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THE FAMILY AND MEDICAL LEAVE ACT: EXTENDING COVERAGE TO MILITARY FAMILIES LEFT AT HOME

HEARING

BEFORE THE

SUBCOMMITTEE ON WORKFORCE PROTECTIONS

COMMITTEE ON

EDUCATION AND LABOR

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

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C O N T E N T S

	Page
Hearing held on September 18, 2007	1
Statement of Members:	
Issa, Hon. Darrell E., a Representative in Congress from the State of California	12
Prepared statement of	13
Wilson, Hon. Joe, ranking minority member, Subcommittee on Workforce Protections	3
Prepared statement of	4
Statement of the National Coalition to Protect Family Leave	40
Woolsey, Hon. Lynn C., Chairwoman, Subcommittee on Workforce Protections	1
Prepared statement of	2
Statement of Witnesses:	
Clinton, Hon. Hillary Rodham, a U.S. Senator from the State of New York, prepared statement of	11
Dodd, Hon. Senator Christopher J., a U.S. Senator from the State of Connecticut	5
Prepared statement of	9
McCaskill, Hon. Claire, a U.S. Senator from the State of Missouri, and Hon. Barack Obama, a U.S. Senator from the State of Illinois, prepared statement of	38
Ness, Debra, president, the National Partnership for Women & Families	29
Prepared statement of	31
Perdew, Jessica, deputy director of government relations, the National Military Family Association	19
Prepared statement of	21
Vion-Gillespie, Christine, employee relations and compliance manager, SAS Institute, Inc., on behalf of the Society for Human Resource Management	24
Prepared statement of	25
Wade, Sarah, public policy intern, Wounded Warrior Project	16
Prepared statement of	18

THE FAMILY AND MEDICAL LEAVE ACT: EXTENDING COVERAGE TO MILITARY FAMILIES LEFT AT HOME

Tuesday, September 18, 2007
U.S. House of Representatives
Subcommittee on Workforce Protections
Committee on Education and Labor
Washington, DC

The subcommittee met, pursuant to call, at 2:04 p.m., in Room 2175, Rayburn House Office Building, Hon. Lynn Woolsey [chairwoman of the subcommittee] Presiding.

Present: Representatives Woolsey, Payne, Bishop, Hare, and Wilson.

Staff Present: Aaron Albright, Press Secretary; Tylease Alli, Hearing Clerk; Jordan Barab, Health/Safety Professional; Jody Calemine, Labor Policy Deputy Director; Lynn Dondis, Senior Policy Advisor for Subcommittee on Workforce Protections; Michael Gaffin, Staff Assistant, Labor; Jeffrey Hancuff, Staff Assistant, Labor; Brian Kennedy, General Counsel; Thomas Kiley, Communications Director; Ann-Frances Lambert, Administrative Assistant to Director of Education Policy; Joe Novotny, Chief Clerk; Michele Varnhagen, Labor Policy Director; Robert Borden, General Counsel; Cameron Coursen, Assistant Communications Director; Rob Gregg, Legislative Assistant; Taylor Hansen, Legislative Assistant; Richard Hoar, Professional Staff Member; Victor Klatt, Staff Director; Jim Paretti, Workforce Policy Counsel; and Linda Stevens, Chief Clerk/Assistant to the General Counsel.

Chairwoman WOOLSEY. A quorum is present. The hearing of the Workforce Protections Subcommittee on "The Family and Medical Leave Act: Extending Coverage to Military Families Left at Home," will come to order.

Pursuant to committee rule 12(a), any member may submit an opening statement in writing, which will be made part of the permanent record.

I now recognize myself, followed by Ranking Member Joe Wilson, for opening statements.

So I want to thank everybody who is here today—who is coming to listen and coming to participate in this very important hearing.

My remarks will be brief. We want to hear our distinguished witnesses; we do not want to hear me. But I want to say something about the Family and Medical Leave Act, which is intended to help individuals balance their families and their work obligations.

Ninety million working people are now eligible for unpaid protected leave for up to 12 weeks a year. When the act was passed in 1993, it was a huge, giant step, and is of great importance to working families still today.

A majority of military spouses work outside of the home, and they, too, must balance work and family, among other things, to put food on the table and to provide support for the needs of their families. But they face additional challenges because their lives have been disrupted by multiple deployments involving not only active servicemembers but those in the National Guard and the Reservists. There is so much that faces the military family that the very least we can do is pass legislation to help them.

The conflicts of Iraq and Afghanistan have resulted in almost 30,000 casualties—I think it is more—with many servicemembers being very, very seriously wounded. These wounded warriors need substantial support. They need care from their families, and they often need this care for long periods of time. Some need the care permanently.

So, no matter where we come down on the merits of these conflicts, we must help the families involved, families who include not only spouses but parents, children and others. We must help them support their loved ones who are putting their lives on the line for us in Iraq and in Afghanistan.

Unfortunately, this current administration has let down our returning servicemembers, and we need to reaffirm our commitment to these brave men and women. Therefore, I am honored to have introduced H.R. 3481, the House companion to Senator Dodd's and Senator Clinton's legislation, S. 1975.

This legislation amends FMLA to provide 6 months of leave for spouses, children, parents and other next of kin to care for injured servicemembers. This legislation incorporates the recommendations of the President's Commission on Care for America's Returning Wounded Warriors, chaired by Secretary Shalala and Senator Dole. It is the least we can do, and hopefully, we can do much, much more.

So I look forward to the testimony of panel one and panel two.

And I yield to my ranking member, Mr. Wilson.

We are going to try then to have you heard before we go vote, Senator.

Senator DODD. Thank you very much.

Prepared Statement of Hon. Lynn C. Woolsey, Chairwoman, Subcommittee on Workforce Protections

Thank you everyone, for coming here today to participate in this hearing.

My opening remarks will be brief because we want to hear from these distinguished witnesses.

The Family and Medical Leave Act is intended to help individuals balance their family and work obligations.

Ninety million working people are now eligible for unpaid job protected leave for up to 12 weeks a year.

When the Act was passed in 1993, it was a giant step, and is of great importance to working families.

A majority of military spouses work outside of the home and must balance work and family, to put food on the table, and provide the support their families need.

But they face additional challenges because their lives have been disrupted by multiple deployments, involving not only active service members but those in the National Guard and reserves.

And the conflicts in Iraq and Afghanistan have resulted in almost 30,000 casualties with many service members being seriously injured.

These wounded warriors need substantial support and care from their families, often for long periods of time, and some permanently.

So no matter where we come down on the merits of these conflicts, we must help the families involved—families who include not only spouses but parents, children and others—support their loved ones who are putting their lives on the line for us in Iraq and Afghanistan.

Unfortunately, this Administration has let down our returning service members and we need to reaffirm our commitment to these brave men and women.

Therefore, I am honored to have introduced H.R. 3481, the House companion to Senators Dodd and Clinton's legislation, S.1975, which amends the FMLA to provide 6 months of leave for spouses, children, parents and other "next of kin" to care for injured service members.

This legislation incorporates one of the recommendations of the President's Commission on Care for America's Returning Wounded Warriors, chaired by Secretary Shalala and Senator Dole.

It is the least we can do and hopefully we can do more.

I look forward to the testimony today on this very critical issue.

Mr. WILSON. Good afternoon.

Thank you, Madam Chair.

When they arrive, I want to welcome each of our witnesses.

Indeed, Senator Dodd, I am confident we can stay through and hear your testimony.

We want to welcome our colleagues from the other body and our colleague in the House, my good friend and neighbor, Mr. Issa, and of course, our witnesses on the second panel, in particular Ms. Wade, who does us a great honor by being here today.

As a 31-year veteran of the Army National Guard and the grateful father of four sons currently serving in the military, I understand the challenges of our military families that they face each and every day. They deserve our utmost respect and admiration.

Earlier this year, President Bush, by way of Executive order, created the President's Commission on Care for America's Returning Wounded Warriors. The Commission, led by former Senate Majority Leader Bob Dole and former Secretary of Health and Human Services Donna Shalala, examined and made recommendations to improve the care benefit and support provided to America's wounded service men and women.

In July 2007, the Commission delivered its final report to the President. One of its recommendations was that Congress amend the Family and Medical Leave Act to provide extended care to relatives caring for combat-related injured servicemembers. President Bush has endorsed this recommendation. Indeed, no one in this room could find a more worthy goal than ensuring workers are not forced to choose between their jobs and caring for an injured family member who has served his or her country.

I am particularly interested today in hearing testimony from our witnesses regarding their reasons for supporting expanded leave for military caregivers. Additionally, I hope they will share their views on the various other proposals before Congress.

Finally, I want it noted for the record that today's hearing is one of the first in this Congress where we have begun to look at the Family and Medical Leave Act. This statute, which now has been on the books for almost 15 years, is working well in some instances but not as well in others.

We are all united in our support of military families today, and that makes our task of legislating easier. But I would caution my colleagues that there are a number of policy issues surrounding the Family and Medical Leave Act that do not lend themselves to unanimous support.

I hope that, after today, this subcommittee and our committee as a whole does not shy away from that debate but, rather, turns to face some of the tough questions that have arisen under the law. That is the debate for another day but one that we must commit to having.

With that, I look forward to today's testimony, and I yield back the balance of my time.

Prepared Statement of Hon. Joe Wilson, Senior Republican Member, Subcommittee on Workforce Protections

Good afternoon, and thank you, Madam Chair. I want to welcome each of our witnesses—our colleagues from the other body, our colleague in the House, my good friend and hall neighbor Mr. Issa, and of course, our witnesses on the second panel, in particular, Ms. Wade, who does us a great honor being here today.

As a 31 year veteran of the Army National Guard and proud father of four sons currently serving in the military, I understand the challenges our military families face each and every day. They deserve our utmost respect and admiration.

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I am particularly interested today in hearing testimonies from our witnesses regarding their reasons for supporting an expanded leave for military caregivers. Additionally, I hope they will share their views on the various proposals before Congress.

Finally, I would note for the record—today's hearing is one of the first in this Congress where we have begun to look at the Family and Medical Leave Act. This statute which has now been on the books for almost fifteen years is working well in some instances but not as well in others. We are all united in our support of military families today, and that makes our task of legislating easier. But I would caution my colleagues that there are a number of policy issues surrounding the Family and Medical Leave Act that do not lend themselves to unanimous support. I hope that after today this Subcommittee and our Committee as a whole does not shy away from that debate, but rather turn to face some of the tough questions that have arisen under the law. That is a debate for another day, but one that we must commit to having.

With that, I look forward to today's testimony, and yield back the balance of my time.

Chairwoman WOOLSEY. Thank you, Mr. Wilson.

I now have the honor of introducing our distinguished first panel and to welcome Senator Dodd. And I think we will probably drag Representative Issa up after the votes, but we will get to hear from the Senator first.

But I think you know that the lights—you have worked here. You know the green light means go, and the yellow light means

you are almost finished, and the red light means wrap it up as soon as you can.

We are going to hear from Senator Dodd first. Senator Christopher Dodd is the senior senator from Connecticut who has tirelessly fought for working families, and did that before the enactment of the Family and Medical Leave Act, which was signed into law in 1993. As the Chair of the Senate Subcommittee on Children and Families, the Senator has continued to help working men and women by authoring the Family and Medical Leave Expansion Act and the Family Leave Insurance Act, which would provide paid leave for employees.

Earlier this year, he worked closely with Senator Clinton and a bipartisan coalition of senators to write S. 1975, the Support for Injured Servicemembers Act, which would help provide 6 months of family and medical leave, as I said, for military families.

Senator, the floor is yours. Thank you for joining us.

STATEMENT OF HON. CHRISTOPHER DODD, A U.S. SENATOR FROM THE STATE OF CONNECTICUT

Senator DODD. Thank you very much, Madam Chairman.

It is good to be back in the House. I started out here with a head of black hair a number of years ago, but to come back here and to return to the House is always a pleasure. I always said the ideal job in politics would be a 6-year term in the House. That always gets an applause on the House side.

Anyway, thank you very much for inviting us to come by today, and I am delighted to be able to participate in this hearing and to encourage support for this very important piece of legislation.

Congressman Wilson, it is good to be with you, as well, and with other members of the committee who have come out here this afternoon to hear this testimony.

I am very proud to have worked, as you pointed out, with former Senator Bob Dole, the majority leader, on this legislative effort to expand the Family and Medical Leave Act.

And I will apologize in advance, and I regret—I have read the testimony, and I want to thank Sarah Wade, particularly. It is not an easy thing to come before a congressional committee and talk about matters as personal as your family and what she has been through and what her husband has been through, particularly what her husband has been through, and to recognize that someone lost a job because they were taking care of their spouse coming back from a theater of conflict in war where they have given everything on behalf of our country. Whether you agree or disagree with the policies, none of us has anything but the highest admiration for those who are serving in very difficult theaters of conflict.

So, to you, Mrs. Wade, we thank you immensely.

I want to thank Jessica Perdew, as well, from the National Military Family Association, for her work and for the work of her association on behalf of military families.

Debra Ness has been a wonderful friend for many, many years and was very instrumental and involved with family and medical leave for the National Partnership for Women and Families.

I want to thank them, as well. I know they are your second panel coming up here.

Madam Chairman, I will ask for consent that the entire context of these remarks be included in your record, and I will try and just paraphrase as much of it as I can, to move things along for you.

Chairwoman WOOLSEY. Without objection.

Senator DODD. I appreciate Bob Dole asking me to draft this legislation to implement one of the key recommendations, as I am sure all of you know, put forth by the President's Commission on Care for America's Returning Wounded Warriors. As co-chairs of the Wounded Warriors Commission, Senator Dole and the former Secretary of Health and Human Services, Donna Shalala, deserve our gratitude. And I think all of us commend them for their thoughtful work in developing the Commission's report.

I also want to take a moment to note that I am both pleased and extremely grateful for the bipartisan support from Senate colleagues. We spent a lot of time talking about the divisions that exist here. Not enough time is spent on the matters, but we actually work very closely together to get the job done.

You have already mentioned my colleague from New York, Senator Clinton, who has been deeply involved in these issues and cares about them very much and has for many, many years here. And I am grateful to her for her participation and support, along with Senator Dole and Senators Graham, Kennedy, Chambliss, Reed of Rhode Island, Senator Mikulski, Senator Murray, Senator Salazar, Senators Lieberman, Menendez, Brown, Nelson of Nebraska, Cardin and, I presume, others, as well. They were all part of this effort here to bring this bill to the successful unanimous adoption by the United States Senate as part of the Children's Health Insurance Program a few weeks ago.

As you pointed out, Madam Chairman, 14 years ago, I started on this journey of family and medical leave, and I would be very remiss, particularly in this body, if I failed to mention the name of Pat Schroeder, Patricia Schroeder, who was really the person who originated the idea. That day of the bill signing in February of 1993, she was not included to stand on the podium in the Rose Garden at the White House, and I have always regretted it deeply because she should have been there. She was really the person who initiated the idea.

I authored the bill in the United States Senate, and as you pointed out, it took three presidents, 7 years and two vetoes to end up with a bill. And I should point out that it never would have happened without the support of Arlen Specter and my good friends, as well, Kit Bond of Missouri, Dan Coates of Indiana; Senator Kennedy was tremendously influential. It was a bipartisan effort. It took a long time, but we ended up adopting that legislation.

