50TH STORY of Level 1 printed in FULL format.

The New York Times

November 8, 1999, Monday, Late Edition - Final

SECTION: Section A; Page 1; Column 6; National Desk

LENGTH: 1461 words

HEADLINE: Dispute Over Plan To Use Jobless Aid For Parental Leave

BYLINE: By ROBERT PEAR

DATELINE: WASHINGTON, Nov. 7

BODY:

A bitter struggle has erupted over a plan by President Clinton to allow states to pay unemployment benefits to workers who take time off to care for newborn infants.

White House officials said the change in policy, subsidizing unpaid leave for parents of newborns, could help millions of people struggling to balance the demands of work and family.

But employers and many state officials said Mr. Clinton was exceeding his legal authority, circumventing Congress and reversing six decades of government policy, which has held that people can get jobless benefits only if they are actively seeking work.

Just two years ago, the Labor Department told states they could not use the federal unemployment insurance trust fund to pay for maternity and paternity leave. Now, the administration is preparing new regulations that would allow the states to do so if they chose.

Employers said the president's policy would take money meant for jobless workers and give it to people who had jobs but chose to leave them temporarily.

Government data suggests that more than 650,000 people a year take parental leave under a 1993 law, the Family and Medical Leave Act. But the potential demand is much greater. The Labor Department says that 1.9 million working women have children under the age of 1.

Patrick J. Cleary, vice president of the National Association of Manufacturers, said of the president's plan: "This is the nuttiest idea we've seen in a long time. The administration is looking for a pile of cash to fulfill a political promise, and they found it in the unemployment trust fund. But that's an insurance fund, not a slush fund. It's for unemployed people. Workers on family leave are employed, not unemployed. We'll see bad times again some day, and when we go back to the trust fund, it'll be bust."

Legislators in several states, including Vermont and Massachusetts, have introduced bills to provide unemployment insurance to workers taking family leave. But officials who run the state programs are generally cool to the idea, fearing that it would change the focus of unemployment insurance and harm the trust fund.

James E. Finch, the unemployment insurance director in Utah, said: "President Clinton's plan represents a very substantial change in the bedrock core principles of the unemployment insurance program as it has been operated for 60 years. The foundation of the program is that benefits are paid to people who are unemployed through no fault of their own and who are actively seeking full-time work."

Under the 1993 law, people who work for a company with 50 or more employees are generally entitled to 12 weeks of unpaid leave to care for newborn children or sick relatives or to tend to medical problems of their own. Workers who take leave are legally entitled to return to their jobs or to equivalent positions with equivalent pay.

Jobless benefits vary from state to state, but average $200 a week. Under the current system, state officials said, the cost of any additional benefit payments would be passed on to employers because they pay the taxes that finance the unemployment insurance program.

State officials estimate that paid leave for new parents could increase their unemployment insurance costs by 15 percent to 20 percent, depending on how many people seek benefits.

Advocates of paid family leave said the cost would be much lower. Moreover, they said, paid leave would benefit the economy by reducing absenteeism and the need for new parents to go on welfare.

Senior Republicans in Congress said the president should not make such a momentous change in policy by unilateral action. And they have sent letters to the White House urging him to reconsider.

In one such letter, Representative Bill Archer of Texas, the chairman of the Ways and Means Committee, and Representative Nancy L. Johnson of Connecticut told the president, "Your decision allowing states to use unemployment compensation to provide paid family leave pits out-of-work Americans against their neighbors who have jobs."

Mr. Clinton signaled his intention to rewrite federal policy in May, in a commencement address at Grambling State University in Louisiana, but he gave no details. Now the administration is preparing to announce the details, many of which have become known to experts in the field as the Labor Department writes new rules for the unemployment insurance program.

In announcing the rules, White House officials said, Mr. Clinton will present himself as the champion of a popular political cause, helping hard-pressed families while Congress sits on the sidelines.

Mr. Clinton is relying on an expansive view of executive authority. An analysis by the nonpartisan Congressional Research Service raises questions about that authority. Under federal law, it says, money withdrawn from the trust fund must be used "solely in the payment of unemployment compensation." Conceivably, it says, states could define "unemployment compensation" to include family leave, but that would conflict with the "legislative history and historical interpretation" of the program.

Business groups said they would challenge the new policy in court if the president formally adopted it.

The federal unemployment insurance program was created in 1935 as part of the Social Security Act. Under longstanding interpretations of the law, people are eligible for jobless benefits only if they are involuntarily unemployed, able to work and available for work.

The Labor Department's Web site describes who is eligible: "You must be available for work. This means that you are ready to start a job immediately. It also means you have transportation and do not have to remain at home to care for children."

Supporters of paid family leave like Maurice Emsellem, a lawyer at the National Employment Law Project, said states could make exceptions to this requirement. Within the framework of federal law, those supporters said, states have wide latitude in setting eligibility standards, benefit levels and tax rates. Moreover, they said, since the New Deal, states have been allowed and even encouraged to experiment with unemployment compensation.

Senator Christopher J. Dodd, an author of the 1993 family leave law, said it had been a boon to millions of new parents, allowing them to bond with their children before returning to work. But Mr. Dodd, Democrat of Connecticut, said that many people who needed family leave did not take it because they could not afford to go without a paycheck.

Low-wage workers who take unpaid leave often "wind up on public assistance," he said.

Labor unions and women's groups, led by the National Partnership for Women and Families, are lobbying state legislators to provide some type of income, subsidies or tax breaks for workers who take family leave. The new federal policy clears the way for such state action.

Richard A. Hobbie of the Interstate Conference of Employment Security Agencies, a national organization of state labor officials, said: "In general, our members have been opposed to the president's proposal, not because they oppose the concept of paid family leave, but because they believe it's inappropriate to use the unemployment insurance system for that purpose. State officials would argue that workers on family leave ought to be able to get benefits under some other government program or from employers."

Thomas W. Douse, the unemployment insurance director for Vermont, said that paying jobless benefits to new parents "would lead to an automatic increase in employer taxes" because benefit payments in the state would probably increase by 20 percent, or $9 million a year.

"To be sure," Mr. Douse said, "we have a strong trust fund right now, but the whole purpose of the trust fund is that you raise money in good times so it will be available in bad economic times."

Employers said the president's proposal could deplete the trust fund. But Mr. Emsellem, from the National Employment Law Project, said that with the jobless rate at a 29-year low, many states had healthy surpluses in their trust fund accounts and could afford to expand unemployment insurance.

"Businesses criticize the president's proposal as a raid on the trust fund, even as they lobby successfully for cuts in state unemployment insurance taxes," Mr. Emsellem said. "That's hypocritical."

Thomas S. Whitaker, deputy chairman of the North Carolina Employment Security Commission, said he liked Mr. Clinton's initiative because it allowed states to decide for themselves whether to pay unemployment compensation to workers taking parental leave.

"If states don't want to do it, they don't have to," Mr. Whitaker said. "I hope the Labor Department takes that approach on other issues."

http://www.nytimes.com

LANGUAGE: ENGLISH

LOAD-DATE: November 8, 1999

November 10, 1999

How Not to Help New Parents

By JERRY JASINOWSKI

WASHINGTON -- Naturally government and employers want to help Americans balance their family lives and their jobs. But the Clinton administration's plan to let states use unemployment insurance money to pay employees on leave after the birth of children is shortsighted, misguided and politically motivated.

Unemployment insurance is a rainy day fund, and during periods of recession like the late 70's and early 80's, it has come perilously close to bankruptcy in some states. It's easy to forget those bad times as we enjoy an unprecedented economic expansion, but it is dangerously myopic to ignore the cyclical nature of our economy.

With the number of women eligible to take advantage of paid leave under the Clinton proposal as high as 1.9 million a year, the policy that Mr. Clinton recommends would seriously drain unemployment insurance funds, even without the inevitable economic downturn. And this number does not even consider the significant number of men who could be eligible to collect these benefits as well.

Unemployment insurance is supposed to help keep the unemployed afloat while they look for new jobs. Workers taking leave under the Family and Medical Leave Act are in a different situation altogether. They are voluntarily stepping out of the work force and are entitled to go back to their jobs after three months.

Most manufacturers have adopted programs to help their employees balance work and family life. They have found that flexible scheduling, expanded birth and adoption leave, on-site day care and other programs for parents help boost morale, productivity and retention of employees.

Undermining the unemployment safety net by dipping into what looks like a leftover pot of money during good times is the wrong way to help working parents.

By unilaterally moving forward with this proposal, despite objections from members of Congress, employers and -- most importantly -- state officials who administer the unemployment insurance system, President Clinton has shown that he is more interested in fulfilling old campaign promises to make the family leave law a government-run paid-leave program than in fiscally sound public policy.

Jerry Jasinowski is president of the National Association of Manufacturers.

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The Plain Dealer

November 11, 1999 Thursday, FINAL / ALL

SECTION: EDITORIALS & FORUM; Pg. 12B

LENGTH: 400 words

HEADLINE: HAVE KIDS, WILL COLLECT 5;
LEGACY-HUNGRY CLINTON IS OVERREACHING WITH COSTLY NEW FAMILY-LEAVE PLAN

BODY:

Unemployment benefits. They're for people who are out of work through no fault of their own, who are actively looking for work and ready to start immediately if a job opens up, right?

Not according to the rewrite of 60-year-old federal policy now under way by President Bill Clinton. If he gets his way, unemployment benefits will be extended to employees taking maternity and paternity leaves.

With any luck, and a little backbone from Congress and the courts, this latest attempt at legacy-carving will be stopped. It would pervert the good intentions behind the federal unemployment insurance program, created with the Social Security Act in 1935, making it instead a massive subsidy for childbearing.

Now, parenthood is a good thing. And the 1993 law that provided 12 weeks of leave to care for newborns, sick relatives or personal medical problems has provided time needed by many families and individuals to put affairs in order. That legislation was passed amid promises that the taxpayers would not be asked to bear the burden of compensating those taking leaves for the wages lost.

But what would this new idea cost? In 1998, Ohio paid out $659 million in unemployment compensation. Early estimates are that the Clinton plan would up the state's outlay by 20 percent, which would raise that number to nearly $800 million. And that's just a start: Nationally, about 650,000 people a year now take parental leave. But the Labor Department says about 1.9 million working women have children not yet a year old. The attractiveness of taxpayer-underwritten, paid leave would be overwhelming, both to the eligible and to the fund from which the payments would be drawn.

Clinton's Labor Department is rewriting unemployment regulations to change six decades of precedent, an effort that scholars challenge as an overly broad exercise of executive authority. And once the scholars are done challenging it in principle, the businesses that pay unemployment taxes can be counted upon to challenge it in court.

Clinton, seeing the end of his presidency rushing toward him, seeks to leave his mark on this policy while slathering organized labor with a salve that will grease the way for a Democratic successor. But the plan, to quote the vice president of the National Association of Manufacturers, is "the nuttiest idea we've seen in a long time."

It must not be allowed to become law.

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COLUMN: EDITORIALS

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The Denver Post

November 9, 1999 Tuesday 2D EDITION

SECTION: DENVER & THE WEST; Pg. B-10

LENGTH: 458 words

HEADLINE: EDITORIAL Another Clinton end run

BODY:

Bill Clinton has a maddening habit of substituting sound bites for sound policy. The latest example is a U.S. Labor Department proposal to give jobless benefits for employees who take maternity or paternity leave.

The problem that the plan identifies is real. Parents of newborns face a tough time, trying to both care for their little ones and pay their often hefty medical bills. Some companies provide paid maternity and paternity leave for their employees, but many do not.

The quandary was only partially addressed by the Family and Medical Leave Act, which says employers must let workers take time off work to care for infants or seriously ill family members.

But unlike most industrialized nations, the time off is unpaid.

So in reality, many Americans still face the conundrum of needing a paycheck and needing to care for their families.

The issue of how best to help new parents should be thoroughly and thoughtfully debated in a public forum. If the federal law needs to be amended, then Congress should make the changes.

Instead, the Clinton crew is preparing a solution that amounts to law-making by administrative fiat.

