LEGISLATIVE FINANCE-HOUSE/SENATE FINANCE COMM. FILES 8879

HB 155 cont. 1967 - 1968 476 67

representing certificated employees that does not meet the leave requirements of AS 23.10.500 - 23.10.550, if the district or attendance area establishes to the satisfaction of the commissioner that a variance from the requirements of AS 23.10.500 - 23.10.550 is necessary to avoid a hardship on the school district based on the lack of qualified, available substitute teachers to replace teachers on leave under AS 23.10.500 - 23.10.550 or the lack of available housing for replacement teachers who do not live in the community.

Sec. 23.10.540. INVESTIGATION AND CONCILIATION OF COMPLAINTS. (a) A person aggrieved by a denial of a right or privilege granted by AS 23.10.500 - 23.10.540 may file a complaint with the department.

(b) The department shall informally, promptly, and impartially investigate the matters set out in a filed complaint. If the investigator determines that the allegations are supported by substantial evidence, the investigator shall immediately try to eliminate the denial of rights or privileges by conference, conciliation, and persuasion.

Sec. 23.10.550. DEFINITIONS. In AS 23.10.500 - 23.10.550,

(1) "child" means an individual who is

(A) under 18 years of age; or

(B) 18 years of age or older and incapable of self-care because of mental or physical disability;

(2) "employer" means a person, including the state and a political subdivision of the state, who employed at least 21 employees in the state for each working day during any period of 20 consecutive workweeks in the preceding two calendar years;

(3) "health care provider" has the meaning given in AS 18.-23.070;

(4) "parent" means a biological or adoptive parent, a

parent-in-law, or a stepparent;

(5) "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves

(A) inpatient care in a hospital, hospice, or residential health care facility; or

(B) continuing treatment or continuing supervision by a health care provider;

(6) "small business facility" means a facility of an employer that did not employ 21 or more employees during any period of 20 consecutive workweeks in the preceding two calendar years;

(7) "state" includes the University of Alaska and the executive, legislative, and judicial branches of state government including public and quasi-public corporations and authorities established by law.

* Sec. 7. AS 23.40.200 is amended by adding a new subsection to read:

(g) Notwithstanding any provision of AS 23.40.070 - 23.40.260 to the contrary, an agreement between an employer subject to AS 23.10.500 - 23.10.550 and an employee bargaining organization that conflicts with the benefit provisions of AS 23.10.500 - 23.10.550 is void unless the agreement provides benefits at least as beneficial to the employee as those provided by AS 23.10.500 - 23.10.550.

* Sec. 8. AS 39.20.225(b)(4) is amended to read:

(4) Pregnancy and childbirth is a medical reason for a female officer or employee to take personal leave. [A FEMALE OFFICER OR EMPLOYEE, OTHERWISE QUALIFIED FOR A LEAVE OF ABSENCE, IS ENTITLED TO TAKE A MAXIMUM OF NINE WEEKS LEAVE IMMEDIATELY PRECEDING AND FOLLOWING CHILDBIRTH. IF THE OFFICER'S OR EMPLOYEE'S ACCRUED PERSONAL LEAVE IS INSUFFICIENT FOR THIS PURPOSE, THE OFFICER OR EMPLOYEE IS ENTITLED TO TAKE LEAVE WITHOUT PAY FOR THE BALANCE OF THE NINE-WEEK

PERIOD.]

* Sec. 9. AS 39.20 is amended by adding a new section to read:

Sec. 39.20.305. FAMILY AND HEALTH LEAVE. (a) An officer or employee who is otherwise qualified to take leave of absence may take family leave for a total of 18 workweeks during any 24-month period. An officer or employee taking leave under this section shall use accrued personal leave. After exhausting accrued personal leave, the officer or employee may take leave without pay for the balance of the 18-week period. If the employee is entitled to a longer period of time under AS 23.10.500, then the longer period applies. An eligible employee is entitled to take family leave

(1) because of pregnancy, the birth of a child of the employee, or the placement of a child, other than the employee's stepchild, with the employee for adoption, in which case the entitlement to leave expires at the end of the 12-month period beginning after the date of the birth or placement; the department or agency may require that an employee using family leave under this paragraph take the leave in a single block of time;

(2) in order to care for the employee's child, spouse, or parent who has a serious health condition; in this paragraph, "child" includes the employee's biological, adopted, or foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis; and

(3) because of the employee's own serious health condition.

(b) If the necessity for family leave under (a) of this section is foreseeable based on an expected birth or adoption or on planned medical treatment or supervision, the employee shall provide the employee's department or agency head with prior notice of the expected need for leave in a manner that is reasonable and practicable. If the

necessity for leave under this section is foreseeable based on planned medical treatment or supervision, the employee shall also make a reasonable effort to schedule the treatment or supervision so as not to disrupt unduly the operations of the state department or agency, subject to the approval of the health care provider of the employee or the employee's child, spouse, or parent.

(c) Notwithstanding (a) of this section, if a parent or child of two employees employed by the state has a serious health condition, the state is not required to grant family leave to both employees simultaneously.

(d) A state department or agency may refuse to grant an employee family leave under (a) of this section if the department or agency establishes that

(1) the salary received by the employee places the employee in the top 10 percent of employees within that department or agency; and

(2) the employee has skills, knowledge, or experience that cannot be provided satisfactorily by other state employees during the period of the proposed leave and that are necessary to the department or agency during that time to meet a business necessity.

(e) In this section, "child," "health care provider," "parent," and "serious health condition" have the meanings given in AS 23.10.-550.

* Sec. 10. Notwithstanding AS 14.20.590(b), enacted by sec. 5 of this Act, AS 23.10.500 - 23.10.550, enacted by sec. 6 of this Act, and AS 23.-40.200(g), enacted by sec. 7 of this Act, a collective bargaining agreement in effect on the effective date of this Act that contains terms that do not comply with AS 23.10.500 - 23.10.550 remains valid until the agreement expires. However, the contract may not be extended by agreement or renewed

unless it complies with AS 14.20.590(b), AS 23.10.530, or AS 23.40.200(g), as applicable.

Attachment 2

6-0525Gb
Cramer

Adpt.
7-2
3/14/90

AMENDMENT #1

OFFERED IN THE HOUSE BY REP. BROWN

TO: CSHB 155 (Finance)

Page 2, line 29, after "23.10.550":

Insert "or the commissioner of education has waived compliance with AS 23.10.500 - 23.10.550 under AS 23.10.530(c)"

Page 6, line 21, after "However,":

Insert "except as provided in (c) of this section,"

Page 6, after line 24:

Insert a new subsection to read:

"(c) The commissioner of education may approve a collective bargaining agreement entered into between a school district or a regional educational attendance area and a bargaining organization representing certificated employees that does not meet the leave requirements of AS 23.10.500 - 23.10.550, if the district or attendance area establishes to the satisfaction of the commissioner that a variance from the requirements of AS 23.10.500 - 23.10.550 is necessary to avoid a hardship on the school district based on the lack of qualified, available substitute teachers to replace teachers on leave under AS 23.10.500 - 23.10.550 or the lack of available housing for replacement teachers who do not live in the community."

Attachment 4

3-7 Failed 3/14/90

6-0525Je
Cramer

AMENDMENT #2

OFFERED IN THE HOUSE BY REP. PHILLIPS

TO: CSHB 155(HESS)

Page 1, line 6, after "rights":

Insert "for public employees"

Page 1, line 10, after "Alaska":

Insert "Public Employee"

Page 1, line 29, after "entitle":

Insert "public"

Page 2, line 3, after "of":

Insert "public"

Page 6, line 19:

Delete "a person, including"

Delete "and"

Insert "or"

Page 6, line 20:

Delete "who"

Insert "that"

Page 7, line 8, after "includes the":

Insert "Alaska Railroad, the"

Attachment 5
6-0525Jf
Cramer

Failed
5-5
3/14/90

AMENDMENT #3

OFFERED IN THE HOUSE BY REP. PHILLIPS

TO: CSHB 155(HESS)

Page 1, line 6, after "rights":

Insert "for state employees"

Page 1, line 10, after "Alaska":

Insert "State Employee"

Page 1, line 29, after "entitle":

Insert "state"

Page 2, line 3:

Delete "employers"

Insert "the state"

Page 2, lines 6 - 7:

Delete "an employer subject to AS 23.10.500 - 23.10.550"

Insert "the state"

Page 2, line 8:

Delete "AS 23.10.500 - 23.10.550"

Insert "AS 39.20.305 - 39.20.309"

Page 2, line 11:

Delete "AS 23.10.500 - 23.10.550"

Insert "AS 39.20.305 - 39.20.309"

Page 2, line 12 through page 7, line 11:

Delete all material.

Renumber the following bill sections accordingly.

Page 7, lines 14 - 15:

Delete "an employer subject to AS 23.10.500 - 23.10.550"

Insert "the state"

Page 7, line 16:

Delete "AS 23.10.500 - 23.10.550"

Insert "AS 39.20.305 - 39.20.309"

Page 7, line 19:

Delete "AS 23.10.500 - 23.10.550"

Insert "AS 39.20.305 - 39.20.309"

Page 7, line 29:

Delete "a new section"

Insert "new sections"

Page 8, line 8:

Delete "AS 23.10.500"

Insert "this section"

Page 9, lines 18 - 20:

Delete all material and insert:

"(e) The state shall grant an employee whose health is affected by pregnancy, childbirth, or a related medical condition the same employment benefits and privileges that the state grants to other employees with similar ability to work who are not so affected, including allowing the employee to take disability or sick leave or other accrued leave that the state makes available to temporarily disabled employees.

(f) During the time that an employee is on leave under this section, the state shall maintain coverage under any group health plan at the level and under the conditions that coverage would have been provided if the employee had been employed continuously from the date the leave began to the date the employee returns from leave under (g) of this section. However, the state employee shall pay all of the costs for maintaining health insurance coverage during a period of unpaid leave.

(g) Unless the department or agency's circumstances have changed to make it impossible or unreasonable, when an employee returns from leave under this section, the department or agency shall restore the employee

(1) to the position of employment held by the employee when the leave began; or

(2) to a substantially similar position with substantially similar benefits, pay, and other terms and conditions of employment.

(h) The provisions of AS 39.20.305 - 39.20.309

(1) do not affect any other provision of law relating to sex discrimination, pregnancy, or parenthood;

(2) are subject to collective bargaining; however, a collective bargaining contract is void unless it contains terms giving employees benefits comparable to those provided by AS 39.20.305 - 39.20.309.

(i) A person aggrieved by a denial of a right or privilege granted by AS 39.20.305 - 39.20.309 may file a complaint with the Department of Labor. The department shall informally, promptly, and impartially investigate the matters set out in a filed complaint. If the investigator determines that the allegations are supported by substantial evidence, the investigator shall immediately try to eliminate the denial of rights or privileges by conference, conciliation, and persuasion.

Sec. 39.20.307. EMPLOYEE TRANSFER. (a) A pregnant employee may request a transfer to a suitable position under this section. A department or agency may not fill the position with a person other than the requesting employee until the department or agency has offered the position to the employee and the employee has refused the offer. A position is suitable if

(1) it is an existing unfilled position in the same administrative division in which the employee is currently employed and is less strenuous or less hazardous than the employee's current position;

(2) transfer to the position is recommended by a licensed health care provider;

(3) the employee is qualified and immediately able to perform the duties of the position; and

(4) the transfer will not subject the state to legal liability.

(b) The state shall compensate an employee who receives a transfer under this section at a rate at least equal to the lesser of the rate, as adjusted by changes to compensation that apply generally to the work force, at which

(1) the employee was compensated immediately before requesting the transfer; or

(2) the position into which the employee transfers is compensated.

Sec. 39.20.309. DEFINITIONS. In AS 39.20.305 - 39.20.309,

(1) "child" means an individual who is

(A) under 18 years of age; or

(B) 18 years of age or older and incapable of self-care because of mental or physical disability;

(2) "health care provider" has the meaning given in AS 18.-23.070;

(3) "parent" means a biological or adoptive parent, a parent-in-law, or a stepparent;

(4) "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves

(A) inpatient care in a hospital, hospice, or

residential health care facility; or

(B) continuing treatment or continuing supervision by a health care provider;

(5) "state" includes the University of Alaska and the executive, legislative, and judicial branches of state government including public and quasi-public corporations and authorities established by law.

* Sec. 7. AS 39.20.310 is amended to read:

Sec. 39.20.310. EXCEPTIONS. AS 39.20.200 - 39.20.330 do not apply to

(1) members of the state legislature, the governor, the lieutenant governor, and justices and judges of the supreme and superior courts and of the court of appeals, but nothing in AS 39.20.200 - 39.20.330 may be construed to diminish the salaries fixed by law for these officers by reason of absence from duty on account of illness or otherwise;

(2) magistrates serving the state on less than a full-time basis;

(3) officers, members of the teaching staff, and employees of the University of Alaska, except as provided in AS 39.20.305 - 39.20.309;

(4) [REPEALED]

(5) persons employed in a professional capacity to make a temporary and special inquiry, study, or examination as authorized by the governor, the legislature, or a legislative committee;

(6) members of boards, commissions, and authorities who are

not otherwise employed by the state;

(7) temporary employees hired for periods of less than 12 consecutive months;

(8) persons employed by the division of marine transportation as masters and members of the crews operating the state ferry system who are covered by collective bargaining agreements as provided in AS 23.40.040, except as expressly provided by AS 39.20.305 - 39.20.309 or by other law;

(9) persons employed by the state who are covered by collective bargaining agreements as provided in AS 23.40.210, except as expressly provided by AS 39.20.305 - 39.20.309 or by other law."

Renumber the following bill section accordingly.

