

## Mandated Paid Sick Leave for Workers? The Healthy Families Act

By Mary K. Hamman, Assistant Professor  
School of Labor and Industrial Relations

Although no one enjoys going to the doctor (or worse yet, the dentist) and we've all chosen to go to work sick because we didn't want to fall behind, many working Americans must grapple with more than just their own anxieties to get the treatment they need or take a day off to rest when ill. In 2006, only 57 percent of workers had paid sick leave through their employer so they may stay home or see a doctor when they are ill.<sup>1</sup> For the remaining 43 percent, taking a day off may cost them more than their wages; it may cost them their jobs.<sup>2</sup>

In the U.S. there is no legal mandate requiring employers to provide employees with paid time off work for any purpose. Until 1993, employees had no legally guaranteed right to unpaid time off either. The Family and Medical Leave Act (FMLA) of 1993 grants *eligible* employees working in *covered* establishments up to twelve weeks of unpaid leave in the case of their own or a family member's serious illness or to care for a new baby. To be eligible for leave under the FMLA, employees must have at least 1 year of tenure with their current employer and must have worked at least 1,250 hours that year. To be covered by the FMLA, an establishment must employ at least 50 workers within a 75 mile radius for twenty or more workweeks in a calendar year. Coverage is far from universal; only 10.8 percent of establishments were covered in 2000 and only 58 percent of employees worked in covered establishments.<sup>3</sup> Furthermore, only 47 percent of private-sector employees both work for covered establishments and are eligible for leave under the FMLA.<sup>4</sup>

Unfortunately, the same workers who lack access to unpaid leave are also less likely to have paid sick leave through their employers. Only 22 percent of part-time workers and 48 percent of those who work for establishments with fewer than 100 employees have paid sick leave.<sup>5</sup> Also, those who are least likely to be able to afford to sacrifice a day's wages are less likely to have paid sick leave. Only 45 percent of blue collar workers in private industry have access to paid sick leave as compared to 72 percent of white collar workers and only 37 percent of workers in service occupations have access to paid sick leave as compared to 81 percent of professionals.<sup>6</sup>

The Healthy Families Act (HFA) was first introduced by Representative Rosa DeLauro of Connecticut and Senator Edward Kennedy in 2005. The HFA as proposed mandated employers who employ 15 workers or more to provide a minimum of 7 paid sick days annually to employees who work at least 30 hours per week and a prorated annual amount of sick days to those working fewer than 30 but more than 20 hours per week (or fewer than 1,500 but more

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<sup>1</sup> Bureau of Labor Statistics 2006 National Compensation Survey.

<sup>2</sup> Ibid.

<sup>3</sup> Waldfogel, Jane. "Family and Medical Leave: Evidence from the 2000 Surveys." Monthly Labor Review. Sept 2001.

<sup>4</sup> Ibid.

<sup>5</sup> Bureau of Labor Statistics 2006 National Compensation Survey.

<sup>6</sup> The white collar and blue collar worker statistics are from the 2006 Bureau of Labor Statistics National Compensation Survey. The service and professional occupations statistics were not included in the 2006 survey; these figures come from the 1999 survey.

than 1,000 hours annually).<sup>7</sup> The leave provided could be used either for one's own medical needs or to care for the medical needs of family members. The bill died in committee in the 108<sup>th</sup> Congress and has been re-introduced in each the 109<sup>th</sup> and 110<sup>th</sup> Congresses. Currently it sits in the Committee on Health, Education, Labor, and Pensions but it has not been heard and at this late date, it will surely die again.

The HFA is one of many pieces of legislation introduced each year that contains "unfunded mandates". Under the 1995 Unfunded Mandate Regulation Act (UMRA) an unfunded mandate is defined as "any provision in legislation, statute, or regulation that would impose an enforceable duty on state, local, or tribal governments or the private sector."<sup>8</sup> For any legislation containing an unfunded mandate, the Congressional Budget Office (CBO) must prepare estimates of the costs of the mandate to accompany the bill throughout the legislative process and a member of Congress may raise a point of order if there is no report to accompany the legislation or if the report shows costs over UMRA's threshold for intergovernmental costs.<sup>9</sup> In the congressional session, the CBO estimated the HFA would impose \$190 million in intergovernmental costs in 2009 and \$1.5 billion in direct costs to the private sector; in subsequent years, their estimates suggest intergovernmental costs would reach over \$320 million annually and private sector costs would reach \$2.6 billion annually.<sup>10</sup> These estimates exceed the UMRA thresholds and may help to explain the bill's lack of progress.

