

Public Comments to:

DEPARTMENT OF LABOR  
Employment Standards Administration  
Wage and Hour Division  
29 CFR Part 825  
RIN 1215-AB35  
The Family and Medical Leave Act of 1993

Submitted by:  
Trust for America's Health  
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I am submitting public comments regarding proposed changes to the Family and Medical Leave Act on behalf of Trust for America's Health (TFAH), a nonprofit, nonpartisan organization dedicated to saving lives by making disease prevention a national priority. Among other major public health issues, TFAH is concerned about strengthening the public health system to prepare for and contain the impact of infectious disease outbreaks and other health emergencies.

The Family and Medical Leave Act (FMLA) of 1993 was landmark legislation, guaranteeing workers' rights to unpaid leave for serious medical conditions or to care for a sick family member. The legislation requires updating, but the proposed rule published on February 11, 2008, is a move in the wrong direction. In the event of a major disease outbreak or bioterrorist attack, Americans will depend on FMLA leave to survive the health and economic consequences posed by such a crisis. Many of the proposed changes would place additional reporting and disclosure requirements on employees, many of whom are already unaware of their rights under FMLA. Some of these changes create needless disincentives to taking FMLA leave.

The proposed rule places a greater burden on employees to provide details about their illness. If there is a severe influenza pandemic, experts estimate that as many as 90 million Americans could be hospitalized.<sup>1</sup> The proposed rule would require workers to call in before the shift begins (Sec. 825.302(a)) and follow the employer's rules about how to report leave (Sec. 825.303(c)). Although TFAH agrees that employees should make every effort to report unforeseeable absences quickly and accurately, we are concerned that there are not enough protections in the proposed changes to guarantee workers will not be unduly punished for not adhering to new, stringent reporting requirements. Parents may have to choose between keeping their jobs and taking care of children or their own health if they are unable to quickly report absences. The proposed change also would allow businesses up to five days to determine if the worker is eligible for FMLA leave (Sec. 825.300). This proposal may present public health concerns during a pandemic as sick people attend work and further spread disease while waiting to find out their eligibility.

The proposed change (Sec. 825.307(a)), which would allow employers to contact their employees' healthcare providers directly to verify the FMLA medical certificate, is especially troubling. Even if the rule prevents employers from accessing medical information, it still allows the business itself, rather than a healthcare professional hired by the company, to contact the worker's provider. Requiring workers to give their employers such access to their health providers presents major obstacles to workers' willingness to take FMLA leave. In addition to presenting the opportunity for violations of patient privacy, the *perception* of privacy violations would be just as harmful. Many workers may be hesitant to take FMLA leave for fear of their employers gaining information about their medical history or a family member's medical history. In an infectious disease outbreak, social distancing measures may be vital to containing the spread of disease, and public health departments will likely recommend symptomatic people stay home from work. Yet, the proposed changes to FMLA would place sick workers in the position of having to decide between their own privacy and what is best for the public's health.

Thank you for the opportunity to submit these comments. TFAH will be pleased to work with the Department as it finalizes the regulations.

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<sup>1</sup> Trust for America's Health. *Pandemic Flu and the Potential for U.S. Economic Recession: A State-by-State Analysis*. Washington, D.C.: Trust for America's Health, 2007. <<http://healthyamericans.org/reports/flurecession/>>