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THE IMPACT OF THE FAMILY AND MEDICAL LEAVE ACT OF 1993 ON THE LEGAL PROFESSION

Kyle B. Arndt* and Christina A. Bull**

I. INTRODUCTION

On February 5, 1993, President Clinton signed the Family and Medical Leave Act of 1993 into law. The Act represented Clinton's first legislative action as President, and was greeted with great fanfare. It was seen, at least by Democrats, as the beginning of change with the new administration. The Act, which had been vetoed twice by President Bush, entitles eligible employees to as much as three months unpaid leave to care for family members.

This Essay examines how the Family and Medical Leave Act affects the legal profession. The position of many lawyers is unique, in that most private attorneys work in partnerships and professional corporations, which present different employment dynamics than...
the standard employer-employee relationship. The quantitative analysis contained herein is somewhat limited, because of the scarcity of demographic data on the work environment of attorneys.

II. THE FAMILY AND MEDICAL LEAVE ACT

A. Purpose and Objectives of the Family and Medical Leave Act

The Family and Medical Leave Act is, in part, a response to the growing number of women working outside the home.\(^6\) A generation ago, when women pursued primarily domestic responsibilities within the home and men worked primarily outside the home as the breadwinners,\(^7\) the Act was not as necessary as it is today.\(^8\) When a child was born, or a family member needed constant attention, there was someone within the home to bear these attendant responsibilities.\(^9\) As more women entered the paid workforce, however, the care of children (or elderly parents) became increasingly difficult because there was no longer someone at home all the time.

As women's roles continue to expand, so too do their professional and domestic responsibilities. "A woman's place today is in the home, in the workplace, in the military and in the White House. The family leave law recognized these new realities, and legislates a little compassion for working moms and dads."\(^10\) The Act responds to these increased demands by allowing employees the necessary latitude to be both earners and caretakers.

The Family and Medical Leave Act strives to prevent women\(^11\) from having to choose between the needs of their family and the

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6. 29 U.S.C.A. § 2601(a)(1) (finding that "the number of single-parent households and two-parent households in which the single parent or both parents work is increasing significantly.").

7. As an example of this trend, in 1960, 28.8% of married women between 25 and 34 years of age worked outside the home. By 1991, this figure had increased to 70.1%. BUREAU OF THE CENSUS, U.S. DEPT OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 387 (112th ed. 1992).

8. There has always been a need for family leave legislation, as there have always been women who work outside the home. Unfortunately, their hardships have only received attention in recent years, as the number of women in the paid work force increased dramatically. See ELEANOR E. MACCOBY & ROBERT H. MNOOKIN, DIVIDING THE CHILD: SOCIAL AND LEGAL DILEMMAS OF CUSTODY 8 (1992) (explaining the generational differences in gender and the workforce).


10. Id.

11. The Family and Medical Leave Act is important for all employees, regardless of gender; it provides the same benefits to anyone who qualifies, man or woman. Wo-
demands of their career. Traditionally, if an employee took leave in response to family demands, the employee risked losing her job. The decision whether or not to take that risk is difficult, not only because family and employment are both important, but because family and employment are interdependent. When a mother leaves work temporarily to care for a child and is forced to give up her job, she is less able to care for her child because she has no income to support herself and her child. Likewise, if a mother stays on the job in order to keep it, she may jeopardize her child’s health or be unable to concentrate on her duties at work. Sick children, new babies, and other family members requiring intensive care need both time and money. The Family and Medical Leave Act attempts to provide for both.

The Act acknowledges the importance of work within the family, recognizing that those who care for family members perform a crucial function in our society, and their work is worthy of respect. Child care is important in its contribution to our nation’s future: it is to our benefit to raise healthy, well-adjusted children who will grow to become productive citizens. In addition, promoting the economic stability of families promotes the stability of the national economy as a whole. The Family and Medical Leave Act addresses these issues.

men, however, have traditionally been the family caretakers, and so the Act is likely to have more impact on them. See infra notes 17–20 and accompanying text.

12. 29 U.S.C.A. § 2601(a)(3). Mitchell Locin, Family Leave Signed, Hailed as Gridlock End, Chi. Trib., Feb. 6, 1993, at 3 ("In times of family crisis, people should not have to choose between their loved ones, and the jobs they need.") (quoting Vicki Yandle, present at the Family and Medical Leave Act signing ceremony, who lost her job when she needed to care for her cancer-stricken daughter).

