

**The Family and Medical Leave Act:
Compliance Among Employers**

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Abstract

The Family and Medical Leave Act: Compliance Among Employers

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The Family Medical Leave Act, more commonly known as FMLA, has been molded and shaped since its 1993 introduction. Its premise is to provide unpaid leave to employees tending to specific needs at home. Court cases and amendments have created a minefield of possible litigation for employers. On one side, employees deserve leave during emergencies to care for loved ones; on the other, employers need staff present to meet business needs. Issues of administration and enforcement of the FMLA stem from educational gaps in both employers and employees. By analyzing *The WestLaw Campus Research Database* of 2014 Cases I hope to find trends in litigation that will help develop a survey for employers. Surveying employers about their leave policy is the best way to observe noncompliance in a short time span. Upon collection of data from surveys I will answer two questions:

1. In what components of the law do employers struggle most?
2. Is there an issue of noncompliance in employers surveyed?

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Purpose of Study

The primary objective of this study is to analyze the FMLA in legal cases and observe the employers who administer the leave policy. The objective is achieved by collecting word frequencies from the *WestLaw Campus Research database*. Additionally, the survey questions asked of the Society for Human Resource Management members achieves the objective within time and observational constraints.

The stakeholders identified by this study include Human Resource professionals directly and indirectly involved with FMLA administration, eligible employees, and the FMLA's governing body – the Department of Labor.

Research Questions

1. Among cases found in the *WestLaw Campus Research Database* are there trends in the language used?
2. Among Tri-State Society for Human Resource Management members surveyed are there trends in noncompliance?

Significance

The FMLA has been in existence for over two decades and people still cringe when it comes up in conversation. Rightfully so, the legal environment and application of FMLA is confusing not only to employees, but also, to Human Resource professionals alike.

Over time the language of the act has been fine-tuned and molded into varied definitions. Employees can be confused when reconciling company leave policy, the FMLA, and what is actually happening. Administration, enforcement, and remedies for noncompliance are costly

and generally not questioned as often by employees because they fear repercussion.

Failure to appropriately administer leave results in noncompliance with FMLA. Most every employer needs to have some sort of leave policy in place, and new entrants to the workforce have increasingly used FMLA. This means that issues of administration were likely to continue. In fact, as more people become educated on leave benefits under the FMLA it is plausible that the awareness of noncompliance issues will become more prevalent. Equally as important is the employer's perspective. Noncompliance is the perfect foundation for litigation. Claims can be costly to defend and just as costly to settle.

Understanding the FMLA has been a focus of employers for over two decades now. However, there has been a fairly consistent problem with FMLA compliance. According to Kenneth Matos and Ellen Galinsky's study in partnership with the Society for Human Resource Management (2014), approximately one in five employers are noncompliant. Yvette Rose, a Doctor of Public Administration, addressed the question of noncompliance in 2008 by analyzing 58 court cases from 1995 to 2001. Rose concluded that not only are employers and employees on a different level of understanding, the courts also have some contradictory opinions. Misinterpretation of the law is at the heart of noncompliance and it is suggested that most employers are not maliciously noncompliant, they simply are not updating policy fast enough to stay compliant.

Studies have shown that FMLA compliance rates hover around the 80 percent mark. This study finds barriers to compliance that current employers may be experiencing. By focusing on cases heard in 2014, the study works with the most recent interpretations of the law. Without looking at the most recent cases the falls victim to the same flaw of most employers – staying behind the curve.

Based on a 2014 study done by the Society for Human Resource Management 43 percent of all responding firms used the HR department to record absences related to FMLA. This means human resource, compliance, and compensation professionals will be able to use this study's findings to examine weak points in their organization, and although the primary focus of the research is on the FMLA, noncompliance with any law can be costly. The methods of this study are easily adapted to other topics. Not every employer is noncompliant, but it is beneficial to see how other organizations may miss the mark so as to avoid the same mistakes. Employers may find it necessary to assign FMLA compliance to a specific job category or position if it is not already in place. Ideally, the surveys and findings from this research will spark a focus on policy within firms. Ignorance of the FMLA is not a valid defense and a firm desires to avoid costly litigation.

Literature Review

The Family and Medical Leave Act (FMLA) of 1993 is a law that reacts to the conditions workers face at home. This means that the law is ever changing. Employers could see costly litigation for improper administration, but only if employees understand the law as well. In fact, it seems that most litigation is a function of slow response rather than malicious intent. During his study on paternity leave and FMLA Erin Kelly, a sociologist from the University of Minnesota, established that firms were more likely to have illegally short paternity leaves if there wasn't an on-site HR professional, supporting her hypothesis of an inattention to the legal environment (Kelly, 2010). Federal law is not the only evolving law; states are adding their own additional requirements. Some employers may find themselves not paying enough attention to leave benefits until they're being met with a lawsuit. This research will examine litigation and administration of FMLA by discussing the literature basis.

What is FMLA?

Employees across the nation ought to be afforded the same set of basic rights. This was a tenant of the Family and Medical Leave Act when it was enacted in 1993. To qualify for these basic rights an employee must meet two criteria. First, be employed by a private sector firm with 50 or more employees in a 75 mile radius, or be employed in a public sector firm such as government agencies or a public school; second, have been in (but not limited to continuous) service for twelve months with the firm. 1,250 hours must be amassed during those 12 months to qualify. Qualified employees can leverage benefits for three basic reasons: serious health conditions, military deployments or care for recently deployed; and expansions of family. Permitted leave shall total 12 weeks unless used for care of a service member in which case leave will be permitted for 26 weeks (Department of Labor, 2014).

One of the leaders in human resource professional development materials The Society for Human Resource Management (SHRM) found, in 2014, that providing a 12 week leave was becoming a more regular policy in the U.S., but SHRM found that approximately 20 percent of employers are noncompliant when administering FMLA leave. Six percent of employers reported providing less than 12 weeks of maternity leave, 11 percent provided less than the required leave for adoptions; and nine percent shorted leave for seriously ill family members (Matos and Galinsky, 2014). A similar report in 2007 by SHRM revealed that employers experienced the most challenges administering chronic leave cases where episodic or continued treatment is required, with care for a parent being the closest challenged leave reason. Tracking short lengths of leave scored eighty on a one-hundred point scale of difficulty, while determining coverage of serious intermittent health conditions scored seventy-three (Frincke, 2007).

Why Does Noncompliance Exist?

