

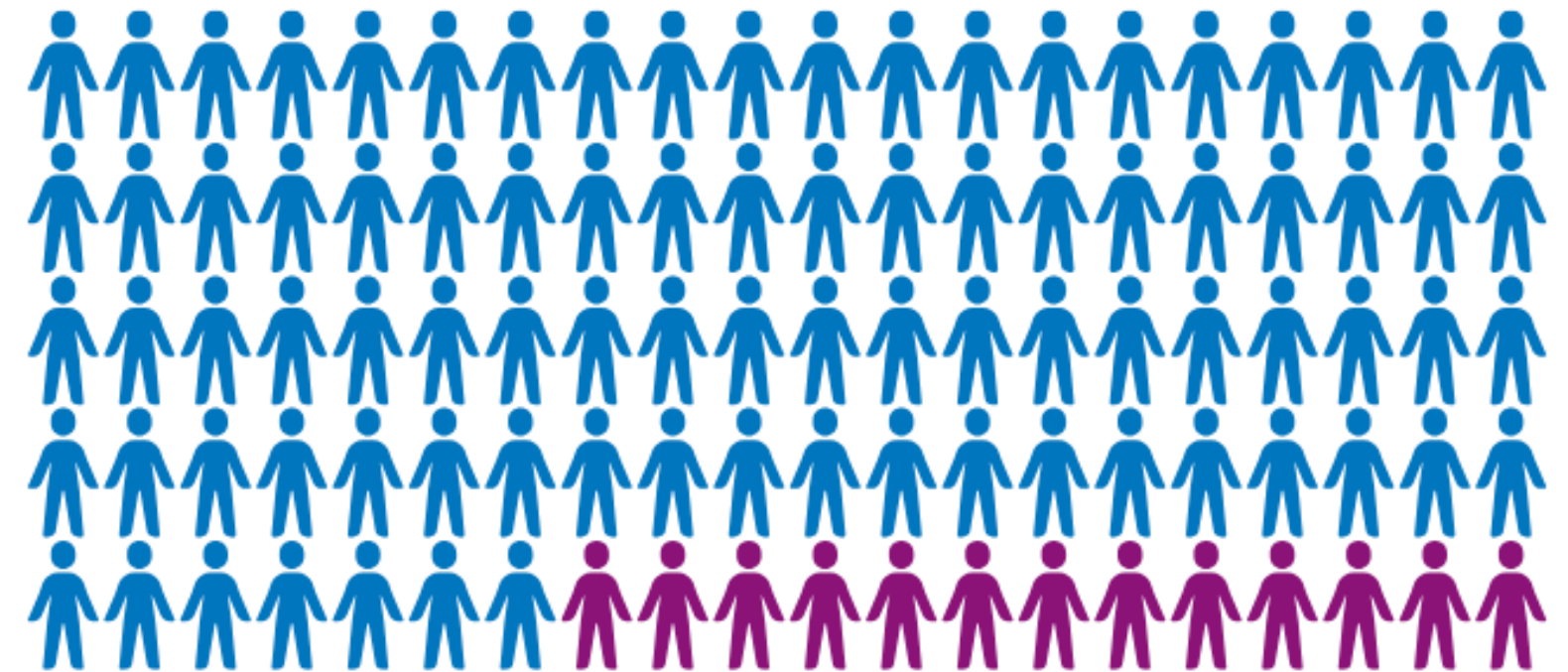


The Family and Medical Leave Act of 1993 Reimagined

SHRM's Vision for Legislative and Regulatory Improvements to Modernize a Cornerstone of U.S. Workplace Policy

The FMLA and SHRM's Interest

- The Family and Medical Leave Act (FMLA), which President Bill Clinton signed in 1993 as his first act in office, was a **groundbreaking bipartisan achievement** that transformed workplace protections.
- However, **the significant shifts** in both the paid and unpaid leave landscapes, along with changes in federal accommodations, worker classifications, and the overall culture of work, have made the **FMLA's application in the modern world unclear.**
- SHRM believes there is **an opportunity** and **demand** to revise the FMLA to meet **the current and future needs of work, workers, and workplaces.**



Nearly 9 out of 10 (87%) employers say that Congress has **an opportunity and responsibility** to revise the FMLA to meet the current and future needs of work, workers, and workplaces.

