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The Family and Medical Leave Act: Effects on Women's Wages and Employment

Andrea E. Miller

Abstract

For many years, women's labor force participation and issues of parental leave have been of great importance not only to families and individuals, but also to policy makers, researchers, and employers alike. The Family and Medical Leave Act was the first Federal policy enacted in an effort to accommodate medical leave for employees. The Family and Medical Leave Act allowed both men and women employees to take extended, unpaid leaves due to personal or family medical and health issues. The FMLA establishes a federal, minimum leave threshold in order for employees to take such an extended leave to include the following situations: to care for a new-born or adopted child, personal recovery from a serious medical condition, or to care for elderly parents, sick children or a spouse. With this Federal agreement, the FMLA guarantees up to twelve weeks of unpaid leave for all employees in firms of fifty persons or larger. In addition, upon any employee's return from such a leave, he or she will receive his or her exact position, or a position of equivalent duties, wage, and hierarchy, of which he or she held prior to taking the time off.

Economic theory suggests that the Family and Medical Leave Act could significantly impact employment outcome, especially with the increased number of female professionals within today's society. This paper will include an overview on the Family and Medical Leave Act that will further educate readers on requirements for both employers and employees who are looking to take an extended medical leave. Following an overview will be a theoretical prediction of the effects of FMLA on employment outcomes as well as labor force participation patterns seen both pre- and post-FMLA. Combinations of studies done over many years after the passage of the FMLA have been researched and the empirical evidence of the effects of the

Family and Medical Leave Act on leave coverage for women will be discussed. Finally, a brief description of the family wage gap, also known as the motherhood wage gap, will include research from both the United States and Sweden.

I. Introduction

For many years, women's labor force participation and issues of parental leave have been of great importance not only to families and individuals, but also to policy makers, researchers, and employers alike. In 1978, the Pregnancy Discrimination Act was passed, making it illegal for any employer to discriminate against an employee because of pregnancy, childbirth, pregnancy-related conditions, or based on the possible intent for the individual to become pregnant. Women could no longer be fired from a position, denied a job, or denied a promotion based on a pregnancy, experience substantial or postnatal health issues.

Fifteen years after the Pregnancy Discrimination Act was passed, the Family and Medical Leave Act was created. The Family and Medical Leave Act , enacted by Congress in 1993, allowed both men and women employees to take extended, unpaid leaves due to personal or family medical and health issues. The FMLA establishes a federal, minimum leave threshold in order for employees to take such an extended leave to include the following situations: to care for a new-born or adopted child, personal recovery from a serious medical condition, or to care for elderly parents, sick children or a spouse. With this Federal agreement, the FMLA guarantees up to twelve weeks of unpaid leave for all employees in firms of fifty persons or more. In addition, upon any employee's return from such a leave, he or she will receive his or her exact position, or a position of equivalent duties, wage, and hierarchy, of which he or she held prior to taking the time off. This particular Act is the first Federal law that requires some U.S. employers to offer parental leave to both women and men with qualifying employment histories. Women's labor force participation, especially surrounding childbirth, proves to be a governmental and national concern, rather than just a family or individual interest.

Economic theory suggests that the Family and Medical Leave Act could significantly impact employment outcome, especially with the increased number of female professionals within today's society. This paper will include an overview of the Family and Medical Leave Act that will further educate readers on requirements for both employers and employees who are looking to take an extended medical leave. Following an overview will be a theoretical prediction of the effects of FMLA on employment outcomes as well as labor force participation patterns seen both pre- and post-FMLA. Combinations of studies done over many years after the passage of the FMLA have been researched and the empirical evidence of the effects of the Family and Medical Leave Act on leave coverage for women will be discussed. Finally, a brief description of the family wage gap, also known as the motherhood wage gap, will include research from both the United States and Sweden.

II. Overview of the FMLA

Despite Congress successfully passing the Family and Medical Leave Act (FMLA) in 1993, it did not become effective until April of 1995. Prior to 1993, some states had policies in place that were similar to the FMLA; however, there was no formal cohesion among the different policies that were in place throughout the United States. When Congress passed the FMLA, there was much uncertainty about the effects it would have on women's wages and employment. In general, prior to the passing of the FMLA, many states did not have any type of formal policy that would guarantee any type of extended leave for medical or personal reasons. If such time off had been permitted, there was no Federal policy that included the individual's

right to return to the same or equivalent position within the company upon the individual's return.

