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SOCIETY FOR HUMAN
RESOURCE MANAGEMENT

FMLA and Its Impact on Organizations

A Survey Report by the Society for Human Resource Management

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July 2007

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ABOUT THIS REPORT

The U.S. Department of Labor (DOL) is the agency in the federal government responsible for administering the Family and Medical Leave Act of 1993 (FMLA). This includes issuing regulations and guidance as well as enforcement of the Act's requirements. In December 2006, the DOL published in the *Federal Register* a Request for Information (RFI) on the FMLA, with a deadline for submitting comments by February 2007.¹ The DOL was seeking information from the public on several of the provisions, the effectiveness of the regulations and the DOL's administration of the Act. The regulations have not been amended since they were implemented 14 years ago. And although no further action has been planned, this RFI may signal the DOL's willingness to propose changes. The Society for Human Resource Management (SHRM) submitted comments in response to the RFI.²

In January 2007, SHRM conducted the SHRM 2007 FMLA Survey, which asked HR professionals about the impact of the FMLA on their organizations. Given the survey's focus and the direct responsibilities of the participants, survey results provide substantive, relevant data upon which to base policy decisions. Since HR professionals are likely to be the ones charged with implementing the policies and procedures related to the FMLA in organizations across the nation, they are among the most knowledgeable about FMLA implementation.

To gain an understanding of the impact of the FMLA on organizations, HR professionals were posed a number of questions about FMLA provisions, paid sick leave, use of the FMLA, advance notice of the FMLA, challenges with the FMLA, legitimacy of FMLA cases and consequences of the FMLA in the workplace. This report presents an analysis of the SHRM 2007 FMLA Survey results and examines differences by HR professionals' organizations' industry, staff size, sector, unionization and region. Where applicable, this report also discusses the results from other SHRM surveys and short polls on this topic conducted in 2000, 2003 and 2006.

The preliminary findings from the current study were presented at the SHRM Employment Law and Legislative Conference in March 2007. The *SHRM Survey Brief: FMLA* is also available free to all SHRM members on the Research Department's Web site at www.shrm.org/surveys.

ABOUT SHRM

The Society for Human Resource Management (SHRM) is the world's largest association devoted to human resource management. Representing more than 210,000 individual members, the Society's mission is to serve the needs of HR professionals by providing the most essential and comprehensive resources available. As an influential voice, the Society's mission is also to advance the human resource profession to ensure that HR is recognized as an essential partner in developing and executing organizational strategy. Founded in 1948, SHRM currently has more than 550 affiliated chapters within the United States and members in more than 100 countries. Visit SHRM Online at www.shrm.org.

Introduction

Congress enacted the Family and Medical Leave Act on February 5th, 1993, to require employers with 50 or more employees to provide unpaid leave for the birth, adoption or foster care of an employee's child, as well as for the serious health condition of a spouse, son, daughter or parent, or the employee's own condition. The Act requires employers, both private and public, to provide eligible employees with 12 weeks of unpaid leave, continue health care benefits and provide job protection. An employee can be eligible for the FMLA if he or she has worked a minimum of 1,250 hours during the 12 months prior to the start of FMLA leave and works at a location where there are at least 50 employees within a 75-mile radius of the work location.

The FMLA is meant to provide a means for employees to balance their work and family responsibilities by taking unpaid leave for certain family and medical reasons. Since the enactment of the FMLA, lawmakers have continued to explore opportunities to assist employees in balancing work and family life. However, since enacted, employers have struggled with the provisions, particularly with unscheduled leave for episodic or chronic serious health conditions, the definitions of a serious health condition and implications of intermittent leave. The current study investigates the challenges facing HR in administering the FMLA and the effect on employees and employers.

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Methodology

A sample of HR professionals was randomly selected from SHRM's membership database, which included approximately 210,000 individual members at the time the survey was conducted. Only members who had not participated in a SHRM survey or poll in the last six months were included in the sampling frame. Members who were students, consultants, academics, located internationally or had no e-mail address on file were excluded from the sampling frame. In January 2007, an e-mail that included a link to the SHRM 2007 FMLA Survey³ was sent to 3,300 randomly selected SHRM members. Of these, 2,989 e-mails were successfully delivered to respondents, and 610 HR professionals responded, yielding a response rate of 20%. Of the 610 HR professionals who responded to the survey, 89 responses were submitted by HR professionals whose organizations were not required to comply with the FMLA. Since the study focused specifically on FMLA-related compliance issues, these HR professionals were excluded from the study (even though their organizations may voluntarily comply with the FMLA). The survey was accessible for a period of two weeks, and four e-mail reminders and a fax reminder were sent to nonrespondents in an effort to increase response rates.

To assure that this survey reached the right people—those directly responsible for FMLA administration—specific instructions were provided at the beginning of the survey instrument to ensure that the person who handled FMLA compliance for the organization completed the survey.

NOTES AND CAVEATS

Analysis: Throughout this report, conventional statistical methods are used to determine if observed differences are statistically significant (i.e., there is a small likelihood that the differences occurred by chance). When presenting data from the overall survey results, findings are discussed, in some cases, even if they are not statistically significant. In some cases, the data are not depicted in corresponding tables/figures even though the results are statistically significant. Analyses by HR professionals' organizations' industry, staff size, sector, unionization and region are presented and discussed.

- Industry categories: only industries that had 20 or more respondents were included in industry analyses. Although respondents from other industries participated in

the study, analysis from industries with fewer than 20 respondents sometimes yields inconclusive or questionable results.

- Staff size categories: small (1 to 99 employees), medium (100 to 499 employees) and large (500 or more employees). The analysis by staff size refers to the number of part-time and full-time employees at the HR professional's work location only.
- Sector: publicly owned for-profit, privately owned for-profit, nonprofit, government and other categories.
- Staff unionization: employees at work location are unionized, under a collective bargaining agreement (with unionized staff) or not unionized (without unionized staff).
- Region: the U.S. Census Bureau recognizes four census regions within the U.S., and these regions are groupings of the 50 states.

Generalization of results: As with any research, readers should exercise caution when generalizing results and take individual circumstances and experiences into consideration when making decisions based on these data. While SHRM is confident in its research, it is prudent to understand that the results presented in this survey report are only truly representative of the sample of HR professionals responding to the survey.

Number of respondents: The number of respondents (indicated by "n" in figures and tables) varies from table to table and figure to figure because some respondents did not answer all of the questions. Individuals may not have responded to a question on the survey because the question or some of its parts were not applicable or because the requested data were unavailable. This also accounts for the varying number of responses within each table or figure.

Confidence level and margin of error: A confidence level and margin of error give readers some measure of how much they can rely on survey responses to represent all SHRM members. Given the level of response to the survey, SHRM Research is 96% confident that responses given by responding HR professionals can be generalized to all SHRM members, in general, with a margin of error of approximately 4%. For example, 44% of the responding HR professionals reported that their organizations offered job-protected leave beyond federal FMLA provisions. With a 4% margin of error, the reader can be 96% certain that between 40% and 48% of SHRM members would report that their organizations offer job-protected leave beyond federal FMLA provisions. It is important to note that as the sample size decreases, the margin of error increases.

KEY TERMS

Organization and *location* are used interchangeably throughout the report. *Location* refers to the work site in which the HR professional's company is based. Although some organizations may have locations in multiple states or internationally, HR professionals were asked to consider the FMLA at their location only when answering the survey items, unless otherwise specified.

Serious health condition entitling an employee to FMLA leave means an illness, injury or impairment, or physical or mental condition as defined under the Act.

Family-related reasons include maternity, birth or adoption of a child or newly placed foster child.

Medical reasons include an employee's serious health condition or care for a child, spouse or parent who has a serious health condition.

Catastrophic event includes serious accidents, serious injuries and/or life-threatening diseases.

Episodic condition includes ongoing injuries, ongoing illnesses and/or non-life-threatening conditions.

Key Findings

The vast majority of HR professionals agreed that there have been more requests to take the FMLA in the last five years compared with 10 years ago across a variety of situations. The most commonly reported type of leave that had increased fell under the category of employee's episodic condition, which includes ongoing injuries, illnesses and/or non-life-threatening conditions. This type of leave also posed the greatest area of challenge for HR professionals in administering/granting leave under the FMLA.

The most difficult FMLA-related activities identified by organizations were tracking/administering intermittent FMLA leave, determining the overall costs incurred while complying with the requirements of the FMLA and determining whether an intermittent serious health condition should be protected by the FMLA.

The amount of advance notice of FMLA leave provided by employees varied depending on the type of leave. With maternity, birth or adoption of a child, organizations indicated that employees provide, on average, two month's notice. In contrast, employees often do not provide advance notice of FMLA leave for a serious health condition due to an episodic condition or a catastrophic event. Typically, employees give notice for FMLA leave less than a week in advance or on the same day for a serious health condition as a result of an episodic condition (more than one-half) or a catastrophic event (nearly three-fourths).

About four out of 10 HR professionals reported approving FMLA requests that they believed were not legitimate. When HR professionals were asked to provide written comments on FMLA cases that they perceived as illegitimate, the main themes that arose were related to the administration and timing of intermittent leave and the validity of documentation/medical certification.

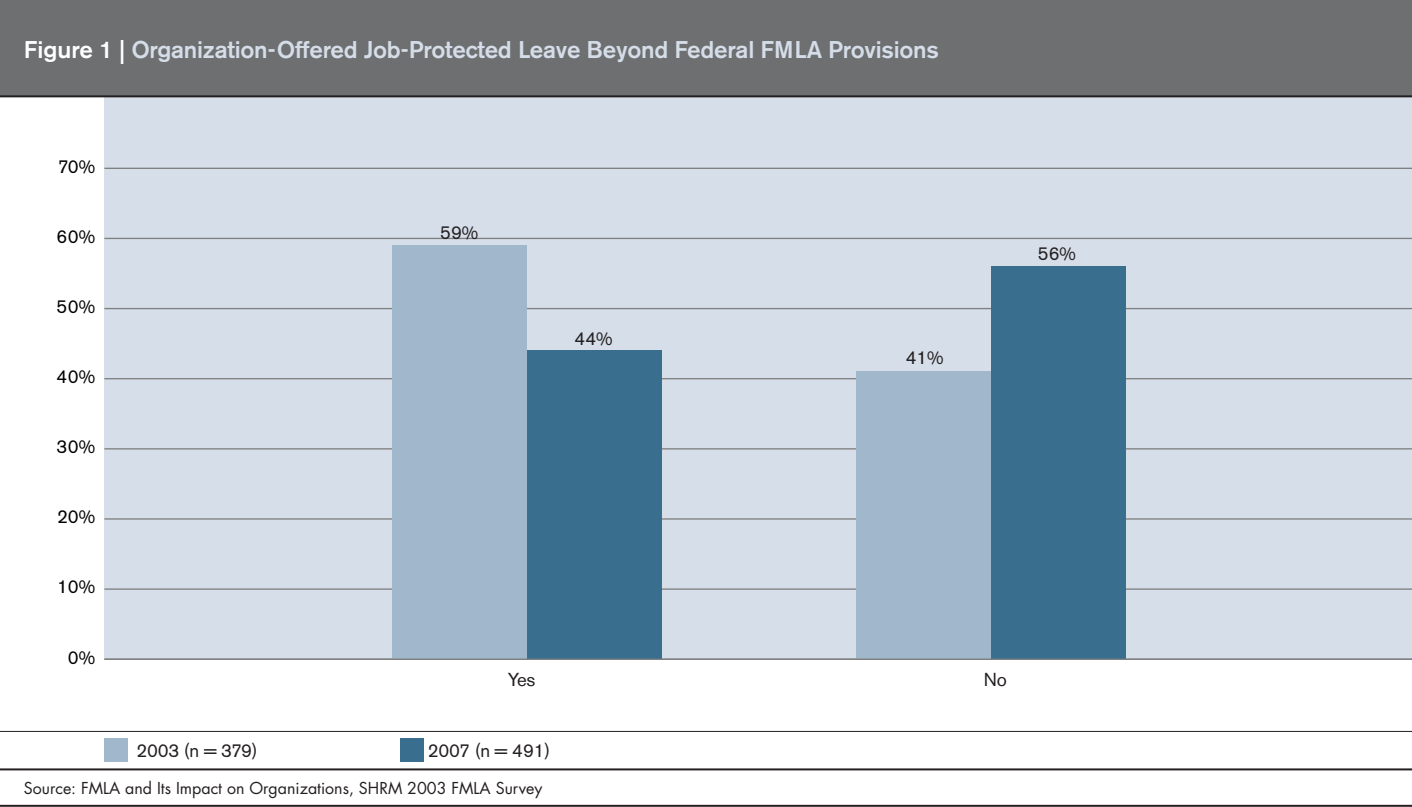
During an employee's FMLA leave, nearly nine out of 10 organizations attended to the employee's workload by assigning work temporarily to other employees. The majority of HR professionals indicated that FMLA and its regulations have had "no noticeable effect" (neither "positive effect" nor "negative effect") on their organizations. When HR professionals reported "negative effects," they were commonly in the areas of employee absences, employee productivity and business productivity.

