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K. Nicole Harms

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CARING FOR MOM AND DAD: THE IMPORTANCE OF FAMILY-PROVIDED ELDERCARE AND THE POSITIVE IMPLICATIONS OF CALIFORNIA'S PAID FAMILY LEAVE LAW

Debra¹ is a forty-six year old woman, wife, daughter, sister, employee, and mother of two. She works in excess of forty hours per week in a job that does not pay well, and she spends another eighteen hours per week caring for her parents. Her mother has a variety of health problems requiring frequent trips to the doctor and a complicated regimen of medication. Her father is slowly deteriorating, both mentally and physically, as he progresses through the horrific stages of Alzheimer's disease. In addition to these work and care-giving responsibilities, Debra struggles to care for her husband and children and to somehow keep her household running. This balancing act is exhausting and it takes its toll on her emotionally and physically. As time goes by, it becomes necessary for her to take some time off from work to provide extra care for her mother who is recovering from surgery and to get her father settled in a long-term care facility because his illness has progressed to a stage where he requires constant care and supervision.

If Debra works for an employer covered by the federal Family Medical Leave Act² (FMLA), she may be eligible to take unpaid leave for up to twelve weeks in order to care for her parents. If her employer is not covered by the Act, she may not be eligible for any leave at all. If unpaid leave is a possibility, Debra may not be able to endure the financial strain of going without pay, and may choose to continue this intricate and exhausting balancing act in order to make a living and care for her family members in the best way she can.

This is clearly an unpleasant and frustrating situation, and it is all too common. Millions of workers in the United States must simultaneously care for their children and aging parents.³ Recently, however, workers in California received a glimmer of hope. With the passage of California's Paid Family Care Leave Act (PFCLA), also known as the Family Temporary Disability Insurance Act (FTDI), workers like Debra are guaranteed up to six weeks of leave

1. Debra, a fictional character, is based upon the author's mother as well as a composite of women with whom the author is acquainted.

2. Family Medical Leave Act of 1993, 29 U.S.C. §§ 2601-2654 (1993).

3. Katherine Elizabeth Ulrich, *Insuring Family Risks: Suggestions for a National Family Policy and Wage Replacement*, 14 YALE J.L. & FEMINISM 1, 6 (2002) (citing U.S. DEPT. OF LAB., FUTUREWORK: TRENDS & CHALLENGES FOR WORK IN THE 21ST CENTURY 28, 32 (1999) [hereinafter, FUTUREWORK]).

with some pay to care for a new family member or an ill relative.⁴ While this statute does not solve all of Debra's problems, it certainly provides some much-needed flexibility to help her to deal with the demands placed on her by both her family responsibilities and her job.

Situations like Debra's will become even more common as baby boomers age, rapidly increasing the number of citizens age 65 and over in the United States.⁵ As this segment of the population expands, the need to address issues surrounding care for the elderly will also grow.⁶ "The care needs of the more numerous and more elderly persons promise to become an increasingly staggering financial and social burden in the United States."⁷

This duty of caregiving in the U.S. disproportionately falls on female family members who are often caring for their children while also providing care for an older family member.⁸ To make matters more difficult, employment is an important factor present in the balancing act for nearly two out of three providers of eldercare,⁹ requiring work schedule modifications to accommodate caregiving responsibilities.¹⁰

In the ongoing attempt to strike a balance between family caregiving and workplace demands, flexible work schedules are increasingly prevalent.¹¹ Statutes like the FMLA address the "compelling . . . need of the American family for flexibility in the workplace."¹² The FMLA, however, frequently falls short in meeting

4. CAL. UNEMP. INS. CODE §§ 3300-3305 (2003). See also S.B. 1661, 2002 Leg., 2001-02 Sess. (Ca. 2002) (enacted); Aaron Bernstein et al., *Making Family Leave Family Friendly*, BUS. WK. ONLINE, Sept. 20, 2002, available at 2002 WL 5147120.

5. Katie Wise, Note, *Caring for our Parents in an Aging World: Sharing Public and Private Responsibility for the Elderly*, 5 N.Y.U. J. LEGIS. & PUB. POL'Y 563, 565 (2001-02).

6. *Id.* at 563.

7. Holly Shaver Bryant, Note, *Funding Kinship Care: A Policy-Based Argument for Keeping the Elderly in the Family*, 8 WM. & MARY J. WOMEN & L. 459, 463 (2002) (citing Robert H. Binstock, *Public Policies on Aging in the Twenty-First Century*, 9 STAN. L. POL'Y REV. 211, 317 (1998)).

8. *Id.* at 462 (citing Rebecca Korzec, *A Feminist View of American Elder Law*, 28 U. TOL. L. REV. 547, 555-56).

9. Ulrich, *supra* note 3, at 6 citing FUTUREWORK, *supra* note 3 (Fifty-two percent of caregivers work full time, twelve percent of caregivers work part time).

10. *Id.* at 6-7.

11. See generally Lonnie Golden, *Flexible Work Schedules: What are We Trading Off to Get Them?*, MONTHLY LAB. REV. 50 (Mar. 2001).

12. See Kathryn L. Morris, Note, *A Matter of Compliance: How Do U.S. Multinational Corporations Deal with the Discrepancies in the Family and Medical Leave Act of 1993 and the European Union Directive on Parental Leave; Is an International Standard Practical or Appropriate in this Area of Law?*, 30 GA. J. INT'L & COMP. L. 543, 543 (2002) (quoting statement by President William J. Clinton Upon Signing H.R. 1 in 29 WEEKLY COMP. PRES. DOC. 144 (Feb 8, 1993)).

these needs because the leave granted under the Act is unpaid.¹³ Many employees simply cannot afford to take extensive periods of leave without pay.¹⁴ In addition, the FMLA applies only to employers with fifty or more employees.¹⁵ Thus, many people who work for small employers receive no assistance from the FMLA.¹⁶

California has taken steps to address the shortcomings of the FMLA with the passage of Senate Bill 1661 in September of 2002, which provides paid leave.¹⁷ The Bill provides paid leave under the title, Paid Family Care Leave Act (PFCLA) or Family Temporary Disability Insurance (FTDI).¹⁸ These benefits are funded by an increase in the amount of money paid into California's disability fund by employees in order to provide about half of an employee's salary, capped at a certain amount, for six weeks per year.¹⁹ Other states have proposed similar measures, but California is the first, and so far the only state to pass such wide-sweeping legislation.²⁰

This note argues that because of the FMLA's shortcomings, other states must pass legislation similar to California's PFCLA/FTDI to lessen the strain on the increasing number of workers who simultaneously provide care for their children and their aging parents. Support for this argument will be presented in five parts. Section I briefly discusses the FMLA. Section II describes the growing need for health care of aging citizens in the United States. Section III outlines some of the many benefits of care provided by family members which are absent when care is provided by unrelated professionals. Section IV provides insight into the situation of workers currently bearing the responsibility of providing care for elderly family members. Section V outlines existing family medical leave schemes that supplement the FMLA with particular focus on the California PFCLA/FTDI.