Under the FMLA, employees are entitled to a total of up to twelve weeks of unpaid leave during any twelve-month period. Although it is most common for the allotted twelve weeks to be used consecutively, under certain conditions, an employee may opt to use the twelve weeks intermittently. The leave of absence available through the FMLA policy is a period of time given in addition to the contracted paid sick days available to an employee, with the amount of annual or sick leave based on company policy. This time frame may vary from company to company and is often based upon the amount of time the individual has spent with the company, total hours worked within that year, or a flat rate of days contracted to each employee.

Unlike paid sick leave, an employee can apply for FMLA only if he or she has worked at least 1250 hours for a firm in the previous year (this is equivalent to about 24.5 hours per week), had a serious medical condition (as documented by a physician), experienced the birth or adoption of a child, needed to care for an elderly parent, or to care for a sick child or spouse, (U.S. Office of Personnel Management, 1999). The employee must provide notice of intent to take family and medical leave no less than 30 days before the leave is to begin. In the case of emergencies, documentation must be made as soon as possible. In order to determine the leave is FMLA-eligible, the employee must obtain a complete, medical certification of his or her health condition, or in the case of caring for a family member the health condition of the employee's spouse, son, daughter, or parent must qualify under the FMLA regulations. Also, the medical certification for the FMLA leave may be requested by an agency before the employee

may take leave; the medical certification must be filled out by the employee and the health care provider to insure the requirements have been met to qualify for the FMLA.

For the employee, a major benefit of such a policy is that upon return from the FMLA leave, an employee must be returned to the same position, or to an equivalent position with equivalent benefits, pay, status, and other terms and conditions regarding employment. Employees who take leave are also entitled to maintain their health insurance coverage while on such leave, which is especially beneficial in the case of medical or health treatments during this time. The decision regarding whether the employee will receive his or her share of premiums on a current basis or upon return to work, however, is up to each employer.

Baum (2003) examined the effects of state maternity leave legislation and the FMLA on employment and wages. He conducted his research by running complex regressions. In the end, results showed that maternity leave legislation has had small and statistically insignificant effects on employment and wages. The effect of maternity leave legislation on wages remains negligible even as women who work for covered employers are identified and controls for sample selection bias are implemented. A simple explanation for this is that many firms voluntarily provided maternity leave benefits prior to the 1993 legislation. A year later, Baum (2004) examined the impact of family leave legislation on women's leave taking once again using regression techniques. From conclusions drawn, the family leave legislation has had no effect on the incidence of leave-taking in any of the models. Similarly, there is no evidence that family leave legislation affects the amount of leave taken in either the full sample of amount leave-takers. One potential explanation for the legislation's small effect on amount of leave taken is that many mothers cannot afford to take the leave the mandate provides because it is

unpaid. Financial constraints may be more binding than employer constraints on the amount of leave allowed.

Evidence shows that more than one-half of the FMLA leave-takers do not take the leave for pregnancy or childbirth-related reasons, despite the legislation's intent to primarily aid women (Amuedo-Dorantes and Kimmel, 2003)¹. Though it has a broader applicability to all workers, the final wording of the policy has the intent that the FMLA addresses gender inequality in the workforce. Since the FMLA covers men as well as women, this may be the reason for only one-half of the leave-takers reasoning being child related. As discussed later on in this paper, women are becoming more and more involved and important in the workforce. This broad spectrum of women employees will fall into many different categories for possible medical leave as well as men taking medical leave for things aside from children. The percentage of childbirth-related leave may seem low in some aspects but once a person views the entire work force population and the fact that not all women are going to become mothers, the percentage is very well understood.

III. Theoretical Prediction of the Effects of FMLA on Employment Outcomes

Economic theory implies an uncertain effect of the FMLA on women's wages and employment. A possible negative effect of the Family Medical Leave Act is the willingness of employer's to "finance" the paid leave by decreasing wages. According to economic theory employees are most concerned with the total compensation package, thus being more willing

¹ This statistic is cited in from Kimmel and Amuedo-Dorantes' and is drawn from a research report from the DOL website which is no longer available

to trade off wages and nonwage benefits to a variety of degrees. A firm may agree to finance generous leave benefits by reducing employee wages to cover the nonwage benefit costs. This will negatively impact women's wages by decreasing the annual gross income that a woman earns whether or not she takes the leave, thus punishing all females within the company. Not only are the women who intend to take a maternity leave ultimately earning less during their time in the workforce, but those women who never intend to take an extended leave will also earn less.

A positive aspect to the Family Medical Leave Act is the reassurance of having one's original positions within the company upon her return. Even after taking an extended leave, a woman is able to continuously work without falling to a lower position or standing within her career field. Employees are guaranteed equivalent positions upon returning to the workforce, thus work experience with the current employer is not lost. This fact is equally beneficial in allowing employees, both those who have, and those who have not taken an extended medical or family leave, to achieve some degree of seniority status within a relatively close timeframe. This ultimately levels "the playing field" for working men and women as it does not punish one, or the other, for taking an extended leave based on the conditions and promises of the FMLA policy. This will enhance wage growth for women.

