

**THE HEALTHY FAMILIES ACT: SAFEGUARDING  
AMERICANS' LIVELIHOOD, FAMILIES AND  
HEALTH WITH PAID SICK DAYS**

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**HEARING**

OF THE

**COMMITTEE ON HEALTH, EDUCATION,  
LABOR, AND PENSIONS**

**UNITED STATES SENATE**

**ONE HUNDRED TENTH CONGRESS**

FIRST SESSION

ON

EXAMINING THE HEALTHY FAMILIES ACT, FOCUSING ON SAFE-  
GUARDING AMERICANS' LIVELIHOOD, FAMILIES, AND HEALTH WITH  
PAID SICK DAYS

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FEBRUARY 13, 2007

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**THE HEALTHY FAMILIES ACT: SAFEGUARDING AMERICANS' LIVELIHOOD, FAMILIES AND HEALTH WITH PAID SICK DAYS**

TUESDAY, FEBRUARY 13, 2007

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

The committee met, pursuant to notice, at 10:07 a.m. in Room SD-430, Dirksen Senate Office Building, Hon. Edward M. Kennedy, chairman of the committee, presiding.

Present: Senators Kennedy, Sanders, Brown, Enzi, Isakson, and Allard.

OPENING STATEMENT OF SENATOR KENNEDY

The CHAIRMAN. We'll get—this is off the record or you can put it on. We'll get started in just a few minutes. We have—Senator Enzi and I had the report from the Aspen Commission. It was Governor Thompson and Governor Barnes on the No Child Left Behind and we had a conference with our House colleagues and a number of members of the press and they were somewhat slow arriving. They had all the members of the commissions. Many had traveled far distances so we were a few moments tardy but Senator Enzi will be here momentarily and we'll get started. I'm very grateful for all of your presence here.

We received good news that we're not going to be interrupted by votes. We'll have until 2:30 this afternoon. I think we can finish by then. You might not be able to get out of here with the snow. That's something that New England does and people from Wyoming but we'll get started in just a very few moments. I'm very appreciative. We've got an excellent panel here.

We'll come to order. Senator Enzi and Senator Isakson, I just reminded our panel that we were necessarily delayed to receive really excellent recommendations of the Aspen Commission on the No Child Left Behind. We welcome the opportunity now to move ahead on this very important issue.

Each of us knows what it means to be sick. We all had to miss occasional days of work because of illness and every parent knows what it is like to care for a sick child. As a Member of Congress, we don't lose our pay or risk our jobs if we stay home when illness strikes but millions of Americans aren't so fortunate. Half of the private sector workers in the United States do not have paid sick days. Seventy percent don't have paid sick days they can use to care for family members. You can't take a day off to recover from

the flu. They can't leave work to care for a child who is running a fever.

This lack of protection is particularly difficult for women and children. Women have moved into the workforce in record numbers. They continue to take primary responsibility for their children's health. Nearly 80 percent of mothers say they are solely responsible for their children's medical care.

We're talking about hardworking people, like Stephanie Scott and Elnora Collins who are here today. Stephanie is a full-time teacher at a day care center. She and her colleagues, who have been at her workplace for years, have no sick days. Elnora is a 67-year-old home care worker who is caring for two granddaughters. She has no paid sick days. She tells us, one time I was sick, I threw up at a client's house. She loves caring for older citizens but she needs time off to care for her own health.

Children need their parents to have paid sick days. I have a letter from four pediatricians, the Boston Medical Center in the South End Community Health Center that I'll include in the record.

**[The material referred to can be found in additional materials.]**

The CHAIRMAN. But briefly, they say, "We strongly support the Healthy Families Act because we believe it could be one of the most powerful treatments we have for children. By supporting the Healthy Families Act, you're supporting minimizing expensive hospital stays for children and getting parents back to work more quickly." If we truly care about families, we must change our policies. We need laws that let working men and women be responsible parents, too.

The lack of paid sick days is not just a family issue. It's also a public health issue. Sick people go to work or sick children go to school. They infect co-workers or fellow workers and the public. In fact, many workers who have constant contact with the public have no paid sick days. Eighty-five percent of food service workers and 55 percent of workers in the retail industry are denied that benefit.

Thirty percent of health care workers can't take paid time off when they are ill. Paid sick days are the obvious solution to prevent the spread of illnesses and reduce medical costs. They would result in significant savings to our economy and our health care system. That's why employers support paid sick days, too.

Dancing Deer Bakery, a small business in my hometown of Boston says a national paid sick day law creates a level playing field for all businesses. We hope that a bill will move through the Chambers, beyond the President's desk. Paid sick days should be a non-partisan issue. A healthy nation is a productive nation.

Paid sick days for workers is a vital step to address health needs. That's why I'm re-introducing the Healthy Families Act to provide the seven paid sick days to workers each year.

We are very mindful on our committee that this is the committee that had the Family Medical Leave bill. Leaders were my good friend, Senator Dodd. Five years of hearings before we finally passed that. And I know that has unpaid family medical leave and Senator Dodd is really leading in trying to make sure we make some progress in that area. Senator Murray on our committee as well, has a more modest approach, particularly to provide time off

for parents work with teachers, in terms of the educational kind of component. And she is enormously committed. Others have different ideas. We hope we'll be able to find the common ground and get some work done in this area.

[The prepared statement of Senator Kennedy follows:]

PREPARED STATEMENT OF SENATOR KENNEDY

Each of us knows what it means to be sick. We've all had to miss occasional days of work because of illness. Every parent knows what it's like to care for a sick child.

As members of Congress, we don't lose our pay or risk our jobs if we stay home when illness strikes. But millions of Americans aren't so fortunate.

Half of private-sector workers in the United States do not have paid sick days. Seventy percent don't have paid sick days they can use to care for family members. They can't take a day off to recover from the flu. They can't leave work to care for a child who is running a fever.

Among workers in the lowest income quarter, 80 percent do not have the ability to take time off for an illness without losing their pay or even their jobs.

This lack of protection is particularly difficult for women and children. Women have moved into the workforce in record numbers, but they continue to take primary responsibility for their children's health. Nearly 80 percent of mothers say they are solely responsible for their children's medical care.

