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Nudge Theory's Perceived Influence on FMLA Among Midwestern Metropolitan Nonprofit Arts Organizations

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Walden University

College of Social and Behavioral Sciences

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Eliza R. Gordner

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Walden University
2018

Abstract

Nudge Theory's Perceived Influence on FMLA Among Midwestern Metropolitan

Nonprofit Arts Organizations

by

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JD, Indiana University Maurer School of Law, 2001

BS, Indiana University, 1996

Dissertation Submitted in Partial Fulfillment

of the Requirements for the Degree of

Doctor of Philosophy

Public Policy and Administration

Walden University

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Abstract

The Family and Medical Leave Act (FMLA) has had significant influence on both for-profit and nonprofit employers since it was enacted in 1993. Because nonprofit organizations often have more limited resources than for-profit organizations, implementing family and medical leave policy mandates can be problematic. Arts-related nonprofit organizations often have even fewer resources available yet must still ensure legal compliance and market competitiveness while continuing to focus on meeting their missions. Even if a smaller nonprofit organization is not subject to the FMLA, it is subject to other federal, state, and local employment laws, and the organization must decide whether to offer unpaid or paid family and medical leave, perhaps styled after the FMLA. The purpose of this qualitative study was to understand how those who conduct human resource functions in nonprofit arts organizations would perceive governmental prompting toward providing FMLA and paid leave in relation to their ability to meet their missions. This question was explored through the lens of nudge theory and involved interviews with nine HR professionals from nonprofit arts organizations. Data were analyzed using Bazeley and Jackson's bucket coding and Yin's explanation building processes. The results of the study indicated that HR professionals perceived little to no effects of the FMLA on their nonprofit arts organizations' ability to meet their missions. The social change implications of this study involve providing insights to policymakers that could inform decisions about family and medical leave mandates or nudges toward a desired outcome regarding these leaves of absence in the nonprofit sector.

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Dedication

I dedicate this dissertation to my sons, Liam and Teddy, who teach me daily and in whom I hope to always inspire a love of learning and discovery. You are my sunshine.

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I would first like to acknowledge and thank my family who have been incredibly supportive of me throughout my life, but especially on this doctoral journey. My parents, Larry and Carol Sue McCart, instilled in me a work ethic and appreciation for knowledge, always supporting my pursuits as a life-long learner. My husband, Louis Gordner, has always been my rock, and he continued to support me throughout this process, allowing for much-needed time to research and write and most importantly, he helped me keep perspective with his trademark humor. To my brother, Dr. Andrew McCart, who paved the way with his own dissertation journey and shared in the ups and downs of this process. Andrew, the way you inspire students daily continues to inspire me. To my father-in-law and mother-in-law, Fritz and Sandy Gordner, I thank you for all your support, and for being Grandma and Grandpa to our two precious boys, particularly when I needed extra time to research and write. To my sons, Liam and Teddy, you are always my motivation to be and do better. To all of my family, I simply could not have done this without you.

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Chapter 1: Introduction to the Study

Introduction

Federal employment regulation in the United States has grown exponentially since the 1930s. This regulation has addressed workplace issues ranging from worker safety, minimum wage, and fair pay practices, as well as race, gender, national origin, and religious discrimination and harassment, among others. Nonprofit organizations are subject to many of these federal employment laws and must stay current on applicable law changes, as well as maintain compliance with existing laws. One challenge faced by nonprofit organizations is that they are subject to a plethora of federal employment laws or state and local employment regulation, but often they do not have a dedicated human resource (HR) professional to ensure legal compliance. Even if the organization has an HR professional on staff, the organization is almost always tasked with doing more with fewer resources than a private company and is affected by complying with these myriad laws.

One of the federal employment laws to which nonprofit organizations are subject is the Family and Medical Leave Act (FMLA) of 1993. This law applies to governmental employers and private employers with 50 or more employees (29 U.S.C. § 2601). It requires employers to provide up to 12 weeks of unpaid leave during a defined 12-month period to eligible employees for their own serious health condition, an immediate family member's serious health condition, for the birth, adoption, or foster care of a child, for certain activities in anticipation of military deployment of an immediate family member, or for caring for a family member injured during military service (29 U.S.C. § 2613).

Limited research exists on the effects of the FMLA on for-profit companies, and even less in the peer-reviewed literature regarding the effects of the FMLA on nonprofit organizations. Through this study, I sought to understand the influence of the FMLA on nonprofit arts organizations through the experience and perception of HR professionals. I examined factors affecting decision making by organizational leaders relative to leave of absence policies and FMLA compliance. I also sought to compare the effects of leave of absence policies of nonprofit arts organizations who are not subject to the FMLA to the impact on similar organizations that are larger and thus subject to the FMLA. Overall, I sought to obtain data that will inform policymakers considering changes to federal, state, or local workplace leave of absence laws.

One approach policymakers have begun to use in various contexts, including employment regulation, is libertarian paternalism, or nudge theory (Thaler & Sunstein, 2008). In this study, I explored how nonprofit arts organizations are affected by employment regulation, namely the FMLA, as examined through the lens of nudge theory. One central tenet of nudge theory is that people and organizations can be “nudged” to adopt desired behavior without using government mandates to achieve the desired outcomes. Exploring how nudge theory can impact leave policy decision making and the use of family and medical leaves of absence in nonprofit organizations can aid policymakers in determining whether nudges can be effective in obtaining desired policy outcomes related to both unpaid and paid leaves of absence. I focused on how HR professionals or those with oversight of HR functions for their nonprofit organizations make decisions related to the FMLA and their perceptions regarding the effects of the

FMLA on their organizations' ability to meet their mission. In examining these topics in the context of nudge theory, I also examined how these organizations and their leaders might perceive government nudging and ways they might nudge employee behavior as it relates to family and medical leaves.

In this chapter, I summarize problems potentially facing nonprofit organizations in complying with the FMLA and identify the purpose, significance, and nature of the study. In this chapter, I also outline the study's central research question and the theoretical framework of nudge theory, as well as the definitions, assumptions, and limitations applicable to this study.

Background

The FMLA is a federal statute enacted by U.S. Congress on February 5, 1993, which became effective on August 5, 1993. It provides eligible employees with up to 12 weeks of unpaid, job-protected leave from work during a 12-month period. Job protection means the employer must provide an employee with the same or an equivalent job upon the employee's return from FMLA leave. An equivalent job is one that is "virtually identical to the original job in terms of pay, benefits, and other employment terms and conditions (including shift and location)" (29 CFR 825.215). The FMLA additionally provides for continuation of group health insurance under the same terms and conditions as if the employee were not out on leave (U.S. Dept. of Labor, 2017a, p. 39a00). FMLA leave can be approved for (a) an employee's own documented serious health condition that causes them to be unable to perform the essential functions of their job, (b) for the serious health condition of an immediate family member (spouse, child, or parent), (c) for

the birth, adoption, or foster care placement of a child, or (d) for predeployment activities for qualifying exigencies arising for the employee's spouse, child, or parent who is a service member on active duty status (29 U.S.C. § 2612(a)). In addition, up to 26 weeks of unpaid leave can be approved for eligible employees to care for a spouse, child, parent, or next-of-kin who is a covered service member with a serious injury or illness (29 U.S.C. § 2612(a)) or on an intermittent or reduced schedule basis (29 U.S.C. § 261[b]).

For-profit and nonprofit governmental and private employers with 50 or more employees within a 75-mile radius are subject to the FMLA (29 U.S.C. § 2611). An employee working for an FMLA-covered employer is eligible for FMLA leave if he or she has been employed by that employer for at least 12 months and provided at least 1,250 hours of service for that employer during the previous 12-month period (29 U.S.C. § 2611[2][A]). To be eligible, the employee must also work at a worksite with at least 50 employees or at a site within 75 miles of a worksite with 50 or more employees (29 U.S.C. §2611[2][B]).

Insufficient research exists on how federal employment regulation affects nonprofit organizations, but particularly when it comes to understanding how the FMLA impacts nonprofit organizations. In this study, I specifically sought to understand how community arts organizations can meet their missions despite limited resources, particularly when part of their obligations include compliance with ever-changing federal, state, and local employment laws. A limited number of studies have been conducted to understand the effects of the FMLA on for-profit businesses, such as the effects of the FMLA on the use of family and sick leave (Baird & Reynolds, 2004;

Waldfoegel, 1999) and on the abuse of FMLA leave by employees in the for-profit sector (Connell, 2014). In one study that looked at nonprofits, Campion and Dill (2000) examined the FMLA's effects on higher education, which includes nonprofit institutions. Due to this gap in the literature and dated nature of most of this research, additional research would aid nonprofit organization leaders and policymakers in better understanding the impact of the FMLA on those organizations. Information on how organization decision makers determine whether to implement unpaid leave, or even paid leave, when it is not government-mandated, would also be instructive for nonprofit leaders and policymakers.

In this study, I focused on nonprofit arts organizations in a midwestern metropolitan area. The organizations studied could be of any size, including both those that are subject to the FMLA because they have 50 or more employees within a 75-mile radius and those having fewer than 50 employees and thus not subject to it. My purpose in this study was to better understand the effects of the FMLA on these two categories of nonprofit arts organizations. My findings from this study add to the literature on how federal employment law affects nonprofit organizations generally and how arts nonprofits address and are affected by family and medical leaves of absence. The results of this study provide data that nonprofit leaders and policymakers can hopefully use to better understand the impact of family and medical leave mandates.

Problem Statement

Because it can be unpredictable when and for how long employees will need to take family or medical leave from work, the influence of these leaves on the

organizations is also unpredictable. A nonprofit employer could be affected on an infrequent basis or on a more regular basis, including weekly or even daily, when an employee is out on intermittent family or medical leave, for cancer treatments, for example. This could cause disruption to any number of functions, including the organization's operations, programming, funding, staffing, and its work with its board of directors. Responding to staffing needs alone can be challenging for an often thinly staffed nonprofit organization, particularly if an employee qualifies for intermittent FMLA leave due to a recurring condition, such as migraine headaches or other chronic conditions that cause the employee to miss work on a periodic and unpredictable basis. The effects on the organization could also vary based on the job functions of the worker out on leave. For instance, if the development or grants director is out on leave for 3 months, then organizational funding could be in jeopardy.

Effectively complying with the FMLA is an ongoing process for those in nonprofit leadership and remains significant despite the FMLA now being in effect for more than 20 years. The FMLA has continued to evolve with the military family leave provisions that were added in 2008 and with adding coverage for same-sex spouses after the Supreme Court cases *U.S. v. Windsor* and *Obergefell v. Hodges* were decided. In *Windsor*, the Court overturned the one man/one woman definition of marriage in the Defense of Marriage Act (DOMA) to include same-sex spouses with respect to federal benefits and protections, including those provided by the FMLA (*U.S. v. Windsor*, 570 U.S. 12 [2013]). This meant that for the first time, covered employers subject to the FMLA were now required to offer FMLA leave to qualifying employees caring for their

same-sex spouse experiencing a serious health condition thereby expanding the pool of employees eligible for FMLA leave (Dixon & Dougherty, 2014).

The U.S. Department of Labor (DOL) finalized regulations regarding these requirements on February 23, 2015. These regulations were set to go into effect on March 27, 2015; however, the U.S. District Court for the Northern District of Texas issued a preliminary injunction on March 26, 2015, with respect to this revised definition of spouse. On June 26, 2015, with the Court's decision legalizing same-sex marriage in *Obergefell v. Hodges*, (135 S.Ct. 2584 [2015]), this became moot and same-sex spouses are covered by the FMLA. As this example of coverage of same-sex spouses under the FMLA illustrates, staying abreast of legal compliance requirements is an ongoing effort that could prove challenging for a nonprofit organization with no dedicated HR professional or with a thinly stretched HR generalist.

As previously stated, scant research has been conducted on the influence of the FMLA on nonprofit organizations. Further study was warranted into how nonprofit organizations comply with the FMLA and how their ability to meet their mission is possibly impacted. Findings from this study can aid nonprofit organization leaders as well as policymakers in better understanding how to evaluate and address these effects. Lawmakers and regulators can use this data as to proposed legislation or regulations intended to broaden the scope of the FMLA or when considering changes to state or local family and medical leave laws.

Purpose of the Study

This was a qualitative multiple explanatory case study with the purpose of obtaining data to contribute to the body of literature by examining the effects of the FMLA as experienced by nonprofit organization HR professionals. I sought to provide nonprofit leaders and policymakers with relevant data about how nonprofit organizations address the challenge of staying current on FMLA compliance requirements, administer the FMLA or other organizational policy allowing family and medical leaves, and make adjustments when essential employees are out on approved leave. Overall, I intended to gain insights on the effects of the FMLA on a nonprofit organization's ability to meet its mission.

Research Question

The central question that I addressed in this study was: How do those responsible for HR functions in midwestern metropolitan nonprofit arts organizations perceive the effects that the FMLA has had on the organization's ability to meet its mission?

Theoretical Framework

The theoretical framework for this study was nudge theory, also known as libertarian paternalism or soft paternalism. The theory holds that policymakers can be choice architects who structure the choices and/or environment in which individuals make decisions in a way that aims to overcome cognitive biases that often lead individuals to act irrationally, sometimes against their self-interest (Thaler & Sunstein, 2008). This theory was brought to the mainstream by Thaler and Sunstein (2008) in their book *Nudge: Improving Decisions About Health, Wealth, and Happiness* and provides a

framework through which decision-making in organizations can be examined, including decisions as to legal compliance and HR management. Studying the application of nudge theory allows a researcher to examine how policymakers might encourage employers to offer paid leave or unpaid leave even when they are not legally required to do so. This theory was appropriate for this study because it was a particularly useful lens through which to examine organizational responses to regulatory compliance and it aided in understanding how nonprofit HR professionals and other leaders make decisions as to FMLA compliance when determining allocation of limited resources. I provide a more detailed analysis and explanation of how nudge theory applies to nonprofit organizations in the context of family and medical leaves of absence in Chapter 2.

Nature of the Study

I chose a qualitative approach for this study to allow examination of the lived experiences of those administering the FMLA and leaves of absence in nonprofit organizations, including those organizations who are not subject to the FMLA but have chosen to implement similar protections for family and medical leaves of absence. This approach allowed exploration of decision-making with respect to offering paid leaves of absence to employees even when not mandated by law.

Specifically, an explanatory case study research method was used to help explain how or why a current social phenomenon works and to enhance knowledge of an organizational phenomenon (Yin, 2014). Case study research is commonly found in both social sciences academia and in practical professions such as public administration, public health, and business (Yin, 2014) and is a particularly useful method of examining

issues in public administration (Agranoff & Radin, 1991). In addition, richer data can be obtained with even only two-case case studies than with other research methods. A researcher can delve into cases in a deeper way to obtain a more detailed understanding of the organizations' response to a phenomenon such as decision making with respect to FMLA compliance (Yin, 2014). A qualitative design also fits well for exploring a topic where limited analysis exists in the literature (Patton, 2015).

I used a case study design to examine multiple cases in a real-world context, namely the extent to which nonprofit arts organizations in this midwestern metropolitan area have been affected by their employees' family and medical leaves and by FMLA compliance. The population of potential study participants contained both organizations subject to the FMLA and those not subject to it. Those organizations with fewer than 50 employees provided insights into how and why they offered FMLA-style leave with job protection even if it was unpaid leave, such as to gain a competitive advantage in the market even though they are not legally subject to the FMLA. These competitive advantages could include employee recruitment and retention efforts. I sought additional insights into how decisions about family and medical leaves of absence affected key aspects of the organization relating to its ability to meet its mission, such as staffing, programming, day-to-day operations, and board relations.

After I obtained data from the participant organizations, I compared the effects of the FMLA on organizations regardless of their size. From those not subject to the FMLA, I sought to gain a better understanding of how and why an organization that does not have to comply with the FMLA might still provide the same or similar protections to its

employees. Obtaining this data allowed me to uncover myriad factors considered when deciding whether to offer unpaid leave or even paid leave. I detail these in Chapter 4. In addition, I sought to understand the results achieved due to organizational decisions to go beyond the law's requirements by voluntarily implementing FMLA-style leave or offering paid leave. I had anticipated that my results could include outcomes as to employee recruitment and retention; for instance. I collected data through interviewing nonprofit HR professionals or those in the organizations responsible for administering family and medical leaves of absence. I also reviewed the organizations' written policies and procedures, if any, related to family and medical leaves of absence. I coded and analyzed data to discover themes and to develop findings as to decision making and legal compliance in the context of nudge theory.

Definition of Terms

Eligible Employees: This term refers to employees that meet the definition under the FMLA for being eligible for FMLA leave. An eligible employee is an employee working for an FMLA-covered employer who has been employed by that employer for at least 12 months, who has actually worked at least 1,250 hours for the employer during the previous 12-month period, and who works at a worksite with at least 50 employees or at a site within 75 miles of a worksite with 50 or more employees (29 U.S.C. §2611(2)). The 1,250 hour-requirement equates to essentially 24 hours per week on average and only hours actually worked by the employee count toward the 1,250-hour minimum; thus, paid or unpaid days off are not counted (U.S. Dept. of Labor, 2017b).

Intermittent leave: Leave that otherwise qualifies under the FMLA but is taken in separate blocks of time due to a single qualifying reason (29 CFR 825.202).

Nonprofit arts organizations: Nonprofit organizations that are tax-exempt under Internal Revenue Code Sec. 501(c)(3) that have an arts-focused mission and are classified as a Group A: Arts, Culture, and Humanities organization under the National Taxonomy of Exempt Entities. This system was created by the National Center for Charitable Statistics (NCCS), a national clearinghouse for data on nonprofit organizations (NCCS, 2017).

Nonprofit organizations: For purposes of this study, this term is limited to organizations exempt from paying federal income tax under Section 501(c)(3) of the Internal Revenue Code.

Serious Health Condition: As defined under the FMLA, this term generally means “an illness, injury, impairment, or physical or mental condition that involves inpatient care . . . or continuing treatment by a health care provider” (29 C.F.R. 825.102).

Assumptions

Assumptions made by researchers generally are aspects that are out of the researcher’s control, but if these aspects did not exist, there would be no basis for the study (Simon, 2011). To illustrate, an example of an assumption for the present study is the fact that nonprofit arts organizations will continue to exist in the midwestern metropolitan statistical area (MSA) where I conducted my study. A primary assumption of this study is that in general, the participants will be truthful and candid with their responses to interview questions, and specifically that they will be forthcoming about the

level of legal compliance with the FMLA by their organization. I make these assumptions because if participants are not truthful and forthcoming about their organizations' legal compliance efforts, then the study will not provide meaningful or accurate insights for other nonprofit organizations or policymakers as to the true effects of the FMLA on these types of organizations. It is possible that some leaders of nonprofit organizations would not wish to speak about whether or not, and in what manner, their organization is complying with federal law. No one wishes to potentially invite an audit of their organization's compliance practices by enforcement agencies such as the U.S. Department of Labor.

Various ways exist for a researcher to ensure accurate and honest data are obtained from participants. Taking steps to protect the confidentiality of the organization and the data provided by study participants is critical to achieving this result, as is obtaining informed consent. I provided all potential study participants with a confidentiality statement and a consent form and I fully informed them of how data were to be collected, stored, and used. I ensured that the nonprofit employees who participated in the study, and the organizations for which they worked, remained anonymous. I provide additional information on data collection and reporting of findings in Chapter 3.

Scope and Delimitations

The scope of a study outlines the parameters under which the study will be conducted (Simon, 2011). The scope of this study was limited both geographically and by type of organization. The study focused only on nonprofit organizations with an arts-focused mission in the midwestern metropolitan area selected for the study. To establish

the geographic scope for this area, I used the metropolitan area as defined by the Office of Management and Budget in its list of MSAs for the United States, based on the 2015 revised delineations of the MSAs as updated from the 2010 U.S. Census population numbers (U.S. Office of Management and Budget, 2015). The chosen area included one midwestern metropolitan city and 11 surrounding counties.