13. 29 U.S.C.A. § 2601(a)(2) ("It is important for the development of children and the family unit that fathers and mothers be able to participate in early childrearing and the care of family members who have serious health conditions.").

14. During the signing ceremony, President Clinton offered another reason why the Act is economically sound: "Men and women are more productive when they are sure they won’t lose their jobs because they are trying to be good parents." Signing Off on a Revolution, supra note 9, at B7. In an effort to appeal to a wide range of citizens and interest groups, Clinton was likely trying to appease the business interests that opposed the Act. See Locin, supra note 12, at 3 (noting business groups’ negative reaction to the Act). Former President George Bush vetoed the same bill twice on the ground that it would adversely impact businesses. See supra note 4 and accompanying text.


Apart from considering the contribution of the family to our society and our economy, there is intrinsic value simply in recognizing and honoring the work that cares for people, and respecting the value of nurture. Unfortunately, work within the family has largely been ignored up to this point.
The Family and Medical Leave Act entitles all eligible employees, regardless of gender, to take leave to care for their immediate families.\textsuperscript{16} The Act, however, is of much greater importance to women. Women tend to bear the burden of family and child care.\textsuperscript{17} This usually does not change when they go to work.\textsuperscript{18} The workplace has always been set up to accommodate traditional workers: men who have wives at home to care for the house and children. The workplace structure assumes that workers have no other obligations and can devote all their energies to work.\textsuperscript{19} When women enter the workplace with multiple roles and responsibilities, however, the workplace has traditionally not responded with any greater flexibility. Many women are caught between the needs of a family and the demands of a career. The Family and Medical Leave Act strives to address these concerns, and so is likely to be of greater benefit to women.\textsuperscript{20}

\section*{B. Mechanics of the Family and Medical Leave Act}

Under the Family and Medical Leave Act, an eligible employee is entitled to twelve weeks of unpaid leave per year.\textsuperscript{21} An employee may take the leave in four circumstances: birth of a child;\textsuperscript{22} placement of a child with the employee for adoption or foster care;\textsuperscript{23} care

\footnotesize
\begin{itemize}
  \item \textsuperscript{16} 29 U.S.C.A. § 2612(a)(1).
  \item \textsuperscript{19} Frug, supra note 18, at 56 ("The labor force is organized as if workers do not have family responsibilities.").
  \item \textsuperscript{20} It could be argued that the Act will be of growing importance to men, because as women enter the workforce in increasing numbers, married men will feel more financially comfortable taking time off to care for their dependents. See Jane Rutheford, Duty in Divorce: Shared Income as a Path to Equality, 58 FORDHAM L. REV. 539, 569 (1990). The Family and Medical Leave Act would facilitate this behavior, giving men the job security necessary to take family leave. However, financial ability or disability by itself cannot explain the reasons women are more likely to care for their families than men. Women have been assigned care-giving responsibilities for centuries. These socialized roles are so entrenched that the Family and Medical Leave Act is unlikely to change them. Cf. infra note 56.
  \item \textsuperscript{21} 29 U.S.C.A. § 2612(a)(1), (c).
  \item \textsuperscript{22} 29 U.S.C.A. § 2612(a)(1)(A).
  \item \textsuperscript{23} 29 U.S.C.A. § 2612(a)(1)(B).
\end{itemize}
of a child, a parent, or a spouse; or a "serious health condition" which renders the employee unable to perform his or her job. Employees retain their health benefits for the duration of their leave and are generally entitled to return to the job they held when the leave commenced or to return to an equivalent position.

There are two limitations within the Family and Medical Leave Act which significantly reduce the number of individuals who will be eligible to take leave. The first is that the Act does not apply to worksites with fewer than fifty employees. The Act also excludes part-time employees from coverage, and does not include part-time employees in calculating the fifty-employee threshold.