13. 29 U.S.C. § 2612(c). *See also* Wise, *supra* note 5, at 587.

14. *See* DAVID CANTOR ET AL., U.S. DEPT. OF LAB., BALANCING THE NEEDS OF FAMILIES AND EMPLOYERS: THE FAMILY AND MEDICAL LEAVE SURVEYS 2000 UPDATE 2-16, Table 2.17: Reasons for Not Taking Leave 1995 & 2000 Surveys (2001) available at <http://www.dol.gov/asp/fmla/chapter2.pdf>. (last visited Oct. 15, 2003) [hereinafter, FMLA SURVEYS 2000 UPDATE].

15. 29 U.S.C. § 2611(4)(A)(i).

16. *See* Wise, *supra* note 5, at 587.

17. S.B. 1661, 2002 Leg., 2001-02 Session (Ca. 2002)(enacted).

18. *Id.*

19. *Id.*; CAL. UNEMP. INS. CODE §§ 2655, 3301. *See also* Bernstein et al., *supra* note 4.

20. Carol Kleiman, *Carol Kleiman Column*, CHI. TRIB., Oct. 8, 2002, available at 2002 WL 101657950 (outlining existing state paid-leave schemes and explaining that "27 states are in various stages of introducing paid leave legislation").

OVERVIEW OF THE 1993 FAMILY AND MEDICAL LEAVE ACT

The FMLA, is the primary federal statutory scheme that assists working caregivers by providing unpaid leave for the care of aging family members.²¹ Under the FMLA, the federal government requires employers covered by the Act to provide up to twelve weeks of unpaid leave per year to eligible employees for the following reasons:

- (A) Because of the birth of a son or daughter of the employee and in order to care for such son or daughter.
- (B) Because of the placement of a son or daughter with the employee for adoption or foster care.
- (C) In order to care for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition.
- (D) Because of a serious health condition that makes the employee unable to perform the functions of the position of such employee.²²

"Employers" who are covered by the FMLA are defined as "[A]ny person[s] engaged in commerce or in any industry or activity affecting commerce who employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year."²³ All public agencies, regardless of size, are also included in the statutory definition of "employer."²⁴

While on FMLA leave, employees are entitled to continue receiving employer-provided health benefits.²⁵ However, should an employee choose not to return to work after taking leave, the employer is entitled, notwithstanding certain exceptions, to recover the premium paid for maintaining health care during the leave period.²⁶ Upon returning from leave, employees must be restored to their original positions²⁷ or to equivalent positions with equivalent "benefits, pay and other terms and conditions of employment."²⁸

21. Ulrich, *supra* note 3, at 17.

22. 29 U.S.C. § 2612(a)(1)(2003).

23. *Id.* at §2611(4)(A).

24. *Id.* at §2611(4)(A)(iii).

25. *Id.* at §2614(c)(1).

26. *Id.* at §2614(c)(2).

27. *Id.* at §2614(a)(1)(A).

28. *Id.* at §2614(a)(1)(B).

While its enactment represents a noble effort to ease the tension between family and work, the FMLA falls short for several reasons, including the fact that it leaves many Americans without coverage due to the limited scope of employers who are covered by the provision.²⁹ The main downfall, however, is that many people who need leave cannot afford to take it because the FMLA provides only for unpaid leave.³⁰ According to a U.S. Department of Labor survey on employees' use of leave conducted in 2000, seventy-seven percent of the workers surveyed who needed to take leave did not take advantage of the FMLA because they could not endure the hardship of going without pay.³¹ This is a substantial number of workers who, as a practical matter, are unable to take advantage of the FMLA. While obviously not the perfect solution to the current problem, at least the FMLA is a place to start.

THE GROWING NEED FOR CAREGIVERS

The existing need for healthcare in America is quite substantial, and is a daily reality for many Americans.³² The number of people currently providing care for elderly family members is already quite large, and many more Americans will assume caregiver roles as "the baby boom generation becomes the senior boom."³³ Presently, over 3.3 million Americans, age sixty-five and older, are severely impaired.³⁴ "This includes 1.8 million senior citizens, residing in the community, who need assistance with at least two basic activities

29. See Emily Hayes, Note, *Bridging the Gap Between Work and Family: Accomplishing the Goals of the Family and Medical Leave Act of 1993*, 42 WM. & MARY L. REV. 1507, 1526 (2001). See DEPT. OF LAB., COMMISSION ON LEAVE, A WORKABLE BALANCE: REPORT TO CONGRESS ON FAMILY AND MEDICAL LEAVE POLICIES, EXECUTIVE SUMMARY (1996) available at <http://www.dol.gov/esa/regs/compliance/whd/fmla/summary.htm> (last accessed Oct. 17, 2003) [hereinafter A WORKABLE BALANCE].

30. 29 U.S.C. § 2612(c)(2003); Wise, *supra* note 5, at 587.

31. See FMLA SURVEYS 2000 UPDATE, *supra* note 14, at 2-16, Table 2.17: Reasons for Not Taking Leave 1995 & 2000.

32. See generally Mary Beth Franklin, *On-the-Job Aid for Caregivers*, KIPLINGER'S PERSONAL FIN. MAG., Aug. 1, 2001, available at 2001 WL 15114500 (discussing eldercare services as part of employees' benefits).

33. *Women and Aging: Bearing the Burden of Long-Term Care: Joint Hearing Before the Special Comm. on Aging & the Subcomm. on Aging of the Comm. on Health, Education, Labor, and Pensions in the U.S.*, 107th Cong. 22 (2002), available at <http://www.access.gpo.gov/congress/senate/senate22sh107.html> [hereinafter *Women and Aging*] (statement of Sen. Hillary Rodham Clinton, Panelist) (testifying on the need for long-term care financing and the disparate impact of informal caregiving on women).

