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STAY-AT-WORK AND BACK-TO-WORK STRATEGIES: LESSONS FROM THE PRIVATE SECTOR

HEARING

OF THE

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

ON

EXAMINING STAY-AT-WORK AND BACK-TO-WORK STRATEGIES, FOCUSING ON LESSONS FROM THE PRIVATE SECTOR

MARCH 22, 2012

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C O N T E N T S

STATEMENTS

THURSDAY, MARCH 22, 2012

STAY-AT-WORK AND BACK-TO-WORK STRATEGIES: LESSONS FROM THE PRIVATE SECTOR

THURSDAY, MARCH 22, 2012

U.S. SENATE,
COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS,
Washington, DC.

The committee met, pursuant to notice, at 10:15 a.m. in Room SD–430, Dirksen Senate Office Building, Hon. Tom Harkin, chairman of the committee, presiding.

Present: Senators Harkin, Alexander, and Hagan.

OPENING STATEMENT OF SENATOR HARKIN

The CHAIRMAN. The Senate Committee on Health, Education, Labor, and Pensions will please come to order.

Our topic today is, "Stay-at-Work and Return-to-Work Strategies: Lessons from the Private Sector." This is the latest in a series of hearings that we have convened since last March—that is a year ago—to explore issues that impact the employment of people with disabilities in America.

Of course, our goal is to boost the labor force participation for people with disabilities. To achieve this goal, we must both create pathways for people with disabilities to join the labor force, but we must also have policies in place to help Americans who have disabilities after they enter the workforce to get the support they need to stay employed.

Over the past 4 years, we have seen the devastating impact of the economic recession on people with disabilities. Thankfully we see, perhaps hopefully, a turnaround, new jobs being created each month, the unemployment rate overall has decreased. But that has not been the case for people with disabilities.

While the unemployment rate for the general public has decreased by a full percentage point from last year February to this year, during the same time period, the unemployment rate for people with disabilities actually went up. It went up by almost half a percentage point from 15.4 to 15.8 percent, according to the Bureau of Labor Statistics. Moreover, the number of Americans with disabilities participating in the labor force has gone down by more than 500,000 workers since the recession began in 2008.

One of the ways to address this stubborn problem of unemployment and underemployment of people with disabilities is to make sure they do not leave the labor force if they already have a job,

and to make sure that those who acquire disabilities can remain in their job, and that is what this hearing is about today.

We have asked a number of representatives from the private sector to share with us strategies to keep people at work or to help them return to work. We know that a complex array of factors—social, medical, psychological, and workplace practicalities—come into play when an adult acquires a disability.

We will hear about the supports that employers can provide in terms of accommodations and adaptations to the work environment. We will also hear about how employees, employers, family members, as well as health and medical professionals can work together to keep people in their jobs or return as quickly as possible to their jobs.

I want to point to one concern I hear about very often when a person with a disability is returning to work, and that is the cost of making accommodations for that individual. Contrary to popular belief, the data does not show that. It shows that the cost of making workplace accommodations for people who have acquired a disability is very low.

In 2006, the Job Accommodation Network, JAN, conducted a survey of almost 1,200 employers and found over 50 percent of the workplace accommodations that were needed to have people with disabilities hold a job, actually, cost nothing; the rest was in the range of $500.

We look forward to learning more about how these types of accommodations and other strategies in the workplace can keep people at work who acquire disabilities or help them return to work.

We have a very distinguished panel here today, and I want to thank all of them, right now, for being here and testifying, and giving good written testimony. I read them all last night and they are very good.

Before I begin, I want to make sure that I leave the record open for any opening comments by our Ranking Member, Senator Enzi, who I know is on the floor now, so hopefully, he will be here after he finishes his duties on the floor.

The CHAIRMAN. Let me introduce our witnesses, and we will get right to it. I will go from left to right.

Mr. Thomas Watjen, the CEO and president of Unum Group, serving that since 2007. Under Mr. Watjen's leadership, Unum has achieved strong, sustainable, financial results while expanding its market leadership position in building a culture of responsibility, which has earned the company a spot on numerous, "Best Places to Work" lists.

Mr. Watjen joined Provident, a Unum predecessor, in 1994 as executive vice president and chief financial officer, was later named vice chairman and director. Previously, he was a managing director at the investment banking firm of Morgan Stanley and Company, a partner with Conning and Company, and worked in corporate finance and investments for Aetna Life and Casualty.

Next, we have Miss Karen Amato, director of Corporate Responsibility Programs for SRA International, and is responsible for providing leadership, strategic direction, and implementation of SRA's integrated in-house disability management and transitional work

programs. She is a registered nurse of 36 years, a certified case manager, and a certified professional in disability management.

Next is Miss Christine Walters, an independent consultant at the Five L Company, an author also, specializing in coaching employers how to maintain quality employees within their company, including employees with disabilities. She is the author of "From Hello to Goodbye: Proactive Tips for Maintaining Positive Employee Relations."

She has 25 years combined experience in human resources administration, management, employment law practice, and teaching, and is an expert on developing return-to-work programs for employees with disabilities.

Next, we have Eric Buehlmann, who had a stroke during his last semester of law school, while working part-time for U.S. Senator Jim Jeffords. Eric's stroke led to paralysis on his left side, loss of vision, and some memory and attention issues. Following a period of recovery and rehabilitation, Mr. Buehlmann was able to return to law school, finish, and return to work for Senator Jeffords with the help of necessary accommodations.

Mr. Buehlmann worked for Senator Jeffords for 12 years, including a time as acting legislative director, and has since gone on to be the deputy executive director for Public Policy at the National Disability Rights Network.

I might also note for the record that Mr. Buehlmann is the son of Beth Buehlmann, a very valuable member of our staff here on the HELP Committee.

Finally, we have Dr. Ken Mitchell, the moderator for the Burton Blatt Institute at Syracuse University's Employer Research Consortium. Over 30 years of experience consulting employers on effective strategies to keep people with disabilities at work. He is also the managing partner at the Work Rx Group, which assists employers of all sizes and industries to reduce the impact of injury, illness, and chronic disease in their workplace.

Prior, Dr. Mitchell was the president of the National Rehabilitation Planners, and the executive director of the International Center for Industry, Labor, and Rehabilitation. He was also the vice president of Health and Productivity Development at Unum. I did not know that until I just read that. I look forward to hearing his testimony also. I look forward to all of them.

I will say at the outset that all of your statements will be made a part of the record in their entirety. If you could sum up in several minutes or so, I would be most appreciative, and then we can get into a discussion.

Thank you all for being here. Thank you for all your leadership in this area for so many years. And as I said, we have been having these hearings for about a year now, and we continue to try to develop the record, and find out what it is that we need to do especially in this area of keeping people with disabilities, when they get an onset of disabilities, how we keep them in the workforce. People have expertise. They have professionalism. It is a shame to lose them out of that workforce, and all of you have been involved in that, and I thank you for that.

We will start with you, Mr. Watjen. It is good to see you again. Welcome to the committee.

STATEMENT OF THOMAS R. WATJEN, M.B.A., PRESIDENT AND CHIEF EXECUTIVE OFFICER, UNUM GROUP, CHATTANOOGA, TN

Mr. WATJEN. Good to see you, Chairman, and thank you very much to you—and the other members who, I know, will be joining us here this morning—for the opportunity to testify today.

As you pointed out, you have a written testimony, so I will keep my comments fairly brief, but maybe start with an introduction to our company.

Unum is actually the leading provider of employee-sponsored benefits, both in the United States and the United Kingdom. What that means is we work with employers to provide benefits to their employees in the workplace that includes disability income protection coverage, life insurance, and accident coverage. But since the focus of this hearing is obviously on disability, I will contain my remarks primarily to our disability business.

To frame that out for you, if I can. In 2011, our U.S. operation actually worked with about 60,000 employers to cover 8.5 million of their employees for disability protection, and we paid out about almost $4 billion in benefits to our disability customers in the United States in the course of 2011.

Just briefly, a couple of points to put our industry in perspective. We insure individuals for a broad range of disabilities, from temporary to more permanent conditions. The benefits typically begin within 1 week to 3 months after a disabling event occurs, and 96 percent of our customers are on-claim for fewer than 2 years.

The coverage not only replaces income lost due to the disability, but also provides support throughout that time they are on disability, including return-to-work services, which I will come back to in a moment and share with you some of those return-to-work services that the individual receives over that particular point in time.

Our goal is a simple one, which is to help the disabled stay at work or return to work, if possible, and allow them to maintain a lifestyle similar to what they had before actually having the disabling condition.

Let me speak to how that affects both consumers, a little bit about what it means for the employers and, frankly, what I think has some very positive public policy implications as well.

Starting with consumers, quite frankly, we are always surprised at how few people fully understand what their exposure to disability can be. In fact, over the course of a working lifetime, there is a 33 percent chance that someone will become disabled for 6 months or more; a fairly significant probability that something like that can happen.

As you look at the state of America today, as we know, most households live paycheck to paycheck, so most American families are ill-prepared to deal with the consequences of lost income, even for a very, very short period of time. The result is that disability can cause a real financial hardship for many individuals and their families. Often, the only recourse is to draw from our scarce public programs, or maybe in more extreme cases, file for bankruptcy which, obviously, is not a good outcome.

Income protection coverage can provide the financial support to allow individuals and their families to retain an adequate standard

of living, along with the assistance needed to help them return to work, which as I mentioned earlier, I will spend a few more minutes talking about what that assistance looks like.

Employer-sponsored benefits, which is the business that we are in, are particularly attractive for the lower and middle income workers who are unlikely to have affordable access to these sorts of protections outside of the workplace.

From the employer's point of view, we find that most of our employer customers and companies do value the ability to provide benefits to their workers in the workplace. It helps with recruiting and retaining the right kind of people, and therefore is valued. And frankly, it only costs about $20 to $30 per person per month to provide that coverage. It is a very modest cost. This is something that all employers can provide, both large and small employers.

Just one note on the public sector implications, I do think the more we connect with providing this coverage on a private basis to Americans, it does have a positive impact on some of the resources that are here in Washington.

According to a study that we commissioned with the Charles River Associates, private income protection insurance prevents about almost 600,000 families from having to seek public assistance, which actually saves the Government about $4.5 to $5 billion per year. And I would point out that roughly 30 percent of the workers in the workplace actually had disability insurance, so the other 70 percent do not, which is obviously the opportunity for us.

Let me speak briefly to the assistance we provide, because it is more than just a financial assistance. For starters, obviously, the financial assistance is important. We provide financial protection. We actually insure roughly 60 to 70 percent of the individual's income so they have something that they can live on over the course of their disability condition. However, as I said, it is much more than that.

We find that by connecting very early, and developing a very early and open conversation with our customers and the physicians that may be involved in the particular case, and the employer, that there is a lot more we can bring to helping people get back to work by having that three-point set of discussions, again, between the individuals, the employer, and the attending physician.

Our primary communication, however, is with the claimant who often is looking for help as they do not know where to turn through these early contacts, which start as soon as a claim is filed, and in some cases, actually before a claim is filed. We work to build an open dialog with our customer.

Through these contacts, we begin to develop a realistic plan including the needed support for returning to work. We find that most people want to return to work and want help doing so. As you might expect, the longer a person is out of work due to disability, the less likely they are eventually to return to work. Each claim is different and through our early contact, we quickly decide what resources and level of support is needed to assure that we have the right expertise involved and that everyone is working toward a common goal.

The level of support a claimant requires can vary significantly, often it is enough simply to have the claimant set up with a very

simple return-to-work plan where our ongoing involvement is more touching base from time to time to be sure that that plan is going as expected.

For those with greater needs, we partner with the employer, the attending physician, and others to support the employee's return-to-work goals. This often is a very specific plan which might include many different things that we can provide. For example, a flexible work schedule in order to facilitate a gradual return-to-work program, workplace modification, retraining, vocational rehabilitation, use of adaptive equipment tailored to address the specific impairment the individual is facing. There is a whole host of different things that we can bring to bear but, again, it is very specific to the specific claim that we are dealing with.

As you might imagine, this process requires significant, specialized resources and our company has, for example, almost 1,000 professionals supporting this part of our business alone.

Again, the key to all of this is establishing a very early dialog with the individual and providing the support that they need. The result is that the vast majority of our claimants successfully return to work. And as I said earlier, 96 percent of our claimants are on-claim for less than 2 years looking at the indication of how quickly they can get back to work.

I continue to believe there is more that we can do together, between the public and private sector. Obviously, we play a very, very important role in helping people to get back to work and providing services beyond just the financial support.

There is more that we as an industry can do to help with that. Education is a big part of that, but it is also being sure that we simplify our products, and continue to make them more affordable and more accessible to all Americans.

I look forward to working with the committee further, Mr. Chairman, on that and address your questions in the question and answer session.

[The prepared statement of Mr. Watjen follows:]

PREPARED STATEMENT OF THOMAS R. WATJEN, M.B.A.

INTRODUCTION

Mr. Chairman, members of the committee, thank you for the opportunity to testify before you today. Unum employs approximately 10,000 people with major operations in Tennessee, Maine, Massachusetts and South Carolina. We are a market leader in employer-sponsored disability, life, critical illness, and accident protection with more than 160 years experience.

Although as noted Unum provides an array of workplace benefits, given the subject of this hearing, my comments today will address disability income protection only. In the United States, we provide our disability products to approximately 60,000 companies—from Fortune 500 companies to small businesses—protecting more than 8.5 million people and their families. In 2011, we paid our U.S. customers approximately $3.8 billion in disability benefits alone.

The committee's focus today on the private income protection industry is very important because it helps highlight how surprisingly common a work limiting illness or injury is and how to minimize the impact when this occurs.

Income protection insurance policies generally replace about 60 percent of a person's income should he or she become unable to work due to injury or illness. Typically payment begins within a week or two after someone leaves his or her job for short-term disability claims and within 3–6 months for long-term disability claims. A key component of income protection insurance is the immediate assistance provided by experienced specialists, which reduces the impact of disability and maxi-

mizes the chances of someone returning to work. Approximately 96 percent of our customers are on claim for fewer than 2 years.

I will focus on three main points in my testimony today. First, the value of income protection insurance to individuals, employers and the Government. Second, the approach the private sector takes in assisting someone when they become disabled. Third, the opportunities the private and public sector have to work together to expand these important protections.

VALUE OF PRIVATE INCOME PROTECTION COVERAGE

Consumers

Sixty-one percent of Americans live paycheck to paycheck. At the same time, few understand that the average worker has a one in three chance of becoming disabled for 6 months or more during his or her working life. Despite this statistic, most Americans are unprepared for the consequences of losing an income even for a short period of time. The result is that a disability can cause real financial hardship for many individuals and their families, and often their only recourse is to draw upon scarce public safety net programs that may only replace a modest portion of their earnings.

Income protection insurance can provide the financial resources to allow individuals and their families to retain an adequate standard of living. This coverage also offers important benefits beyond income replacement. People covered by this protection enjoy the benefit of many support services, including experts whose goal it is to help claimants understand and deal with the onset of disability. This support in turn maximizes the potential for someone to return to work.

Employers

There is considerable value for employers who make income protection coverage available to their employees, particularly with regard to workforce recruitment and retention. Studies consistently demonstrate that employees care about these types of benefits and are more loyal to companies that offer them.

The workplace is an effective way to ensure consumers can access, afford and understand the need for income protection. Ninety percent of income protection insurance is sold through the workplace, providing access to a broad range of employees at differing income levels. Income protection insurance is affordable with premiums often as low as just $20 to $30 per month. Most of the time, income protection premiums are paid by the employer or the cost is shared with the employee. The workplace also serves as an important place for employers to educate consumers about the need for this type of financial protection, particularly given the trusting relationship that most employees share with their employers.

Private income protection insurers also help employers better manage their business by maximizing productivity and minimizing absence. Studies show that disabilities can cost employers upwards of 15 percent of payroll. By increasing the potential for returning to work after illness or injury, employers can save on the expense of recruiting and training replacements, and can reduce health care costs as well.

Unum often collaborates with employers to help them understand and manage the impacts to their business of lost time due to disability. Small employers especially can benefit from the expertise offered by companies like Unum because they are less likely than larger employers to have experience in dealing with employees who become disabled.

The Government

Individuals with private income protection coverage that become disabled are much less likely to require support through government assistance programs, greatly benefiting taxpayers.

Last year, Unum commissioned a study by Charles River Associates to assess the value of employee benefits with a specific focus on disability protection provided in the workplace. The study found that the industry saves taxpayers up to $4.5 billion per year by eliminating the need to rely on public assistance programs such as Temporary Assistance for Needy Families, the Supplemental Nutrition Assistance Program, and other related welfare programs. The industry prevents 575,000 families from becoming impoverished. The study shows that poverty among working adults who become disabled during their working careers could be virtually eliminated if all workers had some form of standard employer-sponsored income protection insurance.

Private income protection insurance offers access to resources that help get people back into the labor force. This in turn has a positive impact on public sector disability-related programs.

PRIVATE SECTOR ASSISTANCE TO DISABLED EMPLOYEES

Private income protection provides a disabled worker with about 60 percent of his or her regular income. With this assistance, the employee can maintain a basic standard of living while focusing on recovering, and then returning to work. In most cases, covered employees who become disabled are able to return to work within 2 years, in part because of our efforts.

As soon as a disabled employee files a claim, Unum begins discussions with that employee and his or her medical provider, as well as the employer. By far the most important communication, however, is with the employee directly. Unum claims professionals are trained to have collaborative dialogs with claimants that include understanding the motivational aspects related to returning to work and the anticipated length of a person's recovery. The world of disability is unchartered territory for most employees, and Unum guides them through this difficult landscape by building a trusting and supportive relationship with the common goal of helping the employee recover and return to work.

Through this approach we can proactively triage claims and effectively direct appropriate professional resources on an individual basis. At Unum we have almost 1,000 physicians, nurses, and vocational rehabilitation consultants and claims specialists in place to provide this assistance. When hiring and training our professionals, we pay special attention to ensure they reflect our high standards of customer service.

For example, we have developed a detailed hiring profile which allows us to target the most appropriately skilled and suitable candidates for claims handling positions. Once we hire a suitable candidate, we build expertise through 10 weeks of comprehensive classroom learning. Upon completion of this training, each claims specialist is assigned an experienced mentor for another 18 months during which time they undergo advanced skill training. We also provide ongoing career development and training focused on all important elements of the claim review process, including medical, vocational, regulatory, and customer relationships. In sum, our employees receive intensive initial and ongoing training to ensure they are as prepared as possible to support the customer in their time of need.

