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# The Family and Medical Leave Act (FMLA): Background and Supreme Court Cases

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## Summary

Congress passed the Family and Medical Leave Act (FMLA) in 1993 in part to “balance the demands of the workplace with the needs of families.” To that end, the FMLA entitles eligible employees of covered employers to set amounts of unpaid, job-protected leave for specified family and medical reasons. These reasons include, for example, the care of a spouse, son, daughter, or parent with a serious health condition, and the care of a newborn or newly adopted child. Employers who interfere with an employee’s exercise of FMLA rights or retaliate against an employee for exercising her FMLA rights may face liability. This report first provides background on leave eligibility, notice requirements, and enforcement under the FMLA. Then the report discusses the U.S. Supreme Court cases—*Ragsdale v. Wolverine World Wide, Inc.*, *Nevada Department of Human Resources v. Hibbs*, and *Coleman v. Court of Appeals of Maryland*—that have considered and clarified some provisions of the FMLA.

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Congress passed the Family and Medical Leave Act (FMLA) in 1993 in part to “balance the demands of the workplace with the needs of families.”<sup>1</sup> To that end, the act provides eligible employees of covered employers with entitlement to specified amounts of unpaid leave per 12-month period. The amount of leave that the FMLA entitles an employee to take per 12-month period depends upon the reason for the leave. This report first provides background on leave eligibility, notice requirements, and enforcement under the FMLA. Then the report discusses the U.S. Supreme Court cases that have considered and clarified some provisions of the FMLA.

## Background

For an individual to be entitled to unpaid leave under the FMLA, she must work for a covered employer and be an eligible employee. Private employers are covered by the FMLA if they engage in commerce, or activities affecting commerce, and have employed 50 or more employees for each working day for 20 workweeks in the past or current calendar year.<sup>2</sup> Federal, state, and local agencies are covered employers under the FMLA regardless of their size.<sup>3</sup> Eligible employees are those who (1) have worked for their current employers for at least 12 months and (2) have worked at least 1,250 hours for their employers in the previous 12-month period.<sup>4</sup>

If an individual is an eligible employee of a covered employer, she is entitled to unpaid leave pursuant to the FMLA only for a specified qualifying reason, and the amount of leave entitlement depends on the qualifying reason. The FMLA entitles an employee to 12 workweeks of unpaid leave during any 12-month period:

- (A) Because of the birth of a son or daughter of the employee and in order to care for such son or daughter;
- (B) Because of the placement of a son or daughter with the employee for adoption or foster care;
- (C) In order to care for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition;
- (D) Because of a serious health condition that makes the employee unable to perform the functions of the position of such employee;
- (E) Because of any qualifying exigency (as the Secretary [of Labor] shall, by regulation, determine)<sup>5</sup> arising out of the fact that the spouse, or a son, daughter, or parent of the

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<sup>1</sup> 29 U.S.C. §2601(b)(1). This report supersedes an earlier work of the same title by (name redacted).

<sup>2</sup> 29 U.S.C. §2611(4)(A)(i).

<sup>3</sup> See 29 U.S.C. §2611(4)(A)(iii); 5 U.S.C. §6381(1). It is worth noting that most civil service employees of federal agencies are covered by Title II of the FMLA, but employees of private, state, and local entities are covered by Title I of the FMLA. The statutory language of Title II closely mirrors that of Title I. This report is limited in scope to Title I of the FMLA and its implementing regulations.

<sup>4</sup> 29 U.S.C. §2611(2)(A)(i)-(ii).