The Why and How of the Research

- As the trusted authority on all things work, SHRM is the foremost expert, researcher, advocate, and thought leader on issues and innovations impacting today's evolving workplaces.
- SHRM intentionally designed its survey to reflect the daily experiences and perspectives of those who manage the FMLA on a regular basis.
- The results provided insight into the challenges HR professionals face with the FMLA and highlight the regulatory and legislative changes SHRM and its members support.

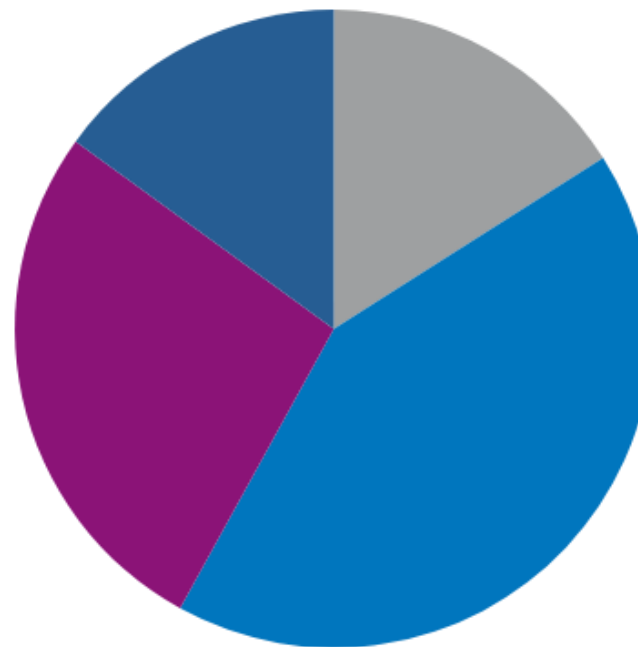
The Who

SHRM surveyed its membership to understand how employers felt about and interacted with the FMLA, as well as changes they would like to see. The respondents were spread across industries, organizational sizes and geographic locations:

Top Industries Represented

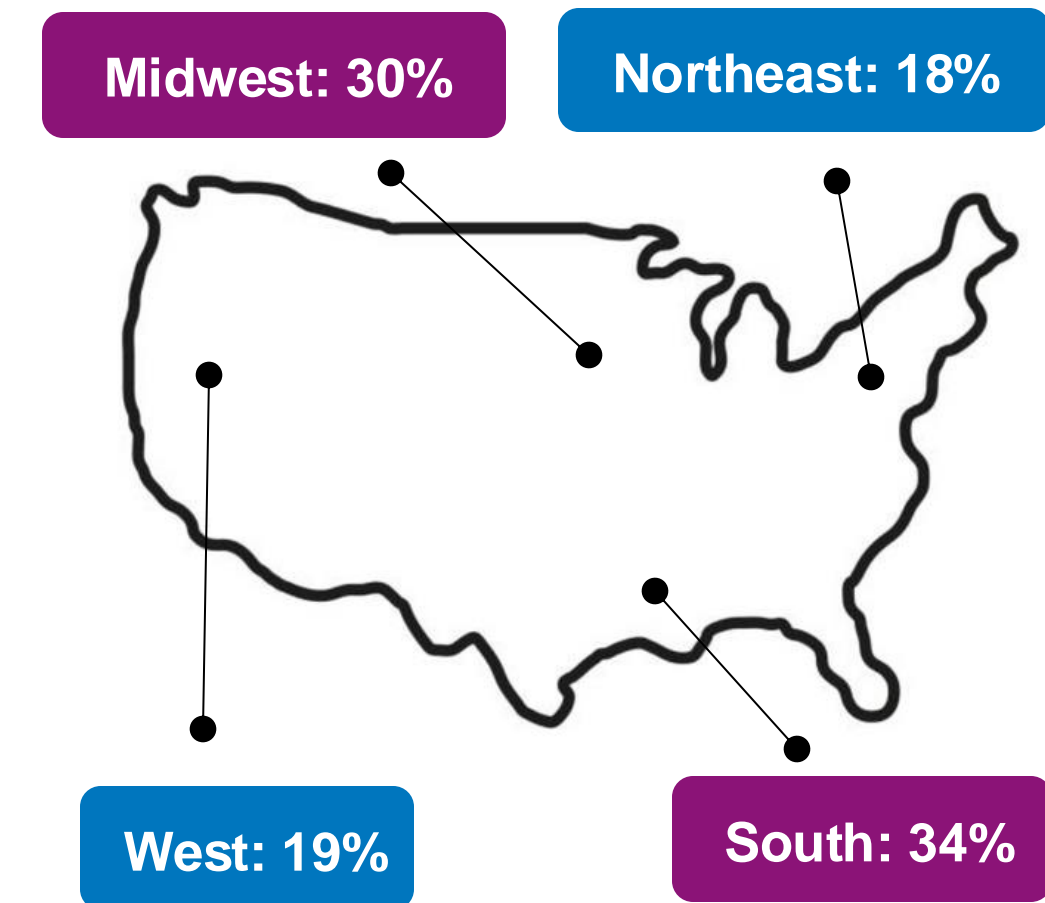
- Manufacturing: 15%
- Health Care: 12%
- Government, Public Administration, or Military: 10%
- Professional, Technical, and Scientific Services: 9%
- Education: 9%
- Finance, Banking, or Insurance: 7%

Organizational Size



- Small organizations (50-99 employees)
- Medium organizations (100-499 employees)
- Large organizations (500-4,999 employees)
- Extra-large organizations (5000+ employees)

Regions in the United States*



*Does not sum to exactly 100% due to rounding

Evolving Workplaces, Evolving Needs— Policy Must Adapt to Keep Pace

SHRM research shows that **employers want to see changes** to the FMLA, believe it is the **federal government's responsibility** to lead these efforts, and **have clear ideas** on which updates should be implemented.



3 in 4 (75%) employers say FMLA requirements are **outdated and should be updated** to reflect the modern world of work and family dynamics.

- 1 Update the FMLA to Reflect Contemporary Family Structures and Workforce Dynamics
- 2 Expand the Definition of Covered Family Members
- 3 Address Challenges with Intermittent or Reduced Leave
- 4 Standardize and Align Regulations
- 5 Enhance Employer Support and Resources

Update the FMLA to Reflect Contemporary Family Structures and Workforce Dynamics

Growing caregiving responsibilities and evolving perspectives on reasons for leave present an opportunity for Congress to update outdated rules, address inequities, and improve leave options for those in need of care.

Two areas of improvement identified by our members include: **removing the aggregate leave limit for married employees** and **adding “safe leave”**—defined as leave used to address medical and nonmedical needs arising from domestic violence, stalking, or sexual assault or abuse—to the list of qualified reasons for leave.

7 IN 10

Employers disagree or strongly disagree that two married eligible employees working for the same employer **should be limited** in the combined number of weeks of leave they can take under the FMLA (i.e., up to 12 weeks combined, rather than each employee receiving 12 weeks).