Page 9, line 22:

Delete "AS 23.10.500 - 23.10.550, enacted by sec. 4"

Insert "AS 39.20.305 - 39.20.309, enacted by sec. 6"

Page 9, line 23:

Delete "5"

Insert "4"

After "agreement":

Insert "between the state and a labor organization representing state employees"

Page 9, line 25:

Delete "AS 23.10.500 - 23.10.550"

Insert "AS 39.20.305 - 39.20.309"

EXPLANATION OF FISCAL NOTE

FOR HB 155

The Division arrived at the Fiscal Note requiring one additional investigator by extrapolating available statistics from two different sources:

As you may know, this proposed legislation provides for broader protection than that afforded in most other states' existing laws. In addition, such legislation is most often found blended in with the other state's equivalent of our Human Rights Commission. These two factors have made it difficult to segregate the impact of such laws on other states' programs. However, by making a few assumptions, we were able to develop some meaningful statistics.

In 1987-88 the State of California, Fair Employment Administration office processed 8322 cases. Of those, 1123, (14 percent) involved pregnancy related offenses. These numbers do not separate out pregnancy leave problems specifically. Neither do they incorporate additional protected classes such as personal sick leave as contemplated in Alaska's legislation.

By presuming that these two factors will offset each other, we can use the 14 percent impact to analyze potential impact in Alaska. In doing so, we would project an approximate increase on case load of 14 percent. We currently process approximately 1400 wage claims annually statewide, with an average of 200 claims per investigator. A 14 percent increase would be 196 claims or one investigator position.

To double check this analysis, we also approached the question from an employer perspective. The Department's Research and Analysis section reports that there are approximately 10,900 employers in the state. We handle 1400 claims annually. Allowing for repeat and multiple offenders as well as invalid claims, this number equates to 600-800 employers or five to eight percent of the total number who violate our laws annually. If we apply this same percentage of violations to the new bill, we can approximate the number of complaints expected. In its projections for Alaska, The Institute for Women's Policy Research estimates that 4000 Alaskan employees will take advantage of this law annually. If we take the low estimate of five percent and apply it to the number of potential affected employees, we could expect 200 complaints per year.

It is important to note that these estimates are conservative in that the presumptions made were based on the bill's effect before the addition of personal sick leave; and, where given an option, we elected to use the smallest variable in our calculations. We determined to err on the side of conservation as we did not want to hamper the bill with an exorbitant Fiscal Note.

Therefore, we feel that the request for one position may underestimate the actual impact. We nonetheless are confident that at least one will be necessary, with overflow being absorbed by existing staff.

It is interesting to note that Human Rights, in a separate analysis arrived at nearly the same conclusion; i.e., one additional staff investigator.

TESTIMONY TO THE HOUSE FINANCE COMMITTEE MARCH 7, 1990

Patricia Chamberlin Clark
Board Member, Resource Center for Parents & Children
Fairbanks, Alaska

Legislative Chair, Alaska State Federation of Business & Professional Women

The Board of Directors of the Fairbanks Resource Center for Parents and Children, as a local agency dealing with child abuse, strongly urges your committee passage of CS HB 155 (Finance). In our daily efforts we see the results of problems that arise when parents have to return to work in order to save their jobs. Often when they really need to stay at home for a longer time. This same stress can affect a family when other family care needs arise and the necessity of protecting a job simply creates more tension within a home.

As Legislative Chair for the Alaska Federation of BPW, I wish to inform you that our organization strongly supports CS HB 155 (Finance) at the state level, just as our national organization supports action at the national level. A number of our state members of BPW are also member of NFIB and their local Chamber of Commerce and recognize the need for CS HB 155 (Finance). Members of your committee, as well as other legislators, will be hearing from constituents in support of this legislation.

<u>BPW and the Fairbanks Resource Center for Parents and Children</u> oppose any amendments to CS HB 155 (Finance) that would decrease the numbers of employees receiving the benefits of family leave.

Our organization is in accord with the stand of the Alaska Women's Lobby and the Alaska Women's on matters pertaining to this legislation.

Thank you for your time. I am sorry I was unable to testify in person on March 7, 1990 but the hearing on the bill was postponed.

Patricia Chamberlin Clark
612 Sprucewood
Fairbanks, Alaska 99701
907/479-2735

STATE OF ALASKA
THE LEGISLATURE

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM February 1, 1990

SUBJECT: Equal protection questions in The Family Protection Act
(CSHB 155 ( ) 1/29/90)

TO: Representative Kay Brown

FROM: Teresa B. Cramer TBC
Legislative Counsel

You have asked whether the exclusion from coverage of the employees of a small business facility violates the equal protection clause of the state or federal constitution. There has not been time to thoroughly research this issue. On the basis of the review that time has permitted, in my opinion the courts would probably find that the legislation was valid.

The Alaska Family Protection Act grants employees of those employers covered by the Act rights to additional unpaid leave, continuation of any group health insurance at the employee's expense, and the right to return to work for the employer at the end of the leave. See Sec. 23.10.500(b), (d), and (e). Under the Committee Substitute, these benefits are granted to employees of an "employer," defined in Sec. 23.10.550(2) as

> a person, including the state and a political subdivision of the state, who employed at least 21 employees in the state for each working day during any period of 20 consecutive workweeks in the preceding two calendar years."

Under Sec. 23.10.500(f), the employees at a "small business facility" are excluded from the protections granted by the Act if the employer did not have more than 20 employees working within 50 road miles of the small business facility during the period of 20 consecutive workweeks.

The state equal protection standard is more rigorous than the federal standard. If legislation is constitutional under the state standard, it will survive a federal challenge. The state supreme court recently articulated state equal protection analysis in State v. Enserch, __ P.2d ___, Opinion No. 3539 December 18, 1989, pg 22 - 24. Under the state analysis, the court first determines the importance of the individual interest impaired by the challenged enactment. Then the court examines the importance of the state interest underlying the enactment. The state's interest must satisfy a standard found on a continuum from mere legitimacy to a compelling interest. The final step in the examination is the connection between the state interest and the means adopted in the legislation to carry out that interest. Depending on the importance of the individual's interest, determined in the first step of the analysis, the equal protection clause requires that the connection fall somewhere on a continuum from substantial relationship to least restrictive means.

The individual's interest under the committee substitute is in receiving the additional job benefits set out in Sec. 23.-10.500. The court has not examined a distinction of this kind under the sliding scale equal protection analysis it now uses. It seems likely that the court would find the individual's interest to be significant but less important than a person's interest in access to employment, which the court reviewed Enserch, and found to be an important right. If the right to these benefits is a significant right, the purpose of the legislation must bear a fair and substantial relationship to the methods chosen to achieve the legislative goals.

The state's interest in the legislation as a whole is in furthering family care for children and other family members who have health problems. This interest is an important state interest. The state's interest in the distinction made between employees at small business facilities and other employees is in accommodating the needs of employers of small businesses, who probably have less flexibility in staffing arrangements than do larger employers. Resolution of the question of whether the distinction is constitutional depends on the evidence brought forward to support it. If the state can show that small businesses have a significantly harder time accommodating the leave provisions required by the legislation, then the court would uphold the distinction.

The final step in equal protection analysis is the connection between the state's interest in caring for family and employees and the means adopted by the legislation to accomplish that. The legislation balances the interest the state has in protecting families by requiring most employers to offer employees family leave with concern for those employers who have few employees and who would find the requirements of the legislation harder to meet. The fit between the objective of the legislation and the benefits granted by the law seems reasonably close, although not perfect. Some small employers may be better able to continue operations in the absence of an employee on family leave, than employers with a larger workforce. But it seems probable that the evidence would support the distinction between large and small employers and that the connection between the categories created by the legislation and the state's goals in enacting it would be held to be sufficiently close.

If I may be of further assistance, please advise.

TBC:pl
WKP1/079

HB 155

Bill Title: Employment rights based on pregnancy; family leave

Prime Sponsor(s): Thaun

Committee Referrals: FIN

Counterpart Bill: _____ Related Bill(s): _____

DEPARTMENT ANALYSIS

Impact on MOA:

Any financial impact? Yes X No _____

If "yes", is it major? Yes X No _____ (Possibly)

Please describe fiscal impact: See attached

Any programatic impact? Major X Minor _____ None _____

Please explain briefly if needed See attached

Recommended MOA position: Support _____ Support with amendments _____

Monitor _____ No action necessary _____

Comments:

Oppose. See Attached Comments.

LEGAL ANALYSIS

Impact on MOA:

Any conflict or effect on the charter or municipal code? Yes _____ No _____

If "yes", is it major? Yes _____ No _____

Please describe briefly if needed _____

Submitted by: Neil R. Koenigs 343-4447

Name Phone number

Approvals: [signature] [signature] [signature] 2/7/90

Department Director/ Date Manager Date

Logged Legislative Affairs/ Date _____ Addlegana

Municipality of Anchorage

HB 155 COMMENTS

We should oppose this proposed legislation for three primary reasons:

1. It conflicts with a basic principle of deferral to local control. That principle is that policies with regard to entitlement of public employees of local governments in Alaska should be determined by the public which employs them. The local taxpayers should have the ability to determine compensation and benefits for their employees through their local elected officials-not have such items mandated for them by a different authority which affords them minimal opportunity for input.

2. It has a direct cost impact for employers. Differing studies in the human resources field have indicated that it costs approximately 20% of the salary of a position to recruit, select and train a replacement. With that requirement for 15 positions a year under this policy, our costs could be increased by as much as $120,000 annually.

3. It has more significant programmatic impacts. Currently we alllow employees to take up to 90 days of unpaid leave per year for personal and/or medical reasons. We are able, however, to have some control on when personal leave is taken and, if medical leave is taken on whether to fill the position on a temporary or regular replacement basis depending on the workload and requirements of the program. This legislation would remove that control. We would be required to only replace on a temporary basis and to guarantee to hold the position for the employee to accomodate their personal needs. There is no recognition of the legitimate needs of the public to be served or the employer to have essential work performed in a consistent manner.

I would recommend that if the State is really desirous of granting additional benfits to its employees, who already have a very generous leave package, that it do so by amending the leave provisions of AS 39.20 which apply specifically to State employees. They do not need to inflict their desired conditions of employment for their workforce-which are both costly and inefficient-on other public and private employers.

KEY COMMITTEE VOTE - H.B. 155

You will soon be asked to vote in the Finance Committee on H.B. 155, legislation which mandates that employers give most employees a minimum of 18 weeks of unpaid parental leave. The bill also essentially requires the employer to restore the employee who has taken parental leave to her/his prior job with the same level of pay and benefits.

NFIB/ALASKA's 4,200 members oppose H.B. 155 in its present form and will be supporting amendments in Committee to make the bill acceptable to our members.

We oppose the bill for following public policy reasons:

1. There is no demonstrated need for this bill; put simply, H.B. 155 is a solution looking for a problem.

2. Although NFIB/Alaska's members generally support generous employee leave policies, we staunchly oppose state government mandating that small business must adopt such policies.

3. H.B. 155 carves the very heart out of the collective bargaining process by forcing new terms and conditions on parental leave which now exist in many Alaskan labor contracts.

4. If concern about discrimination is the driving force behind the bill, far-reaching federal and state anti-discrimination laws already on the books offer effective protection to workers.

HB 155 Back up

TESTIMONY TO THE HOUSE FINANCE COMMITTEE MARCH 7, 1990

Patricia Chamberlin Clark
Board Member, Resource Center for Parents & Children
Fairbanks, Alaska

Legislative Chair, Alaska State Federation of Business & Professional Women

The Board of Directors of the Fairbanks Resource Center for Parents and Children, as a local agency dealing with child abuse, strongly urges your committee passage of CS HB 155 (Finance). In our daily efforts we see the results of problems that arise when parents have to return to work in order to save their jobs. Often when they really need to stay at home for a longer time. This same stress can affect a family when other family care needs arise and the necessity of protecting a job simply creates more tension within a home.

As Legislative Chair for the Alaska Federation of BPW, I wish to inform you that our organization strongly supports CS HB 155 (Finance) at the state level, just as our national organization supports action at the national level. A number of our state members of BPW are also member of NFIB and their local Chamber of Commerce and recognize the need for CS HB 155 (Finance). Members of your committee, as well as other legislators, will be hearing from constituents in support of this legislation.

<u>BPW and the Fairbanks Resource Center for Parents and Children</u> oppose any amendments to CS HB 155 (Finance) that would decrease the numbers of employees receiving the benefits of family leave.

Our organization is in accord with the stand of the Alaska Women's Lobby and the Alaska Women's on matters pertaining to this legislation.

Thank you for your time. I am sorry I was unable to testify in person on March 7, 1990 but the hearing on the bill was postponed.

Patricia Chamberlin Clark
612 Sprucewood
Fairbanks, Alaska 99701
907/479-2735

STATE OF ALASKA
THE LEGISLATURE

POUCH Y . STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M February 1, 1990

SUBJECT: Equal protection questions in The Family Protection Act
(CSHB 155 ( ) 1/29/90)

TO: Representative Kay Brown

FROM: Teresa B. Cramer TBC
Legislative Counsel

You have asked whether the exclusion from coverage of the employees of a small business facility violates the equal protection clause of the state or federal constitution. There has not been time to thoroughly research this issue. On the basis of the review that time has permitted, in my opinion the courts would probably find that the legislation was valid.

The Alaska Family Protection Act grants employees of those employers covered by the Act rights to additional unpaid leave, continuation of any group health insurance at the employee's expense, and the right to return to work for the employer at the end of the leave. See Sec. 23.10.500(b), (d), and (e). Under the Committee Substitute, these benefits are granted to employees of an "employer," defined in Sec. 23.10.550(2) as

> a person, including the state and a political subdivision of the state, who employed at least 21 employees in the state for each working day during any period of 20 consecutive workweeks in the preceding two calendar years."

Under Sec. 23.10.500(f), the employees at a "small business facility" are excluded from the protections granted by the Act if the employer did not have more than 20 employees working within 50 road miles of the small business facility during the period of 20 consecutive workweeks.