<sup>5</sup> Qualifying exigencies include (1) short-notice deployment of the military member; (2) military events (e.g., military ceremonies) and related activities; (3) certain childcare and school activities for the children of the military member; (4) certain financial and legal arrangements for the military member; (5) counseling; (6) spending time with the military member when the military member is on short-term Rest and Recuperation leave during a deployment period; (7) post-deployment activities; (8) care of a military member’s parent who is incapable of self-care; and (9) additional activities agreed upon by the employer and employee. 29 C.F.R. §825.126(b)(1)-(9).

employee is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces.<sup>6</sup>

The FMLA provides an eligible employee who is the spouse, son, daughter, parent, or next of kin of a military servicemember entitlement to 26 workweeks of unpaid leave in a single 12-month period to care for the servicemember.<sup>7</sup> This leave to care for a servicemember is generally not in addition to other qualifying leave.<sup>8</sup> Thus, an eligible employee generally cannot, for example, take 26 workweeks of leave to care for a servicemember son and subsequently take 12 workweeks of leave to care for a daughter with a serious health condition within the single 12-month period.<sup>9</sup>

A key characteristic of FMLA leave is that it is generally job-protected. That is, an employer must usually restore an employee to her position, or an equivalent position, upon her return to work after a period of FMLA leave.<sup>10</sup> Additionally, with limited exceptions, an employer must maintain an employee's coverage in a group health plan for the duration of the FMLA leave period.<sup>11</sup>

The FMLA also allows an employee to substitute accrued paid leave for unpaid FMLA leave.<sup>12</sup> If the employee has accrued paid leave but declines to substitute it for FMLA leave, the employer may require the employee to substitute the paid leave for FMLA leave.<sup>13</sup> If paid leave is substituted for FMLA leave—whether at the direction of an employee or an employer—it runs concurrently with the FMLA leave.<sup>14</sup> The employee thus gets paid for what would otherwise be unpaid leave, but loses the ability to use accrued paid leave at a later date.

The FMLA and its implementing regulations also contain notice requirements applicable to eligible employees and covered employers. For example, before employees take foreseeable FMLA leave, they must generally provide their employers with 30 days' notice and, where 30 days' notice is not possible, must provide "such notice as is practicable."<sup>15</sup> However, for leave taken because of a qualifying exigency caused by a spouse, son, daughter, or parent serving on covered active duty, there is no 30 days' notice requirement; employees must provide "such notice to the employer as is reasonable and practicable."<sup>16</sup> Employer notification requirements mandate that employers, for example, inform employees of their eligibility for FMLA leave upon employees requesting such leave or upon acquiring information that the employees' leave may qualify as FMLA leave.<sup>17</sup> Employers generally must also designate leave as FMLA-qualifying

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<sup>6</sup> 29 U.S.C. §2612(a)(1).

<sup>7</sup> 29 U.S.C. §2612(a)(3).

<sup>8</sup> 29 U.S.C. §2612(a)(4).

<sup>9</sup> Under Department of Labor (DOL) regulations, when FMLA leave is taken to care for a covered servicemember with a serious injury or illness, a new 12-month period begins on the first day the employee takes the leave.

<sup>10</sup> 29 U.S.C. §2614(a)(1). Notably, there is an exception to this protection for certain highly compensated employees, who may be denied restoration under certain circumstances. *See* 29 U.S.C. §2614(b)(1). Highly compensated employees are salaried employees who are among the highest-paid 10% of employees within a 75-mile radius of the facilities at which they are employed. 29 U.S.C. §2614(b)(2).

<sup>11</sup> 29 U.S.C. §2614(c)(1).

<sup>12</sup> 29 U.S.C. §2612(d)(2)(A)-(B).

<sup>13</sup> *Id.*

<sup>14</sup> 29 C.F.R. §825.207(a).

<sup>15</sup> *See* 29 U.S.C. §§2612(e)(1), (2)(B).

<sup>16</sup> 29 U.S.C. §2612(e)(3).

