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## RECENT REGULATION

EMPLOYMENT LAW — FAMILY AND MEDICAL LEAVE ACT OF 1993 — DEPARTMENT OF LABOR REGULATIONS ALTER SUBSTITUTION OF PAID LEAVE PROVISION UNDER THE FMLA. — FMLA Final Rule, 73 Fed. Reg. 67,934 (Nov. 17, 2008) (codified at 29 C.F.R. pt. 825 (2009)).

For many employees faced with serious illness or caregiving responsibilities, the Family and Medical Leave Act of 1993<sup>1</sup> (FMLA) provides the only financial and job protection available. Designed to accommodate the need for a more flexible workplace,<sup>2</sup> the FMLA entitles employees to take job-protected, unpaid leave “for medical reasons, for the birth or adoption of a child, and for the care of a child, spouse, or parent who has a serious health condition.”<sup>3</sup> Though the FMLA is an unpaid job protection statute, it grants employees the choice to use, or employers the right to require that employees use, paid accrued leave in place of unpaid leave.<sup>4</sup> On November 17, 2008, the Department of Labor published revised regulations<sup>5</sup> that, inter alia, no longer guarantee an employee’s right to substitute accrued paid leave for unpaid leave unless the employee has complied with the employer’s normal leave-taking policies. Although the revision purports merely to add a procedural obstacle to an employee’s ability to use accrued paid leave, this new interpretation of the FMLA may, as a practical matter, render the Act useless for many workers whom the FMLA was enacted to protect. This practical effect could lead to a congressional override or a successful legal challenge based on the revised regulations’ inconsistency with the FMLA’s text, legislative history, and symmetrical structure.

Over the latter half of the twentieth century, the American workforce underwent a drastic change as more women entered the workplace.<sup>6</sup> Fewer parents remained at home to handle caregiving responsibilities, and by the time Congress passed the FMLA in 1993, the

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<sup>1</sup> 29 U.S.C. §§ 2601–2654 (2006).

<sup>2</sup> See G. John Tysse & Kimberly L. Japenga, *The Federal Family and Medical Leave Act: Easily Conceived, Difficult Birth, Enigmatic Child*, 27 CREIGHTON L. REV. 361, 361 (1994).

<sup>3</sup> 29 U.S.C. § 2601(b)(2).

<sup>4</sup> 29 U.S.C.A. § 2612(d)(2) (West 2008).

<sup>5</sup> FMLA Final Rule, 73 Fed. Reg. 67,934 (Nov. 17, 2008) (codified at 29 C.F.R. pt. 825 (2009)). The 2008 regulations revised the Department’s 1995 regulations, which were required by the statute. See 29 U.S.C. § 2654; see also Nancy R. Dasgupta, Comment, *The Family and Medical Leave Act of 1993: A Great Idea but a “Rube Goldberg” Solution?*, 43 EMORY L.J. 1351, 1422 (1994).

<sup>6</sup> See Caitlyn M. Campbell, Note, *Overstepping One’s Bounds: The Department of Labor and the Family and Medical Leave Act*, 84 B.U. L. REV. 1077, 1078–79 (2004); Paula J. Dehan, Note, *Has the FMLA Been Stretched Beyond Its Intended Scope?*, 29 N. KY. L. REV. 629, 630 (2002).

United States was the only industrialized nation without job-protected leave.<sup>7</sup> The FMLA was proposed to help families “balance the demands of the workplace with the needs of famil[y].”<sup>8</sup> The Act mandates that employers provide twelve weeks of unpaid, job-protected leave to qualified employees<sup>9</sup> to care for a newly born or adopted child; to care for a child, spouse, or parent with a serious health condition; or because of an employee’s own serious health condition that renders her unable to perform her job functions.<sup>10</sup> The FMLA was the product of a nearly twenty-year legislative compromise.<sup>11</sup> Employee advocates praised Congress’s attempt to protect the needs of families,<sup>12</sup> while parts of the business community feared the burdens of administering the Act and “felt that job-protected leave would likely impact the economic profitability of businesses and the availability of jobs.”<sup>13</sup> Nevertheless, the bill eventually passed with strong support.<sup>14</sup>

In 1995, the Department of Labor promulgated regulations governing the use of the Act.<sup>15</sup> Afterwards, implementation of the Act and its various regulatory provisions led to legal challenges<sup>16</sup> and calls for clarification.<sup>17</sup> The Department submitted revised regulations for public

<sup>7</sup> Sabra Craig, Note, *The Family and Medical Leave Act of 1993: A Survey of the Act’s History, Purposes, Provisions, and Social Ramifications*, 44 DRAKE L. REV. 51, 52 (1995).