The state equal protection standard is more rigorous than the federal standard. If legislation is constitutional under the state standard, it will survive a federal challenge. The state supreme court recently articulated state equal protection analysis in State v. Enserch, __ P.2d ___, Opinion No. 3539 December 18, 1989, pg 22 - 24. Under the state analysis, the court first determines the importance of the individual interest impaired by the challenged enactment. Then the court examines the importance of the state interest underlying the enactment. The state's interest must satisfy a standard found on a continuum from mere legitimacy to a compelling interest. The final step in the examination is the connection between the state interest and the means adopted in the legislation to carry out that interest. Depending on the importance of the individual's interest, determined in the first step of the analysis, the equal protection clause requires that the connection fall somewhere on a continuum from substantial relationship to least restrictive means.

The individual's interest under the committee substitute is in receiving the additional job benefits set out in Sec. 23.-10.500. The court has not examined a distinction of this kind under the sliding scale equal protection analysis it now uses. It seems likely that the court would find the individual's interest to be significant but less important than a person's interest in access to employment, which the court reviewed Enserch, and found to be an important right. If the right to these benefits is a significant right, the purpose of the legislation must bear a fair and substantial relationship to the methods chosen to achieve the legislative goals.

The state's interest in the legislation as a whole is in furthering family care for children and other family members who have health problems. This interest is an important state interest. The state's interest in the distinction made between employees at small business facilities and other employees is in accommodating the needs of employers of small businesses, who probably have less flexibility in staffing arrangements than do larger employers. Resolution of the question of whether the distinction is constitutional depends on the evidence brought forward to support it. If the state can show that small businesses have a significantly harder time accommodating the leave provisions required by the legislation, then the court would uphold the distinction.

The final step in equal protection analysis is the connection between the state's interest in caring for family and employees and the means adopted by the legislation to accomplish that. The legislation balances the interest the state has in protecting families by requiring most employers to offer employees family leave with concern for those employers who have few employees and who would find the requirements of the legislation harder to meet. The fit between the objective of the legislation and the benefits granted by the law seems reasonably close, although not perfect. Some small employers may be better able to continue operations in the absence of an employee on family leave, than employers with a larger workforce. But it seems probable that the evidence would support the distinction between large and small employers and that the connection between the categories created by the legislation and the state's goals in enacting it would be held to be sufficiently close.

If I may be of further assistance, please advise.

TBC:pl
WKP1/079

PARENTAL LEAVE DATA

Updated 1/29/90

Number of Firms and Employees Affected by Parental Leave Legislation

Table 1

Number of Firms and Employees by Size of Firm
Alaska Employment for May 1989

	Private Sector		Local Govt.
	Firms	Employees	Employees
20 or Fewer Employees	9,720	51,697	1,147
21 or more Employees	1,183	107,339	28,286
50 or Fewer Employees	10,439	74,342	3,199
51 or More Employees	464	84,694	26,234
100 or Fewer Employees	10,679	92,227	4,840
101 or More Employees	224	66,809	24,593

Approximately two thirds of all private sector employees, 107 thousand workers, are employed by firms which would be covered by the parental leave legislation as proposed (see table 1). However, only about 11 percent of all Alaska private sector firms would be involved. If the size of firm affected were raised to 101 employees or more, approximately 224 private sector firms and 42 percent of Alaska's private sector wage and salary workers would be affected.

This estimate is slightly higher than previous estimates due primarily to the recent upturn in the Alaska economy. However, it should be noted that this estimate of the number of employees affected by the parental leave legislation is a high case estimate. Many firms with seasonal employment patterns or large numbers of part time workers would have many fewer eligible employees than would be suggested by average monthly employment figures. Employee turnover was not factored into these estimates.

Methodology and Limitations

We extracted the 1988 and 1989 monthly employment history of all firms and local governments in Alaska. By examining average monthly employment figures we identified firms that had 21 or more employees, 51 or more employees and 101 or more

employees during every month of any five month period in 1988 and the first six months of 1989. In addition, only firms that had employment in June, 1989 (the most recent month for which data is available) were included in this analysis.

The estimate of the number of employees affected was based on employment during May of 1989. We did not examine the employment history of individual workers by firm to identify those that had been employed for six consecutive months(one of the legislative requirements of the program). Alaska's high rate of interstate migration, employee turnover and many other factors would necessarily reduce the number of employees eligible for parental leave. In 1985-1986, Alaska had a migration rate of approximately 10 percent.

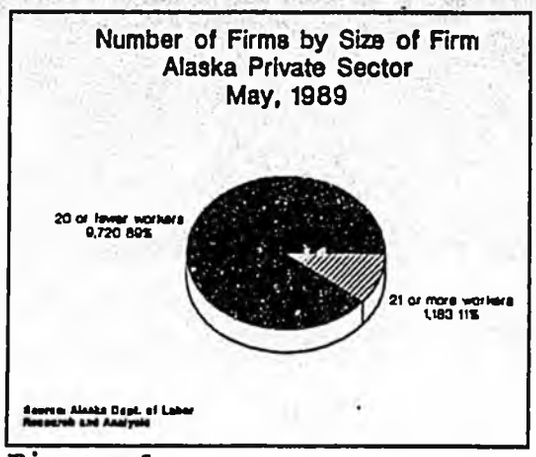


Figure 1

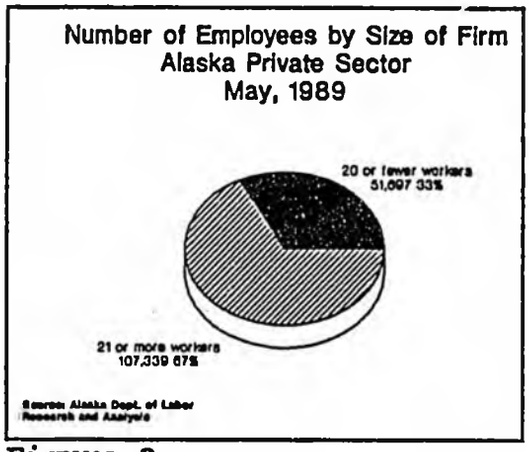
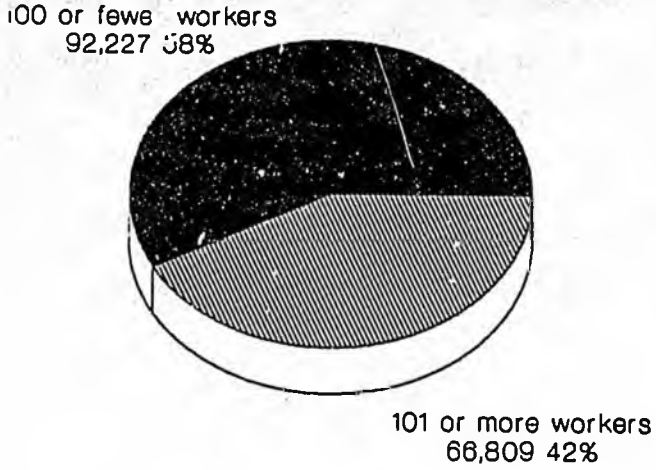


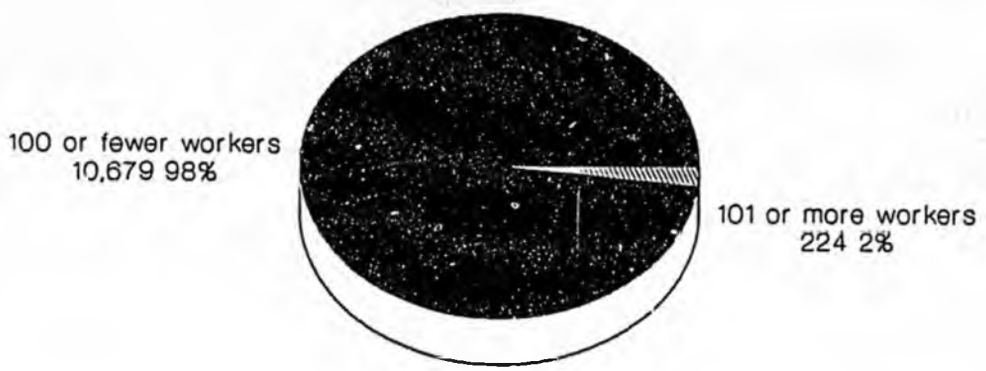
Figure 2

Number of Employees by Size of Firm
Alaska Private Sector
May, 1989



Source: Alaska Dept of Labor

Number of Firms by Size of Firm
Alaska Private Sector
May, 1989



Source: Alaska Dept of Labor

ALASKA CIVIL LIBERTIES UNION

An Affiliate of the American Civil Liberties Union

P.O. Box 201844
Anchorage, AK 99520-1844

Office Location:
310 K Street
Anchorage, Alaska
(907) 276-2258

Jamie Bollenbach
Executive Director

Date: March 7, 1989
To: House Labor and Commerce Committee
From: Jamie Bollenbach, Exec. Dir. AkCLU
Re: Comments on HB 155

The Alaska Civil Liberties Union supports family leave legislation which protects the rights of employees to raise a family and continue working without fear of adverse consequences. We believe that this type of legislation extends fair treatment for all employees, and promotes an end to employment discrimination against parents of all kinds, male or female, present or future, single or married. The American Civil Liberties Union lobbied hard on behalf of similiar legislation at the federal level.

People employed by companies without leave polices risk losing their jobs if they must be absent because of pregnancy or serious medical conditions in the family. Some states tried to soften the impact of inadequete leave policies by mandating a special minimum leave for pregnant workers. This hinders equality between men and women in the workplace. Special treatment for pregnant women legitimizes sex discrimination and simply ignores the role of men as parents.

The ACLU would <u>oppose</u> legislation which singled out pregnant women for disability leave without granting family leave to other employees because such legislation would discriminate on the basis of gender. We support legislation that preserves the principle of equal treatment for men and women in the workplace.

HB 155 recognizes that pregnancy does not fundamentally differ from

LABOR RELATIONS

FILE: HB155 RESPONSE A VM/SP CONVERSATIONAL MONITOR SYSTEM

To: Sioux Plummer

From: Bruce Cummings

Subject: Request for comments on CSHB 155 (draft) * for proposed Substitute

Date: January 17, 1990

The draft legislation contains three new elements which warrant comment and consideration.

1. The draft expands the universe of applicability from family and parental leave to sick leave claimed by the employee in the event of a serious health condition. If enacted, this would significantly increase employee entitlements beyond those provided in collective bargaining agreements without the opportunity to achieve an appropriate alternative or quid pro quo. In addition, the employer's hands would effectively be tied in situations in which there is no expectation that the employee will be able to return to work. At present, the State may administratively terminate such employees and permanently refill the vacated position. Under the terms of the bill as written, it would appear that the employee could insist on being retained for the full 18 weeks, forcing the employer to leave the position vacant or to fill it with a substitute or temporary employee.

2. The draft requires that collective bargaining agreements contain provisions "at least as beneficial" rather than "comparable" as in the previous version. While admittedly the language change is not on its surface earthshaking, the revision does appear to limit the range of bargainable alternatives.

3. The initial bill permitted denial of leave if the requesting employee was in the top 10 percent of employees in the agency with respect to salary providing that the employee has skills, knowledge or experience which cannot be provided by other state employees. The draft adds the further restriction that there must not be temporary employees or "persons available for temporary or nonpermanent employment." This restriction effectively eliminates any ability to deny leave except in very specialized job classes with a severely restricted labor pool. Additionally, full compliance could well require that an agency actually or effectively work the relevent nonpermanent register to determine the availability of nonperm replacements prior to making a decision on denial, a time consuming process which detracts from productive work. The single criterion is the simple availability of minimally qualified replacements: no allowance is made for the agency to consider other factors, such as the cost and length of time required to bring a temporary employee to the working, productive level.

As far as fiscal impact is concerned, I can only reiterate my commemts

of last February. Cost is not calculable at present absent data on utilization; however, increased leave entitlements will undoubtedly be followed by increased absences.

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

ALASKA CIVIL LIBERTIES UNION

An Affiliate of the American Civil Liberties Union

P.O. Box 201844
Anchorage, AK 99520-1844

Office Location:
310 K Street
Anchorage, Alaska
(907) 276-2258

Jamie Bollenbach
Executive Director

Date: March 7, 1989
To: House Labor and Commerce Committee
From: Jamie Bollenbach, Exec. Dir. AkCLU
Re: Comments on HB 155

The Alaska Civil Liberties Union supports family leave legislation which protects the rights of employees to raise a family and continue working without fear of adverse consequences. We believe that this type of legislation extends fair treatment for all employees, and promotes an end to employment discrimination against parents of all kinds, male or female, present or future, single or married. The American Civil Liberties Union lobbied hard on behalf of similiar legislation at the federal level.

People employed by companies without leave polices risk losing their jobs if they must be absent because of pregnancy or serious medical conditions in the family. Some states tried to soften the impact of inadequete leave policies by mandating a special minimum leave for pregnant workers. This hinders equality between men and women in the workplace. Special treatment for pregnant women legitimizes sex discrimination and simply ignores the role of men as parents.

The ACLU would <u>oppose</u> legislation which singled out pregnant women for disability leave without granting family leave to other employees because such legislation would discriminate on the basis of gender. We support legislation that preserves the principle of equal treatment for men and women in the workplace.

HB 155 recognizes that pregnancy does not fundamentally differ from

other critical family care responsibilities, including adoption, serious illness, and the actual care of a newborn baby. Any of these situations require parents' extra time and attention. It is the responsibility of employers not to penalize Alaskans for trying to build a healthy family.

This proposal would particularly benefit single parents who do not have a spouse or an extended family to assist them. A single parent who confronts the responsibility of a baby without job security may have no one else to rely on; childbirth can become an overwhelming burden. Adverse employment action because of pregnancy or childbirth is an injustice that no Alaskan should face.

The AkCLU fully supports the intent and the heart of the language of HB 155. An initial screening by one of our co-operating attorneys indicated that minor changes in parts of the bill may be helpful in clarifying some points. (I passed some of these concerns along to Rep. Brown's office.) We would be happy to provide a more detailed evaluation.

Alaskans are increasingly concerned over employment and family issues, and working Alaskan parents deserve the protection of law. We urge the Legislature to adopt family leave legislation.