Today, 14 years later, 50 million Americans have been able to take advantage of this protection of caring for a sick loved one, to recover from an illness or to welcome a new child into the family, among other things. After an amount of time, we see that the debate is no longer about whether Americans have a right to its protections but, rather, about how best to expand those rights.

And I can say without reservation that no one is more deserving of those protections than those who risk their lives in the service of our Nation. Most of all, of course, wounded soldiers deserve the care of their closest loved ones. That is exactly what we have of-

fered in the Support of Injured Servicemen's Act, which you are proposing here, and what was recommended by the Commission headed by Senator Dole and Donna Shalala.

It should come as no surprise that the Commission found that family members play a critical role in the recovery of wounded servicemembers. In fact, Madam Chairman, I will never forget Dr. C. Everett Koop, who was one of the critical witnesses. It was one of those votes I regret having made. I voted against Dr. Koop, when his confirmation was up years ago in the Senate. After he retired, I wrote a letter and put it into the Congressional Record, apologizing for the vote. He turned out to be a remarkable Surgeon General.

One of the things he did was to come and stress and testify very forcefully, contrary to the administration's position, as someone who is a pediatric surgeon, the importance of having family members around during time of recovery. And he made eloquent testimony some 15 or 16 years ago about the importance of family members being with a loved one as you go through the recovery from an illness or an injury. Certainly, that is what we are trying here to achieve for people coming out of the theaters of conflict.

The commitment shown by families and friends of our troops is truly inspiring. According to the Commission report—and these two numbers I found rather startling—33 percent of active-duty servicemembers report that a family member or a close friend had to relocate in order to be with them during the periods of recovery, and that one out of five actually lost his job as a result of doing so, as you are going to hear from Sarah Wade here.

I think those two statistics had a lot to do with the recommendation by the Commission, the idea that people have to relocate to take care of a loved one and that as many as 20 percent, or over 20 percent, actually lost employment as a result of making that decision.

In fact, the Commission's report points out and says, and I quote, "In virtually every case of a wounded serviceman, a wife, husband, parent, brother or sister has received the heart-stopping telephone call telling them that their loved one is sick/injured from halfway around the world. These loved ones bear a tremendous burden, and to add the fear of losing their employment or their jobs is more than one should demand from these families."

How could we be unmoved by the stories as that of Sarah Wade, whose husband lost an arm and suffered a severe, traumatic brain injury in Iraq? Mrs. Wade was fired from her job for spending too many months helping her husband recuperate, because she had, to quote her employer, "a lot going on," end of quote, in her life.

It is true, thousands of families like hers will have "a lot going on" in their lives until the day their soldiers' recoveries are complete. They will have "a lot going on" because their loved ones sacrificed parts of their bodies for our country. At the very least, we can give those families the assurance that Sarah Wade never had, the assurance that, when they have returned from caring for the wounded, their jobs will still be there for them.

With an all-volunteer military, supporting our military families is more essential today than ever.

I, too, Congressman, served in the National Guard and Army Reserves. Thomas Jefferson was President when I did it in those days, going back. But the old saying here, "We recruit soldiers, but we retain families," is an old saying, but it has true merit and value. Certainly, this point we are making here today emphasizes that particular point.

That is why the Commission recommended that family and medical leave be expanded to provide family members of combat-injured servicemen up to 6 months of leave to care for their loved ones. And those 6 months are vital. According to the staff at Walter Reed, 6 months is the average length of time an injured servicemember needs to recover self-sufficiency. So the period of 6 months is not taken arbitrarily out of thin air. It was a number derived from those at Walter Reed who gave us the indication or who gave the Commission the idea of the amount of time that would be necessary.

For the first time, this bill offers family and medical leave not just to parents, spouses and children, but to next of kin, including siblings. Families, not the government, should decide for themselves who takes on the work of caring for their injured loved ones. This legislation recognizes that fact, and it is a major accomplishment in this bill. But it is just a first step, in my view, in the support that our military families need.

Since its passage in the Senate, I have sought to expand, as you pointed out, family and medical leave to include more employees, particularly in small businesses. When we wrote the legislation initially, I set the standard pretty high because we were going through a difficult time, and I stuck with those numbers even when Congress changed in 1994.

But, nonetheless, to expand that definition of who is a caregiver is what we have done here and also to provide some means of providing paid leave. A staggering number of people who would otherwise qualify for leave could not afford to do it for the periods necessary, so we are trying to fashion it in a bipartisan fashion. Senator Ted Stevens of Alaska has been very cooperative and helpful with me on this particular point, in trying to fashion a paid leave proposal. And we hope to have something to present fairly shortly in that regard.

For many years, I have worked to build on the proven success of the Family and Medical Leave Act and have been driven by my strong belief that more Americans are deserving of its protections. Certainly, I continue these efforts and seek additional resources for our military families, such as comprehensive child care, but we will focus on passing this bill as soon as possible.

I deeply appreciate the partnership of Chairwoman Woolsey in this regard, along with Chairman George Miller, who introduced companion legislation along with that which we have done in the Senate. I would also like to recognize Congressman Altmire, who, I understand, was very involved in this as well, and I want to commend him for his work on behalf of expanding family and medical leave for our military families.

Our full debt to our troops is unpayable, of course, but perhaps the best thing we could do for them is to get out of the way and to make it possible for the love of a family to help heal their

wounds. What this legislation does, then, is to break down the barriers, the barriers between our troops and the care they need most.

In conclusion, Madam Chairman, the support for injured servicemen offers just one of the critical ways in which we can better assist our military families. In a few moments, you are going to hear from a group of people who truly understand the challenges facing our soldiers and their families. They have my admiration and my gratitude. And I look forward to working with all of them, including, as I said earlier, my longtime ally in so many of these issues, Debra Ness of the National Partnership for Women and Families. Together, we can provide critical support, I believe, for working families who sacrifice so much for the collective safety and security of our country.

And I am deeply grateful to the subcommittee for giving me a chance to talk about the issue and to thank all of you for your commitment to this cause, as well.

[The statement of Senator Dodd follows:]

Prepared Statement of Hon. Christopher J. Dodd, a U.S. Senator From the State of Connecticut

Chairwoman Woolsey, Ranking Member Wilson, and distinguished committee members: Thank you for this opportunity to testify on a measure vitally important to our troops and their families.

I am very proud to have worked with former Senate Majority Leader Bob Dole on this legislative effort to expand FMLA for military families. Unfortunately, Senator Dole is unable to be here today. Nonetheless, I deeply appreciate his asking me to draft this essential legislation to implement one of the key recommendations put forth by the President's Commission on Care for America's Returning Wounded Warriors.

As co-chairs of the Wounded Warriors Commission, Senator Dole and former Secretary of Health and Human Services Donna Shalala deserve our gratitude and I commend them for their thoughtful work in developing the Commission's report. I also want to take a moment to note that I am both pleased, and extremely grateful for, the bi-partisan support from my Senate colleagues including: Senator Clinton, the bill's cosponsor and Senators Dole, Graham, Kennedy, Chambliss, Reed, Mikulski, Murray, Salazar, Lieberman, Menendez, Brown, Nelson of Nebraska, and Cardin. Through the efforts of these colleagues just last month, this measure was unanimously adopted as an amendment to the Children's Health Insurance Program reauthorization.

Fourteen years ago, the Family and Medical Leave Act (FMLA) declared a simple principle: workers should never be forced to choose between the jobs they need and the families they love. In the years since its passage, more than 50 million Americans have taken advantage of its protections to care for a sick loved one, recover from illness, or welcome a new baby into the family. And after the seven years, three presidents, and two vetoes it took to get the FMLA finally enacted into law, I am pleased to see that the debate is no longer about whether Americans have the right to its protections; but rather, about how it may best be expanded. I can say without reservation that no one is more deserving of those protections than those who risk their lives in the service of our country. Most of all, wounded soldiers deserve the care of their closest loved ones. That is exactly what I have offered in the Support for Injured Servicemembers Act.

It should come as no surprise that the Commission found that family members play a critical role in the recovery of our wounded servicemembers. The commitment shown by the families and friends of our troops is truly inspiring. According to the Commission's report, 33 percent of active duty servicemembers report that a family member or close friend relocated for extended periods of time to help in their recoveries. It also points out that 21 percent of active duty servicemembers say that their friends or family members gave up jobs to find the time to care for them. To quote from the Commission's moving report:

"In virtually every case [of a wounded servicemember], a wife, husband, parent, brother, or sister has received the heart stopping telephone call telling them that their loved one is sick, or injured, half way around the world."

These loved ones bear a tremendous burden. Add to that the fear of losing their jobs—it is more than we should demand from these families. How could we be unmoved by the story of Sarah Wade, whose husband lost an arm and suffered a severe traumatic brain injury in Iraq? Ms. Wade was fired from her job for spending too many months helping her husband recuperate—because she had, to quote her employer, "a lot going on" in her life. It's true—thousands of families like hers will have "a lot going on" in their lives until the day their soldiers' recoveries are complete. They will have "a lot going on," because their loved ones sacrificed parts of their bodies for our country. And the very least we can give those families is the assurance that Sarah Wade never had—the assurance that, when they have returned from caring for the wounded, their jobs will still be there.

And with an all-volunteer military, supporting our military families is more essential today than ever: We recruit a soldier, but we retain a family. That is why the Commission recommended that FMLA be expanded to provide family members of combat-injured servicemembers up to six months of leave to care for their loved ones. And those six months are vital: according to staff at Walter Reed Medical Center, six months is the average length of time an injured servicemember needs to recover self-sufficiency. For the first time, this bill offers FMLA leave not just to parents, spouses, and children, but to next-of-kin, including siblings. Families—not the government—should decide for themselves who takes on the work of caring for their injured loved ones. This legislation recognizes that fact, and it's a major accomplishment. But it is just a first step in providing the support that our military families need.

Since its passage, I have sought to expand FMLA to include more employees, particularly in small businesses, to expand the definition of who is a caregiver, and also to provide paid leave. For many years, I have worked to build on the proven success of the FMLA and have been driven by my strong belief that more Americans are deserving of its protections. I will continue these efforts and seek additional resources for our military families, such as comprehensive child care, but will focus on passing the Support for Injured Servicemembers Act as soon as possible.

I deeply appreciate the partnership of Chairwoman Woolsey, along with Chairman Miller, who introduced companion legislation in the House of Representatives. I'd also like to recognize Congressman Altmire, who is here today, for his work on behalf of expanding FMLA for our military families. Our full debt to our troops is unpayable. But perhaps the best thing we can do for them is to get out of the way—to make it possible for the love of family to help heal their wounds. What this legislation does, then, is break down a barrier: the barrier between our troops and the care they need the most.

In conclusion, the Support for Injured Servicemembers offers just one of the critical ways in which we can better assist our military families. In a few moments you will hear from a group of people who truly understand the challenges facing our soldiers and their families. They have my admiration and my gratitude, and I look forward to working with all of them, including my long-time ally Debra Ness of the National Partnership for Women and Families. Together, we can provide critical support to the working families who sacrifice so much for our collective safety and security.

Again, I thank the subcommittee for the opportunity to testify today.

Chairwoman WOOLSEY. And we thank you. We are not going to ask questions because we have to go vote.

Senator DODD. I understand that.

Chairwoman WOOLSEY. Senator, we know how busy your schedule is, and we thank you for your participation. We thank you for authoring this legislation, and I am honored to be your House partner on that.

Senator DODD. I look forward to working with you.

Chairwoman WOOLSEY. For everybody to know, we are going to try to get Representative Issa back here with us, and Senator Clinton will be showing up sometime during the hearing.

Senator DODD. Well, thank both of them for me, as well.

Chairwoman WOOLSEY. I will. So thank you. It is great legislation.

Senator DODD. Thank you. It is nice to be with you.

Chairwoman WOOLSEY. Thank you.

Senator DODD. Thank you.

[Recess.]

Chairwoman WOOLSEY. All right. Now we have the privilege—first of all, Senator Clinton came by and left her statement for the record, and we will put it into the record.

[The statement of Senator Clinton follows:]

Prepared Statement of Hon. Hillary Rodham Clinton, a U.S. Senator From the State of New York

I want to thank Congresswoman Woolsey for holding this hearing and to all our witnesses for their testimony today.

We have a duty to honor our veterans, service members, and their families—something I take very seriously as a Senator, a member of the Senate Armed Services Committee, and an American. It is a duty that cuts across party lines and cuts to the heart of our values as a nation.

I have met with so many veterans and service members who have told me about the difficult and dangerous situations they faced on the battlefield. All too often, they have returned home only to face new battles just to get the treatment and care they need and deserve: enduring deplorable conditions at Walter Reed; navigating a maze of bureaucracy to receive disability benefits; visiting VA Hospitals in need of guaranteed funding; struggling to re-enter civilian life.

In July, the bipartisan Commission on Care for America's Returning Wounded Warriors—chaired by former Senator Bob Dole and former Secretary of Health and Human Services Donna Shalala—issued its final report on the need to reform the medical care our troops and veterans receive.

The Commission visited 23 treatment facilities run by the Department of Defense, the Department of Veterans Affairs, and the private-sector. Literally thousands of service members, veterans, family members, and health care personnel submitted their personal stories as well.

Based on its review, the commission recommended that one important way in which our nation can strengthen the help we provide injured service members is by improving and expanding support for military families through the Family and Medical Leave Act. That is why I am proud to partner with my friend Chris Dodd in championing the "Support for Injured Servicemembers Act of 2007," which implements this key recommendation of the commission's report.

We have introduced this legislation as a stand-alone bill, and we successfully passed our amendment through the Senate as part of the Children's Health Insurance Program legislation. We've also introduced our measure as an amendment to the Senate's Defense Authorization legislation. And we have received substantial bipartisan support, including from Senators Dole, Graham, Mikulski, Chambliss, Brown, Cardin, Menendez, Salazar, Kennedy, Reed, Boxer, Murray, Lieberman, and Roberts.

The Family and Medical Leave Act was the first bill signed into law during the Clinton Administration. It has helped more than 60 million men and women trying to balance the demands of work and family. I believe it is time to strengthen that Act for military families. Our legislation provides up to six months of job-protected leave for spouses, children, parents or next of kin of service members who suffer from a combat-related injury or illness.

The families of service men and women face extraordinary demands in caring for loved ones injured in service to our nation. And currently, these spouses, parents and children can receive only twelve weeks of leave under the Family and Medical Leave Act. As the Dole-Shalala Commission found, all too often, this is just not enough time—as injured service members grapple with traumatic brain injuries, severe physical wounds, and other problems upon returning home from Iraq, Afghanistan, and elsewhere.

In fact, 33 percent of active duty, 22 percent of reservists, and 37 percent of retired service members reported to the Commission that a family member or close friend had to leave their homes for extended periods of time to help them in the hospital. About 20 percent said friends or family gave up a job to be with them or act as their caregiver.

Imagine: your husband or wife, son or daughter, returns from Iraq with an serious injury. You want to be with them and take care of them. Right now, you have to choose between the person you love and the job you need. That's not a choice military families should have to make. If you are injured in service to this country, we

should not add insult to injury by failing to do everything we can to help you when you get home.

These men and women took on great risk and sacrifice to protect our nation. Doing right by them and their families is not a Democratic issue or a Republican issue. It is a matter of America's values and moral responsibility.