Just two years ago, the Labor Department told state governments that they could not use jobless benefits - that is, unemployment insurance - to pay maternity and paternity leave. Now, though, the Clinton administration is abruptly reversing course. The labor department plans to issue new federal rules that would let states give unemployment insurance to parents of newborns.

The plan contains critical flaws. While all private employers must pay unemployment insurance, the premiums vary widely - the more layoffs a company has had, the more the insurance costs.

Using unemployment insurance to cover maternity and paternity leave would unfairly penalize companies whose employees happened to have young families.

In addition, to qualify for jobless benefits, employees have to actively look for new work. But this important requirement would be subverted if unemployment insurance was also used to cover maternity and paternity leave.

One point deserves emphasis: Infants do need their parents, so maternity/paternity leave is important to American families.

But unemployment insurance isn't the right vehicle for moving public policy in the direction it needs to go.

Moreover, the labor department proposal is part of a troubling trend in the waning days of the Clinton administration:

Trying to make up for seven years of a failed legislative agenda by issuing administrative directions that do an end run around Congress. And that's a dangerous game to play in a democracy.

LOAD-DATE: November 09, 1999

Bergman Terry <bergman-terry@dol.gov>
11/09/99 06:14:46 PM

Record Type: Record

To: Ann O'Leary/OPD/EOP

cc:
Subject: FW: Presidential remarks

This is the Q & A from President Clinton's news availability with reporters yesterdayafternoon (11-8-99) following his remarks to reporters aboutthe budget and efforts to reduce class size in U.S. schools.

Q The Department of Labor, at your direction, is drafting regulations to change the use of unemployment insurance so that it could be used for family leave purposes. Opponents of this idea say you don't have the authority to do this, that any such change should be done by federal legislation. How do you respond to that?

THE PRESIDENT: Well, I was informed that we did have the authority to do it in the narrow way that we're doing it. And I think if you want more information on what the arguments are, you will have to talk to either the Labor Department Counsel or the appropriate people at the White House. But I obviously would not have done it if I hadn't been told that we had the authority to do it.

As I mentioned, our press office has been fielding inquiries. The ones I remember are the Daily Labor Reporter, Knight Kiplinger, Fox News and the Beacon Journal (Akron, OH).

Carole Kitti 11/12/99 10:11:00 AM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: DOL Developing Plan to Allow States to Use Unemployment Funds to Back Family Leave

---------------------- Forwarded by Carole Kitti/OMB/EOP on 11/12/99 10:11 AM ---------------------------

BNA, Inc.

Daily Report for Executives

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Friday November 12, 1999

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Regulation, Law & Economics

Employment

DOL Developing Plan to Allow States to Use Unemployment Funds to Back Family Leave

The Labor Department is poised to propose regulations aimed at encouraging states to develop ways of using their unemployment insurance systems to support parents taking leave to care for newborns or newly adopted children.

The proposed regulations, which will be published in the "near future," would permit states to adopt legislation establishing a "demonstration-kind" of program to determine if providing unemployment insurance to otherwise eligible individuals who have given birth to or adopted a child "strengthens their connection to the workforce," Henry L. Solano, solicitor of labor, told BNA Nov. 10. The unemployment insurance program has been deemed by President Clinton as an "appropriate vehicle within which to test" this currently "unresolved matter," Solano explained.

President Clinton first outlined the plan for making family and medical leave more affordable for employees in a May 23 commencement speech at Grambling State University in Grambling, La., issuing an executive memorandum a day later directing Labor Secretary Alexis M. Herman to issue a rule to allow states to use their unemployment insurance systems to offer paid leave to new mothers and fathers. Clinton also directed the Labor Department to develop model state legislation that states can follow.

Business Opposition

The plan immediately was greeted by opposition from the business community, which maintains that allowing workers who are on family or medical leave to collect unemployment insurance would undermine the federal/state unemployment program. House Republicans joined in criticizing the plan, with both Reps. William Goodling (R-Pa.), chairman of the Education and the Workforce Committee, and Bill Archer (R-Texas), chairman of the Ways and Means Committee, complaining that the proposal would pit the unemployed against those workers that have jobs.

The business community "will litigate any proposal by the Department of Labor to change the fundamental purpose" of the unemployment insurance system by allowing those who are not able and willing to work to collect benefits, Eric J. Oxfeld, president of UWC-Strategic Services on Unemployment & Workers' Compensation, a business advocacy group, told BNA Nov. 10. Describing the pending proposal as both contrary to the Federal Unemployment Tax Act and the Family and Medical Leave Act, Oxfeld argued that "allowing the misuse" of unemployment compensation benefits for family and medical leave will "shred the safety net" the UI system is intended to provide.

"Grafting onto the unemployment insurance system the wholly alien responsibility to finance and deliver paid family and medical leave to workers who by definition have jobs and are not available for employment will financially and administratively burden the UI system and those whom it sustains," Oxfeld maintained during an oversight hearing on the FMLA last July. Similar concerns have been raised by the nonpartisan Congressional Research Service, which last June questioned whether the Labor Department has the authority to allow states to offer unemployment compensation to applicants who fail to meet the requirement that UI recipients be "able and available for work."

The authority of the secretary of labor "to allow the use of UI for FMLA workers will likely depend on whether courts will look solely" to the relevant statutory language or whether the UI program's "legislative history and historical interpretation will be considered," the June 15 CRS memorandum said. The memorandum pointed out that the language of the unemployment compensation statutes--the Social Security Act and the Federal Unemployment Tax Act--does "not appear to answer the question of inclusion of FMLA coverage in state programs."

Past DOL Interpretation at Odds

If, however, "the legislative history is considered, and the historical interpretation of the UI program by the Department of Labor followed, it may be difficult to show that a worker on FMLA leave meets the requirements of being involuntarily unemployed and willing and able to work," according to CRS. In such a case, CRS said, Clinton's proposal "could arguably be seen as violative of the scope and purpose of the UI program, particularly the FUTA provision that the UI fund be used solely for unemployment compensation."

The Labor Department has published numerous interpretations directing state unemployment agencies to deny unemployment compensation to workers who are voluntarily unemployed or who are unwilling and unavailable for work, according to CRS, and most state laws provide unemployment compensation to those workers who involuntarily lose their employment for reasons other than misconduct and who are willing and available to work. "The objection to allowing UI for workers on FMLA leave is that they are voluntarily, not involuntarily unemployed, and not willing and available to work when they are on FMLA leave," according to the CRS memorandum.

Solano, however, argued that there is "no connection" between the upcoming UI proposal and the FMLA, a 1993 law that requires employers of 50 or more employees to provide up to 12 weeks of unpaid leave a year for the care of seriously ill family members, the birth or adoption of a child, or an employee's own serious health problem. The Labor Department proposal, the solicitor explained, would allow states the flexibility to determine that employees who are not available and able to work due to the birth or adoption of a child are eligible for UI benefits.

State Legislation Necessary

This flexibility could only be offered "pursuant to substantive legislation adopted at the state level," Solano emphasized. Consistent with the general structure of the federal-state UI program, the proposal leaves it up to individual states to determine if they want to participate in the demonstration project, Solano said. This is "not a mandate," he said. Massachusetts, Vermont, Maryland, and Washington have explored legislative proposals similar to the one coming from DOL.

Solano likened the upcoming proposal to a situation in the mid-1960s when the Labor Department allowed states to adopt programs permitting individuals participating in "state sanctioned training" programs to receive unemployment insurance benefits. The latest proposal "can be a very parallel program," he said, observing that Congress ultimately codified changes allowing a link between participation in training and receipt of UI benefits.

By Deborah Billings

Message Sent To:

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11/09/99 06:30:57 PM

Record Type: Record

To: Seto Chung <seto-chung@dol.gov>, KILBANE GRACE A-ETA <GKILBANE@DOLETA.GOV>, "Hildebrand, Gerard W" <GHILDEBRAND@DOLETA.GOV>, Ann O'Leary/OPD/EOP

cc:
Subject: FW: yesterday's NY Times piece on using UI for family-leave incom e

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FYI...

From: Donna Lenhoff[SMTP:dlenhoff@nationalpartnership.org]
Sent: Tuesday, November 09, 1999 6:09 PM
To: Bergman Terry; Green Susan; Palast Geri; Ross Lisa; saltz-david@dol.gov
Subject: yesterday's NY Times piece on using UI for family-leave income

As many of you know, yesterday the Times published a piece by Robert Pear, "Dispute Over Plan to Use Jobless Aid for Parental Leave." I thought you'd be interested in seeing the letter to the editor that we sent today in response:

To: Letters to the Editor, The New York Times (fax 212/556-3622)
From: Judith L. Lichtman, President, National Partnership for Women & Families
Date: November 9, 1999
Re: Response to November 8 article,
ADispute Over Plan to Use Jobless Aid for Parental Leave@

In "Dispute Over Plan to Use Jobless Aid for Parental Leave" (Robert Pear, November 8), several employers and state officials insisted that letting working Americans collect unemployment insurance while on unpaid family leave would jeopardize the unemployment system. These knee-jerk scare tactics needlessly pit people temporarily out of work against each other, and they deliberately ignore the urgent need for income during family leave, the economic reality of state unemployment trust funds, and the weight of public opinion.

Although the unpaid leave provided by the Family and Medical Leave Act has helped many Americans, cost is the main reason why people who need leave do not take it. Nearly one in ten of those who take unpaid leave must resort to public assistance to make ends meet.

Meanwhile, many state unemployment funds are flush enough to cover not only unemployment in a recession, but also the cost of this small expansion --with no additional levies on employers. In Massachusetts, using unemployment insurance to provide some income during both family and medical leave is estimated to cost a mere $1.25 per covered worker per week. In fact, unemployment tax cuts sought by Massachusetts business interests could cover the entire cost.

No wonder most Americans --79% --support giving states the chance to extend unemployment or temporary disability insurance to workers on unpaid family leave. Given the strength of our economy and our unemployment system, there is no reason why so many working women and men must still "choose" between their families and financial crisis.

contact information: Judith L. Lichtman, President
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EXPANDING THE FAMILY AND MEDICAL LEAVE ACT TO HELP FAMILIES BALANCE WORK AND FAMILY RESPONSIBILITIES

January 27, 1998

> *In the new economy, most parents work harder than ever. They face a constant struggle to balance their obligations to be good workers -- and their even more important obligations to be good parents. The Family and Medical Leave Act was the very first bill I was privileged to sign into law as President in 1993. Since then, about 15 million people have taken advantage of it, and I've met a lot of them all across this country. I ask you to extend that law to cover 10 million more workers, and to give parents time off when they have to go see their children's teachers or take them to the doctor.*
>
> --President Bill Clinton
> State of the Union Address, 1/27/98

In his State of the Union Address, President Clinton called on Congress to extend the benefits of the Family and Medical Leave Act -- the first piece of legislation that the President signed into law -- to ten million more American workers.

BIPARTISAN REPORT SHOWS THE LAW IS WORKING. Since the Family and Medical Leave Act was enacted in 1993, at least fifteen million Americans have taken FMLA-covered leave. Today, workers are eligible for FMLA-protected leave if they work at a business with 50 or more employees and if they have worked at least twelve months and 1,250 hours for the employer. FMLA allows eligible employees to take up to 12 weeks unpaid, job-protected leave to care for a newborn or adopted child, to attend to their own serious health needs, or to care for a seriously ill parent, child or spouse. The bipartisan Commission on Leave -- chaired by Senators Craig and Dodd -- reported that the law is working:

- **67 million Americans -- over half of all workers -- are guaranteed they can take leave** from their job to care for a sick relative or a newborn child without fear of losing their job or health insurance.
- **Millions of Americans have taken leave since the enactment of FMLA.** During the 18-month period covered by the Commission's study (1/94 - 6/95), an estimated 12 million Americans took leave for FMLA-covered purposes.
- **40% of all workers think they will need to take leave** for a covered reason at some time in the next five years.
- **Despite its opponents' claims, compliance is easy and costs are low for most employers now covered by the law:**
  - **Nine out of ten employers find the law "very" or "somewhat" easy to administer.**
  - **Compliance entails either little or no costs for 89%-99% of businesses.**
  - **Smaller covered worksites found it easier to comply than larger sites.**
- **Some businesses have reported reduced employee turnover, enhanced productivity and improved morale** which they attribute to the Act.