How might the HFA affect employers if passed? Studies of federal changes in sick leave coverage and generosity in Sweden have shown employees do take more leave when it is available.<sup>11</sup> This behavior is accounted for in the CBO \$2.6 billion dollar private sector estimate. Yet, are there benefits for employers? Although it is often said sick workers are less productive workers there is little empirical evidence of lost productivity, primarily because the effect surely depends on the nature of the job and the illness. For example, influenza has been shown to slow reaction time and the common cold may impair hand-eye coordination.<sup>12</sup> It is also commonly assumed that offering paid sick leave will reduce the spread of illness by reducing incentives for "presenteeism" (coming to work sick) and therefore sick leave may be more cost effective than incurring widespread absences.<sup>13</sup> Since employees with sick leave take more days off for illness per year, it follows logically that there would be lower exposure to illness in workplaces that offer paid sick leave. In a study of nursing homes in New York State, the authors do find lower rates of respiratory and gastrointestinal illness outbreaks in the nursing homes that give their

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<sup>7</sup> GovTrack.us S. 1085 – 109<sup>th</sup> Congress (2005): Healthy Families Act, *GovTrack.us (database of federal legislation)* <http://www.govtrack.us/congress/bill.xpd?bill=s109-1085&tab=summary> (Accessed Nov 18, 2008).

<sup>8</sup> United States General Accounting Office "Unfunded Mandates: Analysis of Reform Act Coverage." May 2004. pp 6.

<sup>9</sup> Ibid.

<sup>10</sup> "Congressional Budget Office Cost Estimate S. 910 Healthy Families Act (as introduced in the Senate on March 20, 2007)" May 21, 2007. < <http://www.cbo.gov/ftpdocs/81xx/doc8133/s910.pdf>.> (Accessed November 18, 2008).

<sup>11</sup> Henrekson, Magnus and Mats Persson. "The Effects on Sick Leave of Changes in the Sickness Insurance System." *Journal of Labor Economics* 22(1): 2004.

<sup>12</sup> Smith, Andrew. "A Review of the Effects of Colds and Influenza on Human Performance." *Occupational Medicine*, 39: 1989.

<sup>13</sup> Chatterji, Monojit and Colin J. Tilley. "Sickness, Absenteeism, Presenteeism, and Sick Pay." *Oxford University Press*, 54: 2002.

employees paid sick leave.<sup>14</sup> Given the nature of the service being delivered in a nursing home, the benefits of sick leave for employees likely spill over to the customers.

With a democratic president in the White House and democratic majorities in the House and Senate, there may be hope for the HFA in the 111<sup>th</sup> Congress. Notably, both President Elect Barack Obama and Vice President Elect Joe Biden were among the HFA's 27 cosponsors in the 110<sup>th</sup> Congress.<sup>15</sup> Also, among the position statements published Obama's campaign website, Obama and Biden state they would "require that employers provide seven paid sick days per year."<sup>16</sup> However, with the economy in recession and many businesses, Congress and the new administration may be loathe to impose new costs on the private sector for fear of putting more jobs at risk and the HFA may be tabled once again.

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<sup>14</sup> Li, Jiehui, Guthrie S. Birkhead, David S. Stogatz, and F. Bruce Coles. "Impact of Institution Size, Staffing Patterns and Infection Control Practices on Communicable Disease Outbreaks in New York State Nursing Homes." *American Journal of Epidemiology*. 143(10): 1996.

<sup>15</sup> GovTrack.us S. 1085 – 109<sup>th</sup> Congress (2005): Healthy Families Act, *GovTrack.us (database of federal legislation)* <http://www.govtrack.us/congress/bill.xpd?bill=s109-1085&tab=summary> (Accessed Nov 18, 2008).

<sup>16</sup> "Strengthening Families and Communities" < <http://www.barackobama.com/issues/family/#support-families>> (Accessed November 18, 2008).