



**Written Statement of Judith L. Lichtman
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**Submitted to the U.S. House Committee on Education and the Workforce
Subcommittee on Workforce Protections
Hearing on H.R. 1406, the Working Families Flexibility Act**

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Good morning, Chairman Walberg, Ranking Member Courtney, members of the Committee and my fellow panelists. I appreciate the opportunity to testify before you today on H.R. 1406.

I am Judith Lichtman, senior advisor at the National Partnership for Women & Families, a nonprofit, nonpartisan advocacy organization. For four decades, we have fought for every major policy advance that has helped women and families. We promote fairness in the workplace, access to quality, affordable health care, and policies that help women and men meet the dual demands of work and family. Our goal is to create a society that is free, fair and just, where nobody has to experience discrimination, all workplaces are family friendly, and every family has access to quality, affordable health care and real economic security.

Formerly the Women's Legal Defense Fund, the National Partnership for Women & Families is proud to have drafted the Family and Medical Leave Act (FMLA) and led the coalition that fought to make it law. Since 1993, women and men have used the FMLA more than 100 million times to care for themselves or their loved ones. It is an historic law that has had a tremendous impact, and a shining example of what can be accomplished when lawmakers work together to address the nation's needs. The FMLA was intended as a first step toward a nation with public policies that truly value families.

It Is Time to Update Our Nation's Family Friendly Laws, But H.R. 1406 Offers a False Choice Between Time and Pay

As lawmakers on both sides of the aisle have acknowledged, people today are struggling to meet the demands of job and family, as well as to make ends meet. In most families, all adults work. Women comprise half of the workforce and women's

earnings are essential to their families. Women also remain primary caregivers in most families.

We all know these are tough times. Across the nation, women – and men – are struggling to get by on less, and to meet both the demands of their employers and the needs of their families. They are worrying about whether their jobs are secure, and trying to hold onto them without the time off they need. Many also contend with work schedules that are unpredictable, inflexible and unstable.

So it should be no surprise that, in a survey commissioned by the National Partnership in November 2012, 80 percent of working women and 72 percent of working men said they, their neighbors or their friends face hardships when managing work, family and personal responsibilities.¹

There is no question that Americans need lawmakers to take the next step on the road to a family friendly nation. But H.R. 1406 is not what the nation needs. It is, at best, an empty promise. In truth, it would cause considerably more harm than good.

Quite simply, H.R. 1406 would be a step in the wrong direction. Instead of building on the success of policies such as the FMLA, paid sick days standards and a fair minimum wage – which provide workers and their families with the time off and the financial stability they need – this “flexibility” bill offers forced choices and false promises.

This legislation is based on smoke and mirrors. It pretends to offer the time off people need when they need it, but in fact, it is a pay cut for workers without any attendant guarantee of time. It also sets up a dangerous, false dichotomy between time and money when, in fact, working families need both.

H.R. 1406 has been introduced multiple times, in identical form, since the late 1990s. Fortunately for the nation’s workers, it has not become law. That is good news because this bill would undermine the very purposes of the Fair Labor Standards Act (FLSA), which for 75 years has helped protect the working hours and paychecks of covered employees. The FLSA’s requirement that hourly, non-exempt employees be paid time-and-a-half for every hour of work in excess of 40 hours per week was intended to spread job opportunities to more workers and create disincentives for overwork, giving working women and men the ability to spend time with their loved ones.

H.R. 1406 would leave workers with neither pay nor time. Let me tell you about a woman the National Partnership and our colleague organization, Family Values @ Work, met in 2011 when we convened discussion groups to examine the challenges

¹ Lake Research Partners and the Tarrance Group. (2012, November). National survey of 1220 voters. (Unpublished data)

facing workers to inform the U.S. Department of Labor's National Dialogue on Workplace Flexibility.

In Los Angeles, we met a widowed clerical aide we'll call Susannah who has a 20-year-old son, a 19-year-old daughter, a 5-year-old daughter, and a 73-year-old mother with health problems.² This hourly worker said her hours had been cut from 40 per week to 30, but her workload had not decreased. "We put in a lot of 'voluntary' time," she explained. "We get told things like, 'If you can't handle it or it's too much work for you, maybe we can find someone else.'" Despite family obligations that required her to be home in the evenings, Susannah felt constant pressure from her supervisor to work extra hours on short notice. "If I need to work overtime, I do it to keep my job," she explained, even though those extra hours often created child- or elder-care problems and extra expenses. At the same time, Susannah said her employer treated her with suspicion when she needed to take a day off to care for her sick child. She said she sometimes goes to work sick for fear that taking a day off would mean losing her job.