NOW IS THE TIME TO EXPAND THE LAW TO COVER MORE WORKERS AND BETTER HELP WORKERS CARE FOR THEIR CHILDREN AND PARENTS. The President believes that it is time to expand the benefits of the law. He is urging the Congress to:

- **Enable workers at businesses with 25 or more workers to take unpaid, job-protected leave** -- current law covers businesses of 50 or more employees. Lowering the employer coverage threshold from 50 to 25 workers will mean that FMLA will cover up to ten million more American workers, allowing them to take up to twelve weeks unpaid, job-protected leave to care for a newborn or adopted child, to attend to their own serious health needs, or to care for a seriously ill parent, child or spouse.

- **Allow FMLA-eligible workers to take up to 24 hours of additional leave each year to meet specified family obligations**, including routine doctors appointments and parent-teacher conferences. Leave could be taken to: (1) participate in school activities, such as parent-teacher conferences; (2) accompany your child to routine dental or medical appointments; and (3) accompany an elderly relative to routine medical appointments or other professional services.

May 21, 1999

MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED

SUBJECT: POLICY ANNOUNCEMENTS FOR GRAMBLING SPEECH

Your Grambling State University commencement address this Sunday focuses on the need to empower parents with greater tools to balance their responsibilities to their jobs and their families. You will release a new study by the Council of Economic Advisors that analyzes the "time crunch" that parents increasingly feel. In addition, you will announce a new policy that addresses this challenge for federal workers. You will direct the Office of Personnel Management to revise its regulations to allow federal workers to use up to 12 weeks of accrued sick leave to care for a spouse, child, or parent with a "serious health condition," as defined under the Family and Medical Leave Act (FMLA). Currently, federal workers are allowed to use only 13 days of sick leave to care for an ill relative. This new policy will enable federal workers to use the sick leave they have earned on the job to take care of a loved one with a serious health condition.

The DPC also has led a policy process to examine non-legislative options for action to enable States on a voluntary basis to use their Unemployment Insurance systems to provide benefits to workers on some form of FMLA-covered leave. This year, in part responding to UI trust fund surpluses, four States – Massachusetts, Vermont, Maryland, and Washington – had bills introduced in their state legislatures that would do this. Three of the four States, anticipating conformity problems, have asked for comment from the Department of Labor (DOL). While many question the prospects of State legislative efforts, DOL has been pressured from Senators Kennedy, Dodd, Leahy, and Murray, the AFL-CIO, and women's groups to allow States this flexibility; business groups have weighed in strongly against opening up UI for this purpose.

Taking a non-legislative step to advance paid leave for American workers would be a way to enable workers to spend more time with their families during important times. The 1996 FMLA Study, *A Workable Balance*, found that lost wages are a significant barrier to taking leave, particularly for lower income workers. Even if no State immediately elected to use its UI system in this way (as many argue is very likely), advancing a proposal that would allow State experimentation would send a strong message that making leave affordable for workers is a new priority and that States should consider creative ways to provide paid leave benefits.

However, the challenges and risks to embracing an expansive change to the UI system are considerable. First, the expense of such a system, if ever fully implemented in all States, would be significant. It is not deficit neutral in the short term since taxes will not match benefit spending which is estimated to begin at $2 billion annually, but will likely be deficit neutral in the long term (10-20 years). Second, the breadth of purposes covered by the FMLA raises concerns. The majority of FMLA-covered leave is taken by workers caring for their *own* serious health conditions, and advancing a policy of providing UI benefits for this category of leave might transform the UI system into a paid sick leave program and lead to significant and regressive substitution effects (employers might abandon their sick leave benefit programs). Third, while today most UI tax collection is "experience rated" (meaning that employers pay into the system based on their workers' use of it), the cost of this new policy should be borne as broadly as possible to guard against possible employer discrimination against women of child-bearing age.

Your advisors have come to a consensus recommendation that would enable you to advance the policy of paid leave, while mitigating the potential for unintended negative consequences. You would direct the Department of Labor (1) to issue regulations and (2) develop model legislation that together would guide the States to confine the allowance of new UI benefits to parents following birth or adoption (and, perhaps, other analogous categories) and that would ensure that these new benefits are not "experience rated." The limitations of these new benefits primarily to leave following birth and adoption alleviates some concerns about expanding the uses of the UI system while responding to the area of greatest need. The 1996 FMLA report found that maternity-disability leave tends to be unpaid or partially paid, while all other types of leave are significantly more likely to be fully paid.

Ideally, DOL's regulation would be able to confine States to this kind of expansion of the UI system. The DOL Solicitor's Office is still reviewing whether it has the legal authority to do this; it may not be able to distinguish between parental leave and other FMLA categories. In this case, we would rely on model legislation to guide States toward this relatively modest expansion. Although this course has some risk (States, after all, could choose to ignore our direction and guidance and only Maryland of the four States previously mentioned would meet this construct), we are relatively confident that few States would elect to impose far greater burdens on their own UI systems.

This general approach would allow you to send a very clear signal about moving forward on unpaid leave for new parents, while also making clear that you will not countenance other, less appropriate uses of UI benefits. The action, however, will not be uncontroversial. Business groups and Republican allies on the Hill may object even to this limited expansion of the UI system and attempt to halt the regulatory process through appropriations riders.

All of the offices involved in this process – the DPC, NEC, OMB, DOL, the Department of Treasury, CEA, and First Lady's Office – agree that the recommendation presented in this memorandum is an innovative and responsible approach to addressing this issue.

____ **PROCEED**

____ **HOLD OFF AT THIS TIME**

____ **LET'S DISCUSS**

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May 21, 1999

DECISION MEMORANDUM FOR THE PRESIDENT

FROM: **BRUCE REED**

SUBJECT: **POLICY ANNOUNCEMENTS FOR GRAMBLING SPEECH**

Your Grambling State University commencement address this Sunday focuses on the need to empower parents in this new economy with greater tools to balance their responsibilities to their jobs and their families. You will release a new study by the Council of Economic Advisors that analyzes the "time crunch" that parents increasingly feel. In addition, you will announce a new policy that addresses this challenge for federal workers. You will direct the Office of Personnel Management to revise its regulations to allow federal workers to use up to 12 weeks of accrued sick leave to care for a spouse, child, or parent with a "serious health condition," as defined under the Family and Medical Leave Act (FMLA). Currently, federal workers are allowed to use only 13 days of sick leave to care for an ill relative. This new policy will enable federal workers to use the sick leave they have earned on the job to take care of a loved one with a serious health condition.

keep in part to UI trust fund surplus

The DPC has also led a policy process to examine non-legislative options for action to enable States on a voluntary basis to use their Unemployment Insurance systems to provide benefits to workers on some form of FMLA-covered leave. This year, four States with surpluses in their UI trust funds – Massachusetts, Vermont, Maryland, and Washington – had bills introduced in their State legislatures that would do this. Three of the four States, anticipating conformity problems, have asked for comment from the Department of Labor (DOL). While many question the prospects of State legislative efforts, DOL has been pressured from Senators Kennedy, Dodd, Leahy, and Murray, the AFL-CIO, and women's groups to allow States this flexibility; business groups have weighed in strongly against opening up UI for this purpose.

Taking a non-legislative step to advance paid leave for American workers would be a bold way to enable workers to spend more time with their families in important times. The 1996 FMLA Study, *A Workable Balance*, found that lost wages are a significant barrier to taking leave, particularly for lower income workers. Even if no State elected to use its UI system in this way (as many argue is very likely), advancing a proposal that would allow State experimentation would send a strong message that making leave affordable for workers is a new priority and that States should consider creative ways to provide paid leave benefits.

However, the challenges and risks to embracing an expansive change to the UI system are considerable. First, the expense of such a system, if ever fully implemented in all States, would be significant. It is not deficit neutral in the short term since taxes will not match benefit spending which is estimated to begin at $2 billion annually, but will likely be deficit neutral in the long term (10-20 years). Second, the breadth of purposes covered by the FMLA raises concerns. The majority of FMLA-covered leave is taken by workers caring for their *own* serious health conditions, and advancing a policy of providing UI benefits for this category of leave might transform the UI system into a paid sick leave program and lead to significant and regressive substitution effects (employers might abandon their sick leave benefit programs). Third, while today most UI tax collection is "experience rated" (meaning that employers pay into the system based on their workers' use of it), the cost of this new policy should be borne as broadly as possible to guard against possible employer discrimination against women of child-bearing age.

Your advisors have come to a consensus recommendation that would enable you to advance the policy of paid leave, while mitigating the potential for unintended negative consequences. You would direct the Department of Labor (1) to issue regulations and (2) develop model legislation that together would guide the States to confine the allowance of new UI benefits to parents following birth or adoption (and, perhaps, other analogous categories) and That would ensure~~s~~ that these new benefits are not "experience rated." Ideally, the binding regulations would confine States' authority in these important ways. The DOL Solicitor's office advises that while issuing regulations will enable us to set important parameters for State programs, we may not have this full authority (the question is under review). Even if we do not have this authority, however, we believe that we can accomplish much the same goal with a broader regulation encompassing all FMLA applications if (a) you focus on new parents in the ~~a~~ directive to DOL initiating the regulatory process, and (b) DOL accompanies the regulation with ~~this~~ model State legislation that guides States in program design.

The confinement of these new benefits to leave following birth and adoption not only helps to address some of the potential negative effects and criticisms of opening up the UI system, it also addresses an important challenge for new parents. The 1996 FMLA report found that maternity-disability leave tends to be unpaid or partially paid, while all other types of leave are significantly more likely to be fully paid. Still, this action may be seen on the Hill as an attempt to circumvent the legislative process to expand FMLA coverage, and it could result in bill riders (arguably a good fight to have).

This construct, however, does not mitigate many of the dangers of unintended consequences. We cannot ensure, for instance, that States would follow the model legislation we would propose and elect only to grant UI benefits to new parents, rather than the full category of FMLA covered leave (only Maryland of the four States previously mentioned would meet this construct). However, we would send clear signals about what the Administration believes is an appropriate new use of UI benefits and use the model State legislation to guide States in the right direction. Furthermore, you would only be on record as supporting this narrow new use of UI trust funds.

This option allows us the benefit of moving forward the important debate of making leave affordable for new parents, while also mitigating many potential downsides. All of the offices involved in this process – the DPC, NEC, OMB, DOL, the Department of Treasury, CEA, and the First Lady's Office – agree that this is an innovative and responsible approach to addressing this issue.

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May 21, 1999

DECISION MEMORANDUM FOR THE PRESIDENT

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SUBJECT: **POLICY ANNOUNCEMENTS FOR GRAMBLING SPEECH**

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The DPC has also led a policy process to examine non-legislative options for action to enable States on a voluntary basis to use their Unemployment Insurance systems to provide benefits to workers on some form of FMLA-covered leave. This year, four States with surpluses in their UI trust funds – Massachusetts, Vermont, Maryland, and Washington – had bills introduced in their State legislatures that would do this. Three of the four States, anticipating conformity problems, have asked for comment from the Department of Labor (DOL). While many question the prospects of State legislative efforts, DOL has been pressured from Senators Kennedy, Dodd, Leahy, and Murray, the AFL-CIO, and women's groups to allow States this flexibility; business groups have predictably weighed in strongly against opening up UI for this purpose.

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Your advisors have considered various ways of advancing the policy of paid leave while also mitigating the potential for unintended negative consequences. Ideally, we would issue a regulation that confines the allowance of new UI benefits to parents following birth or adoption (and, perhaps, other analogous, limited categories) and ensures that these new benefits are not "experience rated." The DOL Solicitor's office advises that, while issuing regulations will enable us to set important parameters for State programs, we may not have the authority to limit them in these ways (the question is under review). Even if we do not have this authority, however, we believe that we can accomplish much the same goal with a broader regulation encompassing all FMLA applications if (a) you focus on new parents in a directive to DOL initiating the regulatory process, and (b) DOL accompanies the regulation with model State legislation that guides States in program design, confining this program to new parents and ensuring that the new benefit is not "experience rated."

