

**H.R. 2339, THE FAMILY INCOME
TO RESPOND TO SIGNIFICANT
TRANSITIONS ACT, AND H.R. 2460,
THE HEALTHY FAMILIES ACT**

HEARING

BEFORE THE

SUBCOMMITTEE ON WORKFORCE PROTECTIONS

COMMITTEE ON

EDUCATION AND LABOR

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

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**H.R. 2339, THE FAMILY INCOME TO RESPOND
TO SIGNIFICANT TRANSITIONS ACT, AND
H.R. 2460, THE HEALTHY FAMILIES ACT**

**Thursday, March 31, 2009
U.S. House of Representatives
Subcommittee on Workforce Protections
Committee on Education and Labor
Washington, DC**

The subcommittee met, pursuant to call, at 10:04 a.m., in room 2175, Rayburn House Office Building, Hon. Lynn Woolsey [chairwoman of the subcommittee] presiding.

Present: Representatives Woolsey, Shea-Porter, Payne, Grijalva, Hare, Sablan, Price, and Kline.

Staff present: Aaron Albright, Press Secretary; Tylease Alli, Hearing Clerk; Jody Calemine, Genral Counsel; Lynn Dondis, Labor Counsel, Subcommittee on Workforce Protections; David Hartzler, Systems Administrator; Jessica Kahanek, Press Assistant; Stephanie Moore, General Counsel; Alex Nock, Deputy Staff Director; Joe Novotny, Chief Clerk; James Schroll, Junior Legislative Associate, Labor; Robert Borden, General Counsel; Cameron Coursen, Assistant Communications Director; Ed Gilroy, Director of Workforce Policy; Rob Gregg, Senior Legislative Assistant; Richard Hoar, Professional Staff Member; Alexa Marrero, Communications Director; Jim Paretti, Workforce Policy Counsel; Molly McLaughlin Salmi, Deputy Director of Workforce Policy; Linda Stevens, Chief Clerk/Assistant to the General Counsel; and Sally Stroup, Staff Director.

Chairwoman WOOLSEY [presiding]. A quorum is present. The hearing of the Subcommittee on Workforce Protections will come to order, and the ranking member and I will present you with our opening statements.

First, I want to thank this group that is here today. Shows a lot of interest for this legislative hearing on H.R. 2339, the FIRST Family Income to Respond to Significant Transitions—and we are never going to say that again; it is going to be the FIRST Act—and H.R. 2460, the Healthy Families Act.

Today most people work outside of the home. They commute long hours; they work long hours to put food on the table for their families. And one of our efforts is to ensure that they get to sit at that table and eat with their families what they have provided for them.

But to be so worried about whether they have to take care of their children or take care of their job is putting a stress on work-

ing families that we would like to work on and make a little bit easier. It is a real challenge for millions of workers in this country.

And several years ago—I talk about this a lot. Several years ago—40 years ago I was a working mother with four small children, and it was a struggle to meet their needs as well as the responsibilities of my job at the same time, so I really understand what families are struggling with and what the challenges are.

And early on in my career, I didn't have paid sick leave or any sick leave at all, and I certainly didn't have family and medical leave, but later on, as my career grew and I could afford to take time off to care for a sick child if I had used up my sick leave or—and certainly we still didn't have paid family and medical leave—the pressure of the workplace was absolutely overwhelming when I had to leave, because, you know, when your daughter is practicing for a skating competition and she breaks her wrist, you don't say, "Oh, excuse me, I have to go to an executive meeting." You go home. And you go home with your heart pounding for her, your heart pounding because of what you have left behind at the workplace.

We have to make these transitions and these responsibilities for working—and it is not just working women; it is working men and women—we have to make it easier all the way around. And we are now, when I say all the way around, in the 21st century. Workers should not have to choose between their jobs and their families, but they are still forced to make those choices every day, almost, in their lives.

And the recent outbreak of H1N1, the swine flu virus, was an example to us of how exposed the problems are when workers are told, "Don't come in if you are ill," but guess what? You don't have any paid time off. So public health officials rightfully, during this swine flu epidemic, told workers, "Stay home. Keep your kids home from school." But it was very difficult, because not very many workers can afford to take time off to care for themselves and/or their families.

So the answer for at least 50 million workers when they are told to stay home without pay is "no," because the U.S. lags behind the rest of the world in providing family leave and sick days to employees—to employees. And so you know what? This is absolutely unacceptable that this country, the number one economy in the world, can barely compete with developing nations when it comes to paid leave and sick days.

The Family and Medical Leave Act that provides unpaid job protected time off for families is a really good first step, but it is the only national leave policy we have in this country. I was a member of Congress when we passed FMLA. Congresswoman DeLauro had a lot to do with getting FMLA passed, but that was over 15 years ago.

It was, as I said, a great achievement, but over those years we have learned a lot. And the most important thing we have learned is that while more than 100 million leaves have been taken under FMLA, most workers can't take advantage of its provisions because most workers cannot afford to take unpaid leave, and because in the case of illness, leave is permitted only for a serious medical condition, ordinary sick leave is not permitted under FMLA.

Representative DeLauro is here today to describe H.R. 2460, the Healthy Families Act, and she will go into detail, but I want to take just a few minutes to stress how critical paid sick days are to workers. Currently, millions of workers go to work when they are sick, as I said, because they can't afford to stay home. They just can't afford to make that decision.

This is not only bad for workers, it is bad for the workers' families, but it is also very bad for the employers. Thirty years ago, when I was a human resources manager, when people were sick we wanted them to stay home. We actually provided 6 or 7 paid sick leave days every year because we wanted our workers to recover from their illness before they returned to work; we wanted them to be healthy and productive when they got back.

And it boggles my mind that 30 years later, in the 21st century, that any employer would rather have employees come to work sick than provide them the time off they need to recover. There are serious public health consequences as well because food workers rarely have paid sick leave, but as Dr. Bhatia will tell us in his testimony, infected and sick workers are often a cause of food-borne disease outbreaks, which cause thousands of people to become ill.

The Health Families Act fixes that. It provides up to 7 days of sick leave per year per worker.

The other bill we are going to consider today, as I trip over my tongue, is my bill, H.R. 2339, the FIRST Act, which was introduced this spring. This legislation provides grants to states—grants to states to implement and administer their paid family leave programs. The grants can be used for start-up costs for new programs, or in the case of programs that are already in operation, for such—the money can be used for activities such as outreach and education.

Currently, only three states have paid family leave programs—California, New Jersey, and Washington State. And a handful of others provide temporary disability benefits, which also provide some wage replacement for pregnancy and for childbirth.

The FIRST Act grants will assist existing programs and will serve as an incentive to other states to develop paid family leave programs of their own. For a very small investment of federal funds, we can help create and improve state programs and help millions of workers balance their work and their family lives, because we know that when a parent is able to take time to bond with a new child, either through birth or adoption, it is so much better for that child.

But you know what? It is much better for the parent as well. And when a worker is able to take time to care for an elderly parent, it quite often makes it possible for that parent to stay in his or her home.

I am a strong supporter of a national policy on paid leave and commend Representative Maloney on H.R. 626, the Federal Employees Parental Leave Act, which passed the House and provides 4 weeks of paid leave for federal workers. That was a great thing we did last week.

I am also an original co-sponsor of Pete Stark's legislation to provide paid leave on a national basis. The FIRST Act, however, is an essential first step to achieving our ultimate goal. Not only will the

FIRST Act assist families who desperately need paid leave and they need it now, it will also help put in place an infrastructure for the administration of a national paid leave program.

So we are going to hear about all of that today. We have a great panel of witnesses, and we have two wonderful members of Congress here. So before I introduce them, I am going to turn the—yield to my ranking member, Dr. Price.

[The statement of Ms. Woolsey follows:]

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

I want to thank everyone for coming to this legislative hearing on “HR 2339, the FIRST (Family Income to Respond to Significant Transitions) Act and HR 2460, the Healthy Families Act.”

Today, most people work outside the home and commute long hours, so balancing work and family is a very real challenge for millions of workers in this country.

Several years ago, I was a working mother with 4 children.

And it was a struggle to meet their needs as well as the responsibilities of my job.

Early on I didn’t have sick leave and certainly not family and medical leave.

But when I could afford to take time off to care for a sick child, the pressure from the workplace was overwhelming.

We are now in the 21st century, and workers should not have to choose between their jobs or their families, but they still are forced to make those choices.

The recent outbreak of the H1N1 virus (Swine Flu) has additionally exposed the significant problems that are created for workers when they and their family members need time off to deal with illness.

Public health officials rightly tell them to stay home from work and to keep their kids home from school.

But can they afford to take time off to care for themselves and/or their families?

The answer for at least 50 million workers is “no.”

The U.S. lags behind the rest of the world in providing paid family leave and sick days to employees.

It is unacceptable that this country, which is the number one economy in the world, can barely compete with developing nations when it comes to paid leave and sick days.

The Family and Medical Leave Act (FMLA) that provides unpaid job-protected family and medical leave is virtually the only national leave policy.

I was a new Member of Congress when we passed the FMLA over 15 years ago.

At the time it was a great achievement, and over the years we have learned a lot.

While more than 100 millions leaves have been taken under the FMLA, most workers can’t take advantage of its provisions because they cannot afford to take unpaid leave.

And because—in the case of illness—leave is permitted only for a serious medical condition, ordinary sick leave is not permitted.

Representative DeLauro is here today to describe HR 2460, the Healthy Families Act in detail, but I want to take a few minutes to stress how critical paid sick days are to workers.

Currently, millions of workers go to work when they are sick, because they simply cannot afford to lose pay or in some cases their jobs.

This is not only bad for workers and their families, but also for employers.

Thirty years ago, I was a human resource manager.

When people were sick, we wanted them to stay home so they could recover from their illnesses and return to work feeling healthy and productive.

It boggles my mind that 30 years later that any employer would rather have employees come to work sick than provide them the time off they need to recover.

There are serious public health consequences as well: food workers rarely have paid sick days, but as Dr. Bhatia will tell us in his testimony, infected and sick workers are often a cause of food borne disease outbreaks, which cause thousands of people to become ill. The Healthy Families Act fixes the problem by providing workers with up to 7 days of paid sick leave.

The other bill we are considering today is HR 2339, the FIRST Act, which I introduced this spring.

This legislation provides grants to the states to implement and administer their paid family leave programs.

The grants can be used for start-up costs for new programs, or in the case of programs already in operation, for such activities as outreach and education.

Currently, only 3 states have paid family leave programs: California, New Jersey and Washington state.

And a handful of others provide temporary disability benefits, which also provides some wage replacement for pregnancy and childbirth.

The FIRST Act grants will assist existing programs and will serve as an incentive to other states to develop paid family leave programs of their own.

For a small investment of federal funds (the act authorizes \$1.5 billion), we can help create and improve state programs and help millions of workers balance their work and family lives.

We know for example that when a parent is able to take time to bond with his or her child, it is better for the child and for the parent as well.

And when a worker is able to take time to care for an elderly parent, it may enable that parent to stay in his or her home.

I am a strong supporter of a national policy on paid leave and commend Representative Maloney on HR 626, the Federal Employees Parental Leave Act, which passed the House and provides 4 weeks of paid leave for federal workers.

I am also an original cosponsor of Pete Stark's legislation to provide paid leave on a national basis.

The FIRST Act, however, is an essential step to achieving our ultimate goal.

Not only will the first act assist families who desperately need paid leave now; it will help put in place an infrastructure for the administration of a national paid leave program.

Some will argue that in this economic climate we can't afford to pay for a grant program and or put an additional mandate on employers to provide paid sick days.

But economists tell us that this is precisely the time to act.

They tell us that these policies will be good for the national economy and will give workers the assistance they need in uncertain times. And we know that employers benefit financially when they support their workers through tough times.

Again thank you for coming. I look forward to hearing from our distinguished panel of witnesses. I now defer to Ranking Member Price for his opening statement.

Dr. PRICE. Thank you so much, Chairman Woolsey. I want to thank you for holding this hearing.

I want to thank our distinguished panel of witnesses for appearing today, and especially for our colleagues, for taking time to join us today.

Today's hearing provides members of this subcommittee with an opportunity to discuss the Family Medical Leave Act and the couple of legislative proposals aimed at promoting healthy families. At first blush, how can any member of Congress on either side not support healthy families? If you have been here for any length of time, you know that the titles of bills are always wonderful, and certainly we support healthy families.

However, once you examine beyond the title of the Healthy Families Act, it becomes clear that nearly the only thing appealing about the bill is its title. Enacting this particular proposal would require countless U.S. employers, even those with as few as 15 employees, to provide paid sick leave to every single employee for a range of medical and non-medical conditions both great and small. By way of contrast, that is a threshold far lower than the law currently mandates with respect to unpaid leave for serious health conditions or the birth of a child under the Family and Medical Leave Act.

We, on this side, are gravely concerned with the impact that this legislation will have on the U.S. economy, on employers, on workers, and on job creation. It represents an intrusion—a further in-

trusion—of the federal government into the benefits policies of millions of companies, both large and small.

The most troubling aspect of the Health Families Act is that it ultimately threatens to harm workers by way of lower wages and fewer opportunities. If this were implemented, the cost of government-mandated benefits would be passed on to American workers through reduced wages and fewer jobs. At the very moment when Americans are worried about losing their job, this proposal undercuts job creation through higher employer cost.

Employers around this nation see this type of legislation right now, and many have frozen any hiring because they don't know how severe government dictates will be. This Congress and this administration are killing the possibility of even having new jobs.

What we urge this committee to do is to keep facts about the current workforce in perspective. The Bureau of Labor Statistics reports that in 2008, 93 percent of full-time employees were provided paid time off that could be used in the event of an illness, and 51 percent of part-time workers had paid illness leave.

In 2008, 79 percent of low-wage workers—and by that I mean folks making between \$7.25 and \$14.99 an hour—had paid illness leave. Last year, 94 percent of large employers offered paid leave that could be used for illness, as did 76 percent of small businesses, meaning those with less than 50 employees. The facts suggest that we should not be imposing costly and new “one size fits all” burdens on businesses based on any faulty assumptions about the workplace.

Putting these facts aside, I am also concerned that this proposal raises a host of unanswered questions and, indeed, stretches far beyond the reach of what its proponents claim it does. For instance, supporters claim that the Healthy Families Act will have no effect on businesses that already provide paid sick leave, but taking a closer look at the fine print makes it clear that it is only those employers who provide leave that meet the exact conditions and circumstances set forth in the bill.

How many employers do we think will meet that standard specifically, especially after bureaucrats in Washington here draft hundreds of pages of federal regulation?

Turning to the second bill that we will examine this morning, the Family Income to Respond to Significant Transitions Act, it is sponsored by our chairwoman. Her efforts and commitment to improving workplace environments across this country are to be applauded.

But the proposal itself appears to put Washington in the business of paying for sick days to the tune of about \$1.5 billion over the next 4 years. At a time when we are facing massive record budget deficits and the president has us on a path to raising the national debt to \$23.1 trillion by 2019, this is a road that America can simply not afford. Even in the absolute best economic climate, this is a questionable idea far beyond the appropriate role, many believe, of the federal government.

As I close, I look forward to hearing from our witnesses, but I wonder if I might—if the chair might answer a process question. This week, House Democrats released their plan to reform America's health care system. It has been suggested that reform of the

Family and Medical Leave Act should be included as part of that final package, and I would suggest that adding that reform—a reform such as this—would be too important to get tucked away into a massive overhaul and should be vetted and debated separately on its merits, and I wonder if it is the committee’s intention to include reforms of the Family and Medical Leave Act in the House version of the health reform expected of later this summer?

Chairwoman WOOLSEY. Well, I can only respond from what I know, and I am not privy to any detail on that right now.

Dr. PRICE. Great. And I thank the chairwoman.

[The statement of Dr. Price follows:]

**Prepared Statement of Hon. Tom Price, Ranking Republican Member,
Subcommittee on Workforce Protections**

Good morning and thank you, Chairwoman Woolsey. I would like to begin by thanking our distinguished panel of witnesses for appearing today. We appreciate that they have taken time out of their busy schedules to share their expertise and experiences with us.

Today’s hearing provides Members of this Subcommittee with an opportunity to discuss the Family and Medical Leave Act and a couple legislative proposals aimed at promoting “healthy families.” At first blush, how can any Member of Congress on either side not support “healthy families”? However, once you examine beyond the title of the Healthy Families Act, it becomes clear that the only thing appealing about it is its title.

Enacting this particular proposal would require countless U.S. employers, even those with as few as 15 employees, to provide paid sick leave to every employee, for a range of medical and non-medical conditions great and small. By way of contrast, that’s a threshold far lower than the law currently mandates with respect to unpaid leave for serious health conditions or the birth of a child under the Family and Medical Leave Act.

We are gravely concerned with the impact this legislation will have on the U.S. economy, employers, workers, and job creation. It represents the intrusion of the federal government into the benefits policies of millions of companies, large and small. The most troubling aspect of the Healthy Families Act is that it ultimately threatens to harm workers by way of lower wages and fewer opportunities. If this were implemented, the costs of government-mandated benefits would be passed on to American workers through reduced wages and fewer jobs. At the very moment when Americans are worried about losing their job, this proposal undercuts job creation through higher employer costs. Employers around this nation see this type of legislation—right now—and many have frozen any hiring because they don’t know how severe government dictates will be. This Congress and Administration are killing even the possibility of new jobs.

What I urge this Committee to do is to keep facts about the current workforce in perspective. The Bureau of Labor Statistics reports that in 2008, 93 percent of full-time employees were provided paid time off that could be used in the event of an illness, and 51 percent of part-time workers had paid illness leave. In 2008, 79 percent of low-wage workers, and by that I mean folks making between \$7.25 and \$14.99 an hour, had paid illness leave. Last year, 94 percent of large employers offered paid leave that could be used for illness, as did 76 percent of small businesses, meaning those with less than 50 employees. The facts suggest that we should not be imposing costly and new one-size-fits-all burdens on businesses based on any faulty assumptions about the workplace.

Putting these facts aside, I am also concerned that this proposal raises a host of unanswered questions, and indeed, stretches far beyond the reach of what its proponents claim it does. For instance, supporters claim that the Healthy Families Act will have no effect on businesses that already provide paid sick leave, but taking a closer look at the “fine print” makes it clear that it’s only those employers who provide leave that meets the exact conditions and circumstances set forth in the bill. How many employers do we think will meet that standard, especially after Washington bureaucrats draft hundreds of pages of federal regulations?

Turning to the second bill that we will examine this morning, the Family Income to Respond to Significant Transitions Act, it is sponsored by our Chairwoman. Her efforts and commitment to improving workplace environments across this country are to be applauded. But the proposal appears to put Washington in the business

of paying for sick days to the tune of about one and a half BILLION dollars over the next four years. At a time when we are facing massive, record budget deficits and the President has us on the path to raising the national debt to \$23.1 TRILLION by 2019, this is a road we simply cannot afford. Even in the absolute best economic climate, this is a questionable idea—far beyond the appropriate role of the federal government.

As I close, I look forward to hearing from our witnesses, but I do close with a question for the Chairwoman. This week, House Democrats released their plan to reform America's health care system. It has been suggested that reform of the Family and Medical Leave Act should be included as part of a final package. I would suggest that adding such reforms is too important to be tucked away into a massive overhaul and should be vetted and debated separately on its merits. Madame Chairwoman, is it this Committee's intention to include reforms of the Family and Medical Leave Act in the House version of health care reform, expected to be voted on later this summer?

Thank you.

Chairwoman WOOLSEY. Thank you.

So now, without objection, all members will have 14 days to submit additional materials for the hearing record.

We have two panels today. I am going to introduce the first panel, and very distinguished members of Congress, and I will welcome you here this morning. And I don't have to tell you that you have 5 minutes to speak. When the light turns red, you will be tying it up. But you also know that you are esteemed members of this House, and we aren't going to kick you out at 5 minutes and 1 second or anything like that.

So first I would like to introduce the honorable Congresswoman Rosa DeLauro. Congresswoman DeLauro was first elected to Congress in 1990, and she represents Connecticut's third district. She sits on the House Appropriations and Budget Committees. She serves as chairwoman of the Agricultural FDA Appropriations Subcommittee and is a member of the Labor, Health and Human Services, Education and Financial Services Appropriation Subcommittees.

Congresswoman DeLauro is a graduate of Marymount College, where she received her B.A., with honors.

No kidding. Like you would do anything else but that.

She earned her master's in international politics from Columbia University and studied at the London School of Economics.

Following Congresswoman DeLauro, we have the honor of having one of our favorite freshman, the honorable Congressman Alan Grayson, who was elected to Congress in 2008 and serves the 8th district of Florida. He sits on the House Financial Services and Science and Technology Committees.

Representative Grayson received his B.A. and J.D. from Harvard. He also holds a master's degree from the Kennedy School of Government at Harvard. Mr. Grayson is here today because he supports the FIRST Act and the Healthy Families, and he is going to describe his new legislation on paid vacations.

Congresswoman DeLauro?

**STATEMENT OF HON. ROSA DELAURO, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF CONNECTICUT**

Ms. DELAURO. Thank you very much, Madam Chair. It is a delight to be with you. I want to thank you and Ranking Member

Price for the opportunity to testify before the Subcommittee on Workforce Protections today.

And Chairwoman Woolsey, I appreciate your tireless leadership on this issue, and also Chairman Miller, who is a co-sponsor and a vocal advocate of this bill.

This is the first legislative hearing on the Health Families Act, which was first introduced in June of 2004, so we are grateful to you for that. And the absence of a national paid sick days policy today affects countless families and workers. This hearing is an important sign of the progress on their behalf.

There is no simple answer when it comes to strengthening our working-and middle-class families. There are a number of critical steps that we can take, initiatives that have proven successful at making opportunity real for families and children, which is why the legislation like the Healthy Families Act is so important.

I am here today for a very simple reason: because I believe that workers in America ought to have paid sick days. It is a basic matter of right and wrong. And yet, almost half of all private sector workers do not have a single paid day off that they can use to care for themselves or for a sick family member. These workers put their jobs on the line every time they take a day off.

The Healthy Families Act, which I introduced with Senator Kennedy, would correct this injustice, requiring employers with 15 or more workers to provide 7 days of paid sick leave annually for their own medical needs or to care for a family member. I might add that smaller employers with fewer than 15 employees are exempt from the act, and that is the same as Title 7 of the Civil Rights Act.

Under the new rules, workers would earn one hour of paid sick time for each 30 hours worked up to a total of 56 hours in a calendar year. They earn these paid sick days. This is about simply setting the floor on what we all can agree is good corporate citizenship, about staying competitive as a nation. And it is harder and harder to do when 57 million people in our workforce do not have the right to take time off from work when they are sick or when they need to stay home to care for a sick child or elderly relative.

Nations around the world—our competitors—do not face the same handicap and are surging ahead. It is about keeping businesses and workers strong, helping to maintain their edge in a tightening global economy.

We also know it is hard to stay ahead when 19 of the 20 most competitive countries in the world guarantee paid sick days. The United States is the odd one out.

What does it say when Lesotho, Papua, New Guinea are implementing paid sick days to give their businesses and their entire nation a competitive edge? America still doesn't get it.

Ultimately, the issue is part of a larger health care debate that is going on right now. It is why we named it the Healthy Families Act. We learned from that recent H1N1 outbreak, as you pointed out, that providing paid sick days to workers is an urgent matter of preventing the spread of disease.

It is interesting to note, all of the health care professionals and the president of the United States on television saying to people, "If you are ill, stay home. If you are ill stay home." But, well, that

is wonderful if you have paid sick days and you can do it and you can afford to do that.

And it was out of the reach of so many Americans when they got that criteria established. Half of all private sector workers do not have a single paid day off that they can use for themselves or a sick family member.

While we try to recover from this economy, study after study has pointed to cost benefits that paid sick days yield to employers, to workers, and to taxpayers. No surprise that we can reduce cost across the board by improving access to appropriate care for chronic illnesses, timely treatment for acute medical needs, while reducing the spread of contagious diseases.

When working parents go to work sick, they risk infecting the entire workforce. They pay a price—we all pay a price for denying employees paid sick days, especially if they work in health care, child care, or food service.

Indeed, well below every other major industry, only 15 percent of workers in food service have paid sick days. They endanger hundreds—even thousands—of patrons.

Let me make a comment about working women and their families. They bear the brunt. And it is as it is. Women have the responsibility for caring for children. Half of all working mothers report that they must miss work when the child is sick. Half of them do not get paid.

When nearly a third of all working mothers fear their job evaluation might suffer for missing work, imagine what this legislation could do for them in terms of peace of mind. This is about income security for our families today, and we are in a very difficult economic situation today. We have a weak safety net that is stretched thin.

Those who bear the brunt have a very difficult time bouncing back. And we have a responsibility to confront that issue. It means, in fact, it is standing the EITC, and I know the FIRST Act, Chairman Woolsey, which you have introduced. I commend you for the proposal. Happy to join you in supporting it.

We need to continue to honor the work and responsibility of the people who take on jobs seriously, who do not have any opportunity for paid sick days, and we need to move forward in this effort. And I thank you for the opportunity to speak before this subcommittee this morning.

[The statement of Ms. DeLauro follows:]

**Prepared Statement of Hon. Rosa L. DeLauro, a Representative in Congress
From the State of Connecticut**

Good morning. Chairman Woolsey, thank you very much for the opportunity to testify before the Subcommittee on Workforce Protections today. I appreciate your tireless leadership on this issue along with Chairman Miller who is a cosponsor and a vocal advocate of this bill. And I want to thank you for holding this first legislative hearing on the Healthy Families Act: The absence of a national paid sick days policy today affects countless families and workers and this hearing is an important sign of progress on their behalf.

There is no simple answer when it comes to strengthening our working and middle class families. But there are a number of critical steps we can take—initiatives which have proven successful at making opportunity real for families and children.

And that is why legislation like the Healthy Families Act is so important. I am here today for a simple reason: because I believe workers in America ought to have paid sick days. It is a basic matter of right and wrong.

And yet almost half of all private sector workers do not have a single paid day off that they can use to care for themselves or a sick family member. These workers put their jobs on the line every time they take a day off.

The Healthy Families Act, which I introduced with Senator Kennedy, would correct this injustice, requiring employers with 15 or more workers to provide 7 days of paid sick leave annually for their own medical needs or to care for a family member. Under the new rules workers would earn one hour of paid sick time for each 30 hours worked, up to a total of 56 hours in a calendar year.

This is really about simply setting the floor on what we all can agree is good corporate citizenship. This is about staying competitive as a nation. But that is harder and harder to do, when 57 million people in our workforce do not have the right to take time off work when they are sick, or when they need to stay home to care for a sick child or elderly relative. Meanwhile, nations all around the world, our competitors—do not face the same handicap and are surging ahead.

It is about keeping our businesses and workers strong—and helping to maintain their edge in tightening global economy. But, we also know, it is hard to stay ahead when 19 of the 20 most competitive countries in the world guarantee paid sick days—and the United States is the odd one out.

What does it say when Lesotho and Papua New Guinea are implementing paid sick days to give their businesses and their entire nation a competitive edge, yet America still does not get it?

Ultimately this issue as part of the larger health care debate going on right now. That is why we named it ‘Healthy Families Act.’ As we have learned from the recent H1N1 outbreak: providing paid sick days to workers is also an urgent matter of preventing the spread of disease.

We know that infectious diseases like H1N1 can spread rapidly throughout the country when proper precautions are not taken. We saw how countless public health officials, and even the President, took to the airwaves to ask folks to follow a simple guideline: If you get sick, stay home from work or school and limit contact with others to keep from infecting them.

And yet, following this critical advice is virtually impossible for far too many Americans. As I mentioned, almost half of all private sector workers do not have a single paid day off that they can use to care for themselves or a sick family member. These workers put their jobs on the line every time they take a day off.

With the economy still struggling to recover, study after study has pointed to cost benefits that paid sick days yield to employers, workers, and taxpayers. It is no surprise that we can reduce costs across the board by improving access to appropriate care for chronic illnesses and timely treatment for acute medical needs, while reducing the spread of contagious illness.

When working parents must go to work sick, they risk infecting their entire workplace, then we all pay the price for denying employees paid sick days—especially if they work in health care, child care, or food service. Indeed, well below every other major industry, only 15 percent of workers in food service have paid sick days—endangering hundreds even thousands of patrons.

What is more: working women and their families, in particular, would benefit from our bill. We all know that the brunt of the responsibility for caring for children still falls upon women—that is the way it is. Half of all working mothers report that they must miss work when a child is sick—and half of them do not get paid. When nearly a third of all working mothers fear their job evaluation might suffer from missing work, imagine what this legislation could mean to them: peace of mind.

Of course, while paid sick days will make a tremendous difference, it is no silver bullet. We must embrace a comprehensive pro-family agenda. Today, families’ fortunes are increasingly tied to an ever more volatile economy. Yet with a weak safety net stretched thin, those who bear the brunt have a very difficult time bouncing back. We have a responsibility to confront the unique challenges that INCOME INSECURITY places on working and middle class families.

That means expanding the EITC, or supporting child care, pay equity and, Chairman Woolsey, initiatives like your own Family Income to Respond to Significant Transitions or FIRST Act to allow more workers to take advantage of the Family and Medical Leave Act. I commend you for this proposal and am happy to join you in supporting it.

Ultimately, I believe our decisions and actions must reflect a broader worldview that begins with equal opportunity and giving people who strive to better themselves the tools to succeed. Thank you again Chairman Woolsey for the opportunity to testify this morning. We must continue to honor the work and responsibility that is the basis of our shared community.

Chairwoman WOOLSEY. Thank you, Congresswoman.
Congressman Grayson?

**STATEMENT OF HON. ALAN GRAYSON, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF FLORIDA**

Mr. GRAYSON. Thank you, Madam Chairman.

Chairwoman Woolsey, Ranking Member Price, and my esteemed colleagues, thank you very much for the opportunity of allowing me to speak today concerning the importance of time off for America's workers. I am a co-sponsor of both H.R. 2339, the Family Income to Respond to Significant Transitions Act, and H.R. 2460, the Healthy Families Act, and I believe that the passage of those two bills will make significant gains in the health, productivity, and well-being of our workforce and our country.

These landmark pieces of legislation are long overdue, and they should be passed, signed by the president, and immediately implemented to help our constituents and their families. Congresswoman DeLauro and Chairman Woolsey must be applauded for their long-time efforts on this legislation, and thousands of groups, ranging from business and labor to family and medical advocacy groups should also be applauded for bringing this bill to where it is today.

Madam Chair, many of the reasons why I introduced the Paid Vacation Act, H.R. 2564, are the reasons why I am in favor of H.R. 2339 and H.R. 2460. In particular, I, too, believe that a healthy worker is a happy worker, and a happy worker is a productive worker. Therefore, in addition to providing all workers in the United States paid sick leave, I believe they should also enjoy a week or more of paid vacation each year.

How many American employees never get a day off? Go ahead and guess. The number is over 27 million. That is right. Over 27 million workers in America never get a single day off.

And half of all American employees get a week off each year or less. No wonder that 69 percent of all Americans support our paid vacation bill.

The Paid Vacation Act would require companies with at least 100 employees to give full-time workers 1 week of paid vacation after a year of service. If you listen to people's comments on our legislation, you will hear one thing over and over again: People need time to recharge their batteries.

That is right. Study after study has shown that people are healthier, happier, and more productive after a vacation—not just the following week or the following month, but actually for the whole year. The gains in productivity make up for the time off and more.

So what kind of workforce do we need? People who are stressed out, burnt out, and pretending to work, or people who are rested, paying attention, and trying to get things done?

The statistics are startling. We spend more than \$3,000 per employee per year on health care for stress-related conditions. Employers without vacations are much more likely to have a heart attack and die. We are literally working ourselves to death.

We have all heard the saying, "All work and no play makes Jack a dull boy." Well, it turns out that all work and no play makes Jack a dead boy.

We are rightly proud of the fact that America leads the world in so many areas. Add this one to the list: We lead the world in employees who can never take a day off. Every major country in the world has a law that provides for paid vacations for employees. More than 140 countries have such a law. Why don't we?

And here is another category in which we are number one: the number of hours worked, a number that is up by 160 hours per year since 1976. Remember that one of the most successful ad campaigns in history told Americans, "You deserve a break today." And that is right. We do deserve a break.

Another reason why I believe this bill is important is because of the support it provides for American tourism, one of the few parts of our economy that actually functions quite well right now. As many of you know, tourism is Florida's largest business. We have more than 75 million visitors a year, and it adds \$57 billion to our state economy each year.

Madam Chairman, that means jobs, jobs, and jobs. My colleagues from Florida, California, Hawaii, Nevada, and elsewhere know that this bill would be great for our economy if more people went on vacation. That is one reason why people are talking about our Paid Vacation Act. Media from Orlando to Fresno are talking about it because it means not only healthy workers, but more jobs.

I will admit there are some people who tell me that they oppose this bill, and I ask them one question: Do you get a vacation? The answer is always yes. So it turns out that they are not against vacations, they are just against vacations for other people.

There is a good reason why my district, which includes Disneyworld and Universal Orlando, is called the happiest place on earth. It is because the happy people who visit us all have one thing in common: they are on vacation.

Do you support family values? Then let us give the 27 million Americans who don't have a chance to be with their families a chance to spend some more time with their families.

In conclusion, I ask the committee to support the immediate passage of the Family Income to Respond to Significant Transitions Act and the Healthy Families Act, and I would also ask my colleagues to ask themselves this question: Why is the United States of America the only major nation not to provide for vacation time as well?

I encourage my colleagues to consider this important issue and support H.R. 2564. Thank you.

[The statement of Mr. Grayson follows:]

**Prepared Statement of Hon. Alan Grayson, a Representative in Congress
From the State of Florida**

Chairwoman Woolsey, Ranking Member Price, and my esteemed colleagues, thank you for allowing me to speak today on the importance of time off for America's workers.

I am a cosponsor of both H.R. 2339, the Family Income to Respond to Significant Transitions Act, and H.R. 2460, the Healthy Families Act, and I believe the passage of these two bills will make significant gains in the health, productivity, and wellbeing of our workforce.

These landmark pieces of legislation are long overdue. They should be passed, signed by the President, and immediately implemented to help our constituents and their families.

Congresswoman DeLauro, and Chairwoman Woolsey must be applauded for their long-time efforts on this legislation. And the thousands of groups, ranging from

business and labor to family and medical advocacy groups should also be applauded for bringing this bill to where it is today.

Madame Chair, many of the reasons why I introduced the Paid Vacation Act, are the reasons why I am in favor of H.R. 2339 and H.R. 2460. In particular, I too believe that a healthy worker is a happy worker. And a happy worker is a productive worker.

Therefore, in addition to providing all workers in America paid sick leave, I also believe they should enjoy a week or more paid vacation each year.

How many American employees never get a day off? Guess. The number is over 27 million. That's right over 27 million workers in America never get a single day of paid vacation. And half of all American employees get less than a week each year. No wonder 69% of all Americans support the paid vacation bill.

The Paid Vacation Act would require companies with at least 100 employees to give full-time workers one week of paid vacation after a year of service.

Listen to people's comments on this legislation and you'll hear one thing over and over—"people need time to recharge their batteries." They're right. Study after study has shown that people are healthier, happier, and more productive after a vacation—not just for the following week, or even the following month, but for the whole year. The gains in productivity make up for the time off, and more. What kind of workforce do we need? People who are stressed, burnt out, and pretending to work, or people who are rested, paying attention, and trying to get things done?

The statistics are startling. We spend more than \$3000 per employee per year on health care for stress-related conditions. Employees without vacations are much more likely to have a heart attack and die. We are literally working ourselves to death. We've all heard the saying "all work and no play makes Jack a dull boy." Well, it turns out that all work and no play makes Jack a dead boy.

We're rightly proud of the fact that America leads the world in so many areas. Add this one to the list—we lead the world in employees who can never take a day off. Every major country in the world has a law that provide for paid vacations for employees—more than 140 countries. Why don't we?

And here's another category in which We Are Number One: the number of hours worked. A number that is up by 160 hours per year since 1976. Remember that one of the most successful ad campaigns in history told Americans, "you deserve a break today." That's right—we do deserve a break.

Another reason why I believe this bill is important is because of the support it provides to American tourism.

As many of you may know, tourism is Florida's largest business. We have more than 75 million visitors a year, resulting in \$57 billion dollars for the state economy.

Madame Chair, this means jobs, jobs, jobs. My colleagues, from Florida, California, Hawaii, Nevada and elsewhere know that this bill would be great for our economy if more people went on vacation.

That's one reason why people are talking about our Paid Vacation Act. Media from Orlando to Fresno are talking about it, because it not only means healthy workers but more jobs.

I'll admit, there are some people who tell me that they oppose this bill. I ask them one question: "Do you get vacation?" Their answer always is "yes." So it turns out that they're not against vacations, just vacations for other people.

There is a good reason why my district, which includes Disney World and Universal Orlando, is called "the happiest place on earth." It's because the happy people who visit us all have one thing in common—they're on vacation.

Do you support family values? Then give 27 million Americans a chance to spend some time with their families.

In conclusion, I ask the committee to support the immediate passage of the Family Income to Respond to Significant Transitions Act, and the Healthy Families Act.

I would also ask my colleagues why the United States of America is the only major nation NOT to provide for paid vacation time. I encourage my colleagues to consider this important issue, and support this legislation.

Chairwoman WOOLSEY. Thank you very much.

Thank you, both of you, very, very much. And now we are going to get ready for panel two.

The nice thing about being a member of Congress, you don't get grilled.

Mr. GRAYSON. Thank you, Madam Chairman.

Chairwoman WOOLSEY. Now I have the distinct privilege of introducing panel two, and I don't know how many of you have been witnesses in the past, so we will go over the rules. We have a lighting system. When you first start to speak, you have 5 minutes, and when the yellow light goes on you have 1 minute left. And we hope that after that yellow light you start wrapping up your 5 minutes.

Now, the same thing goes for us. When we are through with the entire panel of witnesses, when we have heard you all, then we will, in order of people arriving here on the podium, we will have 5-minute questions and answers. And our members, if they choose to give a 5-minute speech, then they don't have any time for your answer. So we are always hoping that the questions are direct and you get more time while you are up there.

We think we are not going to be voting until about 11:30, so this is good. So I will introduce our witnesses and we will get right onto hearing from them.

First we will have Ms. Debra Ness, who is the president of the National Partnership for Women and Families. For over 2 decades, she has been an ardent advocate for the issues that face women and families at home and in the workplace, serving most recently as executive vice president of the National Partnership for 13 years.

Ms. Ness graduated from Drew University with a bachelor's degree in psychology and sociology. After completing graduate work in social welfare and public health policy, she received her master's degree of science from Columbia University's School of Social Work.

Then we have Victoria Lipnic, who is the former assistant secretary of labor for employment standards. Prior to Ms. Lipnic's appointment, Assistant Secretary Lipnic served as workforce policy council for this committee from 2000 to 2002. She earned her B.A. in political science and history from Allegheny University in Pennsylvania and her J.D. from George Mason University School of Law.

Ms. Sandra O'Poole—oh. Sandra O. Poole. I am taking the "O" out now. Sandra Poole.

Sandra is the deputy secretary of the California Employment Development Department disability insurance branch. Prior to this appointment, she held the position of deputy director of the Department of Child Support Services, DCSS, where she was responsible for promulgating statewide policies and regulations that ensure uniform delivery of services by 58 local child support agencies. Ms. Poole has a bachelor's degree in sociology from CSUS, San Bernardino, and a master's degree in public administration from Golden Gate University.

Dr. Bhatia, you realize you are in the middle of all these wonderful women, right? There you are.

Dr. Rajiv Bhatia is the director of Occupational and Environmental Health Department of Public Health for the city of San Francisco in addition to being an assistant clinical professor of medicine at the University of California, San Francisco. As director, he has been involved in many policy areas, including the implementation of the California Healthy Families Healthy Workplace Act of 2008. Mr. Bhatia received his B.S. and M.D. from Stanford

University and an MPH from the University of California, Berkeley.

Ms. China Miner Gorman is the chief operating officer for the Society for Human Resources Management, SHRM. Ms. Gorman has over 25 years of experience in human resources and workforce development, serving most recently as the president of North America for DBM, a global human capital management and transitions firm. She has a B.A. in English literature from Principia College.

Ms. Deborah Frett joined BPW USA and the BPW Foundation as CEO in May of 2005. Ms. Frett has over 27 years of experience providing and implementing strategic direction and executive management for associations for profit and nonprofit organizations. Ms. Frett holds a B.A. in sociology from Quincy University.

Wow. What a panel you are.

We will begin with you, Ms. Ness.

**STATEMENT OF DEBRA NESS, PRESIDENT, NATIONAL
PARTNERSHIP FOR WOMEN**

Ms. NESS. Thank you. Good morning, Chairman Woolsey, Ranking Member Price, members of the subcommittee. I want to start by thanking you for inviting all of us to talk about the workplace policies that our nation so urgently needs.

I am Debra Ness, president of the National Partnership for Women and Families, which is a nonprofit, nonpartisan advocacy group that has been working on issues important to women and families for almost 4 decades. I am here today to testify in support of both the Healthy Families Act and the FIRST Act.

Both of these pieces of legislation are tremendously important to working people across the country, especially at this time when working families are overwhelmed by the economic crises we are all grappling with. We urge Congress to waste no time in passing these bills.

When workers are stretched so thin and job security is so tenuous, taking time off for either a serious medical condition like cancer, or something simpler like the flu, or just taking care of a sick child, can lead to financial disaster for families, and that is because millions of workers have no job-protected, paid time off, as Congresswoman DeLauro made so clear. While the Family and Medical Leave Act provides some workers with up to 12 weeks of unpaid leave, that law was only a first step. It does not cover all workers; it does not allow workers to take time off for short-term illnesses or routine medical care, like mammograms or colonoscopies; and it provides only unpaid leave, which millions of workers cannot afford to take.

It is time to take the next step in making this nation more family-friendly, and the sooner we act, the better off we will be. America needs a basic workplace standard that allows employees to earn paid sick days that they can use to recover from their own illness or to care for a sick family member. The Healthy Families Act would do that by letting workers at businesses with at least 15 employees earn up to 7 paid sick days a year.

The recent H1N1 virus really drove home the need for this legislation. When news broke of a possible pandemic, public health officials and government leaders, from the president on down, said

people with signs of illness should do the responsible thing: stay home from work and school.

But unfortunately, not everybody was able to heed that good advice not because they were irresponsible, but because nearly half of private sector workers and more than three-quarters of low-wage workers do not have a single paid sick day. For them, staying home when you are sick or have a sick child means losing part of your paycheck or even putting your job on the line.

Today, the National Partnership is releasing new research that provides further evidence that paid sick days would also be good for the nation's public health. The study we commissioned from human impact partners and the San Francisco Department of Public Health provides the evidence for what we all intuitively know: The Healthy Families Act would help us significantly reduce the spread of pandemic or seasonal flu by enabling workers to comply with public health advice if they or their family members show sign of illness.

We will hear more about this research in a few minutes, but with one-third of flu cases transmitted at schools or workplaces, the research shows that if we make it possible for people to stay home when they are infected, we can reduce the spread of a pandemic flu virus by up to 34 percent. The study finds that the Healthy Families Act would go a long way toward protecting the public from diseases carried by sick workers in restaurants, in hotels, in nursing homes, and would help people not get sicker, which leads to unnecessary hospitalizations and death.

And I just want to drive home the fact, only 15 percent of food service workers have paid sick days, and yet we know that half of stomach flu virus outbreaks are linked to ill food service workers. People think it is the food getting them sick. They are also getting sick from the workers who are sick, who are spreading their germs.

While the Healthy Families Act is needed to address the day to day health needs of working families, the FIRST Act is also needed to help workers make ends meet when there is a longer-term illness or more serious illness by providing grants to states to develop and implement their own paid family and medical leave program.

When a serious personal or family medical crisis strikes, workers frequently have no choice but to take unpaid leave or quit their job. As a result, for many an illness in the family or the birth of a child forces them into a serious downward economic spiral.

Paid family and medical leave is essential to enable workers to care for themselves, their children, and increasingly, their older family members. These workers are people like you and me, and I would bet that pretty much everybody in this room has or will, at some point, grapple with some of these problems. There are millions of working adults already who are providing support to older relatives, and this number is growing rapidly.

And there is no question that the population is getting older, but the population that is living longer is also living sicker, with more chronic conditions and more complex care needs. And as a result, the care-giving challenges that our families face are enormous. And so, as a nation, as employers, as workers, we need to face this reality: Within the next 5 years, half of the labor force—half of the labor force—will be caregivers for elder relatives.

This is a 21st century problem, and we need 21st century solutions. And as a nation, we ignore the imperative to adopt these policies at our peril.

So, we all have the economy very much on our mind these days. I want to say that it is especially during these times that workers need these protections.

And I will end by saying that I am here representing not just the National Partnership for Women and Families, but also the broad-based coalitions that are leading these efforts to help working families through enacting passage of both the Healthy Families Act and the FIRST Act. Thank you.

[The statement of Ms. Ness follows:]

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

Good morning, Chairwoman Woolsey, Ranking Member Price, members of the Subcommittee and my distinguished fellow panelists. Thank you for inviting us to talk about the policies this nation's workers urgently need.

I am Debra Ness, President of the National Partnership for Women & Families, a non-profit, non-partisan advocacy group dedicated to promoting fairness in the workplace, access to quality health care, and policies that help workers meet the dual demands of work and family. I am here to testify in support of the Healthy Families Act and the FIRST Act, groundbreaking pieces of legislation that are tremendously important to working people across the nation. Congress should waste no time in passing these bills, especially at a time when working families are overwhelmed by personal economic crises caused by the recession.

