Policy Watch: The Family and Medical Leave Act

By: Christopher J. Ruhm

Ruhm, Christopher J. "Policy Watch: The Family and Medical Leave Act", *Journal of Economic Perspectives*, Vol. 11, No. 3, Summer 1997, 175-186.

INTRODUCTION

President Clinton's first legislative action upon taking office in February 1993 was to sign the Family and Medical Leave Act (FMLA). The act is designed to "support families in their efforts to strike a workable balance between the competing demands of the workplace and the home" (Commission on Family and Medical Leave, 1996, p. xii). Most notably, the FMLA is the first federal law requiring some U.S. employers to offer maternity leave to women with qualifying employment histories. Prior to its enactment, the United States was virtually the only industrialized country that did not guarantee job-protected parental leave (Kamerman, 1991). During the recent presidential campaign, President Clinton proposed expanding the Family and Medical Leave Act by guaranteeing workers' rights to up to 24 hours per year off work to participate in their children's school activities or to accompany relatives to medical appointments or related professional services. Individuals would also have the option to earn flex-time for overtime work of up to 80 hours per year, to be used for any purpose including family leave. These extensions were strongly opposed by Senator Dole, as was the original FMLA by President Bush during his term of office.

This article summarizes provisions of the FMLA, considers its possible effects on labor markets and examines resulting changes in the ability of workers to take leave. I conclude that the actual provisions of the act are quite modest and have neither yielded large benefits to workers nor imposed significant costs on employers. One reason for this is that relatively few workers gained significant new rights to time off work as a result of the law. These conclusions should be viewed as tentative given the brief period the FMLA has been in effect and the dearth of previous research on related legislation.

Provisions and Coverage of the FMLA

The FMLA, administered by the Wage and Hour Division of the U.S. Department of Labor, took effect on August 5, 1993.[1] Under the act, eligible employees are entitled to 12 weeks of job-protected leave in a 12-month period to care for newborn or adopted children, relatives with serious medical conditions, or their own health problems. The legislation covers private establishments employing 50 or more persons within 75 miles of the worksite during at least 20 weeks of the current or previous year. Government employers are generally covered regardless of size. Individuals are eligible for FMLA leave if they have been with a covered employer for at least 12 months and worked for the employer 1,250 or more hours during that time. The employer is not required to pay wages during the job absence but must continue health insurance

benefits on the same terms as if the worker had not taken leave. Employees may be required to use accrued sick leave or vacation time to cover some or all of the work absence and are entitled to return to their old jobs or an equivalent position, except that employers may sometimes refuse to reinstate "key" employees (salaried workers who are among the highest paid 10 percent of employees).[2]

Compared to other industrialized countries and some states, the parental leave guarantees of the FMLA are limited. All western European nations currently offer at least three months of paid maternity benefits, and some nations (such as Finland, Sweden and Germany) provide a year or more of paid leave (Organization of Economic Cooperation and Development, 1995; Ruhm, 1997). However, the U.S. law is relatively broad in that it allows eligible workers time off to care for sick relatives or for their own serious medical conditions. In some situations, the work absences can be taken in several intervals of time, rather than as a single episode, or by reducing normal work hours. Conversely, the scope of the law is limited by the exclusion of small private employers (those with fewer than 50 workers in a 75-mile radius) and individuals not meeting the job tenure or work hours requirements.

Much of the information currently available on the implementation of the FMLA comes from surveys of employers and employees conducted in 1995 by Westat Inc. (WESTAT) and the University of Michigan Institute of Survey Research (ISR) at the request of the Commission on Family and Medical Leave, which was created with the enactment of the FMLA. The Employer Survey contains a stratified probability sample of private sector business establishments in the United States. The Employee Survey attempts to provide a national random sample of adults living in the continental United States with some paid employment during the previous 18 months.

Using data from these surveys, the Commission on Family and Medical Leave (1996) estimates that between 60 and 66 percent of employees work for covered employers.[3] The employee data further indicate that 83 percent of persons at these establishments worked at least 1,250 hours during the previous 12 months. Some of these individuals will not meet the one-year job tenure requirement and so will not be eligible for FMLA leave. Thus, a maximum of 55 percent (.66 .83 -- .55) of employed individuals are covered under the FMLA, with a more likely estimate being that around half of workers are eligible.