III. IMPACT ON LAWYERS

A. Demographics of the Profession

Figure 1 shows the distribution of lawyers by employment category and gender. As the Figure shows, while the vast majority of all lawyers are employed in private practice, a greater proportion of male lawyers are employed in private practice than are

24. 29 U.S.C.A. § 2612(a)(1)(C). A child is defined as a "biological, adopted, or foster child, a stepchild, a legal ward or a child of a person standing in loco parentis" who is under 18 years old or is "incapable of self-care because of a mental or physical disability." 29 U.S.C.A. § 2611(12).

25. A "serious health condition" is defined as "an illness, injury, impairment, or physical or mental condition" involving inpatient care or "continuing treatment by a health care provider." 29 U.S.C.A. § 2611(11).


27. 29 U.S.C.A. § 2614(c)(1).

28. 29 U.S.C.A. § 2614(a)(1). However, if the individual is among the highest paid 10% of employees, she may be denied her previous position upon three conditions: (1) "such denial is necessary to prevent substantial and grievous economic injury" to the employer, (2) the employer gives notice to the employee, and (3) the employee does not immediately return from leave. 29 U.S.C.A. § 2614(b).


30. An employee must work more than 1250 hours a year, approximately 25 hours a week, to qualify for leave. 29 U.S.C.A. § 2611(2)(A)(ii).


32. For the purpose of this Essay, a lawyer is any individual who is licensed to practice law in the United States and whose place of employment or residence is in the United States. Individuals who report themselves as "retired" or "inactive" are not included. BARBARA CURRAN & CLARA N. CARSON, SUPPLEMENT TO THE LAWYER STATISTICAL REPORT: THE U.S. LEGAL PROFESSION IN 1988 235-36 (1991).

33. Id. at 20. See Appendix A, infra, for a discussion of data sources.

34. "A lawyer employed in a law firm, in whatever capacity, is considered in private practice as are lawyers in solo practice. Lawyers employed in retail legal service organizations such as Hyatt Legal Services are treated as private practitioners." CURRAN & CARSON, supra note 32, at 235.
female lawyers. Employment in private industry makes up the second largest employment group. A similar proportion of male and female lawyers are employed in private industry. In contrast, in the three remaining job classifications (Federal Government, State Government, and Other Employers), there is a higher proportional representation of female lawyers.

B. Private Practice Lawyers

One of the primary shortcomings of the Family and Medical Leave Act is that it treats lawyers in substantially identical working circumstances differently. This shortcoming is partially a function of the way the Act defines employee and partially a function of the different types of business organizations used to conduct private legal practice.

The Act adopts the definition of employee used in the Fair Labor Standards Act of 1938 (FLSA). The FLSA defines an employee as "any individual employed by an employer." Judicial interpretations of statutes using this definition of employee suggest that members of partnerships will not be considered employees for the purposes of the Family and Medical Leave Act. Courts have universally held that bona fide partners are not employees for the purposes of Title VII and the Age Discrimination in Employment Act. Courts have applied this standard even when the partner in question had a very small partnership interest and had very little

35. "Private industry includes any organization engaged in providing goods or services for profit. This classification excludes law firms." Id.
36. The “Other Employers” category includes lawyers not employed in private industry or government.
38. 29 U.S.C. § 203(e) (1). This is the definition used by most civil rights statutes. Court decisions interpreting the definition of employee in these other statutes are therefore pertinent to interpretation of the Family and Medical Leave Act.
39. See, e.g., Hishon v. King & Spalding, 467 U.S. 69, 79 (1984) (Powell, J., concurring) ("The relationship among law partners differs markedly from that between employer and employee—including that between the partnership and its associates."); Auld v. Law Offices of Cooper, Beckman & Tuerk, 1992 U.S. App. LEXIS 32939, at *2 (4th Cir. 1992) ("[T]raditional partners are not 'employees' of the firm as an independent entity for the purposes of Title VII."); Hyland v. New Haven Radiology Assoc., 794 F.2d 793, 797 (2nd Cir. 1986) ("It is generally accepted that the benefits of [the Fair Labor Standards Acts of 1938, Title VII, and the Age Discrimination in Employment Act (ADEA)] do not extend to those who properly are classified as partners."); Burke v. Friedman, 556 F.2d 867, 869 (7th Cir. 1977) ("[W]e do not see how partners can be regarded as employees rather than as employers who own and manage the operation of the business.") (footnote omitted).
practicable ability to participate in the management of the partnership.\textsuperscript{40}

The exclusion of partners as employees for purposes of the Family and Medical Leave Act has two significant impacts on lawyers in private practice. The most obvious impact is that partners will not be protected if they need to take leave. This may have less functional impact on women, however, because women represent a disproportionately small percentage of partners at larger firms.\textsuperscript{41} The second impact of excluding partners from the definition of employee is that the group of fifty employees necessary to bring a law firm under the Act must be composed entirely of associates and support staff. This means that some mid-sized firms with over fifty employees and attorneys may not qualify under the Act.