<sup>17</sup> 29 C.F.R. §825.300(b)(1).

leave and provide notice of this designation to employees within five days of having enough information to determine whether the leave qualifies as FMLA leave.<sup>18</sup>

The FMLA generally protects employee rights under the act through two primary prohibitions on employer conduct. Broadly speaking, these amount to prohibitions on (1) interfering with, restraining, or denying an employee's exercise of FMLA rights; and (2) retaliating or discriminating against an employee for exercising FMLA rights.<sup>19</sup> The FMLA creates a private right of action for employees against employers that violate either of these prohibitions.<sup>20</sup> Through these actions, employees may seek monetary damages and "such equitable relief as may be appropriate," such as employment reinstatement or promotion.<sup>21</sup>

## The FMLA and the U.S. Supreme Court

Since the FMLA's enactment, the Supreme Court has issued three decisions involving the act. In the first, *Ragsdale v. Wolverine World Wide, Inc.*, the Court considered a challenge to a regulation penalizing employers for failing to designate leave as FMLA leave in accordance with Department of Labor (DOL) regulations. In *Nevada Department of Human Resources v. Hibbs* and *Coleman v. Court of Appeals of Maryland*, the Supreme Court considered the constitutionality of lawsuits against state entities under the FMLA. These three cases have shed light on the rights and obligations under the FMLA.

### *Ragsdale v. Wolverine World Wide, Inc. (2002)*

The Supreme Court first considered the FMLA in *Ragsdale v. Wolverine World Wide*,<sup>22</sup> wherein it determined the validity of a DOL regulation implementing the FMLA. In *Ragsdale*, Wolverine World Wide (WWW) gave its employees up to seven months of unpaid sick leave.<sup>23</sup> Ragsdale, a WWW employee, was diagnosed with Hodgkin's disease.<sup>24</sup> During her treatment, Ragsdale requested and received 30 weeks of unpaid sick leave. WWW conceded, however, that it did not designate this leave as FMLA leave.<sup>25</sup> When Ragsdale requested additional unpaid sick leave, WWW informed her that she had already exhausted her seven months of leave provided under the company's policy and denied her request.<sup>26</sup> When Ragsdale subsequently failed to return to work, WWW fired her.<sup>27</sup>

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<sup>18</sup> 29 C.F.R. §825.300(d)(1).

<sup>19</sup> See 29 U.S.C. §2615(a)(1)-(2). See *Phillips v. Mathews*, 547 F.3d 905, 909 (8<sup>th</sup> Cir. 2008) (observing that "there are two types of claims under the FMLA:" interference claims and retaliation claims); see also *Dalpiaz v. Carbon County, Utah*, 760 F.3d 1126, 1131 (10<sup>th</sup> Cir. 2014); *Nicholson v. Pulte Homes Corp.*, 690 F.3d 819, 825 (7<sup>th</sup> Cir. 2012); *Hunter v. Valley View Local Schools*, 579 F.3d 688, 691 (6<sup>th</sup> Cir. 2009) (observing that "there are two theories of recovery under the FMLA: an interference (or entitlement) theory and a retaliation (or discrimination) theory."); *Yashenko v. Harrah's NC Casino Co., LLC*, 446 F.3d 541, 546 (4<sup>th</sup> Cir. 2006).

<sup>20</sup> 29 U.S.C. §2617(a)(2). The private right of action may be limited by the Secretary of Labor filing a complaint on behalf of an employee. 29 U.S.C. §2617(a)(4).

<sup>21</sup> 29 U.S.C. §2617(a)(1).

<sup>22</sup> 535 U.S. 81 (2002).

<sup>23</sup> *Id.* at 84.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 85.

<sup>26</sup> *Id.* at 84.

<sup>27</sup> *Id.*

Under a then-existing regulation, if an employer failed to designate an employee's medical leave as FMLA leave and failed to notify the employee of this designation within a reasonable time of the employee making his or her need for leave known, the leave did not count toward the employee's FMLA leave entitlement.<sup>28</sup> This regulation, according to Ragsdale, required WWW to provide her with 12 weeks of FMLA leave in addition to the 30 weeks that she had already been given, because WWW never notified her that any of her 30 weeks of leave were considered FMLA leave.<sup>29</sup> According to Ragsdale, by not providing her with the additional 12 weeks of FMLA leave as required by the regulation, WWW interfered with her FMLA rights. Ragsdale thus sought reinstatement, back pay, and other relief.<sup>30</sup> In response, WWW argued that the regulation impermissibly contradicted the FMLA.