LABOR RELATIONS

FILE: HB155 RESPONSE A VM/SP CONVERSATIONAL MONITOR SYSTEM

To: Sioux Plummer

From: Bruce Cummings

Subject: Request for comments on CSHB 155 (draft) * for proposed Substitute

Date: January 17, 1990

The draft legislation contains three new elements which warrant comment and consideration.

1. The draft expands the universe of applicability from family and parental leave to sick leave claimed by the employee in the event of a serious health condition. If enacted, this would significantly increase employee entitlements beyond those provided in collective bargaining agreements without the opportunity to achieve an appropriate alternative or quid pro quo. In addition, the employer's hands would effectively be tied in situations in which there is no expectation that the employee will be able to return to work. At present, the State may administratively terminate such employees and permanently refill the vacated position. Under the terms of the bill as written, it would appear that the employee could insist on being retained for the full 18 weeks, forcing the employer to leave the position vacant or to fill it with a substitute or temporary employee.

2. The draft requires that collective bargaining agreements contain provisions "at least as beneficial" rather than "comparable" as in the previous version. While admittedly the language change is not on its surface earthshaking, the revision does appear to limit the range of bargainable alternatives.

3. The initial bill permitted denial of leave if the requesting employee was in the top 10 percent of employees in the agency with respect to salary providing that the employee has skills, knowledge or experience which cannot be provided by other state employees. The draft adds the further restriction that there must not be temporary employees or "persons available for temporary or nonpermanent employment." This restriction effectively eliminates any ability to deny leave except in very specialized job classes with a severely restricted labor pool. Additionally, full compliance could well require that an agency actually or effectively work the relevent nonpermanent register to determine the availability of nonperm replacements prior to making a decision on denial, a time consuming process which detracts from productive work. The single criterion is the simple availability of minimally qualified replacements: no allowance is made for the agency to consider other factors, such as the cost and length of time required to bring a temporary employee to the working, productive level.

As far as fiscal impact is concerned, I can only reiterate my commemts

of last February. Cost is not calculable at present absent data on utilization; however, increased leave entitlements will undoubtedly be followed by increased absences.

March 24,1989

Good Morning Mr. Chairman,

My name is Robert M. Rickson and I am the Anchorage Coordinator of DADS. Thank you for this opportunity to talk to you. I would like to say that I'm very happy to see a bill of this nature and give it my wholehearted support. The main reason I support it is that it recognizes the fact that a father forms a bond with his child. this bond my be of a different nature than the mothers but just as strong. Let me repeat that,IT IS JUST AS STRONG!!! By allowing the father family leave you are not only allowing a critical three way bond, between the father, the mother and the baby, to be formed, but the baby will feel twice the touch, twice the emotions, twice the physical contact on a full time scale and will feel more like a whole person than baby's in the past. The reason that most baby's seem to know their moms better is because of the extra time the mom spends with the child while the father is at work.

So long as the father is using leave that he has earned and then taking the rest of the time as unpaid leave, I don't see how a employer can lose money. In fact, it will save money in the form of a happier, loyalier, and more productive employee.

The introduction of this bill is LOOKING in the right direction. By passing this bill you will be taking a DEFINITE STEP in the right direction. The passage of this bill will save jobs, money and most importantly it will build the strongest family ties Alaska has seen since the days before the Alaskan divorce rate was 7 out of 10 as it is today.

Thank you for your time and please, carefully look at the importance of this bill to Alaskan fathers and their families.

Sincerely,

Robert M Rickson Sr.

Robert M. Rickson Sr.

Anchorage Coordinator DADS

STEVE COWPER
GOVERNOR

PHONE
(907) 561-4227

STATE OF ALASKA
OFFICE OF THE GOVERNOR

ALASKA WOMEN'S COMMISSION
3601 C STREET - SUITE 742
ANCHORAGE, ALASKA 99503

March 28, 1989

POSITION PAPER ON HB 155

The Alaska Women's Commission strongly supports HB 155, legislation which guarantees job protected unpaid leave for parents after the birth or adoption of a child and to look after a sick child or parent. Businesses with fewer than 15 employees, 84% of the total in Alaska, are excluded in this legislation.

Basic to this bill are the need for parental bonding with infants and the need for parental nurturing of infants and sick children. In addition, many women take time off work to look after elderly parents. These are very important factors in the well-being of children and families. Many women are forced to make a choice between having a child and employment because of the lack of parental and family leave. A study by the National Association of Area Agencies on Aging finds that 77% of employed women experienced work and caregiving conflicts that resulted both in costs to themselves and in productivity losses to employers.

It is necessary to address in a positive way the impact on our families of the increasing number of women in the work force. In Alaska 65% of women over age 16 work. Between ages 20 to 34 when most women have children, 68% of women work. This figure rises to 78% for women aged 35 to 44 years. While Alaska has one of the highest birth rates in the nation, 49% higher than the national average, we also have the second highest participation rate of females in the work force. Similar to national statistics, however, women attain less seniority and earn less money than men. In order to attain equal earning power in the marketplace, women need job protected maternity leave, adequate child care, and flexible work time.

When working full-time, married women earn on average half of what married men earn. It is not surprising, therefore, that women disrupt their career or risk loss of their job to look after children and elderly parents. This creates a vicious circle that prevents women from attaining promotions and seniority. In addition, with the high rate of divorce in Alaska and increasing number of female headed families, the earning power of women has a wider impact on families than before. Job protected leave, as defined in this bill, is one part of the solution.

Several national studies have looked at what private businesses now provide. These studies indicate that at least half of employers provide maternity leave. Maternity leave is least frequently provided in the retail trade and service industries which are areas of high female employment. When leave was available for two parent families, 37% of women returned to work in less than 8 weeks and 32% in 9 to 18 weeks. Men rarely took paternity leave. Thus, the impact of mandated leave is diminished by economic reality for most families since it is not fully used.

Companies with parental leave policies report savings in training and hiring costs, increased employee loyalty and productivity. Conversely, the productivity of working parents who have infants in day care tends to be lower and the cost to government for day care assistance eligible parents is very high.

The National Association of Working Women recently made a multivariate analysis of business employment in seven states with parental leave compared with seven states considered to be pro-business because of anti-regulatory policies. The study addressed the question: Have small businesses grown more slowly or declined in those states which have mandated a family leave policy. The results of this study indicate that family leave policies have had no negative effect on job growth in the small business sector. In fact, family leave policies are associated with high job growth in the small business sector. Businesses with less than fifty workers were estimated to hire approximately 21% more employees if these enterprises were located in a parental leave state. A second finding of this study is the positive association between a high rate of women's labor force participation and employment growth in all size firms.

Family leave with job protection would positively impact women's earning ability and job security, decrease reliance on welfare and other forms of government support, and promote healthy families. The Alaska Women's Commission strongly urges your support of this bill.

FAMILY LEAVE

HOUSE BILL 155 - FAMILY LEAVE

Sponsors: Brown, Ulmer, Gruenberg, Ellis and Spohnholz
Introduced: 2-10-89
Referred: Labor and Commerce, HESS, Finance

The ALASKA DIVISION of AAUW, following the lead of the national association , supports the concept of Family Leave. Family Leave is a positive response to the social and economic reality that the majority of parents - both fathers and mothers - work outside of the home.

Current proposed legislation would allow an employee to take up to 18 workweeks of unpaid leave at the time of birth, adoption or placement of a child and for the care of a child, spouse or parent who has a serious health condition. It would also require an employer to make temporary disability benefits equally available to all employees (including those incapacitated by pregnancy) and, under certain circumstances, to transfer pregnant employees to less strenuous positions. The scope of this bill is limited to employers with at least 15 employees located within a 50 mile area; it is considered "model legislation" that will be promoted among all other Alaskan employers.

Major points:

1. It would not apply to an employer if changed business circumstances made application of the leave provisions unreasonable;
2. It gives employers latitude in providing substitute employment after the leave period;
3. It requires the employers to maintain health insurance during the leave period if the employee pays the costs;
4. It would require an employee to work for an employer for six consecutive months at 35 hrs per week or 12 consecutive months at 17.5 hrs per week before becoming eligible for leave;
5. It expressly acknowledges that leave may be unpaid;
6. It allows employers or employees to substitute accrued paid leave for unpaid leave;
7. It limits mandatory transfers and does not require the employer to incur additional wage expense as a result of the transfer.
8. It addresses specifically implementation for state employees.

Because of the increasing number of single-parent and two working parent households and the young age of our Alaskan population, it is increasingly important to enact a Family Leave policy. Every other Western industrialized nation has more generous policies; Alaska can be a force in modeling US policy by adopting this legislation.

ATTACHMENT - 3

Prepared by:
Rep. Kay Brown
February 10, 1989

THE NEED FOR **FAMILY LEAVE** LEGISLATION
and related Issues

• About 117 countries have parental leave policies for working parents. **Eleven countries provide 100% paid leave to mothers: U.S.S.R., Mexico, Poland, Bulgaria, Chile, Iraq, Thailand, Brazil, West Germany, Finland and Austria.** The following industrialized nations have more generous leave provisions than the U.S. : **Canada, England, France, Italy, Sweden, Israel, and Japan.** The most extensive policies are in the European countries. **South Africa** has a less generous leave law than the U.S.

• **Surveys** by Gallup, Harris, Hart, Yankelovich and others **document Americans' concerns about what's happening to children and families.** Americans have always valued families but what is changing, say the pollsters, is the public's perception that government is not doing its job.

• **Thirty-two states** are considering some version of workplace leave allowing workers time off to deal with a variety of family situations, including birth, adoption, children's sickness, and, sometimes, aging parents.

• **Two-thirds of the states** are considering bills related to family or parental leave. Most of the measures focus on parental leave, narrowly defined as applying to birth, adoption or caring for a sick child. **Seventeen states** are considering broader family leave policies allowing time off for other types of emergencies such as assisting ailing parents.

• Before 1987 no state required employers to hold jobs for employees on unpaid family leave. Now, certain employees in **Connecticut, Maine, Minnesota, Oregon, Rhode Island and Wisconsin** are guaranteed such rights.

• In a few states like **California, Connecticut and Nebraska,** family policy committees or task forces are taking a long-term view unusual in the state legislative process;

• "States are filling the gap created by the federal government's current hands-off approach to family problems," says **Iowa** Senator Charles Bruner. **Iowa** passed five statutes in 1988 on a range of family issues including increasing options for workers who need time off to meet family needs.

• **Nebraska** Senator Sandra Scofield claims **family issues have become more important to the business community:** "The increasing number of children growing up in poverty does not bode well for the future workforce."

• David Blankenhorn, executive director of the Institute for American Values in New York believes there is an **emerging consensus crossing party lines** that government must respond to the needs of the nation's besieged families.

• **The opposition from small businesses to instituting family leave policies is changing. Wisconsin** Senator Plewa says, "Some employers see the value they've put into their employees. Over 90 percent of the first year's salary is the cost of finding, hiring and training the employee. It doesn't make economic sense to just dump that investment." Parental leave policies help maintain the labor force - a particular advantage in smaller firms which rely heavily on women.

• According to a study by 9to5, The National Association of Working Women, there is no evidence that parental leave mandates have any negative effects on small business employment. This first statistical analyisis of the impact of parental leave policies on small business shows that **leave policies are strongly associated with small business expansion. The study found that job growth in firms with 50 or fewer employees was 21% higher in states with leave laws than in those considered pro-business because of their anti-regulatory climate.**

• **Business people are concerned about the costs.** Temporary replacement costs appear to be minimal, according to studies of the few employers who provide such leave. A 1987 General Accounting Office report indicated that work is generally redistributed among employees in lieu of hiring replacements for workers on leave. **It is more expensive for small businesses to rehire and train new workers than to offer a limited leave policy.**

• **Costs of providing benefits during leave** can be high, especially if the employee does not return. Generally, lawmakers have responded to business concerns by exempting small employers, and sometimes requiring employees to contribute to the cost of benefits. In **Rhode Island** and **Wisconsin**, employees contribute to an escrow account for health insurance refundable upon their return to work.

• A paid leave policy is being considered in **Massachusetts.** Designed to protect low income wage earners who cannot afford missed paychecks at a time when there is a new mouth to feed, the proposal is not generous compared with family support policies in the rest of the world. However, **it is a significant step toward acknowledging society's need to nurture the next generation, support families and allow women and men to be responsible parents and employees.**

Sources: ***Kids, Families and Politics,"***
State Legislatures
November/December 1988

ChildCare ActionNews
May-June 1988
Volume 5, No. 3

Family leave aids small businesses
Employee Benefit News
October 1988

Women at Work
International Labor Office Global Survey

National Business Woman
August/September 1986

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

March 29, 1989

MEMORANDUM

TO: Representative Kay Brown

ATTN: Roxanne Turner

FROM: Maria Gladziszewski MGladziszewski
Legislative Analyst

RE: **Family and Parental Leave Statutes in Other States**
Research Request 89.320

You asked us to find out which states' family or parental leave provisions are statutory and which are by labor agreement. You also wanted some sense of how these laws are working; you were especially interested in the impact on small businesses.

Table 1 lists states with statutory provisions for family leave (leave for both sexes for the birth or adoption of a child or to care for seriously ill family members) and parental leave (leave for both sexes for the birth or adoption of a child). Three states (Connecticut, Maine, and Wisconsin) require family leave. Three states (Minnesota, Oregon, and Rhode Island) require parental leave.[1] Table 2 lists states with provisions for maternity disability.

We were not able to determine the impact on small businesses because no state requires family or parental leave for employers with fewer than 21 employees. In addition, most parental and family leave state legislation has taken effect within the last year and no state official contacted was able to comment on the impact of the legislation on smaller businesses. Labor agreements for family or parental leave are negotiated by individual unions and, therefore, no statewide family or parental leave policies are by labor agreement. It was not possible, within the research time available for this request, to contact representatives from the business communities in the states with family or parental leave provisions.

[1]Statutes from Connecticut, Oregon and Rhode Island are attached.