The first and most under supported attempt to explain noncompliance and litigation is that employees must file a claim in order to question their employers leave policy. In order to bring a case to the court the employee's claim must meet a five-step test. Geo and Gender (2013) explain that test. "The employee must show that: (1) he/she is an eligible employee under the FMLA; (2) defendant is an employer as defined in FMLA; (3) he/she was entitled to leave under FMLA; (4) he/she gave notice to the employer of his/her intention to take leave; and (5) he/she was denied benefits to which he/she was entitled under FMLA." This theory suggests that noncompliance rates may actually be higher if there were a system that caught noncompliance in all eligible employers rather than requiring employees to be knowledgeable about the law and speak against their employer.

Second, the complex interconnectedness of Federal and State law makes FMLA compliance challenging for employers who have facilities in multiple locations. The population of employers that are eligible for FMLA has been expanded to include affiliate companies that are across state lines (Dwoskin and Squire, 2010). *Strohl v. Brite Adventure Center, Inc.*, 2009 WL 2824585 addressed this issue when an employee was found eligible for FMLA benefits after the court determined that another daycare facility was an integral part of the business of Brite Adventure Care, Inc. This ruling grants courts the ability to interpret the function of a business and decide if another business unit can be included in eligibility calculations. 15 states have lowered the number of employees required for leave to be administered. 15 states, but not all the same as those with fewer than 50 employees amendments, extend benefits to employees who have been on the job for a shorter period of time. Connecticut and the District of Columbia are the only states in which paid leave is mandated. Missouri does not expand upon any Federal

requirements (National Partnership for Women and Families, 2012). Interpretations, just like law, are varied across states.

In *Babcock V. Bell South* the court found that employees could arguably meet the 12 months of service requirement even if they were not technically working. Babcock was awarded a short-term leave and was informed that if she did not return before the given date (which was after her twelve month anniversary) she would be terminated. Babcock did not return and was subsequently fired. Her suit claimed that even on leave she still qualified for 12 weeks of leave rather than the one-week provided. The court ruled in favor of Babcock saying that the difference in time could be seen as an “unexcused absence,” but this did not stop the time of service clock. *Babcock V. Bell South* was heard in the Fourth Circuit Court, which hears cases from Maryland, North Carolina, South Carolina, Virginia, and West Virginia. *McEachern v. Prime Hospitality Corporation*, heard in a Minnesota Federal Court, found that employees must serve for a full 12 months before requesting FMLA leave. Thus, Babcock’s case would not meet the Minnesota court’s interpretation (Daniel and Kari, 2007).

Lastly, reactions to changes in law are slow and this could be the primary cause of noncompliance in employers. More employees are leveraging their benefits. Colin Cannonier (2014) made a statistical case that suggested women eligible for FMLA are having their first child eight and a half months earlier than non-eligible employees (Cannonier, 2014). Combine this with the findings of a Department of Labor contracted report done in 2013 that found large employers reported more difficulty with compliance than small employers and the picture becomes clearer. The more people that take advantage of leave, the more difficulties you have in proper administration (ABT, 2014). Noncompliance as a whole is largely in existence because policies haven’t been changed. “Noncompliance is also more likely when organizational actors

who are ambivalent about the legal changes (such as men's right to longer family leaves) conveniently forget to check whether their policies and practices need to be updated” (Kelly, 2010). This continuous cycle can become expensive.

Cost is something every firm aims to reduce. A study performed by the Society for Human Resource Management in 2014 found that the average cost to administer FMLA leave was between \$10,000 and \$19,999, with over a quarter of respondents falling in that category. 21 percent of the respondents answered between \$20,000-\$50,000. Although one third of respondents could not calculate a per employee costs, the other two thirds estimated average per employee costs between \$500 and \$5,000 (SHRM, 2014).

The impacts of FMLA noncompliance have been estimated, on average, to cost employers \$506,000. (Cardi and Nowak, 2013). Plaintiffs have been awarded back pay, front pay, pre-judgment interest, liquidated damages (back/front pay and pre-judgment interest), attorney fees for successful plaintiffs, and lost compensation. FMLA damages cannot be considered for symbolic loss of income (ADA, 2013). Settlements may lessen the financial impact of FMLA cases, and the Department of Labor does not oversee the settlement process. “Employees cannot waive, nor may employers induce employees to waive, their prospective rights under the FMLA. This does not prevent the settlement of FMLA claims by employees based on past employer conduct without the approval of the DOL or a court” (Department of Labor, 2014).

As the law continues to evolve layers of complexity will stack upon each other and policies will need to be rewritten. This will make FMLA harder to administer and violations may be more difficult to spot for employees that initiate noncompliance claims.

Methodology

The foundational start of my research was a content analysis of the WestLaw Campus Research Database for cases pertaining to FMLA in 2014. As previously mentioned, Yvette Rose examined FMLA cases in 2008 for thematically similar traits; however her data ranged from 1995 to 2001. The search method filtered all documents from Federal, State, and Supreme Court cases from January 1, 2014 to December 31, 2014; this returned 1,208 documents. I exported these documents as raw text and compiled them for content analysis.

Using Max QDA, software for quantitative text analysis, I created a search string for words used in the legal documents that can be found in Table 1. The string is based on phrases used in the FMLA. The frequency of use data can be found in Table 2. The software generated a fairly large pool of data that will allow me to draw conclusions about the types of cases that made it to litigation. The software allows me to see frequencies and easily jump to locations where combinations of words are used. From the content analysis I gathered data that suggested which components or phrases I should focus on when creating the survey (see appendix).