Many private practice law firms are also organized as professional corporations. It is not clear if shareholders of professional corporations will be treated as employees for the purposes of the Family and Medical Leave Act. Courts that have addressed this issue in the context of other anti-discrimination statutes have reached inconsistent results.

The Seventh and Eleventh Circuits have held that shareholders of professional corporations are not employees for the purposes of anti-discrimination legislation.\textsuperscript{42} In reaching this conclusion, these courts have looked at the "economic realities" of a professional corporation and concluded that "[t]he role of a shareholder in a professional corporation is far more analogous to a partner in a partnership than it is to the shareholder of a general corporation . . . .]\textsuperscript{43} The Second Circuit has taken the opposite approach and

\textsuperscript{40} In Wheeler v. Main Hurdman, 825 F.2d 257 (7th Cir. 1987), the plaintiff brought a Title VII and ADEA suit alleging that she was expelled from the Main Hurdman partnership on the basis of her age or sex. Wheeler was one of 502 partners, \textit{id.} at 260, and had a .000058 share of the firm's capital account. \textit{Id.} at 262. The court found Wheeler to be a partner and thus not protected by Title VII or the ADEA. \textit{Id.} at 276-77.

\textsuperscript{41} Only 8% of women lawyers in private practice are partners, compared to 20% of men. These figures are only for those firms where there are both partners and associates (i.e., this does not apply to sole practitioners or very small firms with no associates). \textit{Curran & Carson, supra} note 32, at 22.

\textsuperscript{42} See Fountain v. Metcalf, Zima & Co., 925 F.2d 1398 (11th Cir. 1991) (stockholder in professional corporation was not an employee for the purposes of the ADEA); EEOC v. Dowd & Dowd, Ltd., 736 F.2d 1177 (7th Cir. 1984) (three stockholders in professional corporation were not considered employees for the purposes of calculating the total number of employees in a Title VII action).

\textsuperscript{43} Dowd & Dowd, 736 F.2d at 1178; see also Metcalf, Zima & Co., 925 F.2d at 1400-01 (when evaluating the classification of an individual as an employee or partner, the court must focus on "the actual role played by [the individual] in the operations of
treats shareholders of professional corporations as employees. While acknowledging that shareholders of professional corporations have “many of the attributes of a partner,” the court rejected the application of an economic realities test and held that the similarity between the two forms of organization was “no reason for ignoring a form of business organization freely chosen and established.” This split will likely result in inconsistent application of the Family and Medical Leave Act to shareholders of professional corporations.

Though it was difficult to quantify the impact of the Family and Medical Leave Act on private practitioners, we have developed a simple model which generally estimates how many lawyers might be eligible for benefits under the Act. Because our data sources are imprecise, these figures represent estimates accurate only within an order of magnitude. If all private practice firms were treated as partnerships, we estimate that only 10% of all private practitioners would be eligible for leave benefits. See Table A-1. This group is comprised primarily of associates working for firms with twenty-eight or more attorneys. This is in contrast to an intuitive response, in which all partners are considered employees. Under this scenario, 22% of all private practitioners would be eligible under the Act. See Table A-2. This group consists of all partners and associates in law firms with twenty-one or more attorneys.

The differential treatment of shareholders in professional corporations makes predicting the impact of the Act more difficult. We were unable to locate data indicating the proportion of partnerships to professional corporations. For purposes of comparison, we ran the model assuming that 50% of all private practice firms were organized as professional corporations. We then assumed, given the split between the circuits, that in only 50% of the cases would shareholders at these firms be considered employees. Under this scenario, 13% of private practitioners would be eligible for leave. See Table A-3. This group consists of one quarter of the partners in firms of twenty-one or more attorneys, one quarter of the associates in firms with between twenty-one and twenty-seven attorneys, and all associates in firms with twenty-eight or more attorneys.