The Court acknowledged that DOL's judgment concerning the need for the regulation "must be given considerable weight."<sup>31</sup> However, the Court observed that its "deference to [DOL] ... has important limits," and maintained that the regulation could not stand if it were "arbitrary, capricious, or manifestly contrary" to the FMLA.<sup>32</sup>

According to the Court, under the FMLA's remedial scheme, an employer is liable to an employee for interfering with the employee's FMLA rights when the interference prejudices, or injures, the employee.<sup>33</sup> However, the regulation at issue created a categorical penalty. In other words, the regulation required an employer to provide additional FMLA leave for failing to designate any taken leave as FMLA leave, regardless of whether or not the employee was prejudiced by the lack of designation. An employer was thus irrefutably presumed to have interfered with an employee's FMLA rights and to have prejudiced the employee by not initially designating the employee's leave as FMLA leave. The Court found the regulation's failure to consider those instances wherein an employer may not have designated an employee's leave as FMLA leave, but the lack of designation did not harm the employee, incongruent with the remedial scheme of the FMLA.<sup>34</sup> For example, Ragsdale would have taken a full 12 weeks of FMLA leave even if her employer had initially designated it as FMLA leave because her medical condition required her to miss much more than 12 consecutive weeks of work. The Court therefore found the regulation contrary to the FMLA's remedial scheme and held it invalid.<sup>35</sup>

In the wake of the Supreme Court's decision in *Ragsdale*, DOL amended the regulation at issue in the case. Under the amended regulation, an employer still must designate leave as FMLA leave and provide an employee with timely notification of such a designation, as mentioned earlier in this report.<sup>36</sup> However, now, an employer's failure to follow notice requirements *may* constitute an interference with an employee's FMLA rights that *may* make an employer liable for harms *as a direct result of* the violation.<sup>37</sup> Therefore, the regulation now appears to require an individualized approach that exposes an employer to liability only when an employee was prejudiced by the

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<sup>28</sup> 29 C.F.R. §825.700(a) (2001).

<sup>29</sup> *Ragsdale*, 535 U.S. at 85.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 86.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 89.

<sup>34</sup> *Id.* at 90.

<sup>35</sup> *Id.* at 96.

<sup>36</sup> 29 C.F.R. §825.300(e).

<sup>37</sup> *Id.*

employer's failure to designate leave as FMLA leave (e.g., when an employee would not have taken as much leave had she known it would be deducted from her FMLA entitlement).

Additionally, a number of federal courts of appeals have held that for employees to successfully sue an employer for interfering with, restraining, or denying their exercise of FMLA rights, they must show that they were prejudiced by the interference.<sup>38</sup> In doing so, these courts have often relied upon the Supreme Court's rationale in *Ragsdale*.

### ***Nevada Department of Human Resources v. Hibbs (2003)***

A year after the Supreme Court issued its decision in *Ragsdale*, it considered whether a state can be sued under the FMLA in *Nevada Department of Human Resources v. Hibbs*.<sup>39</sup> The plaintiff, Hibbs, was a Nevada agency employee who was authorized to take 12 weeks of intermittent FMLA leave over an eight-month period to care for his seriously injured wife.<sup>40</sup> However, during this eight-month period, Hibbs changed his intermittent leave to full-time leave.<sup>41</sup> This request led the agency to inform Hibbs that he had exhausted his FMLA leave before the end of the eight-month period for which his leave was originally authorized.<sup>42</sup> The agency told Hibbs that he must return to work by a specified date and, when he failed to do so, fired him.<sup>43</sup> Hibbs sued the agency, claiming an interference with his FMLA right to take leave to care for a spouse with a serious health condition. In response, the agency argued that a state entity's sovereign immunity under the 11<sup>th</sup> Amendment shields it from such lawsuits.