This is a step we can take immediately that will make a real difference. Our men and women in uniform have made tremendous sacrifices on our behalf. As a nation and as citizens we have a duty in return. Thank you.

Chairwoman WOOLSEY. We are sorry we missed her, but we are delighted to have Representative Darrell Issa here.

Actually, Representative Issa was elected in the year 2001. Today, he represents California's 49th District. He serves as the ranking member on the House Domestic Policy Subcommittee of the Government Reform Committee.

He has been active in advocating the expansion of the Family and Medical Leave Act to enable working family members to care for their wounded loved ones, and he is the sponsor of bipartisan legislation H.R. 3391, the Military Family and Medical Leave Act.

Congressman Issa was commissioned as a U.S. Army officer, and he later attained the rank of captain.

So, Captain Issa, thank you for being here.

STATEMENT OF HON. DARRELL ISSA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. ISSA. Thank you, Madam Chair and Ranking Member Wilson. I appreciate your holding this hearing today on an important and overdue issue.

I would also like to thank Senator Dodd and Senator Clinton, who, as you mentioned, are bipartisan supporters of this bill and of what we are trying to do; additionally, Congressman Rahall, who also has been a leader on this issue and who is a cosponsor of H.R. 3391.

I would like to take just a moment, if I may, to talk a little bit about the history of what we are trying to accomplish here today. The Family and Medical Leave Act emphasizes leave, but, in fact, legislation that has come before this, like this, is not about leave; it is about return.

The fact is anybody can—and today, huge numbers of people do—leave their jobs/lose their jobs in order to care for loved ones. Prior to 1940, military members, particularly Reservists, left their jobs to serve in our military with no right of return.

We changed that for veterans, beginning in 1940, with the Reemployment Rights Act and Selective Training and Service Act. It is a grandiose title, but all it really said was, if you go to serve your country, there will be a job for you when you return, and if that job is not available, effort will be made to find a reasonable equivalent.

America, since 1945, the end of World War II, has had very little trouble absorbing the brave men and women who have come home from war. However, not everyone comes home the way they left. So, when we look at our service men and women coming home, they sometimes come home in need of, sometimes, fairly long rehabilitation periods, sometimes a period in which they will never be able to return to their jobs. But if they are to return to a productive life,

in fact, if they are to live at all, it is very clear that we have an obligation to see that they have the caregivers who are most appropriate.

With the passage of the Family and Medical Leave Act in 1993, we made a decision as a body that, for the eligible employees, for the birth of a child, adoption, foster care or to care for a personal, immediate family member's health, it would be covered.

What we are seeking to do here today, very appropriately, is to extend the recognition that we have a tremendous number of our men and women who are serving in the military who are coming home in need of special care, and today, they are not covered for the people who we would have take care of their needs, whether it is the effects of IEDs, the traumatic brain injuries, amputees, spinal cord injuries. These are not overnight remedies, and they need their best ally.

Our legislation is nothing more, I believe today, than an extension of a direction that Congress began in 1940, but it is an important extension. It is an extension whose time has come and certainly one that is critical in what is often a controversial war but not as to those men and women who go to serve in it.

So, if you have any questions, which I do not believe you do, but I would be glad to take them.

Thanks, Lynn.

What I would say is that the extension of the 26 weeks, the definitions, these are intended to be narrow extensions on a continuum. And, in closing, what I would say, on a bipartisan basis, is that, regardless of how legislation finally ends up, let us all be committed that we must get legislation passed. If we do a little less but we get done the basics today, I commit to come back and to do more.

And there are many who say, "Well, we have to do more in this one bite, and we have to include beyond the scope," at least of what I have drafted. I do not disagree that that may be worthwhile.

What I hope this committee will focus on, and the Senate too, is that we must get legislation passed that does good for those who, today, as we speak, are choosing between caring for a loved one injured in support of our country or keeping their job. That is not a decision that men and women should be forced to make when they serve in the military, and certainly, it is not for those who care for those who come home.

I thank the gentlelady for her time, and I thank the ranking member.

[The statement of Mr. Issa follows:]

Prepared Statement of Hon. Darrell E. Issa, a Representative in Congress From the State of California

Testimony by Congressman Darrell Issa before the Committee on Education and Labor, Subcommittee on Workforce Protections for September 18, 2007

Chairwoman Woolsey, and the Subcommittee on Workforce Protections, thank you for inviting me to speak today. I also thank Senator Dodd, Senator Clinton, and the bi-partisan Senate delegation for their leadership on this issue. As well, I'd like to thank Congressman Rahall for joining me as a leader in the House on this issue by cosponsoring my bill H.R. 3391.

While the title of the law we examine today, the Family and Medical Leave Act, emphasizes "leave," the discussion is truly about the return. What level of care will we as a nation provide to our military upon their return? In this case the answer

does not involve money. It is about the power of family and the commitment of our communities to rebuilding lives after military service.

The history of protecting civilian employment rights for active military and veterans began in 1940 with the Veterans Reemployment Rights Act and the Selective Training and Service Act. Over time, work protections have been expanded and clarified. In 1994, the Uniformed Services Employment and Reemployment Rights Act entitled a military member to return to his or her civilian job upon return from uniformed services.

With the passage of the Family and Medical Leave Act in 1993, employment protections were extended beyond the scope of the military to include eligible employees for the birth of a child, adoption, foster care, and the care of personal or immediate family member health.

Now, in 2007, employment protections can come full circle to incorporate leave for service members and their families.

The need to discuss the expansion of the Family Medical and Medical Leave Act for the family of our wounded service members is unmistakable. Today, our military men and women are surviving combat-related injuries that even a generation ago, would have been impossible.

The President's Commission on Care for America's Returning Wounded Warriors estimated 11% of the wounded received Seriously Injured status. Over 9% of the wounded have Traumatic Brain Injuries, 2% are amputees, 2% are seriously burned, 1% have spinal cord injuries, less than 1% are blinded, and 1.4% are polytrauma patients.

Health studies show that regular family support is a critical component of patient recovery. Physicians often regard the family as the "ally" in combating illness, as they are the daily support for recovering patients. Studies have shown that their time and presence directly corresponds to the improvement of individual health. Family participation in healthcare is vital to both the demanding physical and mental needs of recovery. According to both physicians and medical studies, the presence and participation of supportive relatives is essential to improving the health of an individual.

The Commission found that families are keeping this important commitment to care, but often at the cost of continued employment. Approximately ⅓ of service members indicated their family or close friends relocated for extended times to assist with care. Family members testified to the Commission that they have been forced to make the decision between their job and staying by their wounded family member's side during recovery. Between 15-20% reported close friends and family gave up a job to be by their side.

My bill, H.R. 3391, responds to this need and follows the Commission's recommendation to expand the Family and Medical Leave Act to 26 weeks of leave for parents, spouses, and children caring for qualified wounded service members.

The power of a strong support network and dedicated families is no more evident than in my Congressional District which includes Camp Pendleton Marine Corp Base. Here I have seen the Wounded Warrior Clinic and the Naval Hospital, where I have talked with the service members, their families, and health professionals who care for them. The positive impact of a regular family caretaker is never clearer than in the stories of their recovery. These men and women receiving care are determined and the community is strong and resolute in their commitment.

I realize challenges exist in the expansion of this Act for military family leave. As a former business owner myself, I understand the difficulties of balancing employment demands. It is my sincere hope that we can find an appropriate balance in this discussion, so that employers will not just comply with an expansion of leave under the Family and Medical Leave Act, but will also embrace it.

My bill, H.R. 3391, and many of the other legislative proposals are about giving our military members the best chance at recovery by allowing their family to provide support for an extended recovery period. Family care and support will strengthen our service member's likelihood of a return to the jobs retained for them by law.

Again, thank you for this opportunity today. I am eager to work with my colleagues in the House and Senate to appropriately extend our country's commitment to our military and their dedicated families.

Chairwoman WOOLSEY. I thank you for being here.

We do not usually ask our members questions or have them grilled by us.

Do you have a question, Joe?

Mr. WILSON. Not a question.

I would, again, like to commend Congressman Issa on his leadership. I am very grateful to be his neighbor on the hallway.

Mr. ISSA. Thank you, Colonel Wilson.

Mr. WILSON. Indeed, as a colonel formerly in the South Carolina Army National Guard, I want to commend you on recognizing the re-employment rights, as this is an extension.

I served as a staunch advocate for 25 years, lecturing at armories around the State on re-employment rights. What is very necessary now that we see is the opportunity for, in effect, re-employment by way of medical leave for family members to work with injured wounded warriors.

So I want to thank you for what you are doing, and your analogy is right on point. And I appreciate your leadership here in Congress.

I yield.

Chairwoman WOOLSEY. I thank you.

We thank you for taking time out of your busy schedule to be with us.

Mr. ISSA. No issue is more important than this. Truly, no issue is more important.

And I will put my official statement in for the record.

I thank the gentlelady.

Chairwoman WOOLSEY. Thank you very much.

Now the second panel will be seated.

I now have the honor of introducing our distinguished second panel, and I will introduce them in the order that they will speak.

First, Sarah Wade will speak. Sarah is the wife of retired Army Sergeant Edward "Ted" Wade. Following Ted's serious injury in Iraq on February 14, 2004, Sarah suspended her studies at the University of North Carolina at Chapel Hill to serve as an advocate for her husband. She has recently become a public policy intern at the Wounded Warrior Project, a nonprofit organization dedicated to assisting military personnel who are injured in Iraq and Afghanistan. Born and raised in the Washington, D.C., area, Sarah currently resides in Chapel Hill, North Carolina.

I bet your folks are glad to have you home today.

Jessica Perdew—Jessica has been the deputy director of government relations for the National Military Family Association since January 2007. A former Marine and a Marine spouse of 14 years, Ms. Perdew has also served in various volunteer leadership positions with several community organizations, including Key Volunteers and the Navy and Marine Corps Relief Society. Ms. Perdew is also a past president of the Marine Officers Spouses' Club of Washington, D.C. She received her bachelor of science degree from the University of Michigan at Ann Arbor.

Christine Vion-Gillespie is the employee relations and compliance manager at SAS Institute in Cary, North Carolina, and is a member of the Society for Human Resource Management's Employee Relations Special Expertise Panel. She has over 16 years' experience in human resources, and her current role includes providing counseling to help improve employee relations and to enhance the relationship between HR and organizations' business units. Ms. Vion-Gillespie also serves as an adjunct professor for Peace College.

Debra Ness is the president of the National Partnership for Women and Families. She served as the executive vice president of the partnership for 13 years. Before coming to the National Partnership in 1991, Ms. Ness served in various positions at SEIU and at the National Abortion Rights League, NARAL. Ms. Ness graduated from Drew University with a bachelor's degree in psychology and sociology and received her master's of science from Columbia University's School of Social Work.

Aren't we honored to have you all as our witnesses.

Now, for those of you who did not hear me lecture the members of Congress who were up there, let me explain the lighting system. We have a 5-minute rule, so everyone, including the members, are limited to 5 minutes of presentation and/or questioning. So the green light is illuminated when you begin to speak. When you see the yellow light, it means you have 1 minute remaining. When you see the red light, it is time for you to conclude your testimony. We are not going to cut you off in mid-sentence or in mid-thought, believe me. So just know that that means you should be wrapping up.

Turn on the microphone when you speak. Otherwise, we will all yell at you from up here. Turn it off when you are finished speaking.

So we will now hear from our first witness, Ms. Wade.

STATEMENT OF SARAH WADE, PUBLIC POLICY INTERN, WOUNDED WARRIOR PROJECT

Ms. WADE. Thank you for the opportunity to speak to you today regarding our experiences following my husband's injuries in Iraq.

My husband joined the Army's 82nd Airborne Division during the summer of 2000. And following the attacks of September 11th, his country called on him to serve first in Afghanistan and later in Iraq.

On February 14, 2004, his Humvee was hit by an improvised explosive device on a mission in Mahmudiyah. He sustained a very severe, traumatic brain injury. His right arm was completely severed above the elbow. He suffered a fractured leg, a broken right foot, shrapnel injuries, and complications due to acute anemia, hyperglycemia, infections, and the withdrawal of life support was considered.

Both Ted's parents and I flew to Germany to be by his side. Fortunately, after 2 weeks, he was stable enough to be transferred back to the United States. Ted remained in a coma for over 2½ months. After several weeks at Walter Reed Army Medical Center, Ted was discharged to the McGuire Veterans Medical Center in Richmond, Virginia, for brain injury care, where he remained for 5½ months.

At that time, I started making the 320-mile roundtrip commute to North Carolina 3 days a week so I could work, so I would not lose our house or my job, and I withdrew from school. Ted's father, who lives and works in Georgia, worked out of a hotel in Richmond and took whirlwind trips to meetings, often a 24-hour turnaround, for fear of losing his job so close to retirement. He also struggled to shoulder the financial burden to be near his son and to keep stride with Ted's medical evaluation board and physical evaluation board proceedings in Washington, D.C.

Due to the nature of his injuries, one of us had to be with Ted every step of the way to oversee his medical care. During Ted's hospitalization, he was placed on the Temporary Disabled Retirement List, so we were also juggling the responsibilities of clearing him from Division in North Carolina and out-processing him from the Army in Washington, D.C., while his care was ongoing in Virginia.

Next, Ted was transferred to the Durham Veterans Medical Center near our home in Chapel Hill, North Carolina, and his parents were finally able to return to Georgia after having been away for 7 months. Ted was housed in the extended care facility, where he received maintenance care but no comprehensive rehabilitation for his multiple traumatic injuries.

Unfortunately, the expertise he needed could not be provided in-house, nor did he have access to what civilian expertise there is in our local community. Therefore, we requested transfer back to Walter Reed. I was told Ted could return when he was discharged to outpatient status. He was also required to have a nonmedical attendant accompany him at all times, so I had to leave work again.

Six months into Ted's prosthetic training at Walter Reed, however, he was forced to abandon his rehabilitation due to setbacks with his brain injury. The Army was not staffed to address nor able to get him help due to limitations of his temporary retirement status. Neurology advised that we seek specialty care elsewhere. And due to the lack of upper-extremity resources near our home in North Carolina, it made the most sense to seek brain injury care in the Washington, D.C., area so Ted could continue his amputee rehabilitation at Walter Reed.

However, because Ted was not on active duty, we were told that he was no longer eligible for the global war on terror supplemental funds required to care for him. In addition, TRICARE will only cover cognitive therapy in private facilities for active-duty servicemembers, and the VA can only contract fee-basis care through his home of record. Therefore, we were unable to access the brain injury care Ted so desperately needed in the Washington area.

Before returning to North Carolina, we were able to convince VA that he absolutely had to have outside therapy. Through the world-class cognitive care Ted was offered at a private practice near our home, 15 months after he was initially injured, he slowly started to recover. Unfortunately, he is still unable to receive simultaneous treatment for his two primary injuries due to gaps in current policies, some of which I previously mentioned.

Due to frequent travel to Walter Reed for services, I was unable the return to regular work or to my studies and would eventually be fired from my job because I had "a lot going on" in my life. Because his amputee and orthopedic rehabilitation is still ongoing, we are still in transition 3 years and 7 months after the blast, and I am still unable to maintain employment. Needless to say, the long-term financial challenges faced by the care providers of our severely injured servicemembers are daunting.

