

# I. Employee Perspective: Experiences in the Value of the FMLA

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The chapters that follow in this Report deal in large part with the substantive comments from individual employers and employees, law firms, and groups representing employers and employees, assessing what works or does not work particularly well with specific regulatory sections of the FMLA. Because of that, it is easy to lose perspective about the overall value of the workplace protections provided by the Act. That value is best shown in the comments submitted by individual employees and, in some instances their employers or representatives. While it would be impossible for the Department to catalog every comment it received in response to the Request for Information (“RFI”) about the value of the FMLA, this chapter provides a representative collection of comments recounting those personal experiences.<sup>1</sup> These comments also include some examples of best practices of employers in carrying out the FMLA—practices that often create or strengthen good relationships between employers and employees. These comments reflect the belief stated in the regulations that a “direct correlation exists between stability in the family and productivity in the workplace” and demonstrate that the underlying intent of the Act “to allow employees to balance their work and family life by taking reasonable unpaid leave” for certain qualifying family and medical reasons is being fulfilled. 29 C.F.R. § 825.101.

Many employees were grateful that the Act existed and that they were able to utilize the leave entitlement in a time of need. Some employees specifically commented that the Act helped them during difficult periods of caring for loved ones who were ill. For example, one employee wrote that she used FMLA leave twice, once to care for a seriously ill child and again “when my husband was injured in Afghanistan and needed assistance in his recovery[.]”

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<sup>1</sup> The Request for Information can be found at 71 Fed. Reg. 69,508 (December 1, 2006).

<sup>2</sup> The names of individual employees have been redacted from the Report where any personal or medical information was provided.

An Employee Comment, Doc. 2666, at 1.<sup>2</sup> She noted that “without this [FMLA] protection, I probably would have lost my job and all its benefits[.]” *Id.* Another employee said he could not have cared for his ill wife without FMLA. An Employee Comment, Doc. FL18, at 1. “My wife . . . has a medical condition that is covered by the FMLA. I have used intermittent FMLA leave to take her to the doctor whose office is located approximately 4 hours away by car from where we live. I have been doing this on average once a month for approximately 3 years. I would not be able to do this without the FMLA.” *Id.*

One employee, whose comment echoed the sentiment that the FMLA allows employees to balance their work obligations with the need to care for their loved ones, appreciated how his family benefited from FMLA leave. “Presently, my sister is having to care for our ailing mother while holding down a job. The Family and Medical Leave Act is very important to her as well as her family in her continued effort to care for our mother in her final days.” An Employee Comment, Doc. FL9, at 1. Another employee said, “I . . . recently returned from taking a two week FML[A leave] to care for my elderly step father after open heart surgery. My family and I were appreciative that because of the FML[A] I was able to request time to assist with his care and recuperation at home. We all have no doubt that my time was invaluable with his improvement once home.” An Employee Comment, Doc. 139, at 1.

Other commenters also noted the value of FMLA when they needed leave because of their own serious health conditions. For example, one employee said, “As a cancer survivor myself, I cannot imagine how much more difficult those days of treatments and frequent doctor appointments would’ve been without FMLA. I did my best to be at work as much as possible, but chemotherapy and radiation not only sap the body of energy, but also take hours every day and every week in treatment rooms.” An Employee Comment, Doc. 5798, at 1. Another employee, who used FMLA leave on several occasions for her

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own serious health condition, stated that she was “very thankful for the existence of the Family and Medical Leave Act (FMLA). As a two time survivor of breast cancer, I have taken FMLA leave both on a continuous and an intermittent basis – continuous leave to recover from my surgeries (therapeutic and reconstructive) and intermittent for doctors appointments, radiation therapy, and chemotherapy treatments.” An Employee Comment, Doc. 234, at 1. Other employees specifically pointed out the value of the FMLA in allowing them to focus completely on recovery. For example, a correctional officer commented, “I was out of work for a short period of time due to a serious medical condition that was treatable. FMLA gives the employee the ability to tend to these concerns with their full attention, to recuperate without sacrificing their career [or] their livelihood.” An Employee Comment, Doc. FL87, at 1.