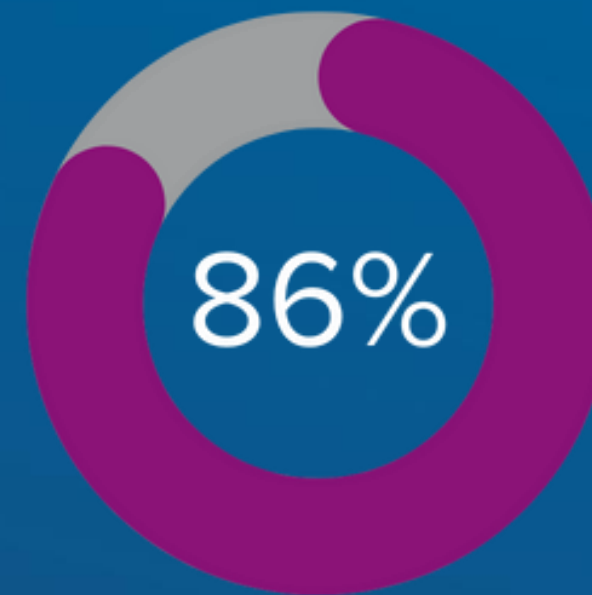
3 IN 5

Employers would approve of expanding the list of qualifying FMLA events to include safe leave.

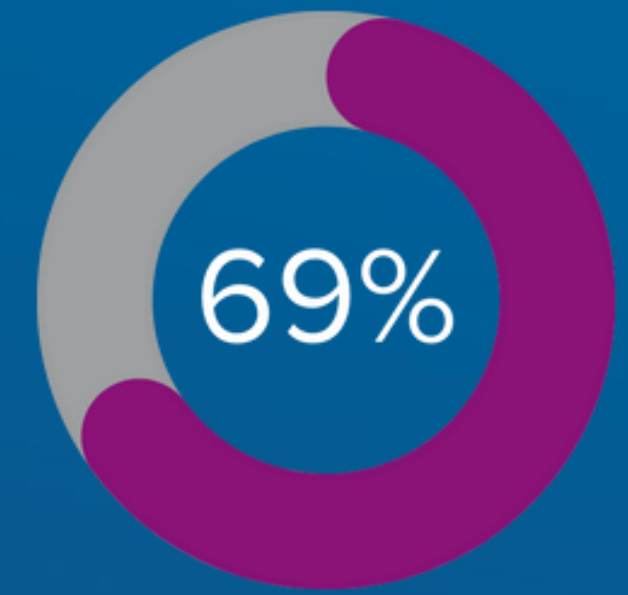
Update FMLA to Reflect Contemporary Family Structures and Workforce Dynamics: Military Leave

- The FMLA has special provisions for military-related leave, recognizing the unique situations service members and their families face.
- In order for eligible employees to take **qualifying exigency leave** related to a qualifying family member's military service under the FMLA, that family member must be on covered active duty to a **foreign country**.
- Exigency leave refers to urgent situations arising from a family member's active military duty, such as short-notice deployment, military events, child care arrangements, financial or legal tasks, and post-deployment activities.

However, while the FMLA was amended in 2008 and 2010 to address these situations by adding qualifying exigency leave and military caregiver leave, there are two notable areas where military leave could be bolstered to improve compliance and access to leave.