I have been blessed to have a family with the means and generosity to see us through these difficult times. Our situation is not typical, nor is the case of my father-in-law. Mr. Wade has graduate degrees in both business and chemical engineering and had been working for the same company for 33 years at the time of Ted's in-

juries. Most family members do not have jobs that allow them to telecommute, as he did, for 6 months nor the loyalty earned over a long and successful career in corporate America. Many family members, such as myself, work for small businesses, have a job where they work for tips or earn commission or are self-employed. If they do not work, they do not get paid or they may get fired. It is that simple.

I am very pleased the committee is considering an extension of the Family and Medical Leave Act. However, I do hope that while you are reviewing ways to protect the employment of caregivers who clearly need more medical leave time than is allowed under current law, you also consider assistance to those who are not granted any leave at all. While this change would have been helpful to my father-in-law, those of us who work for small businesses or who are self-employed remain vulnerable.

I want to thank you for the opportunity to share our experiences with you today. And I look forward to answering any questions you might ask.

[The statement of Ms. Wade follows:]

Prepared Statement of Sarah Wade, Public Policy Intern, Wounded Warrior Project

Thank you for the opportunity to speak to you today regarding our experiences following my husband's injuries in Iraq. My name is Sarah Wade. I am the wife of SGT Edward Wade, or Ted as most people know him. My husband joined the Army's 82nd Airborne Division during the summer of 2000, and following the attacks of September 11, his country called on him to serve first in Afghanistan and later Iraq. On February 14, 2004, his humvee was hit by an Improvised Explosive Device (IED) on a mission in Al Mahmudiyah. He sustained a very severe Traumatic Brain Injury (TBI), his right arm was completely severed above the elbow, he suffered a fractured leg, a broken right foot, shrapnel injuries, and complications due to acute anemia, hyperglycemia, infections, and withdrawal of life support was considered. Both Ted's parents and I flew to Germany to be by his side, and, fortunately, after two weeks, he was stable enough to be transferred back to the United States. Ted remained in a coma for over 2½ months. After several weeks at Walter Reed Army Medical Center, Ted was discharged to the McGuire VA hospital in Richmond, Virginia for TBI care where he remained for 5½ months.

At that time I started making the 320 mile round trip commute to North Carolina three days a week to work so I would not lose our house or my job as a server and had to withdraw from school. Ted's father, who lives and works in Georgia, worked out of the hotel in Richmond and took whirlwind trips to meetings—often a twenty-four hour turnaround, for fear of losing his job so close to retirement. He also struggled to shoulder the financial burden to be near his son and keep stride with Ted's Medical Evaluation Board (MEB) and Physical Evaluation Board (PEB) proceedings in Washington, D.C. Due to the nature of his injuries, one of us had to be with Ted every step of the way to oversee his medical care. During Ted's hospitalization, he was placed on the Temporary Disabled Retirement List (TDRL) so we were also juggling the responsibilities of clearing him from Division in North Carolina and out processing him from the Army in Washington, D.C. while his care was ongoing in Virginia.

Next, Ted was transferred to Durham near our home in Chapel Hill, North Carolina and his parents were finally able to return to their home in Georgia after having been away for seven months. Ted was housed in the extended care facility where he received maintenance care, but no comprehensive rehabilitation or treatment of his multiple traumatic injuries. Unfortunately, the expertise he needed could not be provided in-house nor did he have access to what civilian expertise there are in our local community. Therefore, we requested transfer back to Walter Reed. I was told he could return when he was discharged to outpatient status. Ted also required a non-medical attendant to accompany him at all times, so I had to leave work again.

Six months into Ted's prosthetic training at Walter Reed, however, he was forced to abandon his rehabilitation due to setbacks with his TBI care that the Army was not staffed to address nor able to get him help due to the limitations of his TDRL

status. Neurology advised we seek specialty care elsewhere, and due to the lack of upper extremity resources near our home in North Carolina, it made the most sense to seek TBI care in the Washington, DC area so Ted could continue his amputee rehabilitation at Walter Reed. However, because Ted was not on Active Duty we were told that he was no longer eligible for the Global War on Terror (supplemental) funds required to care for him. In addition, TRICARE will only cover cognitive therapy in private facilities for Active Duty Service Members, and the VA can only contract fee basis care through his home of record. Therefore, we were unable to access the TBI care Ted so desperately needed in the DC area.

Before returning to North Carolina we were able to convince VA that he absolutely had to have outside therapy. Through the world-class cognitive care Ted was offered through private practice near our home, fifteen months after he was initially injured, he slowly started to recover. Unfortunately, he is still unable to receive simultaneous treatment for his two primary injuries due to the gaps in current policies, some of which I previously mentioned. Due to frequent travel to Walter Reed for services, I was unable to return to regular work or my studies and would eventually be fired from my job because I had "a lot going on" in my life. Because his amputee and orthopedic rehabilitation are still ongoing we are still "in transition" three years and seven months after the blast and I am still unable to maintain employment.

Needless to say, the long term financial challenges faced by the care providers of our Severely Injured Service Members are daunting. I have been blessed to have a family with the means and generosity to see us through these difficult times. Our situation is not typical, nor is the case of my father-in-law. Mr. Wade has graduate degrees in both business and chemical engineering, and had been working for the same company for thirty-three years at the time of Ted's injuries. Most family members do not have jobs that allow them to telecommute as he did for six months, nor the loyalty built over a long and successful career in corporate America. Many family members, such as myself, work for small businesses or have a job where they work for tips or earn commission. Others are self-employed. If they are not at work, they do not get paid or they may get fired. It is that simple.

I am very pleased the committee is considering an extension of the Family Leave Act. However, I do hope that while you are reviewing ways to better protect the employment of caregivers who clearly need more medical leave than is allowed under current law, you also consider assistance to those who are not granted any leave at all. While this change would have been very helpful to my father-in-law, those of us who work for small businesses or themselves remain vulnerable.

I want to thank you again for the opportunity to share our experiences with you today, as our story is the story of so many other families, many worse off than ourselves. I look forward to answering any questions you may have.

Chairwoman WOOLSEY. Ms. Perdew?

STATEMENT OF JESSICA PERDEW, DEPUTY DIRECTOR OF GOVERNMENT RELATIONS, NATIONAL MILITARY FAMILY ASSOCIATION

Ms. PERDEW. Madam Chairman and distinguished members of the subcommittee, thank you for the opportunity to address some of the unique needs of military families with respect to the Family and Medical Leave Act.

I have submitted a written statement, and request that it be entered into the record.

Chairwoman WOOLSEY. Without objection.

Ms. PERDEW. My written statement outlines a variety of ways that NMFA believes Congress can modify the FMLA to provide additional protections to military family members.

We have received far too many calls from military spouses and grandparents who have been denied time off to attend a predeployment briefing or to get a child settled into a new school arrangement. Each of these callers expresses frustration that there is no protection for them as military family members. Many are certain

that there is some legislation out there that they just have not heard about. Sadly, this is not the case.

We would like to focus our comments today, however, on a special group of military family members: the military family caregiver.

Six years into the global war on terror, many military families are bearing the scars of protracted military action. Wounded servicemembers have wounded families, and these wounded families deserve better protection under the Family and Medical Leave Act.

The current allowable leave period is insufficient for the serious injuries being incurred in combat. Servicemembers today are surviving injuries that would have been fatal in previous conflicts. While family members are thankful for these improved survival rates, the seriousness of these injuries requires months or even years of rehabilitative care. Twelve weeks may not be sufficient to allow a family member to remain by a wounded servicemember's bedside during the initial hospitalization. Once a wounded member moves from an inpatient to an outpatient status, the family member caregiver's role continues to be vitally important to the success of the treatment program.

FMLA leave may also place a significant financial burden on military family caregivers. At a time when the family is dealing with tremendous emotional strain, can we also ask them to survive without their income? Many family members travel to the National Capital region to be with the wounded servicemember at Walter Reed Army Medical Center or the National Naval Medical Center at Bethesda. Even those families receiving travel reimbursement and lodging may have significant out-of-pocket expenses during their stay here. Asking families to shoulder these additional expenses while on unpaid leave is like adding insult to injury.

Some States are breaking ground to provide partially paid family leave. California's paid family leave program is providing benefits to families who take leave to care for an ill or injured family member. Creating a similar benefit on the Federal level would ensure that every military family would be eligible for paid family leave.

Finally, some military family members may not even qualify for FMLA. Military spouses move as frequently as their military sponsors. Obtaining 12 months of tenure with an employer may be impossible for a spouse who is moving every 24 months. Even those family members who move less frequently may be employed by a small business and be ineligible for FMLA leave.

We must remember that not all military family caregivers are spouses or parents. Siblings of military members are also serving in this important role. Yet, siblings and other relatives do not qualify for benefits under the current FMLA program. These individuals must leave their homes and jobs to assume these caregiver roles. These issues impact military family caregivers each day.

NMFA believes it is time to amend the FMLA with the focus on the family member caregivers of wounded servicemembers. As such, we recommend extending FMLA coverage to 26 weeks, providing a paid leave benefit to military family caregivers, waiving the 12-month qualification requirement for military family caregivers, and expanding the definition of coverage to include siblings of wounded servicemembers.

Thank you, again, for the opportunity to share the needs of military families with you. I will be happy to answer any questions you have.

[The statement of Ms. Perdew follows:]

Prepared Statement of Jessica Perdew, Deputy Director of Government Relations, the National Military Family Association

The National Military Family Association (NMFA) is the only national organization whose sole focus is the military family. The Association's goal is to influence the development and implementation of policies that will improve the lives of those family members. Its mission is to serve the families of the seven uniformed services through education, information, and advocacy.

Founded in 1969 as the National Military Wives Association, NMFA is a non-profit 501(c)(3) primarily volunteer organization. NMFA represents the interests of family members and survivors of active duty, reserve component, and retired personnel of the seven uniformed services: Army, Navy, Air Force, Marine Corps, Coast Guard, Public Health Service and the National Oceanic and Atmospheric Administration.

NMFA Representatives in military communities worldwide provide a direct link between military families and NMFA staff in the nation's capital. Representatives are the "eyes and ears" of NMFA, bringing shared local concerns to national attention.

NMFA does not have or receive federal grants or contracts.

NMFA's website is: *http://www.nmfa.org*.

Jessica Perdew joined the National Military Family Association Government Relations staff in 2005 as Legislative Administrative Assistant. In January 2007 she was selected to serve as Deputy Director in the Government Relations Department In this position, she follows issues such as pay and compensation, housing, taxes, family member employment, financial literacy, commissary, and exchange as well as other issues relevant to the quality of life of the families of the seven uniformed services. She is a regular contributor to several publications including Military Money and Military Spouse magazines. Mrs. Perdew serves on the Military Construction/ MWR/ Exchanges Committee, the Taxes/ Social Security Committee and the Committee on Military Personnel, Compensation and Commissaries of The Military Coalition. In addition she represents military families on the Military Saves National Partners Committee.

A former Marine and a Marine spouse of 14 years, Mrs. Perdew has served in various volunteer leadership positions in civilian and military community organizations including Key Volunteers, Navy and Marine Corps Relief Society, Volunteer Income Tax Assistance (VITA), and Marine Spouse Clubs. She is a graduate of the University of Michigan in Ann Arbor with a Bachelor of Science in Physics and is currently pursuing a second Bachelors degree in Accounting through the University of Maryland.

In addition to her work at NMFA, Mrs. Perdew is a past President of the Marine Officers' Spouses' Club of Washington D.C. and is currently serving as the Coordinator of the Joint Armed Forces Officers Wives Luncheon Committee. She is also a volunteer in the youth office at St. Mark Church in Vienna, Virginia. Mrs. Perdew and her husband, Lieutenant Colonel Jason Perdew, reside in Vienna, Virginia with their four children.

Madame Chairman and Distinguished Members of this Subcommittee, the National Military Family Association (NMFA) would like to thank you for the opportunity to present testimony today workplace challenges facing military family members.

Today's military is comprised of predominantly young adults under the age of 35. Sixty-six percent of military spouses are in the labor force, including 87 percent of junior enlisted spouses (E-1 to E-5). For many, working to pay bills and cover basic expenses is the primary reason for working. Studies show the gap between the financial well-being of military families and their civilian peers is largely due to the frequent moves required of the military family and the resulting disruptions to the career progression of the military spouse. In a 2005 report by the RAND Corporation, Working Around the Military: Challenges to Military Spouse Employment and Education, researchers found that military spouses, when compared to their civilian counterparts, were more likely to live in metropolitan areas and are more likely to have graduated from high school and have some college.

Yet the RAND study found that, all things being equal, military spouses' civilian counterparts tended to have better employment outcomes and higher wages. Surveys show a military spouse's income is a major contributor to the family's financial

well-being and the military spouse unemployment rate is much higher (10 percent) than the national rate. The loss of the spouse's income at exactly the time when the family is facing the cost of a government ordered move is further exacerbated when the spouse is unable to collect unemployment compensation in most states. Lacking the financial cushion provided by the receipt of unemployment compensation, the military spouse must often settle for "any job that pays the bills" rather than being able to search for a job that is commensurate with his or her skills or career aspirations. This in turn hurts morale and affects recruitment and retention of the service member.

Compounding these issues is the current operational tempo. Now six years into the Global War on Terror military families are tired. Repeated long deployments are taking their toll and stressing personal support systems to their breaking point. This fact is very evident among working spouses who are finding it more and more difficult to maintain their professional schedules while also meeting family obligations. National Military Family Association (NMFA) has not tracked the exact number of calls received from family members with workplace challenges, but there has been a considerable increase in the number of these calls in recent months.

We believe the increase is a result of what NMFA refers to as the deployment spiral. Until recently, deployment was discussed in terms of a cycle that began with predeployment and ended with reintegration. Based upon an NMFA survey of military spouses in 2003 and a follow on survey in 2005, NMFA now believes that deployment more closely resembles a spiral than a cycle. Families do not return to their original status at the end of a deployment. As a result, subsequent deployments begin from a different place. Families who had no children may now have toddlers. Other families may have experienced a divorce since the last deployment leaving the service member in a single parent role. Increasingly parents and siblings of service members are stepping into guardian roles while the service member deploys. In addition, the increase in end strength for the Army and Marine Corps is bringing many new families to the military. These families are struggling to adapt to a military lifestyle while coping with deployments.

At the same time employers seem to be growing weary of the special demands military service is placing upon their employees. In some cases it appears employer goodwill with respect to flexibility and time off for military commitments has run out. Even Reserve component personnel called to active duty are finding many employers less willing to support military commitments. For service members there is employment protection under the Uniformed Services Employment and Reemployment Rights Act (USERRA). For military family members there is no such protection. Many times the non-military spouse is forced to choose between attending an important school event for a child who is missing a deployed parent, or losing a job that is keeping the family financially solvent. This is a stressful juggling act at best.

This situation may be further exacerbated in National Guard and Reserve families where parents may work shifts to trade off child care responsibilities. When the service member is activated the spouse is forced to find child care and to make budget adjustments to cover this new and significant expense, along with adjusting to all of the other stresses a deployment brings. One spouse described her experience:

"As a National Guard spouse, I had to quit my high paying position (primary source of income and benefits) during my husband's deployment because of a combination of a long commute and daycare hours. My husband had drop off responsibilities so that I could commute before peak traffic hours. There is no protection or advocacy for guard and reserve spouse jobs. My family went from a comfortable standard of living to qualifying for food stamps in the year and a half after my husband's return because of the difficulty in finding a job that I could stick with through another potential deployment."