This construct does not mitigate ~~all~~ **many of the** dangers of unintended consequences. We cannot ensure, for instance, that States would follow the model legislation we would propose and elect only to grant UI benefits to new parents, rather than the full category of FMLA covered leave **(only Maryland of the four states previously mentioned would meet this construct)**. However, we would send clear signals about what the Administration believes is an appropriate new use of UI benefits and use the model State legislation to guide States in the right direction. Furthermore, you would only be on record as supporting this narrow new use of UI trust funds.

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5-10 yrs - State taxes - Over a long time - 10 yrs - 20 → def. neutral, but at some fed. ~~State~~

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a consensus rec to (1) direct DOL to (1) reg (2) model leg.

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(only MD of these States (which In fact MA, VT & WA does) meet this test)

This option allows us the benefit of moving forward the important debate of making leave affordable for new parents, while also mitigating many potential downsides. All of the offices involved in this process – the NEC, OMB, DOL, CEA, and the First Lady's Office – agree that this is an ~~exciting~~ innovative and responsible approach to addressing this issue.

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____ **LET'S DISCUSS**

Cong opp. or riders

leave benefit programs). Third, while today most UI tax collection is "experience rated" (meaning that employers whose workers claim UI benefits pay into the system proportionately), it would be important that the cost of this new policy is borne as broadly as possible to guard against unintended labor force repercussions on women of child-bearing age. ~~Fourth, paid FMLA leave could lead employers to police workers taking FMLA-covered leave to a new extent.~~ ~~[Finally, data collection of initial claims or maintaining DOL authority as best possible? Abuse?]~~

rewrite - awkward/unclear

Tone?

Y~~our advisors have devised a proposal to take significant action in this area, while mitigating the potential for unintended negative consequences~~. You would direct the Department of Labor to work with States on ways to use their UI systems to fund paid leave for parents *only following birth or adoption*. You might also ask DOL to consider whether other categories of leave would be appropriate, but birth and adoption ~~are two easily verifiable and attractive conditions to embrace~~. You would direct DOL to develop regulations that define the scope of States' authority to provide this new benefit and sets parameters for program design. In addition, DOL would develop model legislation that guides States in program development. To the fullest extent possible under executive authority, DOL would address ~~all~~ the issues discussed above in the regulation, which would be binding for States, ~~such as a separate data collection requirement~~. Remaining policy issues would be addressed in the model State legislation that would accompany the regulation.

Follow structure below, although may use some of this lang

No ital

This construct does not mitigate all danger of unintended consequences. We cannot ensure, for instance, that States would elect only to grant UI benefits to new parents, rather than the full category of FMLA covered leave. However, we would send clear signals about what the Administration believes is an appropriate new use of UI benefits and use the model State legislation to guide States in the right direction. Furthermore, you would only be on record as supporting this narrow new use of UI trust funds.

This option allows us the benefit of moving forward the important debate of making leave affordable for new parents, while also mitigating many potential downsides. Even if no State chooses to adopt this significant change in State UI policy, this step would be an important signal that States should be thinking of creative ways to provide paid leave benefits for American workers.

move up.

Even if

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(and perhaps other analogous + limited categories)

~~After considering this set of~~ ~~and other, most~~ ~~of your advisors~~ (name) ~~have agreed~~

Your advisors have considered various ~~One way~~ ways of advancing the policy of paid leave while mitigating ...

Ideally, we would issue a reg. confined to parents following birth... Dept of L's solicitor's office says that this may not have authority ... Think we can

DRAFT

May 20, 1999

DECISION MEMORANDUM FOR THE PRESIDENT

FROM: **BRUCE REED**

SUBJECT: **POLICY ANNOUNCEMENTS FOR GRAMBLING SPEECH**

Your Grambling State University commencement address this Sunday focuses on the need to empower parents in this new economy with greater tools to balance their responsibilities to their jobs and their families. You will announce a new study by the Council of Economic Advisors that analyzes the "time crunch" that parents increasingly feel. In addition, you will announce a new policy that addresses this challenge for federal workers. You will direct the Office of Personnel Management to revise its regulations to allow federal workers to use up to 12 weeks of accrued sick leave to care for a spouse, child, or parent with a "serious health condition," as that term is defined for the purpose of applying the Family and Medical Leave Act (FMLA). Currently, federal workers are allowed to use only 13 days of sick leave to care for an ill relative. This new policy will enable federal workers to use the sick leave they have earned on the job to take care of a loved one with a serious health condition.

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Need more here

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begin at

However, the challenges and risks to embracing an expansive change to the UI system are considerable. First, the expense of such ~~a~~ system, if ever fully implemented in all States, would be significant (estimates ~~range from~~ $2 t~~o $9 billio~~n annually). Second, the breadth of purposes covered by the FMLA raises concerns. The ~~vast~~ majority of FMLA-covered leave is taken by workers caring for their *own* serious health conditions, and advancing a policy of providing UI benefits for this leave might transform the UI system into a paid sick leave program and lead to significant and regressive substitution effects (employers may abandon their sick

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May 21, 1999

~~DECISION~~ MEMORANDUM FOR THE PRESIDENT

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Taking a non-legislative step to advance paid leave for American workers would be a bold way to enable workers to spend more time with their families ~~in~~ during important times. The 1996 FMLA Study, *A Workable Balance*, found that lost wages are a significant barrier to taking leave, particularly for lower income workers. Even if no State elected to use its UI system in this way (as many argue is very likely), advancing a proposal that would allow State experimentation would send a strong message that making leave affordable for workers is a new priority and that States should consider creative ways to provide paid leave benefits.

However, the challenges and risks to embracing an expansive change to the UI system are considerable. First, the expense of such a system, if ever fully implemented in all States, would be significant. It is not deficit-neutral in the short term since taxes will not match benefit

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spending, which is estimated to begin at $2 billion annually, but will likely be deficit neutral in the long term (10-20 years). Second, the breadth of purposes covered by the FMLA raises concerns. The majority of FMLA-covered leave is taken by workers caring for their *own* serious health conditions, and advancing a policy of providing UI benefits for this category of leave might transform the UI system into a paid sick leave program and lead to significant and regressive substitution effects (employers might abandon their sick leave benefit programs). Third, while today most UI tax collection is "experience rated" (meaning that employers pay into the system based on their workers' use of it), the cost of this new policy should be borne as broadly as possible to guard against possible employer discrimination against women of child-bearing age.

~~however~~, that we may not ~~have~~ authority to impose all these limits (although we clearly will have sufficient ~~authority~~ authority to set important rules and parameters for the state programs)

Your advisors have come to a consensus recommendation that would enable you to advance the policy of paid leave, while mitigating the potential for unintended negative consequences. You would direct the Department of Labor (1) to issue regulations and (2) develop model legislation that together would guide the States to confine the allowance of new UI benefits to parents following birth or adoption (and, perhaps, other analogous categories) and that would ensure that these new benefits are not "experience rated." Ideally, the binding regulations would confine States' authority in these important ways. The DOL Solicitor's office ~~advises that while issuing regulations will enable us to set important parameters for State programs, we may not have this full authority (the question is under review). Even if we do not have this authority, however, we believe that we can accomplish much the same goal with a relatively broader regulation encompassing all FMLA applications~~ if (a) you focus on new parents in the directive to DOL initiating the regulatory process, and (b) DOL accompanies the regulation with ~~this~~ model State legislation that guides States in program design.

our goals by combining

is still reviewing whether we would have ~~legal~~ regulatory authority to impose all these limits. * ~~Even if we do not, however, we believe~~

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This construct, ~~however,~~ does not ~~mitigate many of~~ entirely eliminate the dangers of unintended consequences. We cannot ensure, for instance, that States would follow the model legislation we would propose and elect only to grant UI benefits to new parents, rather than the full category of FMLA covered leave (only Maryland of the four States previously mentioned would meet this construct). However, we would send clear signals about what the Administration believes is an appropriate new use of UI benefits and use the model State legislation to guide States in the right direction. Furthermore, you would only be on record as supporting this narrow new use of UI trust funds.

Assuming we cannot limit ~~the~~ states by rule ~~to providing~~ UI benefits to new parents, a state could choose to ignore our model legislation

[The confinement of these new benefits to leave following birth and adoption not only helps to address some of the potential negative effects ~~and criticisms~~ of opening up the UI system, ~~it~~ but also addresses an important challenge for new parents. The 1996 FMLA report found that maternity-disability leave tends to be unpaid or partially paid, while all other types of leave are significantly more likely to be fully paid. Still, this action may be seen on the Hill as an attempt to circumvent the legislative process to expand FMLA coverage, and it could result in bill riders (arguably a good fight to have).]

This option allows ~~us the benefit of moving forward~~ us to take a significant step toward ~~the important debate of~~ making leave affordable for new parents, while ~~also~~ mitigating ~~many~~ potential downsides. All of the offices involved in this process – the DPC, NEC, OMB, DOL, ~~the~~ the Department of Treasury, CEA,

of expanding the uses of the UI system.

~~The continuum~~

The limitation of these new benefits primarily to leave following birth and adoption alleviates concerns about expanding the uses of the UI system while responding to the area of greatest need. The 1996 FMLA report found that maternity-disability leave tends to be unpaid or partially paid, while all other kinds of leave are much more likely to be fully paid.

Ideally, the ~~regulations~~ DOL's regulations ~~would issue~~ would ~~itself~~ be able to confine states to this kind of expansion of the UI system. The DOL Solicitor's Office is still reviewing whether it has legal authority to do this; it may not be able to distinguish between parental leave and other FMLA categories. In this case, we would rely on the model legislation to guide states toward this relatively modest expansion. Although ~~not eliminating the risk of~~ this course has some risk (states, after all, could choose to ignore our direction and guidance), we are relatively confident that few states would choose to impose far greater burdens on their own UI systems.

This general approach would allow you to send a very clear signal about moving forward on paid leave for new parents, while also making clear that you will not countenance other, less appropriate uses of ~~your~~ UI benefits. The action, however, will not ~~All of the offices~~ be uncontroversial. Business groups and their Republican allies on the Hill may object to ~~the regulation~~ even this limited expansion of the UI system and attempt to halt the regulatory process through appropriations riders.

All of the . . .

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May 21, 1999

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Taking a non-legislative step to advance paid leave for American workers would be a bold way to enable workers to spend more time with their families in important times. The 1996 FMLA Study, *A Workable Balance*, found that lost wages are a significant barrier to taking leave, particularly for lower income workers. Even if no State elected to use their UI system in this way (as many argue is very likely), advancing a proposal that would allow State experimentation would send a strong message that making leave affordable for workers is a new priority and that States should be thinking of creative ways to provide paid leave benefits ~~for workers~~.

However, the challenges and risks to embracing an expansive change to the UI system are considerable. First, the expense of such a system, if ever fully implemented in all States, would be significant (estimates begin at $2 billion annually). Second, the breadth of purposes covered by the category of FMLA raises concerns. The majority of FMLA-covered leave is taken by workers caring for their *own* serious health conditions, and advancing a policy of providing UI benefits for this leave might transform the UI system into a paid sick leave program, ~~and~~ leading to significant and regressive substitution effects (employers may abandon their sick leave benefit programs). Third, while today most UI tax collection is "experience rated" (meaning that employers pay into the system based on their workers' use of it), the cost of this new policy should be borne as broadly as possible to guard against unintended labor force repercussions ~~on~~ against women of child-bearing age.

Your advisors have considered various ways of advancing the policy of paid leave while also mitigating the potential for unintended negative consequences. Ideally, we would issue a regulation that confines the allowance of new UI benefits to parents following birth or adoption (and, perhaps, other analogous, limited categories) and ensuring that these new benefits are not "experience rated." The DOL Solicitor's office advises that while regulations provide us with significant ~~leverage~~ ability to set parameters for State programs, we may not have the authority to limit their scope as much as we would like. ~~Nonetheless~~, we believe that we can accomplish much the same thing with a broader regulation encompassing all FMLA applications <u>if</u> (a) you focus on new parents in ~~the Presidential~~ your directive to DOL initiating the regulatory process, and (b) DOL accompanies the regulation with model State legislation confining State programs to new parents and ensuring that the new benefit is not "experience rated."