We're talking about hard-working people like Stephanie Scott and Elnora Collins, who are here today. Stephanie is a full-time teacher at a day-care center. She and colleagues who have been at her workplace for years have no sick days. Elnora is a 67-year-old home care worker who is caring for two granddaughters. She has no paid sick days. She tells us, "One time I was so sick, I threw up at a client's house." She loves caring for older citizens, but she needs time off to care for her own health.

We're talking about children like Jennetta Allen of Georgia. She says,

"Once when I was little I got real sick at school. I waited and waited but Mom never came. . . . When my Mom finally made it home she was crying more than I was. She told me her boss would not let her leave. My Mom was fired because her boss thought I might get sick again!"

Children need their parents to have paid sick days. I have here a letter from four pediatricians who work at Boston Medical Center and the South End Community Health Center. I will include this letter in the record, but, briefly, they say:

"We strongly support the Healthy Families Act because we believe [it] could be one of the most powerful treatments we have for children. By supporting the Healthy Families Act, you support minimizing expensive hospital stays for children, and getting parents back to work more quickly."

If we truly care about families, we have to change our policies. We need workplace laws that let working men and women be responsible parents too.

The lack of paid sick days is not just a family issue—it's also a public health issue. When sick people go to work or sick children go to school, they infect coworkers or fellow students and the public.

In fact, a high proportion of workers who have constant contact with the public have no paid sick days—85 percent of food service workers and 55 percent of workers in the retail industry are denied that benefit. Thirty percent of health care workers can't take paid time off when they're ill.

Paid sick days are the obvious solution to prevent the spread of illnesses and reduce medical costs. Every day we see stories in the paper of stomach illnesses breaking out in restaurants or on cruise ships. We learn of flu outbreaks leading to hospitalization of the elderly. These diseases are very contagious, but their spread can be minimized if sick people stay at home.

Paid sick days also give people the opportunity to obtain medical treatment for illnesses or chronic medical conditions. We all know that preventive care helps reduce medical costs.

For all these reasons, paid sick days would result in significant savings to our economy and our healthcare system.

That's why employers support paid sick days too. Dancing Deer Bakery, a small business in my hometown of Boston, Massachusetts, has written a statement that I will include in the record, saying that:

“A national paid-sick-days law creates a level playing field for all businesses. . . . We hope that a bill will move through both Chambers and be on the President's desk. Paid sick days should be a non-partisan issue. A healthy nation is a productive nation.”

Paid sick days for workers is a vital step to address health needs. That's why I'll be re-introducing the Healthy Families Act—to provide 7 paid sick days to workers each year.

We must also move to take steps to deal with other family and work issues. We need to protect workers who seek greater flexibility in the workplace. We need to expand family and medical leave—an issue which Senator Dodd has led for many years. We need to provide affordable child care, such as Senator Murray's bill to allow time off for parents to attend teacher conferences.

The world and the workforce are changing, and our laws have to catch up. I look forward to hearing from our witnesses today about how we can move forward and make paid sick days our national law.

The CHAIRMAN. I recognize Senator Enzi.

#### OPENING STATEMENT OF SENATOR ENZI

Senator ENZI. Thank you, Mr. Chairman, I ask that my prepared statement be a part of the record and included.

The CHAIRMAN. It will be so included.

Senator ENZI. Normally I would begin by thanking the Chairman for holding this important hearing but I've been through a whole range of emotions on this and had a lot of difficulty with that statement until I read the testimony. I agree with the testimony that is to be presented. When paid sick leave is provided, it makes a tre-



mendous mental impression on people and helps them out with their daily lives.

One of my concerns is, if we make that a law, is it then the same category and the same incentive that it is when it's done voluntarily? We've been holding roundtables and I know that from an informational standpoint and statistical standpoint that doing it this way is adequate. There are a lot of other opinions that I would have like to have had brought into the mix and we're very limited in a hearing situation to do that.

But I don't want the public to think that business people just sit around and say, what do you think Congress would like us to do on paid sick leave or vacations or any of the other employee benefits that they have to wrestle with—and I say wrestle with because I've been one of those small businessmen. We do it to be sure that we have employees, as effective employees as possible, as consistent of employees as possible and we grapple with how to do it and how to beat the competition on it. You have to be a little better than the other guy in order to get the employee that you want. And consequently, across this nation, of those who do provide paid sick leave, there is a huge variety of ways of doing that and a huge variety in number of days of doing that. I've actually read the bill and I've made a lot of comments in the margin on it and this dictates a way that some, maybe even a majority of businessmen are providing paid sick leave but it isn't the only ways that they're doing it and isn't the only amount of time and there is a variety between how many days a week people work and how many days sick leave there are and ease of calculation and ease of record keeping is very important, particularly to small businessmen.

Now I noticed that this excludes businesses of 15 or smaller. I'm not sure why it doesn't exclude businesses of 50 or smaller so that it complies with the Family Medical Leave Act. That seems to be the standard we've established for ultra-small businesses and ones that would have difficulty with processing it. I know when I was in the shoe business, we started with half a day per month for sick leave. Now that only comes to 6 days a year. We also found out that quite often what that was, as in addition to their paid vacation because a lot of times, they were sick when they needed to go somewhere. Some of my accounting practices, I found that was also helpful and recommended to a couple of people that most of the accidents that they had where people took workers comp, which was a paid time off, happened usually the day before hunting season and they ought to consider giving hunting season off as a paid vacation for their people and it would make a difference. You know and you run into the guy that just got back from an elk hunting trip and say, I thought you were off with an injury. Well, I was off from an injury. I said what did you do? And he said, well I went elk hunting. I said, how did you get into the backcountry? Well, I hiked. How did you get your elk out? I backpacked it. And he was out for a back injury. So there are different circumstances and the businessman has to deal with that and try to figure out how he can make his employees as comfortable as possible with the benefits that he is able to afford.

Oh, yes. Afford. That does play a major role in it. There are a lot of things that small businessmen would do for their employees

if they could afford it. When we're mandating paid days off, we're mandating that they pay for it. It's an unfunded mandate from the Federal Government. We're not saying if you will give your people time off, we're going to allow that as an additional tax credit because when you let somebody off, you have to fill that position in a small business. It isn't like you had an extra position. If you had an extra position, you'd have fired the person. So it's a necessary position and quite often, it's not necessary all of the year but you pay them in the times that the work is really slow so that you have them during the times that it's really busy, although that is time that often they get sick.