Early intervention and timely communications are critical to successful return-to-work outcomes. The frequency and the nature of these conversations are examples of the industry's evolution as well as our own focus on customer service. In recent years, changes have been driven in part due to advances in adaptive technology, as well as a focus on accommodation required by legislation such as the Americans with Disabilities Act.

The level of support a claimant requires can vary significantly based on need. Often, the only professional resource that is needed to assist a claimant in their desire to return to work is communication between the claimant and the claims representative. In many cases, it is enough to help him or her establish a return-to-work plan, then periodically followup with the claimant as they recover. When appropriate, our physicians speak with the claimant's medical provider and discuss their potential work capacity. In other instances, we help, with the involvement of the employer, to create job modifications such as a change in working conditions and ergonomic improvements as well as rehabilitation and career assistance.

The consistent rise in healthcare costs has also contributed to the development of comprehensive health and productivity strategies. Health plans, prevention programs and disability insurers can no longer afford to exist in silos. High incidents of disability often result in higher health care costs and reduced productivity. As a result, if an employer can decrease the frequency and length of disability claims, it will also have an opportunity to reduce medical costs.

Reducing disability claim incidence and length can include strategies that may begin before an employee leaves the workforce as well as return-to-work efforts for those who are absent from work. Effective strategies include condition management, absence management, and disability management.

Condition management keeps employees with disabilities on the job. Typically, these services are provided to employees who have not yet filed a claim and continue to work, but whose future attendance and/or job performance may be at risk. In some cases, services are designed not only to help the employee remain in their occupation, but to help the employee consider a job change with the same employer if appropriate. Examples of these types of services involve working with the employer's human resources department or front line managers by providing training and reasonable accommodations.

Absence management includes developing transitional return to work and stay-at-work plans. These programs are designed to gradually transition a worker from a less than full capacity work status to a full duty work status by modifying tasks

and/or hours so that he is able to incrementally heal and increase productivity during the recovery process from an illness or injury.

With regard to disability management, for those employees who do experience an absence from work, Unum specializes in assisting an individual's rehabilitation, when appropriate, by helping them develop a return-to-work plan. Factors considered in developing the plan include age, type of disability, work history, education, job preferences, and return-to-work opportunities.

We use many tools to develop individually tailored return-to-work plans, including:

- Regular telephone contact with the individual needing the services by one of Unum's claim representatives and/or by one of Unum's certified rehabilitation counselors;
- A detailed job analysis of the tasks the individual is or was performing;
- A functional capacity evaluation designed to determine the level of recovery/medical improvement, in order to better understand which work tasks the employee is capable of performing;
- Medical records and focused return-to-work planning discussions with the employee's treating medical provider; and
- Partnering with State-based job placement and vocational assistance programs.

A customized support plan may include the following services:

- Coordination with the employer to help the employee return to work;
- Identification of adaptive equipment or job accommodations that could enable the employee to resume job duties;
- A vocational evaluation to determine how the employee's disability may affect his or her employment options;
- Job placement services;
- Resume preparation; and
- Job-seeking skills training.

As part of the return-to-work plan, Unum provides a designated vocational professional to help coordinate all of its aspects. Often modifications that have been agreed to by the employer, employee and Unum before implementation need to be monitored and adjusted to help ensure a successful re-integration into the workforce.

It is also important to note that our insurance contracts generally contain additional benefit provisions which can directly assist a successful return to the workforce. Examples of these provisions include providing enhanced financial support to employees returning to work on a gradual basis, dependent care benefits, immediate resumption of benefits if there is a recurrence of disability within a specified timeframe, and educational/training benefits. All of these contractual features are designed specifically to give insured employees support beyond direct vocational assistance.

OPPORTUNITIES FOR PUBLIC/PRIVATE PARTNERSHIP IN DEALING WITH DISABILITY IN THE WORKFORCE

The private income protection insurance industry and the Government have opportunities to work together on the shared objective of making financial protection more accessible and affordable for American workers.

Government can play an important role by helping to raise awareness with consumers, employers, and others about the risks and consequences of disability. The evolution of the private sector tracks advances in public policy as well. Most notably, the Americans with Disabilities Act and the 2008 amendments have prompted employers to move beyond providing reasonable accommodations to programs and policies that involve a more interactive process. More employers are offering workplace flexibility through transitional return to work and are refraining from inflexible termination policies in order to ensure that they do not create the unfortunate situation in which loss of employment occurs without proper consideration of the insured's condition.

In addition, the industry must continue to do its part by helping to educate consumers about the need for coverage but also continuing to seek ways to simplify our products and make these more affordable to all Americans.

CONCLUSION

Mr. Chairman, let me conclude by reemphasizing the crucial role that private income protection insurers serve in protecting American families and maximizing the potential for someone in the workforce who experiences a work limiting illness or injury to return to their job.

Although each case is unique, and while there is no one solution that works for everyone, we have found that the best recipe for successful return to work is a committed insurer with superior claims handling and support, an employer committed to its workforce, and an individual motivated to return to productivity.

Too few Americans are covered by private income protection. A worker is three times more likely to become disabled than to die before retirement, yet is much more likely to have life insurance than income protection insurance. Our experience is that the lack of awareness of the risk of disability and the affordable ways to insure against the risk are the biggest impediments to more Americans being protected. That is why this hearing is so important.

I would be happy to answer any questions the committee may have.

The CHAIRMAN. Thank you very much, Mr. Watjen. I am going to have some questions along why it is 70 percent.

Mr. WATJEN. Yes.

The CHAIRMAN. But anyway, we will get to that.

Miss Amato, welcome. And again, as I said, I will not repeat this any longer, your statements will be made a part of the record. And again, just in your own words, sum it up. Appreciate it.

Ms. AMATO. Good morning.

The CHAIRMAN. Thank you.

STATEMENT OF KAREN A. AMATO, R.N., C.C.M., C.P.D.M., DIRECTOR, WELLWITHIN AND CORPORATE RESPONSIBILITY PROGRAMS, SRA INTERNATIONAL, INC., ARLINGTON, VA

Ms. AMATO. Good morning Mr. Chairman and Ranking Member Enzi. My name is Karen Amato, and I am the director of Integrated Disability Management, Safety and Wellness Programs for SRA International based in Fairfax, VA. SRA International employs about 6,500 employees located in more than 50 locations around the world. I have over 21 years of experience managing disability and return-to-work programs, as well as 36 years as a registered nurse.

I thank you for the opportunity to testify on employer approaches to disability management and return-to-work strategies. I appear before you today on behalf of the Society of Human Resource Management or SHRM, which I have been a member since 2008, and we are pleased to have Senator Enzi, a SHRM member, as well.

My comments will address my experience with large employers that have faced challenges and successes, keeping and bringing employees with disabilities back into the workplace. At the outset, let me note that SHRM and its members have a long tradition of working to increase employment opportunities with people with disabilities.

Since 2006, SHRM has enjoyed a partnership with the Department of Labor's Office of Disability Employment Policy. SHRM was also pleased to include among employer and disability associations that collaborated with you, Senator Harkin, on crafting the Americans with Disabilities Amendments Act, which was signed into law by President Bush in 2008. Chairman Harkin, we thank you for including SHRM in the legislative process that produced the ADA Amendments Act.

In my experience, and particularly in light of the expanded definition we now have for disability under the ADA Amendments Act, there are several successful strategies that some large employers have incorporated into effective disability management programs that I would like to describe.

First, when employers engage an employee early in the return-to-work process, it can allow the organization to simultaneously meet their business needs and also reduce the financial impact on the employee and his or her family, which is significant.

Establishing an onsite case management or return-to-work coordinator allows companies to provide individual assessments and intervention based on an employee's specific impairment. Employers can provide creative accommodations, such as workplace redesigns, adaptive equipment, or can sometimes find simple solutions such as a keyboard tray or a specific mouse for carpal tunnel syndrome.

Accommodations can include flexible work schedules such as defined flexible work schedules and telecommuting. Certainly, some accommodations can be very complex, and may require a third party expert assistance and expensive changes, but many of these enhancements help employees to perform their jobs.

Second, there is a tremendous value for both employers and employees in preventative strategies. Wellness programs, onsite fitness facilities, weight management, and smoking cessation programs, and onsite health screenings, just to name a few, are initiatives that enhance team building and overall health of the employees. These programs can ultimately reduce the incidence of injuries and illnesses through education and action, as well as help employees with impairments to remain active at work.

The third recommendation is for large employers to clearly define policies and jobs. Employers must ensure that their transition back to work programs have written guidelines, light duty and regular duty job description, and formalized training to new tasks and processes that will be involved to ensure consistency.

Finally, incentivizing work while transitioning employees from disability into the workplace, and engaging employees is also important. Large employers can minimize employee issues through such programs as employee assistance and back-up support care. To keep employees engaged, employers can give employees that are on medical leave, voluntary continued access to employer resources such as the Internet or communication systems, if that is approved by their healthcare provider.

In closing, Mr. Chairman, I want to be clear that while some of these suggestions for disability management tactics may work for different employers and their employees, all the suggestions are circumstantial. There is obviously not one simple one-size-fits-all—and we know that—solution for every employer of every size and in every industry. But in the end, proactive employer interventions and prevention efforts can help employees return to work or stay at work, and that improves the bottom line for both employers and families.

I thank you again, and I thank the committee for listening to my perspective, and I am happy to answer your questions.

[The prepared statement of Ms. Amato follows:]

PREPARED STATEMENT OF KAREN A. AMATO, R.N., C.C.M., C.P.D.M.

INTRODUCTION

Good morning Chairman Harkin, Ranking Member Enzi, and distinguished Senators. My name is Karen Amato, and I am director of the integrated disability man-

agement, wellness and safety programs for SRA International, Inc. in Fairfax, VA. I appear before you today on behalf of the Society for Human Resource Management (SHRM), of which I have been a member since 2008. I am also a member of the Northern Virginia SHRM chapter (NOVA SHRM). I thank you for this opportunity to testify before the committee on employer approaches to disability management and the general opportunities and challenges around return-to-work strategies for employers. My comments will address my experience with large employers that have faced the challenges and successes of bringing employees with disabilities back into the workplace.

I commend you both for holding this hearing on this meaningful topic. By way of introduction, I have over 21 years of experience managing disability and return-to-work programs, worksite wellness, safety programs and HR administration, as well as 36 years as a registered nurse.

SHRM is the world's largest association devoted to human resource (HR) management. Representing more than 260,000 members in over 140 countries, the Society serves the needs of HR professionals and advances the interests of the HR profession. Founded in 1948, SHRM has more than 575 affiliated chapters within the United States and subsidiary offices in China and India.

SRA International, Inc. is dedicated to solving complex problems of global significance for government clients in defense, intelligence/homeland security/special operations, health and civil agencies. SRA International, Inc. employs more than 6,500 people located in more than 50 locations around the world.

In today's economy, organizations must compete in the global market for skilled, dedicated employees, while managing their labor costs and expenses to remain competitive. HR professionals and employers must also address how to manage their business when faced with challenges such as employee absences, added workload for colleagues, and the impact on productivity and morale due to disability or illness. Proactively keeping employees at work who are experiencing impairments and transitioning employees who have experienced a disability back into the workforce has value to the employer in mitigating some of this impact while meeting the individual employee's needs. However, even employers with very comprehensive programs can experience challenges with these programs.

SHRM AND THE AMERICANS WITH DISABILITIES ACT

SHRM and its members have a long tradition of promoting effective practices for advancing equal employment opportunity for all people, including individuals with disabilities. SHRM strongly supports the goal of increasing the employment of people with disabilities, and believes that the Americans with Disabilities Act (ADA) strikes the appropriate balance between the needs of individuals and employers. SHRM places a priority on developing educational materials and initiatives for HR professionals on hiring individuals with disabilities. SHRM has been a partner with the Department of Labor's Office of Disability Employment Policy for this purpose since 2006. SHRM created a Disability Employment Resource Web page that offers its members a wealth of resources, articles and links to help source, recruit, retain and develop people with disabilities. SHRM also provides training through conference programming and webcasts to its members on disability law and effective employment practices. SHRM's member organizations regularly engage in outreach efforts to civil rights and disability organizations, both as part of their current affirmative action obligations and as a sound business practice.

The ADA was enacted in 1990 to protect individuals with disabilities from discrimination in employment, public services and public facilities. The ADA prohibits discrimination against current employees and job applicants by employers that employ 15 or more individuals, and requires such employers to provide reasonable accommodations to employees who have known disabilities. The ADA defines "disability" as "a physical or mental impairment that substantially limits one or more of the major life activities of such individual." Individuals must meet this disability standard to be eligible for the ADA's nondiscrimination and accommodation coverage.

In 2008, SHRM and other employer associations reached an agreement with disability advocacy organizations to address a handful of Supreme Court holdings in the preceding decade (including *Sutton* v. *United Airlines* [1999] and *Toyota Motor Manufacturing Kentucky Inc.* v. *Williams* [2002]) that had narrowed the definition of disability under the ADA. The resulting deal led to the ADA Amendments Act (ADAAA), which was authored by you, Chairman Harkin, and passed both houses of Congress unanimously before being signed into law by President Bush in 2008.

SHRM continues to believe that law strikes an appropriate balance between the needs of individuals with disabilities and the obligations of HR professionals under

the ADA. On one hand, the ADAAA affirms that Congress intended the ADA's coverage to be broad, to cover individuals who face unfair discrimination because of a disability. On the other hand, the ADAAA also retained the ADA's individualized assessment of employees to prevent employers from being exposed to excessive liability.

Chairman Harkin, we commend you for sponsoring the ADAAA and for including SHRM in the legislative process that produced the 2008 law.

SHRM RESEARCH ON DISABILITY EMPLOYMENT

SHRM has collaborated with the Cornell University ILR School Employment and Disability Institute on a research study about organizational policies and practices related to employing people with disabilities. This series of research findings also analyzes what metrics organizations track for all employees and employees with disabilities and any barriers organizations experience with employment or advancement for people with disabilities. The survey of more than 600 HR professional respondents will be released in three parts: (1) Recruitment and Hiring, (2) Training, and (3) Retention and Advancement.

The purpose of the first, soon-to-be-released survey results is to provide new insights into the differences in HR practices in hiring and retaining individuals with disabilities and the relationship between these practices and positive employment outcomes.

The survey's key findings are:

• **Most employers have policies and practices related to the recruitment and hiring of people with disabilities**—Nearly two-thirds (61 percent) of organizations indicate including people with disabilities explicitly in their diversity and inclusion plan, 59 percent require sub-contractors/suppliers to adhere to disability nondiscrimination requirements and 57 percent of organizations stated having relationships with community organizations that promote the employment of people with disabilities.

• **Effectiveness of policies and practices**—Organizations believe that requiring sub-contractors/suppliers to adhere to disability nondiscrimination requirements (38 percent), including people with disabilities explicitly in diversity and inclusion plans (29 percent), and having explicit organizational goals related to the recruitment or hiring of people with disabilities (34 percent) were very effective practices.

• **Larger organizations are more likely to have policies and practices related to recruitment and hiring in place compared with smaller organizations.** Publicly owned for-profit organizations also are more likely to have some policies and practices related to recruitment and hiring in place compared with privately owned for-profit organizations and nonprofit organizations.[1]

KEY AREAS FOR MANAGING THE IMPACT OF DISABILITY IN THE WORKPLACE

Although there are fundamental elements of a successful strategy in managing disability in the workplace, there is not a simple "one-size-fits-all" solution for every employer. Employers and human resource professionals must balance pressing business objectives against common challenges associated with return-to-work strategies.

The success of the strategy will depend on the extent to which employers are able to mitigate the negative impact, while simultaneously meeting the employee's needs. The business imperatives of the employer and the abilities of the affected employee will inform determinations regarding appropriate return-to-work (RTW) solutions which are considered in conjunction with the employer's statutory obligations and protection of the individual's rights under the Family and Medical Leave Act (FMLA), the Americans with Disabilities Act and the Americans with Disabilities Act Amendments Act, among other regulations. However, there are a few key areas for managing disabilities in the workplace:

• *Disability Impacts the Entire Family*: Work is important to people and is a large part of what defines them. Prolonged absence from work impacts the family not only financially, particularly in single parent homes; but it also affects employees' emotional well-being. Experienced professionals recognize that the longer employees are out of work due to disability, the more likely they are to become disconnected from the employer and the benefits they receive from working. Intervening to help employees stay at work or transition back into the workplace quickly following a dis-

[1] Society for Human Resource Management and Cornell University ILR School Employment and Disability Institute (2012). SHRM Survey Findings: Employing People with Disabilities—Practices and Policies Related to Recruiting and Hiring Employees with Disabilities.

ability not only improves their recovery, it also enhances their self-image and reduces stress on their families. It also enhances their commitment to their employer as an employer of choice. It has become apparent that there are opportunities for large employers to take proactive steps that will better position them to retain disabled employees on the job. According to a report by the Government Accountability Office, an injured or disabled worker who remains out of work for more than 6 months has only a 50 percent chance of returning to work at all.[2]

• *Proactive Interventions and Prevention Reduce Disability Claims and the Bottom-Line Impact*: Early intervention to recognize and respond to an employee's needs for workplace modifications from the first day of hire through the entirety of the employee's tenure helps mitigate the impact of current and future impairments on their ability to be a productive worker. Anticipating, identifying and providing accommodations to new hires such as equipment, assistive technology, interpreters, and flexible scheduling makes onboarding smooth and the employee is more-quickly engaged and productive. Proactively responding to employee's requests for workplace modifications based on their health concerns, and working together to identify reasonable solutions and confirming the effectiveness of the accommodation can increase productivity and often avoids absence and disability through reduction of their symptoms or impact of their impairment. Modifications may include equipment, technology, assistive devices or services, flexible scheduling, and teleworking.

As evidenced in a Mercer study and Towers Watson/National Business Group on Health study, employers can determine the value of this cost avoidance by measuring their cost of total disability as a percentage of payroll against readily available benchmark data.[3]

• *Early Return-to-Work Programs Work*: Providing supportive services (some large employers may have return-to-work coordinators or case managers) to the employee throughout their absence keeps them engaged and connected with the organization and provides earlier opportunities to transition back into the workplace. Large employers and human resource professionals who engage the qualified, but impaired employee and the manager in a flexible, interactive process are most successful with providing effective workplace accommodations. Of course, this process is fluid and may require additional evaluation and adjustments, and it means that employers must have the dedicated staff capable of managing the process. Bringing employees back to work in a productive capacity where it's medically possible, through provisions such as light duty work, workplace modifications, flexible work arrangements, teleworking and procurement of equipment make it less likely they will transition to long-term disability. For the employer, the ability to return trained, skilled employees back to the workplace can avoid recruitment and replacement costs and reduce direct and indirect costs of absence and disability. Organizations who offer these programs have to be vigilant to comply with the relevant Federal and State employment laws.