Employees' episodic conditions posed the greatest area of challenge for HR professionals in administering/granting leave under the FMLA.

Survey Results

FMLA PROVISIONS

The FMLA mandates up to 12 weeks of unpaid leave in a 12-month period for certain medical and family reasons; however, some organizations offer job-protected leave beyond what is required by the FMLA. In 2007, less than one-half of HR professionals (44%) indicated that their organizations offered job-protected leave beyond federal FMLA provisions, compared with 59% of respondents in 2003⁴ (Figure 1). Organizations may go beyond federal FMLA provisions to address employees' work/



family needs or comply with state laws. For instance, in 2002, California passed a Paid Family Leave law that goes above and beyond the provisions of the federal FMLA.

Organization staff size affected the likelihood of offering job-protected leave beyond federal provisions. Large organizations were more likely than small and medium organizations to offer job-protected leave, as were medium organizations compared with small organizations (Table 1). Job-protected leave beyond federal FMLA provisions was cited more often by organizations with unionized staff compared with organizations without unionized staff (Table 2).

As shown in Figure 2, the most common situations in which organizations offered job-protected leave beyond federal FMLA provisions included substituting accrued sick/vacation leave for FMLA (51%); allowing more than 12 weeks of job-guaranteed leave (48%); offering job-protected leave to employees who have been employed for less than 12 months (41%); and providing job-protected leave to employees who worked less than 1,250 hours (31%).

Offering job-protected leave to employees who had worked less than 1,250 hours prior to requesting leave was cited more often by organizations in the wholesale/retail trade industry than by organizations in the services (nonprofit) industry.⁵ Nonprofit organizations and publicly owned for-profit organizations were more likely than privately owned for-profit organizations to provide job-protected leave for domestic partners.⁶ Respondents from organizations in the West were more likely than those

Table 1 | Organization-Offered Job-Protected Leave Beyond Federal FMLA Provisions (by Organization Staff Size)

	Overall (n = 491)	Small (1-99 Employees) (n = 108)	Medium (100-499 Employees) (n = 203)	Large (500 and More Employees) (n = 127)	Differences Based on Organization Staff Size
Yes	44%	27%	43%	59%	Medium > small Large > small Large > medium
No	56%	73%	57%	41%	

Note: Sample sizes are based on the actual number of respondents answering the organization staff size question; however, the percentages shown are based on the actual number of respondents by organization staff size who answered the question using the provided response options. Blank cells in the last column indicate that no statistically significant differences were found.
Source: FMLA and Its Impact on Organizations

Table 2 | Organization-Offered Job-Protected Leave Beyond Federal FMLA Provisions (by Staff Unionization)

	Overall (n = 491)	Organizations With Unionized Staff (n = 88)	Organizations Without Unionized Staff (n = 321)	Differences Based on Staff Unionization
Yes	44%	57%	39%	With unionized staff > without unionized staff
No	56%	43%	61%	

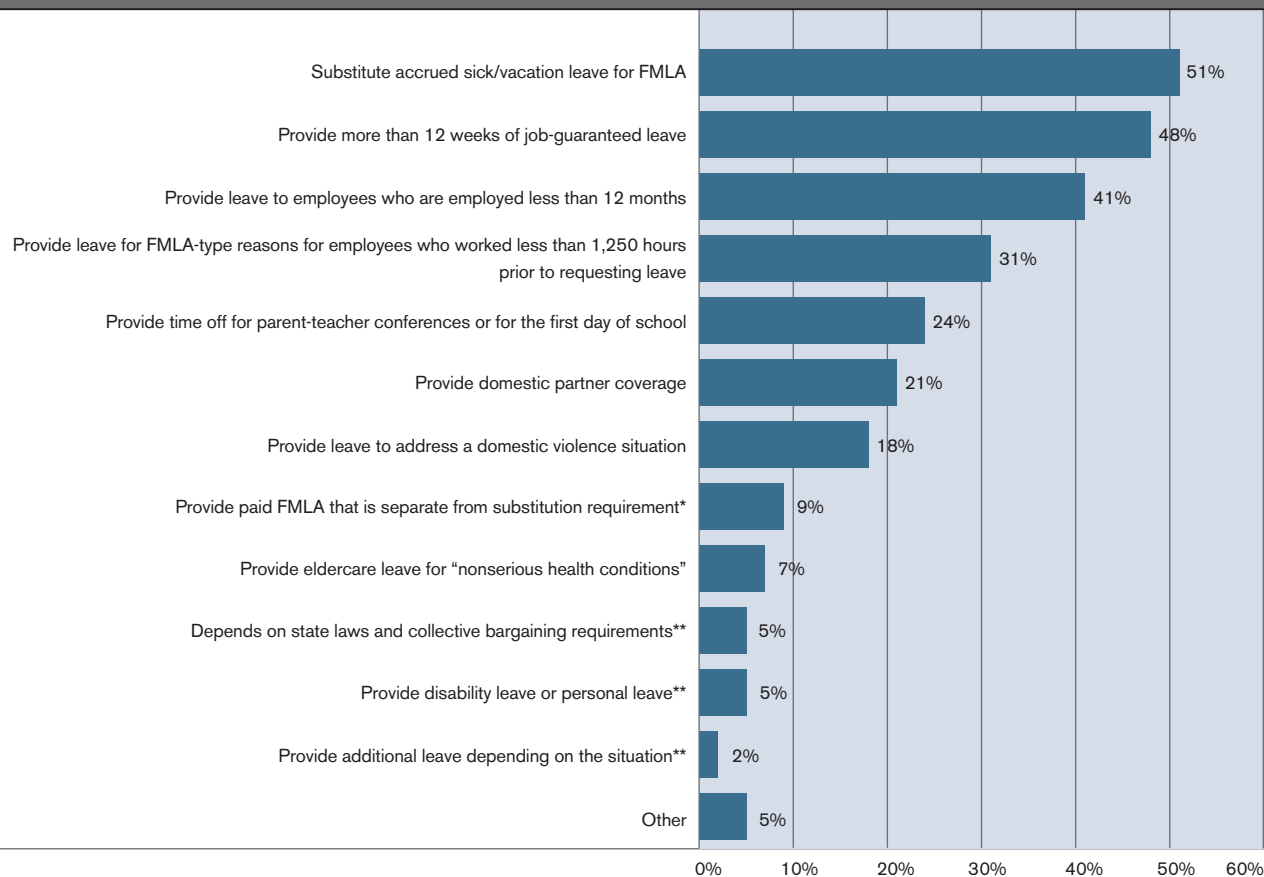
Note: Sample sizes are based on the actual number of respondents answering the staff unionization question; however, the percentages shown are based on the actual number of respondents by staff unionization who answered the question using the provided response options. Blank cells in the last column indicate that no statistically significant differences were found.
Source: FMLA and Its Impact on Organizations

in the Northeast to report that their organizations offered job-protected leave to employees who had worked less than 12 months.⁷

PAID SICK LEAVE

Currently, an employee may elect (or the employer may require an employee) to substitute annual leave and/or sick leave, consistent with current laws and regulations, for any unpaid leave under the FMLA. FMLA leave is in addition to other paid time off available to an employee. Initiatives in Congress (refer to the “A Look Ahead” section) have been introduced to require employers to offer seven paid sick days of leave annually. Many employers offer comprehensive paid leave programs such as traditional sick days and vacation, among other paid leave options, and many combine these

Figure 2 | Organization-Offered Job-Protected Leave Beyond Federal FMLA Provisions



(n = 204)

*Substitution requirement means substituting accrued sick/vacation leave for the FMLA.

**For the purpose of the analysis, these categories have been recoded from the "other" category.

Note: Only respondents who indicated that their organizations offered job-protected leave beyond federal FMLA provisions were asked this question. Percentages do not total to 100% as respondents were allowed multiple choices.

Source: FMLA and Its Impact on Organizations

programs into a consolidated leave program, or paid time off plans. More than one-half (55%) of HR professionals indicated that their organizations offered paid sick leave as part of a paid time off plan (sick, vacation and personal days all in one plan), while 37% offered sick leave but not as part of a paid time off plan (Figure 3).

Sick leave as part of a paid time off plan was cited more often by HR professionals in nonprofit organizations compared with respondents in government agencies. Government agencies were more likely than privately owned for-profit organizations to report that sick leave was offered but not as part of a paid time off plan. Compared with nonprofit organizations, a significantly larger proportion of privately owned for-profit organizations did not offer paid sick leave. These data are depicted in Table 3. It was less common for organizations with unionized staff, compared with organizations without unionized staff, to offer sick leave as part of a paid time off plan. Organizations with unionized staff were more likely to offer sick leave separately than were organizations without unionized staff (Table 4), as did organizations in the Northeast compared with those in the South and Midwest.⁸

Of the organizations that provided paid sick leave, 45% offered paid sick leave to full-time employees only and more than one-half offered it to both part-time and full-time employees (54%) (Figure 4). Paid sick leave was available to part-time and full-time employees more often in the health industry than in the manufacturing (durable goods) industry. Organizations from the manufacturing (durable goods) industry typically offered leave only to full-time employees.⁹ A greater proportion of large

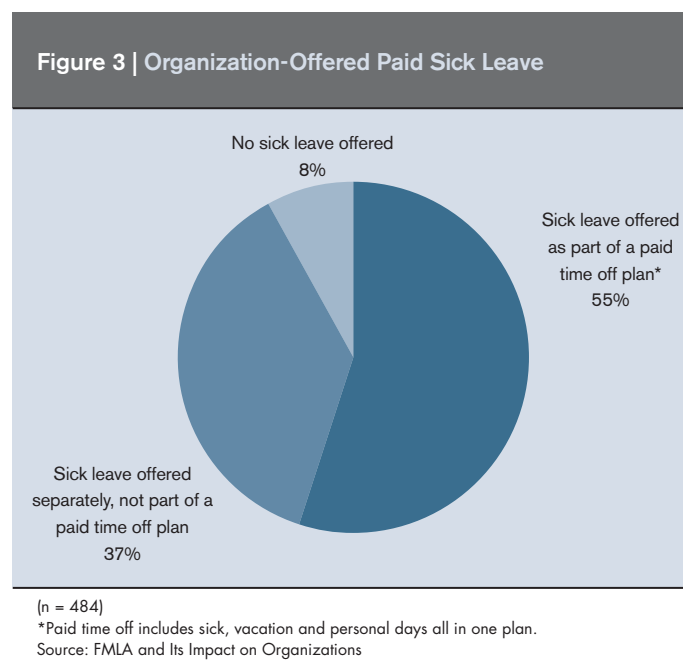


Table 3 | Organization-Offered Paid Sick Leave (by Organization Sector)

	Overall (n = 484)	Publicly Owned For-Profit Organization (n = 86)	Privately Owned For-Profit Organization (n = 197)	Nonprofit Organization (n = 84)	Government Agency (n = 35)	Differences Based on Organization Sector
Sick leave offered as part of a paid time off plan (sick, vacation and personal days all in one plan)	55%	58%	53%	65%	37%	Nonprofit organization > government agency
Sick leave offered separately, not part of a paid time off plan	37%	36%	32%	33%	60%	Government agency > privately owned for-profit organization
No sick leave offered	8%	6%	15%	1%	3%	Privately owned for-profit organization > nonprofit organization

Note: Sample sizes are based on the actual number of respondents answering the organization sector question; however, the percentages shown are based on the actual number of respondents by organization sector who answered the question using the provided response options.
Source: FMLA and Its Impact on Organizations

organizations, compared with small and medium organizations, offered paid sick leave to part-time and full-time employees. It was more common for small and medium organizations to offer paid sick leave to full-time employees only (Table 5).