<sup>8</sup> 29 U.S.C. § 2601(b)(1); see also Megan E. Hladilek, Comment, *Can I Go to Chemo?: Protecting Employee Rights to Intermittent and Reduced Leave Under the Family and Medical Leave Act*, 29 HAMLINE L. REV. 377, 409 (2006) (“The overall purpose of the FMLA is to protect employees from choosing between family and work.”).

<sup>9</sup> An employee is eligible if she has worked for her employer for at least twelve months and for at least 1250 hours during the previous year, and if her employer employs at least fifty employees within seventy-five miles of the employee’s worksite. 29 U.S.C.A. § 2611(2).

<sup>10</sup> *Id.* § 2612(a)(1).

<sup>11</sup> See, e.g., Peter A. Susser, *The Employer Perspective on Paid Leave & the FMLA*, 15 WASH. U. J.L. & POL’Y 169, 169 (2004) (referring to the Act as the result of “a long political struggle”); Marc Mory & Lia Pistilli, Note, *The Failure of the Family and Medical Leave Act: Alternative Proposals for Contemporary American Families*, 18 HOFSTRA LAB. & EMP. L.J. 689, 693–97 (2001) (discussing the Act’s debates and lobbying efforts beginning in the 1980s). “The FMLA was introduced [in Congress] six times and vetoed twice by President Bush before it was signed into law” in 1993. Jennifer Thompson, *Family and Medical Leave for the 21st Century?: A First Glance at California’s Paid Family Leave Legislation*, 12 U. MIAMI BUS. L. REV. 77, 84 (2004).

<sup>12</sup> For an example of support for the FMLA, see Senator Joseph Lieberman’s statements before the Senate, calling the FMLA “pro-family” and stating that it would allow employees to handle the burdens of the family without overburdening employers. 139 CONG. REC. 1704 (1993).

<sup>13</sup> Susser, *supra* note 11, at 169. But see, e.g., 139 CONG. REC. 1703 (1993) (written submission of Fel-Pro, Inc., supporting passage of the FMLA as a benefit to companies and workers).

<sup>14</sup> See Tysse & Japinga, *supra* note 2, at 361 n.2 (reporting that the bill passed the Senate by a 71–27 margin and passed the House by a 247–152 margin).

<sup>15</sup> See Shay Ellen Zeemer, Note, *FMLA Notice Requirements and the Chevron Test: Maintaining a Hard-Fought Balance*, 55 VAND. L. REV. 261, 267–68 (2002).

<sup>16</sup> See Michael Selmi, *Is Something Better than Nothing? Critical Reflections on Ten Years of the FMLA*, 15 WASH. U. J.L. & POL’Y 65, 76 (2004).

<sup>17</sup> See Family and Medical Leave Act Regulations: A Report on the Department of Labor’s Request for Information, 72 Fed. Reg. 35,550, 35,553 (June 28, 2007); see also Antonio E. Bend-

comment in 2008.<sup>18</sup> One notable change involved the ways in which employees may substitute accrued paid leave for unpaid FMLA leave.

The Act does not require that FMLA leave be paid, but it allows employees to substitute accrued paid leave provided by employers for unpaid FMLA leave while maintaining the job protections of the Act. Employers typically offer at least two types of paid leave: (1) sick or medical leave (“accrued sick leave”), and (2) vacation, family, or personal leave (“accrued vacation or personal leave”). The statute’s text specifies that an employer is not required “to provide paid *sick leave* or paid *medical leave* in any situation in which such employer would not normally provide any such paid leave,”<sup>19</sup> but an “employee may elect, or an employer may require the employee, to substitute any of the accrued paid vacation leave, personal leave, or family leave of the employee for leave provided under [the Act].”<sup>20</sup>

