



Spring 2009

Leaving Maryland Workers Behind: A Comparison of State Employee Leave Statutes

Michael Hayes

University of Baltimore School of Law, mjhayes@ubalt.edu

Follow this and additional works at: http://scholarworks.law.ubalt.edu/all_fac

 Part of the [Jurisprudence Commons](#), and the [Labor and Employment Law Commons](#)

Recommended Citation

Leaving Maryland Workers Behind: A Comparison of State Employee Leave Statutes, 9 U. Md. L.J. Race, Religion, Gender & Class 19 (2009)

This Article is brought to you for free and open access by the Faculty Scholarship at ScholarWorks@University of Baltimore School of Law. It has been accepted for inclusion in All Faculty Scholarship by an authorized administrator of ScholarWorks@University of Baltimore School of Law. For more information, please contact snolan@ubalt.edu.

LEAVING MARYLAND WORKERS BEHIND: A COMPARISON OF STATE EMPLOYEE LEAVE STATUTES

MICHAEL J. HAYES*

I. THE STARTING POINT: CURRENT MARYLAND LAW

Maryland law is not quite a blank slate for employee leave rights—but it is close. While the state forbids employers from terminating employees for job time lost for jury service or attending a court proceeding in response to a subpoena or pursuant to victim's rights laws,¹ Maryland is one of a “select few” that does not require any breaks for adult workers, including time off for meals.² Maryland law does not require family or medical leave for private sector workers.³ In fact, the state's most generous leave law stems from repealing antiquated “blue laws” that required businesses to be closed on Sundays; employees of retail and wholesale establishments are able to choose “as a day of rest, Sunday or the sabbath of the employee.”⁴

Copyright © 2009 by Michael J. Hayes.

* Associate Professor of Law, University of Baltimore School of Law. I would like to thank Professor Marley Weiss for her insightful and valuable input on an earlier draft of this paper, Professor Margaret Johnson for her dedicated and effective work in organizing this conference, and the Women's Law Center of Maryland and the University of Baltimore and University of Maryland law schools for sponsoring the Conference.

1. MD. CODE ANN., CTS. & JUD. PROC. § 8-501, 9-205 (West 2009).

2. U.S. Dept. of Labor, Minimum Length of Meal Period Required Under State Law for Adult Employees in the Private Sector, <http://www.dol.gov/esa/programs/whd/state/meal.htm>; U.S. Dept. of Labor, Minimum Rest Period Requirements Under State Law for Adult Employees in Private Sector, <http://www.dol.gov/esa/programs/whd/state/rest.htm>.

3. Bureau of National Affairs, Labor and Employment Law Library, State Comparison Chart: Family Leave, <http://laborandemploymentlaw.bna.com> (follow “Laws, Regulations, and Agency Documents” hyperlink; then follow “Wages, Hours and Leave (State Laws, Regs, Agency Docs)” hyperlink; then expand “State Comparison Charts and Agency Directory” listing; then follow “State Comparison Chart: Family Leave”) (last visited Aug. 25, 2009). The Bureau of National Affairs' Labor & Employment Library maintains an up-to-date chart summarizing state family and medical leave laws in their section on Wages, Hours, and Leave (State Laws, Regs, Agency Docs). See Bureau of National Affairs, *State Comparison Chart: Family Leave, State Labor Laws* 1:52, <http://laborandemploymentlaw.bna.com>.

In 2008, Maryland enacted the Flexible Leave Act, which requires private sector employers to allow employees to use paid leave to care for the illness of an immediate family member, but applies only to employers that already grant paid leave to employees and that employ at least fifteen workers.

4. MD. CODE ANN., LAB. & EMPL. § 3-704 (West 2009).

However, even this protection excludes managerial, professional and part-time employees from coverage.⁵

Given this current state of the law, Maryland employees would benefit from more extensive leave rights. This paper discusses numerous types of leave rights that workers in other states enjoy that Maryland employees do not, with a focus on employment laws recently enacted in other jurisdictions. Later sections analyze which leave rights would be the best candidates for legislative passage in Maryland and offer concrete recommendations on formulating such provisions.

