

**How the Family and Medical Leave Act Does Not Serve
Single Mothers of Color**

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Abstract

The Family and Medical Leave, FMLA, was enacted into Federal law in 1993 under the Bill Clinton Administration to enable employees to take unpaid time off to tend to a medical or familial event that makes attendance at work impossible. Specifically, FMLA was created to “to balance the demands of the workplace with the needs of families, to promote the stability, economic security of families, and promote national interests in preserving family integrity”. This research highlights the disparities in application, access, and protection of this law for single mothers of color, arguing that for these women, this law does not achieve its purpose. It is important to recognize that much of the available research only pertains to one aspect of identity, like gender or race, gravely missing or in some cases harming certain groups or individuals. This lack demonstrates the need for future studies to take an intersectional approach and purposefully center the unique experiences and strengths of single mothers of color in the workplace in order to better create and assess Public Policy. Using the available academic literature on the various intersections of single mothers of color, this compiled research discusses the impact of the unpaid aspect of the FMLA and the impact this has on inhibiting single mothers of color from taking leave. Throughout this research, I found that the FMLA prevents access for single mothers of color and does not achieve its purpose because it is unpaid and does not take into account the intersectionalities of this identity: being a person of color, being a woman, and being a single income earner.

Keywords

Woman of Color, single mother of color, Family and Medical Leave Act

Introduction

In American society, it is easy to take for granted the rights that are present in the workplace. Many Americans do not know about the Family and Medical Leave act until they are faced with a life altering situation. While it may seem as though the Family and Medical Leave act has been around forever, its creation was not that long ago. The Family and Medical Leave, FMLA, act was enacted into law in 1993 under Bill Clinton. This legislation enables employees to take unpaid time off to tend to a medical or familial event that makes attendance at work impossible. The FMLA ensures that if an employee has worked at an establishment for 12 months, the company is over 50 employees, and they work within a 75-mile radius of the company's central location, the employee can take up to three months of unpaid leave and the company cannot terminate the employee during their leave. The intentions of this act in its infancy were meant to eliminate some of the differences between men and women in the workplace. It was thought that by allowing any employee to take unpaid leave for family and medical emergencies, this would lessen the burden on women to be the sole caretaker of the family. The legislation itself claims its intention were to balance the demands of family and the workplace, aid in the economic security and stability of families, and advocate for the preservation of family integrity (The Family and Medical Leave Act, 1993). The FMLA intends to achieve these goals consistent with the Equal Protection clause, which includes eliminating sex discrimination by making leave available for employees and ensuring that it is offered on a "gender neutral" basis (The Family and Medical Leave Act, 1993).

In writing, this sounds like a sound law with the intentions of fixing prevalent problems for many families in the United States. However, I question its ability to do that. When I was 13 years old, my mother gave birth to my youngest brother, and because the company she worked

for was less than 50 people, they were not obligated and were not going to give her paid leave besides the use of her vacation days. When I was 18 years old, my coworker and friend who worked at the same restaurant as I, became pregnant and faced a similar predicament. I noticed that this act did not seem to be protecting many of the women in my life, and that one day, I too could face this same situation. This led to my question of how this act with such great intentions could still be so inadequate in achieving its goals. I began to research, and after many hours and sources, I discovered that the FMLA does not ensure leave is available for eligible medical emergencies and situations especially for single mothers of color for many reasons: the minimum hourly commitments, and minimum number of employees in a company, but most of all because of its unpaid aspect. The unpaid aspect of the FMLA does not allow the FMLA to fulfill its purpose for single mothers of color because the unpaid aspect amplifies the consequences of the different intersectional identities they hold.

History

In order to accurately assess the effectiveness of the FMLA in today's world in regard to women, it is important to look at the history of women in the workforce, the difficulty in passing predecessors to the FMLA, and the difficulty and challenges in passing the FMLA itself. To start, women were not considered permanent workers in the first half of the twentieth century. Women were expected to leave work once they got married or had children (Sholar, 2021). This changed considerably when the United States joined World War II and many of the men who made up the workforce left for war. This left women with the responsibilities of working to help war efforts and replacing their husband's wages. This served as the catalyst for a changing attitude towards women in the workforce (Sholar, 2021). As the number of women began to grow in the workforce, women began to notice different treatment in the hiring process and in

