

CAUGHT

Since the passage of the Family and Medical Leave Act in 1993 by the Clinton administration, companies across the nation are still grappling with how to best administer legislation that is sometimes ambiguous and cumbersome.

Under the legislation, employers with 50 or more workers are required to give their employees 12 weeks of unpaid, job-protected leave to care for a newborn or adopted child, deal with serious personal health issues, or attend to a child, parent or spouse with serious medical problems. During this time, employers must continue health benefits for the employee as during regular employment. Workers must have put in at least 1,250 hours in the preceding year in order to qualify.

The Society for Human Resource Management (SHRM) recently surveyed its 78,000 members on the effects of the law and received discouraging results as far as FMLA was concerned. Six out of 10 of the human resource professionals surveyed say they still spent huge amounts of time putting the Act into practice. A quarter of the respondents say compliance with the law was either "very difficult" or "somewhat difficult." More than half say their company had not benefited from FMLA and employees did not return to work after leave.

voluminous document and what is required."

The Arizona Employers Council, Inc., recently surveyed its members on FMLA and found much difficulty as well. The biggest complaints surrounded taking time off and answering employees' questions regarding their rights. Only 16 percent of those surveyed say they had no problem with the FMLA procedures.

Healy says 42 percent of the respondents say granting leaves created a hardship on scheduling and production and 57 percent of the companies surveyed say their employees do not understand the requirements of the legislation. Fifty percent of the respondents were bewildered enough to consult with legal counsel.

He adds confusion begins when employees feel they can go in and ask for family leave or family medical leave without understanding the parameters of the Act. "Employers and employees have to understand it has to be a serious illness," he says.

The law also stipulates employers must offer returning employees their old job or a job of equal position and pay. The U.S. Department of Labor's Commission on Leave recently conducted its own survey, and while it found that most businesses were happy with FMLA, it also found that 58 percent of

complaints surrounding the law center on employers failure to comply with the reinstatement provision.

According to Healy, 40 to 50 percent of the problems surrounding

FMLA in his survey concentrated on employers who are not fully aware of all the provisions of the requirements. "[Business people] are so busy running the business and attempting to create sales or generate production that personnel and human resource regulations get put on the back burner," he says. "They wait until they receive a call from the Department of Labor, who has received a complaint, before they get on board and make sure they are following the regulations."

Also under fire is FMLA's sometimes ambiguous language. While an employee's serious condition is supposed to be certified by qualified medical practitioners, and employees given 30 days notice of the leave, employees are asking to take intermittent leave of sometimes one to two hours without prior agreement.

Marjo Kennedy-Berry, human resources manager for Phoenix Fuel Company, a wholly owned subsidiary of Giant Industries with 215 employees, has not seen an increase in employees wanting to take intermittent leave at her company. "We haven't had to deal with intermittent leave very much and maybe that's why we haven't had any nightmares," she says. She has noted very few people take the full 12 weeks, however. "They don't want to leave that long because it's unpaid," she says. ►

IN THE ACT

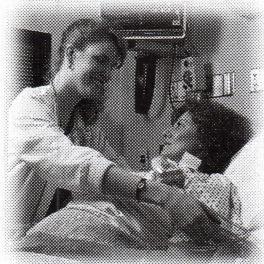
But by far, the worst problem cited in the study was intermittent leave in which employees tried to take FMLA time for as little as an hour. While FMLA allows for employees to take time off in small increments of an hour or more, for say, chemotherapy, FMLA also allows employees whose schedules are divided into eight-minute segments—factory workers and others who punch time clocks, for instance—to take time off in even smaller chunks, making it nearly impossible for managers to track the time and maintain control of their departments or divisions.

Others problems cited by the respondents included hiring and training replacement workers, time explaining the law to employees, and maintaining continuous health benefits to absent employees. All of the concerns have added up, for some, to a nightmare of paperwork and compliance regulations.

"The ones that find it most difficult to administer are those employers who have between 50 and 200 employees," says Kevin J. Healy, president of Arizona Employers' Council, Inc., an employers association providing human resource and labor relations guidance to 850 member companies. "Most of the time those companies don't have a designated personnel manager or human resource manager who has been able to take the time to understand the

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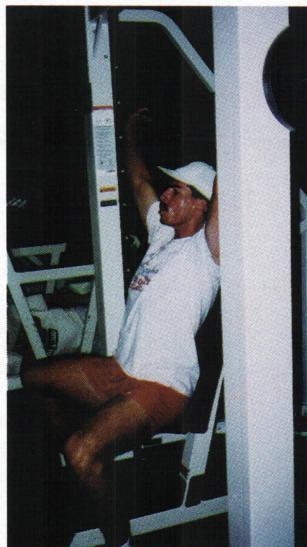
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Coeta Chambers, human resources attorney for Intel Corporation, says tracking intermittent leave has been difficult in a company the size of Intel, with more than 30,000 employees nationwide. "An exempt employee does not fill out a time card, so it's a nightmare to track intermittent leave for an exempt employee," she says. "Managers don't follow exempt employees around to see if they are there or not; you do your job. (So tracking intermittent leave) is very difficult."