But you have to pay the person and then you have to pay the person that replaces them or you fill in for them yourself. I'm aware of a guy in my home town that owns three restaurants and he keeps adding more people to his staff but if I want to find him, I can go to one of those three restaurants and he'll be waiting tables because he didn't have enough people that day. Now when he does that, he still has to spend the night doing the stuff that he would have done during the daytime, even though he tries to pay additional people to do it. So these things aren't quite as easy as they sound.

It would really be nice to give everybody the same amount of paid leave that the Federal Government gets. Affording it is the difficulty. It would be nice to do the paid vacation the same way. Do you know why we don't just prescribe all of those things? I do know why we don't prescribe all of those things. We haven't figured a way for the small businessman to afford it. So I do look forward to the testimony. I appreciate the effort that went into it. I do have probably more questions than we can cover during the time that will be allotted on it and I hope all of you will respond to those questions as well because that information will be extremely helpful to us in whatever kind of a solution we can come up with.

Thank you.

[The prepared statement of Senator Enzi follows:]

#### PREPARED STATEMENT OF SENATOR ENZI

I want to thank the chairman for holding this hearing and I also want to thank the panel for their willingness to participate in this important dialogue.

Anyone who works for a living is keenly aware of the time demands that work imposes. The task of balancing work and family life is never easy, and when illness compounds the situation, the challenge becomes even greater. Most private sector employers are acutely aware of this reality and increasingly responsive to it.

In the most recent member benefit survey conducted by the Society for Human Resource Management, 86 percent of the respondents reported that their companies provided paid sick leave either under a separate sick leave program, or as part of a general paid time off plan. More than 80 percent also indicated that they provide both short-term and long-term disability insurance coverage. In addition, an increasing number utilize even more creative approaches such as paid time off, and sick leave banks, or pools.

The more broadly-based National Compensation Survey reveals that on an overall national basis 68 percent of full-time employees have access to paid sick leave programs at work.

Most employers make these provisions both because they know that a healthy workforce benefits their business; and, because they know that in a competitive labor market, such as the one we have right now, they must address this issue to attract and retain quality employees.

Today, the average cost of employee benefits for all employers in the private sector is nearly \$7.50 an hour. Average benefits now comprise nearly 30 percent of total payroll costs. That number has been increasing over the years, and such numbers support the importance that most employers attach to providing meaningful benefit packages, including provisions for illness-related absences, for their employees.

Despite these facts, however, some employees do not have paid sick leave available to them at their place of work because many of these individuals are part-time employees and many work for smaller employers. Those small employers very often face the same cost squeeze and financial pressures that their own employees face. Many business owners view their employees as their own extended family. That is a fact that we need to always keep in mind as we discuss either wages or benefits and small business. We also must be aware that any additional requirements we place on small business may be the imposition of an unfunded employer mandate.

Some estimates suggest that approximately 55 million private sector workers are without access to paid sick leave. The Health Families Act, as proposed, would extend paid sick leave benefits to all of those individuals except those that work for establishments with fewer than 15 employees which would cover roughly 45 million employees. The legislation requires up to 56 hours of paid sick time per employee.

Currently, the average hourly wage is right around \$17.00 per hour for non-supervisory, non-farm employees. Thus, the average cost exposure of the proposed legislation for *each* full-time employee is nearly \$1,000. Even if we adjust the pool of the approximately 45 million workers to include part-time employees who have pro-rata entitlements, the cost exposure here is clearly in the *tens of billions of dollars*.

To extend this type of leave requirement to businesses, as is contemplated by the Healthy Families Act, would be little more than an unfunded mandate on small businesses throughout the country. In addition, this legislation represents only direct labor cost, and does not account for a myriad of other indirect costs. The money necessary to pay those increased costs must come from somewhere.

Proponents of this legislation argue that the huge cost of this legislation would be offset by productivity savings gained from eliminating "presenteeism" which is called by some individuals the practice of less than healthy individuals coming to work. Presenteeism "losses" are, at best, highly speculative and subjective. Moreover, private sector human resource systems have traditionally shown the ability to adapt to economic reality. Put another way, businesses do not require Federal mandates to instruct them how to operate more efficiently, productively and profitably.

No matter how desirable a particular goal may be, one cannot simply dismiss the costs involved as unimportant or inconsequential. Here, the costs are decidedly not inconsequential, particularly for smaller businesses. The pool of available labor dollars is not infinite, and when we mandate their expenditure for a specific purpose, we always run the risk of unintended consequence. A dollar that must be spent here, often results in a dollar that will not be spent elsewhere. Imagine the irony for an employee who is granted sick leave under this bill, but whose employer decides to eliminate or reduce health plan benefits.

If the end result this bill seeks is indeed healthier families, then I would also like to invite every member of this committee to work with me on small business health plan legislation. That initiative will make America's working families healthier by allowing small businesses and associations to band together and buy into health plan coverage at better rates. Surely as we are rating the "To Do" list of the 110th Congress, increasing the number of insured Americans ranks higher than giving people days off who may not even have a health care provider to go to. I know if I were one of the 46 million uninsured Americans, I would think so.

Obviously, increased benefits, like increased wages, enjoys universal popularity. However, we cannot even contemplate mandating such benefits in an economic or policy vacuum.

We also need to bear in mind that Washington does not always have a monopoly on good ideas; and that whenever we act prescriptively, we also decrease flexibility and creativity. What works in one place of business may not work in another; and, what we inflexibly mandate may not be best for all.

I also believe that our consideration of this legislative proposal must be informed by our experience with similar legislative initiatives. As some of you may recall last Congress, the HELP Committee held a roundtable discussion on the Family and Medical Leave Act. During the course of that roundtable we learned about many of the practical issues and problems associated with implementing that legislation. I'd also note that the Department of Labor has recently solicited information from the public about many of these same issues.

The Healthy Families Act—as it was introduced in the last Congress—while not an FMLA proposal, does import some of the practical problems associated with FMLA that have been repeatedly brought to our attention. Among those issues have been the practical problems associated with unanticipated, or intermittent leave; the issues associated with suspected abuse of leave entitlements, medical verification and privacy concerns, the existence of vague legislative terms and definitions, the issues related to the appropriate increments in which leave can be taken, and the incidence and costs of leave-related litigation.

