

A better way



Christina Stephenson

By Christina Stephenson
OTLA Guardian

In 2012, my father was dying of metastatic colon cancer. I had only just started my legal career in California in 2009 — and passed that damn three-day bar exam — when his cancer started getting worse. My husband and I moved back to Oregon.

My father was my best friend (see title photo). We talked on the phone several times a day. He was the sort of person who not only purchased giant ribbon cutting scissors for fun, but also went to the trouble of getting them certified as the largest in the world by the Guinness Book of World Records.

Since he always wanted to be an attorney, he relished hearing about the ups and downs of my cases and career. He was so fiercely protective (and com-

pletely incapable of butting out) that one evening he called the law firm I was working for in California and told my boss she needed to appreciate me more. While humiliating at the time, I can't help but laugh and be awed by the chutzpah my dad so often demonstrated. He taught me to tackle problems head on and to "never take 'no' for an answer." So, you can see why we fast-tracked our plans to return to Oregon and glean what wit and wisdom we could in his terminal year.

When we returned, I was lucky to obtain a position as a judicial clerk at the Multnomah County Circuit Court. In that position, I had a wonderful mentor in the judge I clerked for. I drafted dozens of lengthy judicial opinions, and I was able to spend significant time on cases in my specialty area, employment law. What I didn't get in that position was money. Or much of it anyway. And one can only put student loans in forbearance for so long.

In need of paid leave

At that time, we were really living paycheck to paycheck. The list of my privileges is long — and no doubt there are worse situations — but the reality of my situation was I had to carefully guard my paid time off. I knew I would need not only time off as my dad's health declined but paid time off. I needed the time not just to accompany him to

chemo treatments and emergency room visits, but to actually spend some quality time with the most influential person in my life in his waning days.

At the time, I was working for an employer large enough to be covered by the Oregon Family Leave Act (OFLA). Once I was there long enough to qualify for OFLA, I theoretically had access to twelve weeks of leave.¹ However, since it was unpaid leave, I could not afford to take much of it.

Knowing my father was terminal made decision-making all the harder. Cancer is unpredictable — he was good one day, bad the next. We wanted to take a final road trip together to California and I had to think about it. If I took time off for the road trip, I might not be able to afford to take the time I would inevitably need to mourn his passing.²

I will leave it to others to determine whether I was a useful or productive employee at that time in my career. I certainly endeavored to be a workerbot who did not trouble my supervisors too much with the ugliness of being a human. But, I can't help but think if I had been able to take more time, I would have been a better human³ and a better employee.

In thinking about what we want for ourselves and our families, I don't think we want a system where employees are forced into these untenable situations.

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Yes, it sucks and can be really inconvenient, but ultimately our workplaces are enriched by having employees who are allowed to be human, to have families.

A new path

Two years after my father's death, I started my own law firm. I am no longer an employee. Now I spend my time representing employees. Like my OTLA colleagues who represent employees, I believe a fundamental goal of employment law is to make workplaces better for employees. In service of that goal, I have had the opportunity, through the OTLA Legislative Committee, to be involved in various coalitions advancing workers' issues.

One such group is the Time To Care Coalition. Since at least 2008, various folks have been trying to put in place a paid family and medical leave system in Oregon. Over the last couple of years, the coalition has been working with all the various state administrative agencies needed to pull off this herculean effort. Now the coalition is poised to pass the FAMILI Equity Act, which will create a paid family and medical leave insurance program (PFML).

Paid family and medical leave

The envisioned paid family and medical leave program⁴ would be a self-sustaining insurance program administered by the state. The program would

be much like unemployment insurance. Employees and employers would contribute less than one percent of payroll⁵ to a state-managed fund to administer the benefit. Employees would submit a claim for wage replacement when they had a qualifying reason for leave, such as:

- The birth or adoption of a child
- Taking in a child from the foster care system
- An employee's own serious illness
- The serious illness of an employee's family member

The proposal would be available for all workers, regardless of the size of the employer. Self-employed Oregonians would also be able to opt into the program.

The coalition has compiled research from other states with paid family and medical leave programs. This research demonstrates, in addition to the obvious benefits for workers, paid leave programs have been good for businesses. In California, for example, a 2011 report revealed that six years after the introduction of a statewide paid family leave program, most employers reported that PFML had either a "positive effect" or "no noticeable effect" on productivity (89 percent), profitability/performance (91 percent), turnover (96 percent), and employee morale (99 percent).

The information from the coalition is consistent with my own anecdotal experience, and my clients' experiences.

For each family

Whenever he found a joke or a quote that he liked, my dad would make a note of it. He had a running Word document with his compiled aphorisms, some of which were immortalized as business cards or bumper stickers, thanks to Vista Print. One thing he was fond of saying was, "There are those that talk about it, and there are those who do it." I think about this saying often. For my dad, for my family for my community, I want to be one of those people who does something. I hope you will join me and get involved in bringing PFML to Oregonians in 2019.

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¹ As an unfortunate personal footnote, I was hit by a car riding my bike in 2012, so I also utilized a significant amount of leave due to the associated injuries. (Shout out to the OTLA attorneys who represented me, Mark Ginsberg and Kate Stebbins!)

² Historical followers of OFLA might realize that in 2012, bereavement leave was not a qualifying reason to take OFLA. At the time, though, I had no idea. It wasn't until after my father passed away I learned that bereavement leave was not protected. I also learned (through some random Google search) that the Oregon Legislature was considering adding the protection in 2013. I rallied myself and some folks in my grief support group to testify in support of the bill. The bill passed and that experience with lawmaking is why I joined the OTLA Legislative Committee.

³ For the record, this is a reflection on me (and to some extent the legal profession) and not unreasonable expectations of those that I worked with. For example, when my dad's oncologist recommended we cancel our planned wedding date, due to my father's rapid decline, the judge I worked for was very supportive and officiated at the wedding we planned in less than two weeks.

⁴ Adapted from <http://www.timefororegon.org/faqs/>

⁵ For those of us with small firms, how amazing to be able to offer this benefit to our employees at this tiny cost!

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