II. LEAVE RIGHTS FOR DOMESTIC VIOLENCE VICTIMS

The leave trend that seems to have made the most progress in the past few years is granting rights to victims of domestic violence. In 2007, Florida,⁶ Kansas,⁷ and Oregon⁸ joined six other states that give victims of domestic violence the ability to take unpaid leave for various purposes. The State of Washington and the District of Columbia enacted similar laws in 2008.⁹ At the federal level, a bill pending in the House would provide thirty days of unpaid leave to employees who are the victims of domestic violence.¹⁰

The Florida law permits up to three working days of leave in any twelve-month period for purposes relating to domestic violence against an employee, or a family or household member of that employee.¹¹ The leave may be paid or unpaid at the discretion of the employer.¹² Employees are permitted to take leave for the following listed purposes:

- To seek an injunction for protection against domestic violence, repeat violence, dating violence or sexual violence;
- To obtain medical care, mental health counseling, or both, to address physical or psychological injuries resulting from domestic violence;

5. *Id.*

6. FLA. STAT. § 741.313(2)(a) (2009).

7. KAN. STAT. ANN. § 44-1132(a) (2008).

8. 2007 Or. Laws 71.

9. See Rev. Code Wash. §7.69.030 and Chapter 49.76 (2009); Accrued Sick and Safe Leave Act D.C. Code § 32-131.01, §32-131.02, and §32-131.04 (2008).

10. Security and Financial Empowerment Act, 111th Cong. H.R. 739 § 102(a)(2) (2009).

11. FLA. STAT. § 741.313(2)(a) (2009).

12. *Id.*

- To obtain services from a victim-services organization (e.g. domestic violence shelter, rape crisis center) as a result of domestic violence;
- To make the employee's home safe from, or to seek new housing to escape from, the perpetrator of domestic violence; or
- To seek legal assistance to address issues arising from domestic violence or to attend and prepare for court-related proceedings arising from domestic violence.¹³

The Florida law covers employers with fifty or more employees, which is the same coverage threshold as the federal Family & Medical Leave Act (FMLA).¹⁴

The 2007 Oregon law covers employers with six or more employees and provides that workers may take "reasonable leave" for listed purposes.¹⁵ The Oregon statute grants these rights to employees who are victims of, or parents or guardians of a minor child who is a victim of, domestic violence, sexual assault or stalking.¹⁶ Employees may take leave for purposes similar to those listed in the Florida law, such as obtaining legal or law enforcement assistance, including preparing for and participating in protective order proceedings, seeking medical treatment or mental health counseling, recovering from sustained injuries, and relocating or taking steps to secure an existing home.¹⁷ An employer may limit the amount of leave an employee may take if the absence creates an undue hardship on the employer's business.¹⁸ Under the Oregon law, the employer is not required to provide paid leave, but the employee may use paid vacation or other leave time for the covered purposes.¹⁹

The new laws of Washington,²⁰ Florida,²¹ Oregon,²² and Kansas,²³ as well as a statute enacted by Hawaii in 2003,²⁴ require

13. *Id.* § 741.313(2)(b) (2009).

14. *Id.* § 741.313(3) (2009).

15. 2007 Or. Laws 180 § 2(1) and § 3.

16. *Id.* § 3(1).

17. *Id.* § 3.

18. *Id.* § 4.

19. *Id.* § 7.

20. *See* Rev. Code Wash. § 49.76.040 (2009).

21. FLA. STAT. § 741.313(4)(c) (2009).

22. 2007 Or. Laws 180 § 6(1).