These are not isolated or minor concerns. These concerns have not been raised in support of any claim that FMLA should be repealed. Quite to the contrary, virtually all the employers that have raised these concerns support FMLA, however, they believe it must be clarified in several important, real-world respects. In a wide variety of instances this legislation borrows from FMLA, and imports, and even expands, many of these same real concerns to the pro-

posed legislation. An appropriate first step would seem to be meaningfully addressing these very real issues in the context of our current laws before simply repeating them in new ones.

Unfortunately, a review of this legislation replicates many of the practical problems we have witnessed with FMLA, and makes them even worse. The legislation lacks definitional precision, adequate safeguards against abuse, and due recognition of, or provisions to counter, its disruptive impact on affected businesses. The legislative language is extremely open-ended as to arguably create a Federal mandate of 56 hours of paid time off to be used as an employee wishes, and in such increments as the employee wishes.

While I share the Chairman's concern for working families I am also concerned for the businesses, particularly the small businesses, which employ them. I also appreciate that as both a policy matter and a personal matter the achievement of an appropriate balance between work and family is a matter of great importance. However, these are complex problems and complex problems very often defy simple or universal solutions. I think we need to recognize this as we move forward, and also recognize that as simple and attractive as it may appear, we cannot solve all problems through legislative fiat without any regard to those that must pay the cost of the mandates we impose.

Mr. Chairman, thank you for holding this hearing today. I look forward to hearing from all of our panelists and look to see how we can help employees and their families to be healthy while providing the flexibility and stability for our Nation's small businesses to build and grow their businesses with the goal towards hiring more workers.

The CHAIRMAN. Thank you very much, Senator Enzi. The panel. We have Debra Ness, who is the President of the National Partnership for Women and Families. Before assuming her current role, she served as the Executive Vice President of the National Partnership for 13 years. Ness has played a leading role in positioning the organization as a powerful, effective advocate for today's women and families.

Dr. Jody Heymann is a founding Director of the Institutes for Health and Social Policy at McGill, an institution dedicated to research of public policy. She is also a founding Director of the project of global working families at Harvard; first research program to comprehensively examine the condition of working families in the United States and around the world. She has recently published, *Forgotten Families: Ending the Growing Crisis, confronting children and working parents in the global economy.*

Heidi Hartmann is President of the Institute of Women's Policy Research, scientific research organization to meet the need for women-centered policy oriented research. She is also a Research Professor at the George Washington University and a recipient of the McCarthy Fellowship Award for her work in the field of women and economics. She is Vice Chair of the National Council of Women's Organizations.

Dr. Rajiv Bhatia is the Director of Occupational and Environmental Health, San Francisco Department of Public Health and Assistant Clinical Professor of Medicine at the University of California at San Francisco. He teaches public health at UC-Berkeley.

Mr. G. Roger King, a Partner of Jones Day Law Firm, San Diego. He specialized in representing employers under Federal labor law. He was labor counsel for Senator Taft in 1971 to 1973, Senate Committee, 1973 to 1975, also a Captain in the U.S. Air Force, Judge Advocate, 1972 to 1973. And I had the chance to say hello and he remembered being a part of this committee working with Senator Javits and others, going back a long time. So welcome back to the committee.

We'll start. Debra Ness, please.

**STATEMENT OF DEBRA NESS, PRESIDENT, NATIONAL PARTNERSHIP FOR WOMEN AND FAMILIES, WASHINGTON, DC.**

Ms. NESS. Good morning. Good morning, Chairman Kennedy, Senator Enzi, Senator Isakson. Thank you very much for this opportunity to testify.

I'm Debra Ness, President of the National Partnership for Women & Families. We are a non-profit, nonpartisan organization that for more than 35 years has been working on issues important to women and families.

I am here to testify in support of the Healthy Families Act, a groundbreaking piece of legislation to guarantee workers 7 paid sick days annually to recover from their own illness or care for a sick family member. Congress should waste no time passing this bill.

The reason is simple. Chances are, each of us will get sick or need to care for a sick family member some time this year. But not all of us have the option of taking time off to get better. In the United States today, nearly half of all private sector workers do not have a single paid sick day and the situation is even more grim for low-income workers, three quarters of whom have no paid sick days.

In fact, 86 million hardworking Americans do not have a single paid sick day that they can use to care for a sick child or a sick family member.

I'd like to put a face on some of those statistics. Let me tell the story of Robbie Bickerstaff. Her son was hit by a car but he didn't want to call his mom because he was afraid she would lose her job. When Robbie found out, she of course left work to take her son to the emergency room where the doctors were able to treat him and set his broken arm. Fortunately, Robbie's son was okay but unfortunately, he was right to worry about his mom's job. Bickerstaff was fired for leaving her job that day.

Let me tell you the story of Connie Smith, who worked for 3 years at a fast-food restaurant without ever taking a single sick day until one day, she got the stomach flu. After vomiting at the restaurant, she told her boss that she simply had to go home. His response? He ordered her to finish her shift, which ended at 4 a.m. So she did. She continued to work, handling food and exposing every customer she served to her illness.

Currently there is no State or Federal law that ensures that workers have paid sick days when they need them. Senators, you can change that by passing this bill. The National Partnership is leading a very broad coalition in support of the Healthy Families Act, a coalition that includes children's, civil rights, women's, dis-

ability, faith-based, community groups as well as labor unions, health advocates, and leading researchers at top institutions. It includes organizations like 9to5, ACORN, the Leadership Conference on Civil Rights, AFL-CIO, and the U.S. Conference of Catholic Bishops. We are all very different organizations but we've come together to support this bill because millions of Americans are being forced to choose between taking care of a sick child or family member and losing a day's pay or even losing their job. In a nation that values families, no worker should have to make this impossible choice.

Paid sick days are particularly important to women, since women, for the most part, are still the primary caregivers for their families. Half of working moms report having to miss work when a child gets sick and half of those moms also lose pay, which can be a significant financial blow for families at any income level.

Paid sick days are also critically important to the well being of children. Children recover from illness faster when their parents care for them and having access to paid sick days also increases the likelihood that working parents can take their children for preventive care and well child visits that can help keep them healthy.