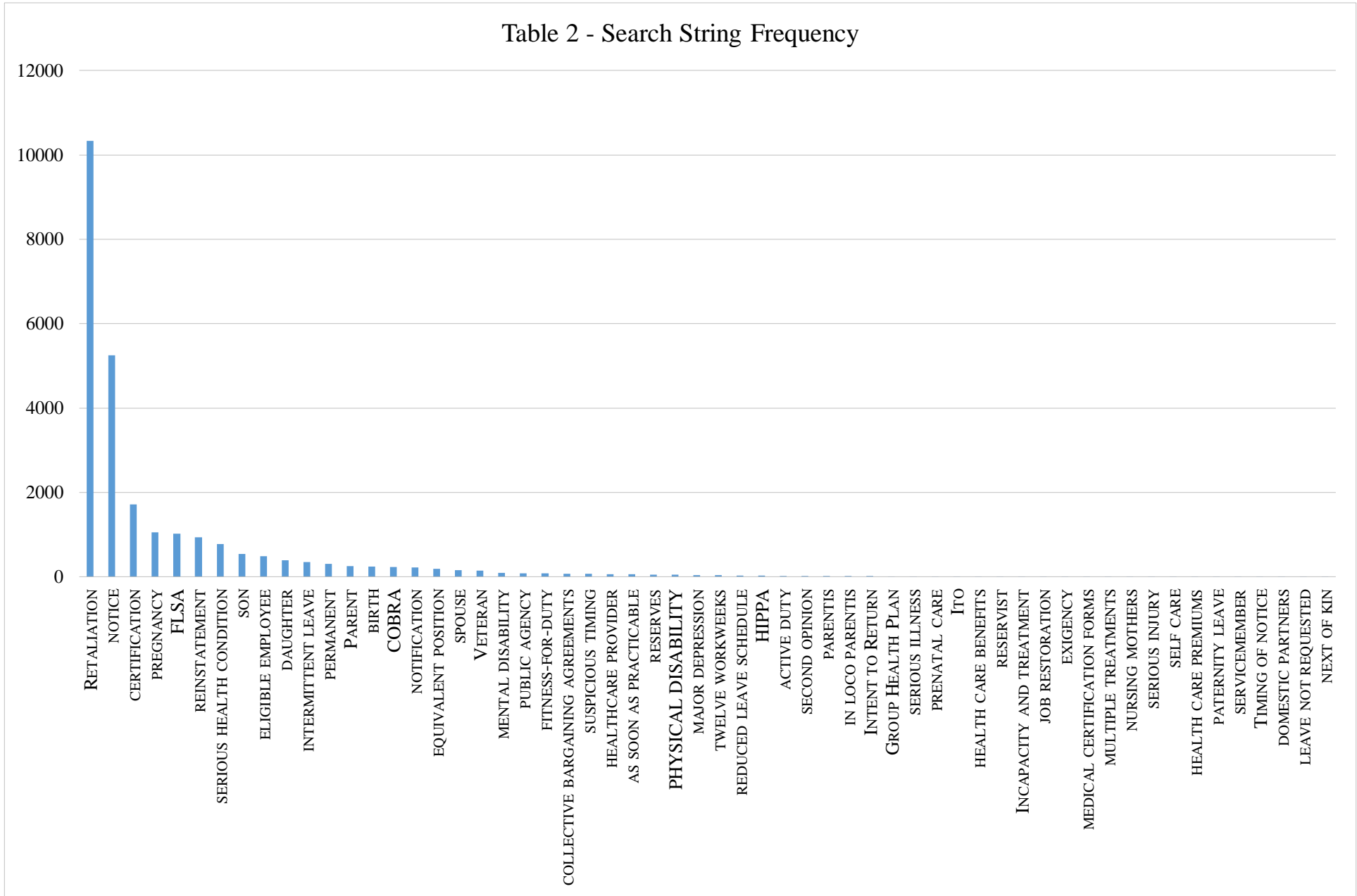
Surveys were distributed to the Tri-State Society for Human Resource Management members via Survey Monkey and all participants' data remained anonymous. Respondents were asked to answer questions as an agent of their company, as such, their policy should direct their responses. Mr. Terry Marion, a professor of Management, reviewed the survey questions before distribution and I secured approval from the Institutional Review Board at Missouri Southern State University.

Survey responses were reviewed and compared to similar studies previously conducted by SHRM. Recommendations are also made about areas of interest employers may wish to examine in their own policy.

Table 1 – Search String

RETALIATION	FITNESS-FOR-DUTY	AS SOON AS PRACTICABLE
NOTICE	COLLECTIVE BARGAINING	RESERVES
	AGREEMENTS	
CERTIFICATION	SUSPICIOUS TIMING	PHYSICAL DISABILITY
PREGNANCY	HEALTHCARE PROVIDER	MAJOR DEPRESSION
FLSA	SERVICE MEMBER	TWELVE WORKWEEKS
REINSTATEMENT	TIMING OF NOTICE	REDUCED LEAVE SCHEDULE
SERIOUS HEALTH CONDITION	DOMESTIC PARTNERS	HIPPA
SON	LEAVE NOT REQUESTED	ACTIVE DUTY
ELIGIBLE EMPLOYEE	EXIGENCY	SECOND OPINION
DAUGHTER	MEDICAL CERTIFICATION	PARENTIS
	FORMS	
INTERMITTENT LEAVE	MULTIPLE TREATMENTS	IN LOCO PARENTIS
PERMANENT	NURSING MOTHERS	INTENT TO RETURN
PARENT	SERIOUS INJURY	GROUP HEALTH PLAN
BIRTH	SELF CARE	SERIOUS ILLNESS
COBRA	HEALTH CARE PREMIUMS	PRENATAL CARE
NOTIFICATION	PATERNITY LEAVE	ITO
EQUIVALENT POSITION	NEXT OF KIN	HEALTH CARE BENEFITS
SPOUSE	INCAPACITY AND	RESERVIST
	TREATMENT	
VETERAN	JOB RESTORATION	MENTAL DISABILITY

Table 2 - Search String Frequency



Survey Results

There were 20 respondents from the Tri-State Society for Human Resource Management; seven public sector and 13 private sector respondents. 85 percent of the population answered “yes” to employing 50 or more employees for at least 20 work weeks in the current or preceding calendar year, a primary question for eligibility in the FMLA. Three participants skipped all questions excluding the demographic questions which brought the sample of respondents answering to 17.

Responses to some questions indicated that employers provided more and required less than legally obligated. Only 35 of employers required employees use accrued paid leave or paid vacation before starting FMLA, something employers can legally do. 47 percent of eligible employers consider outpatient visits not prescribed by a health care provider covered under FMLA. All respondents answered in compliance to the required number of daily living instruments that must be impaired to qualify as incapable of self-care (3); 69 percent required less.