• *Success of the Integrated Disability Model (IDM)*: Going beyond stay-at-work and return-to-work programs, the integrated disability model broadens this reach by engaging the best of an employer's benefits, along with its departments and disciplines to support and meet an employee's need to remain productive, as well as to meet the demands of their job. SHRM outlines this integrated model in a number of its publications and programming it provides to HR professionals. The model indicates that participating departments may include HR partners, benefits, health and wellness, safety, risk management, diversity and philanthropy. Providing a comprehensive approach to fostering a healthy, inclusive and caring environment that is responsive to employees' needs can positively affect the employee's productivity and well-being. Large employers can offer a variety of support including counseling through work-life balance programs such as employee assistance programs, wellness programs, ergonomic evaluations, parental and adoption leave and resources, safety evaluations, job accommodations, and opportunities to participate in charity work and diversity groups to enhance the workplace environment.

Employers also need to evaluate trends from health care, disability and workers' compensation claims to design wellness and workplace safety programs that provide employees with tools for engagement to mitigate risk.

• *Training:* Supervisors' and employees' actions toward others with impairments can have a bearing on whether an organization is successful in supporting people with disabilities. Employees and supervisors should be trained in how to respond

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[2] U.S. Government Accountability Office, Health, Education and Human Services Division (1996). Return-to-Work Strategies From Other Systems May Improve Federal Programs. *http://www.gao.gov/assets/160/155504.pdf*.

[3] Towers Watson National Business Group on Health (2012). Staying at Work Report, 2011–12; and Mercer (2010). Survey on the Total Financial Impact of Employee Illnesses, 2010.

to employees who raise concerns about their health and workplace difficulties. They must be aware of internal resources and how to connect the employee to them. Workforce diversity training for employees enhances how employees with impairments are treated in the workplace. Training on proper body mechanics and proper use of equipment and technology associated with workplace accommodations will hasten an employee's productivity and avoid frustrations. Offering sensitivity training to employees for such things as behavior around service animals, buddy systems and support for colleagues with disabilities is helpful.

SUCCESSFUL STRATEGIES FOR AN EFFECTIVE DISABILITY MANAGEMENT PROGRAM

Since the U.S. Equal Employment Opportunity Commission promulgated the final regulations of the ADAAA in March 2011, the expansion of the definition of disability provides a broad scope of protection to persons with many types of impairments. In my experience, successful strategies for an effective disability management program include:

• *On-site case management/RTW coordinator*: This type of support provides individual assessment and intervention based on specific impairments through collaboration with the employee, supervisor, healthcare provider and insurance carriers as appropriate.
  - Ensure continual followup to support RTW success.
  - Explore creative alternate jobs or current job modifications.
  - Research and deliver appropriate accommodations.
  - Remain connected to the employee by providing support throughout their absence and into the RTW process.
  - Contract with external resources when needed (i.e., a life skills coach).
  - Teams that include nurse case manager, return-to-work coordinator and/or wellness coordinator are better positioned to manage an integrated disability management program.

• *Define policies and jobs:* Employers must ensure that their programs have specific written guidelines for transition-back-to-work programs, light duty and regular duty job descriptions, and formalized training to new tasks and processes to ensure consistency. Formal policies such as flexible workplace, teleworking and compressed work-week provide documentation and oversight for large employers.

• *Incentivizing work and employee engagement*: Large employers, who continue as reasonable health and welfare benefits, as well as other programs, such as employee assistance programs and back-up care, minimize an employee's concerns. Employees may be provided voluntary continued access to employer resources (such as the intranet and communications) while on medical leave, if approved by the healthcare provider. Providing a transitional RTW pecuniary incentive allowing work to supplement disability benefits for a defined period of time protects the employee's predisability income while transitioning to work part-time. If the disability policy does not allow supplemental benefits during a transition back to work this will negatively impact the willingness of the employee and the physician to engage in an early return-to-work program.

• *Provide creative accommodations:* Often it can be a simple solution such as a keyboard tray to reduce carpal tunnel symptoms that enhances the employee's ability to perform their job. Some solutions are complex, may require expert assistance and substantial and expensive changes to the worksite in order to accommodate the employee. Accommodations can include defined flexible work schedules, ergonomic workstations, voice-activated computer systems, lighting adjustments, specialty equipment, technology, mobility devices or relocating the work within reach.

Accommodation challenges can occur based on the nature of the work. Organizations employing white collar workers have more opportunity to offer light duty and workplace accommodations to employees with disabilities, as they typically have less physically demanding job functions that need to be addressed. Organizations with a workforce consisting of mostly blue collar workers tend to have limited availability for light duty positions and a greater challenge when providing accommodations that address the employee's ability to perform physically challenging job requirements.

• *Establish workplace flexibility strategy*: By providing workplace flexibility policies and programs, employers can help all employees better meet their work-life needs. Workplace flexibility policies, such as flexible scheduling and telecommuting, can help employees with disabilities perform their job functions.

SHRM has engaged in a significant effort to educate HR professionals and their organizations about the importance of effective and flexible workplaces. On February 1, 2011, SHRM formed a multi-year partnership with the Families and Work Institute (FWI). This partnership combines the research and expertise of a widely

respected think tank specializing in workplace effectiveness with the influence and reach of the world's largest association devoted to human resource management. By highlighting strategies that enable people to do their best work, the partnership promotes practical, research-based knowledge that helps employers voluntarily create effective and flexible workplaces that fit the 21st century workforce and ensure a new competitive advantage for businesses. Although FWI is an independent nonadvocacy organization that does not take positions on these matters, and the position of SHRM should not be considered reflective of any position or opinion of FWI, I'd like to briefly mention one of the key elements of the SHRM/FWI partnership, the *When Work Works* program, because it seeks to educate and showcase employers who are meeting the needs of our 21st century workforce. The centerpiece of the initiative has been the Alfred P. Sloan Award for Excellence in Workplace Effectiveness and Flexibility, a nationally recognized award for organizations that are using workplace flexibility as part of their business practice.

When Work Works is a nationwide initiative to bring research on workplace effectiveness and flexibility into community and business practice. Since its inception in 2005, *When Work Works* has partnered with an ever-expanding cohort of communities from around the country to:

1. Share rigorous research and employer best practices on workplace effectiveness and flexibility.
2. Recognize exemplary employers through the Sloan Award for Excellence in Workplace Effectiveness and Flexibility.
3. Inspire positive change so that increasing numbers of employers understand how flexibility can benefit both business and employees, and use it as a tool to create more effective workplaces.

• *Comprehensive Wellness Programs*: Employers can provide comprehensive wellness programs to support employees in maintaining or improving their health. On-site fitness and pedometer programs, weight management programs, smoking cessation programs, health screenings, health coaching and CPR training are just a few initiatives that enhance team building and overall health.

Consider an employee who is diagnosed with a neurologically degenerating disease such as Parkinson's disease. A marketing and sales company was able to bring this employee, who was a data analyst, back to work following a few weeks of total disability by providing a scooter and a larger monitor for visual deficits. As the employee's disease progressed and he experienced hand tremors and slurred speech, he requested that he continue to work and additional accommodations were provided to include a special keyboard and writing tools. The employee was able to successfully continue to work for 6½ years, before he was no longer able to perform the essential functions of the job. Had this employee worked as a back hoe operator for a construction company, the only light duty work the employer may have been able to provide was a traffic flagger, which would have required standing on the street. The employee's impairment would have precluded him from this and he would have remained on total disability.

LARGE EMPLOYER CHALLENGES

As I noted earlier in my testimony, there are several legal and regulatory challenges that an employer must navigate in offering a disability management program. These primary challenges include the following:

• *Impact of Individual State Benefits*: There is an administrative burden on employers who have employees that work in multiple States with paid disability and family leave benefits in terms of increased communications, tracking and the potential overlap in benefits and conflicts between Federal and State law. Human resource professionals must have a general understanding of the various State disability benefits and ensure their employees are informed of the process for applying for these benefits. If the employer has private disability insurance, the employees should be informed of the process if State benefits will offset the employer's disability benefits. Employers have the added responsibility of completing paperwork for both the State and private disability carrier, and coordination of a partial return-to-work requires collaboration between all stakeholders. Navigating the bureaucratic requirements can be confusing to an employee; they will look to the employer for guidance and understanding.

In addition, for State-paid family leave benefits, employers must inform employees of their rights as well as the process for applying for benefits. For example, if an employer employs both a husband and wife, both may be entitled to paid benefits for the same event. In this case, the employee with the disability would be eligible

for State disability and the spouse may be eligible for paid family leave. In some cases, ongoing reports of need for paid family leave will be required from the spouse.

• *FMLA and ADA*: Intermittent FMLA continues to pose administrative challenges for large employers in terms of being able to ensure appropriate staffing to meet the needs of the business on a day-to-day basis and ensure they have the current information and updates to provide the appropriate approvals. Other employees may request similar workplace equipment and modifications, unaware that an accommodation for a disability was made. For those on light duty, concerns arise surrounding the impact the employee's future FMLA leave may have on staffing needs and how the organization can manage its work requirements in the long term. Extension of leave beyond FMLA requirements, protected by the ADA, may involve a prolonged absence.

As employers navigate the many laws that govern the employment of people with disabilities, there is much to understand and many resources to explore. Employers who have been successful in providing early RTW programs and workplace accommodations have been able to improve their bottom line while helping their employees. Employers would benefit from increased education on successful models for RTW strategies and information-sharing with regard to resources for managing workplace accommodations.

CONCLUSION

Again, I thank the committee for listening to my perspective on employer opportunities and challenges in return-to-work strategies for employees with disabilities.

I am happy to answer any questions you may have.

The CHAIRMAN. Thank you very much, Miss Amato.

And now we turn to Christine Walters. Welcome, and please proceed.

STATEMENT OF CHRISTINE V. WALTERS, M.A.S., J.D., S.P.H.R., SOLE PROPRIETOR, FIVEL COMPANY, WESTMINSTER, MD

Ms. WALTERS. Thank you, Chairman Harkin.

And thank you, in their absence, to the other members of the committee, and Ranking Member Enzi.

I am Christine Walters. Like Karen Amato, I am before you today as a member of SHRM, Society for Human Resource Management. Thank you, also, for your introduction. I do have about 25 years combined experience in employment law practice, HR administration, management, and teaching, and practice today as an independent HR and employment law consultant, predominantly with small business. And it is from that perspective that I will share with you this morning my experience in the private sector predominantly small businesses, their experiences and challenges regarding stay-at-work and return-to-work, or RTW, strategies.

Life for a small business owner is very hectic and navigating the maze of laws with limited resources and sometimes limited personnel can be overwhelming. What is more, smaller employers often have no in-house HR professional. If they do have a person who is in charge of HR administration, that person also often has two or three other jobs, perhaps payroll administrator or office manager. In my experience, the myriad of Federal and State laws comprise the primary challenge that small employers face when trying to hire and retain individuals with disabilities.

To give you a quick sense of the complexity, the ADA, the FMLA, and State worker's comp laws are sometimes affectionately known as "the Bermuda Triangle" of HR. Despite their merits, these statutes are complex, they are overlapping, and they are sometimes frustrating for small employers to administer particularly those trying to proactively administer an RTW strategy.

First with regard to the ADA, in light of the enactments of the ADA Amendments Act, the key focus, as we know now, is on whether discrimination has occurred, not on whether the individual has a disability. I hear sometimes that shift in focus may make RTW programs difficult to sell to small business. They may feel that under this new analysis, maybe it is safer to do less for all, than more for some.

Under the FMLA, there are several challenges. One example is that the time an employee spends performing light duty does not count toward FMLA leave, leaving that employee's full 12-week entitlement fully intact. Also, that same employee must be paid his or her regular wages while working light duty. That can create some employee relations challenges when that person works alongside other employees who are paid less, while performing the same work.

State workers' compensation laws are also complex, but there are some nice opportunities to partner with worker's comp carriers to assess methods for balancing RTW strategies with gainful employment, and also overseeing overall fiscal responsibility.

Then finally, there is the Fair Labor Standards Act, of course, FLSA and State wage and hour law considerations when implementing flexible work arrangements; three very quick examples.

Under the FLSA, of course, employers are permitted to allow a nonexempt employee, for example, to work four 10-hour days in a compressed workweek without the employer—as long as they do not go over 40—to incur any overtime obligations. However, under California law, for example, if an employee works more than 8 hours in a day, that employer would have to pay overtime.

Or another example, take a healthcare technician who wants a flexible work schedule to accommodate his or her own disability, or to care for a person with whom he associates who has a disability, working maybe 45 hours the first week and 35 hours the second week in the same payroll period. The FLSA, again, would require that employer to pay overtime for the hours over 40 in that first workweek. And then if the employer could find a job sharing arrangement whereby a coworker might work those first 5 hours or the 5 hours over 40 in that first workweek, that might violate State law. We currently have at least 14 States that prohibit mandatory overtime for certain professionals in certain industries, including the healthcare industry.

As Congress, Federal, and State regulatory agencies consider proposals to support the employment, the retention, and the advancement of persons with disabilities, we respectfully suggest that we focus our distinction or focus our concentration on carrots rather than sticks. And that is to say: let us focus on employer incentives rather than mandates. Let us entice employers to engage in proactive measures to recruit, hire, retain, train, and advance individuals in their workplaces and persons with disabilities. Small employers can secure rewards, be they tax incentives or safe harbors to enhance and encourage those activities.

I thank you so much for calling today's hearing, listening to my comments, and I, as well, remain open for questions.

Thank you.

[The prepared statement of Ms. Walters follows:]

PREPARED STATEMENT OF CHRISTINE V. WALTERS, M.A.S, J.D., S.P.H.R.

INTRODUCTION

Chairman Harkin, Ranking Member Enzi, and distinguished members of the committee, my name is Christine Walters. Thank you for the invitation to appear before the committee to share private sector lessons, experiences and challenges regarding disability management practices.

By way of introduction, I have 25 years of combined experience in human resources administration, management, employment law practice and teaching. Today I am an independent human resources and employment law consultant with the FiveL Company in Westminster, MD. I have served as an adjunct faculty member of the Johns Hopkins University, teaching a variety of courses in graduate-, undergraduate- and certification-level programs from 1999 to 2006 in human resource management topics. I am pleased to say that my first book, From *Hello to Goodbye: Proactive Tips for Maintaining Positive Employee Relations*, was published in March 2011 and was the publisher's #4 best seller last year.

I appear today on behalf of the Society for Human Resource Management (SHRM). SHRM is the world's largest association devoted to human resource management. Representing more than 260,000 members in over 140 countries, the Society serves the needs of HR professionals and advances the interests of the HR profession. Founded in 1948, SHRM has more than 575 affiliated chapters within the United States and subsidiary offices in China and India. On behalf of SHRM and its members, I thank you for this opportunity to appear before the committee to share return-to-work strategies and other disability management practices in the 21st century workplace. My testimony will rely heavily on my experience working with small businesses.

HOW EMPLOYERS CAN LEVERAGE RETURN-TO-WORK STRATEGIES

What is a return-to-work (RTW) strategy? Also referred to as disability management, the U.S. Government Accountability Office (GAO) defines an RTW strategy as a "proactive approach to controlling disability costs while helping disabled employees return to work."[1] RTW programs and strategies have been the subject of national and international research and literature for decades. As examples:

- In 1998, the International Labour Organisation's International Research Project on Job Retention and Return to Work Strategies for Disabled Workers (IRP) examined the inter-relationships of public and enterprise policies and practices as they affect the retention and return to work of disabled workers in eight countries: Canada, France, Germany, the Netherlands, New Zealand, Sweden, the United Kingdom and the United States.[2]
- A 2001 IRP report addressed a major six-country study on work incapacity and reintegration (the WIR project) undertaken in the mid-1990s under the auspices of the International Social Security Association. The Project drew on data compiled in six longitudinal studies in Denmark, Germany, Israel, the Netherlands, Sweden and the United States.[3]
- A 2002 IRP report on a qualitative study of return to work in small workplaces, particularly its sociological dimensions. The study examined the strategy of Early and Safe Return to Work (ESRTW) used in Ontario—an approach that emphasized workplace self-reliance and early return to work before full recovery in modified jobs.[4]
- Also in 2002, IRP published a literature review that considered the matters of work preparation and vocational rehabilitation. The review focused mainly on the development of vocational rehabilitation in the United Kingdom, but also considered approaches to vocational rehabilitation drawing on international literature.[5]

In 1996, the GAO Health, Education, and Human Services Division published a report for the Chairman of the U.S. Senate Special Committee on Aging to respond

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[1] U.S. Government Accountability Office, Health, Education and Human Services Division (1996). Return-to-Work Strategies From Other Systems May Improve Federal Programs. *http://www.gao.gov/assets/160/155504.pdf*.

[2] Thornton P (1998) International Research Project on Job Retention and Return to Work Strategies for Disabled Workers—Key Issues, International Labour Organisation.

[3] Bloch, F., and Prins, R. (2001). Who Returns to Work and Why? International Social Security Series, Volume 5, Transaction Publishers. USA, UK.

[4] Eakin, J.M., Clarke, J., and MacEachen, E. (2002). Return to Work in Small Workplaces: Sociological Perspective on Workplace Experience with Ontario's "Early and Safe" Strategy, University of Toronto/Institute for Work and Health Study, Canada.

[5] Riddell, S. (2002). Work Preparation and Vocational Rehabilitation: A Literature Review, Strathclyde Centre for Disability Research, University of Glasgow.

to an inquiry regarding key private-sector practices used to return disabled workers to the workplace. The report also included examples of how foreign employers implement RTW strategies for persons with disabilities. The report found that other countries had implemented RTW strategies that were similar to those in the U.S. private sector. Although the study was published in 1996, its findings are still remarkably applicable today.

The GAO study found three common elements to successful RTW strategies including in the private sector in the United States, Germany and Sweden:

1. Early intervention—The GAO reported that 50 percent of employees who go out on disability leave for 5 or more months will never return to work.