The chosen category of arts-focused organizations could include, for instance, theatre companies, ballets, museums, historical societies, literary arts organizations, and symphonies. I chose this specific nonprofit sector because arts organizations have received decreased government funding and continue to be a focus of budget cuts under the Trump administration. There have also been decreases in financial resources and even elimination of elementary and secondary school arts programs in the United States due to elementary and secondary schools cutting arts programs, and community-based arts programs fill a vital role in educating and perpetuating the arts in their communities.

I focused on a midwestern city with approximately 850,000 people based on 2016 population estimates (U.S. Census Bureau, 2017). Studying this metropolitan area provided an opportunity for comparison among other cities of similar size in the midwest and around the United States. The size and demographics of this MSA could provide a useful point of comparison for other researchers, practitioners, and policymakers as to the effects of the FMLA relevant to nonprofit organizations in similar U.S. cities.

Delimitations are boundaries placed on a study (Simon, 2011). They are related to the scope of the study, such as limitations on the population for the study, and help define the parameters of the study (Creswell, 2013). Delimitations for this study included the

narrow group of organizations that were included in the study population, namely that only nonprofit organizations with arts-based missions in the chosen midwestern metro area participated. These were reflected in how I framed the problem statement and research question (Simon, 2011).

Limitations

Limitations to a social science study are, as with assumptions, beyond the control of the researcher (Simon, 2011). Limitations are aspects of the study's design that could influence the study's results (Simon, 2011). A researcher needs to identify limitations and should seek to overcome them to avoid potentially skewing the study results. Limitations of a study can be inherent in the methodology used, as well as logistical limitations faced by the researcher. One limitation is time (Simon, 2011). Also, because this is a qualitative study as opposed to a quantitative study, the results will not be generalizable in ways that quantitative research results can be (Patton, 2015).

Related to limited generalizability, the results of this study could also potentially be limited solely to nonprofit organizations rather than more broadly applicable to for-profit organizations. The results could also be limited to the type of nonprofit organizations studied or limited to the geographic area being used. Limitations can exist when considering how study findings can be applied to a broader population, and more general applicability of findings could be impaired by cultural differences in the nonprofit organizations in various geographical locations. Differences in the size of other organizations could negate transferability of the findings. Also, the findings will not necessarily be applicable to countries outside the United States.

Using interviews of study participants can have inherent limitations. These included whether I could obtain accurate self-reporting by interviewees and given the subject matter of the study, interviewees might adjust what they share in the interviews because their responses could indicate potential legal liability or confidential information about which interviewees are not willing to speak. In interviews generally, there can be gaps in the information shared by an interviewee that would have been material to the study results. Offering an alternative to an in-person interview where participants could respond in writing could address these concerns, but was not necessary for the study participants. I was able to ask follow-up questions to delve deeper into a topic that I believed needed to be further developed. I also assured participants of confidentiality and anonymity to help overcome these potential limitations.

An additional limitation was the time that study participants were able to give for interviews and limitations as to scheduling interviews. I was as flexible as possible with my own schedule to allow for the most opportunities possible to find a convenient time for the interviewees to meet. I used alternatives such as phone conferencing in lieu of face-to-face interviews when absolutely necessary, although this did limit my observation of the interviewee's nonverbal communication.

Guarding against researcher bias is important in all research studies but is of particular importance in qualitative research because the researcher himself or herself is the research instrument. As an attorney and former HR professional who has administered the FMLA for a for-profit organization in the target market for the study, I needed to be cognizant of any researcher bias I could bring to data collection and data

analysis. I have also been involved with nonprofit organizations in the target MSA in various capacities, including consulting and serving on nonprofit boards. Being aware of how these past experiences could impact data collection and analysis because of preconceptions or biases helped protect against researcher bias skewing the study. Bias can be minimized by using techniques such as heightened self-awareness, journaling, triangulation, and rich, thick description (Creswell, 2013; Patton, 2015). I used each of these methods.

Significance

In assessing the impact of the FMLA on organizations, Colopy and Dielman (2009) argued that the FMLA has affected the daily operations of U.S. organizations more than any other recent employment law. Although the data are somewhat dated, according to the Employment Policy Foundation, the FMLA cost employers \$21 billion in 2004 (Hayes, Smith, Tyner, & Johnson, 2012).

As Colopy and Dielman (2009) found, this influence includes ongoing changes to the FMLA such as the military provisions that were added in 2008 and the more recent changes to the definition of spouse. Since the 20th anniversary of the FMLA in February, 2013, the FMLA has been affected by the U.S. Supreme Court's decision in *U.S. v. Windsor* overturning the definition of marriage in DOMA as well as the Department of Labor's expansion of the definition of spouse now that same-sex marriage is legal post-*Obergefell*. As previously emphasized, organizations subject to the FMLA must focus on administering leaves of absence to meet ongoing compliance obligations and stay abreast of law changes.

The topic of this study was also significant and timely because paid family and medical leaves of absence have been revived as a key employment-related policy issue in the United States in recent years. Various lawmakers have called for paid leave at the national level. In December, 2013, New York Senator Gillibrand and Connecticut Representative Rosa DeLauro introduced legislation that would establish a national insurance fund for paid family and medical leave funded by employee and employer contributions (Gillibrand, 2017). In his 2015 State of the Union address, President Obama called for paid sick leave to be mandated by federal statute and both 2016 presidential candidates, Hillary Clinton and Donald Trump voiced support for paid sick leave during their presidential campaigns. President Trump has called for paid parental leave and specifically mentioned it in his first address to Congress in February, 2017. At the state and local level, states such as New York and Rhode Island have added paid leave insurance programs. In January 2018, Indiana added 4 weeks of paid parenting leave for all state employees and became the eighth state to offer state employees paid parental leave (Burgess, 2018).

Because of this renewed focus on paid family and medical leaves of absence, this study is timely and relevant, and I sought to obtain data to inform federal, state, and local policymakers considering expanding family and medical leave policy in their respective jurisdictions. My findings could also help nonprofit organizations subject to the FMLA understand the potential effects on their organizations because little currently exists in the literature. This includes understanding more about decision-making factors and approaches taken by other nonprofits when administering FMLA leave. In addition,

insights gained could equip organizations to make informed decisions about offering paid leave to their employees. Influencing policy discussions and organizational decisions that impact the way family and medical leave policy is implemented in the United States will help promote positive social change.

Summary

This study was needed to educate and inform leaders of nonprofit organizations and policymakers on how and the extent to which nonprofits have been affected by the FMLA. Data obtained provided feedback on how other organizations are managing FMLA compliance, as well as how they are dealing with the positive and negative aspects of administering the FMLA. Study results provided an understanding of how organizational leaders make decisions regarding offering paid or unpaid family and medical leave. Using data obtained from this study, policymakers can better understand the impact of the FMLA on nonprofit organizations, which has not yet been studied in any depth. This contribution to the literature was necessary because FMLA research has primarily focused only on for-profit entities and this study provided information focused solely on the nonprofit sector.

I examined family and medical leave policy implementation through the lens of nudge theory to better understand how organizational leaders and policymakers make decisions and attempt to influence behavior. Other underlying disciplines such as law and economics and behavioral economics are instructive as to the evolution and application of nudge theory. In the following chapter, I address this theoretical framework. I also summarize the legal requirements of the FMLA, basic employment law requirements for

nonprofit organizations, and the limited analysis in the literature regarding the effects of the FMLA on organizations. In addition, I discuss the literature on strategic HR management and nonprofit organizations.

Chapter 2: Literature Review

Introduction

The FMLA has arguably affected the daily operations of U.S. organizations more than any other recent employment law (Colopy & Dielman, 2009). According to the Employment Policy Foundation, the FMLA cost employers \$21 billion in 2004 (Hayes et al., 2012). Nonprofit organizations are not exempt from the FMLA and those with 50 or more employees must provide job-protected leave to eligible employees with serious health conditions, upon the birth, adoption, or foster placement of a child, and to those meeting the FMLA's military family leave provisions (29 U.S.C. § 2613).

In addition to ensuring they meet the administrative requirements of the FMLA, employers must also not interfere with an employee's entitlement to FMLA leave and must not retaliate against an employee for taking leave (Dove, Findley, Edwards & Jones, 2016). FMLA administrative obligations include obtaining medical certifications, documenting leave decisions, providing notice to employees, and tracking leave, as well as addressing and sometimes even investigating, suspected abuse of FMLA leave (Connell, 2014). Challenges can arise when essential personnel are taking approved FMLA leave on an extended or intermittent leave basis (Hayes, et al., 2012). This is particularly true for arts- and culture-based nonprofits because they often have more limited resources and face unique challenges as compared with other categories of nonprofit organizations (Yun, 2012).

Through this study, I sought to obtain relevant data to aid nonprofit leaders and policymakers in understanding how nonprofit organizations' ability to meet their mission

is affected by family and medical leaves of absences and government mandates, if at all. This information was based on the perceptions of HR professionals or those charged with conducting HR functions for their organizations. I additionally sought to understand how proposed mandates to provide paid family and medical leaves would be perceived by these professionals. Nudge theory offered a lens through which to examine the extent government mandates are necessary for employers to provide time off work for family and medical reasons. In studying the influences that the FMLA has had on nonprofit organizations, I gleaned information on how nonprofit organization leaders and HR professionals would perceive government attempts to nudge organizations into offering paid leave when they are not required to do so.

Organization of the Literature Review

In this review of the literature, I first provide a summary of nudge theory and how it evolved from challenges to traditional economic theory, law and economic theory, behavioral economics, and behavioral law and economics. I then summarize policy contexts in which nudge theory has been used, those governments that have used nudge theory, and examples of how nudges have been applied in the United States. I then provide a summary of key criticisms of nudge theory and evidence is provided supporting the use of nudge theory for this study. To illustrate the complex regulatory environment facing nonprofit employers, I provide descriptions of employment regulations applying to nonprofit organizations. I then give more detail on the history, purpose, and requirements of the FMLA. Because strategic human resource management (SHRM) is one factor impacting an organization's ability to meet its mission, relevant factors relating to the use

of SHRM in nonprofit organizations are summarized. Finally, I summarize salient details from the literature regarding nonprofit arts organizations, highlighting some of the unique challenges faced by these organizations.

Literature Search Strategy

The literature review was primarily based on articles from the following databases: Political Science Complete, Business Source Complete, Academic Source Complete, LexisNexis, and the U.S. Department of Labor (DOL) website.

I conducted searches on topics related to the FMLA using the following keywords and included the relevant legal sources such as the statute itself, U.S. Department of Labor regulations, and related U.S. Department of Labor guidance: Family and Medical Leave Act, or the FMLA.

I conducted searches on topics related to federal, state, and local family and medical leave laws and policy initiatives using the following keywords: *family and medical leave, FAMILY Act, and paid family and medical leave.*

I conducted searches related to nonprofit arts organizations using these keywords: *nonprofit arts organizations, arts, and culture and humanities nonprofit organizations*

I conducted searches related to SHRM in nonprofit organizations using these keywords: *strategic human resource management and nonprofit organizations.*

Searches related to nudge theory and its precursors in economic and law-related disciplines included the keywords *nudge theory, nudging, choice architecture, choice architect, libertarian paternalism, behavioral law and economics, behavioral economics and policy, traditional economic theory, Thaler, and Sunstein.*

Theoretical Foundation

I examined how HR professionals or those conducting HR functions for the organization perceived the influence of the FMLA to be on their organizations. I explored these perceptions in the context of nudge theory. The essential theoretical proposition of nudge theory is that policymakers can be choice architects who create an environment whereby people can make decisions in a way that overcomes their cognitive biases that would otherwise lead them to act irrationally and against their own best interests (Desai, 2011). The underlying philosophy of influencing individual choice is paternalistic and thus nudge theory is often referred to in the literature as libertarian paternalism or soft paternalism (Morgan, Deedat, & Kenten, 2015; VonBergen, Kernek, Bressler, & Silver, 2016). Nudge theory incorporates paternalism, but holds that an individual's freedom of choice is retained and nudge theory is thus held to apply a *libertarian* paternalistic philosophy (Sunstein, 2016). For purposes of this study, I used the term *nudge theory* throughout to maintain consistency.

Origins of Nudge Theory

Because nudge theory is a relatively new theory, it is important to examine briefly its origins, namely, the theories and disciplines from which it arose: traditional economic theory, behavioral economics, traditional law and economics, and behavioral law and economics. This examination includes details of how nudge theory was inspired by behavioral economics and as a variation on the often negatively-perceived paternalism philosophy.

Traditional economic theory. Traditional economic theory holds that individuals

make rational choices based on their self-interest (Simon, 1955). This theory hinges on the concept of an economic person who is rational, well-organized, able to perform all necessary calculations, and knowledgeable about all available alternatives, and it holds that that the economic person would chose the alternative that maximizes his utility (Simon, 1955). This concept is reflected in rational choice theory which posits that individuals make decisions based on what action will maximize their utility and that individuals will make rational choices based on self-interest (Simon, 1955). Rational choice theory is based on the three key assumptions that decision makers have access to all the information necessary to make the decision, that they are rational decision makers, and have constant and well-defined preferences (Knoll, 2010). This ultra- or hyperrational individual is often referred to as *homo economicus* (Neatu, 2015) and is what Thaler and Sunstein (2008) refer to in their book *Nudge* as an “econ.” Econs are adept at correctly processing only relevant information and optimally advancing their own interests clearly and consistently (Kovvali, 2016).

Herbert Simon was one of the early theorists who challenged traditional economic theory and he won the Nobel Prize in Economics in 1978 for his pioneering work on decision-making. Based on his work for the RAND Corporation, Simon first proposed the concept of bounded rationality and gave name to this concept in his 1957 book, *Models of Man* (McSweeney, 2010). Simon addressed uncertainty in decision making and agreed that individuals make decisions purposefully, but not necessarily based on having full information nor on a perfectly rational basis (McSweeney, 2010). Bounded rationality theory was a precursor to behavioral economics (McSweeney, 2010).

Behavioral economic theory. Behavioral economics integrates economics and psychology to examine how individuals form preferences and make choices (Congdon, Kling & Mullainathan, 2009). The term “behavioral economics” was first used in 1958 (Johnson, 1958), but some espouse that it builds on work from key economists including Adam Smith, Pareto, Veblen, Mitchell, or Keynes (Neatu, 2015). Behavioral economists like Kahneman, Tversky, and others in the late 1970’s (Ulen, 2014) challenged the assumptions of traditional economic theory that individuals form preferences and make decisions in a way that is perfectly rational and perfectly self-interested and conclude that these assumptions do not represent the reality of how individuals make choices (Congdon, Kling & Mullainathan, 2009). Behavioral economic theory takes the study of economics, a study of behavior, one step further and ties it with cognitive and social psychology, positing that individuals violate the assumptions of traditional economic theory so consistently that the assumptions are no longer valid (Congdon, Kling & Mullainathan, 2009). Behavioral economists also argue that it is evident that individuals violate traditional economic assumptions in predictable ways (Congdon, Kling & Mullainathan, 2009). As discussed later in this chapter, Thaler and Sunstein take this one step further and advocate using nudges to influence choices based on these predictions about decision-making.

Traditional law and economic theory. Traditional law and economic theory has been advanced by well-known legal scholars and theorists like Posner, a recently retired judge on the U.S. Court of Appeals for the Seventh Circuit, and Coase, author of the Coase theorem. Posner originally published the casebook *Economic Analysis of Law* in

1973, now in its ninth edition (Posner, 2014). The Coase theorem holds that in the absence of transaction costs, an optimal allocation of resources will arise, regardless of any legal rules (Coase, 1960). Law and economic theory essentially applies rational choice theory to legal and policy matters and holds that minimal intervention from the legal system is necessary because in the absence of market failures, an individual will make choices in a way that maximizes his or her own welfare (Faure & Luth, 2011).

Behavioral law and economics. Behavioral law and economics evolved from challenges to both traditional economic theory and law and economic theory and it combines economics and psychology to analyze individual decision-making (Bubb & Pildes, 2014; Wright & Ginsburg, 2015). This approach to analyzing decision-making is often referred to as simply behavioral economics in the economics discipline and behavioral law and economics in law schools (Bubb & Pildes, 2014). Sunstein is often called the father of behavioral law and economics (Amir & Lobel, 2008) as has Ulen been identified as one of the founding fathers of this discipline (Zywicki, 2014).

A behavioral law and economic framework has been applied to several areas of law and policy, including tax policy (Congdon, Kling & Mullainathan, 2009), the U.S. Social Security system (Knoll, 2010), workers' behavior regarding retirement savings (Congdon, Kling & Mullainathan, 2009), consumer protection laws (Faure & Luth, 2011), corporations and mandatory disclosure (Bainbridge, 2000), corporate and securities law (Greenfield, 2014), corporate law (Langevoort, 2012), environmental law (Livermore, 2014), antitrust law (Devlin & Jacobs, 2013), and health policy (Kooreman & Prast, 2010). Additionally, there is evidence that behavioral law and economics is

affecting public policy and being used in the executive branch and administrative agencies (Wright & Ginsburg, 2015). Nudge theory has evolved from these law, economic, and behavioral perspectives.

Nudge Theory and Theorists

The thesis of nudge theory has been summarized by Desai (2011) as twofold. First, cognitive biases lead individuals to act irrationally in ways that are even sometimes against their self-interest, and second, policymakers can be choice architects who create the environment in which people make decisions and thereby attempt to overcome those cognitive biases (Thaler & Sunstein, 2008; Thaler, Sunstein & Balz, 2014). An example illustrating this is automatic enrollment in 401(k) retirement plans. When employers choose to automatically enroll employees into 401(k) plans at an employer-determined deferral rate from employee paychecks (e.g., 3 percent of gross compensation), employers nudge employees to act in the employees' self-interest by saving for retirement when they arguably would not otherwise have done so (Sunstein, 2016).

Nudge theory has its roots in behavioral economics, a discipline that developed from challenges to the application of traditional economic theory (Jolls, Sunstein, & Thaler, 1998). While rationality is the foundation of decision-making under traditional economic theory, nudge theory is predicated on the assumption that people deviate in predictable ways from making rational choices (Wilkinson, 2013). Governments can use these predictions to create choice architecture to steer individuals to choose desired outcomes (Chriss, 2016; Thaler, Sunstein & Balz, 2014). Continuing with the 401(k) plan automatic enrollment example, it was in the Pension Protection Act of 2006 (PPA) that

Congress made auto-enrollment easier for employers, and thus nudged employers to in turn nudge employees to save more for retirement (Russell, 2015). One key incentive for employers under the PPA is the so-called “safe harbor” offered to employers implementing automatic enrollment that allowed them to avoid complex and costly annual non-discrimination testing on their plans (Russell, 2015).

Nudge theory was developed by Thaler and Sunstein and made popular in their New York Times bestselling book, *Nudge: Improving Decisions About Health, Wealth, and Happiness* (2008). Thaler is a behavioral economist and has been recognized as the founder of behavioral economics (Amir & Lobel, 2008; Sunstein, 2016), and his first article on behavioral economics was published in 1980 (Thaler, 1980). Thaler’s early writings on behavioral economics built upon the departures from traditional economic theory made by psychologists Tversky and Kahneman (1974) in their research on judgment and decision-making (Sunstein, 2016). Tversky and Kahneman were the pioneers of behavioral economics, and Kahneman, a Princeton University psychologist, won the Nobel Prize for Economic Sciences in 2002 (Brief of Scholars of Behavioral Economics, 2016). Although Thaler and Sunstein first popularized nudge theory in 2008, Thaler had examined nudging as early as 1994 in the context of automatic enrollment of employees in retirement savings plans (Sunstein, 2016). Sunstein is a lawyer and law professor and currently teaches at Harvard Law School (Harvard Law School, 2017). From 2009 to 2012, Sunstein was Administrator of the White House Office of Information and Regulatory Affairs (Harvard Law School, 2017).