As depicted in Table 6, paid sick leave for part-time and full-time employees was provided less often by privately owned for-profit organizations than by any other sector. Privately owned for-profit organizations typically provided paid sick leave to full-time employees only. Respondents from organizations located in the West were more likely

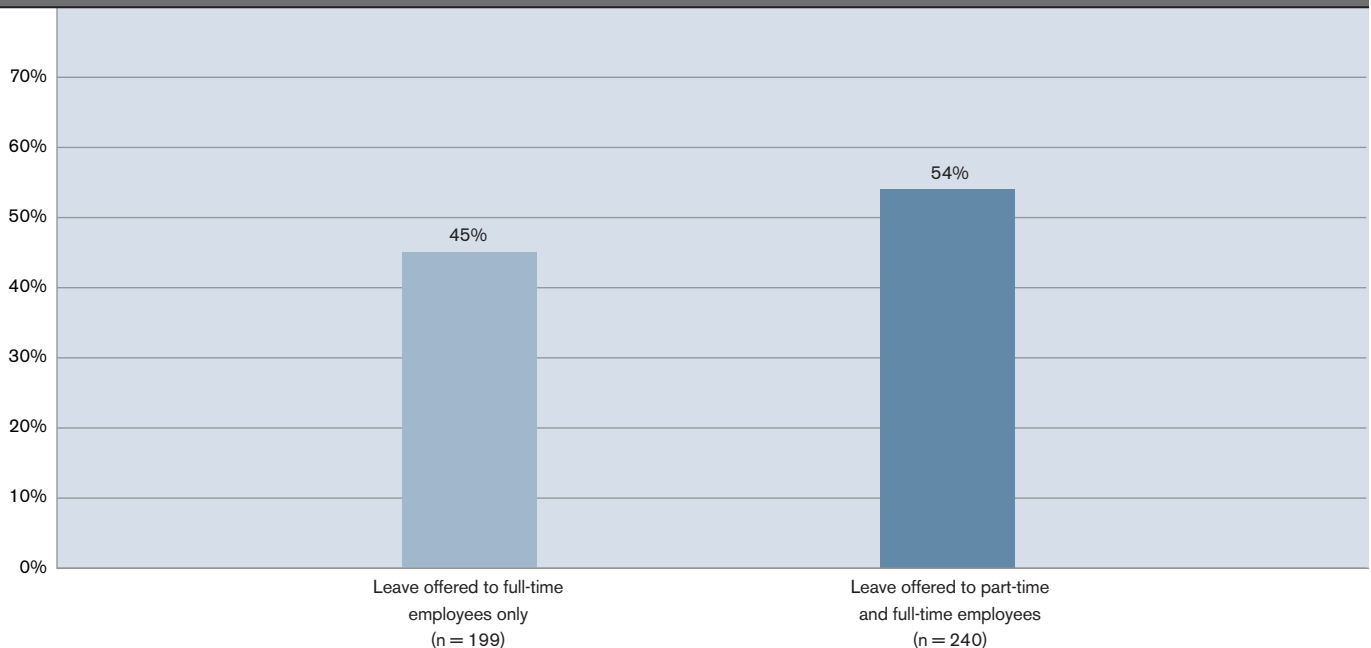
Table 4 | Organization-Offered Paid Sick Leave (by Staff Unionization)

	Overall (n = 484)	Organizations With Unionized Staff (n = 88)	Organizations Without Unionized Staff (n = 321)	Differences Based on Staff Unionization
Sick leave offered as part of a paid time off plan (sick, vacation and personal days all in one plan)	55%	45%	58%	Without unionized staff > with unionized staff
Sick leave offered separately, not part of a paid time off plan	37%	49%	32%	With unionized staff > without unionized staff
No sick leave offered	8%	6%	10%	

Note: Sample sizes are based on the actual number of respondents answering the staff unionization question; however, the percentages shown are based on the actual number of respondents by staff unionization who answered the question using the provided response options. Blank cells in the last column indicate that no statistically significant differences were found.

Source: FMLA and Its Impact on Organizations

Figure 4 | Organization-Offered Paid Sick Leave by Employment Status



Note: Only respondents who indicated that their organizations offered paid sick leave were asked this question. Percentages do not total to 100% since less than 1% of organizations offered paid sick leave to part-time employees only.

Source: FMLA and Its Impact on Organizations

than those from organizations located in the South to report that their organizations offered paid sick leave to part-time and full-time employees. It was more common for organizations in the South to offer paid sick leave only to full-time employees than it was for organizations in the West.¹⁰

USE OF FMLA LEAVE

HR professionals were asked if there had been a greater number of employee requests to take FMLA leave in the past five years compared with 10 years ago for different types of leave. As illustrated in Figure 5, most HR professionals agreed (responded “somewhat agree” or “strongly agree”) that there had been more requests to take the FMLA. The top three types of leave were 1) employee’s episodic condition (81%);

Table 5 | Organization-Offered Paid Sick Leave by Employment Status (by Organization Staff Size)

	Overall (n = 441)	Small (1-99 Employees) (n = 108)	Medium (100-499 Employees) (n = 203)	Large (500 and More Employees) (n = 127)	Differences Based on Organization Staff Size
Leave offered to full-time employees only	45%	54%	53%	28%	Small > large Medium > large
Leave offered to part-time and full-time employees	54%	46%	47%	72%	Large > small Large > medium

Note: Only respondents who indicated that their organization offered paid sick leave were asked this question. Percentages do not total to 100% since less than 1% of organizations offered paid sick leave to part-time employees only. Sample sizes are based on the actual number of respondents answering the organization staff size question; however, the percentages shown are based on the actual number of respondents by organization staff size who answered the question using the provided response options.

Source: FMLA and Its Impact on Organizations

Table 6 | Organization-Offered Paid Sick Leave by Employment Status (by Organization Sector)

	Overall (n = 441)	Publicly Owned For-Profit Organization (n = 86)	Privately Owned For-Profit Organization (n = 197)	Nonprofit Organization (n = 84)	Government Agency (n = 35)	Differences Based on Organization Sector
Leave offered to full-time employees only	45%	36%	63%	25%	35%	Privately owned for-profit organization > publicly owned for-profit organization Privately owned for-profit organization > nonprofit organization Privately owned for-profit organization > government agency
Leave offered to part-time and full-time employees	54%	64%	37%	75%	65%	Publicly owned for-profit organization > privately owned for-profit organization Nonprofit organization > privately owned for-profit organization Government agency > privately owned for-profit organization

Note: Only respondents who indicated that their organization offered paid sick leave were asked this question. Percentages do not total to 100% since less than 1% of organizations offered paid sick leave to part-time employees only. Sample sizes are based on the actual number of respondents answering the organization sector question; however, the percentages shown are based on the actual number of respondents by organization sector who answered the question using the provided response options.

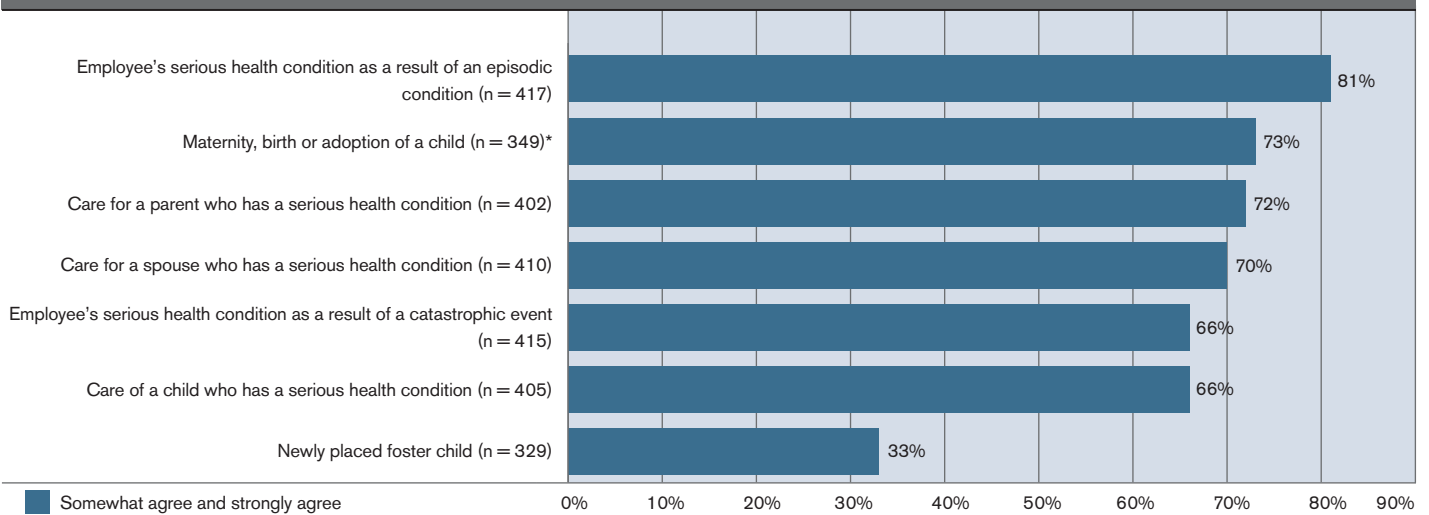
Source: FMLA and Its Impact on Organizations

2) maternity, birth or adoption of a child (73%); and 3) care for a parent with a serious health condition (72%).

As depicted in Table 7, HR professionals from large organizations were most likely to agree that there had been a greater number of requests to take FMLA leave for most leave categories. Compared with small organizations, HR professionals from medium organizations agreed that the number of FMLA requests to care for a parent or spouse who had a serious health condition had increased. Publicly owned for-profit organizations were more likely than privately owned for-profit organizations to agree that there had been an increase in FMLA requests to care for a child with a serious health condition. Government agencies, compared with privately owned for-profit organizations, agreed that there had been an increase in FMLA requests to care for a spouse with a serious health condition.¹¹ The overall average levels of agreement revealed that organizations with unionized staff perceived an increase in the number of FMLA requests for each type of leave (with the exception of maternity, birth or adoption of a child and newly placed foster child) compared with organizations without unionized staff (Table 8).

Next, respondents were asked to report on the number of employees at their location and the number of employees taking FMLA leave for family and medical reasons in the last 12 months. Overall, 95% of HR professionals reported that one or more employees at their organizations took FMLA leave in the last 12 months (Figure 6). According to respondents, on average, 8% of their employees took FMLA leave, of which 3% took it for family-related reasons and 5% took it for medical reasons. Respondents were also

Figure 5 | Situations in Which the Requests to Take FMLA Leave Have Increased in the Last Five Years Compared With 10 Years Ago



*In the survey, this item was posed as two items, "maternity" and "birth or adoption of a child." For reporting purposes, it was decided to group these two items together when the responses were consistent with one another.

Note: Percentages are based on a scale where 1 = "strongly disagree," 2 = "somewhat disagree," 3 = "somewhat agree" and 4 = "strongly agree." Figure represents those HR professionals who answered "somewhat agree" and "strongly agree."

Source: FMLA and Its Impact on Organizations

asked to indicate the number of employees who took FMLA leave for episodic conditions in the last 12 months. On average, 3% of employees took FMLA leave for episodic conditions. These data are depicted in Table 9.