A smaller percentage of women are eligible for FMLA maternity leave.[4] Klerman and Leibowitz (1994a) estimate that 63 percent of new mothers over the age of 19 are employed during the 12 months prior to the birth of their children. Of this group, just 52 percent meet the FMLA job tenure and work hours requirements, and 59 percent of the remainder work for employers with 50 or more employees. Taken together, this implies that just 19 percent of new mothers (.63 .52 .59 -- .19) are eligible for FMLA leave, as are but 31 percent (.52 .59 -- .31) of those employed for one year before childbirth. Since the act was designed to be restricted in scope, this limited coverage is not surprising. Nonetheless, it is important to keep in mind when discussing its likely consequences.

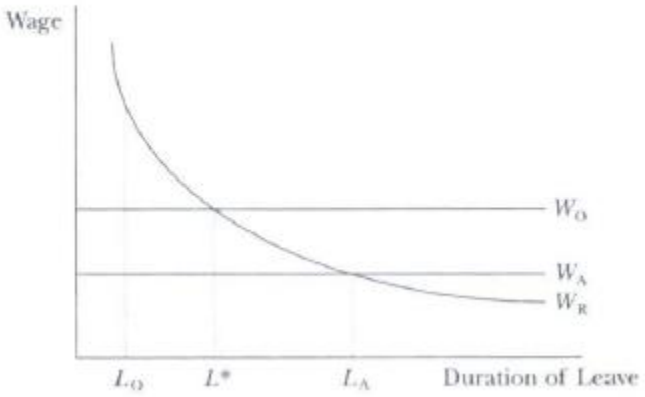
Consequences of the FMLA

In a competitive spot labor market with perfect information and no externalities, family leave mandates reduce economic efficiency by limiting the ability of employers and workers to negotiate the optimal compensation package. Instead, firms are required to allow job absences even when the costs exceed the benefits of doing so. Since most of these expenses are likely to be passed on to workers, the decrease in effective compensation results in a deadweight loss. However, there are situations under which efficiency might be increased. If large employers set compensation policies according to the preferences of the median worker, who may receive little benefit from rights to time off work, family and medical leave may be underprovided to a substantial minority of workers. Similarly, if individuals have better information than employers regarding the probability of using leave, companies voluntarily providing the benefit will attract a disproportionate share of "high-risk" workers and so will be forced to pay lower wages. Persons less likely to need time at home will shun these firms.[5] A government mandate eliminates the incentive for this type of sorting behavior and has the potential to increase efficiency. Finally, some workers may bargain for too little leave because they have incomplete information regarding the advantages of staying home with infants.

Klerman and Leibowitz (forthcoming) provide a model suggesting that the FMLA may have an ambiguous impact on the amount of time new parents will be away from work. Figure I helps to illustrate their argument. The key assumptions are that the reservation wage (W_R) decreases over time (as the infant gets older) and that compensation on the old job (W_o) is higher than that in alternative employment (W^). If unconstrained, the individual would return to work at time L*, when $W_o = W_R$. However, if the maximum leave allowed by the employer (L_o) is less than L*, the employee must choose between returning to the old firm at L_o or staying out of work until L_A, but then switching jobs and receiving lower future compensation. Now assume the government passes legislation requiring firms to supply more leave than L_o (but less than L*). Workers who would have previously picked L_o increase their leave to the amount guaranteed under the new law. Conversely, some persons who would have otherwise chosen L_A find it worthwhile to reduce their work absences to remain with their previous employers. This occurs because the gap between the desired and available (with the old firm) amount of leave decreases. If this effect dominates, new parents may work more rather than less on average when leave is mandated.

Figure 1

Determinants of Leave Duration and Reemployment Decisions



Next consider how leave entitlements affect employment and wages. The mandate raises labor costs and so shifts the labor demand curve to the left (from D_1 to De in Figure 2, where C is the cost to employers of the leave guarantee). Since employees receive at least some benefit from the entitlement, the supply curve simultaneously shifts to the right (from S_1 to S_2). Thus equilibrium wages (but not necessarily total compensation) fall while employment may either increase or decrease, depending on the relative size of the shifts--the figure illustrates the case where the expenses to employers exceed the benefits to workers.