Several employees commented specifically about the value of intermittent leave under the FMLA. A railroad employee of thirty-six years said he uses intermittent leave to care for his wife, who suffers from Multiple Sclerosis (“MS”). An Employee Comment, Doc. FL115, at 1. Acknowledging the sporadic need for leave, the commenter said, “Since MS is an incurable disease without a schedule or any way of knowing when an episode is going to [occur], I cannot always foresee when I am needed at home. The only time I know I am needed is when [my wife] has an appointment with her doctor. This is subject to change if she is unable to go to the doctor due to weakness.” *Id.* Similarly, an AT&T employee commented that intermittent leave under the Act makes it possible for her to care for her mother, who has Alzheimer’s disease. “I only take an hour here and there as needed. I try to work doctor appointments and other things around my work schedule. However, it is impossible to always do that. FMLA has been a life saver for me. Had I not had FMLA for this reason I don’t know what I would do.” An Employee Comment, Doc. 10046A, at 1.

Many employees commented that the Act

helped save their jobs. For example, one employee, who commented that her child’s health condition sometimes keeps her out of work for several days at a time, said, “FMLA has tremendously helped my family. I have a child born w/[asthma], allergies & other medical issues. And, there are times I’m out of work for days[. I]f I didn’t have FMLA I would have been fired [a long] time ago. I’ve been able to maintain my employment and keep my household from having to need assistance from the commonwealth.” An Employee Comment, Doc. 229, at 1. Another employee said, “I returned home after three months [of FMLA leave] to be told I no longer had a job. I was told it would be unfair of me to expect my coworkers to cover for me so they were forced to hire a new employee. . . . When I asked the manager about the previous assurances that my job would be held until I returned I wasn’t given a direct answer. I invoked the FMLA and was able to keep my job.” An Employee Comment, Doc. 61, at 1. A teacher stated, “Without [the FMLA], I couldn’t have cared for both of my parents at different times in their lives and kept my job . . . . Because of the act I was able to keep my parents out of nursing homes and still keep my job to support them later. This is the best thing you can do for working families around our country.” An Employee Comment, Doc. 1181, at 1.

Similarly, an employee with a chronic serious health condition commented, “I can get sick at any time and need brain surgery. This can put me out of commission for a month or two. FMLA gives me the peace of mind that I cannot be fired after I have been in a job for a year. I cannot stress how monumental that assurance is.” An Employee Comment, Doc. 159, at 1. Another employee said, “Without the availability of FMLA I’m not certain of what would have happened to my family when my husband was diagnosed with ALS 5 years ago. Thankfully it was there, so I could be with him as he was dying.” An Employee Comment, Doc. 4332, at 1. A union steward, using FMLA leave for his own serious

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health condition, commented that “FMLA not only allows me to take time off for . . . therapy/medical appointments but also allows [me] to take time off as needed when I have sporadic episodes in which the medicine does not work, needs to be fine tuned or changed which is essential to my well-being.” An Employee Comment, Doc. 4619, at 1. He further commented, “Without FMLA I would have been fired long ago[.] . . . FMLA saved my job and I also believe saved my life, and to this day gives me a sense of security against any discipline or termination based on my legitimate medical needs.” *Id.*

The FMLA appears to be particularly valued by employees caring for both children and parents with serious health conditions. A telephone company employee providing care for her asthmatic son and for her 84 year old mother commented: “I am part of what is known as the ‘Sandwich Generation’[.] . . . I have had several occasions to use FMLA[.] . . . Without FMLA protection I would have lost my job.” An Employee Comment, Doc. R133, at 1. Another employee described taking leave for a three month period for the birth of her child, then needing leave intermittently to care for her father “for a few days after each hospitalization” for his chronic heart disease. An Employee Comment, Doc. 6311, at 1. According to this commenter, “Knowing that I was protected meant I didn’t have to choose between my Father’s health and my job.” *Id.* at 1.