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45. Id. at 798.
C. **Federal Employees**

The Family and Medical Leave Act provides for federal employees by amending their existing annual and sick leave benefits.\(^{46}\) The Act entitles most federal employees to the same leave benefits enjoyed by eligible private sector employees.\(^{47}\) As a consequence, most lawyers who work for the federal government will be eligible to take leave under the Act. Eligible federal employees who take leave are entitled to return to their previous job, or an equivalent position,\(^{48}\) and may continue to participate in any applicable health benefit plans.\(^{49}\)

D. **State Employees**

Employees of state and local government who are subject to civil service laws are eligible for leave under the same conditions as employees in the private sector.\(^{50}\) Thus, while most state employees will be eligible for leave, employees of local government will be precluded from eligibility if their employing jurisdiction has fewer than fifty employees.\(^{51}\)

E. **Other Lawyers**

Lawyers who work outside private practice and government will be treated under the Family and Medical Leave Act as any other employee. Their eligibility will be predicated largely on the size of the employer. These lawyers include those in private industry, law professors, lawyers working for private associations,\(^{52}\) and legal aid attorneys. Some private industry and private association

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\(^{47}\) The Family and Medical Leave Act generally adopts the definition of employee used in 5 U.S.C. § 6301. 5 U.S.C.A. § 6381(1)(A) (1993 West Supp.). The Act expands 5 U.S.C. § 6301 by including physicians, dentists, and nurses employed by the Veterans Health Administration and individuals who hold teaching positions as defined by 20 U.S.C. § 901. *Id.* Federal employees who are not covered by the Act include many part-time and temporary employees, employees of either house of Congress, and a number of officers appointed by the President. 5 U.S.C. § 6301.

\(^{48}\) 5 U.S.C.A. § 6384(a).

\(^{49}\) 5 U.S.C.A. § 6386.


\(^{51}\) See Dumas v. Mount Vernon, 612 F.2d 974, 979-80 (5th Cir. 1980) (holding that a municipality employing fewer than 15 people was not an employer for the purposes of Title VII).

\(^{52}\) "Examples of private associations are trade associations, unions, special interest groups, charitable and religious organizations." *CURRAN & CARSON, supra* note 32, at 235.
attorneys, most likely general counsel, may fall under the Act’s ex-
emption for those that earn compensation within the top 10% of all
employees.\footnote{Our law professors have assured us they will not have to worry about this
 provision.} While this does not completely exclude them from the
benefits of the Act, it gives the employer, in certain circumstances,
the ability to deny the employee her previous position.\footnote{See supra note 28 and accompa-
nying text.}

IV. CONCLUSION

The impact of the Family and Medical Leave Act on lawyers
will be limited due to the structure and organization of the legal
profession. The Act will be most meaningful to lawyers working
outside private practice because the majority of these individuals
work for employers with fifty or more employees. This is also due
to the structure and dynamics of private practice.\footnote{It is likely that women lawyers
outside private practice may enjoy more flexible work environments, and would not be
constrained to the same degree as their counterparts in large law firms. See, e.g., Nancy
Kramer, Women in Law Can Be Mommies and Partners; Other Kinds of Practice, N.Y.
Times, Aug. 26, 1988, at A18.} Because most
private firms are small, and because partners and some shareholders
of professional corporations are not considered employees, most
private practitioners will not be covered. The largest group of pri-
vate practitioners that are eligible for leave under the Family and
Medical Leave Act, therefore, are associates at large firms. Unfortu-
nately, these are the women who may feel least at liberty to take
it. Associates at large firms are often professionally handicapped if
they take maternity leave, and many women attorneys feel they
must choose between the “mommy track” and the partnership track.\footnote{See, e.g., Jennifer A.
Kingson, Women in the Law Say Path Is Limited by “Mommy Track,” N.Y.
Times, Aug. 8, 1988, at A1; Tamar Lewin, Women Say They Still Face Obstacles as Lawyers,
N.Y. Times, Dec. 4, 1989, at A21.} Women can take the time to have children and spend time
with them, or they can advance in their firms, but many have found
that they cannot do both.\footnote{It is possible that the pressure on male associates not to take family leave is
even greater. One lawyer told the New York Times that “[I]n the legal world, to take
parental leave is wimp-like. . . . The kind of toughness that is needed to be perceived as
a go-getter lawyer is more harmed if a man takes parental leave than if a woman does.”
Because women are more likely to assume family responsibilities, though, men are less
likely to feel torn between their jobs and their families. See supra notes 17-20 and
accompanying text.} So while family leave may be available,
and the attorney can return to her position as she left it, she may
find subsequent advancement is slower or non-existent.
The fact that partners are not considered employees under the Family and Medical Leave Act, and thus not included in the fifty employee calculation, may have a detrimental effect on the subjective expectations of associates and support staff at medium-sized law firms. Not knowing that partners are not considered employees under the law, these women may expect that because there are fifty people working at their firm, they are therefore eligible for leave under the Act. The reality of their circumstances is not likely to become apparent until too late, when they urgently need leave to care for a sick family member. Support staff may be more vulnerable to this perception, because they may be less familiar with the law which would make them ineligible.