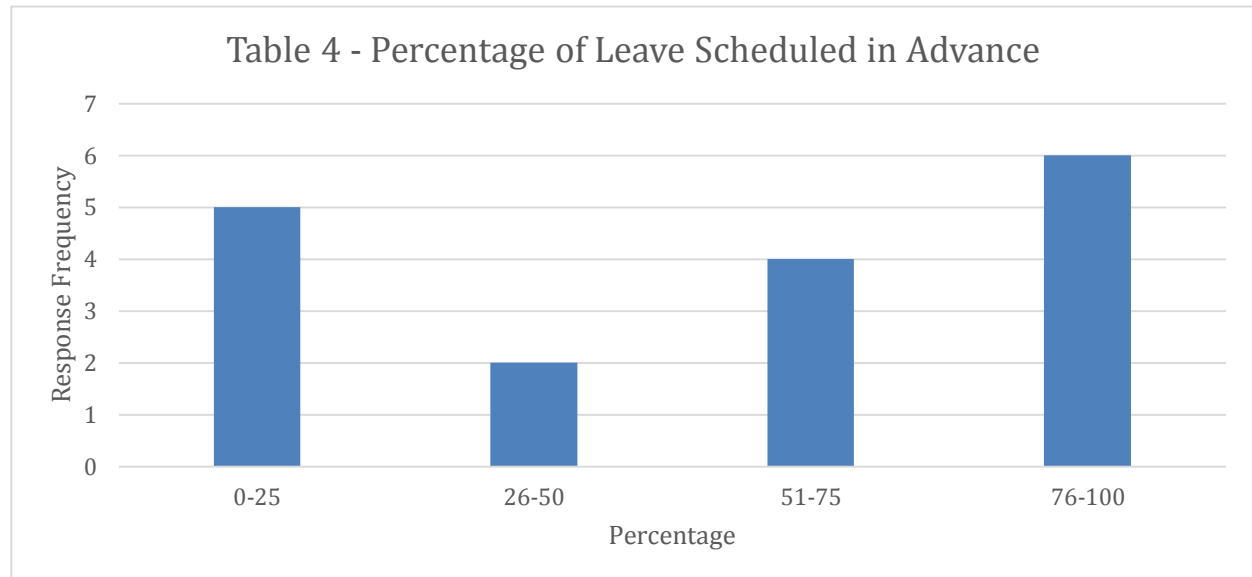
Dissent in other questions indicates an area of interest when evaluating compliance. Table 3 shows the responses to how FMLA defines spouses. For the purpose of compliance the definition used in policy ought to reflect the law verbatim. The Supreme Court 2013 repeal of The Defense of Marriage Act left the definition of “spouse” as follows, “a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides, including common law marriage in States where it is recognized.” Similarly, defining what constitutes an equivalent position when returning from leave can be difficult in work settings where the leave required replacement or additional employees be hired. 41 percent of

Table 3 – Spouse Definition	Response Percent	Response Count
a person's partner in marriage	29.4%	5
a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides, including common law marriage in States where it is recognized	58.8%	10
either member of a married pair in relation to the other; one's husband or wife	11.8%	2

eligible employers considered positions at the same rate of pay the employee left regardless of adjustments for cost of living and/or the same position on a different shift equivalent. If an employee was forcibly placed in a role that met the previous two criteria the employer would be noncompliant, an equivalent position is virtually identical.

Responses signaled possible confusion around notice and reimbursement requirements within the FMLA. Employers fail to meet their obligation to provide notice of fitness-for-duty tests in 29 percent of eligible respondents. A written Designation Notice is required five days after gathering enough information to determine leave eligibility. Included in this notice is a statement that the employee will be required to pass a fitness-for-duty test for reinstatement to take place, the employer may also attach a list of required tasks that the test will examine. “If the employer requires a second or third opinion, the employer must reimburse an employee or family member for any reasonable "out of pocket" travel expenses incurred to obtain the second and third opinions” (DOL 2015). Half of eligible respondents fail to meet this obligation.

Survey questions also gleaned data useful in providing context to FMLA administration as a whole. Table 4 is a representation of the frequency at which employees are providing notice of leave in advance, an important factor in the difficulty of administering leave. This data suggests that most of the time leave is schedule in advance, but a more urgent need for leave also exists. It's this urgent demand that can stress the need for costly temporary coverage or overtime.



“Retaliation” was the most frequently used word during the content analysis by over 5,000 hits. Accordingly, 94 percent of eligible respondents train managers and administrators of leave policy on retaliation specifically related to job absence.

Tables 5 and 6 examine specific challenges faced in FMLA administration. Leave stemming from both catastrophic events and chronic conditions generated an issue of morale in individuals asked to cover the workload in over 75 percent of eligible respondents. This is consistent with the common practice of reassigning labor as opposed to hiring additional labor. Vague documentation of medical leave certification was cited by half of the respondents as a challenge to administration. The number of respondents citing the cost of labor associated with

the absence of employee(s) and cost associated with the lack of productivity as challenges is in line with SHRM's 2014 study that found areas which measured the overall financial impact of employee absence and concluded, "Employee absences inevitably lead to productivity loss in many forms ... co-workers are likely to be less productive on their "regular" work when filling in for an absent employee, and supervisor productivity decreases when supervisors must spend time addressing employee absences" (SHRM 2014).

The number of challenges cited during administration was seven and a half percent larger when leave was as a result of a chronic condition compared to a catastrophic event. Suggesting that the overall environment of administration is much the same as it was during the previously mentioned SHRM study in 2007 on the impact of FMLA on organizations. Some of this difficulty may be attributed the continuous nature of chronic conditions whereby there is more involvement required of HR staff. Additionally, tracking intermittent leave was cited as a challenge 41 percent less in cases as a result of a catastrophic event. 70 percent of respondents believe that abuse of leave in chronic conditions is a contributing challenge to administration. Not only are legitimate chronic conditions requiring additional resources to administer, illegitimate claims are forcing staff to vet chronic conditions in more detail to contain abuse. The cost associated with compliance and leave tracking was nearly 18 percent more challenging in chronic conditions as well. Although, the difficulty with DOL regulations, guidance, and opinion letters varies only slightly; and the amount of leave taken for illness or ailment that does not qualify does not change between the two categories of leave.

Table 5 - What specific challenge has your organization encountered due to employees taking FMLA leave as a result of a catastrophic event? [serious accident, serious injury, and/or life-threatening disease]