The Court observed that the 11<sup>th</sup> Amendment has long been held to preclude federal jurisdiction over suits against nonconsenting states.<sup>44</sup> However, the Court also observed that Congress can eliminate this sovereign immunity in federal court when it does so in "unmistakably clear" statutory language and acts pursuant to a proper use of its power under Section 5 of the 14<sup>th</sup> Amendment (§5).<sup>45</sup> The Court noted that the FMLA's language makes unmistakably clear that Congress intended to permit FMLA suits against states by expressly authorizing such suits.<sup>46</sup> Thus, the outcome of the case depended on whether Congress acted pursuant to a valid exercise of its Section 5 power when authorizing such suits under the FMLA.

According to the Court, Section 5 allows Congress to enact "appropriate legislation" to enforce the substantive guarantees of the 14<sup>th</sup> Amendment, including the guarantee of equal protection of the laws contained within the Equal Protection Clause.<sup>47</sup> The Court observed that Section 5

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<sup>38</sup> See, e.g., *McFadden v. Ballard Spahr Andrews & Ingersoll, LLP*, 611 F.3d 1, 7 (D.C. Cir. 2010); *Wilson v. Virgin Islands Water & Power Auth.*, 470 Fed. App'x 72, 77-78 (3<sup>rd</sup> Cir. 2012); *Ranade v. BT Ams., Inc.*, 581 Fed. App'x 182, 184 (4<sup>th</sup> Cir. 2014) ("In order to establish a claim for interference with the exercise of FMLA rights, [plaintiff] must prove not only the fact of interference, but also that the violation prejudiced her in some way."); *Alexander v. Servisair, LLC*, 593 Fed. App'x 352, 354 (5<sup>th</sup> Cir. 2014); *Wallace v. FedEx Corp.*, 764 F.3d 571, 585 (6<sup>th</sup> Cir. 2014).

<sup>39</sup> 538 U.S. 721 (2003).

<sup>40</sup> *Id.* at 725.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 726.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> See *id.* at 727. The Equal Protection Clause prevents some state actions that distinguish between different classes of people, including some state actions that distinguish on the basis of gender. See, e.g., *U.S. v. Virginia*, 518 U.S. 515 (1996) (invalidating on equal protection grounds a public university's long-standing male-only admissions policy as (continued...))



enables Congress to enact prophylactic legislation to deter potential discrimination by states that would violate the Equal Protection Clause.<sup>48</sup> However, any such legislation must be “congruent and proportional” to the injury to be prevented or remedied.<sup>49</sup>

The Court observed that Congress passed the FMLA to protect against gender-based discrimination in workplace leave policies.<sup>50</sup> The Court then noted that, in passing the FMLA, Congress relied on evidence of potential gender-based discrimination by states in family leave practices. For example, Congress considered evidence suggesting that state employers relied upon gender stereotypes—more specifically, the idea that women are responsible for homemaking and caretaking obligations and men are not—in crafting or administering their family leave policies.<sup>51</sup> The Court determined that the FMLA is congruent and proportional to preventing potential unconstitutional reliance on gender stereotypes by states in creating and administering family leave policies.<sup>52</sup> The Court thus held that states can be sued for interfering with an employee’s FMLA right to take leave to care for a spouse, son, daughter, or parent with a serious health condition.<sup>53</sup>

The Court’s decision specifically addressed the provision of the FMLA permitting suits against an employer, including a state entity, for interference with an employee’s FMLA right to take leave to care for a spouse. However, the decision did not directly address whether states can be sued for interfering with other employee rights under the FMLA (e.g., the right to take leave because of childbirth or adoption, or for an employee’s own serious health condition). The Supreme Court later addressed this question in *Coleman v. Court of Appeals of Maryland* with regard to employee self-care.

### ***Coleman v. Court of Appeals of Maryland (2012)***

In 2012, the Supreme Court once again considered FMLA suits against state entities in *Coleman v. Court of Appeals of Maryland*.<sup>54</sup> Coleman was a state employee who, when sick, requested FMLA leave.<sup>55</sup> His employer informed him that he would be fired if he did not resign.<sup>56</sup> Coleman sought money damages, alleging that by denying him FMLA self-care leave—or leave because of his own serious health condition that rendered him incapable of performing his job functions—his employer violated the FMLA. In response, the employer argued that, as a state entity, the 11<sup>th</sup> Amendment shielded it from lawsuits under the self-care provision of the FMLA.