In a similar vein, one commenter who administers FMLA leave for her employer noted, “What I am seeing with increasing regularity are FMLA requests for employees to care for an elderly parent who is ill and not able to afford a caregiver to attend to his/her needs. These are usually for intermittent leaves that will allow the employee to chauffeur their parent to the doctor [or] attend to their parent post surgery. As our working population ages, [the need for leave related to] caring for elderly parent(s) will increase.” Doreen Stratton, Doc. 696 at 1. An employee agreed: “There are multiple factors putting stress on the American family, making the

FMLA a good thing for families with children. Also, millions of baby-boomers are getting old, many of them without adequate retirement funds – so we will be seeing more family caregivers, not fewer.” An Employee Comment, Doc. 5473, at 1. As these comments show, the importance of the FMLA is growing for this key group of employees and their employers. As one commenter put it, “In most families, since both parents have to work to support themselves and their children and perhaps their older parents, the more a company provides pay and good will towards a family[’s] caretaking abilities, the more that employee will be loyal to the company.” An Employee Comment, Doc. 5521, at 1.

In addition to these individual employee and employer comments, the American Federation of Labor and Congress of Industrial Organizations (“AFL-CIO”) conducted an “online survey among members of Working America, the Federation’s community-based affiliate in response to the RFI. Within a period of two weeks, over 1,660 members responded.” Doc. R329A, at 6. As a result of their survey, several hundred personal experiences were included in an Appendix to the AFL-CIO’s comment—a sampling of which is provided here:

- “My daughter was mauled by a dog. I had to take 2 months of leave (permitted under FMLA). Had FMLA not been in place, I would have lost my job for sure.”
- “FMLA has made a big difference to me. I have a chronic health condition along with being a single mother and have my aging mother living with me. I can’t imagine not being able to use this so that I know that my job will still be there whether I have a [reoccurrence] of my health condition or like when my 4 year old broke his leg.”
- “My step mother had a debilitating stroke. Since I work in social services, I was [the] best person in the family to assist her with setting up her benefits. My direct supervisor did not

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like it, but my request could not be denied. Human Resources was more than helpful in telling me how much vacation and sick time I had accrued. It was required that I use that up while I was on FMLA. I was paid for all but a week and a half of my leave. Without FMLA, I could not have taken the 5 weeks off work.”

- “When my mother was diagnosed with lung cancer, my brother and I decided I would be the one to take her to all her appointments and therapy. I would have lost my job or had to leave it without FMLA. It was difficult for the people I worked with because it put a strain on the office, however, they were, for the most part, emotionally supportive as well.”
- “My mother was diagnosed with cancer and she had a stroke that left her paralyzed and wheelchair bound. With the help of the FMLA I was able to take her to her appointments and tell the doctors what was going on with her since I was her primary caregiver. I was able to be with her when she took her last breath and was grateful for the time I was able to [spend] with her until her death.”

*Id.* at 46-59.

Similarly, the Communications Workers of America submitted several hundred examples of their members’ personal experiences with FMLA “to illustrate the continued importance of the FMLA[.]” Doc. R346A, at 16. A representative sample of those experiences follows:

- “A Cingular employee with a good work record has Lupus which causes periodic flare-ups that prevent her from working and require weekly therapy and regular doctor visits. FMLA has allowed her to remain stress-free . . . because she does not need to worry about losing her job.”

- “A Pacific Bell Telephone employee with chronic lower back pain that prevents sitting or walking when it flairs up has been able to take FMLA leave when these symptoms occur without facing discipline for absence issues. As a result, this employee remains a productive and committed employee.”
- “A [Communications Workers of America] member reports that in 1995 his late wife was diagnosed with colon cancer. After she was operated on, she needed extensive chemotherapy. His employer allowed him to substitute paid leave for unpaid FMLA leave whenever he needed to go with his wife to chemotherapy treatments since she was unable to drive herself to or from these appointments. This made a big difference especially because some of the medical care was not covered by the employee’s insurance.”
- “An employee of AT&T has used FMLA leave to care for her husband, her son, her elderly mother and for her own serious health condition. She reports that she learned about the availability of FMLA leave from her union and the union representatives were very helpful to her in trying to understand complicated FMLA application forms and other related documents sent to her in connection with these leaves.”
- “An employee of AT&T used FMLA leave five years ago when her father developed a brain tumor that ultimately took his life. She states that ‘it was devastating to our family, but I am so grateful that, with the FMLA I was able to help care for him in our home and was by his side when he passed. This is how life and death should be. Losing the protections of FMLA would force us to have strangers care for our [loved] ones in their time of need.’”