Military families, like all other families, need to spend time actively involved in their children's schools and activities. This becomes particularly important when a parent is deployed. It is imperative that the child experiencing a deployment be able to find comfort in normal family routines and activities. Imagine the stress and guilt that builds each time a parent or custodial grandparent must explain to his or her child why they won't be able to attend a school function. The Family and Medical Leave Act (FMLA) could be modified to permit these parents and guardians the opportunity to attend these important events. Providing military parents and guardians up to four hours per month to attend school functions could have a tremendously positive impact on military children missing a deployed parent and dealing with deployment issues. NMFA is thankful that Chairman Woolsey recognizes and has championed the improvement of the lives of working families and the need for family friendly workplaces through the sponsorship of H.R. 2392.

NMFA recommends FMLA be modified to include up four hours per month for military family members to attend school sponsored functions or military sponsored deployment related functions.

As if the normal stresses of military life were not enough, many military families are now finding themselves in the role of caretaker for a wounded service member. In an instant a family's entire life can change. Regardless of a service member's marital status their families will be affected in some way by the injury. Family members are an integral part of the health care team. Their presence has been shown to improve the wounded service member's quality of life and aid in a speedy recovery.

Congress must be cognizant of the caregiver. Family members have made the commitment to care for their loved one. We must acknowledge they are a part of the health care recovery team. The responsibilities shouldered by the family member caregiver provide relief to both the medical staff and health care system. Family member caregivers also help to reduce the total cost of care for the wounded service member by performing duties that would require paid staff in the absence of a family member. They advocate, transport, and move, along with their wounded loved one from Walter Reed Army Medical Center or the National Naval Medical Center at Bethesda, to a Poly-trauma center and follow on to other military treatment facilities or Veterans Administration health care facilities throughout the United States, often leaving their own lives and jobs behind. Congress must take into consideration the economic impact on families who decide to remain by the bedside to provide care for their injured loved one. Families may voluntarily choose to leave their jobs for a variety of reasons. They may desire to spend as much time as possible with the wounded service member. The overwhelming challenges of trying to care for and navigate the Department of Defense and Department of Veterans Affairs complex health care systems may make it impossible to meet professional and increasing family demands. Or, they may need to relocate for an extended period of time to be with the injured service member or veteran to a location that can provide the optimum quality of care.

Certainly FMLA provides some protection for the families of wounded service members. But, the reality is the time permitted under FMLA is not sufficient for the severely wounded. Chairman Woolsey's "Support for Injured Servicemembers Act", H.R. 3481, would provide a much needed extension to FMLA leave. NMFA is thankful that Congress recognizes the limitations in the current FMLA program and is working to overcome those limitations. In addition, many military spouses do not qualify for FMLA leave due to the mobile nature of the military lifestyle. For a spouse who moves every two or three years, accruing 12 months of tenure with an employer may be a challenge. Even for family members who qualified for FMLA leave, financial circumstances may make leave without pay an impossible option. In the case of single service members who are wounded, it is often a parent, step-parent, or sibling who becomes the primary caregiver. Often the caregiver must terminate a position in order to care for their wounded loved one during their rehabilitation and recovery phase. Not only are these caregivers losing income, many times they lose their health care coverage, too. If the caregiver is a sibling, he or she is not currently eligible for any leave under FMLA. According to the National Naval Medical Center at Bethesda, the average age of an active duty Traumatic Brain Injury patient arriving at their health care facility is between 21 and 23. Many of these young service members are unmarried, placing parents and siblings in the caregiver role.

State initiatives, such as California's Paid Family Leave (PFL) and the California Family Rights Act (CFRA) are providing much needed paid family leave. Providing a federal version of these programs would enable families caring for a wounded service member to concentrate on the service member's recovery, rather than worrying about the possibility of lost income. While some states are already providing these benefits, the time required to push these programs through the legislative process in every state would mean the families of many wounded service members might never benefit by their passage. These programs are needed on a consistent basis nationwide to ensure all military families are covered regardless of the duty station's location. Certainly, states could provide a more generous benefit if they desired but, the basic benefit would exist nationwide with the passage of national legislation.

Primary Caregivers of wounded service members require increased protection. NMFA recommends:

- Extending FMLA leave periods to at least 26 weeks per year
- Exempting military family caregivers from the 12 month employment threshold
- Providing a limited amount of paid family leave

• Broadening the definition of eligibility by including those who are considered the primary caregiver
• Providing some level of protection to employees in small businesses

Military families serve along with their service members. The military lifestyle is not without sacrifice and families willingly accept the challenges inherent in military service. There is, however, a limit to the sacrifices that can be reasonably expected. No family should have to choose between paying the bills and caring for a seriously ill or wounded service member. No parent or guardian should be denied the opportunity to visit their child's school or attend an important event while a service member is forward deployed. Military families support the Nation's military missions. Modification of the FMLA not only provides important benefits to military families, it also validates their service to their country and recognizes their sacrifice.

Chairwoman WOOLSEY. Thank you.

Ms. Vion-Gillespie?

STATEMENT OF CHRISTINE VION–GILLESPIE, SOCIETY FOR HUMAN RESOURCE MANAGEMENT

Ms. VION-GILLESPIE. Chairwoman Woolsey, Ranking Member Wilson and distinguished members of the subcommittee, my name is Christine Vion-Gillespie, and I am the employee relations and compliance manager for SAS Institute, Inc., headquartered in Cary, North Carolina. I commend the subcommittee for holding this hearing on leave for military families, and I appreciate the opportunity to share my experiences with you today.

I am a certified senior human resources professional and have over 16 years' experience in human resources management in a variety of industries. I appear today on behalf of the Society for Human Resource Management, or SHRM, the world's largest association devoted to human resource management.

With the Nation on a heightened military status, SHRM and its members stand in full support of the men and women serving in America's military, both here and abroad. A considerable number of the Nation's reserve components are currently on active duty, requiring significant sacrifices not just of those called to active duty but of their families and of their employers.

At SAS, for example, we are committed to supporting our employees serving in the military as well as their families. We continue to compensate our active-duty military employees, paying the difference between their SAS salary and their military wage for up to 18 months. Active-duty military employees and their families also continue to receive health-care benefits for up to 12 months, and their children are welcomed at the SAS-subsidized daycare center indefinitely. SAS offers an array of additional support services, as outlined in my written statement.

Because of SAS's commitment to our military employees and their families, the North Carolina Employer Support of the Guard and Reserve recently presented SAS with the Pro Patria Award, the highest State-level award given to a civilian employer by the U.S. Department of Defense.

As you can see from the SAS example, HR professionals and their organizations are committed to assisting military families in balancing both their work and family demands.

SHRM applauds the subcommittee's interest in examining ways to better support workers whose families have been impacted by a call-up. And we stand ready to work with the subcommittee on

crafting a workable solution that meets the needs of the military servicemembers, their employee caregivers and employers.

However, we strongly believe that a comprehensive review of the Family and Medical Leave Act is also warranted, given that a number of military leave proposals before Congress build upon the leave requirements currently afforded to workers under the statute and given the fact that employers and employees continue to experience challenges with the practical application of FMLA in the workplace.

As you know, there are a number of legislative proposals before Congress to provide additional leave to military families. I would like to briefly mention SHRM's concerns with regard to key provisions of these proposals.

First, the House adopted an amendment offered by Representatives Altmire and Udall during consideration of the Department of Defense's authorization bill. That would expand the FMLA to provide leave for military families to deal with issues related to a call of duty or an impending call.

Madam Chair, this language is very broad. It sets vague standards for leave, and it represents a significant departure from the original intent of the FMLA, which was to provide employees with family and medical leave. This amendment, however, would authorize leave for a variety of purposes unrelated to the family or medical leave.

The Senate also adopted an amendment to the Children's Health Insurance Reauthorization Bill that would amend FMLA to provide 26 weeks of leave for family members to care for injured servicemembers.

Madam Chair, this legislation is very similar to H.R. 3481, the bill you have introduced with Chairman Miller. While this approach represents an improvement over the Altmire-Udall amendment and is narrowly targeted to address the issues raised on the President's Commission on Care for America's Wounded Warriors, it, too, raises concerns.

For example, it is unclear under this proposal whether an employee must use the leave within a specified period of time after the injury or illness is incurred. In addition, the proposal includes a vague standard of leave, especially given the administrative challenges employers currently encounter with FMLA.

Clearly, the Nation's men and women in uniform and their families have made significant sacrifices for the benefit of their country. I know this as the proud daughter of a 30-year veteran of the U.S. Navy. SHRM looks forward to working with the subcommittee on effective leave policies to support our military families.

Thank you for the opportunity for us to be here today.

[The statement of Ms. Vion-Gillespie follows:]

Prepared Statement of Christine Vion-Gillespie, SPHR Employee Relations and Compliance Manager, on Behalf of the Society for Human Resource Management

Chairwoman Woolsey, Ranking Member Wilson, distinguished members of the Subcommittee, my name is Christine Vion-Gillespie and I am the Employee Relations and Compliance Manager for the SAS Institute, Inc. headquartered in Cary, North Carolina. I commend the subcommittee for holding this hearing on the Family and Medical Leave Act (FMLA) and leave for military families. I appreciate the opportunity to share my experiences with you today.

I am a certified senior professional in human resources and have over 16 years experience in human resource management in a variety of industries including hospitality, healthcare, media, and high tech software. In my current role, I manage the affirmative action program at SAS, develop policies and programs to enhance the strategic partnership between HR and the business units, and provide counseling to all levels of the HR department with regards to employee relations.

I appear today on behalf of the Society for Human Resource Management (SHRM). SHRM is the world's largest professional association devoted to human resource management. Our mission is to serve the needs of HR professionals by providing the most current and comprehensive resources, and to advance the profession by promoting HR's essential, strategic role. Founded in 1948, SHRM represents more than 225,000 individual members in over 125 countries, and has a network of more than 575 affiliated chapters in the United States, as well as offices in China and India.

SHRM is well positioned to provide insight on workplace leave policies for military personnel and their families. The Society's membership comprises HR professionals who are responsible for administering their employers' benefit policies, including paid time-off programs as entitled to FMLA, track an employee's FMLA leave, and determine how to maintain a satisfied and productive workforce during the employee's FMLA leave-related absences.

Employer Support

With the nation on a heightened military status, SHRM and its members stand in full support of the men and women serving in America's military both here and abroad. According to the Employer Support of the Guard and Reserve (ESGR), the men and women of the National Guard and Reserve comprise approximately 46 percent of the total available military manpower, a significant number of which are currently deployed. In addition, the military deployments of the Guard and Reserve are lasting longer, requiring additional sacrifices not just of those called to active duty, but of their families as well. At the same time, employers can be significantly affected when an employee is called to active duty or when a member of an employee's immediate family has been deployed. In these situations, HR professionals and their organizations work diligently to support employees and their families affected by these military call-ups. HR professionals must also ensure that their workplaces respond appropriately to shifts in personnel that are created when employees are called to active duty.

In my experience, employers believe it is important to assist employees in balancing work and personal needs and this includes employees who may be called to active duty. At SAS, we have created a culture of support for our employees who are in the armed services that extends to their families too.

One important way employers have assisted families of active duty Guard and Reserve is through compensation or pay differential. In a SHRM Weekly Online Survey conducted in April 2007, 45 percent of the randomly selected HR professionals who responded said their organizations employee's time on active duty; 6 percent said they do so for the entire period of activation; and 35 percent said they provide no direct compensation support to employees called to active duty.

In 2004, SAS revised its military service policy to increase the amount of time we would continue to compensate an active duty employee on military leave from 12 to 18 months. Now, employees on military leave receive the difference, if any, between their SAS salary and their military wage for up to 18 months. Employees on military leave also continue to receive health care benefits for 12 months. Because child care can be especially challenging for families when a spouse is activated, SAS allows children of employees enrolled in our Child Care Center to remain at the Center for the duration of the military leave. In addition, SAS has five social workers on staff to offer a variety of support services to employees including assistance with relocation; finding a tutor for their children; marriage and family relationship issues; financial services; eldercare and in-home resources; and grief counseling.

As a result of SAS's commitment to our military employees and their families, the North Carolina Employer Support of the Guard and Reserve committee recently presented SAS with the Pro Patria Award, the highest state-level award given to a civilian employer by the U.S. Department of Defense.

Need Comprehensive Review of FMLA

As noted earlier, HR professionals and their organizations are committed to assisting their employees in balancing both their work and family demands. Employees called to active duty, along with their families, undoubtedly face difficult times and unique challenges. SHRM applauds the Subcommittee's interest in examining

ways to better support workers whose families have been impacted by a call-up. However, we strongly believe that a comprehensive review of the FMLA is leave requirements currently afforded to workers under this Act, and the fact that employers and employees continue to experience challenges with the practical application of FMLA in the workplace. Adding an additional leave requirement to the FMLA, regardless of how meritorious it may be, will only exacerbate the frustrations HR professionals have experienced in implementing this law.

As you know, the U.S. Department of Labor (DOL) recently completed a thorough review of the effectiveness of the FMLA regulations in which the Department received over 15,000 comments from employers, employees and other interested organizations. In June, the DOL issued a report summarizing the comments received through this process. The report noted that in many instances, when it comes to the "family" portion of FMLA, the regulations are basically working as Congress intended with few concerns for employers or employees. However, the report also highlighted that in other areas, particularly in the "medical" leave portions of the regulations, differing opinion letters, federal court rules and regulator guidance have clouded and sometimes undermined key provisions of the FMLA. While SHRM appreciates the Labor Department's efforts to initiate a dialog on the FMLA regulations, we believe the agency should take the next logical step and issue new rules as soon as possible to comprehensively address the issues raised in the review process.

As mentioned above, there are certain provisions within the FMLA regulations that work well for both employers and employees. The family leave portion of the regulations—which provides up to 12 weeks of unpaid leave for the birth or adoption of a child—has caused relatively few problems in the workplace. For example, in the 2007 SHRM Survey FMLA and Its Impact on for the birth or adoption of a child.

Key aspects of the regulations governing the medical leave provisions, however, as also discussed above, have drifted far from the original intent of the Act, creating challenges for both employers and employees. In fact, 47 percent of members responding to the 2007 SHRM FMLA Survey reported that they have experienced challenges in granting leave for an employee's serious health condition as a result of an episodic condition (ongoing injuries, ongoing illnesses, and/or non-life threatening conditions). HR professionals have struggled to interpret various provisions of the FMLA, including the definition of a serious health condition, intermittent leave, and medical certifications.

HR professionals have two primary concerns with the Act's regulations: the definitions of "serious health condition" and "intermittent leave." For example, with regard to the definition of serious health condition, the DOL issued a statement in April 2005 advising that conditions such as the common cold, the flu, and non-migraine headaches are not serious health conditions. The following year, however, the DOL issued a statement saying that each of these conditions could be considered a "serious health condition." Almost anything, after three days and a doctor's visit, now qualifies as a serious medical condition (due to DOL regulations and opinion letters).