23. KAN. STAT. ANN. § 44-1132(c) (2008).

24. HAW. REV. STAT. ANN. § 378-72(h)(i)(2) (LexisNexis 2003). Hawaii's statute covers employers with fifty or more employees.

employers to maintain the confidentiality of all information they receive relating to these types of leave requests. Most of the domestic violence leave statutes impose obligations on employees similar to those of the FMLA, which requires that employees provide the employer with reasonable advance notice of their need for leave, if such notice is feasible, and comply in a timely manner with employer requests for “certification” of the need for leave.²⁵ Some of the domestic violence leave statutes enacted prior to 2007 provide employees with a greater number of leave days than the three provided in Florida²⁶ or the maximum of eight provided in Kansas.²⁷ Hawaii’s statute grants employees thirty days per calendar year,²⁸ while Illinois’ law provides twelve weeks within any twelve-month period.²⁹ Similar to Oregon, the leave statutes in Maine and North Carolina provide that employees may take “reasonable” time off from work for domestic violence related purposes.³⁰

A law that provides similar leave rights to victims of domestic violence should face a favorable prospect of enactment in Maryland. Many private and public organizations in the state, including the Women’s Law Center and Maryland’s two law schools, have done a great deal to heighten the awareness of politicians and citizens to the plight of domestic violence victims.³¹ When states like Florida and

25. See, e.g., KAN. STAT. ANN. § 44-1132(b) (2006); FLA. STAT. § 741.313(4) (2007).

26. FLA. STAT. § 741.313(2) (2007).

27. KAN. STAT. ANN. § 44-1132(d) (2006).

28. HAW. REV. STAT. ANN. § 378-72(a) (LexisNexis 2009).

29. 820 Ill. Comp. Stat. Ann. 180/20-2 (LexisNexis 2009). Illinois’ law covers state and local government employers and private employers with fifty or more employees. 820 Ill. Comp. Stat. Ann. 180/10-10 (LexisNexis 2009).

30. Anya Lakner and Patricia A. Shiu, *Domestic Violence and Employment: A Survey of Employment Rights in the Workplace*, in WHEN HOME COMES TO WORK: DEALING WITH DOMESTIC VIOLENCE AND OTHER ISSUES INVOLVING VIOLENCE IN THE WORKPLACE, NATIONAL CONFERENCE ON EQUAL EMPLOYMENT OPPORTUNITY LAW 6 (2006), <http://www.bna.com/bnabooks/ababna/eeo/2006/lakner.pdf>.

31. The University of Maryland School of Law has engaged in considerable outreach in domestic violence issues through its Women, Leadership and Equality program. See University of Maryland School of Law, Women, Leadership and Equality Program, <http://www.law.umaryland.edu/programs/wle/index.html> (last visited Mar. 6, 2009). The University of Baltimore School of Law’s Family Law Clinic has testified in support of and drafted legislation to assist domestic violence victims and used the media to call attention to problems those victims face. See, e.g., *Testimony in support of S.B. 199*, Maryland Senate Judicial Proceedings Committee, 423rd Sess. (Md. 2007) (bill to alter the maximum duration of a final protective order from twelve months to twenty-four months); UNIVERSITY OF BALTIMORE, THE LAW CLINICS: PRACTICAL EDUCATION THAT WORKS 12, available at http://law.ubalt.edu/downloads/law_downloads/brochure.pdf (last visited Mar. 6, 2009); Leigh Goodmark, *Where’s Outrage for Athletes Who Abuse Partners?*, BALT. SUN, Aug. 8, 2007, at A11. The Women’s Law Center of Maryland sponsors domestic violence projects in multiple

North Carolina, which one would not consider to be “liberal” or “pro-employee,” have stepped forward to extend leave rights to domestic violence victims, then Maryland should not hesitate to help these individuals in a similar manner.

While these privileges primarily assist victims of domestic violence, they might be of little use to those working for employers with antipathy towards such employees. This antagonism is, unfortunately, all too common. Many employers terminate or otherwise react negatively against employees who suffer domestic violence.³² To protect employees in these situations, any Maryland statute should include an anti-retaliation provision that protects employees who use leave, which would be similar to the one found in the FMLA.³³ Another recommendation would be to follow Oregon and expressly give employees the right to use any accrued paid leave, whether for sick days or vacation time, toward absences relating to domestic violence.³⁴ Such a condition would prevent employers from treating the absence as unpaid when the employee is due unused paid leave. On the federal level, Section 4207 of the 2010 health care reform law (Public Law 111-148) requires employers with 50 or more employees to provide reasonable break times for nursing mothers, but this short provision provides less detail and explanation than many of the state laws.