Table 1

Results of Studies Examining the Labor Market Effects of Parental Leave Legislation

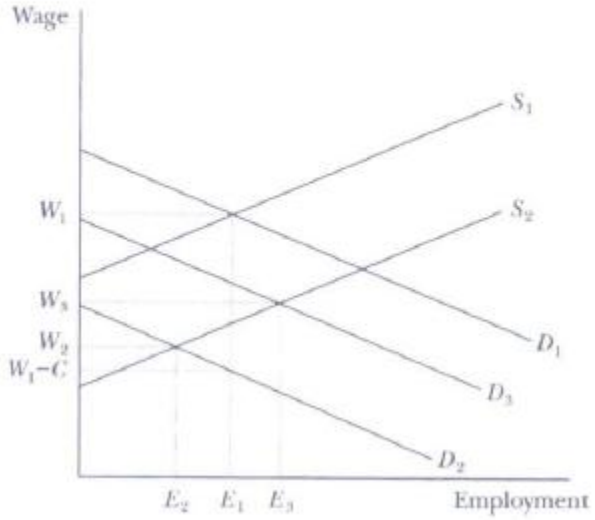
Author	*Type of Leave/Data Source*	*Main Results*	*Comments and Caveats*
Klerman & Leibowitz (forthcoming)	Examines state maternity leave mandates using Census data from 1980 and 1990.	The employment and leave taking of mothers increase after the enactment of state maternity leave mandates.	Higher employment may occur because states with booming economies are more likely to enact maternity leave mandates. The employment of women with infants sometimes increases less than that of mothers with slightly older children.
Ruhm & Teague (forthcoming)	Investigates national parental leave laws in 17 OECD countries over the 1969–1988 time period.	Parental leave durations are positively correlated with employment-to-population ratios, labor force participation rates and, except at very long durations, per capital GDP.	The models may not fully account for the endogeneity of parental leave. In particular, the labor market effects are not concentrated among women, who are most likely to use the leave.
Ruhm (1997)	Studies national parental leave laws in 9 European nations over the 1969–1993 period.	Durations of paid parental leave are positively related to the relative EP ratios of women but, except at short durations, are negatively related to their earnings.	Men or older women are used as a comparison group, under the assumption that the effects of parental leave are concentrated among women of childbearing age.
Waldfogel (1996)	Examines the FMLA using data from the 1992–1995 March Current Population Surveys.	The FMLA has had no impact on wages but has modestly increased the employment of women.	The estimated employment effect is sensitive to the choice of models. Some specifications indicate negative or inconsistent impacts (e.g. the employment of mothers with infants grew faster, after passage of the FMLA, in states with than in those without maternity leave mandates).

There could be additional "dynamic" effects. For instance, if family leave raises firm-specific human capital, by allowing workers to return to their old jobs, the marginal product of labor will rise, causing the demand curve to shift to the right (from D_2 to D_3 in Figure 2), attenuating the wage reduction or actually leading to a rise in earnings. Indeed, proponents of leave mandates

frequently use this reasoning to anticipate increases in both wages and employment for the groups most likely to use leave.[6]

Previous research examining the economic consequences of leave entitlements is quite limited. The best available evidence pertains to parental leave benefits. Studies examining the effects of maternity leave voluntarily supplied by employers typically find that women receiving leave or returning to their old jobs are out of work less time, receive higher wages and have steeper wage profiles (largely due to preservation of job tenure) than those whose employers do not supply maternity leave (Dalto, 1989; Spalter-Roth and Hartmann, 1990; Waldfogel, 1994, forthcoming). However, the advantages may result from nonrandom selection into jobs offering the benefits, rather than because of the leave itself, and efforts to purge the effects of the unobserved heterogeneity have not been entirely successful.

Figure 2
Consequences of Leave Mandates



Four recent studies provide evidence on legislated parental leave rights. These investigations, briefly summarized in Table 1, suggest that the entitlements modestly increase the employment of women while either having no effect on or (at durations exceeding three months) lead to slight reductions in their wages. These findings, which should be viewed as preliminary since the results are sometimes sensitive to the choice of models or specifications, are consistent with a relatively large outward shift in the labor supply curve combined with a smaller ceteris paribus reduction in labor demand.

Neither theory nor the available empirical evidence provides unambiguous predictions regarding the effects of the FMLA on economic efficiency or labor market outcomes. However, based on the previous research and given that the leave periods provided for in the act are quite short, it may be reasonable to anticipate that they will have small positive effects on employment and little effect on the wages of the groups most likely to use them.