Susannah is just one of the many workers whose experiences put a face on data from the Bureau of Labor Statistics and major national surveys that show declines in the value of workers' wages, declines in workers' control over their work hours and schedules, and growing fears of termination that prevent workers from asserting their rights. It also illustrates the family demands that workers face, and how hard it can be to care for children and parents at the same time, especially without guaranteed time off and enough income to cover unexpected expenses.

We heard from workers with similar stories all over the country, and their experiences shine a bright light on why H.R. 1406 is so deeply flawed. It would give workers less control over both their time and their paychecks. It does not guarantee the time off that workers need, regardless of their opportunity or ability to work overtime hours. And for the growing segment of workers whose challenges stem from the opposite problem – working too few hours involuntarily with too little predictability – this proposal would do absolutely nothing to assure access to either the pay or the paid time off they need to meet their family responsibilities.³

Comp time, accepted freely and fairly and available on demand for non-vulnerable workers, may have a place in a suite of policy solutions to help workers and families. But H.R. 1406's brand of comp time is designed to benefit employers only. It does not offer any of the protections workers need. It is tone-deaf to what workers are experiencing right now.

² National Partnership for Women & Families and Family Values @ Work. (2011, February). *Los Angeles Workers Speak: The Employee Case for Flexibility in Hourly, Lower-Wage Jobs*. Retrieved 5 April 2013, from http://www.nationalpartnership.org/site/DocServer/W_F_Workflex_LA_Workers_Voice.pdf?docID=8241

³ On the rise of part-time and contingent work, see Greenhouse, S. (2012, October 27). A Part-Time Life, as Hours Shrink and Shift. *The New York Times*. Retrieved 5 April 2013, from <http://www.nytimes.com/2012/10/28/business/a-part-time-life-as-hours-shrink-and-shift-for-american-workers.html>

The following are our specific concerns about H.R. 1406.

H.R. 1406 Magnifies the Power Imbalance between Employees and Employers

H.R. 1406 places significant power in the hands of employers, while limiting the ability of employees to earn the wages they need to support their families. It permits employers to offer comp time in lieu of overtime to one, some or all eligible workers. And although it requires an “agreement” between employers and employees, it does not give an employee wishing to remain in her or his employer’s good graces any true “choice.” As a worker said recently in a focus group commissioned by the National Council of La Raza, “[T]he employer can abuse you, can use you because you’re scared to lose your job. You lose your job, they fire you, they’ll get somebody else or two other people.”⁴

Few hourly workers – and almost none without union representation – have real bargaining power in the workplace. These low-wage workers tend to rely on overtime pay to make ends meet. They also are at high risk for wage theft, where wages are withheld or reduced by unscrupulous or thinly capitalized employers.⁵

In the current climate, in which Americans are deeply concerned about losing jobs or being unable to work enough hours to make ends meet,⁶ employees will be coerced into accepting comp time instead of pay, for fear of losing their livelihoods altogether. And, as I’ll discuss in a moment, the comp time offered here may not even be available when workers need it, rendering this proposal a true wolf in sheep’s clothing.

This legislation would put workers at very real risk. An employee who does not accept comp time could find himself or herself penalized with fewer hours, non-preferred shifts and loss of overtime work. The employee’s “choice,” then, would be to accept comp time instead of needed pay or, if he or she reasonably asks for pay for overtime work and faces retaliation, try to fight it in court. That is an unrealistic expectation for workers who fear losing their jobs and have no resources with which to litigate.

⁴ Lake Research Partners. (21 September, 2012). *Focus Groups among Lower-Income Latinos in Florida*.

⁵ For worker stories of overtime and wage theft violations, see National Council of La Raza. (2011). *We Needed the Work: Latino Worker Voices in the New Economy*. Retrieved 3 April 2013, from <http://www.nclr.org/images/uploads/publications/JobQuality.pdf>; Labor Council for Latin American Advancement. (2012). *Trabajadoras: Challenges and Conditions of Latina Workers in the United States*. Retrieved 3 April 2013, from http://www.lclaa.org/images/pdf/Trabajadoras_Report.pdf

⁶ Lake Research Partners. (2010). *Community Voices on the Economy: Report from a Nationwide Survey of 1004 Adults*. Retrieved 5 April 2013, from http://www.lakeresearch.com/news/cv/CV_Report.pdf