Federal legislation now pending in the House of Representatives would require employers of 50 or more employees to provide for 10 weeks of unpaid family leave; three years after implementation of the Family Medical Leave Act, the law would apply to employers of 35 or more employees. The Senate version of the bill applies to employers of 20 or more employees.[2]

I hope this information is useful. Please call this office if you have additional questions or need more information.

Attachment

---

[2]The Family Medical Leave Act of 1989, HR-770, went through committee mark-up on March 8, 1989, and is expected to reach the floor of the House by Mother's Day. The Senate version of the bill is expected to reach the Senate floor by mid-April.

TABLE 1
STATES WITH STATUTORY PROVISIONS FOR FAMILY OR PARENTAL LEAVE

"Family leave" guarantees men and women time to care for a new child or seriously-ill child, spouse, or parent.

"Medical leave" guarantees time off for an employee's own serious health condition (including pregnancy and childbirth).

"Parental leave" guarantees men and women time to care for a newborn or newly-adopted child; may include care for seriously ill children.

STATE	PURPOSES	WEEKS	EMLOYERS COVERED	EFFECTIVE DATE OF LEGISLATION
Connecticut 1987 Conn. Pub. Acts 87-291	Family leave	24	public sector	July 1988
	Medical leave	24	public sector	
Maine Me. Rev. Stat. Tit. 26, Sections 843-49	Family or medical leave	8	25+ employees	July 1988
Minnesota Minn. Stat. Sec. 181.930 -.980	Parental leave	6	21+ employees	August 1987
Oregon Or. Rev. Stat. Sec. 659.010-.121 659.360-.370	Parental leave	12	25+ employees	January 1988
Rhode Island RI ST 28-48-1 to 9	Parental leave; includes serious illness of a child	13	private sector, 50+ employees; public sector, 30+ employees	July 1987
Wisconsin 1987 Wis. Act 287	Parental leave;	6	50+ employees	April 1988
	Family leave for serious illness of family member;	2	50+ employees	
	Medical leave	2	50+ employees	

Note: The California legislature enacted a parental leave bill in 1987 that would have required employers with 25 or more employees to allow 16 weeks parental leave every two years. The bill was vetoed by Governor Deukmejian.

Source: Women's Legal Defense Fund.

Prepared by the House Research Agency, March 1989 (89-320A).

TABLE 2
STATES WITH STATUTORY PROVISIONS FOR MATERNITY LEAVE

STATE	LEAVE	WEEKS	EMLOYERS COVERED
Arkansas AR ST 21-4-209	Maternity disability	24	state employees
California 2 Cal. Admin. Code 7291.2(d)(3)	Maternity disability	16	all
Colorado 3 Col. Code of Regs 708, Sec 8	Maternity leave for a reasonable period		all
Delaware 14 Del. C. 1323	Maternity disability	12	public school teachers
Florida Fl St 110.221	Maternity disability	24	state employees
Hawaii Regs 12-23-1 to 12-23-22. 12-12-58	Maternity disability for a reasonable period		1+ employees
Illinois Ill Rev Stat ch 108 1/2 p 17-134	Maternity leave		public school teachers
Indiana IN ST 20-6.1-6-4	Leave of absence up to one year following birth		public school teachers
Iowa Iowa Code 601A.15-.17	Maternity disability	8	4+ employees
Kansas 1 Kans. Admin. Regs. 21-32-6	Maternity leave for a reasonable period		4+ employees
Kentucky Ky. Rev. Stat. 337.015	Adoption of a child under age 7	6	8+ employees
Louisiana LSA-RS 23:1007	Maternity disability	16	26+ employees
Maryland	Maternity leave		state employees
Massachusetts* Mass. Gen. Laws Ch. 149, Sec. 105D	Birth or adoption of a child under age three; Female employees only	8	6+ employees
Missouri MO ST 168.122	Grants Board of Education authority to establish maternity leave policy		public school employees

TABLE 2 (Continued)
STATES WITH STATUTORY PROVISIONS FOR MATERNITY LEAVE

STATE	LEAVE	WEEKS	EMLOYERS COVERED
Montana MT ST 49-2-310 to 49-2-311, 49-2-501 to 49-2-509	Maternity leave for a reasonable period		1+ employees
Nevada NV ST 608.159	Maternity disability		employers who grant medical disability
New Hampshire NH ST 354-A:9-10	Maternity disability		6+ employees
Pennsylvania PA Admin Code 41.104, 42.11-141	Adoption		employers that grant leave for childbearing and child care; 4+ employees
Tennessee** TN ST 50-1501 to 50-1505	Maternity disability and nursing	16	100+ employees
Washington Wash. Admin. Code 162-30-020	Maternity leave for period of physical disability		1+ employees

* The 1972 Massachusetts maternity leave law was amended in December of 1984 to include leave for adoption of a child under age three.

** The Tennessee law as originally enacted required leave for female employees for the birth or adoption of a child. Because of an opinion issued by the Tennessee Attorney General in December, 1988, the Tennessee legislature revised the statue to make it applicable only to natural mothers.

Source: National Conference of State Legislatures and the Women's Legal Defense Fund

Prepared by the House Research Agency, March 1989 (89-320A).

Law Lib Ref.

STATE OF CONNECTICUT

PUBLIC and SPECIAL ACTS

JANUARY, 1987, REGULAR SESSION

JULY, 1987, SPECIAL SESSION

Volume 1

P.A. 87-1—P.A. 87-376

a permanent location, such person shall seek recovery first from the association operating in the location of the property. [, and if it is a workers' compensation claim, he shall seek recovery first from the association operating in the area of the residence of the claimant.] Any recovery under this chapter shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent having a like function to that of said association.

Sec. 6. Section 38-303 of the general statutes is repealed and the following is substituted in lieu thereof:

(a) This chapter shall apply to direct life insurance policies, accident and health insurance policies, annuity contracts and contracts supplemental to life and accident and health insurance policies and annuity contracts issued TO A RESIDENT by persons licensed to transact insurance in this state at any time.

(b) This chapter shall not apply to: (1) That portion or part of any variable life insurance or variable annuity contract not guaranteed by an insurer; (2) that portion or part of any policy or contract under which the risk is borne by the policyholder; (3) any policy or contract or part thereof assumed by the impaired or insolvent insurer under a contract of reinsurance, other than reinsurance for which assumption certificates have been issued, or any policy or contract issued by a nonprofit hospital or medical service corporation.

Sec. 7. Subsection (f) of section 38-308 of the general statutes is repealed.

Sec. 8. This act shall take effect from its passage.

Approved June 10, 1987

Substitute Senate Bill No. 413

PUBLIC ACT NO. 87-291

AN ACT CONCERNING PARENTAL AND MEDICAL LEAVE FROM EMPLOYMENT.

Section 1. (NEW) (a) Each permanent employee, as defined in subsection (s) of section 5-196 of the general statutes, shall be entitled to the following: (1) A maximum of twenty-four weeks of family leave of absence within any two-year period upon the birth or adoption of a child of such employee, or upon the serious illness of a child, spouse or parent of such employee; and (2) a maximum of twenty-four weeks of medical leave of absence within any two-year period upon the serious illness of such employee. Any such leave of absence shall be without pay. Upon the expiration of any such leave of absence, the employee shall be entitled (A) to return to the employee's original job from which the leave of absence was provided or, if not available, to an equivalent position with equivalent pay, except that in the case of a medical leave, if the employee is medically unable to perform the employee's original job upon the expiration of such leave, the personnel division of the department of administrative services shall endeavor to find other suitable work for such employee in state service, and (B) to all accumulated seniority, retirement, fringe benefit and other service credits the employee had at the commencement of such leave. Such service credits shall not accrue during the period of the leave of absence.

(b) The leave of absence benefits granted by this section shall be in addition to any other paid leave benefits and benefits provided under subdivision (7) of subsection (a) of section 46a-60 of the general statutes which are otherwise available to the employee.

(c) Any permanent employee who requests a medical leave of absence due to the employee's serious illness or a family leave of absence due to the serious illness of a child, spouse or parent pursuant to subsection (a) of this section shall be required by the employee's appointing authority, prior to the inception of such leave, to provide sufficient written certification from the physician of such employee, child, spouse or parent of the nature of such illness and its probable duration. For the purposes of this section, "serious illness" means an illness, injury, impairment or physical or mental condition that involves (1) inpatient care in a hospital, hospice or residential care facility or (2) continuing treatment or continuing supervision by a health care provider.

(d) Any permanent employee who requests a family leave of absence pursuant to subsection (a) of this section shall submit to the employee's appointing authority, prior to the inception of such leave, a signed statement of the employee's intent to return to the employee's position in state service upon the termination of such leave.

(e) Notwithstanding the provisions of subsection (b) of section 38-374 of the general statutes, the state shall pay for the continuation of health insurance benefits for the employee during any leave of absence taken pursuant to this section. In order to continue any other health insurance coverages during such leave, the employee shall contribute that portion of the premium the employee would have been required to contribute had the employee remained an active employee during the leave period.

(f) On or before July 1, 1989, and annually thereafter, the commissioner of administrative services shall report to the general assembly on the extent of use by permanent employees of leaves of absence pursuant to this section in the preceding twelve-month period, and the impact of such use on state employment. The commissioner shall gather necessary information for such reports in accordance with regulations adopted pursuant to section 2 of this act.

Sec. 2. (NEW) On or before July 1, 1988, the commissioner of administrative services shall adopt regulations, in accordance with the provisions of chapter 54 of the general statutes, which establish procedures and guidelines necessary to implement the provisions of section 1 of this act, including but not limited to procedures for the periodic reporting by state agencies to the commissioner of their current experience with leaves of absence taken pursuant to said section. Such regulations may be adopted by the commissioner prior to July 1, 1988, but may not take effect prior to that date.

Sec. 3. This act shall take effect July 1, 1987, except that section 1 shall take effect July 1, 1988.

OREGON

659.340 Refusal to employ or otherwise discriminate solely because of employment of another family member prohibited; exceptions; enforcement. (1) Except as provided in subsection (2) of this section, it is an unlawful employment practice for an employer solely because another member of an individual's family works or has worked for that employer to:

(a) Refuse to hire or employ an individual;

(b) Bar or discharge from employment an individual; or

(c) Discriminate against an individual in compensation or in terms, conditions or privileges of employment.

(2) An employer is not required to hire or employ and is not prohibited from barring or discharging an individual if such action:

(a) Would constitute a violation of any law of this state or of the United States, or any rule promulgated pursuant thereto, with which the employer is required to comply;

(b) Would constitute a violation of the conditions of eligibility for receipt by the employer of financial assistance from the government of this state or the United States;

(c) Would place the individual in a position of exercising supervisory, appointment or grievance adjustment authority over a member of the individual's family or in a position of being subject to such authority which a member of the individual's family exercises; or

(d) Would cause the employer to disregard a bona fide occupational requirement reasonably necessary to the normal operation of the employer's business.

(3) As used in this section:

(a) "Employer" has the meaning for that term provided in ORS 659.010.

(b) "Member of an individual's family" means the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent or stepchild of the individual.

(4) Subsections (1) to (3) of this section shall be enforced by the Commissioner of the Bureau of Labor and Industries in the same manner as provided in ORS 659.040 to 659.110 for enforcement of an unlawful employment practice. Violation of subsections (1) to (3) of this section subjects the violator to the same civil and criminal penalties as provided for violation of ORS 659.010 to 659.110. [(1), (2), (3) formerly 659.131; (4) formerly 659.136; 1953 c.225 §5; 1985 c.565 §90]

Note: 659.340 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 659 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

659.360 Denial of parental leave prohibited. (1) It shall be an unlawful employment practice for an employer to refuse to grant an employe's request for a parental leave of absence for:

(a) All or part of the time between the birth of that employe's infant and the time the infant reaches 12 weeks of age, or, in the case of a premature infant, until the infant has reached the developmental stage equivalent to 12 weeks as determined by an attending physician; or

(b) All or part of the 12-week period following the date an adoptive parent takes physical custody of a newly adopted child under six years of age.

(2) The employer is not required to grant to an employe parental leave which would allow the employe and the other parent of the child, if also employed, parental leave totaling more than the amount specified in paragraphs (a) and (b) of subsection (1) of this section nor to grant to an employe parental leave for any period of time in which the child's other parent is also taking parental leave from employment.

(3) The employe seeking parental leave shall be entitled to utilize any accrued vacation leave, sick leave or other compensatory leave, paid or unpaid, during the parental leave. The employer may require the employe seeking parental leave to utilize any accrued leave during the parental leave unless otherwise provided by an agreement of the employer and the employe, by collective bargaining agreement or by employer policy.

(4) The employer may require an employe to give the employer written notice at least 30 days in advance of the anticipated date of delivery, stating the dates during which each parent intends to take parental leave. Duplicate copies of the notice shall be given to the employers of both parents. Both parents shall adhere to the dates stated in the notice unless:

(a) The birth is premature;

(b) The mother is incapacitated due to birth such that she is unable to care for the child;

(c) The employe takes physical custody of the newly adopted child at an unanticipated time and is unable to give notice 30 days in advance; or

(d) The employer and employe agree to alter the dates of parental leave stated in the notice.

(5) In cases of premature birth, incapacity or unanticipated taking of custody referred to in

subsection (4) of this section, the employer may require the employe to give notice of revised dates of parental leave within seven days after birth or taking of custody.

(6) The parental leave required by subsection (1) of this section is not required to be granted with pay unless so specified by agreement of the employer and employe, by collective bargaining agreement or by employer policy.

(7) The regular employment position of an employe on leave of absence under this section shall only be considered vacant for the period of the leave of absence, and the employe shall not be subject to removal or discharge from such position as a consequence of the parental leave of absence.

(8) Upon the termination of the parental leave of absence of the employe under this section, an employe shall be restored to the former or an equivalent job without loss of seniority, vacation credits, sick leave credits, service credits under a pension plan or any other employe benefit or right which had been earned at the time of the leave of absence but reduced by any paid leave that the employe used during the parental leave of absence. Benefits are not required to accrue during the parental leave of absence unless accrual is required under an agreement of the employer and the employe, a collective bargaining agreement or an employer policy. If the employer's circumstances have so changed that the employe cannot be reinstated to the former or equivalent job, the employe shall be reinstated in any other position which is available and suitable. However, the employer is not required to discharge any employe in order to reinstate the employe to any job other than the former or equivalent job unless required by an agreement of the employer and the employe, by collective bargaining agreement or by employer policy.