There is scant reason to believe that these mild benefits impose large costs on employers. Well over 90 percent of covered establishments responding to the WESTAT Employer survey stated

that the FMLA had no noticeable effect on business performance or growth (Commission on Family and Medical Leave, 1996). Furthermore, larger percentages of employers indicated positive rather than negative effects over a number of dimensions of employee performance. Thus, 13 percent mentioned a positive effect on employee productivity versus 5 percent claiming a negative impact. Beneficial effects were also more frequently spoken of with regards to employee turnover (5 percent vs. 0 percent), career advancement (8 percent vs. 1 percent) and the ability of employees to care for their families (34 percent vs. 0 percent).[7]

Effect of the FMLA on Leave Taking

Enactment of the FMLA has led to substantial changes in formal employer leave policies, but it has had a more modest effect on the actual use of family and medical leave. Data from the WESTAT survey indicates that two-thirds of covered establishments altered their leave policies to comply with the FMLA (Commission on Family and Medical Leave, 1996). Among these employers, the most common changes were allowing leaves for more reasons (76 percent), permitting males to use leave (69 percent), extending the period of work absence (66 percent) and guaranteeing job reinstatement (55 percent). Since the changes were disproportionately concentrated among relatively small (covered) employers, they affect a smaller percentage of employees than they do establishments. Also, a large fraction of individuals do not work at covered employers or, as discussed, do not meet the work history requirements for eligibility. Finally, as shown below, firms modifying policies to achieve technical compliance with the act often already provided mechanisms by which workers could take parental or medical leave.

Even prior to the FMLA, the Pregnancy Discrimination Act of 1978 (an amendment to Title VII of the Civil Rights Act of 1964) required employers to treat disability resulting from pregnancy or childbirth in the same manner as any other disability (Trzcinski and Alpert, 1994). As a result, companies allowing leave for temporary disabilities had to include those caused by pregnancy and childbirth. Data from the U.S. Department of Labor's Employee Benefits Surveys indicate that 86 percent of full-time workers in private establishments with 100 or more employees had shortterm disability coverage in 1991, as did 96 percent of state and local government employees in 1992 (Silverman et al., 1995). Hence, most women working for medium or large employers could take some maternity leave (often paid) before the act was passed. Short-term disability benefits were also reasonably prevalent among private firms with fewer than 100 employees--64 percent of full-time workers with these companies had coverage in 1992. Admittedly, employees of very small firms and part-time workers were much less likely to have disability benefits, but these individuals are also generally not eligible for FMLA leave.

Temporary disability insurance legislation in five states (California, Hawaii, New York, New Jersey and Rhode Island) and Puerto Rico extends beyond the Pregnancy Discrimination Act by requiring firms with two or more employees to provide temporary disability benefits, including partial replacement of lost wages, to workers who have been with the employer for a minimum amount of time (generally 14 to 20 weeks). Nonwork related disabilities pertaining to pregnancy and childbirth are included under these laws. Typically, the leave period ranges from four weeks to four months, and the cash benefit replaces about half the wages of the average employee. Finally, 12 states and the District of Columbia enacted maternity leave legislation prior to the FMLA. The leave periods varied from six to 17 weeks, with all states exempting small employers and many excluding medium-sized firms (Klerman and Leibowitz, forthcoming).

Several other states required maternity leave for government (but not private) workers or mandated rights to limited job absences but without guaranteeing reinstatement. By 1992, 25 states had enacted some type of parental leave statute (Trzcinski and Alpert, 1994).

These laws, in combination with employer sick leave and vacation policies, imply that a substantial number of workers eligible for FMLA leave would have been able to take some time off work in its absence, and such leaves were relatively common prior to its enactment. For example, during the 1986-88 period, 73 percent of "employed" women with one-month-old infants were on leave (and 41 percent on paid leave) rather than working, as were 41 percent (16 percent) of those with two-month-old babies (Klerman and Leibowitz, 1994b). Most women were able to return to their old jobs following childbirth, if they so desired. Thus, in 1990, 85 percent of new mothers who held full-time positions one year earlier and were also working (either full- or part-time) six months after the childbirth had returned to the same employer, as had 79 percent of those employed 18 months after the birth (Klerman and Leibowitz, 1994a).

Data from the ISR Employee Survey directly suggests the modest effect of the FMLA on leave taking. Over the 18-month period ending in the summer of 1995, 17 percent of workers aged 18 or over reported using leave for a reason included in the FMLA. However, just 7 percent of this group (or 1.2 percent of all employees) claimed that the leave was taken under the federal law. With over 125 million workers in the United States, this implies that over one million additional individuals received family and medical leave as a result of the act, with a larger number of persons likely to use FMLA leave over more extended periods of time. However, even if the fraction of individuals saying they took time off work under the law is understated by a factor of two or three--perhaps because many did not realize their leave was due to the legislation--it still represents only a small fraction of job absences for reasons covered by the FMLA. By this criteria, the act has had a relatively small impact.