H.R. 1406 Would Mean Less Work for Some and More Work – and Extra Expenses – for Others

H.R. 1406 undermines the central tenets of Section 7 of the FLSA: creating reasonable work hours for all, and work and job opportunities for many. Because it is cheaper for employers to provide comp time than to pay overtime wages, there is a significant incentive for employers to hire fewer people and rely on overtime hours – paid for in future comp time – to get work done. H.R. 1406 could translate into fewer jobs at a time when the economy needs more people working. And it would mean greater scheduling instability, uncertainty and unpredictability for workers who are asked to work overtime hours; potentially greater childcare and transportation expenses; and yet fewer dollars in workers' pockets to meet the additional costs and inconveniences that more overtime work would bring.

H.R. 1406 Means Less Paycheck Security for Employees and an Interest-Free Loan for Employers

H.R. 1406 would permit employers to defer compensation – in money or time – to employees for as many as 13 months. In essence, comp time creates an interest-free loan for employers because employees who work overtime today may not see the value of that overtime for more than a year.

The legislation allows employers to retain and earn interest on the wages they would otherwise have been obligated to pay. Although it is true that an employee can trade banked comp time for overtime pay, employers have a full 30 days to grant the request. That means that an employee who needs the overtime pay to make ends meet may have to wait a full month for it.

H.R. 1406 Fails to Provide the Time that Working People Need

The worker flexibility offered by H.R. 1406 is nothing more than a mirage. That's because this proposal gives the employer, not the employee, the "flexibility" to decide when and even if comp time can be used. The plain language of the bill requires an employee to make a request in advance, gives the employer a "reasonable period" after the request is made to allow the employee to use the time, and permits the employer to deny the request entirely if the employee's use of comp time would "unduly disrupt" operations.

This means that a mother who asks to take comp time to stay home with her toddler because her child care provider is sick has no guarantee that she'll be able to use the time she's earned and banked. And there is no guarantee that a son's request to use a week of comp time to help his aging parent relocate to a nursing home will be granted. Just as workers like Rosa, a hotel housekeeper, are denied the use of vacation leave they have earned for important family events like a

daughter's communion,⁷ so too will workers be denied the use of the comp time they have earned through long hours on the job.

If an employee's request is arbitrarily or unfairly delayed or denied, H.R. 1406 provides no recourse. There is no remedy under this proposal for an employee who is unable to use accrued comp time, except to ask that the time be cashed out. This is far from the kind of family friendly policies workers need.

H.R. 1406 Jeopardizes Employees' Wages When Firms Die

All of this assumes the employer remains in business and employees can eventually use the time they've banked, or receive the cash equivalent when banked time is paid out. But H.R. 1406 provides no protections to employees when firms collapse or go bankrupt. As a result, a worker could lose the value of unused comp time – up to 160 hours per employee, or more than \$2,200 for a typical worker.⁸ The receipt of comp time in lieu of overtime could also have repercussions for employees seeking unemployment compensation.

This significant loss of income would affect not just individual employees but – when large employers close their doors – whole communities. On average, more than three million employees lose their jobs each year when businesses close. Even at the peak of the last business cycle, about 600,000 firms employing 3.4 million workers went out of business in one year.⁹ And during the most recent recession, firm deaths outnumbered firm births across all sectors.¹⁰

H.R. 1406 Fails to Provide Affordable Remedies to Workers or Resources to the Department of Labor

Even under current wage and overtime law, unscrupulous employers regularly violate employees' rights to earn overtime payments because the benefits of non-compliance outweigh the financial liabilities. H.R. 1406 would increase employers' incentives to ignore the FLSA's wage and overtime provisions. It does not provide administrative remedies for employees who have been coerced into accepting comp time or whose rights to freely choose comp time versus overtime payments have been violated. Instead, employees' only recourse is through the courts. But few low-wage workers have the resources to sue. And, as noted above, employees have no right at all to use the comp time they have accrued when they need it.