The Act explicitly states that employers may restrict employee use of accrued sick leave, but it mentions no restrictions on employee use of accrued vacation or personal leave. The 1995 regulations interpreted this provision of the Act to mean two things: (1) employers could require employees to use accrued paid leave before allowing them to take unpaid leave,<sup>21</sup> and (2) employers were prohibited from placing any restrictions on an employee’s choice to substitute accrued vacation or personal leave.<sup>22</sup> Under the proposed regulations, however, employers could still require that employees use accrued paid leave before taking leave without pay, but employers could reject an employee’s request to use accrued vacation or personal leave if the employee failed to comply with the company’s accrued leave policies.<sup>23</sup> Thus, if an employer required two weeks’ notice for a vacation time request, but an employee needed immediate FMLA leave because of a spouse’s sudden illness, the proposed regulations would allow the employer to prohibit the use of accrued vacation or personal leave and allow the employee to take only the FMLA leave without pay.<sup>24</sup>

Public comments to the proposed change were divided. Employers welcomed the revision because it would prevent employees taking

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ezu, *The Fifteen-Year FMLA Facelift*, WYO. LAW., June 2009, at 26, 27, available at <http://wyomingbar.org/pdf/barjournal/barjournal/articles/FMLA.pdf>.

<sup>18</sup> See FMLA Final Rule, 73 Fed. Reg. at 67,935. The Department received nearly 5000 comments. *Id.*

<sup>19</sup> 29 U.S.C.A. § 2612(d)(2)(B) (West 2008) (emphasis added).

<sup>20</sup> *Id.* § 2612(d)(2)(A).

<sup>21</sup> FMLA Final Rule, 73 Fed. Reg. at 67,979.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> See *id.* at 67,980 (stating that some bargaining agreements “require substantial advance notice for using personal leave”). Another example of a procedural hurdle to taking accrued vacation and personal leave is a policy requiring employees to bid for vacation time up to a year in advance. *Id.*

FMLA leave from being treated “more favorably than employees using non-FMLA leave.”<sup>25</sup> Employers also argued that the interpretation in the 1995 regulations incentivized employees not to work.<sup>26</sup> Employee advocates argued that the revision would disadvantage employees because many cannot afford to take leave without pay.<sup>27</sup> The Department “carefully considered all the comments” but promulgated the regulations as proposed.<sup>28</sup> The Department noted that the revision “may have an impact on some workers” but emphasized that “the FMLA is an unpaid leave statute that does *not* convey the right to the paid leave that workers may have accrued.”<sup>29</sup>

Although the revised regulations technically add to the 1995 regulations only a procedural obstacle to employee use of accrued vacation or personal leave as part of FMLA leave, the revised interpretation of the FMLA may, in effect, render the Act useless for many workers whom the FMLA was enacted to protect. This effect could result in a congressional override of the Department’s revised regulations or a successful legal challenge. The statute’s text, legislative history, and symmetrical structure all support the argument that the revised regulations are inconsistent with Congress’s intent. The Act is indeed one that protects an employee’s job while taking *unpaid* leave, but the option to concurrently use accrued paid leave is what makes FMLA leave feasible for many employees. In its report to Congress, the U.S. Commission on Family and Medical Leave found that more than sixty percent of employees who needed leave were unable to take it “because they could not afford the associated loss of wages.”<sup>30</sup> Nearly fifty percent of those taking leave received full wage replacement, most likely

<sup>25</sup> *Id.*

<sup>26</sup> See Family and Medical Leave Act Regulations: A Report on the Department of Labor’s Request for Information, 72 Fed. Reg. 35,550, 35,612 (June 28, 2007). Under this reasoning, if an FMLA-approved employee wished not to come into work the day before Christmas, for example, she could call in sick and use accrued vacation time under the auspices of needing FMLA leave, even if other employees would not have been allowed to do so. Since the employer could not fire the employee for doing so, the employee would have no incentive to pass up the opportunity to take such a peak day off of work.

<sup>27</sup> FMLA Final Rule, 73 Fed. Reg. at 67,979.

<sup>28</sup> *Id.* at 67,980.

<sup>29</sup> *Id.* at 68,054.