The historic pace at which our economy is shedding jobs is devastating millions of working families—shaking the financial ground beneath their feet. Last week, the unemployment rate rose to 9.4 percent—the highest level since 1983. The unemployment rate for African Americans and Hispanics is even higher.

That means millions of families that once relied on two incomes are struggling to manage on one income, or no income at all. Access to employer-provided health insurance has declined, and family wealth is disappearing at a record pace. In fact, in the 18-month period ending in December 2008, total family wealth decreased by \$15 trillion—the fastest decline in any 18-month period since the government began collecting such data. One in nine mortgages is delinquent or in foreclosure, and credit card defaults continue to rise.¹

When workers are stretched so thin, having to take time off for the flu or a strep throat, treatment for a serious medical condition, or to care for a new child can lead to financial disaster for families. That's because millions of workers have no job protected, paid time off. We need to change that, especially now because in this economic climate, basic workplace standards of paid family and medical leave and paid sick days can prevent workers from being forced to choose between their health or the health of their family, and their paycheck or even their job. Simply put, we need these workplace policies to prevent working families from falling further down an economic rabbit-hole.

The FMLA was Only a First Step

The typical American family has changed dramatically in recent decades. More families have two parents working, fewer families have full-time caregivers at home, and more workers are responsible for the care of aging relatives. Our nation's workplace policies have not addressed these changes. Currently, only one federal law helps our nation's workers meet the dual demands of work and family: the Family and Medical Leave Act (FMLA). It provides unpaid, job-protected leave for up to 12 weeks a year for covered workers to care for a newborn, newly adopted or foster child, to care for a seriously ill family member, or to recover from their own serious illness. The FMLA provides essential job protections that can allow workers to take the time off they need without losing their jobs.

Laws like the FMLA could not be more important during an economic downturn, and more workers need access to the protections the FMLA affords. However, I want to address two main weaknesses of this law, both of which would be addressed by the legislation this Subcommittee is considering.

First, the FMLA does not address many workers' day-to-day health needs. FMLA coverage for illnesses is limited to serious, longer-term illnesses and the effects of

long term chronic conditions. The law does not offer time off to deal with common illnesses that do not meet the FMLA standard of “serious” illness. It also does not offer time off for routine medical visits.

Second, the FMLA offers unpaid leave. Millions of workers cannot afford to take the unpaid leave the FMLA provides. Without some form of wage replacement, the FMLA’s promise of job-protected leave is out-of-reach for millions of women and men. In fact, in one survey 78 percent of employees who qualified for FMLA leave and needed to take it did not do so because they could not afford to go without a paycheck.² More than one-third of the men and women who use the FMLA (34 percent) receive no pay during leave, and another large segment of the population has a very limited amount of paid leave available.³

Workers Need Paid Sick Days

The recent H1N1 virus outbreak highlighted the need for paid sick days. We all agreed it was sound advice when officials at the Centers for Disease Control & Prevention warned, “This is a serious event * * * If you have a fever and you’re sick or your children are sick, don’t go to work and don’t go to school.” But nearly half of private-sector workers (48 percent) do not have access to paid, job-protected sick days.⁴ Seventy-nine percent of low-income workers—the majority of whom are women—do not have a single paid sick day.⁵ For them, staying home when sick means going without pay and perhaps risking their jobs.

Giving workers advice they cannot afford to take is ineffective at best. Focusing entirely on workers, without stressing that employers also have a responsibility to make it possible for sick workers to take time off, is a recipe for disaster if a virulent, contagious pandemic strikes.

The problem is particularly acute for working women, who are disproportionately affected by our failure to enact a minimum standard of paid sick days because they are more likely to work part-time (or cobble together full-time hours by working more than one part-time position) than men. Only 16 percent of part-time workers have paid sick days, compared to 60 percent of full-time workers.⁶

Women also have primary responsibility for meeting family care giving needs. Almost half of our nation’s working mothers report that they must miss work when a child is sick—but 49 percent of those mothers do not get paid when they miss work to care for a sick child.⁷

Paid sick days may actually reduce health care costs. Studies have shown that when parents are able to be involved in their children’s health care, children recover faster.⁸

Our failure to guarantee a minimum standard of paid sick days is a significant public health concern, as we witnessed during the H1N1 virus outbreak. Many of the workers who interact with the public every day are among the least likely to have paid sick days. Only 22 percent of food and public accommodation workers have any paid sick days, for example. Workers in child care centers, retail clerks, and nursing homes also disproportionately lack paid sick days.⁹ If a lack of paid sick days means that they must work when they are ill, their coworkers and the general public are at risk of contagion.

Today, I am pleased to release powerful new research assessing the health impact of the Healthy Families Act. Conducted by Human Impact Partners, a non-profit project of the Tides Center, and the San Francisco Department of Public Health, this study was commissioned by the National Partnership for Women & Families and funded by the Annie E. Casey Foundation. It finds that providing employees with paid sick leave benefits will significantly improve the nation’s health.

The new study finds that guaranteed paid sick days would reduce the spread of pandemic and seasonal flu. More than one-third of flu cases are transmitted in schools and workplaces. Staying home when infected could reduce by 15–34 percent the proportion of people impacted by pandemic influenza. Without preventive strategies, more than two million people in this country could die in a serious pandemic flu outbreak.

It also finds that, if all workers had paid sick days, workers would be less likely to spread food borne disease in restaurants and there would be fewer outbreaks of gastrointestinal disease in nursing homes.

Paid sick days may be associated with less severe illness and a reduced duration of disability due to sickness, because workers with paid sick days are 14 percent more likely to visit a medical practitioner each year, which can translate into fewer severe illnesses and hospitalizations.

Finally, the study finds that parents who had paid time off are more than five times more likely to care for their sick children. This indicates that parents who lack paid sick days are having to make terrible choices—such as sending a sick child to school or day care.

I hope you will look at the full report, posted on www.nationalpartnership.org and www.humanimpact.org/PSD.

Even without considering the public health, the lack of paid sick days is a concern for millions of workers. One in six workers report that they or a family member have been fired, suspended, punished or threatened with being fired for taking time off due to personal illness or to care for a sick relative, according to a 2008 University of Chicago survey commissioned by the Public Welfare Foundation. To put a face on some of those statistics, I'd like to share with you a few stories from working people:

- Heather from Cedar Crest, New Mexico explained to us: "In October, I got very sick with diverticulitis. My doctor put me on bed rest for two weeks. While I was out, my boss hounded me to come back, but I was way too sick. I told him I would be back as soon as I could. I was not receiving sick pay at all. When I did go back to work early, he fired me and told me he needed someone he could count on. I worked for this man for two years. I was shocked. Sometimes things happen and you get sick. How are you to foresee these things?"

- Noel from Bellingham, Washington wrote to us: "I had to work while having bouts of awful bronchitis and walking pneumonia. I got no time off at all even when I was in severe pain, coughing up phlegm or vomiting. Instead I had to act like I wasn't sick, and keep up the same standards and smiling face * * * I couldn't take unpaid days off from work because I couldn't afford to do that. I needed the money to pay for things like rent and food. When my quality of work suffered substantially from having to go to work while so sick, I was fired from my job because according to my then-supervisor, I did not create a happy environment for the customers."

As our population ages and more workers care for elderly parents, we expect the number of workers risking their jobs to only increase. Caregiving takes a financial toll on working people, especially when they have to take unpaid time off from work. More than 34 million caregivers provide assistance at the weekly equivalent of a part-time job (more than 21 hours), and the estimated economic value of this support is roughly equal to \$350 billion.¹⁰ Among caregivers, 98 percent reported spending on average \$5,531 a year, or one-tenth of their salary, for out-of-pocket expenses.¹¹ Those costs are compounded when they must forfeit pay to provide care.

At present, no state requires private employees to provide paid sick days. San Francisco, the District of Columbia and Milwaukee have passed ordinances requiring that private-employers provide paid sick days. More than a dozen cities and states are working to pass paid sick days laws to ensure that this basic labor standard becomes a right for all workers. But illness knows no geographic boundaries, and access to paid sick days should not depend on where you happen to work.

Paid sick days is a basic labor standard like the minimum wage—and as with the minimum wage, there should be a federal minimum standard of paid sick days that protects all employees, with states free to go above the federal standard as needed to address particular needs of their residents. The Healthy Families Act would create just that: a federal floor that allows workers to earn up to seven paid sick days a year to recover from short-term illness, to care for a sick family member, for routine medical care or to seek assistance related to domestic violence, sexual assault or stalking.

Workers Need Paid Family and Medical Leave

While the Healthy Families Act would help address the day-to-day health needs of working families by guaranteeing paid, job-protected time off for common illness and short-term caregiving needs, it is not meant to offer wage replacement for long-term or serious medical needs, or to provide care for a newborn or newly adopted child.

When such personal or family medical crises strike, workers frequently have no choice but to take unpaid leave or quit their jobs. As a result, for many workers, the birth of a child or an illness in the family forces them into a cycle of economic distress. Twenty-five percent of all poverty spells begin with the birth of a child.¹² The lack of paid family and medical leave hits low-income workers hardest: almost three in four low-income employees who take family and medical leave receive no pay, compared to between one in three middle income employees and one in four upper income employees.

Providing paid family and medical leave helps ensure that workers can perform essential caretaking responsibilities for newborns and newly-adopted children. Parents who are financially able to take leave are able to give new babies the critical care they need in the early weeks of life, laying a strong foundation for later development.

We heard from a woman in Colorado whose experience illustrates the devastation of not receiving wages while on leave. She explained: "I needed to take FMLA when

I was pregnant. My job didn't offer paid leave when I gave birth to my daughter. Because of FMLA I was guaranteed time off when I was put on bed rest. Because it was unpaid, I had to work from my bed and go back to work before my daughter was ready for me to go back. Financially I needed to go back to work. My daughter was four weeks old and on oxygen. I had to make special arrangements for a family friend to watch her instead of the childcare facility because of her age and special needs."

Paid family and medical leave also would help the fast-growing number of workers who are caring for older family members. Thirty-five percent of workers, both women and men, report they have cared for an older relative in the past year.¹³ Roughly half of Americans 65 years of age and older participate in the labor force. Many require time away from work to care for their own health and the health of a family member.¹⁴

In 2003, experts estimated that 44 million adults in the United States over age 18 provided support to older people and adults with disabilities who live in their communities.¹⁵ They need job supports today, and even more workers will need them in the future, because so many adults are in the workforce and because people are living longer and with more chronic conditions. Half of the labor force will be caregivers within the next five years.¹⁶

Nearly 58 million working-age adults reported having at least one of seven major chronic conditions¹⁷ in 2006—an increase of 25 percent from 1997. That increase reflects rising rates of chronic disease prevalence among nonelderly adults, as well as an overall increase in the adult population.¹⁸ The population of Americans age 65 and older will double during the next 25 years. By 2030, there will be 71 million older adults, accounting for roughly 20 percent of the U.S. population.¹⁹ Older adults are more likely to have more than one chronic condition. Here are the figures:

- 91.5 percent of adults older than 65 years old are living with at least one chronic condition, and 76.6 percent have at least two.²⁰
- 77.3 percent of adults between the ages of 55 and 64 are living with at least one chronic condition, and 57 percent have at least two.²¹
- 58.2 percent of adults between the ages of 35 and 54 are living with at least one chronic condition, and 33.4 percent have at least two.²²
- 36.4 percent of adults between the ages of 18 and 34 are living with at least one chronic condition, and 14.4 percent have at least two.²³
- 26 percent of adults below the age of 19 are living with at least one chronic condition, and 6 percent have at least two.²⁴

The combination of more people living longer, and more of them facing one or more chronic conditions, translates into more caregiving responsibilities for workers.

The Family Income to Respond to Significant Transitions (FIRST) Act is groundbreaking, badly needed legislation that would provide states with grants to develop and implement their own paid family and medical leave programs. It gives states the flexibility to develop programs based on the needs of working families in their states. In the absence of a national paid family and medical leave insurance program, the FIRST Act would support those states that have policies in place and provide incentives to those states that do not so they can to develop their own programs.

States have already been in the forefront of developing innovative paid family and medical leave programs. Five states with temporary disability programs (California, Hawaii, New Jersey, New York, Rhode Island) and Puerto Rico provide wage replacement for women during the period of disability due to pregnancy. Additionally, California and New Jersey have enacted paid family leave for caregiving purposes, and Washington state passed a law that will offer working parents paid time off for the birth or adoption of a new baby.

In 2004, California became the first state to provide wage replacement while a worker is on family leave. The most comprehensive of its kind, the law has given more than 13 million California workers (nearly one-tenth our country's workforce) access to partial income replacement (roughly 55 percent of wages) while they take time off to care for a new child or seriously ill family member. Premiums for the program are paid entirely by workers and are incorporated into the state's temporary disability fund. Critically, the wage replacement program covers all California workers who pay into the system; it is not limited to those who are covered by the federal or state family and medical leave act. Thus, the program reaches workers who may need it the most—those who are not covered because they work for small businesses or do not have a long tenure at their current job.

In 2007, Washington State became the second state to enact a paid parental leave program. Washington's program will provide \$250.00 per week for five weeks to new parents who are staying home with their child. Although not as expansive as Cali-

ifornia's, Washington's program also covers more workers than the FMLA and provides job-protected leave for employees who work in establishments with more than 25 employees. The FIRST Act would allow Washington State to begin the implementation of its program as the state, given the current budget crisis, has been unable to secure funding for the start up costs of the program.

In 2008, New Jersey became the third state to enact paid family leave legislation. Its program will extend the state's existing temporary disability insurance system to provide workers with six weeks of paid family leave to care for seriously-ill family members or to bond with newborn or newly adopted children. The small premiums for the program are paid by workers.

Where We Stand Compared to Other Countries

The United States stands alone among industrialized nations in its complete lack of national policies to ensure that workers are financially able to take time off for day-to-day medical needs, serious illness or to care for a new baby.

Out of 173 countries, the U.S. is one of just four that fails to provide paid maternity or paternity leave.²⁵ The others are Liberia, Papua New Guinea, and Swaziland.

According to the Center for Economic and Policy Research, the United States is the only one of 22 countries ranked highly for economic development that fails to guarantee workers paid time off for serious illness, such as to undergo a 50-day cancer treatment.

It also is one of just three countries that do not provide paid sick days for workers who miss five days of work due to the flu.²⁶

Businesses Benefit from Paid Leave Policies

Research confirms what working families and responsible employers already know: when businesses take care of their workers, they are better able to retain them, and when workers have the security of paid time off, they demonstrate increased commitment, productivity and morale, and their employers reap the benefits of lower turnover and training costs. Furthermore, studies show that the costs of losing an employee (advertising for, interviewing and training a replacement) is often greater than the cost of providing short-term leave to retain existing employees. The average cost of turnover is 25 percent of an employee's total annual compensation.²⁷

Paid sick days policies also help reduce the spread of illness in workplaces, schools and child care facilities. In this economy, businesses cannot afford "presenteeism," when sick workers come to work rather than stay at home. "Presenteeism" costs our national economy \$180 billion annually in lost productivity. For employers, this costs an average of \$255 per employee per year and exceeds the cost of absenteeism and medical and disability benefits.²⁸

Paid family and medical leave programs help business owners by enabling them to offer policies that help their employees meet the dual demands of work and family, particularly if they could not afford to provide such leave on their own. Additionally, paid leave programs would help smaller businesses level the playing field with larger businesses, making it easier for them to compete for the best workers by offering similar workplace policies.

Conclusion

Now more than ever, with families struggling and jobs scarce, workers need policies like paid family and medical leave and paid sick days. Working families should not have to risk their financial security when they get sick or a family member needs them. It's time to put family values to work by adopting policies that expand the FMLA, guarantee a basic workplace standard of paid sick days, and establish paid family and medical leave programs.

Our nation has a history of passing laws to help workers in times of economic crisis. Social Security and Unemployment Insurance became law in 1935; the Fair Labor Standards Act and the National Labor Relations Act became law in 1938, all in response to the crisis the nation faced during the Great Depression. Working people should not have to risk their financial health when they do what all of us agree is the right thing—take care of a family member who needs them.

The National Partnership for Women & Families leads broad-based coalitions that support the Healthy Families Act and the FIRST Act. These coalitions include children's, civil rights, women's, disability, faith-based, community and anti-poverty groups as well as labor unions, health agencies and leading researchers at top academic institutions. They include 9to5, ACORN, the Leadership Conference on Civil Rights, the AFL-CIO and SEIU, the National Organization for Women and dozens of other organizations. Together, we urge Congress to pass the Healthy Families Act and the FIRST Act immediately.

Chairwoman Woolsey and members of the Subcommittee, I thank you for the opportunity to participate in this important discussion.

ENDNOTES

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Chairwoman WOOLSEY. Thank you very much. You were very smart to put the FIRST Act last, because you see, I had a hard time not wanting to hear all of that. But thank you, Ms. Ness.

Ms. Lipnic?

STATEMENT OF VICTORIA LIPNIC, ESQ., FORMER ASSISTANT SECRETARY OF LABOR, EMPLOYMENT STANDARDS ADMINISTRATION, U.S. DEPARTMENT OF LABOR

Ms. LIPNIC. Good morning, Chairwoman Woolsey, Ranking Member Dr. Price, and members of the subcommittee. Thank you very much for inviting me to be back to the committee today.

My name is Victoria Lipnic. As you mentioned, I served as the Assistant Secretary of Labor for Employment Standards, where I was responsible for, among other things, the administration of the Family and Medical Leave Act. I have also served as council to this committee and have practiced labor and employment law for about 16 years.

I am appearing before you today on behalf of the U.S. Chamber of Commerce to discuss H.R. 2460, the Healthy Families Act. My testimony today is confined only to H.R. 2460, and does not address the FIRST Act.

My testimony is based on both my personal and professional experience, and I guess I would note that when Dr. Price said that bills get turned over to government bureaucrats to write the regulations, I have been one of those government bureaucrats, so I know firsthand what it means to take the legislative language and turn it into the very real practical rules that employers and employees have to live with every day in their workplaces.

I have seen the consequences of those rules, both intended and unintended, and what they can mean to a workplace. I have also seen cases in which terms which are believed to be perfectly well defined by the Congress, well intended, even perfectly well defined by the regulators, leave more questions than they actually answer.

Let me offer a few general comments about the bill before I address some of the specifics of the bill's provisions. First, it is certainly true that the Healthy Families Act has laudable goals.

During the past few years when the Department of Labor revised the family and medical leave regulations and created, most recently, the implementing regulations for the military family leave provisions, I read and studied the more than 20,000 comments to the public record from employers, health care providers, employers, interest groups, and academics. The concern of everyone—employers and employees—over how to deal at the same time with the demands of work and an employee or a family member of the employee who has an illness was palpable.

Secondly, it is also true, however, that the Healthy Families Act would impose a new federal mandate of unprecedented scope on very small business establishments. It would do so at a time of serious economic stress and severe continued job losses. It would come with a cost in the form of reduced wages and job opportunities.

It would come at a time when employers are considering every option available to them, including reducing hours, shifts, benefits, contributions to retirement funds, to avoid either any or further layoffs. And it would do so in the face of evidence that a majority of employees in the United States can access paid leave when they have an illness.

A February, 2009 report by economists from the U.S. Bureau of Labor Statistics, published in the monthly labor review, provides

important new information and insights that are critical to the debate about whether a federal mandate to require paid sick leave is needed. In that new report, the BLS economists found that when looking at leave benefits that are provided in combination—not just paid sick leave, but vacation leave, paid time off, personal leave—for which employees can use the leave if they have an illness or to visit a doctor, 83 percent of workers in private industry have access to illness leave. This is despite the fact that paid vacation leave, holidays, and sick leave are among the most expensive benefits offered to employees in private industry.

I would respectfully suggest to the committee that it would be useful to have the BLS provide further information about their study of these combinations of paid benefits and what they are now terming their “use-oriented analysis” as the committee considers legislation that mandates new or additional benefits.

Third, the Healthy Families Act is inexplicably punitive and burdensome on employers who already offer paid leave benefits. The HFA removes the discretion of employers to design benefits which best meet the needs of their employees and their operations. Employers provide paid leave benefits as a recruiting and retention tool, as a market differentiator, as part of a total compensation total rewards package, but have the ability to take into account how the benefits are structured.

Under the HFA, employers who are already providing these benefits would be subject to a new regulatory regime, additional compliance and record-keeping costs, and litigation for alleged violations of the law. They would be subject to liquidated damages that are awarded in an unprecedented fashion as a matter of course with no good faith defense and no discretion from the court. This is for the people who are already providing the benefit.

Finally, we know from years of experience, commentary, and observation about the use of the FMLA that different workplaces experience the use of leave very differently. In some workplaces, it may be essential that everyone be there on time in order to start the shift or run a particular piece of machinery. The loss of one person to that shift may be critical to the start of an entire production line or transportation system.

And the one thing that I would note is that the HFA makes no allowance for the differences among industries or workplaces as to their operational needs.

Is my time up? I just want to check on that.

Chairwoman WOOLSEY. Well, you can finish your thought—

Ms. LIPNIC. Okay.

Chairwoman WOOLSEY [continuing]. And finish your—

Ms. LIPNIC [continuing]. Since this is a legislative hearing, just a couple of points I will make in particular about some of the specifics about the bill. First is that while the bill itself sets the employee threshold at 15 employees, I think if you read the bill it actually works out to be employers who would have less than 15 employees who would be covered, and that is partly because the leave carries over from year to year and it does not take into account the ability of small businesses to absorb those costs from one year to another.

Another, I think, unanswered question is whether the Healthy Families Act would also—whether that leave would also be designated and counted as family and medical leave. It would, as I would read it, for some employees in the workplace, and you would then end up with a—two different standards in the workplace for employees who are covered by the FMLA and the HFA at the same time as the FMLA. I mentioned earlier about the liquidated damages provision, which, I don't know if that is an oversight or if that is deliberately left out of the bill.

And two other questions that I think are significant to the discussion of the bill: First is, what medical conditions are actually covered? And then secondly, who is covered? And the bill has a very broad application to that.

Thank you very much.

[The statement of Ms. Lipnic follows:]

Prepared Statement of Hon. Victoria A. Lipnic, on Behalf of the U.S. Chamber of Commerce; Former Assistant Secretary of Labor for Employment Standards, U.S. Department of Labor

Good morning Chairwoman Woolsey, Ranking member Price and members of the subcommittee. Thank you for inviting me to testify before the subcommittee today. My name is Victoria Lipnic. I am an attorney, and have practiced labor and employment law for nearly 16 years in many forums. I most recently served as the Assistant Secretary of Labor for Employment Standards at the U.S. Department of Labor, where I was responsible for, among other things the administration and enforcement of the Family and Medical Leave Act and the Fair Labor Standards Act. I have also served as counsel to this committee and in practice, have litigated employment cases and counseled clients on numerous employment issues.

I am appearing before you today on behalf of the U. S. Chamber of Commerce to discuss H.R. 2460, the “Healthy Families Act” (hereinafter “HFA” or “H.R. 2460.”) My testimony today is confined only to H.R. 2460 and does not address the other bill being discussed today, H.R. 2339, the “Family Income to Respond to Significant Transitions Act.” The U.S. Chamber of Commerce is the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region. My testimony today is based on my personal and professional experience; especially having most recently served as the head of one of the largest federal regulatory enforcement agencies. I know firsthand what it means to take legislative language and turn it into the very real practical rules employers and employees must live by in their workplaces every day. I have seen the consequences of those rules—both intended and unintended—and what they can mean to a workplace. I have also seen cases in which terms, believed to be perfectly well-defined and extremely well-intended by legislators and regulators, raise more questions than they answer, and result in an unsatisfactory answer to the human resource administrator, lawyer, manager, or employee or worse, in costly litigation. Let me offer a few general comments about the bill before I address specifics about some of the bill's provisions. First, it is certainly true that the Healthy Families Act has laudable goals. During the past few years when the Department of Labor revised the Family and Medical Leave Act (FMLA) regulations and created the implementing regulations for the military family leave provisions, I have read and studied the more than 20,000 comments to the public record—from employees, health care providers, employers, interest groups, and academics. The concern of everyone—employees and employers over how to deal, at the same time, with the demands of work and an employee or family member of the employee who has an illness—was palpable.

Secondly, it is also true, however, that the Healthy Families Act would impose a new federal mandate of unprecedented scope on very small business establishments. It would do so at a time of serious economic stress and severe, continued job losses. It would come with a cost in the form of reduced wages and job opportunities.¹ It would come at a time when employers are considering every option available to them, including reducing hours, shifts, benefits, contributions to retirement funds, to avoid either any or further layoffs.² And it would do so in the face of evidence that a majority of employees in the United States can access paid leave when they have an illness. A February 2009 report by economists from the U.S. Bureau

of Labor Statistics, published in the Monthly Labor Review, provides important new information and insights that are critical to the debate about whether a federal mandate to require paid sick leave is needed. In that new report, the BLS economists found that when looking at leave benefits provided by employers in combination—that is, not just paid sick leave, but including other types of paid leave (such as personal leave) for which employees can use the leave for their illness or to visit a doctor—83 percent of workers in private industry have access to illness leave.³ This is despite the fact that paid vacation leave, holidays, and sick leave are among the most expensive benefits offered to employees in private industry.⁴ To quote from that Monthly Labor Review article: Current NCS [National Compensation Survey] publications report, for example, that 61 percent of private industry workers have access to paid sick leave. But they do not report that 83 percent of workers have access to the more broadly defined illness leave. Nor do they report that only 22 percent of workers have access to comprehensive illness-leave benefits. In some contexts, paid sick leave alone does not tell the whole story. Some benefits are close substitutes, and others are complements. A complete picture of access to benefits should present not just benefits in isolation, but benefits in combination.⁵ Emphasis added.

I would respectfully suggest to the committee that it would be useful to have the Bureau of Labor Statistics provide further information about their study of the combinations of benefits and their “use-oriented” analysis as the committee considers legislation that mandates new or additional benefits. Third, the HFA is inexplicably punitive on employers who already offer paid leave benefits. The HFA removes the discretion of employers to design benefits which best meet the needs of their employees and their operations. Employers provide leave benefits as a recruiting and retention tool, as a market differentiator, as part of a total compensation/total rewards package, but have the ability to take into account how the benefits are structured. Under the HFA, employers who are already providing these benefits would be subject to a new regulatory regime, additional compliance and recordkeeping costs and litigation for alleged violations of the law. They would be subject to liquidated damages that are awarded, in an unprecedented fashion, as a matter of course, with no good faith defense and no discretion from the courts. This is for people who already provide paid leave benefits.

Finally, we know from years of experience, commentary and observation about the use of the Family and Medical Leave Act that different workplaces experience the use of leave very differently. In some workplaces it may be essential that everyone be there on time in order to start the shift or run a particular piece of machinery. The loss of one person to that shift may be critical to the start of an entire production line or transportation system. That is very different than a workplace setting where the start time of an individual or individuals is not critical to the completion of that day’s work or project.⁶ Those issues have downstream effects on other employees and services. Just as under the FMLA, the HFA makes no allowance for differences among industries or workplaces as to their operational needs. Since this is a legislative hearing, let me turn to some comments about specific provisions in the bill. I recognize that H.R. 2460 makes a number of changes as compared to prior versions of the same titled bill introduced in the 110th Congress, H.R.1542 and S. 910, not the least of which is now including coverage for victims of domestic violence. Nevertheless, there remains a number of ambiguities, inconsistencies, and problematic areas in H.R. 2460. The HFA will cover businesses even smaller than those with 15 employees and makes no differentiation between small and large businesses and their ability to deal with the business cycle.

The HFA provides that a “covered employer” is one “who employs 15 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year.”⁷ The bill also allows for the carry-over of unused accumulated leave, although an employer is not required “to permit an employee to accrue more than 56 hours of earned paid sick leave at a given time.”⁸ Given these provisions, a small business which has 15 employees one year, but due to business conditions, may have only five employees the next year, would be in a position where it had to provide potentially 56 hours of paid leave, to an employee in the year when it had as few as five employees. That would be after it laid off 10 other people. The ability of that small business to absorb those costs are far different than for an employer who has over 1,000 employees and Congress should give that great consideration as it considers this legislation. Paid sick leave under the HFA will also be designated and counted as Family and Medical Leave Act leave for some employees in the workplace. One of the foremost unanswered questions is does the paid sick leave contemplated under the HFA constitute leave under the Family and Medical Leave Act (FMLA) as well, or is it intended as an additional benefit over and above the twelve weeks of unpaid leave provided by the FMLA? And, how are the

two statutes to be reconciled? There will be different answers for different employees in the workplace. Certainly there are significant differences in coverage and eligibility between the HFA and the FMLA. The HFA applies to a much broader group of employers (50 employee threshold for coverage under the FMLA; 15 employee threshold for coverage under the HFA); a broader group of employees who can take leave (employees must meet an eligibility requirement under the FMLA of having worked for the employer for 12 months and 1250 hours; there is no eligibility requirement under the HFA), as well as a broader group of individuals for whom the employee can take leave in order to care for that individual (under the FMLA leave can be taken for a spouse, son, daughter or parent who has a serious health condition, as well as additional family members, such as “next of kin” who are blood relatives, for purposes of military family leave; under the HFA employees can take paid sick leave to care for “children, spouse, parents, and parents-in-law, and other children and adults for who they are caretakers” and/or “any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship”). Despite these differences, the HFA and the FMLA cross-over in significant ways, particularly because the bar is set fairly low for what constitutes a “serious health condition” under the FMLA.

For example, assume you are an employee who takes leave under the HFA for “an absence resulting from a physical or mental illness, injury or medical condition” of the employee.⁹ Such an absence would easily meet the standard for an FMLA-eligible employee who has a certified chronic health condition and is absent from work due to his or her medical condition.¹⁰ In such a case, the paid sick leave would be counted as FMLA leave. The same would apply for the employee who is sick for more than three days and visits a health care provider and receives a prescription for treatment.¹¹ This would also be counted as FMLA leave. In both of these cases there will be two different standards in the workplace for individuals covered and eligible under both the FMLA and those only covered under the HFA creating additional inequities and compliance quagmires for employers and employees. Intermittent leave and the time increment by which paid sick leave is used—what is it? The use of intermittent leave, particularly unscheduled intermittent leave has long been documented as one of the most significant unintended consequences of the FMLA and continues to be one of the most vexing issues under the FMLA. Employers have long advocated for a change to the time increment in the use of intermittent FMLA leave which they have found to be both administratively burdensome and, in many cases depending on the industry, wreaking havoc on their operational needs.¹² The revised FMLA regulations restated the “one hour is dispositive” rule and eliminated confusing and conflicting references to the employer’s payroll systems and record-keeping systems, but the time increment is still determined by “an increment no greater than the shortest period of time that the employer uses to account for use of other forms of leave provided that it is not greater than one hour and provided further that an employee’s leave entitlement may not be reduced by more than the amount of leave actually taken.”¹³

The HFA does not address the time increment directly. (Previous versions of the bill did address it directly although they imported the same problems as under the FMLA.) For example, in Section 4—“Definitions” of the bill at paragraph (7) “Paid Sick Time”—is defined as “an increment of compensated leave that can be earned by an employee for use during an absence from employment for any of the reasons described * * *”. Compare that to Section 5—“Provision of Paid Sick Time” of the bill at paragraph (a) “Accrual of Paid Sick Time” (1) An employer shall permit each employee employed by the employer to earn not less than 1 hour of paid sick time for every 30 hours worked * * *” Read together, presumably that means that one hour is the minimum “increment” by which an employee can take leave, since that is the increment at which he or she is earning it. But, what if an employer allows an employee to earn leave in an increment smaller than one hour? What if it is in six minute increments? Must he allow the use of paid sick leave in that same amount? If left to the regulators would they follow the “shortest period of time” rule from the FMLA regulations? If that is the case you would then again be importing one of the most problematic areas from the FMLA. Congress should consider the allowing employers to set the time increment for use according to their operational needs even if that is above one hour. At the very least, the HFA should make clear, that one hour is minimum time increment by which the leave is both earned and used. What medical conditions are covered?

The HFA provides extraordinarily broad and not entirely consistent definitions for the medical conditions that are covered. In Section 2 of the “Findings” at paragraph (2) the bill refers to: “* * * medical treatment and recovery in response to short and long-term illnesses and injuries.” In contrast, Section 3 of the “Purposes” at paragraph (5)(A) refers to paid sick time being made available for “eligible medical rea-

sons.” “Eligible medical reasons” is not defined anywhere in the bill. Finally, Section 5 of the bill “Provision of Paid Sick Time” at paragraph (b) “Uses” provides that paid sick time earned under this section may be used by an employee for any of the following: (1) an absence resulting from a physical or mental illness, injury, or medical condition of the employee; (2) an absence resulting from obtaining professional medical diagnosis or care, or preventive medical care, for the employee.” Presumably, everything is covered. Does that include if the doctor says “take a day off?” Who exactly is covered? The Healthy Families Act provides coverage for employees and individuals to use paid sick leave for a seeming limitless group of family and friends. Individuals can use leave for “an absence for the purpose of caring for a child, parent, a spouse, or any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.”¹⁴ Who will decide what the “equivalent of a family relationship” is?

Employers can use their existing leave policies—sort of. Unlike previous versions of the HFA, H.R. 2460 recognizes that employers may have existing paid leave policies or paid time off banks (rather than designated sick leave) and allows employers to essentially substitute their existing paid leave policy for the requirements of this bill.¹⁵ This is an improvement over previous versions of the bill which did not take into account existing employer policies and, on its face, seems like it offers greater flexibility to employers. But, employers must provide the same amount of leave as provided under the HFA and allow for its use under exactly the same terms and conditions as outlined in the bill. When combined with the certification requirements and restrictions on those certifications provided by the HFA, which may include disregarding employer procedural requirements for requesting leave and employer call-in procedures (that is unclear under the bill), along with the fact that the legislation seems to prohibit the use of “any absence control policy” in relation to the use of this leave, it seems there is little regard given to employers’ existing leave policies. H.R. 2460 is especially punitive in awarding liquidated damages. Section 7(B)(1)(III) in its discussion of liability and damages provides that an employee or other individual can recover “an additional amount as liquidated damages.” The liability/damages provisions in Sec. 7 in the bill for the most part track with the damages provisions of the FMLA. But, the HFA inexplicably eliminates the good faith defense of employers and the discretion of the court in awarding liquidated damages.¹⁶ Instead, the HFA applies liquidated damages as a matter of course without question or review. Job applicants can sue even though they will not have “earned” the benefit of the bill. The HFA emphasizes that “any individual” including “job applicants” cannot be subject to any retaliation for exercising, or attempting to exercise any right provide under the Act.” Therefore, job applicants could bring suit under this legislation even though the benefits under this act are based on the accrual and earning of leave.¹⁷ While there is no eligibility requirement before an employee can use leave under the Act, as there is with the FMLA, damages would be available to job applicants under the bill even though they would not yet have accrued or earned any leave. Presumably, an example of this would be where a job applicant asks during an interview, “I have a son who has asthma. I have to take him to the doctor every Friday morning for a treatment for about an hour. Will that be a problem?” Theoretically, an employer could discriminate against that applicant by not hiring him or her, because of the need to take leave on a weekly basis. This would be an extraordinarily difficult case to prove. This raises the question as to what is the value of creating such a federal cause of action given the potential recovery for that applicant and the commensurate litigation costs for the employer? I would be remiss not to also note that one additional provision that should be considered should the Committee decide to proceed in moving this legislation. This provision would strengthen the ability of small businesses to recoup attorneys’ fees and expenses when they successfully defend themselves from meritless charges by the government. Unfortunately, questionable claims are made all too frequently and the Equal Access to Justice Act has not been effective at discouraging such claims by the government. The least that can be done is to pay the costs of small businesses that successfully defend themselves from unmeritorious claims.

Conclusion

Madame Chairwoman and members of the Committee, these are just some of the concerns of the U.S. Chamber of Commerce about H.R. 2460, the Healthy Families Act. Above all, the Chamber is particularly concerned about moving forward with such legislation at a time of severe economic distress when businesses are doing everything they can to preserve jobs. We look forward to working with you as the Committee gives further consideration to this legislation. I’d be happy to answer any questions you may have.

ENDNOTES

¹There is a consensus among economists that the costs of employer mandates are passed on to workers in the form of lower wages and reduced job opportunities. See Katherine Baicker and Helen Levy, *Employer Health Insurance Mandates and the Risk of Unemployment*, National Bureau of Economic Research, Working Paper 13528, October 2007; and other citations in that research. See also Linda Levine, *Leave Benefits in the United States*, CRS Report for Congress, June 5, 2009, 19: "If Congress were to pass [the HFA] * * * one would expect the compensation costs of employees to increase * * * Because employees generally are no more valuable (i.e. productive) to businesses after imposition of a benefit * * * they have no economically sound reason to raise their workforce's overall total compensation as a result * * * Economists therefore theorize that firms will try to finance the added benefit cost by reducing or slowing the growth of other components of compensation."

²See, Raymund Flandez, *Small Businesses Work Hard to Prevent Layoffs*, *The Wall Street Journal*, March 13, 2009.

³See, Iris S. Diaz and Richard Wallick, "Leisure and illness leave: estimating benefits in combination," *Monthly Labor Review*, February 2009, p. 30, "The unduplicated total of paid vacation, paid sick leave, paid family leave, and paid personal leave is 83 percent. Therefore, 83 percent of workers in private industry have access to illness leave." The full article can be found at www.bls.gov/opus/mlr/2009/02/art3full.pdf.

⁴Id.

⁵Id. at p. 33.

⁶See, "Specific Industries Report Difficulties With Unscheduled FMLA Leave," *Family and Medical Leave Act Regulations: A Report on the Department of Labor's Request for Information*, 72 Fed Reg 35550, 35632—35638, citing to report from Criterion Economics: "A regulation that reduces labor productivity for example, will have a larger impact on economic welfare in industries where production requires 'fixed proportions' of capital and labor (e.g. air transport, which requires at least one pilot and one co-pilot per airplane) than in industries where capital can easily be substituted for labor * * * Further, in some industries, employee absenteeism will have a relatively small effect on firms' overall ability to operate, and therefore entail a relatively modest financial impact. In other sectors, absenteeism hinders production substantially by, for example, diminishing the productivity of other workers and equipment."

⁷Healthy Families Act, H.R. 2460, 11th Cong. § 4(4)(B).

⁸Id. at § 5(a)(3).

⁹See H.R. 2460 § 5 (b)(1).

¹⁰See 29 C.F.R. §§ 825.115(c) and (f).

¹¹See 29 C.F.R. §825.115(a)(2).

¹²See *Family and Medical Leave Act Regulations: A Report on the Department of Labor's Request for Information*, 72 Fed Reg 35550, 35553: "* * * it is precisely the use of unscheduled (or unforeseeable) intermittent leave for chronic conditions that presents the most serious difficulties for many employers in terms of scheduling, attendance, productivity, morale, and other concerns. With respect to employer comments, no other FMLA issue even comes close."

¹³See 29 C.F.R. §825.205(a).

¹⁴See H.R. 2460 § 5(b)(3).

¹⁵See Id. at § 5(a)(5) and § 5(d)(2).

¹⁶The FMLA at Sec. 107 (a)(1)(A)(iii) provides for damages equal to: "an additional amount as liquidated damages equal to the sum of the amount described in clause (i) and the interest described in clause (ii), except that if an employer who has violated section 105 proves to the satisfaction of the court that the act or omission which violated section 105 was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of section 105, such court may, in the discretion of the court, reduce the amount of the liability to the amount and interest determined under clauses (i) and (ii) respectively; and * * *¹⁷ (Emphasis added).

¹⁷See H.R. 2460 §7(a) and (b).

Chairwoman WOOLSEY. Thank you.
Ms. Poole?

STATEMENT OF SANDRA POOLE, DEPUTY DIRECTOR, DISABILITY INSURANCE BRANCH, CALIFORNIA EMPLOYMENT DEVELOPMENT DEPARTMENT

Ms. POOLE. Thank you, Chairwoman Woolsey, Ranking Member Price, and the distinguished members of this subcommittee, for the invitation to speak with you today regarding California's Paid Family Leave program. My name is Sandra Poole, and I am the deputy director of the Employment Development Department State Disability Insurance program.

Approximately 13 million California workers are covered by the State Disability Insurance program. There are two components of

the program. One is disability insurance, and the second component is the Paid Family Leave program.

The State Disability Insurance program is worker-funded and is an economic safety net for eligible workers. The Disability Insurance program provides benefits to workers who are unable to work due to non-work-related illness, injury, or pregnancy and has been provided in California since 1946.

In 2002, legislation extended disability compensation to individuals who take time off of work to care for a seriously ill child, spouse, parent, domestic partner, or to bond with a new minor child. Employee contributions for this program, known as Paid Family Leave, began in January 2004, and the department began paying benefits in July of 2004.

Since July 2004, approximately 740,000 California taxpayers have received benefits from the Paid Family Leave program. Initially, some employers expressed concern that the program would be rife with fraud, employees would file claims when they weren't actually providing care or bonding, and employees would use the program as an excuse to be away from work, leaving the employer understaffed. To address this concern, the department implemented several fraud deterrence and detected activities, and to date only a couple of claims have been referred for investigation of suspected fraudulent activity.

Paid Family Leave customers overwhelmingly support the program, and in a recent survey, 81 percent expressed satisfaction with the entire claim filing process. While I can certainly provide you with statistics and data related to Paid Family Leave, I believe the benefit of the program to our customers is best expressed in their own words.

Let me share just a portion of one story which portrays an example of a real life experience of one of our customers. I will call her Mrs. V to protect her privacy.

As her mother, Barbara, was dying, Mrs. V was at her side. She would say to me, "Don't you have to go to work?" Mrs. V recalled, and would say, "It is okay, Mom. I can stay here with you."

"She didn't understand about Paid Family Leave, but that is why I could do all that I could for her," Mrs. V says. Mrs. V was on Paid Family Leave for the last weeks of her mother's life. She says that, "It was really comforting for her just to hear my voice. She was at peace and she was never alone."

Being able to be with her mother during those last days, in her words, "helped me to accept her death. I was truly blessed. I know that I did the best that I could, and I have no regrets."

While the Paid Family Leave program in California is working well, the federal assistance provided by H.R. 2339 would help California in several ways. First, funds are available for outreach and education. In California, advocacy groups interested in work and family issues continue to meet with our department regarding a concern that workers are not aware of the program and thus not utilizing the program.

In addition, the FIRST Act—under the FIRST Act, funds can also be used for administrative costs as well. Because California was the first in the nation to implement a paid family leave program, there was no data to rely upon for anticipating claim volumes.

Also, there was insufficient time to fully develop the automation system to capture demographic data that researchers often request.

Despite the barriers that California's program has faced, it is a very successful program that helps workers balance work and family. I hope other states will follow California's lead, and the grants provided under the FIRST Act will be of invaluable assistance to them as they implement their programs. Thank you.

[The statement of Ms. Poole follows:]

Prepared Statement of Sandra O. Poole, MPA, Deputy Director, Disability Insurance Branch, California Employment Development Department

Thank you, Chairwoman Woolsey, Ranking Member Price and Members of the Subcommittee for the invitation to speak to you today regarding California's Paid Family Leave program.

My name is Sandra O. Poole and I am the Deputy Director of the Employment Development Department's (EDD) State Disability Insurance program. Approximately 13 million California workers are covered by the SDI program. There are two components of the SDI program in California: 1) Disability Insurance; and 2) Paid Family Leave program. California is one of five states (California, Rhode Island, New Jersey, New York, Hawaii, plus the Commonwealth of Puerto Rico) that currently provide disability insurance for their workforce. As a worker-funded program, the State Disability Insurance program contributes to the economic security of California by providing affordable benefits to eligible workers. The Disability Insurance program provides benefits to workers who are unable to work due to non work-related illness, injury, or pregnancy and has been provided in California since 1946.

July 2009 will mark the 5th Anniversary of California paying benefits under the Paid Family Leave program. In 2002, legislation extended disability compensation to individuals who take time off work to care for a seriously ill child, spouse, parent, domestic partner, or to bond with a new minor child. Employee contributions (withholdings) for this program, known as Paid Family Leave (PFL) began January 1, 2004, and the department began processing PFL claims on July 1, 2004. Since July 2004, approximately 740,000 California taxpayers have received benefits from PFL. The average weekly benefit amount paid in 2008 was \$464.00. During this same period over 4 billion dollars in benefits were paid to claimants. Approximately 87% of these claims were for bonding with a minor child and 13% were to provide care for an injured or ill relative.

Business concerns expressed at the time of enactment have not been realized. The small business community voiced concerns that the PFL program would encourage employees to take off work and they could not afford to do business if a worker was absent from work. The EDD has not received any information that these predictions did in fact occur. In addition, employers expressed concern the program would be rife with fraud; employees would file claims when they weren't actually providing care or bonding and employees would use the program as an excuse to be away from work leaving the employer understaffed. To address this concern, the department implemented several fraud deterrence and detection activities, and to date, only a couple of claims have been referred to EDD Investigations Division to investigate suspected fraudulent activity in the PFL program.

PFL customers overwhelmingly support the program, and in a recent survey 81% expressed satisfaction with the entire Paid Family Leave claim filing process. While I can certainly provide you with more statistics and data related to the claimants served, benefits paid, administrative costs etc, I believe that the benefit of the PFL program to our customers is best expressed in their own words. Let me share just one story which portrays an example of a real life experience of one of our customers a year after the PFL program began. I will call her Mrs. V to protect her privacy.

As her mother, Barbara was dying; Mrs. V was at her side:

"She would say to me, 'Don't you have to go to work?' Mrs. V recalls, "and I'd say, It's OK, Mom, I can stay here with you."

"She didn't understand about Paid Family Leave, but that's why I could do all that I could for her." Mrs. V. says. "It was stress free. I didn't have to worry about how we could pay for it."

Last July Barbara's health began to fail quickly. "One day she was walking fine. The next day she would need a cane, then a walker. She had a tumor and it was spreading rapidly."