Paid sick days are also good for the public health. Our government, the CDC urges us to stay home from work, to keep our children out of school and daycare when they are sick but workers without paid sick days don't have that option and we all suffer as a result.

Paid sick days are also good for our economy. Studies show that presentism—employees' practice of coming to work even though they are sick costs our national economy \$180 billion in lost productivity annually.

Cost-benefit analysis shows that if workers had just 7 paid sick days a year, our economy would experience a net annual savings of \$8.2 billion due to reduced turnover, higher productivity and reduction in the spread of contagious illness in the workplace.

I could go on. Paid sick days are good for low-wage workers, for older workers, for seniors, for caregivers. Paid sick days are important to all of us and poll and after poll has found tremendous public support for paid sick days and proposals like the Healthy Families Act.

Momentum is building and the National Partnership is working with organizations across the country. Paid sick day bills have been or will soon be introduced in cities and State legislatures from coast to coast. These State and local initiatives are important but we need more. Americans need paid sick days and it shouldn't matter what city or what State they live in.

This debate is really about what we value as a nation. We're very good at talking about family values but we need to do more than talk. If we truly care about the health, the well-being and the economic security of our families, then we must enact the Healthy Families Act.

Thank you.

[The prepared statement of Ms. Ness follows:]

## PREPARED STATEMENT OF DEBRA L. NESS

Good morning. Chairman Kennedy, Senator Enzi, and members of the committee, thank you for the opportunity to testify here today. I am Debra Ness, President of the National Partnership for Women & Families, a non-profit, nonpartisan advocacy organization with more than 35 years of experience promoting fairness in the workplace, access to quality health care, and policies that help women and men meet the competing demands of work and family.

I am here to testify in support of the Healthy Families Act, a groundbreaking piece of legislation to guarantee workers 7 paid sick days annually to recover from their own illness or care for a sick family member. Congress should waste no time in passing this bill, which is tremendously important to people all across our country.

The reason is simple. 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. In the United States today, nearly half (48 percent) of private sector workers do not have a single paid sick day to use for themselves or to care for a family member.<sup>1</sup> The situation is even more grim for low-income workers: three in four (76 percent) have no paid sick days at all.<sup>2</sup> And 86 million hard-working Americans do not have a single paid sick day they can use to care for a sick child.<sup>3</sup>

Let's put a face on some of those statistics:

- Robbie Bickerstaff was fired after leaving work to take her son, who had been hit by a car, to the emergency room so doctors could set his broken arm. Her son understood the risk and refrained from calling her after the accident, because he did not want her to lose her job. It turns out that he was right to worry.
- In 3 years working at a fast-food restaurant, Connie Smith never took a sick day—until she got the stomach flu. After vomiting at the restaurant, she told her supervisor that she simply had to go home. He ordered her to finish her shift, which ended at 4 a.m. She did, exposing every customer she served to the flu.
- Donetta Renee Parish reported to work at a Washington, DC, grocery store with a severe ear infection because she could not afford to take unpaid leave. She was later written up for missing work when she stayed home to care for her 2½-year-old son who had had a seizure.

Currently, no State or Federal law ensures that workers have paid sick days when they need them. You can change that by passing this bill. The National Partnership is leading a coalition in support of the Healthy Families Act—a coalition that includes 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. It includes 9to5, ACORN, the Leadership Conference on Civil Rights, AFL-CIO, National Organization for Women, and numerous other large, well-respected organizations. We have come together in support of this bill because millions of Americans are being forced to choose between taking care of a sick child or family member and losing a day's pay—or even losing a job. In a nation that values families, no worker should have to make this impossible choice.

Americans want to be responsible workers *and* be able to care for their families. In 78 percent of today's families, both parents work for pay—and the typical couple in America now works close to 90 hours per week. But our policies lag desperately behind—and families are struggling as a result. We can and must do better—and we will, if we truly value families.

Coalitions are working in cities and States across this country to pass measures similar to the Healthy Families Act, and they are making progress. But we urgently need a national standard. America needs you to make passage of the Healthy Families Act a priority for this Congress.

## LACK OF PAID SICK DAYS HITS LOW-WAGE WORKERS HARDEST

When a low-wage worker gets sick, or needs to take care of a sick child or take an elderly parent to a medical appointment, he or she is faced with an impossible choice: lose a day of pay and possibly even your job, or take the time you need to take care of your family. Half of low-wage working parents report losing pay to stay

<sup>1</sup> Vicky Lovell, *No Time to be Sick: Why Everyone Suffers When Workers Don't Have Paid Sick Leave*, Institute for Women's Policy Research, May 2004.

<sup>2</sup> Lovell, *No Time to be Sick*.

<sup>3</sup> Lovell, *No Time to be Sick*.



home and care for a sick child or being forced to leave children home alone.<sup>4</sup> In the wealthiest Nation in the world, these are choices no parent should have to make.

Low-wage workers typically have little or no savings to fall back on when they need time off but have no paid sick days. For example, a recent survey of New York residents found that 71 percent of low-income workers report having less than \$500 in savings, and 52 percent of those workers report having less than \$100 in savings.<sup>5</sup> When sick workers have little savings, they are especially vulnerable to extreme financial crises and even bankruptcy. One study found that nearly 2 million Americans experience medical bankruptcy annually, even though 75 percent of those surveyed had health insurance at the onset of illness. Respondents reported that illness and medical bills were the cause of 46.2 percent of their personal bankruptcies.<sup>6</sup>

#### PAID SICK DAYS ARE GOOD FOR CHILDREN

Children inevitably get sick. On average, school-age children miss at least 3 school days per year due to health issues, and younger children have even higher rates of illness.<sup>7</sup> Providing workers with paid sick days that can be used to care for a sick child has a positive impact on children's health. Studies show that children recover from illness faster when their parents care for them,<sup>8</sup> and that having paid time off is a primary factor in a parent's decision to stay home when a child is sick.<sup>9</sup> Having access to paid sick days also increases the likelihood that working parents can take children for the preventive care and well-child visits that can help keep kids from getting sick or forestall more serious illness.