In *Coleman*, the Court utilized the same analysis that it earlier relied upon when considering an FMLA suit against a state entity in *Hibbs*. The Court first observed that Congress expressly authorized suits against state entities for interfering with an employee’s rights under the FMLA’s self-care provision, just as it did in *Hibbs* with regard to suits for interference with an employee’s

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(...continued)

unconstitutional discrimination on the basis of gender).

<sup>48</sup> *Hibbs*, 538 U.S. at 727-28.

<sup>49</sup> *Id.* at 728.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at 730-31.

<sup>52</sup> *Id.* at 737.

<sup>53</sup> *Id.* at 740.

<sup>54</sup> 132 S. Ct. 1327 (2012).

<sup>55</sup> *Id.* at 1322-33.

<sup>56</sup> *Id.* at 1332.

right to take leave to care for a spouse, son, daughter, or parent with a serious health condition.<sup>57</sup> Like *Hibbs*, the Court’s decision in *Coleman* turned on whether Congress acted pursuant to a valid exercise of its Section 5 power when permitting suits against states for interfering with an employee’s leave under the self-care provision of the FMLA. The Court held that Congress did not.<sup>58</sup>

In *Hibbs*, the Court had found that Congress relied on evidence of states’ “unconstitutional participation in, and fostering of, gender-based discrimination” when administering family leave policies to permissibly authorize suits against state entities for interfering with an employee’s right to take FMLA leave to care for a spouse, son, daughter, or parent with a serious health condition.<sup>59</sup> However, the *Coleman* court indicated that there was not similar widespread evidence of sex discrimination or gender stereotyping in the administration of self-care leave policies by state employers.<sup>60</sup> Because Congress had not identified a “specific pattern of constitutional violations by state employers,” the Court held that the 11<sup>th</sup> Amendment precludes money damages suits against states for interference with an employee’s rights under the FMLA’s self-care provision.<sup>61</sup>

The Court in *Hibbs* addressed only whether states could be sued for interfering with an employee’s FMLA leave to take care of a spouse, son, daughter, or parent with a serious condition. The Court did not expressly address the FMLA provisions providing leave after childbirth or adoption. However, in this instance, the Court collectively referred to FMLA provisions providing leave after childbirth or adoption, along with leave to take care of a spouse, son, daughter, or parent with a serious health condition, as the FMLA’s “family care provisions.”<sup>62</sup> It did so when distinguishing between these provisions and the self-care provision, observing that in *Hibbs*, the Court found Congress had relied on “evidence of a well-documented pattern of sex-based discrimination in family-leave policies” by states.<sup>63</sup> Therefore, *Coleman* suggests, though it does not expressly say so, that states can be sued for interfering with an employee’s FMLA rights after childbirth or adoption.

Notably, in dissent, Justice Ginsburg observed that *Coleman* “does block injured employees from suing [states] for monetary relief” following state interference with an employee’s FMLA rights; however, it does not preclude “injunctive relief against the responsible state official.”<sup>64</sup> At least one circuit court has held that the 11<sup>th</sup> Amendment does not preclude prospective claims for injunctive relief (e.g., reinstatement) against individual state officials in their official capacities for continuing interferences with the FMLA’s self-care provision.<sup>65</sup>

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<sup>57</sup> *Id.* at 1334.

<sup>58</sup> *Id.* at 1338.

<sup>59</sup> *Id.* at 1334.

<sup>60</sup> *Id.* at 1337 (“... there is no sufficient nexus, or indeed any demonstrated nexus, between self-care leave and gender discrimination by state employers.”).

<sup>61</sup> *See id.* at 1337-38.

<sup>62</sup> *Id.* at 1332.

<sup>63</sup> *Id.* at 1334.

<sup>64</sup> *Id.* at 1350.

<sup>65</sup> *Diaz v. Mich. Dep’t of Corrections*, 703 F.3d 956, 965-66 (6<sup>th</sup> Cir. 2013).

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