III. UNPAID BREAK TIMES FOR BREASTFEEDING

Another expansion of employee leave rights currently enjoying legislative success is break time for nursing mothers. The first state-wide law on this issue was passed in the late 1990s, and more than a dozen states have since enacted laws that ensure mothers have time off during the work day to nurse their children.³⁵ The National Conference

locations in Maryland, and it's Protection Order Advocacy and Representation Project trains judges across the state on domestic violence issues. See Robert J. Rhudy, *Women's Law Center Works to Enhance Rights of all Women in Society*, DAILY RECORD (Baltimore), June 6, 2003.

32. Nina W. Tarr, *Employment and Economic Security for Victims of Domestic Abuse*, 16 S. CAL. L. REV. & SOC. JUSTICE 371, 373 (2007); Nicole Buonocore Porter, *Victimizing the Abused?: Is Termination the Solution when Domestic Violence Comes to Work?*, 12 MICH. J. GENDER & L. 275, 288–89 (2006).

33. Family and Medical Leave Act, Title I, § 105, codified at 29 U.S.C. § 2615 (2008).

34. 2007 Or. Laws 180 § 7(2).

35. National Conference of State Legislatures, 50 State Summary of Breastfeeding Laws, <http://www.ncsl.org/programs/health/breast50.htm> [hereinafter *50 State Summary*].

of State Legislatures, in a May 2009 summary, reports that twenty-four states have laws relating to breastfeeding in the workplace.³⁶

Oregon's law, which was passed in 2005 and amended extensively in 2007, offers the most detailed provisions related to breaks for nursing.³⁷ Unless the employer and employee agree otherwise, the employer must provide a thirty-minute rest period to express milk during each four-hour work period to be taken approximately in the middle of the workday.³⁸ An employer must also make reasonable efforts to provide a location, other than a public restroom or toilet stall, that is in close proximity to the employee's work area for her to express milk in private.³⁹ The Oregon law covers employers with twenty-five or more employees, and effectively exempts employers who can show that complying with its requirements would cause an "undue hardship," which is defined as "significant difficulty or expense when considered in relation to the size, financial resources, nature or structure of the employer's business."⁴⁰

A New York State statute enacted in 2007 offers a more succinct legislative model. The law reads:

An employer shall provide reasonable unpaid break time or permit an employee to use paid break time or meal time each day to allow an employee to express breast milk for her nursing child for up to three years following child birth. The employer shall make reasonable efforts to provide a room or other location, in close proximity to the work area, where an employee can express milk in privacy. No employer shall discriminate in any way against an employee who chooses to express breast milk in the work place.⁴¹

Most of the other state laws on breastfeeding in the workplace similarly require employers to allow an employee to use unpaid break time each day to express milk and to provide a location where she can do so in privacy.⁴² Maryland could assist many employees and

36. *Id.*

37. OR. REV. STAT. § 653.077 (2005); 2007 Or. Laws 144.

38. 2007 Or. Laws 144 at § 653.077(2)(C).

39. *Id.* § 653.077(5)(A).

40. 2007 Or. Laws 144.

41. N.Y. LAB. LAW § 206-c (Consol. 2009).

42. See 50 *State Summary*, *supra* note 35.

employers by enacting a law on breastfeeding in the workplace, to spell out more clearly than the new federal law does the rights of employees and the obligations of employers.

The prospects for passage of a similar law in Maryland seem encouraging because recent public policy in the state strongly endorses breastfeeding. Varied and widespread efforts by numerous public authorities in the state encourage and promote breastfeeding of children in infancy and early childhood.⁴³ The website of the Family Health Administration of the Maryland State Department of Health and Mental Hygiene identifies an array of programs, grants and initiatives of state agencies to encourage breastfeeding.⁴⁴ In 2003, the Maryland legislature passed and the Governor signed a law that gives all women the right to breastfeed their children in any public or private place in which the mother and child are authorized to be.⁴⁵ In sum, this time of strong support for Maryland mothers breastfeeding their children provides a positive environment for a law that would require employers to provide a time and a location for mothers to express milk while at work.