#### PAID SICK DAYS HELP WORKERS CARE FOR OLDER RELATIVES

Many workers today care for an older relative, and many more will be caring for them in the near future as Baby Boomers age. In 2000, 12.6 percent of the population was over 65 years old; by 2030, Americans over age 65 will comprise 20 percent of the population.<sup>10</sup> Studies have shown that more than a third of Americans (35 percent), both women and men, have significant eldercare responsibilities, and many are forced to reduce their work hours or take time off to provide care.<sup>11</sup> Providing access to family-flexible sick leave is a critical strategy for helping working families deal with the needs of their aging relatives.

#### WOMEN ARE DISPROPORTIONATELY IMPACTED BY THE LACK OF PAID SICK DAYS

The lack of paid sick days has a significant impact on working women, and is particularly threatening to women's economic security. Women are still predominantly responsible for family caretaking. Many working women have children, and one in three has additional caretaking responsibilities for an elderly relative, a person with a disability, or a special need child.<sup>12</sup>

Staggering statistics demonstrate the hardship that can be associated with women's caretaking responsibilities: half of working mothers miss work when a child comes down with a common illness.<sup>13</sup> Many of these women—two-thirds of low-income mothers and one-third of middle and upper income mothers<sup>14</sup>—lose pay to care for their sick children. That is a significant financial blow for many low- and moderate-income women and their families.

Because women are more likely to work part-time (or full-time by cobbling together more than one part-time position), they are less likely to have paid sick days. Only 16 percent of part-time workers have paid sick days, compared to 60 percent

<sup>4</sup>Jody Heymann, *Forgotten Families*, Oxford University Press, 2006.

<sup>5</sup>Community Service Society and Lake Snell Perry & Associates, *The Unheard Third 2005: Bringing the Voices of Low-Income New Yorkers to the Policy Debate*, 2005.

<sup>6</sup>David Himmelstein, Elizabeth Warren, Deborah Thorne, and Steffie Woolhandler, *Illness and Injury As Contributors to Bankruptcy*, Health Affairs Market Watch, 2 February 2005.

<sup>7</sup>Vicky Lovell, *No Time to be Sick*.

<sup>8</sup>S.J. Heymann, Alison Earle, and Brian Egleston, 1996, as cited in Lovell, *Paid Sick Days Improve Public Health by Reducing the Spread of Disease*, Institute for Women's Policy Research, 2006.

<sup>9</sup>Jody Heymann, *The Widening Gap*.

<sup>10</sup>Department of Health and Human Services, Administration on Aging, *Statistics on the Aging Population*, 2006.

<sup>11</sup>Families and Work Institute, *Highlights of the 2002 National Study of the Changing Workforce*, 2002.

<sup>12</sup>Jody Heymann, *The Widening Gap: Why America's Working Families Are in Jeopardy—and What Can Be Done About It*, Basic Books, 2000.

<sup>13</sup>Kaiser Family Foundation, *Women Work and Family Health: A Balancing Act*, Issue Brief, April 2003.

<sup>14</sup>Kaiser Family Foundation, *Women, Work and Family Health: A Balancing Act*.

of full-time workers.<sup>15</sup> Accommodation and food service industry workers, the majority of whom are women (53 percent) have almost no paid sick time.<sup>16</sup> Women also are disproportionately represented among low-wage workers, the population least likely to have access to paid sick days: 59 percent of minimum wage workers are women.<sup>17</sup>

Further, women's dual commitments to work and family can negatively affect their career paths and income stability if they lack paid sick days they can use to care for family members. One study found that being female doubles the chance of experiencing job loss because of family illness.<sup>18</sup>

#### OLDER WORKERS NEED PAID SICK DAYS, TOO

Roughly half of Americans 65 years or older participate in the labor force,<sup>19</sup> and this number is expected to increase as the number of older Americans increases and more workers delay retirement for economic or other reasons. Many of these workers will require time away from work to care for their own health or to care for an older spouse or other family member.

#### ESTABLISHING A MINIMUM STANDARD OF PAID SICK DAYS IS GOOD FOR PUBLIC HEALTH

Paid sick days are essential to ensuring that workers don't have to risk their own or the public's health because they can't afford to take a sick day. The U.S. Centers for Disease Control and Prevention (CDC) strongly urges us to stay home from work, school, and social gatherings when we are sick and, not surprisingly, the CDC encourages parents to keep sick children home from school and daycare to avoid the spread of illness.<sup>20</sup> But workers without paid sick days don't have the option to do so, and we all suffer as a result.

Workers in direct contact with the public every day are the least likely to have paid sick days. Eighty-six percent of food and public accommodation workers have no paid sick days, and most workers in child care centers, retail, and nursing homes also lack paid sick days.<sup>21</sup> Nobody wants a sick worker sneezing in their food, passing illness at the store, or infecting children and seniors. We want sick children to recover at home and not infect other children at school or in daycare. We are all at risk when workers cannot stay home when they are sick or need to care for a sick child or family member.

Giving workers paid sick days makes it possible for them to seek the medical help they or a family member needs. It also removes a key barrier to health care access, making it possible for them to seek preventive care. Preventive care is key to improving workers' overall health and decreasing the number of avoidable hospitalizations, thus decreasing health care costs. Many people with chronic illnesses such as asthma or diabetes could avoid hospitalization if they were able to attend outpatient visits to manage their conditions.

#### PAID SICK DAYS ARE GOOD FOR THE U.S. ECONOMY

Providing paid sick days for workers produces benefits beyond those that accrue to individual workers, children and seniors, or even our national public health. Healthy workers are critical to a productive and vibrant economy. Employers and our economy would benefit substantially if workers had 7 paid sick days annually.

Sick workers in the workplace inevitably hurt more than they help. All workers who have no paid sick days go to work sick and spread illness to colleagues, lowering the overall productivity of the workplace. More than half (56 percent) of human resources executives report that "presenteeism"—employees' practice of coming to work even though they are sick—is a problem in their companies.<sup>22</sup> Studies have shown that presenteeism costs our national economy \$180 billion in lost productivity annually.<sup>23</sup> When workers are guaranteed a minimum number of paid sick

<sup>15</sup> Vicky Lovell, *No Time to be Sick*.

<sup>16</sup> Lovell, *No Time to be Sick*.

<sup>17</sup> Economic Policy Institute, Minimum Wage Issue Guide, [http://www.epi.org/content.cfm/issueguides\\_minwage](http://www.epi.org/content.cfm/issueguides_minwage), 2007.