Some assert that nudge theory offers a middle ground between government intervention on one end of the spectrum and a complete free market economy on the other (Carlin, Gervais, & Manso, 2013). Others further clarify Thaler and Sunstein's premise by describing nudging as a strategy government can use to overcome three ineffective levers previously available when attempting to achieve policy goals—banning activities, creating financial incentives or penalties, and changing behavior by educating citizens (Morgan, et al., 2015). A key underlying assumption of nudge theory is that when individuals lack adequate time and capacity for a full decision-making process, “decisions are driven by habits, emotion, inertia, pleasure, and the desirability of the easier option” (Morgan, et al., 2015, p.715). Thaler discovered through numerous experiments that individuals actually seek to gain immediate rewards rather than make decisions based on their potential future welfare (Neatu, 2015).

One mechanism used to nudge individuals toward desired policy choices is choice architecture. Choice architecture is influencing others' choices by designing those choices in a way that contemplates behavioral psychology, heuristics, limitations, and biases (Ariely, 2008; Desai, 2011; Thaler & Sunstein, 2008). Examples include strategic arrangement of items on a menu, of food choices in a school cafeteria line, or of items on a supermarket shelf (Arno & Thomas, 2016; Thaler & Sunstein, 2008). The goal of choice architecture as seen by a libertarian paternalist is to influence choices such that the individual selects the desired choice while still maintaining individual autonomy (Desai, 2011; Thaler & Sunstein, 2008). Thaler and Sunstein hold that nudging is libertarian in nature because the individual retains free choice in making his or her decision and is not

punished for not making the government's desired decision (Thaler & Sunstein, 2008). The theorists offer nudging as a way that policymakers can be choice architects and influence individual decision-making to promote behavior in society's best interest as well as the individual's best interest (VonBergen, et al., 2016). Nudging is thus a strategy for implementing public policy (Kosters & Van der Heijden, 2015).

As will be discussed in more detail in the next section, the U.K. and U.S. governments particularly have begun analyzing and applying nudge theory to design and implement policy initiatives. Both theorists have played a direct role. Thaler consults as a member of the Academic Advisory Panel to the Behavioral Insights Team (or "Nudge Unit") in the U.K. (Behavioral Insights Team, 2017) and as previously mentioned, Sunstein is the former Office of Information & Regulatory Affairs Administrator (Harvard Law School, 2017).

Application of Nudge Theory

Due to this study's focus on law and policy, it is instructive to examine nudge theory relative to its application to law and public policy. Nudge theory has been applied by various governments including the U.S., U.K. and Australia (Sunstein, 2016). These governments have used nudging as a third alternative to the proverbial carrot or stick approaches (Wilkinson, 2013). This section provides an overview of key policy areas in which nudge theory has been applied.

One key area where nudging has been implemented is to address the policy issue of Americans saving too little for retirement. Congress enacted pension reform in 2006 through the Pension Protection Act (PPA). This legislation included numerous provisions

in response to financial factors including the collapse of WorldCom and Enron, underfunded pension plans, and low employee participation in employer-sponsored 401(k) retirement plans (Secunda, 2016). The PPA also came at a time when Americans' personal savings rate had in 2005 reached its lowest level since the Great Depression (Thaler & Sunstein, 2008). The PPA had a provision which allowed employers to avoid an otherwise mandatory nondiscrimination test if they implemented auto-enrollment in their 401(k) plans, making them "safe harbor" plans (Secunda, 2016). Two other PPA features grounded in behavioral economics and choice architecture are automatic increases or auto-escalation of contributions and employer-chosen default investment options (Secunda, 2016). These features nudge employees to increase 401(k) savings rates (Thaler & Benartzi, 2004). In a similar vein, the "Save More Tomorrow" program was proposed by Thaler and Benartzi (2004) and it purported to nudge employees to increase retirement plan savings by having them commit in advance to contributing a percentage of future salary increases into retirement savings.

Criticisms of Nudge Theory

Key criticisms of nudge theory center around the extent to which nudging becomes manipulation and is no longer libertarian, but paternalistic (Wilkinson, 2013). Another argument is that the fatal flaw of nudge theory is that it ignores the value of individuals having the freedom to make errors and learn from those errors based on the consequences of the error being more palpable when there is freedom to err (Wright & Ginsburg, 2015). Wright and Ginsburg (2015) argue that choice is both a freedom and a burden and that one must deal with the consequences of one's actions, and accept the

attendant praise or blame. The authors go on to state that “liberty and responsibility are inseparable” (Wright & Ginsburg, 2015, p. 1072). Glod (2015) also argues that while not all nudges are problematic, those that have paternalistic aims take away autonomy and freedom of choice. Examples of more paternalistic nudges Glod (2015) identifies include “purposely ordering the presentation of medical options in ways that make life-preserving options more salient, default enrollments into retirement accounts to encourage greater savings, and subliminal messages intended to inculcate in the target agent better habits without her awareness of such” (p. 600). Along these lines of concerns over subliminal messages, concerns about lack of transparency have also been expressed (Wilkinson, 2013).

Other researchers have argued that nudge theory should not be used as a blanket approach to policy, but should be used judiciously (Carlin, et al., 2013), and that those who nudge should consider unintended consequences. Salazar (2012) examined the effect of nudges on food purchase and consumption. Examples of nudges included strategic placement of fruits and vegetables in a supermarket, having fruit for sale next to a school cafeteria cash register, placing soft drink machines in obscure locations, and making healthy food options the default or front-page menu choices. Despite some documented successes, Salazar (2012) argues in favor of being careful of unintended consequences of nudging when related to consumers’ food options, such as overconsumption of calories and consumers’ lost freedom of choice.

Nudge Theory in the Current Study

Despite these challenges to nudge theory, this theory was appropriate for this study for several reasons. Nudge theory was used as a lens through which to examine organizational decision-making in response to employment regulation of family and medical leaves. Although nudge theory has not been used to examine FMLA or family and medical leave policy, it has been applied previously in studying employment regulation (Congdon, Kling & Mullainathan, 2009; Thaler & Benartzi, 2004). Applying behavioral research to how individuals make decisions in the absence of complete information, with limited cognitive resources, and with decision biases, can aid policymakers in structuring policy initiatives. Policymakers can take into account potential behavioral responses that are ignored when applying only traditional economic theory (Knoll, 2010). Application of behavioral economics and nudge theory can also illustrate disconnects that arise when one makes decisions based on what one *ought* to do versus what one wants to do (Knoll, 2010). Applying behavioral economics through nudge theory allows policymakers to focus on the reality of a situation rather than applying an idealized world or set of hypotheticals to real-world problems (Haque, 2009).

While nudge theory has had limited application to employment law contexts, I found an absence of nudge theory being applied to nonprofit organizations. In fact, zero results were found from conducting a Boolean search for “nudge theory” and “nonprofit organization” in the research databases listed at the beginning of this chapter. I found only one article from a Boolean search for “nudge” and “nonprofit organization” and it

was regarding nudging volunteers (Crichton, 2011). Through this study, I sought to fill this absence in the literature of nudge theory being applied to nonprofit organizations.

Nonprofit Arts Organizations

Nonprofit arts organizations are charitable nonprofit organizations that fall under 501(c)(3) of the Internal Revenue Code and have an arts- and culture-focused mission. The NCCS is a national clearinghouse for data on nonprofit organizations and it created a system that categorizes nonprofit organizations into broad categories—the National Taxonomy of Exempt Entities (NTEE) (NCCS, 2016). The NTEE is then used by the IRS to classify nonprofit organizations (NCCS, 2016). The relevant category for this study is *Group A: Arts, Culture, and Humanities*. This category is defined as:

Private nonprofit organizations whose primary purpose is to promote appreciation for and enjoyment and understanding of the visual, performing, folk, and media arts; the humanities (archaeology, art history, modern and classical languages, philosophy, ethics, theology, and comparative religion); history and historical events; and/or communications (film, video, publishing, journalism, radio, television). (NCCS, 2016).

Nonprofit organizations were selected for this study because of the lack of peer-reviewed research studying the impact of federal employment legislation on these organizations. The sub-category of arts-focused nonprofit organizations specifically was chosen for multiple reasons. One is the unique role they play as part of a civil society in educating citizens about the arts, in bringing performance arts to citizens, in furthering and commemorating society's culture, and in enriching communities (GuideStar, 2017;

Rosenstein, Riley, Rocha & Boenecke, 2013). The second is because of funding challenges related to cutbacks by the government, donors, and foundations (Lai & Poon, 2009). Additionally, arts organizations must play an even more critical role in educating and enriching communities today, particularly in the context of cutbacks in arts education funding and elimination of school programs after passage of No Child Left Behind (Amrein-Beardsley, 2009). Nonprofit arts organizations were furthermore impacted by the Great Recession and in subsequent years many have focused on maintaining general operating support (Rosenstein, et al., 2013) and on new marketing strategies to sustain their organizations (Lai & Poon, 2009). I sought to understand how community arts organizations allocate resources and continue to meet their missions in light of these circumstances, particularly when they must maintain compliance with all federal, state, and local employment laws.

Maintaining a thriving arts community in a metropolitan area like that used in this study is critical. Although the primary focus of arts organizations is on promoting and presenting the arts, nonprofit arts organizations must also operate akin to business organizations in that they must conduct several day-to-day business operations. These include budgeting, marketing, fundraising, hiring employees, managing those employees, and complying with applicable laws. Maintaining funding and operations is particularly important given an environment where nonprofit performing arts organizations have an extremely high closure rate compared to other nonprofit organizations, demonstrating that these nonprofit organizations are at particular risk to fail (Bowen, Nygren, Turner, & Duffy, 1994). Bowen et al. (1994) examined closure of nonprofits from 1984 to 1992 and

estimated the general closure rates of nonprofit organizations to be 2.3 percent.

Performing arts organizations, however, much higher annual failure rates: 25.1% for ballet, 22.7% for opera, 22.3% for dance, and 20.3% for theatre (Bowen, Nygren, Turner, & Duffy, 1994).

Employment Regulation of Nonprofit Organizations

The following sections examine key concepts in the literature central to this study, including federal and state employment regulation as it relates to nonprofit organizations, the origins and current regulatory requirements of the FMLA, state-mandated unpaid and paid family and medical leave, federal and state policy proposals regarding family and medical leave, and SHRM in nonprofit organizations, including some of the unique challenges faced by nonprofit arts organizations. Due to the ever-changing nature of the law, past and current policy proposals will be summarized as current at the time of this writing and could change dramatically or never be enacted into law.

Because the FMLA or other family leave or medical leave employment policies are not operating in a vacuum, it is instructive to examine briefly the various employment laws that nonprofit organizations must follow. These can include federal laws, state laws, local ordinances, and Constitutional provisions for public organizations. Each are covered briefly below.

Federal employment laws typically apply to three tiers of employers—those having at least 15 or more employees, those having 20 or more employees, and those having 50 or more employees. It is not my intent in this section to provide an exhaustive list or description of these laws and their mandates, rather, I seek to provide a brief

overview of these laws to illustrate that the FMLA is only one of many federal employment laws applying to nonprofit organizations. This section also highlights the fact that state laws and local ordinances can apply to nonprofit organizations falling below 15 employees. Organizations must ensure they understand the full scope of their legal compliance obligations.

Federal Employment Laws for Organizations with 50 or more employees

Two key federal employment laws applying to organizations with 50 or more employees are the FMLA and the Affordable Care Act (ACA). Pursuant to President Trump's calls to repeal the ACA and Republican control of the House and Senate, it was anticipated that the ACA might be repealed by the 115th Congress. The individual mandate portion of the ACA was repealed by Congress in a tax bill passed in December, 2017. As of this writing, the ACA's so-called employer mandate has not been repealed. This section of the ACA still requires employers having 50 or more employees to provide qualifying health insurance to employees (29 U.S.C. 4980H). This ACA employer mandate is beyond the scope of this study, but it should be noted that it comes with compliance obligations, including notice and reporting requirements, in addition to providing the level of health insurance coverage meeting the statutory requirements (29 U.S.C. 4980H). The FMLA is discussed in the subsequent section entitled The Family and Medical Leave Act of 1993 (FMLA).

Federal Employment Laws for Organizations with 15-49 employees

The second category of federal employment laws are those applying to organizations with 15 to 49 employees. These include most of the Equal Employment

Opportunity laws, including Title VII of the Civil Rights Act of 1964 (Title VII), the Pregnancy Discrimination Act of 1978, and the Genetic Information Nondiscrimination Act (GINA) which all apply to organizations with 15 or more employees, including state and local governments (U.S. Dept. of Labor, 2017d). Two equal employment opportunity laws applying to employers with 20 or more employees are the Americans with Disabilities Act (ADA) and the Age Discrimination in Employment Act (ADEA) (U.S. Dept. of Labor, 2017d). Another law with a 20-employee threshold is referred to as COBRA from the Comprehensive Omnibus Budget Reconciliation Act of 1985, which requires continuation of health insurance coverage for eligible employees upon certain qualifying events, including termination of employment (U.S. Dept. of Labor, 2017d).

Federal Employment Laws with No Employee Threshold

There are several other federal employment laws that apply to nonprofit employers regardless of their number of employees. Examples of these include the Fair Labor Standards Act (FLSA) and the Occupational Safety and Health Act (OSHA) (U.S. Dept. of Labor, 2017d; Pynes, 2013). Some federal employment laws are only triggered in certain circumstances, such as the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) if an employer employs covered service members (U.S. Dept. of Labor, 2017d). Another example is if certain benefits are offered to employees, such as the Employment Retirement Income Security Act of 1974 (ERISA) when a qualified retirement plan or welfare benefits are offered (Pynes, 2013). Additionally, if the organization is a public organization, then it is subject to all

Constitutional protections applying to its employees, such as freedom of speech and association, equal protection of law, privacy, and due process rights (Pynes, 2013).

State & Local Employment Laws

If a nonprofit employer is not large enough to be subject to the above-described federal employment laws, then it should be aware of any state laws or local ordinances to which it is subject. These laws generally apply to employers with two to 14 employees and examples include non-discrimination laws akin to Title VII. One example is a state civil rights law that protects against employment discrimination on the basis of race, religion, color, sex, disability, national origin, and ancestry. Such laws often apply to employers with six or more employees (excluding certain nonprofit organizations that are fraternal or religious in nature, such as certain religious schools, and exclusively social clubs or associations). Employers must also be aware of any local ordinances to which they are subject. Nonprofit employers must take care to understand which laws apply to them and which laws have an exemption for nonprofit employers.

The FMLA

This section begins with an overview of the legislative intent, requirements, protections, and regulatory framework of the FMLA. This section continues with a summary of the peer-reviewed literature studying the impact the FMLA has had on employers—almost exclusively for-profit organizations—and on employees.

Legislative Intent

As indicated in the language of the statute, the findings that prompted Congress to enact the FMLA in 1993 were a significant increase in working parents in both single-

parent and two-parent households and parents being forced to choose between job security and parenting due to the lack of workplace policies allowing for family leave and job security for employees with serious health conditions that prevented them from working temporarily (29 U.S.C. §2601(a)). Congress noted the importance of both fathers and mothers being able to participate in early childrearing for its positive impact on the child's development, as well as the importance of being able to care for family members with serious health conditions (29 U.S.C. §2601(a)). Congress also noted that because gender-based roles meant primary responsibility for family caretaking was on women, the time needed off work to provide this caretaking disproportionately affects female employees' working lives and causes the potential for gender-based workplace discrimination (29 U.S.C. §2601(a)).

Congress sought to respond to these public policy concerns by enacting the FMLA, indicating the purposes of the FMLA were to allow employees to balance work and family demands, to provide a way to support "national interest of preserving family integrity," and to promote families' stability and economic security (29 U.S.C. §2601(a)). Congress sought to address the need for employees to take reasonable unpaid leave for family and medical reasons, but in a manner that "accommodates the legitimate interests of employers" and is "consistent with the Equal Protection Clause of the Fourteenth Amendment" (29 U.S.C. §2601(a)). Lawmakers sought to minimize gender-based employment discrimination and required leave be available on a gender-neutral basis. FMLA leave was made available for medical reasons including maternity-related reasons,

but also for compelling family reasons, upholding equal employment opportunity goals (29 U.S.C. § 2601(b)).

FMLA Provisions

The FMLA was enacted on February 5, 1993, and became generally effective on August 5, 1993. This federal statute and its regulatory framework provides eligible employees with up to 12 weeks of unpaid, job-protected leave from work during a specified 12-month period. The FMLA also provides for continuation of group health insurance under the same terms and conditions as if the employee were not out on leave (U.S. Dept. of Labor, 2017a, p. 39a00). FMLA leave can be approved for (1) an employee's own documented serious health condition that causes him to be unable to perform the essential functions of his job, (2) for the serious health condition of an immediate family member (spouse, child, or parent, but not parent "in law"), (3) for the birth, adoption, or foster care placement of a child, and (4) for pre-deployment activities for qualifying exigencies arising for the employee's spouse, child, or parent who is a service member on active duty status (29 U.S.C. § 2601, *et seq.*). Additionally, up to 26 weeks of unpaid leave can be approved for eligible employees to care for a spouse, child, parent, or next of kin who is a covered service member with a serious injury or illness (National Defense Authorization Act, Sec. 585).

Employers subject to the FMLA include public agencies, and state, local, and federal governmental employers, as well as for-profit and nonprofit private employers having 50 or more employees within a 75-mile radius for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year (29 U.S.C.

§2611(4)). An employee working for an FMLA-covered employer is eligible for FMLA leave if he has been employed by the employer for at least 12 months, with at least 1,250 hours of service for the employer during the previous 12-month period, and works at a worksite with at least 50 employees or a site within 75 miles of a worksite with 50 or more employees (29 U.S.C. §2611(2)). Job-protected leave provided under the FMLA essentially means that covered employers have to maintain group health insurance for the employee in the same manner as if the employee had not taken the leave, and the employer must reinstate the employee to the same or an equivalent position with equivalent benefits and other employment terms and conditions (29 U.S.C. §2614).

Regulatory Framework

Amendments to the FMLA and subsequent regulatory guidance illustrate how compliance with employment laws generally is a complex endeavor and FMLA compliance efforts are no exception. In 1995, 2009, and 2013, the DOL promulgated regulations implementing the FMLA and its amendments. The 2009 regulations were in response to Section 585 of the National Defense Authorization Act for Fiscal Year 2008 (FY 2008 NDAA) which added military caregiver leave and qualifying exigency leave to the FMLA. Under the military caregiver provisions, FMLA leave of up to 26 weeks became available for eligible employees to care for covered service members with a serious injury or illness if they are the employee's spouse, child, parent, or next of kin. Under the qualifying exigency provisions, FMLA leave of up to 12 weeks became available for eligible employees to conduct pre-deployment activities for qualifying exigencies arising for the employee's spouse, child, or parent who is a service member on

active duty status. The Wage and Hour Division of the DOL implemented the FMLA military service provisions through final regulations effective January 16, 2009. In these regulations, the DOL sought to address more than 4,600 public comments it had received to its Notice of Proposed Rulemaking and to address several U.S. Supreme Court and federal court decisions invalidating aspects of the original FMLA regulations.

In 2010, Section 565 of the National Defense Authorization Act for Fiscal Year 2010 (FY 2010 NDAA) amended the FMLA and expanded the military family leave provisions added by the FY 2008 NDAA. These included an expanded covered service member definition and allowed military caregiver leave for current service members with serious injuries or illnesses that existed prior to service and that were aggravated by service in the line of duty on active duty. The FY 2010 NDAA also expanded the qualifying exigency leave provisions to entitle an eligible employee whose spouse, son, daughter, or parent is a member of the Regular Armed Forces to take qualifying exigency leave, and added a foreign deployment requirement for qualifying exigency leave for all military members (National Guard, Reserves, and Regular Armed Forces) (U.S. Dept. of Labor, 2017e).

FMLA's Influence on Organizations

I found no articles relating to nonprofit arts organizations and family and medical leave. Overall, there is little existing literature on the influence on employers of family and medical leave policies (Rossin, 2016). I sought to understand the influence of these leave policies and address this gap in the literature through this study.