The FMLA could have little effect on the overall use of leave while having a stronger impact for selected groups, such as women with young children. Waldfogel (1996) recently examined whether the legislation increased the extent of maternity leave among full-time workers. Her findings suggest a modest increase in the availability of maternity leave. In particular, leave taking by women with infants increased, after passage of the FMLA, relative to that of other women or men. However, this conclusion is qualified because: 1) the coefficients are frequently estimated imprecisely and exhibit substantial instability across post-FMLA years; 2) the growth in maternity leave is generally greater for persons working for large (500 or more employees) than medium (100-499employees) employers, even though the smaller companies less frequently voluntarily provide leave benefits; and 3) there is no consistent indication that the FMLA had a larger effect in states without than in those with pre-existing maternity leave mandates.

Data from the ISR Survey of Employees suggests that overall patterns of leave taking have been largely unaffected by the FMLA. Among persons working for covered employers, 60 percent of job absences were for the employee's own health problem other than maternity disability, 4 percent for maternity disability, 13 percent to care for a newborn or adopted child, and 23 percent to care for an ill relative (Commission on Family and Medical Leave, 1996). For respondents holding positions in exempt establishments, the corresponding percentages were 56 percent, 7 percent, 15 percent and 22 percent. This may not be a perfect comparison since the

statistics include all leaves for reasons covered by the act, whether or not they represent FMLA leave, and health or family status could differ systematically with firm size (and so coverage under the law). However, the findings provide little indication that FMLA eligibility has led to relative increases in work absences for maternity or to care for sick family members.

To summarize, the small effects of the FMLA reflect the limited scope of the legislation and the existence of other mechanisms by which many employees of medium and large firms could take time off the job, even prior to its passage into law.

Concluding Thoughts

The enactment of the Family and Medical Leave Act has considerable symbolic importance by demonstrating the emergence of a widespread consensus regarding the need to balance the competing interests of work and family. However, the actual provisions of the act arc modest. The leaves are short and unpaid. Only about half the workforce is eligible under the law, and most of them would have been able to take at least some time off the job even without the legislation. Neither economic theory nor the available empirical evidence provides a clear indication of the effects of family leave mandates on employment or earnings.

Given its limited scope, the FMLA has probably not had a strong impact on either workers or employers. More substantial effects might be expected, however, if the legislation were extended to cover more workers, to require payment during the job absence, or to lengthen the duration of the job-protected leave. It is also possible that the usage of FMLA leave will increase over time. My provisional belief is that the advantages of a limited extension of the act--like covering employers with 25-49 employees or requiring partial payment during a portion of the leave--would probably outweigh the costs. Conversely, I anticipate that the costs would exceed the benefits if the extremely generous leave provisions of many European countries (like rights to a year or more of leave with pay) were adopted.

1. For workers covered by ongoing collective bargaining agreements, the FMLA took effect at the end of the agreement or on February 5, 1994, whichever was earlier.
2. Further information on FMLA provisions can be obtained from U.S. Department of Labor, Employment Standards Administration, Fact Sheet No. ESA 93-24.
3. The 60 percent estimate is probably low because the WESTAT survey excluded government employers, who are generally covered regardless of size. The 66 percent estimate is almost certainly high because the ISR slightly oversampled high-income individuals and included as eligible for FMLA leave persons who worked for covered employers during any of the preceding 18 months, whether or not they continued to do so at the time of the survey. Further information on the two surveys can be obtained from Cantor et al. (1995) and McGonagle et al. (1995).
4. Women constituted 46 percent of all employees, but 58 percent of leave takers (Commission on Family and Medical Leave, 1996). Other groups disproportionately using leave, including 25- to 34-year-olds, African-Americans, Latinos, high school dropouts, hourly employees, workers with children and those with low family incomes.
5. Rothschild and Stiglitz (1976) make analogous arguments for market failure in insurance markets. Aghion and Hermalin (1990) show that, under some situations, socially optimal leave benefits might not be voluntarily provided to any workers.

6. Summers (1989) and Mitchell (1990) provide detailed discussions of the economics of mandated benefits.
7. Noncovered worksites expect much higher costs from the FMLA than those experienced by companies actually covered (for example, 47 percent anticipate a decline in business performance and profitability). This could reflect undue pessimism concerning compliance and administrative costs or, alternatively, might indicate that the act would actually be relatively much more expensive for currently uncovered employers, perhaps because of their small size.