(9) If the employe fails to give the notice that may be required by subsection (4) of this section, the employer may require the parental leave to commence up to three weeks from the date of notice and may reduce the parental leave required by this section by three weeks.

(10) This section is not applicable if:

(a) The employe was employed by the employer for fewer than 90 days immediately prior to the first day of the parental leave of absence;

(b) The employe is employed by the employer on a seasonal or temporary basis for a period of time defined at the time of hire to be less than six months;

(c) The employer employs fewer than 25 persons immediately prior to the first day of the leave of absence; or

(d) The employer offers to the employe a nondiscriminatory cafeteria plan, as defined by Section 125 of the Internal Revenue Code of 1986, providing as one of its options a parental leave benefit that is at least equivalent to the benefit required by this section.

(11) Nothing in this section is intended to reduce the rights to parental leave to which an employe may be entitled under any agreement between the employer and the employe, collective bargaining agreement or employer policy. [1987 c.319 §2]

659.365 Procedure to enforce ORS 659.360. (1) Complaints may be filed by employes with the Commissioner of the Bureau of Labor and Industries. The Commissioner of the Bureau of Labor and Industries shall enforce ORS 659.360 in the manner as provided in ORS 659.010 to 659.110 and 659.121 for the enforcement of other unlawful employment practices.

(2) Violation of ORS 659.360 subjects the violator to the same civil remedies and penalties as provided in ORS 659.010 to 659.110 and 659.121. [1987 c.319 §3]

659.370 Posting of notice on ORS 659.360. A notice of the provisions of ORS 659.360 shall be provided by the Bureau of Labor and Industries and shall be posted in every establishment in which employes are employed. [1987 c.319 §4]

CIVIL RIGHTS OF PHYSICALLY AND MENTALLY HANDICAPPED

659.400 Definitions for ORS 659.400 to 659.435. As used in ORS 659.400 to 659.435, unless the context requires otherwise:

(1) "Employer" means any person who employs six or more persons and includes the state, counties, cities, districts, authorities, public corporations and entities and their instrumentalities, except the Oregon National Guard.

(2) "Handicapped person" means a person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment or is regarded as having such an impairment.

(3) As used in subsection (2) of this section:

(a) "Major life activity" includes, but is not limited to self-care, ambulation, communication, transportation, education, socialization, employment and ability to acquire, rent or maintain property.

Or. Rev. Stat. §659.010 (6)

Civil Rights of Mentally and Physically Handicapped

[¶ 27,000.10]

Sec. 659.010. Definitions for ORS 659.010 to 659.110 and 659.400 to 659.435.—As used in ORS 659.010 to 659.110 and 659.400 to 659.435, unless the context requires otherwise:

(1) "Bureau" means the Bureau of Labor.

(2) "Cease and desist order" means an order signed by the commissioner, taking into account the subject matter of the complaint and the need to supervise compliance with the terms of any specific order issued to eliminate the effects of any unlawful practice found, addressed to a respondent requiring the respondent to:

(a) Perform an act or series of acts designated therein and reasonably calculated to carry out the purposes of ORS 659.010 to 659.110 and 659.400 to 659.435, eliminate the effects of an unlawful practice found, and protect the rights of the complainant and other persons similarly situated;

(b) Take such action and submit such designated reports to the commissioner on the manner of compliance with other terms and conditions specified in the commissioner's order as may be required to assure compliance therewith; or

(c) Refrain from any action designated in the order which would jeopardize the rights of the complainant or other person similarly situated or frustrate the purpose of ORS 659.010 to 659.110 and 659.400 to 659.435.

(3) "Commissioner" means the Commissioner of the Bureau of Labor.

(4) "Conciliation agreement" means a written agreement settling and disposing of a complaint under ORS 659.010 to 659.110 signed by a respondent and an authorized official of the Bureau of Labor.

(5) "Employe" does not include any individual employed by the individual's parents, spouse or child or in the domestic service of any person.

(6) "Employer" means any person, including state agencies, political subdivisions and municipalities, who in this state, directly or through an agent, engages or utilizes the personal service of one or more employes reserving the right to control the means by which such service is or will be performed.

(7) "Employment agency" includes any person undertaking to procure employes or opportunities to work.

(8) "Entity" includes employers, labor organizations, employment agencies, places of public accommodation as defined in ORS 30.675 or vocational, professional or trade schools.

(9) "Labor organization" includes any organization which is constituted for the purpose, in whole or in part, of collective bargaining or in dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in connection with employes.

(10) "National origin" includes ancestry.

(11) "Person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy or receivers.

(12) "Respondent" includes any person or entity against whom a complaint or charge of unlawful practices is filed with the commissioner or whose name has been added to such complaint or charge pursuant to subsection (1) of ORS 659.050.

(13) "Unlawful employment practice" includes only those unlawful employment practices specified in ORS 654.062(5), 659.030, 659.035, 659.227, 659.270, 659.295, 659.330, 659.340, 659.410, 659.415, 659.420 and 659.425.

(14) "Unlawful practice" means any unlawful employment practice or any distinction, discrimination or restriction on account of race, religion, color, sex or national origin made by any place of public accommodation as defined in ORS 30.675 or by any person acting on behalf of any such place or by any person aiding or abetting such place or person in violation of section 14 of this 1973 Act, or any violation of ORS 345.240, 659.033, 659.037, or rules adopted pursuant to subsection (1) of ORS 659.103, but does not include a refusal to furnish goods or services when the refusal is based on just cause. [Sec. 659.010 reads as last amended by: Ch. 813, L. 1979, effective October 3, 1983, Ch. 225, L. 1983, effective October 15, 1983.]

RHODE ISLAND
RI

(4) Any individual's benefit rate which is in effect for a benefit year beginning prior to July 1, ~~1987~~ 1987, shall continue in effect until the end of that benefit year.

(b) *Dependents' allowance.*

(1) An individual to whom benefits for total or partial unemployment are payable under this chapter with respect to any week, shall, in adition to those benefits, to be paid with respect to each week, a dependents' allowance of ~~five~~ ten dollars ~~($5.00)~~ ($10.00) or five percent (5%) of the individual's benefit rate whichever is greater for each of that individual's children, including adopted and stepchildren, who, at the beginning of the individual's benefit year, is under eighteen (18) years of age, and who is at that time in fact dependent on that individual.

(2) • • •

SECTION 2. This act shall take effect July 1, 1987.

CHAPTER 366

87-H 5473A am
Approved Jul. 1, 1987.

AN ACT RELATING TO PARENTAL LEAVE

It is enacted by the General Assembly as follows:

SECTION 1. TITLE 28 OF THE GENERAL LAWS ENTITLED "LABOR AND LABOR RELATIONS" IS HEREBY AMENDED BY ADDING THERETO THE FOLLOWING CHAPTER:

CHAPTER 48
PARENTAL LEAVE

28-48-1. Definitions. — As used in this chapter, the following words and terms shall have the following meanings:

(a) "Director" means the director of the department of labor.

(b) "Employee" means any full-time employee who works an average of thirty or more hours per week.

(c) "Employer" means and includes:

(1) any person, sole proprietorship, partnership, corporation or other business entity that employs fifty (50) or more employees,

(2) the state of Rhode Island (including the executive, legislative and judicial branches), and any state department or agency that employs any employees, and

(3) any city or town or municipal agency that employs thirty (30) or more employees and

(4) any person who acts directly or indirectly in the interest of any employer.

(d) "Parental leave" means leave by reason of:

(1) the birth of a child of an employee; or

(2) the placement of a child sixteen (16) years of age or less with an employee in connection with the adoption of such child by the employee, or (3) a seriously ill child.

(e) "Seriously ill child" means a child under the age of 18 who by reason of an accident, disease or condition (1) is in imminent danger of death or (2) faces hospitalization involving an organ transplant, limb amputation or such other procedure of similar severity as shall be determined through regulation by the director of labor in consultation with the director of health.

28-48-2. Parental leave requirement. — (a) Every employee who has been employed by the same employer for twelve (12) consecutive months shall be entitled, upon advance notice to his or her employer, to thirteen (13) consecutive work weeks of parental leave in any two (2) calendar years. The employee shall give at least thirty (30) days' notice of the intended date upon which parental leave shall commence and terminate, unless prevented by medical emergency from giving such notice. The director shall promulgate regulations governing the form and content of the employee's notice to the employer.

(b) Parental leave granted pursuant to this chapter may consist of unpaid leave. If an employer provides paid parental leave for fewer than thirteen (13) weeks, the additional weeks of leave added to attain the total of thirteen (13) weeks required by subsection 28-48-2(a) may be unpaid.

28-48-3. Employment and health benefits protection. — (a) Every employee who exercises his or her right to parental leave under this chapter shall, upon the expiration of such leave, be entitled to be restored by the employer to the position held by the employee when the leave commenced, or to a position with equivalent seniority, status, employment benefits, pay and other terms and conditions of employment.

(b) During any parental leave taken pursuant to this chapter the employer shall maintain any existing health benefits of the employee in force for the duration of such leave as if the employee had continued in employment continuously from the date he or she commenced such leave until the date he or she returns to employment pursuant to subsection 28-48-3(a).

Prior to commencement of parental leave, the employee shall pay to the employer a sum equal to the premium required to maintain the employee's health benefits in force during the period of parental leave. The employer shall return such payment to the employee within ten (10) days following the employee's return to employment.

28-48-4. Effect on existing employment benefits. — (a) The taking of parental leave pursuant to this chapter shall not result in the loss of any benefit accrued before the date on which the leave commenced.

(b) Except as provided in subsection 28-48-3(b), nothing in this chapter shall be construed to entitle any employee who takes parental leave pursuant to this chapter to any benefit other than benefits to which the employee would have been entitled had he or she not taken the leave.

(c) Nothing in this chapter shall be construed to affect an employer's obligation to comply with any collective bargaining agreement or employment benefit plan that provides greater parental leave rights to employees than the rights provided under this chapter.

(d) The parental leave rights mandated by this chapter shall not be diminished by any collective bargaining agreement or by any employment benefit plan.

(e) Nothing in this chapter shall be construed to affect or diminish the contract rights or seniority status of any other employee of any employer covered by this chapter.

28-48-5. **Prohibited acts.** — (a) It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise any right provided by this chapter.

(b) It shall be unlawful for any employer to discharge, fine, suspend, expel, discipline, or in any other manner discriminate against any employee for exercising any right provided by this chapter.

(c) It shall be unlawful for any employer to discharge, fine, suspend, expel, discipline, or in any other manner discriminate against any employee for opposing any practice made unlawful by this title.

28-48-6. **Judicial enforcement.** — A civil action may be brought in the superior court by an employee or by the director against any employer to enforce the provisions of this title or of any order issued by the director pursuant to section 28-48-7. The court may enjoin any act or practice that violates or may violate any provision of this chapter, and may order such other equitable relief as is necessary and appropriate to redress such violation or to enforce any provision of this chapter.

28-48-7. **Enforcement powers of the director.** — If, after giving an employer written notice and an opportunity to be heard, the director finds that the employer has failed to comply with any provision of this chapter, the director may issue such orders as he or she deems necessary to protect the rights of any employee. The director shall promulgate such rules and regulations as are necessary and appropriate to carry out the provisions of this section.

28-48-8. **Civil penalty for violations.** — Any employer who shall violate any provision of this chapter, or of any order issued pursuant to section 28-48-7, shall be subject to a civil penalty of not more than one thousand dollars ($1,000). In the case of a continuing violation, each day's continuance thereof shall be deemed to be a separate and distinct offense.

28-48-9. **Severability.** — If any provision of this chapter or the application thereof to any person or circumstance is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application; and to that end, the provisions of this chapter are declared to be severable.

SECTION 2. This act shall take effect upon passage.

LABOR RELATIONS

FILE: HB155 RESPONSE A VM/SP CONVERSATIONAL MONITOR SYSTEM

To: Sioux Plummer

From: Bruce Cummings

Subject: Request for comments on CSHB 155 (draft)

Date: January 17, 1990

The draft legislation contains three new elements which warrant comment and consideration.

1. The draft expands the universe of applicability from family and parental leave to sick leave claimed by the employee in the event of a serious health condition. If enacted, this would significantly increase employee entitlements beyond those provided in collective bargaining agreements without the opportunity to achieve an appropriate alternative or quid pro quo. In addition, the employer's hands would effectively be tied in situations in which there is no expectation that the employee will be able to return to work. At present, the State may administratively terminate such employees and permanently refill the vacated position. Under the terms of the bill as written, it would appear that the employee could insist on being retained for the full 18 weeks, forcing the employer to leave the position vacant or to fill it with a substitute or temporary employee.

2. The draft requires that collective bargaining agreements contain provisions "at least as beneficial" rather than "comparable" as in the previous version. While admittedly the language change is not on its surface earthshaking, the revision does appear to limit the range of bargainable alternatives.

3. The initial bill permitted denial of leave if the requesting employee was in the top 10 percent of employees in the agency with respect to salary providing that the employee has skills, knowledge or experience which cannot be provided by other state employees. The draft adds the further restriction that there must not be temporary employees or "persons available for temporary or nonpermanent employment." This restriction effectively eliminates any ability to deny leave except in very specialized job classes with a severely restricted labor pool. Additionally, full compliance could well require that an agency actually or effectively work the relevent nonpermanent register to determine the availability of nonperm replacements prior to making a decision on denial, a time consuming process which detracts from productive work. The single criterion is the simple availability of minimally qualified replacements: no allowance is made for the agency to consider other factors, such as the cost and length of time required to bring a temporary employee to the working, productive level.

As far as fiscal impact is concerned, I can only reiterate my commemts

FILE: HB155 RESPONSE A VM/SP CONVERSATIONAL MONITOR SYSTEM

of last February. Cost is not calculable at present absent data on utilization; however, increased leave entitlements will undoubtedly be followed by increased absences.