Despite the decrease in wages, a possible positive outcome of the policy, however, may be that it could ultimately improve a female's access to previously male-dominated occupations. Men in the workforce will be chasing after employers who pay more, and are not making the same trade off as previously mentioned. This would allow more women to enter these positions that had been heavily male-dominated.

When looking at women's wages under the Family Medical Leave Act, it may be easy to conclude that women will benefit from such a policy considering their jobs are guaranteed to be there when they return, and they do not need to start from a base pay as they may have had to in the past. One factor that may be easy to overlook, however, is that not all employees can even afford to take the extended medical leave. The FMLA offers an unpaid twelve weeks leave, and in many cases a woman cannot support herself, as well as her family, without being paid for that twelve week time period. From a survey conducted by the U.S. department of Labor centered about the FMLA and the effect's that it has on women, it has been found that most of the employees who, "had not taken a leave when needed said the reason was their inability to afford time off" (U.S. Department of Labor, 2000). From this viewpoint the effect on wages would be negative because there is no pay for any extended leave under the FMLA. The research done by the U.S. Department of Labor was done based upon two surveys taken in 1995 and 2000.² After reviewing the results in 1995, 66.4% received pay while 33.6% did not. In 2000, 65.8% received pay and 34.2% did not; in both 1995 and 2000 the percentage of employees who received pay was approximately two-thirds. These data show that the percentage of employees who did not receive pay did in fact increase, but only slightly over the five-year period.³

In summary, economic theory predicts that the FMLA could cause women's wages to rise or fall, depending on a number of factors. Some workers will seek out better leave benefits

2 The primary discrepancy between these two surveys was that the questions asked were not worded exactly the same. In the 1995 survey the question was stated, "Was the leave fully paid, unpaid, or partially paid?" In the 2000 survey, it was stated as, "Did you receive pay for any part of your (longest) leave?"

3 Because the two surveys were not clearly worded in the same way, the slight increase shown in the data could be attributed to the subject's interpretation differences of to the questions.

by settling on lower wages. Salaries may also increase as job retention contributes to long-term wage growth. As for employment, mandated maternity leave could cause unemployment or gender discrimination if wages are not flexible. Under the job retention portion of the FMLA, however, female job retention should improve, and thus will encourage women to be comfortable when considering more professional careers while also having the opportunity to have a family.

IV. Labor Force Participation Patterns Surrounding Childbirth

As stated previously, prior to the passage of the FMLA, very few states had policies that protected employees taking extended leave from work. During the 1980s, about six out of ten women worked while pregnant (Smith and Bachu, 1998). Looking at a longer period of time, between the years of 1981 and 1984, roughly sixty-five percent of women who had their first child worked during their pregnancy. This number was substantially greater than the forty-four percent from the years 1961 and 1965. This increase in working through pregnancy could be attributed to the change in the nature of work. In more recent years, women have been working more in the service sector versus the manufacturing sector. This shift has made it easier for women to balance pregnancy and work. Among the studies of the 1980s, there is a consensus on the proportion of mothers who were employed during pregnancy and those who returned to work within six months to a year of childbirth (Smith and Bachu, 1998).

Looking at studies done subsequent to the passing of the FMLA, researchers have found an increase in leave taken among mothers in the first and second months after childbirth. This is in contrast to the findings that the FMLA has had minimal impact in extending maternity

leave access to all working women (Smith and Bachu, 1998). Now around half of American working women have been provided with access to maternity leave under the FMLA, versus in the 1960s only approximately one third of employed women were granted access by maternity/sick, paid or unpaid leave during their pregnancy.

V. Empirical Evidence of the effects of Family and Medical Leave Act on Leave Coverage for Women

The FMLA appears to have had two main effects on coverage for women's leave (Waldfogel, 1999). First, employer surveys suggest that some companies are now offering job-protected leaves for maternity and other family and medical reasons for the first time. Second, according to the 1994 Westat survey, many companies that previously offered leave have expanded their coverage; for example by offering a longer leave, continuing health insurance during the leave, or allowing other types of leave.⁴ It can be noted from the results that 11 percent of firms, employing 60 percent of all workers, were covered by the FMLA. Overall, an estimated 46 percent of all workers qualified for FMLA coverage, which is a large increase from the small 25 percent that qualified in the survey done the year prior; noting that many employees did not qualify based on the 1250 hours needed to have worked. Another finding was that women were only slightly less likely to be covered and to qualify for leave than men. The results obtained through this survey suggest that since the FMLA has come into effect the coverage for both men and women has grown significantly based on health insurance coverage

⁴ This survey was given to small, medium, and large firms and was conducted for the Family and Medical Leave Commission. The question asked was "How many of the covered employers had to change their policies as a result of the FMLA?"

during maternity or other types of leave as well as providing job protection and extending the period of leave or allowing other types of leave.