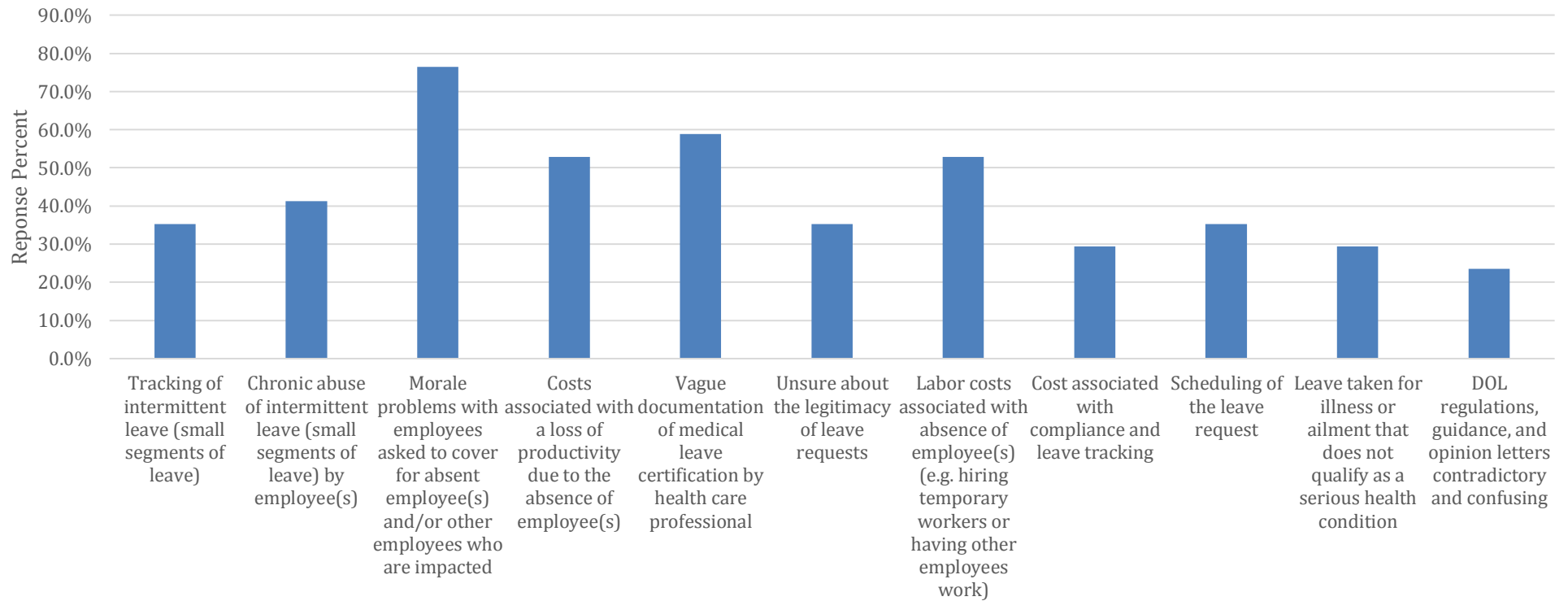
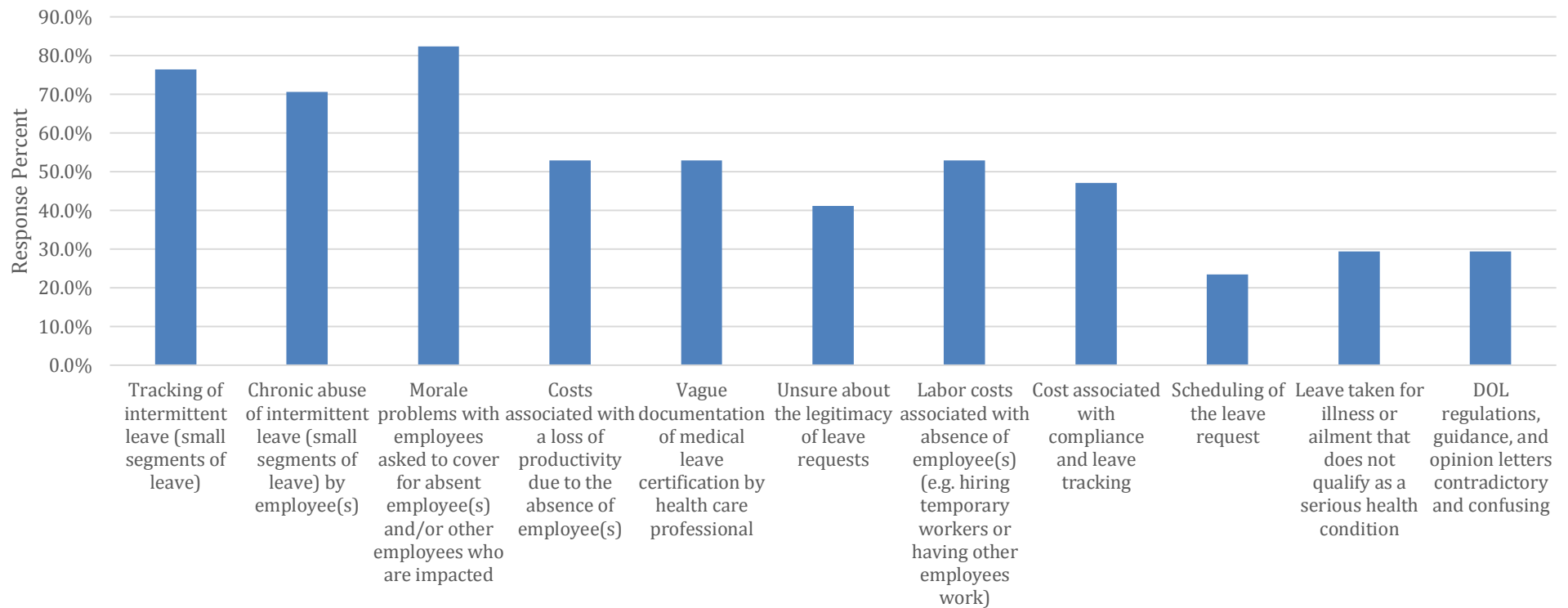


Table 6 - What specific challenge has your organization encountered due to employees taking FMLA leave as a result of a chronic condition? [on-going injury, on-going illness, and/or non-life threatening condition]



Limitations

The first limitation was the selection of cases from the *WestLaw Campus Research Database*. The study excluded any documents that were not from 2014, not a part of any Federal or State hearing, and those not available within the database.

The second was the pool surveyed, which was limited to members of the Tri-State Society for Human Resource Management. Furthermore, the survey was introduced at two meetings of which approximately 30 members attended as well as distributed and conducted exclusively electronically.

Research Questions and Recommendations

This study set out to observe compliance with FMLA by answering two questions. First, among cases found in the *WestLaw Campus Research Database* are there trends in the language used? Next, among Tri-State Society for Human Resource Management members surveyed are there trends in noncompliance?

To answer the first question we look back to the content analysis and the search string frequencies in Table 2. This data told us chiefly that retaliation was an important topic to cover. As an ethical dilemma, the level at which an organization ought to tackle this issue is foundational. Almost all eligible respondents provided some kind of education about retaliation related to job absence. Another important practice in ridding the workplace of retaliation is hiring and promotional procedures that support an ethical culture. This data also suggested that notice and certification obligations and regulations were frequently discussed. Reinstatement is also very important topic as the issue of equivalent comes into play.