In terms of statutory interpretation, the 2007 Oregon law is particularly worthy of attention because it grew out of experience with, and problems with, a more general law that was enacted in 2005. The Oregon law spells out some clear minimum standards that employers must meet, while still allowing for flexibility. However, at least one phrase used to amend Oregon's breastfeeding law in 2007 should be avoided in Maryland. Oregon's statute contains an exception relieving employers from the requirements of the law if it would cause "undue hardship" to the employer.⁴⁶ This language should be resisted because a similar provision in Title VII of the Civil Rights Act of 1964 has been interpreted by courts to relieve employers of their statutory duties

43. See, e.g., Press Release, Maryland Department of Health and Mental Hygiene, DHMH Encourages Working Mothers to Breastfeed Their Babies (July 31, 2007), available at <http://www.dhmh.state.md.us/publ-rel/html/2007/pr073107.htm>; Anne Arundel County Department of Health, Women, Infants and Children (WIC) Program, http://www.aahealth.org/hip_wic.asp (referring to the breastfeeding education and support programs of Anne Arundel County's Department of Health); Carroll County Health Department, Health Services - Nutrition Services - WIC, www.carrollhealthdepartment.dhmh.md.gov/healthserv/wic.html (discussing the breastfeeding programs of the Carroll County health department).

44. Maryland Family Health Administration, Breastfeeding, <http://www.fha.state.md.us/mch/breastfeeding> (last visited Mar. 6, 2009).

45. MD. CODE ANN., HEALTH-GEN. § 20-801 (West 2003). This law also provides "A person may not restrict or limit the right of a mother to breast-feed her child." *Id.*

46. 2007 Or. Laws. 180 § 4.

when faced with anything greater than the most minimal of burdens.⁴⁷ To ensure that the protections for nursing mothers are not rendered a dead letter, any Maryland law should either reject such a statutory exception or ensure that “undue hardship” is defined very narrowly and specifically, as it is in the Oregon law.

IV. FAMILY AND MEDICAL LEAVE

A. Paid Leave

The most comprehensive state law providing paid family and medical leave is California’s Family Leave Act, which was enacted in 2002 and became effective in 2004.⁴⁸ This legislation established a family temporary disability insurance program for employees who “take time off work to care for a seriously ill child, spouse, parent, domestic partner, or to bond with a minor child within one year of the birth or placement of the child in connection with foster care or adoption.”⁴⁹ Employees absent from work for one of these purposes are entitled to a maximum of six weeks per year of partial pay, which can amount to approximately fifty-five percent of their pre-taxed weekly wage up to a maximum of \$959.⁵⁰ The State of Washington in 2007 enacted a more limited paid family leave statute, which is to go into effect on October 1, 2012.⁵¹ The Washington law will authorize payments of \$250 per week to any worker who takes time off work to care for a newborn or adopted child.⁵²

In 2008, the New Jersey legislature enacted a paid family leave law, under which workers can collect leave benefits for up to six weeks to care for a newborn or newly adopted child, or a sick parent, spouse or child.⁵³ The benefit amount is set at two-thirds of a worker’s weekly pay, up to a maximum of \$524 a week.⁵⁴ The benefits are

47. Debbie N. Kaminer, *Title VII’s Failure to Provide Meaningful and Consistent Protection of Religious Employees: Proposals for an Amendment*, 21 BERKELEY J. EMP. & LAB. L. 575, 610–22 (2000) (discussing that the “undue hardship” exception to religious accommodation has been interpreted broadly by the U.S. Supreme Court and lower federal courts).

48. CAL. UNEMP. INS. CODE §§ 3300–06 (Deering 2009).

49. *Id.* § 3301(a)(1).

50. Labor Project for Working Families, California Paid Family Leave, <http://www.paidfamilyleave.org> (last visited Aug. 25, 2009).

51. 2007 WASH. LEGIS. SERV. 357 at *1, *8. See also 2009 WASH. LEGIS. SERV. 544 (postponing implementation of program from 2009 to 2012).