34. Barbara R. Stucki & Janemarie Mulvey, *Can Aging 'Boomers' Avoid Nursing Homes?*, 83 CONSUMERS' RESEARCH MAG. 20, Aug. 1, 2000, available at 2000 WL 12692361 (advocating planning for long-term care insurance as a means for middle-income elders to alleviate the cost of care needs as they arise, thereby alleviating the burden on family caregivers).

of daily living . . . or supervision due to a cognitive impairment, such as Alzheimer's disease. It also includes 1.5 million Americans residing in nursing homes."³⁵ In response to these needs, an estimated 22 million households currently provide care for an older or disabled relative.³⁶ Two-thirds of elders requiring assistance with basic daily activities receive the needed assistance solely from family members or other unpaid caregivers.³⁷

As baby boomers age and become senior citizens, increased life expectancy and the health problems that accompany old age will lead to a greater need for caregivers.³⁸ With such a large population of baby boomers, the numbers are staggering—according to the 2000 Census, 12.4 percent of the United States population is age sixty-five or over.³⁹ This proportion is expected to grow to 16.4 percent by 2020 and will increase to 20.7 percent by 2040.⁴⁰ In effect, over 70 million Americans will grow to join the ranks of the elderly over the next twenty years.⁴¹

Advances in health and medicine are factors in this population surge because baby boomers are expected to live longer than preceding generations.⁴² "Since 1900, life expectancy has increased by thirty-one years for women (from forty-eight to seventy-nine) and by twenty-eight years for men (from forty-six to seventy-four)."⁴³ While disability is not caused by age alone, people are more likely to develop health problems that result in a need for care as they

35. *Id.* See also LISA HETZEL & ANNETTA SMITH, U.S. CENSUS BUREAU, THE 65 YEARS AND OVER POPULATION: 2000: CENSUS 2000 BRIEF 8, Table 8, Population 65 Years and Over in Nursing Homes by Age: 1990 and 2000, available at <http://www.census.gov/prod/2001pubs/c2kbr01-10.pdf> (last visited, Oct. 17, 2003) (indicating that 1,557,800 Americans age sixty-five and over reside in nursing homes).

36. See Franklin, *supra* note 32 and accompanying text.

37. Stucki & Mulvey, *supra* note 34.

38. See generally *id.*

39. Fernando M. Torres-Gil, *The New Aging: Individual and Societal Responses*, 10 *Elder L.J.* 91, 93 (2002) (citing U.S. CENSUS BUREAU, PROFILE OF GENERAL DEMOGRAPHIC CHARACTERISTICS 2000: 2000 CENSUS OF POPULATION AND HOUSING, Table DP-1 (2001), available at <http://www.census.gov/prod/cen2000/dp1/2kh00.pdf> (last visited, Oct. 17, 2003) [hereinafter 2000 U.S. DEMOGRAPHICS]).

40. See *id.* (citing 2000 U.S. DEMOGRAPHICS, *supra* note 39; FRANK B. HOBBS & BONNIE L. DAMON, U.S. CENSUS BUREAU, CURRENT POPULATION REPORTS, SPECIAL STUDIES P23-190, 65+ IN THE UNITED STATES 2-1 (1996) available at www.census.gov/prod/1/pop/p23-190/p23-190.pdf [hereinafter 65+ IN THE U.S.]).

41. Donna Jackel, *TV Show, Call-in Offer Adult Caregivers Help*, DEMOCRAT & CHRON. (Rochester, NY), Oct. 9, 2002, at 4B, available at 2002 WL 100997674.

42. *Id.*

43. Torres-Gil, *supra* note 39, at 92 (citing 65+ IN THE UNITED STATES, *supra* note 40, at 3-1.)

age.⁴⁴ This trend would lead to placement of increasingly high demands on caregivers as needs become more long-term.⁴⁵

THE IMPACT ON EMPLOYED CAREGIVERS

Juggling family life, caring for an ill relative, and working to earn a living causes a great deal of stress for an employed caregiver.⁴⁶ As the number of elders increases, more people will be required to provide care for aging relatives.⁴⁷ A number of factors have contributed to the increase in the number of people dealing with the conflicts that are inevitable when managing both caregiving and employee roles, such as “an increase in the number of families with both parents in the workforce, an increase in the number of one-parent families, and an aging population that has led to an increased number of families caring for elderly relatives.”⁴⁸ This is an especially burdensome situation for members of the “sandwich generation”—women who are responsible for providing care to aging parents or relatives while caring for their children at the same time.⁴⁹ Women comprise approximately seventy-five percent of informal eldercare providers⁵⁰ and many fit the “sandwich generation” profile.⁵¹ Therefore, this note addresses issues that face caregivers from a female perspective.

Several problems are likely to arise in the workplace when caregiving duties and work demands conflict. First, because of her additional responsibilities, a caregiver may be forced to alter her work schedule or reduce her workload to accommodate her caregiving duties; she may even be forced to quit work altogether.⁵² Second, taking time off or reducing the number of hours in an employee’s workload detrimentally affects the caregivers’ earnings and retirement savings. Third, caregivers may be concerned about negative effects on their careers if they take time to care for their loved one.⁵³ Finally, employers often focus on the negative aspects

44. See Stucki & Mulvey, *supra* note 34.

45. See Stucki & Mulvey, *supra* note 34 and accompanying text.

46. See, e.g., Jackel, *supra* note 41.

47. See *id.*

48. Ulrich, *supra* note 3, at 2.

49. Bryant, *supra* note 7, at 480-81 (citing Korzec, *supra* note 8, at 556).

50. See *Women & Aging*, *supra* note 33, at 23 (“[T]he brunt of unpaid caregiving is borne by women . . . who provide, on average, 50 more hours of informal care than men.”).

51. Bryant, *supra* note 7, at 480-81 (citing Korzec, *supra* note 8 at 556).

52. See Ulrich, *supra* note 3, at 6 (citing *FUTUREWORK*, *supra* note 3).

53. See *FMLA SURVEYS 2000 UPDATE*, *supra* note 14, at 2-16, Table 2.17: Reasons for Not

of providing leave for their employees instead of realizing the many benefits that may result from granting leave, thereby reducing attrition and employee stress.

Balancing Work and Family Care

Maintaining balance between work responsibilities and caring for a family member often forces a caregiver to make many difficult choices. As a person assumes the duties of caring for an elder, many caregivers must make changes in their work schedules in order to accommodate the added responsibilities.⁵⁴ Approximately two-thirds of those providing care for elders are employed, which means that the work and caregiving conflict affects a substantial number of caregivers.⁵⁵ "Six percent of caretakers report that they had to leave the labor force entirely, and more than fifty percent report making changes at work, such as leaving early, going in late, changing to a part-time work schedule, or taking time off during the day."⁵⁶ In these situations, employers must be flexible in order for employees to successfully balance all of their responsibilities.

