

From: Vasu Reddy [<mailto:vreddy@nationalpartnership.org>]

Sent: Thursday, December 22, 2016 1:38 PM

To: Chief Evaluation Office

Subject: Comments of National Partnership for Women & Families - Department of Labor OMB Control Number 1205-ONEW, FMLA Wave 4 Surveys

Dear Ms. Yancey,

Please find attached the written comment of the National Partnership for Women & Families to the Department of Labor regarding OMB Control Number 1205-ONEW, Family and Medical Leave Act Wave 4 Surveys. If you have any questions about this comment, please contact Sarah Fleisch Fink ([sfleischfink@nationalpartnership.org](mailto:sfleischfink@nationalpartnership.org)) or Vasu Reddy ([vreddy@nationalpartnership.org](mailto:vreddy@nationalpartnership.org)).

Best,  
Vasu



December 27, 2016

Christina Yancey  
Chief Evaluation Office, Office of the Assistant Secretary for Policy  
U.S. Department of Labor  
Room S-2312, 200 Constitution Avenue NW  
Washington, DC 20210

**Re: Department of Labor, Wage and Hour Division Comment Request; Family and Medical Leave Act (FMLA) Wave 4 Surveys, OMB Control Number 1205-0NEW**

Dear Ms. Yancey,

We appreciate 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. We strongly support efforts to commission these critically important surveys, which have been invaluable tools for gauging the effectiveness of the FMLA. Previous iterations of the FMLA employer and employee surveys have produced important information that is unavailable elsewhere regarding workers' and employers' experiences handling employee leaves for serious family and medical purposes. This information is vital to the performance of DOL's function as the agency charged with administering and enforcing the FMLA. Updated data is particularly important as workers and employers adapt to the changing economy and demographic and labor force trends. We urge DOL and the Office of Management and Budget (OMB) to move forward expeditiously with the surveys.

The National Partnership for Women & Families is a nonprofit, nonpartisan advocacy group dedicated to promoting fairness in the workplace, 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 identifying needed improvements in workers' access to paid and unpaid leave.

The FMLA surveys will assess the experiences of employers in administering the FMLA as well as the experiences of employees in using it. The surveys quantify the expected share of workers who take FMLA leaves in a year, which can help DOL plan staffing levels, materials development and more.

The FMLA survey data will help DOL identify gaps in compliance and determine how well employers and employees understand the law's requirements. This information plays an

important role in DOL determining how to most efficiently target its efforts around outreach to employers, enforcement and compliance. For example, the 2012 survey found that while nearly all covered worksites allow leave to care for an employee's own serious health condition, a new child or a seriously ill family member, fewer covered worksites allowed leave for reasons related to the deployment of a military service member.<sup>1</sup> This suggests that employers may not be aware of the 2008 amendments expanding the FMLA to cover leave for a qualifying exigency arising out of a family member's military deployment, which may reveal a need for DOL to further educate employers on qualifying exigency leave.<sup>2</sup> The survey also reported the sources of information other than DOL that employers rely on to learn about the FMLA, such as trade groups and attorneys.<sup>3</sup>

The data can also help DOL and employers discover gaps in employees' understanding of FMLA provisions. For example, the 2012 survey found that most employees believe the FMLA covers more family members than it actually covers, and that awareness of the military family leave provisions of the law is substantially lower than awareness of the other provisions.<sup>4</sup> This information can help DOL and employers alike shape their materials and outreach efforts.

Finally, the survey data underscores the positive impacts and lack of negative effects of the FMLA on employers and employees. This data reinforces the importance of the FMLA and the need for robust administration and enforcement of the law. For example, the 2012 survey showed that most employers found it easy to comply with the law, and the vast majority reported positive or neutral effects from the law on productivity, absenteeism, turnover, career advancement, morale and profitability.<sup>5</sup> Only 2.5 percent of covered employers reported suspecting employees of misusing the FMLA, and only 1.6 percent reported confirmed instances of misuse.<sup>6</sup>

For employees, the data illustrated that unpaid leave alone is not enough, and that workers suffer without access to paid family and medical leave. The 2012 data revealed, for example, that the lack of pay during an FMLA leave has substantial negative impacts on considerable shares of workers, including using savings earmarked for other purposes, putting off paying bills, borrowing money or turning to public assistance. Without any pay or adequate pay, half of workers also cut their leaves short, which can lead to health and other problems over time. In addition, 46 percent of employees who needed leave but were unable to take it cited an inability to afford going without pay as the reason why they could not take FMLA leave.<sup>7</sup> Trends here are alarming and illustrate the need for ongoing research. For example, the 2012 employee survey revealed that the share of workers who said they did not take a leave they needed was twice as high as in 2000. This finding and others reinforce the need for initiatives to expand access to paid family and medical leave.

The FMLA surveys are a unique source of data that is unavailable anywhere else. The proposed sample sizes are large enough to conduct substantial subgroup analysis, which will further improve the agency's performance with respect to FMLA implementation. We urge DOL and OMB to field the new surveys without delay.

We appreciate the opportunity to submit comments on these surveys. If you have any questions regarding this comment, please contact Sarah Fleisch Fink, Director of Workplace Policy and Senior Counsel ([sfleischfink@nationalpartnership.org](mailto:sfleischfink@nationalpartnership.org) or

202.238.4852), or Vasu Reddy, Policy Counsel ([vreddy@nationalpartnership.org](mailto:vreddy@nationalpartnership.org) or 202.238.4842) at the National Partnership for Women & Families.

Sincerely,

National Partnership for Women & Families

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1 Klerman, J.A., Daley, K., & Pozniak, A. (2012, September 7). *Family and Medical Leave in 2012: Technical Report* (Exhibit 2.4.1a, pp. 27-31). Abt Associates Publication. Retrieved 21 December 2016, from <http://www.dol.gov/asp/evaluation/fmla/FMLA-2012-Technical-Report.pdf>

2 U.S. Department of Labor, Wage and Hour Division. (2013, February). *Fact Sheet #28M: The Military Family Leave Provisions under the Family and Medical Leave Act*. Retrieved 21 December 2016, from <https://www.dol.gov/whd/regs/compliance/whdfs28m.pdf>

3 See note 1, Exhibit 3.2.2, pp. 43-45.

4 Ibid., Exhibit 2.3.2, pp. 25-26.

5 Ibid., pp. 49, 156-157.

6 Ibid., p. 156.

7 Ibid., pp. 104-105, 127.