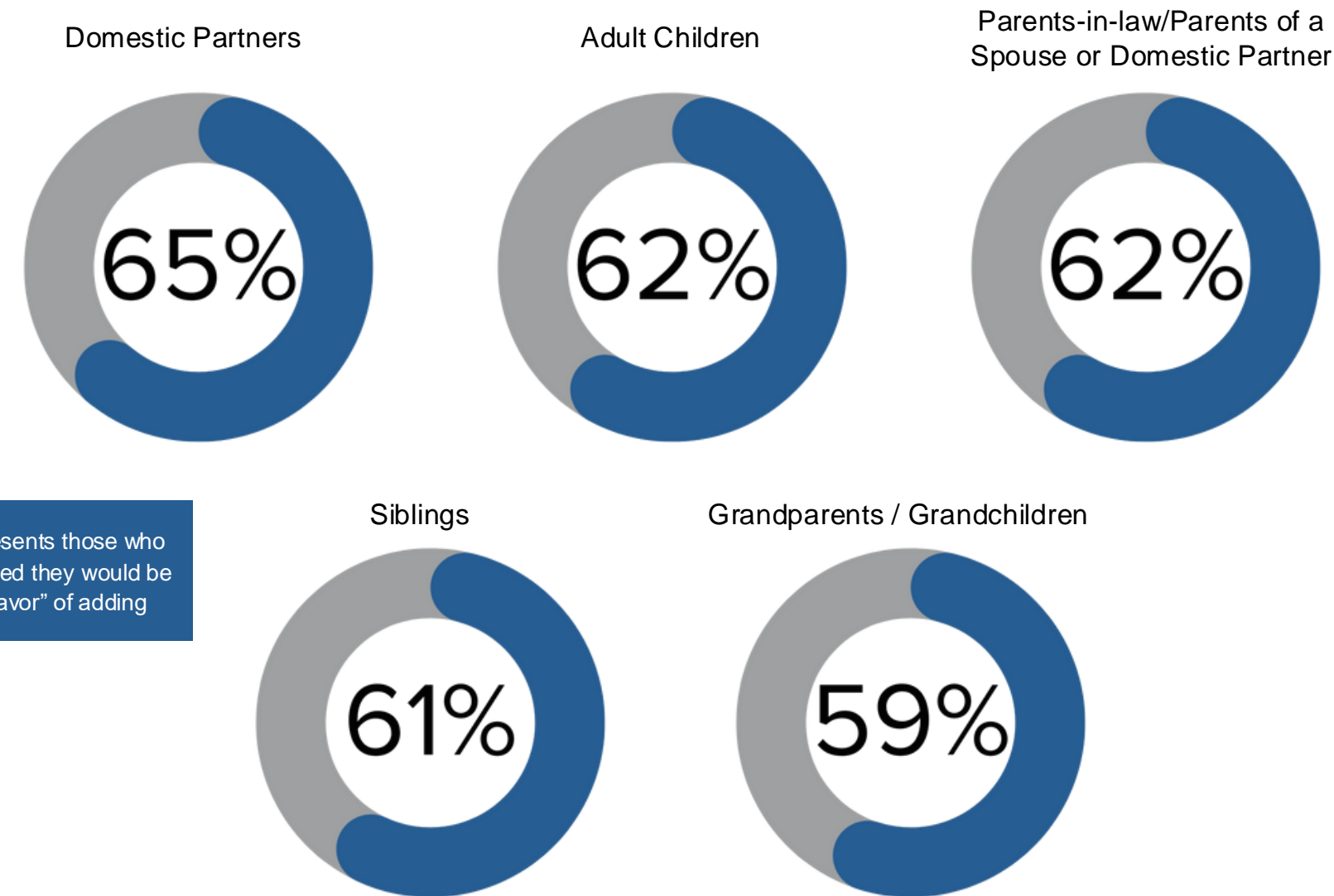
Over 8 in 10 (86%) employers “agree” or “strongly agree” that the FMLA should be expanded to explicitly allow for exigency leave for a family member's domestic military duties (such as responses to natural disasters and other emergencies).



Sixty-nine percent of employers “agree” or “strongly agree” that the FMLA should be amended to include more family members (e.g., domestic partner, fiancé/fiancée, other significant other, or “chosen family”) as it pertains to exigent circumstances related to military service.

Expand the Definition of “Covered Family Members”

If the FMLA’s standard definition of “covered family members” were expanded, the following percentage of employers would support adding these family members to the list:



Currently, under the FMLA for purposes of caring for a family member with a serious health condition, only the following are included:

- Spouse
- Child (biological, adopted, foster, stepchild, legal ward, or a child the employee stands in loco parentis to, who is under 18 or incapable of self-care due to a disability)
- Parent (biological or anyone who stood in loco parentis to the employee when they were a child)

SHRM research revealed that employers are open to expanding the definition of “covered family member” for purposes of leave under the FMLA, with only 7% of respondents reporting no desire for change.

Employers were less supportive of including individuals beyond immediate family members (e.g., aunts, uncles, cousins, or close friends) in the definition of “qualified family members.”