the workplace. This led to the next large legal movement in the progression of women towards equal treatment, Title VII of the Civil Rights Act of 1964, where it became illegal to refuse to hire or fire anyone because of their sex (Ali, 2009). While this was a grand victory for female workers, there were still no protections for these same workers when they were pregnant. In 1978 Congress passed the Pregnancy Discrimination Act, which outlawed discrimination against pregnant women, childbirth or anything relating to the act of having a child. However, it did not allow for time off of work to care for the child, so while many women were guaranteed equal access to employee benefits, like temporary disability leave for injury or illness, many women were forced to leave the workplace anyways because they needed to care for their infant. The protections against discrimination did not aid in the persistence of need for parental leave (Sholar, 2021). Because of this, this act did not suffice in its protections. The next attempt at an inclusive act for women that allowed for time off for the family was the Family Employment Security Act of 1984. This act called for 26 weeks a year of unpaid job protected leave to care for a new child, a child in poor health, or the disability of the employee's spouse, or their own disability. There were some activists calling for a paid leave, but this was not inserted into the act as it was thought that adding this element would create obstacles for its passing (Sholar, 2021). While this act was never formally introduced to Congress, this served as a pioneering act for family and medical leave acts to come. In 1986 a new bill was introduced under the name "The Parental and Medical Leave Act". This newer version had different eligibility requirements, like 3 months of employment or 500 hours required to become eligible for the leave, and had longer family and medical leave, set at 36 weeks over two years. Additionally, The American Association of Retired Persons advocated for the inclusion of time granted to employees to look after a spouse, child or elderly parent. With this inclusion came a name

change to the Family and Medical Leave Act (Sholar, 2021). Unfortunately, in June of 1990, George H.W. Bush vetoed the bill. He maintained that he was in support of family leave but wanted to make it voluntary for businesses to participate and to create an incentive for businesses to participate, like allowing a tax credit for businesses who did implement family and medical leave (Sholar, 2021). George H.W.'s change in attitude towards the bill may have been a last attempt to gain voter support, as his opposing candidate, Bill Clinton, was an advocate for FMLA. With a few changes to the bill before passage, like shorter time off and longer employment requirement before leave, the bill was finally signed into law by Bill Clinton in 1993. This was a huge step for families across the nation, but it is important to carefully look at the law when discussing it to understand its impact.

Purpose & Findings

The purpose of this law is clearly stated as, “to balance the demands of the workplace with the needs of families, to promote the stability, economic security of families, promote national interests in preserving family integrity” (The Family and Medical Leave Act, 1993). The act aims to accomplish these purposes in a way that matches the requirements of the Equal Protection Clause of the Fourteenth Amendment. The FMLA would achieve this purpose by minimizing the possibility for sex discrimination by “. . . ensuring generally that leave is available for eligible medical reasons (including maternity-related disability) and for compelling family reasons, on a gender-neutral basis...” (The Family and Medical Leave Act, 1993). The purposes of this law were composed based off of the findings legislators had discovered. Legislators acknowledged the number of single parent households and double parent households where one parent or both parents are working was increasing and that it is important for parent(s) to be involved in the early development of a child, or the sickness of a family member. The

findings also admit that the lack of family policies forced parents to choose between employment and family responsibilities and acknowledges that the responsibility to take care of the family unit often falls on the woman. Along with this responsibility comes a more significant impact to the working lives of women than of men (The Family and Medical Leave Act, 1993). However, the FMLA does not achieve its purposes for single mothers of color, as the unpaid aspect of the law greatly inhibits single mothers of color from taking leave.

Intersectionality

It is important to recognize that single mothers of color belong to an intersectional group, where they experience the intersection of discrimination not only as a person of color, but also as a woman. This is important to recognize, as this is reflected in the research available on this minoritized group. There is limited research specifically on women of color and single women of color in regard to the FMLA. However, with careful consideration, I have taken research on people of color and single women of color and tried to highlight the overlap. While this has worked for this paper, it is important to note the need for more research specifically on single mothers of color in all aspects of research, but especially for research on public policies. The aspect where the FMLA does not serve people of color, specifically single mothers of color the most is the unpaid aspect of the leave granted from the FMLA. The access to paid leave is diminished for people of color and has been shown to be more accessible to white employees. One study found that White non- Hispanics have 9% more access to paid leave than did Hispanics (Bartel et al., 2019). More specifically while “. . . Latinos have the highest labor force participation rate (66%) of any racial or ethnic group, they are concentrated in low wage jobs which do not provide paid leave or paid family leave” (Unidos US and National Partnership for Women and Families, 2019, p.2). It is not a question of seasonal work or full time, as this