Table 7 | Average Level of Agreement With Statements About Situations in Which the Number of Requests to Take FMLA Have Increased in the Last Five Years Compared With 10 Years Ago (by Organization Staff Size)

	Overall	Small (1-99 Employees)	Medium (100-499 Employees)	Large (500 and More Employees)	Differences Based on Organization Staff Size
Employee's serious health condition as a result of an episodic condition (n = 417)	3.20	3.07	3.09	3.49	Large > small Large > medium
Care for a parent who has a serious health condition (n = 402)	3.05	2.71	3.05	3.30	Medium > small Large > small
Maternity, birth or adoption of a child (n = 280)*	2.97	2.75	2.95	3.19	
Care for a spouse who has a serious health condition (n = 410)	2.94	2.58	2.97	3.21	Medium > small Large > small
Employee's serious health condition as a result of a catastrophic condition (n = 415)	2.85	2.69	2.85	3.01	
Care for a child who has a serious health condition (n = 405)	2.85	2.52	2.79	3.18	Large > small Large > medium
Newly placed foster child (n = 329)	2.08	1.79	2.10	2.31	Large > small

*In the survey, this item was posed as two items, "maternity" and "birth or adoption of a child." For reporting purposes, it was decided to group these two items together when the responses were consistent with one another.

Note: Data sorted in descending order by "overall" column. Averages are based on a scale where 1 = "strongly disagree," 2 = "somewhat disagree," 3 = "somewhat agree" and 4 = "strongly agree." Blank cells in the last column indicate that no statistically significant differences were found.

Source: FMLA and Its Impact on Organizations

Table 8 | Level of Agreement With Statements About Situations in Which the Number of Requests to Take FMLA Have Increased in the Last Five Years Compared With 10 Years Ago (by Staff Unionization)

	Overall	Organizations With Unionized Staff	Organizations Without Unionized Staff	Differences Based on Staff Unionization
Employee's serious health condition as a result of an episodic condition (n = 417)	3.20	3.43	3.14	With unionized staff > without unionized staff
Care for a parent who has a serious health condition (n = 402)	3.05	3.38	2.96	With unionized staff > without unionized staff
Maternity, birth or adoption of a child (n = 280)*	2.97	3.09	2.93	
Care for a spouse who has a serious health condition (n = 410)	2.94	3.23	2.86	With unionized staff > without unionized staff
Employee's serious health condition as a result of a catastrophic condition (n = 415)	2.85	3.17	2.78	With unionized staff > without unionized staff
Care for a child who has a serious health condition (n = 405)	2.85	3.12	2.76	With unionized staff > without unionized staff
Newly placed foster child (n = 329)	2.08	2.26	2.02	

*In the survey, this item was posed as two items, "maternity" and "birth or adoption of a child." For reporting purposes, it was decided to group these two items together when the responses were consistent with one another.

Note: Data sorted in descending order by "overall" column. Averages are based on a scale where 1 = "strongly disagree," 2 = "somewhat disagree," 3 = "somewhat agree" and 4 = "strongly agree." Blank cells in the last column indicate that no statistically significant differences were found.

Source: FMLA and Its Impact on Organizations

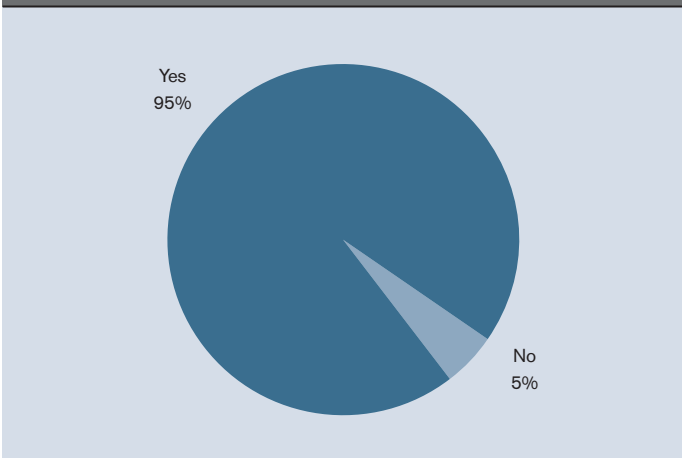
Of the FMLA leave taken by employees, more than one-third of the leave was for family-related reasons (average of 38%) and more than one-half was for medical reasons (average of 59%). On average, approximately one-third (32%) of FMLA leave was for episodic conditions. These data are depicted in Table 10.

Some differences based on organization sector and staff unionization emerged.¹² Organizations with unionized staff reported a larger number of employees taking FMLA leave overall, as well as leave specifically for medical reasons and episodic conditions in the past 12 months, compared with organizations without unionized staff. A larger proportion of employees in publicly owned for-profit organizations took leave for family-related reasons compared with those in privately owned for-profit organizations. In contrast to organizations without unionized staff, a greater percentage of leave was for medical reasons among organizations with unionized staff. For organizations without unionized staff, a greater percentage of leave was for family-related reasons.

ADVANCE NOTICE OF FMLA LEAVE

One of the challenges of the FMLA is that employees are sometimes unable to promptly notify their employers when they need to take FMLA leave, especially in unexpected circumstances. Currently, FMLA regulations require that employees provide their employers with at least 30 days' notice before their FMLA leave is to begin unless the need for leave is unforeseeable, in which

Figure 6 | FMLA Leave Taken by Employees in the Past 12 Months



(n = 411)
Source: FMLA and Its Impact on Organizations

Table 9 | Percentage of Employees Taking FMLA Leave in the Past 12 Months

	n	Average	Standard Deviation
Overall	389	8%	7%
Family-related reasons	363	3%	3%
Medical reasons	363	5%	5%
Episodic conditions	368	3%	5%

Note: The standard deviation measures the spread around the average; thus, a large standard deviation indicates a lack of consensus among respondents.
Source: FMLA and Its Impact on Organizations

Table 10 | Percentage of FMLA Leave in the Past 12 Months

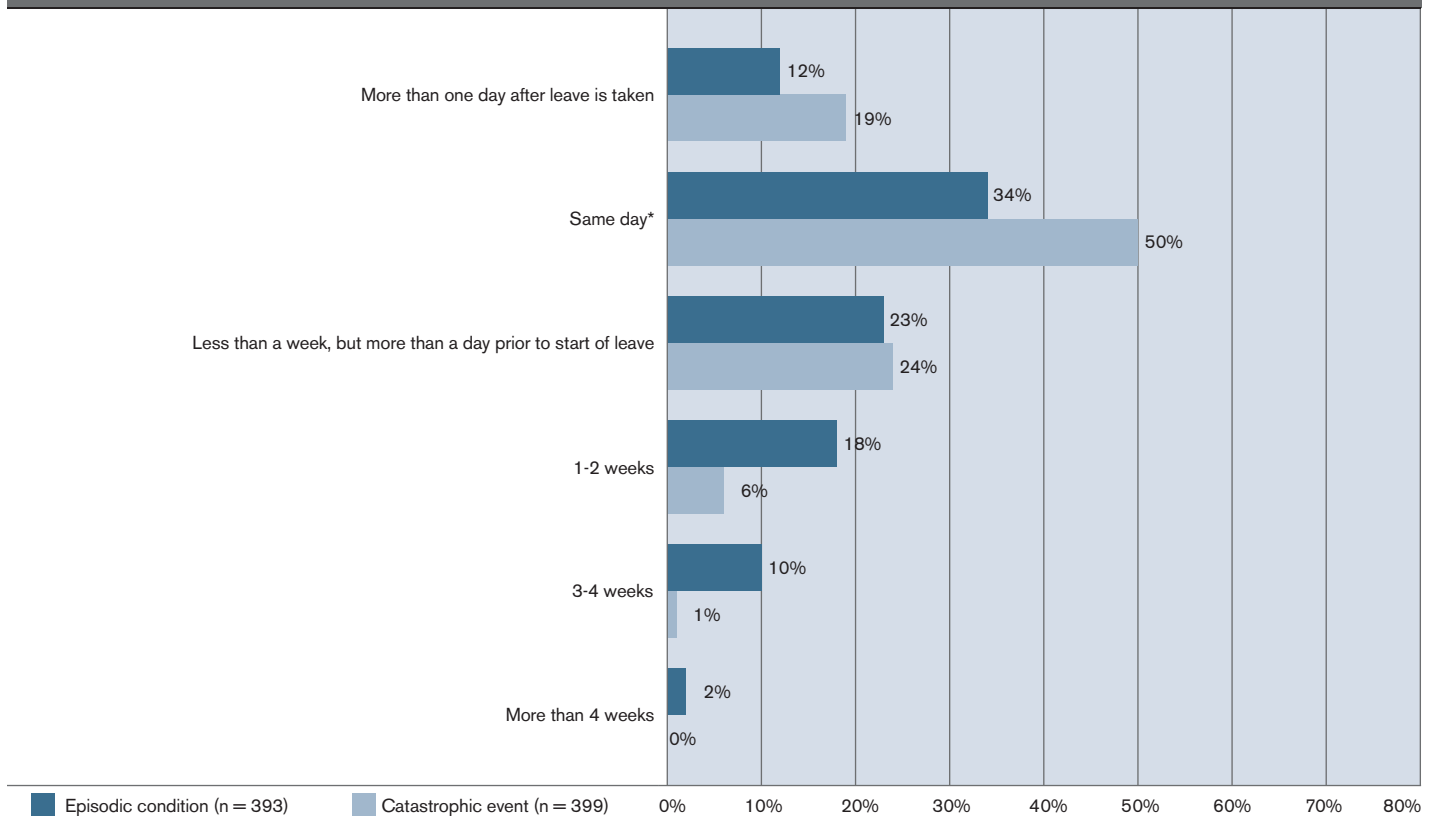
	n	Average	Standard Deviation
Family-related reasons	363	38%	27%
Medical reasons	363	59%	28%
Episodic conditions	368	32%	29%

Note: The standard deviation measures the spread around the average; thus, a large standard deviation indicates a lack of consensus among respondents.
Source: FMLA and Its Impact on Organizations

case the employee shall provide notice that is “practicable.” Overall, HR professionals indicated that employees provided an average of 61 days (standard deviation = 52)¹³ of advance notice when using FMLA leave for maternity, birth or adoption of a child or newly placed foster child. The number of days ranged from 0 to 270 (nine months). However, organizations with unionized staff typically received less notice (average of 51 days) from employees for this type of leave than did organizations without unionized staff (average of 64 days).¹⁴

Conversely, most HR professionals indicated that employees provided notice less than one week in advance or on the same day for a serious health condition as a result of a catastrophic event (74%) or an episodic condition (57%), making it difficult for HR professionals to plan for their absence (Figure 7). For catastrophic events, it should come as no surprise when an employee provides notice on the same day of leave due to its unforeseeable nature (50%), and this tends to occur more often in privately owned for-profit organizations than in nonprofit organizations.¹⁵ Organizations in the Midwest

Figure 7 | Amount of Advance Notice Provided by Employee When Taking FMLA Leave for a Serious Health Condition



*In the survey, this item was posed as two items, “same day, but at or after the start of leave” and “same day, but prior to start of leave.” For reporting purposes, it was decided to group these two items together.

Note: Percentages do not total to 100% due to rounding.