Secondly, the survey data presented in the Survey Results section discusses some categories in which employers might struggle with compliance. It is important to note that

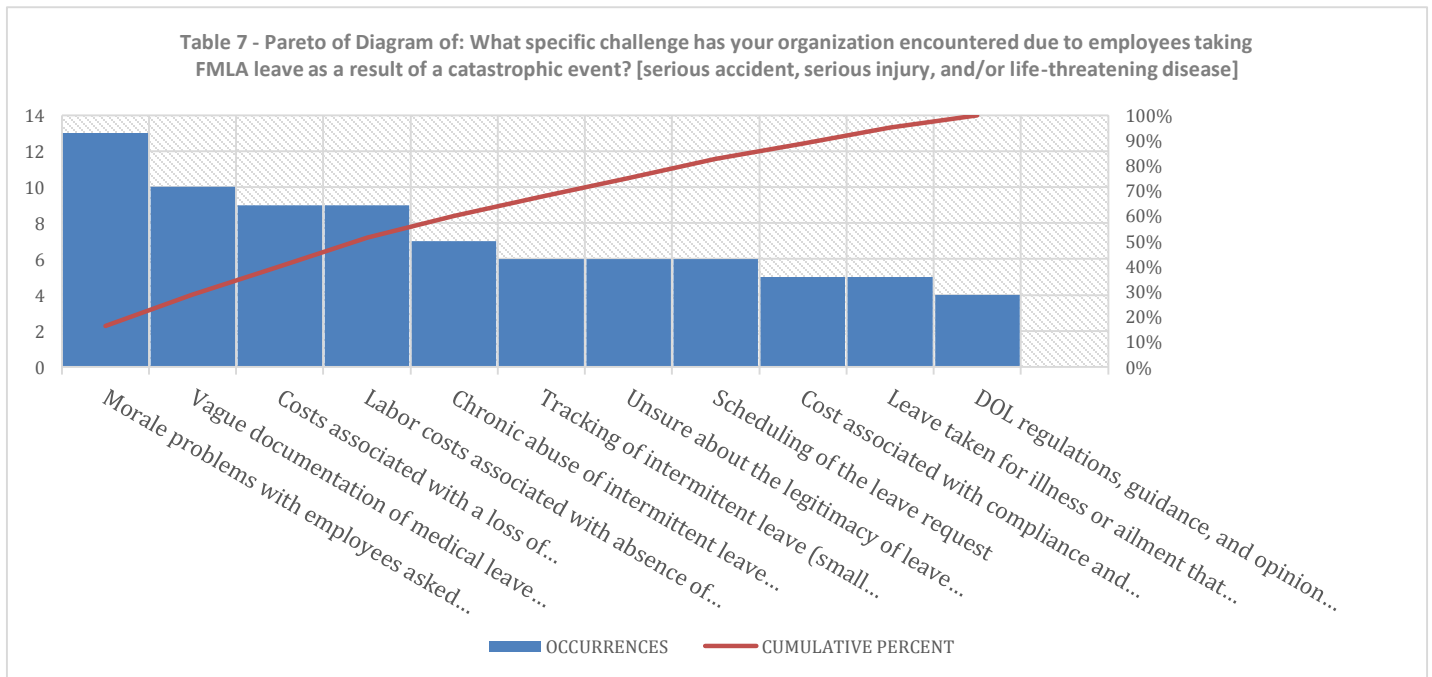
although some responses may indicate an illegal policy the survey results can only conclude the responses of human resource professionals as no actual policy or noncompliance claim against any respondent were been evaluated. Employers should consider using the glossary provided by the United States Department of Labor as reference for their own leave policy, to be most specific including the definitions in any employee training materials or handbooks. On the topic notice of fitness for duty employers may refer to WH-382 for the U.S. Wage and Hour Division's example. This document and the entirety of the WH-380 section on the Wage and Hour forms section are dedicated to providing employers with compliant forms for use. Including WH-380 which is very specific and clear language broken down into sections for medical facts and the amount of care needed. Companies may also update any policies or practices that do not pay for the cost of, or reasonable travel expenses incurred during second or third opinions for medical certification of eligible leave. This was the most prevalent suggestion of noncompliance in the survey.

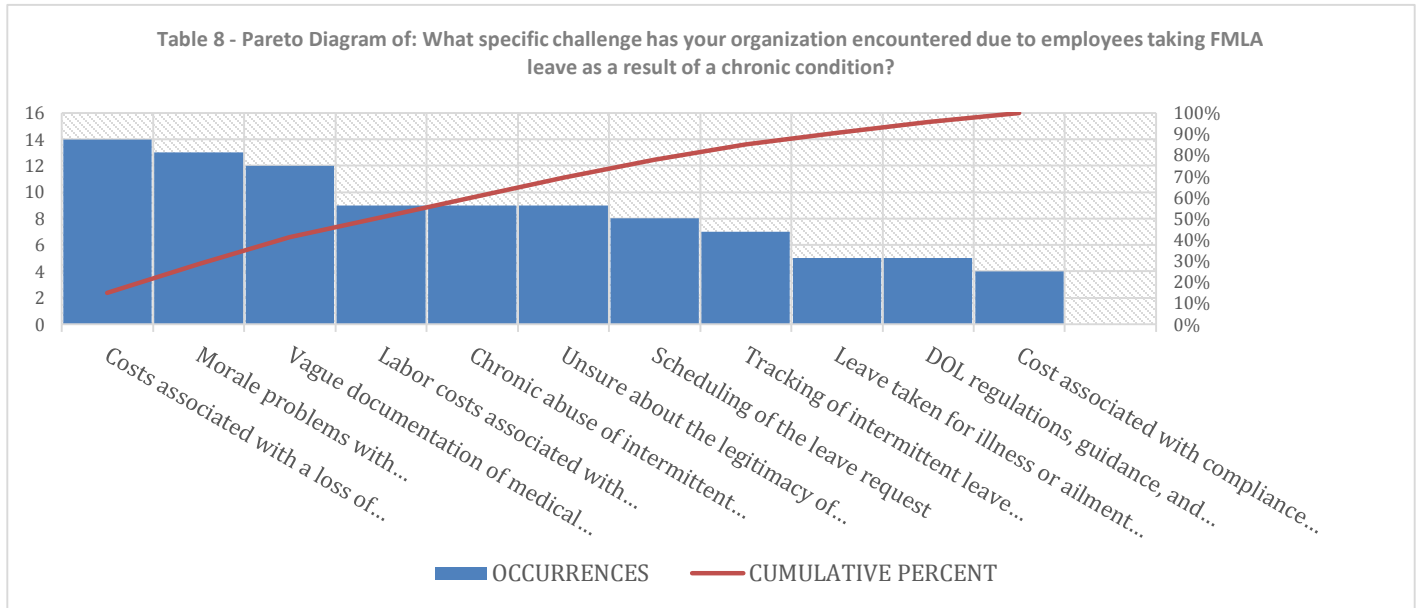
Reponses also suggested that intermittent leave continues to be a costly area of administration. Companies may consider developing a method of scheduling upcoming leave with employees. This attempt at open communication is backed by law, it reads, "Employees needing intermittent/reduced schedule leave for foreseeable medical treatment must work with their employers to schedule the leave so as not to unduly disrupt the employer's operations, subject to the approval of the employee's health care provider" (DOL 2015). Yvette Rose concluded in 2008 that organizations had become unnecessarily lax out of fear of litigation and that the result is a specific type of absenteeism, she elaborates, "The type of absenteeism that is generated from the FMLA is unscheduled for the most part, creating another factor of absenteeism, therefore creating an administration burden" (Rose 2008). This study's findings

support her conclusion. The number of respondents citing challenges with abuse of intermittent leave combined with data suggesting that 41.2 percent of eligible respondents administer unscheduled leave over half of the time describes an atmosphere susceptible to abuse. This survey however does not describe the reason this environment exists.