Compliance Challenges for Employers

Complying with the complex FMLA regulatory framework involves numerous steps, forms, and recordkeeping by the employer (Dove, et al., 2016). Complying with often vague interpretations of FMLA requirements can thwart the statute's intent to protect and provide benefits to employees and can cause additional burdens to employers trying to correctly administer the FMLA (Hayes et al., 2012). Employers must meet notice requirements, obtaining and reviewing medical certifications from an employee's healthcare provider (Dove, et al., 2016). Additional aspects of administering the FMLA are discussed later in the Strategic HR Management section of Chapter 2.

FMLA compliance is a challenge, in part, because of the myriad employment laws and continuing regulatory changes impacting employers, many of which were summarized in this Chapter. In short, FMLA compliance efforts do not occur in a vacuum. Nonprofit organizations with 50 or more employees are subject to myriad federal employment laws beyond the FMLA. Examples include addressing privacy of medical information in response to the privacy rule under the Health Insurance Portability and Accountability Act (HIPAA) and Equal Employment Opportunity Commission's (EEOC) guidance in 2000 in its *Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act (ADA)* regarding handling of employees' medical information under the ADA (NPRM, 2008). The additional employment laws highlighted above provide context illustrating the complex regulatory environment facing nonprofit organizations.

In addition to keeping abreast of and adhering to FMLA regulatory requirements, the threat of employee lawsuits can impact how employers administer the FMLA (Dove et al., 2016). Most FMLA lawsuits are based on retaliation or interference with an employee's FMLA rights (Dove, et al., 2016) and can cost an average of \$80,000 per claim to defend (Hayes, et al., 2012). One group of professors surveyed nearly 80 FMLA decisions of federal circuit courts of appeal from 2012 to 2014 and found the number of retaliation claims filed by employees against their employers had increased 33 percent annually (Dove, et al., 2016). Employers sometimes decide to grant FMLA leave to an employee not legally entitled to it just to avoid a potential lawsuit. It has been estimated that 52 percent of employees have been granted leave despite not technically meeting the qualifications because their employers wanted to avoid litigation (Hayes, et al., 2012).

Abuse of the FMLA by employees can also occur and an employer must determine the amount of time and resources to devote to investigating such abuse. Numerous anecdotal and case law examples show abuse often occurs with employees approved for intermittent leave. Common examples are an employee taking intermittent leave allegedly for migraines only on Mondays or Fridays to have a 3-day weekend or treating intermittent leave approval as a *get-out-of-jail-free card* (Connell, 2014). Employees in recent cases have lost lawsuits involving these basic categories of FMLA abuse: working a second job while on FMLA leave, engaging in manual labor or running errands while claiming their health condition precludes such activities, and partying, engaging in social or recreational activities or taking vacations while on FMLA leave (Connell, 2014). Some employers even hire private investigators to surveil and videotape

employees on FMLA leave whom they suspect are lying about their inability to work due to their health condition (Connell, 2014). Other employees themselves divulge their activities on social media and HR becomes aware of these abuses and fire the employee (Connell, 2014). Employers have been successful in defending employee terminations for abuses in several cases and it is clear from the case law that employers have the right to conduct surveillance and videotape employees for suspected FMLA abuse (Connell, 2014).

Researchers found that having dedicated HR professionals and training both them and front-line supervisors on FMLA administration to avoid litigation and consistently apply the regulations (Hayes, et al., 2012; Wears & Fisher, 2012). This, of course, only applies to larger organizations. Researchers have also called for Congress to review the results of the FMLA, to consider the burden placed on employers, and to incorporate employer feedback to alleviate confusion for employers trying to remain compliant (Hayes, et al., 2012). Others have called on Congress to amend the FMLA to preclude individual supervisor liability and additionally to address a split in the federal circuit courts of appeal on whether the FMLA allows for individual liability on supervisors in the public sector (Stippel, 2016).

Effect on Employees

Other categories of peer-reviewed literature reviewed addressed the effect of the FMLA on female employees and on male employees separately, and addressed the adequacy of the FMLA. Some policymakers and industry analysts believe federal protections for employees pursuant to the FMLA, perhaps even in tandem with other

federal employment laws like the ADA, are not sufficient as a matter of public policy. Some states and municipalities have sought or could seek to fill this void and mandate more generous leave requirements. These could include leave requirements modeled on the FMLA for smaller employers below the 50-employee threshold or could even mandate paid leave. Of course, employers are always able to offer more generous benefits than required by law and thus could establish their own leave policies to provide paid leave for up to 12 weeks or even longer if they so choose. Despite this possibility of employers having more generous leave policies, it should be emphasized that one key reason the FMLA was enacted was to address the lack of employers providing job-protected family and medical leave. In other words, Congress felt it necessary to act because employers were not doing so on their own.

Paid Family and Medical Leave

Legal mandates for family and medical leave should not to be confused with mandated paid sick time. Although family and medical leave is similar in some ways to sick time, sick day accrual mandated by state law or local ordinances is not the same as job-protected leave modeled after the FMLA. Sick days are categorically different than actual leaves of absence, certainly when the family leave of absence is not illness-based, for instance to bond with an adopted child or foster child, but also when caring for a seriously ill child or parent where the employee himself is not the one who is sick. Despite these differences, a brief summary of recent trends in paid sick leave law is at least instructive to understanding policy shifts regarding paid family and medical leaves of absence.

Despite calls from the Obama administration and previously proposed federal legislation, approximately 40 to 44 million U.S. workers do not have access to earned paid sick time (A Better Balance, 2016). In January, 2015, Representative Maloney from New York introduced H.R. 532, the Federal Employees Paid Parental Leave Act of 2015 which would require that six of the 12 weeks of parental leave be paid leave for federal employees. In September, 2015, Senator Schatz from Hawaii introduced S. 2033, the Federal Employees Paid Parental Leave Act of 2015. Both bills died in committee. Only seven states (Connecticut, Massachusetts, California, Oregon, Vermont, Arizona, and Washington) and the District of Columbia have passed statewide laws requiring paid sick days and 29 cities have established paid sick time ordinances (A Better Balance, 2016). Under these mandates, employees accrue sick time for hours worked and can often use the paid time off for their own illness or a child or spouse's illness (A Better Balance, 2016). On September 7, 2015, President Obama signed an executive order entitled Establishing Paid Sick Leave for Federal Contractors that requires up to seven paid sick days be provided to employees of federal contractors that goes into effect with contracts starting in 2017 (Exec. Order No. 13706). President Trump has called for federal mandatory paid family leave, including in his first address to Congress on February 28, 2017. The specifics of this proposed mandate have not yet been detailed by the administration.

As of September, 2018, only four states require both state and private employers to offer paid family and medical leave: California, New Jersey, New York and Rhode Island (A Better Balance, 2016; Burgess, 2018). These programs offer partial wage

replacement, e.g., 55% of wages up to \$1,120 per week in California (A Better Balance, 2016). The programs are all funded by payroll deduction from employee wages and in some cases are supplemented by employer funding. The length of leave varies from four weeks in a 52-week period (Rhode Island) to 12 weeks in a 52-week period (New York) (A Better Balance, 2016). Additionally, only two of the states (Rhode Island and New York) include job protection and continuation of the employer group health benefits. (A Better Balance, 2016). Four other states have offered paid parental leave only to state employees: Arkansas, Minnesota, Missouri, and Indiana (Burgess, 2018).

Nonprofit organization leaders must ensure they are complying with the myriad federal, state, and local employment laws to which their organizations are subject. Even though larger nonprofit organizations, such as those with 150 or more employees like museums, might have dedicated HR staff, and small organizations do not have this luxury, nonprofit organizations of any size can examine their approach to HR and apply SHRM. The next section addresses some of the challenges faced by nonprofit organizations in addressing human resource management (HRM), and offers an overview of one approach, SHRM.

HRM in Nonprofit Organizations

Nonprofit organizations face various challenges including economic, social, cultural, technological, and legal challenges to their viability (Pynes, 2013). One mechanism for overcoming those challenges is by having well-trained and flexible employees (Pynes, 2013). Nonprofit organizations are increasingly called upon to be nimble and more efficient with using scarce resources to meet their missions and serve

their stakeholders (Ridder, Piening, & Baluch, 2012). One way to do this is through SHRM (Ridder, et al., 2012).

SHRM

SHRM has been defined as the “integration of human resources management (HRM) with the strategic mission of the organization” (Pynes, 2013, p. xvii). Key components of strategic HR management include decisions about recruiting, retention, compensation and benefits planning, training, performance management, and staffing (Pynes, 2013). These components are relevant to this proposed study because when an organization provides employees with family or medical leave, their absence affects the organization. I sought to understand more about that affect and the decisions made generally about FMLA compliance in light of that affect. Part of this examination also included understanding what factors play into a smaller organization’s decision to offer family and medical leave when they are not subject to the FMLA.

SHRM has become one way to address these challenges faced by nonprofit organizations (Ridder, et al., 2012). SHRM has been described as planned HR activities that have the intent of organizational goal achievement (Wright & McMahan, 1992). As with the study of employment regulation in nonprofit organizations, peer-reviewed literature on SHRM in nonprofit organizations remains limited. I searched the following databases for peer-reviewed articles published in the last five years (2013-2018) on “strategic human resource management” and nonprofit organization (without quotes): Academic Search Complete, Business Source Complete, and Political Science Complete. Only four articles were found. This finding supports the conclusion that most SHRM

studies focus on the for-profit sector, although, some have focused on understanding the role of SHRM in helping nonprofit organizations meet their objectives while overcoming limited resources. Recent studies have focused on recruitment, selection, training, compensation, and benefits (Ridder, et al., 2012).

An exploratory multiple case study of ten health and social service nonprofit organizations was conducted by Ridder, Piening, and Baluch (2012). These researchers summarized some of the unique challenges faced by nonprofit organizations and their use of HR practices as opposed to the public and for-profit sectors. One key difference is that nonprofits possess a consensus-oriented cooperative culture rather than a system based on individual rewards for individual tasks (Ridder, et al., 2012). Other differences include the dual role of managing employees and volunteers, as well as being accountable to diverse stakeholders (Ridder, et al., 2012). Compensation data is mixed on whether nonprofit organization wages are always lower than wages in for-profit organizations (Ridder, et al., 2012). Studies found that non-monetary benefits such as commitment to the nonprofit organization's mission, rewarding work, autonomy, creativity of the work, and other nontangible benefits often outweigh monetary incentives (Ridder, et al., 2012).

The concept of SHRM itself demonstrates how HR has transformed into becoming a strategic partner in organizations, using recruitment, selection, training, development, compensation, and benefits to link HR management to achieving the larger organizational mission and goals (Sondhi & Nirmal, 2013). Sondhi and Nirmal (2013) conducted a single case study and found support for SHRM in a nonprofit organization that grew from seven employees to 400 staff members.

Walk, Schinnenburg, and Handy (2014) examined German human service nonprofit organizations and emphasized the importance of SHRM due to these organizations' labor-intensive nature and the competitive environment of human services. Their case study examined employees' perceptions of their organizations' recruitment, appraisal, professional development, and compensation practices (Walk, Schinnenburg, & Handy, 2014). Walk, et al. (2014) highlighted the link described in the literature between SHRM and performance in nonprofits (citing Akingbola, 2006) and found that the organizations interviewed faced challenges in implementing effective HR practices. The researchers offered suggestions for strategies to improve alignment of HR practices to organizational mission (Walk, et al., 2014).

Summary

A number of key themes and conclusions emerged from my review of the literature. These include the conclusion that scant research has been conducted on employment regulation of nonprofit organizations despite these organizations being subject to these laws in mostly the same manner as for-profit entities. A gap in the literature exists as to employment regulation of nonprofit organizations and specifically as to the FMLA. Nudge theory offers a useful lens through which to examine decision-making in organizations, including decisions related to family and medical leave of absence policy. There are also challenges to nudge theory and the theories and traditions that influenced its development—traditional economic theory, behavioral economics, and law and economics. The review of the literature further showed that despite calls for mandated federal paid leave or extended leave time under the FMLA, these initiatives

have not yet been implemented, and only a handful of states and local governments have gone beyond the minimum required by the FMLA, which is 12 weeks of unpaid, job-protected leave.

To explore how these themes play out in nonprofit arts organizations, I studied the perceptions of HR professionals or those who make decisions relating to family and medical leaves about the influence of the FMLA on their organizations' ability to meet their mission. In analyzing the data collected, I examined two categories of organizations—those with 50 or more employees that are thus subject to the FMLA and those with less than 50 employees and thus not subject to the FMLA but might have employee leave of absence policies that offer FMLA-style leave or even go beyond what is mandated under the FMLA. Studying these small nonprofit organizations allowed for exploration of the effect of employee leaves of absence for family and medical reasons as experienced by smaller nonprofit arts organizations not subject to the FMLA. I compared these experiences and used nudge theory to analyze organization decision-making relative to addressing family and medical leaves of absence. I also gathered information indicating whether these organizations could be influenced by government entities' nudges to offer paid leave.

In summary, this chapter provided a review of the literature on key elements of the study, including regulation of nonprofit organizations related to employment including the FMLA, paid leave initiatives and existing laws at the federal, state, and local level, unique challenges for nonprofit arts organizations, and strategic HR management. Chapter 2 additionally summarized the history, basic tenets, and application

to law and public policy of nudge theory. The following chapter explains the research method and design used in this study.

Chapter 3: Research Method

Introduction

My purpose in this study was to understand the influence of the FMLA on a nonprofit organization's ability to meet its mission as perceived by the organizations' HR professionals or those responsible for HR functions in the organization. To explore these perceptions, I conducted a qualitative explanatory case study of multiple cases. The organizations studied were nonprofit arts organizations in a midwestern MSA that were either subject to the FMLA (FMLA group) or not subject to the FMLA (non-FMLA group). Nonprofit organizations are generally subject to the FMLA if they have 50 or more employees, thus, the FMLA Group included organizations with 50 or more employees and those in the Non-FMLA Group had less than 50 employees in a 75-mile radius. For the FMLA Group, I examined family and medical leave policy implementation and decision-making processes regarding FMLA compliance. For the non-FMLA group, I examined the decision-making process relative to offering FMLA-style leave to their employees even though they were not mandated to do so. FMLA-style leave would be any offerings of unpaid, job-protected leave up to the 12 weeks an FMLA-eligible employee would receive. I also studied how these HR professionals or organizational leaders implemented those organizational policies and what influenced the organization's decision whether to offer paid leave rather than only unpaid leave.

I collected data through interviews of those employees conducting HR functions for the organization to gain insights on the influence of the FMLA on each organization's ability to meet its mission. This was based on the perception of the participants

interviewed. I also conducted a document review of internal organizational policies and procedures, including employee handbooks, related to the organization's FMLA compliance or other general, non-FMLA, family and medical leave policy. In this chapter, I describe the research design and methodology used, the rationale for conducting a case study, and the collection and analysis of data. In this chapter, I also discuss my role as a participant-observer and as the research instrument. The chapter concludes with analysis of the relevant ethical considerations for the study.

Research Question

How do those responsible for HR functions in midwestern metropolitan nonprofit arts organizations perceive the influence the FMLA has had on the organization's ability to meet its mission?

Research Design and Rationale

Understanding the influence on nonprofit arts organizations of family and medical leaves of absence and the FMLA regulatory framework can aid policymakers in determining how to potentially expand family and medical leave mandates. This could include requiring paid leave or expanding the duration of unpaid leave required under state or federal law. Policymakers could also benefit from understanding the ramifications of family and medical leave policy implementation and what might prompt nonprofit employers to offer unpaid or paid leave beyond legal mandates. To explore and understand how leave of absence policy implementation influences the organization, I used a qualitative research design. HR professionals or those conducting the organization's HR functions was the focus of my research. I chose a qualitative approach

for this study to explore the lived experiences of those making implementation decisions and those administering family and medical leaves of absence in nonprofit arts organizations.

Multiple reasons exist regarding why a qualitative design was appropriate for this study. First, qualitative research is especially appropriate for studying processes and it allows a researcher to understand how processes work and the varying experiences of participants in the process (Patton, 2015). The processes to be studied included the decision-making processes used in establishing family and medical leave policies and procedures, decision-making in administering FMLA leave, and for non-FMLA organizations, deciding whether to offer family and medical leave at all and if so, whether it should be paid leave. Non-FMLA organizations additionally made decisions with respect to individual employees requesting family and medical leave.

Second, a qualitative design was an appropriate fit for exploring a topic like this that has limited coverage in the literature (Patton, 2015). Qualitative, inductive analysis allows the researcher to discover patterns and themes in the data particularly in contexts where there is little to no previous research (Patton, 2015). In qualitative studies, these themes are still explored within a theoretical framework, and can later be used to generate formal hypotheses for a deductive analysis (Patton, 2015). Through this study, I obtained data on the FMLA and family and medical leave policy implementation in a new way—through the lens of nudge theory—that allowed for patterns to emerge (Yin, 2014). I found no studies in the literature that applied behavioral economics or nudge theory to

FMLA policy implementation; thus, qualitative inquiry was especially useful due to its inductive nature.

To adequately understand the perspectives of nonprofit HR professionals on family and medical leave decision making, I selected the case study research tradition. Like qualitative research design generally, case studies are useful for exploring and analyzing decision-making processes (Yin, 2014). Case studies additionally aid a researcher in understanding the participants' experience of a process or phenomenon, here, leave administration and compliance with the FMLA (Creswell, 2017). This strategy of inquiry provided the best tool to explore in-depth the process or phenomenon of complying with the FMLA by an organization within a given space/time boundary (Creswell, 2017). The case study tradition allowed me to better understand nonprofit HR professionals' experience of administering and adhering to the FMLA as well as the associated influence of the FMLA on their organization, allowing for themes to emerge from the data I collected (Patton, 2015).

Case studies allow a researcher to examine a variety of evidence, including documents and interviews (Yin, 2014). This is a strength of case studies that allows the researcher to go beyond what can be obtained from using the history method (Yin, 2014). Using a multiple case study approach makes the study arguably more compelling and more robust than a single-case design (Yin, 2014). Using a multiple-case study design also allows for case comparisons. Because I had participants from organizations in both groups (FMLA and non-FMLA) agree to participate in the study, I was able to compare how organizations in each group addressed family and medical leave policy

implementation within their organization. This design also allowed for comparison of organizations within the same group. Case comparisons can provide rich data for determining commonalities and differences between these two categories of organizations (Patton, 2015). Case comparisons enabled me to examine what factors influence whether a nonprofit organization offers paid leave or only unpaid leave, as well as whether they decide to offer employees FMLA-style leave even if the organization is not technically subject to the FMLA.

Once a researcher has decided to use a case study, other design elements must be considered. One is what type of case study should be used, namely whether an explanatory (or causal), exploratory, or descriptive case study would be appropriate (Yin, 2014). For answering a research question framed as a “how” or “why” question, as in this study, an explanatory case study is the preferred method (Yin, 2014). Additional elements include the unit of analysis and whether to use only one case or multiple cases (Yin, 2014).

Explanatory case studies can be used to help explain how or why a current social phenomenon works and to enhance knowledge of an organizational phenomenon (Yin, 2014). Case study research is particularly helpful for examining issues in public administration (Agranoff & Radin, 1991). Multiple case studies can provide richer data even from just two cases than from other research methods (Yin, 2014). Studying a small number of organizations allowed me to delve into the cases in a deeper way to obtain a more detailed understanding of the organizations’ response to the phenomena of decision-making about leave of absence offerings and legal compliance. Using multiple

cases allowed for me to compare between the two sizes of organizations (50-plus employees and fewer than 50 employees). Focusing on HR professionals' perspectives provided insights into the effect of leaves of absence and the FMLA on organizations and bounded the case regarding legal compliance processes and decision-making relative to leaves of absence.

I considered phenomenology as an alternate tradition for this study because through it a researcher can gain a better understanding of a participant's lived experiences (Patton, 2015). Phenomenology focuses on participants' descriptions of what they experience and how they experience it (Patton, 2015). This approach can also be effective when a theory is not as developed in the literature (Patton, 2015). A phenomenological approach could involve interviewing participants about personal experiences regarding FMLA compliance over a defined period. Themes could emerge from the data about nonprofit HR professionals' experience of FMLA compliance and the overall influence of the regulations on the organization. I concluded a phenomenological approach would not be a better fit than case study for answering this study's research question because the study focused on ongoing decision making and compliance.