52. *Id.*

53. 2008 N.J. Laws 17 (West).

54. *Id.*

funded by a mandatory employee payroll tax, which officials estimated would average \$33 per worker each year.⁵⁵ The payroll deductions began on January 1, 2009, and the leave benefits became available six months later, on July 1, 2009.⁵⁶

A 2004 study by the National Partnership on Women and Families discusses a variety of approaches that states have used to make paid leave available to employees who take time off for family responsibilities, medical conditions or both.⁵⁷ The strategies range from providing money from temporary disability insurance programs that are either state-funded or mandated for “employees who are temporarily disabled for medical reasons, including pregnancy or birth-related medical reasons,”⁵⁸ to using At-Home Infant Care programs that provide some low-income working parents with wage-replacement funds while they provide care for newborn or newly adopted children.⁵⁹ Other states require employers to permit employees to use their paid sick leave to care for certain identified family members with medical conditions.⁶⁰ This last approach is the one taken by Maryland’s “Flexible Leave Act,” enacted in 2008, under which employers who provide workers “leave with pay” (including vacation, sick leave or compensatory time) must allow employees to use such leave for the illness of an employee’s “child, spouse or parent.”⁶¹ The Accrued Sick and Safe Leave Act enacted in the District of Columbia in 2008 requires employers to provide a minimum number of paid days off when the employee or a member of the employee’s family is sick.⁶² The number of minimum days an employer must provide varies depending on the size of the employer.⁶³

55. *Id.*

56. *Id.*

57. National Partnership for Women & Families, *State Paid Leave Initiatives in 2004 and Prior State Legislatures: Making Family Leave More Affordable*, <http://www.nationalpartnership.org/site/DocServer/StateRoundUp2004ExecSumm.pdf?docID=1055> (last visited Apr. 10, 2008).

58. *Id.* at 1.

59. *Id.* at 2.

60. *Id.* at 2. Additional states that have passed laws adopting this approach since the National Partnership’s 2004 study include Hawaii, Maine and Oregon. See HAW. REV. STAT. ANN. § 398-4 (LexisNexis 2007); ME. REV. STAT. ANN. tit. 26, § 636 (2008); 2007 Ore. Laws 635.

61. See MD. CODE ANN. LAB. & EMPL. § 3-802 (West 2009)(the law applies to employers with 15 or more employees).

62. Accrued Sick and Safe Leave Act D.C. Code § 32-131.02 (2008).

63. Employers with twenty-four or fewer employees must provide a minimum of three days of paid leave; employers with twenty-four to ninety-nine employees must provide at least five days; and employers with 100 or more employees must provide a minimum of seven days of paid leave. *Id.*

On the federal level, bills requiring employers to provide paid sick leave for employees to care for themselves or certain family members are pending in the House and Senate.⁶⁴ Also pending in Congress are bills to establish paid family and medical leave insurance programs.⁶⁵

B. Unpaid Leave

In 2002, the National Partnership on Women and Families issued a detailed study on state family and medical leave statutes that discussed the numerous laws that provide more extensive leave rights than the FMLA in a variety of ways: by lowering the “number of employee” threshold for coverage, allowing leave to be taken for additional purposes than those listed by the federal law, or providing a greater number of weeks of leave.⁶⁶

The most common addition to the list of permissible purposes for taking leave is for parents to participate in their children’s educational activities.⁶⁷ The National Partnership for Women and Families includes this type of parental leave in its list of state law “improvements” on the FMLA.⁶⁸ According to the list compiled by the National Partnership, nine states and the District of Columbia have laws requiring that employers allow employees to take some minimum number of hours of leave per year for participation in a child’s educational activities.⁶⁹ None of these laws require the leave to be

64. See Healthy Families Act, S. 1152, 111th Cong. (2009); H.R.2640, 111th Cong. (2009).

65. See Family Leave Insurance Act of 2009, H.R. 1723, 111th Cong. (2009); Balancing Act of 2009, H.R. 3047, 111th Cong. (2009).