⁷ National Council of La Raza. (2011). *We Needed the Work: Latino Worker Voices in the New Economy*. Retrieved 3 April 2013, from <http://www.nclr.org/images/uploads/publications/JobQuality.pdf>

⁸ Based on the median hourly wage of \$14.12 for an hourly worker aged 25+ in 2011, as reported in U.S. Bureau of Labor Statistics. (2012, October). *Highlights of Women's Earnings in 2011*, p. 46. Retrieved 5 April 2013, from <http://www.bls.gov/cps/cpswom2011.pdf>

⁹ U.S. Census Bureau. (2012). *Firm Births and Deaths by Employment Size of Enterprise: 1990 – 2007 (Table 765)*. Retrieved 5 April 2013, from <http://www.census.gov/compendia/statab/2012/tables/12s0765.pdf>

¹⁰ U.S. Census Bureau. (2012). *Establishment Births, Deaths, and Employment by Sector and Firm Type – Startups, Young, and Mature Firms: 2009 (Table 764)*. Retrieved 5 April 2013, from <http://www.census.gov/compendia/statab/2012/tables/12s0764.pdf>

In addition, H.R. 1406 adds significant new provisions to the FLSA and creates a new imperative for employee and employer outreach, but provides no additional funds for the education and enforcement efforts its new provisions will require. The U.S. Department of Labor's Wage and Hour Division already struggles to enforce the FLSA with too few investigators and too small a budget; recent fiscal pressures will only stretch DOL's resources even more.

For each of these reasons – and because employees simply should not have to put in extra time beyond a 40-hour week *and* forgo pay simply to earn time to care for themselves or their loved ones – we ask you to reject H.R. 1406. It is a deeply flawed proposal that would cause massive harm to workers. It offers a false, flawed choice that would make times even tougher for workers and their families. It would be a giant step in the wrong direction for the country. We can do better.

Toward a More Family Friendly and Prosperous Nation: Public Policy Solutions That Workers and Families Need Most

We commend the committee for recognizing the important role that public policies can play in setting our nation's course. Too often, work-family conflicts are seen as individual struggles to be managed privately rather than as a common thread that connects virtually every working parent or adult child and that binds the interests of employees, employers and communities.

False Assumptions Have Impeded Our Progress

For too long, a number of false assumptions have stood in the way of progress. The organized business lobby and other opponents have perpetuated the idea that family friendly policies are zero-sum, expensive and marginal to working families' economic stability and well-being. The opposite is true. Employees, families, businesses, taxpayers and government all have a stake in creating more family friendly workplaces and increasing the economic security of working families. I want to refute these false assumptions so we can move beyond them and consider the policy solutions working people need.

The most egregious myth perpetuated by the organized business lobby is that expanding work-family policies harms employers. Done right, these policies can benefit business. Research confirms what working families and responsible employers already know: When businesses take care of their workers, they are better able to retain them. Workers paid fair wages have more ability to support local businesses. And workers with the security of paid time off and flexibility increase their commitment, productivity and morale – and employers reap the benefits of lower turnover and reduced training costs.¹¹

¹¹ National Partnership for Women & Families. (2011, March). *Taking Care of Business: The Business Benefits of Paid Leave*. Retrieved 5 April 2013, from http://www.nationalpartnership.org/site/DocServer/W_F_Taking_Care_of_Business_March_Update.pdf?docID=8721

Studies show that the costs of losing an employee, including advertising for, interviewing and training a replacement, are often much greater than the cost of providing short-term leave to retain an existing worker. The average cost of turnover can range from 25 percent to 200 percent of an employee's annual compensation.¹² This is why the Council of Economic Advisors in 2010 recognized the imperative for more flexible, family friendly workplaces. And this is why a growing number of businesses are supporting increases in the minimum wage and the establishment of paid sick days and paid family leave laws.

A second, related myth is that humane leave policies are too costly for taxpayers. In reality, these policies provide cost-savings to governments as well as businesses. A recent study shows that if all workers had paid sick days, 1.3 million emergency room visits could be prevented each year in the United States, saving \$1.1 billion annually. More than half of these savings – \$517 million – would accrue to taxpayer-funded health insurance programs such as Medicare and the State Children's Health Insurance Program.¹³ In addition, both women and men who take paid leave after a child's birth are significantly less likely to rely on public assistance or food stamps in the following year.¹⁴ And women who take paid leave are more likely to be working nine to 12 months after a child's birth and to have higher earnings.¹⁵ Like other policies that promote higher wages and economic opportunity, paid leave helps grow the economy and the tax base while reducing reliance on public services.

A third myth is that only women care about family friendly policies, which are marginal to families' economic security. Women remain our families' primary caregivers to children and elders. However, women are nearly half the workforce, men increasingly manage responsibilities at home as well as in the workplace, and both genders feel intense work-family conflict and need better ways to manage job and family responsibilities. Regardless of the gender of family caregivers, the absence of family friendly policies harms families financially.