In addition, HR professionals encounter numerous challenges in administering unscheduled, intermittent leave. It is often difficult to track an employee's unscheduled, intermittent leave usage, particularly when the employee takes FMLA leave in small increments. Unscheduled, intermittent leave also poses significant staffing problems for employers. When an employee takes unscheduled, intermittent leave with little or no advance notice, organizations must cover the absent employee's workload by reallocating the work to other employees. For example, during an employee's FMLA leave, their location attends to the employee's workload by assigning work temporarily to other employees. In most cases, it is not cost-effective to use temporary staff because the period to train a temporary employee is sometimes longer than the leave itself. Furthermore, employers typically do not receive sufficient advance notice regarding an employee's need for FMLA leave, thereby making it difficult to obtain temporary help on short notice.

In addition to staffing problems, "intermittent leave" (as defined in the FMLA regulations) has resulted in numerous issues related to the management of absenteeism in the workplace. The most common challenge HR professionals encounter in administering medical leave, for example, is where an employee is certified for a chronic condition and the health care professional has indicated on the FMLA certification form that intermittent leave is needed for the employee to seek treatments for the condition. This certification in effect grants an employee open-ended leave, allowing leave to be taken in unpredictable, unscheduled, small increments of time. While serious health conditions may well require leave to be taken on an intermittent basis, limited tools are available to employers in order to determine when the leave is in fact legitimate. As a result, 39 percent of HR professionals responding

to the 2007 SHRM FMLA Survey Report indicated that they granted FMLA leave for requests that they perceived to be illegitimate.

SHRM supports the goals of the FMLA and wants to ensure that employees continue to receive the benefits and job security afforded by the Act. While we fully appreciate the immediacy of the issues being faced by our Guard and Reserve families and employees called to active duty, we respectfully suggest that if Congress considers proposals to expand FMLA leave coverage for military families, it should also take steps to address the underlying problems both employers and employees encounter with the FMLA.

SHRM shares Congress' interest in providing military families additional work flexibility and looks forward to collaborating with the Subcommittee on crafting a workable solution that meets the needs of military service members, their employee caregivers, and employers. However, as outlined above, there is already a lengthy record of problems with administering leave under the FMLA due to confusing and inconsistent regulations. SHRM respectfully requests that Congress fix the documented shortfalls of the FMLA before considering additional leave benefits under this important workplace statute. In addition, we would note that the Society has fundamental concerns with a number of key provisions of the legislative proposals that have been introduced in the 110th Congress. These concerns are outlined below.

Proposal to provide leave for an exigency arising from a call-up

As you know, earlier this year the House passed H.R. 1585, the Fiscal Year 2008 Department of Defense Authorization bill, which included an amendment offered by Representatives Altmire (D-PA) and Udall (D-NM) that would expand the FMLA to provide leave for military families to deal with exigencies arising from a call to duty or an impending call to duty. This amendment is very broad, sets vague standards for leave, and does not adequately address many issues key to effective implementation, which under FMLA have led to excessive litigation. For example, in the case of a spouse called to active duty, the amendment would appear to authorize leave for a wide range of purposes from providing or arranging child care to coaching a child's baseball team, to even taking on the spouse's household chores, such as maintaining the yard. In addition, if enacted, this amendment would represent a significant departure from the original intent of the FMLA, which was intended to provide leave for employees to bond with a condition.

Furthermore, as noted previously, the most significant challenge with the current FMLA rules is in the area of intermittent leave. Since the Altmire/Udall amendment would allow leave to be taken on an intermittent basis for reasons outside the original intent of Act, SHRM and its members are extremely concerned that this proposal would only exacerbate the current problems with FMLA leave use and administration. Proposals to provide 26 weeks of leave for caregivers

In addition to the Altmire/Udall amendment discussed above, Chairwoman Woolsey (DCA) and Representative Darrell Issa (R-CA) have introduced H.R. 3481, the Support for Injured Servicemembers Act and H.R. 3391, the Military Family and Medical Leave Act, respectively. Both of these bills would provide up to 26 weeks of leave for FMLA-covered employees to care for relatives injured while on active duty. These proposals seek to implement the President's Commission on Care for America's Wounded Warriors' recommendation to expand FMLA leave for up to 6 months for a spouse or parent to care for an injured service member. On a similar note, an amendment offered by Senator Dodd (D-CT) and cosponsored by Senator Clinton (D-NY) to provide caregivers of injured service members 26 workweeks of FMLA leave was adopted during Senate consideration of H.R. 976, the Children's Health Insurance Program Reauthorization Act.

While these proposals represent an improvement over the Altmire/Udall approach, SHRM is concerned with the practical application of these proposals in the workplace. For example, under several of these proposals, it is unclear when an employee must take leave. Does the benefit need to be used within a specific period of time after the injury or illness is incurred? As members of the Subcommittee know, many service-connected illnesses, such as Post Traumatic Stress service. Therefore, SHRM recommends that any proposal to expand leave benefits to caregivers of service members should include a finite time period connected to the military service. If in fact a service member would have an impairment that qualified as a serious health condition down the road, in all likelihood, both the service member and a caregiver would be eligible for FMLA leave at that time. Finally, because the proposals outlined above include a vague standard for leave, SHRM again has concerns that this type of language would only add to the well-documented problems in complying with certain FMLA provisions.

Proposals to provide 52 weeks of leave for caregivers

Additional legislation to provide leave for caregivers of injured service members has also been introduced by Senator Barack Obama (D-IL). S. 1885, the Military Family Job Protection Act, would entitle FMLA-eligible relatives, including siblings, to 52 work weeks of job-protected leave to care for recovering service members. This proposal was also adopted in the Senate as an amendment to H.R. 976, the Children's Health Insurance Program Reauthorization Act.

Under the FMLA, an employee must have worked for an employer for 1,250 hours in order to be eligible for leave. However, there is no minimum number of hours an employee must work before taking leave under the Obama proposal. In addition, there is no length of service requirement in the Obama legislation, which presumably means that an employee would be eligible for the leave on their first day. Moreover, it is unclear whether this proposal would allow employees to take leave on an intermittent basis or what caregivers would be covered under this legislation. These shortcomings raise serious concerns for HR professionals.

Conclusion

Clearly, the nation's men and women in uniform and their families have made significant sacrifices for the benefit of our country. SHRM appreciates the opportunity to provide testimony on proposals to provide additional leave for our nation's military families. While the goal of extending the FMLA to cover military families is laudable, SHRM would encourage policy makers to proceed with caution in advancing these types of proposals in order to limit any unintended consequences for employees, caregivers, and employers. The Society looks forward to working with the Subcommittee on workable leave policies to support caregivers of injured military service men and women.

Chairwoman WOOLSEY. Thank you.

Ms. Ness?

STATEMENT OF DEBRA L. NESS, PRESIDENT, NATIONAL PARTNERSHIP FOR WOMEN AND FAMILIES

Ms. NESS. Good afternoon, Chairwoman Woolsey, Representative Wilson, Representative Bishop and my fellow panel members. Thank you for the chance to talk about a law that is so vital to America's working families, the Family and Medical Leave Act, and how we can make it available to military families when they need it most. I am Debra Ness, president of the National Partnership for Women and Families.

One of our proudest accomplishments is the Family and Medical Leave Act. We wrote the initial draft of the bill, fought for 9 years to enact it, and we remain its stewards today. The FMLA is the only Federal law that helps our Nation's workers meet the dual demands of work and family. It provides unpaid, job-protected leave for up to 12 weeks a year to care for a newborn, a newly adopted or foster child, to care for a seriously ill family member or to recover from one's own serious illness. It protects your job and your health insurance.

Since it was passed in 1993, more than 60 million workers have used the FMLA in times of need to care for themselves or family members without putting their jobs on the line.

The FMLA is, without a doubt, one of our country's most popular laws. More than 80 percent of employees surveyed by the Department of Labor say that all workers should be able to take up to 12 weeks of leave a year for family and medical reasons. Support for the FMLA crosses all demographic lines; it works equally well in red States and blue States.

The FMLA has also been good for employers. National research conducted by the Department of Labor indicates that the vast ma-

jority of employers say complying with the FMLA has a positive or a neutral effect on productivity, profitability, growth and morale. The law benefits employers by helping them retain trained employees, by keeping productive workers on the job and creating a positive work environment.

It does have its limitations, however. It covers only about 60 percent of our Nation's workforce, and the leave it provides is unpaid. So, as a result, unfortunately, there are millions of workers in this country who are not yet covered by the FMLA and who cannot afford to use the benefits that it provides.

We know it works. We know that millions of more workers urgently need its protections. Yet, in the 14 years since it became law, the FMLA has never been expanded. We hope that is about to change. With our Nation at war and with so many servicemembers suffering grievous injuries, we need to expand the FMLA so that military families can care for their loved ones without fear of losing their jobs or their health insurance.

The President's Commission on Care for America's Returning Wounded Warriors recognized the importance of this law this summer when it made FMLA expansion one of its six broad recommendations. The Commission asked Congress to expand the FMLA to allow up to 6 months for family members caring for seriously ill soldiers. We could not agree more.

The Commission reports that more than 3,000 servicemembers have been seriously injured during operations in Iraq and in Afghanistan. Many return home, as we have heard here today, with traumatic brain injuries, amputations and other serious conditions that require extensive, long-term medical care and rehabilitation.

Many of these wounded veterans rely on the care of a family member for their recovery. That care is truly essential to their recovery. In fact, almost a third of wounded servicemembers report that a family member or a close friend had to relocate for an extended period of time to be with them while they were recovering in the hospital. About one in five servicemembers report that their family members had to give up their jobs to care for them.

How tragic it is that in addition to the enormous sacrifices these soldiers and families have already made, these families also face a loss of income and health coverage. To care for their wounded spouse, son, daughter, sister or brother, they must jeopardize their family's stability and economic security. Expanding the FMLA would mean that fewer families would have to face that kind of trauma.

That is why we are so pleased that both houses of Congress are moving quickly to implement this Commission recommendation. Last month, the Senate unanimously enacted the Support for Injured Servicemembers Act, which amends the FMLA to provide up to 6 months of job-protected leave for a family member/next of kin who is providing care to a wounded servicemember. The House should do the same with all due haste.

Thank you, Chairwoman Woolsey, for introducing this companion bill. Thanks, also, to Representatives Miller, Filner, Berkley, McCarthy and Skelton for co-sponsoring it.

We heartily endorse this legislation. We urge you to enact it quickly so that military families can immediately begin taking ad-

vantage of the extended leave it provides. It is a modest but critically important step.

Thank you.

[The statement of Ms. Ness follows:]

Prepared Statement of Debra Ness, President, the National Partnership for Women & Families

Good afternoon Chairwoman Woolsey, members of the subcommittee, and my distinguished fellow panel members. Thank you for inviting us to talk about a law that is vital to America's working families—the federal Family and Medical Leave Act—and how we can make sure that it is available to support our military families when they need it most.

I am Debra Ness, President of the National Partnership for Women & Families, a non-profit, nonpartisan advocacy organization with more than 35 years of experience promoting fairness in the workplace, access to quality health care, and policies that help women and men meet the competing demands of work and family.

One of the accomplishments we are most proud of is our work on the Family and Medical Leave Act. We wrote the initial draft of the bill; built a broad-based, strong coalition of more than 250 national and local organizations to support it; and pushed for nine years until it was enacted. We were fortunate to have Senator Dodd as our champion in the Senate, and to have many champions in the House of Representatives as well. And of course it was President Clinton who finally signed the FMLA into law after it was vetoed twice by the first President Bush.

We are still the stewards of the FMLA, working to make its protections available to all workers who need it. The FMLA is the only federal law that helps our nation's workers meet the dual demands of work and family. It provides unpaid, job-protected leave for up to 12 weeks a year to care for a newborn, newly adopted or foster child, to care for a seriously ill family member, or to recover from an employee's own serious illness. It also protects the health insurance of those on leave.

Since it was enacted in 1993, the FMLA has given more than 60 million workers the opportunity to care for themselves and their family members in times of need—without putting their jobs on the line.

The FMLA is one of the most popular laws in the country. More than 80 percent of employees surveyed by the Department of Labor say that all workers should be able to take up to 12 weeks of leave a year for family and medical reasons—a finding duplicated in poll after poll. It has high support across all demographic, political, and regional groups.

The FMLA has also been accepted and welcomed by employers. Data from the most recent national research on the FMLA, conducted by the Department of Labor, show that the vast majority of U.S. employers report that complying with the FMLA has a positive/neutral effect on productivity (83 percent), profitability (90 percent), growth (90 percent), and employee morale (90 percent). The Act benefits employers in numerous ways, most notably the savings derived from retaining trained employees, from keeping productive workers on the job, and from a positive work environment.

The Department of Labor recently published a summary of comments submitted by employees and employers that are a testament to the important role the FMLA plays in our nation's efforts to maintain a healthy, productive workforce. Many of the comments are available on the Department's website, and I want to share just a few of them with you today:

Comments from workers:

• "Without [the FMLA], I couldn't have cared for both of my parents at different times in their lives and kept my job. * * * Because of the act I was able to keep my parents out of nursing homes and still keep my job to support them later. This is the best thing you can do for working families around our country."

• "FMLA not only allows me to take time off for * * * therapy/medical appointments but also allows [me] to take time off as needed when I have sporadic episodes in which the medicine does not work, needs to be fined tuned, or changed which is essential to my well-being. * * * FMLA saved my job and I also believe saved my life, and to this day gives me a sense of security against any discipline or termination based on my legitimate medical needs."

• "I used FMLA three times in the last 9 years (with and without pay); each time I was very grateful to know that my job status was protected when I was out on leave. All three times I returned to work and rededicated myself to my job. FMLA helped me, my family, and my loyalty and productivity in the workplace."

And from employers:

• "If I have an employee with a child or family member with a serious illness, and this employee is unable to be with that family member when needed, they are distracted at work and their productivity suffers. In contrast, if they are allowed time to care for that family member, their productivity increases. They know what they have to accomplish and—sometimes by working at home, or working extra hours, or skipping lunch, or working exceptionally hard—they get it done. And in the end I have an extremely loyal employee."

• [Administering FMLA leave is] no more difficult to navigate than any other labor oriented legislation. In fact I find it very straight forward and it has been a literal lifesaver for some of our people. * * * In the long run, most people will appreciate the extra protection offered by the employer during a difficult time and will return as more motivated employees once the crisis has passed."

The FMLA has been a tremendous benefit to working families—but it has limitations and does not cover all of our nation's workforce. For example, the FMLA covers only 60 percent of the workforce because it covers only employers with 50 or more employees. The decision in 1993 to leave unprotected those working for employers with fewer than 50 employees was due in large part to claims made by some stakeholders that the law would harm employers and the economy. We now have nearly 15 years of experience with the law, and these concerns have been proven false.

Further, the FMLA provides only unpaid leave. This means that for the vast majority of low-wage workers who have no paid leave benefits, the FMLA remains an empty promise. Seventy-eight percent of those who need but do not take family and medical leave do not take it because they can not afford to, according to the Department of Labor. And 300,000 personal bankruptcies a year are caused by lack of paid medical leave, according to research by Harvard Professor Elizabeth Warren.

We are grateful to the Congressional leaders who have introduced bills to expand the FMLA, so more workers can benefit from its essential protections. We applaud Chairwoman Woolsey for introducing The Balancing Act, a comprehensive measure that would expand the FMLA, facilitate the creation of state paid family and medical leave programs, and provide other badly needed supports to working families. And we thank Senators Dodd and Stevens for introducing legislation that would create a national paid family and medical leave insurance program.