• Know *your* RTW metrics. A successful program is dependent upon buy-in and support from all levels of the organization. Define your company's goals. Know your baseline measures. What are your average days-lost-from-work, average absence rate, on-the-job injury/illness incident report? What are the trends, e.g., are they increasing/decreasing? How do they compare to your market by industry, geography and size? How will you measure success of your RTW program? I applaud SHRM's efforts to standardize employment metrics and its active engagement with ANSI toward new ISO initiatives.[6]

• Stay in contact with employees out on leave; help them feel still connected to the job.

2. Case management—Provide RTW assistance and manage cases to achieve goals. RTW requires an individualized approach, and may not always mean that an employee returns to the *same* job.

3. Providing RTW incentives——

• Retain employer-sponsored medical benefits, which serve as an incentive to return to work.

• The GAO report states that if disability benefits are too generous they can serve as a disincentive to return to work.

• But incentives alone are not enough; they must be incorporated into RTW practices such as including a contractual requirement for cooperation with a RTW plan as a condition of eligibility.

One-size-does-not-fit-all. How any given employer provides creative alternatives to work schedules and duties is very much driven by the industry and size of the employer. But even small business employers are becoming more learned and creative in finding ways to keep employees with disabilities gainfully employed. Just some of these flexible staffing models include:

• Flex time—permitting employees to work flexible schedules around a "core" set of hours.

• Alternative work schedules (AWS)—alternate work schedules such as 4/10 workweeks.

• Job sharing—where two employees may share the duties and work schedule of one FTE.

• Teleworking—permitting employees to work from home or an alternate location.

KEY ISSUES FOR SMALL BUSINESS

Life for a small business owner is hectic, and navigating the maze of laws with limited resources and personnel can be overwhelming. Smaller employers often have no in-house HR professional. If they have someone who is responsible for HR, that individual also probably handles two or three other job functions (for example, the HR manager may also be the payroll administrator and office manager).

In my experience, here are some of the primary disability management issues faced by smaller sized employers:

Myriad Federal and State laws—Despite their merits, the ADA, FMLA and workers' compensation laws are referred to as "the Bermuda Triangle of HR." They are particularly complex, overlapping and frustrating for small employers to administer—particularly for employers administering an RTW strategy. Those three and other statutes are discussed here:

• *ADA*—In light of the enactment of the ADA Amendments Act of 2008, the key point to focus on now is whether discrimination occurred, not whether an individual has a disability. This shift in focus may make RTW programs more difficult to "sell"

[6] Society for Human Resource Management (2011). Press release. ISO Approves U.S. Proposal for International Standards on Human Resource Management, March 3, 2011. *http://www.shrm.org/about/pressroom/PressReleases/Pages/ISOApprovesUSProposal.aspx.*

to small business. Some employers may feel under the new analysis that it may be safer to do less for all than more for some.

• *FMLA*—Under the FMLA, providing same pay during light duty creates tension among co-workers. Time spent working light duty does not count toward FMLA leave. Reduced schedule leave = infinite FMLA leave (never exhaust 480 hours). Employee retains protected right to decline offer of light duty work, while employee out on non-FMLA medical leave has no such protected right.

• *Workers' compensation (WC)*—There are opportunities to partner with WC carriers to assess methods for balancing RTW, gainful employment and fiscal responsibility. As mentioned above with regard to FMLA rights, an employee has a right under FMLA to decline an offer of light duty work. Declining the opportunity to work light duty may, however disrupt or stop the employee's receipt of continued benefits. This strategy is similar to that described in the GAO reported referenced earlier in my remarks, e.g., a purpose of the study was to assess ways to reduce increasing DI costs paid by government agencies.

• *FLSA and State wage and hour laws*—Flexible staffing models such as AWS that include a 10-hour-a-day, 4-day workweek known as a 4–10 workweek must be implemented with consideration to Federal and State wage and hour laws. Employers may find they inadvertently create increased labor costs when such models result in overtime that was not budgeted for nor anticipated or that violates State wage and hour laws that mandate overtime for hours worked in a day (such as in California) or in one of at least 14 States that limit or restrict mandatory overtime for certain professionals.

• *Covered Federal (sub)contractors and Executive Order 11246*—For many small employers, it is good news and bad news when they are awarded a government contract or subcontract and exceed the 50-employee threshold for the first time. On one hand, they are very excited about their success. On the other hand, they are also sometimes overwhelmed at the task ahead of them. Such contractors will quickly recruit qualified candidates in numbers greater than ever before to support the new contract. Then, I find more often than not they are stunned to learn about their obligations to now not only draft written affirmative action plans (Plans) but to administer those Plans and maintain all the corresponding documentation. With regard to the recruitment, selection, hiring, training and other employment activities related to persons with disabilities covered contractors currently must:

- Annotate the application or personnel form of each covered individual to identify each vacancy for which the applicant was considered. Such annotation shall include: (i) the identification of each promotion for which the covered employee was considered, and (ii) the identification of each training program for which the covered individual was considered.
- Where an employee or applicant is rejected for employment, promotion, or training, a statement of the reason as well as a description of the accommodations considered, where applicable.
- Where a covered applicant or employee is selected for hire, promotion, or training and the employer undertakes any accommodation that makes it possible to place the covered individual on the job, the application form or personnel record will contain a description of that accommodation.
- Review physical and mental job qualifications upon the development of any new position, update existing positions or position descriptions and recommend and implement any necessary changes. Such review shall take place on an on-going and as-needed basis and no less than once each year upon update of the Plan.
- When a qualified candidate is referred or selected from Federal, State or local agencies or other resources identified in the employer's Plan, formal arrangements must be made with the respective agency for the referral of the applicant, followup and feedback on the disposition of applicant.
- Track and monitor all personnel activity, including referrals, placements, transfers, promotions, terminations and compensation at all levels.
- Provide training to all personnel involved in the recruitment, screening, selection, promotion, corrective action and other processes related to the employment of persons with disabilities and the commitments of the Plan.

Early intervention—Small business owners often do not have the same internal resources that larger employers have. Put another way, many small businesses know enough to know what they don't know about their legal liability. Without an in-house HR advisor and in an attempt to defer the expense of consulting external legal counsel, they may feel that silence and inaction are safer than saying or doing the wrong thing.

Case management—Small business owners have limited fiscal and staffing resources. Thus, where larger employers may seek second and third opinions on legal issues, a small business may be more likely to bypass these options for cost reasons. With regard to the strategies described above, small business' most frequent concern as I hear it expressed is lack of funding and/or expertise to implement the recommended case management strategies. Small business owners do not have case managers and often have little idea where to look or whom to ask to find one.

Providing RTW incentives—Most small businesses offer some form of paid leave program whether it is in the form of traditional vacation and sick leave or a combined "bank" of paid leave referred to by various names such as paid time off (PTO), paid leave days (PLD) or some other term. More and more laws are being passed, predominantly at the State level, that prohibit employers from requiring employees to use the benefit of paid leave for such activities as jury duty, leave to care for a family member, leave due to one's own serious health condition, leave as the result of being the victim of a crime, leave for service in the Uniformed Services, leave that runs concurrent with a State disability program, and/or that bar employers from maintaining use-it-or-lose-it paid leave policies. While I understand the intent of such legislation, the practical impact to small business is that their accounts payable liability is reduced at a rate lower or slower than anticipated. That fiscal impact, since most employers pay out at least some portion of accrued, unused paid leave at termination, may result in small business reducing the amount of annual leave it provides to employees.

Setting precedent—The concern I hear most frequently from employers who may be less familiar with RTW strategies is about setting precedent. Employers aim to be fair and consistent with employees, but they may ask "If I do 'x' in this case, won't I have to do the same for everyone?"

Self-fulfilling defeat of essential functions—one court held that when an employer accommodated an employee by permitting the employee to not perform an essential function of the job for some period of time and subsequently determined it could not continue to provide that accommodation, the employer had created its own defeating, self-fulfilling prophecy. The court held that if the employer was able to permit the employee to not perform that function for some period of time, it must be non-essential.

SHRM'S WORK TO PROMOTE DISABILITY EMPLOYMENT

All of us share a sense of duty to give back to those who serve our country. I find so much enthusiasm and passion from employers to recruit and retain veterans and those who are currently engaged in the armed forces and reserves. As employers become engaged in those processes, they may receive their first exposure to providing reasonable accommodation for an employee or applicant with a disability. Through those experiences I find concerns I have described above about setting precedent or creating an argument that will be used against you subsides.

To boost veterans' employment and help organizations meet the Nation's skills gap, SHRM is working with two organizations to help employers recruit and retain current and former members of the military, many of whom return home with service-related disabilities.

The Employer Support of the Guard and Reserve (ESGR) is a Department of Defense organization that promotes cooperation and understanding between Reserve component members and their civilian employers and assistance in the resolution of conflicts arising from an employee's military commitment. SHRM signed a statement of support for ESGR and the more than 1.2 million citizens from all walks of life who have volunteered to serve during two long and difficult wars. In addition, the U.S. Department of Labor's Veterans' Employment and Training Service (VETS) provides resources to assist veterans and service members to boost their employment opportunities. Both of these organizations can help HR professionals and employers find, hire and retain skilled military service members.[7] We have much to learn about the experiences, perceptions, perspectives, needs and desires of our veterans, returning military and reservists. That broadened perspective can only enhance our understanding of overlapping, similar and different needs with regard to the employment and continued employment opportunities for persons with disabilities.

[7] Society for Human Resource Management (2012). Military Employment Resource Page. *http://www.shrm.org/hrdisciplines/staffingmanagement/Articles/Pages/Military.aspx.*

THE SLOAN AWARD FOR EXCELLENCE IN WORKPLACE EFFECTIVENESS AND FLEXIBILITY

I also applaud SHRM's new initiative "*When Work Works*." The Sloan Awards are a signature piece of that initiative within the SHRM/Families and Work Institute partnership, which aims to educate employers about the benefits of workplace flexibility and to recognize best practices. In 2011, hundreds of organizations applied for the Sloan Award for Excellence in Workplace Effectiveness and Flexibility, resulting in 450 winning worksites! Since 2005, the Sloan Awards have been recognizing model employers of all types and sizes across the United States for their innovative and effective workplace practices. For more information, you may go to *http://whenworkworks.org/*.

RESOURCES

I believe a key to continued enhancement in the employment, retention and advancement of persons with disabilities is education and resources for small business. I find the following to be just a few examples and opportunities:

- U.S. Department of Labor's Office of Disability Employment Policy's RTW Toolkit (for more information, see link below) [8]
- OSHA's Small Business Handbook [9]
- Federal and State agency (free) public technical assistance seminars.
- Physician and employer partnerships and education.
- Corporate wellness programs and legal parity (GINA, HIPAA, ADA challenges with compliance).
- Sample, model RTW programs—NY State Insurance Fund [10]
- State and local "green" tax credits for AWS programs.

CARROTS VERSUS STICKS

Over the last year, I have seen a plethora of regulatory activity at the Federal and State level that is impacting employment practices. Add to that employment-related Federal and State legislation. As Congress, Federal and State regulatory agencies consider proposals to support the employment, retention and advancement of persons with disabilities, I respectfully suggest we focus our discussion on carrots rather than sticks. That is, applying the same philosophy as shared by the GAO to Congress in 1996 let us focus on incentives to entice employers to engage in proactive measures to recruit, hire, retain, train and advance in their individual workplaces persons with disabilities. Let us focus on rewards for engaging in such activities, be they tax incentives, safe harbors or recognition programs. Let us maintain that focus rather than shifting to discussions of mandates and adverse consequences if those mandates are not met.

These are exciting times and through joint efforts and initiatives between Congress, regulatory agencies, small and large business, physicians, employees and applicants, I believe we can continue to enhance the employment and continued employment opportunities of all persons including those with disabilities.

CLOSING

Thank you again for the opportunity to appear before the committee to share these experiences and challenges from the small business perspective regarding disability management practices.

I welcome your questions.

The CHAIRMAN. Thank you, Miss Walters.

And now, we turn to Eric Buehlmann. Eric, Mr. Buehlmann, welcome. Please proceed.

STATEMENT OF ERIC BUEHLMANN, J.D., ARLINGTON, VA

Mr. BUEHLMANN. Chairman Harkin, Ranking Member Enzi, and other members of the HELP Committee, I appreciate the opportunity to add my personal perspective today to the discussion of an acquired disability in returning to work.

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[8] *http://www.dol.gov/odep/pubs/20100727.pdf*.

[9] *http://www.osha.gov/Publications/smallbusiness/small-business.pdf*.

[10] *http://ww3.nysif.com/SafetyRiskManagement/RiskManagement/LimitingLiability/ReturnToWorkPrograms.aspx*.

My story begins in January 1993. I was a 24-year-old and in my last semester of law school. In addition, I was working part-time as a staff assistant for Senator James Jeffords. It was also the month that I had a brain hemorrhage. As I slowly became aware of my surroundings at Georgetown University Hospital, the effects of the brain hemorrhage became apparent.

I was paralyzed on the left side of my body. I was unable to see anything from my nose left. I was unable to focus both my eyes on the same point, which made it very hard to read. It was very difficult for me to sustain my focus for any length of time without becoming overly tired, and at times, it was very difficult to find the words to express my thoughts and ideas.

After 3 weeks at Georgetown University Hospital, I transferred to the National Rehabilitation Hospital to begin more intensive inpatient therapy. While there, I did physical, occupational, speech, and vocational therapies. I also had individual sessions with a neuropsychologist who helped me understand the effects of my brain hemorrhage. I also had group sessions with others that had experienced a traumatic brain injury. I found these individual and group sessions extremely helpful.

During this time at NRH, Senator Jeffords came for a visit and we talked about work. While it was unclear if or when I would be able to return, he stated that they were looking into accommodations to help me return. As I was not walking at that point, one of the issues was wheelchair accessibility of the office. Throughout my stay at NRH, Senator Jeffords' office had several discussions with my therapist about accommodations.

After a little more than 2 months at NRH, I left much improved. While I continued to do outpatient therapy, my focus shifted from if I would return to work and school, to how best to accomplish these goals.

In July 1993, I started back to work at Senator Jeffords' office. With the help of the therapist at NRH, my workplace was designed to address my visual issues, and with the understanding of Senator Jeffords' office, I started with a few hours a day and then built back up to the amount I was working before the hemorrhage. By August, I was there.

I restarted my law school classes at American University in January 1994 with an accommodation of time and a half for any test I took in class. I ultimately graduated in January 1995, and then took the bar exam in Maryland in February with the same time and a half accommodation. Needless to say, I was beyond pleased to pass on the first try.

Following the bar exam, I began to work for Senator Jeffords in a full-time capacity. I started as a legislative correspondent and became his legislative counsel in 1996. I was also privileged to be Senator Jeffords' acting legislative director in 2006.

Even though I was now putting in the long hours required of a legislative counsel, it was still important for me to continue to follow the strategies and techniques I had learned from the therapist at NRH.

I stayed with Senator Jeffords up until his retirement from the Senate in January 2007, and then began the job hunt process. This raised a completely new set of questions for me to consider includ-

ing how much I should disclose about my disability and past medical history.

As my disability is not readily obvious, I did not always disclose it in an interview. There were plenty of interviews where I never discussed this topic, and I have sometimes wondered if decisions about me were made about some manifestation of my disability rather than my actual skills.

The brain hemorrhage was a part of my life, an important component of who I am today, but I was concerned about the stigma attached to medical issues and disability. In many ways, I wish I had felt free to discuss the topic.

My current employer, the National Disability Rights Network, is a membership organization for agencies that provide legal advocacy for people with disabilities, and I had no qualms about disclosing my brain hemorrhage and its effects up front. I felt comfortable that I would be judged on my qualifications rather than my disability.

It has been my pleasure to work the last 5 years at NDRN and progress to my current position as deputy executive director for Public Policy. Working at NDRN and with the nationwide network of protection and advocacy agencies we represent has strengthened my belief that our country is better when we include people from all backgrounds including those with disabilities. While employing a person with a disability may require an accommodation, I believe the benefits far outweigh any costs.

January 2013 will be the 20th anniversary of my brain hemorrhage. Testifying today has given me an opportunity to reflect on what enabled me to successfully return to work.

First, a high level of family, friend, and coworker support was instrumental in my recovery.

Second, the ability to have over 2 months of good inpatient therapy was critically important.

Third, my desire to return to work along with Senator Jeffords' willingness to work with my therapist to make the accommodations necessary for me to return also made a difference. Fortunately, I was lucky to have all of those things in place, but many people who experience an acquired disability are not this lucky.

I was reading to my son the other night from a "Magic Tree House," book and there was a discussion of Alexander Graham Bell, and I thought a statement he had was pretty interesting. Basically, he always believed that when one door closed, another door opened and we spend a lot of time focused on the closed door. And I sort of feel like, in some respects, that people with disabilities sort of face that as they look—the closed door is that they look at just the disability and they sort of do not see the open doors, and the abilities, and the changes we can make to sort of move forward with a person with a disability in employment.

As everybody else, I look forward to the opportunity to answer any questions anyone may have.

[The prepared statement of Mr. Buehlmann follows:]

PREPARED STATEMENT OF ERIC BUEHLMANN, J.D.

Good morning Chairman Harkin, Ranking Member Enzi, and other members of the Health, Education, Labor, and Pensions Committee. I appreciate the opportunity

to provide my personal perspective today on stay-at-work and back-to-work strategies.

My story begins in January 1993. I was 24 years old and in my last semester of law school. In addition, I was working part-time as a Staff Assistant for Senator James Jeffords. During a pick-up game of basketball, I took a hit to the side and suffered a bad bruise. I noticed that after a few days, the bruise was not healing and I went to a doctor. They ran some tests, and I went to my law school classes as normal. When I returned to my apartment that afternoon, there was a message telling me to come to the hospital right away. They needed to see me.

When I arrived at the hospital, they informed me that my platelet count, which normally should be 300,000–350,000, was only 3,000. This meant that my blood was having problems clotting. They ran another series of tests and ultimately diagnosed me with Idiopathic Thrombocytopenic Purpura (ITP). Basically, this means my spleen thought my platelets were bad, and removed them as fast as my bone marrow could produce them.

Treatment for ITP is done more on an outpatient basis, so the hospital released me and I resumed my law school classes and work in Senator Jeffords' office. I was informed of some warning signs that would indicate that I would need to come back immediately to the hospital, but honestly being 24 years old, I didn't think much about that. Unfortunately, very shortly after my release I experienced the warning signs. I called my roommate and he rushed home to take me to the hospital. His key unlocking the door to our apartment is the last thing I remember for the next 2 weeks of my life.