The Paid Family Leave program began providing benefits in July 2004 but Mrs. V had not heard of the new program. Then her father gave her a newspaper article

about it. Mrs. V. an employee of a Bank in California called the Employment Development Department and applied for Paid Family Leave.

She was on Paid Family Leave for three and a half weeks, the last weeks of her mother's life. Barbara was receiving hospice care in her home, but her daughter knew she needed more than medical attention. "I was there as early as 8 in the morning and I'd leave at 8 in the evening when she was going to sleep. "Mrs. V. says. "It was really comforting for her just to hear my voice. She was at peace. She was never alone."

Being able to be with her mother during those last days "helped me to accept her death. I was truly blessed. I know that I did the best I could. I have no regrets."

While the PFL program is working well, the Federal assistance provided by the HR 2339, the FIRST Act would help California in a myriad of ways. First, funds are available under HR 2339 for outreach and education. In California, advocacy groups interested in work and family issues began ongoing dialogue with legislators and the EDD prior to the inception of the program (2002) and continue to meet with the EDD regarding a concern that workers are not aware of the program and thus not utilizing the program. A one-time marketing campaign was conducted in 2004 to educate the public about the launch of the worker-funded PFL program July 2004. Subsequent studies have indicated that many employees are still unaware of the PFL program and benefits it provides.

In addition, under HR 2339, funds can be also used for administrative costs as well. Because California was the first in the nation to implement a Paid Family Leave program, there was no data to rely on for anticipating claim volumes. Also, because there was insufficient time to fully develop the automation system, reporting functionality was never tested. The current claim form and automation system do not capture demographic information such as nature of employment (industry) or current income information.

Despite the barriers California's PFL program has faced, it is a very successful program that helps workers balance work and family. I hope other states follow California's lead, and the grants provided under the FIRST Act will be of invaluable assistance to them as they implement their programs.

Thank you and I would be happy to answer any questions you may have.

Chairwoman WOOLSEY. Mr. Bhatia?

STATEMENT OF DR. RAJIV BHATIA, DIRECTOR, OCCUPATIONAL AND ENVIRONMENTAL HEALTH, SAN FRANCISCO DEPARTMENT OF PUBLIC HEALTH

Dr. BHATIA. Thank you.

Thank you, Chairwoman Woolsey, Ranking Member Price, and members of the committee for asking me to testify today. I really appreciate the committee's interest in the public health issues of the Healthy Families Act.

I have been involved in conducting research on the health impacts of paid sick days since 2006 and have coauthored two comprehensive health impact assessments of the paid sick days legislation. Almost all of the data and evidence I have reviewed is consistent with the premise that a requirement for paid sick days would protect the health of all Americans.

I want to articulate a few facts with this regard to the committee's interest. First, I think it is important to note that workers with paid sick days are actually more likely to take time off work when they are ill. We know—and a number of studies have demonstrated this—we know that the average number of days missed from work for those with paid sick days is higher than those without paid sick days. I think it is important to note that this is—the factor here is workers with paid sick days policies, not paid time off policies or other types of policies.

A second important point is that these workers are not taking time off sick not because they are not sicker. The workers without

paid sick days are actually sicker and have more dependent and medical needs.

Workers without paid sick days are more likely to have a child with asthma, for example. Workers without paid sick days are also more likely to have a lack of health insurance. Low-income workers without paid sick days have vulnerability to environmental exposures and a whole set of other conditions.

The second point is one that is being raised—has been raised previously, is that effective strategies for influenza prevention require compliance with recommendations that keep workers and students home from sick, and paid sick days legislation would enable this compliance. As we know, about 5 to 20 percent of the population gets influenza every year, and about 36,000 people die. This is from seasonal influenza, not a pandemic.

In a pandemic, the number of people suffering could reach 70 percent of the population, and the number of sick individuals could reach 100 million. As we have noted, 37 percent of the transmission of influenza occurs in community settings such as schools and workplaces, and 33 percent in additional community settings.

We have modeled influenza spread and strategy—and the effectiveness of strategies for prevention. We know that these strategies to keep people home from places they can communicate the disease can reduce influenza spread by 15 to 34 percent, depending on the studies.

Every one of those studies models a certain degree of compliance. It assumes that people actually will follow these rules. We don't have the enabling structures in our society to have people follow the rules, and that is why I think this bill is so important.

This issue is important for communicable diseases other than influenza, the one, I think, that everyone has been paying attention to recently. I think it is even more striking in the situation of food-borne illnesses.

We have about 76 million food-borne illnesses every year, resulting in 325,000 hospitalizations every year. More than half of food-borne disease outbreaks, where you have two or more infections from a common food source, occur in restaurants.

Food safety codes tell employers they have to exclude sick workers from workplaces when they are sick. However, we know this is not happening today.

We, as public health, rely on voluntary compliance with these exclusion policies, yet the data from the CDC will tell us that up to 14 percent of food-borne outbreaks are associated with a food worker who is sick and working. One study that looked at outbreaks involving food workers found that almost all of them were ill at the time of the outbreak.

Each one of these outbreaks can be quite significant. In 2006, a restaurant worker without paid sick days infected over 350 customers with norovirus at a restaurant in Lansing, Michigan.

The fourth point I want to make is that workers with paid sick days are more likely to take care of their children and dependents and ensure their regular contact with medical providers. For dependents, including children and elders, having access to an adult is more than a convenience; it can be a matter of life and death.

Children left at home may be unable to see physicians for diagnosis. Children need to receive medicines or emergency help if their conditions worsen.

The presence of parents at home can reduce hospital stays by 31 percent. Parents who have sick days are five times more likely to take care of their children. We know that families without paid sick days are more likely to experience delayed care for their children.

In San Francisco, we adopted paid sick days in 2007. We are at the early phases of implementation. However, I think it is pretty clear from—I regulate 6,000 food businesses—we have not had an outburst or issues from our businesses. Most of the businesses in San Francisco seem to be implementing this law without problem. Anecdotal evidence from business leaders suggests the same.

I am going to conclude. I think a fundamental purpose of government is to ensure the day to day living conditions are healthy. We need to remember that laws like labor laws are fundamentally public health laws. These were the laws that improved our life expectancy in the 20th century, and labor laws like paid sick days are still public health laws today.

The U.S. spends over \$6,000 per person per year on health care costs, yet we are last in the world among our peers in life expectancy. Something is amiss. Most of the other countries that have good life expectancies have safety net policies like sick days that take care of people and prevent illness before they are sick. I think it is time for us to join that crowd.

Thank you.

[The statement of Dr. Bhatia follows:]

Prepared Statement of Rajiv Bhatia, M.D., MPH, Director, Occupational and Environmental Health, San Francisco Department of Public Health

I am Rajiv Bhatia, and I currently serve as the Director of Occupational and Environmental Health for the San Francisco Department of Public Health. I earned a Medical Doctorate from Stanford University and a Masters Degree in Public Health from the University of California at Berkeley, and I have practiced medicine and environmental health since 1992. I am an Assistant Clinical Professor of Medicine at the University of California at San Francisco, and I teach a graduate course in health impact assessment of public policy at the University of California at Berkeley. I also serve as the scientific director for the non-profit group Human Impact Partners.

I deeply appreciate the committee's interest in the public health impacts of the Health Families Act. I have been involved in conducting research on the health impacts of paid sick day policies since 2006 and have co-authored comprehensive health impact assessments of the paid sick day legislation currently being considered in the California legislature as well as the legislation currently being considered today by the House of Representative (Bhatia 2008; HIP 2009). In conducting research for these health impact assessments, I and others have critically reviewed available published health research literature on paid sick days, analyzed data from State and National health surveys, reviewed disease statistics for communicable diseases and food borne disease outbreaks, conducted focus groups and surveys with workers, and interviewed and surveyed public health officials responsible for communicable disease control. I have also been involved in the implementation of San Francisco's Paid Sick Days Law through outreach and training to San Francisco businesses. I have provided evidence and analysis on the health impacts of paid sick day legislation to stakeholder groups, and I have testified previously on paid sick day legislation both at local and state hearings and on a prior version of the bill in the US Senate.

Almost all available data and evidence I have reviewed is consistent with the premise that a requirement for paid sick days would protect the health of all Americans. The evidence provides substantial support for the following six conclusions:

- Workers that have greater need for sick leave, such as those with families, are less likely to have paid sick days.
- Workers with paid sick days are more likely to take time off work when they become ill.
- A substantial burden of food borne disease outbreaks are connected to food service workers working with a communicable illness despite laws that should exclude sick workers from work.
- Effective strategies for influenza prevention require compliance with recommendations that keep workers and students at home when sick; paid sick day legislation would enable compliance with these strategies.
- Workers with paid sick day are more likely to care for their sick children and ensure their regular contact with medical providers.
- Workers with paid sick days are more likely to access timely medical care.

Access to paid sick days in relation to need

Almost 60 million workers—48% of the workforce—in the country currently do not have the ability to earn and use paid sick days when ill or when a family member needs care (Lovell 2006). Moreover, the availability of paid sick days varies among subpopulations with less availability of paid sick day benefits among those populations with a greater need for medical and dependent care.

Over 70% of workers in the highest income quartile receive paid sick days compared to about 20% of those in the lowest income quartile (Hartmann 2007). Disparities in access to paid sick days by income are important because lower income confers greater vulnerability to illness and disease, both through the experience of absolute and relative poverty and through exposure to adverse neighborhood and workplace conditions.

Disparities in access to paid sick days also correlate with disparities in access to health insurance. Based on data from the 2007 National Health Interview Survey (NHIS), those who had paid sick days were more likely to have health insurance coverage, compared to those without paid sick days (95.3% vs. 68.0%) (HIP 2009).

Furthermore, those who have access to paid sick day also have better health status. Analysis of 2007 NHIS data revealed that a higher proportion of working adults who rated their health as excellent, very good, or good had paid sick days compared to those who viewed their health as fair or poor (61.2% vs. 48.3%) (HIP 2009).

Mothers with children with relatively poor health are also less likely to have access to paid sick days. Heymann and others (1996) found that 40% of mothers whose children had asthma and 36% of mothers whose children had chronic conditions lacked sick leave during a five-year period. Similarly, Heymann and Earl (1999) found that mothers of children with chronic conditions are more likely to lack sick leave. Clemens—Cope (2007) found that, among children in low-income working families, 30% of children in fair/poor health lived in families that had access to paid sick leave for the entire year compared to 37% of children in good, very good or excellent health.

Sick Leave among workers with and without paid sick days

A number of studies have demonstrated that workers without paid sick days are less likely to take sick leave when ill. One recent survey of U.S. workers found that among employed adults aged 19-64, 42% without paid sick days did not miss work because of illness in contrast to 28% of workers with paid sick day benefits. The relationship was even stronger after adjusting for chronic health problems, disabilities, age and wages; employed adults without paid sick days were only half as likely to take time off for illness (Davis 2005).

In our analysis of the 2007 NHIS data, among workers who missed no more than nine work days due to sickness (i.e., those who did not have a prolonged illness), the average number of missed work days in the past 12 months was higher for workers with paid sick days than for those without (1.39 days per year vs. 0.92 days per year) (HIP 2009). Others have found a similar difference for California workers using data from the 2006 NHIS (1.8 days per year, versus 1.4 days per year) (Lovell 2008). These findings suggest that substantial numbers of ill workers without paid sick days are going to work when sick. In fact, in one survey on paid sick days, the majority (64%) of respondents reported having gone to work sick at least once because of a lack of sufficient paid sick days (Bhatia 2008).

Workers who take sick time off without the benefit of a paid sick leave policy may face real and perceived consequences of their choices, such as being reprimanded, the loss of wages, good shifts, or even a job. Surveys and focus groups with workers without paid sick days also have identified factors that may discourage workers from taking sick leave. For example, in one focus group, a participant described going to work with the flu and being feverish while at work (HIP 2009). While her

employer recognized her illness, she was not instructed to go home. According to a recent poll (Smith 2008), one in six workers reported that they or a family member had been fired, suspended, punished, or threatened by an employer due to needing time off for illness. Collectively, these factors suggest that paid sick day policies could support a workplace culture that is more likely to accept and accommodate employee absence for illness.

Working when sick and the spread of communicable disease

Many common infectious diseases are transmitted in workplaces, schools, and other public institutions through simple casual contact. These diseases include influenza, food borne diseases such as salmonella and norvirus, and the common cold. For these common infections, keeping a sick worker out of their workplace and sick children out of school will help stop infections from spreading.

Influenza

Each year in the United States, 5% to 20% of the population gets the flu; more than 200,000 people are hospitalized from flu complications; and, about 36,000 people die from flu (CDC 2008). Transmission of influenza occurs through the generation of aerosol droplets by infectious individuals and through contact with infectious individuals. An estimated 30% of influenza transmission occurs in homes, 37% in schools and workplaces, and 33% in other community settings (Ferguson 2006).

Substantial attention and public health planning is focused on the prevention of worldwide pandemics due to a novel strain of influenza. Research has shown that the emergence of a highly infectious novel influenza strain as a pandemic could result in 68% of the population being affected and 34% suffering a clinical infection, potentially translating into 100 million sick individuals in the United States (Ferguson 2006). According to researchers who have studied prevention strategies to limit transmission of influenza, a combination of effective strategies including pharmacological strategies (e.g., vaccines, prophylaxis) and non-pharmacological strategies (e.g., quarantine, isolation, school closure) are necessary to effectively control an influenza pandemic (Halloran 2008).

Strategies to minimize social contacts between people can be highly effective in controlling the spread of influenza but require people to take leave from work when they or their family members are potentially infectious (USDHHS 20007). Pandemic infectious disease modeling studies are consistent in predicting a reduction in the cumulative incidence of clinical infections with modest measures to reduce contacts among individuals, but estimates vary between models and scenarios (Halloran 2008). Glass (2006) estimated that from a moderately infectious pandemic strain requiring that all sick persons stay at home when symptomatic could result in a 22% reduction of the cumulative attack rate in a hypothetical U.S. small town. Ferguson (2006) estimated that 50% compliance with policy of household quarantine would result in a 15% reduction in the cumulative attack rate for infected individuals and household members with a somewhat more infectious strain of influenza in the United States.

The U.S. Centers for Disease Control and Prevention explicitly advises people with influenza: “stay home from work and school when you are sick” (CDC 2008). The modeling studies, combined with understanding that having paid sick days enables taking leave from work, provide a strong rationale for access to paid sick day as a strategy both for community prevention of seasonal influenza and for the management of an influenza pandemic. Legislation requiring universal paid sick day policies would enable and increase compliance with both voluntary and mandatory social distancing strategies, including the home isolation of sick individuals and related household members and school closure

Foodborne Disease Outbreaks

Some workplaces are priority sites for prevention of communicable disease transmission because workers have direct and regular contact with the public. Restaurants and other places where workers prepare food consumed by the public are particularly important because of their role in the transmission of food borne diseases.

Foodborne diseases cause approximately 76 million illnesses, 325,000 hospitalizations, and 5,000 deaths in the United States each year (Mead 1999). Outbreaks refer to two more cases of a food borne illness linked to a common food source. More than half of all U.S.-reported foodborne illness outbreaks are associated with restaurants (Jones 2006).

Food safety codes typically require the exclusion of a food service worker from a restaurant if the employee is diagnosed with an infectious agent, symptomatic, and still considered infectious. Public health officials rely on workers to recognize the illness and their employers to self-enforce requirements that protect the public. In re-

ality, expecting voluntary compliance is not realistic. A worker may recognize a symptom but may not associate it with a food borne illness requiring work exclusion. Also, food worker may not want to take unpaid time to obtain a diagnosis or may defer care until the symptom worsens, potentially infecting co-workers and patrons in the meantime. Paid sick days along with clear workplace policies for their use could enable appropriate leave for food service workers; however, 85% of workers in the food service industry do not have access to paid sick days (Lovell 2008).

Unfortunately, in the current workplace environment, sick food service workers are commonly the source of restaurant food borne disease outbreaks. Guzewich and Ross (1999) reviewed published scientific literature for reports of food borne disease believed to have resulted from contamination of food by workers, finding 81 published outbreaks involving 14,712 infected persons. Eighty-nine percent (n=72) of the outbreaks occurred at food service establishments, such as restaurants, cafeterias and catered functions. Hepatitis A and Norwalk-like viruses accounted for 60% (n=49) of outbreaks. Ninety-three percent of these outbreaks involved food workers who were ill either prior to or at the time of the outbreak.

According to data from Centers for Disease Control's Electronic Foodborne Outbreak Disease Report System (eFORS), there were 5754 foodborne disease outbreaks between 2003 and 2007 nationally, with 121,948 related cases of illness (HIP 2009). The majority of these outbreaks (71%) and cases (61%) occurred in institutional and workplace settings including schools, day care settings, restaurants or delis, workplace cafeterias, grocery stores, hospitals, and jails. In these settings, workers with a communicable disease have a significant potential to contribute to a communicable disease outbreak if they work when ill. Of the 4,079 outbreaks occurring in the specific settings listed above, for 14% of outbreaks (n=586) and 24% of cases (n=18,030), food handling by an infected person or carrier of a pathogen was identified as a contributing cause.

A survey of local health officers in California that I conducted this year also provides similar findings on significance of ill food service workers as a cause of disease outbreaks. For example, in San Francisco and Los Angeles counties, about 11-12% of outbreaks involve an ill food service worker working.

The public health impact of a single disease outbreak with food borne disease can be significant. For example, in 2006, a restaurant-worker without paid sick day benefits infected over 350 customers (MMWR 2007) with norovirus at a restaurant in Lansing, Michigan. In 2007 in Santa Cruz, a dishwasher working at a hotel was implicated as the likely source of a norovirus outbreak affecting 134 people through a resort hotel.

Outbreaks in Health Care Facilities

Nursing homes are another important setting for infectious disease outbreaks and outbreaks may be traced back to both residents and staff. For example, according to the CDC, 23% of all norovirus outbreaks occur in nursing homes (CDC 2006). In one year in California, nursing home outbreaks accounted for 6,500 patient illnesses, 120 hospitalizations, and 29 deaths (CDPH 2008). The vast majority of patients will recover from norovirus illness within a few days, but an estimated 10% experience more serious symptoms, including acute dehydration that ultimately requires hospitalization (Calderon-Margalit 2005).

Paid sick days may play an important role in nursing home-based disease outbreaks. About a quarter of nursing home workers nationally do not have paid sick day benefits. These workers may be more likely to come to work sick, thus putting patients and co-workers at risk of contracting illness. While this question has received only limited attention, one study of New York State nursing homes conducted in 1993 found that risk of respiratory and gastrointestinal infectious disease outbreaks was significantly less for nursing homes with paid sick leave policies (Li 1996).

Parental Care and Health Care in Dependents

Employed workers in households with children are among those with the greatest need for paid sick days due to responsibilities for the care of children. Furthermore, the American Academy of Pediatrics recommends excluding sick children from schools and childcare settings for a number of specific conditions and symptoms (Copeland 2006). In 2006, 70% of mothers with children under 18 were in the workforce (BLS 2006).

Unfortunately, care for sick children competes for the time and labor of parents and other caregivers. When a child is not well, parents might reasonably view staying home to care for a child as jeopardizing their ability to earn income to pay for essential health services, food, or housing.

For dependents, including children and elders, having access to an adult caregiver can be a matter of life and death. Children left home alone may be unable to see physicians for diagnoses, receive needed medications, or emergency help if their conditions worsen. The presence of parents has also been found to shorten children's hospital stays by 31% (Taylor and O'Connor 1989). Even when adults receive support from family members when sick, they recover faster and more fully from conditions such as heart attacks and strokes (Gorkin et al 1993; Tsouna-Hadjis et al 2000).

Clemens-Cope and others (2007) analyzed determinants of taking sick leave among the families of a sample of 10,790 children in low-income families using data from the Medical Expenditure Panel Survey. Only 36% of the children in working families had access to paid sick days for the entire year. Employees with paid sick days were much more likely to miss work to care for family members (44% vs. 26%).

Heymann and colleagues (1999b) analyzed data in the Baltimore Parenthood Study to assess what factors affected parents' decisions to care for sick children. The study found that parents who had either paid sick or vacation leave were 5.2 times as likely to care for their children when they were sick. In this study, half of the parents who cared for their own sick children reported that paid leave enabled them to miss work. Similarly, in recent study of Chicago and Los Angeles parents with children who have special care needs, Chung and colleagues (2007) found that parents with paid leave benefits had 2.8 times greater odds than other parents of taking time off work for their child.

In another study evaluating the relationship between maternal employment conditions and children's medical visits, Pimoff and Hamilton (1995) found that working mothers had fewer sick child visits than non-working mothers. However, mothers who could use sick leave for doctor visits had 27% more sick-child visits than those without this benefit.

Our analysis of 2007 NHIS data also suggest that the lack of paid sick days may be a factor in delayed medical care for family members (HIP 2009). Based on NHIS, 17.2% of working adults were likely to have at least one family member whose medical care was delayed or who was not able to get needed medical care. A higher proportion of working adults who did not have paid sick days were likely to have family members who had delayed medical care or who had not received care they needed compared to those with paid sick days (23.7% vs. 12.9%). Notably, among those health insurance, those with paid sick days also experienced less delayed care (15.8% vs. 11.2%).

Timely health care in working adults

Timely primary care provides opportunities for disease prevention as well as early detection and management of health problems (IOM 1996). Timely primary care can potentially prevent the need for the unnecessary use of emergency rooms, hospitalization, complications, or more severe disease (AHQR 2004). For example, patients may be hospitalized or seek acute hospital care for avoidable reasons including misdiagnosis or a failure to detect the condition, inappropriate management including the lack of patient adherence to treatment recommendations, or failure by the patient to interpret symptoms as important (AHRQ 2004).

Timely ambulatory care is dependent on a number of factors including income and health insurance (Billings 1996; Newacheck 1998). Little research has explored the relationship between access to paid sick days specifically and primary care utilization. Based on 2007 NHIS data, we found that those with paid sick days were about 15% more likely to have a medical visit controlling for other potential predictors of medical visits (HIP 2009). The 2007 NHIS data also reveals that those who had paid sick days may be likely to visit an emergency room (ER) in the past year than those who did not have paid sick days (15.7% vs. 17.7%) particularly for those with health insurance.

San Francisco's experience with paid sick day legislation

In November 2006, San Francisco became the first city in the United States to require employers to provide paid sick days. Over 60% of voters in San Francisco supported this legislation. While formal studies of the laws implementation and impact are still underway, implementation to date has been largely unproblematic. One small survey found that "most employers were able to implement the paid sick leave ordinance with minimal to moderate effects on their overall business and their bottom line" (Boots 2009). An analysis did not find evidence of loss of jobs in San Francisco in the year after the policy was implemented (Lovell & Miller 2008). Anecdotal assessments of the paid sick day law reported by several of the city business leaders also suggest there has been little to no impact on businesses.

Conclusions

A fundamental purpose of government is to ensure that day-to-day living and working conditions support health and welfare. Labor and occupational safety laws, including limits on child labor, the minimum wage, and work-time rules, were essential contributors to the dramatic gains in life expectancy in the 20th century. It is equally important today to think of labor policies as public health policies.

According to the Organization for Economic Cooperation and Development, the U.S. spends \$6,102 per person on health care services—15% of our GDP and more than any other country the world (OECD 2006). Despite outspending our peers, life expectancy in the United States is a full year less than in Canada and England and three years less than Spain, Sweden, and Switzerland. One reason these other countries may be outperforming the US with respect to health is that they tend to pay more attention standards of healthy living and working conditions for all residents.

Overall, based on the research I and others have conducted, paid sick day legislation would be a practical and evidence-based public health policy to prevent communicable disease and to enable timely, preventative care for ourselves, our children and our elders. Guaranteeing the right to earn and use a minimum number of paid sick days may foster a workplace culture that is more conducive to appropriately taking time off when sick. Paid sick days would facilitate existing workplace policies designed to prevent food borne disease outbreaks. Adopting paid sick days would eliminate the perplexing contradiction between our strategies for containing new strains of influenza and labor laws. Finally, a paid sick day law has potential to reduce health disparities and control health care costs.

I thank you for your consideration of this testimony.

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Chairwoman WOOLSEY. Thank you very much.
Ms. Gorman?

STATEMENT OF CHINA MINER GORMAN, CHIEF OPERATING OFFICER, SOCIETY FOR HUMAN RESOURCE MANAGERS (SHRM)

Ms. GORMAN. Chairwoman Woolsey, Ranking Member Dr. Price, and distinguished members of the subcommittee, my name is China Gorman, and I am the chief operating officer of the Society for Human Resource Management.

There we go. Now you can hear me.

I am the chief operating officer of the Society for Human Resource Management, or SHRM. Representing more than 250,000 individual members, SHRM is the world's largest association devoted to serving the needs of the human resource professionals and to advancing the H.R. profession.

In light of time constraints, I ask that my written statement be entered into the record, but in that statement we explain our specific concerns with the proposed Healthy Families Act, H.R. 2460, and with the FIRST Act. In short, SHRM believes these bills will create more confusion and inequity in the workplace. Instead, SHRM believes we need to adopt a different approach to all leave policies, an approach that reflects the needs of today's more mobile, diverse, and flexible 21st century workforce.

And here is why we think a new way of thinking is necessary: Human resource professionals are responsible for administering employer benefit plans, including paid time off programs. Our members are constantly looking for ways to design workplace policies that improve employee morale and retention to essential elements in developing and maintaining a productive workforce.

Our members know that offering a solid benefits program makes it easier for their organizations to attract and retain great and productive employees. Unfortunately, what currently exists is a set of laws and regulations that are based on an Industrial Age workforce that no longer exists. These well-intentioned statutes attempt to anticipate every circumstance in every organization in every sector.

This has resulted in hundreds of pages of rules that seek to prescribe how, when, and under what circumstances leave must be requested, granted, documented, and used. For example, since enactment of the Family and Medical Leave Act in 1993, H.R. professionals have struggled to interpret various provisions of this important law. What began as a fairly simple 12-page employer mandate has become over 200 pages of complex regulations.

This is what H.R. professionals have to interpret every day as they make judgments about what is appropriate, what is fair, what is legal, and how it will affect employee morale, productivity, and

work schedules. To make matters worse, a patchwork of state and local leave requirements, each with their own set of complex regulations, makes it more difficult for H.R. professionals to balance the needs of employees who take leave, employees who need to pick up those added responsibilities, and employers who are simply seeking predictability in their workforce.

It is also difficult to ensure fairness among employees who are employed by the same company but who work in different states or cities that have different leave requirements. Today, many employers are already voluntarily providing paid sick, personal, vacation, and maternity leaves for their employees.

According to a 2008 SHRM survey, 81 percent of our respondents reported that their organization offered some form of paid sick leave. Recently, more employers have begun to offer paid time off, or PTO plans, in lieu of other employer-sponsored leave—paid leave programs because this is what today's employees and organizations want.

These plans typically combine all common leave benefits—vacation, sick leave, holidays, and personal days—into one leave program that can be used in any circumstance by the employee. According to the SHRM survey, 42 percent of employers are now offering PTO programs.

Based on our years of experience on the front lines of implementing leave statutes like the FMLA and others, we believe Congress should build on this progress by offering incentives for employers to do more, not risk the unintended consequences of another government mandate. In essence, we believe that all employers should be encouraged to provide paid leave for illness, vacation, and personal days to accommodate the needs of employees and their families, as Chairman Woolsey so eloquently described in her opening remarks. In return for meeting a minimum eligibility requirement, employers who choose to provide paid leave would be considered to have satisfied federal, state, and local requirements and would qualify for a statutorily-defined safe harbor.

SHRM has developed a set of five principles to help guide the creation of this new type of leave policy, and the written statement describes these in detail, but briefly stated, they are: First, SHRM believes a new workplace leave policy must meet the needs of both employers and employees. Second, employers should be encouraged to voluntarily provide paid leave to help employees meet work and personal life obligation to a safe harbor leave standard.

Third, a new policy should encourage maximum flexibility, creativity, and innovation for both employees and employers. Fourth, the policy must avoid a mandated one size fits all approach, and instead recognize that paid leave offering should accommodate the increasing diversity in workforce needs and environments. And finally, the policy must support a variety of work options, such as telecommuting, flexible work arrangements, job sharing, and compressed or reduced work schedules.

SHRM is committed to working with members of Congress to craft new workplace leave legislation that will leave more organizations to offer the type of paid leave and other benefits that make the most sense for their employees and their families. It is time to create a 21st century workplace leave policy that meets the needs

of our 21st century workforce without more rigid mandates, without more pages of conflicting regulations, and without causing employers to stop offering valuable existing benefits.

SHRM welcomes the opportunity to work with this subcommittee on this new approach. Thank you.

[The statement of Ms. Gorman follows:]

**Prepared Statement of China Miner Gorman, Chief Operating Officer,
Society for Human Resource Management**

Chairwoman Woolsey, Ranking Member Price and distinguished members of the Subcommittee, my name is China Miner Gorman. I am the Chief Operating Officer of the Society for Human Resource Management (SHRM), the world's largest association devoted to serving the needs of human resource professionals and to advancing the HR profession. On behalf of our more than 250,000 members, I thank you for the opportunity to appear before the Subcommittee to examine proposals for expanding workers' access to paid family and sick leave.

SHRM and its members believe the United States must have a 21st Century workplace flexibility policy that reflects the nature of today's workforce, and that meets the needs of both employees and employers. It should enable employees to balance their work and personal needs while providing predictability and stability to employers. Most importantly, such an approach must encourage employers to offer greater flexibility, creativity and innovation to meet the needs of their employees and their families.

The collective membership of SHRM represents the professionals who develop and implement human resource policies in organizations throughout the country and, as such, are responsible for administering employee benefit plans, including paid time-off programs. Our members are also constantly looking for ways to adapt and design workplace policies that improve employee morale and retention—two essential elements in developing and maintaining a productive workforce. It just makes sense that offering a solid benefits program makes it easier for organizations to attract and retain great employees. Given the practical experience SHRM and its members possess, we believe we are uniquely positioned to provide insight on a sensible federal leave policy that ensures fairness and balance for employees and employers.

For instance, while the Family and Medical Leave Act (FMLA) has helped millions of employees and their families since its enactment in 1993, key aspects of the regulations governing the statute's medical leave provisions have drifted far from the original intent of the Act, creating challenges for both employers and employees.

Family and Medical Leave Act

The FMLA provides unpaid leave for the birth, adoption or foster care placement of an employee's child, as well as for the "serious health condition" of a spouse, son, daughter, or parent, or for the employee's own medical condition.

From the beginning, HR professionals have struggled to interpret various provisions of the FMLA. What began as a fairly simple 12-page document has become 200 pages of regulations governing how the law is to be implemented.

This is the result of a well-intentioned, but counter-productive attempt to anticipate and micro-manage every situation in every workplace in every industry—without regard for the evolving and diverse needs of today's workforce or the new operations and technologies that organizations employ to stay competitive.

Among the problems associated with implementing the FMLA are the definitions of a serious health condition, intermittent leave, and medical certifications. In fact, 47 percent of SHRM members responding to the 2007 SHRM FMLA and Its Impact on Organizations Survey reported that they have experienced challenges in granting leave for an employee's serious health condition as a result of a chronic condition (ongoing injuries, ongoing illnesses, and/or non-life threatening conditions). Vague FMLA rules mean that practically any ailment lasting three calendar days and including a doctor's visit, now qualifies as a serious medical condition. Although we believe Congress intended medical leave under the FMLA to be taken only for truly serious health conditions, SHRM members regularly report that individuals use this leave to avoid coming to work even when they are not experiencing serious symptoms. This behavior is damaging to employers and fellow employees alike.

For example, during the Department of Labor's request for information on organizations' experiences with the FMLA in 2007, a major airline carrier described how its employees are able to misuse FMLA leave. One of the airline divisions has historically high FMLA usage during the month of December, with peak usage the day

before Christmas and the day after. However, FMLA absences plummet on Christmas Day when employees in this division are eligible for triple overtime.

In addition to problems interpreting the federal statute equitably, states and cities are also passing laws with additional (and sometimes contradictory) employer mandates. In 2002, California became the first state to provide up to six weeks of partial paid leave to employees for family and medical leave issues. Recently, the states of Washington and New Jersey as well as the cities of San Francisco, Washington, D.C. and Milwaukee enacted laws to provide paid leave to employees for similar situations. Several states have either considered or are currently considering enacting their own paid leave laws. In Ohio, a paid sick leave mandate similar to the Healthy Families Act was slated for consideration on the 2008 ballot, but was ultimately pulled after Democratic Governor Strickland opposed the proposal, saying: "We believe that this initiative is unworkable, unwieldy and would be detrimental to Ohio's economy, and we will be opposing it and asking Ohioans to oppose it as a result."

However well-intended the original FMLA legislation was, our experience shows that while a federal policy is far preferable to a patchwork of city and state regulations—proscriptive attempts to micro-manage how, when and under what circumstances leave must be requested, granted, documented and used are counter-productive to encouraging flexibility and innovation. This is an especially important lesson when attempting to meet the evolving needs and desires of today's diverse, flexible and mobile workforce. We therefore urge this Subcommittee not to impose additional mandates and regulations on organizations.

Healthy Families Act

Specifically, SHRM has strong concerns with the one-size-fits-all mandate encompassed in

H.R. 2460, the "Healthy Families Act" (HFA). As others have noted, this bill would require public and private employers with 15 or more employees for 20 or more calendar workweeks in the current or preceding year to accrue one hour of paid sick leave for every 30 hours worked. Under the HFA, an employee begins accruing the sick time upon commencement of employment and is able to begin using the leave after 60 days. The paid sick time could be used for the employee's own medical needs or to care for a child, parent, spouse, or any other blood relative, or for an absence resulting from domestic violence, sexual assault or stalking.

We share the goal that employees should have the ability to take time off to attend to their own or a close family member's health, and that the leave should be paid. However, at a time when employers are facing unprecedented challenges, imposing a costly paid leave mandate on employers could easily result in additional job loss or cuts in other important employee benefits. While the HFA presents a host of practical concerns, I would note four significant challenges with this bill from an HR professional's perspective.

First, the HFA, like the current FMLA, prescribes a series of vague and ill-defined qualifying events that may trigger leave eligibility for the employee. Under the current FMLA, employers and employees alike must make a determination if the requested leave is eligible for coverage as a qualifying event. While in many instances this determination of leave eligibility under the FMLA can be made easily, in others it requires the employer and employee to make a rather subjective, sometimes intrusive determination to determine leave eligibility—often leaving both parties frustrated and distrustful of each other. Unfortunately, we anticipate that employers and employees will have a similar experience under the HFA in trying to determine leave eligibility.

Second, although it may not be the intention of the bill sponsors, the HFA would disrupt current employer paid leave offerings. For example, if an employer's existing paid leave policy fails to meet all the requirements of the Act, the employer's plan would need to be amended to comply with the HFA requirements. HR professionals are best situated to understand the benefit preferences of their workforce, not the federal government.

Third, the HFA specifically states that the Act does not supersede any state or local law that provides greater paid sick time or leave rights, thus forcing employers to comply with a patchwork of varying federal, state and/or local leave laws—as well as their own leave policies. As it stands now, employers consistently report challenges in navigating the various conflicting requirements of overlapping state and federal leave and disability laws. The HFA would only add to the already complex web of inconsistent but overlapping leave obligations under federal and state laws.

Finally, the HFA's inflexible approach could cause employers to reduce wages or other benefits to pay for the leave mandate and associated compliance costs, thereby limiting employees' benefit and compensation options. This is because employers

have a finite pool of resources for total compensation. If organizations are required to offer paid sick leave, they will likely “absorb” this added cost by cutting back or eliminating other employee benefits, such as health or retirement benefits, or forgo wage increases, a potential loss to employees who prefer other benefits rather than paid sick leave.

SHRM believes the federal government should encourage paid leave—without creating new mandates on employers and employees. As has been our experience under the FMLA, these proscriptive attempts to micro-manage how, when and under what circumstances leave must be requested, granted, documented and used are counter-productive to encouraging flexibility and innovation. As a result, the focus is on documentation of incremental leave and the reasons for the leave, rather than on seeking innovative ways to help employees to balance the demands of both work and personal life. Another rigid federal mandate would be more of the same.

Family Income to Respond to Significant Transitions Act

The Subcommittee is also considering H.R. 2339, the “Family Income to Respond to Significant Transitions (FIRST) Act.” This legislation provides grants to states to implement programs that provide partial or full wage replacement for those taking leave for birth or adoption, or those who are taking leave to care for themselves, their child(ren), spouse or parent with a serious health condition, as defined by the FMLA.

Under H.R. 2339, states could provide wage replacement for employees out on FMLA leave through a state unemployment compensation benefit program. As you may know, the federal-state unemployment insurance (UI) system is a form of social insurance that was created in 1935 as part of the Social Security Act and was intended to provide a temporary source of income to unemployed individuals. Unemployment insurance is administered by each state and is funded through employer taxes.

While SHRM would welcome dialogue on positive ways to encourage financial support for parents who take leave following the birth or adoption of a child, we believe the FIRST Act is the wrong approach. HR professionals are particularly concerned with policy proposals that would further spend down unemployment insurance reserves for the entirely unrelated purpose of compensating leave takers—ultimately risking the safety net for unemployed workers.

During the present economic recession, with elevated levels of unemployment claims, it is critical that unemployment funds are available for the unemployed in order to fulfill the original purpose of the UI program. Therefore, we would encourage policymakers not to use unemployment compensation programs to provide paid leave. With UI funds severely strained, an expansion of the UI program at this time would likely lead to increases in employer payroll taxes at a time when employers can least afford it.

New Approach

SHRM and the 250,000 human resource professionals it represents believe it's time to give employees choices and give employers more predictability when it comes to a federal leave policy. We believe employers should be encouraged to provide the paid leave their workforces need—and let employees decide how to use it.

From our perspective, a government-mandated approach to providing leave is a clear example of what won't work—particularly during a time of economic crisis. Congress should refrain from pursuing additional employer mandates—rather, employers need to be unencumbered from proscriptive government rules, so that they can create innovative and more flexible ways to meet the needs of their employees. SHRM advocates an alternative approach—a 21st Century workplace flexibility policy—that for the first time reflects different workers' needs and different work environments, union representation, industries and organizational size.

In fact, many employers are already voluntarily providing paid sick, personal, vacation and maternity leave for employees. According to the SHRM 2009 Examining Paid Leave in the Workplace Survey, 81 percent of responding SHRM members reported that their organization offered some form of paid sick leave while 88 percent offered paid vacation leave. In the 2008 SHRM Employee Benefits Survey, 15 percent of respondents indicated their organization offered paid maternity leave outside of what is covered by a short-term disability benefit.

More employers have begun to offer Paid Time Off (PTO) plans in lieu of other employer-sponsored paid leave programs because these types of plans are preferred by employees and employers. These plans typically combine all common leave benefits (vacation, sick leave, holidays and personal days) into one leave program that can be used in any circumstance by the employee. According to the SHRM 2009 Examining Paid Leave in the Workplace Survey, 42 percent of employers offer PTO

plans to their employees. Congress should build on the progress that is already being made by offering incentives for employers to do more—not risk the unintended consequences of an onerous government mandate that could very well result in decreased benefits and fewer new jobs.

SHRM has developed a set of five principles to help guide the creation of a new workplace flexibility statute. In essence, SHRM believes that all employers should be encouraged to provide paid leave for illness, vacation and personal days to accommodate the needs of employees and their family members. In return for meeting a minimum eligibility requirement, employers who choose to provide paid leave would be considered to have satisfied federal, state and local requirements and would qualify for a statutorily defined “safe harbor.” I have outlined our principles below:

SHRM’s Principles for a 21st Century Workplace Flexibility Policy

Shared Needs—SHRM envisions a “safe harbor” standard where employers voluntarily provide a specified number of paid leave days for employees to use for any purpose, consistent with the employer’s policies or collective bargaining agreements. A federal policy should:

- Provide certainty, predictability and accountability for employees and employers.
- Encourage employers to offer paid leave under a uniform and coordinated set of rules that would replace and simplify the confusing—and often conflicting—existing patchwork of regulations.
- Create administrative and compliance incentives for employers who offer paid leave by offering them a safe-harbor standard that would facilitate compliance and save on administrative costs.
- Allow for different work environments, union representation, industries and organizational size.
- Permit employers that voluntarily meet safe harbor leave standards to satisfy federal, state and local leave requirements.

Employee Leave—Employers should be encouraged voluntarily to provide paid leave to help employees meet work and personal life obligations through the safe harbor leave standard. A federal policy should:

- Encourage employers to offer employees with some level of paid leave that meets minimum eligibility requirements as allowed under the employer’s safe harbor plan.
- Allow the employee to use the leave for illness, vacation, personal and family needs.
- Require employers to create a plan document, made available to all eligible employees, that fulfills the requirements of the safe harbor.
- Require the employer to attest to the U.S. Department of Labor that the plan meets the safe harbor requirements.

Flexibility—A federal workplace leave policy should encourage maximum flexibility for both employees and employers. A federal policy should:

- Permit the leave requirement to be satisfied by following the policies and parameters of an employer plan or collective bargaining agreement, where applicable, consistent with the safe harbor provisions.
- Provide employers with predictability and stability in workforce operations.
- Provide employees with the predictability and stability necessary to meet personal needs.

Scalability—A federal workplace leave policy must avoid a mandated one-size-fits-all approach and instead recognize that paid leave offerings should accommodate the increasing diversity in workforce needs and environments. A federal policy should:

- Allow leave benefits to be scaled to the number of employees at an organization; the organization’s type of operations; talent and staffing availability; market and competitive forces; and collective bargaining arrangements.
- Provide pro-rated leave benefits to full- and part-time employees as applicable under the employer plan, which is tailored to the specific workforce needs and consistent with the safe harbor.

Flexible Work Options—Employees and employers can benefit from a public policy that meets the diverse needs of the workplace in supporting and encouraging flexible work options such as telecommuting, flexible work arrangements, job sharing and compressed or reduced schedules. Federal statutes that impede these offerings should be updated to provide employers and employees with maximum flexibility to balance work and personal needs. A federal policy should:

- Amend federal law to allow employees to balance work and family needs through flexible work options such as telecommuting, flextime, part-time, job sharing and compressed or reduced schedules.

- Permit employees to choose either earning compensatory time off for work hours beyond the established work week, or overtime wages.
- Clarify federal law to strengthen existing leave statutes to ensure they work for both employees and employers.

Conclusion

SHRM is committed to working with this subcommittee and other Members of Congress to craft a workplace leave policy that provides flexible paid leave for employees in a manner that does not threaten existing benefits or create unnecessary and counterproductive regulations. It's time to pursue a new approach to this issue absent of rigid, unworkable mandates. It's time to give employees greater flexibility and to give employers more predictability. It's time to encourage paid leave—without stifling existing innovative benefits or hindering job creation. Thank you.

Chairwoman WOOLSEY. Thank you very much.
Ms. Frett?

**STATEMENT OF DEBORAH FRETT, CEO, BPW USA, BPW
FOUNDATION**

Ms. FRETT. Chairwoman Woolsey, Ranking Member Price, distinguished members of the subcommittee, and my fellow panelists, thank you for this opportunity to testify today on behalf of Business and Professional Women's Foundation in support of two important work-life bills, the FIRST Act and the Healthy Families Act.

Business and Professional Women's Foundation works with women, employers, and policymakers to create successful workplaces that practice and embrace diversity, equity, and work-life balance. We have a network of supporters which includes both employers and employees across the country, and both our employee and employer members support paid sick days and paid parental leave because they know it is good for business and it is good for workers.

We submitted written remarks, which you all have. Today I would just like to highlight a few key points.

One of the most significant trends of the past 50 years has been the movement of women, especially mothers, into the paid labor force and the growth of women-owned businesses. Achieving a sustainable work-life balance is of paramount concern for working women and their families. Many women business owners say they left their previous employer to start their own business to have greater work-life balance, and they are more likely to offer that same exact flexibility to their employees.

The American family has also changed dramatically in the last 50 years. Employee benefits should reflect the way we live now. Today, two-thirds of families with children have either two employed parents or a single employed parent, most of who now work full time.

Business and Professional Women's Foundation strongly supports the goals of the FIRST Act and the Healthy Families Act because they are important and necessary steps toward achieving work-life balance for employees and helping employers create a successful workplace.

BPW Foundation supports paid parental leave because not all families can afford to take the unpaid leave provided by the Family and Medical Leave Act. As more working families struggle to make

ends meet during the current economic downturn, it is especially important to ensure that workers are not forced to choose between their mortgage and their new children.

Providing paid leave is good for business. The congressional Joint Economic Committee estimates that it costs nearly three times as much to replace an employee than to provide them with 4 weeks of paid parental leave. In addition to reducing turnover, paid parental leave can lead to increased productivity, better morale, and reduced absenteeism.

The FIRST Act is the first step to provide paid leave to working families. This reliance on a public-private partnership assures that the burden of providing a much-needed benefit does not fall solely on business. The FIRST Act sets the stage for a national paid leave policy.

BPW Foundation is particularly supportive of the provisions in the FIRST Act that allow workers to take time off to care for an injured servicemember or to deal with a family member's deployment. BPW Foundation provides support to women veterans, and we have conducted primary research on their workplace needs as they return from active duty, and family leave options is an important one to them.

Military families serve along with their servicemembers. Paid parental leave not only provides important benefits to military families, it also recognizes their sacrifices.

BPW Foundation supports the Healthy Families Act and its goal to guarantee full-time workers 7 paid sick days each year. Currently, there are no state or federal laws that guarantee all workers the minimum number of paid sick days. The lack of this benefit has forced millions of Americans to choose between their paychecks and their health or the health of a family member.

The lack of paid sick days hurts working women, men, and families. It hurts moms and dads, kids and grandparents, and singles. Everyone gets sick.