This construct does not mitigate all danger of unintended consequences. We cannot ensure, for instance, that States would follow the model legislation we would propose and elect only to grant UI benefits to new parents, rather than the full category of FMLA covered leave. However, we would send clear signals about what the Administration believes is an appropriate new use of UI benefits and use the model State legislation to guide States in the right direction. Furthermore, you would only be on record as supporting this narrow new use of UI trust funds.

This option allows us the benefit of moving forward the important debate of making leave affordable for new parents, while also mitigating many potential downsides. All of the offices involved in this process – the NEC, OMB, DOL, CEA, and the First Lady's Office – agree that this is an exciting and responsible approach to addressing this issue.

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Even if we do not have broad auth, however,

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____ **LET'S DISCUSS**

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May 20, 1999

DECISION MEMORANDUM FOR THE PRESIDENT

FROM: **BRUCE REED**

SUBJECT: **POLICY ANNOUNCEMENTS FOR GRAMBLING SPEECH**

Your Grambling State University commencement address this Sunday focuses on the need to empower parents in this new economy with greater tools to balance their responsibilities to their jobs and their families. You will announce a new study by the Council of Economic Advisors that analyzes the "time crunch" that parents increasingly feel. In addition, you will announce a new policy that addresses this challenge for federal workers. You will direct the Office of Personnel Management to revise its regulations to allow federal workers to use up to 12 weeks of accrued sick leave to care for a spouse, child, or parent with a "serious health condition," as that term is defined for the purpose of applying the Family and Medical Leave Act (FMLA). Currently, federal workers are allowed to use only 13 days of sick leave to care for an ill relative. This new policy will enable federal workers to use the sick leave they have earned on the job to take care of a loved one with a serious health condition.

The DPC has also led a policy process to examine non-legislative options for action to enable States on a voluntary basis to use their Unemployment Insurance systems to provide benefits to workers on some form of FMLA-covered leave. This year, four States with surpluses in their UI trust funds – Massachusetts, Vermont, Maryland, and Washington – had bills introduced in their State legislatures that would do this. Three of the four States, anticipating conformity problems, have asked for comment from the Department of Labor (DOL). While many question the prospects of State legislative efforts, DOL has been pressured from Senators Kennedy, Dodd, Leahy, and Murray, the AFL-CIO, and women's groups to allow States this flexibility; business groups have predictably weighed in strongly against opening up UI for this purpose.

Taking a non-legislative step to advance paid leave for American workers would be a bold way to enable workers to spend more time with their families in important times. The 1996 FMLA Study, *A Workable Balance*, found that lost wages are a significant barrier to taking leave, particularly for lower income workers. Even if no State elected to use their UI system in new this way (as many argue is very likely), advancing a proposal that would allow States to experiment in this way would ~~carry~~ send a strong message that making leave affordable for workers is a priority and that States should be thinking of creative ways to provide paid leave benefits for workers.

However, the challenges and risks to embracing an expansive change to the UI system are considerable. First, the expense of such a system, if ever fully implemented in all States, would be significant (estimates begin at $2). Second, the breadth of purposes covered by the FMLA raises concerns. The ~~vast~~ majority of FMLA-covered leave is taken by workers caring for their *own* serious health conditions, and advancing a policy of providing UI benefits for this leave might transform the UI system into a paid sick leave program and lead to significant and regressive substitution effects (employers may abandon their sick leave benefit programs). Third, while today most UI tax collection is "experience rated" (meaning that employers ~~whose workers claim UI benefits pay into the system proportionately~~ pay into the system based on their workers' use of it), ~~it would be important that the cost of~~ the this new policy ~~is~~ should be spread borne as broadly as possible to guard against unintended labor force repercussions on women of child-bearing age.

Your advisors have considered various ways of advancing the policy of paid leave while also mitigating the potential for unintended negative consequences. Ideally, we would issue a regulation that confines the allowance of new UI benefits to parents following birth or ~~adoption~~ make new benefit (and, perhaps, other analogous, limited categories) and ensuring that the pro costs ~~of~~ such a program are ~~born by all employers (i.e. not~~ "experience rated"~~)~~. The DOL Solicitor's office advises that while ~~regulations~~ provide us with significant power to ~~ability~~ set parameters for State programs, we may not have th~~is~~e authority to limit the'ir scope as much as we would like. Nonetheless, we believe that we can accomplish much the same thing with a broader regulation encompassing all FMLA applications <u>if</u> (a) you focus on new parents in the Presidential Directive to DOL initiating the regulatory process, and (b) DOL accompanies the regulation with model State legislation confining State programs to new parents and ensuring that the new benefit is not "experience rated."

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This option allows us the benefit of moving forward the important debate of making leave affordable for new parents, while also mitigating many potential downsides. All of the offices involved in this process – the NEC, OMB, DOL, CEA, and the First Lady's Office – agree that this is an exciting and responsible approach to addressing this issue.

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____ LET'S DISCUSS

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May 20, 1999

Too often, they exhaust those

DECISION MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED

SUBJECT: POLICY ANNOUNCEMENTS FOR GRAMBLING SPEECH

Your commencement ~~speech~~ address this Sunday ~~at~~ Grambling State University focuses on the need to empower parents in this new economy with greater tools to balance their responsibilities to their jobs and their families. You will announce a new study by the Council of Economic Advisors that analyzes the "time crunch" that parents increasingly feel. In addition, you will announce a new policy that addresses this challenge for federal workers. You will direct the Office of Personnel Management to revise its regulations to allow federal workers to use up to 12 weeks of accrued sick leave to care for a spouse, child, or parent with a "serious health condition," as that term is defined for the purpose of applying the Family and Medical Leave Act (FMLA). Currently, federal workers are allowed to use only 13 days of sick leave to care for an ill relative. This new policy will enable federal workers to use the sick leave they have earned on the job to take care of a loved one with a serious health condition.

That would do this.

The DPC has also led a policy process to examine non-legislative options for action to enable States on a voluntary basis to use their Unemployment Insurance systems to provide benefits to workers on some form of FMLA-covered leave. This year, four States with surpluses in their UI trust funds – Massachusetts, Vermont, Maryland, and Washington – had bills introduced in their State legislatures to ~~use Unemployment Insurance (UI) to pay individuals~~ on ~~some form of FMLA-covered~~ leave. Three of the four States, anticipating conformity problems, have asked for comment from the Department of Labor (DOL). While many question the prospects of State legislative efforts, DOL has been pressured from Senators Kennedy, Dodd, Leahy, and Murray, the AFL-CIO, and women's groups to allow States this flexibility; business groups have predictably weighed in strongly against opening up UI for this purpose.

Taking a non-legislative step to advance paid leave for American workers would be a bold way to enable workers to spend more time with their families in important times. # The 1996 FMLA Study, *A Workable Balance*, found that 40 percent of leave-takers report that they cut their leave short due to lost wages, and 64 percent of respondents who did not take leave when needed (3.4 percent of respondents) cite cost as a barrier. Furthermore, the study found that lower-skilled, poorer workers are far less likely to have any wage replacement for FMLA leave; for instance, hourly employees, who are more likely to have lower incomes and lower levels of education, are four times as likely as salaried leave-takers to report receiving no pay during their leaves. And, most of the wage replacement that workers do report for their FMLA leave is in the form of sick, personal, or vacation pay.

lost wages are a significant barrier to taking leave, particularly for lower income workers.

Making empl. bear the cost of this new benefit could lead empl. to

However, the challenges and risks to embracing an expansive change to the UI system are considerable. First, the expense of such a system, if ever fully implemented in all States, would be significant (~~ranging~~ estimates from \$2 to \$9 billion annually) ~~in the form of higher tax on business)~~. Second, the breadth of purposes covered by the FMLA raises concerns. The vast majority of FMLA-covered leave is taken by workers caring for their *own* serious health conditions, and advancing a policy of providing UI benefits for this leave might transform the UI system into a paid sick leave program and lead to significant and regressive substitution effects (employers may abandon their sick leave benefit programs). ~~Covering sick leave could also lead to abuse of this policy~~. Third, paid FMLA leave could lead employers to police workers taking FMLA-covered leave to a new ~~extent. Fourth~~, while today most UI tax collection is "experience rated" (meaning ~~that~~ employers whose workers claim UI benefits pay into the system proportionately), it would be important that the cost of this new policy is borne as broadly as possible to guard against unintended labor force repercussions on women of child-bearing age. [Finally, data collection of initial claims or maintaining DOL authority as best possible? Abuse?]

Your advisors have devised a proposal to take significant action in this area, while also mitigating the potential for unintended negative consequences. You would direct the Department of Labor to work with States on ways to use their UI systems to fund paid leave for parents only following birth or adoption. (You might also ask DOL to consider whether other categories of leave would be appropriate). In so doing, you would direct DOL to develop regulations that define the scope of States' authority to provide this new benefit and ~~sets~~ set parameters for ~~their action~~ program design. In addition, DOL would develop model legislation that guides States in program development ~~in implementing this change~~ developing their program. To the fullest extent possible, DOL would address ~~in~~ the issues discussed above in the regulation, such as a separate data collection requirement. Remaining policy issues would be addressed in the model State legislation that would accompany the regulation. which would be binding for States.

This construct does not mitigate all danger of unintended consequences. We cannot ensure, for instance, that, ~~to the extent States would adopt any of this policy,~~ States would elect only to grant UI benefits to new parents, rather than the full category of FMLA covered leave. However, we would send clear signals about what the Administration believes is an appropriate new use of UI benefits and use the model State legislation to guide States in the right direction. Furthermore, you would only be on record as supporting this narrow new use of UI trust funds.

This option allows us the benefit of moving forward the important debate of making leave affordable for new parents, while also mitigating many potential downsides ~~of such an~~. Even if no State chooses to adopt this significant change in State UI policy, this step would be an important signal that States should be thinking of creative ways to provide paid leave benefits for American workers.

under executive authority

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____ LET'S DISCUSS

John Frazier
- Chuck Marr
- Barbara Chow
- Larry Matlack
- Mark McClellan
- Emil
- Barry White
CEA XX

Barry White
10/22/98 07:44:01 PM

Record Type: Record

To: Nicole R. Rabner/WHO/EOP
cc: Larry R. Matlack/OMB/EOP
bcc:
Subject: Re: Paid Parental Leave

Nice to know you are still in there pitching. I suppose for a first meeting, it would be me and Larry Matlack and a couple of his examiners (we'll pick them), and at the policy level, Chow. Pls invite Barbara to the first discussion.

To be sure to get us, don't schedule your meeting Monday 9-12 or 2:30-4; Tuesday 10-1 or 3:30 - 4:30; Wednesday 9-11:30 or 2-3. There is lots of '00 Budget stuff going on.

Nicole R. Rabner

Nicole R. Rabner

10/22/98 06:53:04 PM

Record Type: Record

To: Barry White/OMB/EOP@EOP
cc:
Subject: Paid Parental Leave

Barry, we are exploring, in the "new ideas" category of budget-related initiatives, a paid parental leave proposal with the DOL using the UI system (you'll remember this proposal discussed in conjunction with the child care initiative last year this time). Early next week, we plan to call a preliminary meeting to discuss the proposal, which, I suspect, will help us prepare for a DPC Deputies or Principals meeting in the coming weeks. Who at OMB should we include in the preliminary discussion meetings?

→ 3pm ~~Wed~~ Thursday

JF 10/7/98

January 5, 1998 Final

MEMORANDUM FOR EMIL PARKER
AMY FINKELSTEIN
GUS GAUCHER

FROM: JOHN FRASER

SUBJECT: FMLA Estimates

Per this morning's request, here is an estimate of the number of covered and eligible leave takers whose longest leave was for maternity-disability or care of a newborn, adopted or foster child whose leave was over 12 weeks. This comes from the 18 - month long FMLA survey.