In addition, a grounded theory tradition was briefly considered because the research question being explored involve studying a process (i.e., administering and complying with the FMLA). Grounded theory enables a researcher to explore a process for which incomplete theories exist (Creswell, 2017). Grounded theory thus allows for building theory versus testing theory (Patton, 2015). A grounded theory approach would have been appropriate for the study if an undeveloped or underdeveloped theory was

applied to understand a nonprofit organization's compliance process. After analyzing the pros and cons of the various qualitative research traditions, I concluded that exploring multiple, bounded cases—nonprofit arts organizations in a midwestern MSA with respect to their FMLA compliance and implementation of family and medical leave policy—would best align with the research question and my purpose in the study.

Role of the Researcher

As is expected with a qualitative case study, I was the research instrument, collecting data directly (Apori-Nkansah, 2008; Creswell, 2017). In this study, I operated as an observer-participant and collected the data by interviewing the participants and reviewing the organization's internal documents. I had no personal relationships with the nonprofit arts organization HR professionals or executives that I interviewed. If the question arose about my professional affiliations, I disclosed that I am a licensed, non-practicing attorney, but it was clear that I was not operating as an attorney while conducting the interviews, but rather as a doctoral candidate. I also disclosed if prompted that I have previously administered the FMLA for a for-profit organization. In sum, researchers must remain neutral to avoid being influenced by previous experiences or participation in processes related to the study (Patton, 2015). I maintained this neutral mindset throughout data collection and analysis.

I conducted this study in a content area where I have previous professional experience working in HR and administering the FMLA in the for-profit sector. This had the potential for bias because of my past experiences as an HR professional who has experienced the challenges of administering the FMLA. I additionally have volunteered

or worked with three nonprofit organizations in the city in which I conducted the study as a member of the Board of Directors, a member of the volunteer Executive Management team, and as an outside consultant, respectively. None of these organizations were arts-related nonprofit organizations. Overall, I addressed any potential bias or potential conflict of interests through a variety of means, including drafting objective questions, obtaining a subject matter expert review to test my interview protocol, following that interview protocol for every interview, and taking care not to allow my previous FMLA or nonprofit experience influence the way I conducted the interview. Participation in the study was completely voluntary and information and documents received from participants were kept confidential as well. Study participants could cease participating at any time. The organizations will remain anonymous in any summary or write-up of this study, including in Chapters 4 and 5 of this dissertation. In analyzing and presenting the data, I let the data speak for itself and presented it in an objective manner as to the themes that emerged.

Methodology

Participant Selection Logic

The midwestern MSA where I conducted my study was chosen because it is a large metropolitan area with a thriving arts community containing various sizes of nonprofit arts organizations. I refer to this geographic area as the “midwestern MSA” in this dissertation and it is comprised of one metropolitan city and 11 surrounding counties.

To recruit participants from arts organizations for the participant population, I partnered with an Arts Council (AC) for this midwestern MSA. The AC agreed to

participate in the study as a research partner aiding in participant recruitment and signed a Letter of Cooperation. This AC used its database of arts administrators as an e-mail distribution list and the AC personnel sent an e-mail to all members in its database with the details of the study and an invitation to contact me directly if the participant or someone at his or her organization wished to participate in the study. This e-mail contained pre-approved language by Walden IRB.

Before scheduling interviews with interested participants, I ensured that each organization for which the interested participant worked was a “Category A” nonprofit organization per the NCCS (i.e., having the National Taxonomy of Exempt Entities [NTEE] code of *Category A – Arts, Culture and Humanities*). I additionally ensured that study participants were located in the midwestern MSA as defined in Chapter 1. Using the NCCS website, I used the “Search Active Organizations” form to find all organizations falling within the above definition. To obtain accurate results based on the MSA parameters and the way the NCCS search form is structured, I completed this form separately for each county in the midwestern MSA to verify the organizations fell within the scope of the study.

Participant Selection Criteria

The participant populations for this study were based on clearly defined, objective criteria: Arts Council (AC) member organizations, that are nonprofit organizations in the chosen MSA having an NTEE Code of “A” and at least one employee as reported on the organization’s most recent Form 990. I requested as part of my Interview Protocol (Appendix A) the organization’s employee count from the interviewee based on the

number of employees meeting the definition of “employee” per the FMLA statutory language and these varied from three employees to 200 employees for the study participants’ organizations.

Sampling Strategy Decisions

In qualitative research, the researcher should employ the sampling approach that flows from and supports the research questions being asked (Patton, 2015). By being purposeful in sampling strategy, the researcher can select cases that align with the study’s purpose, the research question, and the data being collected (Patton, 2015). Purposeful sampling is the primary sampling approach used in qualitative research (Patton, 2015). Purposeful sampling entails using a relatively small sample from which to gain information-rich cases that can be studied in an in-depth manner (Patton, 2015). This approach contrasts greatly with quantitative research which seeks to use large, random samples from which generalizations can be made and statistical probabilities applied (Patton, 2015). When using purposeful sampling in a case study, the researcher creates a pool of participants knowledgeable about the particular process or phenomenon being studied (Apori-Nkansah, 2008).

Patton (2015) has identified 40 purposeful sampling options divided among eight broader categories. I chose the category of “Instrumental-use multiple-case sampling” for this study because this category of sampling approaches involves selecting multiple cases of a phenomenon from which the researcher can generate generalizable finding that can inform policymakers and changes in practices, programs, and policies (Patton, 2015, p. 270). Instrumental case studies go beyond the case to generate findings that can be used

by both policymakers and practitioners for evidence-based decision-making (Stake, 2006).

Within the instrumental-use multiple-case sampling category, I selected utilization-focused sampling as a specific sampling strategy. This strategy involves using a set of cases concerning an issue about which I can delve with sufficient depth and detail to conclude what key factors can then credibly inform future decision-making (Patton, 2015). My overall findings can be used to generate conclusions about the key factors involved in family and medical leave decision-making and policy implementation that can inform policymakers' decisions as to unpaid and paid family and medical leave policy.

There are no set rules regarding sample sizes to be used in qualitative studies (Patton, 2015). Relevant factors include limited time and scarce resources, and the researcher must not think that "bigger is better" (Patton, 2015). As noted previously, a key benefit of qualitative research is obtaining valuable information from a relatively small sample (Patton, 2015). Large samples are not required since qualitative research does not have as its primary purpose to make generalizations about the data (Patton, 2015; Miles, Huberman & Saldana, 2014). To the contrary, selecting too large a sample can negatively affect a researcher's ability to interview information-rich sources of information or could even inhibit the researcher's effectiveness as the research instrument (Patton, 2015). The smallest sample size I originally had proposed for this study was ten organizations which could be a mix from each participant population group (FMLA and non-FMLA). The number of participants for each group was capped once saturation is

reached in that group. Saturation would be reached at a point before I had interviewed someone responsible for HR functions from each of the nonprofit arts organizations in the AC's database who volunteered to participate, but after a point where I had a redundancy of responses occurring with respect to the majority of the interview questions.

In sum, my research question, as well as the purpose and rationale for the study drove the sample size used (Patton, 2015). The sample size addressed the study's purpose and rationale and allowed discovery of rich data from a narrow and focused number of participants, while also allowing for patterns and themes to emerge. The next sub-section describes the procedures for identifying and recruiting study participants.

Procedures for Identifying and Recruiting Participants

After I obtained Walden IRB approval, an AC staff member sent a recruitment e-mail with the language pre-approved by the IRB. This e-mail explained the research study and what participation entailed. This e-mail directed interested parties to contact me directly by e-mail. Individuals who voluntarily agreed to participate were noted and their e-mails were acknowledged by return e-mail. Since I did not receive the minimum number of 10 participants as a result of this initial e-mail, the same AC staff member sent the follow-up request e-mail with pre-approved IRB language 14 days after the initial e-mail. Because I did not obtain the database participant list from the AC, no follow-up phone calls were made as originally proposed. Once these follow-up measures were exhausted, I planned to deem the final participant pool as those organizations that had agreed to voluntarily participate, but since I only had six participants agree to participate

from these two e-mails snowball sampling was employed as it has been approved by the IRB. From this pool, I had planned to randomly generate a list of organizations to interview using Research Randomizer, www.randomizer.org, but this was not necessary because all participants who expressed interest were interviewed as part of the study since I obtained nine, not the originally intended minimum ten participants.

In the initial and follow-up emails sent by the Arts Council to its database, an explicit request was included that the e-mail be forwarded to the individual responsible for administering employee leaves of absence or the FMLA at the organization. This was expected to be an HR generalist or perhaps an HR specialist at the larger organizations (e.g., 200-plus employees), or for smaller organizations, especially those having less than 50 employees, it was expected to be the head of finance or head of operations who oversees HR functions for the organization. The key to identifying the correct interviewee at a given organization was based on job functions, not the individual's job title. Job titles for the study participants are included in Table 1 in Chapter 4. The correct interviewee ended up being the CEO at four of the Non-FMLA organizations and the Vice President at the fifth Non-FMLA organization. Participants employed at the FMLA organizations were all in the HR department, which confirmed my expectations. Explicitly requesting that the e-mail be forwarded to the person responsible for administering leaves of absence or the FMLA worked well and connected me with the correct individual from each organization from the start.

After the appropriate individual was identified at each of the organizations, I sent the participant a copy of the Informed Consent form along with proposed time slots for

scheduling the interview and e-mails exchanges allowed for scheduling interviews with each participant who agreed to proceed with the study. All individuals who had expressed interest in the study did proceed with an interview. I collected signed Informed Consent forms either via e-mail or in-person at the time of the interview.

Instrumentation

Interview Protocol

I developed the Interview Protocol (Appendix A) to use in this study as a guidepost for my data collection in the interviews. The basis of this protocol comes from the literature assessing key factors involved in compliance with the FMLA, strategic HR management, nonprofit organization management, and nudge theory. The Interview Protocol was developed in a way that sought to ensure relevant themes were captured regardless of the size of the participant organization interviewed.

Data obtained from the interviews aided in understanding what factors are taken into consideration by the Non-FMLA organizations in deciding whether to offer FMLA-style leave. For both groups, I explored how decisions about family and medical leaves of absence are made and how these decisions affect key aspects of the organization relating to its ability to meet its mission, such as staffing, programming, day-to-day operations, and board dynamics. These questions were framed in terms of the perceptions of the participants being interviewed and their interactions with leave policy implementation.

The Interview Protocol (Appendix A) contained a question set of open-ended questions responsive to the study's research question and theoretical framework. The protocol contained different levels of questions as summarized by Yin (2014) as Level 1

questions, and opened with questions confirming the interviewee's job title, length of time with the organization, job functions, and individual experience with administering the FMLA or other organizational leave policy. The last question asked of each interviewee was an open-ended question asking if they had anything else they would like to add or that they had thought of during the interview.

Documentation Review

I requested each participant to provide me an electronic or hard copy of the FMLA policy or other family and medical leave-related policies and procedures for the organization. These documents were often contained in an employee handbook and were reviewed and coded for common themes and elements found in organizations' family and medical leave policies and procedures pursuant to my Preliminary Coding Framework (Appendix C) and emerging codes as outlined in Chapter 4. I reviewed the details of any paid or unpaid leaves of absence offered, which as addressed in Chapter 2, does not constitute mere paid time off or sick days, but more extended leaves of absence for unexpected occurrences or conditions. I also identified how many weeks of leave are available to employees and the qualifying reasons or events for which employees can receive approved leave time. Additionally, how an employee requests leave, who in the organization administers the leaves of absence, and who makes the final determination approving or denying a leave of absence were details collected from both the interviews and the document review.

Procedures for Subject Matter Expert Review

Because I created the interview protocol rather than using a published data collection instrument, I obtained a subject matter expert (SME) review of the interview protocol. The SME review was conducted by a senior HR professional in a 300-employee nonprofit organization in the midwestern MSA that is not arts and humanities-related.

I requested by e-mail that the SME review my interview protocol and provide me with written feedback regarding the protocol. I solicited feedback specifically as to the strengths and weaknesses of the interview protocol as a data collection tool to be used in interviewing HR professionals at nonprofit arts organizations. If the SME had requested it, I would have had a face-to-face meeting regarding his review and feedback about the protocol. He instead requested that we go over the protocol by phone and he provided me with feedback on each question on the phone as I took written notes.

I reviewed his feedback and made improvements to the question set and interviewer prompts before using them in the study. Overall, obtaining the SME's feedback afforded the opportunity to test out the interview protocol and question set before using it with actual study participants.

Procedures for Data Collection

For this study, I originally proposed obtaining qualitative data from ten participants using the Interview Protocol (Appendix A) as adjusted pursuant to the SME's feedback. As previously indicated, potential interview participants were invited via an e-mail that explained the purpose of the study using the mailing list from the AC's nonprofit arts organization database of e-mail addresses. A second round of e-mail

reminders was sent by the AC and one change in procedures was requested of IRB to obtain approval for e-mailing directly individuals who were HR professionals or those likely to administer leaves of absence at nonprofit arts organizations fitting into my defined participant pool. These additional recruitment e-mails did not result in any additional participants, and I thus concluded my participant recruitment stage with nine participants.

Interviews

I had originally proposed that interviews be conducted at the participant's work location, but Walden IRB approved that I propose an off-site public library meeting room for the interviews. I anticipated that time preferences would be varied and I was flexible in being able to schedule interviews during business hours on multiple weekdays. Participants were told that interviews would last approximately 60 minutes that they were free to stop participating in the interview at any time. I also indicated that the interviews would be recorded electronically. Recording the interviews allowed me to take notes during the interview and allowed for transcription after the interviews. I used a recording application on my iPhone and then uploaded audio files to the TranscribeMe! service. Interview transcripts were delivered via e-mail to my Walden password-protected e-mail account.

Member checking was conducted by providing a copy of the transcribed interview to the participant. I requested agreement regarding their responses (Patton, 2015). I had proposed that if responses appeared to be extreme outliers, for instance, I might ask additional questions or make phone or e-mail contact of participants after the initial

interview. Participants were made aware at the time of their initial interview per the Interview Protocol (Appendix A) of this potentiality; however, no follow-up contacts were necessary to obtain additional information.

Data Analysis Plan

Two forms of data were collected in the research phase—interview responses from in-person interviews and details from my review of the internal HR policy documents related to family and medical leaves. The documents allowed for comparison of family and medical leave policy aspects among the study participants and to the responses from the in-person interviews. There is only one research question for the study, thus the interview questions all tied to that question and to the theoretical framework for the study. The organizational documents and interview transcripts were coded first using the Preliminary Coding Framework included in Appendix C. As advocated by Patton (2015), I used both hand coding and NVivo software to code and analyze data, utilizing the Preliminary Coding Framework and several emerging codes that arose as I coded the data. I planned to identify any discrepant cases using an inductive analysis approach (Patton, 2015), however, most data were consistent across all participants. After I reviewed and coded the data using an iterative process, I determined what patterns emerged from the coded data. My findings are detailed in Chapter 4.

Trustworthiness

Credibility

The concept of credibility in qualitative research is focused on ensuring integrity of the researcher's findings when the analysis is so dependent on the researcher's

judgment (Patton, 2015). As Patton (2015) emphasizes, “astute pattern recognition” and being open to where the data leads, along with allowing for unexpected patterns throughout the research process helps to enhance the credibility of the analysis, and therefore, the findings (p. 653). One strategy a researcher can use is generating alternative logical conclusions and assessing their viability to deepen the level of data analysis (Patton, 2015). Researchers can also identify negative cases that are outliers from the emerged patterns to further tease out or test the boundaries of the patterns identified in the data (Patton, 2015). A researcher can continuously reexamine the findings and work to validate the findings against the data (Patton, 2015).

Researcher bias and conflicts of interest can also affect credibility in qualitative research. As the research instrument in a qualitative study, I identified before beginning the data collection process any potential bias or subjectivity I might apply or insert into data collection, data analysis, or data interpretation (Creswell, 2017; Apori-Nkansah, 2008). I have practiced law as a licensed attorney and have worked as an HR benefits specialist in the target market for the study. I have also conducted some consulting work for nonprofit organizations and have served on nonprofit boards in two different midwestern cities. Being aware of how these past experiences could affect data collection, as well as data interpretation because of pre-conceptions or biases, I guarded against these compromising the study in various ways. I sought to minimize any potential bias by using credibility techniques such as heightened self-awareness, triangulation, using rich, thick description, systematically analyzing the data by searching for alternative conclusions and negative cases, and keeping my analysis connected to the

research purpose and design (Creswell & Poth, 2017; Patton, 2015). I consciously approached the interviews using an open mind and apply a mindset of “being in discovery” about the participants’ lived experiences, without having pre-conceived notions about those experiences. Using member-checking additionally strengthened the credibility of study data obtained through interviews.

Transferability

Limitations can exist in how study findings can be applied to a broader population. These limitations include more general applicability of findings potentially being impaired by cultural differences in the nonprofit arts organizations in various geographical locations. Differences in the size of other organizations could negate transferability of the findings. Also, the findings will not necessarily be applicable to countries outside the U.S. Applying findings from this study could be most useful in comparable-sized U.S. cities with comparable sizes of nonprofit arts organizations. This study could also be replicated in similar-sized metropolitan areas applying it to similar-sized nonprofit organizations in a different sector, e.g., youth services, human services, or social advocacy organizations.

Dependability

In qualitative studies, triangulation can also be used to enhance dependability (Patton, 2015). One triangulation method is to ascertain the level of consistency among different responses from interviewees (Patton, 2015). This does not mean to demonstrate that interviewees are saying essentially the same thing, but to test for consistency (Patton, 2015). Triangulation was also applied by comparing interviewees’ responses against the

family and medical leave policy documents the organizations provided. Again, the point of this is to understand and note whether any differences between the documents and the responses occurred, and this does not necessarily invalidate the data (Patton, 2015). As with credibility, member-checking strengthened the dependability of data obtained from interviewees.

Confirmability

Reflexivity is an important aspect affecting trustworthiness of a researcher's findings. Reflexivity has been described as encompassing deep introspection, an awareness of the context in which fieldwork and data analysis is conducted, and overall mindfulness and self-awareness about one's relationship to the collection, analysis, and interpretation of data obtained through qualitative research (Patton, 2015). A triangulated inquiry is helpful in enhancing confirmability, as with dependability and credibility. Triangulation in this sense involves reflecting upon and questioning how the participants, the researcher herself, and the audience know what they know, make sense of the world around them and form their worldview, and how all parties perceive the others (Patton, 2015).

Ethical Considerations

As a licensed attorney, I considered any professional responsibility obligations I would have to meet through this process. Because I was not entering into an attorney-client relationship with the interview participants, the rules of professional responsibility to which I am bound as an attorney did not apply to my interactions and collection of data from study participants. Participants willingly signed Informed Consent forms before

their interviews. Confidentiality was maintained throughout the data collection and analysis process. I used my password-protected personal laptop to complete data entry in NVivo and to review interview transcripts. I used my password-protected iPhone for recording the interviews. Additionally, if participants had any concerns regarding their participation, including any ethical or confidentiality concerns, they were able to withdraw from the study at any time.

The Walden IRB approved of the Informed Consent form that I used in the study, and there were no vulnerable populations involved in this study. There were no other Institutional Review Boards that needed to give approval for the study. I did not conduct this study within my own work environment, nor did I have any conflicts of interest with study participants. No monetary incentives were given to participants in exchange for participation in the study.

Summary

Nonprofit organizations face challenges when they have limited resources available but their leadership must still ensure the organization stays current and compliant with all applicable employment laws, including the FMLA. Because nonprofit organizations are often operating without an HR specialist on staff and with a limited staff, the organization can face potential disruptions if an employee takes FMLA leave. Arts organizations especially can be challenged by ever-dwindling resources and uncertainty regarding support from the federal government.