The prevalence of flexible work schedules is increasing, but there may be a high cost associated with flexibility. In some situations,

workers who wish to gain greater access to a flexible schedule sometimes must be willing to work very long workweeks (50 or more hours) such as evening shifts, work irregular shifts, work an unpredictable number of hours each week, or make a transition to either part-time work or self-employment.⁵⁷ These changes may lead to a loss of time for leisure activities, absence of predictability in the workweek or a long-term lower level of compensation.⁵⁸

Additional problems arise when the workplace does not provide the flexibility needed to accommodate the needs of caregivers. Employees who work for employers covered by the FMLA are guaranteed the flexibility to take leave if the requirements of the Act

Taking Leave 1995 & 2000 (In 2000, 42.8 percent of leave-needers thought job advancement might be hurt, 27.8 percent did not want to lose seniority, 31.9 percent thought job might be lost.).

54. See Ulrich, *supra* note 3, at 6-7 (citing FUTUREWORK, *supra* note 3, at 32).

55. *Id.* citing FUTUREWORK, *supra* note 3, at 31 (Fifty-two percent work full time and twelve percent work part time).

56. *Id.*

57. Golden, *supra* note 11, at 63.

58. See *id.*

are met.⁵⁹ Unfortunately, since the leave provided under the Act is unpaid, a Department of Labor survey conducted in 2000 indicated that about three quarters of those who needed to take leave were unable to reap the benefits of the provision because they could not afford to go without pay.⁶⁰ Additionally, a substantial number of people, who were eligible for leave did not take leave because they were afraid it would have a negative impact on their careers.⁶¹

Despite practical difficulties, employees covered by the FMLA are legally entitled to choose whether or not to take leave to care for a family member. In contrast, many employees do not have the option of federally-mandated, unpaid leave. Only two-thirds of workers in the United States work for employers who are obligated to provide leave under the FMLA.⁶² Thus, many employees have no guarantee that leave will be available should circumstances arise that make it necessary. Some of these employees may have certain benefits provided by their individual employers, but only 33.5 percent of the employers not covered by the FMLA provided the same full coverage as employers falling under the FMLA.⁶³ This is significant in light of the fact that one-third of the workers in the United States are employed by uncovered employers who would fall into this category.⁶⁴

Financial Ramifications

Unpaid leave is better than nothing, but has many problems for those who choose to take advantage of it. Lower-income employees often experience financial difficulties when choosing to take advantage of unpaid leave either under the FMLA or state provisions, or reducing their workloads in order to gain a more

59. See 29 U.S.C. § 2612(a)(1)(2003); Shay Ellen Zeemer, *FMLA Notice Requirements and the Chevron Test: Maintaining a Hard-Fought Balance*, 55 VAND. L. REV. 261, 265 (2002).

60. See FMLA SURVEYS 2000 UPDATE, *supra* note 14, at 2-16, Table 2.17: Reasons for Not Taking Leave 1995 & 2000 (77.6 percent of leave-needers could not afford to take leave).

61. *Id.* (42.8 percent of leave-needers thought job advancement might be hurt, 27.8 percent did not want to lose seniority, 31.9 percent thought job might be lost).

62. See Hayes, *supra* note 29, at 1526 (citing A WORKABLE BALANCE, *supra* note 29) (66.1 percent of the labor force, including private and public sector employees, work for employers covered by the FMLA.).

63. Jane Waldfogel, *Family and Medical Leave: Evidence from the 2000 Surveys*, MONTHLY LAB. REV. 17, 18 (Sept. 2001), Table 1: Provision of Family and Medical Leave Benefits by Establishment Coverage, 1995 and 2000 (citing FMLA SURVEYS 2000 UPDATE, *supra* note 14, at Fig. 5.2 & Table 5.4).

64. See Hayes, *supra* note 29 and accompanying text.

flexible schedule.⁶⁵ For example, “[w]orkers who care for an elderly relative can have an average loss over a lifetime of more than \$600,000 in wages, pension and Social Security benefits.”⁶⁶ These costs will not only affect the caregiver’s earnings during the period while care is being provided, but by negatively impacting their contributions to Social Security, it will have lasting effects in their own senior years.

Additionally, when leave is taken by lower income workers, employees making \$20,000 or less per year, they often suffer especially burdensome economic effects.⁶⁷ This trend is, in part, due to the fact that people who are employed in jobs with lower pay are typically less likely to be eligible for pay during leave than people who are employed in more lucrative positions.⁶⁸ Among workers falling into this lower income category, many who choose to use unpaid leave are forced to borrow money.⁶⁹ Others may delay paying their bills and/or cut their leave short.⁷⁰ Finally, approximately fifteen percent go on welfare in order to survive.⁷¹

The tendency for women, rather than men to be employed in jobs that pay less and are less likely to offer paid leave can be an especially difficult situation for women.⁷² In addition, factors such as caring for children and aging family members continue to be an obstacle in the effort to close the wage gap that exists between men and women because women are often the ones making the necessary sacrifices at work in order to fulfill the traditional role of ‘caregiver’.⁷³ These sacrifices translate into lower earnings over the course of the woman’s lifetime and subsequently smaller pensions.⁷⁴ “At retirement, women receive less than one-third of the employer provided retirement benefits received by men.”⁷⁵ Pensions

65. See Melissa A. Childs, Comment, *The Changing Face of Unions: What Women Want from Employers*, 12 DEPAUL BUS. L.J. 381, 427 (1999/2000) (reporting that “among workers with annual family incomes less than \$30,000 who take leave, twenty-seven percent must borrow money to survive, thirty-eight percent delay paying bills, thirty-two percent cut their leave short and fifteen percent resort to welfare”).

66. See AFL-CIO, ELDER CARE, *supra* note 53.

67. See Childs, *supra* note 66, at 427.

68. See Golden, *supra* note 11, at 57-63.

69. See Childs, *supra* note 66, at 427.

70. *Id.*

71. *Id.*

72. Tim Engstrom, *Pay Equity Still Out of Reach for Women*, NEWS-PRESS, Sept. 2, 2002, at Business Monday; F, available at 2002 WL 25953890.

73. Korzec, *supra* note 8, at 549-57 (Women in their caregiving role deviate from the “male norm” of the American ideal worker who “devotes all his time to career advancement”).