Recognized Benefits vs Costs of Expanding

On the positive side, some employers report that expanding the standard definition to include additional family members would:

- Promote a better **work/life integration** for employees
- Foster a more **inclusive** workplace culture
- Improve employee **retention**
- Improve employee **engagement**

On the negative side, some employers report that expanding the standard definition to include additional family members would

- Increase the **financial costs** or resources needed to accommodate FMLA leave
- Result in staffing **disruptions**
- Increase the **risk of employees** abusing FMLA leave

Despite these concerns, there is substantial support from employers for expanding the definition of “covered family member” under the FMLA, reflecting a growing recognition of diverse caregiving responsibilities.

Respondents' willingness to see an expanded definition of family members may highlight two key issues:

1

Lack of Clarity Leads to Uncertainty

To add some flexibility, the FMLA includes broader terms, such as “in loco parentis,” that are intended to capture various family relationships. An individual stands “in loco parentis” to a child if they have day-to-day responsibilities to care for or financially support the child. However, many employers lack clarity on what this term means in practice.

In fact, **61% of respondents "disagree" or "strongly disagree"** that “in loco parentis” is easily understood when determining employee eligibility for FMLA leave.

2

Expanding Caregiving Responsibilities

As demand for mental health and family leave grows, forward-thinking organizations offer diverse time-off benefits to support well-being and caregiving. SHRM's Knowledge Advisors regularly hear from HR professionals managing leave for parental care, spousal support, or personal health.

SHRM's research found that at least **80% of working caregivers** anticipate the care they provide to be long-term and, looking forward, within the next 5 years, **14% anticipate taking on new or additional adult care responsibilities**, and **18% anticipate taking on new or additional eldercare responsibilities**.^{*}The pressures of caregiving on the workforce are not expected to slow or narrow.

Address Challenges with Intermittent or Reduced Leave

Under the FMLA, eligible employees can take intermittent or reduced leave to care for a spouse, child, parent, or themselves due to a serious health condition, or for military-related reasons. Leave for bonding with a child after birth, adoption, or foster care placement requires employer approval.

3 IN 5

Employers are accustomed to intermittent leave requests, with 3 in 5 employers say they “**sometimes**” (40%) or “**often**” (21%) receive requests for intermittent FMLA leave.

Employers also display a willingness to grant these requests beyond what is required under the FMLA, **with only 22% of HR professionals** indicating that their organization generally only permits reduced scheduling or intermittent leave as required by the FMLA.

Timekeeping Under FMLA Regulations

72%

Nearly 3 in 4 respondents indicated that determining the amount of eligible leave that has been used and what is remaining was a challenge when administering intermittent leave.