<sup>30</sup> U.S. COMM’N ON FAMILY & MED. LEAVE, A WORKABLE BALANCE: REPORT TO CONGRESS ON FAMILY AND MEDICAL LEAVE POLICIES 99 (1996), available at [http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1002&context=key\\_workplace](http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1002&context=key_workplace). Ellen Bravo, the National Director of the 9 to 5 National Association of Working Women, reports that nearly eighty percent of women “cannot afford to take unpaid leave even if it is desperately needed” because they work in low-paying jobs. Emily A. Hayes, Note, *Bridging the Gap Between Work and Family: Accomplishing the Goals of the Family and Medical Leave Act of 1993*, 42 WM. & MARY L. REV. 1507, 1523 (2001) (quoting *Expand Family, Medical Leave Act Through Bargaining, Seminar Told*, 31 Gov’t Emp. Rel. Rep. (BNA) 1557 (Nov. 29, 1993)).

from “sick pay, vacation pay or pay from a disability insurance plan.”<sup>31</sup> The revised regulations, which no longer ensure employees the right to substitute accrued vacation or personal leave for unpaid FMLA leave, could exacerbate this problem and adversely affect a group specifically targeted by Congress in enacting the FMLA: low-income families.<sup>32</sup> For these workers, the Act risks becoming an “empty promise.”<sup>33</sup>

The ability to substitute accrued vacation or personal leave for unpaid FMLA leave without restrictions is vital precisely because the FMLA is intended, designed, and often used for unforeseeable circumstances. The Act can be used by employees who need “to care for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition.”<sup>34</sup> In 2000, nearly twenty percent of leave was taken to care for seriously ill family members.<sup>35</sup> In these situations, which will likely increase as the baby boom generation ages,<sup>36</sup> the opportunity to use paid leave is essentially useless if employees have to comply with their employers’ policies, such as notice requirements.

There are two ways to remedy the effect of the revised interpretation. First, Congress could correct the interpretation through subsequent legislation. The first piece of legislation that President Obama signed into law — the Lilly Ledbetter Fair Pay Act of 2009,<sup>37</sup> which superseded the Supreme Court’s interpretation of the statute of limita-

<sup>31</sup> U.S. COMM’N ON FAMILY & MED. LEAVE, *supra* note 30, at xxi.

<sup>32</sup> See S. REP. NO. 103-3, at 16 (1993) (“While the need for family leave applies to workers across the economic spectrum, that need is greatest for the low wage earner.”).

<sup>33</sup> Hayes, *supra* note 30, at 1524; see also Thompson, *supra* note 11, at 77 (referring to the FMLA protections as “illusory” if employees cannot afford to take unpaid leave).

<sup>34</sup> 29 U.S.C.A. § 2612(a)(1)(C) (West 2008). The Act’s legislative history also illustrates that Congress knew and intended that the Act would be increasingly used for families’ caretaking responsibilities, including sudden illness or injuries to children, spouses, or parents. See, e.g., S. REP. NO. 103-3, at 6 (“[The Act] also responds to another dramatic demographic shift: the aging of the American population.”); *id.* at 7 (“Two-thirds of the nonprofessional caregivers for older, chronically ill, or disabled persons are working women, the most common caregiver being a child or spouse.”); 139 CONG. REC. 1964 (1993) (statement of Rep. Gordon) (“And what about the elderly [sic] — those of our parents with severe health problems who fall through the cracks of our long-term-care system? Do we tell Americans that when their widowed father is bedridden, needing constant medical supervision, they cannot stay at home for a few weeks to take care of him without worrying that they will be out of work[?]”).

<sup>35</sup> See U.S. COMM’N ON FAMILY & MED. LEAVE, *supra* note 30, at 95 (finding that eight percent of leave is taken for care of seriously ill children and ten percent of leave is taken to care for adult family members who are seriously ill).

<sup>36</sup> See John A. Pearce II & Dennis R. Kuhn, *Managers’ Obligations to Employees with Elder-care Responsibilities*, 43 U. RICH. L. REV. 1319, 1319 (2009). Additionally, employees anticipating the need to take leave within the next five years most frequently cited caring for an ill parent as the anticipated need for leave. See U.S. COMM’N ON FAMILY & MED. LEAVE, *supra* note 30, at 101-02.