Source: FMLA and Its Impact on Organizations

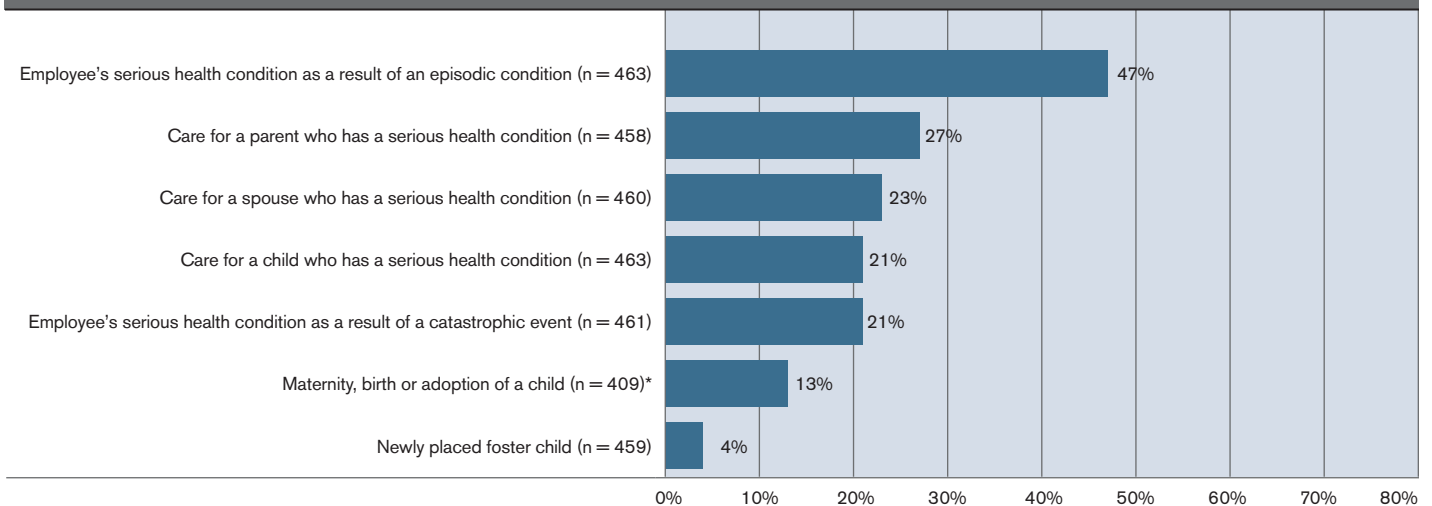
were more likely than organizations in the Northeast to receive notice from employees after the leave was taken for this type of leave.¹⁶

CHALLENGES WITH FMLA LEAVE

When respondents were asked if their location had experienced challenges in administering/granting leave under the FMLA in the past 12 months, the most frequently reported challenge was regarding leave for an employee’s episodic condition (47%) (Figure 8). In November 2006, SHRM conducted two polls on the specific challenges that organizations encountered when employees use FMLA leave for various circumstances.^{17, 18} More than half of HR professionals reported challenges with tracking intermittent leave (73%), chronic abuse of intermittent leave by employees (66%), morale problems with employees asked to cover for absent employee(s) (63%), costs associated with a loss of productivity due to the absence of employee (60%), vague documentation of medical leave certification by health care professionals (57%) and uncertainty about the legitimacy of leave requests (57%) for an employee’s episodic condition.

As depicted in Table 11, HR professionals from large organizations were most likely to experience challenges in administering/granting leave under the FMLA for most leave categories. Compared with small organizations, HR professionals from medium organizations reported difficulties with administering/granting leave under the FMLA for an employee’s episodic condition and to care for a spouse or child with a serious health condition. Government agencies were more likely than privately owned for-profit organizations to cite challenges with FMLA leave for a child who had a

Figure 8 | Challenges Experienced by Organizations in Administering/Granting Leave Under the FMLA in the Past 12 Months



*In the survey, this item was posed as two items, “maternity” and “birth or adoption of a child.” For reporting purposes, it was decided to group these two items together when the responses were consistent with one another.

Note: Data sorted in descending order by the percentage of HR professionals who answered “yes.”

Source: FMLA and Its Impact on Organizations

serious health condition.¹⁹ A greater proportion of organizations with unionized staff encountered challenges with most types of FMLA leave than did organizations without unionized staff (Table 12).

Table 11 | Challenges Experienced by Organizations in Administering/Granting Leave Under the FMLA in the Past 12 Months (by Organization Staff Size)

	Overall	Small (1-99 Employees)	Medium (100-499 Employees)	Large (500 and More Employees)	Differences Based on Organization Staff Size
Employee's serious health condition as a result of an episodic condition (n = 463)	47%	30%	46%	62%	Medium > small Large > small Large > medium
Care for a parent who has a serious health condition (n = 458)	27%	14%	25%	41%	Large > small Large > medium
Care for a spouse who has a serious health condition (n = 460)	23%	9%	23%	35%	Medium > small Large > small
Employee's serious health condition as a result of a catastrophic event (n = 461)	21%	12%	23%	25%	
Care for a child who has a serious health condition (n = 463)	21%	8%	20%	37%	Medium > small Large > small Large > medium
Maternity, birth or adoption of a child (n = 409)*	13%	10%	16%	10%	
Newly placed foster child (n = 459)	4%	1%	3%	6%	

*In the survey, this item was posed as two items, "maternity" and "birth or adoption of a child." For reporting purposes, it was decided to group these two items together when the responses were consistent with one another.

Note: Data sorted in descending order by "overall" column. Blank cells in the last column indicate that no statistically significant differences were found.

Source: FMLA and Its Impact on Organizations

Table 12 | Challenges Experienced by Organizations in Administering/Granting Leave Under the FMLA In the Past 12 Months (by Staff Unionization)

	Overall	Organizations With Unionized Staff	Organizations Without Unionized Staff	Differences Based on Staff Unionization
Employee's serious health condition as a result of an episodic condition (n = 463)	47%	60%	44%	With unionized staff > without unionized staff
Care for a parent who has a serious health condition (n = 458)	27%	36%	25%	With unionized staff > without unionized staff
Care for a spouse who has a serious health condition (n = 460)	23%	34%	20%	With unionized staff > without unionized staff
Employee's serious health condition as a result of a catastrophic event (n = 461)	21%	26%	19%	
Care for a child who has a serious health condition (n = 463)	21%	34%	17%	With unionized staff > without unionized staff
Maternity, birth or adoption of a child (n = 409)*	13%	9%	14%	
Newly placed foster child (n = 459)	4%	7%	3%	

*In the survey, this item was posed as two items, "maternity" and "birth or adoption of a child." For reporting purposes, it was decided to group these two items together when the responses were consistent with one another.

Note: Data sorted in descending order by "overall" column. Blank cells in the last column indicate that no statistically significant differences were found.

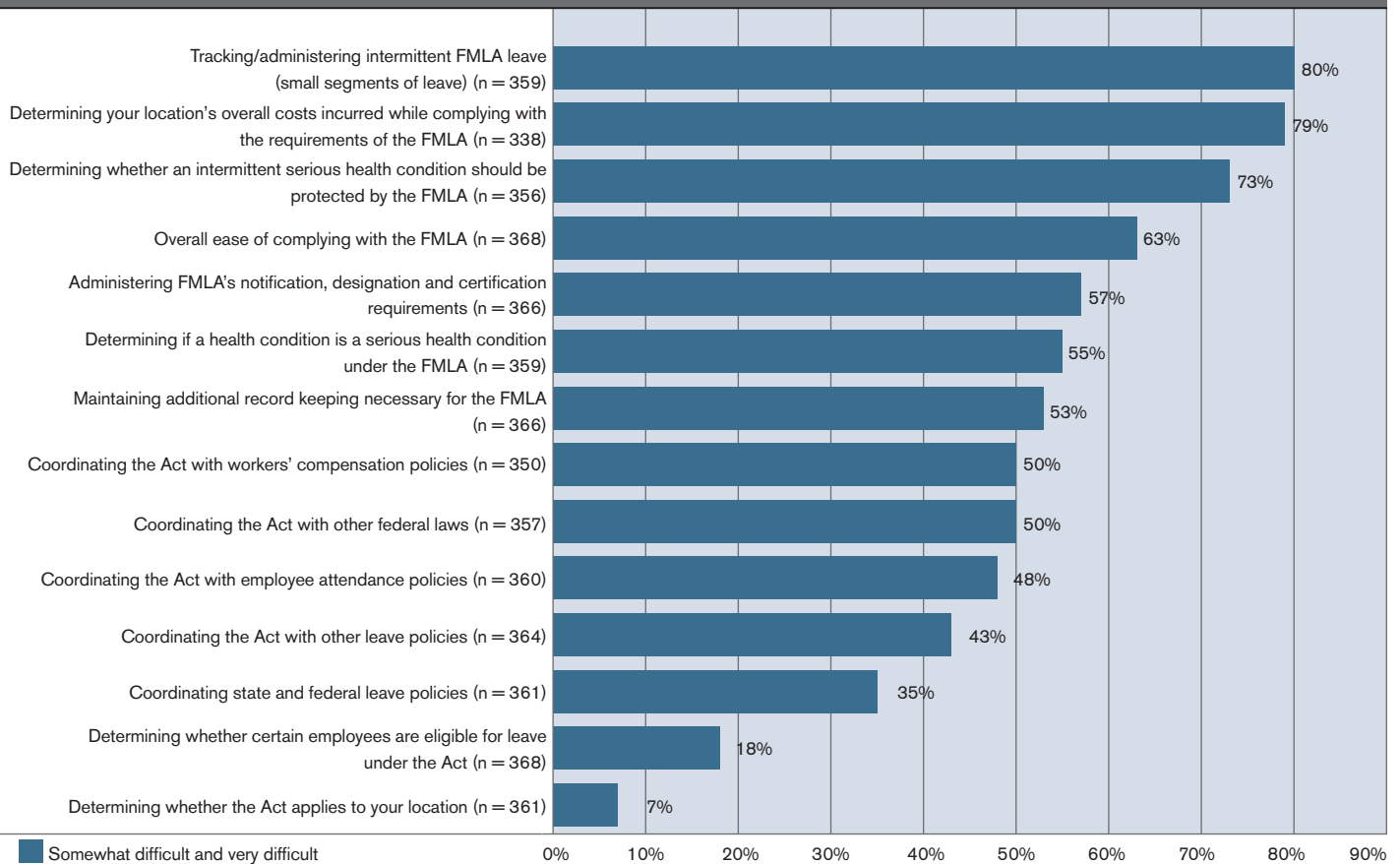
Source: FMLA and Its Impact on Organizations

CHALLENGES WITH FMLA-RELATED ACTIVITIES

In the *2000 Survey of Establishments*, conducted by Westat, establishments were asked to indicate the extent to which various FMLA-related activities were difficult for their businesses to administer.²⁰ As a point of comparison, these same items, plus a couple of new items, were included in the current survey. The largest proportions of respondents in the 2000 Westat study reported that administering FMLA’s notification, designation and certification requirements (54% in the Westat study and 57% in the SHRM study) and coordinating the Act with other federal laws (53% in the Westat study and 50% in the SHRM study) were “somewhat difficult” or “very difficult” activities. The top four most difficult (“somewhat difficult” or “very difficult”) activities reported by HR professionals in the current study were as follows (Figure 9):

Tracking/administration of intermittent leave: Tracking/administering intermittent FMLA leave was identified as the most difficult (“somewhat difficult” or “very

Figure 9 | Extent of Difficulty for Organizations to Administer FMLA-Related Activities



Note: Percentages are based on a scale where 1 = “very easy,” 2 = “somewhat easy,” 3 = “somewhat difficult” and 4 = “very difficult.” The data in this figure represent those HR professionals who answered “somewhat difficult” and “very difficult.”
Source: FMLA and Its Impact on Organizations

difficult”) activity for organizations (80%).²¹ Currently, FMLA regulations specify no minimum increment of intermittent leave, though an employer may limit leave to the shortest period of payroll time, as long as that period is an hour or less. It is often difficult to track an employee’s intermittent leave usage, particularly when the employee takes FMLA leave in small increments. The average level of difficulty revealed that tracking/administering intermittent FMLA leave was a more difficult activity for large organizations than for small organizations.²²

Determination of overall FMLA costs: Determining an organization’s overall costs incurred while complying with requirements of the FMLA was a “somewhat difficult” or “very difficult” activity for most HR professionals (79%).²³ HR professionals may experience difficulties in determining costs given the various financial implications that the FMLA can have on an organization, such as lost productivity, replacement costs and continuation of benefits.