Later I was told, that by the time we arrived at Georgetown Hospital, I was complaining of being blind and I was unable to walk or stand up without assistance. I was placed into an MRI, to get a picture of the inside of my head, and was pulled out half way through the process because of the severity of the cranial bleeding. Hospital personnel immediately rushed me to surgery where a craniotomy was performed to relieve the pressure on my brain and try to stop the bleeding. The neurosurgeon removed part of the right occipital lobe of my brain during this surgery. There was still a concern that the ITP and the resulting low platelet count was going to lead to more bleeds, so it was decided to do a splenectomy. The doctors hoped that removing my spleen would raise the level of platelets in my blood. The splenectomy worked. My platelet count ultimately stabilized at an acceptable level.

As I slowly became aware of my surroundings, the effects of the brain hemorrhage began to become apparent to me. First, I was paralyzed on the left side of my body. Second, my field of vision had been reduced and I was seeing nothing from my nose left as well as having trouble focusing to read. Third, it was difficult for me to sustain my focus for any length of time without becoming overly tired, and it was also difficult at times for me to articulate thoughts and ideas.

This was definitely a down time in my recovery as I was becoming exceedingly bored spending my days in bed, doing very little other than watching television and sleeping. This all changed the day the therapists at Georgetown came and began to start a course of therapy. Therapy gave me something to do, something to work on, and added interaction with people.

After 3 weeks at Georgetown University hospital, I was transferred to the National Rehabilitation Hospital (NRH) to begin more intensive in-patient therapy. While there I did physical, occupational, speech, and vocational therapies. I also had individual sessions with a neuropsychologist who helped explain what the effects of the brain hemorrhage were. I also had group sessions with others that had experienced a traumatic brain injury. I found these individual and group sessions extremely helpful in understanding what had happened to me, and in letting me know that others were struggling with the same issues I was struggling with every day.

During this time at NRH, Senator Jeffords came for a visit and we talked about work. While it was unclear if, or when, I would be able to return, he stated that they were looking into accommodations to help with my return. As I wasn't yet walking at that point, one of the issues they looked into was spacing between the cubicles and making the office wheelchair accessible. Throughout my stay at NRH, Senator Jeffords' office had discussions with my therapists about accommodations necessary for my desk space, and the best way to bring me back in terms of the length of the workday.

After a little more than 2 months at NRH, I left in different shape than I had entered. I was walking at that point; better able to articulate my thoughts and ideas; had a higher and longer level of attention; and could get my eyes to focus together which allowed me to read again. Some effects of the brain hemorrhage still existed, like the reduction of my field of vision, I would get tired and neglectful sooner than before, and I continued to have some difficulty with word retrieval at

times. However, the therapists at NRH had taught me a lot of strategies and techniques to help me compensate.

I continued to do outpatient therapy at that point for a couple more months, but my focus shifted from ***if*** I would return to work and school, to ***how*** to best accomplish these goals. I had discussions of my situation with both Senator Jeffords' office and the American University School of Law, and settled on a plan to restart work first with a smaller set of hours per week, but building them up to the amount I was previously working over the course of a couple weeks. As for school, I would restart in January 1994 and complete the last semester of law school over the course of the year.

So, in July 1993, roughly 6 months after my hemorrhage, I started back to work in Senator Jeffords' office. With the help of the therapists at NRH, my workspace was designed to best address my visual issues, and with the understanding of Senator Jeffords' office I started with a few hours a day and then built back up to the amount I was working before the brain hemorrhage.

It was important for me to listen to my body and understand when I needed to take a break or I was going to become over tired. I could not spend hour after hour looking at a computer screen or reading every day. I also needed to plan my travel schedule much more as I was not able to drive. Finally, I needed to position myself properly in meetings to ensure that I was not missing anything, and that I was able to appropriately interact with everyone. By August, I was back to my previous workload, thanks to the work of my therapists, the support of my family and friends, and willingness of Senator Jeffords to provide accommodations.

As I mentioned earlier, I restarted my law school classes at American University in January 1994 with the understanding that I would complete the last semester of work over the course of the year. I also received an accommodation for time and a half for any test I took in class. With these accommodations, I was able to complete law school and graduated in January 1995. I then took the bar exam in Maryland with the same time and a half accommodation in February and was beyond pleased to pass it on the first try.

Following the bar exam, I began to work for Senator Jeffords in a full-time capacity. I started as a legislative correspondent in 1995 and became his legislative counsel in 1996. Even though I was now putting in the long hours required of a legislative counsel, it was still important for me to continue to follow the strategies and techniques I had learned from the therapists at NRH. I still needed to listen to my body and take breaks from just sitting in front of the computer or reading all day and I needed to position myself well in meetings so I did not miss anything that was occurring.

During my time with Senator Jeffords as his legislative counsel, I handled a variety of issues, including: Federal employees; banking, housing and insurance; labor law; judiciary-related issues, including abortion and gun control, and campaign and election law, including the enactment in 2002 of the Snowe-Jeffords provisions on electioneering communications. I was also privileged to be Senator Jeffords acting legislative director in 2006.

I stayed with Senator Jeffords up until his retirement from the Senate in January 2007, and then began the job hunt process for the first time since I had suffered my brain hemorrhage. This raised a completely new set of questions for me to consider, including how much I should disclose about my disability and past medical history. This was a struggle for me.

As my disability is not readily obvious to the casual observer, I did not always disclose my past medical history in an interview. A lot depended on my comfort level with the organization I was interviewing with and the questions that were asked. There were times that I was asked about the most difficult situation I had to overcome, and if I felt comfortable, I would discuss my recovery process from the brain hemorrhage. However, there were plenty of interviews where I never discussed this topic, and I have sometimes wondered if decisions about me were made on some manifestation of my disability, rather than my actual skills.

The tightrope I felt like I was walking along was the fact that the brain hemorrhage was a part of my life, an important component of who I am today, countered by concern of the stigma attached to medical issues and disability. In many ways, I wish I could have felt free to always discuss the topic, as it is such an important part of who I am, and I think it makes for a better interview and discussion of who I am and what I would bring to a job.

For example, my current employer, the National Disability Rights Network (NDRN), is the membership organization for agencies that provide legal advocacy for people with disabilities, and I had no qualms about disclosing my brain hemorrhage and its effects up front. I felt comfortable that I would be judged on my qualifications rather than my disability. Because of that, I freely discussed my past and

challenges I faced, and issues I still faced from the brain hemorrhage, and I felt it was one of the best interviews in my search for a new job.

It has been my pleasure to work, the last 5 years, at NDRN and progress to my current position as deputy executive director for public policy. Working at NDRN, and with the Protection and Advocacy agencies all around the country which we represent, has strengthened my belief that our country is better when we include people from all backgrounds, including those with disabilities. While employing a person with a disability may require accommodations, I believe the benefits far outweigh any costs.

January 2013, will be the twentieth anniversary of my brain hemorrhage. Testifying today has given me an opportunity to reflect on what worked to help me successfully return to work. First, a high level of family, friend, and coworker support was instrumental in my recovery. Knowing that I had a strong system of support allowed me to focus on my rehabilitation. Second, the ability to have over 2 months of good in-patient therapy was critically important. Being able to immerse myself in therapy pretty much every waking hour, 7 days a week allowed for a better recovery than would have been possible if I only did a little in-patient rehabilitation and then shifted to out-patient therapy. My strong relationship with Senator Jeffords and my desire to return to work, along with Senator Jeffords' willingness to work with my therapists to make the accommodations necessary for me to return to work (looking at office design, workspace layout, and work schedule) also made a big difference. Fortunately, I was lucky to have all of those things in place, but many people who experience an acquired disability are not this lucky.

Again, thank you for the opportunity to tell my story today, and I look forward to answering any questions you may have.

The CHAIRMAN. Thank you very much, Mr. Buehlmann.

And now, for last, we will turn to Dr. Ken Mitchell. Welcome. Please proceed, Dr. Mitchell.

STATEMENT OF KENNETH MITCHELL, Ph.D. MANAGING PARTNER, WORK RX GROUP, LTD., WORTHINGTON, OH

Mr. MITCHELL. Thank you, Senator Harkin, chairman. Senator Alexander, thank you for having the opportunity to share with you a point of view this morning.

My message this morning is a simple one. That is, to increase return-to-work outcomes over the next decade, we are going to have to think differently about going back to work and staying at work with an impairment.

Thinking differently means that we have to move away from the current compensation claims focus programs and risk management model. What we need to do is employers, and insurers, and those people associated with them have to embrace a health and productivity developmental approach. Such a model creates a stay-at-work and return-to-work culture at the worksite, offering specific responsibilities and timely action. This model also reduces the likelihood of what we refer to as bureaugenic disability, that is, disability created by the corporate policies and practices.

By creating the return-to-work culture, employers and employees become engaged in strategies that protect the individual's current productivity and long-term employability. Correspondingly, this culture supports hiring of employees with existing impairments. Also, we understand that past legal and legislation dealing with disability encourages compliance with the law, but does not encourage a culture of return-to-work.

Oftentimes employers ask us, "Do return-to-works make a difference? Do the return-to-work programs, stay-at-work programs actually make a measurable impact?" The evidence is clear: they do. We know what return-to-work strategies work and we know

those that do not. Individuals who return to work in a safe and timely manner do much better than those that do not.

We have a good understanding of why a person does not go back to work. When a person is unsuccessful in their return-to-work efforts, unnecessary costs are experienced by everyone: the employer, the employee, the healthcare provider, the community in general.

We certainly know what the next decade's workforce is going to look like. On the whole, it is going to be older, more prone to impairment, but with a high interest and need to continue working. Women between the ages of 50 and 60 will be the largest single workgroup in that next decade's workforce.

With that, we have to look at return-to-work realities. Every long-term disability starts with a short-term work disruption. That is the time to act, not when a claim is filed. To reduce or prevent long-term disability, one must move upstream and make an impact at the time of injury, illness, and onset of the symptoms. Please accept this as a blueprint for moving forward and thinking differently about return-to-work.

First, we have to create timely access. We always talk about early intervention, but early intervention is relative. What we need to do is create an access to the point where the individual, that is, the employer needs to embrace and embed return-to-work policies in the fabric of the employment setting. That is, when the person is hired, when there is performance management issues, when safety and wellness programs are being initiated, return-to-work has to be embedded in that particular discussion, not at the time of injury/illness where it currently is applied.

We also know that the return-to-work decision is made, all too often, too early or too late, in isolation, with faulty or incomplete information. And so, from that standpoint, we need to move in this health and productivity return-to-work model to a shared decisionmaking model.

In this particular shared decisionmaking model, we need to bring together the employer, the healthcare provider, and the insurer to really talk about the actual treatment options, surgery or no surgery, preferences in terms of style, and how to go back to work; and most importantly, the consequences of going back to work or not going back to work, the consequences of one treatment versus another treatment. From that standpoint, the shared decisionmaking model is one that we believe begins to bring together the opportunity to reduce that gap that often we see in the return-to-work planning.

Then, one of the several things that we need to pay attention to is when we talk about going back to work, people say, "When?" It is not so much "when," but "how," and that way, we have to create return-to-work pathways and that is set by accommodations, transitions, and return-to-work planning.

And finally, we know in terms of those individuals and employers who stay engaged with the employee, they have a greater chance of bringing that person back to work or keeping them back to work. We must be able to establish incentives for employers to stay engaged with their employees, not to create a workforce that is moving in and out of the organization. Such strategies help to develop engagements, pay dividends in returning a person back-to-work be-

cause you are able to guide a person in establishing the plan. You are able to create milestones and assess progress, and then you are in a position to adjust a treatment plan both in terms of intensity and direction that allows for the accommodation of that person requiring and increasing their work functions.

It is building that return-to-work program and that return-to-work plan embedded into a health and productivity culture in which return-to-work succeeds and prospers. And with that, a comprehensive cohesive plan makes a difference in return-to-work planning, both at the corporate level, at the insurance level, and at the individual level.

Thanks again for an opportunity to share these points of view.

[The prepared statement of Mr. Mitchell follows:]

PREPARED STATEMENT OF KENNETH MITCHELL, PH.D.

Going back to work following a work disrupting injury, acute illness or chronic disease produces measurable benefits for the employee, the employer and the community in general. Individuals who are able to return to work in a safe and timely manner report greater financial and emotional well-being, reduced need for healthcare services and greater life satisfaction than those who do not return to work. Employers who offer return to work programs report less absenteeism and shorter times off work. Healthcare costs per employee are reported to be measurably reduced with the application of return-to-work programs. Investing in strategies to protect the productivity of the workforce offers a clear return-to-work dividend for all involved. Evidence-based research highlights the conditions for an effective return-to-work program. Four building blocks serve as the foundation for an effective and sustainable return-to-work program: timely access, shared decisionmaking, return-to-work planning supported by stay-at-work and return-to-work investments/ incentives.

The Return to Work Dividend: Protecting Productivity. The essence of any return-to-work strategy is about protecting the long-term employability and productivity of the individual. Productivity goes beyond completing certain tasks over time. Productivity contributes to a sense of achievement and mastery, as well as a tangible measure of personal worth. When an individual's capacity to be engaged in productive activities is temporarily disrupted by an injury, illness or chronic disease, the individual, and those who support and benefit from his or her productivity are affected as well. How the individual, in concert with the employer, healthcare provider and insurance partners, responds to this disruption, influences the decision to stay at work, return to work or take a different path. Staying at work or returning to work is a process made up of a series of shared decisions, preferences, options and consequences influenced by specific values and judgments of those involved.

By any measure, stay-at-work (SAW) and return-to-work (RTW) are collaborative efforts by a number of stakeholders, each with a set of self interests and expectations. When these self interests and expectations are appropriately aligned, return-to-work success is highly likely. When the self interests compete, collide or take on an adversarial nature, the process is disrupted, delayed and becomes unnecessarily costly for all parties.

Debate continues regarding the value, effectiveness and best strategies of a stay-at-work or return-to-work program. This debate has sharpened with the current economic realities, emerging workforce patterns and health care cost trends. The economic viability of the Social Security Disability Insurance Program (SSDI) and the connections with the private disability insurance industry has become a critical part of the return-to-work equation.[1] Thoughtful innovation and collaboration are critical to meet this challenge. This testimony is guided by the following questions.

1. What value and impact do SAW/RTW programs have?
2. What SAW/RTW strategies work and why?
3. What are the benefits and limitations of disability insurance in protecting an individual's productivity?
4. Why and how do employers encourage employees to continue to be productive with impairment?
5. What SAW/RTW strategies need to be developed over the next decade?

1.0 The Value and Impact of SAW/RTW Programs. The SAW/RTW debate focuses on two core questions, (1) Do stay-at-work and return-to-work programs have

an impact? And (2) If so, how can these programs be applied in the most effective and timely manner? The evidence is clear. Stay at work and return- to-work programs make a measurable, positive impact.[2] The challenge is in the commitment to and the timing of the applications. Research over the past 10 years supports the following conclusions.

1.1 Proactive RTW programs reduce lost time costs, increase employee satisfaction and benefit the employer.[2 3]

• Significant decreases in absenteeism and workers compensation claims can result when RTW programs are integrated in health and wellness strategies: e.g., 28 percent decline in absenteeism and 30 percent decline in WC/disability claim costs.
• Employees who are satisfied with their employer's response to injury or illness return to work 50 percent faster with 54 percent lower cost.
• A study of California employers showed that formal RTW programs led to a 3–4 week reduction (from 9 weeks to 6.2 weeks) in time to RTW for injured employees and demonstrated that reduction in time to RTW (beyond just 1.4 weeks for lower wage workers employed by large firm) can lead to a net savings for the employer.

1.2 Multiple factors independent of an underlying medical condition influence return to work and supportive work environments facilitate successful and sustained RTW.[4 5 6 7 8]

• Supportive work environments are highly predictive of successful RTW. Workers in highly supportive organizations are 4 times more likely to successfully function at work after returning to work.
• Employers with Employee Assistance Programs (EAP) average 21 percent lower absenteeism rates and 14 percent higher productivity (Harte, ET al. 2011 cite 24) and employees who use EAP on disability return to work an average of 14.5 days sooner.
• Developing a suite of RTW "Best Practices" such as developing formal, written policies and procedures that apply across the organization creates a consistent and cohesive SAW/RTW framework.
• When opportunities for transitional work or light duty assignments are available, disabled individuals are twice as likely to successfully resume work following an injury.

2.0 What Strategies Work and Why? Recognizing the real and potential barriers to a return-to-work program is critical. Correspondingly, understanding the conditions that support a timely return to work is also valuable. The following evidence-based indicators offer the RTW developer, along with corporate executives and public policy leaders a blueprint to building effective programs.[9 10 11]

2.1 What Increases the likelihood of going back to work? The following factors improve RTW outcomes.

• The worker's belief in a high probability of returning to work.
• Flexible employee benefits that support continued work with an impairment.
• Ability to cope with change and multiple stressors.
• Non-hostile work environment.
• Timely application (within the first 30 days of an injury or illness) of return-to-work programs.

Flexible employer policies, management style and a non-hostile work environment appear to be the top indicators for increasing the likelihood of a safe and timely return to work.

2.2 What Reduces the Likelihood of Going Back to Work? Substantial evidence indicates the lack of success in returning to work does not result exclusively from the actual medical problem. Rather, a constellation of common psychosocial and bureaugenic (corporate practices and benefits) factors sabotage the return-to-work effort.

These factors include:

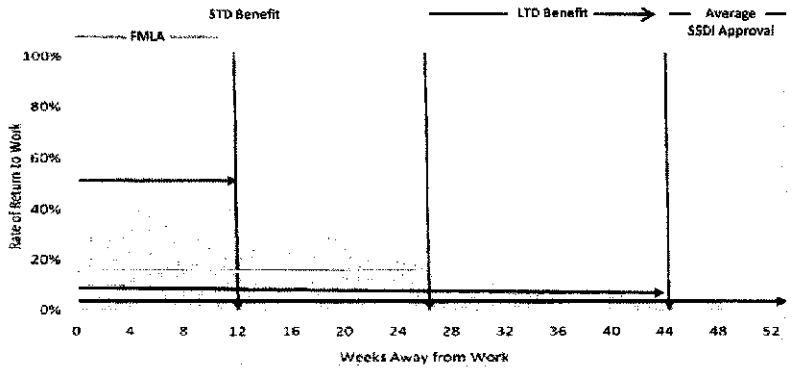
• Low value of work, negative work environment, low job satisfaction.
• A belief that recovery to previous work function is unlikely.
• Presence of multiple impairments, poor medical outcomes.
• Greater psychological stress, multiple life disruptions.
• Receiving injury compensation with low economic status.
• Distrust of employer and/or insurance provider by the disabled individual.
• Delayed return-to-work planning efforts (> 30 days after injury or illness).