*Id.* at 16-42.

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Numerous employees commented that requesting and using FMLA leave was a positive experience because their employers were helpful and straightforward in providing such leave. Several of these employees commented that their employers initially suggested they request FMLA leave and helped them through the process. *See, e.g.*, Employee Comments, Doc. 4734, at 1 (“My employer did not give me any difficulty in using my sick/personal time[.] . . . I spoke to my Human Resources person and she suggested I apply [for FMLA leave.]”); Doc. 874, at 1 (an employee who needed leave to care for her mother in a different state “first heard of FMLA when I contacted my HR office about my dilemma, and I was so amazed and relieved that such a worker-centric law actually existed! With the help of FMLA, I was able to spend a month in Michigan helping my Mom -- away from my job -- without having to worry that I would be fired.”).

Other employees observed that their employers put them at ease when they requested FMLA leave. Specifically, an employee recalled when her child became ill with a brain tumor that her “company was very understanding about granting me [FMLA] leave. I felt very safe and secure knowing that I could take leave and still have my job when I returned.” An Employee Comment, Doc. 95, at 1. Similarly, an employee said she was “[s]o thankful when my employer informed me of this law because it gave my mom peace of mind knowing that I would be available for her when she needed me.” An Employee Comment, Doc. 4773, at 1.

Often employees were thankful because their employers were sympathetic to their family needs while on FMLA leave. The National Association of Working Women provided the example of “a 41-year-old single mother in Aurora, Colorado. The FMLA allows her to take off whenever her 11-year-old son . . . has an attack caused by his chronic asthma. ‘When he does get sick, I have to be up practically 24 hours,’ [the mother] says, praising her employer, Kaiser Permanente, and her supervisor

for understanding her situation.” Doc. 10210A, at 1. One employee said her employer’s sympathy during FMLA leave prevented her from looking for new work: “Thanks to the FMLA, I was able to take three months off work with full salary in order to take care of [my husband] when he was reduced to a state of complete dependency. . . . I was secure in the knowledge that I could come right back to my job, and I developed a keen sense of loyalty to my employer which has more than once prevented me from looking for work elsewhere.” An Employee Comment, Doc. R62, at 1. Finally, one employee stated she did not find requesting FMLA leave to be “cumbersome or unreasonable” because her Human Resources department was “very helpful with the entire process.” An Employee Comment, Doc. 4720, at 1. Further, she noted that “the process and leave itself [was a Godsend] as caring for our Mother was very, very stressful[.]” *Id.*

Many comments recounted employer policies that go above and beyond what is required under the Act. *See, e.g.*, An Employee Comment, Doc. 5069, at 1 (employer “gives paid medical leave based on how much time is medically necessary.”); Jill Ratner, President, The Rose Foundation for Communities and the Environment, Doc. 4877, at 1 (A non-profit foundation that provides “one week of paid family leave (in addition to two weeks of paid sick leave) to all employees” commented that “providing family leave is critical to recruiting and retaining qualified staff, and to maintaining staff morale and effectiveness.”); An Employee Comment, Doc. 1106, at 1 (“Altogether, I was away from work for about two months or so. My employer, Monsanto, was very generous with me. In addition to granting the time off and guaranteeing I would still have my job when I returned, they paid sick leave during this period.”); An Employee Comment, Doc. 70, at 1 (The employer of an employee who had been employed for less than one full year when she needed FMLA leave to care for her sick mother “essentially applied the FMLA rules anyway; they let me use all my

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vacation time and then gave me unpaid leave. I cannot tell you what a difference that made.”); National Employment Lawyers Association, Doc. 10265A, at 3 (An attorney association commented that one of her clients suffered from chronic fatigue syndrome, which shortened her work day by 1 to 2 hours, but “her employer was very cooperative with her efforts to continue working by allowing her to use her FMLA [leave] in these short blocks of time and wasn’t even really counting whether she was using up her FMLA leave.”).