It is time to reject these absurd myths, which have been disproven time and again, and instead work together to adopt innovations that are long overdue. We do not need to require workers to subsidize their own time off with lower wages and more time on the job, as H.R.1406 does. Instead, we need to adopt national policy

¹² Sasha Corporation. (2007). *Compilation of Turnover Cost Studies*. Retrieved 5 April 2013, from <http://www.sashacorp.com/turnframe.html>

¹³ Miller, K., Williams, C., & Yi, Y. (2011, October 31). *Paid Sick Days and Health: Cost Savings from Reduced Emergency Department Visits*. Institute for Women's Policy Research publication. Retrieved 5 April 2013, from <http://www.iwpr.org/publications/pubs/paid-sick-days-and-health-cost-savings-from-reduced-emergency-department-visits>

¹⁴ Houser, L., & Varatanian, T. (2012, January). *Pay Matters: The Positive Economic Impacts of Paid Family Leave for Families, Businesses and the Public*. Rutgers Center for Women and Work Publication. Retrieved 5 April 2013, from <http://smlr.rutgers.edu/paymatters-cwwreport-january2012>

¹⁵ Ibid.

solutions patterned on those working well in states and cities across the country. Paid sick days and paid family and medical leave would boost incomes and the economy and would, in many cases, lead to cost-savings over time for employers.

The policies I'll discuss have strong popular support across the political spectrum. In a poll commissioned by the National Partnership last November, 86 percent of voters said it is important for Congress and the President to consider new laws to help keep working families economically secure, including ensuring workers the right to earn paid sick days and creating a system of paid family and medical leave insurance. Policies that would provide wage protections in the form of a higher minimum wage and fair pay for women have nearly universal support. Policies that would promote more flexibility and predictability for workers while recognizing the needs of business are overwhelmingly popular as well.

Families, Businesses and the Economy Will Benefit When Workers Are Paid Fair Wages

It is a huge problem for our country that the value of workers' wages has declined. That makes overtime pay even more important for workers who are able to work overtime. While H.R. 1406 would literally take money out of workers' paychecks, an increase in the minimum wage would promote greater financial stability.

The **Fair Minimum Wage Act (H.R. 1010/ S. 460)** would increase wages for 30 million workers, most of them women. Nearly 28 percent of those who would see a wage increase are parents; more than 17 million children have a parent who would benefit. A rise in the minimum wage would increase consumer spending, stimulating the economy. By the third year, when the minimum wage reaches \$10.10 per hour, the Fair Minimum Wage Act would generate more than \$32 billion in additional economic activity and approximately 140,000 jobs.¹⁶

It is also a huge problem for the country that the gender-based wage gap is pervasive and unrelenting. Families headed by women pay an especially high price. Over the course of a year, wages paid to women with full-time, year round jobs average \$11,000 less than the wages paid to men with full-time, year round jobs. That money could buy 89 weeks of food or pay more than a year of rent.¹⁷ The disparity for African American women and Latinas is even greater than for white women.

¹⁶ National Women's Law Center. (2013, 20 March). *Fair Pay for Women Requires Increasing the Minimum Wage and Tipped Minimum Wage*. Retrieved 8 April 2013, from <http://www.nwlc.org/resource/fair-pay-women-requires-increasing-minimum-wage-and-tipped-minimum-wage>

¹⁷ National Partnership for Women & Families. (2013, April). *America's Women and the Wage Gap*. Retrieved 8 April 2013, from http://www.nationalpartnership.org/site/DocServer/Wage_Gap_National.pdf?docID=12421

For many women who experience gender discrimination in wages, and whose families suffer as a result, overtime pay is key to financial stability. H.R. 1406 would further diminish their earnings by threatening these women's ability to earn overtime pay.

In contrast, the **Paycheck Fairness Act (H.R. 377/S. 84)** would increase women's financial stability by promoting fair pay practices. It would help women challenge and eliminate discriminatory pay practices, help train women and girls in salary negotiation, support government collection of critical wage data, and reward employers that have good pay practices. If you want to help women and their families and level the playing field, you will pass the Paycheck Fairness Act.

Employees Must be Able to Earn Paid Sick Days to Protect Their Health and Economic Security

Everyone gets sick or needs medical care, for themselves or their families, at some point. While H.R. 1406 does nothing to assure that workers will have sick days when they need them, the **Healthy Families Act (H.R. 1286/S. 631)** would allow 90 percent of the private sector workforce to earn paid sick time to use when they need it.¹⁸ The Healthy Families Act would ensure that most of the 43 million workers who do not have any paid sick time could start to accrue it.¹⁹ It would allow workers to earn up to seven paid sick days annually to use to recover from short-term illness, care for a sick family member, seek routine medical care or obtain assistance related to domestic violence, sexual assault or stalking. Employers that already provide this type of leave would not have to provide additional sick time, and small businesses with fewer than 15 employees would be exempt.