References

Aghion, Phillipe, and Benjamin Hermalin, "Legal Restrictions on Private Contracts Can Enhance Efficiency," Journal of Law, Economics, and Organization, Fall 1990, 6, 381-409.

Cantor, David, et al., "The Impact of the Family and Medical Leave Act: A Survey of Employers," mimeo, Westat, Inc., Rockville, Md., October 2, 1995.

Commission on Family and Medical Leave, A Workable Balance: Report to Congress on Family and Medical Leave Policies. Washington, D.C.: U.S. Department of Labor, 1996.

Dalto, Guy G., "A Structural Approach to Women's Hometime and Experience-Earnings Profiles: Maternity Leave and Public Policy," Population Research and Public Policy Review, September 1989, 8, 247-66.

Kamerman, Sheila B., "Childcare Policies and Programs: An International Overview," Journal of Social Issues, 1991, 47:2, 179-96.

Klerman, Jacob A., and Arleen Leibowitz, "Employment Continuity Among New Mothers." National Longitudinal Surveys Discussion Paper No. 95-22, Washington D.C., U.S. Department of Labor, Bureau of Labor Statistics, March 1994a.

Klerman, Jacob A., and Arleen Leibowitz, "The Work-Employment Decision Among New Mothers," Journal of Human Resources, Spring 1994b, 29, 277-303.

Klerman, Jacob A., and Arleen Leibowitz, "Labor Supply Effects of State Maternity Leave Legislation." In Blau, Francine D., and Ronald Ehrenberg, eds. Gender and Family Issues in the Workplace. New York: Russell Sage Foundation Press, forthcoming.

McGonagle, Katherine/L, et al., "Commission on Leave Survey of Employees on the Impact of the Family and Medical Leave Act," mimeo, Institute for Social Research, Survey Research Center, University of Michigan, Ann Arbor, October 13, 1995.

Mitchell, Olivia, "The Effect of Mandatory Benefits Packages." In Bassi, Lori J., David L. Crawford, and Ronald G. Ehrenberg, eds., Research in Labor Economics. Vol. 11, Greenwich, Conn.: JA/Press, 1990, pp. 297-320.

Organization for Economic Cooperation and Development, "Long-Term Leave for Parents in OECD Countries." In Employment Outlook: July 1995. Paris: OECD Department of Economics and Statistics, 1995, pp. 171-202.

Rothschild, Michael, and Joseph Stiglitz, "Equilibrium in Competitive Insurance Markets: An Essay on the Economics of Imperfect Information," Quarterly Journal of Economics, November 1976, 90, 629-50.

Ruhm, Christopher J., "The Economic Consequences of Parental Leave Mandates: Lessons From Europe," mimeo, University of North Carolina, Greensboro, January 1997.

Ruhm, Christopher J., and Jackqueline L. Teague, "Parental Leave Policies in Europe and North America." In Blau, Francine D., and Ronald Ehrenberg, eds. Gender and Family Issues in the Workplace. New York: Russell Sage Foundation Press, forthcoming.

Silverman, Celia, et al., EBRI Databook on Employee Benefits. 3rd ed., Washington, D.C.: Employee Benefits Research Institute, 1995.
Spalter-Roth, Roberta 3,., and Heidi I. Hartmann, Unnecessary Losses: Costs to Americans of the Lack of Family and Medical Leave. Washington, D.C.: Institute for Women's Policy Research, 1990.
Summers, Lawrence, "Some Simple Economics of Mandated Benefits," American Economic Review, May 1989, 79, 177-83.
Trzcinski, Eileen, and William T. Alpert, "Pregnancy and Parental Leave Benefits in the United States and Canada: Judicial Decisions and Legislation," Journal of Human Resources, Spring 1994, 29, 535-54.
Waldfogel, Jane, "The Family Gap for Young Women in the U.S. and U.K.: Can Maternity Leave Make a Difference?," mimeo, Harvard University, October 1994.
Waldfogel, Jane, "The Impact of the Family and Medical Leave Act on Coverage, Leave-Taking, Employment, and Earnings," mimeo, Columbia University, New York, May 1996.
Waldfogel, Jane, "Working Mothers Then and Now: A Cross-Cohort Analysis of the Effects of Maternity Leave on Women's Pay." In Blau, Francine D., and Ronald Ehrenberg, eds. Gender and Family Issues in the Workplace. New York: Russell Sage Foundation Press, forthcoming.