3.0 Disability Insurance and Return to Work: Disability insurance (DI) is a crucial part of the financial safety net for individuals who are impaired and unable to work. Disability insurers are critical players in the stay-at-work and return-to-work process. The DI products and the accompanying services are built upon: (1) Eligibility for the benefit, (2) Meeting a legal definition of disability and (3) Sub-

scribing to underwriting—risk management principles. Disability insurance is not an entitlement program, but an income replacement benefit to individuals who are unable to work and are covered under a negotiated contract, employee benefit plan or State or Federal legislation.

Disability insurance and efforts to maintain a person at work or returning a person to work are not natural partners. In their purest applications, there are competing self interests among the insurer, the claimant and the employer policy holder. Risk management, which is an integral part of any insurance program, creates substantial barriers to mitigating the impact of the impairment. Figure 1 illustrates RTW rates aligned with various benefit plan time lines.[11]

Figure 1 Estimated Percentage Rate of Return by Time



Once Individuals enter into an adversarial relationship with the employer and the insurer, they must commit significant time, energy and resources in proving that they are unable to work. The likelihood of these individuals returning to work in any reasonable time is extremely low. The disability insurer needs to offer a business model that reduces the competing interests. Private disability insurance carriers have done this. The public SSDI program has not.

The SSDI program reports RTW rates of less than 10 percent. Private disability insurers report RTW rates of 60 percent to 80 percent for short-term disability (< 6 months off work). For long-term disability claims (greater than 6 months off work) private disability insurers report an estimated 20 percent to 25 percent RTW rate depending on the impairment type. It is clear that private disability insurers are more successful in supporting a safe and timely return to work. There are four specific reasons for the differences. They are:

1. Early access to the claimant and employer.
2. Incentives to provide return-to-work services.
3. A measurable investment in dedicated RTW programs run by skilled RTW professionals.
4. The provision of stay-at-work (SAW) and return-to-work (RTW) incentives to both the employer and the disabled person.

Table 1 presents the key elements that produce the differences in return-to-work outcomes.

Table 1.—Contributing Factors to RTW Outcomes

Factor	Private Disability Insurer	Public Disability Insurer (SSDI)
Access to Claimant & Employer ...	• Contact with claimant within days of filing of claim. • Claims adjudication process is completed within 5 to 7 days. • RTW expectations defined early or prior to claim filing. • Employer fully engaged	• Six-month time off work to be eligible. • High initial non approval rate (65 percent). • One year wait for an appeals hearing. • Employer unlikely to be involved at time of claim filing and beyond.

Table 1.—Contributing Factors to RTW Outcomes—Continued

Factor	Private Disability Insurer	Public Disability Insurer (SSDI)
Incentive to Provide RTW Services	• Insurer receives measurable benefits with a successful return to work such as: reduced claims costs, reduced reserves and a satisfied corporate customer.	• No financial incentive to return the individual to work. • Any cost savings are not redirected to the SSA or the Trust Fund.
Dedicated RTW Services	• Insurer invests in dedicated return-to-work services with defined responsibilities and measurable accountability.	• No dedicated RTW resources. • May apply private RTW contractors or State vocational rehabilitation.
Provide Stay at Work (SAW) and Return to Work (RTW) Benefits.	• Insurer Includes additional cash benefit for claimant—Partial awards. • Able to cover work site accommodations.	• Various benefit and health care protection to the claimant for participating in the RTW process.

4.0 Why Do Employer's Use Return to Work Programs? The Burton Blatt Institute (BBI) at Syracuse University, in concert with its Employer Research Consortium (ERC), is currently engaged in a unique exploration of the decisionmaking of employers in applying return-to-work programs. Preliminary findings from the National Study on Employers' RTW Policies and Practices [12] found in a sample of 172 employers that 44 percent of respondents reported offering a formal return-to-work program. Forty-three percent reported offering an informal return-to-work program. The remaining employers (13 percent) reported offering neither formal nor informal return-to-work programs or services. Preliminary findings from this exploratory study offer interesting insights to employer practices. For example:

4.1 Why Have a RTW Program? One of the principle research questions of the RTW Survey was "Why does your organization have a formal return-to-work program?" The top five responses were:

1. Was the right thing to do.
2. Made good economic sense for the organization.
3. Needed to reduce lost time.
4. Considered RTW services to be a best practice for their HR programs.
5. Part of overall corporate strategy to control medical and lost time costs.

The top five responses to the question, "Why do you have an informal return-to-work program" were:

1. Was the simplest to implement.
2. Offers more flexibility.
3. Lacks internal resources to implement a formal program.
4. A formal program was determined not to be necessary to achieve RTW goals.
5. Formal programs not required by State or Federal regulations.

The top five reasons offered as to why employers did not offer a return-to-work program were:

1. Lost time is not an issue, managing lost time not a priority.
2. Too many competing interests along with too many operational sites.
3. Any changes made in the organization take time and are complicated.
4. No internal champion to move program forward.
5. Tied—No light duty jobs available. Not required by State of Federal regulations.

The early conclusions of the National Study on Employer RTW Policies and Practices suggest:

• 65 percent to 70 percent of participating employers reported lost time and the associated costs to be a significant, ongoing issue for the organization.
• 87 percent of participating employers consider return-to-work programs as valuable elements of their efforts to control lost time and reduce the associated costs.
• The primary reasons for implementing a formal or informal program were: (1) it was the right thing to do and (2) resulted in reduced lost time along with a reduction in the associated costs.

4.2 RTW Program Elements: The BBI/Syracuse National RTW study identified the following strategies to be essential parts of an employers' support for a safe and timely continuation or resumption of work.

Essential Strategies

• Transitional work—incremental resumption of work tasks during a well-defined timeframe.

• Limited light duty assignments to maintain safe work function during periods of impairment.
• Written RTW policies that define the RTW process with specific guidelines and accountabilities.
• Work site accommodations applied to protect against lost function.

Commonly Used Strategies

• Use of individual RTW plan.
• Work conditioning programs to increase work capacity during transitions—Ergonomic assessments.
• Designated RTW Coordinator.
• Supervisor education about RTW policies and practices.

Less Commonly Used Strategies

• Transitional work fund.
• Behavioral health assessments.
• Physician education.
• On site medical unit.

5.0 Blueprint for the "2020" Workforce. The following SAW/RTW Program Blueprint offers employers, public and private disability insurers, healthcare providers, as well as public policy developers a RTW Development strategy to meet the demands of the American workforce over the next decade.

5.1 Investment vs. Entitlement. To achieve RTW dividend tangible investments need to be made. Developing return-to-work strategies is an investment in protecting the productivity of the worker. Investments by all key stakeholders are required. For example:

• **Employers** who invest in SAW/RTW policies and practices create a health and productivity (H&P) culture that: (1) Addresses job performance issues prior to a lost time event; (2) Creates flexible policies and work place benefits that respond to emerging health-related impairments; (3) Communicates that a return to work is expected and (4) Guides the employee in how to stay at work or return to work in a safe and timely manner through a fair and consistent process.
• **Disability & Health Insurers** who invest in a fair and timely adjudication of lost time claims, as well as offer targeted employer incentives protect the employee's productivity. The disability insurer who invests in a dedicated RTW planning and coaching service supports clear pathways back to work. The healthcare insurer invests with incentives for participating physicians to include return-to-work planning as part of the treatment plan.
• **Employees** who invest their time and energy to become fully engaged in the treatment plan and return-to-work planning provides the answer to the basic RTW question, "Who is accountable for helping the individual back to work?" One person! The disabled employee needs to be accountable for solving his or her health and productivity predicament. Guidance and support need to be readily available for those who become stuck.
• **Healthcare providers** are placed as the primary advocate and RTW gatekeeper for the disabled worker. The medical community must invest time and talent to participate in a shared decisionmaking process. Shared decisionmaking introduces evidence-based medical practices with return-to-work options, preferences and likely consequences into the treatment plan. The physician moves from an advocate or adversary to become a true SAW/RTW partner.

5.2 Understand the nature and scope of the "2020" workforce. Developing SAW and RTW strategies is based on the nature of the target workforce over the next decade. The "2020" workforce offers:

• **Scope.** Forty percent of Americans who are 55 or older were in the workforce in 2011.[7]
• **Expectations.** Seventy-four percent of respondents in a Wells Fargo survey[13] expect to work in their retirement years; 47 percent say they will do "similar work" to their pre-retired years.
• **Critical Work Group.** Female labor force participation is increasing: 68 percent of women 55–59 worked in 2011 as compared to 48 percent in 1975. Women between the ages of 40 and 60 will be the largest single worker cohort in the American workforce over the next decade.[14]
• **Epidemiology.** Almost 50 percent of Americans have one chronic health condition and of this group, nearly half have multiple chronic conditions.[7]

5.3 Move to a Health and Productivity RTW Model. Returning to work or staying at work with impairment involves a series of decisions directed by personal values, judgment, and the capacity to solve the health and productivity predicament facing the individual. The current disability insurance risk management model ap-

plied by both public and private disability insurers does not recognize this. This model works in absolutes, that is, medical evidence determines whether or not you are disabled. Unfortunately, disability is subjective and depends on factors other than medical evidence. The risk management model offers limited interest in time or capacity to help the individual develop or regain work function.

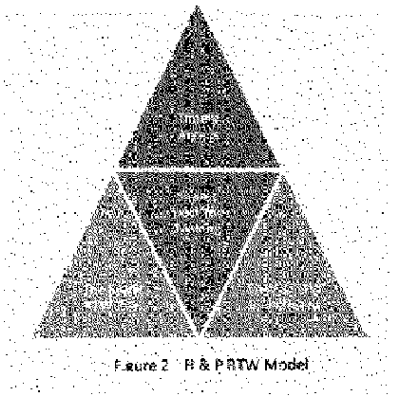


Figure 2 H & P RTW Model

The Health and Productivity RTW model (Figure 2) recognizes the realities of the various contributors as to why a person is unable to work. More importantly, it recognizes the strategies that can be applied in a timely fashion (e.g., prior to the lost time event) to increase the likelihood of a person staying at work or returning to work. The principle elements of the Health and Productivity (H&P) RTW Model and their public and corporate policy implications are:

5.3a Timely Access. Individuals appear to make return-to-work decisions near the onset of the disabling event, onset of symptoms and diagnosis. These decisions are often made based on current events or conditions at work and in their social/family environment, often supported by incomplete/inaccurate information.

- RTW expectations can be made at the time of hire, during safety and benefits meetings, integrated into labor management agreements and wellness/risk reduction programs.
- Timely access creates opportunities to identify and develop the skills the individual will need to engage in the stay-at-work or return-to-work process.
- Early access creates the opportunity to recognize and mitigate job performance and employee or labor relation issues that are cloaked as health and disability problems.

Public and Corporate Policy Implications

- Short-term disability Insurance benefits with the companion return-to-work planning resources become linked or made part of public DI programs to insure early access.
- The Public Disability Insurance (SSDI) program needs to connect with employers in a way that creates a measurable economic incentive for the employer to support the employee at work or enable the individual to return to work in a timely fashion.

5.3b Shared Decisionmaking. Returning to work is a series of decisions made by the employer, employee and the participating healthcare and disability insurance partners. Applying a shared decisionmaking model offers the opportunity to apply accurate information efficiently across the participating stakeholders. Clear options, preferences and most importantly, consequences are defined.

- Public/Private Disability Insurers and medical providers who invest in developing a shared decisionmaking model link the key participants in an informed decisionmaking process.
- Evidence-based RTW strategies should be included in the decisionmaking process defining the most likely approaches that support a stay-at-work or return-to-work effort.
- Appropriate assessment tools should be used to identify the individual employee's strengths, capacity for good judgment and decisionmaking as well potential psycho-social barriers to the return-to-work process.

Public or Corporate Policy Implications

• Support research into the applications of shared decisionmaking as part of the disability claims and return-to-work process.

• Shared decisionmaking strategies are embedded in the employer and insurer's health and productivity management programs.

5.3c SAW/RTW Planning. There are three elements to a formal RTW plan: Clarity, Simplicity and Integration.

• **Clarity.** Ambiguity is a friend only to those who may have a different agenda than going back to work following an injury or illness. Creating an unambiguous RTW plan offers clear expectations and direction.

• **Simplicity.** Individuals who have difficulty returning to work may have limited capacity or knowledge to navigate the SAW/RTW process. The RTW Plan creates the "How", a road map to stay or go back to work. The RTW plan offers all stakeholders clear direction with a reasonable, but flexible time table.

• **Integration.** The RTW Plan integrates the treatment plan with the RTW options. The attending physician can accurately calibrate the success of the treatment plan and make appropriate adjustments in the intensity and direction of the care.

Public or Corporate Policy Implications

• A return-to-work plan needs to be incorporated as a "best practice" by employers, disability insurers and healthcare providers as the guide to develop and support any RTW decisions.

• Specific skill development programs for RTW planners/coaches are recommended in dealing with and managing ambivalence and resistance to going back to work.

5.3d SAW/RTW Incentives. Common sense strategies can include various incentives to protect productivity.

Public or Corporate Policy Implications

• Employers should require a demonstration of SAW/RTW programming as they select health and disability insurance programs for their employees.

• Federal contractors should demonstrate clear SAW and RTW practices around recruitment, retention and promotion of people with disabilities under Section 503 of the Rehabilitation Act.

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The CHAIRMAN. Well, Dr. Mitchell, thank you very much for a very profound statement.

I know Senator Alexander has to leave shortly, and I am going to yield to Senator Alexander for any statement or questions he might have for the panel.

STATEMENT OF SENATOR ALEXANDER

Senator ALEXANDER. Thanks, Mr. Chairman. That is a great courtesy.

I have enjoyed the testimony I have heard. I read the other testimony, and I have a meeting of a committee, of which I am the ranking member, at 11. So I thank Senator Harkin for his customary courtesy.

I especially wanted to welcome Tom Watjen who, from the presidency of the Unum Group in Chattanooga, that is a Fortune 250 company, as he has already testified, has about 3,000 employees in our State. And is really in the business of helping employers help their employees return to work after they have been sick or after they have been injured.

Last year, and I know you mentioned this in your earlier testimony, but I would like to go back to it a little bit, if I may, Mr. Watjen. You came by my office and we talked about a Charles River survey that you had done about income protection for employees.

Could you summarize, again, the two or three key findings you gathered from that? How that has affected your policies of devising products or strategies to help employers help their employees get back to work after they have been hurt or injured?

Mr. WATJEN. Certainly, Senator. It is nice to see you, Senator. Thank you very much and I will.

The Charles River study actually was a very important process that we went through. We started it about 2 years ago, actually, because whereas we can see tremendous value each day for the

things we do for our customers during their time of need, what we can do for employers helps them deal with a very critical absence of an employee. We were struggling a little bit to figure out how can we connect with some of the broader things that are happening, especially here in Washington? And I think that is what drove the decision to do the study.

What we found, actually, was things that quantified things that are intuitive, which is, the more people take personal responsibility for their own affairs, frankly, it is good for them and it is good for being able to be sure our public assistance programs are only there for people who desperately need it. So, it quantified much of that.

As you saw from my testimony, one of the things we found for those that do have private disability insurance, which is roughly 30 percent of those in the workforce today, the sheer fact that they have the ability to draw from that coverage, both in terms of the financial protection plus the return-to-work services they had, really prevented about 575,000 to 600,000 individuals per year from having to seek public assistance, which saves the Government about $4 to $5 billion a year.

Senator ALEXANDER. Why is the percentage only about one-third of people have that kind of private insurance?

Mr. WATJEN. We struggled as an industry, frankly, to raise the awareness. And as you saw from my testimony, one of the things people really often do not appreciate is the fact that over the course of their working careers probably 30 percent of the individuals actually suffer some disabling experience which will keep them out of work for 6 months or more. And again, as you know, the fragility of Americans today, many people cannot cope very adequately with the loss of an income.

Senator ALEXANDER. Well, you——

Mr. WATJEN. We have had a real education issue to make that need better understood both at the employer level, but also at the individual consumer level.

Senator ALEXANDER. But your customer is the employer, right?

Mr. WATJEN. Right, it is.

Senator ALEXANDER. So you have to persuade him or her that it is good for the business.

What do you tell them? It is going to cost them more money.

Mr. WATJEN. It is, but it is actually surprisingly inexpensive. For $20 or $30 a month per employee per year—per month, you can actually get very basic coverage for your employees.

Senator ALEXANDER. Does the research show that it is a benefit that employees notice or are employees not very aware of this?

Mr. WATJEN. No, they notice it and especially when they see a coworker, for example, who may not have had the coverage, and have a condition like this emerge where they did not have either the financial support or the return-to-work resources to get them back to work. And they can see, firsthand, how that can have a dramatic impact on the family because, again, as good as the public assistance programs are you cannot adequately replace the loss of income by seeking Federal support. It is just not possible.

Senator ALEXANDER. This committee, and the Congress, has struggled with what we call "The Class Act," which is part of the health insurance law, and there were concerns about its financial

viability when it passed. President Obama's Department of Health and Human Services has raised some questions.

What has our discussion about that, about the Class Act, had on the services that you provide?

Mr. WATJEN. It is an interesting question, because there is the coverage that one gets while they are actively engaged in the workplace, which is really what income protection and disability is. The Class Act was really referring more to long-term care which——

Senator ALEXANDER. Yes.

Mr. WATJEN. Gets more to when you are not working, frankly. What support do you have at times, which obviously is a significant issue for society in terms of the aging population?

Senator ALEXANDER. So there was not much relationship between them?

Mr. WATJEN. They are two separate things, but oftentimes, an employer will consider, actually, adding long-term care coverage as part of their package of benefits for their employees. So that is where it connects.

It connects not so much in the coverage, but it connects in terms of the employer oftentimes thinking of that as potentially a benefit they may want to provide their employee.

Senator ALEXANDER. My time has expired. Mr. Watjen, thank you for coming.

Mr. WATJEN. Thank you, Senator.

Senator ALEXANDER. And Senator Harkin, thank you very much for your courtesy.

Mr. WATJEN. Good to see you. Thank you, Senator.

The CHAIRMAN. Thank you, Senator Alexander. I know you have to leave right now, but I just want to followup on Senator Alexander's question. And that is how we get more employers to cover with disability insurance $30 a month. I suppose if you have a lot of employees that adds up. Is this a deductible expense, I assume?