Estimated are (1) the number of covered employees whose longest leave was for (a) maternity disability or (b) care for a newborn, adopted or foster child; (2) the number of these leave takers who took leave for more than 12 weeks (85+ days); (3) an adjustment to factor out those leave takers who, although at a covered site, would have been ineligible for FMLA; and (4) an estimate of the number of covered and eligible leave takers whose longest leave was for maternity-disability or care of a newborn, adopted or foster child whose leave was over 12 weeks.

A. Maternity-Disability	B. Newborn, Adopted, Foster	Totals
1. From table 5B covered worksites		
563,153	1,972,861	17.1 % of all leave
2. From table 5D leave takers at covered worksites taking more than 85 days		
x 0.424	x 0.162	
238,777	319,603	
3. Eligibility Adjustment*		
x 0.83	x 0.83	
4. Estimated leave takers		
198,185	265,270	**463,000**

* eligibility adjustment is an average for all covered leave takers and does not distinguish differences in eligibility among those taking parental leave and other types of leave.

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F 11/26/97

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11/26/97 3:00 PM

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Paid-Leave Plan for the Birth or Adoption of a Newborn

Thanks to the Family Medical Leave Act, signed into law by President Clinton on February 5, 1993, millions of Americans can take unpaid leave from their jobs (up to 12 weeks per year) to care for an infant after birth or adoption -- and know that a job will be waiting for them when they return. But many of those workers are unable to take the full amount of FMLA-protected time they need, because they simply can't afford to go that long without a paycheck. And other workers who, although not protected by FMLA, have access to unpaid leave can face the same dilemma.

To address this obstacle, the Administration could propose the creation of a New Parent Paid Leave Plan, to provide eligible parents with partial wage replacement for up to six weeks. While careful consideration needs to be given to the effect of such a program on employer benefit plans, design elements of a workable program would include:

- Income eligibility: Eligibility to receive funds would be tied to income. The simplest approach would be to set a family income cap -- only parents with family earnings below a set amount would be eligible to receive new-parent paid leave. An alternative but more complicated approach would be to vary the benefit amount by family income.

  Pros: - Assists the families that are most likely to face a financial barrier to taking family leave for a newborn/adopted infant.

  - Limiting eligibility to workers protected by the FMLA would exclude those most likely to benefit from such a program.

- Workforce attachment:

  1. Prior to receiving benefit: New parent paid leave would be available to those qualifying parents who are authorized to work in the U.S. and have been in the workforce — part time or full time -- for each of the fifty-two weeks prior to giving birth/adopting.

  Pros: - Funds available to all working parents, regardless of FMLA coverage
  - Links eligibility to connection to the workplace and to the concept of wage replacement.
  - One year requirement demonstrates pre-pregnancy workforce participation.
  - Minimum standard for amount of time in the workforce reflects FMLA concept and excludes from eligibility those whose workforce

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participation was minimal.
- If UI administers the program, they will have access to employment information for all UI-covered workers

Cons: - If UI administers the program, an alternative method of confirming eligibility would be necessary for non-UI covered workers (e.g., self-employed, independent contractors, etc.) -- for example, proof of receipt of wages during the time period. This would add cost to the proposal.

- If UI administers the program, it may be simpler if the eligibility requirement is the same as for UI - work in roughly 20 of the preceding 52 weeks. (Note, however, that states have discretion to have additional UI qualifying requirements.)

Note: If data indicates that workers most likely to need paid leave have generally worked for less than one year, we should change the one-year requirement as appropriate.

2. After receiving benefit: Workers could receive benefits regardless of whether they intend to return to their job, or whether they in fact return.

Pros: - Eligibility based on return to employment or the workforce would require a penalty/recovery scheme for those who -- for whatever reason -- fail to return to work in a timely manner.

- Commission data indicates that lower income workers, the ones most likely to need wage-replacement, are the least likely to return to work following the birth or adoption of an infant.

Cons: - Parents who voluntarily leave their jobs to care for newborn/adopted infants have presumably decided they are not financially dependent upon their wage, and therefore do not need a wage replacement benefit. (The lower any income requirement is set, the less this problem exists -- fewer eligible parents will be financially able to quit their job.)

- Benefit duration and timing: Benefits would be available only for the first six weeks following birth/adoption. A worker with access to employer-paid leave who also wanted to participate in federal paid leave would have to use the federal benefit before using employer-paid leave.

Pros: - Simpler to administer
- Minimizes disincentives on employers who might otherwise provide benefits or more generous benefits.

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Cons: - To the extent that an employer benefit plan limits post-pregnancy use of sick leave to a period immediately following birth, female workers with accumulated paid sick leave who give birth may not be able to use paid sick leave after six weeks.

- May not cover time at home for newborn babies/mothers who have extended hospital stays.

- Administration/Implementation: The program would be administered, and the benefits paid, through the state UI system. State participation would not be mandatory.

  Pros: - State employment security agencies (SESAs) have experience in making payments as agents of the Federal government in the case of other programs, such as Trade Readjustment Allowances. In FY 98 there are about 40,000 TRA recipients collecting about $230M in benefits at an administrative cost of about $5 M per year, which would provide an order of magnitude in evaluating this proposal.

  - States are able to perform these functions under agreement with a Federal agency assuming suitable arrangements can be made to meet the cost of administering this separate payment system.

  Cons: - To the extent that SESAs are asked to make eligibility determinations that differ from those under the UI system, staff training and administrative costs would rise substantially.

  - Since the costs of the benefits would be coming from a fund other than the State trust fund (unless Federal law is amended), it may be expensive for the States to establish the alternative procedures necessary to make the payments.

  - States are currently underfunded for UI administration costs and would not be able to embark on a new program without some funding guarantees.

- Benefit amount: Simplest approach would be to set one benefit amount available to all eligible workers: $200 per week (based on UI average benefit of $190.19, which represents 35% of the average weekly wage). Alternatives could include having one or two benefit levels, keyed to income ranges.

fu 11/26/97

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POTENTIAL CHANGES FOR FMLA

ADD PAID LEAVE COVERAGE FOR 6 WEEKS OF NEWBORN CARE

Maximum number of women 3,378,000 with newborns in a given year (CPS)
Assume that 1,834,000 will return to work (LFPR of those with <1 year olds)
Assume between 20-33% will be ineligible (tenure data) [will be checking lower bound with work experience data]
Using bounds implies between 1,467,200 and 1,228,780 would make tenure cut and may want leave to take care of infant
Without means testing implies cost of (at $200x6weeks=1200 each mother) = $1,760,640,000 and $1,474,536,000 (w/o administrative costs)
How many of these women would meet an income eligibility cut?
Median income for families with children under 3 -- $36,626. If this was the cut off than ½ of potential above would not qualify so cost would be half -- so between $880,320,000 and $737,268,000.
Add administrative costs of approximately $200,000 ($60m to change UI base period and $140m to add payment system to UI [no basis for this number]) and proposal costs out at $1B.

$800?
$60?

assumes all eligible take full 6 wks?

cut

DOL looking at

EXTEND COVERAGE FROM 50 TO 25 PERSON ESTABLISHMENTS

EXTEND BENEFITS FROM 12 WEEKS TO 26 WEEKS

Unemp Ins. system

6 wks

Bergman Terry <bergman-terry@dol.gov>
11/12/99 01:05:45 PM

Record Type: Record

To: Ann O'Leary/OPD/EOP

cc:

Subject: The Birth and Adoption regs

I don't know if you saw the Daily labor report article today on the upcoming regs, but I thought I would flag it for you. In addition, I understand that Robert Pear of the NY Times has asked to speak to our Solicitor today on the issues raised in his earlier article.

We're concerned that these press reports (which key on business oppositions and the reversal of our old position on "able and available") are framing the debate on the regs, when the proposed rules themselves would answer a number of the more difficult questions. I was at the dentist this morning when this issue came up in a staff meeting, but I understand that our Deputy COS was going to make some calls to the White House (my guess is through Cabinet Affairs) trying to get clarification on the timing of the regs.

We really want to get them out....can you give me any update on the thinking about an event? Without WH clearance our Dep Sec will not allow the package to be signed and sent to the Federal Register.

HUMAN
RIGHTS
CAMPAIGN

919 18th Street, NW
Washington, D.C. 20006
phone 202 628 4160
fax 202 347 5323

MEMO

DATE: May 26, 1999

TO: **Winnie Stachelberg, Political Director**

FROM: **Seth Kilbourn, Deputy Director for Health and Family Policy**
Barbara Menard, Senior Policy Advocate

SUBJECT: **Federal Government Family-Friendly Workplace Policies**

In the past month, the President has announced two new policies that will greatly assist Federal employees who have a family member with a serious medical condition. We applaud the President's efforts to set an example for the private sector by creating new family-friendly workplace policies for Federal government employees. We are concerned, however, that if these policies are specifically linked to a particular definition of family, many federal employees will be unnecessarily denied those benefits.

Last week, the President proposed to extend from 13 days to 12 weeks the amount of accrued sick leave a Federal government employee may take in order to care for a sick family member. (See attached Executive Memorandum) The 12-week cap appears to be based on the Family and Medical Leave Act (FMLA) and the President's memorandum specifically refers to "serious illness as defined by the FMLA". Our concern is that FMLA, which defines a spouse as a "husband or wife as recognized by a state", will be similarly used to define the particular family members for whom a Federal employee can take his or her sick leave.

It is our understanding that the current policy allowing the use of 13 days of sick leave to care for an ill family member is governed by each agency individually and is not restricted by definitions in the FMLA. Thus, it is possible that employees whose agencies had previously allowed them to take sick time to care for an ill partner may not even be able to use <u>any</u> sick time to care for their partner under the new policy.

The Office of Personnel Management has not yet proposed formal regulations that would implement the President's Executive Memorandum. We recommend that the Domestic Policy Council to work closely with OPM to ensure that, at the very least, Federal employees do not take a step backward in their ability to care for their families under this new policy. Further, we would like to encourage the DPC to ensure that the new 12-week sick leave expansion include a more broad definition of family m ember than what is currently in the FMLA. Again, while we applaud the President's efforts to make the Federal government a more family-friendly workplace, we want to ensure that <u>all</u> employees are included in that effort.

On a separate but related issue, we also recommend encouraging the DPC to work with OPM on the definition of "eligible relative" in implementing the President's proposal to allow Federal government employees to purchase group long-term care insurance for themselves and eligible relatives. The authorizing legislation for this program includes language that allows an "eligible relative" to be defined by the Office of Personnel Management or by the individual insurance companies with which the Federal government chooses to contract. We sincerely hope that OPM and at least one of the insurance companies available for this program will define "eligible relative" appropriately.

We recommend a meeting with key White House staff next week (anytime June 1 – 4) to discuss these two policies and the broader issue of definitions of family during the formulation of future family-friendly initiatives.

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release May 24, 1999

May 24, 1999

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: New Tools to Help Parents Balance Work and Family

Since I became President, my Administration has worked hard to make sure that parents have the tools they need to meet their obligations at home and at work. I am proud that the very first bill I signed into law was the Family and Medical Leave Act (FMLA). Since 1993, the FMLA has allowed millions of Americans to take up to 12 weeks of unpaid leave -- without fear of losing their jobs -- to care for a newborn or adopted child, to attend to their own serious health needs, or to care for a seriously ill parent, son, daughter, or spouse. Too many American workers, however, have been unable to take the leave they need because they simply cannot afford to go without a paycheck.

Therefore, I am taking new steps toward enabling workers to take the leave they need.

First, I hereby direct the Secretary of Labor to propose regulations that enable States to develop innovative ways of using the Unemployment Insurance (UI) system to support parents on leave following the birth or adoption of a child. In addition, I direct the Secretary to develop model State legislation that States could use in following these regulations. In this effort, the Department of Labor is to evaluate the effectiveness of using the UI system for these or related purposes. In a 1996 study conducted by the Commission on Family and Medical Leave, lost pay was the most significant barrier to parents taking advantage of unpaid leave after the birth or adoption of a child. This new step will help to give States the ability to eliminate a significant barrier that parents face in taking leave.