Unpaid time impacts the entire household because of the lost income. Without paid sick days, workers and families face financial difficulty in cases of illness or family health emergencies.

Paid sick days are good for business. Companies that provide paid sick days and leave tend to have lower job turnover rates, lower recruitment and training costs, lower unnecessary absenteeism, and a higher level of productivity than firms that do not offer this benefit.

The Healthy Families Act also contains important protections for business. To meet the concerns of small businesses, companies with 15 employees or less are exempted, and if a company already provides paid sick days, nothing changes. In addition, paid sick days will be calculated using an accrual method, so an employee will earn the leave.

In conclusion, BPW Foundation believes in the three-pronged approach to creating a successful workplace: one, legislation, like the Healthy Families Act and the FIRST Act; two, working with businesses to proactively implement and update their own workplace policies; and three, empowering women through education.

Paid sick days and paid parental leave are important to the health and wellbeing of women, families, and workplaces. The

Healthy Families Act and the FIRST Act will start us on the road toward successful workplaces for employers and employees.

Thank you for this opportunity.
[The statement of Ms. Frett follows:]

Prepared Statement of Deborah L. Frett CEO, Business and Professional Women's Foundation

Chairwoman Woolsey, Ranking Member Price and distinguished members of the subcommittee, thank you for this opportunity to testify today on behalf of Business and Professional Women's Foundation in support of two important work-life bills—the FIRST Act (H.R. 2339) and the Healthy Families Act (H.R. 2460).

Business and Professional Women's Foundation (BPW Foundation) works with women, employers and policymakers to create successful workplaces that practice and embrace diversity, equity and work-life balance. Through our groundbreaking research and our unique role as a neutral convener of employers and employees, BPW Foundation leads the way in developing and advocating for policies and programs that “work” for both women and businesses. A successful workplace is one where women can succeed and businesses can profit.

BPW Foundation has a network of supporters in every community across the country which includes both employers and employees. Both our employee and employer members support paid sick days and paid parental leave because they know it's good for business and workers.

The Changing Workforce

One of the most significant trends of the past 50 years has been the movement of women, especially mothers, into the paid labor force and the growth of women-owned businesses. Women now make up nearly half of the U.S. workforce and are projected to account for 49 percent of the increase in total labor force growth between 2006 and 2016.¹ Women-owned firms represent 30% of all U.S. businesses and between 1997 and 2004, the number of women-owned firms increased by 17% nationwide, and twice the rate of all firms.²

Achieving a sustainable work-life balance is of paramount concern for working women and their families. One-third (1/3) of women believe that the difficulty of combining work and family is their biggest work-related problem, and nearly three-fourths (3/4) think the government should do more to help.³ Many women business owners say they left their previous employer to start their own businesses to have greater work-life balance, and therefore they are more likely to offer that flexibility to their employees. Women-owned firms in the United States are more likely than all firms to offer flex-time, tuition reimbursement, and profit sharing to their employees.⁴

Despite the current economic downturn, there is ample evidence that we are headed toward a workforce shortage. There will be more jobs than workers and the jobs of the future are going to call for more education, more critical thinking and more compassion—all skills at which women excel. The number of jobs requiring either an associate's degree or a post secondary vocational credential will grow by 24.1% during this decade. By 2020 it is estimated that there will be 15 million new U.S. jobs requiring college preparation; yet at the current rates there is the potential for 12 million unfilled skilled jobs.⁵

The make-up of the workforce has changed. Women account for 51% of persons employed in management, professional and related occupations categories; 63% of sales and office occupations; and, 45% of workers in public administration.⁶ Other data shows that businesses with more women in senior positions are more profitable, women make a majority of the buying decisions within a family and younger workers are demanding more flexibility in their workplaces.⁷ Investing in policies that support working women is simply good for business.

The increasing work commitment of American families and the changing workforce is putting new pressure on employers and policymakers to address the problem of work-life balance. BPW Foundation believes that greater attention to work-life policy initiatives is good for business and will result in improved employee retention, positive human capital outcomes, a more productive work force and healthier and happier families.

BPW Foundation supports the goals of the FIRST ACT (HR 2339) and the Healthy Families Act (HR 2460) because they are important and necessary steps towards achieving work-life balance.

FIRST ACT (H.R. 2339)

The aptly named Family Income to Respond to Significant Transitions or FIRST ACT is an essential step to help employers and working women begin achieving a successful workplace by supporting work-life balance.

The FIRST Act will provide grants to the states so they can provide paid leave to working families for the birth or adoption of a child, to recover from serious illness or to care for a seriously ill family member.

Business and Professional Women's Foundation strongly supports paid parental leave because not all families can afford to take the unpaid leave provided by the Family and Medical Leave Act (FMLA). Seventy-eight percent of workers who need leave do not take it because they can not afford it.⁸ As more working families struggle to make ends meet during the current devastating economic downturn, it is especially important to ensure that workers are not forced to choose between their mortgage and their new children.

FMLA has been extremely successful. Under the FMLA, eligible workers are allowed twelve weeks of unpaid leave. Since FMLA passed in 1993, working people have been able to take job-protected time off more than 100 million times to recover from their own serious illness, to care for a seriously ill family member or to bond with a new child.⁹ BPW Foundation worked hard to pass the FMLA but we knew even at that time that unpaid leave was a compromise and was not going to be sufficient for all families.

The success of FMLA shows that businesses will not collapse if they provide time off to their employees. In fact 15 years after its passage, business leaders have good things to say about FMLA. A 2000 U.S. Department of Labor study found that a vast majority of employers report that FMLA has a positive or neutral effect on productivity (83 percent), profitability (90 percent), and growth (90 percent).¹⁰

Providing paid leave is good for business. The Congressional Joint Economic Committee estimates that it costs nearly three times as much to replace an employee than to provide them with four weeks of paid parental leave. In addition to reducing turnover, paid parental leave can lead to increased productivity, better morale, and reduced absenteeism.

BPW Foundation is particularly supportive of the provisions in the FIRST ACT that allow workers to take time off to care for an injured service member or to deal with a family member's deployment. BPW Foundation has a history of supporting women veterans. We have conducted groundbreaking research on the unique needs of women veterans transitioning from active duty to the civilian workforce and understand the strain on today's military families.

Women are a growing and important part of the military—currently, women comprise 15% of active-duty military, 10% of deployed forces and 20% of new recruits. These women are also a growing and important part of the U.S. labor force. Women veterans comprise 8% of the current U.S. veteran population and 18% of Iraq and Afghanistan veterans. In a 2007 study conducted by BPW Foundation, women veterans told us they desire workplaces that offer fair compensation, opportunities for advancement, training and professional development opportunities, family leave options, health/dental insurance, flexible work schedules, retirement plans and paid vacations.¹¹

Military families serve along with their service members. No family should have to choose between paying the bills and caring for a seriously ill or wounded service member. No parent or guardian should be denied the opportunity to visit their child's school or attend an important event while a service member is deployed. Paid parental leave not only provides important benefits to military families, it also recognizes their sacrifice.

The FIRST Act is a cautious approach to paid leave. We realize that there are serious and legitimate concerns about the feasibility of paid leave. The modest amount of federal grant funding for the FIRST Act will allow states to start new programs or to bolster existing paid leave programs, while providing states with the flexibility to develop their own programs based on their priorities. The grant funds can be used by states that have programs in place, for outreach and education, administrative costs, and incentives to small businesses to provide job-protected leave. This reliance on a public-private partnership assures that the burden of providing a much-needed benefit does not fall solely on business.

Healthy Families Act (H.R. 2460)

BPW Foundation supports the Healthy Families Act and its goal to guarantee full-time workers seven (7) paid sick days each year to recover from an illness, care for a sick family member, seek routine medical care, or seek assistance related to domestic violence.

Women make up nearly half of the U.S. workforce. Currently there are no state or federal laws that guarantee all workers a minimum number of paid sick days. Nearly half (48%) of private-sector workers don't have a single paid sick day to care for their own health or that of a family member.¹² The lack of this benefit has forced millions of Americans to choose between their paychecks and their health or the health of a family member.

The lack of paid sick days particularly hurts working women, who still bear a disproportionate responsibility for care of the family. According to the National Compensation Study, more than 22 million working women self report that they do not have paid sick days.¹³ Half of all working mothers report that they have had to miss work to care for an ailing child and of those half reported that they lost wages in the process.¹⁴

The following story was shared with us on the condition of anonymity. The author is a mother who works as a security guard for a large corporation and feared re-primation just for talking about her struggles due to a lack of paid sick leave.

I would love to have paid sick leave. I'm a mother of two girls, 3 and 13. When I was pregnant with my first child I had no clue what to expect. Being pregnant, you have to go to the doctor a lot. My job didn't provide any leave at all. If you do not work, you do not get paid. Every time I had a doctor's appointment, I had to check my calendar and make sure I could afford to take off. I worked up to my 32nd week and it took three months to get back to work. In that time with no income I had to go on welfare and food stamps.

With a child, I had to leave work for emergencies more frequently because any problem with your child is top priority. It would be great to be able to take leave to handle such things and not feel guilty or scared about missing work!

With my second child I was a little more prepared, but it was the same story: miss work and you don't get paid. Well, this time around I was put to the test; I had rent, electric, gas and transportation bills. I lost my apartment because I had no income while out with a new child. I'm not saying that having paid sick leave would have saved my apartment, but I would have had better options and managed my time off better. I currently work M-F 7am-3pm and overtime whenever possible. If I need to take my children to annual check ups, I have to take unpaid leave. There would be a lot less stress in those situations if I had time I could take with no reprimand.

Being a single mother is hard enough. A few days of sick leave could mean a great deal to anyone out here trying to raise a family and be a responsible parent.

The lack of paid sick days also hurts men. Thirty percent of working fathers report having had to take unpaid leave to care for themselves or a family member.¹⁵ More than two million fathers are the primary caregivers of children under 18, a 62% increase since 1990.¹⁶ Due to lingering stereotypes about gender roles, some men report having been denied leave to care for a family member.

The lack of paid sick days hurts families. It hurts moms and dads, kids and grandparents and singles—everyone gets sick. Unpaid time impacts the entire household because of the lost income. And not taking sick time impacts your health and ability to do preventive and wellness care. Without paid sick days, workers and families face financial difficulty in cases of illness or family health emergencies.

The American family has changed dramatically in the last 50 years. Employee benefits should reflect the way we live now. In the 1960s, the overwhelming majority—70%—of American families with children had a mother who stayed home to provide around-the-clock childcare. Today, that statistic is reversed: two-thirds of families with children have either two employed parents, or a single employed parent, most of whom now work full-time.¹⁷

If we are really committed to the American family, leave policies must be created so that everyone can achieve the work-life balance that is so frequently talked about. It is not enough for a few companies to offer paid sick days; it must be widely recognized as key to a successful workplace. In this economic climate many working women are backing off from their flexible work schedules and not taking sick days for fear of losing their jobs. A benefit that employees are afraid to take advantage of is no benefit. If we are truly interested in fostering a strong and productive workforce and strong families, then we must ensure that there are workplace policies that support employee success. And paid sick days is such a policy.

Paid sick days are good for business. The lack of paid sick days leads to what is known as "presenteeism." Presenteeism is the practice of employees coming to work sick, being unproductive and infecting their co-workers. That is bad for business. Ultimately, it costs businesses less to allow a sick person to stay home with pay than it does if the sick worker causes the illness of others in the workplace. The American Productivity Audit and studies in the *Journal of Occupational and Environmental Medicine*, the *Employee Benefit News*, and the *Harvard Business Review*

show that presenteeism is a large drain on productivity—larger than that of either absenteeism or short-term disability.

Companies that provide paid sick days and leave tend to have lower job turnover rates, lower recruitment and training costs, lower unnecessary absenteeism, and a higher level of productivity than firms that do not offer this benefit.¹⁸ The stock market is showing favorable signs to support work-life policies as well. A recent Harvard Business article cited a research study of stock market reaction to the announcement of Fortune 500 firms adopting work-family programs. The results showed a positive swing of the stock—on average 0.48%.¹⁹

The Healthy Families Act also contains important protections for business. To meet the concerns of small businesses, companies with 15 employees or fewer are exempted. And if a company already provides paid sick days, nothing changes. In addition, paid sick days will be calculated using an accrual method so an employee will earn those days over time rather than getting them all at once. At first glance, many business owners thought that offering paid sick days would be a burden, but the numerous who have initiated this benefit have found that it is an easy adjustment and the pay-offs in productivity and happy employees are well worth it.

Business research firms have calculated the ROI (Return on Investment) of companies who execute work-life effectiveness policies to those that do not and found that there are positive business profits for those who do. For example, companies on “best companies to work for” lists (e.g. excellent HR practices) produced four times the bottom line gains as compared to other indexes such as the S&P 500.²⁰

Conclusion

BPW Foundation believes in a three pronged approach to creating a successful workplace.

1. Legislation like the Healthy Families Act and the FIRST Act
2. Working with businesses to proactively implement and update their own workplace policies and
3. Empowering women through education.

Paid sick days and paid parental leave are important to BPW Foundation because they are important to the health and well-being of women, families and workplaces. The Healthy Families Act and the FIRST Act will start us on the road toward successful workplaces for employers and employees.

Thank you.

ENDNOTES

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¹²Vicky Lovell, Institute for Women’s Policy Research, “Women and Paid Sick Days: Crucial for Family Well-Being,” 2007.

¹³Institute for Women’s Policy Research analysis of the March 2006 National Compensation Survey, the November 2005 through October 2006 Current Employment Statistics, and the November 2005 through October 2006 Job Openings and Labor Turnover Survey.

¹⁴Kaiser Family Foundation, “Women, Work and Family Health: A Balancing Act,” Issue Brief, April 2003.

¹⁵Kaiser Family Foundation, “Women, Work and Family Health: A Balancing Act,” Issue Brief, April 2003.

¹⁶Business and Professional Women’s Foundation, “The State of Work-Life Effectiveness,” June 2006, pp 4 & 20.

¹⁷U.S. Census Bureau, "America's Families and Living Arrangements: 2006," <http://www.census.gov/population/socdemo/hh-fam/cps2006/tabFG1-all>; Bond, et al, "Highlights of the National Study of the Changing Workforce," 2002.

¹⁸Jane Waldfogel, "The Impact of the Family Medical Leave Act," *Journal of Policy Analysis and Management*, vol. 18, Spring 1999; Christine Siegwirth Meyer, Swati Mukerjee, and Ann Sestero, "Work-Family Benefits: Which Ones Maximize Profits?" *Journal of Managerial Issues*, 13(1):28-44, Spring 2001; Families and Work Institute, *Business Work-Life Study*, 1998, available at <http://www.familiesandwork.org/summary/worklife.pdf>; Children's Defense Fund, "Minnesota, Parental Leave in Minnesota: A Survey of Employers," Winter 2000; and "Limits of Family Leave," *Chicago Tribune*, May 4, 1999.

¹⁹Freek Vermeulen, "The Case for Work/Life Programs," *Harvard Business blog*, April 2009.

²⁰Business and Professional Women's Foundation, "The State of "Work-Life Effectiveness," June 2006, pp 2 & 12.

Chairwoman WOOLSEY. Thank you.

Thank all of you. This has been a very informative panel.

First of all, I have to get it out that as a human resources manager from 1969 to 1980, a company that started with 12 engineers and myself, and 10 years later we had over 800 employees, so you know we were very busy hiring and putting policies together and all of that, but we had paid sick leave at that time, and we would bend over backwards if one of our employees had a family need and had to leave for a length of—a period of time. We didn't have, you know, family and medical leave then, but we actually did have it.

I guess I was too busy at the time to even think about joining SHRM—whatever, why don't you say it again?

Ms. GORMAN. SHRM. S-H-R-M.

Chairwoman WOOLSEY. That doesn't say anything to me.

But anyway, I didn't join it, and I kind of wonder what your answer is when 8 percent of workers in this nation have access to paid family leave—8 percent. I mean, I thought my job—and I knew it was, actually, as the human resources person—was to work for the employees and to help them through management get what they needed, actually, to balance work and family. So what do you think human resources people are all about?

Ms. GORMAN. Well, first and foremost, human resources people are all about ensuring that they have an active, productive workforce that is able to sustain an employer's and a business' and an organization's mission.

Chairwoman WOOLSEY. Well, where does paid family leave and sick leave fall into that?

Ms. GORMAN. Our members are very clear that providing paid time off for their employees, whether it is to cover illness, to cover caring for elderly parents, to cover caring for sick children, is an important part of an employee's total compensation plan.

Chairwoman WOOLSEY. But you don't want a level playing field for—

Ms. GORMAN [continuing]. What we don't want is a one size fit all mandated highly-regulated approach that—

Chairwoman WOOLSEY. Right.

Ms. GORMAN [continuing]. Doesn't take into account differences in employee populations—

Chairwoman WOOLSEY. Okay. Well, then I am going to interrupt you, because hence, 8 percent of the workforce have any kind of paid family leave, because it is all left up to the employers.

Dr. Bhatia, tell me—congratulations, San Francisco. You know, you do a good job. Tell me if the H1N1 swine flu had turned into a pandemic, people would have left the workforce if they were ill.

What kind of workforce would you have left? I mean, would it have been worse if they had stayed and more people would get ill?

I mean, I think the fear is that everybody will leave and then there will be no workforce. How do you see that?

Dr. BHATIA. If an influenza—if a novel strain of influenza emerges that is viral and it, you know, it kills people, if it is—and it spreads quickly, public health is going to issue orders that are, you know, that are either local, regional, or nationwide to have people stay home from work, stay home from school, and depending on the situation. I think in the situation we recently saw with swine flu, the recommendations evolved and adapted very, actually, productively, you know, and quickly, as we learned more about it.

What will happen really—I mean, I think it will depend on—the seriousness of the infection will affect how people react probably more than anything else. What we would like to see is 100 percent compliance with recommendations.

We are putting these recommendations out in order to protect the health of everybody. People not complying with the recommendations are going to break that system down—break that system down.

Chairwoman WOOLSEY. Okay. I need to interrupt you, because I have to ask Ms. Poole one question, but thank you. That is good information for us.

Would the state of California take advantage of these grants to—even though the state of California already has programs in place for paid family leave?

Ms. POOLE. As I—

Chairwoman WOOLSEY. No. Turn it on. Thank you.

Ms. POOLE. California could certainly benefit from grants, particularly in the area of education outreach. Currently, the utilization rate of the Paid Family Leave compared to the covered population is only 1.5 percent, and that has been a source of criticism from the advocacy groups for our program, so that would be an area that we could utilize the grants.

Chairwoman WOOLSEY. Okay. Thank you so much.

Dr. Price?

Dr. PRICE. Thank you, Madam Chair.

It is so often that we are comparing apples and oranges in these discussions, and so statistics get amusing and sometimes very confounding. I would, however, like to, for the record, introduce—ask unanimous consent to introduce the February 2009 Mumford Labor Review that has leisure and illness leave estimating benefits in combination, and two letters, one from the International Franchise Association and one from a group of businesses regarding these bills.

Chairwoman WOOLSEY. Without objection.

[The information follows:]

June 11, 2009.

Hon. LYNN WOOLSEY, *Chair*; Hon. TOM PRICE, *Ranking Member*,
Subcommittee on Workforce Protections, U.S. House of Representatives, Washington, DC

DEAR CHAIRWOMAN WOOLSEY AND RANKING MEMBER PRICE: On behalf of the International Franchise Association (IFA), I am writing to express our strong concerns and urge your opposition to H.R. 2460, the Healthy Families Act of 2009. This

legislation will create an inflexible mandate on franchised small businesses during a time of extraordinary economic challenges.

As the largest and oldest franchising trade group, the IFA's mission is to safeguard the business environment for franchising worldwide. IFA represents more than 85 industries, including more than 11,000 franchisee, 1,200 franchisor and 600 supplier members nationwide. According to a 2008 study conducted by PricewaterhouseCoopers, there are more than 900,000 franchised establishments in the U.S. that are responsible for creating 21 million American jobs and generating \$2.3 trillion in economic output.

Franchise business leaders understand that employees need time off to address personal or family health issues, which is why the vast majority of employers voluntarily offer paid leave benefits. At the same time, employers face economic realities and must balance leave benefits with other compensation offered to employees, such as wages and health benefits. The Healthy Families Act (HFA) would require employers with 15 or more employees to offer a one-size-fits-all package mandating 56 hours of paid sick time annually to every employee. A paid sick leave mandate would limit an employer's flexibility in designing a benefits package that meets the needs of their unique workforce, resulting in significant costs for employers as well as a potential loss to employees who prefer other benefits rather than paid sick leave.

Unfortunately, the HFA incorporates some of the FMLA concepts that have caused the most significant problems in managing workplace operations, namely the ability to use this paid sick leave on an unscheduled basis, with little or no notice of an absence. Franchise businesses provide important services to every local community—from auto repair to professional services such as child care—and have customers that rely on these services. The HFA would inhibit the ability of franchise business owners to adequately manage their workforce so that these services to the community can continue to be provided in a reliable and timely manner.

Again, we urge you to oppose the Healthy Families Act and during the current recession avoid placing a harmful and costly mandate that will stifle economic recovery efforts. Please do not hesitate to contact myself or Jason Straczewski, IFA's Director of Government Relations at (202) 662-0797 should you have any questions.

Thank you for your consideration in this manner.

Sincerely,

DAVID FRENCH,
Vice President, Government Relations.

June 10, 2009.

U.S. House of Representatives, Washington, DC.

DEAR REPRESENTATIVE: On behalf of the signatories and our contractors, sub-contractors, material suppliers and employees across the nation, we are writing to express our opposition to the Healthy Families Act (H.R. 2460/S.1152). Due to the burdensome and adverse impact it will have on small businesses, we urge you to oppose this legislation.

The Healthy Families Act (HFA) would require employers with 15 or more employees to offer a one-size-fits-all paid sick leave package mandating 56 hours—approximately 7-8 days—of paid sick leave to all “full-time” employees (those working 1680 hours a year or more—and average of 32 hours a week), and a pro-rated amount of leave to part-time employees—regardless of how few hours they work per week (workers would accumulate 1 hour of leave of every 30 hours worked). A paid sick leave mandate would drastically limit an employer's flexibility in designing a compensation package that meets the needs of their unique workforce, resulting in significant costs for employers as well as a potential loss to employees who prefer compensation or other benefits rather than paid sick leave.

The HFA's one-size-fits-all approach threatens an employer's ability to provide the benefits that best fit the needs of their workforce. The unique nature of the construction industry demands that the benefits reflect the reality of the industry workforce. The HFA allows employees to take leave by the hour or in the smallest increment of time available under the employer's payroll system without notifying their employer. Experience with this provision under the Family Medical Leave Act has shown that allowing employees to take leave on an intermittent basis, without prior notice or documentation (e.g., doctor's note), invites unscheduled absences, tardiness and misuse of leave. When employees take intermittent leave with little or no notice, employers must cover the absent employee's workload by reallocating the work to other employees or the work goes undone.

The economic hardships facing our nation have acutely impacted the construction industry. Our industry has seen historic highs in job losses over the last year, with more than 126,000 jobs lost in our industry in March 2009, and more than 1.3 million jobs lost since January 2007. At a time when employers are struggling to avoid layoffs and business closures, imposing paid leave mandates on employers is unwise policy that threatens jobs and the viability of many of the nation's small businesses.

Employers of all sizes understand that employees need time off to address personal or family health issues, which is why the vast majority of employers currently offer paid leave benefits. At the same time, employers face economic realities and must balance leave benefits with other compensation offered to employees, such as wages and health benefits. Small businesses across the country are struggling to keep their doors open in these trying times and mandating paid leave will only aggravate this already fragile situation. For this reason and the reasons stated above we urge you to oppose the Healthy Families Act.

Sincerely,

AIR CONDITIONING CONTRACTORS OF AMERICA,
ASSOCIATED BUILDERS AND CONTRACTORS,
ASSOCIATED GENERAL CONTRACTORS,
INDEPENDENT ELECTRICAL CONTRACTORS,
NATIONAL ASSOCIATION OF HOME BUILDERS,
NATIONAL ROOFING CONTRACTORS ASSOCIATION,
NATIONAL UTILITY CONTRACTORS ASSOCIATION,
PLUMBING-HEATING-COOLING CONTRACTORS ASSOCIATION.

Dr. PRICE. In an effort to try to correct a little bit of the record, I know we are in the habit these days in this Congress of not believing that anything in our nation is worth anything, and especially the health care. We beat folks around the head and neck about what they are doing for health care.

The comment, doctor, that you made about life expectancy, and I think it was that we were the lowest of our peers—if, in fact, you look at disease-specific criteria, in fact, we have some of the greatest medical treatment in the world. If you take out violent deaths and MVAs, our life expectancy in this nation exceeds all of our peers. So I think it is important to make certain that we are talking about real information and real criteria. It may not be in the wonderful world of the Northeast and Harvard, but it is, if you look at the actual data.

Ms. Gorman, I would—the chairwoman has said that, “8 percent—only 8 percent of employees have paid family leave.” Is that true?

Ms. GORMAN. I don't have the specific statistic according to our membership, and we can certainly get that, but our statistics would show it as a higher level. What is more important is that the majority of employers do provide time off for sick days, and many of them are quite generous, the point being, the points that we have all made here that healthy workers are productive workers and support the health of the nation.

Dr. PRICE. And I appreciate that. In fact, the Bureau of Labor Statistics that is charged with determining who has paid time off and the like, in 2008 93 percent of full-time employees were provided with paid time off that could be used in the event of an illness, 51 percent of part-time. So I think it is important that we talk about real statistics and real facts here.

Chairwoman WOOLSEY. Could the gentleman yield? I am talking about family and medical leave, not sick leave.

Dr. PRICE. You want to extend my time, or—

Thank you very much.

One of the concerns that I have, and I know many people have, and you have held up the list of regulations—200 pages of regulations—the Healthy Families Act claims it will have no effect on business at all. Do any of you know how many businesses or what percentage of businesses already meet the standards of the Healthy Families Act? Anybody know?

So in fact, it may be that it affects every single business, and that—if, in fact—Ms. Lipnic, I may ask you—if, in fact, it affects a given business, what are the consequences to that business in terms of wages or new jobs or the like?

Ms. LIPNIC. And the question is if the Healthy Families Act would apply to a business who already has a paid leave program, for example?

Dr. PRICE. Or who may not comply with every single jot and tittle of the regulation that is sure to come.

Ms. LIPNIC. Well, if they don't comply and if the Healthy Families Act was signed into law, then they would have to comply with that and they would end up complying with a set of regulations similar to the ones that promulgated under the Family and Medical Leave Act. So they would have to, as you have said, comply with every dot and tittle of what the regulations would say.

Dr. PRICE. And that might, in fact—as businesses have said and we have introduced evidence to that—might, in fact, decrease the number of jobs?

Ms. LIPNIC. Well, there is absolutely a compliance cost in having to comply with the regulatory scheme. I mean, it is both a regulatory scheme and an enforcement mechanism. So those costs would come from somewhere, and presumably they would either come out of reduced benefits for employees or reduced jobs.

Dr. PRICE. And reduced benefits—it could be reduced wages?

Ms. LIPNIC. Yes.

Dr. PRICE. Ms. Gorman has outlined five specific recommendations, and I wonder if any of the other panelists have had an opportunity to look at that or if you have any thoughts about any of those recommendations, I think, that are so helpful—that anybody—with which anybody disagrees?

Dr. Bhatia?

Dr. BHATIA. I think I want to just make a point on the distinction between a sick days policy and a flexible paid time off policy. I mean, in general, if one has a bucket of days to take off for whatever purpose vacation, one has maybe a natural tendency to, you know, “I am planning a vacation to Disneyland with my family. I need to save that—my vacation for that.”

There is a reason, there is a specific rationale to have paid sick days, I think, separate, that you are—that you use it when you are sick and when you don't use it you won't accrue it—you won't accrue it forever. You want people to be able—you want people to use—take that time off and not have a competing need overwhelming that—

Dr. PRICE [continuing]. Ms. Gorman's recommendations that—

Dr. BHATIA. I think that speaks to one of the general principles that she was—

Dr. PRICE. I would ask the panelists if I may, Madam Chair, to address Ms. Gorman's recommendations in writing to us and com-

ment as to whether or not you have any disagreement with them.
Thank you, Madam Chair.

Chairwoman WOOLSEY. Thank you.

Mr. Hare?

Mr. Hare, just a minute, before. We have a vote on, and we are going to go through everybody before—oh, we don't? What were those bells? Oh, I didn't count them. Oh, good. Well, let us go.

Mr. HARE. Am I on?

Madam Chair, I wonder if I could insert this for the record. The Center for Economic and Policy Research quoting that was issued today, by John Schmitt and some other folks, quoting from it, "We find no statistically significant effect of mandated paid sick days or leave on national unemployment rates." If I could insert that for the record, I—

Chairwoman WOOLSEY. Without objection.

[The information follows:]



Paid Sick Days Don't Cause Unemployment

By JOHN SCHMITT, HYE JIN RHO, ALISON EARLE, AND JODY HEYMANN*

Introduction

Critics of legislation requiring employers to provide paid sick days frequently argue that these measures will lead to job loss and raise the national unemployment rate.¹ In previous work, we have analyzed whether there is any relationship between whether a country offers paid sick leave and national unemployment rates. Using data on over 100 countries around the world, we found no relationship between the availability of paid sick leave and either unemployment or competitiveness.²

However, the question remained whether the *duration* of sick leave was critical to the impact on unemployment. The recent completion of a detailed analysis of leave duration and funding mechanisms in 22 affluent countries now makes such an analysis possible. In this issue brief, we use internationally comparable data to examine the relationship between the national unemployment rate and the length of government-mandated or government-funded short-term paid sick days and longer-term paid sick leave.³ We find no statistically significant effect of mandated paid sick days or leave on national unemployment rates.

Data and Methodology

To measure the effects of paid sick days and paid sick leave on national unemployment rates, we use data on the generosity of government-mandated and government-funded paid sick days and leave policy from a separate analysis we completed recently.⁴ In that analysis, we examined legally required forms of paid sick days and leave in a sample of 22 countries with the highest scores on the United Nation's Human Development Index.⁵ We assessed generosity by converting legal rights to paid sick days and leave into full-time-equivalent sick pay available to workers facing two typical health situations: a five-work-day flu and a fifty-work-day treatment for a more serious disease such as cancer.

Center for Economic and
Policy Research
1611 Connecticut Ave, NW
Suite 400
Washington, DC 20009
tel: 202-293-5380
fax: 202-588-1356
www.cepr.net

*John Schmitt is a Senior Economist at the Center for Economic and Policy Research. Hye Jin Rho is a Research Assistant at the Center for Economic and Policy Research. Alison Earle is Co-Director of the Project on Global Working Families at Harvard University. Jody Heymann is Founding Director of the Institute for Health and Social Policy at McGill University.

To look for a relationship between the unemployment rate and paid sick days and leave, we regress internationally comparable data on unemployment rates from the Organization for Economic Cooperation and Development (OECD)⁶ against the separate measures of the generosity of paid sick days and paid sick leave.

To smooth out short-run effects of the business cycle, we use the average unemployment rate in each country over two periods: 2000-2007, which corresponds to the most recent complete business cycle in the United States, and 1989-2007, which includes the last two complete business cycles in the United States.⁷

Ideally, we would also like to control for other factors that affect national unemployment rates. Unfortunately, there is not sufficient comparative data of adequate quality available to include these factors in this study. We interpret the evidence here as simply a first-cut evaluation of the claim that paid sick days and leave increase national unemployment rates.

We also note that government-mandated or government-funded paid sick days and leave may be positively correlated across countries and over time with other forms of labor-market regulation that are often hypothesized to increase unemployment (such as generous unemployment-related benefits, high levels of unionization, or high tax rates). To the extent that these other factors do act to increase the national unemployment rate, excluding them from this analysis would bias our simple regressions toward concluding that more generous paid sick days policies were associated with higher national unemployment rates.

Unemployment and Leave

Table 1 presents our main results. The first set of columns shows the relationship between the generosity of short-term paid sick days legislation and the national unemployment rate. For the period 2000-2007, national unemployment *declines* with the generosity of paid sick days. Each additional day of full-time-equivalent paid sick days available to workers is associated with about a 0.2 percentage-point reduction in the national unemployment rate. The standard error of this estimate is large, however, indicating that the relationship is not statistically significant. If we expand the analysis to cover the average national unemployment rate for 1989-2007, the economic effect of the generosity of paid sick days on the unemployment rate almost doubles: an increase of one paid sick day is associated with about a 0.4 percentage-point fall in the national unemployment rate. But, again, the standard error of the estimate is large, and the relationship is not statistically significant.

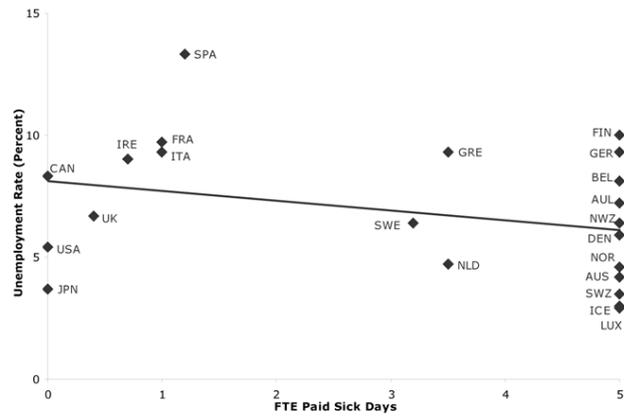
TABLE 1
Relationship between Paid Sick Days and Harmonized Unemployment, 22 High Human Development Index Countries

National Unemployment Rate	Paid Sick Days				Paid Sick Leave			
	Coefficient	Std. Error	R ²	NS	Coefficient	Std. Error	R ²	NS
1989-2007	-0.210	0.245	0.036	NS	0.032	0.035	0.041	NS
2000-2007	-0.401	0.275	0.096	NS	0.006	0.041	0.001	NS

Note: Coefficients are results from Ordinary Least Squares Regression of the harmonized unemployment rate from the OECD (2009) against measures of the generosity of paid sick days (first set of columns) and paid sick leave (second set of columns) from Heymann, Rho, Schmitt, and Earle (2009). Sample size is 22 in all cases. NS: Not statistically significant.

Figure 1 shows the data and the fitted regression line for the average unemployment rate for 1989-2007 and short-term paid sick days. The figure illustrates that countries with generous paid sick days policies – those guaranteeing that a worker who misses five work days due to illness will receive five full days of pay – have a wide range of unemployment rates: from around three percent, for example, in the case of Switzerland, to about 10 percent in the case of Finland. Similarly, countries that provide little or no paid sick days also exhibit a wide range of unemployment rates: from under four percent in Japan to over 13 percent in Spain.

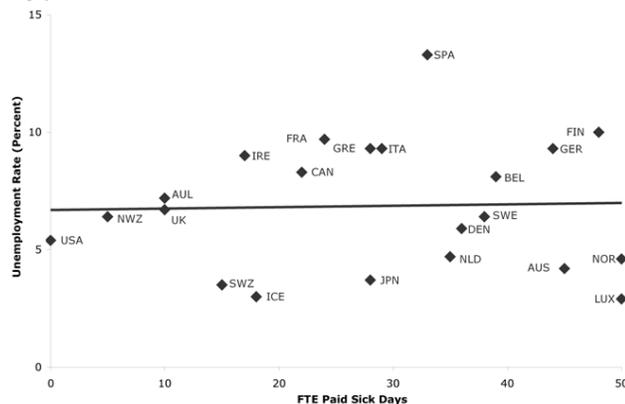
FIGURE 1
Unemployment Rate (1989-2007) and Paid Sick Days



Source: Analysis of OECD and Heymann, Rho, Schmitt, and Earle

The second set of columns of Table 1 presents results from a similar analysis of the relationship between longer-term paid sick leave and the national unemployment rate. For both periods – 2000-2007 and 1989-2007 – the national unemployment rate does not vary much with the availability of paid sick leave, and in both cases the weak relationship is not statistically significant. **Figure 2** shows the underlying data and the fitted regression line for the relationship between paid sick leave and the average unemployment rate over the period 1989-2007.

FIGURE 2
Unemployment Rate (1989-2007) and Paid Sick Leave



Source: Analysis of OECD and Heymann, Rho, Schmitt, and Earle

Conclusion

The experience of the 22 countries with the highest level of social and economic development (as measured by the Human Development Index) suggests that there is no significant relationship between national unemployment rates and legally-mandated access to paid sick days and leave.

1 See, for example, the National Small Business Association: "NSBA is opposed to legislation that would hinder an entrepreneur's ability to create jobs—something the Healthy Families Act would surely do." (<http://www.nsbabiz/content/2343.shtml>, accessed June 3, 2009); or, the National Association of Manufacturers: "Employer mandates [such as the Healthy Families Act] make it even more difficult for manufacturers to preserve or create jobs and help drive economic recovery." (<http://www.nam.org/NewsFromtheNAM.aspx?DID={EE3B9173-EAC9-4E4A-81F3-E2F82861D352}>, accessed June 3, 2009.)

2 Earle, Alison and S.Jody Heymann. 2006. "A Comparative Analysis of Paid Leave for the Health Needs of Workers and their Families Around the World." *Journal of Comparative Policy Analysis*, 2006; 8 (3): 241-257.

3 Following Heymann, Rho, Schmitt, and Earle (2009, p. 2) and others: "We use the term 'paid sick days' to refer to short-term leave for health-care appointments, to deal with short-term illnesses and injuries, and to address periodic short-term health needs related to chronic health conditions. The term 'paid sick leave' is used to refer to longer-term medical leave such as that needed for serious health conditions that require lengthier treatment and recovery periods. We use the term 'paid sick days and leave' to refer to both of these policies together. In many countries, paid sick days are covered by employer mandate and paid sick leave by social insurance."

4 See S. Jody Heymann, Hye Jin Rho, John Schmitt, and Alison Earle. 2009. "Contagion Nation: A Comparison of Paid Sick

Day Policies in 22 Countries," Center for Economic and Policy Research Briefing Paper (May).

5 Again, following Heymann et al (2009, p. 4): "Our sample consists of those countries that score at least 0.94 on the Human Development Index (HDI), 'a summary composite index that measures a country's average achievements in three basic aspects of human development: health, knowledge, and a decent standard of living. Health is measured by life expectancy at birth; knowledge is measured by a combination of the adult literacy rate and the combined primary, secondary, and tertiary gross enrollment ratio; and standard of living by GDP per capita (PPP US\$)' (<http://hdr.undp.org/en/statistics/faq/question,68,en.html>). The Human Development Index (HDI) is calculated yearly by the United Nations for 177 countries and areas with sufficient data and reported in their annual Human Development Reports. See United Nations Development Programme, Human Development Report, *Human Development Indices - A statistical update 2008*, Table 1."

6 OECD, Main Economic Indicators database, accessed May 29, 2009. Data for Iceland refer to the "commonly used definition" and are not strictly comparable to the harmonized or standardized rates used for the rest of the sample.

7 Business cycles in the rest of the sample follow roughly the same pattern, and our qualitative results are not sensitive to choosing any multi-year period through 2007 that starts between 1989 and 2000. We exclude data for 2008 because they correspond to a new, incomplete business cycle. Including the most recent data available makes the coefficient on the paid sick days and leave regressions more negative, reinforcing the conclusions we draw from Table 1.

Mr. HARE. Thank you.

You know what I find interesting whenever we have these hearings and we hear from our friends on the other side about, you know, how much this is going to cost, I would bet—I could be wrong—but I think every member of this subcommittee has paid sick days and vacations. I think every member of this committee, subcommittee, and members of Congress, their staff, has vacations and sick days.

So I find it interesting that if it is good enough for us, it ought to be good enough for you. But then we get into the whole question of, how are we going to afford it? We always find a way to afford it for us, but for people who need it and need it badly, there is al-

ways this question of, "Oh my gosh, we are just going to break the bank doing this." So I find that kind of interesting.

I would like to ask the panel a question. I was going to ask just specifically—and I am not being facetious when I say this, because I worked at a factory, by the way, where we cut lining for men's suits. We had no paid sick days. Women were given 6 weeks of maternity leave unpaid and told if they didn't come back on that day after the sixth week they were terminated immediately even with a doctor's excuse, which I thought was really benevolent of the employer.

I found people coming to work on piecework terribly sick, and they were losing—actually losing money and making other people sick standing next to them working, including myself. And I would say, "Why don't you stay home?" And they would say, "Well, I would like to, but I have kids, and I am not going to get paid."

I would like to ask the panel, just how many of you—you know, I know you came in here and I appreciate it. How many of you would be willing to eat at a restaurant if you absolutely knew for certain that the person that was handling your food was sick, if that would cause any discomfort for you or would you find no problem with that whatsoever?

See, my point here is that this is happening every single day, and you may not even know it. And the person in the back that is preparing the food may be ill. And the fact of the matter remains, you don't want that person handling your food, you don't want them reporting to work. And productivity is going to go down. And food service workers, as you know, are not the highest-paid people in the land.

I often ask myself too, I wonder for that mother or for that father, and you were reading a case, Ms. Poole—excuse me—of a person who went to take care of their parent. I wonder what price we would put on that. You know, what dollar amount do we put on that person being able to spend time with a dying child, a dying parent, a dying spouse?

And then having to come back to work and not getting paid for the time that you are off—you are given the time, you just don't get paid. And the trauma that is involved among that—with that illness, it is bad enough in itself. Now you have to lose money in the process in a lousy economy.

And listen, I have said this many times: I am not out to punish businesses, but I think that we have a moral obligation to take care of people.

Ms. Gorman, you said that reduced wages or other benefits start—let me just read this to you. You said that many employers are voluntarily providing paid sick, personal, vacation, maternity leaves. However, the doctor has indicated extensive study of this issue providing evidence today that workers who have greater need for sick leave, such as those with families or who have lower incomes don't get it. What would you reply—what would your answer be?

Ms. GORMAN. Well, I can talk specifically about the 250,000 H.R. professionals who are members of the Society for Human Resource Management. Eighty-two percent of them provide a full range of paid—of time off, paid and non-paid, for all types of occurrences in

their lives, sick leave being one of those. And so I can speak to those statistics.

H.R. people want a healthy workforce. They want a productive workforce. They know that healthy workers are productive workers. And so what we are really talking about is looking at a new way of looking at paid leave and letting employees and employers together determine what is right for their business and what is right for them so that if out of their paid time off bucket, that year they are dealing with illness issues of an elderly parent, they may, in fact, elect to take their time to deal with that and not go to Disneyland.

Mr. HARE. Let me, if I could, because I know my time is short, I want to ask you one last question, Ms. Gorman. You said in your testimony that a federal paid sick leave policy could cause employers to reduce wages or other benefits. I wonder how accurate this argument would be considering the statistics that have been brought forward today showing that when employees come to work sick, productivity severely decreases and additionally, sick workers who come to work often infect their coworkers, which is, again, going to reduce productivity.

So we hear a lot about this whole question of wages, but if you are sick as a dog and you are coming to work because you have to come to work because you know you are not going to get paid, the productivity, it seems to me, instantly drops, and then you are getting your coworkers that sit next to you. How can that possibly not have an effect on workers?

Ms. GORMAN. Well, I think it is a fair point, and that is why we want to change the conversation entirely and look at the full range of needs for paid time off, not just singularly look at one and a whole raft of one size fits all across all employers expensive kind of mandate, but rather, look at all the needs for this new 21st century workforce that requires more flexibility, that requires different kinds of employee experiences, and who, frankly, want more control over their lives and the decisions that they are making about the totality of their life so that they can make decisions about sick time and other kinds.

Chairwoman WOOLSEY. Okay. Thank you.

Mr. Kline?

Mr. KLINE. Thank you, Madam Chair.

Thank you to the witnesses for being here today, for your testimony, and for your forthright answers to the questions. I am almost tempted to take Mr. Hare up on his bet about every staff member having paid sick leave. My guess is that many have paid time off, which is a little broader program than Ms. Gorman has, but that would be hard to settle, and so I won't take the bet.

Mr. HARE. Would the gentleman yield for a second?

Mr. KLINE. I would be happy to yield.

Mr. HARE. Well, I know in my office I provide sick leave and vacation leave for the people that work for me, because they work very hard. And my assumption was that every member of Congress would do that.

Mr. KLINE. So we know that 1/40th has got it. Thank you.

Reclaiming my time, I am often concerned that in Congress we pass legislation that is, again, well-meaning, and then, as Ms.

Lipnic said, it is turned over to people who actually write the regulations, and then too often it is turned over to lawyers to litigate it and fight it out. So I think it is important that we understand what is in this legislation before we pass it and get the statute as accurate as we can.

And to that end, I have got a couple of questions, if time allows, for Ms. Lipnic, reliant on your expertise in both the legislative and executive branches. And I want to get a couple of things cleared up.

Could you explain to us how the certification process works under the Healthy Families Act? What can an employee ask for? What must an employer provide? And what problems this might pose—can you take a minute or 2?

Ms. LIPNIC. Sure.

Mr. KLINE. Thank you.

Ms. LIPNIC. Well, my understanding of the way the bill is written, employers would, after an employee had been absent for 3 days, be entitled to ask for a certification that explains what the absence was about, for medical reasons. Now, of course—and this is similar to in the FML—family and medical leave context—you know, the certification is coming after the fact.

There is a provision in the bill, since the bill allows for people to take leave for doctor's appointments or preventative medical care that is described in the bill, that if the leave is foreseeable and the employee knows at least 7 days in advance that they are going to be absent, that there is a requirement that they have to notify the employer at least within that 7 days. The other standard is, as soon as practicable.

I can tell you that standard, as soon as practicable, caused fits to the Department of Labor in trying to define exactly what that means and how that standard works in the workplace.