Mr. WATJEN. For the employer, yes. Yes.

The CHAIRMAN. I am just wondering if we should have more of a carrot out there somehow especially for small employers. If it is deductible, I mean. If, in fact, that Charles River study that shows all the savings that we get from people returning to work, saves the taxpayers a lot of money.

So I am just wondering, to balance, maybe it ought to be a credit against taxes rather than a deductible?

Senator ALEXANDER. Well, that is interesting. I did hear one witness encourage us to think of carrots instead of mandates. I heard that part.

What do you think of that, Mr. Watjen?

Mr. WATJEN. I think anything we can possibly think about to create more of the awareness and more incentive, because I do.

I think, as some of the others have already spoken, employers feel a sense of responsibility to their employees to be sure that they are properly cared for, and everything we can do to actually make that easier is certainly something we all should work toward.

Education is a piece of it. I still think there is a lack of appreciation for this issue and how it affects many of their employees. I do not want to underestimate the importance of education. We constantly work at it. That is another place that I think we could seek

some help in being sure we are getting the message out at the employer level, but at the individual consumer level.

And you are right. The employer actually is the one that makes the decision, but if they are hearing from their employees that they actually are worried about this issue, that can also affect the employer's appetite to do something like this.

I would also add, that we all know employers are facing significant strains these days. And I think what we often find in this environment, especially at the small and mid-size employer, is actually the employer is asking the employee to pay a portion of the cost. That is a very common way to begin to get the employer, even those that are feeling intense financial pressure, to take on this responsibility, finding a way to share that cost—either a part of it or all of it—with the employee as well.

The CHAIRMAN. I guess the problem is human nature being what it is, I mentioned that in my opening statement, there is a broad variety of factors that affect a person's decision in that. But human nature being what it is, young people are never going to get sick and they are never going to get injured.

Senator ALEXANDER. They are invincible.

The CHAIRMAN. They are invincible. So I am just wondering out loud. I do not know about anyone else here, just how we get more people to have disability insurance coverage.

I want to couple that with another question and that is that people like Unum and others, they do a good job in working with people to get them back to work, but SSDI does not. Is that something we ought to look at? SSDI, you go on it and that is it. So it seems to me that we would be better off if we could encourage more people to be covered by disability insurance, not only from the financial aspect, but also from the aspect of the private insurers having an interest in getting people back to work. SSDI does not seem to have that interest.

How do we get the Federal Government, I cannot control employers, but what should the Federal Government be doing to get that 30 percent rate up to, make it 70/30 or 90/10 rather than what it is right now? Any thoughts on that from anyone?

Mr. BUEHLMANN. I think education is definitely an issue. Having been 24 years old when I had my stroke, I thought I was invincible.

The CHAIRMAN. Oh, sure.

Mr. BUEHLMANN. You did not think it was going to happen to you, and it does happen. But as people start to age and get older, we are going to see much more disability out there, and I think people need to understand that. A lot of people are sort of on the brink of paycheck to paycheck, and you need to understand that you need some help to be able to bridge the gap to get back to work.

You need to educate people that these things are important, and they need to plan for these contingencies. People just do not think it is going to happen to them, but it is going to happen much more now because we are living a lot longer. We are experiencing a much longer life-span than we did in the past.

And use my story. Use other stories of people that you know. You see the coworker that has a disability that has an injury. They need to understand that this could happen to them at any time.

Ms. AMATO. Senator Harkin, I would agree that education is really paramount. I think that helping maybe model samples of younger people might get the need for life insurance. And certainly people become disabled at a much higher percentage early in their working life than the income protection they need for their family from passing.

Sometimes what employers will do is model for their employees the value to different benefits. Obviously, there are different situations for different employers, depending on their size and so forth in terms of trying to provide a comprehensive benefit packet of the cost of all the benefits they offer and comprehensively what makes the best benefit offering for their employees.

But I think that you need to help educate and particularly in the SSDI world. I think that having a more comprehensive integrated disability management approach in the SSDI world would make a big difference to touching those people that are out on disability and helping engage them again.

The CHAIRMAN. Let me followup on that with you because you talked about the integrated disability model.

Why has it not been more widely implemented?

Ms. AMATO. It has been out there for years. I think that there might be a lot of employers that may not be aware of it. It also requires a change of thought in terms of the business. There might be employers or organizations that are not sure how to support employees with disabilities, and so that fear factor might hold them back from looking at how to present and offer programs that are going to be helpful.

The Integrated Disability Management program, IDM, requires that you are looking at all of your different benefits, and disciplines, and departments in terms of how each of those touches the employee and their ability to stay at work. And I think that Dr. Mitchell had really articulated it well that it is touching each of these: a safety employer, a risk management, the health and benefits programs, and so forth.

So I think it is an education factor. It has been out there a long time, but a lot of organizations may not be aware of it and then also helping to collaborate the different departments that need to offer that program.

The CHAIRMAN. Before I turn to Senator Hagan, let me ask one followup on that, and that is, I mentioned in my opening statement, and I read it in some of your statements also, about the study that was done on the cost of accommodations. And that literally it was, I forget the percentage I mentioned, but a high percentage was nothing, and then $500 or so for accommodations for people with disabilities.

I have a sense, and this is sort of anecdotal from my talking with employers in my own State, and that is that, "Oh, my gosh. The cost would be prohibitive." So I am wondering if there is a misconception out there about how much the cost for accommodations would be and is that realistic.

The first question is: Is that a realistic number or does it cost more than that for accommodations? And second, if those are kind of ballpark figures, how do we get that information out?

Mr. MITCHELL. Senator.

The CHAIRMAN. Ken.

Mr. MITCHELL. I think you are absolutely correct. The data you cited is accurate that the cost of an accommodation is minimal, at best. What happens is that examples are used where there is a massive need to put something in like an elevator or to change this. So what happens is that is what gets promoted, that is what gets shared as opposed to the day-to-day, 99 percent of accommodations that make no difference at all in terms of cost.

What we found when we help an employer build a return-to-work program, we ask them, "During the course of the day, how do you make adjustments for someone not being there, or something happening, or a tool breaks?" And you find out that they have these strategies already in play, they just have not connected them to managing someone who has an impairment, or has a visual impairment, or is going through chemotherapy, and they have a fatigue factor or something like that.

A lot of it is making sure that you do not allow the hype in terms of special events to override that, but also coming up with a plan. We find that when you help an employer—they have safety programs, you have fire drills. Invite the employer to talk about what-if. "If you have a person that gets injured or ill, how do you compensate for a shift, a week, 2 weeks?" You can build and that is what we call return-to-work pathways. You have a plan to bring a person back to work, even though you do not know who is going to get hurt, or the type of injury it is going to get, but you have a process and a plan.

When you get an employer thinking that way proactively and creating that planning culture, that return-to-work culture we talk about, now you have a chance where people can move very timely and very smoothly into applying a reasonable accommodation.

The CHAIRMAN. But who does this, Work RX or does SHRM? Do you consult with employers on this at all?

Mr. MITCHELL. We have a series of education programs, certainly the insurance groups, everyone from Unum, from Prudential, AARP, any of those particular groups, they provide these programs. There is a myriad of resources that SHRM is a leader in putting out workshops and seminars in terms like this.

I am doing a workshop with the American Association of Occupational Health Nurses on dealing with the older worker in the workplace, which is the essence of that is accommodation to maintain the productivity of the older worker. And so, from that standpoint, it is a matter of education, but it is also a matter of will and it is a matter of self-interest. If you can get the employer to focus on that, then you get them to comply with creating that culture, and that is what makes the difference.

Mr. WATJEN. Mr. Chairman, if I could add too. I think we would agree very much with Dr. Mitchell's comments.

This is not a costly undertaking. What ends up happening is that the sensational sort of change actually gets most of the attention.

The CHAIRMAN. Yes.

Mr. WATJEN. But if you look at the experience we have had, the most important thing we could do is try to develop a part-time to full-time regimen with an individual. That is not a modification of a workplace; that is a simple sort of plan that you develop that is

customized for that individual based on the issues that they are dealing with.

Then if you get into work modifications, most of them are pretty minor. It is a stand-up/sit-down desk. It is a keyboard that is more adaptive for maybe an issue that you are dealing with—such as carpal tunnel syndrome. It is a hearing impairment sort of tool. These are technologies and tools that are very readily available at very inexpensive cost. Those are the kinds of things that we can help our customers very much sort through.

But I do think as Dr. Mitchell said, what often gets the attention is some of the most dramatic things where, I think, people reach very quickly some conclusions that are inappropriate. What it really is, is those things that I mentioned are the more bread and butter than what happens with the vast majority of conditions that we find ourselves and our teams exposed to.

The CHAIRMAN. Yes, I wanted to yield to Senator Hagan, but Miss Walters, go ahead.

Ms. WALTERS. Thank you, Mr. Chairman.

You mentioned SHRM. I think it is a very exciting time. I think the timing of this hearing. SHRM is involved in a lot of initiatives and I find businesses are learning. It is kind of the eggshell of, "Oops, I do not know if I should even try to address this."

Quick example, SHRM has forged a very close alliance with ESGR, Employer Support of the Guard and Reserves, and knowing that we are going to have a lot of folks coming back to us, veterans, reservists coming back, and some of those will be persons with disabilities. So forming those partnerships through SHRM's State councils and local chapters has been a great opportunity to learn about the needs of that population.

SHRM also has a new When Work Works program, and a key component of that program addresses workplace flexibility including the Sloan Awards. And employers across the country, 2011, had hundreds of winners of the Sloan Awards, and that really focuses on showcasing employers proactive practices in workplace flexibility, including providing opportunities for persons with disabilities to stay at work and return to work.

So it is a really dynamic, interactive opportunity for HR professionals and business owners. I have seen relationships forming with State and local chambers of commerce to partner a business with HR with a lot of these other entities to learn about, "What can we do? What do you do? Let us not reinvent the wheel. What works well? What are some of the pitfalls to avoid?"

So I will stop there.

The CHAIRMAN. Senator Hagan.

STATEMENT OF SENATOR HAGAN

Senator HAGAN. Thank you, Mr. Chairman, and thank you for holding this hearing.

I wanted to followup on what you just mentioned about veterans. North Carolina is a strong military State. As a matter of fact, when you look at the population, we have probably a third, either active duty military or veterans in our State, and I am obviously very, very proud of that, and I come from a strong military family.

But we also have a lot of disabled veterans, and in 2009, the Bureau of Labor Statistics found that 2.8 million or 13 percent of veterans reported a service-related disability. And of the 2.8 million disabled veterans, almost 50 percent of them are in the workforce. We do have a high unemployment rate for our veterans right now, so that is something I am very concerned about.

We passed a bill last year called the VOW to Hire Heroes Act, and it put some tax credits in for hiring veterans. And then if you have a service-related disability, then that tax credit is doubled. So right now, companies can get a tax credit of about $9,600 for a service-related disability to hire a veteran.

So my question is directed to the full panel: do you know if employers are using this tax credit? And how can we make sure that employers looking to hire veterans, and the veterans themselves looking for work, know about this tax credit?

Ms. AMATO. Senator Hagan, thank you.

Yes, there are many employers initiating Wounded Warrior programs that are very successful in integrating the veteran, the disabled vet back into the workplace, and collaborating with their veteran employee resource groups to give them a buddy, somebody that can help them transition from the military world to the civilian world, and how that is different in terms of rapport.

So there is a lot of support for the Wounded Warrior program and employers are hiring veterans with really good success. And what comes from that also is the value to the other employees that really feel good about the place they work, and integrating the wounded warriors. It is a collaboration in this area with many of the large employers who are actually championing to increase the wounded warrior hiring.

Senator HAGAN. That would be great. Yes.

Mr. MITCHELL. One of the barriers that we have seen that seems to dilute the impact of tax credits is we find employers do not know how to integrate that injured worker or the disabled worker.

> "It sounds good. We are all for it, but I am not sure how to do that. I am not sure what really needs to be done. Someone who might have traumatic brain injury, or PTSD, or something else, we are not sure."

Along with tax credits or any legislation, and not just information and education programs, but one of the strategies we recommend is that organizations create mentoring programs. That is, mentor an employer on how to build, not a light duty program, but a transitional work program. Light duty programs get people in trouble because they put people on a light position and they can stay there for their whole career sometimes. Transitional programs bring back a person in a graded, incremental way back to full productivity.

Helping a smaller employer, in particular, show how they can do that in their particular workplace becomes an effective way of giving them the skill to take advantage of the tax credit. So when the question is asked, why won't someone use the tax credit?, it is not because they do not want to. It may be because they do not know how to.

We have to recognize that "how" part of building return-to-work programs.

Senator HAGAN. Good point.

Dr. Mitchell and Mr. Watjen, you both have talked about how disability insurance is a crucial part of the financial safety net providing about 60 percent of income replacement to individuals who are unable to work. Obviously this coverage is so important for employees, but also benefiting the employers for improving recruitment, and retention, and productivity.

I know we have been talking about this study by the Charles River Associates that showed that employer-sponsored benefits such as disability insurance actually helped save the Government money up to $4.5 billion per year by reducing the pressure on the SSDI program. So I think the value of income protection benefits for employees, and employers, and the Government is certainly clear.

What percent of employers offer disability insurance to their employees? Then if you could talk about what percentage of the employees then take advantage of the disability insurance if it is offered? And I guess, the final question is, how can we encourage more employers to offer the disability insurance to their employees? I know Senator Alexander was talking about carrots, what can we do to provide carrots for that?

Mr. WATJEN. I will start, Senator Hagan. Good morning.

Senator HAGAN. Morning.

Mr. WATJEN. Just on the employer side, actually, and it varies substantially between large employers and small employers. You would find large employers—probably 80 to 90 percent of the employers will actually have some disability plan in place. That number will drop considerably, probably down to 25 to 35 percent for small employers. So, it really does differ quite dramatically depending on which type of an employer you are talking about, which obviously is where some of the challenges have been.

We talked about some of the challenges the small employer faces in being sure the small employer can see the value of a program like this, but also, where they can share the costs with the employee. There is a lot of work to be done there to educate. At that level, we have some different customer dynamics between the large employer and the small employer.

I mentioned the other statistic, which is, roughly 30 percent of the employees in the workplace actually have disability insurance. It varies pretty dramatically by organization in terms of how many take it when they are offered the chance, especially if they have to use their own money. Can we actually share it with them? Can they appreciate the value of that disability insurance? That is a challenge for us. It has been a challenge for the industry for decades in terms of people, again, appreciating the fact that they are much more likely to have a disabling condition over their lifetime, working lifetime, than they are, for example to, unfortunately, pass. That is a very hard concept to get across and that is where financial education is so important in this process.

We have challenges at the small employer level. And then throughout every organization, getting people to sign up for it, especially if they are having to use their own money, we have the challenge of people appreciating the probability of having a disabling condition is much higher than you think.

Mr. MITCHELL. Also to your question about how can we get companies to give more? Here is a suggestion or a tack I take is that all too often when someone is trying to buy an insurance policy, we focus on the cost. And it cost this, it cost that, so we have used that vocabulary here today.

What I focus is on the investment. That is, you are going to get something for this. It is not just something you are buying and are never going to use. If you begin to focus on the investment, whether it is insurance itself or the return-to-work program that they might be involved in, you can begin to quantify the value of that investment.

What we see is that basically a return on investment return-to-work program is about 1 to 7, 1 to 8 in terms of that. We know we can measure that in terms of companies that have put in a return-to-work program, they realize that amount of return on that investment, or what we call the return-to-work dividend.

But an important part of that is putting it into the currency of a company. I had a bank that was kind of resisting getting people back to work, and so I asked them. I said, "Do you understand what the impact is to you?" He said, "Well, yes. We know what the cost is." I said, "No, the impact."

And what we did was we measured, we took the amount of time people were off of work, we brought that together, and we put it into full-time equivalencies in terms of the number of people that hours created in terms of lost time, and we find out for this bank, they had 10 branch banks open for business all year, and no one was there.

Senator HAGAN. That is interesting.

Mr. MITCHELL. We quantified the impact in productivity. Now building a return-to-work program was an investment, not a cost. After a year of the return-to-work program, we found out that from that, we have that in terms of instead of having 10 banks open for the year and no one there, they only had 5. They can measure that and that is the investment. That is the key to getting more people, both employers and individuals, to invest in that.

Senator HAGAN. Thank you, Mr. Chairman.

The CHAIRMAN. That was just fascinating that kind of a study.

Let me turn to something else. I will stick with you here, Dr. Mitchell. You pointed out, let me get back to your testimony here.

> "The SSDI program reports return-to-work rates of less than 10 percent. Private disability insurers report return-to-work rates of 60 to 80 percent for short-term disability. For long-term disability, payments greater than 6 months, private insurers report an estimated 20 to 25 percent depending on the impairment type."

So it is clear that private insurers are pretty darn good at getting people back to work. We know that from Unum. Is there something that we should learn from this for SSDI?

Mr. MITCHELL. Yes, I think it is. If you had someone that takes 6 months to 9 months to prove that they cannot work, you should not expect them to go back to work. If you take that long time to prove that you cannot work, that is to be eligible, and say you cannot work to get your benefit, it is very unlikely that a person is going to go back to work.

So what happens is the SSDI decision, whether a person can work or not, is so far down from the time that they could not, they stopped working that the idea of going back to work is almost not a question just because they have been separated from the workplace for so long. They have had to show evidence that they cannot work. And whether they get the Social Security or not, now they are in a situation to undo what they have actually convinced themselves that they cannot do.

Social Security is basically a system that is there as a long-term social financial network. It is not designed to bring people back to work, but they like to think that they can, and in the hopefulness you can, but there are a lot of things going on in this in a way that prevents that from happening. And the most important part is timing.

As Tom mentioned, and this occurs in all the disability insurers in the private sector, they are talking with the person within days, within weeks of the event and they are fully engaged with them. The Social Security may have a person who has not even talked to their employer in 6 months, and most likely is not even connected to that employer any more. So they do not even have an employer to go back to.

So that is an important part right there, the actual timing and the nature of the conditions that the Social Security Disability Administration is presented in terms of when they receive a claim for an individual that has been off work.

The CHAIRMAN. Well, we have been trying for a long time to get that time limit. Now I think it is down to 500-and-some days or something like that. So you are right. They have been out of work for a year and a half, and we know from experience that once you are out over 6 months——

Mr. MITCHELL. Right.

The CHAIRMAN [continuing]. The chances of you going back to work diminish rapidly.

