

Attachment E: Summary of Public Comments and DOL Responses

In accordance with the Paperwork Reduction Act of 1995 (P.L. 104-13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), DOL published a notice in the Federal Register announcing the agency’s intention to request an OMB review of this information collection activity. This notice was published on Friday, October 28, 2016, Volume 81, Number 209, pages 75161-75163, and provided a 60 day period for public comment. A copy of this notice is included as Attachment D. During the notice and comment period, the government received 13 comments from 12 entities. The comments included statements of support for the data collection, requests for the survey instruments, and substantive comments about the surveys. DOL provided the survey instruments to all entities that requested them. Below is a table with a summary of the substantive comments only and DOL’s responses to those comments. For each entity that provided a substantive comment, each point appears in its own row.

Comment Submitter	Comment Summary	CEO Response
Institute for Child, Youth and Family Policy, The Heller School for Social Policy and Management, Brandeis University	Submitter suggested that the sample frame be expanded to include the self-employed.	<p>We appreciate the advice to clearly and consistently define the sample frame in the survey upfront and in all publications related to the survey and will make our best effort to clarify the language in reports and other publications.</p> <p>The primary focus of the Employee Survey is leave conditions under the FMLA. Self-employed workers own their own businesses and, unless they are self-employed and incorporated with over 50 employees, the FMLA does not apply. The self-employed set their own employment policies, including eligibility to take leave and the conditions under which they are allowed to take leave.</p>
Association of American Railroads	Respondents to the Employer Survey should have the option of providing company-wide data rather than worksite data;	Previous waves of the survey used a sample design based on worksites. It is important to maintain a consistent reference point among respondents that most coincides with the administration of FMLA.
	The Employer Survey should ask about “general disciplinary action” related to FMLA abuse, rather than the response to the most recent case of FMLA misuse; and	While incidence is low, asking about the most recent case of FMLA misuse will provide a random sample of disciplinary action. Using the most recent case of FMLA misuse will provide a random sample of disciplinary action. DOL has considered the additional burden of reporting for both the worksite and general misuse. Pre-testing in previous rounds of questionnaire development indicate that disciplinary action is often tailored to the case, rather than in a general way and may vary by firm size. Nevertheless we have added a general question about disciplinary action related to FMLA use.

Comment Submitter	Comment Summary	CEO Response
	The Employer Survey should include a question about all costs, including overtime and other costs triggered by FMLA usage.	Updates to the Employer Survey have included additional questions about overtime and other costs.
Airlines for America	Respondents to the Employer Survey should have the option of providing company-wide data rather than worksite data.	Previous waves of the survey used a sample design based on worksites. It is important to maintain a consistent reference point among respondents that most coincides with the administration of FMLA.
	The Employer Survey should have specific question for eligibility of flight crew members (504 hours rather than 1250).	This survey is a national probability sample of worksites and is not designed to be tailored to specific industries. In addition, sample sizes for any particular industry (e.g., the airline industry) are too small to yield useful information.
	The Employer Survey should include time increments of one day.	The question to which this comment refers has been removed from the survey.
	The Employer Survey should ask about “general disciplinary action” related to FMLA abuse, rather than the response to the most recent case of FMLA misuse.	While incidence is low, asking about the most recent case of FMLA misuse will provide a random sample of disciplinary action. Using the most recent case of FMLA misuse will provide a random sample of disciplinary action. DOL has considered the additional burden of reporting for both the worksite and general misuse. Pre-testing in previous rounds of questionnaire development indicate that disciplinary action is often tailored to the case, rather than in a general way and may vary by firm size. Nevertheless we have added a general question about disciplinary action related to FMLA use.
	The Employer Survey should include a question about all costs, including overtime and other costs triggered by FMLA usage.	Updates to the Employer Survey have included additional questions about overtime and other costs.
Equal Employment Advisory Council	The Employer Survey should ask more in-depth questions about use and administration of intermittent leave.	The selection of survey questions must balance respondent burden and analytic utility. In consideration of all the topics that need to be covered, the included questions on intermittent leave have been selected as the most informative, given the incidence of intermittent leave-taking. Adding more questions related to intermittent leave-taking would increase the total survey length and other priority questions would have to be dropped. DOL has determined that the questions on intermittent leave are sufficient for their research questions, given the need to retain other items.
	The Employer Survey should ask specific and detailed questions distinguishing between exempt and nonexempt employees.	DOL has considered the burden additional detailed questions on exempt and non-exempt employees would entail and has elected not to include additional questions.

Comment Submitter	Comment Summary	CEO Response
	The Employer Survey should eliminate any questions that do not address FMLA requirements, such as use of paid leave.	For the most part, the questionnaires only address issues that reflect the requirements, benefits and coverage parameters established under FMLA. However, in both surveys select issues cannot be thoroughly examined without expanding the scope of the questions to incorporate, for instance, the availability and use of paid leave. Given the growing availability of paid leave since 2012, the current employee instrument must now acknowledge its presence in asking about the range of available options for addressing medical conditions. In the same vein, questions asked of employers regarding their use of FMLA and the perceived administrative burden must also account for resources outside of FMLA. Similarly, access to benefits such as paid sick time and disability intersect with the coordination with FMLA.
	The Employer Survey should start with an explanation that the survey is not used for compliance/audit purposes.	Advance letters and recruitment materials that include informed consent will clearly state that the survey will not be used for compliance and auditing purposes.
United Steelworkers	Submitter suggested that the surveys capture utilization, experience, and management of leave.	The surveys include questions on each of these topics.
YMCA of Greater Rochester	Submitter suggested DOL delay the study to “wait and see how the Trump Administration will address the interplay between FMLA and Paid Family Leave.”	DOL is currently following an established contractual schedule.