The point about the employer can request the certification after someone has been absent for 3 days—the first point I would make about that is, that is set—that is setting a federal standard that that is when an employer is able to ask for a doctor's note, essentially. So if an employer who has as few as 15 employees—if their standard in their workplace right now is that they request a doctor's note after someone has been absent for 2 days, that is out the window. It would now be for 3 days.

The other thing, as I understand from the bill, is that the employee then has 30 days to provide that note to—the doctor's note, the certification—to the employer. So this is 30 days after the absence, which, you know, we are talking about sick leave. I mean, by and large that is going to be what the case would be. But this would be after the time had been paid, so, you know, there may be employers who have some concern about whether 30 days is too lenient a standard, whether they should be—for example, if their policy is now, if you are absent for more than 3 days you have got to give us a doctor's note as soon as you come back to work, that would be gone too because the standard that is set by the bill is a 30-day standard.

There are also questions about sort of what constitutes a sufficient certification, and I guess, you know, the last point I would make about it is—and I used to say this related to the Fair Labor Standards Act at the Department of Labor—you would think that

it can't be this hard to pay people, and in fact, it is, and that is all a creature of the regulations. The same thing would apply here. You would think, you know, it cannot be this hard to be sick and call in sick, but, you know, once this gets turned into the actual rules and regulations, it becomes a whole different story.

Mr. KLINE [continuing]. I yield back. Thank you.

Chairwoman WOOLSEY. It is called push.

Mr. KLINE. Thank you, Madam Chair. That is very enlightening.

Chairwoman WOOLSEY. Mr. Payne?

Mr. PAYNE. Thank you very much.

Earlier there was a discussion regarding the—I know Dr. Bhatia—I didn't want to do like Ms. Woolsey did and say it wrong.

Dr. Bhatia, there was a discussion regarding the life expectancy and you—I looked at your face. You sort of—would you want to elaborate what you would have said if you had an opportunity?

Dr. BHATIA. We are 29th in the world in life expectancy. We are several years behind Japan, Sweden, and Spain, I think most of the countries we would consider, you know, peers. This isn't due to injuries, gun violence. The main causes of death in our country are heart disease, chronic diseases.

It is differences in life expectancy from all causes that account for this difference. I think the point is, we are spending a lot of money on health care. We are spending little money on ensuring that everybody in this country has a certain—the conditions that they need to be healthy, whether those are employment conditions, land-use conditions, environmental conditions, and other countries do a lot better job at maintaining sort of that minimum standard of environmental and occupational conditions.

Mr. PAYNE. Thank you very much.

Also, I was looking at some of the footnotes, and it talks about workplace—170 countries in the world—found that the United States was one of four countries. I mean, we are in pretty good shape—Papua, New Guinea, Swaziland, and Liberia, that do not have paid leave for new mothers.

Let me ask, since I think Ms. Lipnic—I came in late—and Ms. Gorman seem to have a problem, do you—what do you think about those two areas? Do you feel that United States of America maybe should break out of that category and provide this? Just your personal opinion or your organization's opinion. And maybe, Ms. Gorman, you can also respond.

Ms. GORMAN. Well, the question at hand is whether these leaves are mandated, whether they are across the board, government-regulated, mandated leaves.

Mr. PAYNE. And you are opposed to mandating?

Ms. GORMAN. We are opposed to mandating.

Mr. PAYNE. Okay. Well, how do you get it done, since we are with four of the 166 other—because evidently, you know, I mean, tell me then, maybe, why don't you give us how you get it done, then, since you don't want to mandate it and since nobody does it, maybe you could—and then we put it in the law.

Ms. GORMAN. SHRM's new approach to looking at leave and paid leave, in particular, builds on what is already being done. Eighty-three percent of employees, according to the BLS, have access to some kind of paid leave right now. Those are coming voluntarily

from employers who know it is important to have a competitive range of benefits to attract and retain a productive workforce.

What we are proposing is to encourage employers to build on this level of success by looking at leaves in a whole new way and providing a safe harbor if they meet a certain standard of paid leave that can be used, as the chairwoman was so eloquent in expressing, the needs of caring for elderly parents, the needs of caring for children, the need for taking care of your—for your own health, including coaching your kid's soccer team, if that is how you choose to use this kind of paid leave.

Employees want to have control over how they spend their time and how they use this paid leave, and our suggestion is to provide a standard against which employers would be encouraged to provide for, and if they hit that standard, they would reach a safe harbor. If they didn't reach that standard, they would be liable to, just as they are today, to meet all local, state, and federal requirements around leave.

Mr. PAYNE. Okay. All right. That is good.

Just one other question. I think, Ms. Lipnic, you indicated that you are not satisfied with the way that the Healthy Families Act defines what medical conditions should be covered. So maybe let me ask you, what suggestions do you have on what should be covered?

Ms. LIPNIC. Congressman, if I could just respond to your earlier question also—

Mr. PAYNE. Yes.

Ms. LIPNIC [continuing]. The point about the study that you mentioned about the comparison of the United States to other countries around the world in terms of paid maternity leave, and I have seen that study cited so many times. One point that I think gets lost in all of the citations of that study is, that study looked at, do other countries have a mandate for paid leave?

They don't look at—there was no comparison done as to whether or not those countries actually implement that. It is just, is there a mandate on the books? And in fact, the United States does have significant amounts of paid maternity leave. I realize we are talking about paid sick leave here today, but I think that is an important point that is lost every time I see that study cited.

And the other thing that I would mention about that study is, it only looked at, in comparison to other countries, the standards in the formal economy. So in many countries around the world, there is an informal economy, and much of the economy actually may take place in an informal economy, not in the formal economy. So I think, you know, as Dr. Price mentioned, we sometimes are comparing apples and oranges.

To quickly answer your other question, though, in terms of what medical conditions, the point that I was making in my testimony that I think is important for the committee to look at is, what are you defining as medical conditions, and define it somehow consistently throughout the bill. It is a very, very broad standard right now. I mean, it is essentially, if you have a medical condition, whatever that is, it is covered.

Now, you can, you know, define that in terms of condition, you can define it in terms of days of absence, which is what happens

under the FMLA. I would just make the point that it ought to be consistent and it ought to be defined in the bill.

Mr. PAYNE. Okay. Thank you. My time has expired, but I think just—if I might take a half second—that every country has laws that are unenforced. Every country has informal societies. And you can't extrapolate on the—extrapolate violent deaths and so forth, then our life expectancy would be longer. You know, that is like saying if you take short people out of the height of the country they would all be taller. I mean, you can't—you know, you have what you have.

Chairwoman WOOLSEY. Are you finished?

I have some more questions. Do you want—just short. We have about 10 minutes before we are going to go vote. I would like—

Yes. Well, it is up to me. You don't have to ask questions, but I am going to, and then have closing remarks.

Dr. PRICE. Madam Chair, with all due respect, it is not up to the chair.

Chairwoman WOOLSEY. Oh yes?

Dr. PRICE. We operate by rules in this House of Representatives. At least we used to. I don't know whether we still do—

Chairwoman WOOLSEY [continuing]. All right. Would you like to ask—I am going to ask a question. You have—I would offer you the same opportunity I have.

Dr. PRICE. Please proceed.

Chairwoman WOOLSEY. Thank you.

Ms. NESS, we have sort of left you sitting there with all kinds of looks on your face, so I want to offer you time to respond to some of what you have been hearing. And I would like, if any of you would like to respond to the very fact that we know that a child—a baby's brain at birth and the first few months, and then, of course, the first 3 years, is the most important time. And would you weave a little bit of the need for bonding with parents—the child to the parent, but the parent to the child as well—in your remarks?

Ms. NESS. Sure. Well, we—just to respond to that immediately, we have a good body of research which shows that giving parents the opportunity to bond with their newborn children or newly-adopted children is critical not just to the parents, but also to the child and to their long-term future development. And there are all sorts of ramifications in terms of how children then evolve into healthy adults, whether it is school performance, later job performance, et cetera.

But there is plenty of research showing how incredibly important it is to children's development and to their long-term economic wellbeing to give parents the time that they need to spend with their newborns.

There are so many different points I could pick up on here. I will just touch on a couple. I think the conversation about how we compare with other countries is very interesting. It is awful to think about the U.S. categorized with countries like Swaziland and Papua, New Guinea, but if you look at the 22 most economically competitive countries in the world, we are the only one that doesn't have laws that require either paid time off short-term, long-term.

So there are lots of claims about how this will be a terrible burden on employers and how this will cause cutbacks in wages and employment. These are the same claims we have heard every single time we try to move forward in terms of advancing basic workplace standards and conditions. They don't materialize. We don't have any evidence that those are going to come to pass.

And I would say that there is a lot of evidence that shows over the long term these policies save businesses money, and that the cost of presenteeism, which means people going to work, being less productive, people being sick longer as a result of not taking care of themselves, and people getting other people sick in the workplace, those costs well exceed the cost of absenteeism and the cost of even medical disability claims.

And we know that the cost of replacing workers, if you have high turnover, which is what happens when you don't have these policies—cost of replacing workers and retraining, recruiting and retraining, are much higher than the costs of giving people some short-term time off to take care of themselves when they are sick.

So I think we are always willing to sit down and figure out how to make the legislation we are talking about work well for both employers and employees, and I have enormous respect for Ms. Lipnic. We have worked with her here in the past, and under her leadership the Department of Labor commissioned an enormous amount of feedback and issued a report on the Family and Medical Leave Act that actually shows that despite the fact that there are some challenges, it has worked enormously well for both employees and employers.

And so I think we can figure out a way to move ourselves forward into the 21st century in a way that can work for both employers and employees.

Chairwoman WOOLSEY. Thank you very much.

Ms. Frett, I would like to ask you what you think, if we provide paid medical—sick leave, are we going to have to take it out of the wages of the employees?

Ms. FRET. Thank you.

I think we need to consider during this current economic downturn that there is ample evidence that we are headed toward a workforce shortage, okay? There is going to be more jobs than workers, and the jobs in the future are going to call for more education, more critical thinking, and more compassion, which, I might add, are all skills that women excel at.

And we also know that the makeup of the workforce is changing as well, and that future is women. And women are not asking, women are demanding, work-life balance. And that means paid sick days and paid parental leave.

And if we have a workforce shortage and we are trying to recruit and we are trying to retain, then we have got to focus in terms of what is going to be that biggest population, which is going to be women, and address this. Otherwise, there won't be workers for businesses to keep their doors open.

Chairwoman WOOLSEY. Thank you very much.

Dr. Price?

Dr. PRICE. Thank you, Madam Chair.

Ms. Frett, I would just follow up quickly. Is there any compliance cost to these bills by the employer?

Ms. FRETTE. I don't have the specific statistics on there, but obviously, I mean, there is always some administrative costs. But I think what we continue to see by the evidence and all the other studies is that it is always cheaper than presenteeism. We are looking at costs of \$180-plus billion in terms of people coming to work sick. And so I think what you are going to see is savings in those areas that will be used to offset any administrative costs, as well as retention.

Dr. PRICE. But there are compliance costs to these—

Ms. FRETTE. There is always administrative—

Dr. PRICE. Always—

And, Ms. Ness, I was struck by your comment, because you said it was good for business and, "We know." The problem oftentimes with Congress is that we think we know, but in fact, we legislate and we may not have any experience in the real world where the rubber meets the road, where jobs actually are created. Seventy percent of the jobs in this nation are created by small business out there, and every time that we put a cost on business, then we actually decrease the number of jobs able to be created.

Do you not believe that we ought to have businesses be able to function in a way that allows them to create jobs and attract employees in certain ways? Is that a bad idea?

Ms. NESS. No. Of course I believe—we want businesses to thrive. We want employers to thrive just like we want employees to thrive.

Dr. PRICE. And would there be a compliance cost related to these bills?

Ms. NESS. I agree with what Ms. Frett just said. There are always some compliance costs. But I think the cost of having people come to work sick or not having the time they need to take care of their families are much greater in the long run than the cost of making that kind of leave available.

Dr. PRICE. And Ms. Lipnic, do you have any comment on that?

Ms. LIPNIC. Dr. Price, if I could just make one point—

Dr. PRICE. Sure.

Ms. LIPNIC [continuing]. About the compliance costs, I think it is important to look at the costs relative to the size of the business. If you are a business who has 15 employees, those compliance costs are dramatically more expensive than an employer who has 1,000 employees.

Dr. PRICE. Maybe I would ask you to follow up on that for those small businesses to talk about the certification requirements and what would we be placing on those small businesses if these two—if these laws were to be adopted?

Ms. LIPNIC. Well, presumably you are placing an entire regulatory regime, so they would have to follow whatever the regulations are that the Department of Labor would write. I would expect—and actually, China may know this better than I, with her years of H.R. experience—that most small businesses probably have fairly informal systems right now, in terms of how people take their leave and how they request it. That would not be the case if this were signed into law. You would be complying with whatever

the certification requirements are that the Labor Department would set forward.

Dr. PRICE. Thank you, Madam Chair.

Chairwoman WOOLSEY. Mr. Payne?

Mr. PAYNE. Just very briefly, you know, I continue to hear conversation about how, you know, the poor business people are going to, you know, just be unable to function. Unfortunately, in our country compensation for the top strata of employees, the CEO, for example, has risen. They used to be at 4 million, the worker was, maybe the chief operating officer was maybe five times the salary of it. I mean, it has gone off the chart.

I keep hearing about the strain on businesses. We used to have a defined pension plan where people were guaranteed a pension. I mean, in our town of Norton, New Jersey, we had all kinds of industry—General Electric, General Motors, you know, RCA, you name it—and everyone who worked there received the defined pension for life, period. All of that is gone now. It is defined contributions—what you put in the 401K, which are now like 201Ks, you know?

But, you know, and so you find that there is less of a responsibility on the part of the employer. Even the federal government, in the building where my office is, employees were previously employed by the federal government. They went out for a contract, lowest responsible bidder, the salaries of those employees that are custodians and other types of workers in the federal building now are almost 50 percent of what they used to be because the small business has that contract and provide no health benefits when the federal government did.

So I keep hearing about how the poor business people are doing when we are seeing our salaries just coming down to at a point where we are going to find that—and like I say, my, I guess, confusion is that we keep hearing about how much sacrifice the small business person is doing, and all I am seeing is a reversal. Even in strong unions—ILA, Teamsters, UAW, you know, the starting salaries are maybe two-thirds of what they were before because we have to compete with the foreign worker, and so we therefore conclude that we have to reduce our wages to come down to what the Korean auto worker makes in Korea if we are going to build cars in the United States, so they go to the South where there are no unions and they get a lower per cost.

So there is no question—I think there is a vote coming on, so I will yield back the balance of my time. Thank you.

Chairwoman WOOLSEY. Thank you.

For closing remarks, Dr. Price?

Dr. PRICE. Thank you, Madam Chair. I want to thank you for holding this hearing.

I want to thank the witnesses for your testimony in what is clearly a spirited area of discussion here in the Congress. We all have a common goal of making certain that Americans are able to have the healthiest lifestyle and lives possible, that their families are able to be cared for, and that we work together as employers and employees and government to make it so that we have the greatest possible benefit for all individuals.

I would suggest that oftentimes the class warfare that we hear is a—maybe a useful political tool, but it is not a useful policy tool. And I think as we move forward, there are some good provisions in the legislation we have talked about. I believe there is some very harmful provisions to employees, to jobs, to America, and so I look forward to working with the chair as we move forward on this legislation and hopefully come up with some positive bipartisan legislation.

Thank you, Madam Chair.

Chairwoman WOOLSEY. Thank you, Dr. Price.

Thank you, all of you. You were a wonderful panel of witnesses, and so well-informed, all of you.

And I, when talking about the FIRST Act and Healthy Families Act and the impact on businesses, I all of a sudden, you know, like the light bulb went on like in the comic strips. California is the fifth largest economy in the world. California actually provides paid family leave. So we have to learn something from that. So, I mean, there is some good examples there.

What we have heard today makes it clear that during good times and bad times, employee and employers benefit from paid family leave and paid sick days. We can't afford to wait. We need to go—we can't not pass the FIRST Act. We must pass the Healthy Families Act and bring us into the 21st century, as a country, and make it easier for our families to go to work and take care of their families at the same time—our workers—so that we don't put that extra pressure on them so they are not dying from the heart attacks, that they know that they are supported while they are supporting their families.

So I look forward to working with Dr. Price and with the rest of the committee and the full committee in bringing both of these bills forward and having good debate, and moving in this 21st century. And you have helped us a lot today. Thank you very much.

So now, as previously ordered, members will have 14 days to submit additional materials for the hearing record. Any member who wishes to submit follow-up questions in writing to the witnesses should coordinate the majority—with the majority staff within 14 days. So without objection, the hearing is adjourned.

[The statement of Mrs. McMorris Rodgers follows:]

Prepared Statement of Hon. Cathy McMorris Rodgers, a Representative in Congress From the State of Washington

Thank you, Chairwoman Woolsey, for holding a hearing on such an important issue. I appreciate our witnesses taking time from their busy schedules to share their perspectives on ways to help working Americans better balance work and family obligations in today's economy.

Without a doubt, the biggest concern for workers in this struggling economy is job security. We see headlines everyday about employers who have been forced to scale back and let employees go as a result of economic conditions. The latest unemployment numbers demonstrate job growth continues to be weak.

In light of these difficult circumstances, there is no question mandating new labor costs on employers now through enhanced vacation and paid leave policies will only exacerbate the situation. Instead, I believe we should give employers and employees the flexibility to work out mutually-beneficial arrangements in the workplace. To that end, I introduced the Family-Friendly Workplace Act, which would allow private sector employers to offer their employees the option of paid time off in lieu of overtime pay. I believe this legislation addresses one area where the federal government can play an instrumental role in providing a valuable option—giving employees a choice instead of a federal mandate.

Current law mandates private sector employees receive wages for overtime hours worked. Yet, their public sector counterparts can choose to save overtime hours worked as paid compensatory time off (known as “comp time”) to be taken at a later date. Banked comp time belongs to the employee and thus, for example, could be saved for use during a maternity leave or to stay home and care for a sick child or elderly parent.

Most employers understand when employees have flexible workplace options they are more productive, committed and focused. For example, an insurance company in my home state of Washington saw per-employee revenue increase 70 percent over five years after implementing flexible work options. In many workplaces, flexible work arrangements are an important tool for retaining and attracting a quality workforce.

One of the biggest struggles working parents face is how to balance work and family responsibilities. Being a new mom myself, I struggle with balancing these aspects every day. Employees are looking for flexibility so they can put in the time they need to get the job done, but also make sure they can make the school play, stay home with a sick child, or care for an elderly parent. Of course, none of this matters if the company goes out of business. We must balance the costs and benefits that workplace flexibility policies give to employees and employers.

The Family-Friendly Workplace Act would complement the Family Medical Leave Act (FMLA) by providing employees with an option for accruing paid time off, which could then be taken by the employee at a later date. It simply allows overtime compensation to be given—at the employee’s request—as paid comp time off, at the rate of one-and-one-half hours of comp time for each hour of overtime worked, provided the employee and the employer agree on that form of overtime compensation. The bill contains numerous protections to ensure the choice and use of comp time is a decision made by the employee, not mandated by the employer.

Many hourly paid employees, particularly those who are lower wage workers, have fewer opportunities for workplace flexibility than their public sector or salaried counterparts. Comp time is specifically directed at hourly employees who work overtime. Through an agreement with their employer, employees could choose to bank paid time in lieu of overtime wages. Under the Family-Friendly Workplace Act, comp time would belong to the employee, and the employee could use it for any purpose at any time. To be clear, the Family-Friendly Workplace Act would not change the employer’s current obligation to pay overtime at the rate of one-and-one-half times an employee’s regular rate of pay for any hours worked over 40 in a seven day period.

Many of the witnesses here today advocate for proposals to create costly “one-size-fits-all” employer mandates. As our nation faces the most severe economic downturn it has seen in decades, increasing labor costs by way of employer mandates for expanded leave policies is more likely to hinder than to help economic recovery. One of the best features of the Family-Friendly Workplace Act is it provides greater choice and flexibility to employees, without costly mandates.

One way to respond to the growing needs of people who want to better integrate work and family is to allow them to decide for themselves whether paid time off or extra pay best fits their needs and that of their families. It’s a matter of helping people focus on doing what’s best for families, small businesses and the next generation.

[Additional submissions of Dr. Price follow:]

Statement Submitted for the Record

by

HR POLICY ASSOCIATION

Before the

Workforce Protections Subcommittee of the U.S. House of
Representatives

Hearing on

H.R. 2460, the Healthy Families Act

JUNE 11, 2009



MADAM CHAIRMAN AND DISTINGUISHED MEMBERS OF THE SUBCOMMITTEE:

Thank you for this opportunity to present HR Policy Association's views on the Healthy Families Act (H.R. 2460 / S. 1152). HR Policy Association represents the chief human resource officers of more than 275 of the largest corporations in the United States, collectively employing over 12 million employees in the United States, and over 18 million worldwide. One of HR Policy's principal missions is to ensure that laws and policies affecting employment relations are sound, practical, and responsive to the realities of the modern workplace.

H.R. 2460, the Healthy Families Act (HFA), would mandate that employers "allow" employees to "earn" one hour of paid sick leave for every 30 hours worked up to 56 hours per year. This mandate would apply to all employers with 15 or more employees and all employees working for such employers. The HFA mandate is a daunting legislative proposal because it would be the first federal mandate that employers provide any type of paid leave. Moreover, many employers, including almost all large employers, offer a variety of paid leave programs to most, if not all, of their employees as an integral method of attracting and retaining the best possible workforce; however, these benefits vary by employer.

HR Policy Association believes that the HFA, however, would significantly limit an employer's flexibility in designing and administering leave programs and benefits. In addition to limiting employer flexibility and creativity, some other problems with the HFA include:

- Permitting the creation of a complex patchwork of different federal, state and local mandates that have different permissible use, notice and certification provisions, and administrative requirements;
- Including part-time employees working less than 20 hours per week;
- Allowing paid sick leave to be taken in increments of one hour or less;
- Allowing temporary or seasonal employees who work at least 60 days to accrue paid sick leave;
- Providing that claims for paid sick leave which will generally be a couple of days (or even hours) of leave to be enforced through disproportionately expensive litigation as opposed to a more efficient, cost effective administrative enforcement procedure; and
- Permitting employees who carry over leave to take up to 112 hours of paid sick leave per year.

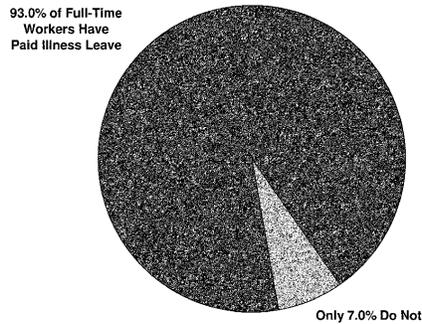
Moreover, the bill retains its fundamental flaw of imposing new mandated costs on employers at a time when the economic recovery is uncertain at best. In addition, it would impose new administrative burdens on employers who are already providing benefits at least as generous as those required by the bill. This statement provides a detailed analysis of the HFA and examines some of the concerns employers would have in seeking to implement it.

I. Data on All Leave Benefits Puts Sick Leave in Perspective

Proponents of the Healthy Families Act claim that “nearly half (48%) of private sector workers—and nearly 80% of low-wage workers—do not have paid sick leave to care for their own health.”¹ Paid sick leave, however, is only part of the equation. In fact, most employees have access to paid leave that can be used for, among other reasons, sick leave. According to the U.S. Bureau of Labor Statistics (BLS), 83 percent of all workers in private industry have access to paid illness leave, far more than proponents of the HFA recognize.² The BLS defines illness leave as any combination of paid leave benefits that can be used to attend to illness or injury.³ As noted by the BLS, focusing on paid sick leave alone does not tell the whole story. “A complete picture of access to benefits should present not just benefits in isolation, but benefits in combination.”⁴

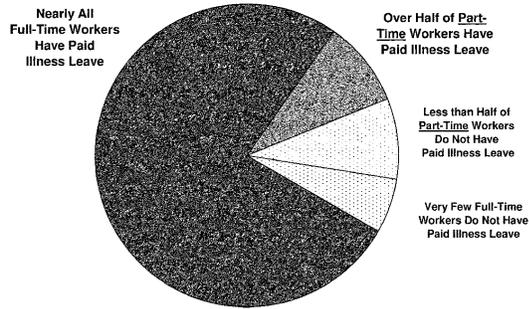
In 2008, 93 percent—nearly all—of full-time employees had access to paid illness leave.⁵ (See Chart 1). Moreover, a majority of part-time workers, 51 percent, have paid illness leave even though most—82 percent⁶—voluntarily work part-time to better manage work and family. Further, the vast majority, 79 percent, of low-wage workers (\$7.25 to \$14.99 per hour) have paid illness leave.⁷ (See Chart 2). Moreover, 94 percent of large employers—defined as employing 500 or more workers—provide illness leave and even 76 percent of all workers in small businesses (1 to 49 workers) have paid illness leave⁸ and “other employers offer informal plans. (See Chart 3). For example, those in which paid time off due to health-related concerns is granted by the employer on a case-by-case basis.”⁹

Chart 1: Nearly All Full-Time Workers Have Access to Paid Illness Leave



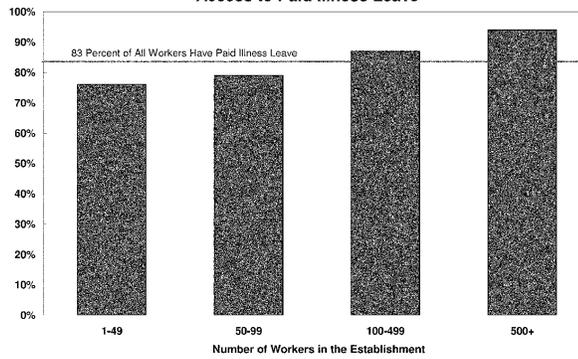
Source: Bureau of Labor Statistics, available at: www.bls.gov/opub/mlr/2009/02/art3full.pdf.

Chart 2: Most Workers, Including Many Part-time Employees Have Access to Paid Illness Leave



Source: Bureau of Labor Statistics, available at: www.bls.gov/cpub/mir/2009/02/art3full.pdf.

Chart 3: Most Workers in Small Businesses Have Access to Paid Illness Leave



Source: Bureau of Labor Statistics, available at: www.bls.gov/cpub/mir/2009/02/art3full.pdf.

Employers, and particularly large multi-state employers, are already providing substantial paid leave benefits for employees. Yet, the HFA would impose an additional layer of workplace regulation and create an administrative quagmire and numerous potential pitfalls for well-intentioned employers. This problem could be compounded exponentially because the HFA refuses to incorporate one federal standard by preempting State or local paid leave laws. Moreover, the legislation would also substantially increase indirect administrative costs and open employers to significant litigation costs for a simple dispute over a couple of days (or hours) of paid sick leave.

There is a consensus among most economists that the costs of employer mandates are passed on to workers in the form of lower wages and reduced job opportunities.¹⁰ With so many workers already having access to paid illness leave benefits, the focus should be on ways to increase job opportunities and not on well-intended legislation that has destructive unintended consequences.

II. The Requirements of the Healthy Families Act

The HFA would mandate that employers provide 56 hours of job-protected paid sick leave. The expansive paid sick leave provisions would be available to all employees. The paid sick leave could be used for an illness or doctor's appointment of the employee, a family member, or others "in the equivalent of a family relationship." Paid sick leave could be taken intermittently as under the Family and Medical Leave Act (FMLA), and unused leave would be carried over to subsequent years.

The HFA is stand-alone legislation but it adopts many of the concepts and definitions found in the FMLA. This legislation is intended by its strongest supporters to lay the groundwork for paid FMLA leave. The Multi-State Working Families Consortium along with the National Partnership for Women and Families as well as nine other national groups¹¹ have identified the HFA as merely the first step in bringing the American workplace in line with Europe and other nations of the "advanced world."¹² Other proposals by the Consortium that are in line with this Europeanization of the American workplace include¹³ providing paid FMLA leave,¹⁴ restricting employers from using "mandatory overtime,"¹⁵ and replacing the "at-will employment" standard with the "just cause" standard for job dismissal.¹⁶

Eligibility for Leave Under the Healthy Families Act

Under the HFA, employees working for an employer with 15 or more employees would "earn" one hour of paid sick leave for every 30 hours worked.¹⁷ This would apply to all employees.¹⁸ Unlike the previous version of the legislation, there is no exclusion of part-time employees or employees working fewer than 20 hours per week or 1,000 hours per year.¹⁹ In contrast, the FMLA requires that an employee work for an employer for 12 months and 1,250 hours to be eligible for leave. However, under the HFA employees immediately begin accruing paid sick leave and can use accrued leave after 60 calendar days of employment.²⁰ Besides this initial waiting period, employees may "use the paid sick leave as the time is accrued."²¹ Moreover, unlike the previous version of the HFA, if an employee is separated from employment but is rehired within 12 months, the employer must restore the "employee's previously earned paid sick time" and the employee may use and accrue additional paid sick time upon reemployment.²² However, an employer is not required to "reimburse" an employee for unused paid sick time upon his or her termination, resignation, retirement, or other separation from employment.²³

Carry-over of Accumulated Leave. The HFA would provide that an employee's unused sick leave may accumulate and be carried forward to the next year, although an employer is not required "to permit an employee to accrue more than 56 hours of earned paid sick leave at a given time."²⁴ For example, an employee who only uses 16 hours of paid sick leave in 2010 would carry over 40 hours of paid sick leave to 2011. The problem, as will be discussed below, is that an employee can arguably continue to bank paid sick leave from year to year and use more than 56 hours of paid sick leave in any calendar year.

Definition of Employer. The HFA defines an "employer" as "any person who employs 15 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year."²⁵ This definition is similar to the FMLA with the exception that it applies to persons who employ 15 or more employees as opposed to 50 or more employees under the FMLA definition.²⁶

Other elements of the definition of "employer" are also identical to similar provisions under the FMLA. For example, an employer would also include "persons who act, directly or indirectly, in the interest of an employer to any of the employees of such employer."²⁷ This definition is inclusive enough to impute personal liability to corporate officers and managers for violations of the HFA. Indeed, a majority of courts have concluded that such individuals have potential personal liability under the same definition in the FMLA.²⁸

Use of Leave Under the Healthy Families Act

Purpose of the Leave. Eligible employees could use paid sick leave for absences due to their own "physical or mental illness, injury, medical condition" or to obtain a "medical diagnosis or care, or preventative medical care."²⁹ This standard is broader than the FMLA's "serious health condition" standard. The HFA also provides that employees may take paid leave for the reasons listed above to care for a "child,³⁰ parent,³¹ spouse,³² or any other person related by blood or affinity whose close association with the employee is the equivalent of a family relationship."³³ This standard is likely to include siblings, aunts, uncles, domestic partners, or even close friends, making it more expansive than the FMLA, which provides employees job-protected leave to care for a spouse, children, or parents.

Meanwhile, the new legislation expands the previous bill by creating paid leave rights for activities associated with "domestic violence, sexual assault, or stalking" including taking legal action, seeking medical attention, relocating, or recovering.³⁴

Existing Policies. In a new provision that was not included in the previous bill, employers with paid leave policies that provide an equivalent amount of leave to employees as that mandated by the HFA are not "required to permit employees to earn additional paid sick time" so long as the paid leave may be used "for the same purposes and under the same conditions" as required by the legislation.³⁵ This provision apparently seeks to cure two significant problems in the previous version of the HFA. First, it does not lock in an employer's existing benefits and require an employer to add an additional seven days of paid sick leave if an employer's leave policy did not match up exactly with the dictates of the Act,³⁶ which would have penalized employers who already provided paid leave to their employees. Second, the current version of the HFA would allow employers to use PTO banks, which combine traditional paid sick leave days, vacation days and other paid leave time into one consolidated paid leave program so long as the paid leave can be taken for the same reasons and under the same conditions in the HFA.

These programs, which are very popular among employees, would have effectively become obsolete under the previous version of the HFA because it would have required employers to specifically identify seven days, which are solely for "sick leave," thus negating the very purpose of a PTO program. If an employer failed to segregate sick leave under the PTO bank and the employee exhausted his or her bank for personal reasons, the employer would be required under the law to provide paid sick leave anyway. Proponents of the HFA, however, apparently recognized and attempted to correct this problem. In introducing the legislation, Rep. DeLauro declared that "employers that already provide this leave will not have to change their current policies at all, as long as their existing leave can be used for the same purposes described in the bill" and that she "does not want to upset existing leave programs."³⁷ It remains unclear, however, whether this provision would be interpreted so that most employer-provided paid leave programs would be considered to satisfy the demands of the Act or whether such paid leave programs would have to meet a high threshold of hyper-technical requirements.

Intermittent Leave. The legislation would allow employees to use paid sick leave on an intermittent basis. Employees could use paid sick leave for periods of less than a full workday and at least on an hourly basis, but employees could also likely use the paid leave in fractions of an hour. While the text of the legislation regarding intermittent leave has changed, the practical result does not appear to have changed. Under the previous version of the HFA, an employee could use paid sick leave on the lesser of an hourly basis or the "smallest increment that the employer's payroll system uses to account for absences or use of leave."³⁸ The current version of the HFA, however, permits employees to "use the paid sick time as the time is earned"³⁹ and employers must "permit each employee" to earn one hour of paid sick leave for every 30 hours worked.⁴⁰

The HFA, however, is silent regarding whether paid time is accrued or "earned" in fractions of an hour. Because most employers track work time in fractions of an hour, paid sick leave would likely be determined to accrue in fractions of an hour. Accordingly, employees would likely be permitted to take HFA leave in less than one-hour increments. Moreover, if it was the intent of the legislation to limit HFA leave to be taken in no less than one-hour increments, the drafters could have simply added the provision found in the City of Milwaukee's recently enacted sick leave ordinance, which states that "paid sick leave shall accrue in hour unit increments."⁴¹ That provision has been interpreted in a manner that "paid sick leave must be used in increments of one hour, not in fractions of an hour."⁴² Thus, the HFA's intermittent leave standard is similar to that in use under the FMLA and such an intermittent leave standard would be subject to the same administrative difficulties which plague the FMLA. Moreover, because the permitted reasons for leave are much broader than the "serious health condition" standard under the FMLA, the problem would be even more pervasive.

Notice of Leave and Certification. The HFA provides that employees must, either orally or in writing, request the paid sick leave, explaining the expected duration of the leave.⁴³ Under this version of the HFA, employees would no longer be required to explain "reason for the absence."⁴⁴ Employees would be required to provide seven days notice if the leave is foreseeable or, if not, as soon as the employee is aware of the need for the leave.⁴⁵ An employer may require that a health care provider⁴⁶ certify the leave if it extends for more than three consecutive workdays. In that case, employees must provide the employer the certification no later than 30 days after the first day of leave.⁴⁷ Importantly, however, employers cannot deny or delay the leave on the grounds that they have not received the certification.⁴⁸ Thus, employers would have

already paid the employee for the sick leave but may have to wait as long as 30 days to determine whether the reason for the leave and certification are legitimate.

If the absence is related to domestic violence, sexual assault, or stalking, an employer can request that the absence be supported by a police report indicating the employee or family member was a victim, a court order protecting the employee or family member from an alleged perpetrator, or "other evidence from the court or prosecuting attorney" that the employee or family member has or is scheduled to appear in court.⁴⁹ Alternatively, a document signed by, among others, an employee or volunteer of a victim services organization, an attorney, police officer, social worker, or clergy affirming that the employee or family member was a victim of domestic violence, sexual assault, or stalking will suffice as a proper certification.⁵⁰

Enforcement and Damages For Alleged Violations of The Healthy Families Act

Who May Sue. The HFA, in comparison with other federal employment laws, drastically expands the number of people who may sue an employer for an alleged violation of the Act. The legislation provides that *any* individual, employee, or other similarly situated individual may sue an employer for damages.⁵¹ Thus, the plaintiff need not have an employment relationship with the employer being sued.

Damage Claims. Two general claims may be brought under the HFA. First, aggrieved individuals may recover an amount equal to 56 hours of wages or salary if an employer fails to provide paid sick leave.⁵² Second, the Act provides that individuals may sue employers for damages equal to the amount of any wages or benefits lost as a result of interference or discrimination under the HFA, up to 56 hours of pay.⁵³ Interference and discrimination includes taking any negative action that would impede or negatively impact an employee's exercise of any right under the HFA.⁵⁴ For example, if an employee was terminated or suspended for attempting to take paid sick leave or engaging in protected activity, the employee could be reinstated and would be entitled to lost wages and benefits damages. This would also apply, for example, if an employer counts "the sick leave under a no-fault attendance policy."⁵⁵ As under the FMLA, prevailing plaintiffs would be entitled to liquidated damages (*i.e.*, double damages), interest, and attorney's fees and costs. However, unlike the FMLA, the HFA contains no provision giving courts authority to eliminate or reduce the amount of liquidated damages if an employer can show that the action was in good faith and had legitimate grounds to believe that it was complying with the Act.⁵⁶

Statute of Limitations. The statute of limitations under the HFA is also nearly identical to that in use under the FMLA. It provides that employees may bring suit within two years after the last event constituting an alleged employer violation of the Act,⁵⁷ and the time period is extended to three years if it is determined that the violation was "willful."⁵⁸

III. The Healthy Families Act Is Unacceptably Vague And Is Inconsistent With Other Federal Employment Laws And Policies

No Preemption Will Result in a Patchwork of Paid Sick Leave Requirements

Several localities—including San Francisco, Milwaukee, and the District of Columbia—have passed paid sick leave mandates that vary in their provisions and numerous other jurisdictions are considering following suit. The result would be a patchwork of varying (and even conflicting) requirements straining the ability of multi-state employers to have nationwide uniform benefits, as is guaranteed their retirement and health plans by the preemption provisions of the Employee Retirement Income Security Act (ERISA). Yet the HFA expressly states that it would not “supersede (including preempting) any provision of State or local law” that provides more generous paid sick leave rights. This would create the very real problem of employers trying to comply with different paid sick leave standards throughout numerous cities and states. Not only could the number of hours differ, but also, multi-state employers would be required to deal with dozens (or more) notice, certification, recordkeeping, and other administrative mandates. Such administrative difficulties would substantially increase indirect personnel administrative costs. If Congress were to decide that employers must provide paid leave to employees, there is no good reason why there shouldn’t be one federal standard in order to at least minimize significant indirect costs associated with the administrative quagmire and pitfalls—particularly in light of the fact that large (multi-state) employers overwhelmingly provide paid leave to their employees.⁵⁹

“Earning” Paid Sick Time Could Create a New Property Right

The HFA requires an employer to permit employees to “earn” paid sick time, whereas the previous version simply required an employer to “provide” employees paid sick leave.⁶⁰ Moreover, under the previous version it was reasonably clear that employees were not entitled to receive compensation for or could not “cash-out” unused paid sick leave. By using the term “earn,” the new version of the legislation appears to convey the sense that unused paid sick leave may become a vested property right. While the HFA provides that it shall not be “construed as requiring financial or other reimbursement to an employee . . . upon the employee’s termination, resignation, retirement, or other separation from employment for earned paid sick time that has not been used,” there is no language in the legislation that would prohibit earned paid sick time to be considered earned but unpaid wages under state wage laws. Accordingly, employees leaving an employer may pursue earned but unused HFA paid sick leave under state wage laws.

Potential Entitlement to More than 56 Hours Per Year

The way the provisions of the HFA regarding “earning,” “accrual and use,” and “carryover” work together would allow for employees to use more than 56 hours (and up to 112 hours) of paid sick leave in a calendar year. Under the HFA, an employee “earns” one hour of paid sick leave for every 30 hours worked although “an employer shall not be required to permit an employee to earn . . . more than 56 hours of paid sick time in a calendar year.”⁶¹ And any “earned” but unused HFA leave shall “be carried forward from one calendar year to the next.”⁶² Yet an employer is not required “to permit an employee to accrue more than 56 hours of earned paid sick leave at a given time.”⁶³ Thus, while the HFA would prohibit an employee from “earning” more than 56 hours of paid sick leave in a calendar year, it would not prohibit the “accrual” or “use” of more than 56 hours in the same year if unused sick leave from the previous year were carried over.

The following hypothetical is illustrative of this problem. Employee X only uses eight hours of paid sick leave in 2010, and carries over 48 hours of paid sick leave to 2011. Because X does not have a total of 56 hours of paid sick leave at the beginning of 2011, employer Y must permit X to “earn” sick leave up to a maximum of 56 hours. During the first week of February 2011, X uses all 48 hours which had been carried over plus those paid sick leave hours which he or she accrued in January 2011 (approximately 5 hours of paid sick leave for a full time employee). Upon returning to work for the second week of February 2011, X immediately begins to “earn” paid sick leave under the HFA because, while employer Y does not need to allow X to “accrue more than 56 hours of earned paid sick leave at a given time,”⁶⁴ X no longer has any paid sick leave hours, and according to the HFA X is entitled to earn up to 56 hours in a calendar year (i.e., 2011).⁶⁵ In fact, X could accrue enough paid sick leave in the remainder of 2011 to take an additional 51 hours (X already used 5 hours earned in January) of paid leave by mid November of 2011.⁶⁶ If X took the 51 hours of paid sick leave in 2011, X would have taken a total of 104 hours of paid sick leave in the 2011 calendar year. Indeed, if an employee carried over a full 56 hours of paid sick leave from one year to the next, the HFA would provide that he or she could take up to 112 hours of paid sick leave in a calendar year.

Enforcement Through Litigation Would be Expensive and Inefficient

Claims for paid sick leave or violations of the HFA would almost exclusively be enforced through private lawsuits. But the HFA’s enforcement mechanism is grossly disproportionate to the monetary amount that would be in dispute. At issue in the vast majority of HFA lawsuits would be a few days or possibly even hours of paid sick leave to which an employee alleges he or she is entitled. Indeed, the upper limit of monetary damages would be 56 hours of an employee’s pay, and in some instances this amount could be doubled. In other words, a relatively small amount of money would be at issue. Yet the HFA would require employees and employers to engage in costly litigation to resolve a dispute over a few days’ or hours’ worth of pay.

A more responsible approach would be to adopt an administrative enforcement scheme in which an employee files a complaint with a federal government agency, such as the Department of Labor (DOL), which would in turn resolve the dispute.⁶⁷ Such a procedure is not without precedent. For example, when an employee seeks unemployment insurance compensation he or she files a claim with the respective state agency and the matter is determined at an administrative level. The decision is generally made on the documents submitted or through telephone hearings. And the monetary value at issue in unemployment compensation claims far exceeds that of HFA claims—generally a percentage of multiple months’ worth of pay compared to a maximum of 56 hours of paid leave under the HFA.

Moreover, an administrative enforcement mechanism would also likely be much more efficient than litigating a low-cost case in the clogged court dockets of the federal and state judiciaries. DOL decisions would be much faster than protracted litigation and result in the employee receiving his or her paid leave or in the employer prevailing. An administrative scheme would also likely lead to high settlement rates because an employer would be alerted of the claim and could settle it (if meritorious) before a lawsuit would be filed. In sum, the HFA’s enforcement scheme could be much more simple, efficient, and cost effective. Indeed, the current scheme would only stand to benefit attorneys litigating these matters.

The Scope of Individuals Who Can Sue Under the Healthy Families Act is Too Broad

The HFA is inconsistent with federal employment law and policy because it does not require that a plaintiff have an employment relationship with an employer to bring suit. For example, the legislation not only provides that “employees” may file claims, but it also permits “any individual” or “others similarly situated” to sue employers for alleged violations of the Act.⁶⁸ By contrast, the other federal nondiscrimination statutes, as well as the FMLA,⁶⁹ require an employment relationship between a plaintiff and employer. Under the HFA, an independent contractor—or even employee of the independent contractor— could bring suit against an employer seeking paid sick leave. Eliminating the requirement of an employment relationship and permitting an over-broad group of plaintiffs to sue employers is inconsistent with federal law and policy and will result in increased litigation.

In addition, the HFA would allow “job applicants” to sue for violations.⁷⁰ Though applicants would not be entitled to paid sick leave, because they are not employees who have worked any hours to accrue paid sick leave, such individuals could bring suit if they simply asked “what kind of benefits are available” and then did not get the desired job. Benefit issues, such as leave, are often the subject of discussion during job interviews and permitting lawsuits based on legitimate, routine interview discussions is overreaching. Including job applicants as potential plaintiffs may lead to the unintended consequences of making discussions about benefits or leave a subject that is off-limits during job interviews.

Leave for Almost Any Reason Could be Considered Sick Leave

The types of “sick leave” covered by the legislation are overly broad and go well beyond the kinds of leave permitted under most policies. As noted above, the bills provide that employees may use paid sick leave for absences due to their own “physical or mental illness, injury, medical condition” or to obtain a “medical diagnosis or care, or preventative medical care” or use paid sick leave for the same reasons to care for others. These terms are expansive and may prompt eligible employees to use their sick leave for other reasons. For example, the phrase “preventative medical care” could be interpreted to apply to anything that may be “just what the doctor ordered.” Indeed, a strong case could be made that an employee could take sick leave to go jogging if a health care provider instructed the employee to exercise as a means to better the employee’s health. In addition, it could include taking days off to rest at home or enjoy a picnic in the park to reduce an employee’s stress, which could be interpreted as “preventative medical care.” As with many of the important terms or phrases in the HFA, “preventative medical care” lacks clarity and is undefined and could be the source of considerable abuse.