Families suffer when workers cannot earn paid sick time. For the average family without paid sick days, just a few days of lost income due to illness can jeopardize the families' grocery budget for an entire month.²⁰ Nearly one in four adults nationwide has lost a job or been threatened with job loss for needing time away from work to address a personal or family illness.²¹

¹⁸ U.S. Congress Joint Economic Committee. (2010, March). *Expanding Access to Paid Sick Leave: The Impact of the Healthy Families Act on America's Workers*. Retrieved 8 April 2013, from http://www.jec.senate.gov/public/index.cfm?a=Files.Serve&File_id=abf8aca7-6b94-4152-b720-2d8d04b81ed6

¹⁹ U.S. Bureau of Labor Statistics. (2012, March). *Leave benefits: Access, private industry workers, National Compensation Survey (Table 32)*. Retrieved 3 April 2013, from <http://www.bls.gov/ncs/ebs/benefits/2012/ownership/private/table21a.pdf>

²⁰ Gould, E., Filion, K., & Green, A. (2011, June). *The need for paid sick days: The lack of a federal policy further erodes family economic security*. Economic Policy Institute publication. Retrieved 8 April 2013, from http://www.epi.org/publication/the_need_for_paid_sick_days/

²¹ Smith, T. and Kim, J. (2010, June). *Paid Sick Days: Attitudes and Experiences*. National Opinion Research Center at the University of Chicago for the Public Welfare Foundation publication. Retrieved 8 April 2013, from <http://www.publicwelfare.org/resources/DocFiles/psd2010final.pdf>

The Healthy Families Act is a much more effective solution than H.R. 1406 in providing workers with the time they need to care for their loved ones and themselves. It guarantees employees the ability to use that time off while respecting employers' needs for stability in their business operations. For restaurant workers who cook our food, childcare workers who tend to our children and care workers who support the frail elderly, the Healthy Families Act would be a step forward while H.R. 1406 would be a step in the wrong direction. At a time when more than half of parents do not have even a few paid sick days they can use to care for an ill child²² and tens of millions of workers have family eldercare responsibilities,²³ we need the real solutions the Healthy Families Act would provide.

Paid sick days laws are working well around the country. San Francisco, Washington, D.C., and Seattle have successfully implemented paid sick days standards, as has Connecticut. Portland, Oregon, and New York City will have paid sick days standards in place next year. San Francisco's paid sick days law has been in place since 2007 and the number of businesses and jobs in the city has increased relative to the surrounding five counties.²⁴ Workers and their families have benefitted with little to no burden on employers. In fact, two-thirds of San Francisco employers now support the city's paid sick days law.²⁵

But illness knows no geographic boundaries. Access to paid sick days should not depend on your zip code. We need a national standard. A working mother in Alabama and a working father in Virginia should have the same right as workers in Connecticut to take a day away from work to care for a feverish child, a parent with a broken hip, or to get medical care. The Healthy Families Act would guarantee that time. H.R. 1406 would not.

Workers Need Paid Family and Medical Leave and Expanded FMLA Protections During the Best and Worst of Times

In addition to paid sick days to cover short-term needs, nearly all working men and women will need time away from their jobs at some point to care for a new child or seriously ill loved one or to address their own serious health condition. Tens of millions of workers cannot afford to take the time they need without some wage

²² Smith, K., & Schaefer, A. (2012, June). *Who Cares for the Sick Kids? Parents' Access to Paid Time to Care for a Sick Child*. Carsey Institute at the University of New Hampshire publication. Retrieved 8 April 2013, from <http://www.carseyinstitute.unh.edu/sites/carseyinstitute.unh.edu/files/publications/IB-Smith-Paid-Sick-Leave-2012.pdf>

²³ National Alliance for Caregiving. (2009, November). *Caregiving in the U.S.* National Alliance for Caregiving and AARP publication. Retrieved 8 April 2013, from http://www.caregiving.org/data/Caregiving_in_the_US_2009_full_report.pdf

²⁴ Petro, J. (2010, March). *Paid Sick Leave Does Not Harm Business Growth or Job Growth*. Drum Major Institute for Public Policy publication. Retrieved 8 April 2013, from http://paysickdays.nationalpartnership.org/site/DocServer/Petro_DML_Paid_Sick_Leave_Does_Not_Harm_2010_Unabbr_.pdf?docID=7721