74. See *id.*

75. *Id.* at 560 (citing Carol Moseley-Braun, *Women’s Retirement Security*, 4 ELDER L.J. 493, 494-95 (1996))(citations omitted).

are typically determined based on a formula factoring the number of years worked and the salary earned by the worker.⁷⁶ Based on this formula, the gender gap “actually widens” during retirement years.⁷⁷

Fear of Negative Career Impact

Employees often fear that absence from the workplace will have a negative impact on their careers.⁷⁸ In a 2000 survey, the U.S. Department of Labor found the inability to afford leave to be the most common reason for choosing not to take FMLA leave.⁷⁹ Over half of those surveyed felt that their “work was too important to take leave.”⁸⁰ Approximately forty-three percent were afraid of negative impact on job advancement;⁸¹ almost twenty-eight percent were concerned that they might lose seniority; and nearly one-third of the employees who needed leave, but did not take it, chose to continue working because of the fear that they would lose their jobs altogether.⁸²

By mandating *paid* leave, California’s government provides support for the idea that leave is important. This strong support may provide additional encouragement to workers to take family medical leave that is available to them without fearing negative aftershocks. It also sends a similar message to employers that should result in an increased sensitivity to the importance of this option for employees. The stance taken by the government will be beneficial if it causes employers to look at the benefits of offering this type of flexibility rather than focusing on problems they may face when their employees take leave.

Burden on Employers

When employees suffer from the stress of trying to balance caregiving and working, the struggle of balancing these conflicting interests may have negative consequences for their employers. “Stress is the enemy of productivity, and the number-one stressor in the workplace is family problems.”⁸³ Employers may incur

76. *Id.*

77. *Id.*

78. See FMLA SURVEYS 2000 UPDATE, *supra* note 14, at 2-15.

79. See *id.* at 2-16, Table 2.17: Reasons for Not Taking Leave: 1995 and 2000 Surveys (In 2000, 77.6 percent of leave-needers did not take leave because they could not afford it.).

80. *Id.* (52.6 percent reported, “work was too important,” as a reason for not taking leave.).

81. *Id.*

82. *Id.*

83. See Childs, *supra* note 66, at 434 (citing BARBARA SCHWARZ VANDERKOLK &

potentially high costs in the form of "lower efficiency and productivity, increased absenteeism, turnover and higher health risks."⁸⁴ In addition, it is quite expensive to lose an employee and retrain a successor.⁸⁵ Therefore, many companies have looked at these costs on productivity and the cost of employee attrition, and discovered the importance of offering assistance to employees who are trying to balance their duties at home and at work.⁸⁶

These programs benefit the employer by allaying many of the costs incurred by employers, such as decreased efficiency and productivity, and increased absenteeism, when their workers are experiencing increased levels of stress caused by family care needs.⁸⁷ If employers choose not to help their employees cope with these dual demands, they may not be able to attract and retain valuable workers.⁸⁸ Since paid leave has benefits for both employer and employee, it is hard not to see this as a win-win situation.⁸⁹

BENEFITS OF CARE PROVIDED BY FAMILY MEMBERS

Although providing care for a family member is often necessary for a variety of reasons, there are many benefits to the provision of care by family members that make it preferable. First, care provided by family members is economically valuable, which is an important consideration, given the rising cost of elder healthcare and the scant resources available to meet the growing need.⁹⁰ Second, the practice of caring for one another is "essential to a properly functioning society."⁹¹ Third, providing family care allows

ARDIS ARMSTRONG YOUNG, *THE WORK & FAMILY REVOLUTION: HOW COMPANIES CAN KEEP EMPLOYEES HAPPY & PROFITABLE* 59 (1991) (hereinafter, Vanderkolk & Young).

84. *Id.* (citing VANDERKOLK & YOUNG, *supra* note 84, at 10).

85. *Id.* at 435 (citing VANDERKOLK & YOUNG, *supra* note 84, at 10) (hiring and training a new employee may cost up to one and one half times of the employee's salary).

86. *Id.* at 433.

87. *Id.* at 434-35. See also Franklin, *supra* note 32.

88. See Childs, *supra* note 66, at 435-36. See, e.g., Franklin, *supra* note 32 ("Without help, employees are likely to spend time away from work or use work hours to research solutions to parents' care needs. The resulting lost productivity and increased absenteeism cost businesses as much as \$29 billion a year, according to a MetLife study.").

89. See Franklin, *supra* note 32.

90. See Wise, *supra* note 5, at 569-70 (Poverty among the elderly continues despite extensive government aid in the form of Social Security, Medicare and Medicaid.).

91. P.K. Runkles-Pearson, Note, *The Changing Relations of Family and the Workplace: Extending Antidiscrimination Laws to Parents and Nonparents Alike*, 77 N.Y.U. L. REV. 833, 852 (2002) (citing Joan Williams, *From Difference to Domesticity: Care as Work, Gender as Tradition*, 76 CHI-KENT L. REV. 1441, 1462-65; MONA HARRINGTON, CARE & EQUALITY: INVENTING A NEW FAMILY POLITICS 48-49 (1999)) (. . . it is essential to human health and balanced development, it is also crucial to developing human moral potential, to instilling and reinforcing in an individual sense of positive connection to others.").

elders to enjoy independent lifestyles, which increases the elders' ability to avoid or at least, postpone nursing home or medical institutionalization.⁹² Finally, the quality of life of the elder and the quality of the care provided is likely to be higher when a family member serves in a caregiver capacity.⁹³

Economic Value of Informal Caregiving

Informal caregivers, the term often used to apply to the family members providing care without receiving pay, are beneficial to society due to the enormous economic value of the services they provide.⁹⁴ "Some commentators argue that laws that recognize and enforce adult childrens' duties to their parents are economically preferable to having Social Security, Medicare, and Medicaid provide for the elderly."⁹⁵

As the population of elderly persons continues to increase dramatically, the government may not be able to meet the increasing need for healthcare funding.⁹⁶ This makes the support provided by family members very valuable because it leaves money in the government coffers while providing the healthcare needed by the aging members of our society.⁹⁷ The government provides care in several ways. Currently, Medicaid pays for "nursing home care and some home and community-based services, only to the very poor"⁹⁸ Medicare also covers "home health care provided in the elder's home, but only if such care is "medically necessary, approved by a physician, and for limited days."⁹⁹ Social services for persons over sixty are partially funded by the Older Americans Act benefits but

92. Andrew I. Batavia, *The Growing Prominence of Independent Living and Consumer Direction as Principles in Long-Term Care: A Content Analysis and Implications for Elderly People With Disabilities*, 10 ELDER L.J. 263, 277-80 (2002) (arguing that an independent living model should be available to all individuals with disabilities, including elderly persons).

93. See Wise, *supra* note 5 at 584 (citing DEBORAH M. MERRILL, CARING FOR ELDERLY PARENTS: JUGGLING WORK, FAMILY, AND CAREGIVING IN MIDDLE AND WORKING CLASS FAMILIES 167 (1997)).