Robert Frazier, human resources manager at Arizona State University, says ASU's difficulty arose when the unit administrators at ASU weren't used to running leaves concurrently, and FMLA is run concurrently with other leaves. "That was a hard concept for people to grasp," he says.

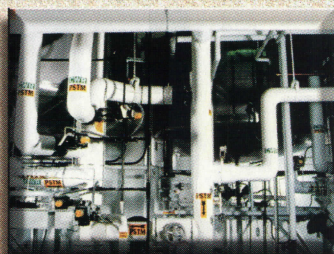
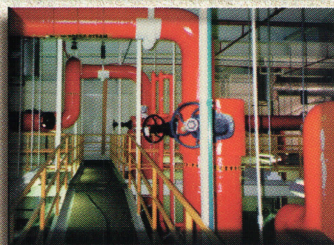
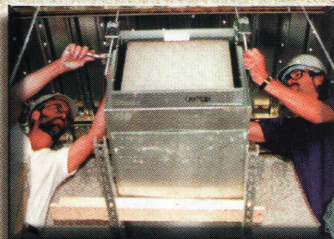
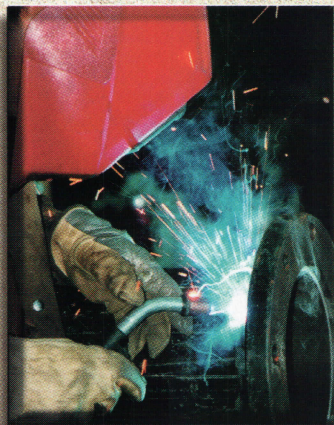
He also noted FMLA's language had to be spelled out to employees who were sometimes confused about how they could take off. "There is no family leave until the supervisor tells the employee in writing they have family leave," says Frazier. If this is not done before an employee goes, FMLA does not allow retroactive pay. "We had cases early on where an employee would go out on sick leave and hadn't been notified in writing that they were on concurrent family leave," says Frazier. They then tried to apply in the middle of leave, which the FMLA doesn't allow.

Frazier does, however, point out that ASU, with 6,300 employees on three campuses, had much of FMLA's leave practices in place due to their own policies, so they had a much easier time administering the program. "We had the kind of personnel policies in place before family leave that were 80 to 90 percent of what the intent of family leave is," he says. "We are a little more favorable to employees than you'd find in the private sector, and wrapping family leave into our leave policies was not that great a jolt."

The same holds true for Intel, which had much of FMLA's medical sections in place before the bill passed. "The family leave portions of the bill are something new for us," says Chambers. "Before the Act, we did not have in place unpaid leave for, say, someone being off work to take care of an elderly parent."

Some companies are also having trouble with employees taking their full 12 weeks of leave and then never returning to work, although most organizations questioned did not seem to have as many problems with that. ►

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Kennedy-Berry says Phoenix Fuel Company has only had one employee take their family leave and not return. "We knew at the front of it that they probably wouldn't return because of the medical condition, but we still had to give them that time."

Healy of Arizona's Employment Council says respondents to his organization's survey did not pinpoint not returning to work as a problem, but he notes, with most legislation, some employees will always slip through the cracks. "They may have the best intentions of coming back to work," he says. "But you're always going to have a certain percentage of employees that will take the leave with no intention of returning."

Chambers says Intel has not experienced much problem with employees failing to return to work once their leave is up. "Most employees are in good faith taking the leave for legitimate reasons," she says.

What Intel has experienced is a problem of trying to comply with the federal FMLA regulations and state leave policies together while making everybody happy. "We have big facilities in California and Oregon where they have state laws that also provide similar kinds of leaves," she says. "If someone is pregnant and their parents are sick and they are sick, they can have months and months and months of being gone. And they have to have a job guarantee when they come back. That is tough to do."

But, interestingly, despite all the problems, only one in five respondents would repeal FMLA if given the chance. That may account for why lawsuits and overall complaints have been rare. The Department of Labor has received about 6,000 complaints, but FMLA covers more than 65 million people. Nine out of 10 complaints have been resolved without going to court. In most cases, once employers realize they are not in compliance, they take measures to get into compliance.

On a positive note, Frazier notes FMLA has given employees an opportunity to be with their families when, in the past, that may have not been possible. "With maternity leave, (FMLA) has allowed people to stay and bond with the youngster," he says. "In the past, in some places on campus, there was an implied pressure to come back to work as soon as you were able. Family leave has taken that pressure off the employee."

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