Determination of intermittent serious health conditions: Nearly three-fourths of HR professionals (73%) reported difficulties (“somewhat difficult” or “very difficult”) determining whether an intermittent serious health condition should be protected by the FMLA, and it was particularly difficult for organizations with unionized staff to make this determination (Table 13). As defined under the Act, a serious health condition entitling an employee to FMLA leave means an illness, injury or impairment, or physical or mental condition that involves inpatient care in a hospital, hospice or residential medical care facility and continuing treatment by a health care provider. Under some circumstances, employees may take FMLA leave intermittently—taking leave in blocks of time or reducing their normal weekly or daily work schedule.²⁴

Respondents in both studies were asked about the difficulty in determining whether a health condition qualifies as a serious health condition under the FMLA. Overall, 42% percent of respondents in the Westat survey, compared with 55% of respondents in the current survey, found this activity to be “somewhat difficult” or “very difficult.” Organizations with unionized staff reported a greater degree of difficulty with this aspect than did organizations without unionized staff (Table 13). As cited in the SHRM 2006 polls, some HR professionals have found the DOL regulations, guidance and opinion letters to be contradictory and confusing for various types of FMLA leave. As a result, it may not always be clear to employers what conditions qualify and under what circumstances they qualify as a serious health condition.

Overall ease of complying with the FMLA: When respondents were asked about the overall ease of complying with the FMLA, only 36% of establishments in the Westat 2000 survey found it to be “somewhat difficult” or “very difficult,” compared with 63% of HR professionals in the current study. One reason to explain this discrepancy between the surveys is that overall usage of the FMLA has increased in the last five years, compared with 10 years ago, as noted earlier. Compliance with the FMLA was particularly difficult for large organizations²⁵ and organizations with unionized staff (Table 13).

Somewhat similar proportions of respondents in the Westat 2000 survey and current survey found coordinating the Act with other policies/laws, including other federal

laws (53% and 50%, respectively), state and federal policies (43% and 35%), other leave policies (40% and 43%) and employee attendance policies (35% and 48%) to be “somewhat difficult” or “very difficult” activities. Staff unionization and region of the organization had an impact on coordinating the Act with policies/laws. As shown in Table 13, HR professionals in organizations with unionized staff reported a greater degree of difficulty with coordinating the Act with other leave policies than did respondents in organizations without unionized staff. Organizations with unionized staff also reported more difficulties with employee attendance policies compared with organizations without unionized staff, as did organizations located in the Northeast

Table 13 | Average Extent of Difficulty for Organizations to Administer FMLA-Related Activities (by Staff Unionization)

	Overall	Organizations With Unionized Staff	Organizations Without Unionized Staff	Differences Based on Staff Unionization
Determining your location’s overall costs incurred while complying with the requirements of the FMLA (n = 338)	3.16	3.16	3.15	
Tracking/administering intermittent FMLA leave (small segments of leave) (n = 359)	3.12	3.18	3.09	
Determining whether an intermittent serious health condition should be protected by the FMLA (n = 356)	2.91	3.09	2.85	With unionized staff > without unionized staff
Overall ease of complying with the FMLA (n = 368)	2.72	2.87	2.67	With unionized staff > without unionized staff
Administering FMLA’s notification, designation and certification requirements (n = 366)	2.61	2.68	2.58	
Determining if a health condition is a serious health condition under the FMLA (n = 359)	2.59	2.75	2.54	With unionized staff > without unionized staff
Maintaining additional record keeping necessary for the FMLA (n = 366)	2.55	2.67	2.51	
Coordinating the Act with workers’ compensation policies (n = 350)	2.51	2.58	2.48	
Coordinating the Act with employee attendance policies (n = 360)	2.47	2.68	2.40	With unionized staff > without unionized staff
Coordinating the Act with other federal laws (n = 357)	2.44	2.59	2.39	
Coordinating the Act with other leave policies (n = 364)	2.39	2.56	2.34	With unionized staff > without unionized staff
Coordinating state and federal leave policies (n = 361)	2.21	2.37	2.16	
Determining whether certain employees are eligible for leave under the Act (n = 368)	1.79	1.82	1.77	
Determining whether the Act applies to your location (n = 361)	1.43	1.43	1.43	

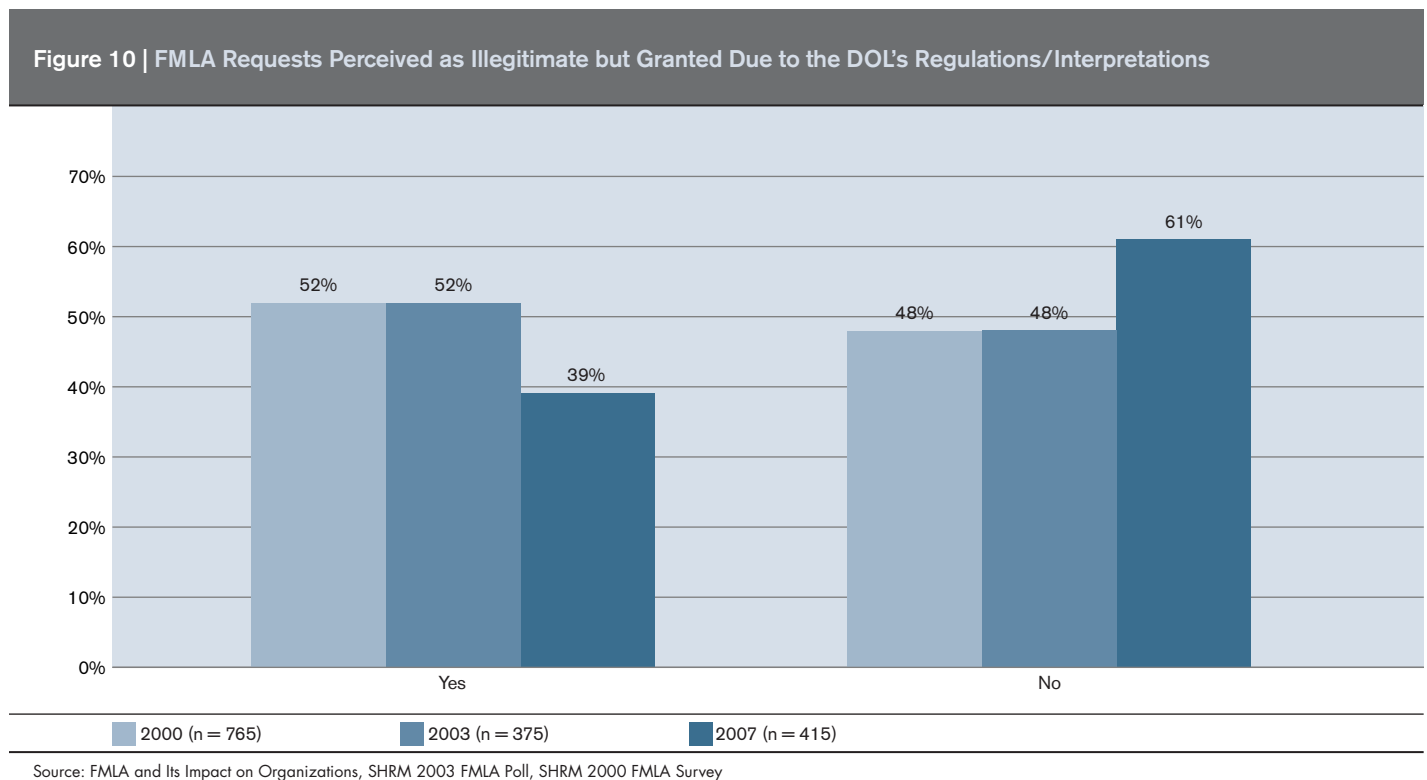
Note: Data sorted in descending order by “overall” column. Averages are based on a scale where 1 = “very easy,” 2 = “somewhat easy,” 3 = “somewhat difficult” and 4 = “very difficult.” Blank cells in the last column indicate that no statistically significant differences were found.
Source: FMLA and Its Impact on Organizations

compared with those in the Midwest.²⁶ HR professionals from organizations in the West were more likely than those in the South to report difficulties with coordinating the Act with state and federal leave policies.²⁷

LEGITIMACY OF FMLA CASES

As previously discussed, the sometimes contradictory and confusing aspects of the DOL information may leave employers feeling uncertain when administering the FMLA. In some cases, employers may perceive employee requests for FMLA leave as illegitimate but still feel the need to grant the leave, perhaps to avoid the possibility of litigation. About four out of 10 (39%) HR professionals stated that due to the DOL regulations and interpretations, they have had to grant FMLA requests that they perceived to be illegitimate, compared with more than one-half of respondents in 2000 and 2003 (52% each).^{28,29} These data are depicted in Figure 10.

A greater proportion of HR professionals in manufacturing (durable goods), compared with those in services (nonprofit) and wholesale/retail trade, reported that because of the DOL regulations and interpretations, they have had to grant FMLA requests that they believed were not legitimate (Table 14). Similarly, large organizations were more likely to grant these requests than were small and medium organizations, as did medium organizations compared with small organizations (Table 15). Organizations with unionized staff reported granting these requests more often than did organizations without unionized staff (Table 16).



HR professionals were asked to provide written comments on FMLA cases that they perceived as illegitimate. There were several main themes that arose from their comments, and they are summarized below.

Intermittent leave administration: Some of the most frequently voiced issues were about the administration and abuse of the FMLA, particularly with respect to intermittent leave. The unpredictable nature of certain conditions and conditions that are difficult to prove medically (e.g., migraines), do not necessarily require a doctor’s visit (e.g., seizures) or where medical recertification was not allowed (e.g., diabetes) posed challenges for HR professionals. In addition, due to the broad definition of a serious health condition, HR professionals questioned the use of FMLA leave for specific conditions such as migraines, allergies, asthma, stress-related reasons (anxiety, depression, change in work environment/expectations), flu, cold, back problems, bronchitis, elective surgery and care for a child/spouse/parent.

Intermittent leave timing: The timing of the intermittent leave has also raised suspicions of abuse. Leave may be taken or extended beyond what seems necessary, and absences tend to occur regularly around specific days or times of the year. For example, HR professionals reported that it was common for employees to take intermittent leave around the weekends, regularly scheduled days off and holidays or when the weather was nice. In other situations, leave may have been used when an employee was

Table 14 | FMLA Requests Perceived as Illegitimate but Granted Due to the DOL’s Regulations/Interpretations (by Organization Industry)

	Overall (n = 415)	Manufacturing (Durable Goods) (n = 46)	Services (Nonprofit) (n = 36)	Wholesale/ Retail Trade (n = 24)	Differences Based on Organization Industry
Yes	39%	67%	25%	17%	Manufacturing (durable goods) > services (nonprofit) Manufacturing (durable goods) > wholesale/retail trade
No	61%	33%	75%	83%	

Note: Sample sizes are based on the actual number of respondents answering the industry question; however, the percentages shown are based on the actual number of respondents by industry who answered the question using the provided response options. Only industries represented by 20 or more respondents were included in this table. Blank cells in the last column indicate that no statistically significant differences were found.

Source: FMLA and Its Impact on Organizations

Table 15 | FMLA Requests Perceived as Illegitimate but Granted Due to the DOL’s Regulations/Interpretations (by Organization Staff Size)

	Overall (n = 415)	Small (1-99 Employees) (n = 108)	Medium (100-499 Employees) (n = 203)	Large (500 and More Employees) (n = 127)	Differences Based on Organization Staff Size
Yes	39%	18%	35%	65%	Medium > small Large > small Large > medium
No	61%	82%	65%	35%	

Note: Sample sizes are based on the actual number of respondents answering the organization staff size question; however, the percentages shown are based on the actual number of respondents by organization staff size who answered the question using the provided response options. Blank cells in the last column indicate that no statistically significant differences were found.

Source: FMLA and Its Impact on Organizations

losing interest in his or her job or avoiding/delaying disciplinary action due to poor performance.

Validity of documentation/medical certification: HR professionals questioned the validity of the documentation and medical leave certification from health care professionals. Instances where physicians asked employees how many days they wanted off were cited. In addition, HR professionals reported examples of paperwork being backdated, conditions being exaggerated to meet qualifications, allowing more time than what really seemed necessary (e.g., employee could have worked or at least worked with restrictions) and an attitude that all illnesses fall under a serious health condition. The fact that there is little to no recourse in following up on suspicious absenteeism was a commonly shared sentiment among HR professionals.