94. SENATE SPECIAL COMMITTEE ON AGING, 107TH CONG., LONG-TERM CARE REPORT 14 (Comm. Print 2002) available at <http://www.access.gpo.gov/congress/senate/senate22cp107.html>. [hereinafter LONG-TERM CARE REPORT].

95. Wise, *supra* note 5, at 569-70.

96. *Id.*

97. *Id.*

98. Torres-Gil, *supra* note 39, at 108 (citing STAFF OF HOUSE COMM. ON WAYS & MEASURES, 104TH CONG., OVERVIEW OF ENTITLEMENT PROGRAMS 906 (1996) (stating that in order to become eligible for Medicaid assistance, the poor must first spend down their assets)).

99. Torres-Gil, *supra* note 39, at 108.

its budget is "relatively small" at \$1.4 billion.¹⁰⁰ The harsh reality is that "the majority of the population must pay for its own home- and community-based services (e.g., home health aides, homemaker and chore workers, visiting nurses, nursing homes) out-of-pocket."¹⁰¹

Informal caregivers frequently step in to fill this gap between caregiving needs and resources. Family caregivers are currently responsible for providing approximately eighty percent of the long-term care in America, and the cost of replacing family caregivers who are unpaid with professional paid caregivers would be nearly \$200 billion dollars annually.¹⁰² Provisions that help to accommodate these valuable unpaid caregivers benefit the entire country by relieving some of the burden placed on government funding. The Senate Special Committee on Aging has examined the effects of the burgeoning problem of healthcare and the aging population and they presented some rather frightening projections in a recent report. They stated that:

Government projections developed by the Lewin Group for the U.S. Department of Health & Human Services find that annual expenditures for long-term care will reach \$207 billion in 2020 and \$346 billion in 2040, and could nearly quadruple in constant dollars to \$379 billion by 2050 Absent reform, spending on Social Security, Medicare and Medicaid would consume nearly three-quarters of federal revenue by 2030. This will leave little room for federal priorities such as defense and education. By 2050, total federal revenue would be insufficient to fund spending for Medicare, Medicaid and Social Security interest payments.¹⁰³

With such daunting projections, it is clear that care provided by unpaid family members is no trivial matter, and such caregiving should be viewed as the economically valuable service that it really is.

Necessity in a Properly Functioning Society

In addition to its economic value, providing care for one another is a basic element of a properly functioning society.¹⁰⁴ Mona Harrington argues that care should be viewed as a national social

100. *Id.* at 108-09.

101. *Id.* at 109.

102. LONG-TERM CARE REPORT, *supra* note 95.

103. *Id.* at 8.

104. Runkles-Pearson, *supra* note 92, at 852.

value stating that, “. . . to assure good care to all members of the society [, care] should become a primary principle of our common life, along with the assurance of liberty, equality, and justice.”¹⁰⁵ Considering the fact that every person will at some time either require and/or provide care, the reality of our dependence on others is clear.¹⁰⁶

Harrington also argues that care should be viewed as highly important “. . . for the basic reason that it is essential to human health and balanced development.”¹⁰⁷ This makes a great deal of sense in its simplicity: without care, those in need of care will suffer. Care is, in basic terms, a necessity for survival. Harrington also presents the idea that care

. . . is also crucial to developing human moral potential, to instilling and reinforcing in an individual a sense of positive connection to others. And it is this sense of connection that makes possible the whole range of mutual responsibilities that allow the people of a society to respect and work toward common goals.¹⁰⁸

Anyone who has provided care for another living being—whether it is a child caring for a pet, a parent caring for a child, or a caregiver providing care for a family member—can attest to the lessons learned from being responsible for the needs of another. These profound opportunities to connect with another person in a meaningful way, and to develop a responsible attitude in providing essential care benefits society as these positive traits spill over into other aspects of life.¹⁰⁹

Increased Autonomy for the Elderly

Another important advantage gained through family-provided care is the increased autonomy of an aging family member that results when it is possible to prevent or delay institutionalization.¹¹⁰ The elderly, like all Americans, highly value their own personal

105. HARRINGTON, *supra* note 91, at 48 *cited in Id.* at 852-53.

106. *See* HARRINGTON, *supra* note 91, at 49 (i.e., humans need family care from infancy through adulthood and elder years).

107. *Id.*

108. *Id.*

109. *See generally id.*

110. *See* Bryant, *supra* note 7, at 473.

"freedom, privacy and autonomy."¹¹¹ Elders are cognizant of the fact that residing in a nursing facility will require them to relinquish to a large extent, their personal freedom, privacy, and autonomy, and as a result, most elders will go to great lengths to avoid living in such a facility altogether or to at least postpone making such a move.¹¹² Family-provided care is an important factor in their ability to accomplish this goal.¹¹³ By encouraging family support as an alternative to institutionalization, the elderly person may be able to continue living at home or in the community where an increased ability to control his or her own care will increase the elder's personal autonomy.¹¹⁴

"A growing body of empirical evidence shows that the perception of personal control plays a critical role in an individual's long-term physical and emotional health and well-being."¹¹⁵ By avoiding the more impersonal and controlled atmosphere of a nursing facility or other long-term care institution, an elder will be able to retain some modicum of control over the "everyday, mundane choices that usually are taken for granted" that appear to be vital to an elder's sense of personal control and quality of life.¹¹⁶ Allowing elders to enjoy greater autonomy, which results in an improved quality of life, is a very worthwhile benefit provided by family caregivers.

Quality of Care

Finally, encouraging family members to provide care is likely to result in a higher level of quality in the care provided to the elder.¹¹⁷ It is assumed that those in need of care would prefer to receive care solely from family members or as a "supplement to care provided entirely by strangers."¹¹⁸ Allowing this type of arrangement

111. See *supra* note 93, at 277.

112. See *id.*

113. See Marshall B. Kapp, *Enhancing Autonomy and Choice In Selecting and Directing Long-Term Care Services*, 4 ELDER L.J. 55, 90 (1996) cited in Bryant, *supra* note 7, at 473 ("... it is assumed that a substantial percentage of [elders] would prefer family caregiving as a substitute for or supplement to care provided entirely by strangers.").

114. See Bryant, *supra* note 7, at 473.

115. See Kapp, *supra* note 114 at 63 (citing Brian F. Hofland, *Autonomy in Long-Term Care: Background Issues and a Programmatic Response*, 28 GERONTOLOGIST 3, 5-6 (1988); Judith Rodin, *Aging and Health: Effects of the Sense of Control*, 233 SCIENCE 1271 (1986)).