²⁵ Drago, R. & Lovell, V. (2011, February). *San Francisco's Paid Sick Leave Ordinance: Outcomes for Employers and Employees*. Institute for Women's Policy Research publication. Retrieved 8 April 2013, from <http://www.iwpr.org/publications/pubs/San-Fran-PSD>

replacement,²⁶ and H.R. 1406 would do nothing to address this urgent need. It does not even offer a guarantee that an expecting parent who planned carefully for time away from work to welcome a new child to the family – or a sister who wants to help a sibling through cancer treatment – would be able to take banked comp time to meet those needs. Despite rhetoric to the contrary, H.R. 1406 would not even ensure that a parent who wanted to use banked comp time to attend a parent-teacher conference would have that leave request granted.

As prominent current and former lawmakers on both sides of the political aisle have noted recently in conjunction with the 20th anniversary of the Family and Medical Leave Act, it is time for the United States to adopt a **national system of paid family and medical leave insurance and to expand unpaid, job-protected FMLA leave to cover more workers who need leave for more reasons.**

Only 11 percent of private sector workers have designated paid family leave through their employers²⁷, and fewer than 40 percent have personal short-term disability insurance through an employer-sponsored plan.²⁸ Only about 50 percent of first-time mothers can cobble together any form of paid leave, whether sick or vacation days, disability insurance, or something else. That number has been stagnant for a decade. Fewer than 20 percent of women with low levels of formal education have access to paid leave – and that number has not increased since 1961.²⁹

Adopting a national paid family and medical leave insurance program, similar to successful state programs, would: increase families' financial stability; promote better health outcomes for children, elders and caregivers; generate new tax revenues; and reduce burdens on the social safety net. In the year following a birth, new mothers who take paid leave are 54 percent more likely to report wage increases and 39 percent less likely to need public assistance than mothers who do not. Fathers who take paid leave are also less likely to need public assistance.³⁰ Paid leave also safeguards the income and retirement security of workers with eldercare responsibilities who might otherwise have to drop out of the workforce. On

²⁶ Abt Associates Inc. (2012, September 6). *Family and Medical Leave in 2012: Technical Report*. Retrieved 8 April 2013, from <http://www.dol.gov/asp/evaluation/fmla/FMLATEchnicalReport.pdf>

²⁷ See note 19.

²⁸ U.S. Bureau of Labor Statistics. (2012, March). *Insurance benefits: Access, participation, and take-up rates, private industry workers, National Compensation Survey (Table 16)*. Retrieved 8 April 2013, from <http://www.bls.gov/ncs/ebs/benefits/2012/ownership/private/table12a.pdf>

²⁹ Laughlin, L. (2011, October). *Maternity Leave and Employment: Patterns of First-Time Mothers 1961-2008*. U.S. Census Bureau publication. Retrieved 8 April 2013, from <http://www.census.gov/prod/2011pubs/p70-128.pdf>

³⁰ See note 14.

average, a worker who is 50 years of age or older who leaves the workforce to take care of a parent will lose more than \$300,000 in wages and retirement income.³¹

To better understand the need for – and the potential power of – a national paid leave policy solution, we can look to the two states that have created paid leave insurance systems. California created the nation’s first statewide paid family leave insurance program in 2002, and New Jersey followed in 2008. These programs were built upon those states’ much older and well-established temporary disability insurance systems, which workers have been using for decades to take leave from work to address their own serious health conditions. Women who use California’s paid family leave program are better able to arrange child care and to breastfeed their children for longer, both of which are associated with improved child well-being.³² Men are more likely to take leave now, sharing more equally in caregiving responsibilities with women.³³ And California employers have been able to implement the program smoothly. About 60 percent have been able to coordinate their own benefits with the state program, which has likely led to cost savings.³⁴ We believe this provides a model for a national paid family leave program.³⁵

For 20 years, the Family and Medical Leave Act has been an unqualified success, helping mothers and fathers, sons and daughters, and husbands and wives to take leave more than 100 million times. But according to the most recent Department of Labor data, slightly less than 60 percent of the workforce is eligible for FMLA leave, leaving tens of millions of workers vulnerable to job loss when family or personal needs arise.³⁶ The comp time offered by H.R. 1406 would not fill this gap for workers who are not covered by the FMLA, despite rhetoric to the contrary.