Chapter 4: Results

Introduction

Examining the influence of the FMLA on nonprofit arts organizations provided a useful framework in which to examine employment law policy implementation. Using the lens of nudge theory added perspective on how data from the government might influence organizational decision makers relative to family and medical leave of absence offerings for their employees. The following research question guided the data collection and analysis in this study: How do those responsible for HR functions in midwestern metropolitan nonprofit arts organizations perceive the influence the FMLA has had on the organization's ability to meet its mission?

Through interviews and review of organizational documents such as family and medical leave policies and employee handbooks, I examined how HR professionals and leaders in nonprofit arts organizations in the chosen midwestern MSA perceive the FMLA and family and medical leaves of absence have influenced their organizations. In this chapter, I provide a description of a subject matter expert's review of my interview protocol, data collection activities, and analysis of the data collected. I also outline evidence of trustworthiness and conclude with a summary of the study results.

Subject Matter Expert Review

Because I developed the interview protocol rather than using a published, tested data collection instrument, I used a subject matter expert (SME) review. The SME reviewer was an HR senior executive for a 300-employee nonprofit organization that is in a different sector than arts, humanities, and culture. He provided feedback regarding the

effectiveness and appropriateness of the interview protocol. I chose to speak with an HR executive at this type of organization because I wanted an HR professional with experience with the FMLA at a large organization, but who could offer a more general perspective than solely an arts-focused perspective. In addition, I wanted solely an SME review and not an interview to obtain data. I purposefully chose an organization that fell outside the defined participant pool for the study and any data the SME provided in response to my questions was not included in the study findings.

The SME's feedback addressed two questions where I could ask the question in a less-confusing way and one question where I should ask the question a different way when a smaller organization not subject to the FMLA was involved. I tweaked these questions based on the SME's feedback. I had completed this SME review before submitting my Walden IRB application; thus, the revised final version of the interview protocol was what was submitted to the Walden IRB for consideration and was approved (Approval Number 01-04-18-0308524). Overall, the SME review was a useful exercise to test my interview protocol.

Setting

Participants interviewed were from nonprofit arts organizations meeting the study's defined participant pool—members of the metropolitan area's Arts Council (AC) who were nonprofit organizations in the chosen MSA having an NTEE Code of "A" (Arts, Culture, and Humanities) and at least one employee as reported on the organization's most recent Form 990. There were no known personal or organizational

conditions that influenced participants or their experience at the time of the study that would thus influence my interpretation of study results.

I distributed invitations to participate in the study exclusively via e-mail and often e-mails were not returned. Only six participants responded to these e-mails to express their desire to participate and only five other potential participants e-mailed back to decline. The other potential participants who received the study invitation did not respond at all. Despite this challenge, I obtained nine participants and saturation in a majority of the responses was achieved, particularly with respect to the overarching research question for the study.

Demographics

All participants were HR professionals or executives at nonprofit arts organizations designated with an NTEE Code A (Arts, Culture and Humanities) located in the midwestern MSA with at least one employee. It was interesting to note that all participants were female. I asked demographic questions regarding the participants' job title and years with their organization at the beginning of each interview. A summary of the participants' current job titles and total years with their current organization is represented in Table 1:

Table 1

Participant Demographic Information

Demographic information	Compiled responses
Job title	
CEO	4
Vice president	1
Senior director HR	1
Director of employee development	1
Assistant director HR	1
Benefits specialist	1
Range of participants' years in current - position	4 to 17
<u>Average years in current position</u>	<u>9.4</u>

Note. CEO = chief executive officer.

Data Collection

Walden IRB approval was obtained on January 3, 2018 (Approval Number 01-04-18-0308524). On January 24, 2018, an AC staff member sent out an e-mail to the AC's database of nonprofit arts organization employees using Walden IRB-approved language inviting them to participate in the study and providing information regarding the purpose of the study. A response deadline of February 5, 2018, was given. Pursuant to my IRB application, a follow-up e-mail was sent by the AC staff member on February 7. Six of the eventual nine participants e-mailed me in response to these recruitment e-mails sent by the AC. I received responses from two potential participants declining participation because they believed an FMLA study did not apply to them because they were too small.

I offered a brief explanation via e-mail as to why any size organization could be influenced by family and medical leaves of absence, and thus would provide important information relevant to the study, but I did not receive any additional response from these individuals.

Lack of participation prompted the need to add an additional recruitment activity to attempt to obtain additional participants. I submitted a change in procedures request on March 21, 2018 and approved by Walden IRB on March 30, 2018. This change in procedure entailed me directly e-mailing HR professionals at nonprofit arts organizations meeting the study's participant pool definition if they had publicly available e-mail addresses. I obtained several e-mail addresses for HR professionals on arts organizations' websites that fit within the study parameters. Using IRB-approved language, I e-mailed invitations to 28 additional potential participants and received e-mails back from only three who declined to participate. To reach what proved to be a final count of nine participants, I obtained an additional three participants from snowball sampling whereby I contacted peers identified by participants after they had completed their interviews.

All interviews were completed between February 2018 and May 2018, with a total of nine participants interviewed. Five of the interviews were conducted in-person, and although the recruitment e-mail and informed consent form indicated that interviews could be held at a public library meeting room, these five participants requested to hold the interviews at their respective arts organizations. The remaining four interviews were conducted by phone due to scheduling needs of the participants and my work travel.

Participants' job titles are noted in Table 1. The five participants from the non-FMLA organizations were not solely operating as HR professionals for their organizations. Despite having a multitude of responsibilities, they each were able to respond to all interview questions and provided detailed information as to HR-related aspects of their respective organizations. As is evident in Table 1, the other four participants were all dedicated HR professionals in some capacity. These participants worked for FMLA-subject organizations with headcounts ranging from 70 to 200 employees.

All interviews lasted between 30 to 60 minutes and were recorded using my finger-printed enabled, locked smart phone. No problematic circumstances occurred during the interviews and only a small challenge arose when I was unable to connect for 10 minutes with one of the telephone interviewees. We were, however, able to connect and complete the interview at that time. I uploaded recordings to TranscribeMe! and obtained transcripts within 2 days. I reviewed all resulting transcripts while listening to the actual recordings to ensure accuracy of transcripts. I additionally made written notes of key terms, phrases, and consistent concepts that began to emerge as I reviewed and ensured the accuracy of the transcripts. I had verified with participants at the end of each interview if it was acceptable to e-mail the transcript for their review. Member-checking was used by requesting participants to review their transcript for accuracy of responses.

Data Analysis

After I had reviewed and verified my first two transcripts, I uploaded them to NVivo for coding. I started with creating initial parent nodes in NVivo by using terms

from my Preliminary Coding Framework (Appendix C). I then used various terms from my literature review to establish child nodes, particularly those relating to strategic HR management (SHRM), e.g., compensation/benefits planning, recruiting/retention, and training, and specific areas of potential effect on the organization's ability to meet its mission, including functions like fundraising, grant-writing, programming, and board relations. All interviewees were asked sub-questions about the effect of leaves of absence on each of these specific areas.

I then used a coding method presented by Bazeley and Jackson (2013) where researchers can use NVivo software to code data through a broad-brush or bucket coding. I identified from the data significant information relevant to the research question and theoretical framework. I first identified relevant information in the data and then assigned a somewhat broad word or phrase that best represented that information, ensuring it aligned with the research question. I devised a label for that information and created a node for it with a description of the node. I categorized nodes together based on similarities and most fit under one of the parent nodes I had already established. This bucket approach allowed me to go line-by-line through each transcript and identify the broad concepts to which the data related. Some of these fit under existing parent nodes and once I identified the more specific related concept, those became child nodes.

One example of significant information that appeared in every transcript was the various ways that organizations with unpaid leave of absence policies used to pay employees for their time off work for family and medical leaves. That concept fit within my preliminary framework parent node of *paid leaves of absence* and this parent node

became the code for all the ways participants had indicated employees at their organization could receive pay while out on family and medical leaves of absence, even though the organization did not have a paid leave policy (e.g., short-term disability or PTO/vacation days). Coding for significant information, and then seeing how those significant pieces of data were linked together helped me create broader categories illustrating the relationship among the data.

I additionally employed the process of explanation building as defined by Yin (2014) as identifying patterns to explain how and why something occurs. This approach led to another tweak to the preliminary framework that allowed for more effective use of the preliminary parent node *nonprofit arts organizations*. When making a first pass at coding the two initial transcripts, I discovered this node was not specific enough for coding since all participant data was actually related to nonprofit arts organizations. I therefore determined it could more effectively be used to help identify these patterns of how and why something occurs, as addressed by Yin (2014). Thus, the parent node was changed to *nonprofit organization management* as this better reflected the concepts emerging from the data related to the how and why of managing nonprofit organizations. One key example of a *how* was how organizations covered absences of those employees out on family or medical leave. I named this child node *covering absences* and put it under this new parent node *nonprofit organization management* because it addressed how nonprofit leaders managed their staff and ensured continuation of programming and any other tasks while an employee was out on leave. Additional emerging child nodes were

added as I coded all the transcripts, and tables are provided below in the Results section identifying key emerging codes.

Another preliminary framework code that was adjusted was the *FMLA* node. This node was originally intended to categorize those organizations subject to the FMLA and those not. I realized through the coding process that additional concepts fit here, including anecdotal data about past leaves of absence and reasons why employees had taken leaves of absence. Data was coded with the child node *anecdotes regarding past Leaves* when participants provided anecdotes about employees previously out on family and medical leaves or who had requested anticipated leave but not yet taken it at the time of the participant interview. Any examples indicating reasons for taking family and medical leaves were coded as *reasons for taking leave*, and primarily consisted of pregnancies. Additional examples are discussed in the next section. In sum, this parent *FMLA* node was used to categorize leave of absence anecdotes and reasons why employees take family and medical leaves, in addition to which organizations had paid family and medical leaves of absence and which were unpaid per the organizational policy.

Another way I developed nodes and analyzed data was related to the theoretical framework of the study, nudge theory. I had included two parent nodes related to nudge theory in the Preliminary Coding Framework—*nudge theory* and *decision-making*. For the first child nodes under these, I pulled relevant terms from my literature review with respect to nudge theory: *government nudging employers* and *choice architecture*. Codes such as *influence* and *inform* emerged from the data because participants indicated that

nudges from the government would either influence or merely inform their organization's decision-making on family and medical leave policy. I also drew from phrases I had used in the interview questions to establish child nodes related to decision-making, including *decision-makers, decision-making process, and factors used for decision-making.*

To build on this coding framework for nudge theory, I saw examples in the data of entities other than the government doing the nudging as I reviewed the transcripts and analyzed the data. From this, I explored expansion of the theorists' definition of who could nudge whom, which as Thaler and Sunstein (2008) have defined, is mainly limited to the government and policy-makers nudging constituents. This allowed for exploration of the various parties and directions where nudging could occur as to employment policy in nonprofit organizations. Examples of these broader contexts for nudges include employees nudging employers, employers nudging employees, and organizations nudging their boards. Specific examples and conclusions relating to this broader definition of nudging are covered below in the Results section.

While reviewing and coding the transcripts, I used an iterative process throughout, thus, once several codes had emerged from coding subsequent transcripts, I went back to re-code the initial transcripts to ensure I captured all relevant data related to these emerging nodes, such as *covering absences*. This allowed me to capture all the ways the organizations with unpaid family/medical leave had used to pay employees at anywhere from a 60% rate up to 100% during their leave. These included using compensatory time (comp time), paid time off (PTO), sick/vacation/personal days, and/or short-term disability pay (STD).

Throughout the coding process, I focused on maintaining consistency in creating codes and in assigning codes to the data. I reviewed coded transcripts a second time using both NVivo and hand coding and additionally reviewed the results under each node to identify themes and conclusions from the data. These themes and conclusions are summarized in the Results section below.

Evidence of Trustworthiness

Key aspects to demonstrating trustworthiness involve taking steps to insure the credibility, transferability, and dependability of a study. Credibility was maintained in various ways. One was by using a subject matter expert review of the Interview Protocol (Appendix A) to provide support for its use as a data collection tool. I additionally used the protocol consistently as a guide to ask questions of all participants in the same or similar manner as much as possible without interrupting the interview flow or exploration of topics broached by the participants. To minimize bias, I was conscious not to allow my past professional experiences to influence how I collected or analyzed data. I approached data collection and analysis with an open and flexible mindset in order to allow the data to speak for itself and to lead me to the themes and conclusions based on participant perspectives, not my own. One way I ensured the dependability of the data was by having interviews transcribed by TranscribeMe. I additionally reviewed each transcript while listening to the interview recordings to verify accuracy of transcripts. I sought to ensure confirmability through use of the TranscribeMe service, my additional comparison of transcripts against the recordings, and member-checking. Furthermore, I sought to

address trustworthiness by providing rationales for decisions I made throughout the proposal, data collection, and data analysis phases of the study.

Results

For purposes of reporting on my findings, I assigned a number (P1 through P9) to each participant and those are used in this section for participant-specific data or quotes. Results are presented here by nodes, including the nodes related to the study's theoretical framework. Data are presented sequentially based on the order in the Preliminary Coding Framework, including the change from Nonprofit Arts Organizations to Nonprofit Organization Management and the change of Leaves of Absence (General) to General Effect on Mission as indicated above. This order of nodes also represents the general flow of the Interview Protocol.

Nonprofit Organization Management

Nonprofit Organization Management had several underlying emerging codes as indicated in Table 2 that through my data analysis were grouped into categories based on common themes. These categories encompassed myriad ways in which the participants' nonprofit arts organizations do their work and meet their missions despite any challenges from having limited resources, a small staff, or from having a key employee out on family or medical leave. Emerging codes are indicated with an asterisk.

Table 2

Nonprofit Organization Management Categories

Category	Subcategory
Organizational culture	Supportive employee relations Passion for mission Innovative*
Strategies	Covering absences* Board members as SMEs* Board members stepping up* Whatever it takes approach*
Demographic-related issues	Longevity in position* It matters who is out on leave* Influence of small staff size
Issues specific to Arts/humanities organizations	Landlord function* Managing a historic building* Managing an art gallery* Statewide programming*

Note. *Indicates an emerging code. SMEs = subject matter experts.

Table 3

Coding Frequencies of Nonprofit Organization Management Themes

Codes & subcodes	Frequency	Number of participants
Supportive employee relations		
Flexibility	24	6
Right thing to do	13	5
Cultivating employee loyalty	6	4
Family atmosphere	11	5
Work/life balance	8	3
Passion for mission	9	5
Innovative	6	4
Covering absences	18	7
Board member as SMEs	4	4
Board members stepping up	3	3
Whatever it takes approach	4	2
Longevity	8	7
Who is out on leave matters	5	5
Effect of small staff sizes	18	5
Landlord function	2	2
Managing historic building	11	2
Managing art gallery	11	4

Note. SMEs = subject matter experts.

Organizational Culture

A consistent theme that arose among almost all the organizations was related to the organizational culture. All participants except one gave multiple responses indicating they perceive their organization as having a supportive, collaborative, and what was sometimes described even as a family-like organizational culture. The one outlier

response was more focused on an approach the participant described as “get it done whatever it takes” (Participant 1). This nonprofit leader expected employees to demonstrate their commitment and passion to the organization. The participant indicated that employees should not have an expectation of receiving extra time off or comp time each time they stay late for a board meeting or other event. She indicated that the organization did not have had a formal comp time policy so employees would not have this type of expectation. She stated: “no, you work for a nonprofit, calm down, you know. That’s not how it works” (Participant 1). This participant did not use words like family or supportive. She also shared her perception regarding time off through an anecdote about a negative experience with an employee who had come back from medical leave too early and disrupted the workplace more than if she had stayed out on leave. The study participant had to take the employee to the hospital multiple times. This participant further indicated the organization’s approach regarding employee commitment levels:

[w]e will pay more to get people that are committed and will do what they need to do because of their passion for what we do. We always, no matter what, and mostly it's come up when people have left when we have had to jump in and cover and we've done that every single time. It's important work. It's not curing cancer and we don't say that, but it's important that we get it done. And I think all nonprofits are that way, I assume.

A contrasting point was made by a participant from another organization who indicated that sometimes a nonprofit employee’s passion for the mission is not enough:

I'm painfully aware of the weakness in the sector of generally having a reputation for not paying well and crappy hours. There's just an expectation that your passion is going to carry you through and make lots of people want to do this work. I'm a believer that we need to be respectful of people working in this sector, and they should be as well-paid and well-supported as any. And our board has that philosophy, and that's part of the reason why I joined the organization myself, many years ago.

This type of supportive organizational culture was echoed by a participant of another small organization:

the COO ensures that we are complying with all of our policies and keeping the spirit of the organization, which, for me as the head of the organization, it's very important for me that people come first and that families come first.

This CEO emphasized being fair to everyone, not just those employees having children, and broadened this flexibility and support beyond family or medical leaves. She gave the example of an employee perhaps attending a concert in Colorado or having some other once-in-a-lifetime opportunity and said “I don't want anybody on our staff to miss out on something that they consider really important to them...because everyone works so incredibly hard here, excellent team” (Participant 9). She went on to say that:

[b]ecause we're a small nonprofit, we want the best people we can get and for me that is making sure they feel valued as human beings. And some folks don't have kids and are never going to

have kids, and so their lives still matter, even if they're not needing time out for kids. Maybe they're taking care of a parent or whatever. It's their lives, it's their business.

Another theme demonstrated by the data was that flexibility is a critical component of the organization's culture and is valued by nonprofit leaders and employees alike. For instance, one CEO described her response to an employee who has a child with a chronic illness:

You can be a mom. We're an organization who is going to let you drop things. It's great that you're at the doctor's office. Check your texts if you can. If you can't, that's fine, but know that you have a job that's flexible in that way.

When one of this organization's employees was off work for an entire month from only a 3-person staff, the CEO indicated

we were able to make it work and could provide some flexibility and just kind of checking in by cell phone ... we let them make that decision and how much they wanted to be involved still or not... In a perfect world, they would stay in touch. The rule is we text people if we need information right away, we email them if it's something that they can check sometime. But if they said to us that they can't, that's fine. I mean, we work a lot and we just want to be super flexible for understanding people's personal... we have evening programs and all kinds of stuff, so

we know that people put in more than their fair share, so we want it to work for their family situation.

One organization had an employee who was out for a long time due to a car accident which included a hospital stay and rehabilitation. The organization allowed her to ease back into the workplace and provided flexibility for her to work from home for part of that time. The CEO indicated the employee was single and that the organization wanted to help her avoid financial hardship, so they covered nearly her full salary the whole time she was on medical leave. The CEO stated “[w]e felt like it as the right thing to do, and she's been fantastic, loyal, and I think it certainly added to her positive experience of working here.” Another example where flexibility and a supportive environment went hand-in-hand was when an employee had premature twins. The CEO’s response in describing this situation was that although the organization had planned for her absence, when the premature delivery occurred, “flexibility is the name of the game, so we made sure she and her family were taken care of.”

Another way that an organization demonstrated a supportive and flexible environment was at a five-employee organization that does not have a formal leave of absence policy. Here, the CEO handles leaves of absence on a case-by-case basis among the five of them, with the CEO and the individual employee having a collaborative discussion to reach a decision. The CEO indicated that the ultimate decision-making was left with her and the individual requesting leave time. She summed up her approach as “I trust you're going to get your job done and we're going to give you the flexibility to do what you need to do in your personal life as well. And it works.”

A participant at a large organization indicated a supportive environment of employees' decision-making related to whether to return to the workforce after a maternity leave. The HR professional interviewed indicated that during the five and a half years she had been there, only one employee had chosen not to come back after exhausting her FMLA time and one employee came back for a short time and then left. The HR professional indicated that this is just "the cost of doing business" and that "being a parent is important and you can't fault anybody for making that choice. Ultimately, it's the best choice for them, so we just accept it and go on."