116. *Id.* at 64 (e.g., enabling elders to make choices as simple as the foods he or she would like to eat, the clothes he or she would like to wear, and the activities in which he or she would like to participate).

117. See generally Kapp, *supra* note 116, at 90; Bryant, *supra* note 7, at 473.

118. See Kapp, *supra* note 116, at 90; Bryant, *supra* note 7, at 473.

would result in greater satisfaction on the part of the care recipient by presenting a broader range of care options, adding to their feeling of personal control.¹¹⁹

The quality of care provided by a family member will differ from that provided by a professional caregiver. It is likely that the care will be of a higher quality because of a family member's "stronger personal ethical commitment and personal attachment to the client's well-being" as compared with a stranger providing care in exchange for payment.¹²⁰ Since caregiving includes nurturing the elder's emotional well-being,¹²¹ as well as taking care of basic needs, it makes sense that having a caregiver with a personal stake will be beneficial.

SCHEMES SUPPLEMENTING THE FMLA

The FMLA, is the primary federal statutory scheme that assists working caregivers by providing unpaid leave for the care of aging family members.¹²² A few states have enacted laws to expand the coverage of the FMLA and many are considering such legislation.¹²³ In addition, some employers provide different types of benefits to help employees balance family and work.¹²⁴ This section will provide a brief overview of the FMLA and other provisions available through employers and state legislation.

Employer-Provided Benefits

Some employees are blessed with employers who recognize the problems faced by their caregiving employees and are able to foresee the losses they will suffer if they do not attempt to help their employees. As a result, many employers offer assistance to employees beyond the requirements of the FMLA.¹²⁵ These benefits, while not necessarily including leave, indicate that employers are beginning to take notice of the caregiving-work demand conflict.

119. See Kapp, *supra* note 116, at 90.

120. *Id.* (citing NATHAN L. LINSKETAL., WAGES FOR CARING: COMPENSATING FAMILY CARE OF THE ELDERLY 217-25 (1992)).

121. See Korzec, *supra* note 8, at 556.

122. See Family Medical Leave Act of 1993, 29 U.S.C. §§ 2601-2654 (1993). See also Ulrich, *supra* note 3, at 17.

123. See Ulrich, *supra* note 3, at 19.

124. *Id.* at 22.

125. See Franklin, *supra* note 32 (reporting that a 2000 survey found that nearly half of all large employers (those with more than 1,000 employees) offer some sort of eldercare assistance).

Two primary responses to the difficulties experienced by an increasing number of employees who are involved in caregiving are employer-paid consultation and referral programs, and employee-paid long-term care insurance plans.¹²⁶ This issue is important to employers as the impact of caregiver issues costs an estimated \$29 to \$31 billion annually.¹²⁷ Some companies attempt to ease the burden by offering "innovative and affordable elder-care benefits."¹²⁸ These benefits range from toll-free call centers, informational websites about elder-care programs in their locality, web-based and telephone consultation and referral services by networks of elder-care providers to "access to a growing list of services, discounts and assistance from experienced geriatric specialists."¹²⁹

While helpful, these services still fall short of providing the flexibility of leave needed by caregivers. Some employers, not covered by the FMLA, do provide some family medical leave to their employees. For example, Water Transportation Alternatives, a company that operates a water shuttle in the Boston area, employs only forty people and is therefore exempt from the FMLA, but chooses to provide one week of sick leave or personal time for its employees.¹³⁰ The possible expansion of the FMLA to cover smaller businesses like Water Transportation Alternatives is a daunting prospect to small business owners as smaller businesses are less able to bear the cost and burden of replacing an employee for an extended amount of time.¹³¹

State Expansion of Family Leave

Several states have "implemented family-leave programs to supplement the job protection provided under the . . . FMLA."¹³² Such programs assist employees attempting to care for their elderly relatives.¹³³ For example, in some states, employees may use "accrued

126. Robert E. O'Toole, *Integrating Contributory Elder-Care Benefits with Voluntary Long-Term Care Insurance Programs*, EMPLOYEE BENEFITS J., Dec. 1, 2002, available at 2002 WL 15846972.

127. *Id.* (Giving several examples of 'caregiver issues': lost time at work by, time spent on the phone at work trying to resolve caregiving problems, caregiver-related stress).

128. *Id.*

129. *Id.*

130. Diane E. Lewis, *Leave Law on Brink of Change Groups Propose to Change Scope of the FMLA*, BOSTON GLOBE, Feb. 9, 2003, available at 2003 WL 3379482.

131. *Id.*

132. Wise, *supra* note 5, at 589. See, e.g., WIS. STAT. § 103.10(5)(b) (1994); VT. STAT. ANN. tit 21, § 472 (2001).

133. See Wise, *supra* note 5, at 589.

sick leave to care for family members.”¹³⁴ While this may be beneficial for some employees, those working in lower-income jobs are less likely to have benefits packages, which include paid sick leave or vacation time that could be substituted for the unpaid leave offered under the FMLA.¹³⁵ A different solution that substantially assists working caregivers must be found, and California may be the leader in implementing the perfect solution.

Paid Leave is Not a New Concept

The idea of offering paid leave was originally considered during the framing of the FMLA, “but was abandoned for political reasons.”¹³⁶ Former President Clinton recognized the shortfall of the FMLA and attempted to bridge this gap by “issu[ing] an executive order that federal employees could take up to twelve weeks of paid sick leave for the care of an ill parent or child.”¹³⁷ He also directed the Secretary of Labor to allow states to offer paid leave to new parents “using funds from unemployment insurance systems.”¹³⁸ The bottom line is that regardless of how it is instituted, “paid leave would be extremely beneficial for American families and society, and would be invaluable in increasing the effectiveness of the FMLA.”¹³⁹

California’s Paid Family Care Leave / Temporary Disability Insurance Law

California has taken this bottom line into account and has taken unprecedented action to provide paid leave for its citizens culminating in the signing into law of Senate Bill 1661 by California Governor, Gray Davis, on September 23, 2002.¹⁴⁰ This law expands the State Disability Insurance program to allow employees to tap into the funds for about half of their salary for up to six weeks in order to take time off to care for a child or sick relative.¹⁴¹ The

134. *Id.*

135. See Hayes, *supra* note 29, at 1524.

136. *Id.* at 1523 (citing RONALD D. ELVING, CONFLICT AND COMPROMISE: HOW CONGRESS MAKES THE LAW 11, 42 (1995)) (detailing the political progress of the FMLA from its original proposal in the mid-1980s to its enactment in 1993).