66. National Partnership for Women and Families, *State Family Leave Laws That Are More Expansive than the Federal Family and Medical Leave Act*, <http://www.nationalpartnership.org/site/DocServer/StatesandunpaidFMLLaws.pdf?docID=968> The Bureau of National Affairs' Labor and Employment Library maintains an up-to-date chart summarizing state family and medical leave laws in their section on Wages, Hours, and Leave (State Laws, Regs, Agency Docs). See Bureau of National Affairs, *State Comparison Chart: Family Leave, State Labor Laws* 1:52, <http://laborandemploymentlaw.bna.com>.

67. National Partnership for Women and Families, *supra* note 66. 9 to 5, The National Association of Working Women, *Parental Leave in the States*, http://www.9to5.org/display_story.php?id=23.

68. National Partnership for Women and Families, *supra* note 66.

69. National Partnership for Women and Families, *Leave for Parental Involvement in School Activities*, <http://www.nationalpartnership.org/site/DocServer/schoolactivities02-2006.pdf?docID=1053> (updated July 2009). The report explains that Louisiana has a statute providing that

employers may grant parents up to 16 hours of leave each year to participate in classroom activities, if there is reasonable notice and an attempt to schedule leave during non-work hours [but] there is no

paid, but most allow employees to use accrued paid leave for such purposes.⁷⁰ The greatest amount of leave granted to employees for these education-related reasons is California's forty hours per year, with a maximum of eight hours per month, while the smallest is North Carolina's four hours.⁷¹ The laws of Minnesota, North Carolina and the District of Columbia apply to all employers, while the laws of the other six states (Colorado, Illinois, Massachusetts, Nevada, Rhode Island, and Vermont) vary in the minimum number of employees an employer must have to be covered.⁷²

While "parental involvement in education" leave has been required in less than twenty percent of states, there are persuasive arguments for supporting the adoption of such a law in Maryland. A series of studies have consistently correlated parental involvement with improved student educational performance and understanding.⁷³ Parental involvement leave laws may be especially relevant when many politicians and business groups are celebrating "family values" because such time off can improve education outcomes and strengthen the bond between parents and their children.

C. One Day Off per Week Statutes

An admittedly more dated, and perhaps more homely, leave right that is enjoyed by employees in other states, but not by most Maryland employees, is the right to take off at least one day per week. The most broadly applicable state laws providing such a right are those of California⁷⁴ and Illinois.⁷⁵

V. CONCLUSION

As was wisely pointed out by Professor Marley Weiss in her commentary, any persons or groups seeking reform of Maryland's employment laws have to consider whether it would be sensible to

requirement for employers to grant this leave and no enforcement or consequence if they fail to grant the leave. *See id.* at 3.

70. *Id.*

71. *Id.*

72. *Id.*

73. *See, e.g.*, National Education Association, Getting Involved in Your Child's Education, <http://www.nea.org/parents/index.html#research> (last visited Apr. 9, 2008) (summarizing studies finding that active parental involvement improves children's educational performance).

74. CAL LAB. CODE § 551 (Deering 2009).

75. One Day Rest in Seven Act, 820 Ill. Comp. Stat. Ann. 140/1-9 (LexisNexis 2009).

push for relatively narrow changes that could be enacted in the short term, or to set a goal of broad, comprehensive reform that would be much more consequential but would likely take many more years to achieve.⁷⁶ As an example of the value of the latter strategy, Professor Weiss pointed to the federal Family and Medical Leave Act, which was the result of a more than decade-long movement for reform, in which Professor Weiss was herself involved.⁷⁷

At present, the broadest goal on the agenda of expanding employee leave appears to be legislation mandating universal (or close to universal) paid leave for employees. While aiming to achieve broad goals is worthwhile, there are strong practical reasons why seeking universal paid leave should not be the top priority on the current agenda for improving Maryland employment rights. In 2007, a bill was introduced in the Maryland legislature that would have required most employers in the state to provide a minimum amount of paid sick leave to employees.⁷⁸ The bill was reported unfavorably by both the Senate Finance Committee and the House Committee on Economic Matters.⁷⁹

This result is consistent with the history of paid leave at the state level, which is that it is proceeding very slowly. It took nine years from the enactment of the FMLA in 1993 before California passed the first paid employment leave law in 2002.⁸⁰ Washington, which did not pass its own paid leave law until 2007, followed next after California.⁸¹ But Washington's law will not go into effect until 2012.⁸² New Jersey's paid family leave law went into effect in 2009,⁸³ which adds up to only three states that have adopted paid family leave (and only two where it's actually gone into effect) in the sixteen years since passage of the FMLA.

