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FMLA Federal Legislative History Highlights

Year of Legislation	Description
1978	<p>The Pregnancy Discrimination Act (PDA) is passed and represents the first federal law protecting pregnant workers' employment rights. The PDA amends Title VII of the Civil Rights Act of 1964 to ensure that employers cannot discriminate based on pregnancy in matters of employment including hiring, firing, pay, promotions or benefits. It states that for all employment-related purposes, employers must treat pregnant women equally as other employees who are not pregnant but are affected similarly in their "ability or inability to work."¹ In following years, the Supreme Court upholds the interpretation that Title VII, as amended by the PDA, prohibits employment discrimination against a woman because of her capacity to become pregnant.²</p> <p>Importantly, Title VII applies only to employers with at least 15 employees, and therefore, the PDA also applies only to employers with 15 or more employees.³</p> <p>With the passage of the American with Disabilities Amendments Act in 2008, the interpretation of the PDA was updated to reflect that impairments resulting from pregnancy can be considered disabilities and employers may be required to provide reasonable accommodations.⁴</p> <p>Thus, Title VII and the PDA protect working women who may become pregnant, who are currently pregnant or who are dealing with complications related to pregnancy. However, they do not provide job protected leave to working mothers and fathers who need time off from work after childbirth or to care for ill family members. To address this gap, the feminist legal community begins drafting and advocating for a national policy to provide equal protection to male and female workers who need to take leave for family or medical reasons.⁵ While the primary push behind this work is to ensure equal employment rights for women, the drafted legislation is also designed to protect the jobs of men, in addition to women, with family caregiving responsibilities.</p>
1985	<p>The Family and Medical Leave Act is drafted by Donna Lenhoff of the Women's Legal Defense Fund and a staffer for California's Congressman Howard Berman in 1984. In 1985, the first version of the law introduced in the House of Representatives allows for 18 weeks over a two-year period for unpaid parental leave for the birth, adoption, or serious illness of a child, and 26 weeks of unpaid medical leave for the employee's own serious health condition. The law applies to employers with 5 or more employees.⁶</p> <p>Nine years transpire between the initial draft of the bill and the actual passage of the FMLA in 1993. The bill meets heavy political resistance and advocates have to build support and awareness through a multi-year campaign. Over time, a coalition is formed from organizations representing diverse groups, including workers and unions, women, children and parents, the elderly, health professionals, and religious organizations.⁷ Many compromises are made to increase the bill's political viability, including reducing the length of allowed leave and increasing the minimum employer size for employers covered by the law.</p>

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<p>1993</p>	<p>The FMLA is signed into law by President Bill Clinton. The final version of the bill allows for 12 weeks of unpaid parental and medical leave and applies to employers with at least 50 employees. It allows employees to take leave to care for family members, but only if the family members are spouses, children or parents. However, the FMLA does allow some flexibility in the definitions of qualifying family members through the <i>in loco parentis</i> clause – click here for more information.</p> <p>FMLA leave can be taken in three forms:</p> <ul style="list-style-type: none"> • Continuous: The employee is on leave for more than three consecutive working days. • Reduced Schedule: The employee reduces his or her regular working hours. • Intermittent: The employee takes time off in multiple, separate blocks.
<p>2008</p>	<p>President George W. Bush signs the National Defense Authorization Act for Fiscal Year 2008, which amends the FMLA to include two special military family leave provisions:⁸</p> <ul style="list-style-type: none"> • Military caregiver leave: an employee who is the parent, spouse, child, or next of kin of a current service member with a serious illness or injury incurred during active duty may take up to 26 weeks of unpaid leave to care for the service member. • Qualifying exigency leave: an employee who is the parent, spouse, or child of a member of the National Guard or Reserves to take up to 12 weeks of unpaid leave for qualifying urgent matters arising from the service member’s deployment (such as the need to make alternative child care, legal or financial arrangements or attend military events). <p>These amendments take effect in 2009.⁹</p>
<p>2009</p>	<p>President Obama signs the National Defense Authorization Act for Fiscal Year 2010 which includes statutory amendments to the FMLA:¹⁰</p> <ul style="list-style-type: none"> • Military caregiver leave is expanded to include leave to care for veterans receiving medical treatment or therapy, or who are recuperating from a serious illness or injury incurred or aggravated during active duty. Military caregiver leave is allowed for pre-existing injuries or illnesses aggravated during active duty for all covered service members, including veterans. • Qualifying exigency leave is expanded to eligible employees with family members in the Regular Armed Forces and is modified to be available only in cases where a service member’s deployment is to a foreign country. <p>The Airline Flight Crew Technical Corrections Act establishes special FMLA hours of service requirements for airline flight crewmembers and flight attendants because of the industry’s non-traditional work hours.¹¹</p>
<p>Additional efforts</p>	<p>Over the years, additional federal efforts are made to expand access to FMLA job-protected leave, but are not successfully approved or passed into law. Some examples include:¹²</p> <ul style="list-style-type: none"> • In 2008, there is a presidential initiative under President Barack Obama to extend FMLA coverage to worksites with 25 or more employees, but legislation aligned with this initiative is not enacted. The Department of Labor’s 2015 budget request includes \$105 million for a State Paid Leave Fund to provide grants and technical assistance to states planning or launching paid leave programs.¹³ • In 2012, the president’s proposed budget includes \$23 million to “provide grants to assist additional states to

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established paid leave programs;” however, it is excluded from the final enacted budget. Legislation such as the Family Leave Insurance Act of 2011 has been introduced to mandate paid leave programs, but it has not been enacted.