There may be three reasons as to why we might observe a positive effect of the FMLA on leave-taking. First, there might be new coverage by firms that did not previously offer coverage. Second, there might be expanded coverage by firms that already had coverage. Third, there might be expanded usage in firms that already had coverage due to an increased level of awareness about the available coverage. Since the passage of the FMLA, an increased number of employees are aware of the availability of extended medical leave. Although it is up to the employer as to how much maternity leave a woman is guaranteed based on employment, under the FMLA both the father and the mother are eligible to take up to an extra twelve weeks leave. Even though this leave is unpaid, an employee no longer needs to agonize about the risk of losing her position within the company. Waldfogel (1999) takes the difference-in-difference (D-D) and difference-in-difference-in-difference (D-D-D) approach to show the estimates of the effects of the FMLA on leave-taking. The difference-in-difference approach grouped the states in two separate categories; the states that had laws similar to the FMLA before it came into effect in 1993, and the states that did not have any type of law similar to the FMLA. The difference within each group was found and this became the difference-in-difference. The D-D-D estimates is the D-D estimates for the given group which had a similar law minus the D-D estimate for the group of states without a similar law. It is shown in the results from this approach that for medium firms the FMLA did have a positive effect on leave-taking for both treatment groups but had no effect on leave-taking for the control groups; this leads to the findings that the D-D-D estimates are positive for medium sized firms as well. As for

both small and large firms, the D-D-D estimates tend to be negative, suggesting that states with prior state laws saw a bigger increase in leave-taking than those without state laws. This could be attributed to the fact some of these firms were covered by state laws and that awareness and use of such coverage may have increased post-FMLA

As suggested earlier, the effects on women's wages from continuous work through childrearing can be viewed as positive due to the FMLA. Since job retention is part of the FMLA, women are able to enter and exit the workforce for childbearing without receiving a set-back in their achieved salaries. Women would be receiving a wage premium associated with seniority and a good job match. In this case we may see a rise in the wages of women with infants and women with children overall, although it might be too soon to see this effect if the wage gains increase over time. Although some negative effects may come into effect if a women takes several leaves over the course of a few years, overall women will not need to start from the base salary like that would have before. Prior to the FMLA, a women could potentially lose her job when she became pregnant and there was no guarantee what position, if any, she would return to when she came back into the workforce. With the time gap from leaving the workforce a woman would need to start from a lower salary than when she left the workforce to have her child (children).

Contrary to this hypothesis is that wages for women of childbearing age will go down as employers pass along the cost of the mandated benefit to those potentially benefitting from it. Waldfogel (1999) presents empirical evidence that suggests that the trade-off between women earning less overall during their careers because of the possibility of leaving the workforce for childbearing and earning an equivalent amount with no secure job retention or leave-time, one

may be more valuable. To the extent that women valued the benefit, they might be willing to accept lower wages in return for the benefit.

VI. The Family Wage Gap

The family wage gap, or motherhood wage gap, is the gap in wages between women with children and women who do not have children. The FMLA may reduce this motherhood wage gap by helping working moms maintain their ties to the labor force. Looking into the family wage gap prior to the passage of the FMLA, Waldfogel (1998) takes a look at the statistics leaving out the policy. According to this article, women with children earn less than other women in the United States. Upon controlling differences in characteristics such as education and work experience, researchers still find a family penalty of approximately 10 percent for women with children as compared to women without children. In contrast, there is no such family penalty for men. It is known, however, that married men with children earn more than other men from the study performed by Jacobsen and Rayack in 1996. This study found a marriage premium for men ranging from 10-15 percent. Ironically or not this is the same percentage difference women with children earn less than women without children.

Amuedo-Dorantes and Kimmel (2003) examined the motherhood wage gap and asked questions about the effects of family and medical leave eligibility on women's wages as well as questioned if there is a differential impact on mothers versus non-mothers. The authors implemented a well-known regression-based method to estimate the relationship between family leave policies and employment and wage outcomes. The empirical model was a straightforward implementation of Mincer's human capital model in which wages are

expressed as a function of factors known to determine wages. The first equation modeled the woman's discrete decision to participate in paid employment, and the second equation modeled the hourly wage earned by those women who work. Amuedo-Dorantes and Kimmel (2003) included a large group of variables using data from the geo-coded National Longitudinal Survey of Youth. Amuedo-Dorantes and Kimmel (2003) show for the motherhood dummy variable, on average, mothers in their sample experienced a motherhood wage gap of approximately eleven percent. Further information on the overall effect of eligibility on their earnings shows current leave eligibility raises women's earnings by approximately seven percent. This positive effect on women's wages under the FMLA emphasizes the importance of leave benefits in promoting job retention that contributes to long-term wage growth.