In addition, the Family and Medical Leave Act may thwart advancement among women in large firms. Accepting a partnership is already a difficult choice for some, since it carries with it the potential for significant financial loss associated with personal liability for firm obligations. The unavailability of family leave may act as a further incentive for women to choose not to become partners. Unfortunately, the aggregate consequences of this decision is that women will continue to be kept out of the leadership of law firms, which may well slow the advancement of all women.

APPENDIX A

Our primary data source for this article is the Supplement to the Lawyer Statistical Report: The U.S. Legal Profession in 1988, published by the American Bar Foundation. This report presents the most detailed information about the United States legal profession we could find. We specifically chose not to use United States Census data because they were not sufficiently detailed. In particular, the Census Bureau collects data about business enterprises providing "Legal Services." This is defined as including "attorneys, counselors at law, law offices, lawyers, legal aid services, legal services, patent solicitors offices and referees in bankruptcy." In addition, Census data do not provide information about partner-to-associate ratios and participation in particular job categories by gender.

To determine an estimate of the impact of the Family and Medical Leave Act (FMLA) on private practitioners, we developed a very simple model using the American Bar Foundation data. Because eligibility for leave is predicated largely on the employer's size, the first step in developing our model was ascertaining a ratio of attorney-to-support staff within private practice firms. The only study we were able to find on the subject indicated an average attorney-to-support staff ratio of 1 to 1.36. Using this attorney-to-support staff ratio and American Bar Foundation associate-to-partner ratios, we were able to project the number of individuals and the number of FMLA "employees" who worked at firms using the number of attorneys in the firm. As Figure A-1 shows, we estimate that a firm with twenty-one attorneys will have fifty individuals working at the firm. Figure A-1 also shows our estimate that firms with twenty-eight attorneys will have more than fifty employees as defined by the Act (i.e. non-partner employees).

Tables A-1, A-2, and A-3 estimate the impact of the Family and Medical Leave Act on attorneys, both in terms of individual firms and private practice in general. The following calculations were used:

59. CURRAN & CARSON, supra note 31.
61. Gerry S. Malone & Joseph B. Altonji, Administrative Staff, in The Back Office, AM. LAW., Dec. 1991, at supp. 22. The survey was based on firms with over 100 lawyers and thus may not be applicable to smaller firms. Id. at 10. The authors observed, however, no economies of scale as offices got larger. Id. at 20. While better data would yield a more precise estimate, such data do not appear to be available.
Firm Size: We have used the same firm size groupings used in the Lawyer Statistical Report. When a grouping includes more than one firm size, we calculated the impact on individual firms using the largest firm size in that grouping. We used 150 lawyers to calculate the impact on individual firms with over 100 lawyers.

Associate/Partner Ratio: This is the associate-to-partner ratio of firms with one or more associate. Because not all firms have associates, applying this ratio to all firms would overstate the total number of associates and understate the total number of partners.

Partners: Firm Size divided by the Associate/Partner Ratio.

People in Firm: Firm Size plus support staff using a 1.36 attorney-to-support staff ratio.

FMLA Employees: People in Firm less those individuals who are not considered employees for the purpose of the Family and Medical Leave Act.

Total Lawyers: This information is taken directly from the Lawyer Statistical Report.