Other examples demonstrated that a supportive culture and passion for the organization's mission can provide personal fulfilment but also an outward-focused effect on the community. This was illustrated by these comments from participants:

P4: We've had people who have really been able to, I think, grow and prosper in this work. They've gotten graduate degrees. They've had babies. They've had accidents. They've done things that they come back, and they're better than ever and work really hard and are very passionate about what they do, and also feel very fulfilled and supported.

P4: Our talent's everything. I mean, when you have a really small team-- we have a big state to serve, and we have a big mission.

P3: We're always thinking about what does the community need, and how can we provide a cultural solution.

Another aspect that three organizations of varying sizes emphasized was their perception they are innovative and will strive to continue to be innovative in their

approach to nonprofit management and benefit offerings. This desire to be innovative has led two of the organizations to explore offering employees unlimited PTO. This would also affect the employees taking family and medical leaves that would thus be fully paid.

Covering Absences

A key area where nonprofit management and navigating leaves of absence intersect is with how to cover absences while an employee is out on family or medical leave. Several possibilities were highlighted by the participants, including using text messages to check in or ask questions related to the employee's role if the employee agreed to that, using interns, temporary contract workers or volunteers to cover the duties, and drawing from other staff members to fill in the gaps.

Challenges with covering absences were especially apparent from participants of nonprofits with 15 or less employees. One such organization leader indicated:

P1: Like all nonprofits each of our employees manages two or three key roles or positions, so any time one person is out you're missing really potentially two or three departments, so it is a huge issue. When one employee left the organization after being on long-term disability, the organization moved another employee into that role because it was a 'day-to-day have to be there, have to do type of role' and an intern was hired on a short-term basis to cover that employee's role.

Due to many nonprofit employees having multiple roles, this organization had not focused on cross-training employees on other department's roles. They were able to overcome this challenge in part due to the longevity of staff members. This study

participant stated “we have a lot of people on staff that have a lot of longevity that have been here a long time, so they know how everything works and it's not like things will fall apart if one person is gone.” She continued “we have so many people that have been here so long, that they can step in and not because they've been cross trained but just because ‘yeah, I know what happens, I've got it, it's fine.’”

Hiring a part-time or a full-time temporary contract employee was another approach used by the nonprofit organizations for whom study participants worked. As indicated by P2 regarding a female employee who was out after having a baby, “[w]e hired someone part-time to cover for her to keep her spot open when she came back, she's a valuable employee.” Participants working at organizations with exhibits or specialized positions addressed absences by hiring a contractor for specialized work. P8 indicated that in situations when an employee has been gone for the entire 12 weeks straight, the organization hired part-time help to cover for specialized positions e.g., graphic design work. She stated, “if we need to get things done, and someone's on FMLA. With specialized positions, we're going to hire contractually.” She further indicated that since her organization has a lot of specialized positions and exhibits, if someone from the exhibit staff is out on FMLA and they need someone to cover an exhibit, “we would have a conversation with the department head to figure out what we need and what can we do, what can we get by with. How can we manage this, if we can.” This HR professional also indicated that “we have a whole team of development people” and as to grant-writing:

[W]e have stop-gap measures, if we need to bring someone else in, and we have. I remember we brought in someone who used to be here before my

time to help out while [the grant-writer] was on [maternity] leave, like managing the day-to-day of deadlines with grants.

Those organizations that function as landlords or who need someone to be available to assist artists or sell art use various solutions to cover absences. P3 indicated her organization hires someone to come in to cover absences and provide presence for when visitors or artists need something. While these temporary workers cover the reception area, they are given blogs or postcards to write. P2 indicated that her organization would hire someone to cover any short-term gap for volunteer management, for example, or would contract someone to handle grant-writing. She did indicate that building maintenance would probably require the organization to hire a firm to come in and take over for the maintenance head if he were the one out on leave.

In dealing with having a small staff, other creative solutions mentioned were having staff members go to the organization's tenants, including artists or other tenants in the building to get IT help, for instance, or using a volunteer instead of hiring somebody to cover the reception desk. At another small organization, P4 indicated that scalable work allows for the organization to simply increase intern staff or not take on as many obligations if they know a key employee will be on leave for an extended period of time. This CEO shared that this works especially well with pregnancies because they can plan. This assumes that nothing happens to require a change in plans, i.e., premature delivery, which did occur with one employee at an organization with less than 10 employees.

Those organizations who do solicit outside help used board members and consultants to keep up with organizational tasks, as well as to aid with HR and legal

compliance. P8 indicated that her organization has a very active board that participates in the organization's annual fundraiser, including obtaining donors and sponsorships. A CEO of a 3-employee organization stated, "I also think the board would step up to help... I think if I was out, I think they'd rally." Another 3-person organization hired a company to help them create HR policies and another organization hired an outside consultant once to address its HR-related needs. P4 indicated that some of her organization's board members have experience with HR and legal compliance and P1 indicated that her organization has an HR professional on its board who is a great resource with whom she and the CEO consult when necessary.

Alternatively, P5, an HR professional from an organization with more than 100 employees, indicated a somewhat different approach from seeking outside help or contracting out tasks: "it's pretty much absorbed, either it doesn't get done while they're gone, or it's absorbed through other members of their respective department." This organization does not hire any outside people to come in and fill positions while employees are out on leave. Likewise, at a small organization with three employees, the participant summed up covering leaves of absence as, "we make do," and a nonprofit leader at an organization with less than 15 employees indicated her organization does "whatever it takes" to keep meeting the organization's mission:

mostly it's come up when people have left when we have had to jump in and cover and we've done that every single time. We would have found a way because that's what we do—nonprofits—that's what we do. I think overall we're really good at making sure things get done. We just get it

done no matter what it is, we will get it done and that's kind of our attitude and we make sure that people that come on board here have a 'whatever it takes' attitude.

Employment Regulation of Nonprofit Organizations

FMLA administration and compliance technically only applied to participants from organizations with 50 or more employees that are subject to the FMLA. Those organizations used the paperwork and medical documentation forms provided by the Wage and Hour Division of the Department of Labor, adhering to the 15-day window for employees to return their medical form to HR, for instance. HR professionals indicated they would also have a conversation with the employee to guide him or her through process and tell the employee whether he or she was qualified for FMLA leave. One HR professional indicated she might additionally provide formal notification using the DOL's notice form. One participant from an FMLA-covered organization indicated that they used FMLA really only as a tracking mechanism and that "no one's going to lose their job."

Other regulatory compliance issues that were mentioned centered on the proposed changes during the Obama administration to the Fair Labor Standards Act (FLSA) exempt employee definition. P1 indicated that these proposed changes to overtime requirements were going to have a major effect on her organization and would have "really hurt our budget." This potential effect had the organization leadership considering whether they could continue doing all of their programming and their big annual event due to the amount of overtime that would now have to be paid if the regulations had gone

into effect. Another participant, P3, indicated "it's been a big conversation about benefits because of the size of our staff and figuring out what is legal, what is good, what is good for people. We have invested a lot of time in conversation into things like that." P5 indicated that "the state gave a lot of push back when they were trying to raise the [number of employees under] the Fair Labor Standards Act from exempt to nonexempt. We dodged a big bullet on that one because it was going to cost a lot of money."

There were two other examples of organization leaders trying to keep up with legal and regulatory changes and the potential effects to their organization. One of these individuals indicated that "I'm an attorney by training and I haven't practiced in a long time, but it's hard to keep up with what is actually going on out in the--for a small organization, to have a sense of what the HR practices are of other places. I mean, we just sort of have our own philosophy that we follow here, but it's not informed by a lot of information or surveying." Another HR professional had responsibility for administering benefit plans, benefit orientations for employees, administering workers' compensation and FMLA, and general compliance, all tasks for which she has to stay abreast of applicable regulatory changes.

FMLA

Under this section, I summarize some of the reasons employees at the participants' organizations have taken family and/or medical leaves of absence. I also provide details about some of the leave-of-absence anecdotes shared by participants.

Reasons for Taking Leave

Four participants worked for organizations subject to the FMLA. The most-cited reason for employees taking FMLA or family or medical leaves of absence at non-FMLA organizations was for the employee's pregnancy. There were only two instances of a father taking paternity leave. Additional reasons for leave at the various organizations included one serious car accident, one motorcycle accident, one employee with a personal illness, and one employee who had a child with a chronic illness. One participant indicated a potential leave she had been made aware of at the time of the interview that would be for a family member's illness, but the HR professional indicated that was not common. Also rare was the use of intermittent FMLA leave with only two examples cited by participants. Of the participants interviewed, four had taken family/medical leave themselves when they had maternity leaves, either at their current organization or at a previous employer.

Leave of Absence Anecdotes

Each participant shared at least one anecdote from her organization regarding a family or medical leave of absence that was not her own. Anecdotes of note included a small organization where an employee took two months off after the birth of her baby, and the organization allowed her to bring her baby into the office for a year. The CEO indicated the employee "was a valuable employee" and the arrangement was "to encourage her to come back and to help cut her costs a little bit." Another anecdote of note was where a male employee had negotiated a combination of full days and half days off for four weeks after the birth of his second child. The study participant indicated that having this employee out of the office will "be a hardship" for the organization because

he plays a major role in the organization and needs to be here. The participant said although it is not ideal, it illustrates the organization's CEO working with an employee to make sure the employee can take care of what he needs to at home.

Another example of an employee negotiating leave time was at a non-FMLA covered organization where the employee advocated for adding adoption leave that previously had not been offered by the organization. Another small, non-FMLA organization provided six weeks of paid leave to a new father before it had a formal policy in place. By the time his second child was born, the formal policy was in place for him to receive the six weeks of paid leave again.

Other challenges faced by organizations included an employee who attempted to come back to work too soon after being on leave for a medical issue and had to be taken to the hospital by a colleague multiple times and be physically helped at the office by her colleagues. Additional aspects of administering leaves were demonstrated by examples of tracking paid time off (PTO) or sick days, short-term disability, and FMLA concurrently, if applicable.

General Effect of FMLA & Leaves of Absence on Meeting Mission

This question got to the heart of the overall research question for this study: As a general matter, how do you perceive the FMLA effects your organization's overall ability to meet its mission? For the organizations not subject to the FMLA, the question was framed more generally: Since you are not formally subject to the FMLA, how does the fact that you provide your employees family and medical leaves of absence affects your organization's overall ability to meet its mission? Answers ranged from a focus on the

importance of providing leaves of absence so the organization can “have the best employees that we can” (P1) to “[i]nitially, it’s always a challenge to adjust to make sure the spot is covered and the work is getting done, but I think what it’s done is create a tremendous amount of loyalty” (P2) to “it hasn’t impacted our ability to meet our mission” (P4), “I don’t really see that it does” (P5), “not at all” (P6), “it doesn’t really impact... I just don’t see that it impacts us at all” (P8), and finally, “I have had no concerns with leave of absences causing any problem with us meeting our mission.” (P9). The general consensus was that the FMLA and family and medical leaves of absence do not impact these organizations’ ability to meet their mission, and if they do have some impact it is only “a little bit.”

Specific Effect of FMLA & Leaves of Absence on Meeting Mission

To gauge the influence of the FMLA and leaves of absence on specific areas of a nonprofit arts organization, I asked participants the following question:

On a scale of 1-to-3 with 1 being not at all, 2 being a little bit, and 3 being quite a bit, if one of your employees would take leave for an extended period, for example four days or more, or even 30 days, how would that influence your organization’s ability to meet its goals as to: fundraising, grant-writing, programming, staffing, day-to-day operations, volunteer management, board relations, and ability to meet the organization’s mission.

Table 4 displays the cumulative results for each category:

Table 4

Specific Areas Influenced by the FMLA/Leaves of Absence

Function	Not at all	A little bit	Quite a bit
Fundraising	5	3	1
Grant writing	3	4	1
Programming	5	2	2
Staffing	4	5	0
Day-to-day operations	6	2	1
Volunteer management	4	1	4
Board relations	7	1	1

As Table 4 demonstrates, the areas of least influence as perceived by participants were on board relations followed by day-to-day operations. Of note was the perceived effect as to volunteer management. That split to both ends of the spectrum with four organizations indicating it would have quite a bit of influence and four organizations stating it would have no effect. Based on participants' elaborations about these ratings, it appeared that this depended particularly on the extent to which the organization used volunteers that therefore needed managing.

Paid Leaves of Absence

As stated above, originally the parent node Paid Leaves of Absence was intended to be used for those organizations having paid FMLA leave. As I coded the data, I realized that the participants' organizations used many ways outside of a paid family and medical leave policy to pay employees during their time off. This node therefore became the catch-all category for the various ways participants indicated their organization

provided pay to employees out on family and medical leaves of absence, despite the organization not having a paid leave policy.

The data showed various ways participants' organizations have provided full or partial pay for employees on family or medical leaves of absence. This was achieved through short-term disability, paid time off (PTO), vacation/personal/sick time, or a combination of these. Based on participant responses, I concluded that these organizations often were able to pay 60% to 100% of an employee's compensation who would otherwise have unpaid leave.

Strategic HR Management

SHRM focuses on ways that HR professionals can be a strategic partner in organizations to fulfill the organization's mission and larger organizational goals. Given this focus, I examined organizational aspects demonstrating SHRM when coding the data. These factors involved recruitment, retention, selection, training, development, compensation, and benefits. An emerging code that became prominent and was tied to organizational culture was *employee relations*. Overall compensation and benefit packages were a major focus of many participants as to how they can continue to recruit and retain top talent.

To delve into staffing and planning for anticipated family and medical leaves, I asked participants the extent to which they anticipated leaves for employees would be necessary in the next 12 months. Noting that this is often a difficult thing to predict, participants from all the small, non-FMLA organizations indicated that it was possible, but not likely, that any employees would need a family or medical leave of absence in the

next 12 months. One exception to this was a potential surgery that would require two weeks of medical leave. All the FMLA organizations indicated that at least one leave of absence might be on the horizon. These reasons varied and included paternity leave, leave for a family member, and pregnancies at the larger organizations. A participant from the largest organization in the study indicated that she surmised eight to ten FMLA leaves would occur over the next 12 months.

As to employee benefit offerings, there was general consistency among the participants' organizations as to offering health insurance, short-term disability, long-term disability, and some form of paid time off. Also, many organizations pay 100% of the employee's health insurance coverage and a portion of the premiums for dependent coverage. *Flexible* was the main word used by participants to describe how their organizations' benefit policies and procedures were administered.

Considering how their organization might respond to mandated paid family and medical leaves of absence, participants' answers focused on the financial and budgetary effects. Two participants addressed how it would affect health insurance premiums and the need to pass on the cost by requiring employees pay a higher portion of health insurance premiums for their dependents. Three other participants indicated it would be a big hit because one said they would have to provide the salary for the employee out on leave, plus pay the salary for someone to replace them. Another of these participants indicated they would use creative solutions, and could potentially use a volunteer to cover the position during the employees' leave of absence. Some participants additionally mentioned the effect such a mandate would have on compensation and benefits planning.

Staying competitive in the market as to employee recruitment and retention was highlighted by one participant. She indicated the organization would weigh the financial cost of paid leave against the benefits related to recruitment and retention. The HR professional from a quasi-governmental entity voiced her belief mandated paid leave would be a huge hit to state government and there would definitely be push-back from the state if 12 weeks of paid leave were required. The CEO from the organization that already provides 12 weeks of paid leave indicated that “it wouldn’t be a problem. Nope. We’re good.” Another participant indicated that mandated paid leave would not affect her organization’s ability to meet its mission, but that the organization would just have to budget for it.

Nudge Theory

To address the context of nudge theory, I asked all participants about their response if they were to receive information (a nudge) from the government through information provided on what other similar nonprofit organizations were offering for family and medical leave. All participants indicated that this type of information would either inform or influence their organization’s decisions about family and medical leave organizational policy.

Although the definition of nudging involves the government or policymakers providing information to provide choices to an individual or organization. In analyzing the data, it became apparent that different behaviors or entities had nudged individuals or the board of directors. For instance, the board of directors could also influence family and medical leave policy at the organizations. Examples included the board at one of the CEO

participant's organization "has allowed us to be generous in this way" in taking paid time off after accidents, after having a baby, or to pursue graduate degree work. She further stated that her board has the philosophy to make sure its nonprofit employees are "as well-paid and well-supported as any." Active boards that get donors and sponsorships for annual events also aid in maintaining the fiscal health of the organization.

It additionally became apparent that in some organizations, employees had done the nudging in prompting the CEO or HR professional at their organizations to add or provide enhanced family and medical leave-related benefits. One included a male employee who negotiated an extra week of paid leave, plus half days for two weeks to use after the birth of his second child by Cesarean section. At that same organization, the VP indicated that another employee had nudged the organization to provide leave time for adoption, not just for birthing a child, and that it was "very similar to if she had had a baby or given birth, so basically that was added in because of her need."

Other participants indicated that they were interested in maintaining the overall wellness and quality of life of their employees. Four participants indicated the following variations on this theme: they wanted to encourage employees to practice self-care, to eat well, to stay active, energized and positive, to avoid burnout, to encourage work/life balance, to address the psychological effects of stress, and to feel like the organization "recognizes their pain" when going through a family or medical leave issue.

One other aspect that could involve nonprofit organizations nudging policymakers or even for-profit organizations was the use of comp time or compensatory time. Comp time means that employees are able to use extra hours worked in a given pay period

toward taking time off in a subsequent pay period. As I collected data from the participants, it became apparent how much comp time is used in these nonprofit organizations to provide several benefits to the organization and employees alike. It is commonly used in public and nonprofit organizations and provides flexibility in employees' schedules, and allows for employees to work extra when needed to staff after-hours events or large annual fund-raising events, for example. Leaving aside any legal or compliance questions about comp time, one question that arose when I analyzed the data was whether nonprofit organizations could influence other organizations to use comp time, or some variation of flex time, to provide more flexibility for their employees and increase employee satisfaction.

An important part of applying nudge theory is choice architecture. Again, choice architecture involves influencing others' choices by designing the choices presented in a way that contemplates behavioral psychology, heuristics, limitations, and biases (Ariely, 2008; Desai, 2011; Thaler & Sunstein, 2008). Examples include strategic arrangement of items on a menu, of food choices in a school cafeteria line, or of items on a supermarket shelf (Arno & Thomas, 2016; Thaler & Sunstein, 2008). I initially did not code for choice architecture because when first reviewing the data, I did not immediately identify instances of the organizations structuring choices for their employees. Because choice architecture is a fundamental part of nudge theory, I decided to review the transcripts again, looking specifically for instances of choice architecture by the study participants or their organizations. HR professionals from three of the FMLA-subject organizations had shared that they describe options to employees planning for maternity leaves. In these

cases, a purported menu of choices is outlined for the employee en taking FMLA, namely how they could structure their leave to have as much paid time off as possible using paid holidays, comp time, or vacation days/PTO. Another choice explained to employees getting ready to go on maternity leave at two organizations involved not exhausting sick days, paid vacation days/PTO, or comp time during the initial maternity leave in order to save some paid time off for when the infant might be ill or for the infant's doctor's appointments. A key aspect of these discussions was that the ultimate choice was left up to the employee. This aligned with the concept of choice architecture and libertarianism; however, I did not see evidence that the HR professionals consciously chose to structure the way choices were presented seeking to influence employees. This is something that could be further investigated in a future study.

Decision-Making

Because nudge theory involves behavioral economic principles focused on decision-making and what factors influence how individuals make decisions, I asked questions of study participants related to decision-making. These questions focused on decision-making about family and medical leave of absence policies and administration of such leaves, of organizations both subject to the FMLA and not subject to it. Through these questions (set forth in the Interview Protocol (Appendix A)), I sought to glean information about who the decision-makers had been or continue to be, and what factors were considered when making family/medical leave decisions, as understood by the interviewee. Because all but one of the study participants were involved in leave of absence policy decision-making in some way, I obtained mostly first-hand knowledge of

these various factors. The one organization where the participant/HR professional was not directly involved in the decision-making process was an outlier because her organization is a quasi-governmental entity where the FMLA is administered by the State's personnel office and the arts organization's HR professionals simply follow State guidelines and implement the decisions made by the State. Although I did receive some answers about decision-making with respect to individual leaves of absence, no interviewees indicated that any leaves of absence had been denied and this section focuses primarily on the broader organizational decision-making as to organization policy.