With our nation at war, and so many of our servicemembers coming home and needing care while they recover from very serious injuries, we need to ensure that the protections of the FMLA are adequate to serve the needs of our military families.

The President's Commission on Care for America's Returning Wounded Warriors issued its report this past summer, and one of its six broad recommendations was that Congress should change the Family and Medical Leave Act to allow up to six months leave for spouses and parents of seriously injured soldiers.

We could not agree more. According to the Commission, more than 3,000 servicemembers have been seriously injured during operations in Iraq and Afghanistan. Many return from these conflicts with serious injuries, including traumatic brain injuries and amputations, both of which require extensive medical care and rehabilitation. And recovering in the care of a loved one is the best option for a significant number of these wounded veterans.

Some already have that support. Thirty-three percent of active duty, 22 percent of reserve component, and 37 percent of retired or separated servicemembers reported that a family member or close friend relocated for extended periods of time to be with them while they were recovering in the hospital. Additionally, 21 percent of active duty, 15 percent of reserve component and 24 percent of retired or separated servicemembers reported that family members or friends gave up a job to be with them or to act as their caregivers.

They shouldn't have to. We are grateful that leaders in both houses of Congress are moving quickly to implement this Commission recommendation. Last month, the Senate unanimously enacted The Support for Injured Servicemembers Act, which amends the FMLA to provide up to six months of job-protected leave for a family member (spouse, son, daughter, parent, or next of kin) who is otherwise eligible for the FMLA and who is providing care for a servicemember recovering from a combat-related injury or illness.

This is the first time that an FMLA expansion has been adopted by either house of Congress since the law was enacted in 1993. The measure was enacted as an amendment to the legislation reauthorizing the Children's Health Insurance Program, and was sponsored by Senators Dodd and Clinton, and co-sponsored by Senators Dole, Graham, Mikulski, Chambliss, Brown, Cardin, Menendez, Salazar, Kennedy, Reed, Boxer, Murray, Lieberman and Roberts. Earlier this month Chairwoman Woolsey introduced the companion measure in the House, which has five co-

sponsors (Representatives Miller, Filner, Berkley, McCarthy, and Skelton), and which is the subject of this hearing today.

We heartily endorse this legislation and urge you to enact it quickly, so that military families can immediately begin taking advantage of the extended leave that it provides. It is a modest and critically important step forward in improving health care for our veterans and providing better support for our military families.

The President's Commission report could not have been more clear—today's veterans and their families need access to extended FMLA leave. We ask our military families to make great sacrifices. Now we have an opportunity to show them how much we appreciate all that they have done by giving them time off from work to provide care for their loved ones through The Support for Injured Servicemembers Act.

Thank you for the opportunity to speak here today. I am happy to answer any questions you might have.

Chairwoman WOOLSEY. Well, I want to thank all four of you. You have been wonderful.

First of all, I yield myself 5 minutes to make some remarks but mostly to ask questions.

I echo—that we need to do this in the Congress. Rather than repeat everything you say, Ms. Ness, I am going to say I echo your rationale about the FMLA. And I keep hearing the unpaid piece of it, and that it only covers 60 percent of the workforce.

So, along with introducing H.R. 3481, I want to assure you that we are working on expanding the Family and Medical Leave Act. I have legislation called the Balancing Act. It is H.R. 2392. We have 50-some cosponsors already. And it does bring down the eligibility to companies that are below 50 now—and we have not quite picked the cutoff point, but it will be about 15 or 20 at the most.

And it does include paid family leave, modeled after California. But we could even do more in this country. We are the wealthiest nation in the world, and we take the least amount of care of our families, their children and our seniors through our medical and our leave policies. Shame on us.

Ms. Vion-Gillespie, I was a human resources professional for 20 years; I know what your job is all about. I also know that, when there is a will, there is a way. And in times like this, we can not wait to redo the Family and Medical Leave Act and make it all-inclusive and fix it totally. We have to do something for our military personnel, our veterans and for their families, and we need to do it now.

So I wanted to know from you: What would you think of waiving the 12-month period? I mean, it is virtually impossible for a family that is following their spouse around the country to be in a job for 12 months.

Ms. VION-GILLESPIE. I think that is a great question.

I know that expanding leave benefits for military families is desirable. It is feasible. It is a great goal. If current laws are amended to balance the needs of employers and employees, we can reach that goal.

At the same time, we have an obligation to provide all employees and employers with clear, predictable and practical leave requirements. Certainly, looking at that 12-month waiting period and having been a child of the military, I certainly understand where it is difficult to maintain those levels of employment.

As part of that partnership, I think that is where the give and take is and that maybe there is an opportunity to be able to do that in order to help clarify another piece of that legislation. You all do that very well in being bipartisan, and I know that we could do as well.

Chairwoman WOOLSEY. Well, I thank you for that.

Part of it is leveling the playing field. You know, there are really good employers in this country of ours who do take care of their servicemembers and their employees. Look at Ms. Wade's father-in-law. And you are right, he had earned that loyalty, but not all employers would provide that. But if all employers are expected, then the playing field is leveled. And so the employer who gives the most does not end up having less profit, because everybody is expected to live up to who we are as Americans.

With that, Ms. Wade, you talked about having a lot going on in your life and having that be a label, like that was something very negative.

First of all, I am in awe of you and your hero husband; you are both my heroes.

In the law that we are talking about, what could make it even better?

Ms. WADE. I think that one of the—a couple of people touched on this, that it does not cover everybody. I know that my husband had a soldier who was in his squad—my husband was a team leader—who grew up in a boys' home in Tennessee. In a situation like his, it was a former foster parent who would have taken that role, and I think that—I mean, one of the things that might be good to look at is that, after your invitational travel orders expire that you initially get as a family member with the military, then a doctor can authorize what they call "nonmedical attendant orders" for somebody to stay for a longer period of time. I believe the ITOs are 120 days, if I remember correctly, but then you become the nonmedical attendant.

And I think it should apply to whomever is designated as that person's nonmedical attendant, because, that way, we would not leave anybody out. It would include a brother or a sister or it would include whomever is that person who is providing the care.

Chairwoman WOOLSEY. Okay. Thank you.

I am going to move to Mr. Wilson in 1 minute. I just want to say siblings are covered in our legislation.

Ms. WADE. Okay. All right.

Chairwoman WOOLSEY. You know, it does not just say "blood relatives." and if, for some reason, it is not clear that it is covered, we will fix that.

Mr. Wilson?

Mr. WILSON. Thank you again all for being here. And, Ms. Wade, indeed you are an inspiration, and your father-in-law and I am sure your mother-in-law working together with you. And I know that all of us want to be available, too, in any way as you face the multitude of measures.

Is your husband currently at Walter Reed still, or where is he now?

Ms. WADE. We are actually back at Walter Reed right now.

Mr. WILSON. Back at Walter Reed?

Ms. WADE. Yes.

Mr. WILSON. And is he receiving the assistance with the prosthetic devices that you feel sufficient?

Ms. WADE. He is now, yes. That is why we are back at Walter Reed, yes, sir.

Mr. WILSON. Again, if any of us can be of assistance, you really have been an inspiration.

Ms. Perdew, I certainly appreciate your organization, and particularly the definition of eligibility, including those who would be considered primary caregiver. And Ms. Wade pointed out if you are an orphan, how do you identify? And so I hope whatever definition is in here, it covers the primary caregiver.

And on the issue of paid family leave, with the nonmedical attendant orders, where I believe persons—and I have worked with people, and it is wonderful the devotion that family members have at Walter Reed where I visited in Bethesda—they are reimbursed and receive a stipend. Is that sufficient? And that would be from obviously the government, not from a private business. Since I would like to work with you on how we can best address that.

Ms. PERDEW. We believe that their basic needs are provided for. What we also know is that that particularly a servicemember with young children or children at home, they may have to relocate the family here if this is a long-term, protracted treatment program.

And we also know that living in the National Capital region, we have very limited family resources for our military families. This is unlike any other duty station. We have very few military child care centers. We have some wonderful medical resources, but they are overtaxed. And so what we know is that if they come here with the entire family in tow, the cost of providing some of the normal care for their children is probably not being covered.

Child care is very expensive in this region, and if you have a family member who is hospitalized, and you need to be there for those appointments, there has to be some family care plan. And we know that they are digging deep into their own pockets to cover those expenses.

Mr. WILSON. Well, I look forward to your suggestions on how we can address that.

Ms. WADE. Sir?

Mr. WILSON. Yes.

Ms. WADE. If I may, there is no stipend.

Mr. WILSON. A reimbursement of some type?

Ms. WADE. They have a per diem for meals, but there is no stipend. And also if you are a retired servicemember or on temporary retirement, you do not qualify for that.

Mr. WILSON. Well, again, however we can help on that, please keep me informed, because in my visits to see the caregivers, that is—they are world class working with young people.

Ms. Vion-Gillespie, can you tell us today does SHRM support expanding the Family and Medical Leave Act to provide extended care for military families? And as a follow-up, based on your experience with the FMLA in other contexts, are there particular challenges in the law that we in Congress should be mindful of as we choose to expand it?

Ms. VION-GILLESPIE. If it is all right with you, I will answer the second one first, because it will lead into the second one. There are challenges now. What we found is there are some great things with FMLA. I think we have got it down to a science now when we deal with a lot of family issues. I think we have it down to a science when we deal with prolonged illnesses and individuals have to be out.

Where the challenge comes in that chronic condition, the condition where we don't know when they are going to be out. It is one thing if I am going in and I know I have dialysis, because chances are I am not going to call up the employer and say, hey, I have dialysis at 8:00, I just found out. Typically in those cases it is foreseen. The employee works really well with the employer. They set up a time, they know when that is, and they can provide for coverage so that the work is done.

Where the challenges we have with administering it is truly with chronic intermittent. We have 5,000 employees in the U.S. On average every month we have 150 requests for leave, FMLA. Eighty of them are intermittent where we are not going to know if and when the employee is going to be able to come to work today. That is a huge challenge for us at this point in time.

Do I think in terms of looking at it being expanded especially for the military? There is no cause nearer and dearer to my heart than is certainly the military. Our thing is it is desirable, it is feasible. But, by gosh, we really need to balance those needs of employers and employees, and we need to spend some time in trying to maybe fix where some of those challenges are. I always think of it as a pyramid. You have the base, and you have to have a really, really strong base, because if you keep adding layers on there, your layers are only as strong as that initial base.

Mr. WILSON. Thank you very much.

Chairwoman WOOLSEY. Mr. Bishop.

Mr. BISHOP. Thank you, Madam Chairwoman, and thank you to the panel, all of you, for your testimony.

Ms. Vion-Gillespie, is it fair for me to summarize your at least written testimony that your organization believes that expanding FMLA coverage for up to 6 months for caregivers of military personnel is something that you support, but only within the context of a broader reform or review of FMLA in general? Is that a fair characterization of your testimony?

Ms. VION-GILLESPIE. It is such a complex issue to sum up. Yes, in the sense that we want to have that good foundation in order to put it on there; but, yes, we understand, and we see where the need is as well.

Mr. BISHOP. Let me read from your testimony. You said, given the fact that employers and employees continue to experience challenges with the practical application of FMLA in the workplace, adding an additional leave requirement to the FMLA, regardless of how meritorious it may be, will only exacerbate the frustrations human resource professionals have in implementing this law.

When I read that paragraph I concluded from that that you believe that the specific case is meritorious, but that it would create larger problems that require being addressed. And I am not trying

to put words in your mouth. I guess that is the subject on which I wish to engage you.

The President has described the war as the central front in the war on terror. He has also described it as the defining struggle of our time. We have 165,000 of our troops fighting in Iraq and another 25- or 30- in Afghanistan. They are conducting the work of this defining struggle for the rest of the 300 million of us.

Shouldn't this be a no-brainer? I mean, shouldn't we just say that if this is what the families of those who have waged this struggle on our behalf need, shouldn't we just find ways to make this work without subjecting it to some broader review of a piece of legislation that may well need the review, but is going to take time, and the struggle is going on right now? I mean, shouldn't we just get this done and then at some future point deal with some of the larger issues that HR professionals and employers have to contend with?

Ms. VION-GILLESPIE. I guess I would see it as not being mutually exclusive. In addition to looking at the military families and looking at those caregivers, and you are absolutely right, they are out there fighting so that we can be free, and we can be able to express our ideas here, absolutely, but we also have to look at what that does to the employees left behind as well. We have a lot of employees in the workforce that that is a challenge for them, too.

What we are saying is we don't have to do one at the exclusion of the other. We can actually go ahead, put it together and have it working, and have it working even stronger, and maybe avoid some of those challenges and frustrations that we faced very early on with FMLA.

Mr. BISHOP. I guess I would just say as a practical matter, you are right, they are not mutually exclusive. But this is something that I think would attract broad bipartisan support. We could get this done relatively quickly. In terms of Washington time, nothing moves quickly, but a broader assessment of FMLA would take a long, long time. And so I guess my belief is that we should just get this done, and then at some future time, if there are issues to look at, we can look at them.

I guess the other thing I would say, before I came to the Congress, I ran a college. We had 250 employees, we had 1,200 students, and it was a small town. I mean, they lived on campus. We had to feed them; we had to provide security and so on. We had FMLA coverage, obviously, and we even went beyond it. We went beyond it for maternity leave and so on.

Employers have lots of tools at their disposal to accommodate temporary absences in the workplace, even if they are not known beforehand. And so it seems to me that given the sacrifices we are asking people to make, to ask employers to sacrifice in terms of coming up with some ingenuity and some creative ways to cover temporary absences, that is very modest in comparison to what we have asked the Wade family to deal with. So I would hope we can find a way to do this and to do it very, very quickly.

And with that, I yield back. Thank you, Madam Chair.

Chairwoman WOOLSEY. Thank you, Mr. Bishop.

Mr. Payne.

Mr. PAYNE. Thank you very much, Chairwoman, and I really commend you for calling this very important subject to light. And unfortunately I was unable to get here in time to hear the witnesses; however, I certainly have a feeling for what the problems are.

I was in Congress when we passed the Family and Medical Leave Act in general, and we had a difficult time just trying to get that through. There was a lot of opposition to it. The act really, compared to European countries, doesn't even come close to medical family medical leave in Europe, especially Germany and Scandinavian countries where it is paid leave and both parents can take time off. Actually, men can take off during maternity. It is just really family friendly. And that is one of the things that I do notice here in the greatest Nation in the world: We tend not to necessarily be so family friendly.

So I just wonder, you know, when we gauge quality of life here as really being superior to anyplace in the world supposedly, however we have to battle for anything that is progressive.

And since I was unable to hear the testimony, I won't ask any questions, but I simply would like to say that you certainly have my support in trying to move this legislation forward. And we will work hard to try to see that we extend coverage to military families, but hopefully we can just get a saner policy as relates to us getting into war. That would be the number one issue. I speak a little Spanish. That would be numero uno, if I can say it in Spanish, and number one in English. And then many of these problems that we are confronted with now would not exist.

So I would just like to say once again that I support the issue and will work closely with the committee and the Chairperson to see that we move it through as expeditiously as possible. Thank you.