STEVE COWPER
GOVERNOR

PHONE
(907) 561-4227

STATE OF ALASKA
OFFICE OF THE GOVERNOR

ALASKA WOMEN'S COMMISSION
3601 C STREET - SUITE 742
ANCHORAGE, ALASKA 99503

January 18, 1990

JAN 22 1990

Representative Hoffman
Representative Larson
Co-Chairs, House Finance Committee
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, Alaska 99811

Dear Representative Hoffman and Representative Larson,

The Alaska Women's Commission is in strong support of HB155, the parental leave bill. HB155 seeks to enable people working outside the home to take unpaid leave without fear of losing their job so that they can provide the care to infants, sick children and elderly parents that is so critical for healthy families.

It is necessary to address in a positive way the impact on our families of the increasing number of women in the work force. Nationally less than 10% of families have a father working outside the home while the mother stays at home to take care of the children.

The cost to women of our lack of family leave policies is decreased earning capacity and decreased ability to nurture their families. The cost to society is increased welfare, unemployment and government funded care for elderly. Yet the costs to employers are minimal and, as shown by a recent U.S. General Accounting Office study, there are savings in training and hiring costs and increased employee loyalty and productivity. In Oregon, a year after parental leave was initiated, only 20 cases of non-compliance had been reported and one litigated. Virtually no businesses reported that they would reduce other benefits and only 1 in 3 employees was replaced. States with parental leave policies also have been shown to have higher job growth in the small business sector than states with anti-regulatory policies.

Two thirds of women who work are single, divorced, widowed or married to men earning less than $15,000/year. In Alaska 68% of women aged 20 to 34 years are employed, and 78% of women aged 35 to 44 years. While Alaska has one of the highest birth rates in the nation, we also have the second highest participation rate of females in the work force.

When working full time, married women earn on average half of what married men earn. It is not surprising therefore that women disrupt their career or risk loss of their job to look after sick children and elderly parents. This creates a vicious circle that prevents women from attaining promotions and seniority and thus reduces their earning capacity. Yet with over two out of three marriages in Alaska ending in divorce, it is critical for women, who often become the sole provider for their family, to earn an adequate income and to not risk losing their job or leaving sick children at home alone. Otherwise reliance on various forms of public assistance becomes their alternative, at considerable cost to the state.

Several national studies have looked at what private businesses now provide. These studies indicate that at least half of employers provide maternity leave. However maternity leave is least frequently provided in the retail trade and service industries which are areas of high female employment. When leave was available for two parent families, 37% of women returned to work in less than 8 weeks and 32% in 9 to 18 weeks. Men rarely took paternity leave. Thus, the impact of mandated leave is diminished by economic reality for most families since it is not fully used.

The National Association of Working Women recently made a multivariate analysis of business employment in seven states with parental leave compared with seven states considered to be pro-business because of anti-regulatory policies. The study addressed the question: Have small businesses grown more slowly or declined in those states which have mandated a family leave policy? The results of this study indicate that family leave policies have had no negative effect on job growth in the small business sector. In fact, family leave policies are associated with high job growth in the small business sector. Businesses with less than fifty workers were estimated to hire approximately 21% more employees if these enterprises were located in a parental leave state. A second finding of this study is the positive association between a high rate of women's labor force participation and employment growth in all size firms. The well-being of employees, which correlates with productivity, decreases when family obligations clash with work responsibilities.

I look forward to your support of this bill. Family leave is a critical issue for families that needs to be addressed now.

Sincerely,

Ruth Lister

Ruth Lister
Executive Director

CC: House Finance Committee
RL/bh

[redacted] LASKA STATE MEDICAL ASSOCIATION
2401 E. 42nd • Suite 104 • Anchorage, Alaska 99508 • (907)562-2662

March 1, 1989

Honorable Kay Brown
House of Representatives
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Brown:

On behalf of the Alaska State Medical Association and myself, I would like to applaud your efforts in addressing health issues through the cosponsorship of House Bill 141. In addition, we continue to support your efforts on House Bill 155 as you again seek employment rights based on pregnancy and childbirth.

Our legislative committee has discussed this proposed legislation and compliments you for your leadership. If we can be of any service or offer any expertise on these or other health issues, please feel free to contact us.

Sincerely,

Ray Schalow
Executive Director

NFIB Alaska

National Federation of
Independent Business

Thursday 19 April

House HESS Committee

RE: HB 155

Dear mr. Chairman:

I Am Sorry that I have been called to Anchorage today and will not be able to attend the continuation of the hearing on HB 155 (PARENTAL LEAVE).

I have attached a definitive presentation by our NFIB national office on this issue and I urge you and the committee to read this and consider this a supplement to my previous testimony on Tuesday.

I am also developing the information you requested on the Number of businesses who are NFIB members who would be directly affected, and will tender it to you as soon as possible.

I appreciate your consideration

State Office
Suite 201
430 'C' St.
Anchorage, AK 99501
(907) 278-NFIB (6342)

Sincerely,

Anthony Sukow

The Guardian of
Small Business

Parental Leave

National Federation of Independent Business

NFIB

STATEMENT OF

John Motley III
DIRECTOR OF FEDERAL GOVERNMENTAL RELATIONS

OF

NFIB

Before: Subcommittee on Children, Family, Drugs and Alcoholism of the Senate Labor and Human Resources Committee

Subject: S. 249, Proposal for Government Mandated Parental and Temporary Medical Leaves

Date: October 29, 1987

Mr. Chairman, my name is John Motley, and I am the Director of Federal Governmental Relations for the NFIB. NFIB is a voluntary membership organization with over 500,000 small business owner members. Our membership comes from all of the industrial and commercial categories and reflects the national small business community in its distribution among industries. That is, we have about the same percentage of members in the construction industry, the manufacturing industry, wholesale, retail, etc., as exists in the national business profile.

Today, I also represent the Concerned Alliance of Responsible Employers. NFIB is a founding member of the Alliance, and my

comments will also reflect their views. The Alliance represents more than 160 corporations, trade associations, professional societies, and citizen groups actively seeking to ensure that the current voluntary system of benefit structuring remains intact. The Alliance's members believe that the private sector is best equipped and provides the most flexible and efficient response to the changing demands and requirements of today's workforce.

We at NFIB appreciate this opportunity to testify on your proposed legislation mandating parental and temporary medical leave benefits, or "parental leave", as it is commonly referred to.

The 1986 White House Conference on Small Business voted opposition to government mandated benefits, such as parental leave, their number two priority -- second only to the liability insurance crisis -- receiving 1,360 votes of 1,715 ballots cast. While the recommendation was to oppose all federal mandates, it was parental leave that brought this issue into focus, and opposition to legislation was specifically cited.

Further, the National Advisory Council for the Small Business Administration, consisting of 120 small business owners and representatives from around the country, met in Providence, Rhode Island, on October 5 and 6 and passed the following resolution:

The freedom and flexibility that have traditionally characterized the labor management relationship in the American "free enterprise system" are essential to the health of a vibrant small business community. Recent legislative initiatives all interject the federal government directly into this relationship along the lines of the rigid and failed labor-management policies of Western Europe. These initiatives threaten the essential strength and job generating abilities of American small business and should be rejected.

Such initiatives include:

-- The Family and Medical Leave Act, H.R. 925 and S. 249, and any so-called compromise bill that mandates that employers provide this fringe benefit

-- The Kennedy-Waxman Minimum Health Benefits For All Workers Act, S. 1265 and H.R. 259

-- The High Risk Occupational Disease Notification and Prevention Act, H.R. 162 and S. 79

-- Plant Closing Notification Act and the Minimum Wage Restoration Act, S. 837 and H.R. 1834.

Also, the results of our September 1986 Mandate polling were 83% opposed to government-mandated parental and medical leaves (11% favored and 6% undecided). The results for the state of Connecticut varied only slightly: 77% opposed, 14.5% favored, and 8.5% undecided.

Beyond the practical difficulties and costs associated with this particular mandate, which I will elaborate on later, the business community's strong and vocal opposition to parental leave is an outcry of rage on principle: that the Congress would force its judgement onto the employer-employee relationship to a new and unprecedented degree.

Business owners fear that such a precedent, once set, would open the floodgates to an increasing number of attempts to force businesses to pay for every benefit deemed desirable by various elements in the national workforce. Indeed, in the 100th Congress alone, we have a plethora of mandate proposals: the Kennedy/Waxman bills mandating health insurance coverage, the Stark/Gradison proposal for mandated catastrophic coverage, the Ways and Means Committee consideration of employer-paid continuation of health insurance coverage for former employees and their dependents. All this while the ink is not yet dry on the "COBRA" provisions passed without hearings or debate in 1986.

Practical Difficulties in Implementing Mandated Parental Leave

Providing for parental and medical disability leaves is common sense and in very many cases, good sound business judgement; mandating these leaves will be disastrous because of the cost and practical difficulties in implementing such policies, regardless of the circumstances of the particular business and its employees.

Small firms are labor intensive, and it's not unusual for each employee to wear more than one hat; it could be impossible to get temporaries who can perform this variety of functions in a particular manner.

In larger firms, individual job units could be severely hampered by the loss of one employee. One NFIB member who has testified on these bills provides an excellent example. She owns a paint manufacturing plant with 89 employees. They are a job shop: each paint formula is developed to customer specifications, and all paint is manufactured per customer order. The paint they make goes directly on the customer's line and is an integral part of his manufacturing process. Because of this, there is great demand for continual technical service. Her company's particular strength is its ability to both respond quickly to customer line emergencies and meet the short lead times required by just-in-time deliveries.

The company provides group life and medical insurance, for which it contributes 80 pecent of the premium; both short- and long-term disability coverage; and a new 401(K) plan at the request of the employees. They have given salary and wage increases every year since 1958, have had one strike in their 80-year history, but not had even one lay-off. She has testified:

> The company encourages long-term employment and makes every effort to accommodate the special needs of its employees when problems occur. The flexibility needed to make these accommodations would be limited if government were to begin mandating benefits such as leave.
>
> If it were to pass, it would have severe consequences for Rockford Coatings because it would require leaves of such a nature and length that it would threaten the stability of our business. If the legislation were in effect today, paternity leave alone would cost our company four months' service of

10 percent of our technical force, including our Rockford lab manager. Paint chemists and service technicians are not available in the temporary market. We would have to choose between overburdening other employees or violating an unreasonable law by denying the leave or hiring replacements. Surely, lawsuits would be inevitable, productivity would suffer and the costs would be grave.

By way of further illustration, consider the description of a small business distributing medical supplies in East Providence, Rhode Island:

> The bill incorrectly addresses "all firms with 15 or more employees" but fails to acknowledge that all 15 jobs within a firm are not interchangeable. For example, a typical small distribution firm is staffed as follows:
>
> | | |
> |---|---|
> | 1 Administrator | 2 Delivery Men |
> | 1 Accounting/Finance person | 2 Salespeople |
> | 1 Accounts Receivable clerk | 1 Purchasing |
> | 1 Accounts Payable clerk | 1 Customer Service/Telephone |
> | 1 Receiver | 1 Computer Operator/Programmer |
> | 1 Warehouseman | 1 Pricing Clerk/Terminal Operator |
> | 1 Shipper | |
>
> Total 15
>
> When an employee is absent it's not as though we were 1/15th understaffed. We are 100% understaffed in that functional area. To fill any one functional job on a temporary basis for six months and then to guarantee the absent employee full re-employment rights represents an unrealistic demand placed upon the employer by the federal government.

If a company can hire a replacement for the leave period, what does the employer do when the original employee returns? Lay off the temporary and face the increased unemployment insurance (UI) cost? In all but 14 states, a temporary replacement laid off after working an 18-week leave period becomes eligible for unemployment benefits.

Then, too, some employers, as one NFIB member has testified, face a unique problem relating to the terms of their collective bargaining agreements. To protect the security of current union employees, the maximum time any temporary may stay within the craft classification is 60 days. In other words, a temporary would actually become a "temporary replacement", such that two to four different temporaries would be required to cover the leave period. The disruptions to the work flow and the team concept are obvious.

The alternative solution, covering for the missing employee with overtime from other workers, presents another set of problems. If an employer foregoes a replacement -- the costs of hiring and training -- and asks existing employees to fill in, he faces overtime costs at time-and-a-half or double-time, less productivity and employee morale problems.

Due to the competitive nature of small business, necessary bid figures for contracts are usually quite precise and the margin for error slight. The concept of using overtime would require the employee, in order for the job to come in on time and within budget, to produce 150% of the normal hourly work. Practical reality indicates that this is not likely to happen. Overtime costs must then be absorbed by the business, reducing or eliminating profit margins.

Benefit Mandates are Detrimental to Employees, Too

In all businesses, benefit packaging is a zero-sum game. There are only so many dollars to go around.

The types and feasibility of benefit packages differ for each employer, based on a variety of factors, such as type of industry, size and skill of the workforce, individual workforce needs, competing standards in the industry by geographic location, and the ability to absorb or pass through costs.

For example, small employers typically institute vacation and sick leave benefits first. As their profitability increases, health insurance is the next most widely offered -- and desired -- benefit.

The number one problem for small employers, according to an NFIB survey, is the cost of health insurance. Legislating new benefits and requiring employer-paid benefit coverage during extended leave periods will only exacerbate this problem. Small businesses expand benefit coverage as their profitability increases; nowhere is this fact recognized in this legislation.

Mr. Chairman, with all due respect to the collective wisdom of the Congress, it just is not possible for Congress to decide for

each of America's 112 million employees which benefit is the most important. In fact, it is patently unfair to mandate that a benefit plan for a 55 year-old woman, for example, contain a parental leave provision when such a mandate might well preclude the offering of a benefit such as paid prescriptions, which is much more important for this particular employee.

All companies are not alike all workforces are not alike and certainly all employees are not alike. Flexibility on the part of the businesses and employees to decide on a benefit plan is crucial.