76. Marley S. Weiss, *Commentary: Women's Employment Rights in the Maryland Workplace of 2007 and 2027*, 9 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 91-92 (2009).

77. *Id.* at 92.

78. Healthy Families and Healthy Workplaces Act, H.B. 832, 2007 Leg., 422nd Sess. (Md. 2007); S.B. 828, 2007 Leg., 422nd Sess. (Md. 2007).

79. See Welcome to the Maryland General Assembly, <http://mlis.state.md.us/2007rs/billfile/hr832.htm> (last visited Oct. 3, 2007) (summarizing history of H.B. 832)); Welcome to the Maryland General Assembly, <http://mlis.state.md.us/2007rs/billfile/sb0828.htm> (summarizing history of S.B. 828) (last visited Oct. 3, 2007).

80. Gillian Lester, *A Defense of Paid Family Leave*, 28 HARV. J.L. & GENDER 1, 4 (2005).

81. 2007 Wash. Legis. Serv. 357 (West).

82. *Id.* See also 2009 WASH.LEGIS.SERV. 544 (postponing implementation of program from 2009 to 2012).

83. See *supra* note 53.

From the website of the National Partnership for Women and Families, and other groups that have long been active on the paid leave issue, the focus shifted to the federal level.⁸⁴ As noted above, there are paid leave bills pending in the House and Senate.⁸⁵ Major Congressional hearings on the issue were held in June 2007⁸⁶ and June 2009.⁸⁷ It seems prudent to take a wait and see approach before devoting substantial time and resources to pushing it in Maryland, where it recently met with great resistance.

A salient advantage of some of the narrower leave reforms discussed above is that they would not even have to be presented, at least primarily, as efforts to expand employee rights. Employment leave for domestic violence victims is an important means of combating such violence and reducing its deleterious effects by promoting the “economic security” of victims.⁸⁸ Break time for breastfeeding and leave for parental involvement in children’s educational activities are reasonable and common-sense measures to improve the health and well-being of children.⁸⁹ Thus, all these employment leave reforms could be achieved without suspicious legislators, leaders of the business community or members of the public perceiving them as appreciably expending the political capital of employee groups and advocates. Such limited resources could then be preserved if federal-level efforts to improve employment leave falter and states become the only hope for expanding the leave rights of employees.

84. See, e.g., *National Partnership for Women & Families, Take Action*, <http://www.nationalpartnership.org/site/PageServer?pagename=takeaction> (last visited August 25, 2009) (referring mostly to federal initiatives such as the Healthy Families Act.)

85. See *supra* notes 64-65 and accompanying text.

86. *Balancing Work and Family: What Policies Best Support America's Families?: Hearing Before the Subcomm. on Workforce Protections of the H. Comm. on Education and Labor*, 109th Cong. (June 21, 2007), available at <http://edlabor.house.gov/hearings/2007/06/balancing-work-and-family-what.shtml>.

87. *H.R. 2339, The Family Income to Respond to Significant Transitions Act, and H.R. 2460, the Healthy Families Act*, Hearing Before the Subcomm. on Workforce Protections of the H. Comm. on Education and Labor, 111th Cong. (Jun. 11, 2009) available at <http://edlabor.house.gov/hearings/2009/06/hr-2339-the-family-income-to-r.shtml>.

88. Nina W. Tarr, *Employment and Economic Security for Victims of Domestic Abuse*, 16 S. CAL. L. REV. & SOC. JUSTICE 371, 399 (2007).

89. A domestic violence leave law is also legislation to help and protect Maryland’s children, as children are very adversely affected by domestic violence whether they are direct victims or not.