Chairwoman WOOLSEY. Thank you.

I ask unanimous consent that the joint statement of Senator Barack Obama and Senator Claire McCaskill be included in the record. Without objection.

[The joint statement of Senators Obama and McCaskill follows:]

Prepared Statement of U.S. Senators Claire McCaskill (Missouri) and Barack Obama (Illinois)

Madam Chairman, thank you for providing us with the opportunity to present testimony today to the House Workforce Protections Subcommittee. We are grateful that the committee has chosen to examine the fundamental question of how we can best provide the care and support our veterans and military families deserve.

Since the conflicts in Iraq and Afghanistan began, our service members have performed bravely and brilliantly, and they have done everything we have asked of them. Our military families have also made incredible sacrifices. Waiting and praying, they manage the stress and uncertainty of long, repeated deployments. And when their loved ones return home, they are there to help them heal from the physical—and sometimes less visible—wounds of war.

Given these sacrifices, and given that three out of every five deployed service members have family responsibilities at home, Congress must ask if we are truly meeting our commitment to our military families. Providing our service members and their families with the care and compassion they deserve is the very least we owe these heroes.

The unacceptable shortcomings in care at Walter Reed highlighted the fact that our nation has not always matched words with action when it comes to caring for our service members, veterans and their families. Anyone who has taken the time to visit Walter Reed, as we have, has met spouses who don't view visiting hours

as a part-time job. Day after day, these family members help their wounded loved ones persevere through what is often a lengthy and painful rehabilitation process.

We must show our veterans and military families that we will help them with the basics, including access to health care, counseling and vocational training—all measures from our Dignity for Wounded Warriors Act that the Senate adopted this summer. But we must also focus on their job security. When America's sons and daughters are injured overseas and they return home to begin their recovery, their families should not be forced to choose between caring for a wounded family member and keeping their jobs.

That's why in February we first proposed the idea of extending job protections for our military families. Our Military Family Job Protection Act (S. 1885) would provide family members with up to one year of protected leave to care for a wounded loved one. Our approach also calls on the Secretary of Defense to consult with the Labor Department and develop a certification process that minimizes the administrative burden and helps free our military families from a web of red tape and bureaucratic delay.

Our bill provides 12 months of job protection, which we believe is the necessary amount of time to help family members caring for a wounded service member. In addition, the protections we propose would be provided through channels similar to those utilized to provide job protections for reserve component military service members called to serve on active duty. In many ways, the family members we are trying to assist are similar to military service members being called to active duty. Just as we protect activated service members for the duration of their combat tour, we must seek to protect family members for the duration of their tour of duty caring for their wounded loved ones.

Our proposal has bipartisan support and has been endorsed by Veterans for America. We urge our colleagues in Congress to support this common-sense solution and send the Military Family Job Protection Act to the president for his signature.

Madam Chairman, thank you again for inviting us to offer this testimony.

Chairwoman WOOLSEY. Would anybody else like to ask any further questions?

Would any of the four of you have anything to say that we might not have heard, because we have kept you here a long time.

Ms. Wade?

Ms. WADE. I think one thing I just want to caution against, when I was listening to what Mr. Bishop was saying, is that some people like myself ended up working for people that didn't have a very big heart. And I know sometimes that there are people that don't like to hire military spouses because they move a lot, and I don't want to deter or add any more deterrence to people wanting to employ military spouses, and so I hope you all keep that in mind.

Chairwoman WOOLSEY. That is a very good point, but we are not going to refer to just military spouses; it could be anybody in the workforce that is going to be the caretaker of somebody in the military. Actually we will be very careful in our language that it doesn't set it up that way.

Anybody else?

Ms. Ness.

Ms. NESS. Just one small point going back to Representative Wilson's question about the stipend. The other thing I think we need to keep in mind is for folks who are not covered by the FMLA, the question of losing their health insurance is also very significant, and it is really a tragedy that somebody might have to give up their own health coverage in order to take care of a loved one.

Chairwoman WOOLSEY. Mr. Wilson, the closing remarks.

Mr. WILSON. I would like to move that members of the committee have 14 days in which to submit additional information.

Chairwoman WOOLSEY. Without objection.

[The information follows:]

Prepared Statement of the National Coalition to Protect Family Leave

Chairwoman Woolsey, Ranking Member Kline, the National Coalition to Protect Family Leave appreciates the opportunity to submit testimony to the House Subcommittee on Workforce Protections for today's hearing on extending Family and Medical Leave Act Coverage to military families. We commend you for convening this hearing on such a meaningful issue to America's servicemen and women, their families, employers, and the nation they serve.

I. Overview

The National Coalition to Protect Family Leave ("Coalition" or "NCPFL") is a broad-based, non-partisan group of organizations, companies and associations dedicated to protecting the integrity of the Family and Medical Leave Act ("FMLA" or "the Act").

The Coalition supports the spirit and intent of the FMLA. Coalition members recognize the challenges employees face in balancing work and family demands and their desire to feel secure in their jobs, particularly in the event they need to be absent for family or medical issues. We also understand the concerns of employers when administering the FMLA on a daily basis.

Most relevant to today's hearing, the Coalition appreciates the sacrifices of the thousands of members of the U.S. military who nobly serve in countless capacities at home and abroad, and the difficulties of simultaneously maintaining civilian employment. Few national priorities rise above providing quality care and support to the nation's servicemen and women and their families. Today's hearing provides an important forum to discuss the challenges facing our returning soldiers and their families.

The Coalition is pleased to submit this statement for the record of today's hearing because, as is explained below, the issue of military family leave is clearly a priority to the Subcommittee and the Congress. Both the House and Senate have recently voted on legislation to provide new Federal leave benefits to the families of military service members, albeit without the benefit of any prior hearings on the issue. Several important aspects of the current FMLA law and proposals to expand the Act or create a new statute for military families require careful consideration.

II. FMLA Challenges

The Coalition recognizes the significant contributions the FMLA has made to the American workplace. The family leave provisions of the FMLA have been particularly successful, and employers have encountered very few challenges implementing the leave provisions as they apply to the birth or adoption of a child.

Notwithstanding the successes of the family leave portion of the FMLA, employers have experienced challenges with the "medical leave" provisions of the Act, in particular the use of incremental leave for chronic conditions. Day-to-day administration of the Act has confused both employers and employees alike. Employers have struggled with several issues, particularly what constitutes a "serious health condition" as well as with the implications of unscheduled intermittent leave. The "intermittent leave" regulations, coupled with the vague "serious health conditions" regulations, allow employees to characterize chronic, non-serious health conditions as FMLA leave.

In March 2007, the Coalition released a survey conducted by the Society for Human Resource Management (SHRM) that found more than half (51%) of human resource (HR) professionals have faced "significant challenges" in implementing the medical leave provisions of the FMLA. Furthermore, nearly two-thirds of HR professionals have experienced problems in determining when to grant "chronic leave" under the Family and Medical Leave Act (FMLA), leading to employee morale issues and loss of productivity.[1] The challenges of chronic leave threaten the integrity of this important law for those employees who truly have serious health conditions. For these reasons, the Coalition has actively supported public policies that will strengthen the FMLA to ensure its availability to those employees Congress intended to cover.

Much of the confusion surrounding the medical portion of the FMLA has been the inconsistent U.S. Department of Labor (DOL) opinion letters that have undermined the original intent of the Act. Consequently, the Coalition has repeatedly urged DOL and Congress to strengthen the FMLA by clarifying the medical leave interpretations and other FMLA administrative complexities which are causing problems in the workplace.

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[1] Society for Human Resource Management, SHRM Survey Brief: FMLA (2007)

In order to preserve the integrity of the law's leave protections for family and medical reasons, the medical leave provisions of the Act and the corresponding regulations must be clarified to ensure that the Act benefits those employees who need it most. Relevant to the issue of today's hearing, the Coalition believes that these issues need to be addressed before expansion of the Act or other leave mandates are considered. Furthermore, the Coalition believes a piecemeal approach to correcting FMLA shortcomings will not provide the needed clarity for the workforce.

III. President's Commission on Care for America's Returning Wounded Warriors

In July 2007, the President's Commission on Care for America's Returning Wounded Warriors ("Commission"), chaired by former Senator Bob Dole and former Secretary of Health and Human Services Donna Shalala, released a report on how to better support and rehabilitate members of the U.S. Armed Forces returning from combat operations abroad. In order to provide greater support to military families, the Commission recommended that Congress should amend the FMLA to provide six months' leave for any family member of a service member who sustained a combat-related injury and meets the other eligibility requirements in the law. The Commission surveyed injured service members and found that 33 percent of active duty, 22 percent of reserve component, and 37 percent of retired and separated service members reported having a family member or close friend who relocated for an extended period of time to be with them while they received medical care.[2]

IV. Legislation to provide leave to military families

The Subcommittee is faced with several legislative proposals that intend to provide new leave benefits to military families. This section examines four of the most prominent pieces of legislation:

- *Altmire/Udall amendment*

In May 2007, Representatives Jason Altmire and Tom Udall offered an amendment to H.R. 1585, the National Defense Authorization Act for Fiscal Year 2008, during its consideration before the full House. The Altmire/Udall amendment would expand the FMLA to provide leave for family members of military servicemen and women who are called to duty. Under the proposal, each individual of the family of a service member called to active duty—or who had reason to anticipate an impending call to active duty—would be entitled to take FMLA leave for any reason related to the call-up of a service member.

However well-intentioned, the Altmire/Udall amendment is concerning to Coalition members. First, the amendment was constructed with such broad language that family members of soldiers could use the FMLA benefit for virtually any activity, including potentially those unrelated to a loved one's military assignment. Second, the amendment would allow leave on an unscheduled and intermittent basis, despite the uncertainty that dispensing intermittent leave poses to employers. Consequently, the Altmire/Udall amendment would add to current FMLA administration challenges.

Members of Congress deserved the opportunity to explore the potential effect of these aspects of the Altmire/Udall amendment on the FMLA and how the amendment would interact with other federal and state leave statutes. However, prior to its consideration, the amendment was not reviewed by the committee of jurisdiction, the Committee on Education and Labor. The Coalition has consistently sought clarifications to the FMLA's confusing and conflicting implementing regulations to ensure the integrity of the Act. Due to the complexity of FMLA administration, until a comprehensive review is completed, the Coalition cannot support an effort like the Altmire/Udall amendment to expand the FMLA.

- *Support for Injured Servicemembers Act (Woolsey)*

Subcommittee Chairwoman Lynn Woolsey and Full Committee Chairman George Miller introduced the Support for Injured Servicemembers Act (H.R. 3481) on September 6, 2007. Similar legislation (S. 1975) was introduced by Senators Christopher Dodd and Hillary Rodham Clinton in the U.S. Senate. The bill would amend the FMLA to provide a total of 26 workweeks of leave during any 12-month period to any the spouse, son, daughter, parent, or next of kin of a member of the U.S. military. Thus, the intent of the bill is to provide new rights to employees who are family members of service members, not directly to service members.

H.R. 3481 would allow leave to be taken in the event that an eligible family member is involved in caring for the service member. The legislation covers any relative of a military member who is receiving any kind of medical treatment or is otherwise

[2] The President's Commission on Care for America's Returning Wounded Warriors (2007)

in medical hold or on the temporary disability retired list related to a combat-related injury or serious illness. All FMLA job service and eligibility requirements would apply to employees eligible for leave under H.R. 3481. The legislation also includes a section that provides the same leave benefit to civil service employees.

It appears that the legislation would allow the leave benefit to be taken on an intermittent basis. As under the FMLA, employees would need to meet a 1,250-hours worked requirement as a condition of eligibility to take leave under H.R. 3481.

The Coalition believes the bill is written very broadly. The legislation's sole requirement to earn FMLA leave is that an eligible employee provides "care for the servicemember." This is a very vague standard for leave, particularly in light of the tremendous administrative problems and resulting litigation the FMLA currently causes for employers. Such a benefit, particularly if accessible on an intermittent frequency, would be tremendously difficult for employing organizations to administer on a day-to-day basis.

• *Military Family and Medical Leave Act (Issa)*

A similar approach to the Woolsey/Miller bill is the legislation introduced by Representatives Darrell Issa and Nick Rahall entitled the Military Family and Medical Leave Act (H.R. 3391) on August 3, 2007.

Like the Woolsey/Miller bill, H.R. 3391 would also directly amend the FMLA and grant 26 leave weeks in a 12-month period to a spouse, son, daughter, or parent of a service member with a serious health condition. Thus, the Coalition is concerned about the expansive and vague leave benefit contained in the Issa proposal. One minor difference is that, unlike the Woolsey bill, H.R. 3391 would not cover service members on the temporary disability retired list. H.R. 3391 also does not include a section specifically covering civil servants.

• *Obama amendment*

During Senate consideration of H.R. 976, the Children's Health Insurance Program Reauthorization Act of 2007, Senator Barack Obama offered Senate amendment 2588 that would allow for 52 weeks leave for a family member to care for service member with combat-related injury.

For purposes of establishing who is eligible for leave under the amendment, the legislation defines a "family member" as a spouse, child (natural, step, adopted, and illegitimate), parent, person in loco parentis, or sibling of a recovering service member. The term "in loco parentis" means a person who has stood in loco parentis for a period of at least one year before the member entered military service, and only one father and one mother figure, respectively, may be recognized under the bill relative to any one service member. It is unclear whether "spouse" might include domestic partners. The term "children" would include adult children, regardless of whether they are incapable of self-care.

Unlike the FMLA or the Woolsey or Issa bills, the Obama amendment includes no length of service or hours worked requirement. Also unlike the FMLA, the Obama amendment does not require leave to be taken during a one year period. Thus, it is unclear if an eligible employee would have to take all 52 weeks of leave in a single period under the Obama amendment, or if leave can be taken intermittently or on a reduced schedule basis.

The Coalition believes these aspects of the Obama amendment deserve to be thoroughly scrutinized. However, just as the House considered the Altmire/Udall amendment without the benefit of a legislative hearing on the legislation, the Senate voted on the Obama amendment without any committee review.

V. Conclusion

Madam Chair, and distinguished members of the Subcommittee, thank you for considering the views of the National Coalition to Protect Family Leave. The Coalition and its membership strongly supports members of the U.S. Armed Forces and their families, and we are hopeful that you will incorporate the Coalition's views as you consider legislation to address the existing Federal leave benefit. We look forward to a continuing dialogue with you on these important issues.

Chairwoman WOOLSEY. Well, I want to thank you all for being here, and I think that we need to honor somebody who is in our audience. Sergeant Wade, would you mind standing up and let us appreciate you?

And I especially want to thank you, Mrs. Wade, for taking this time and your testimony at this hearing. You have made it personal to all of us, the two of you, for being here. You have reminded us of your sacrifices and the sacrifices of all servicemembers and their families. Thank you for that.

We have to do more than talk about this; we have to act, and we need to act as quickly as possible, because your story is not that unique, it appears. I wish it were. And we have an administration whose record on assistance for returning servicemembers and their families has not been all that good. So we need to take more action, we need to take it quickly, it needs to be bipartisan. And I suppose if I quit picking on the administration, it would make it easier for you, but we are going to work on this together, and we thank you very much for being the incentive for us. Thank you. Thank you all.

The meeting is adjourned.

[Whereupon, at 4:32 p.m., the subcommittee was adjourned.]