concentration of lower jobs Hispanic workers typically have “. . . lower earnings when working full time and year-round. . .” (Joshi et al., 2019, p. 5). While these studies focused primarily on Hispanics, the lack of access to paid leave ranges across many minoritized workers. Often times workers of color have lower paying jobs that provide fewer employer-provided benefits (including paid leave) (National Partnership for Women & Families, 2021, p. 7). With these lower paying jobs and less access to paid leave comes more economic insecurity, workers of color have no choice but to take unpaid leave, and a higher probability of being unable to afford that unpaid leave. (National Partnership for Women & Families, 2021,7). Black and Hispanic parents are less likely to be eligible for and potentially afford unpaid leave compared to White working parents (Joshi et al., 2014, p.4). Additionally, Bartel et al. found that Black households are more likely to have no earner or only one earner. The combination of having lower wages and only having one or no income earner in a household can help explain economic hardship experienced by Black and other minoritized groups’ families. (Joshi et al., 2014, p.9).

Lack of Accessibility Based on Being a Person of Color

The lack of ability to afford to take an unpaid leave, comes from a problem of generational racial wealth inequality that has persisted in the United States since its creation. Racial wealth inequality has been perpetuated by laws allowing segregation in schools and housing, to redlining and discrimination in the work force. A 2019 survey of consumer finances found that in the United States the median White household net worth, or value after all debts are subtracted is “. . . eight times that of the median Black household and five times that of the median Latinx household” (Heymann et. al., 2021, p. 1507). It is not just wealth that Black and Hispanic/ Latinx households lack, but also assets such as cash or savings accounts and social networks with prestigious connections like memberships to clubs or fraternities. This lack of

wealth, assets and social networks with prestigious connections for Black and Hispanic/Latinx families is found across multiple studies and helps to explain why Black and Hispanic/ Latinx workers and families cannot afford a financial setback, especially an unpaid 3-month long leave (Joshi et al., 2019, p. 5). Furthermore, it has been found that when there is a prolonged period of absence due to health reasons, “. . .the median Black worker loses a greater percentage of family income through lost wages compared to the white worker” (Joshi et al., 2019, p.10). Losing any percentage of family income can lead to a financial crisis and a lack of “cushion” of wealth for minoritized groups like Latinx and Black workers, can lead any minoritized family to refrain from taking family or medical leave (Joshi et al., 2019, p.11). “Black and Hispanic parents, even when eligible to take leave, are the least likely to be able to afford that leave” (Joshi et al., 2014, p.2225). The FMLA excludes low income working parents, and often these parents are “Hispanic, Black or both” (Joshi et al., 2014, p.2225). While these factors are a sufficient barrier between employees of color and their family and medical leave, it is not the only barrier that single mothers of color face, as they also face discrimination for being a woman.

Lack of Access of Being a Woman of Color

It is important to focus on the aspect of being a woman in America when looking at the Family and Medical Leave act, and then creating a smaller focus to look at women of color. The number of women of color in the United States workforce has increased significantly throughout history. As of 2021, labor force participation for Latinas has risen to 16% of all women workers (Mejia, 2021) and was very high for Black women, the highest in fact, at 60.5% (Roux, 2021). When looking at mothers specifically, it is important to note that a large percentage of Latina and Black women are mothers who work. A little over half of Latina mothers are working, and two thirds of these Latina mothers work full time (Mejia, 2021). The percentage of Black mothers in

the workforce is high as well, with 76% of Black mothers working in the U.S. labor force (Roux, 2021). With mothers of color making up a significant portion of the workforce, it is also important to note the wage differences between Black and Latina women to white men. As of 2021, Black women on average are making 0.63 cents to the white man's dollar (Roux, 2021). Latinas are making 0.55 cents to the white man's dollar, this being the largest wage gap between white men and minority women (Mejia, 2021). This obvious income gap has led to a significant wealth gap, making it harder for a woman of color to have as much wealth as a white man.

Stereotypes & the FMLA

Of course, wages and wealth are not the only barrier facing minority women in the workforce. It is also important to note that minority women face stereotypes, whether conscious or unconscious that can hurt them in accessing paid leave. These stereotypes are amplified by the intersectionality of a woman of color, as one faces stereotyping not only because they are women, but because they are a person of color. The stereotype for Latinas is that they are excessively emotional, focused on family and dull-witted (Cocchiara et. al. 2006). Black women are seen as angry and aggressive (Cocchiara et. Al, 2006). These stereotypes can be layered on even more for single mothers of color, as often times single mothers are presumed to miss work more because they need to take care of their children. However, when single mothers are diligent in their attendance and work, it is often perceived as desperation for income instead of due diligence (Cocchiara et. al, 2006). These stereotypes are not helpful in the workforce, and these coupled with the stereotypes of women in general and sexist expectations have seeped into the FMLA, and inhibit women from being able to safely gain access to and take family and medical leave. Women already take longer leaves than men on average, “. . . with the largest difference in leave times between men and women being to take care of a newborn” (Armenia & Gerstel,