The decision-makers for the participants' organizations are indicated in Table 5 by title or position:

Table 5

Decision Makers About Leave of Absence Policy

Position/entity	No. of participants' organizations
CEO	6
CFO	1
VP level	2
Finance professional	1
HR professionals (senior HR director; HR directors; benefits specialist)	2
State personnel office	1

Note. CEO, chief executive officer; CFO, chief finance officer; VP, vice president; HR, human resources.

The decision-making processes used by these organizations included the following approaches:

- Conversations among CEO, VP, Finance professional after conducting research on best practices, seeking guidance from subject matter experts on the organization's board, and writing up a policy for approval by the entire board of directors (Participant 1).
- Hiring an outside consultant to aid in creating a policy handbook based on best practices and the organization's own past practices. The CEO then signed off on the leave of absence policy and informed the board. The CEO indicated

she would approve such a policy as it relates to her staff, and the board would need to approve as the policy relates to her as CEO (Participant 3).

- Going to the board to receive more objective decision-making if the CEO felt she was not able to be impartial or times she might be emotionally involved. The CEO indicated that it is “helpful to have them being both people of compassion, but also a little bit more objective” (Participant 3).
- Having the organization’s HR professionals research and develop a proposed policy on providing paid leaves of absence. This proposal would be pitched to the HR Director and CFO, who would join with the CEO for final approval of any such policy. A new policy would be run by the board, “maybe not so much for an approval, but for a ‘we’re doing this’ and a blessing” (Participant 6).
- Having the CEO, VP, and Senior Director of HR decide to establish or change organizational policy regarding leaves of absence (Participant 8).
- The CEO presenting a proposal to the board of directors and having them vote on it. In this organization, establishing a benefits package was not approved the first time it was presented to the board because the board believed as a small nonprofit (3 employees), benefits did not need to be provided due to the cost. It is important to note that the CEO also indicated that two key stakeholders were not at that board meeting. At a board meeting two months later, those two stakeholders were present and the board decided they needed

to provide benefits to the staff and voted to do so, including six weeks of paid paternity and maternity leave (Participant 9).

- The CEO of small nonprofit (5 employees) deciding independently to have no formal policy on leaves of absence and to handle them on a case-by-case basis, collaborating with the employee on the decision-making (Participant 2).

Participants from five organizations shared whether or not the board of directors was involved in this decision-making. For four of those five organizations, the board was involved to some extent in these policy decisions. This involvement ranged from merely providing a blessing for what was already decided by the CEO, CFO, and HR, to the CEO being the driver of the policies but having the board vote to approve, to the Board driving all the significant decisions of the organization related to policies and personnel. For the one organization where the board was not involved, the CEO did not use formal policies and made determinations on leaves of absence on a case-by-case basis, consulting with employees as the need for leave arises.

There were various decision-making factors indicated, but the most frequently cited factors were general research on what other organizations are doing, recommendations by board members who are HR subject matter experts, using nonprofit organization salary and benefits survey information, comparing data from other HR professionals at peer institutions in the city, and considering overall what benefit offerings would best help the organization stay competitive in the market or gain an edge in recruiting, retention, and employee satisfaction. One organization examines what similar organizations in other peer cities are doing. Yet another organization obtains

information from other organizations belonging to national associations where the organization is a member. Multiple organizations indicated that an employee's individual situation was the impetus for a policy change at the organizational level. Another organization raised the issue of factoring in the effect of double costs if the organization offered paid leave and had to pay a temporary replacement as well. Three organizations indicated the effect offering paid leave could have on other benefit offerings such as whether the organization would continue paying 100% of staff members' individual health insurance premiums. One example of this would be in instances where an employee advocated for adding adoption leave that previously had not been offered.

Two of the participant organizations were considering offering unlimited paid time off (PTO) and had to consider not only the budgetary effect of making such a change, but also whether this would be disruptive to the managers implementing such a policy and to other employees not taking time off. Both indicated that more research was necessary before a decision could be made, but they valued their organization's innovation. One organization self-funds its short-term disability program and would have to consider the effect of paying at 100% of an employee's salary for extended medical leaves, versus just 60% as was currently budgeted. Other factors mentioned by participants at two different organizations were the timing of implementing any policy change since the organization was on a July 1 fiscal year and the fact that employees already had a generous PTO policy, 12 paid holidays, and ability to roll over sick time, so there would be a slim-to-none chance that FMLA would become paid leave. The personality and the philosophy of the organization's CEO was also cited as a major factor

in any decision to offer paid medical and family leaves of absence. Additionally, two participants drew from past experiences with previous employers to inform their decision-making and recommendations regarding leaves of absence at their current arts organizations. These experiences included one participant's own maternity leave and another who had been an HR professional at a much larger institution.

Summary

Overall, the study participants did not perceive the FMLA and family and medical leaves of absence to affect their organizations' overall ability to meet its mission, with one exception (ranking it as having a little bit of an effect). Although one participant indicated anecdotally a negative experience with an employee who had come back from leave too early and disrupted the workplace more than if she had stayed out on leave, the majority of participants indicated a lasting positive effect by cultivating loyalty from the employee who had been out on leave, and on the other employees who some participants indicated now knew they would also be taken care of if they had a family or medical issue.

Chapter 5: Discussion, Conclusions, and Recommendations

Introduction

In Chapter 5, I summarize conclusions reached and recommendations for future research related to this study. My purpose in this study was to understand the extent of influence of the FMLA and family/medical leaves of absence on nonprofit arts organizations' ability to meet their missions. Through this study, I sought to answer the research question: How do those responsible for HR functions in midwestern metropolitan nonprofit arts organizations perceive the influence the FMLA has had on the organization's ability to meet its mission?

In this chapter, I provide an interpretation of the study findings and describe limitations of the study, with a focus on trustworthiness implications. I next provide recommendations for future research. I conclude this chapter by discussing study implications and potential for positive social change, ending with an overall summary of the study.

One key finding from this study is how organizational culture appeared to be both a driver for how family and medical leave policy gets implemented and for employee relations in these organizations relative to employees' need for family or medical leaves of absence. More specifically, I concluded from the data that the FMLA and instances of family and medical leaves had little-to-no influence on these organizations' ability to meet their missions because of their organizational cultures. These cultures embodied a theme of doing the right thing by employees and offering much flexibility as to employees' needs related to personal, family, and medical matters. I also experienced

from many of the study participants that the leaders of their organizations demonstrated grit as I would describe it, or an extreme sense of determination, and an attitude to get it done, no matter what. This attitude is often common to nonprofit organizations. In addition, the theoretical framework for the study, nudge theory, has as a central tenet that people and organizations can be nudged to adopt certain behavior without using government mandates to achieve policymakers' desired outcomes. Findings from the study showed that nudges versus mandates align better with nonprofit organizations' flexible approach to meeting their mission and to employee relations.

Interpretation of the Findings

As examined in Chapters 3 and 4, using participant interviews within a case study research design allowed an opportunity to obtain in-depth, thick, rich descriptions of procedures, decision making, policy implementation, and reflections on SHRM functions. I obtained this information from HR professionals in arts nonprofits or those charged with conducting HR functions. At the smaller organizations, these individuals were often organizational leaders such as the CEO or a VP at the smaller organizations.

Perceived Effect on Ability to Meet Mission

Almost all participants indicated that, in their perception, family and medical leaves of absence, and the FMLA itself for those larger organizations subject to it, have little or no influence on the organization's ability to meet its mission. One overall theme that emerged is related the organizational culture and characteristics of nonprofit organizations. Descriptions of this culture include a passion for mission, a great deal of flexibility given to employees, doing the right thing for employees, and a determination

to do more with less. I concluded that all of these factors contributed to the participants' organizations being able to absorb most, if not all, of the influence of family and medical leaves.

The organizational culture of participants' arts nonprofits was a driver of decision making and employee relations which resulted in organizational leaders opting to do the right thing and take care of their people by providing job-protected leave and using various means to try to pay employees for the time off work if no formal policy applied. This, in turn, cultivated loyalty and enhanced work-life balance to create longevity in the organization's workforce. Several participants indicated that one factor that might provide a different result as to effect on the organization's ability to meet its mission is *who* is out on leave. In other words, several participants indicated if it were the CEO who was to be out on leave for an extended period of time (e.g., 30 days or more), various factors would be affected, such as board relations or fundraising, particularly in small nonprofits with less than 15 employees. Even in this potential CEO-on-leave scenario, however, most of the participants still indicated that there would be little-to-no influence on the organization's ability to meet its mission.

In addition, organizations were able to demonstrate flexibility in paying employees by using compensatory time ("comp time"), short-term disability, paid time off or sick/vacation/personal time, or by even offering fully paid family and medical leaves of absences via a formal organizational policy. Furthermore, no participants in the study indicated that employees would lose their job for exhausting family and medical leave of absence or paid time off time.

Strategic Human Resource Management

This study contributes to the literature on SHRM in nonprofit arts organizations, specifically to decision making about family and medical leave policy implementation. Nonprofit leaders can glean validation of existing practices and opportunities for positive change when navigating family and medical leaves of absence. Flexibility and being small means many nonprofit arts organizations can come up with creative solutions to minimize negative effects of employees being out on family and medical leaves. These include common solutions like using “comp time” to more extreme solutions of allowing an employee to bring her infant into the office to ease the transition back from leave and to aid her on minimizing child care costs. They also included allowing employees to work from home, to tiptoe back into a regular schedule on a part-time basis while having a newborn, or using text messaging to answer pressing questions while out on leave if the employee agrees to it. Nonmonetary and non-tangible benefits such as these have been shown to often outweigh monetary incentives (Ridder, et al., 2012).

Overall, it appeared that these nonprofit organizations could to be nimble in addressing family and medical leaves of absence, most of which were employee pregnancies. These approaches to handling leaves of absences appeared to provide positive employee relations and a supportive environment in which employees could better achieve work/life balance. Riddle et al. (2012) have indicated that SHRM has become one way that nonprofit organizations can be more nimble and efficient with meeting their missions while only having scarce resources and the data I collected supported that.

Perceived Effect of Nudges on Leave Policy Implementation

Using nudge theory as a lens through which to examine family and medical leave policy implementation provided insights on how organizational leaders could be nudged to make decisions without having to have a governmental mandate. Primary concerns expressed about future mandates requiring family and medical leave be paid leave unsurprisingly were budgetary in nature. Multiple organizations discussed a potential need to shift funds previously allocated to other budget line items if the organizations would be mandated to cover paid leaves of absences. One example of this was proposing an increase to the premium costs charged to employees for dependent health insurance coverage, even though the organization would continue to pay 100% of the insurance premiums for individual employee coverage.

A recent example of a federal mandate that had a significant effect on program planning and allocation of employee benefits came from the Obama administration's mandate to increase the pool of employees who were to receive overtime pay under the Fair Labor Standards Act (FLSA). This legal requirement was rescinded before full implementation occurred, but preliminary planning for implementing this law affected at least three of the study participants' organizations. This potential legal change nudged them to consider how they should best implement this policy before it was rescinded and whether they should go ahead and implement it even though it was no longer a legal mandate, because it was the right thing to do.

In this study, I also examined decision-making as to family and medical leaves, including whether to offer paid leave despite no government mandate to do so. One

reaction by organizational leaders seemed to involve using emotion or making decisions to solve the immediate problem and gain immediate rewards, but perhaps at the cost of long-term, more workable solutions. One such example included a senior leader whose approach was to work 18-hour days to ensure that everything was handled in preparation for the organization's main fundraising event when an employee was out on leave.

Alternatives to consider could have been hiring an intern, using a volunteer, or hiring a temporary employee to fill the gap until the employee could return to work.

Limitations of the Study

Limitations of this study included that there was some difficulty obtaining study participants. Despite this, participants responded in markedly similar ways to several interview questions and saturation was reached as to the study's primary research question regarding the participant's perception of the effect of the FMLA and family and medical leaves of absence on the organization's ability to meet its mission. A study limitation included obtaining additional organizations subject to the FMLA, those with 50 or more employees meeting the statutory definition. I sought to obtain more participants generally, and especially those employed by FMLA-subject nonprofit arts organizations, and thus obtained IRB approval for a change in procedures to send additional individual outreach emails. This outreach resulted in zero additional participants. Snowball sampling proved to be the most effective way in this study to obtain additional participants, but these all resulted in employees from small arts nonprofits not subject to the FMLA.

One opportunity to expand the participant base could have come from expanding the geographical area of my defined population. However, more rural areas were not the focus of my study of a midwestern metropolitan area and could have resulted in a completely different study design than was my intent as a researcher and would have required IRB approval.

Recommendations

Recommendations for further research on these topics include how providing flexibility and engaging employees could boost employee satisfaction rather than furthering employee burnout in the nonprofit sector for those who have to pick up the so-called slack for employees who are out on leave. Another topic worth examining further is the perception of employees who have taken family or medical leave and whether they perceive that their organizations are helping them achieve work/life balance through how the organization approaches these leaves. These employees could also be asked whether they personally, or a co-worker, has ever refrained from telling their employer they have a serious health condition covered by the FMLA for fear of retaliation or other reasons personal to the employee. For instance, during the interviews in this study, one example arose at a 70-person organization where the HR department did not know at first an employee's spouse was dealing with a serious health condition for which the employee missed work frequently. The employee would have been eligible for FMLA but did not request it. Further study is warranted in understanding the dynamics involved between employees and employers in this context. A quantitative or mixed methods study could provide data from employees on their perceptions about leave policy implementation to

obtain a different perspective and better understand this dynamic and its effect on SHRM as well.

One way this study could be expanded is to conduct it in the private sector and compare the results with the nonprofit sector results obtained. Data from the private sector in the same midwestern metropolitan area could aid in understanding whether factors more unique to the nonprofit sector are the reason for virtually no influence on an organization's ability to meet its mission. The flexibility available in the nonprofit sector and the ability to offer comp time, for instance, allow for less effect on organizations' ability to meet their missions. This study could additionally be replicated by applying it in a different sector of nonprofit organizations and compare the results to those found regarding arts and humanities nonprofits. This study could also be replicated in another metropolitan city to examine the consistency of results.

Implications

The results of this study could provide positive social change in a variety of ways by aiding policy-makers in understanding constituents' challenges if they were mandated to offer fully paid family and medical leave, especially for small nonprofit organizations. The data obtained could help policy-makers understand the decision-making factors and process used to implement paid leave. The results of this study also can provide data on ways organizations are already using flexibility and creativity to pay employees out on leave 60 percent to 100 percent of pay to "do right by employees." This informs the debate of whether a mandate is necessary for nonprofit organizations to offer these types of benefits. Some might argue that mandates would take away from the flexibility that

nonprofit employees and leaders value and that the nonprofit sector would better respond to nudges from policy-makers. The study findings also demonstrate what factors go into decision-making about whether to offer paid leaves of absence in the arts nonprofit sector. The perceived lack of effect from providing family and medical leaves of absence suggests that allowing decision-making to stay with organizational leaders could elicit the result desired by policy-makers who want employers to offer paid leave.

Conclusion

Since the 1930's, U.S. employers have faced increasing regulatory requirements from which nonprofit organizations are typically not exempt. One such regulatory framework covers employees' family and medical leaves, with the primary law being the FMLA. Per the FMLA, employers with 50 or more employees must provide up to 12 weeks of leave for eligible employees. Employers not subject to the FMLA sometimes style their leave offerings to employees to mirror the FMLA. Deciding whether to offer paid leave family and medical leaves is based on a multitude of factors, with budgetary reasons being primary along with wanting to support employees with achieving work/life balance and maintaining favorable employee relations. As such, organizational culture is a substantial factor affecting decision-making about these leaves. Nonprofit organizations can be particularly flexible in deriving creative ways to offer some or up to 100 percent of salary for otherwise unpaid leaves. This study showed that HR professionals and leaders of nonprofit arts organizations in this particular midwestern metropolitan area perceive the FMLA as having only minimal to no effect on the organizations' ability to meet their missions. The study results indicate a potential for nudges to be perceived as a

more positive influence than mandates, thus, policy-makers could explore using nudges instead of mandates to achieve fully paid family and medical leaves of absence in the nonprofit sector, particularly where flexibility is deeply valued by employers and employees alike.

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Appendix A: Interview Protocol

- 1.a) Verify job title and ask how long they have been with the organization.
- 1.b) Please provide a brief description of your job responsibilities. What HR responsibilities do you have?
- 1.c) Under the Family and Medical Leave Act (FMLA), an employee is defined as “any employees working for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year.” How many employees does your organization have that fall under this definition?

The following questions focus on family and medical leaves of absence, and are not addressing a day or two of sick leave or paid time off (PTO). Leaves of absence for a serious health condition are considered to require more than three calendar days off work.

- 2.a) How has your organization addressed employees’ family and medical leaves of absence?
- 2.b) Does your organization have a formal leave of absence policy, and if so, can you please describe how it is administered, including who in your organization administers this policy and his/her job title and job responsibilities?
- 3) How would you describe your organization’s mission?
- 4) How do you perceive the FMLA impacts your organization’s overall ability to meet its mission?
- 5) Who were the decision-makers involved in deciding whether or not to create a formal family and medical leave of absence policy for your organization?
- 6) Is the leave your organization provides paid or unpaid?
 - If paid family and medical leave is provided, who were the decision-makers involved in deciding whether or not to offer employees paid family and medical leave?
- 7) To your knowledge, what factors were considered when making that decision?

Interviewer prompts:

 - Did they make the decision with employee input (surveys, feedback forms) or was it a surprise or done at annual budget time
 - What about factors like keeping up with market competitors and/or for retention purposes?

8) What impact would it have on your organization if the state of Indiana, your city, or your county enacted a law requiring your organization to provide paid leave for family and medical leaves of absence?

9) To what extent do you anticipate any of your employees will need to take family or medical leave in the next 12 months?

Interviewer prompt: for their own serious health condition (meaning they will miss work for more than three calendar days), the serious health condition of an immediate family member including child, spouse, or parent, the birth of a newborn or adoption or foster care of a newly placed child, to prepare for their own or a spouse's or child's military deployment?

I'm going to ask you to consider how FMLA would impact your organization in a variety of ways:

10) On a scale of 1-to-3 with 1 being not at all, 2 being a little bit, and 3 being quite a bit, if one of your employees would take leave for an extended period, for example, four days or more, how would that impact your organization's ability to meet its:

- Mission
- Fund-raising
- Grant-writing
- Programming
- Staffing
- Day-to-day operations
- Volunteer management
- Board relations

Which would be the top 2-3 areas that would impact your organization most dramatically?

11) How would you anticipate your organization would be impacted by a federal law requiring your organization provide paid leave for qualifying family and medical reasons?

12) In what ways might your role be influenced by information from the federal, state, or local government indicating the number of nonprofit organizations of similar size that offer paid leave to employees, for example, receiving a mailing with data showing a certain percentage of nonprofit organizations provide up to 6 weeks of paid leave to all employees for family or medical leaves of absence?

In closing, thank you very much for your time, and can I contact you if further questions arise after I review and summarize the information from today's interview? I will also provide you with this summary to have you verify the accuracy of your responses.

Appendix B: Preliminary Coding Framework

Research Question: How do those responsible for HR functions in midwestern metropolitan nonprofit arts organizations perceive the effect the FMLA has had on the organization's ability to meet its mission?

Primary Coding - Topic:

Topic	Codes	Possible Interview Question
Nonprofit Arts Organizations	NAO	3, 4, 10
Employment Regulation of Nonprofit Organizations	ERNO	8, 11
FMLA	FMLA	1c, 4, 9
Leaves of absence (general)	LOA	2a, 2b, 6, 9
Paid leaves of absence	PLOA	6, 8, 11
Strategic HR Management	SHRM	1b, 2b, 5

Secondary Coding - Theoretical Framework:

Topic	Codes	Possible Interview Question
Nudge Theory	NT	12
Decision-making	DM	5, 7, 12