Mandated Paid Sick Leave Will Decrease Wages and Affect Other Employees

One of the unintended consequences of the HFA would be to depress other areas of employee compensation, such as wages. As a Congressional Research Service study recently noted, “If Congress were to pass [the HFA] ...one would expect the compensation costs of employees to increase. . . . Because employees generally are no more valuable (*i.e.*, productive) to businesses after imposition of a benefit . . . they have no economically sound reason to raise their workforce’s overall total compensation as a result. . . . Economists therefore theorize that firms will try to finance the added benefit cost by reducing or slowing the growth of other components of compensation.”⁷¹

The HFA Lacks Sufficient Clarity for Employers to Comply With Leave Requirements

At first glance, the HFA may appear to be a rather straightforward attempt to grant paid sick leave to all employees, but a closer look at the legislation reveals a significant lack of *clarity*.

Perpetrators of Domestic Violence, Sexual Assault, and Stalking Could Use Paid Leave. While it is unlikely that it was intended by the drafters, one of the most troubling aspects of the legislation is that it would permit perpetrators of domestic violence, rapists, or stalkers to use paid sick leave to attend court proceedings. Under the certification provisions for absences in the case of domestic violence, sexual assault, or stalking, an employer can require certification for absences for victims of the above-mentioned crimes. However, the HFA also provides that an employee can provide “other evidence from the court or prosecuting attorney that the employee ... has appeared in court or is scheduled to appear in court in a proceeding related to domestic violence, sexual assault, or stalking.”⁷² There is no requirement that the employee or the employee’s family member be the victim. Indeed, the requirement is that the employee or employee’s family member is scheduled for or attended a court proceeding that is “related to” the aforementioned crimes and that he or she produce a court document reflecting the appearance. Consequently, an employee could simply produce his or her own indictment (*i.e.*, court document) as a certification and the employer would have to provide paid leave for such an appearance. Moreover, an employer could run the risk of being sued if it terminated an employee after being presented with such a document because “using the taking of paid sick time under this Act as a negative factor in an employment action, such as ... a disciplinary action” is considered a prohibited act under the HFA.⁷³ Assuming this was not the intent of the sponsors of the legislation, the provision needs to be redrafted to ensure that its protections only apply to victims.

Weak & Ambiguous Certification Requirements. Even though the HFA provides that an employer may require a certification from an employee who takes three consecutive workdays of paid sick leave, the legislation undercuts the requirement by mandating that the certifying health care provider make “reasonable efforts” to limit the medical facts that are disclosed in a medical certification.⁷⁴ No explanation of how health care providers are to limit the information contained in the certification is provided.⁷⁵ In fact, the limitation on the “medical facts” a health care provider may disclose would seem to make any medical certification of little use.⁷⁶ In addition, under the HFA it is unclear what, if any, recourse an employer would have if a medical provider failed to submit the certification. The HFA also fails to describe what recourse an employer has if an employee fails to produce a sufficient certification and the employee has already been paid for the sick time.

Moreover, many employers currently require that employees taking sick leave provide some kind of certification from the medical or dental provider even if the employee is simply going to a routine doctor’s appointment that only lasts a couple of hours. It would appear that the HFA’s limit that a certification only needs to be provided after taking three consecutive days of sick leave prohibits employers from requiring such certification for any paid sick leave of fewer than three days. However, it is unclear whether the HFA’s three-day certification requirement would prevent employers from utilizing such a policy if the employee had exhausted all his or her HFA paid sick leave and the employer provided more generous leave.

The Term “Paid” Is Not Defined. A problem exists in that the HFA fails to define the term “pay.” In requiring an employer to provide paid leave, it is unclear whether this applies to all forms of compensation or just for regular hours worked. Would eligible employees be entitled to

have incentive, differential, or bonus pay calculated into the paid leave amount? Take, for example, an employee who rotates between day and night shift every six months. It is not uncommon for some employers to pay a shift differential. Consequently, he or she could make \$15 per hour for the day shift and \$20 per hour for the night shift. It is unclear how such an employee's "paid sick leave" would be calculated. The term "pay" should be defined. Otherwise, the statute would be difficult for employers and courts to understand and administer.

Confidential Medical Information. The HFA would prohibit an employer from disclosing any "health information" about "an employee or an employee's child, parent, spouse, or other individual" without the affected employee's permission.⁷⁷ Importantly, however, the term "health information" is not defined and the statutory limitation is not confined to "health information" related to paid sick leave. Therefore, without an employee's permission, it is likely that a supervisor could violate this prohibition by telling his or her co-workers that he or she is home sick or not feeling well. It would also preclude an employer from explaining to co-workers that an employee is not at work because of a serious tragedy in the employee's family, such as a death in the family. The confidentiality requirement would lead to some bizarre results. For example, if two siblings worked for the same employer and one of the siblings suffered an injury at work, the employer could disclose to the other sibling that someone had been injured at work but could not disclose who was injured. Perversely, the employer would also be prohibited from informing the injured employee's spouse of the injury without the employee's express consent.

Joint Employment Raises Issues of Double Leave. Another problem is the issue of who pays an employee in "joint employment" circumstances.⁷⁸ "Joint employment" occurs when a client employer uses temporary employees supplied by a temporary employment agency and both the client and temporary employment agency are deemed employers of the temporary employee. Courts have held that "joint employment" exists under the FMLA,⁷⁹ so it would likely be found to exist under the HFA, despite the absence of any specific provision dealing with the issue.

The HFA does not designate which employer must provide paid sick leave to the temporary employee. In fact, the legislation as drafted would require both employers to provide paid sick leave to the temporary employee. Assuming the temporary employee works 30 or more hours per week, he or she would be entitled to seven days of paid sick leave from both the client and the temporary employment agency. Consequently, an employee with joint employers has a windfall and would be eligible for 14 days of paid sick leave for performing the same work.

IV. Conclusion

The Healthy Families Act would significantly limit an employer's flexibility in designing and administering leave programs and benefits. It is riddled with ambiguities that would render it very difficult for employers to successfully administer the new mandates. In addition, the proposed legislation seeks to provide leave for employees to have greater personal and family balance, yet the notice and certification requirements are so minimal and ineffective that there is little protection against gaming of the system by employees simply seeking more time off, which would detrimentally affect other employees and an employer's personnel scheduling and decisions. In sum, the HFA's ambiguous, unworkable, counterproductive, and unbalanced provisions go far beyond providing the minimum standards sought by the legislation. We strongly encourage the Committee to take a very close look at these and other problems related to mandating paid sick leave through the HFA. We are very eager to join you in this effort and thank you for allowing us an opportunity to express our views.

Endnotes

- ¹ http://www.nationalpartnership.org/site/PageServer?pagename=psd_index (last visited June 1, 2009).
- ² Iris S. Diaz and Richard Wallick, *Leisure and Illness Leave: Estimating Benefits in Combination*, Monthly Labor Review, February 2009.
- ³ Specifically it includes any combination of one or more of the following: paid sick leave, paid family leave, paid personal leave, and paid vacation leave – as long as that leave can be taken for illness reasons.
- ⁴ Iris S. Diaz and Richard Wallick, *Leisure and Illness Leave: Estimating Benefits in Combination*.
- ⁵ *Id.*
- ⁶ 2008 Annual data from the U.S. Bureau of Labor Statistics. Available at: www.bls.gov/webapps/legacy/cpsatab5.htm.
- ⁷ Iris S. Diaz and Richard Wallick, *Leisure and Illness Leave: Estimating Benefits in Combination*.
- ⁸ *Id.*
- ⁹ Natalie Kramer and Alan Zilberman, New Definitions of Employee Access to Paid Sick Leave and Retirement Benefits in the National Compensation Survey, Bureau of Labor Statistics, December 23, 2008, available at: www.bls.gov/opub/ewc/print/cm20081219ar01p1.htm.
- ¹⁰ Katherine Baicker and Helen Levy, *Employer Health Insurance Mandates and the Risk of Unemployment*, NBER, Working Paper 13528, October 2007; Craig Olsen, *Do Workers Accept Lower Wages in Exchange for Health Benefits?*, Journal of Labor Economics, Vol. 20, No. 2, Pt. 2, 2002; Norman Thruston, *Labor Market Effects of Hawaii's Mandatory Employer-Provided Insurance*, Industrial and Labor Relations Review, October 1997; Jonathan Gruber, *The Incidence of Mandated Maternity Benefits*, American Economic Review, June 1994; Jonathan Gruber and Alan Kruger, *The Incidence of Mandated Employer-Provided Insurance: Lessons from Workers' Compensation Insurance*, Tax Policy and the Economy, Vol. 5, 1991.
- ¹¹ The other nine groups include ACORN, ALF-CIO, A Better Balance, Center for Law and Social Policy, Moms Rising, 9 to 5, National Employment Law Project, SEIU, and Take Care Net.
- ¹² MultiState Working Families Consortium, FAMILY VALUES AT WORK: IT'S ABOUT TIME! 31 (2007).
- ¹³ MultiState Working Families Consortium, FAMILY VALUES AT WORK: IT'S ABOUT TIME! 32 (2007).
- ¹⁴ *Id.*
- ¹⁵ *Id.* at 34.
- ¹⁶ *Id.*
- ¹⁷ Healthy Families Act, H.R. 2460, 111th Cong. § 5(a)(1) (2009). "Paid sick time" means an increment of compensated leave that can be earned by an employee for use during an absence from employment for any of the reasons described in paragraphs (1) through (4) of section 5(b)." H.R. 2460, § 4(7).
- ¹⁸ Exempt employees are assumed to work 40 hours a week. *Id.* at § 5(a)(2).
- ¹⁹ *Id.* at § 4(7).
- ²⁰ *Id.* at § 5(a)(3).
- ²¹ *Id.*
- ²² *Id.* at § 5(a)(7).
- ²³ *Id.* at § 5(a)(6).
- ²⁴ *Id.* at § 5(a)(4)(B).
- ²⁵ The legislation provides that the term "person" would have the same broad meaning as under the FLSA and FMLA, H.R. 2460, § 4(B)(iii)(III). Indeed, the term "person" would include an "individual, partnership, association, corporation, business trust, legal representative, and any organized group of persons." 29 U.S.C. § 203(a). If the term is interpreted in a consistent manner as it has been under the FLSA and FMLA, even legally separate business entities may be part of a single employer for the purposes of the HFA if they qualify as an "integrated employer." The "integrated employer" test considers whether the entities have (1) common management, (2) interrelation between operations, (3) centralized control of labor relations, and (4) common ownership and/or financial control. 29 C.F.R. § 825.14. However, centralized control over labor relations is likely the most important factor. See *Schweitzer v. Advanced Telemarketing Corp.*, 104 F.3d 761 (5th Cir. 1997).
- ²⁶ The low number of employees needed to be a "covered employer" under the HFA will have a significant impact on small businesses, particularly ones experiencing financial difficulties. Because the definition of "employer" includes persons who employed 15 or more employees in the previous calendar year, a small employer suffering financial problems would have to provide paid sick leave even if it did not have 15 or more employees in the current calendar year. For example, a person who employed at least 15 employees in 2009 must provide paid sick leave to all eligible employees in 2010 even if the business suffered severe financial setbacks and had to lay off

10 of its employees on January 1, 2010. Thus, under the Act, an employer may have to continue to provide paid sick leave even if it does not have 15 or more employees.

²⁷ H.R. 2460, § 4(3)(B)(i)(I).

²⁸ See, e.g., *Carter v. United States Postal Service*, 157 F. Supp. 2d 726 (W.D. Ky. 2001); *Boriski v. City of College Station*, 65 F. Supp. 2d 493 (S.D. Tex. 1999); *Buser v. Southern Food Service, Inc.*, 73 F. Supp. 2d 556 (M.D.N.C. 1999); *Meara v. Bennett*, 27 F. Supp. 2d (D. Mass. 1998).

²⁹ H.R. 2460, § 5(b).

³⁰ "Child" is defined as "a biological, foster, or adopted child, a stepchild, a legal ward, or a child of a person standing in *loco parentis*, who is (A) under 18 years of age; or (B) 18 years of age or older and incapable of self-care because of a mental or physical disability." H.R. 2460, § 4(1).

³¹ "Parent" means "a biological, foster, or adoptive parent of an employee, a step parent of an employee, or a legal guardian or other person who stood in *loco parentis* to an employee when the employee was a child." H.R. 2460, § 4(8).

³² The term "Spouse" with respect "to an employee, has the same meaning given such term by the marriage laws of the State in which the employee resides." H.R. 2460, § 4(11).

³³ H.R. 2460, § 5(b)(3).

³⁴ *Id.* at § 5(b)(4).

³⁵ *Id.* at § 5(a)(5).

³⁶ S. 910, § 5(g).

³⁷ Mark Schoeff, Jr., DeLauro Says Paid Sick Days Bill Won't Disrupt PTO Plans, *Workforce Management* (May 19, 2009).

³⁸ S. 910, § 5(c)(B).

³⁹ H.R. 2460, § 5(a)(3).

⁴⁰ *Id.* at § 5(a)(1).

⁴¹ Milwaukee Paid Sick Leave Ordinance, § 112-3(5).

⁴² Milwaukee Equal Rights Commission, Rules Implementing the Milwaukee Paid Sick Leave Ordinance (Draft), Rule 3.2 (April 1, 2009).

⁴³ H.R. 2460, § 5(d)(1).

⁴⁴ Cf. S. 910, § 5(f)(1)(A).

⁴⁵ H.R. 2460, § 5(d)(1)(B-C).

⁴⁶ "Health care provider" is defined as a "provider who (A)(i) is a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the state in which the doctor practices; or (ii) is any other person determined by the Secretary to be capable of providing health care services; and (B) is not employed by an employer for whom the provider issues certification under this Act." H.R. 2460, § 4(6). The definition of "health care provider" in the HFA is an exact duplicate of the same definition in the FMLA. Cf. H.R. 2460, § 4(6) and 29 U.S.C. § 2611(6).

⁴⁷ H.R. 2460, § 5(d)(2)(A)(ii).

⁴⁸ *Id.*

⁴⁹ *Id.* at § 5(d)(4)(A).

⁵⁰ *Id.* at § 5(d)(4)(A).

⁵¹ *Id.* at § 8(a)(3)(A)(i-ii).

⁵² *Id.* at § 8(a)(3)(B)(i)(D)(bb).

⁵³ *Id.* at § 8(a)(3)(B)(i)(D)(aa).

⁵⁴ *Id.* at § 7(a)(1-2).

⁵⁵ *Id.* at § 7(a)(1)(c).

⁵⁶ See Family and Medical Leave Act, § 2617(a)(1)(A)(iii).

⁵⁷ H.R. 2460, § 8(a)(5)(A).

⁵⁸ *Id.* at § 8(a)(5)(B).

⁵⁹ Iris S. Diaz and Richard Wallick, *Leisure and Illness Leave: Estimating Benefits in Combination*.

⁶⁰ The previous HFA defined paid sick leave as an "increment of compensated leave provided by an employer to an employee as a benefit of employment for use by the employee during an absence from employment for any of the reasons described in paragraphs (1) through (3) of sections 5 (d)." S. 910, § 4(9). "Paid sick time" means an increment of compensated leave that can be earned by an employee for use during an absence from employment for any of the reasons described in paragraphs (1) through (4) of section 5(b)." H.R. 2460, § 4(7).

⁶¹ H.R. 2460, § 5(a)(1).

⁶² *Id.* at § 5(a)(4)(A).

⁶³ *Id.* at § 5(a)(4)(B).

⁶⁴ *Id.*

⁶⁵ *Id.* § 5(a)(1).

⁶⁶ It would take 1,680 hours, or 42 weeks, or 10.5 months working 40 hours per week for an employee to accrue 56 hours of paid sick leave under the HFA § 5(a).

⁶⁷ The DOL could also decide issues of “equity,” such as reinstatement, if an employee claimed to have been terminated for using paid sick leave.

⁶⁸ *Id.* at § (7)(a)(1)(A).

⁶⁹ See Family and Medical Leave Act, § 2617(a)(2)(B) (permitting a claim to be brought on behalf of “employees similarly situated”).

⁷⁰ H.R. 2460 § (7)(a)(1)(A).

⁷¹ Linda Levine, *Leave Benefits in the United States*, CRS Report for Congress, May 7, 2008, 22.

⁷² *Id.* at § 5(d)(3)(A)(ii).

⁷³ *Id.* at § 7(a)(1)(B).

⁷⁴ *Id.* at § 5(d)(2)(B)(ii). Indeed, the HFA specifically provides that “[n]othing in this Act shall be construed to require a health care provider to disclose information in violation of § 1177 of the Social Security Act (42 U.S.C. 1320d-6) or the regulations promulgated pursuant to §264(c) of the Health Insurance Portability and Accountability Act (42 U.S.C. 1320d-2 note).”

⁷⁵ H.R. 2460, § 5(d)(2)(B)(i).

⁷⁶ *Id.* at § 5(f)(2)(B)(ii).

⁷⁷ *Id.* at § 5(d)(2)(D)(ii).

⁷⁸ In addition, a temporary employee would likely count as an employee toward the 15-employee threshold for both the employer and the temporary employment agency, which is the case under the FMLA. See, e.g., *Miller v. Defiance Metal Products, Inc.*, 989 F. Supp. 945 (N.D. Ohio 1997).

⁷⁹ See, e.g., *Sherry v. Protection, Inc.*, 981 F. Supp. 1133 (N.D. Ill. 1997).

Prepared Statement of the National Association of Manufacturers (NAM)

DEAR CHAIRMAN MILLER AND RANKING MEMBER MCKEON: The National Association of Manufacturers (NAM)—the nation’s largest industrial trade association representing manufacturers of all sizes and industries—opposes “one-size-fits-all” mandates on employers that increase the cost of doing business in the United States, reduce benefit design flexibility, and limit or eliminate the customized benefit options currently available to employees. For these reasons, the NAM opposes H.R. 2460, the Healthy Families Act (HFA), which will be examined before the House Committee on Education and Labor’s Workforce Protections Subcommittee this week.

The HFA legislation would impose an inflexible government mandate on employers, making it more difficult for manufacturers to preserve and create jobs in these difficult economic times. Employers require the flexibility to provide their employees with the benefits that best fit the needs of their business and workforce. Most man-

ufacturers provided generous family-friendly benefits that include leave programs long before Congress considered mandating paid leave. On average, manufacturing employees earn over 20 percent more in compensation than the rest of the workforce and 79 percent of manufacturers currently offer a leave benefit that their employees can use specifically for illness, doctor's appointments or to care for an ill family member. The HFA's flawed approach would force employers to reduce wages or other benefits to pay a federal government leave mandate.

We stand ready to work with Congress to explore approaches that will enhance manufacturers' ability to provide the best benefit mix for their employees.

Sincerely,

JERI G. KUBICKI.

Prepared Statement of the Retail Industry Leaders Association (RILA)

DEAR CHAIRMAN MILLER AND RANKING MEMBER MCKEON: On behalf of the Retail Industry Leaders Association (RILA), I write to express our concerns with the Healthy Families Act (H.R. 2460). RILA member companies place great importance on employee relationships and offer competitive and comprehensive benefit and salary packages. For this reason, we share your goal of increasing access to paid leave for working Americans who desire this benefit. If enacted, however, this bill would impose an onerous mandate at a time when our industry is struggling to avoid further layoffs and business closures. The legislation would also force many employers to make tough choices between offering paid sick leave over health insurance, a more flexible leave program, or other benefits that employees may prefer. Needless to say, the ability to design such packages based on the particular needs of our employees is of paramount importance to retailers.

The Retail Industry Leaders Association promotes consumer choice and economic freedom through public policy and industry operational excellence. Our members include the largest and fastest growing companies in the retail industry—retailers, product manufacturers, and service suppliers—which together account for more than \$1.5 trillion in annual sales. RILA members provide millions of jobs and operate more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad.

Retailers greatly value paid leave programs as key to recruiting the best talent, ensuring employee happiness and productivity, and improving community welfare. However, the one-size-fits-all approach of the Healthy Families Act does not meet the needs of our companies' unique workforces. Further, because of the large part-time and seasonal workforces inherent to our industry, accruing leave upon date of hire and at any number of service hours will make compliance burdensome. Finally, the legislation as drafted would only add to the already complex web of inconsistent but overlapping leave obligations under federal and state laws.

We urge you to put aside the Healthy Families Act and instead engage us and other stakeholders in a conversation to better meet our shared goals of enacting a paid leave law that respects the needs of employers and employees alike.

[Additional submissions of Ms. Woolsey follow:]

WASHINGTON
LEGISLATIVE OFFICE



June 25, 2009

The Honorable Lynn Woolsey
Chairwoman
Subcommittee on Workforce Protections
House Committee on Education and Labor
2181 Rayburn House Office Building
Washington, DC 20515

AMERICAN CIVIL
LIBERTIES UNION
WASHINGTON
LEGISLATIVE OFFICE
915 15th STREET, NW, 6TH FL
WASHINGTON, DC 20005
T/202.544.1681
F/202.546.0738
WWW.ACLU.ORG

Caroline Fredrickson
DIRECTOR

NATIONAL OFFICE
125 BROAD STREET, 18TH FL.
NEW YORK, NY 10004-2400
T/212.549.2500

OFFICERS AND DIRECTORS
SUSAN HERMAN
PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

RICHARD ZACKS
TREASURER

The Honorable Tom Price
Ranking Member
Subcommittee on Workforce Protections
House Committee on Education and Labor
2181 Rayburn House Office Building
Washington, DC 20515

RE: ACLU Supports the Healthy Families Act (HR 2460)

Dear Chairwoman Woolsey and Ranking Member Price:

On behalf of the American Civil Liberties Union (ACLU) and its more than half a million members and activists and 53 affiliates nationwide, we thank the Subcommittee on Workforce Protections of the House Committee on Education and Labor for holding a hearing on the Healthy Families Act (HR 2460). The Healthy Families Act would guarantee workers up to seven paid sick days per year to recover from short-term illness, to care for a sick family member, for routine medical care, or to seek assistance related to domestic violence, sexual assault or stalking. We write to offer our full support for the Health Families Act and urge swift passage of this important legislation.

The ACLU is a national, nonpartisan public interest organization dedicated to protecting the constitutional rights of individuals. Through its Women's Rights Project, founded in 1972 by Ruth Bader Ginsburg, the ACLU has long been a leader in the legal battles to ensure women's full equality. This commitment includes fighting for equal employment opportunities for women and working to protect the workplace rights of battered women. We support the Healthy Families Act because it would help all covered workers maintain their paychecks and their jobs in the face of illness, and would especially help working women, who are not only more likely to care for sick family members but also less likely to have access to paid sick leave. By providing a right to take up to seven paid sick days a year to recover from an illness or care for a sick family member, the

legislation will help workers balance their jobs and family responsibilities, thus providing economic stability in trying times.

The ACLU also supports the Healthy Families Act because it will help survivors of domestic violence keep their jobs and escape abuse. A woman's ability to escape an abusive relationship will often depend on socio-economic factors such as her success in finding and keeping a job. Conversely, obstacles to obtaining adequate employment leave women more vulnerable to domestic violence, because these obstacles constrict their economic independence and limit their choices. Poor women and immigrant women are especially vulnerable to being trapped in cycles of abuse because of inadequate earnings. By guaranteeing up to seven paid sick days that can be used to address the medical, legal, psychological, and other consequences of domestic violence, sexual assault, or stalking, the Healthy Families Act begins to address the barriers survivors face as they seek to escape abusive relationships and protect themselves and their children from further violence.

Women, Work, and Paid Sick Days

Almost half of all workers do not have access to paid, job-protected leave to recover from their own illness or to care for a sick family member.¹ In fact, according to a 2008 University of Chicago survey, one in six workers reports that he or she or a family member has been fired, suspended, punished, or threatened with being fired for taking time off due to personal illness or to care for a sick relative. While a lack of paid sick leave harms all workers, it imposes a particular burden on women. Among working parents, women are less likely than men to have paid sick leave.² Women are also more likely to work in low-wage or part-time jobs, which in turn are far less likely to provide paid sick leave.³

Women are more likely to shoulder care-giving responsibilities in the family, and thus to miss work when a child is sick or an elderly parent or relative needs medical help. While only about half of workers have the right to take a paid day off to recover from their own illness, even fewer have paid leave available to care for a sick family member: only 30 percent of workers report that they have this option.⁴ When a child is sick and requires a parent's care at home, mothers are usually the parent who provides that care, even when this means losing wages or risking the loss of a job. About 80 percent of mothers are responsible for taking children to doctor's appointments and ensuring that the child receives the necessary follow-up care.⁵ Half of working mothers, compared to less than a third of working fathers, report missing work to care for a sick child, and half of those mothers do not get paid for this time.⁶

Female-headed families are on average poorer and thus particularly ill-equipped to absorb the loss of earnings and the risk of job loss that arise when a parent cannot take a paid day

¹ Vicky Lovell, Institute for Women's Policy Research, No Time to be Sick: Why Everyone Suffers When Workers Don't Have Paid Sick Leave 6 (2004).

² Katherin Ross Phillips, The Urban Institute, Getting Time Off: Access to Leave among Working Parents, 2-3 (April 2004).

³ Lovell, *supra* note 1, at 13(2004).

⁴ *Id.* at 10.

⁵ Kaiser Family Foundation, Issue Brief: Women, Work, and Family Health: A Balancing Act (April 2003).

⁶ *Id.*

to care for a sick child. Indeed, those parents who can least afford the lost income are also the least likely to have paid sick days to take care of a sick child. Single parents are less likely than married parents to have access to any paid leave.⁷ Poorer working parents are less likely than working parents with higher incomes to have paid leave.⁸ Among workers currently receiving welfare, a group made up overwhelmingly of mothers, about 3 out of 5 have no paid sick days, meaning that a child's illness can push such a worker out of the labor force and further away from self-sufficiency.⁹

By guaranteeing up to seven paid sick days a year, the Healthy Families Act supports workers' family caretaking responsibilities and allows workers to take the time they need to care for their own health. The ACLU strongly endorses protecting the incomes and job security of working families by ensuring that this time is made available.

Violence Against Women and Employment

The fear of job loss and resulting economic instability prevents many survivors of violence from escaping abusive relationships. For the first time in the bill's history, the Healthy Families Act would make paid leave available to victims of domestic violence, stalking, or sexual assault to address domestic or sexual violence in their lives. This is an important first step toward ensuring victims the economic security they need to leave their abusers.

Although domestic violence, stalking, and sexual assault affect both men and women, nearly one in three women in the U.S. reports physical or sexual abuse by a husband or boyfriend at some point in her life. Intimate partner violence continues to be a pervasive crime, committed primarily against women. A Department of Justice study estimated that intimate partners were responsible for 691,710 instances of rape, robbery and assault in 2001, with 588,490 crimes perpetrated against women and 103,220 against men.¹⁰ Twenty-two percent of non-fatal violent crimes experienced by women are committed by intimate partners.¹¹ Half of those who experience non-fatal violence sustain physical injury as a result.¹²

Domestic or sexual violence is a direct cause of workplace problems for the vast majority of victims who work. Indeed, up to 96% of domestic violence victims have experienced employment difficulties because of abusers and violence.¹³ Batterers often exercise control over victims by preventing them from going to work or harassing them on the job.¹⁴ The work lives of survivors are also disrupted if they need to seek housing or medical or legal help in response to abuse. Three studies collected by the U.S. General Accounting Office found that between 24

⁷ Phillips, *supra* note 2, at 3.

⁸ *Id.*

⁹ *Id.*

¹⁰ Callie Marie Rennison, U.S. Dep't of Justice, Bureau of Justice Statistics, Intimate Partner Violence 1993-2001 1 (2003).

¹¹ Shannan Catalano, U.S. Dep't of Justice, Bureau of Justice Statistics, Intimate Partner Violence in the United States (2006).

¹² *Id.*

¹³ U.S. Dep't of Labor, Women's Bureau, Domestic Violence: A Workplace Issue 1 (1996).

¹⁴ Richard M. Tolman & Jody Raphael, A Review of Research on Welfare and Domestic Violence, 56 J. Soc. Issues 655, 664-70 (2000).

and 52 percent of victims of domestic violence reported that they were either fired or had to quit their jobs as a result of abuse.¹⁵ These statistics represent a troubling reality: thousands of employees who are suffering from intimate partner abuse are at great risk of losing their jobs.

Despite the prevalence of domestic and sexual violence, more than 70% of workplaces in the United States do not have a formal program or policy that addresses workplace violence, and only 4% train their employees on domestic violence and its impact on the workplace.¹⁶ In the absence of such policies and training, employers frequently demonstrate "zero tolerance" for survivors of domestic violence, sexual assault, and stalking. Many refuse to accommodate survivors' need for time off to attend court dates or doctors' appointments, making it all but impossible for survivors to address the violence in their lives while financially supporting themselves.

Domestic and sexual violence thus renders women economically vulnerable, as battered women are forced to make the difficult choice between suffering in silence and risking loss of their income. In fact, research has shown that a large percentage of federal public assistance recipients and homeless women and families have experienced domestic violence.¹⁷ Addressing the impact of violence in the lives of employees serves the interest not only of the individual employees, but also of the larger public, by giving workers the tools necessary to remain self-supporting.

The ACLU strongly supports the Healthy Families Act's provision of up to seven paid sick days a year to allow survivors to safeguard themselves and their children. Survivors may need to take off short periods of time from work in order to relocate themselves and their families, obtain an order of protection, meet with law enforcement officials, or receive medical treatment or counseling. Without the option of paid leave, many victims may decide to endure abuse in order to hold on to their jobs. This is particularly true for survivors who work in low-wage jobs, and who thus have the fewest financial resources. Congress must ensure that paid sick leave is available to survivors who seek safety for their families.

Common Sense Public Health Policy

The lack of paid sick days is also a significant public health issue. This concern is even more relevant and poignant following the recent H1N1 (swine flu) scare and current pandemic. Workers who interact with the public every day are much less likely to have paid sick days than their counterparts in non-service jobs. For example, only 22 percent of food and hotel workers have any paid sick days. Workers in child care centers, retail clerks, and nursing homes also disproportionately lack paid sick days. When working people have no choice but to go to work when they're ill, their colleagues and the general public, including children and senior citizens, face an increased risk of contracting illness.

¹⁵ U.S. Gen. Acct. Office, *Domestic Violence: Prevalence and Implications for Employment Among Welfare Recipients* 19 (1998).

¹⁶ U.S. Dep't of Labor, Bureau of Labor Statistics, *Survey of Workplace Violence Prevention* (2006).

¹⁷ See Tolman & Raphael, *supra* note 9; U.S. Conference of Mayors, *Hunger and Homelessness Survey* 64 (December 2005).

In conclusion, the ACLU applauds the Chairwoman and Ranking Member for your attention to this important and long overdue legislation. In this time of great economic crisis, families need work supports like paid sick leave now more than ever. We look forward to working with members of the Committee in the months ahead to enact the Healthy Families Act.

Should you have any questions, please don't hesitate to contact Vania Leveille at 202 715-0806 or vleveille@aclu.org. Thank you for your consideration.

Sincerely,



Caroline Fredrickson
Director, Washington Legislative Office



Vania Leveille
Legislative Counsel

Prepared Statement of the American Association of University Women

Thank you for the opportunity to submit testimony for the hearing “H.R. 2339, the Family Income to Respond to Significant Transitions Act, and H.R. 2460, the Healthy Families Act.”

Founded in 1881, the American Association of University Women (AAUW) is a membership organization founded in 1881 with approximately 100,000 members and 1300 branches nationwide. AAUW has a proud 127-year history of breaking through educational and economic barriers for women and girls, and continues its mission today through education, research, and advocacy. AAUW believes that creating work environments that help employees balance the responsibilities of work and family is good public policy. In fact, AAUW’s member-adopted Public Policy Program is committed to “greater availability of and access to benefits and policies that create a family-friendly workplace environment,” which are critical for women to achieve “equitable access and advancement in employment.”¹

Despite the Family and Medical Leave Act (FMLA) and a patchwork of state laws and employer-based benefits—many of which AAUW members helped to pass—family and personal sick leave remain elusive to many working Americans. Further, despite the relative wealth of the United States, our family-oriented workplace policies lag dramatically and embarrassingly behind those in much of the rest of the world, including all high-income countries and many middle- and low-income countries as well.² While American workplace policies have lagged, the past fifty years has seen substantial changes in the composition of the American workforce. Two-thirds (64 percent) of women with children under six are in the labor force.³ Nationwide, 22.9 million families provide care for an adult family member or friend, and nearly 80 percent of those care recipients are over the age of 50.⁴

It's clear that new and unique solutions are necessary to meet the increasing demands of families and the necessary obligations of work.

Employees Need Paid Sick Days, Especially Women

AAUW has long supported flexible workplace policies to address the family responsibilities of employees. Offering workers the option of taking time off when they or a family member is sick is not just good for families, it's good for business. At least 145 countries worldwide provide paid sick days, with 127 providing a week or more annually. More than 79 countries provide sickness benefits for at least 26 weeks or until recovery.⁵

But many hardworking Americans do not have access to the important benefit of paid sick leave. In fact, just under half (43 percent) of the private sector workforce has no paid sick days.⁶ Low-wage workers are especially hard hit, with about half receiving no paid sick days.⁷ In the industries that employ the most women—retail trade and accommodations/food service, which coincidentally have immense public health implications—almost 9 million women do not have paid sick days.⁸ Further, 27 percent of low income women put off getting health care because they cannot take time off from work and 18 percent of women at all income levels face this situation.⁹ More than 22 million working women do not have paid sick days,¹⁰ and as a result half of working mothers report that they must miss work and often go without pay when caring for a sick child.¹¹

Paid employment should not be at odds with family responsibilities. In fact, finding solutions so that the two roles might better coexist is in the best interest of businesses. Current models of benefits are out of touch with the realities of the 21st century workforce, where households are often headed by dual-earning couples out of necessity, or a single parent whose juggling act can be particularly difficult. Furthermore, elder care responsibilities affect nearly four in ten adults, and this number is likely to grow higher as nearly two-thirds of Americans under age 60 expect to be responsible for the care of an elderly relative in 2008.¹² But work is not a choice for the majority of Americans, and most cannot afford to forfeit their paycheck or their job when a family member is sick; the Healthy Families Act provides a reasonable solution to this everyday crisis faced by families nationwide.

The Healthy Families Act

Without sick days, employees often come to work sick, decreasing productivity and infecting coworkers. We've seen increased attention to the community health issue during the recent H1N1 flu pandemic, with officials urging schools to close and workers presenting symptoms to stay home. The lack of available paid sick days forces families with children to confront difficult choices that impact not only their families but potentially their communities as well. Such decisions can become a catch-22. For the 86 million Americans who do not have paid sick days,¹³ a decision to stay home to care for a sick child or family member jeopardizes their family income or even their job. In addition, employees themselves are unable to make smart decisions to stay home to prevent infecting others because they cannot go without a day's wages.

The Healthy Families Act would require employers with at least 15 or more employees to guarantee workers seven days of accrued paid sick leave annually. By ensuring that hard working Americans have access to a minimum number of paid sick days that can also be used to care for sick dependents, employees will no longer have to make the difficult choices between caring for loved ones—or themselves—and losing much-needed income. In these challenging economic times, that decision is an especially difficult one for families to make.

In the 111th Congress, the Healthy Families Act was introduced with an important new provision. The bill's paid sick days would be available for use for treatment, recovery, and activities necessary to deal with an incidence of domestic violence. This includes, but is not limited to, activities such as filing a restraining order, making a court appearance, moving into a shelter, and seeking medical treat-

ment. We know that the aftermath of domestic violence costs employers, at a minimum, between \$3 billion and \$5 billion annually in lost time and productivity.¹⁴ And even more importantly, victims of intimate partner violence lose 8 million days of paid work each year.¹⁵ Paid sick and safe days are a necessity to victims and AAUW supports this new provision in the bill.

Not only is offering paid sick days a positive step for businesses to stay in tune with the makeup and needs of the 21st century workforce, paid sick days produce savings for businesses through decreased turnover and increased productivity. The Institute for Women's Policy Research estimates that the Healthy Families Act would result in a net savings, after covering costs of paid leave, of \$8 billion per year. In addition, we are fortunate to be able to examine the policy already in place in San Francisco, where it was shown that implementing paid sick days resulted in a minor impact on employers and strong job growth in relation to the region.¹⁶

Conclusion

The Healthy Families Act is an important step for Congress to take to ensure that employees can more adequately balance the responsibilities of work and life. The demands of providing care for a sick family member should not force workers into an untenable decision between a paycheck or their job and the needs of a loved one. AAUW believes that the improvement of current benefits and family leave to include a basic minimum of paid sick days is critical to breaking through economic barriers for women, and will continue to work with Congress to pass the Healthy Families Act.

Thank you for the opportunity to submit testimony.

ENDNOTES

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Prepared Statement of Darryl Fagin, Legislative Director, Americans for Democratic Action, Inc.

Chairwoman, Lynn Woolsey and Members of the Subcommittee on the Workforce Protections, on behalf of Americans for Democratic Action our nations' premier membership multissue liberal political organization, I thank you for giving us this opportunity to express our views about this vital legislation pending before your Committee, the Healthy Families Act (HFA) H.R. 2460 and the Family Income to Respond to Significant Transitions (FIRST) Act's, HR 2339.

Chairwoman, Woolsey you made the strongest case for these bills in March when you said, "Today, three-quarters of all mothers work and in about 80% of two-parent families, both parents work outside the home. Unfortunately, the laws governing work-life balance haven't kept up with these changes." Our nation's financial crisis has caused families to have less money and unable to make ends meet, workers need policies like paid family and medical leave more than ever. The lack of paid sick days is not just a crisis for individual families—it is a public health crisis as well.

The HFA has 105 cosponsors. This bill requires certain employers, who employ 15 or more employees for each working day during 20 or more workweeks a year, to permit each employee to earn at least one hour of paid sick time for every 30 hours worked.

The HFA is a comprehensive bill that will more fully restore and strengthen the economic safety net for working people. Specifically, the bill would provide assistance for working families through: family and medical care leave; expanded child care opportunities; in-school and after-school options, and a variety of other initiative that will help working parents. The HFA policies benefit workers and employers. Studies have shown that workers with the flexibility to balance work and family are loyal to their employers, and tend to stay longer in their jobs.

When illness strikes working families need paid leave to help them survive financially when they have a new child, when a bread winner cannot work because of critically illness, or when a loved on suffers from illness and needs care. The current law that helps workers in this situation is the federal Family and Medical Leave Act.

Working people need more than the unpaid leave provided by current laws to protect their family's financial integrity. Working people need paid leave. Low-income worker without paid family and medical leave are hit hardest and suffer the most. About three in four low-income employees who take family and medical leave receive no pay, compared to between one in three middle income employees and one in four upper income employees. "For families in the lowest quartile of earners, 79 percent lack paid sick time." [H. R. 2460, Sec. 2. (12)]

The FIRST Act's, grant funding to develop and implement new paid leave programs would enable states to clear the hurdle of start-up costs. The FIRST Act will also help states with existing programs reach out to and educate workers about their options for paid leave.

Under the FIRST act, the Secretary of Labor can award grants to states to pay for the federal share of the cost of carrying out programs that assist families by providing, through various mechanisms, wage replacement for eligible individuals taking leave to respond to care giving needs resulting from the birth or adoption of a child, or for other purposes under the Family and Medical Leave Act of 1993 (FMLA) or provided under state or local law.

When employees don't have paid sick days their necessary absences eventually leads to higher employee turnover. Many low-income workers do not have paid sick days. Providing paid sick days will actually save American businesses by eliminating these productivity losses and reducing worker turnover. Paid sick leave will help to build a loyal and stable workforce.

Allowing workers earn paid sick time to care for themselves and their families is a matter of fundamental fairness. All hardworking Americans deserve the chance to take care of their families without having to choose between keeping their jobs and caring for their sick child.

ADA supports these two bills by Rep. Rosa DeLauro (D-CT) "The Healthy Families Act" (HFA) and Rep. Lynn Woolsey (D-CA) "FIRST Act," and urges Congress to past this common sense legislation to help working Americans. These well crafted bills will benefit both workers and employers and should be approved, without delay.

Thank you for your attention.

Prepared Statement of A Better Balance

On behalf of A Better Balance, a legal advocacy organization that is working with a broad coalition of advocacy groups in New York and in states around the nation to create paid leave programs for workers, we appreciate the opportunity to provide a statement for the hearing record on the Family Income to Respond to Significant Transitions Act (FIRST Act). We urge Congress to pass the FIRST Act, which will make it possible for working people to take time off to care for a new baby, for their own serious health needs or those of their families without jeopardizing their economic security. This legislation would provide incentives to encourage additional states to adopt paid family leave programs and assist states that have already enacted such programs to conduct outreach and to provide incentives to small employers to provide job protection to workers on leave. We strongly support it.

Working families need paid leave to help them stay afloat financially when they have a new child, when a wage earner falls critically ill, or when a family member has a serious health condition and needs care. Right now, the only laws that help workers in this situation are the federal Family and Medical Leave Act, and in our state, the Temporary Disability Insurance program, which provides only meager benefits for a worker's own temporary non-work related disability. But workers need more than the unpaid leave and limited benefits provided by these laws to protect their family's economic security. For many workers, the birth of a child or an illness in the family forces them into a cycle of economic distress. Twenty-five percent of all poverty spells begin with the birth of a child. The lack of paid family and medical leave hits low-income workers hardest: almost three in four low-income employees who take family and medical leave receive no pay, compared to between one in three middle income employees and one in four upper income employees.

With families increasingly unable to make ends meet, workers need policies like paid family and medical leave more than ever. Because of the economic downturn, lost wages or a lost job because of a new child or sick family member can have especially devastating effect. If a wage earner gets seriously ill or needs to take time off of work to care for a family member, a missed paycheck may mean that the mortgage, rent or other bills will have to go unpaid. It is unsurprising that studies show that medical bills lead to foreclosures and bankruptcy—workers have no other choices.

Working families should not have to risk their financial security when they get sick or a family member needs them. Paid family and medical leave will help families maintain their economic security and will show that we, as a nation, truly support and value families. Please help us achieve this goal by supporting the FIRST Act.

Prepared Statement of Ellen Bravo, Coordinator, Family Values @ Work: A Multi-State Consortium

On behalf of Family Values @ Work: A Multi-State Consortium (FV@W), I would like to express strong support for the Family Income to Respond to Significant Transitions Act (FIRST Act).

Family Values @ Work is a network of eleven state coalitions, all working to expand access to paid family leave and paid sick days at the state and federal levels. The coalitions in our network include representatives of seniors, children, women, labor, health professionals, and business owners who advocate for new policies to make sure that workplace standards match the realities of today's workforce.

The Family and Medical Leave Act allows employees in firms of 50 or more to take time to care for a new child, a serious health condition or a seriously ill loved one. Yet nearly three million people a year who are eligible for family leave and need to use it, do not take this time because they cannot afford to do so without pay. Family and medical leave insurance is a proven, cost-effective approach that would immediately help rectify this problem. It would enable people to stay employed and at the same time improve the health and well-being of children, speed recovery from illness, lower medical costs, improve family economic security, and help businesses prosper.

A number of our member states as well as other states have already passed or would likely pass family leave insurance programs, but need funds to help initiate these programs or do adequate outreach for them.

By providing grants to the states for start-up or outreach for family leave insurance funds, the FIRST Act would assist with our nation's economic recovery, directing money to people who will spend it just when they need it most. Establishment of family leave insurance funds will enable workers to stay employed and help business owners benefit from job stability and lower costs related to turnover.

All employees need to be able to be good family members and responsible employees. And all business owners need to know that staff can take time to care for themselves or a loved one and be able to return to work. The FIRST Act's funding to develop and implement new paid leave programs would enable states to clear the hurdle of start-up costs. Funding at the critical early stages will help ensure that state paid leave programs can then become self-sustaining.

By providing this assistance, passage of the FIRST Act would significantly help working families. We strongly urge Congress to act quickly to pass the FIRST Act. Thank you very much for your consideration.

**Prepared Statement of Cindia Cameron, Organizing Director, 9to5,
National Association of Working Women—Atlanta Chapter**

On behalf of the members and constituents of 9to5, National Association of Working Women—Atlanta Chapter, I appreciate the opportunity to provide a statement for the hearing record on the Healthy Families Act and the Family Income to Respond to Significant Transitions Act (FIRST Act).

Atlanta 9to5 urges Congress to pass the Healthy Families Act, which will allow workers to earn up to 7 paid sick days annually to care for their own or family members' illness, and to pass the FIRST Act, which will make it possible for working people to take time off to care for a new baby, for their own serious health needs or those of their families without jeopardizing their economic security. Both of these pieces of legislation are critical for the health and economic security of all working people and their families. We strongly support both bills.

Jennetta Allen is a 19 year-old college student, and a member of Atlanta 9to5, who was diagnosed with spino-cerebellar syndrome at a young age. She shared her experience of the need for the Healthy Families Act at an Atlanta press conference:

"Once when I was little I got real sick at school. I waited and waited but Mom never came. The principal had to drive me home and wait with me for my Mom. When my Mom finally got home she was crying more than I was. She told me her boss would not let her leave work. My Mom was fired because her boss THOUGHT I might get sick again!"

Healthy Families Act

Chances are each of us will get sick or need to care for a sick family member this year. But not all of us have the option to take time off from work to get better or to care for a sick family member. Almost 60 million Americans lack a single paid sick day in which to care for themselves when illness strikes. In addition, nearly 100 million workers don't have a paid sick day they can use to care for an ill child.

When many workers get sick, need to take care of a sick child, or have to take an elderly parent to a medical appointment, they are faced with an impossible choice: lose a day of pay and possibly even a job, or take the time needed to take care of their family. Half of low-wage working parents report losing pay to stay home and care for a sick child or being forced to leave children home alone.

When workers have access to paid sick days, employers benefit from reduced turnover, higher productivity, and reduced spread of contagion in the workplace. If workers were allowed to earn just seven paid sick days per year, as the Healthy Families Act proposes, our national economy would experience a net savings of \$8.1 billion per year.

In a nation that values families, no worker should have to choose between their job and their own or a family member's health. Please help us achieve this goal by supporting the Healthy Families Act.