Although the original authors of the FMLA had to reduce the scope of the Act to achieve political viability, in the years since it was passed, the reach of FMLA has been expanded gradually by both legislation and regulations. Amendments to the Act expanding FMLA coverage to military service members and veterans, as well as tailored eligibility requirements for airline crewmembers, mean that the Act provides job-protected leave to large numbers of health vulnerable workers and families. Nevertheless, despite several legislative and presidential efforts, **FMLA leave remains unpaid**, making it unaffordable to the most vulnerable families and raising equity concerns about actual take-up of FMLA leave. Some states have begun to address this problem with state leave programs that include level partial wage replacement, [click here](#) for more information.

Sources & notes

- ¹ The Pregnancy Discrimination Act of 1978, Pub. L. No. 95-555, 92 Stat. 2076 (1978). Retrieved from <http://www.eeoc.gov/laws/statutes/pregnancy.cfm>.
- ² U.S. Equal Employment Opportunity Commission. (2014). *EEOC Enforcement Guidance on Pregnancy Discrimination and Related Issues*. Retrieved from http://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm.
- ³ U.S. Equal Employment Opportunity Commission. (2008). *Facts about pregnancy discrimination*. Retrieved from <http://www.eeoc.gov/facts/fs-preg.html>.
- ⁴ National Women’s Law Center. (2014). *Fact Sheet: The Pregnancy Discrimination Act and the Amended Americans with Disabilities Act: Working together to protect pregnant workers*. Washington, D.C.: Author. Retrieved from http://www.nwlc.org/sites/default/files/pdfs/pda_adaaa_preg_workers_fact_sheet_2014.pdf.
- ⁵ Lenhoff, D.R. & Bell, L. (n.d.). *Government support for working families and for communities: Family and medical leave as a case study*. Washington, D.C.: National Partnership for Women & Families. Retrieved from <http://www.nationalpartnership.org/research-library/work-family/fmla/fmla-case-study-lenhoff-bell.pdf>
- ⁶ Lenhoff, D.R. & Bell, L. (n.d.). *Government support for working families and for communities: Family and medical leave as a case study*. Washington, D.C.: National Partnership for Women & Families. Retrieved from <http://www.nationalpartnership.org/research-library/work-family/fmla/fmla-case-study-lenhoff-bell.pdf>
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- ⁸ U.S. Wage and Hour Division. (n.d.). *The Family and Medical Leave Act and National Defense Authorization Act for FY 2008*. http://www.dol.gov/whd/fmla/NDAA_fmla.htm; U.S. Wage and Hour Division. (n.d.). *Fact sheet: Final rule to implement statutory amendments to the Family and Medical Leave Act relating to airline flight crew employees*. Washington, D.C.: U.S. Department of Labor. Retrieved from <http://www.dol.gov/whd/fmla/2013rule/fs-general.htm>.
- ⁹ U.S. Wage and Hour Division. (n.d.). *Revised final regulations under the Family and Medical Leave Act (RIN 1215-AB35)*. Retrieved from <http://www.dol.gov/whd/fmla/finalrule.htm>.
- ¹⁰ U.S. Wage and Hour Division. (n.d.). *Major provisions: Final rule to implement statutory amendments to the Family and Medical Leave Act*. Retrieved from <http://www.dol.gov/whd/fmla/2013rule/militaryAmendments.htm>.
- ¹¹ Airline flight crew and attendants “will meet the hours of service eligibility requirement if they have worked or been paid for not less than 60 percent of the applicable total monthly guarantee and have worked or been paid for not less than 504 hours during the 12 months prior to their leave.” Source: U.S. Wage and Hour Division. (n.d.). *Fact sheet: Final rule to implement statutory amendments to the Family and Medical Leave Act relating to airline flight crew employees*. Washington, D.C.: U.S. Department of Labor. Retrieved from <http://www.dol.gov/whd/fmla/2013rule/fs-general.htm>; U.S. Wage and Hour Division. (2013). *The employee’s guide to the Family and Medical Leave Act*. Washington, D.C.: U.S. Department of Labor. Retrieved from <http://www.dol.gov/whd/fmla/employeeguide.pdf>.
- ¹² Klerman, J.A., Daley, K., & Pozniak, A. (2012). *Family and medical leave in 2012: Technical report*. Cambridge, MA: Abt Associates. Retrieved from <http://www.dol.gov/asp/evaluation/fmla/FMLA-2012-Technical-Report.pdf>.
- ¹³ U.S. Department of Labor. (2015). *Department of Labor budget in brief, FY 2015*. Washington, D.C.: Author. Retrieved from <http://www.dol.gov/dol/budget/2015/PDF/FY2015BIB.pdf>.