A professor commented that her college provided leave periods in addition to FMLA leave, lasting the length of a full school term. An Employee Comment, Doc. R79A, at 1. “I also underwent surgery, several cycles of adjuvant chemotherapy, and a series of medical tests for the management of my cancer and am currently considered to be cancer-free and doing well. These treatments were possible, not only because of my excellent medical coverage as a full-time university employee, but because I could take a one-term medical leave in the fall and still receive paychecks[.]” *Id.*

Some employers also noted that making it easier on employees to use FMLA leave was a positive experience from their perspective. One employer commented:

If I have an employee with a child or family member with a serious illness, and this employee is unable to be with that family member when needed, they are distracted at work and their productivity suffers. In contrast, if they are allowed time to take care of that family member, their productivity increases. They know what they have to accomplish and - sometimes by working at home, or working extra hours, or skipping lunch, or working exceptionally hard - they get it done. And in the end I have an extremely loyal employee.

Marie Alexander, President & CEO, Quova, Inc., Doc. 5291, at 1. A public sector employer commented that administering FMLA leave was “no more difficult to

navigate than any other labor oriented legislation. In fact, I find it very straight forward and it has been a literal lifesaver for some of our people.” Kevin Lowry, Nassau County Probation, Doc. 86, at 1. The commenter went on to say, “In the long run, most people will appreciate the extra protection offered by the employer during a difficult time and will return as more motivated employees once the crisis has passed.” *Id.* The benefit to employers of providing FMLA leave to employees was also the topic of another employer’s comment: “As a supervisor, FMLA allowed me to keep a good employee while she cared for her terminally ill husband. After he passed away, she came back to work and has continued to contribute to [the company] in an extremely valuable way.” Chris Yoder, Doc. 922, at 1.

Some employees also noted that, upon returning from FMLA leave, they felt more productive at work and more loyal to their employer. One employee said, “My mentor allowed me to use my own sick leave and vacation and then to hold my position without pay until after my mother passed and I was able to return to work. The course of my mother’s illness was quick and I was gone about six weeks total. When I returned to work I was able to re-engage in it and be productive.” An Employee Comment, Doc. 885, at 1. Another employee commented, “I used FMLA three times in the last 9 years (with and without pay); each time I was very grateful to know that my job status was protected when I was out on leave. All three times I returned to work and rededicated myself to my job. FMLA helped me, my family, and my loyalty and productivity in the workplace.” An Employee Comment, Doc. R2, at 1.

A telecommunications employee also commented that taking FMLA leave allows her to be more productive: “The FMLA has changed my life. It has saved my job. Without the intermittent leave, and my taking only 1.5 days maximum per month, I would be on a disability. When I do miss work, I work twice as hard to make up for the time I am

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gone. I actually produce more than those who don't take the FMLA time." An Employee Comment, Doc. 233, at 1. Another employee noted that FMLA leave is not "charity" but "instead it safeguard[s] loyal employees who, because of unforeseen circumstances need a temporary helping hand." An Employee Comment, Doc. 4732, at 1. Further, the commenter noted, "I have known a family which has benefited tremendously by the FMLA. After assistance, they have emerged once again into a productive, tax paying, exciting family that is contributing to our community." *Id.*

While other chapters of this Report detail areas where commenters indicate the FMLA may not work as well as it could, the comments in this chapter show the continued value to employees and employers of the FMLA leave entitlements. While employees were relieved at having available job-protected leave, they also often noted their increased loyalty to their employers after using periods of FMLA leave, especially where they felt their employers were sympathetic concerning the leave circumstances and helpful with the procedures for taking leave. Employers, as well as employees often noted increased productivity among employees returning from FMLA leave and, in some instances, provided greater benefits than those required by the Act. The value of FMLA leave was pointed out for all types of qualifying leave scenarios, but was particularly referenced in regard to employees of the "sandwich generation" who frequently find themselves caring for their own health needs, those of their children, and of their aging parents.