



October 2, 2017

Office of Information and Regulatory Affairs
Attn: OMB Desk Officer for DOL-OS
Office of Management and Budget, Room 10235
725 17th Street NW
Washington, DC 20503

Submitted by email

Re: Department of Labor Information Collection Request for the Family and Medical Leave Act (FMLA) Wave 4 Surveys (ICR 201703-1290-001)

Dear OMB Desk Officer:

The National Partnership for Women & Families appreciates the opportunity to respond to the Department of Labor's (DOL's) request for comments on the Family and Medical Leave Act (FMLA) Wave 4 Surveys Information Collection Request (ICR 201703-1290-001). We urge Office of Management and Budget (OMB) to approve this ICR expeditiously so that data collection and analysis can proceed on schedule, beginning in November 2017, and the public can have access to Wave 4 results by August 2019. We commend DOL for the thorough materials it has prepared to explain the rationale for the surveys, sampling methodologies and choices of questions to include in the survey instruments. The data collected through the employer and employee surveys is unique and unavailable elsewhere. The surveys will yield critically important information that will assist DOL's Wage and Hour Division in its outreach, investigation and enforcement functions and the Chief Evaluation Office in its research and evaluation functions.

The National Partnership for Women & Families is a nonprofit, nonpartisan advocacy group dedicated to promoting fairness in the workplace, reproductive health and rights, access to quality health care and policies that help workers in the United States meet the dual demands of work and family. Since our founding as the Women's Legal Defense Fund in 1971, we have fought for every significant advance for equal opportunity in the workplace, including the Pregnancy Discrimination Act of 1978, the Family and Medical Leave Act of 1993 and the FMLA amendments of 2008 and 2009. The National Partnership works to further the purposes of the FMLA by promoting awareness of the law, educating both employees and employers so that the law is used effectively and working to expand workers' access to paid and unpaid leave through public and private sector policy changes.

We applaud DOL for its commitment to conducting Wave 4 of nationally representative surveys of employees and employers regarding awareness of, access to, usage of and compliance with the FMLA. The data collected are vital to the performance of DOL's function as the agency charged with administering and enforcing the FMLA and have tremendous practical utility to the agency's education, outreach and enforcement activities.

For example, the surveys will quantify the share of workers who take FMLA leaves in a year, which can help DOL plan help-line needs, staffing levels, materials development and more. The survey can help DOL identify gaps in compliance and misunderstandings of the law's protections and requirements among both employers and employees. This information could play an important role in helping DOL to determine how to most efficiently target its outreach to employers, its enforcement priorities and its employee-facing resources. The oversample of low-wage employees will help the agency to understand the particular challenges of that growing, diverse set of employees and provide insight into how DOL activities and plans can meet their needs and the needs of their employers.

Updated data is particularly important as workers and employers adapt to the shifting state and local policy landscape. We appreciate that the sampling frame of the Wave 4 employee survey will oversample workers in California, New Jersey and Rhode Island – states that have state paid family leave programs. (Per the note on Exhibit B.1 of DOL's Supporting Statement for OMB Clearance Request Part B, we assume Washington state will be dropped from that oversample because its original paid parental leave program was not implemented; the state has recently adopted a new program that will be implemented by 2020). In the time since the Wave 3 surveys were conducted, three states and the District of Columbia have passed paid family and medical leave laws, joining California and New Jersey, and more than two dozen states had paid leave insurance proposals introduced in the most recent state legislative session. Workers who are covered by both the FMLA and state laws may have different leave experiences than workers in other states. This data will help DOL evaluate the interactions between state paid leave programs and the FMLA; it may suggest avenues for providing targeted technical assistance to state agencies and ways that DOL can support employees and employers in states with paid leave programs and those that are considering policy adoption.

The data collected also has tremendous practical utility to researchers, employers, community-based organizations, health providers and the public. For example, the National Partnership has used Waves 1, 2 and 3 FMLA survey data extensively in our “know your rights” materials and in our work to educate and elevate the best practices of employers. The information collected in these prior surveys – and the information that will be collected in Wave 4 – is unique and unavailable in any other national survey.

In terms of the information that the surveys will collect, we applaud the scope of questions included in both the employer and employee surveys, as outlined in Exhibits 1 and 2 of DOL's Supporting Statement for OMB Clearance Request, Part A. We appreciate efforts to align Wave 4 with Wave 3 to allow analysis of changes within the five-year span between the last survey and the current one and the care taken to explain the comparability of Section A questions across the survey waves. We believe the questions are clear, targeted and of tremendous utility.

We prioritize timely clearance of the survey over substantive changes, but if time permits, we ask for a limited number of modifications to the surveys to improve their quality, utility and clarity. With respect to the employee survey:

- Add an open-ended or closed-ended question with a range of categories to follow up on question A10 to ask more specifically about the nature of the health condition for

which the respondent took leave, to help assess the likely duration of leaves for different types of conditions and the association between intermittent leave and particular types of conditions.

- In question A43a, add an optional description of “state paid family leave” that the interviewer can use if the respondent has a question about the meaning of this term to clarify that it means benefits paid through California, New Jersey or Rhode Island’s state agency’s paid family leave or temporary disability insurance program, but not through workers compensation or unemployment insurance.
- In questions E15 and 16, to ensure that the lower-wage worker sample’s work experiences are reflected, add in or substitute “food service,” “health care,” “retail” or other common industries that employ lower-wage workers to the list of examples in E15 and “food server,” “health aide,” “warehouse worker,” “cashier” or other similar occupational titles in E16.
- In question D4, add a definition of the term “FAMILY,” or specify “FAMILY within your household” to be clear about the unit for which family income is being requested.

In the employer survey:

- In Q16F, “care of spouse” and “care of parent” should be broken out separately to help the agency better understand FMLA compliance as it relates to those two separate, statutorily protected categories.
- In Q49, we are concerned that employers’ responses to “B. Cost of continuing benefits such as health plans during leave” will simply reflect the change in the price of health plans over time; we ask that the question be modified to either exclude the reference to health plans or to include an instruction that the question is meant to get at the administrative cost of continuing benefits, rather than the cost of the benefit itself.
- In Q67, we ask that Q67(B) define “short-term leave.”

We applaud DOL and its contractor for seeking to incentivize participation among employees and the diligence of its planned nonresponse follow-up, and we appreciate the instructions and flexibility for employers to complete the survey in multiple ways. The minimal, time-limited burdens involved in answering this survey are appropriate given the value of these surveys and the inability to know the information requested in any way other than through surveys like these.

We appreciate the opportunity to submit comments on this ICR and, again, urge OMB to clear the surveys right away. If you have any questions regarding this letter or our suggestions, please contact Vicki Shabo, Vice President, Workplace Policies and Strategies (vshabo@nationalpartnership.org or 202.986.2600), or Julia Kortrey, Policy Associate (jkortrey@nationalpartnership.org or 202.986.2600) at the National Partnership for Women & Families.

Sincerely,

National Partnership for Women & Families

cc: U.S DOL-OASAM