137. *Id.* at 1533 (citing Commencement Address at Grambling State University in Grambling, Louisiana, 1 PUB. PAPERS 836, 838 (May 23, 1999)).

138. *Id.*

139. *Id.* at 1537.

140. See S.B. 1661, 2002 Leg., 2001-02 Sess. (Ca. 2002)(enacted). See also Marian Wright Edelman, *California Shows it Values Families*, SAN DIEGO UNION-TRIB., Sept. 29, 2002, available at 2002 WL 100345582.

141. Bernstein et al., *supra* note 4.

maximum payout will be \$728 per week, which will take effect in July of 2004.¹⁴² To make this option possible, employees will make an average contribution of less than \$3 per month.¹⁴³ Since this leave is not tied to the FMLA, employees will be eligible for paid leave that were previously eligible for no leave at all.¹⁴⁴ California is the first state to pass such legislation.¹⁴⁵ Hopefully, other states will decide to follow the leader.

Other State Family Leave Statutes

While California is the first to pass such a comprehensive law, other states have recognized the need for paid leave, passing less comprehensive, but nonetheless significant laws.¹⁴⁶ Washington, for example, has a new law that will allow workers to use paid sick leave, personal days and vacation time to care for sick family members.¹⁴⁷ A small number of states have less comprehensive provisions providing partial paid leave, or paid leave for parents in lower income families.¹⁴⁸

Approximately twenty-seven other states are in the process of considering implementing paid leave provisions.¹⁴⁹ In 2001 and 2002, Maine, Minnesota, New Mexico and Oregon proposed organization of task forces to study paid leave.¹⁵⁰ Lawmakers in Arizona, Connecticut, and Illinois presented proposals to allow the use of paid sick leave as family leave.¹⁵¹ Temporary disability insurance was viewed as a possible source of paid family leave in

142. See Lewis, *supra* note 131; Edelman, *supra* note 141.

143. See Lewis, *supra* note 131; Edelman, *supra* note 141 ("Family leave would be funded by workers, at an average cost of about \$2 per worker, per month.").

144. See Kleiman, *supra* note 20.

145. See Edelman, *supra* note 141.

146. See Kleiman, *supra*, note 20.

147. See Rebecca Cook, *State Law Will Let Workers Use Leave for Family Care*, THE COLUMBIAN, Nov. 29, 2002, available at 2002 WL 103781790. See also WASH. REV. CODE ANN. § 49.12.270 (West 2003).

148. See Kleiman, *supra* note 20. See, e.g., MINN. STAT. ANN. § 181.9413 (West 2003) (allowing the use of accrued sick leave to care for a sick or injured child); HAW. REV. STAT. ANN. § 398-4 (2002) (allowing the use of accumulated sick leave in addition to unpaid leave to care for family members); 2003 Conn. Acts 213 (Reg. Sess.) (allowing the use of up to two weeks of accumulated paid sick leave to care for family members); MINN. STAT. ANN. § 119B.061 (West 2003) (providing a subsidy to low-income parents caring for an infant full time in the home).

149. See *id.*

150. Martin Kasindorf, *California Family Leave Bill Awaits Governor's Decision*, USA TODAY, Sept. 17, 2002, available at 2002 WL 4733672. See, e.g., H.B. 2891, 2001 Leg., 71st Sess. (Or. 2001) (establishing a task force on paid family leave and unemployment insurance).

151. *Id.* See, e.g., S.B. 1417, 45th Leg., 1st Reg. Sess. (Az. 2001) (seeking to allow the use of paid sick leave to care for family members)

California, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island and Washington.¹⁵² Illinois, Massachusetts, Minnesota, and Vermont considered proposals for state funded family leave.¹⁵³ Three states, Colorado, Hawaii and Massachusetts considered providing tax credit to employers with paid leave.¹⁵⁴ Ultimately, however, California was the only state to come to the aid of their citizens by approving their state's proposed legislation.¹⁵⁵ California has the interests of their workers at the forefront which will have an amazing impact on the lives of their workers and the lives of those who receive care.

CONCLUSION

As the population boom of senior citizens explodes, the need for caregivers will continue to grow as well. The overwhelming number of informal caregivers is currently quite large and will certainly increase in order to meet the demands of our aging society. The strain of these demands often falls on women who are members of the "sandwich generation,"¹⁵⁶ and who are involved in working outside the home, caring for their children and caring for their aging parents. The stress is overwhelming for many of these caregivers as they struggle to balance work and family.

Provisions like the FMLA are helpful to these "sandwiched"¹⁵⁷ employees in that they provide unpaid leave in some caregiving situations. However, the FMLA falls short in a number of respects, primarily because many Americans are not covered and because an overwhelming portion of those needing to take leave cannot afford to go without pay.

While some states and private employers offer limited paid leave provisions, California's new law is far more significant and should be emulated by other states. This law will increase productivity in the workplace by reducing the stress of employees

152. *Id. See, e.g.,* A222, 2002 Leg., 210th Sess. (NJ. 2002) (proposing to allow employees to use temporary disability insurance to care for a newborn or adopted child, or to take care of the medical illness of a family member) .

153. *Id. See, e.g.,* H.B. 497, 92nd Gen. Assem., Reg. Sess.(Il. 2001) (specifying that the state will share the cost with employers who pay at least some wages to employees taking leave to care for family members or to recover from their own serious illness).

154. *Id. See, e.g.,* H.B. 01-1291, 63rd Gen. Assem., Reg. Sess.(Co. 2001) (allowing employees to take up to forty hours of unpaid leave annually to attend their children's school activities and to substitute paid sick, annual or other paid leave for this purpose while additionally providing tax credits to employers of employees who take this kind of leave).

155. *Id.*

156. *See Korzec, supra* note 8, at 556.

157. *See id.*

embroiled in the struggle to balance conflicting responsibilities, and will decrease many of the costs incurred by employers who have employees playing conflicting roles. It will also encourage provision of the economically valuable service provided by informal caregivers, be beneficial to society as a whole, allow for increased autonomy of the elderly, and result in a higher level of care for elderly Americans. Finally, it will provide caregivers like Debra, with the much needed flexibility and peace of mind she deserves for undertaking such an important and valuable role in our society.

K. NICOLE HARMS*

* J.D. Candidate, 2004, Marshall-Wythe School of Law, College of William and Mary; B.M.E Vocal Music Education, summa cum laude, 1997, Arkansas State University. The author would like to dedicate this note to the memory of my grandparents, Eugene and Anna Mae Ross, and I would like to thank my family for shouldering the burdens and recognizing the joys of caring for them. I will be forever grateful for the love, attention and assistance you bestowed upon these very special people.