Second, I direct the Director of the Office of Personnel Management to propose government-wide regulations to allow Federal employees to use up to 12 weeks of accrued sick leave each year to care for a spouse, son, daughter, or parent with a "serious health condition," as that term is defined for the purpose of applying the FMLA. Currently, the amount of sick leave that can be used to care for a family member who is ill is limited to 13 days each year for most Federal employees. By enabling Federal workers to use the sick leave they have earned, we will eliminate a significant barrier to caring for a family member with a serious health condition. The use of paid sick leave under this policy will be subject to the same conditions as the use of unpaid leave for these purposes under the FMLA. In particular, the same notification and certification requirements that govern the use of unpaid leave to care for a spouse, son, daughter, or parent under the FMLA will apply to Federal employees who use paid sick leave for this purpose. I believe the Federal Government has an important role to play in setting an example for the Nation.

Finally, I direct the Director of the Office of Personnel Management to establish an Interagency Family Friendly Workplace Working Group within 90 days to promote, evaluate, and exchange information on Federal family-friendly workplace initiatives. I also direct the head of each executive department and agency to appoint a family-friendly work/life coordinator to serve as a member of this Working Group. Working Group representatives will be responsible for making sure that Federal employees are aware of the full range of options available to them to meet their personal and family responsibilities (such as alternative work schedules, telecommuting, part-time employment, and job sharing).

The coordinators also will provide employees with information about child and elder care resources currently available in their communities, and establish and promote parent support groups, elder care support groups, and on-site nursing mothers' programs.

WILLIAM J. CLINTON

# # #

PRESIDENT CLINTON: HELPING PARENTS MEET THEIR RESPONSIBILITIES AT HOME AND AT WORK

May 23, 1999

Today, in a commencement speech at Grambling State University, President Clinton announced new steps to help workers meet their responsibilities to their jobs, and their more important responsibilities to their families. The President put forward two new proposals to make leave more affordable for American workers. In addition, he released a new report that examines the "time crunch" that parents increasingly feel as they struggle to balance their responsibilities at home and at work.

Working to Make Parental Leave More Affordable. A 1996 study by the Commission on Family and Medical Leave found that loss of wages was the most significant barrier to parents taking advantage of unpaid leave following the birth or adoption of a child. Today, President Clinton directed the Secretary of Labor to propose new regulations and model state legislation to enable states to develop innovative ways of using the Unemployment Insurance (UI) system to support parents taking leave to care for a newborn or adopted child. Several States recently have asked the Administration whether they could use the UI system for this purpose consistent with federal law. The new regulations will authorize this expansion of the UI system, thereby allowing states that wish to use unemployment insurance to assist new parents to put their plans into effect.

Enabling Federal Workers to Take Paid Leave to Care for Sick Family Members. In an effort to set an example for all employers, President Clinton also today directed the Office of Personnel Management (OPM) to revise its government-wide regulations to allow federal employees to use up to 12 weeks of accrued sick leave each year to care for a spouse, son, daughter, or parent with a "serious health condition," as that term is defined for the purpose of applying the Family and Medical Leave Act. Currently, the amount of sick leave that can be used to care for a family member who is ill is limited to 13 days each year for most federal employees. By enabling federal workers to use more of the sick leave they have earned, according to conditions established by the FMLA, this measure will remove a significant barrier to caring for an ill family member. The President also has directed the OPM to establish an Interagency Family Friendly Workplace Working Group to develop, promote, and evaluate federal family-friendly workplace initiatives. The President previously has taken other actions to ensure that federal government is a model employer, including: allowing federal employees to donate annual leave to other employees; expanding flexible family-friendly work arrangements, such as job sharing, career part-time employment, alternative work schedules, telecommuting, and satellite work locations; and directing improvements in the quality of federally sponsored child care.

A New Study on the Amount of Time Available for Families. The President released a report by his Council of Economic Advisers (CEA) today that details the factors that have led to decreased amounts of time available for parents to spend with their children. The report, *Families and the Labor Market, 1969-1999: Analyzing the "Time Crunch,"* demonstrates that the increase in hours mothers spend in paid work, combined with the shift toward single-parent families, has resulted in families experiencing an average decrease of 22 hours a week (14 percent) in time that parents spend with their children. The report concludes that the increased time at work among parents requires policy-makers to seek new ways to promote strong families, including greater flexibility in paid work hours, more affordable child care, better support for families with low-wage earning parents, and methods for encouraging two-parent families to form and stay together.

Advancing An Agenda To Help Parents Balance Their Responsibilities At Home And At Work. In his balanced budget request, the President put forward a bold agenda to provide families with greater tools to meet their responsibilities at home and at work. This agenda includes: an historic initiative to make child care better, safer, and more affordable for working families; a tripling of our investment in after-school programs through the 21st Century Community Learning Center program; a new tax credit to help Americans struggling with long-term care costs; and proposals to expand the Family and Medical Leave law to cover more workers and allow leave for more parental activities, including parent-teacher conferences and routine doctor's visits.

Notification of key stakeholders on UI-FMLA announcement

I. Advance Notification by White House

Senator Edward Kennedy -- Massachusetts is one of 4 states with pending legislation. The Senator has written to the Secretary on the issue and staff (Michael Myers) has followed this issue aggressively.

Senator Chris Dodd -- Served on Family and Medical Leave Commission which recommended use of UI for paid leave; co-signed Kennedy letter to Secretary Herman.

Senator Patrick Leahy -- Has supported VT legislation in past two legislative sessions; has written to Secretaries Reich and Herman; previous DOL letter raised conformity issues and suggested that the State use the separate fund method.

Senator Patty Murray -- Has also written on this subject.

Leadership -- courtesy calls to Senator Daschle and Rep. Gephardt are also recommended.

Labor -- Gerry Shea of the AFL-CIO

Women's groups -- Judith Lichtman of the National Partnership for Women and Families.

NOTE: The likely reaction from Senator Kennedy and other advocates will be twofold:
1) Policy does not go as far as they would have liked (States could not adopt pending legislation and must await DOL regulations, which would also limit the scope of the experiment.)
2) They had expected to be consulted on the range of options prior to a policy announcement.

II. Advance Notification by DOL

Rep. Nancy Johnson -- Secretary Herman has an appointment with the Ways & Means Human Resources Subcommittee Chair next week on the issue of the proposed Welfare-to-Work reauthorization, and significant good will could be lost if a heads-up to staff is not provided. Ways & Means staffer Ron Haskins, who has advocated *stregthening the work requirements in UI* will likely oppose this policy, especially given the opposition of employer groups.

Rep. Ben Cardin -- Staff call also recommended. Not only is he the subcommittee ranking minority member, but Maryland is one of the states where legislation has been filed and reaction from parties on both sides of the issue is likely to be swift. We do not know if he has taken a position on the state legislation.

III. Monday Follow-up by DOL

Remaining authorizers; key members: Senators Roth and Moynihan; Reps Levin and English (sponsors of Administration UI Reform bill)

State groups -- Interstate Conference of Employment Security Agencies (ICESA) and National Governors Association (NGA) should be called; new policy will shift the pressure to the States.

Business/Employer Organizations -- UWC has been spearheading a letter-writing campaign against a change in policy. Significant co-signers have been: US Chamber of Commerce, NFIB and NAM.

Prepared 5/21/99

URGENT

UNITED STATES DEPARTMENT OF LABOR

FACSIMILE TRANSMISSION

OFFICE OF CONGRESSIONAL AND INTERGOVERNMENTAL AFFAIRS

200 Constitution Avenue, N.W.
Room S-1325
Washington, DC 20210

Confirmation: 202/219-6141

5/21

TO: Nicole
DEPARTMENT/COMPANY: DPC
FACSIMILE NUMBER: 456-2878
FROM: DARLA LETOURNEAU
NUMBER OF PAGES INCLUDING COVER:

FACSIMILE REPLIES:

CONGRESSIONAL AFFAIRS	202/219-5120
INTERGOVERNMENTAL AFFAIRS	202/219-5736
IMMEDIATE OFFICE OF THE ASSISTANT SECRETARY	202/219-5288

MESSAGE: On UI/FMLA issue – just wanted to make sure you'd seen this letter from business groups to Secretary.

May 18, 1999

The Honorable Alexis M. Herman
Secretary of Labor
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Dear Secretary Herman:

We understand that the Department's longstanding position with respect to the Family and Medical Leave Act (FMLA) and Unemployment Insurance (UI) is under review. Specifically, we understand that you are being urged to change federal FUTA standards to permit states to provide workers who are already on leave under the FMLA to simultaneously collect UI.

The DOL Bureau of Employment Security (now the Unemployment Insurance Service) stated in 1962 that: "The qualifying requirement and the requirement that claimants be able and available for work are the two halves of a single requirement that protection be limited to unemployed members of the labor force." Allowing workers on FMLA leave to collect UI would undermine both the spirit and the law of the Federal/state unemployment program. It is inappropriate to even consider advancing such a fundamental philosophical change of this magnitude through a "back door" change in a longstanding DOL interpretation. Most unfortunately, for workers who find themselves out of work, this proposal would divert UI tax dollars by paying benefits to claimants who are not even looking for work. The proposal would escalate UI costs and result in employers who are exempt from the FMLA subsidizing those who are not.

We urge you to maintain the Department's current position that states must require claimants to be available for work in order to qualify for Unemployment Insurance. Allowing for Unemployment Insurance for workers on Family and Medical Act Leave would undermine both the spirit and the letter of both the FMLA and the UI program. If you have any questions concerning this issue, please feel free to have your staff contact Eric Oxfeld at UWC-Strategic Services on Unemployment & Workers' Compensation at (202) 682-1515, Deanna Gelak at the Society for Human Resource Management at (703) 535-6027 or any of the associations, companies and organizations listed below.

Sincerely,

Associated Builders and Contractors
American Hotel & Motel Association
American Rental Association
American Trucking Association
Americans for Tax Reform
Associated General Contractors
Association of International Automobile Dealers
Association of International Automobile Manufacturers
Food Marketing Institute
Goodyear Tire & Rubber Company
International Mass Retail Association

Laurdan Associates, Incorporated
Maryland Chamber of Commerce
Mitsubishi Motor Manufacturing of America
Montgomery Maryland Chapter of the Society for Human Resource Management
National Association of Manufacturers
National Association of Retailers
National Federation of Independent Business
National Mining Association
National Restaurant Association
Printing Industries of America
Society for Human Resource Management
Small Business Survival Committee
UWC-Strategic Services on Unemployment & Workers' Compensation
United States Chamber of Commerce
University of Chicago Hospital System

DATE: 5/20/99

U.S. DEPARTMENT OF LABOR

UIS

UNEMPLOYMENT INSURANCE SERVICE

FAX TRANSMITTAL COVER SHEET

NUMBER OF PAGES TRANSMITTED (INCLUDING COVER SHEET) 3

ATTN: NICOLE RADMER

BUS. PHONE:

FAX NO.: 456-~~5709~~ 2878

FROM: GRACE KILBANE

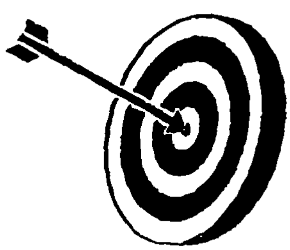
BUS. PHONE:

FAX NO.: 202-219-8506

MESSAGE:

URGENT

JUST RECEIVED, FYI



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National Association of Manufacturers
National Association of Retailers
National Federation of Independent Business
National Mining Association
National Restaurant Association
Printing Industries of America
Society for Human Resource Management
Small Business Survival Committee
UWC-Strategic Services on Unemployment & Workers' Compensation
United States Chamber of Commerce
University of Chicago Hospital System

→ debrabond 57751
/53264 Larry Barbara

Carole Kitti 05/21/99 03:45:20 PM

Record Type: Record

To: Barbara Chow/OMB/EOP@EOP, Nicole R. Rabner/WHO/EOP@EOP

cc: Iratha H. Waters/OMB/EOP@EOP, Larry R. Matlack/OMB/EOP@EOP, Debra J. Bond/OMB/EOP@EOP
Subject: President's Speech at Grambling on UI and Parental Leave

I just got a call from a White House speechwriter (Paul Glastris, I think), who was pushing back on my edits to the paragraph on UI and parental leave. He understood my point, but still wanted to suggest in the speech that the benefits were "earned" and not a give-away.

