



Written by [Michael Tennant](#) on October 28, 2011

Senator Pushes Bill Mandating Unpaid Leave for Grieving Parents

Tester's motto apparently being "There oughta be a law against that," his solution is to force employers to give parents time off after the death of a child. Thus, he has introduced the [Parental Bereavement Act of 2011](#), which would amend the Family and Medical Leave Act (FMLA) of 1993 to mandate up to 12 weeks of unpaid leave — or, as Tester put it in a [press release](#), "job-protected time-off" — for an employee who has just suffered the death of his child.



In 21st-century America, when one wants something, one does not try to persuade others to adopt his position. Instead, he turns to the government to impose his will on others. Therefore, when some of Tester's constituents experienced the deaths of their children and thought they deserved more time off, they wrote to their Senator, prompting Tester to introduce his legislation. Similarly, thousands of people have signed an [online petition](#) urging Congress to pass Tester's bill.

"Allowing time off to mourn the death of a child should have happened a long time ago because it's simply the right thing to do for any parent," Tester said in his press release.

The fact that the United States has gone well over 200 years without such a law might indicate that it is not necessary and that it would in earlier times have been considered not just unnecessary but imprudent. Previous generations of Americans, not yet weaned on the nanny state, would have had little trouble recognizing that Tester's bill — along with the rest of FMLA, which mandates unpaid leave for a variety of other reasons — far exceeds the federal government's enumerated constitutional powers.

Even if the legislation were constitutional, it would still be unwise. It interferes with property rights, forcing terms of employment on employers and employees rather than permitting them to arrive at those terms by mutual agreement. It also violates existing employment contracts by introducing new terms into them *ex post facto*. As Rep. Ron Paul (R-Texas) recently [remarked](#), "The government is supposed to be there to enforce contracts, not undermine them." But the biggest problem may be that the bill imposes significant costs on businesses. An employer may not have to pay an employee who is taking leave under FMLA, but the employer must absorb additional costs to ensure that the missing employee's work is accomplished. That FMLA's authors and supporters are aware of this is obvious from the fact that companies with fewer than 50 employees are exempt from the law. The costs, it seems, would be too great for them to bear; but politicians have no problem socking it to larger



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businesses.

Despite all this, Tester says he is “proud to push [the bill] in the Senate.” Three other Senators — Sherrod Brown (D-Ohio), Richard Durbin (D-Ill.), and Claire McCaskill (D-Mo.) — are cosponsoring it. “Tester said he hasn’t heard any opposition to his legislation,” according to the *Republic*.

“I would hope we can get it through this year, especially if there’s no serious opposition,” he told the paper. “If we run out of time this year, I’ll keep pushing it next year.”

Given that no companion legislation has been introduced in the House of Representatives, it seems unlikely that the bill will pass by the end of the year.

Upon taking office, Tester took an [oath](#) to “support and defend the Constitution of the United States.” Instead of pushing a bill to expand the already unconstitutional FMLA, even with the best of intentions, the Senator should be sponsoring legislation to repeal that law.



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