Total Partners & Total Associates: Division of Total Lawyers using Associate/Partner Ratios by Firm Size.

Eligible FMLA Lawyers: Lawyers who would be eligible for leave under the Family and Medical Leave Act.

Table A-1 estimates the number of lawyers who will be eligible for leave if all private practice firms are treated as partnerships. Table A-2 shows the number of lawyers who would be eligible for leave if the distinction between partners and associates was ignored by the courts. Table A-3 is an attempt to estimate the number of lawyers who will be eligible for leave by assuming that 50% of the private practice attorneys are employed by professional corporations and that in only 50% of those cases would shareholders at these firms be considered employees.

63. Id. at 21.
64. Id. at 13.
65. The limitations of the attorney-to-support staff ratio are discussed in Malone & Altonji, supra note 61.
### Table A-1

**Impact of the Family and Medical Leave Act if All Private Practice Firms are Treated as Partnerships**

<table>
<thead>
<tr>
<th>Firm Size</th>
<th>Associate/Partner Ratio</th>
<th>People In Firm</th>
<th>FMLA Employees</th>
<th>Total Lawyers</th>
<th>Total Partners</th>
<th>Total Associates</th>
<th>FMLA Lawyers</th>
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<td>1</td>
<td>2</td>
<td>1</td>
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<td>240,100</td>
<td>n.a.</td>
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<td>1</td>
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<td>17,400</td>
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<td>2</td>
<td>7</td>
<td>5</td>
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<td>15,900</td>
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<tr>
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<td>17,700</td>
<td>13,300</td>
<td>4,400</td>
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<tr>
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<td>3</td>
<td>12</td>
<td>9</td>
<td>13,600</td>
<td>8,200</td>
<td>5,400</td>
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<td>27,100</td>
<td>13,500</td>
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<td>11,700</td>
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<tr>
<td>150 Lawyers</td>
<td>1.1 / 1</td>
<td>71</td>
<td>354</td>
<td>283</td>
<td>49,600</td>
<td>23,600</td>
<td>26,000</td>
</tr>
</tbody>
</table>

**Total**

**Percent of Total**

Table: 520,000 | 401,600 | 118,500 | 49,700

- **Total Lawyers:** 77%
- **Total Partners:** 23%
- **Total Associates:** 10%
### Table A-2
Impact of the Family and Medical Leave Act if All Partners in Private Practice Firms Were to Be Treated as Employees

<table>
<thead>
<tr>
<th>Firm Size</th>
<th>Associate/Partner Ratio</th>
<th>People in Firm</th>
<th>FMLA Employees</th>
<th>Total Lawyers</th>
<th>Total Partners</th>
<th>Total Associates</th>
<th>Eligible FMLA Lawyers</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Lawyers</td>
<td>n.a.</td>
<td>1</td>
<td>2</td>
<td>2</td>
<td>240,100</td>
<td>240,100</td>
<td>n.a.</td>
</tr>
<tr>
<td>2 Lawyers</td>
<td>1/1</td>
<td>1</td>
<td>5</td>
<td>5</td>
<td>34,700</td>
<td>17,400</td>
<td>17,400</td>
</tr>
<tr>
<td>3 Lawyers</td>
<td>1/2</td>
<td>2</td>
<td>7</td>
<td>7</td>
<td>23,900</td>
<td>15,900</td>
<td>8,000</td>
</tr>
<tr>
<td>4 Lawyers</td>
<td>1/3</td>
<td>3</td>
<td>9</td>
<td>9</td>
<td>17,700</td>
<td>13,300</td>
<td>4,400</td>
</tr>
<tr>
<td>5 Lawyers</td>
<td>2/3</td>
<td>3</td>
<td>12</td>
<td>12</td>
<td>13,600</td>
<td>8,200</td>
<td>5,400</td>
</tr>
<tr>
<td>6-10 Lawyers</td>
<td>1/2</td>
<td>7</td>
<td>24</td>
<td>24</td>
<td>40,600</td>
<td>27,100</td>
<td>13,500</td>
</tr>
<tr>
<td>11-20 Lawyers</td>
<td>3/4</td>
<td>11</td>
<td>47</td>
<td>47</td>
<td>36,900</td>
<td>21,100</td>
<td>15,800</td>
</tr>
<tr>
<td>21-50 Lawyers</td>
<td>4/5</td>
<td>28</td>
<td>118</td>
<td>118</td>
<td>36,600</td>
<td>20,300</td>
<td>16,300</td>
</tr>
<tr>
<td>51-100 Lawyers</td>
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<td>56</td>
<td>236</td>
<td>236</td>
<td>26,300</td>
<td>14,600</td>
<td>11,700</td>
</tr>
<tr>
<td>150 Lawyers</td>
<td>1.1/1</td>
<td>71</td>
<td>354</td>
<td>354</td>
<td>49,600</td>
<td>23,600</td>
<td>26,000</td>
</tr>
</tbody>
</table>