<sup>18</sup> Spilerman and Schrank, *Responses to the Intrusion of Family Responses in the Workplace*, Research in Social Stratification and Mobility, 10, 27–61, 1991.

<sup>19</sup> AARP Public Policy Institute, *Update on the Aged 55+ Worker*, 2005.

<sup>20</sup> Centers for Disease Control and Prevention, <http://www.cdc.gov/flu/symptoms.htm> and <http://www.cdc.gov/flu/professionals/infectioncontrol/childcaresettings.htm>.

<sup>21</sup> Lovell, *No Time to be Sick*.

<sup>22</sup> CCH Incorporated, *2006 CCH Unscheduled Absence Survey*, October 2006.

<sup>23</sup> Ron 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.

days, employers benefit as healthier workers are more productive and the spread of illness in the workplace is reduced.

Employers reap the savings from reduced turnover as well. Turnover-related costs (which include advertising for, interviewing, and training replacements) are substantial, generally far greater than the cost of providing paid sick time to retain existing workers. A cost-benefit analysis of the Healthy Families Act demonstrates that if workers had just 7 paid sick days per year, our national economy would experience a net savings of \$8.2 billion per year due to reduced turnover, higher productivity, and reduction in the spread of contagion in the workplace.<sup>24</sup>

The United States lags far behind the rest of the world in providing paid leave benefits. A recent study by Dr. Jody Heymann of Harvard and McGill Universities highlights just how far the United States lags behind other nations including those with some of the strongest economies in the world: at least 145 nations provide paid leave for short- or long-term illnesses, and 127 of those nations guarantee a week or more of paid sick days per year to their workforce. The benefits of paid leave are provided to workers in every one of the top 10 most economically competitive nations in the world, with the glaring exception of the United States.<sup>25</sup>

Also of note, just last fall the World Economic Forum announced its annual economic rankings, and the United States had fallen from first to sixth.<sup>26</sup> The nations ranked above the United States all guarantee some paid sick time to their workers.

We are familiar with the arguments against establishing minimum labor standards that provide workers paid sick days, because we heard them all in the fight to enact the FMLA. We are convinced that they are specious scare tactics; there are simply no objective studies that conclude that giving workers good working conditions leads to job loss or that these protections are in any way linked to higher unemployment rates.<sup>27</sup> The statistics, and the experience of other economic powerhouse nations, clearly demonstrate that these arguments are not based in reality.

#### THE PUBLIC OVERWHELMINGLY SUPPORTS PAID SICK DAYS

The likelihood of being sick—or of having a child who will get sick—does not depend on whether you live in a blue or a red or a purple State, so establishing a minimum standard of paid sick days deserves bipartisan support. Poll after poll has found tremendous support for paid sick days and proposals like the Healthy Families Act. For example, 7 in 10 New York City residents across income lines believe there should be a law that requires employers to provide full-time workers at least 7 days of paid sick time annually.<sup>28</sup> Nine out of ten Maryland voters believe that every full-time worker should have paid sick days. Similarly, 85 percent of respondents in a national poll support the use of paid sick days to care for children and parents who are ill.<sup>29</sup> A recent poll by the National Council for Research on Women showed that women are five times more likely to vote for a candidate who favors guaranteed paid sick days.<sup>30</sup>

#### CONCLUSION

This debate is really about what we value in this Nation. If we want strong families and a strong economy, if we care about the health, well-being and economic security of our families, we will waste no time in passing the Healthy Families Act.

Guaranteeing access to paid sick days is the next step in the effort to put our desperately outdated workplaces back in sync with the realities of families. Paid sick days are the next minimum labor standard the Nation needs.

Momentum is building. The National Partnership for Women & Families is working with concerned citizens around the country who are pressing for paid sick days. San Francisco voters overwhelmingly approved the country's first paid sick days ordinance in November. Thus far in 2007, paid sick days bills have been introduced in legislatures in Connecticut, Florida, Maine and Massachusetts and will be intro-

<sup>24</sup> Vicky Lovell, *Valuing Good Health: An Estimate of Costs and Savings for the Healthy Families Act*, Institute of Women's Policy Research, 2005.

<sup>25</sup> Jody Heymann, Alison Earle, and Jeffrey Hayes, Project on Global Working Families, *The Work, Family, and Equity Index: How Does the United States Measure Up?*, 2007.

<sup>26</sup> Steven Pearlstein, *No Longer No. 1, and No Wonder*, The Washington Post, Sept. 27, 2006, D10.

<sup>27</sup> Jody Heymann, Alison Earle, and Jeffrey Hayes, Project on Global Working Families, *The Work, Family, and Equity Index: How Does the United States Measure Up?*, 2007.

<sup>28</sup> Community Service Society and Lake Snell Perry & Associates, *The Unheard Third 2005: Bringing the Voices of Low-Income New Yorkers to the Policy Debate*, 2005.

<sup>29</sup> Job Opportunities Task Force and Gonzales Research & Marketing Strategies, *Statewide Survey*, 2006.

<sup>30</sup> The National Council of Research on Women Poll, 2006.

duced in the District of Columbia, Maryland, Minnesota, Montana, Vermont, Wisconsin, and the city of Madison in coming months. These initiatives are important, but we need even more. Every American needs paid sick days. The time has come to enact a law that provides paid sick days for *all* workers: the Healthy Families Act.

Mr. Chairman, members of the committee, I thank you for the opportunity to participate in this important discussion.

The CHAIRMAN. Thank you.  
Dr. Heymann.

**STATEMENT OF JODY HEYMANN, M.D., Ph.D., PROFESSOR AT MCGILL UNIVERSITY, DIRECTOR, MCGILL INSTITUTE FOR HEALTH AND SOCIAL POLICY AND PROJECT ON GLOBAL WORKING FAMILIES, MONTREAL, QUEBEC**

Dr. HEYMANN. Good morning. There we go. That's a little better. Good morning, Senator Enzi, Senator Isakson and Chairman Kennedy. Thank you for inviting me here to testify today.

My name is Jody Heymann. I am the Director of the Institute for Health and Social Policy at McGill, Founding Director of the Project on Global Working Families at Harvard, and on the faculty of both universities. I am trained as a pediatrician and a policy analyst and for over a decade and a half, I have led systematic studies involving over 10,000 working Americans as well as studies involving over 55,000 families in the global economy.