Future Studies and Implications

The similarity of evidence in this survey to responses in previous studies makes clear the challenge of administering FMLA and highlights the necessity of trained human resource professionals to ensure compliance. If the cost of labor continues to rise will that mean the practice of reassigning labor to the existing workforce will contribute to a lack of morale? The question then becomes how do organizations combat the lack of morale, is this a root cause issues with administration? A Pareto Diagram of the data from Tables 5 and 6 help shed some light on the answer to that question in the present. During leave as a result of catastrophic event





as well as chronic conditions morale seems to be a major player in the contributing factors to challenges in administration. Employers would be wise to analyze the root cause of morale loss in an effort to lighten the burden on employees assuming more as a result of another’s leave. Could additional work be completed all at once or is it vital to the process that work be completed simultaneously. Automation or a change in process may be the answer, and these changes could lead to cost reductions as a result of reclaimed productivity. Additionally, examining the perception of leave policy may uncover areas where moral can be improved.

The application of this type of research method to other compliance issues is also easily transferable. Using public access databases and free-ware content analysis software businesses could conduct this type of research at the cost of the labor conducting it. There are however some suggestions to be made for improvement. The limit placed on content for analysis made sure that questions came from recent preceding, however we still use law from years past in practice today. The only limitation future studies could feel required to make are those on the analysis

software. Furthermore, the limitation on the distribution of the survey ought to be expanded to a larger sample population. Industry analysis benefits from large distribution databases.

References

- ABT Associates. (2014). *Family and Medical Leave in 2012: Technical Report*. 174.
- Cannonier, C. (2014). Does the Family and Medical Leave Act (FMLA) Increase Fertility Behavior?. *Journal Of Labor Research*, 35(2), 105-132. doi:10.1007/s12122-014- 9181-9.
- Cardi, M., Nowak, J. (2013). A Year of FMLA and ADA Litigation: What Does It Mean? What Comes Next?. *Reed Group*.
- Daniel, B. R., & Kari, A. L. (2007). Recent developments under the family and medical leave act. *Compensation and Benefits Review*, 39(5), 32-38,4.
- Department of Labor. (2013). *Federal Register*. 78(25). 8834-8947.
- Department of Labor Wage and Hour Division. (2015) *Family and Medical Leave Act Overview*. Retrieved from <http://www.dol.gov/whd/fmla/index.htm>.
- Dwoskin, L. B., & Squire, M. B. (2010). FMLA Boot Camp: Regulatory and Case Law Developments Under the Family and Medical Leave Act. *Labor Law Journal*, 61(1), 37-51.
- Fisher, J. (2007). Reconciling the family medical leave act with overlapping or conflicting state leave laws. *Compensation and Benefits Review*, 39(5), 39-45,4.
- Frincke, J. (2007). FMLA and Its Impact on Organizations. *Society for Human Resource Management*. 48.
- Geo, J. & Gender, L. (2013). Fourteenth Annual Gender and Sexuality Law: Annual Review Article: Family and Medical Leave Act. *The Georgetown Journal of Gender and the Law*. 449. 449-467.
- Kelly, E. L. (2010). Failure to update: An institutional perspective on noncompliance with the family and medical leave act. *Law & Society Review*, 44(1), 33-66.
- Matos, K. & Galinsky E. (2014). *2014 National Study of Employers*. Retrieved from <http://www.whenworkworks.org/be-effective/guides-tools/2014-national-study-of-employers>.
- National Partnership for Women and Families. (2012). *Expecting Better: A State-by-State Analysis of Laws That Help New Parents*. (2).
- Ramdhania, D. (2012). Determining Compliance or Noncompliance with Federal and State Family Leave Laws Within a Healthcare Organization. 53.

Rose, Y. (2008) *Family Medical Leave Act: A Program Evaluation*. (Doctoral Disertation). 125.

Society for Human Resource Management. (2014) *Total Financial Impact of Employee Absences Across the United States, China, Australia, Europe, India and Mexico*. (47-48).

WestLaw Campus Research Database. ALLFEDS Retrieved January 28, 2015

<https://campus.westlaw.com/signon/>

default.wl?bhcp=1&fn=_top&newdoor=true&rs=WLW15%2E01&vr=2%2E0

WestLaw Campus Research Database. ALLSTATES Retrieved January 28, 2015

<https://campus.westlaw.com/signon/>

default.wl?bhcp=1&fn=_top&newdoor=true&rs=WLW15%2E01&vr=2%2E0

Appendix A – Honors Reflection

To take a project from start to finish is an incredibly gratifying one. As I reflect on my progression I see places for improvement as well as moments of accomplishment which signals a worthwhile experience in my opinion. The biggest change to come from completion of the senior thesis is how I approach a situation some may consider challenging or difficult.

Knowledge of self and capabilities was the first avenue for change. You begin to question or ability to accomplish such a large project when deadlines are introduced and the end result is out of sight. I think the biggest struggle we all faced was the question of what a senior thesis ought to look like. It was at the moment I realized only I could answer that question, that I felt some panic sink in. There is no template for original research, there are suggestions for items which constitute a well thought-out and logical project. The final product is analogous to an unmolded block of clay for a sculptor. Once the process of creating that product starts it was like you're just along for the ride. This was in large part thanks to the Research Seminar class and the proposal process I felt like the success of my project was due in large part to the amount of forethought that went into the steps of my project and how they were interwoven with each other. Once one task was completed I had clear line of sight on what needed to be done next in order to stay on task. I'll touch on the implementation of the plan later. This is to say that at the end of the project I feel capable of more than before. I can participate in a professional organization and analyze their behavior to provide some knowledge even if it is limited. I've now conducted research which meets the standards of an Institutional Review Board. These skills I've gained make challenging situations and tasks seem manageable.