2005, p.887). This is partially explained because after birth, women have endured physical effects and men have not. Even so, men are often discouraged from taking leave because of their higher salaries and how throughout history men have been the breadwinner. (Ali, 2009, p. 201). This difference in expectation hurts women, especially when it is disguised under the facade of solidifying “traditional” family values, as the term and idea of “traditional” no longer applies to all women or all families. When given careful thought, it is easy to see how the “traditional family values” that have been prescribed to the American public are present in this law. The American government based this law on the idea of a nuclear family structure where often the wife did not work and thus whenever she did begin to work, her income was disposable, so it made sense to not include a paid aspect of the family and medical leave (Ali, 2009, p. 200). The FMLA reinforces an outdated and inconsiderate idea of the man being the “breadwinner”. However, this is not applicable to many families across the U.S. especially those headed by a single woman of color (Arellano, 2015, p.4).

Lack of Access Because of Being a Single Mother

Keeping these considerations in mind, it is imperative to look at how this bill affects a particular subsection of women, women who have children and are single. As it stands, single mothers currently make 56 cents to a man’s dollar (Dickens). This combined with no additional financial support from a spouse may explain why single mothers feel less able to take a leave (Armenia & Gerstel, 2005). Families with single incomes, like single mothers headed families face bigger repercussions with wage loss, since their incomes make up to as little as two thirds of the income for the family, or the entirety of the family income. (Joshi et. al., 2019, p.11). It is also imperative to consider that gender is one of the main predictors in predicting leave taking, and in one study it was found that “. . . when controlled for all factors, leave taking was twice as

common for women as it was for men to take a family leave” (Armenia & Gerstel, 2005, p.881). Additionally, “For Black workers, living in a single-earner family has a much larger effect on the gains from paid FML due to a lower proportion with spouses/ partners and higher contributions to family income. For Hispanic workers without a second earner. . . a lower proportion of Hispanic workers have spouses or partners who contribute earnings to family income compared to whites.” (Joshi et. al., 2019, p.11).

Single mothers are not likely to take unpaid leave, and it is clear to see why. Single mothers of color do not seem to benefit from the FMLA. As one study found, those who do benefit from the FMLA and are able to take leave are typically married, college educated white women. (Joshi et al., 2014, p.2226). It’s also important to note that, the FMLA’s requirement for a minimum number of hours before employees can receive the leave excludes women because women are more likely to work less hours. “Latinx workers also face greater exclusion because of employer size requirements and 93 percent over part-time workers without a minimum hour’s requirement” (Heymann et. al., 2021, p.1501). The FMLA disproportionately excludes women because women are more likely to work less hours.

Relevant New Policies

Policies that are actively looking to instill all or some of inclusive principles include: Kristen Gilibrand of New York and Rosa DeLauro “. . . sponsored legislation known as the Family and Medical Leave Insurance Act- Family Act- which will provide a funding mechanism for the FMLA” (Unidos US and National Partnership for Women & Families, 2019). This act if passed in its entirety would provide national insurance for 12 weeks of leave to new parents, or to care for a family member or one’s own health condition. “It would cover employees without consideration of employer size and would only cost workers \$1.50 per week to the general

employee” (Arellano, 2015, p.9). This would allow the FMLA to complete its purpose for single mothers of color because they would be able to continue receiving income while taking care of their families in need.

Conclusion

It is clear to see that the FMLA had good intentions in its origins. However, the intent does not change the effect this law has had on many families, specifically those headed by a single woman of color. The pervasive and sexist idea the FMLA was built on, that women’s incomes are insignificant to a household’s earnings, has left out many households and is inconsiderate of single mother households. We can see that the unpaid aspect of the FMLA is a great factor holding back single mothers of color from taking the leave that they need. The answer that is needed for families with single mothers of color as the sole income earner, and for many families is a paid family and medical leave. As a society, we need to also require paternal leave so that it is not only women being negatively impacted in their careers for taking a leave. There needs to be a policy of an equal offer of leave to both male and female employees, and there needs to be an equal expectation that male and female employees take a leave. In order to better take care of all in the United States, we must include our single mothers of color who already take care of so many in this country and deserve to be taken care of when they need it.

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