TOTAL

PERCENT OF TOTAL

<table>
<thead>
<tr>
<th>Total Lawyers</th>
<th>Total Partners</th>
<th>Total Associates</th>
<th>Eligible FMLA Lawyers</th>
</tr>
</thead>
<tbody>
<tr>
<td>520,000</td>
<td>401,600</td>
<td>118,500</td>
<td>112,500</td>
</tr>
</tbody>
</table>

77%  23%  22%
<table>
<thead>
<tr>
<th>Firm Size</th>
<th>Associate/Partner Ratio</th>
<th>Partners</th>
<th>People In Firm</th>
<th>FMLA Employees</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Lawyers</td>
<td>n.a.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2 Lawyers</td>
<td>1 / 1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3 Lawyers</td>
<td>1 / 2</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4 Lawyers</td>
<td>1 / 3</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5 Lawyers</td>
<td>2 / 3</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6-10 Lawyers</td>
<td>1 / 2</td>
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<tr>
<td>11-20 Lawyers</td>
<td>3 / 4</td>
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</tr>
<tr>
<td>21-50 Lawyers</td>
<td>4 / 5</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>51-100 Lawyers</td>
<td>4 / 5</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>150 Lawyers</td>
<td>1.1 / 1</td>
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</tbody>
</table>

(The impact on an individual firm will differ depending on the form of business association used).

<table>
<thead>
<tr>
<th>Firm Size</th>
<th>Associate/Partner Ratio</th>
<th>Partners</th>
<th>People In Firm</th>
<th>FMLA Employees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Total Lawyers</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>240,100</td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>34,700</td>
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<tr>
<td>23,900</td>
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<tr>
<td>17,700</td>
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<td></td>
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</tr>
<tr>
<td>13,600</td>
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<tr>
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<td>36,600</td>
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<tr>
<td>26,300</td>
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</tr>
<tr>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>520,000</td>
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<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Impact on Individual Firms

Impact on Profession

Eligible FMLA Lawyers

<table>
<thead>
<tr>
<th>Total</th>
<th>Total Partners</th>
<th>Total Associates</th>
<th>Eligible FMLA Lawyers</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>240,100</td>
<td>240,100</td>
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</tr>
<tr>
<td>34,700</td>
<td>17,400</td>
<td>17,400</td>
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<tr>
<td>23,900</td>
<td>15,900</td>
<td>8,000</td>
<td>0</td>
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<tr>
<td>17,700</td>
<td>13,300</td>
<td>4,400</td>
<td>0</td>
</tr>
<tr>
<td>13,600</td>
<td>8,200</td>
<td>5,400</td>
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</tr>
<tr>
<td>40,600</td>
<td>27,100</td>
<td>13,500</td>
<td>0</td>
</tr>
<tr>
<td>36,900</td>
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</tr>
<tr>
<td>36,600</td>
<td>20,300</td>
<td>16,300</td>
<td>18,115</td>
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<tr>
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<td>14,600</td>
<td>11,700</td>
<td>15,350</td>
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<td>23,600</td>
<td>26,000</td>
<td>31,900</td>
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<tr>
<td>520,000</td>
<td>401,600</td>
<td>118,500</td>
<td>65,365</td>
</tr>
</tbody>
</table>

Total

Percent of Total

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>77%</td>
<td>23%</td>
<td>13%</td>
</tr>
</tbody>
</table>
FIGURE 1
Employment of Active Lawyers by Job Category

FIGURE A-1
Family and Medical Leave Act "Employees" by Lawyers in Firm

---

Partners Counted as Employees

Partners Not Counted as Employees