWAII REVISED STATUTES.
- (3) Extended annual vacation for travel purposes only.
- (4) Seek political office.
- (5) Personal business of an emergency nature.
- (6) Annual periods of temporary cessation of normal operation.
- (7) Child care.

(c) The duration of leaves of absence without pay shall be for no more than twelve months except as otherwise provided by statute or in this chapter.

[Eff. JUN 22 1981 ] (Auth: HRS §§26-5, 76-17) (Imp: HRS §§76-17, 76-32)

§14-8-4 Leave without pay for officers or employees on loan to other governments or for government programs administered by private or public agencies. So that an employee may be employed by another government on a loan basis by contract, a leave of absence without pay may be granted in accordance with section 79-17, HAWAII REVISED STATUTES.  
[Eff. JUN 22 1981 ] (Auth: HRS §§26-5, 76-17, 79-12)  
(Imp: HRS §79-17)

§14-8-5 Leave without pay to work at the State legislature. With the approval of the governor, and upon request of a member of the State legislature, an employee may be granted a leave of absence without pay to render services at the State legislature.  
[Eff. JUN 22 1981 ] (Auth: HRS §§26-5, 76-17, 79-12)  
(Imp: HRS §79-19)

§14-8-6 Leave without pay to delay layoff. A regular employee may be granted a leave of absence without pay for no more than twelve months in order to delay a planned layoff when the position which the employee occupies has been abolished. If the employee has not been placed at the expiration of the twelve-month period, the employee shall be laid-off and shall have those rights specified in subchapter 2 of chapter 14 of these rules. [Eff. JUN 22 1981 ] (Auth: HRS §§26-5, 76-17) (Imp: HRS §§76-17, 76-32)

§14-8-7 Military leave without pay. (a) When requested, military leave without pay shall be granted for service in the United States Armed Forces to an employee who is eligible for reemployment rights pursuant to Chapter 43 of Part III of Title 38, United States Code. The following employees are eligible for this leave:

- (1) An employee serving an initial probational appointment.
- (2) A regular employee who is serving a permanent or new probational appointment.
- (3) A regular employee who is serving a temporary appointment and has not forfeited the employee's return rights to the position in which the employee last held permanent appointment.
- (4) An exempt employee who is serving other than a temporary appointment.

(b) The leave of absence without pay period shall be for no more than four years plus a one year voluntary extension of active duty when the extension is at the request and for the convenience of the U. S. government. Upon application for reemployment, the employee shall be reemployed in accordance with Chapter 43 of Title 38 of the United States Code.

(c) In filling a position which became vacant by military leave, the appointing authority shall inform each replacement of the status of the replacement's employment and the provisions of section 79-24, HAWAII REVISED STATUTES.

(d) A replacement employed in the position from which military leave was granted shall be displaced so that the position may be filled again by the former employee returning to State employment. However, when two or more employee movements occurred because of the former employee being on military leave, each affected employee shall be returned to the employee's former position or another comparable position deemed to be appropriate by the director.

(e) If in the application of subsection 14-8-7(d) the replacement could not be placed through the application of the layoff formula, the replacement's name shall be placed on the appropriate eligible list as a laid-off employee.

(f) The provisions of this section shall supersede the provisions of any other section of these rules which are to the contrary. [Eff. JAN 1 1981 ]  
(Auth: HRS §§26-5, 76-17, 79-12) (Imp: HRS §79-24; Chapter 43, Title 38 of the U. S. Code)

§14-8-8 Sabbatical leave. Sabbatical leave may be granted to an employee in accordance with section 76-33, HAWAII REVISED STATUTES.

(b) The appointing authority may grant a regular employee sabbatical leave of absence upon the review and consideration of at least all of the following:

- (1) The purpose of the leave is mutually beneficial to the employee and to the employer.
- (2) The nature, length and pertinency of educational course work, research or other professional/educational activity, which the employee plans to undertake during the sabbatical leave, are consistent with the needs of the service.
- (3) The employee's absence will not adversely affect the operation of the department.
- (4) The employee's work performance record and seniority (continuous length of service in the civil service).