The FMLA should be updated. We need to extend its protections to employees in smaller businesses and to those who work part-time. The definition of “family member” should be updated to allow workers to take FMLA leave to care for a domestic partner, parent-in-law, adult child, sibling, grandchild or grandparent. Such an expansion would have allowed Anne-Marie Pearson, a conscientious worker in Pennsylvania, to have cared for her dying sister without having to leave her job. Similarly, it would help countless others care for close relatives in their final days.

³¹ MetLife Mature Market Institute. (2011, June). *The MetLife Study of Caregiving Costs to Working Caregivers: Double Jeopardy for Baby Boomers Caring for Their Parents*. Retrieved 8 April 2013, from <https://www.metlife.com/assets/cao/mmi/publications/studies/2011/mmi-caregiving-costs-working-caregivers.pdf>

³² Appelbaum, E., & Milkman, R. (2011). *Leaves That Pay: Employer and Worker Experiences with Paid Family Leave in California*. Center for Economic and Public Research publication. Retrieved 8 April 2013, from <http://www.cepr.net/documents/publications/paid-family-leave-1-2011.pdf>

³³ Ibid.

³⁴ Ibid.

³⁵ National Partnership for Women & Families. (2013, February). *The Case for a National Family and Medical Leave Insurance Program (The FAMILY Act)*. Retrieved 9 April 2013, from http://www.nationalpartnership.org/site/DocServer/FAMILY_Act_Fact_Sheet.pdf?docID=11821

³⁶ See note 26.

Expanding the FMLA in this way would not unduly burden employers. The vast majority of businesses report that complying with the FMLA has had a positive effect or no noticeable effect on employees and their business. In fact, 37 percent of worksites covered by the FMLA reported that compliance has had a “positive effect” on “employee productivity, absenteeism, turnover, career advancement and morale, as well as the business’ profitability.” Half (54 percent) said compliance has had “no noticeable effect.” Many businesses are voluntarily making FMLA leave available to workers who are not covered.³⁷

The FMLA’s promise of job protection should also be extended to address more circumstances. For example, H.R. 1406’s sponsor and others have talked about comp time as the solution to a parent’s need to attend a parent-teacher conference. A much more useful policy solution, and one that would help many more parents and children, is a “small necessities” expansion of the FMLA so that workers could take up to 24 hours per year to attend school meetings, parent-teacher conferences and other essential educational activities. Separately, victims of domestic violence should be able to use FMLA leave to seek legal, medical and relocation services.

True Flexibility Would Reflect Employees’ Needs for Predictability, Notice and Fluidity in Scheduling as Well as the Right to Refuse Overtime

H.R. 1406 has the word “flexibility” in its title, but the flexibility it offers workers is an empty promise. A growing body of research shows that true flexibility and predictability – the ability to vary start and ending times, to work split shifts, and to have advance notice of scheduling – provides benefits for workers and cost-savings for employers. Nothing in the FLSA prohibits these best practices.

It should be a priority to educate employers about the flexibility available under the FLSA and the benefits that flexibility provides. We should create disincentives for scheduling practices such as “just in time” scheduling and call-in shifts, which hold workers back, impede their productivity on the job, interfere with their caregiving responsibilities at home and create extra child care and transportation expenses. Public policies should protect workers who cannot work mandatory overtime and should offer protections to those who report to work or put other job opportunities on hold only to find out that they are not needed when they arrive at the job site. Policies that encourage predictability and advance notice, and discourage rigidity, are also needed.

³⁷ Ibid.

Conclusion

At a time when our nation's working families urgently need public policies that make our workplaces more fair and family friendly, H.R. 1406 is an empty promise – a cruel hoax that would take the country in the wrong direction. It would make life appreciably harder for families that are already struggling, and no amount of misleading or deceptive rhetoric can soften the blow. For many workers, H.R. 1406 would bring less pay, less flexibility and workplaces that are even less family friendly.

Instead of wasting time on smoke and mirrors to try to hide the real impact of this bill, I urge you instead to support the Healthy Families Act, paid family and medical leave insurance, expanded access to the FMLA, the Fair Minimum Wage Act, the Paycheck Fairness Act and proposals to encourage fairer, more predictable and more flexible work hours. These are the advances the nation needs. These are and the initiatives that would help our nation's workers and their families, employers, communities and our economy.

Chairman Walberg, Ranking Member Courtney and members of the Committee, thank you for the opportunity to testify here today. With our many allies, and on behalf of America's workers, the National Partnership for Women & Families looks forward to working with you to adopt policies that are truly family friendly.