These mandates change the cost of employment and could affect a firm's employment decisions. Sixty-six percent of the jobs for young Americans are provided by small employers. They provide the bulk of the on-the-job training. Small business -- labor intensive and pressed for a competitive edge -- will be forced to overlook these same young men and women.

An architectural firm provides somber testament to "the detriment and harm it (H.R. 925) would cause to the young people, the future of the country":

> We have an Architectural firm with 65 employees, 60% of them are under 30 years of age. 30% have been with the firm over 20 years. The young people are professional, college graduates and our firm is known as "the springboard to Architecture" in Orange County. We provide Health Insurance, Life Insurance, Workmen's Compensation, paid vacations and major sick leave. There are approximately 400 to 500 architects in Orange County who have

worked in our firm and left with our blessing to go on with their careers. Our entire program for young people will come to a roaring halt if this law is passed. We could no longer stay in business with a potential of 30 employees home on paid or unpaid leave, and obviously, all interviewing and hiring would be from the 40 years and older group.

Requiring employers to provide parental leave benefits sets up conditions for potential discrimination. When choosing between two equally qualified candidates, an employer may be more likely to hire the candidate least likely to take the leave.

Congress already has provided a chilling demonstration of this dynamic. In 1982, Congress amended the Age Discrimination in Employment Act, requiring firms with 20 or more workers to provide health insurance for their employees aged 65-69. The amendments also require that the plan be the primary payer of health costs for those workers.

The small business community responded quickly, in the only way it could. Within a year, firms with fewer than 100 workers employed only two-thirds of the elderly workforce. Previously, they had provided jobs for more than three of every four.

Mr. Chairman, mandating these benefits may destroy the very jobs proponents seek to protect. Small businesses create the bulk of our nation's jobs. Small business created the jobs that absorbed the baby boom generation and made it possible for millions of women to

move into the workforce. The rigidities of government-mandated benefits will hamper job creation, undermining the American small business miracle other countries marvel at and want desperately to duplicate.

Benefit Mandates in a Global Economy

American businesses do not operate in a vacuum. We are part of a global economy in which we must be able and willing to compete. Small businesses, while not always on the front line, play a vital role as suppliers and in providing services throughout our economic chain.

Since 1980, many U.S. industries have lost their competitive edge in the world market. Indeed, the 100th Congress has recognized this dilemma and formed groups like the Competitiveness Caucus to address this issue. At the same time, however, the 100th Congress has introduced several mandated benefit proposals that will only further damage the ability of these wounded companies and our nation to compete. Mandated benefits are not a new invention. Before we step down the slippery slope of government intervention into the workplace, we should take advantage of the information available to us and learn from other countries' mistakes.

The European experience with mandated benefits is that it has increased the fixed costs of hiring to the point of stagnation. Much of our competitiveness threat is now coming from Japan and Asia. The compensation in these countries is such that government mandating of even a minimal level of benefits for U.S. employees will most certainly reduce our competitiveness and is likely to result in the loss of U.S. jobs.

NFIB has coined a term for this very real danger -- "Europeanization." We fear the effects from following in the footsteps of our European neighbors who have chosen to mandate a large proportion of their total compensation package. The results: few new business starts, no job growth, a sluggish GNP, high structural unemployment, and long periods of joblessness for displaced workers. The charts in our appendices, prepared by the NFIB Foundation, illustrate several of these factors:

Those nations with the highest proportion of benefits to wages -- Italy, Germany, France and Europe as a whole -- also have the lowest levels of employment growth. (Charts 1 & 2)

These same nations exhibit higher levels of unemployment and longer durations of unemployment. (Charts 3 & 4)

In looking at female labor participation rates, it would appear that increasing fringe benefits (as a percentage of wages) has no effect. (Chart 5)

American companies have been boosting their productivity by adding more capital and <u>more</u> labor, but European companies have been using capital <u>instead</u> of labor. Labor market rigidities, wage and benefit mandates are resulting in excessive substitutions of capital for labor in Europe. (Chart 6)

Further illustration can be found in the remarks of one small California manufacturer:

> "Please recognize that many small manufacturers like ourselves employ largely unskilled entry level people. Our fringe benefits approximate 30% of our wages. We employee 25 people and we compete with wages of $2.50 per day 150 miles south in Mexico, $0.50 -- $0.75 per day in the Philippines and similar total daily labor costs in other pacific basin countries. Programs such as this adds to the growing inability of small companies to compete in the world marketplace.

The Proposed Benefits May be Unpaid to the Employee, But There Are Costs

Because the leave periods stipulated in these bills are unpaid, a casual analysis would lead one to believe these bills are cost free. Nothing could be further from the truth.

Assuming jobs are interchangeable and other employees can fill in, time and a half for a $6.45/hour employee (1982 average wage in firms with less than 100 employees) would require $2,474 in additional wages alone for an 18-week parental leave and $3,573 for a 26-week medical leave. These benefits are not free even when unpaid. Yet the legislation requires recommendations be made to the Congress on implementing paid leave!

The proposed bills require employers to continue the existing benefit arrangements of employees on leave. We know from our 1985 Employer Benefit Survey that two-thirds of the small employers

providing health coverage pay the entire premium cost -- the median cost being $75-95 per month for single employees $125 per month for an employee with dependents. These expenses would also have to be carried by the employer for an employee on leave.

Consider, too, the double-whammy of "COBRA" if the employee on leave decides to quit after the 18- or 26-week period -- the employer must then extend coverage for another four months. One member explains:

> We recently had a young woman who requested three-months' maternity leave which we granted. In order to hold her job, we employed a temporary employment service to fill this job as secretary/receptionist. During the leave, we paid all benefits. At the end of the leave time, the individual informed us she had decided not to return to the labor force. In other words, we went through a period of inefficiency and delay in being able to seek and train a replacement (as well as a monetary outlay to cover fringe benefits) for an employee who did not return.

The number one problem for small firms is the cost of health insurance, according to the 1985 NFIB Small Business Problems and Priorities Survey. Mandating these benefits with continued coverage during the leave period acts as a disincentive for employers to offer health insurance.

For those firms that can afford hiring temporaries, there are also grave consequences for their UI rates. The majority of small employers already pay more in payroll taxes than any other form of taxation.

As we stated earlier, using the 18-week parental leave period proposed in S. 249, in all but 14 states the temporary employee would be eligible for unemployment compensation when let go by the employer (see attached chart).

Public Opinion

Mr. Chairman, we have closely tracked your hearings on this issue, and while we commend you for your efforts to take this issue to the people in your field hearing work, we believe the record has been construed to single out a minority of cases where employees were not satisfied with their employer's particular policy or lack thereof. In no instance did we hear the employer's side of the story. Always, there are two sides to a story.

Proponents cite the Opinion Research Corporation's April 1987 polling results indicating that a majority of those polled support "The Family and Medical Leave Act" (a full copy of the survey results is attached).

The complete poll results -- the other side of the story -- bears repeating. A majority of those polled -- a majority of those who support "The Family and Medical Leave Act" -- see the same folly in government mandates that I've outlined in my testimony today. Even the majority of supporters (54%) agree that the government

should not interfere in the employer's decision as to whether or not grant parental leave ... 72% of those who are opposed (to the legislation also) hold this opinion.

The majority of both supporters (56%) and opponents (58%) see the possibility that requiring employers to grant parental leave might result in fewer women being hired.

Even more -- 71% of supporters and 78% of opponents - agree that parental leave with the guarantee of job security will be a hardship for many small companies.

Another problem, recognized by a large majority of the public (73%), is that providing unpaid parental leave will not help low-income employees.

Substitute Bills

Mr. Chairman, proponents of the House companion bills, H.R. 925 and H.R. 284, are now touting substitute language -- requiring 10 weeks family leave and 15 weeks medical leave for employees with one year of service in firms with more than 50 employees -- as a "reasonable" alternative. Mr. Chairman, our view on a "reasonable" size standard for exempting businesses from a government mandate is that there is none, and changing the employee threshold at which the mandate applies does not alleviate the concerns of business owners.

David A. Matthews, president of a small medical supply firm says this well:

> "The exemption itself is a clue to the harmful effects of the bill. If such a bill were justified, would it not be equally justified for employees of all companies? Do employees of large companies have babies differently than those in small companies? No. The only rationale for the exemption is recognition that its provisions could sink many small firms. It's like saying, "This is a poison, so we'll only give it to people we think can survive it". (emphasis added)

All businesses are not the same, and very real economic conditions often dictate the availability and length of any leave period or benefit. Mandatory benefits increase fixed costs. Businesses already operating on thin margins could be forced to eliminate jobs and may well be driven out of business.

David Birch, the noted MIT economist, has published a new book in which he discusses the detrimental "hourglass effect" observed in Canada. Government-imposed thresholds have made medium-size firms extinct. The Canadian economy operates with only very large and small firms. Birch is credited for his work in discerning the special dynamism of small firms in

creating jobs. His "hourglass effect" is illustrated by these comments of a small business owner:

> If this bill is passed, I am sure that each employer will be extremely cautious when making a decision to hire a person who might fall within these categories. Likewise, I can see that small businesses who now have 14 employees would think twice before hiring any additional help which would automatically place them under jurisdiction of this pending legislation.

Likewise, an appropriate leave time will hinge on many factors -- the employee's medical condition, the needs of the business, the availability of a replacement or other trained employees.

I would argue, Mr. Chairman, that the real question is whether this type of government mandate is needed at all. It's acknowledged that nearly all large businesses provide for these types of leaves. NFIB field survey data indicate 72% of small firms allow time off without loss of benefits. Of the 16.3% "nc" responses (11.9% were "no reply"), more than half were from firms with fewer than five employees. The United States' voluntary, flexible benefit system has worked well in this area.

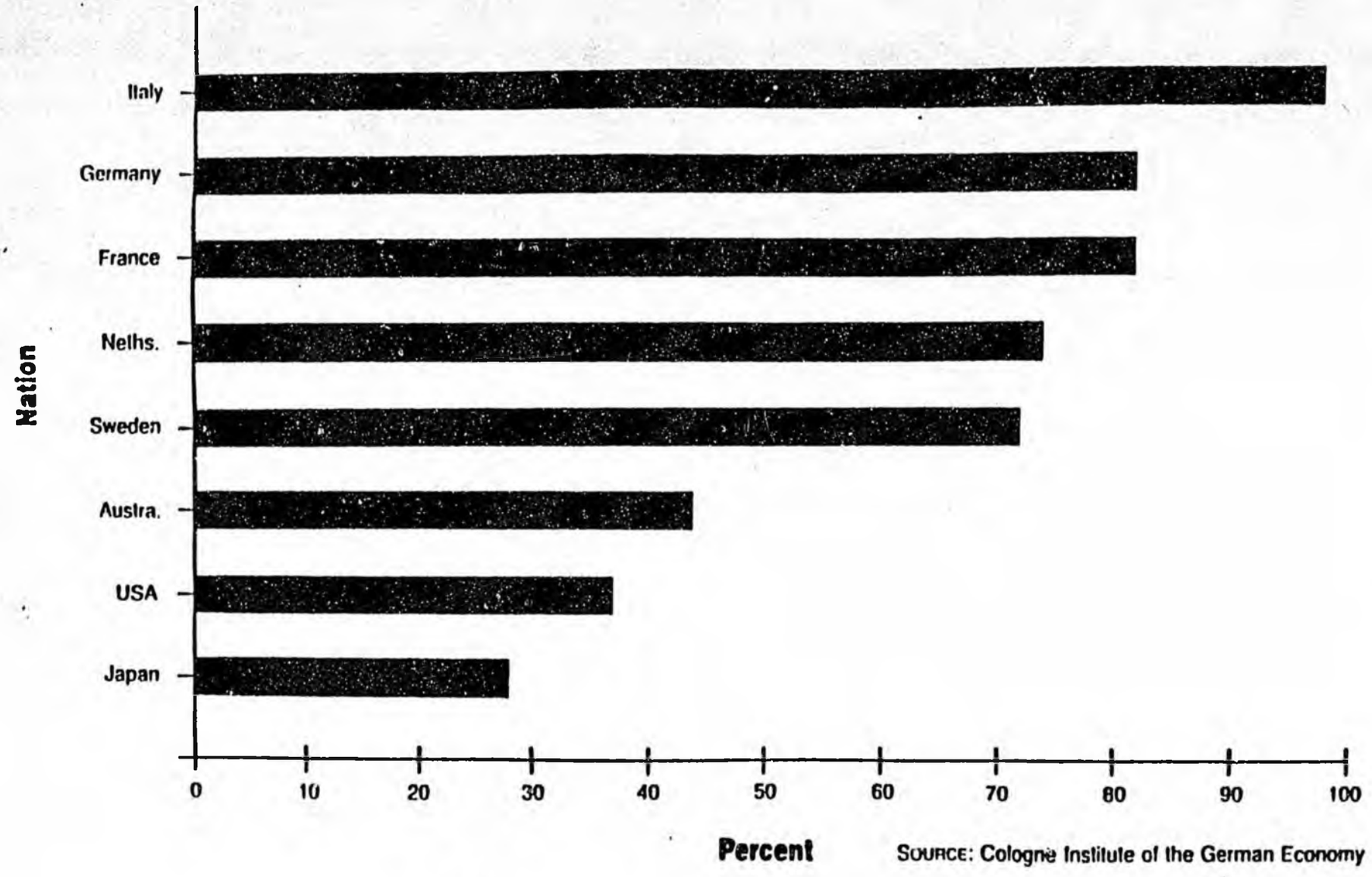
While parental leaves are excellent benefits, they are only one option among many. For instance, small firms are more flexible and more likely to offer part-time jobs that allow women to work and still be at home with their children.

The costs of mandated parental leaves will limit the availability of other benefits. Employers and employees are best able to structure benefit packages; Congressional dictates ignore individual needs and differences.

Congress should not attempt to manage the nation's businesses from Washington. It hasn't worked in Europe, and it won't work here.

0310T

Fringe Benefits as a Percentage Of Wages in Manufacturing Industries By Selected Nation: 1985



SOURCE: Cologne Institute of the German Economy