The decline of gender-based occupational segregation began in the 1970s and has had continuous improvement since. According to Amuedo-Dorantes and Kimmel (2003), females have gained ground in previously male dominated occupations such as executive, administrative, and managerial positions. However, when looking at statistics overall, occupational segregation still exists. Many of the receptionist, elementary-education teachers, and other professions that were viewed historically as "women's work" are still dominated by women. Additionally the stereotypical "men's work" such as firefighters, police officers, and engineers are continuously male dominated even with women's acceptance into those professions. During the 1980s, much improvement was made in the U.S. gender wage gap; in fact, the percentage improvement experienced during these decades exceeded that of most other countries. The wage gap for year-round, full-time workers is nearly identical across a wide range of education levels. Since education is a dominating factor in salaries earned by

employees, it is only appropriate that when comparing statistics of women's and men's earnings we keep education levels constant. When we do we see that, "comparing like-educated women and men, the gender wage gap, is in the narrow range, seventy-two percent to seventy-five percent, for all levels of education between less than high school and a doctorate degree," (Amuedo-Dorantes and Kimmel, 2003). While this gives hope for women's equality of wages, some concerns remain. This concern turns back into looking at the motherhood wage gap and whether women have the ability to integrate themselves fully into the workforce. Waldfogel (1998) has demonstrated that mothers continue to earn less than like non-mothers, with the ratio of mothers to non-mothers earnings in the ninety percent range since 1970. She estimates that over one-half of the gender wage gap is due to the motherhood wage gap and argues that this family wage gap is growing over time.

Since many women have entered the paid workforce some families have utilized the working woman and stay at home father. However, many other men may claim they would like more time to be involved with their families; strikingly few men take any significant paternity leave or assume equal responsibility for childrearing.

After looking at so many different statistics and trends in the U.S. when it comes to family and medical leave, it may be helpful to compare to another country. Sweden is interesting to research because of its very different view of family and medical leave. In Sweden, parental leave is paid care for one's own newborn children. According to Duvander and Sundstrom (2001), during 1994 parents were entitled to fifteen months leave of absence from work, of which twelve months were compensated at ninety percent of their prior earnings and three months at a lower flat rate. Parents were able to share the leave as they decided.

This amount of leave and the fact that employees are compensated during the time out of the office is significantly different than the U.S. policy. When comparing mothers and fathers within the country of Sweden, it was seen that mothers take the overwhelming part of the leave but half the fathers use at least some parental-leave days. A common finding is that in families with young children the mother's number of paid work hours is an important predictor of father's time in childcare. According to research, many household tasks, including childcare, are more equally divided when mothers are more educated and contribute more to family income. It was found that the more hours that wives spend in their jobs' the more husbands are involved with their young children, and that fathers who are employed more hours do less caregiving.

"Kaufman and Uhlenberg reported that men with egalitarian gender-attitudes decreased their hours of work when they became fathers, while men with traditional gender-attitudes increased their hours of work when they became fathers" (Duvander and Sundstrom, 2001).

There is no direct effect from the amount of compensation that men are earning from their jobs as to whether they increase or decrease hours worked after becoming a father.

VII. Conclusion

This paper focused on the effects of the Family and Medical Leave Act of 1993 on women within the workforce, while also further discussing current research findings on wages, employment, and the postnatal return to work. Economic theory says that the FMLA can impact women's wages in either direction. The findings are inconsistent and lack a clear consensus of their effects on women's wages and employment because of the many different aspects of the policy.

Although improvements have been traced over the past two decades, gender wage inequality continues in the American workplace. The problems may continue because some employers may impose penalties on women both because of their actual behavior, which differs from men's, but also based on their expectation that women will leave the workforce when they have children. The FMLA has been the only federal effort to provide relief to working parents but there is a risk that the wage impact may be negative. The FMLA covers both men and women but women are considerably more likely than men to leave on the given conditions. Since employers notice that women are more likely to take leave than men they may be penalized in the marketplace. With time, however, the possible wage effects of the FMLA achieved through increased job retention may outweigh the negative. With any type of government policy there needs to be time for the country to react and fully develop itself around the new guiding principle.

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