FIRST Act

Working families need paid leave to help them stay afloat financially when they have a new child, when a wage earner falls critically ill, or when a family member has a serious health condition and needs care. Currently, the only law that helps workers in this situation is the federal Family and Medical Leave Act. But workers need more than the unpaid leave provided by FMLA to protect their family's economic security. For many workers, the birth of a child or an illness in the family forces them into a cycle of economic distress; in fact, the birth of a child accounts for twenty-five percent of people's bouts with poverty.

Working families should not have to risk their financial security when a wage earner gets sick or a family member needs help. Paid family and medical leave will help families maintain their economic security and will show that we, as a nation, truly support and value families. Please help us achieve this goal by supporting the FIRST Act.

June 25, 2009.

DEAR REPRESENTATIVE WOOLSEY: My name is Lindsey Lee and I am writing to express my strong support of federal legislation that mandates a minimum standard for paid sick and safe days for workers through the Healthy Families Act. I founded Cargo Coffee and Ground Zero coffee shops in Madison, Wisconsin over eleven years ago. I have about twenty-four employees and provide paid sick days. I first became an avid supporter of paid sick days when paid sick days legislation was first debated in Madison, Wisconsin in 2006.

Providing paid sick days makes plain sense for my business and I believe for the overall economy. First, the cost is relatively minor. This is especially true when compared to the ever rising health insurance costs. For my staff, providing paid sick days resulted in about a two to three percent one time increase to payroll. Second, providing paid sick days has increased productivity among my staff. Having an employee come in to work sick and then having multiple sick employees several days later makes no sense. Being in the restaurant industry, I am pretty sure my customers and employees appreciate that I am acting prudently in making sure I have a healthy staff.

Finally, I recall that in the early 1990s, some voices trying to speak for the business community predicted dire consequences for small businesses and the overall economy if the Family and Medical Leave Act passed. Instead, it has been a successful law that recognizes that our workforce has been evolving, especially with more families with two parents working full time jobs. I believe that law actually strengthened our workforce and business culture which in turn has made for a stronger economy. I am sure the same would be true if paid sick days were also made mandatory.

My business would benefit from a national standard which would set a level playing field among my competitors. My employees with children can stay with their sick child and not fear they will lose their job. That should be a minimum standard for all businesses.

In order for me to continue to recruit, retain, and support skilled and committed workers, I have to acknowledge the needs of my workers and their families. I urge support of the Healthy Families Act to meet the needs of our workforce and modern economy.

Thank you.

LINDSEY LEE,
Cargo Coffee and Ground Zero Coffee, Madison, WI.

Prepared Statement of the Center for Law and Social Policy (CLASP)

The Center for Law and Social Policy (CLASP) is a nonpartisan national nonprofit that develops and advocates for policies at the federal, state, and local levels that improve the lives of low-income people. CLASP's mission is to improve the economic security, educational and workforce prospects, and family stability of low-income parents, children, and youth, and to secure equal justice for all.

CLASP strongly encourages passage of the Healthy Families Act. Having paid sick days is a basic labor standard that needs to be legislated because the lack of a paid sick days mandate has resulted in about half of all private-sector workers having no ability to take a day off when sick without losing pay. Too many are at risk of losing jobs as well. The lack of paid sick days disproportionately affects the lives of our nation's low-income population, contributes toward public health risks, and allows an uneven playing field for businesses.

Low-Income Workers—Nearly half of all private-sector U.S. workers (47%) are not provided any sick time and 70 percent do not have sick days to care for sick children. Fully 77% of workers in the bottom wage quartile—nearly 24 million—do not have any paid sick leave.¹ When those workers who do not have paid sick days fall ill, or their children or elders fall ill, they are forced to choose between their badly needed pay check, and often their job security, and their health. Parents with paid time off are more than five times as likely as other parents to stay home with sick children which helps with recovery, yet only 41% of working mothers have paid sick days consistently.²

Public Health—In light of the recent H1N1 flu pandemic, the President urged and the Centers for Disease Control and Prevention (CDC) issued guidelines recommending that employees experiencing flu-like symptoms, stay home from work or school and limit contact with others.

As a practical matter, employees are unable to heed these warnings if they do not have the benefit of paid sick days and cannot afford to stay home from work and risk losing their jobs.

The danger resulting from the spread of viruses and disease is especially acute in the service industry, where workers interact regularly with the general public. Because service workers earn low wages, they usually cannot afford to miss a day of work during an illness. And, workers in the food and accommodation industry are least likely to have access to paid sick days—17th of 17 industries.³ Without paid sick days, these employees will continue to come to work and interact with patrons while sick, which creates a public health concern.⁴

While some businesses may have responded to the recent flu by providing time off for employees so that the public health was not jeopardized, the vast majority did not change their policies. The government is right to call attention to the public health concerns related to the flu; to ensure a viable system, it appears a government policy that sets a labor standard floor is essential.

Level-Playing Field—A minimum labor standard on paid sick days is critical to ensure that businesses, especially small businesses, have a level-playing field. Competition with other firms that do not offer paid sick days discourages many businesses from voluntarily offering paid sick days to their employees, even when they would like to do so.⁵ A small firm that wants to provide paid sick days to its employees typically cannot afford to do so unless the firm's competitor provides paid sick days as well. The smaller a firm's profit margin, the greater the significance of a level-playing field.

Cost-Benefit Analysis—Recent research also suggests the economic benefits of paid sick days for businesses outweigh the costs. Paid sick days would reduce the incentive for employees to leave one firm for another with better working conditions, and costs associated with high rates of turnover are substantial. Unhealthy workers are also unproductive workers. "Presenteeism," or the cost incurred when sick employees go to work but perform under par due to illness, constitutes a "hidden" loss in productivity for businesses. Health conditions of sick employees often worsen when they do not rest at home or seek medical care, thereby exacerbating the loss in productivity. And, sickness is spread easily in the workplace from one employee to another.⁶ Contagion due to the flu in the workplace costs our national economy \$180 billion annually in lost productivity.⁷ For employers, this costs an average of \$255 per employee per year and exceeds the cost of absenteeism and medical and disability benefits.

While some critics of paid sick days legislation argue that mandated paid sick days legislation would lead to job loss and raise the unemployment rate, the facts are to the contrary. A recent study has found that there is no statistically significant effect of mandated paid sick days or leave on national unemployment rates.⁸ However, paid sick days could pay off economically by restricting the costly spread of contagious diseases.

Conclusion

Because paid sick days are critical to public health and are good for business, it is not surprising that 21 of the world's 22 highly ranked countries in terms of economic and human development provide paid sick days to its employees. It is a surprising fact that the United States is the only country in that group that has to date failed to adopt a national policy guaranteeing that workers receive paid sick days or paid leave.⁹

The Healthy Families Act provides our nation with an opportunity and highlights our responsibility to provide paid sick days to all workers, including the many low-wage workers that cannot afford to not have them. CLASP strongly urges passage of the Healthy Families Act.

ENDNOTES

¹Vicky Lovell, "No Time to be Sick: Why Everyone Suffers When Workers Don't Have Paid Sick Leave," Institute for Women's Policy Research, Washington, DC, 20004. Low-income is defined as less than 200 percent of the federal poverty line.

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⁵Jodie Levin-Epstein, "Responsive Workplaces: The Business Case for Employment that Values Fairness and Families," The American Prospect, February 2007, <http://www.prospect.org/cs/articles?article=responsive-workplaces>.

⁶Jodie Levin-Epstein, "Presenteeism and Paid Sick Days," Center for Law and Social Policy, February 2005, <http://clasp.org/publications/presenteeism.pdf>.

⁷Ron Goetzal, et al., "Health Absence, Disability, and Presenteeism Cost Estimates of Certain Physical and Mental Health Conditions Affecting U.S. Employers," *Journal of Occupational and Environmental Medicine*, April 2004.

⁸John Schmitt, et al., "Paid Sick Days Don't Cause Unemployment," Center for Economic and Policy Research, June 2009.

⁹Jody Heymann et al., "Contagion Nation: A Comparison of Paid Sick Day Policies in 22 Countries," Center for Economic and Policy Research, May 2009.

Prepared Statement of Connecticut Working Families

Connecticut Working Families is a grassroots coalition of community organizations, unions and neighborhood activists. We were formed with the goals of refocusing the political debate on issues that most affect working class and middle class families, like affordable healthcare, good jobs, high quality public schools and fair workplace standards.

For the past few years, we have led the Everybody Benefits coalition campaigning for paid sick days for working people in Connecticut. Our campaign has attracted a broad coalition of supporters, including doctors, public health professionals, business owners, educators, women's rights groups, unions and community organizations.

A growing body of research demonstrates that such a policy has broad public benefits and minimal costs. It's not just a narrow "labor-management" issue; it's an issue of public health, of healthcare access, and even an issue of smart business practices.

Two factors have drawn the need for a basic labor standard for paid sick days into sharper focus than ever.

The first is the swine flu. When the swine flu outbreak began, public health officials, the Centers for Disease Control, and even President Barack Obama offered the same commonsense advice to protect public health: if you get sick, stay home.

For the hundreds of thousands of Connecticut employees without sick days, and for millions across the nation, making the healthy choice isn't so easy. Facing the prospect of losing wages or even their job, workers are likely to come in sick. In fact, a recent survey from Monster.com indicated 33 percent of workers go to work sick for fear of losing their job in this economy.

Swine flu didn't turn into the global pandemic some feared. But it did show a real divide between common-sense public health practices and reality for hundreds of thousand of workers.

It is particularly alarming that workers without paid sick days are concentrated in industries such as food service, retail and even healthcare, which require a substantial level of contact with the public.

A 2008 outbreak of a 'norovirus' at Adam's Mill restaurant in Manchester. About 30 UConn students caught an acute norovirus (sometimes called a stomach flu) at dinner. The Connecticut Department of Public health did an investigation and traced the incident to a sick food service worker. This is no surprise; the Center for Disease Control estimates that out of 18 million norovirus infections annually, roughly half are attributable to ill food service workers.

Infectious illness can be particularly harmful in places like schools and nursing homes, where vulnerable populations are in close contact. It defies commonsense to make school bus drivers and home health aides come to work sick. But we do. And that puts us all at risk.

Many physicians support paid sick days because it's a reform that can dramatically improve our healthcare system. When it comes to healthcare reform, there's one thing that all sides agree on: improving access to primary care drives down costs for all of us. Yet nearly half of all private sector workers have no sick days—making them far more likely to forego the preventive care that reduces costs and improves health outcomes.

The second factor is the recession. Our working families are hit hardest by the recession. More than ever, families are barely making ends meet, or falling further into debt. And those without paid sick days have even more to be worried about. For those families, losing a day's pay—or even a job—is as easy as catching the flu, or a child catching a bug.

Among low-wage workers—those who can least afford to lose pay—around three-quarters lack paid sick days. And if an employee does stay home to recover from illness or to care for a child, and loses his job, the consequences are worse than ever. It will likely take much longer to find a new job than it would have even a year ago.

If there was ever a time that working families need an extra measure of economic security, this is it. In times as tough as these, we shouldn't be asking people to make an impossible choice between their livelihood and their family's health.

Opponents of a paid sick days measure will claim it's too expensive for businesses. This view is penny-wise but pound-foolish. It's an argument contradicted by serious analysis and by real life experience.

According to the Center for Worklife Law, the cost to employers of "presenteeism"—coming to work sick—is far greater than the cost of absenteeism. It accounts for 78 percent of the loss of productivity for businesses—\$180 billion annually. Employees who stay home account for only 22 percent.

There is an assumption by some that employees will use every hour of sick leave available. Yet, the research and available data indicate that when allowed seven sick days per year, workers take, on average, just under three. Many use no sick time in a given year. Only rarely do employees use all the sick time available.

The argument that employees will abuse sick leave is equally misguided. Proper administration dissuades abuse and provides tools for dealing with it.

Paid sick leave also decreases turnover and its associated costs, increases employee morale and satisfaction and ultimately enhances profitability and success. Employees who feel valued are more likely to produce value, and are less likely to leave.

The experience in San Francisco bears out this data. In 2007, the city enacted a paid sick leave ordinance that is much broader than the one proposed in Connecticut. The following year, job growth in San Francisco was as good as or better than any other county in the area. In the restaurant industry, the most heavily affected by paid sick leave, employment grew faster the year following the ordinance than the year prior.

The Healthy Families Act is crafted carefully to balance the needs to employers and employees, and it gives employers the ability to protect against employee abuse. Research shows that paid sick days is even smart for business, and saves money in the long run.

Enacting a reasonable labor standard for paid sick days will give hundreds of thousands of Connecticut families a safety net so that illness won't mean financial disaster.

Prepared Statement of Cathy Deppe, Lead Organizer, 9to5, National Association of Working Women—Los Angeles 9to5

On behalf of the members and constituents of 9to5, National Association of Working Women—Los Angeles, I appreciate the opportunity to provide a statement for the hearing record on the Healthy Families Act and the Family Income to Respond to Significant Transitions Act (FIRST Act).

9to5 Los Angeles urges Congress to pass the Healthy Families Act, which will allow workers to earn up to 7 paid sick days annually to care for their own or family members' illness, and to pass the FIRST Act, which will make it possible for working people to take time off to care for a new baby, for their own serious health needs or those of their families without jeopardizing their economic security. Both of these pieces of legislation are critical for the health and economic security of all working people and their families. We strongly support both bills.

When 9to5 helped win the "first in the nation" paid sick days bill for the City of San Francisco, the Work and Family Coalition brought together labor unions, interfaith groups, and community organizations for a state-wide drive. Our Coalition has over 160 members and includes ACORN, the California Federation of Labor, and SEIU. 9to5 Los Angeles has helped secure a Los Angeles City Council Resolution for the bill. This same coalition has advocated for legislation to protect caregivers against discrimination in the workplace, and legislation to extend and reinforce the CA Paid Family Leave Act which provides 6 weeks partial wage replacement. We are doing our part—and we need Congress to step in and do theirs.

Healthy Families Act

Chances are each of us will get sick or need to care for a sick family member this year. But not all of us have the option to take time off from work to get better or to care for a sick family member. Almost 60 million Americans lack a single paid sick day in which to care for themselves when illness strikes. In addition, nearly 100 million workers don't have a paid sick day they can use to care for an ill child.

When many workers get sick, need to take care of a sick child, or have to take an elderly parent to a medical appointment, they are faced with an impossible choice: lose a day of pay and possibly even a job, or take the time needed to take

care of their family. Half of low-wage working parents report losing pay to stay home and care for a sick child or being forced to leave children home alone.

When workers have access to paid sick days, employers benefit from reduced turnover, higher productivity, and reduced spread of contagion in the workplace. If workers were allowed to earn just seven paid sick days per year, as the Healthy Families Act proposes, our national economy would experience a net savings of \$8.1 billion per year.

In a nation that values families, no worker should have to choose between their job and their own or a family member's health. Please help us achieve this goal by supporting the Healthy Families Act.

FIRST Act

Working families need paid leave to help them stay afloat financially when they have a new child, when a wage earner falls critically ill, or when a family member has a serious health condition and needs care. Currently, the only law that helps workers in this situation is the federal Family and Medical Leave Act. But workers need more than the unpaid leave provided by FMLA to protect their family's economic security. For many workers, the birth of a child or an illness in the family forces them into a cycle of economic distress; in fact, the birth of a child accounts for twenty-five percent of people's bouts with poverty.

Working families should not have to risk their financial security when a wage earner gets sick or a family member needs help. Paid family and medical leave will help families maintain their economic security and will show that we, as a nation, truly support and value families. Please help us achieve this goal by supporting the FIRST Act.

Prepared Statement of Erin Bennett, Colorado Organizer; Lorena Garcia, Colorado Lead Organizer, 9to5, National Association of Working Women—Colorado Chapter

On behalf of the members and constituents of 9to5, National Association of Working Women—Colorado Chapter, I appreciate the opportunity to provide a statement for the hearing record on the Healthy Families Act and the Family Income to Respond to Significant Transitions Act (FIRST Act).

9to5 Colorado urges Congress to pass the Healthy Families Act, which will allow workers to earn up to 7 paid sick days annually to care for their own or family members' illness, and to pass the FIRST Act, which will make it possible for working people to take time off to care for a new baby, for their own serious health needs or those of their families without jeopardizing their economic security. Both of these pieces of legislation are critical for the health and economic security of all working people and their families. We strongly support both bills.

Eva Henry is a resident of Thornton, Colorado. She worked in the financial services industry as a single parent and did not receive paid sick days. On a \$15,000 annual salary she had to decide between paying rent and putting food on the table; or staying home with her child. If she missed one day of pay she would have to make those hard choices or even lose a job and be faced with the challenge of finding a new one. Her daughter had chronic ear infections from the time she was 6 months old. When her daughter was 8, Eva had to start leaving her at home alone because she did not have paid sick days that allowed her to be home with her child. When she was at work, her daughter was constantly on her mind. Eva would call home often; worried that something would happen while she was at work. When her daughter was 10, she had to have an operation. Eva informed her supervisor and 3 days before her daughter's operation, she was fired because of the time needed for her daughter.

9to5 Colorado is dedicated to working on work-family issues, such as paid sick days and paid time off. Recently, we led the effort to pass a Colorado bill allowing workers time off to attend their children's school activities, such as parent-teacher conferences. This year, we began working on gaining access to paid sick days for all workers in Colorado. We have built a strong coalition consisting of organizations, businesses, labor, and many Colorado citizens who believe very strongly that everyone deserves access to paid sick days.

Healthy Families Act

Chances are each of us will get sick or need to care for a sick family member this year. But not all of us have the option to take time off from work to get better or to care for a sick family member. Almost 60 million Americans lack a single paid sick day in which to care for themselves when illness strikes. In addition, nearly 100 million workers don't have a paid sick day they can use to care for an ill child.

When many workers get sick, need to take care of a sick child, or have to take an elderly parent to a medical appointment, they are faced with an impossible choice: lose a day of pay and possibly even a job, or take the time needed to take care of their family. Half of low-wage working parents report losing pay to stay home and care for a sick child or being forced to leave children home alone.

When workers have access to paid sick days, employers benefit from reduced turnover, higher productivity, and reduced spread of contagion in the workplace. If workers were allowed to earn just seven paid sick days per year, as the Healthy Families Act proposes, our national economy would experience a net savings of \$8.1 billion per year.

In a nation that values families, no worker should have to choose between their job and their own or a family member's health. Please help us achieve this goal by supporting the Healthy Families Act.

FIRST Act

Working families need paid leave to help them stay afloat financially when they have a new child, when a wage earner falls critically ill, or when a family member has a serious health condition and needs care. Currently, the only law that helps workers in this situation is the federal Family and Medical Leave Act. But workers need more than the unpaid leave provided by FMLA to protect their family's economic security. For many workers, the birth of a child or an illness in the family forces them into a cycle of economic distress; in fact, the birth of a child accounts for twenty-five percent of people's bouts with poverty.

Working families should not have to risk their financial security when a wage earner gets sick or a family member needs help. Paid family and medical leave will help families maintain their economic security and will show that we, as a nation, truly support and value families. Please help us achieve this goal by supporting the FIRST Act.

Prepared Statement of Carol Goertzel, President/CEO, PathWays PA

PathWays PA would like to commend the Subcommittee on Workforce Protections for holding hearings to discuss the need for a minimum paid leave standard as depicted in H.R. 2460, the Healthy Families Act (HFA), and H.R. 2339, the Family Income to Respond to Significant Transitions (FIRST) Act. Both of these bills would provide much needed opportunities for workers to earn time to care for themselves, their children, and their families.

In short, we support these bills for the following reasons:

- **Paid Leave is a Limited, Regulated Benefit Earned by Workers:** Paid leave bills establish a minimum workplace standard that would allow workers to earn a limited amount of time to care for themselves or their families.
- **Paid Leave Makes Businesses Stronger:** Paid leave programs increase productivity, decrease turnover, and provide substantial savings for businesses.
- **Paid Leave is Necessary to Strong Working Families:** Paid leave gives parents the opportunity to be with their children while they are ill, leading to faster recovery times and better health outcomes.
- **Paid Leave Makes Sense Even in This Economy:** Paid leave policies do not create job loss, but they do allow caregiving without loss of income.

Why PathWays PA Supports Paid Leave

PathWays PA began in 1978 as the Women's Association for Women's Alternatives, one of Pennsylvania's first residential programs to keep low-income, vulnerable women together with their children. It has grown to become one of the Greater Philadelphia region's foremost providers of residential and community-based services with a focus on serving women, teens and children. Each year PathWays PA serves nearly 6,000 clients with a full complement of social services; job training and employment assistance; as well as residential programs.

Through our work, we have seen many families struggle towards self-sufficiency, and observed firsthand how state and local policies affect their success. We believe, very simply, that workers shouldn't have to choose between their jobs and their families' well-being. Yet in the United States today, there is no minimum standard for paid sick days, leaving 59 million workers without paid time off for themselves, and even more (86 million) without paid time to care for their family members.¹ In Pennsylvania, 46% of our workers are without paid time to care for themselves and their families.²

Paid Leave is a Limited, Regulated Benefit Earned by Workers

An important distinction when talking about paid leave, either in the case of paid family leave (defined as several weeks of time used for serious illness) and paid sick time (defined as a small number of days workers earn to care for routine illness), is that paid leave in either case is a limited, regulated amount of time. Paid leave bills establish a minimum workplace standard, similar to the minimum wage, which would allow workers to earn a limited amount of time to care for themselves or their families.

Paid Leave Makes Businesses Stronger

Many businesses, both large and small, already provide paid sick leave based on the benefits incurred by their businesses as well as those gained by the employee. Employers who offer paid sick leave say it ultimately improves their bottom line, citing fewer absences, lower health care costs, and higher rates of worker retention.³

Even the National Federation of Independent Business (NFIB) notes on their website “a sick staff infects a small business’ bottom line.”⁴ This infection is not because the business needs to pay for paid sick time, but because “sick people are not productive.”⁵

Businesses that provide paid leave for workers profit in a number of ways, including higher productivity and morale, reduced absenteeism and “presenteeism”⁶ and lower turnover and training costs. These benefits often outweigh any direct costs of providing paid leave.

- **Paid Leave Creates High Productivity and Low Presenteeism:** When sick workers do come into the office, they cost their businesses more in lost productivity than they would by staying home. According to a study by AdvancePCS, an organization providing health improvement services, 72% of lost productivity related to illness comes from presenteeism, while only 28% comes from workers staying home sick.⁷

- **Paid Leave Creates Substantial Savings to Business:** A national study showed that 46% of employees with little job flexibility (including paid sick time and paid family leave, etc.) planned to look for new jobs in the next year, compared to just 27% of workers with higher flexibility.⁸ Staff retention alone saves businesses the high costs associated with employee turnover. Businesses often spend 150% of a worker’s annual salary to replace that worker, and the replacement cost for a worker earning \$8 hour can be higher than \$5,500. This loss equals 687 work hours, or 87 days of 8-hour work.⁹

Studies show that many companies know and value the benefits of decreased turnover. Nearly 8 out of 10 companies surveyed responded that providing paid leave and other flexible work arrangements either outweighed costs or had a neutral fiscal impact.¹⁰

Our Own Story as a Business Offering Paid Sick Time

PathWays PA employs nearly 150 workers, most of whom are full-time. We have made a commitment to provide our employees with a comprehensive benefits package that includes paid sick, personal, and vacation time.

While we think this is the “right thing to do” from the standpoint of our mission, it is also the right thing from a business standpoint. Paid sick time gives our employees the opportunity to care for themselves and their children, ensuring that when they are in the workplace, they are giving full attention to their work. In the past year alone, our employees have had access to paid sick time for the following reasons (among others):

- One employee was involved in a car accident and was able to use paid sick time to recover from the accident and her subsequent hand surgery. Without paid sick time, she says “she would have never been able to catch up on her bills.”

- At least one employee took short periods of leave to act as a caregiver for her father, using the time to take him to doctor’s appointments and to be with him when he was rushed to the hospital. Following his death a short time later, she said she “had the comfort of knowing that I had been with him when he needed me, and that my job was safe during the hours I spent with him.”

Paid Leave is Necessary to Strong Working Families

In addition to creating a healthy workplace, paid sick time plays a critical role in the health and economic well-being of working adults, their children, and their elderly relatives.

All working families must cope with common illnesses. Over one-third of American families have at least 2 weeks per year when a family member is sick. Approximately 1 in 4 working families face a family illness burden of 3 weeks or more each year.¹¹ When working family members are ill, paid sick days and paid leave help to bridge the income gap and create needed benefits for the sick family.

- **Paid Leave Leads to Healthier Families:** When parents participate in the care of sick children, these children recover more rapidly from illnesses and injuries and have better health outcomes. But time to care for a sick child is available to only 26% of low-wage workers and 57% of high-wage workers nationally, a significantly smaller amount than the number of workers who have access to paid leave to recover from their own illness.¹² However, many parents report they often have no choice but to go to work when their children are sick.¹³ Among parents who are able to stay at home with their sick children, more than half say that some type of paid leave allows them to do so.¹⁴

- **Paid Leave Impacts Everyone During an Economic Crisis:** At a time when many families are stretching their paychecks to meet ever-increasing costs, fewer families are able to afford even one day without pay. In Pennsylvania, 21 percent of all households earn less than the Self-Sufficiency Standard for Pennsylvania, a conservative measurement of the expenses families face to meet their basic needs.¹⁵ The Standard sets a bare bones budget, with no room for movies, cable, or debt repayment—and no room for a missed day to recuperate from the flu or care for a sick child.

One Worker's Story on the Need for Paid Sick Time

At PathWays PA, we have an employee whose previous company “allowed” her to take a paid sick day, but labeled each day as an “occurrence.” More than three occurrences in a six-month period led to a written warning, and our employee saw others lose their jobs because they took “paid” sick time.

Although she worked while sick many times, when her daughter was admitted to Children's Hospital in Philadelphia, our employee had to be with her child. During the hospital stay, she had to choose between working, which meant being two hours away, or staying at the hospital, which meant losing her job.

This is a direct quote: “When I told my daughter that I had to go to work because I needed to make sure I still had a job to help support my family, it was very hard for her to understand. She was in the hospital, and she wanted me to be there with her. Instead, my older daughter, who was still in school at the time, had to stay home from school that day so that she could be at the hospital with her little sister.”

Paid Leave Makes Sense Even in This Economy

During times of economic crisis, paid sick days are critical because their families have less of an economic cushion to sustain them during unpaid leave or unemployment. Just as importantly, paid sick leave policies have no relationship to the national unemployment rate. In a recent study from the Center for Economic and Policy Research, the authors tested the impact of paid sick time on unemployment data for 22 affluent countries and found no correlation between sick time policies and unemployment.¹⁶

While paid leave impacts everyone, those closest to poverty are among those most impacted by being able to earn time to care for their families. 76 percent of low-wage and low-income workers do not have access to paid sick leave.¹⁷ These workers also face a higher likelihood of being fired for staying home to care for a sick child. However, even middle-class Pennsylvanians are likely to lack paid leave if they work part-time, work for a small company, or work in the service or construction industries.

In Conclusion: Workers Need Paid Sick Time

There are many more families in Pennsylvania that are like the families of our employees—parents who must make a choice between work and family that should never need to be made; children who think their parents prefer work over spending time with them, or who must stay home from school to care for a sick sibling. Something as simple as paid sick days could ensure that children can have the time they need with their parents, and that parents can concentrate on work instead of worrying about a sick child from afar.

Note on the FIRST Act:

While PathWays PA supports both HFA and the FIRST Act, our testimony primarily concentrates on HFA. However, we would like to state the need for the FIRST Act as well. The FIRST Act, which provides grants to the states to implement and improve their paid family leave programs, would give workers the opportunity to care for their families in times of critical need. The Family and Medical Leave Act (FMLA) gives about 60 percent of American workers the right to take up to 12 weeks of unpaid leave following the birth or adoption of a child or because of the serious health condition of the worker or the worker's child, spouse, or parent.¹⁸ Yet studies show that among workers who need family and medical leave but do not take it, seventy-eight percent chose not to take leave because they cannot

afford to miss a paycheck.¹⁹ Without fully paid leave, nearly one in ten workers were forced onto public assistance to make ends meet.²⁰

ENDNOTES

¹“Get Well Soon: Americans Can’t Afford to be Sick.” Washington, D.C.: National Partnership for Women and Families, 2004, p. 1.

²Analysis using the Institute for Women’s Policy Research (IWPR) Paid Sick Days Estimator, <http://www.paid sick days.org>. The Estimator uses IWPR analysis of the U.S. Bureau of Labor Statistics’ March 2006 National Compensation Survey (Vicky Lovell, Taking Care: Adequacy and Equity of Paid Leave, forthcoming), adjusted for eligibility with data from the November 2005 through October 2006 U.S. Bureau of Labor Statistics’ Job Openings and Labor Turnover Survey, to calculate the percent of workers, by industry, lacking paid sick days at the national level. Data on the number of workers in PA by industry are from the U.S. Bureau of Labor Statistics’ Quarterly Census of Employment and Wages (downloaded from <http://data.bls.gov/cgi-bin/dsrv?en>).

³Jodie Levin-Epstein, “Responsive Workplaces: The Business Case for Employment That Values Fairness and Families.” Center for Law and Social Policy. <http://www.clasp.org/publications/responsive-workplaces.pdf>. Accessed 8/26/08.

⁴Shannon McRae, “Fighting the Flu: How to Keep Your Office Running in Sickness and in Health.” The National Federation of Independent Business. <http://www.nfib.com/object/IO-26096.html>. Accessed 08/25/08.

⁵Shannon McRae, “Fighting the Flu: How to Keep Your Office Running in Sickness and in Health.” The National Federation of Independent Business. <http://www.nfib.com/object/IO-26096.html>. Accessed 08/25/08.

⁶When workers are ill but stay on the job, their presence comes at a cost to employees in the form of reduced productivity. Presenteeism refers to workers who come to work even though they are sick because they cannot afford to take time off. Depending on the illness, these workers may also infect other workers, which could contribute to further absenteeism and/or presenteeism in the company. Jodie Levin-Epstein, “Presenteeism and Paid Sick Days.” Washington, D.C.: Center for Law and Social Policy, 2005, p. 1. <http://www.clasp.org/publications/presenteeism.pdf>.

⁷Jodie Levin-Epstein, “Presenteeism and Paid Sick Days.” Washington, D.C.: Center for Law and Social Policy, 2005, p. 1. <http://www.clasp.org/publications/presenteeism.pdf>.

⁸MultiState Working Families Consortium, “Summary Report: Family Values at Work: It’s About Time!”. <http://www.9to5.org/familyvaluesatwork/FV@workSummary.pdf>. Accessed 8/25/08.

⁹MultiState Working Families Consortium, “Summary Report: Family Values at Work: It’s About Time!”. <http://www.9to5.org/familyvaluesatwork/FV@workSummary.pdf>. Accessed 8/25/08.

¹⁰Ellen Galinsky and James T. Bond, “The 1998 Business Work-Life Study: a Sourcebook.” New York City, NY: Families and Work Institute, Executive Summary, 1998, p. iv.

¹¹Alison Earle, Ph.D., Testimony before Massachusetts Joint Committee on Labor and Workforce Development, May 4, 2005.

¹²Department of Labor, National Compensation Survey: Employee Benefits in Private Industry in the United States, March 2006. Summary available at www.bls.gov/ncs/ebs/sp/ebsm0004.pdf.

¹³Alison Earle, Ph.D., Testimony before Massachusetts Joint Committee on Labor and Workforce Development, May 4, 2005.

¹⁴Alison Earle, Ph.D., Testimony before Massachusetts Joint Committee on Labor and Workforce Development, May 4, 2005.

¹⁵Diana Pearce, Ph. D., Overlooked and Undercounted: Struggling to Make Ends Meet in Pennsylvania. May 2009.

¹⁶John Schmitt, Hye Jin Rho, Alison Earle, and Jody Heymann, “Paid Sick Days Don’t cause Unemployment.” <http://salsa.democracynaction.org/dia/track.jsp?v=2&c=AyxeWOJ3nJUGQyFlRmWZKMFa8fBupv7>. Accessed 18 June 2009.

¹⁷Vicky Lovell, No Time to Be Sick: Why Everyone Suffers When Workers Don’t Have Paid Sick Leave. Institute for Women’s Policy Research, 2004, downloaded from www.iwpr.org.

¹⁸Workers are covered by FMLA protections if they work for companies with at least 50 workers or for public employers and have been with their employer for at least one year. With these restrictions, roughly 40 percent of workers are not covered by the FMLA.

¹⁹Nicole Costa, “Highlights of the 2000 U.S. Department of Labor Report Balancing the Needs of Families and Employers: Family and Medical Leave Surveys.” Washington, D.C.: National Partnership for Women and Families, 2000, p. 5. Available at <http://www.nationalpartnership.org/portals/p3/library/FamilyMedicalLeave/2000DOLLaborReportHighlights.pdf>.

²⁰Nicole Costa, “Highlights of the 2000 U.S. Department of Labor Report Balancing the Needs of Families and Employers: Family and Medical Leave Surveys.” Washington, D.C.: National Partnership for Women and Families, 2000, p. 5. Available at <http://www.nationalpartnership.org/portals/p3/library/FamilyMedicalLeave/2000DOLLaborReportHighlights.pdf>.

Prepared Statement of the Leadership Conference on Civil Rights (LCCR)

DEAR CHAIRWOMAN WOOLSEY AND RANKING MEMBER PRICE: On behalf of the Leadership Conference on Civil Rights (LCCR), the nation’s oldest, largest, and most

diverse civil and human rights coalition, representing more than 200 national organizations, we write to express our strong support for the Healthy Families Act (H.R. 2460).

The Healthy Families Act will allow workers to earn up to seven paid sick days that workers will be able to use to recover from their own short-term illnesses, to care for a family member with a short-term illness, to attend well-care visits, and to address issues arising from domestic violence.

The need for the Healthy Families Act is obvious: all workers get sick or have to care for sick family members sometimes. Yet, as we know from recent studies, many workers—especially low-income workers and people of color—do not have paid sick days. The Healthy Families Act will ensure that the most vulnerable workers are able to earn paid sick time.

The Healthy Families Act is a necessary, modest workplace standard. Without paid sick days, too many workers are faced with the impossible choice of losing a job or a paycheck, or taking care of their health or their family. While these choices are difficult at the best of times, in today's climate, with so many families facing incredibly difficult economic situations, these choices are especially harsh. We should never force workers to choose between their family's health and economic well-being.

The Healthy Families Act's provision of paid sick days will help protect the public's health as well. As the recent outbreak of H1N1 flu virus highlighted, in order to contain contamination, workers who are ill need to be able to miss work and parents whose children are sick need to be able to keep those children out of school when necessary. This prevents the unnecessary spread of illness and allows sick individuals to get necessary care. Yet, without paid sick days, neither of these outcomes is possible.

We look forward to working with you to pass this important legislation. If you have any questions, please contact LCCR Employment Task Force Chair Co-chair Sharyn Tejani, at 202986-2600, or LCCR Counsel Paul Edenfield at 202-263-2852.

Prepared Statement of Donna Levitt, Manager, San Francisco Office of Labor Standards Enforcement

Donna Levitt brought over 20 years of experience in the construction industry to the San Francisco Office of Labor Standards Enforcement when she was hired to lead the office in 2002. Ms. Levitt was among a group of pioneering tradeswomen when she began her carpenter apprenticeship in 1980. She worked in the trade for over ten years as a carpenter, superintendent, and estimator. Ms. Levitt was also a widely respected union representative, the only woman to head a major construction local in the United Brotherhood of Carpenters & Joiners of America. She has served on the California Building Standards Commission, the San Francisco Landmarks Preservation Advisory Commission, and on the boards of numerous labor and community organizations.

The San Francisco Office of Labor Standards Enforcement (OLSE) enforces labor laws adopted by San Francisco voters and the San Francisco Board of Supervisors. Among other laws, OLSE administers and enforces San Francisco's Paid Sick Leave Ordinance (PSLO), the first law in the United States to require employers to provide employees with paid sick days.

The Paid Sick Leave Ordinance was adopted by San Francisco voters on November 7, 2006, with 61% of voters voting in favor of the measure. The PSLO finds that a large number of workers in San Francisco, particularly part-time employees and low income workers, do not have paid sick leave or have an inadequate level of paid sick leave. The absence or inadequacy of paid sick leave among workers in San Francisco poses serious problems not only for affected workers but also their families, their employers and customers, the health care system, and the community as a whole.

While 127 countries provide at least one week of paid sick leave per year,¹ San Francisco was the first jurisdiction in the United States with a paid sick leave requirement. The ordinance took effect on February 5, 2007. It requires all employers to provide paid sick leave to their employees performing work in San Francisco. There is no exception for small businesses.

Paid Sick Leave Ordinance—Economic Impacts

While paid sick leave may have been a new concept to some employers and employees in San Francisco, we believe that the implementation of the law has been

¹The Work, Family, and Equity Index, Jody Heymann, Alison Earle, and Jeffrey Hayes, 2007.

smooth for our community. When the PSLO took effect in February of 2007, some employers initially reported that they needed additional time to adjust their payroll systems to ensure compliance with the new requirements. Since that time, we have heard relatively few complaints or problems from employers with respect to implementation of the law.

I am not aware of any employers in San Francisco who have reduced staff or made any other significant changes in their business as a result of the sick leave ordinance. While San Francisco, like every community, has suffered in the current recession, to my knowledge no employers have cited the sick leave requirement as a reason for closing or reducing their business operations in the city.

Further, economic indicators do not show that the law had an adverse affect on the City's economy. In the 12-month period following the effective date of the PSLO, employment in San Francisco expanded by 1.1 percent, the same rate as neighboring Marin and San Mateo counties and substantially above the rate of employment change in Alameda, Contra Costa, and Santa Clara counties.²

Paid Sick Leave Ordinance—Worker and Public Health Impacts

Meanwhile, tens of thousands of San Francisco workers who previously did not have access to adequate sick leave now have the opportunity to take time off to care for their own health or for a loved one. That also means fewer sick workers exposing their co-workers or customers to illness.

The recent H1N1 Flu (Swine Flu) outbreak has demonstrated the public health necessity that sick workers and children stay home. However, as the only jurisdiction in the United States with a comprehensive paid sick days law, only San Francisco can meaningfully urge workers and parents to stay home. To that end, at the height of the H1N1 Flu outbreak, my office distributed 55,000 sick days fliers to the San Francisco Unified School District to be sent home with children. The fliers—provided in English, Spanish, and Chinese—informed parents and guardians of their legal right to stay home with sick children. The PSLO enables San Francisco to deal with a pandemic such as H1N1 Flu unlike any other jurisdiction in the United States.

Paid Sick Leave Ordinance—Implementation

Our office completed an extensive public rulemaking process to provide guidelines on the PSLO requirements and produced multilingual resources to explain the law to employers and employees. These materials are available for your review at www.sfgov.org/olse/pslo. Should Congress choose to implement a national paid sick days law, we would gladly make ourselves available to provide assistance based on our experience here in San Francisco.

I am happy to respond to any questions or requests for information. Thank you for the opportunity to share our experience implementing the San Francisco Paid Sick Leave Ordinance.

Prepared Statement of the Massachusetts Paid Leave Coalition

On behalf of the Massachusetts Paid Leave Coalition, I thank the Subcommittee for holding a hearing on the Healthy Families Act introduced in the House by Congresswoman Rosa DeLauro and in the Senate by Senator Edward Kennedy and submit this statement in full support of the Act.

The Massachusetts Paid Leave Coalition is a coalition of labor unions, local advocates, businesses, community organizations, and policy and data experts working in collaboration to educate the public and policymakers about the critical need for policies that provide all workers with access to paid leave—specifically paid sick days. The Coalition is a member group of Family Values @ Work: A Multi-State Consortium, that brings together state coalitions working to expand access to paid leave. Similar legislation providing for paid sick days is pending in the Massachusetts state legislature which, like the Healthy Families Act, would allow workers to earn up to seven paid sick days a year to be used for illness, doctor visits, or care for a child, spouse or parent and as safe days for victims of domestic violence.

Paid Sick Days is A Public Health Issue

Over 40% of workers in our state do not have any paid sick days or job protection, and for workers in service industries it is nearly 80%. A sick worker must consider whether she can afford to lose a day's pay or maybe her job; a decision that could impact the health of everyone that comes in contact with her. As cases of the H1N1

²Job Growth Strong with Paid Sick Days, Vicky Lovell, Ph.D., and Kevin Miller, Ph.D., October 2008

virus (a.k.a./ swine flu) are spreading, public health officials are advising the sick to stay home from work at least 7 days to avoid infecting others. However without paid sick days, many families will not heed this advice. The threat of an epidemic of swine flu reinforces the necessity of this basic public health measure immediately. Workers should not be punished for following guidelines from the nation's health experts, and we all have a stake in ensuring that those who prepare and serve our food, teach our children, care for our elderly, or even ride our public transportation do not have to make a choice between following healthy precautions and losing their jobs.

Paid Sick Days Help Contain Health Care Costs

As Congress works to reform health care, many look to the Massachusetts model where the Health Care Reform Law's universal health care requirement was successful in extending health insurance to nearly 440,000 individuals in its first two years. (Commonwealth Health Insurance Connector Authority 2008). However, the program's cost has been much higher than anticipated. The Institute of Women's Policy Research (IWPR) found that paid sick days is a natural partner to bring cost control to the state's expanded health care system: "Expanded access to paid sick days could help the state meet its cost-containment goals. The proposed Paid Sick Days Act would make it easier for workers to get regular, appropriate care for chronic illnesses and timely treatment for acute medical needs, while reducing the spread of contagious illness." IWPR No. B267, January 2009.

Responding to a recent study on increased emergency room visits, Massachusetts' Secretary of Health and Human Services, Dr. Judy Ann Bigby, noted that without paid sick days, some workers turn to costly emergency room services rather than scheduling appointments with primary care doctors: "The issue of whether primary-care providers are available when people are able to see them is going to affect lower-income people who are more likely to not be able to take time off in the middle day without losing pay * * *. Non-English speakers are also more likely to be working in a job with that situation." (Lazar, Kay. 2008. "Many Continue to Rely on ERs: 14% Used Hospital Before Family Doctor" Boston Globe, November 29). Paid sick days are a natural complement to universal health insurance. "Together, these policies promote health and reduce health care costs by helping workers access preventive, timely, and lower-cost health services while reducing workplace injuries and the spread of disease." IWPR No. B267.

Paid Sick Days are Good for Business

The conventional wisdom is that providing paid sick days costs businesses money, but research shows that the opposite is true. Paid sick days would offer substantial savings to employers by reducing turnover and minimizing absenteeism, according to another IWPR report, *Valuing Good Health in Massachusetts: The Costs and Benefits of the Paid Sick Days Act (2/09)*. The report, which analyzes the potential financial impact of the legislation on employers, finds that while Massachusetts employers would pay \$218 million annually in wages, payroll taxes, payroll-based employment benefits and administrative expenses under the law, they would save a total of \$348 million annually. The majority of those savings would be due to reduced turnover costs. The research also shows that workers do not abuse sick time. "Workers with paid sick days usually don't use anywhere close to the number of paid sick days available to them. Workers covered by the Paid Sick Days Act will use an average of less than two sick days annually for their own medical needs, excluding maternity leave. On average, they will use one paid sick day a year for family care and doctor visits, and half of all workers will not take off any days for illness." IWPR No. B269 February 2009.

We applaud the Subcommittee for the hearing on the Healthy Families Act and we urge an early mark-up of the Act because of the immediate need for paid sick days to protect the public health from the spread of disease and because paid sick days are shown to benefit business, workers, and families.

MASSACHUSETTS PAID LEAVE COALITION

AARP Massachusetts • ACORN • AFL-CIO, Massachusetts • Asian Task Force • AFSCME Council 93 • Arise for Social Justice • Boston Chinatown Neighborhood Center • Boston Police Patrolmen's Association • Boston Women's Commission • Boston Teachers Union (AFT) • Boston Tenant Coalition • Caregivers Alliance/OWL Older Women's League • CHAPA • Charles Group Consulting • Chinese Progressive Association • City Life Vida Urbana • Coalition Against Poverty/Coalition for Social Justice • Community Action Agency of Somerville • Disability Law Center • EMERGE • Greater Boston Labor Council • Greater Boston Legal Services • Greater Southeastern Mass. Central • Labor Council • Hampshire Franklin Central Labor

Council • JALSA-Jewish Alliance for Law & Social Action • John Hancock Financial Services • Jobs With Justice • Legal Assistance of Central Mass. • Mass. Affordable Housing Alliance • Mass. Commission on the Status of Women • Mass. Law Reform Institute • Mass. NOW • Mass. Nurses' Association • Mass. Senior Action • Mass. Women's Bar Association • Merrimack Valley Central Labor Council • National Assoc. of Social Workers, MA • Neighborhood Legal Assistance • North Shore Labor Council • PACE • Painters District Council 35 • Pioneer Valley Central Labor Council • Plymouth Bristol Central Labor Council • SEIU Local 1199 • SEIU Local 509 • SEIU Local 615 • SEIU Local 888 • South Coastal Counties Legal Services • South Middlesex Legal Services • Springfield Partners for Community Action • Take Back Your Time • Teamsters Local 122 • The Family Center • UAW Mass. CAP Council • UAW Local 1596 • UAW Local 2320 • UAW Local 2322 • UFCW Local 1445 • UFCW Local 791 • UNITE HERE, Joint Board • U. Mass. Action Network • Western Mass. Legal Services

Prepared Statement of Linda Meric, Executive Director, 9to5, National Association of Working Women

On behalf of the members and constituents of 9to5, National Association of Working Women across the United States, I appreciate the opportunity to provide a statement for the hearing record on the Healthy Families Act and the Family Income to Respond to Significant Transitions Act (FIRST Act).