ATTACHMENT FOR QUESTION NO. 3 - PARENTAL OR FAMILY  
LEAVE SURVEY

**HAWAII PUBLIC EMPLOYEE  
COLLECTIVE BARGAINING UNITS**

Bargaining Unit	Description of Bargaining Unit	Exclusive Representative	No. of State Employees Included in the Unit				
			6-30-83	6-30-84	6-30-85	6-30-86	6-30-87
1	Blue Collar Positions—Non-Supervisory employees	UPW	4,668	4,596	4,579	4,562	4,583
2	Blue Collar Positions—Supervisory employees	HGEA	445	462	453	466	442
3	White Collar Positions—Non-Supervisory employees	HGEA	6,291	6,367	6,435	6,465	6,370
4	White Collar Positions—Supervisory employees	HGEA	284	290	293	285	372
5	Teachers & other personnel of the DOE under the same salary schedule	HSTA	8,816	8,772	8,693	8,931	9,049
6	Educational Officers & other personnel of the DOE under the same salary schedule	HGEA	544	535	530	547	540
7	Faculty of the University of Hawaii & the Community College system	UHPA	2,573	2,539	2,526	2,595	2,502
8	Personnel of the University of Hawaii and the Community College system other than faculty (APT)	HGEA	809	809	819	845	876
9	Registered Professional Nurses	HGEA	794	787	764	726	702
10	Non-Professional Hospital & Institutional Workers	UPW	1,749	1,787	1,802	1,826	1,845
11	Firefighters	HFFA	148	147	151	147	147
12	Police	SHOPO	(All county employees)				
13	Professional & Scientific employees, other than Registered Professional Nurses	HGEA	3,258	3,242	3,257	3,264	3,059

Shading indicates a bargaining unit of which some members are State Civil Service employees.  
Units without shading have no members in the State Civil Service System.

HFFA —Hawaii Fire Fighters' Association  
HGEA —Hawaii Government Employees' Association  
HSTA —Hawaii State Teachers Association

SHOPO —State of Hawaii Organization of Police Officers  
UHPA —University of Hawaii Professional Assembly  
UPW —United Public Workers



**Labor relations continued**

With regards to grievances by subject matter filed during the 12-month FY period, grievances over disciplinary actions and promotions continued to rank first and second in terms of the number of grievances filed by subject matter. Based on past data, it is anticipated that grievances over disciplinary actions and promotions will continue to be the two most frequent types of grievances filed in future years as well.

Staff workload resulting from the monitoring and administering the State's Temporary Disability Benefits Plan and the Federal Fair Labor Standards Act (FLSA) was minimal during the year.

*Nearly a year of work by both labor and management teams go into every collective bargaining process — the culmination of which is evidenced by the contracts shown here awaiting signatures of the Governor and the Mayor of each county.*

According to the Wage and Hour Division of the United States Department of Labor, there were no formal FLSA complaints filed against the State of Hawaii in Fiscal Year 1987. This may indicate that supervisors and employees are fairly familiar with the complex FLSA provisions — due in part to the Labor Relations Division's comprehensive departmental supervisory personnel training program undertaken the previous year.

There were 98 claims for benefits under the State's Temporary Disability Benefits Plan programs (for civil service employees included and excluded from collective bargaining units) of which 34 claims were denied. Data derived from the 64 compensable temporary disability benefits indicate a cost to the State of

# PARENTAL OR FAMILY LEAVE SURVEY

## Company Policy

1. What is the general policy of your company regarding unpaid leave?

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Can unpaid leave be used for any of the following purposes? Please circle Y (Yes) or N (No).

- Y   N   Birth of a child  
 Y   N   Adoption of infant  
 Y   N   Serious illness of a child  
 Y   N   Serious illness of a parent

2. Circle Y (Yes), N (No) or NA (Not Applicable) for any or all of the following MATERNITY and PATERNITY POLICIES that currently are in use at your company. Complete additional information where appropriate.