<sup>37</sup> Pub. L. No. 111-2, 123 Stat. 5 (to be codified in scattered sections of 29 and 42 U.S.C.).

tions for certain Title VII claims — did just that.<sup>38</sup> Second, the regulation could be challenged in court. Legal challenges to agency regulations are difficult because judicial review of agency regulations is fairly deferential, and a litigant essentially must prove that the Department's interpretation of the FMLA is contrary to Congress's clear intent:<sup>39</sup> "[R]egulations are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute."<sup>40</sup>

Still, a legal challenge may be feasible. The plain text, legislative history, and symmetrical structure of the Act's substitution of paid leave provision all support the argument that the revised regulations are contrary to Congress's clear intent. Although the statute explicitly states that employers need not provide paid sick leave "in any situation in which such employer would not normally provide any such paid leave,"<sup>41</sup> this same language is noticeably absent when the statute addresses accrued vacation or personal leave. Had Congress desired the same limitations for accrued vacation or personal leave, such limiting language could easily have been included. When confronted with an employer's requirement that employees give two weeks' notice to use accrued vacation or personal leave for unforeseeable FMLA leave, a U.S. district court reasoned that the 1995 regulations were "consistent with both the letter and the spirit of the FMLA"<sup>42</sup> and that a contrary interpretation would create the precise nature of financial hardship that the Act was created to prevent.<sup>43</sup>

Legislative history also supports the notion that Congress intended employees to be able to use accrued vacation or personal leave without restrictions. Even though Congress failed to mandate paid leave,<sup>44</sup> one

<sup>38</sup> See Peter Reed Corbin & John E. Duvall, *Employment Discrimination*, 60 MERCER L. REV. 1173, 1190 & n.179 (2009); William A. Fletcher, *Dissent*, 39 GOLDEN GATE U. L. REV. 291, 299 (2009).

<sup>39</sup> See *Chevron U.S.A. Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984).

<sup>40</sup> *Id.* at 844. Further, the Court has recently confirmed that even when a regulation represents a sharp departure from past practice, as this one does, it is still entitled to the same treatment as a longstanding regulation. See *FCC v. Fox Television Stations, Inc.*, 129 S. Ct. 1800, 1810–11 (2009).

<sup>41</sup> 29 U.S.C.A. § 2612(d)(2)(B) (West 2008).

<sup>42</sup> *Solovey v. Wyo. Valley Health Care Sys.–Hosp.*, 396 F. Supp. 2d 534, 539 (M.D. Pa. 2005). The court's decision was based on the text of the statute and the Department's 1995 regulations.

<sup>43</sup> See *id.*

<sup>44</sup> Congress's failure to do so was considered by some to be a serious shortcoming of the Act. See, e.g., 139 CONG. REC. 1968 (1993) (statement of Rep. Walker) ("[T]his bill will not help families because families making \$29,000 on an average in this country cannot afford to take unpaid leave."); Hayes, *supra* note 30, at 1523. Paid leave was excluded from the FMLA not because it was not considered an important part of a national leave policy, but rather because proponents believed that a paid leave mandate would be impossible to pass. See Iman Syeda Ali, Student Article, *Bringing Down the "Maternal Wall": Reforming the FMLA To Provide Equal Employment Opportunities for Caregivers*, 27 LAW & INEQ. 181, 185 (2009); Kathryn Kroggel, Comment,

way that lawmakers eased the financial burden of taking FMLA leave was to include explicitly a provision that allowed employees to concurrently use accrued paid leave already offered by their employers. Not only do employee advocates hail the provision as “a critical factor in employees being able to utilize FMLA leave,”<sup>45</sup> but the Department’s own understanding of the provision’s purpose also shows that the ability to use accrued paid leave was important to Congress: the Department stated that one purpose of the Act’s provision “was to mitigate the financial impact of income loss to the employee due to family or medical leave.”<sup>46</sup> The provision was not merely included in the statute by chance — it was contemplated by Congress as a way to offset the burden of taking time off from work under the FMLA. Senate and House Reports discussing the provision state that its purpose is “to provide that specified paid leaves which have accrued but have not yet been taken, may be substituted for the unpaid leave under the act *in order to mitigate the financial impact of wage loss* due to family and temporary medical leaves.”<sup>47</sup>

In addition, the structure of the Act and its substitution of paid leave provision create symmetrical protections of employers’ and employees’ interests that are destroyed by the revised regulations. The FMLA was enacted to protect employees with leave needs while not overly burdening employers’ ability to run their businesses.<sup>48</sup> The substitution of paid leave provision extends this mutual protection:

