

INCLUSION AND EXCLUSION: THE FAMILY AND MEDICAL LEAVE ACT

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Abstract

The purpose of this case is to examine how sex, gender, and sexuality are built into public policy, in this instance, labor policy in the form of the Family and Medical Leave Act (FMLA). This mini-case asks whether three families are covered by the FMLA as they face family and medical problems. The families are Rose and Tomás Martínez and their children, his divorced sister Patricia Santa Cruz and her son, and the Martínez's neighbors, Mark Chan and David Lee. All have different marital, work, and health insurance circumstances. Using the Department of Labor's summary of the legislation, the analytical task of the case is to determine which adults can invoke the protections of the FMLA as they face changing family circumstances. The case raises questions about the costs and benefits of this legislation to individuals, families, firms, and society.

Case Study

Rose and Tomás Martínez are happily expecting their first child. Rose was a widow with two children, Gabriella and Albert, when she married Tomás. Their blended family is working quite well. Because Gabriella and Albert knew their father and are close with their father's family, there are no plans for Tomás to adopt the children. The family, including Tomás's widowed mother Maria, live in a middle-class neighborhood in Los Angeles.

Tomás Martínez is an Assistant Principal in the St. Anne parish school system, which employs 100 people. The three principals and the five assistant principals are the highest-paid employees in the school district. Tomás makes \$85,000 a year and his health insurance covers himself and his mother. Rose Martínez works as the purchasing agent for Sanchez Brothers Construction Firm. She makes \$33,000 a year and her health insurance covers herself and her two children by her previous marriage. Sanchez Brothers is a small firm of eight employees whose income is very sensitive to the business cycle. There are only two people who work in the office, Rose and another woman who is the secretary/bookkeeper. Sanchez Brothers contracts with many labor unions for skilled workers throughout the year—at least 100 unionized workers do contract work with the company in a good year. The company also contracts for unskilled, non-unionized workers on a daily basis as needed through a commercial hiring hall. About 30 unskilled workers do some work for Sanchez Brothers every year.

The Family and Medical Leave Act protects the jobs of certain employees who have personal or family medical needs, including protecting the jobs of some workers who are taking time off for the birth or adoption of a child. Rose would like to stay home with her baby for three months, but wants to return to work after that time. She and Tomás have also talked about the possibility of Tomás staying at home six weeks and Rose staying at home six weeks. Is Rose eligible to stay home with the baby and receive FMLA protections? Why? Is Tomás? Why? What personal strategies would you recommend to Rose and Tomás to be able to stay home all or part of the 90 days they would like to spend with their

newborn? How are sex, gender, and sexuality built into labor relations and the labor force in this case?

Tomás's sister Patricia Santa Cruz is divorced with two children. She lives in an apartment not far from her brother and sister-in-law. She works as a salesperson in Downtown Department Store, a national chain employing 2,000 people. She makes \$26,000 per year and has health insurance. Her older son, Miguel broke his leg playing pee-wee football and will require two operations and a great deal of physical therapy. She would like to take time off, at least eight weeks, to be with him during his hospital stays and to participate in his physical therapy. Is Patricia eligible for leave under FMLA? Why? What personal strategy do you suggest for Patricia to maximize the amount of time she can spend with Miguel during his recovery? How are sex, gender, and sexuality built into labor relations and the labor force in this case?

Tomás and Rose's next door neighbors are Mark Chan and his partner David Lee. Mark is an electrician and a member of the California Electrical Workers Union. He makes \$60,000 per year and his health insurance comes through the union. David is a writer who also works part-time as a waiter. He makes \$15,000 a year and has no health insurance. In the last two years Mark has worked more than 170 days each year under contract to Sanchez Brothers as they built a shopping mall. His mother has developed a serious stomach disorder that will require surgery and then a permanent move to a nursing home. She lives 150 miles away. Mark knows that the surgery and move will probably take six weeks. Is Mark covered under the FMLA? Why? If David wants to take three weeks off to help Mark and his mother, is he covered by the FMLA? What personal strategy do you suggest for Mark and David? How are sex, gender, and sexuality built into labor relations and the labor force in this case?

Preparation Questions

1. Which of the family members who wish to take time off for medical or family reasons are eligible under the act? Why or why not? Among those who can take time off from their jobs, which do you think will avail themselves of this option?
2. What leverage does Rose Martinez have with Sanchez Brothers construction? What leverage does Tomás Martinez have with his school system? Can Mark Chan expect assistance from his labor union?
3. What do you expect the leaders of each of these organizations to do for their employees or union members and why? How will they cope with the loss of labor and the disruption to the continuity of work?
4. What advantages does the FMLA, in its current form, offer to covered employees? To their firms?
5. What disadvantages does the FMLA, in its current form, impose on covered employees? On their firms?
6. What are the social costs and benefits of expanding the FMLA? Who would oppose or support extension and why?