CONSEQUENCES OF THE FMLA IN THE WORKPLACE

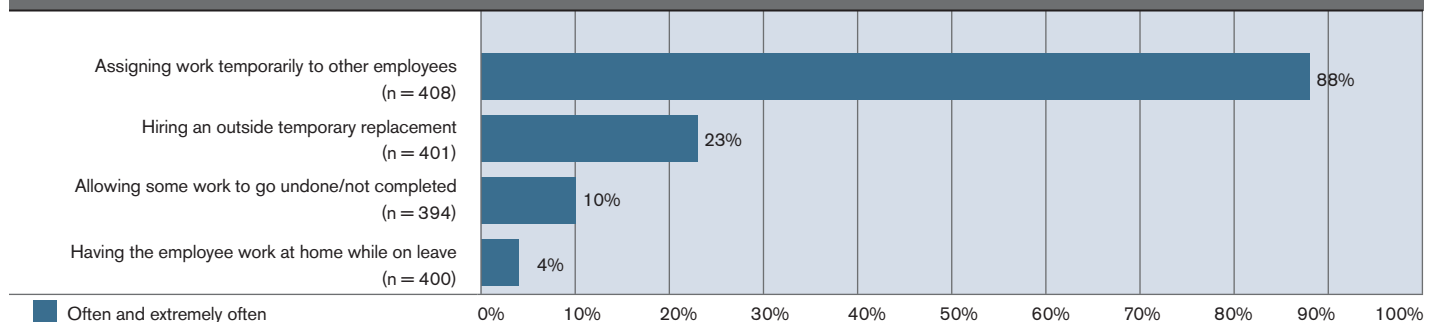
FMLA leave has benefited millions of employees in helping to meet their particular family and medical needs. However, when employees use the FMLA, it may create job disruptions and adverse effects on the workplace in terms of additional costs and a loss of productivity. As illustrated in Figure 7, it is not unusual for an employer to receive notice on the same day of the employee’s absence for a serious health condition.

Table 16 | FMLA Requests Perceived as Illegitimate but Granted Due to the DOL’s Regulations/Interpretations (by Staff Unionization)

	Overall (n = 415)	Organizations With Unionized Staff (n = 88)	Organizations Without Unionized Staff (n = 321)	Differences Based on Staff Unionization
Yes	39%	55%	33%	With unionized staff > without unionized staff
No	61%	45%	67%	

Note: Sample sizes are based on the actual number of respondents answering the staff unionization question; however, the percentages shown are based on the actual number of respondents by staff unionization who answered the question using the provided response options. Blank cells in the last column indicate that no statistically significant differences were found.
Source: FMLA and Its Impact on Organizations

Figure 11 | During an Employee’s FMLA Leave, Organization Attends to the Employee’s Workload by...

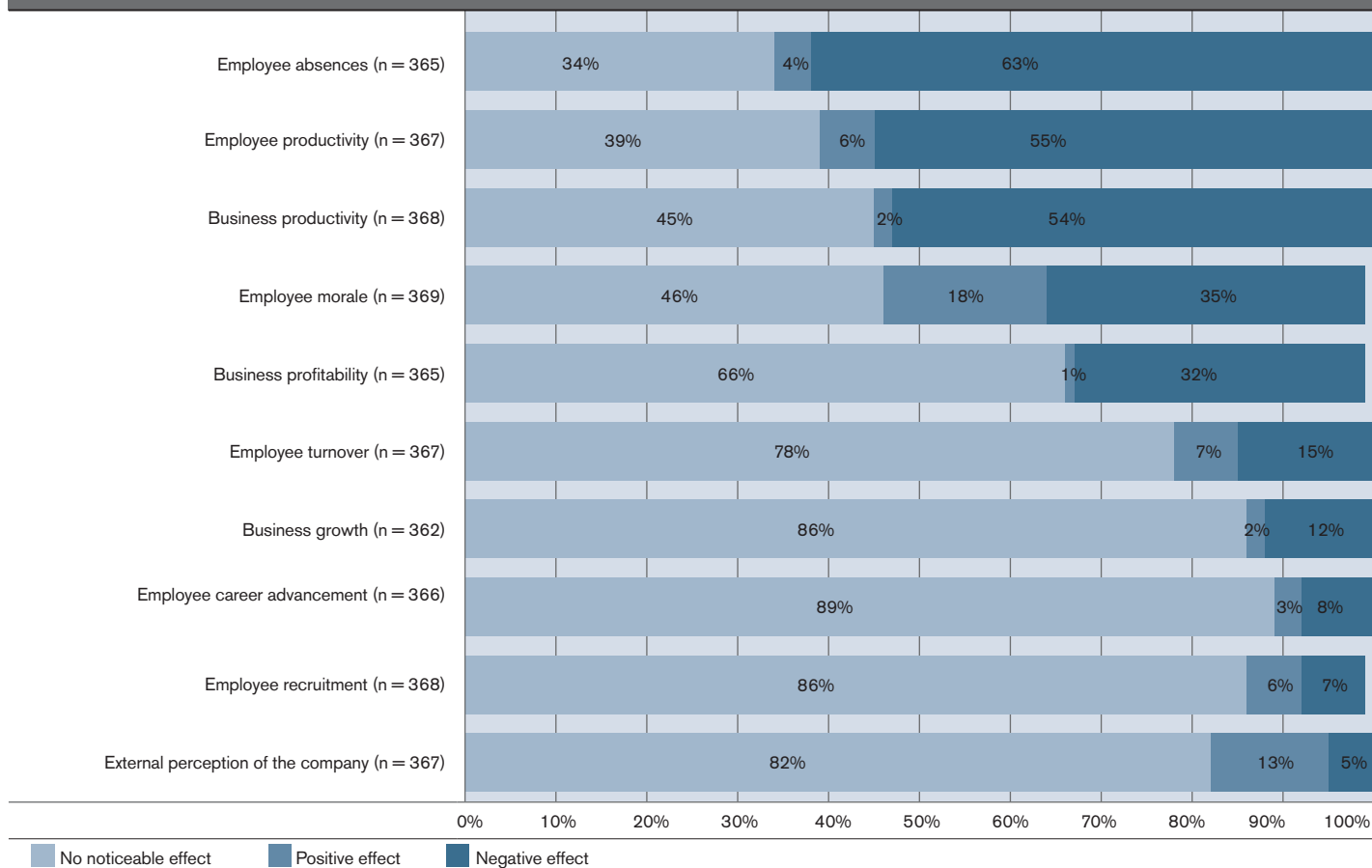


Note: Percentages are based on a scale where 1 = “not at all,” 2 = “rarely,” 3 = “sometimes,” 4 = “often” and 5 = “extremely often.” Figure represents those HR professionals who answered “often” and “extremely often.”
Source: FMLA and Its Impact on Organizations

Employers may opt to hire a temporary worker or have the work go unfinished, but typically other employees are asked to step in and help cover the absent worker’s duties. Eighty-eight percent of organizations often (“often” or “extremely often”) assigned work temporarily to other employees during an employee’s FMLA leave, and this, in turn, may affect employee morale and productivity (Figure 11). This was also the most frequently used method of attending to a leave taker’s workload in 2000 and 2003. Large organizations were more likely than medium organizations to allow some work to go undone or incomplete.³⁰

What type of impact have the FMLA and its regulations had on organizations? To gain a better understanding of how organizations perceive the impact of the FMLA, the survey included a number of items about FMLA’s effects on business and employees. Similar to the Westat 2000 survey findings, the majority of respondents reported that the FMLA and its regulations have had “no noticeable effect” (neither “positive effect” nor “negative effect”) on business profitability, business growth, employee turnover

Figure 12 | Effects of FMLA and Its Regulations on the Organization



Note: Data sorted in descending order by the percentage of HR professionals who answered “negative effect.” Percentages may not total to 100% due to rounding.
 Source: FMLA and Its Impact on Organizations

and career advancement. In the present study, a large proportion of respondents also indicated “no noticeable effect” on employee recruitment and external perception of the company. These data are illustrated in Figure 12.

In general, small organizations and organizations without unionized staff were most likely to report “no noticeable effect” of the FMLA and its regulations. More specifically, small organizations were more likely than medium and large organizations to indicate “no noticeable effect” on business profitability, employee morale, employee productivity and employee absences. Small organizations were also more likely than large organizations to report that the FMLA and its regulations had “no noticeable effect” on employee turnover and business productivity (Table 17).

HR professionals in organizations without unionized staff reported that the FMLA and its regulations had “no noticeable effect” on employee morale, business productivity, employee productivity and employee absences more often than respondents in organizations with unionized staff did. These data are illustrated in Table 18. In addition, organizations in the South and Midwest were more likely than organizations in the West to report “no noticeable effect” of the FMLA and its regulations on employee morale.³¹

Table 17 | “No Noticeable Effect” of the FMLA and Its Regulations on the Organization (by Organization Staff Size)

	Overall	Small (1-99 Employees)	Medium (100-499 Employees)	Large (500 and More Employees)	Differences Based on Organization Staff Size
Employee career advancement (n = 366)	89%	90%	89%	87%	
Business growth (n = 362)	86%	90%	88%	78%	
Employee recruitment (n = 368)	86%	89%	86%	84%	
External perception of the company (n = 367)	82%	90%	77%	81%	Small > medium
Employee turnover (n = 367)	78%	88%	77%	71%	Small > large
Business profitability (n = 365)	66%	81%	66%	52%	Small > medium Small > large
Employee morale (n = 369)	46%	61%	45%	33%	Small > medium Small > large
Business productivity (n = 368)	45%	59%	43%	31%	Small > large
Employee productivity (n = 367)	39%	54%	40%	22%	Small > large Medium > large
Employee absences (n = 365)	34%	57%	30%	21%	Small > medium Small > large

Note: Data sorted in descending order by “overall” column. Blank cells in the last column indicate that no statistically significant differences were found.
Source: FMLA and Its Impact on Organizations

Table 18 | “No Noticeable Effect” of the FMLA and Its Regulations on the Organization (by Staff Unionization)

	Overall	Organizations With Unionized Staff	Organizations Without Unionized Staff	Differences Based on Staff Unionization
Employee career advancement (n = 366)	89%	90%	89%	
Business growth (n = 362)	86%	82%	86%	
Employee recruitment (n = 368)	86%	90%	85%	
External perception of the company (n = 367)	82%	83%	82%	
Employee turnover (n = 367)	78%	78%	78%	
Business profitability (n = 365)	66%	58%	69%	
Employee morale (n = 369)	46%	34%	49%	Without unionized staff > with unionized staff
Business productivity (n = 368)	45%	33%	48%	Without unionized staff > with unionized staff
Employee productivity (n = 367)	39%	29%	42%	Without unionized staff > with unionized staff
Employee absences (n = 365)	34%	21%	38%	Without unionized staff > with unionized staff

Note: Data sorted in descending order by “overall” column. Blank cells in the last column indicate that no statistically significant differences were found.
Source: FMLA and Its Impact on Organizations

Table 19 | “Negative Effect” of the FMLA and Its Regulations on the Organization (by Organization Staff Size)

	Overall	Small (1-99 Employees)	Medium (100-499 Employees)	Large (500 and More Employees)	Differences Based on Organization Staff Size
Employee absences (n = 365)	63%	39%	64%	79%	Medium > small Large > small Large > medium
Employee productivity (n = 367)	55%	39%	53%	74%	Large > small Large > medium
Business productivity (n = 368)	54%	40%	54%	68%	Large > small
Employee morale (n = 369)	35%	23%	33%	52%	Large > small Large > medium
Business profitability (n = 365)	32%	18%	32%	48%	Large > small Large > medium
Employee turnover (n = 367)	15%	7%	16%	22%	Large > small
Business growth (n = 362)	12%	7%	10%	21%	Large > small
Employee career advancement (n = 366)	8%	6%	7%	12%	
Employee recruitment (n = 368)	7%	4%	6%	12%	
External perception of the company (n = 367)	5%	1%	5%	7%	

Note: Data sorted in descending order by “overall” column. Blank cells in the last column indicate that no statistically significant differences were found.
Source: FMLA and Its Impact on Organizations

Compared with the 2000 Westat survey, nearly three times as many respondents in the current study reported that the FMLA and its regulations have had a “negative effect” on employee absences (63% in the current study versus 19% in the Westat study), employee productivity (55% versus 17%) and business productivity (54% versus 16%).