The provision enables the employee to take advantage of *paid* employer-provided leave that the employee would be entitled to regardless of the existence of the FMLA. The provision also protects the employer; if an employee requests FMLA leave, the employer can require that the employee also use employer-provided leave thereby . . . saving itself from having to extend more leave than provided for in its leave policy.<sup>49</sup>

The 1995 regulations protected this symmetry, but the new regulations preserve employer power to force employees to use accrued paid leave

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*Absent Fathers: National Paid Paternity Leave for the United States — Examination of Foreign and State-Oriented Models*, 23 PENN ST. INT’L L. REV. 439, 446 (2004).

<sup>45</sup> Family and Medical Leave Act Regulations: A Report on the Department of Labor’s Request for Information, 72 Fed. Reg. 35,550, 35,611 (June 28, 2007).

<sup>46</sup> *Id.* at 35,555; *see also* Hladilek, *supra* note 8, at 402 (“The intent of the FMLA was to reduce the financial strain on employees, not increase the stress of missing work . . .”).

<sup>47</sup> S. REP. NO. 103-3, at 28 (1993) (emphasis added); *accord* H.R. REP. NO. 103-8, pt. 1, at 38 (1993); *see also id.* pt. 2, at 17 (“An employee may choose to take family leave in combination with any other available leave.”).

<sup>48</sup> Since the Act provides employer-provided benefits to employees (such as a continuation of health insurance during unpaid leave), it is impossible to avoid all burdens on employers under the Act. However, under the FMLA, one purpose of the Act is to “accommodate[] the legitimate interests of employers.” 29 U.S.C. § 2601(b)(3) (2006).

<sup>49</sup> *Ragsdale v. Wolverine Worldwide, Inc.*, 218 F.3d 933, 938 (8th Cir. 2000), *aff’d*, 535 U.S. 81 (2002).

before taking FMLA leave without pay and destroy employee power to take accrued vacation or personal leave unless employees comply with employer policies.

Moreover, allowing employers to hinder employees' ability to substitute accrued vacation or personal leave does little to protect employers' legitimate business interests.<sup>50</sup> Employers have a legitimate interest in keeping sick employees out of the workplace (for example, to prevent communication of disease); it therefore makes sense that Congress allowed employers to prevent employees from exhausting every paid sick day on FMLA leave unless the leave is for the employee's own illness. However, control over employee use of accrued vacation or personal leave is not as compelling a business interest. When employers provide personal and vacation leave and such leave has accrued, they have already committed to a financial allotment; the timing of leave payment is thus not particularly onerous on employers' finances.<sup>51</sup> An employer may have a valid interest in controlling schedules; therefore, policies discouraging sudden leave can be helpful, especially in industries where deadlines are particularly important. However, the Act already allows employees to take unforeseeable FMLA leave with minimal notice, illustrating that Congress placed more importance on employees' leave needs than on employers' scheduling interests.

Accordingly, although courts are generally deferential to agency interpretations of statutes, the Act's text, legislative history, and symmetrical structure and its substitution of paid leave provision could support a successful legal challenge to the revised regulations concerning the provision. If the regulations are not successfully overturned by subsequent legislation or a successful legal challenge, an employee faced with strict accrued vacation or personal leave policies will be forced to choose between three poor options: (1) not take leave in order to pay the bills and thereby neglect one's family duties, (2) take unpaid leave to take care of unforeseeable caregiving responsibilities and risk financial ruin, or (3) resign from one's job to receive the accrued vacation or personal leave owed and take care of one's family. In each situation, the employer remains unburdened and the employee is discouraged from taking FMLA leave and forced "to choose between the job they need and the family they love."<sup>52</sup>

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<sup>50</sup> See Family and Medical Leave Act Regulations: A Report on the Department of Labor's Request for Information, 72 Fed. Reg. at 35,612 (including a comment by the Coalition of Labor Union Women that paid leave does not adversely impact employers' business).

<sup>51</sup> If an employee resigned, for example, the employer would have to pay out the accrued leave all at once.

<sup>52</sup> William J. Clinton, Statement on Signing the Family and Medical Leave Act of 1993, 1 PUB. PAPERS 50 (Feb. 5, 1993).