<u>COMPANY POLICY</u>			<u>MATERNITY</u> <u>(Female Employee)</u>	<u>PATERNITY</u> <u>(Male Employee)</u>
Y	N	UNPAID LEAVE	Up to ____ weeks	Up to ____ weeks
Y	N	Return to work guaranteed	Up to ____ weeks	Up to ____ weeks
Y	N	Same position/ job held open	Up to ____ weeks	Up to ____ weeks
Y	N	NA Seniority status affected	Up to ____ weeks	Up to ____ weeks

### FULL SALARY LEAVE

Y	N	Sick	Up to ____ weeks	Up to ____ weeks
Y	N	Vacation/personal	Up to ____ weeks	Up to ____ weeks

### PARTIAL SALARY LEAVE

			<u>MATERNITY</u> <u>(Female Employee)</u>	<u>PATERNITY</u> <u>(Male Employee)</u>
<input checked="" type="radio"/>	N	TDI	Up to <u>26</u> weeks, <u>55</u> % of salary	
<input checked="" type="radio"/>	N	Sick	Up to <u>6</u> weeks, <u>100</u> % of salary	
Y	N	Other	Up to ____ weeks, ____% of salary	Up to ____ weeks, ____% of salary
Y	N	Continuance of company benefits while on leave	For how long? ____ weeks Which benefits? _____	For how long? ____ weeks Which benefits? _____
<input checked="" type="radio"/>	N	Same policies for all employees (clerical/profes- sional, technical)	If no, describe: _____ _____ _____	If no, describe: _____ _____ _____

3. Y N Are these leaves granted under a collective bargaining agreement?

If yes, please provide name of union and the number of employees covered by the contract.

Union/local	No. of employees

4. Please describe any NON-POLICY practices regarding unpaid leave. Include areas where managers are allowed to exercise their own judgment.

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5. Please add any additional comments or pertinent information.

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#### Employee Demand

If you are unable to gather the information for questions 6, 7, 8, and 9, please go on to question 10.

6. In 1987, how many of your employees took leave (other than sick leave and/or TDI) to care for a newborn?

	<u>Female</u>		<u>Male</u>	
	<u>No. of employees</u>	<u>Average days</u>	<u>No. of employees</u>	<u>Average days</u>
Vacation	<u>119</u>	<u>850.72</u>	<u>11</u>	<u>41.63</u>
Leave without pay	<u>109</u>	<u>2766.45</u>	<u>0</u>	<u>0</u>
Other (list)				
Compensatory Time	<u>12</u>	<u>71</u>		

7. In 1987, how many of your employees asked for leave without pay to care for an infant?

	<u>Granted</u>	<u>Denied</u>
Number of females	<u>64</u>	<u>0</u>
Number of males	<u>1</u>	<u>0</u>

8. In 1987, how many of your employees asked for leave without pay to care for a seriously ill child?

	<u>Granted</u>	<u>Denied</u>
Number of females	<u>13</u>	<u>0</u>
Number of males	<u>0</u>	<u>0</u>

9. In 1987, how many of your employees asked for leave without pay to care for a seriously ill parent?

	<u>Granted</u>	<u>Denied</u>
Number of females	<u>5</u>	<u>0</u>
Number of males	<u>2</u>	<u>0</u>

#### Effects

10. Proposed legislation regarding parental or family leave:

One proposal that is being considered would statutorily mandate employers having 50 or more employees to grant employees an unpaid parental or family leave to care for: a newborn child of the employee; a child placed with the employee for adoption or foster care; or the employee's seriously ill child or parent.

A qualified employee would be required to have been employed for 14 consecutive weeks. The employee may be employed on a part-time or full-time basis.

The duration of the unpaid leave would be no longer than 18 weeks.

Please note: The proposal under consideration is somewhat ambiguous. No mention is made of how often a qualified employee would be able to take advantage of unpaid parental or family leave--only once a year? More than once year?

Should the above proposal become law, what effects, including costs, do you foresee for:

- (a) Your company?

Please explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- (b) Your employees?

Please explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

11. Assume the proposal discussed above was being considered by the Legislature. Assume also that the maximum leave allowed was 18 weeks/year. What would your company's position be? Choose only one.

☐ In favor because it's a good idea  
☐ In favor because benefits exceed costs  
☐ Opposed because costs exceed benefits  
☐ Opposed because it's a bad idea  
☐ Don't care

12. Would you be willing to meet with a researcher from the Legislative Reference Bureau to discuss the impact of the proposed legislation, should it become law, on your company or organization? Please circle one.

Yes                      No

Official to be contacted if questions arise regarding this survey:

Respondent: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

Phone No.: \_\_\_\_\_ Date: \_\_\_\_\_

Thank you for your help!