In general, HR professionals from large organizations and from organizations with unionized staff were most likely to indicate that the FMLA and its regulations have negatively affected their organizations. Large organizations, compared with small and medium organizations, found that the FMLA and its regulations had a negative impact on employee absences, employee productivity, employee morale and business profitability. In addition, HR professionals in large organizations were more likely than respondents in small organizations to indicate that business productivity, employee turnover and business growth were negatively affected by the FMLA and its regulations. These data are depicted in Table 19. The 2000 Westat study also revealed that large establishments were significantly more likely than small establishments to report that the FMLA has had a “negative effect” on employee absences, business productivity and business profitability.

Compared with organizations without unionized staff, a greater proportion of organizations with unionized staff reported that the FMLA and its regulations have had a “negative effect” on employee absences, employee productivity, business productivity and employee morale (Table 20).

Table 20 | “Negative Effect” of the FMLA and Its Regulations on the Organization (by Staff Unionization)

	Overall	Organizations With Unionized Staff	Organizations Without Unionized Staff	Differences Based on Staff Unionization
Employee absences (n = 365)	63%	74%	59%	With unionized staff > without unionized staff
Employee productivity (n = 367)	55%	66%	51%	With unionized staff > without unionized staff
Business productivity (n = 368)	54%	65%	50%	With unionized staff > without unionized staff
Employee morale (n = 369)	35%	46%	32%	With unionized staff > without unionized staff
Business profitability (n = 365)	32%	41%	30%	
Employee turnover (n = 367)	15%	13%	15%	
Business growth (n = 362)	12%	14%	12%	
Employee career advancement (n = 366)	8%	6%	8%	
Employee recruitment (n = 368)	7%	6%	8%	
External perception of the company (n = 367)	5%	9%	4%	

Note: Data sorted in descending order by “overall” column. Blank cells in the last column indicate that no statistically significant differences were found.
Source: FMLA and Its Impact on Organizations

Conclusions

The Family and Medical Leave Act of 1993 was established to provide job-protected unpaid leave for certain family and medical reasons. Organizations clearly want to follow and support the spirit and intent of the FMLA, and in some cases, they go beyond the FMLA requirements. About four out of 10 organizations reported that they offered job-protected leave beyond federal FMLA provisions. And, as shown in this research, the vast majority of HR professionals perceived no noticeable effect (neither positive nor negative effect) of the FMLA and its regulations on their organizations, particularly with respect to employee career advancement, business growth, employee recruitment and external perception of the company.

Although certain provisions of the FMLA are favorable for both employees and employers, HR professionals have struggled with certain aspects of the FMLA, specifically those related to serious health conditions, intermittent use of leave and chronic or episodic conditions. Tracking/administering intermittent FMLA leave and determining whether an intermittent serious health condition should be protected by the FMLA were among the most difficult FMLA-related activities for organizations to administer. When HR professionals were asked to elaborate on FMLA requests that they believed were not legitimate, a number of comments were related to problems with administering intermittent leave and questioning the timing of intermittent leave.

HR professionals agreed that there has been an increase in the number of requests to take the FMLA in the last five years compared with 10 years ago, and an employee's episodic condition was the most common type of requested leave. Similarly, an employee's episodic condition posed the greatest challenge for HR professionals in administering/granting leave under the FMLA.

Scheduled FMLA leave is generally less problematic for employers than unscheduled leave because it allows for the employer to make alternative arrangements in advance to cover the leave taker's workload rather than make last-minute arrangements. The most common method for attending to an employee's workload during his or her FMLA leave was to assign work temporarily to other employees. FMLA leave for medical reasons (serious health conditions) appears to pose more problems for HR professionals than leave for family-related reasons (maternity, birth or adoption of a child or newly placed foster child). HR professionals often receive less than one week's notice or same-day notice for a serious health condition due to a catastrophic event or episodic

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condition, whereas employees typically provide two month's notice when the leave is for maternity, birth or adoption of a child or newly placed foster child.

The results from this survey will assist policy-makers as they seek to make possible changes to FMLA rules. This survey is particularly reflective of FMLA implementation since SHRM members are the individuals charged with implementing the FMLA in organizations across the nation. More clarification and education are needed in the FMLA and its regulations to help eliminate confusion about the FMLA for both employees and HR professionals and reduce any unintended negative consequences.

A Look Ahead : Family and Medical Leave Act

Paid leave proposals introduced by several key lawmakers could influence HR practices involving leave benefits in the years ahead. As of June 2007, Senator Ted Kennedy (D-MA) and Congresswoman Rosa L. DeLauro (D-CT) introduced the Healthy Families Act, which would require employers with 15 or more employees to provide seven paid sick days to care for their own and their families' medical needs, while Senator Christopher Dodd (D-CT), chairman of the children and families subcommittee of the Senate Health, Education, Labor and Pensions Committee and author of the Family and Medical Leave Act, announced he intends to offer a bill that will provide six weeks of paid leave for employees—with employers, employees and the federal government all sharing the costs of leave. Political observers believe that given the Democratic control of the Senate, these bills will be more likely to move forward, though they may still be difficult to pass. If similar proposals eventually become law, legal and policy experts predict that it could lead to much stricter and more rigorous employer approval processes for employees requesting leave, and this is likely to have a significant impact on HR leave policies overall. They forecast that many more employers would shift their vacation and sick time policies into a single paid time off/PTO leave benefit rather than offer two distinct leave benefits.

However, plans to change or expand the FMLA are likely to continue to be challenged. Arguments will likely focus on clarifying the areas of most confusion in the original legislation, especially in the area of medical leave interpretations, before further expansion of the Act moves forward. Efforts to make changes to the FMLA are most likely to focus on medical leave for individual employees, as this is the area of the Act that has caused the most confusion and appears to have been subject to the most inconsistent interpretations. Employers and many HR professionals argue that vague description of a “serious health condition” has opened the use of FMLA leave up to abuse by employees with chronic but nonserious health conditions. Calls for changes could intensify if litigation linked to different interpretations of serious health conditions continues to grow. Already, the Labor Department's FMLA regulations have been challenged in more than 70 court decisions, and more litigation is expected.³²

Bodies such as The National Coalition to Protect Family Leave, which SHRM co-chairs, are urging the Department of Labor and the U.S. Congress to modify

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and improve the FMLA through either regulations or legislation. The Coalition's recommendations include:

- Restoring the meaning of a “serious health condition” to the original Congressional intent.
- Improving notification requirements to reduce work disruptions and shifting unwanted overtime to employees.
- Streamlining record keeping.
- Allowing employers to offer a choice between FMLA benefits or paid sick leave.

Problems administering the medical leave provisions, such as those highlighted in this survey, are also likely to add to pressure to make changes to the existing law. This may be particularly likely given the rise in the reported number of employee requests to take FMLA leave in the past five years compared with 10 years ago. And because the most common reason for requesting leave is the employee's own medical condition as a result of an episodic condition (81%), problems administering medical leave provisions will continue to be highlighted.

Demographics

Location Industry	
Health	12%
Manufacturing (durable goods)	11%
Services (profit)	9%
Services (nonprofit)	9%
Government	7%
Wholesale/retail trade	6%
Finance	6%
Transportation	4%
High-tech	4%
Manufacturing (nondurable goods)	4%
Educational services	4%
Hospitality/retail/restaurant*	3%
Insurance	3%
Construction and mining/oil and gas	2%
Utilities	2%
Biotechnology/pharmaceuticals*	1%
Legal*	1%
Real estate/property management/home builder*	1%
Telecommunications	1%
Engineering/aerospace*	1%
Other	9%

(n = 408)

*For the purpose of the analysis, these categories have been recoded from the "other" category.

Location Staff Size (Number of Staff at Location)	
Small organization (1-99 employees)	25%
Medium organization (100-499 employees)	46%
Large organization (500 and more employees)	29%

(n = 438)

Note: Respondents indicated an average of 887 employees at their location. The number of employees in their organizations ranged from 50 employees to 28,000 employees.

Work Location Staff Size (Number of Staff at Location and Work Locations Within a 75-Mile Radius)	
Small organization (1-99 employees)	21%
Medium organization (100-499 employees)	47%
Large organization (500 and more employees)	33%

(n = 419)

Note: Respondents indicated an average of 1,255 employees at their location and work locations within 75 miles of their location. The number of employees in their organizations ranged from 50 employees to 100,000 employees. Percentages do not total to 100% due to rounding.

Location Sector

Publicly owned for-profit organization	21%
Privately owned for-profit organization	48%
Nonprofit organization	21%
Government agency	9%
Other	1%

(n = 408)

Unionized Staff at Location

Yes	22%
No	78%

(n = 409)

Note: Respondents who answered “yes” to this question were also asked to provide the percentage of unionized staff. There was an average of 60% of employees unionized.

Location Region

Midwest (Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Wisconsin)	24%
Northeast (Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont)	19%
South (Alabama, Arkansas, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, West Virginia)	34%
West (Alaska, Arizona, California, Colorado, Hawaii, Idaho, Nevada, New Mexico, Montana, Oregon, Utah, Washington, Wyoming)	22%

(n = 354)

Note: Percentages do not total to 100% due to rounding.

Endnotes

¹ Retrieved May 15, 2007, from www.dol.gov/esa/whd/06-9489.pdf.

² Retrieved May 15, 2007, from www.shrm.org/government/federal/lht_published/CMS_020554.pdf.

³ This survey instrument is available upon request by contacting the SHRM Survey Program at surveys@shrm.org or by phone at 703-535-6301.

⁴ Burke, M. E. (2003, April). *SHRM 2003 FMLA Poll*. Alexandria, VA: Society for Human Resource Management.

⁵ These data are not depicted in a table.

⁶ These data are not depicted in a table.

⁷ These data are not depicted in a table.

⁸ These data are not depicted in a table.

⁹ These data are not depicted in a table.

¹⁰ These data are not depicted in a table.

¹¹ These data are not depicted in a table.

¹² These data are not depicted in a table.

¹³ The standard deviation measures the spread around the average; thus, a large standard deviation indicates a lack of consensus among respondents.

¹⁴ These data are not depicted in a table.

¹⁵ These data are not depicted in a table.

¹⁶ These data are not depicted in a table.

¹⁷ Society for Human Resource Management. (2006, November 7). Has your organization experienced challenges in granting leave under FMLA? [SHRM Weekly Survey]. Retrieved February 15, 2007, from www.shrm.org/surveys/.

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- ²⁰ Westat. (2000). *2000 survey of establishments*. Retrieved May 15, 2007, from www.dol.gov/esa/whd/fmla/fmla/chapter6.htm.
- ²¹ This item was not asked in the *2000 Survey of Establishments*.
- ²² These data are not depicted in a table.
- ²³ This item was not asked in the *2000 Survey of Establishments*.
- ²⁴ U.S. Department of Labor Employment Standards Administration Wage and Hour Division. Fact Sheet #28: The Family and Medical Leave Act of 1993. Retrieved April 30, 2007, from www.dol.gov/esa/regs/compliance/whd/whdfs28.htm.
- ²⁵ These data are not depicted in a table.
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- ²⁸ Society for Human Resource Management. (2000). *SHRM 2000 FMLA Survey*. Alexandria, VA: Society for Human Resource Management.
- ²⁹ Burke, M. E. (2003, April). *SHRM 2003 FMLA Poll*. Alexandria, VA: Society for Human Resource Management.
- ³⁰ These data are not depicted in a table.
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- ³² Spencer Fane Britt & Browne LLP. (2006, November). *Reported Court Cases in Which the Validity of an FMLA Regulation Has Been Challenged*.

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