9to5 urges Congress to pass the Healthy Families Act, which will allow workers to earn up to 7 paid sick days annually to care for their own or family members' illness, and to pass the FIRST Act, which will make it possible for working people to take time off to care for a new baby, for their own serious health needs or those of their families without jeopardizing their economic security. Both of these pieces of legislation are critical for the health and economic security of all working people and their families. We strongly support both bills.

Healthy Families Act

Chances are each of us will get sick or need to care for a sick family member this year. But not all of us have the option to take time off from work to get better or to care for a sick family member. Almost 60 million Americans lack a single paid sick day in which to care for themselves when illness strikes. In addition, nearly 100 million workers don't have a paid sick day they can use to care for an ill child.

Americans want to be responsible workers and be able to care for their families. In the vast majority of today's families, both parents work for pay, but our policies lag desperately behind this reality—and families are struggling as a result. We can and must do better—and we will, if we truly value families.

Providing paid sick days benefits all workers including women and seniors. Nearly half (47%) of working mothers miss work when a child comes down with a common illness, and women are more likely to have low-wage jobs that do not offer paid sick days. Parents who lack paid sick days are often forced to choose between the jobs they need and caring for their families.

While this issue is important for families with children, it also affects the more than one-third of working Americans with elder care responsibilities who need to take time away from work to provide care. Thirty-five percent of workers, both women and men, report that they have cared for an older relative in the past year. Responsibilities for caregiving will increase as Baby Boomers age.

In service industries that employ low-wage workers such as restaurants, the majority of workers (86%) lack paid sick days. When a low-wage worker gets sick, needs to take care of a sick child, or has to take an elderly parent to a medical appointment, she or he is faced with an impossible choice: lose a day of pay and possibly even a job, or take the time you need to take care of your family. Half of low-wage working parents report losing pay to stay home and care for a sick child or being forced to leave children home alone.

Paid sick days are also a key component of safeguarding our nation's public health. The Centers for Disease Control and Prevention has recommended that those who believe they are ill with swine flu-related symptoms stay home from work or school until they recover. Staying at home when infected could reduce the proportion of people impacted by pandemic influenza by 15-34%, according to a new study by Health Impact Partners. But for those without paid sick days, staying home from work means losing income and might mean losing a job. Especially in this challenging economy, urging anyone to stay home and risk losing a job is an ineffective way to protect the public health.

Workers who disproportionately lack paid sick days work with the public every day. Seventy-eight percent of food and hotel workers do not have a single paid sick day. Many of these workers are employed in child care centers, retail establishments, and nursing homes. When they go to work sick, their colleagues and all others they contact face an increased risk of contracting illness.

Workers' access to paid sick days is critical to a productive and vibrant economy. When workers have access to paid sick days, employers benefit from reduced turnover, higher productivity, and reduced spread of contagion in the workplace. If workers were allowed to earn just seven paid sick days per year, as the Healthy Families Act proposes, our national economy would experience a net savings of \$8.1 billion per year.

In a nation that values families, no worker should have to choose between their job and their own or a family member's health. Please help us achieve this goal by supporting the Healthy Families Act.

FIRST Act

Working families need paid leave to help them stay afloat financially when they have a new child, when a wage earner falls critically ill, or when a family member has a serious health condition and needs care. Currently, the only law that helps workers in this situation is the federal Family and Medical Leave Act. But workers need more than the unpaid leave provided by FMLA to protect their family's economic security. For many workers, the birth of a child or an illness in the family forces them into a cycle of economic distress; in fact, the birth of a child accounts for twenty-five percent of people's bouts with poverty.

The lack of paid family and medical leave hits low-income workers hardest: almost three in four low-income employees who take family and medical leave receive no pay, compared to one in three middle income employees and one in four upper income employees.

With families increasingly unable to make ends meet, workers need policies like paid family and medical leave more than ever. In the current economic downturn, lost wages or a lost job because of a new child or sick family member can have an especially devastating effect. If a wage earner gets seriously ill or needs to take time off of work to care for a family member, a missed paycheck may mean that the mortgage or other bills will have to go unpaid. Not unsurprisingly, studies show that medical bills lead to foreclosures and bankruptcy—workers have no other choices.

The economy has also taken its toll on state budgets. Even states that want to create paid family and medical leave programs are finding it difficult to allocate funding for the relatively small start-up costs of such programs. The FIRST Act's grant funding—to develop and implement new paid leave programs—would enable states to clear the hurdle of start-up costs. Funding at the critical early stages will help ensure that state paid leave programs will quickly become self-sustaining. The FIRST Act will also help states with existing programs reach out to and educate workers about their options for paid leave.

Working families should not have to risk their financial security when a wage earner gets sick or a family member needs help. Paid family and medical leave will help families maintain their economic security and will show that we, as a nation, truly support and value families. Please help us achieve this goal by supporting the FIRST Act.

Prepared Statement of the North Carolina Justice Center

The North Carolina Justice Center commends Chairwoman Lynn Woolsey and Ranking Member Tom Price for convening a series of hearings to examine workplace policies that help workers meet their responsibilities on the job and to their families. The North Carolina Justice Center is a nonprofit, nonpartisan advocacy organization based in Raleigh, North Carolina dedicated to ensuring that every North Carolina household has access to the resources, services and fair treatment it needs to achieve economic security.

Updating our labor standards to match a changing workforce

The North Carolina Justice Center has a long history of working to improve workplace standards for low and moderate income workers and their families. We have pushed for minimum wage increases, advocated for stronger worker safety protections, and successfully implemented a series of policy changes to strengthen our unemployment insurance system. Decades of research and policy analysis have shown us repeatedly that we cannot successfully alleviate poverty until we address the fact that work is no longer a pathway to prosperity.

Thousands of working families in North Carolina work long hours in lowpaying jobs with poor benefits—no health insurance, no paid leave, or vacation. Many work multiple jobs to make ends meet and patch together a meager family budget with their wages and safety net benefits.

Our workplaces have changed dramatically over the last decades and gone is North Carolina's thriving manufacturing economy, where a basic high school education and hard work could guarantee a modest middleclass lifestyle.ⁱ As workers have adapted to a growing servicebased economy, our labor laws have not.

This country's labor laws have not changed significantly since the 1930's and it's time that we recognize that they're outdated and need retooling.

Workers speak out about paid sick days

Among many issues that workers tell us about, paid sick days, or a lack thereof, have risen to the top among North Carolinians struggling to balance work and family. We have been travelling around the state talking to everyday North Carolina workers and here are some of their stories: A mom went back to work days after giving birth, leaving her infant child to spend her first days in the world without a momma's tender care.

A nurse, who is in the business of trying to help sick patients get better, dragged herself into work sick, sniffles and all, so she didn't have to lose a day's pay.

A virus was spreading through the kitchen of a local restaurant but a waiter came in anyway, fearful of losing a shift or even his job. He continued doling out the diner's signature meatloaf, with a side of strep throat.

Everybody has a story to tell about paid sick days. And it's no surprise because nearly half of North Carolina's workers—1.6 million—lack paid sick days.ⁱⁱ Without access to paid sick time, workers are faced with the difficult choice between losing a day's pay (or possibly their job) or going to work sick. Especially in today's economy, workers are more often choosing to come into the workplace with their sickness in tow.

These workers are typically the folks preparing and serving our food, the people who take care of our children and our aging parents. When they come to work sick, their germs become our germs.

Support in North Carolina

North Carolinians get why paid sick days benefit everyone. In a survey conducted by AARP North Carolina, 79% of respondents said employers should be required to provide a minimum number of paid sick days for fulltime employees. The survey of 800 workers age 30plus also tellingly demonstrated how many Tar Heels have significant caregiving responsibilities: one in six respondents is currently providing care to a family member or friend.

We're in tough economic times and workers are struggling to hold on their jobs. Taking a day off and missing pay to take care of a sick loved one is just not an option for the 1.6 million workers without paid sick days in North Carolina.

Federal action needed

States have longrelied on federal action to set minimum standards such as the minimum wage and child labor laws. Southern states like North Carolina particularly depend on Congress in the area of labor and workplace safety. As one of the most unfriendly union states in the nation, passing state legislation such as paid sick days is a long battle, as our nearly 3 year old statebased paid sick days campaign has reminded us.

We urge Congress to continue its good work and look at making paid sick days a reality for all workers not only in North Carolina but also across the nation. Enacting paid sick days legislation is a job retention strategy that would help our working families, improve public health and benefit employers.

ⁱFor a more detailed explanation of North Carolina's shifting economy, see the report: "North Carolina's Unfinished Transformation", Winter 2006, by John Quintero: <http://www.ncjustice.org/sites/default/files/north-carolina.pdf>

ⁱⁱMiller, Kevin. "Valuing Good Health in North Carolina: The Costs and Benefits of Paid Sick Days", Institute for Women's Policy Research, March 2009. For an Executive Summary: <http://www.ncjustice.org/sites/default/files/IWPR%20CostBenefits%20Exec%20Summary,%20509.pdf>.

June 25, 2009.

Hon. TOM PRICE, *Committee on Education and Labor,*
Rayburn House Office Building, Washington, DC.

DEAR RANKING MEMBER PRICE: On behalf of the National Partnership for Women & Families, I would like to thank you and Chairwoman Lynn Woolsey for inviting me to testify in support of the Healthy Families Act and the FIRST Act on June 11, 2009. At your request, I am responding to the Society for Human Resource Management's (SHRM's) Principles for a 21st Century Workplace Flexibility Policy.

Like SHRM, the National Partnership believes that employers should provide paid time off so that workers can take care of their own health and personal needs, and care for the health and well-being of their family members. And like SHRM, we also commend the responsible employers that voluntarily guarantee their employees paid time off. When businesses take care of their workers, they are better able to retain them—and reap the benefits of a committed, productive workforce.

Workers Need a Standard of Paid, Job-Protected Time Off

First and foremost, the National Partnership—and our coalition partners representing children's, women's, disability, faith-based, and anti-poverty groups, labor unions, health agencies and leading researchers at top academic institutions—urge Congress to consider workers' need for guaranteed, paid and job-protected time off, especially when illness strikes them or their family members. Second, we believe that paid leave policies, including paid sick days, must ensure that the most vulnerable communities have access to leave.

Despite the benefits to businesses that offer paid time off, not all employers do so. In fact, one in five working parents (20 percent) and more than half of poor working parents (54 percent) ages 18 to 54 have no paid time off at all.¹ And nearly half of private-sector workers (48 percent) do not have paid time off for even the most basic of needs—their own health.² Ironically, low-wage workers are more likely to have frequent contact with the public, where the spread of contagion can be hard to avoid, but they are less likely to have paid sick days. Only 22 percent of food and public accommodation workers have any paid sick days, for example.³ Unless Congress passes the Healthy Families Act, we will not see the kind of large-scale guarantee of paid sick days that workers and communities urgently need.

Federal Work-and-Family Policies Create a Floor

Paid sick days, and other paid leave laws, are basic labor standards like the minimum wage and safety and health laws. And as with the minimum wage, we are convinced there should be a federal minimum standard of paid sick days that protects all workers, with states and localities free to go above the federal standard to address particular needs of their residents. The nominal number of paid sick days proposed in the Healthy Families Act—seven—would create such a floor. Among the 52 percent of private-sector workers who currently have access to paid sick days, the leave available to them varies from eight to 11 days in smaller firms, and 11 to 21 days in larger firms.⁴

We encourage flexibility at the state and local levels in creating policies that go beyond the federal floors set by the Family and Medical Leave Act and proposed in the Healthy Families Act. California and New Jersey have enacted paid family leave programs, and Washington State passed a law that will offer workers paid parental leave. Similarly, San Francisco and the District of Columbia have enacted paid sick days laws, and more than a dozen cities and states are working to pass similar policies. We urge Congress to pass legislation that would establish a floor without squelching state and local innovation.

Work-and-Family Policies Should Not Undermine Other Laws

While we support efforts to create innovative programs and policies that help workers meet their responsibilities on the job and at home, the National Partnership cannot support a “safe harbor” for employers that would exempt them from federal, state and local leave policies. Although SHRM's “safe harbor” concept is new, its underlying elements have long been proposed by employer groups. These proposals would diminish workers' ability to rely on basic workplace standards. For

¹Katherin Ross Phillips, Urban Institute, Getting Time Off: Access to Leave among Working Parents, 2004, <http://www.urban.org/url.cfm?ID=310977>

²Vicky Lovell, Institute for Women's Policy Research, Women and Paid Sick Days: Crucial for Family Well-Being, 2007.

³Vicky Lovell, Institute of Women's Policy Research, Valuing Good Health: An Estimate of Costs and Savings for the Healthy Families Act, 2005.

⁴Bureau of Labor Statistics, 1996–1997 data (most recent available).

more than 70 years, these standards have served as safeguards for millions of workers in inherently unequal employer-employee bargaining positions.

We strongly urge Congress not to amend federal work-hour laws, as SHRM proposes. The Fair Labor Standards Act (FLSA) established a 40-hour workweek to protect workers and discourage employers from requiring extraordinarily long hours of work or diminished pay. Changes to the 40-hour workweek would, obviously, leave workers vulnerable to reduced wages and/or excessive, mandatory overtime work, which would be especially punitive in these difficult economic times.

The Healthy Families Act Considers Business Concerns

In proposing the Healthy Families Act, the National Partnership and our coalition partners have taken into consideration many of the concerns of the business community and, particularly, many of the principles outlined by SHRM. The Healthy Families Act already balances the needs of workers with the needs of employers.

- The Healthy Families Act now has a simplified method by which paid sick days are accrued: workers would earn a minimum of one hour of paid sick time for every 30 hours worked, up to 56 hours (seven days) per year, unless the employer selects a higher limit. We believe—and our business-community allies agree—that this simplified calculation would make it easier for employers to track of the amount of paid sick time workers earn.

- The Healthy Families Act covers businesses with 15 or more employees, which is also the threshold set in the Americans with Disabilities Act and Title VII. The threshold balances our desire to cover as many workers as possible, while mitigating compliance concerns for small businesses.

- Employers already offering paid sick time that meets the requirements proposed by the Healthy Families Act do not need to offer additional paid sick time. Furthermore, employers may—but are not required to—request certification from employees after they’ve taken more than three consecutive sick days.

Now more than ever, with families struggling and jobs scarce, workers need policies like paid family and medical leave, paid sick days, limits on mandatory overtime and more work schedule flexibility—as is already allowed by the Fair Labor Standards Act. Especially in the current economic crisis, this “safe harbor” is a Trojan Horse that would roll back 70 years of basic workplace protections at the expense of workers. In no way is it a step toward workplace standards that truly respect and value workers and their families.

The National Partnership and our broad coalition of more than 100 organizations are committed to working with you, as well as Chairwoman Woolsey and other Members of Congress, to advance policies that will help workers meet their responsibilities on the job and to their families.

Sincerely,

DEBRA L NESS, *President.*

Prepared Statement of the New Hampshire Women’s Lobby and Alliance

On behalf of a broad advocacy coalition in New Hampshire that is working to create a paid leave program for workers in our state, we appreciate the opportunity to provide a statement for the hearing record on the Family Income to Respond to Significant Transitions Act (FIRST Act). We urge Congress to pass the FIRST Act, which will make it possible for working people to take time off to care for a new baby, for their own serious health needs or those of their families without jeopardizing their economic security. This legislation would be critical for the success of our work and would give our state the flexibility to develop a program based on the needs of our state’s working families. We strongly support it.

Working families need paid leave to help them stay afloat financially when they have a new child, when a wage earner falls critically ill, or when a family member has a serious health condition and needs care. Right now, the only laws that help workers in this situation are the federal Family and Medical Leave Act. But workers need more than the unpaid leave provided by these laws to protect their family’s economic security. For many workers, the birth of a child or an illness in the family forces them into a cycle of economic distress. Twenty-five percent of all poverty spells begin with the birth of a child. The lack of paid family and medical leave hits low-income workers hardest: almost three in four low-income employees who take family and medical leave receive no pay, compared to between one in three middle income employees and one in four upper income employees.

With families increasingly unable to make ends meet, workers need policies like paid family and medical leave more than ever. Because of the economic downturn, lost wages or a lost job because of a new child or sick family member can have espe-

cially devastating effect. If a wage earner gets seriously ill or needs to take time off of work to care for a family member, a missed paycheck may mean that the mortgage or other bills will have to go unpaid. It is unsurprising that studies show that medical bills lead to foreclosures and bankruptcy—workers have no other choices.

The economy has also taken its toll on state budgets. Even states that want to create paid family and medical leave programs are finding it difficult to allocate funding for the relatively small start-up costs of such programs. The FIRST Act's grant funding to develop and implement new paid leave programs would enable states to clear the hurdle of start-up costs. Funding at the critical early stages will help ensure that state paid leave programs will quickly become self-sustaining. The FIRST Act will also help states with existing programs reach out to and educate workers about their options for paid leave.

Working families should not have to risk their financial security when they get sick or a family member needs them. Paid family and medical leave will help families maintain their economic security and will show that we, as a nation, truly support and value families. Please help us achieve this goal by supporting the FIRST Act.

Prepared Statement of the New Jersey Time to Care Coalition

The New Jersey Time to Care Coalition, a broad group of over 70 diverse organizations working together to create family friendly workplace practices, very much appreciates the opportunity to provide a statement for the hearing record on the Family Income to Respond to Significant Transitions Act (FIRST Act).

We urge Congress to pass the FIRST Act, which will make it possible for working people to take paid time off to care for a new baby, for their own serious health needs or those of their families without jeopardizing their economic security. This legislation would be critical for the success of states' work on this issue and would give our state the flexibility to expand its existing program to better meet the needs of New Jersey's working families. We strongly support it.

Working families need paid leave to help them stay afloat financially when they have a new child, when a wage earner falls critically ill, or when a family member has a serious health condition and needs care. New Jersey recognized this need and on May 2, 2008, it took a strong step forward in helping its working families meet the challenges of balancing work and family by enacting a family leave insurance program. On that day, Governor Jon Corzine signed family leave insurance legislation into law, making New Jersey the third state in the nation to enact a family leave insurance program for its working families.

In enacting family leave insurance legislation, New Jersey reaffirmed its commitment to protect the economic security of all New Jersey's working families. With families increasingly unable to make ends meet, workers need policies like paid family and medical leave more than ever. Because of the economic downturn, lost wages or a lost job because of a new child or sick family member can have especially devastating effect. If a wage earner gets seriously ill or needs to take time off of work to care for a family member, a missed paycheck may mean that the mortgage or other bills will have to go unpaid. It is unsurprising that studies show that medical bills lead to foreclosures and bankruptcy—workers have no other choices.

New Jersey has taken a strong step forward in helping families meet the challenges of balancing work and family by enacting family leave insurance program, but there is much still that can be done to help all U.S. working families—the FIRST Act's grant funding to develop and implement new paid leave programs would enable states to clear the hurdle of start-up costs, and funding at the critical early stages will help ensure that state paid leave programs will quickly become self-sustaining. The FIRST Act will also help states with existing programs like New Jersey expand job protections for workers in small businesses, conduct outreach and education and explore other opportunities to expand its existing program.

Working families should not have to risk their financial security when they get sick or a family member needs them. Paid family and medical leave will help families maintain their economic security and will show that we, as a nation, truly support and value families. Please help us achieve this goal by supporting the FIRST Act.

Respectfully submitted,

THE NEW JERSEY TIME TO CARE COALITION.

Prepared Statement of the New York State Paid Family Leave Coalition

On behalf of a broad advocacy coalition of more than 100 labor, women's, children's, senior, health and anti-poverty organizations in New York State that is working to create a paid leave program for workers in our state, we appreciate the opportunity to provide a statement for the hearing record on the Family Income to Respond to Significant Transitions Act (FIRST Act). We urge Congress to pass the FIRST Act, which will make it possible for working people to take time off to care for a new baby, for their own serious health needs or those of their families without jeopardizing their economic security. This legislation would provide incentives to encourage additional states to adopt paid family leave programs and assist states that have already enacted such programs to conduct outreach and to provide incentives to small employers to provide job protection to workers on leave. We strongly support it.

Working families need paid leave to help them stay afloat financially when they have a new child, when a wage earner falls critically ill, or when a family member has a serious health condition and needs care. Right now, the only laws that help workers in this situation are the federal Family and Medical Leave Act, and in our state, the Temporary Disability Insurance program, which provides only meager benefits for a worker's own temporary non-work related disability. But workers need more than the unpaid leave and limited benefits provided by these laws to protect their family's economic security. For many workers, the birth of a child or an illness in the family forces them into a cycle of economic distress. Twenty-five percent of all poverty spells begin with the birth of a child. The lack of paid family and medical leave hits low-income workers hardest: almost three in four low-income employees who take family and medical leave receive no pay, compared to between one in three middle income employees and one in four upper income employees.

With families increasingly unable to make ends meet, workers need policies like paid family and medical leave more than ever. Because of the economic downturn, lost wages or a lost job because of a new child or sick family member can have especially devastating effect. If a wage earner gets seriously ill or needs to take time off of work to care for a family member, a missed paycheck may mean that the mortgage, rent or other bills will have to go unpaid. It is unsurprising that studies show that medical bills lead to foreclosures and bankruptcy—workers have no other choices.

Working families should not have to risk their financial security when they get sick or a family member needs them. Paid family and medical leave will help families maintain their economic security and will show that we, as a nation, truly support and value families. Please help us achieve this goal by supporting the FIRST Act.

Prepared Statement of Hon. Diane Rosenbaum, Oregon State Senator

Thank you for the opportunity to provide testimony for the record in support of the Family Income to Respond to Significant Transactions Act (FIRST Act). I have been working to pass a paid family leave program in Oregon for a number of years and would like to urge Congress to pass the FIRST Act, which will make it possible for working people to take time off to care for a new baby, their own serious health needs or those of their family without jeopardizing their economic security. This legislation would be critical for the success of Oregon's work and would give the state the flexibility to develop a program based on the needs of Oregon's working citizens. I strongly support this legislation.

Right now, the only laws that help workers care for their family while maintaining their job are the federal Family and medical Leave Act, and in Oregon, the Oregon Family Leave Act. However many employees are unable to take advantage of these benefits because they cannot afford to go without a paycheck. Oregon has been working to provide partial wage replacement to these workers. Paid Family Leave Insurance would enable many low- and moderate-income families to be at home during the crucial first months of a child's life, or to take care of a family member who has a life-threatening illness. According to independent studies commissioned by the U.S. Department of Labor, 78% of employees who did not take family leave when they needed it reported they did so because they could not afford to go without a paycheck.¹

With an increasing number of Oregonian "sandwiched" between caring for their children and their aging parents, employees are increasingly called upon to balance

¹Department of Labor 2000 report at 2-16.

their need for time off against their need to earn a paycheck. Because of the economic downturn, lost wages or a lost job because of a new child or sick family member can have an especially devastating effect.

The economy has also taken its toll on state budgets. Oregon is facing a \$4.2 billion dollar deficit, and we have found it increasingly difficult to allocate funding for the relatively small start-up costs of a paid family leave program. The FIRST Act's grant funding to develop and implement new paid leave programs would enable us, and others, to clear the hurdle of start-up costs. Funding at the critical early state will help ensure that state paid family leave programs will quickly become self-sustaining.

Working families should not have to risk their financial security when they get sick or a family member needs them. Paid family and medical leave will help families maintain their economic security and show that we, as a nation, truly support and value families. Please help us achieve this goal by supporting the FIRST Act.

Respectfully,

DIANE ROSENBAUM, *Oregon State Senator,
Senate Assistant Majority Leader, Senate District 21.*

Prepared Statement of Amy Stear, Wisconsin Director, 9to5, National Association of Working Women—Milwaukee Chapter

On behalf of the members and constituents of 9to5, National Association of Working Women—9to5 Chapter, I appreciate the opportunity to provide a statement for the hearing record on the Healthy Families Act and the Family Income to Respond to Significant Transitions Act (FIRST Act).

9to5 Milwaukee urges Congress to pass the Healthy Families Act, which will allow workers to earn up to 7 paid sick days annually to care for their own or family members' illness, and to pass the FIRST Act, which will make it possible for working people to take time off to care for a new baby, for their own serious health needs or those of their families without jeopardizing their economic security. Both of these pieces of legislation are critical for the health and economic security of all working people and their families. We strongly support both bills.

In Milwaukee, we have been hearing from parents with children in Milwaukee Public Schools who have H1N1. Wisconsin is leading the country in confirmed H1N1 cases. Doris Gillispie, the Chair of 9to5's Board said, "I have a family member who had to be quarantined and missed 4 and a half days of work, with no pay, because of H1N1 in her household. Now, she is doing double shifts just to pay her bills and make it at her job. With the lawsuit, justice was delayed, but our families can't wait on politicians who already have sick time." As the head of the household, she has been put in this impossible place where she can't pay rent while caring for her own health, her children's health, and public health by staying home.

An overwhelming majority of the voters—over 69%—passed a Milwaukee paid sick days ordinance in November of 2008 because they recognized the need for it. They need it to stay healthy, to keep their children healthy, to stay employed, to stay out of poverty. They need it in order to care for loved ones with chronic conditions or ailments that come with aging. Some need it to find legal and treatment remedies for domestic violence or sexual assault.

A broad and expansive coalition of over 50 labor, religious, student, and community groups in Milwaukee and the surround region will continue to fight for the paid sick days law to be implemented. Wisconsin is in preliminary stages of a statewide Paid Sick Days campaign and continue their commitment to work/family policies.

Healthy Families Act

Chances are each of us will get sick or need to care for a sick family member this year. But not all of us have the option to take time off from work to get better or to care for a sick family member. Almost 60 million Americans lack a single paid sick day in which to care for themselves when illness strikes. In addition, nearly 100 million workers don't have a paid sick day they can use to care for an ill child.

When many workers get sick, need to take care of a sick child, or have to take an elderly parent to a medical appointment, they are faced with an impossible choice: lose a day of pay and possibly even a job, or take the time needed to take care of their family. Half of low-wage working parents report losing pay to stay home and care for a sick child or being forced to leave children home alone.

When workers have access to paid sick days, employers benefit from reduced turnover, higher productivity, and reduced spread of contagion in the workplace. If workers were allowed to earn just seven paid sick days per year, as the Healthy Families

Act proposes, our national economy would experience a net savings of \$8.1 billion per year.

In a nation that values families, no worker should have to choose between their job and their own or a family member's health. Please help us achieve this goal by supporting the Healthy Families Act.

FIRST Act

Working families need paid leave to help them stay afloat financially when they have a new child, when a wage earner falls critically ill, or when a family member has a serious health condition and needs care. Currently, the only law that helps workers in this situation is the federal Family and Medical Leave Act. But workers need more than the unpaid leave provided by FMLA to protect their family's economic security. For many workers, the birth of a child or an illness in the family forces them into a cycle of economic distress; in fact, the birth of a child accounts for twenty-five percent of people's bouts with poverty.

Working families should not have to risk their financial security when a wage earner gets sick or a family member needs help. Paid family and medical leave will help families maintain their economic security and will show that we, as a nation, truly support and value families. Please help us achieve this goal by supporting the FIRST Act.

Prepared Statement of Time to Care for Oregon Families

On behalf of a broad advocacy coalition in Oregon that is working to create a paid leave program for workers in our state, we appreciate the opportunity to provide a statement for the hearing record on the Family Income to Respond to Significant Transitions Act (FIRST Act). We urge Congress to pass the FIRST Act, which will make it possible for working people to take time off to care for a new baby, for their own serious health needs or those of their families without jeopardizing their economic security. This legislation would be critical for the success of our work and would give our state the flexibility to develop a program based on the needs of our state's working families. We strongly support it.

Working families need paid leave to help them stay afloat financially when they have a new child, when a wage earner falls critically ill, or when a family member has a serious health condition and needs care. Right now, the only laws that help workers in this situation are the federal Family and Medical Leave Act, and in our state, the Oregon Family Leave Act. But workers need more than the unpaid leave provided by these laws to protect their family's economic security. For many workers, the birth of a child or an illness in the family forces them into a cycle of economic distress. Twenty-five percent of all poverty spells begin with the birth of a child. The lack of paid family and medical leave hits low-income workers hardest: almost three in four low-income employees who take family and medical leave receive no pay, compared to between one in three middle income employees and one in four upper income employees.

With families increasingly unable to make ends meet, workers need policies like paid family and medical leave more than ever. Because of the economic downturn, lost wages or a lost job because of a new child or sick family member can have especially devastating effect. If a wage earner gets seriously ill or needs to take time off of work to care for a family member, a missed paycheck may mean that the mortgage or other bills will have to go unpaid. It is unsurprising that studies show that medical bills lead to foreclosures and bankruptcy—workers have no other choices.

The economy has also taken its toll on state budgets. Even states that want to create paid family and medical leave programs are finding it difficult to allocate funding for the relatively small start-up costs of such programs. The FIRST Act's grant funding to develop and implement new paid leave programs would enable states to clear the hurdle of start-up costs. Funding at the critical early stages will help ensure that state paid leave programs will quickly become self-sustaining. The FIRST Act will also help states with existing programs reach out to and educate workers about their options for paid leave.

Working families should not have to risk their financial security when they get sick or a family member needs them. Paid family and medical leave will help families maintain their economic security and will show that we, as a nation, truly support and value families. Please help us achieve this goal by supporting the FIRST Act.

REGAN GRAY,
Time to Care for Oregon Families & Children First for Oregon.

Prepared Statement of Trust for America's Health (TFAH)

I am Dr. Jeffrey Levi, Executive Director of Trust for America's Health (TFAH). TFAH is a nonprofit, nonpartisan organization dedicated to saving lives by protecting the health of every community and working to make disease prevention a national priority. Thank you for having this hearing on an important piece of legislation, the Healthy Families Act, which would guarantee most workers seven days of paid sick leave per year. TFAH believes that this legislation is a necessary public health tool to protect workers during public health emergencies such as an influenza pandemic. We thank Representative Rosa DeLauro and Senator Ted Kennedy for their leadership on this legislation.

The recent outbreak of the 2009 H1N1 influenza virus is an important wake up call for the nation, a clear reminder that influenza pandemics can happen that novel flu viruses do emerge and can threaten the nation's and the world's health. While so far not as virulent as some prior pandemic flu viruses, we are not yet out of the woods the virus has not finished playing out this season and there is a very real danger that it could return in a far more virulent form in the fall. In the meantime, scientists continue to be worried about the threat posed by the H5N1 (avian) flu virus.

In June, TFAH released a report, *Pandemic Flu Preparedness: Lessons from the Frontlines*, which detailed early lessons from the initial H1N1 outbreak and recommendations for preparing for a resurgence of the virus in the future. In our report, we cited numerous media reports of people with influenzalike illness continuing to go to work because they had no sick leave and feared losing their jobs, and some parents sent sick children to school because they could not stay home to care for them.¹ Just last week, a column in *The Salt Lake Tribune* stated that some employees of the Primary Children's Medical Center were reportedly going to work with flulike symptoms because the hospital's sick leave policies could force them to take all of their paid sick days and some vacation time to stay home.²

Throughout the H1N1 outbreak, the Centers for Disease Control and Prevention (CDC) and state and local health departments warned Americans to stay home if they felt sick.

These kinds of "social distancing" measures are essential to contain and mitigate the effects of an infectious disease outbreak. The Healthy Families Act is an important step in ensuring workers can follow the guidance of public health officials and stay home if they are sick or must care for a family member who is ill. For many employees, taking unpaid sick time is simply not a financially viable option. Employers may threaten to terminate workers who stay home, and many who live paycheck to paycheck can not afford to miss work. Workers should not be penalized for protecting their families and the public's health in general by avoiding contact with other people if they are sick.

TFAH is hopeful Congress will pass the Healthy Families Act quickly, as scientists fear the H1N1 virus may resurge in the fall in a more virulent form. Even with passage of this important legislation, however, we urge employers to be as flexible as possible during a flu pandemic. Sick leave policies should allow workers to fully comply with CDC guidance. Furthermore, Congress, the Office of Personnel Management, and Department of Labor should consider policies that expand worker protections during a severe infectious disease outbreak, including up to two weeks of paid sick time.

Thank you for the opportunity to comment on the Healthy Families Act. We appreciate the Committee's work on this legislation and for your continued efforts to protect American workers.

Prepared Statement of Vermont Paid Sick Days Coalition

On behalf of the Vermont Paid Sick Days Coalition, the Vermont Livable Wage Campaign of the Peace and Justice Center and Voices for Vermont's Children submit these comments for the Congressional record in support of the Healthy Families Act. We applaud Chairwoman Woolsey and the Subcommittee on Workforce Protections for taking testimony on June 12, 2009 to learn more about this important legislation and the need for paid sick leave for working Americans.

¹ Trust for America's Health. *Pandemic Flu Preparedness: Lessons from the Frontlines*. Washington, DC: Trust for America's Health, June, 2009. p. 4.

² Rolly, Paul. "Rolly: The Sick Treating the Sick?" *The Salt Lake Tribune*, June 12, 2009. <http://www.sltrib.com/news/ci—12581592> (Accessed 6.18.09)

The Healthy Families Act Boosts States' Efforts

Vermont is among a growing number of states pushing for paid sick leave for its workforce. This spring, the Vermont Paid Sick Days Coalition launched Campaign 2010: Paid Sick Days for Vermont. The Coalition, comprised of organizations working on a broad range of issues from women's and workers rights to issues affecting children and domestic violence victims, has been seeking to pass legislation in Vermont for over six years. Similar to the Healthy Families Act, Vermont's legislation—H.382: Act Relating to the Absence from Work for Health Care and Safety—allows workers to earn up to 7 paid sick days annually. As we continue our Campaign 2010 outreach and organizing work, we believe that the Subcommittee's focus on the Healthy Families Act and the plight of millions of working Americans and their families will help us build momentum to pass Vermont legislation.

Vermont Needs Paid Sick Days

In our small state of Vermont with a total private sector workforce of only 250,000, currently 42 percent of working Vermonters lack any paid sick days to care for themselves or a family member. Today, approximately 106,000 hard working Vermonters do not have paid sick days and like their counterparts nationwide, low-wage workers in Vermont disproportionately lack paid sick days. Unfortunately, too many workers are forced to choose between their paycheck, their health or the health of their family. Fortunately, Vermonters across the political spectrum support guaranteed paid sick days. In a poll of Vermont voters, more than three-quarters want the state legislature to "create a basic 'workplace standard' guaranteeing all Vermont workers a minimum number of paid sick days."

The Healthy Families Act Will Be Good for Everyone's Health

Before the outbreak of the H1N1 flu and the subsequent attention paid to this major public health risk, the Vermont Paid Sick Days Coalition partnered with the University of Vermont Medical College to complete a public health analysis titled "The Impact of Paid Sick Days on Public Health in an Elementary School Population". The research found: (1) Adults with less paid sick days were more likely to send a child with symptoms of illness to school for financial or work related issues. This correlation was more pronounced in families when adults are typically not home during the school day. (2) Three or less paid sick days reduced the amount of well child visits (annual check ups) in families when adults are commonly not home, while over 90% of adults took their children to well child visits regardless of paid sick days when an adult was typically home during the school day.

It is clear that in these difficult economic times and given the concern for public health all Vermonters would benefit significantly from allowing everyone to earn paid sick days. The Healthy Families Act would have a marked impact on the health and economic security of all Vermonters.

Thank you for taking the time on this vitally important issue.

Prepared Statement of Marilyn P. Watkins, Policy Director, Economic Opportunity Institute

On behalf of the Washington State Family Leave Coalition, I would like to express strong support for the Family Income to Respond to Significant Transitions Act (FIRST Act).

As a broad coalition, including representatives of seniors, children, women, labor, health professionals, and business owners, we have advocated for new policies to modernize workplace standards for over a decade. When a new child arrives or a serious illness strikes, all workers must have access to paid time off from work. Family and medical leave insurance is a pragmatic, proven approach that improves the health and well-being of children, speeds recovery from illness, lowers medical costs, bolsters family economic security, and helps businesses prosper.

We are proud that in 2007 Washington became the first state without an existing temporary disability insurance program to pass a family leave insurance program. However, the state fiscal crisis has forced a delay in implementation of that program from 2009 until 2012. This is particularly unfortunate, because families and local businesses need the economic security and stimulus that this program would provide now more than ever.

We anticipate that a fully implemented family and medical leave insurance program in Washington state would benefit 38,000 families caring for a newborn or newly adopted child each year, and an additional 70,000 workers with their own or a family member's serious health condition.

By providing federal assistance with start-up costs and initial benefits, passage of the FIRST Act would help our state get family leave insurance back on track.

Equally important, passage of the FIRST Act would spur creation of programs in other states, tailored to the specific conditions in each state. The United States lags far behind other nations in support of young children and of workers in their caregiving roles. Our shockingly high infant mortality rate and the unsustainable growth in health care costs are in part a result of this neglect.

We strongly urge Congress to act quickly to pass the FIRST Act. American families are counting on you.

Attached is a list of the organizations that endorsed passage of Senate Bill 5659, establishing Washington's Family Leave Insurance program in 2007.

Organizations Endorsing Washington State Family and Medical Leave Insurance, Senate Bill 5659, Signed into Law May 8, 2007:

AARP Washington
American Association of University Women, Washington Chapter
A. Philip Randolph Institute, Seattle
Amalgamated Transit Union Legislative Council
American Federation of State, County and Municipal Employees, Council 2
American Federation of Teachers, Washington
Association of Western Pulp and Paper Workers
Children's Alliance
Child Care Resources (CCR)
Children's Home Society
Church Council of Greater Seattle
Early Care and Education Coalition
Economic Opportunity Institute
International Association of Machinists and Aerospace Workers, Local 751
International Union Of Operating Engineers Local 302
League of Women's Voters of Washington
Lutheran Public Policy Office
Minority Executive Directors Coalition
Moms Rising
National Council of Jewish Women
National Employment Law Project
National Organization for Women, Washington Chapter
Northwest Women's Law Center (Legal Voice)
Program for Early Parent Support (PEPS)
Seattle Human Services Coalition
Senior Citizens' Lobby
Service Employees International Union, Local 775
Service Employees International Union, Local 925
Society of Professional Engineering Employees of Aerospace, IFPTE 2001 (SPEEA)
Statewide Poverty Action Network
Take Back Your Time
United Food and Commercial Workers, Local 141
Washington Association of Churches
Washington State Alliance for Retired Americans
Washington State Labor Council
Welfare Right Organizing Coalition

Prepared Statement of Women Employed

Women Employed commends Chairwoman Lynn Woolsey and Ranking Member Tom Price for convening this hearing on paid sick days legislation for employees who are ill, or to care for an ill family member, or for medical appointments, or for leave connected to domestic violence or sexual assault. WE is a 36-year-old membership organization dedicated to improving women's economic status. Over the past three decades, WE has expanded employment and educational opportunities, won improvements in workplace practices, and provided women with practical tools for career and educational planning. Our primary focus today is on the barriers facing the millions of women still earning low wages.

WE's policy work has always been informed by our Job Problems Counseling Service, which has responded to thousands of individuals who call to get advice on employment-related problems. We regularly receive calls from individuals wanting to know how much paid leave the law requires their employers to provide them. We unfortunately have to explain to them that there is no affirmative duty to provide paid leave.

All of us will get sick at some point, sick enough to need to stay home. But nationally, nearly half of all private sector workers have no paid sick days. Without an enforceable paid sick days law:

- workers come to work sick because they cannot afford to miss a day's pay, or they fear being fired for taking a day off;
- some employers provide leave to some workers but not all;
- those workers fortunate enough to have sick leave are often prevented from using it to care for a family member who is ill;
- employers may apply sick day usage as part of a progressive disciplinary policy that involves demerits for using a sick day.

Here are some stories from Illinois employees who needed to take sick days:

- Angela of Chicago Heights worked for a retailer who promised her sick days, but then would not let her use them when she needed it due to painful rheumatoid arthritis. They told her they would fire her if she did not return to work. She instead chose to quit because she could not trust her employer and had no avenue for recourse. Angela is currently in college, raising two foster children, and working part-time at a large chain bookstore that does not provide paid sick days to part-time workers. Angela supports the Healthy Families Act for full and part-time workers, and for the leave it would provide her if she or her children got sick.

- Karen, a dental assistant from Dixon, has no sick days because she works part-time, although she notes that full-time employees in the office get benefits. She winds up having to work for her co-workers who have benefits when they stay home and use their paid time off, which she notes creates ill-will.

- Beverly from Rock Falls has a son who is able to work despite a head injury as a teenager. He does not receive paid sick days at the fast food and retail establishments where he has worked, so while he should take time off to see a doctor or regulate his medications, he goes to work in order to pay his expenses, including a house he purchased. Despite these efforts her son has been fired from jobs when he was so sick he had to stay home and his employer did not provide a sick day benefit.

- Jannet in Vernon Hills works through a temporary agency that does not provide benefits. She has been at her current assignment for over one year. In December, Jannet got sick with bronchitis and then her two-year-old daughter got sick—because family members do not always get sick at the same time. Jannet had to miss work and was not paid. This meant she could not pay bills, nor celebrate Christmas as she'd planned.

Providing paid sick days benefits the public

Cold and flu outbreaks can be ameliorated by having a sick day policy that allows workers to briefly withdraw from worksites to recover and avoid spreading disease. This is particularly important at worksites where employees are in direct contact with the public, such as restaurants, hotels and child care and health care facilities. So even those of us who receive paid sick days are threatened with illness when we come in contact with those without paid sick days who come to work because they cannot afford to miss a day's pay.

Providing paid sick days benefits business

A Harvard Business Review article reported that “presenteeism”—workers coming to work when sick—costs companies more than they spend on healthcare expenses. (Presenteeism: At Work—But Out of It, Paul Hemp, Oct. 2004.) According to a cost-benefit study done on the impact of the Healthy Families Act, the benefits outweigh the costs by \$8 million. (Valuing Good Health: An Estimate of Costs and Savings for the Healthy Families Act, Vicky Lovell, Ph.D., April 2005, www.iwpr.org.) These savings come from 1.) not paying workers who are unproductive because they come to work sick, 2.) by reducing turnover costs when workers do not have to leave for another job with better benefits, and 3.) in reduced spread of flu at work, which would have led to more workers being absent.

In addition, lack of paid sick days can impact an employer's customers. A Nevada jury found that a viral outbreak that sickened hundred at a Las Vegas hotel was caused by the lack of an adequate paid sick days policy, awarding \$25 million in damages to victims of the disease. (*Diane Verderber v. Reno Hilton Resort Corporation*, et al., 106 P.3d 134 (Nev. 2005).)

Before the paid sick days law was passed in San Francisco (in 2007), some businesses opposed it based on their concern that business would move outside the city limits. However, a study done one year after enactment of the ordinance (*Job Growth Strong with Paid Sick Days*, Vicky Lovell, Ph.D. and Kevin Miller, Ph.D., Oct. 2008, Institute for Women's Policy Research) shows that San Francisco maintained a competitive job growth rate that exceeded the average growth rate of near-

by counties that do not require that employers provide paid sick days. The director of the Golden Gate Restaurant Association told the San Francisco Chronicle that “it hasn’t been a big issue” for the companies he represents.

The United States should adopt the Healthy Families Act

Some, but not all, large employers have recognized the necessity of providing benefits for their employees’ needs and have reaped the rewards of retaining a skilled and stable workforce in this competitive economy. But it is insufficient to point to the few employers that are making these efforts as the answer to the rest of the U.S. workforce that is faced with jeopardizing their jobs when they or family members get sick.

Prepared Statement of Working Mother Media (WMM)

TO THE SUBCOMMITTEE ON WORKFORCE PROTECTIONS: Working Mother Media (WMM) is proud to express its continued support for the Healthy Families Act. WMM issued a press release in 2007 in support of the Healthy Families Act when it was last introduced. Our support today is as strong as it has ever been. WMM—the publisher of Working Mother magazine and the force behind the 24-year-old signature initiative Working Mother 100 Best Companies—has long advocated family-friendly policies in the workplace. WMM is standing with Representative DeLauro and Senator Kennedy as they promote common-sense change that will enhance the lives of millions of working Americans.

Every study, every piece of research shows that giving workers paid sick days to attend to personal concerns, as well as to those of children and extended family members, increases job satisfaction, workplace morale, company profitability, and community health.

This issue is particularly important to women, including our 2 million readers who combine career and family. Mothers are the family health managers in America, and we need to make sure that when the family health manager also works outside the home, she can still perform her important job of keeping her family healthy. It is time to level the playing field by asking government to mandate a standard that protects the health of our working families. The provision of a minimum standard for paid sick days will dramatically change the lives of countless workers and their families.

Poorer Americans, in particular, will benefit from the proposed legislation. An estimated three quarters of low-wage workers have no paid sick days, and research from the Urban Institute estimates that of working parents with incomes below 200% of the federal poverty line, 41% have no paid leave at all. As a result, workers who least can afford it are forced to miss work or lose their jobs to care for themselves and family members. Working mothers, as primary household caregivers, feel the burden most acutely.

In response to the issues raised by the original introduction of the Healthy Families Act, Working Mother Media has highlighted the importance of paid sick days in the business world by making sick day policy a factor in evaluating applicants to the Working Mother 100 Best Companies award. We want to be certain that our winners offer this important supports to their employees.

About Working Mother Media

Working Mother Media (WMM) is a division of Bonnier Corporation. Founded by Carol Evans in 2001 when she acquired Working Mother magazine, the Work Life Congress, and the National Association for Female Executives (NAFE) and their websites, WMM has launched important new initiatives including the Best Companies for Women of Color, the Best Companies for Hourly Workers and the Best Law Firms for Women. Working Mother magazine, launched thirty years ago, reaches over 2 million readers and is the only national magazine for career-committed mothers.

Sincerely,

CAROL EVANS, *President,*
Working Mother Media.

[Whereupon, at 12:03 p.m., the subcommittee was adjourned.]