What I want to flag for you is that the arguments the speechwriter was making move into the area of policy making. The most troublesome was his claim that this program would have no costs. I told him that his suggestions in the cost-control area had not been discussed in any of the policy meetings and told him that nothing should be said about costs in the President's speech.

The speechwriter raised issues like the person claiming UI for parental leave would be taking some risks in that he would have less of his UI entitlement left if he later lost his job. This could be true, but it depends a lot on how the parental leave program is designed and how it fits into the regular UI benefit system. Then he wanted to claim that this proposal would be revenue neutral. He described a situation that would require the person taking parental leave to give up more weeks in UI benefits (say 24 weeks of UI would given up to offset 12 weeks of parental leave). Obviously, nothing in this detail had been discussed at any policy meeting on the parental leave proposal, and such suggestions might well be rejected.

What's our authority for this proposal?

DOL has the authority to respond to states regarding the UI program and to evaluate the effectiveness of this program. DOL will address state flexibility in the rulemaking process.

When will individuals be able to receive benefits?

The Department must issue regulations governing the experimental program, and States must change their laws, before benefits can be paid.

Who would qualify?

The President has directed the Secretary to enable parents of newborns and newly-adopted children to receive benefit payments, who also meet State unemployment insurance law requirements.

Will this effort cover the same people as the Family Medical Leave Act (FMLA)?

In the process of rulemaking, DOL will address.

Why is the proposal limited only to parents of newborn or newly-adopted children rather than extending, for example, to individuals attending ill family members?

In a 1996 study conducted by the Commission on Family and Medical Leave, lost wages was the most significant barrier to parents taking advantage of unpaid leave after the birth or adoption of a child. Individuals with illnesses or other needs often have savings or insurance coverage which helps in providing for their care.

How long can a benefits be collected?

In the process of rulemaking, DOL will address. Duration is not expected to exceed 12 weeks.

How many States can participate in the program?

Participation is not limited to particular States.

Four States have introduced legislation that would pay all or some of these individuals. How does the proposal affect them?

It's premature to talk about the specifics of any of these proposals. However, none of these States could enact their proposals until the Department has issued its rules. The States would have to assure that their proposals meet the requirements of the rules.

Why are we doing the rule at this time?

Interest has been shown by the State legislatures and many others during the last two years. This rule will allow us to accommodate known interest and to determine the extent of interest.

How would this proposal affect employers' State unemployment tax rates?

The Department anticipates that individual employers will not be expected to bear the costs of their own employees taking leave. The costs, instead, will be shared by all employers which could increase their taxes depending on the take-up rate and its impact on the State's unemployment trust fund.

How does an individual qualify for unemployment insurance?

Specific qualifying rules vary from State to State, but individuals must generally show a certain attachment to the workforce in both length of employment and amount of earnings.

How does the unemployment insurance program work?

The unemployment insurance program provides partial wage replacement to workers who are unemployed. It is authorized under the Social Security Act and the Federal Unemployment Tax Act but operates under laws specific to each State. These State laws determine how workers qualify for benefits within broad federal guidelines. States would need to amend their laws to participate in this experiment.

Why use the unemployment insurance program for this purpose?

States interested in paying unemployment insurance to parents on leave following birth or adoption believe this is a logical application of the unemployment insurance program. All States already pay unemployment insurance to workers who are laid off but who the employer expects to recall. In some States, some workers remain eligible even if they become ill.

UI AND NEW PARENTS
Talking Points

- The President may announce that he has directed the US Department of Labor to explore using the Unemployment Insurance (UI) system to support parents on leave following birth or adoption. The Department would propose regulations and develop model legislation that States could use to enact State laws.

- The care of our children is uppermost in the minds of new parents and recent events have brought it even more to the forefront. Many parents are unable to take off work during those first few critical weeks of a child's life because of financial constraints. This policy direction will help those parents meet their family responsibilities without fear of financial ruin.

- We are proposing this program at this time because of the interest shown by the State legislatures during the last two years. The experiment will allow us to accommodate known interest and to determine the extent of interest.

- The policy direction is to enable the parents of newborns and newly-adopted children, who also meet State eligibility requirements, to be eligible beneficiaries.

- Through the rulemaking process, DOL will address issues such as the number of weeks that benefits would be available. (There is no formal connection between this effort and the FMLA.)

- The Department must issue regulations governing the experimental program, and States must change their laws before benefits can be paid.

- The experiment is not limited to particular States. Any State meeting the requirements of the Department's regulations can participate.

- It's premature to talk about the specifics of any of this program; however, no State could enact its proposal until the Department has issued its rules. The States would have to assure that their proposals would meet the requirements of the rules.

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Carole Kitti 05/21/99 01:11:47 PM

Record Type: Record

To: Nicole R. Rabner/WHO/EOP@EOP

cc: See the distribution list at the bottom of this message

Subject: Edit for President's Speech at Grambling

I want to suggest the following factual edits for the UI and paid parental leave paragraph in the President's speech at Grambling. These edits are in addition to the sentence that Barbara Chow sent you earlier today on the President's action (to replace the last sentence in the paragraph).

Bottom of p. 6 of 5/19 draft:

But we must also find creative new ways to allow private sector employees to ~~use the benefits they have earned to~~ finance the time off they need for their families. Several states have asked the federal government for permission to try a bold experiment: allow employees to ~~tap~~ use the unemployment insurance ~~balances they have accumulated~~ program so that they can have some income while they are on family leave. [This is a promising experiment and today, I am granting states that permission to conduct it.] substitute Barbara's sentence

The reason for these edits is that the UI program does not have balances tied to individual workers (like accrued sick leave or a retirement program). UI taxes are set to generate enough money to support the small subset of workers who become unemployed, not enough to pay all workers.

Message Copied To:

Barbara Chow/OMB/EOP@EOP
Iratha H. Waters/OMB/EOP@EOP
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Larry R. Matlack/OMB/EOP@EOP
Debra J. Bond/OMB/EOP@EOP

Leonard.Burman@do.treas.gov
05/20/99 02:06:59 PM

Record Type: Record

To: Nicole R. Rabner/WHO/EOP

cc: See the distribution list at the bottom of this message
Subject: UI/Paid Leave

Date: 05/20/1999 12:55 pm (Thursday)
From: Leonard Burman
To: ex.mail("Nicole_R._Rabner@who.eop.gov")
CC: plattj,knittelm,faucherg,walkerd,mikrutj
Subject: UI/Paid Leave

Comments on yesterday's draft:

In short, Treasury is supportive of the policy thrust of the paper. Offering states flexibility in this area seems desirable if it does not subvert other important policy objectives.

One concern that should be raised is that the policy might require an increase in the FUTA tax rates if administrative costs increase significantly. We are working with DOL to try to determine whether this is likely to happen. I'll let you know what we find out.

The sentence on unemployment data should clarify that the data we are talking about are initial claims for unemployment insurance, which are an important leading economic indicator. I assume that the actual estimates of the unemployment rate would not change if FMLA people were allowed to claim UI benefits.

If the data are readily available, it would be useful in the memo to estimate the number of people who would be affected by the policy options. Similarly, the family incomes of eligible and non-eligible workers might be germane. Because small employers are exempt from FMLA, and they are also paid less, it might be that this benefit would primarily help higher income people. Doing a full-blown distributional analysis would require estimates of who would take advantage of the proposal, which could be difficult, so I am not suggesting that.

I will not be able to attend the 3pm meeting.

Len

Leonard Burman
Deputy Assistant Secretary, Tax Analysis
U.S. Department of the Treasury
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Washington, DC 20220
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Leonard.Burman@do.treas.gov
05/20/99 02:06:59 PM

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cc: See the distribution list at the bottom of this message
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15th and Pennsylvania Ave.
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Voice: 202-622-0120
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Matthew.Knittel@do.treas.gov
Joseph.Mikrut@do.treas.gov
Joel.Platt@do.treas.gov
Deborah.Walker@do.treas.gov

Comments on Preliminary Draft of UI/FMLA Options Memorandum

Page 1.

General Comment

We may want to add the fact that three of the four States adjourned with two taking no action and one reported its bill unfavorably.

1st paragraph

1. Second sentence. We recommend adding "responding in part to surpluses in the UI trust funds."

3rd paragraph

2. Second sentence. We recommend rewriting the sentence as follows:

> Because DOL does not interpret federal law as setting specific requirements for the first two tests, States are free to carve exceptions as they see fit (e.g., claimants who are going to be recalled to their old employer need not seek work; claimants may quit work if they have good personal cause such as illness; temporarily ill claimants need not seek work).

The rewritten parenthetical is intended to provide a fuller description for those not familiar with UI. The current version suggests that States are carving exceptions to a Federal requirement which does not exist. The revision is intended to correct that impression.

3. Fourth paragraph, fourth sentence. Change "ready and available" to "able and available."

4. Fifth sentence change "DOL has used this interpretation" to "DOL has used interpretations of the same Federal law provisions."

Explanation: The "availability" interpretation does not, by itself, wall off regressive proposals. However, the same provisions of Federal law (and the same legislative history) which are interpreted to require availability are interpreted to preclude, for example, means testing and the introduction of other factors unrelated to the fact or cause of the individual's unemployment. The point is still worth retaining since, absent a rule, DOL could lose its ability to fence off these proposals.

4th paragraph

We recommend the third sentence be replaced by the following:

> For instance, how FMLA leave-takers would be accounted for in the count of initial claims (a leading economic indicator), is a an issue that must be considered.

Explanation: DOL has not had an opportunity to do research, but we know of no basis on which claims from FMLA leave-takers could excluded from this important statistics.

Page 2

Option 1

Post-it® Fax Note 7671	Date 5/20/99 # of pages ▶ 2
To Nicole Rabner	From Bill Samuel
Co./Dept.	Co.
Phone # 456 7263	Phone # 693 6043
Fax # 456 2878	Fax # 693 6143

Second pro. Insert "could" before assert.

Second con. Add "and may prevent other regressive State proposals" to end of sentence.

Option 2: Second con - If the questions is "would DOL be the agency to do the rules?", the answer is "yes."

Option 3

Replace the sentence explaining the proposal with the following:

> DOL would encourage States to divert a portion of UI taxes to fund special benefits for workers on FMLA leave. DOL would also develop voluntary model State legislation for such a tax-neutral approach, separate from , but administered by the State UI authority, to provide wage replacement benefits for FMLA-covered leave.

Add the following pro:

> About two dozen States have already created separate funds, many using tax neutral mechanisms, for the payment of income support such as temporary disability and other employment related programs.

Rewrite the first con as follows:

> Could be ineffective promoting State action, as States may be concerned about appearance of creating a new tax structure to cover FMLA benefits.

Explanation: The revisions reflect our understanding of why some States have been able to create special funds - emphasizing tax neutrality - while others have not due to the perception of a new tax.

Comments on Preliminary Draft of UI/FMLA Options Memorandum

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Page 2

Option 1

Post-it® Fax Note 7671	Date 5/20/99 # of pages ▸ 2
To Nicole Rabner	From Bill Samuel
Co./Dept.	Co.
Phone # 456 7263	Phone # 6936043
Fax # 456 2878	Fax # 6936143

Second pro. Insert "could" before assert.

Second con. Add "and may prevent other regressive State proposals" to end of sentence.

Option 2: Second con - If the questions is "would DOL be the agency to do the rules?", the answer is "yes."

Option 3

Replace the sentence explaining the proposal with the following:

> DOL would encourage States to divert a portion of UI taxes to fund special benefits for workers on FMLA leave. DOL would also develop voluntary model State legislation for such a tax-neutral approach, separate from , but administered by the State UI authority, to provide wage replacement benefits for FMLA-covered leave.

Add the following pro:

> About two dozen States have already created separate funds, many using tax neutral mechanisms, for the payment of income support such as temporary disability and other employment related programs.

Rewrite the first con as follows:

> Could be ineffective promoting State action, as States may be concerned about appearance of creating a new tax structure to cover FMLA benefits.

Explanation: The revisions reflect our understanding of why some States have been able to create special funds - emphasizing tax neutrality - while others have not due to the perception of a new tax.