I feel like this project along with many of the courses during my senior year have instilled a healthy sense of skepticism around data and how it's presented in me. Study results aren't

always published with an unbiased nature, as such it is important to understand what makes for good research methods and practices. I think this concept is best exemplified by the phrase, “know what you’re talking about.” This skepticism is also matched with a healthy amount of humility. I’m able to admit I don’t understand the entirety of other senior thesis are about and I’m still being able to appreciate the methods by which the research was conducted. This really entrenched the concept of Subject Matter Experts or Domain Experts which are terms term used to describe professionals who have a particular authority or grasp of a concept.

To say that the project went as well as planned would be incorrect. I did experience a challenges that delayed my timeline and ultimately, in my opinion, the overall effectiveness of my research. A delay in obtaining access to the *WestLaw* database came as a surprise when I started work after Christmas break. Proxy settings and a change in website left me unable to access the database from home or on campus. Access was restored on campus so I was able to gather text for analysis. The analysis and survey writing went quickly, but distribution of the survey was delayed until much later than planned. IRB approval was a lengthier process than expected. Initially I thought approval could be done by a single representative because there was no potential harm to the subject and I wasn’t asking sensitive information. However, the nature of the survey allow participants to answer in potentially illegal ways. Because of this my project required the approval of the board to ensure no identifying information was gathered or presented. The process was not complicated and communication was frequent so I felt like they genuinely cared about the project. Weather and other rescheduling pushed meeting dates back and the survey was not distributed until early March. Collection and analysis of survey data was thus pushed back. As a result I opted for not interviewing HR professionals. The consensus of most at the meetings I attended was that the approximation of 20 minutes for the survey was

already a large portion of the day to devote to non-job related functions during times where businesses were closing for days at a time.

I would advise future students to do everything in their power to follow the deadlines outlined in the proposal, your initial planning will factor in more time for editing and mishaps than completing the project as you feel necessary. At some point the project might seem stale and you find yourself saying I just want to be done with this. In that moment, start working and get the project done. The senior thesis is meant to be a culmination of skills you've acquired throughout your tenure in college and the only way you get through the project is by applying those skills. I felt like the biggest roadblock to accomplishing what I wanted was my own apprehension that I couldn't create something I could be happy with or feel had value. After really diving into the work I found enjoyment in analyzing data and tying it back to previous research. I felt like what I did actually made sense when was able to apply concepts from previous classes to my research. Trust me, the end of the project is much better than the middle.

**Appendix B – A Survey Given to Tri-State Society for Human Resource Management
members**

Your business is a member of the:

- Public sector
- Private sector

Have you employed 50 or more employees for at least 20 workweeks in the current or preceding calendar year (this includes joint employers and successors in interest)?

- Yes
- No

How many months must an employee remain employed to become eligible for FMLA benefits?

- 6
- 8
- 10
- 12
- 15

How many hours must that employee work in the previously answered months to become eligible?

- 100
- 1500
- 1250
- 500
- 1000

How many weeks of leave are provided in a 12 month period?_____

For what reasons may an employee take leave (check all that apply)?

- for the birth of a son or daughter, and to care for the newborn child
- for the placement with the employee of a child for adoption or foster care, and to care for the newly placed child
- to care for an immediate family member (spouse, child, or parent — but not a parent "in-law") with a serious health condition
- when the employee is unable to work because of a serious health condition
- Because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty
- To care for a covered service member with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the covered service member.

Do you require accrued paid leave and paid vacation be used to cover all or some of the FMLA leave taken?

- Yes
- No

Do you allow both the father and mother to take FMLA leave for the birth of a child?

- Yes
- No

Are previously eligible employees who are laid off still eligible for FMLA when they return?

- Yes
- No

How does the FMLA define spouses?

- a person's partner in marriage
- a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides, including common law marriage in States where it is recognized
- either member of a married pair in relation to the other; one's husband or wife

How many activities of daily living or instruments of daily living be impaired to qualify as incapable of self-care?

- 1
- 2
- 3
- 4
- 5

Do you consider outpatient visits not prescribed by a health care provider covered under FMLA?

- Yes
- No

Do you consider substance abuse considered an eligible health condition if the employee has not been receiving treatment?

- Yes
- No

Ca you require a physician review a statement of functions to ensure employees are unable to perform work related tasks?

- Yes
- No

Do you required employees pay benefit premiums during their leave period?

- Yes
- No

An equivalent position would be (check all that apply):

- Virtually identical
- A different position if it pays better
- At the same rate of pay the employee left regardless of adjustments for cost of living
- The same position without accrued vacation time
- The same position on a different shift

Do you provide notice of fitness-for-duty tests that may be required for reinstatement?

- Yes
- No

Do you require employees receiving planned medical treatment consult them you scheduling options?

- Yes
- No

In your experience, what percentage of employees taking FMLA leave schedule the leave in advance?

Upon request for certification how long does an employee have to present evidence?

Do you cover expenses incurred during travel if requesting a second or third opinion?

- Yes
- No

How often do you test intermittent leave takers for fitness-for-duty? _____

Are managers and administrators of leave policy trained on retaliation related to job absence?

- Yes
- No

Format developed from SHRM Weekly Online Survey: November 7, 2006

What specific challenge has your organization encountered due to employees taking FMLA leave as a result of a catastrophic event [serious accident, serious injury, and/or life-threatening disease](Check all that apply)?

Tracking of intermittent leave (small segments of leave)
Chronic abuse of intermittent leave (small segments of leave) by employee(s)
Morale problems with employees asked to cover for absent employee(s) and/or other employees who are impacted
Costs associated with a loss of productivity due to the absence of employee(s)
Vague documentation of medical leave certification by health care professional
Unsure about the legitimacy of leave requests
Labor costs associated with absence of employee(s) (e.g. hiring temporary workers or having other employees work)
Cost associated with compliance and leave tracking
Scheduling of the leave request
Leave taken for illness or ailment that does not qualify as a serious health condition
DOL regulations, guidance, and opinion letters contradictory and confusing
Other

What specific challenge has your organization encountered due to employees taking FMLA leave as a result of a chronic condition [on-going injury, on-going illness, and/or non-life threatening condition] (Check all that apply)?

Tracking of intermittent leave (small segments of leave)
Chronic abuse of intermittent leave (small segments of leave) by employee(s)
Morale problems with employees asked to cover for absent employee(s) and/or other employees who are impacted
Costs associated with a loss of productivity due to the absence of employee(s)
Vague documentation of medical leave certification by health care professional
Unsure about the legitimacy of leave requests
Labor costs associated with absence of employee(s) (e.g. hiring temporary workers or having other employees work)
Cost associated with compliance and leave tracking
Scheduling of the leave request
Leave taken for illness or ailment that does not qualify as a serious health condition
DOL regulations, guidance, and opinion letters contradictory and confusing
Other