Mr. MITCHELL. Right, it does. And in my testimony, I show the chart.

The CHAIRMAN. Yes.

Mr. MITCHELL. That really represents that and it is pretty dramatic. Even with the Family Medical Leave at the 12-week commitment of covering that, even at 12 weeks, the percentage of going back to work is very low. I like to consider it the 30- to 60- to 90-day rule. That is the window of opportunity you have to really begin to get the person engaged and return-to-work planning.

Now, they may not be ready to go back to work, but you are now in a position to at least start the planning process. And my colleague here talked about, he did not say when he was coming back to work. He said the right word: how.

The CHAIRMAN. I thought it was "when." How.

Mr. MITCHELL. That is the critical part and when a person has been off that long, they do not know how to get back to work.

The CHAIRMAN. That is right.

Or as I like to say sometimes they just get in a rut. They just get out, and they get in a rut, and then they——

Mr. MITCHELL. Well, here is the Ken Mitchell vernacular: they get stuck.

The CHAIRMAN. Oh, they get—yes, rut, stuck. Right.

Mr. MITCHELL. They get stuck. They do not know where to go, and you know what it is like to be stuck.

The CHAIRMAN. Right, exactly.

Mr. MITCHELL. You just cannot go anywhere.

The CHAIRMAN. Exactly. Yes, Miss Amato.

Ms. AMATO. Just one other comment on the SSDI question. I think you know with SSDI, it is all or none, and what the employer has learned is that if you offer some carrot, which is the ability to do a little bit of something in employment.

The CHAIRMAN. Yes.

Ms. AMATO. Be productive, work a little bit that you are incentivized. If you are continuing your benefit, whether that is your private insurance disability benefit if you have that, then you are not disincentivized from returning to some kind of employment, and with SSDI, it is all or none.

So having a program that might allow, when they are out, because they have obviously been out of the workforce 6 months at least, but creating a program that allows them to transition to vary part-time with support, with vocational rehabilitation might be a carrot that would help them come off the rolls if they knew they were not losing their full SSDI benefit.

Mr. WATJEN. Mr. Chairman, I just want to make one additional comment too.

The CHAIRMAN. Yes.

Mr. WATJEN. I think we often minimize the psychological effect of a disabling condition. The physical piece is very obvious, and we talk endlessly about that.

But there is no doubt immediately when this happens, as we heard from Eric, there is a sense of, "What do I do? How do I even think about the rest of my life?" And the more we can transition the discussion from the disability to the ability side of what someone can do quickly, then you begin to have a spirit of finding a way to return to work to do the things necessary to make that happen.

And that shift from disability to ability conversation needs to happen very early in the process, otherwise it sets in, to use Ken's term. You get a mindset and you do not begin to think that way, and you are not going to think about the ability side and that has to happen very, very early in the process.

The CHAIRMAN. And you do that. Unum does that.

Mr. WATJEN. We do, we do.

The CHAIRMAN. You do that.

Mr. WATJEN. We do because that is where, as Dr. Mitchell mentioned, those conversations happening days after a disabling event occurs is so important because as much as anything, you are beginning to establish that rapport, beginning to create that set of expectations, beginning to transition the conversation away from the disability itself to what we can do. And that is really, that is a huge psychological shift when that actually occurs, and that has to happen, again, very early in the process.

That is why not just us, but all of our industry. That is all part of how we do business, which is get engaged with the individual very early in the process.

Mr. MITCHELL. Senator Harkin, I think there's been——

The CHAIRMAN. Yes, go ahead. Sure.

Dr. MITCHELL [continuing]. I think there is going to be an interesting shift over the next years because we are going to find a different type of person that is working in the workplace. This has been shown very clearly with cancer where cancer used to be one of the most significant disabling conditions for individuals. We are not seeing that now. You are seeing more people working and going through cancer therapy.

So there is going to be pressure on employers now to make accommodations, to create transitions, to accommodate that person who wants and needs to go through their chemotherapy and still work. That is what is going to be the issue with the older workforce because the older worker is more inclined, especially women in their forty-fives and fifties, to develop breast cancer, a man with prostate cancer, colon cancer. The treatments today are such that the survival rate is so high and the treatment may be longer.

The CHAIRMAN. Right.

Mr. MITCHELL. People are not going to want to be on disability. They want to work. We are going to see a push on employers to make adjustments, and I think that will be an important part of that rethinking, or thinking differently about staying at work and returning to work in relationship to these types of issues.

The CHAIRMAN. I think in your testimony, if I remember, in your written testimony you talked about surveys done of people, they expect to work later on in life. They expect to be working.

Mr. MITCHELL. Exactly, exactly. That is very clear. The surveys, the research being done on that worker, the Baby Boomer group is they are expecting not because they may want to, but they are going to need to extend that workplace, their work time into their sixty-fives, seventies, maybe into seventy-fives. And employers are going to want to keep them because they are a talented group of individuals and resources, and they are going to have to have benefit programs that comply with that.

The CHAIRMAN. Yes, Miss Amato.

Ms. AMATO. Thank you, Senator Harkin.

I am just thinking in terms of engaging with them very early on with the employees. One of the things employers can do is really be proactive. We obviously have preventative strategies, but in terms of offering proactive resources under the HR. We have a well-within program which includes nurses and nurse care managers, return-to-work coordinators, and wellness coordinators.

Basically what that model allows you to do is be available to the employee, listen to them when they are starting to express concerns, health concerns. Engage right away. You are looking at ways that you can modify the workplace. You are offering solutions if somebody is going out, for instance, for radiation or chemotherapy. You are creating a flexible day, compressed workweek. You are doing what you have to do to allow the employee to stay at work and also you are supporting your business needs. So there is a model also for employers to benefit from engaging right away, and if they can create a structure of support, that helps.

Mr. BUEHLMANN. From my own personal example, definitely time and getting it engaged right away is exceedingly important. It is in my written testimony, but I did not say it here.

About the first week and a half after I started becoming aware at Georgetown, I was bored out of my mind. Hospital TV's, as wonderful as they are getting, daytime television gets a little boring after a while.

The first day the therapist came in to start working with me was probably one of the happiest days that I had because it was an advancement. It was showing that there was movement and you were going to go forward. And being able to be sort of ingrained into the inpatient therapy that I had at NRH for such a long time was huge in my recovery, because you are basically doing it 24 hours, 7 days a week. Even when you are eating in your room, even when you are just doing very simple things that you think, it is part of your life at that point.

The psychological is hugely important because you have to overcome, "Why did this happen to me? What is the long-term effects? What are people going to think?" those kinds of things. The therapy, but also the psychological at the same time is very important, and starting it quickly so that you do not get stuck in the rut. It is important to try to get the person out as soon as you can, and make them look like they are going forward, and there is progress that is going to be happening, even if it is small.

People would come in and see me that had not seen me for a couple of weeks. I did not necessarily see the progress, but they would see the progress because they had not seen me for 3 weeks. Every day there is always a little change that is occurring and it is important to keep moving forward on that.

The CHAIRMAN. OK. We are coming to a close here, but a couple, three things. One, somehow we—and I do not know what the Federal Government's role is here, and I am looking for advice and consultation from all you experts on this—what should we do to encourage employers and employees to get disability insurance? Obviously we know it saves the Government money. The private insurers are more adept at getting people to return to work and consulting with them earlier. How do we get more people to carry disability insurance? I am looking for what we can do. I don't know.

Second, what do we do about SSDI? I don't know. We could try to collapse the timeframe. There is not that kind of involvement with SSDI as there is with the private insurers in terms of getting people early on to motivate them to get back to work.

You have one suggestion that was made here and we have wrestled with this a long time, and that is if you are on SSDI and you are able to go back to work that you don't lose everything, that you keep something where you don't just fall off a cliff right away. We have wrestled with that for a long time. I think there is something there that we can do.

How we, again, get small businesses. Small businesses just don't have HR departments and things like that where they can work with employees, and most small businesses they just don't have that wherewithal. So how do we get them involved in this process?

There is one thing I did want to say here. I asked my staff to get this for me. I am surprised how many small businesses don't know this, but Title 26, Section 44 of the Internal Revenue Code. We passed this after the ADA back in the 1990s.

Right now, there is a tax credit available to small businesses. It is a 50 percent expenditure of up to,

> "It exceeds $250, but not to exceed $10,250. A business may take the credit each year. It is a small business that has $1 million or less in gross receipts, 30 or fewer full-time employees,"

And it is a tax credit. It is an absolute tax credit.

So they can get a tax credit, not a deduction for that, but a lot of them don't know that. And if it is $500. Well, let us see if I figure it right. If it costs them $500 to get a credit for anything over $250 and a half, it would cost them $125 is what it would cost the business to do that.

That tax credit is there and many times I have talked to small businesses, come in my office, or I see them someplace, and they just were not aware of it. And, of course, again, they do not have HR departments, and they do not have tax consultants who tell them that. So we have to do a better job of getting that information out.

We are just making sure when we deal with SSDI, how we have early intervention programs, as you said, to where we can get the people early on because we know if they are out for more than 6 months, they get stuck.

These are all things that we are wrestling with and that is why this hearing is so vital to hear from you in the private sector about what you are doing. Now, if you have an answer to all those questions right now, I would be glad to entertain it.

Mr. Watjen, did you have an answer?

Mr. WATJEN. Well, I do not have all the answers actually, but what I would say is I really do think we should put our heads together and think about how we all collectively move down the awareness path. How do we create the awareness? Because I think whether it is the tax provision you talked about, whether it is the failure to appreciate it as a business owner how what you are doing is not just good for your employees and your business, but actually has a positive impact on some of the discussions here in Washington more broadly about how to reduce deficits.

I think it could just go on and on where there are a set of message points to be made that probably we could do them a little differently in a little more holistic way and do it a little bit together because, again, I think a lot of what we talked about is education. And unless people have that sort of appreciation either on the individual level for the possibility these things can happen in your life, or at the employer level, about how you can actually do these things in a relatively cost-effective way. And frankly in Washington in the environment here in terms of how it actually could be good potentially for the Social Security Administration plans or in trying to reduce those expenses.

So that whole communication piece and awareness is probably—I would start with that as the biggest place to me. We just need to put our heads together following a hearing like this, and put some definition behind that.

The CHAIRMAN. Should we make it a tax credit rather than a deduction for disability insurance for employers? I do not know. I thought about it.

Mr. WATJEN. Yes.

The CHAIRMAN. Obviously, it is going to be a cost to the Government.

Mr. WATJEN. And that is why, at least from my personal view, I was not promoting anything that was going to cost too terribly much.

The CHAIRMAN. We know the money that it saves.

Mr. WATJEN. Absolutely. No, very much so. I think it could easily be that that discussion is a little easier to have when there is a better appreciation for how all these pieces connect in a way that, frankly, is good for everybody: individuals, employers, those trying to continue to manage here in Washington, some of the public programs.

Again, we have a little more work, I think, to do to connect all those dots for people, and then maybe create a little better atmosphere from which to begin to look for financial incentives to support that.

The CHAIRMAN. I think that is probably true. Mr. Buehlmann, did you have something? Yes.

Mr. BUEHLMANN. Using purely my work hat at this point, I would say there is a Federal set of programs that sort of mirror what Unum does in some respects in terms of the protection, and advocacy, and the client assistance programs in terms of providing advocacy for individuals with disabilities and helping them, and working with the employers in getting them back to work.

One of our programs is the Protection and Advocacy for Beneficiaries of Social Security program, trying to move people off of SSDI and back to work. People with disabilities want to work. And so, you need to create sort of the atmosphere where the employer is talking with the person with the disability in creating the accommodations, and helping the person transition back to work.

The Ticket to Work program is one of those things that is very helpful in terms of ensuring that there is still health insurance coverage because that is definitely a big concern for people with disabilities—that they are going to lose their health insurance coverage in shifting off of the Federal rolls back to employment and that they may not have the same level of health coverage.

But I think there is sort of a counterpart. There is a Federal role in terms of the protection and advocacy and client assistance programs that sort of mirrors what my colleagues here are doing at the same time.

The CHAIRMAN. Any last thing?

Ms. AMATO. Yes, Senator Harkin.

I think what the Government might want to do is create some off-the-shelf programs that employers, particularly small employers, can use to kind of guide them in terms of what the incentives and the value-add to offering coverage or benefits, what the value-add is for them; so having those kinds of things.

Also SHRM offers and making them clearly understand what benefits that SHRM has on their Web and so forth for resources. And last, perhaps incentives from even the insurance companies for employers that look to the small employers particularly that need some help might be beneficial.

The CHAIRMAN. How would we get that? Explain that further because I really want to get to the small employers.

Ms. AMATO. Right.

The CHAIRMAN. But what could we do to incentivize this, you say?

Ms. AMATO. I think your idea of taxes is certainly one, but maybe and I am looking to my friend over here in terms of the insurance companies giving a little incentive to the employers to consider purchasing insurance for their employees.

If there is an incentivization regarding their tax cost structure or providing a value-add that once you—based on your benchmark, that you bring more people to work, showing them that, and sort of having a tiered approach to something like that. I do not know if that is possible, but just throwing some ideas out.

Mr. WATJEN. No, it is not. As I mentioned, the engagement of the small employer in this is much lower than it is for the large employer, significantly lower.

The CHAIRMAN. Right.

Mr. WATJEN. And yet on the other hand, when you do have a chance to sit down with a small employer and talk about how these can actually be not just good for you and your employees, actually more important to you and your employees because you do not have a full HR department.

You do not have resources that actually are aware of how to help people get back to work at the corporate level. You are simply on your own because you are maybe the business owner, you are also wearing the HR hat, and oh, by way, you are doing something else in the front of the store at different points in time. So the value-add is actually even greater for the small employer because they do not have those resources.

This gets back to the awareness. It is difficult to get out that audience, but we have to think differently about how to do that because there are very simple products and offerings that are out there that make it very easy for the small employer. It is just getting them to act and making them more aware because they are running a business. So how do you get some time with them, and grab their attention, and get them engaged in this discussion? Which is why I always come back to this.

We have a substantial awareness issue out there and maybe more collectively working together as private and public sector, and those engaged in all of this. There are ways we can maybe be a little more aggressive because the time absolutely is right.

As every speaker has spoken about, these issues are not going to get any easier for us. They are going to get more challenging as the population ages, and some of the demographics that we know that are unfolding are going to continue to unfold.

The CHAIRMAN. Exactly. Yes, Miss Walters.

Ms. WALTERS. Mr. Chairman, ditto on tax incentives, tax credits, and safe harbors. To answer your question, how do we entice small employers to offer short-term disability coverage?, I go back to the eggshell issue. What I hear a lot is small business knows enough to know what they do not know, and it is that concern of, "I do not know what I can ask about what you might need. I do not want to violate the ADA, the FMLA."

The CHAIRMAN. Oh, yes.

Ms. WALTERS. "GINA, HIPAA. So I am going to do nothing." I think if there was an opportunity to say to small business, "If you develop an RTW strategy or a stay-at-work strategy," and maybe it is through a partnership with Jan, or workforce investment boards, or SHRM, so that there is some—I do not want to use "oversight" or "regulation,"—but there is a partnership in how that program is developed.

And then that small business was told,

> "Since you have taken the time to implement this strategy, if there is a charge or a claim filed against your company alleging a violation of ADA, FLMA, GINA, HIPAA, ET cetera, etc., you would be given a safe harbor. That is, there would be a presumption that you did not have the intent to discriminate or fail to accommodate or violate any of these."

I think that would be a fabulous carrot.

The CHAIRMAN. I am going to explore that. That is a good suggestion.

Ms. WALTERS. Why, thank you very much.

The CHAIRMAN. I am going to look at that.

Ms. WALTERS. Well then, I am stopping right there.

The CHAIRMAN. I am looking at WIA too. I am going to discuss that because we are trying to reauthorize the Workforce Investment Act, and this might be something we get to take a look at there. I like that. Anything else that I should do?

Mr. Buehlmann, first of all, I just have two things. I do not know you personally. I certainly know your mother very well, who is a very valuable member of this staff and I am supposed to note for the record that your mother has recused herself from working on this hearing because of her relationship with the witness. OK. I do not know why that is necessary.

Mr. BUEHLMANN. She has had a long relationship with the witness.

The CHAIRMAN. Your mother is a very valuable member of this committee. I also just wanted to let you know of my great respect for your former employer, Jim Jeffords. Jim and I came to Congress together, the same year, 1975. He was on the Education Committee, I wasn't, in the House; this is in the House of Representatives. But I had been interested, of course, in disability issues and Jim was interested in early education.

So there evolved out of his committee, I was not on that committee, the Education of All Handicapped Children's Act, 1975. And so then Congressman Jeffords was very much involved in that. I played a peripheral role. I was not on the committee, he was, but he was very central to the passage of that legislation at that time.

Then we worked together over the years and then found ourselves both in the Senate, although I got here before he did, so I was senior. But then working together on the ADA and all of the issues, and then we worked together in the Senate when we changed the name of it. We changed it from Education of All Handicapped Children's Act to IDEA. That is what everyone knows it now as the Individuals with Disabilities Education Act, which I think was in 1990, if I am not mistaken. And your former boss played a very integral role in that, in all the education bills that

we worked on, and helping, and making sure that people with disabilities were, especially children with disabilities, were fully integrated into the classrooms of America.

I have a great deal of fondness for Jim Jeffords and just sorry about his present condition.

Mr. BUEHLMANN. It was definitely—I brought a personal perspective to disability afterwards, but it was a perspective that I had while working with Senator Jeffords because people with disabilities and making sure that they were included in the workforce, and making sure they were included in education was always a very integral part of our office.

It was something I knew lots about before my personal experience and sort of my work afterwards, but it was definitely something that he carried throughout his career here in the House and the Senate.

The CHAIRMAN. Well, I have often said the Congress was a much better place because of Jim Jeffords. He was a great gentleman and just an outstanding Senator. Just sorry about his illness and what has happened to him.

Anyway, I will not dwell on that, but I just wanted you to know my great respect for your former boss.

Mr. BUEHLMANN. Thank you.

The CHAIRMAN. If there is nothing else to come before the committee, again, I thank you all very much as I said in the beginning, for your work in this area, for your continuing involvement here. And as we move ahead, I hope that my staff can continue to reach out to you for advice and consultation as we move ahead in this area.

We will leave the record open for 10 days to allow additional statements or supplements to be submitted for the record.

Again, thank you all very much. The committee will stand adjourned.

[Whereupon, at 11:48 a.m., the hearing was adjourned.]

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