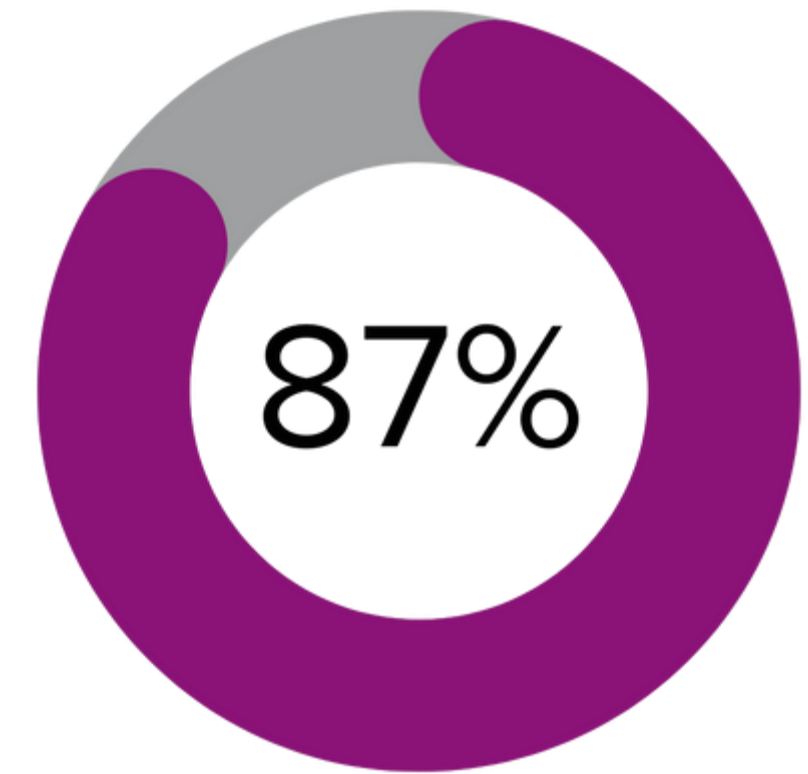
53%

Over half of HR professionals believe that employers should be able to dictate reasonable increments of time for FMLA leave, regardless of how other forms of leave are tracked.

FMLA regulations dictate that when an employee takes intermittent or reduced FMLA leave, the employer must account for it using the shortest increment of time used for other leave, not exceeding one hour.

Standardize and Align Regulations

- Given the breadth of the FMLA's application and reach, it has the potential to intersect with — and diverge — from other federal workplace laws, notably **the Pregnant Workers Fairness Act (PWFA)** and **the Americans with Disabilities Act (ADA)**.
- SHRM research found that employers believe there is **a lack of clear cross-agency guidance** on how to handle situations where the FMLA overlaps with the PWFA and the ADA, in particular with regard to reduced or intermittent scheduling requests.
- While the FMLA and the PWFA/ADA are regulated by different agencies – the Department of Labor's Wage and Hour Division and the Equal Employment Opportunity Commission respectively—there is **an opportunity for collaboration** to help employers ensure compliance.



of employers “agree” or “strongly agree” that there is a lack of clear cross-agency guidance on how to handle when FMLA overlaps and diverges with the PWFA and ADA for reduced or intermittent scheduling requests.

Intersection with Other Leave and Policies

59%

of employers say it is “somewhat difficult,” “difficult,” or “very difficult” to manage the coordination of FMLA leave with other types of leave (e.g., paid parental) or salary continuation programs (e.g., short-term disability, workers’ compensation).

28%

of employers lack clarity about administering FMLA leave in conjunction with other forms of unpaid leave such as personal leave of absence and accrued leave.

53%

of employers who are in one or more of the 13 states (plus Washington D.C.) that have their own system of short-term temporary disability insurance or family leave insurance say that the need to align the FMLA with state and/or local laws is a “moderate” or “major” compliance challenge for their organization.

SHRM research highlights a clear need to better align the FMLA with the realities of state programs that overlap or interact with its provisions.

Enhance Employer Support and Resources

For HR professionals still grappling with questions about compliance, SHRM has dedicated resources:

- **SHRM Podcasts**: SHRM podcasts feature insightful interviews, captivating conversations and timely tips for HR professionals, people managers and anyone who wonders about the workplace.
 - Honest HR Podcast: “The U.S. Department of Labor on FMLA - [Part One](#)”
 - Honest HR podcast: “The U.S. Department of Labor on FMLA - [Part Two](#)”
- **Express Requests**: Find a variety of resources, all in one place, on today’s trending topics.
 - [FMLA: Common Mistakes to Avoid](#)
 - [FMLA: Calculating for a Holiday Week](#)
 - [FMLA: Curbing Abuse](#)
- **Ask an Advisor**: SHRM's HR Knowledge Advisors offer guidance, real-life personal/professional experiences, and resources to assist our members with their HR-related inquiries.



Nearly 9 out of 10 (89%) of employers “agree” or “strongly agree” that there should be more education and training for both employees and employers regarding FMLA rights and responsibilities.

Methodology

A total of 1,431 HR professionals were surveyed on Oct. 7-9, 2024.

The survey was fielded electronically using the SHRM Voice of Work Research Panel.