I am here today to say that the Healthy Families Act would make an enormous difference to working Americans. When we asked people across the country, in a representative sample from coast to coast, what was the single most important reason that they had to disrupt work to care for a family member, it was health. That was true for Americans from 25- to 75-years old, for men and women across every geographic region. Yet, nearly half of private sector workers currently have no paid sick days at all and an even larger percentage lack the ability to take days off to care for sick family members.

Sick days matter to employees. They matter because they lead to faster recovery from illnesses and employees being less likely to spread their illnesses to those they work with. They also matter because people are more likely not to lose jobs. In fact, in the national study we did, having a health problem increased by 50 percent the likelihood of job loss among low-wage mothers. This matters to the middle class as well. The single factor that made the biggest difference in keeping your job if you got sick was paid sick days. Among nurses across the country, two and a half times as likely to keep your job if you had paid sick days once you got sick. So it matters to employees and it matters to their families.

What are the basic facts about families? A majority of working Americans are caring for children, the elderly or disabled. Seventy percent of mothers with children under 18 are in the workforce. A third of working Americans are caring for somebody over 65 and two out of seven have at least one member in their family with disabilities.

Let's just take the case of children which we began to hear about from Debra and look at it a little bit more. When there are no paid sick days available, we know what happens. Children are sent to daycare sick with contagious diseases that spread to other kids.

They are left home alone. They are often unable to see physicians for diagnosis or needed medications and end up with emergencies and conditions that worsen.

When paid sick days are available and this is the important statistic to remember, families are five times as likely to be able to care for their children when they're sick.

Now it matters to adult care as well. When adults receive support from family members when they are sick, they have better health outcomes from major illnesses like heart attacks and strokes and those same working Americans that we asked across the country, who did you need to care for when they got sick? Well, 42 percent reported it was their children. The rest were reporting a wide range of family members, which is why I commend the fact that this act is written to incorporate the fact that you can be caring for aunts or uncles, grandchildren as well as your own children's spouses who are in desperate need of help.

Businesses benefit at the same time and that's why I'm glad it's been raised, the issue of what are the economic consequences? Businesses benefit from limiting the spread of infectious diseases in the workplace, from lowering job turnover rates, from lower recruitment and training costs, lower presentism costs and we base this on having spoken with businesses across the country.

Importantly, we know the United States can compete while doing this. We've done a study of the countries around the world and who is offering paid sick days. One hundred and forty-five countries offer paid sick days. In at least 100 of these countries, it begins on the first day you are sick. Unless we think 7 days is too many, in 100 of these countries, it's for a month or more.

Now, the world business leaders in the world economic forum have ranked the most competitive economies around the world and every single one of the 20 most competitive economies with the exception of the United States, guarantees paid sick days. In fact, guaranteeing paid sick days makes you more competitive and we have rigorous analyses showing that.

As for unemployment, which is a question that has been raised, there is absolutely no relationship between national unemployment or employment levels and offering paid sick days.

So in conclusion, can the United States afford to provide paid sick days and still compete in the global economy? Most of the world already has legislation guaranteeing paid sick days. All the competitive economies do. I have faith that U.S. companies are just as strong and compete as well with it. Will it make a difference to the health of American children and adults alike in need? Absolutely. It will make a great difference and particularly to those in greatest need, low-income families who are the most likely to lack it. Thank you for having me here.

[The prepared statement of Dr. Heymann follows:]

PREPARED STATEMENT OF JODY HEYMANN, M.D., PH.D.

Good morning, Chairman Kennedy, Senator Enzi, and members of the committee. My name is Jody Heymann. I am the Director of the Institute for Health and Social Policy at McGill University, Founding Director of the Project on Global Working Families at Harvard University, and on the faculty at both McGill and Harvard Universities. For the past decade and a half, I have led a research team at Harvard and now at both McGill and Harvard, which focuses on understanding the condi-

tions working families face in America and in a globalized economy, and what can be done to improve the conditions of working adults, their children, their elderly parents, and other family members.

Trained as a pediatrician and a policy analyst, I began this work when it became clear from individual families that the conditions parents faced in the workplace and in their communities in the United States were having a dramatic effect on the health of American children. Over the past decade and a half, I have led systematic studies involving over 10,000 Americans—from every State and across all income and demographic groups—as well as studies involving over 55,000 families in the global economy, and have examined public policies across the United States and across 180 other economies we interact and compete with.

Thank you for inviting me here to testify today. I am here to urge you to support the Healthy Families Act. The Healthy Families Act will make a crucial difference to the health and livelihoods of American adults and their families. The provisions in the act are readily feasible and affordable while competing in the global economy.

#### WORKING FAMILIES IN AMERICA

The clear majority of working Americans care for children, disabled, or elderly adults.<sup>1</sup> According to the Bureau of Labor Statistics, 70 percent of mothers with children under 18 are in the workforce.<sup>2</sup> At the same time, the National Study of the Changing Workforce found that between 25 percent and 35 percent of working Americans are currently providing care for someone over 65.<sup>3</sup> According to the Census Bureau, 2 in every 7 families report having at least one member with disabilities.<sup>4</sup> While both men and women provide important care, women are still much more likely than men to assume primary caregiving responsibilities for family members of all ages.<sup>5 6 7</sup>

While the majority of working Americans are caring for family members—children, spouses or partners, parents, grandchildren, and grandparents—the United States does not have most of the basic protections the rest of the world can count on. While the United States compares well to many other countries in having policies that ensure an equitable right to work for all racial and ethnic groups, regardless of gender, age or disability, the United States lags far behind the rest of the world when it comes to most policies protecting working families. Just to cite a few examples, 168 countries offer guaranteed leave with income to women in connection with childbirth; 66 countries ensure that fathers either receive paid paternity leave or have a right to paid parental leave; 107 countries protect working women's right to breastfeed; 137 countries mandate paid annual leave; and 145 countries provide paid sick days or leave for short- or long-term illnesses. The United States does not guarantee any of these yet.<sup>8</sup>

And in the absence of legislation, the private sector has not filled the gap. Nearly half of private sector workers have no paid sick days at all. An even larger percentage lack the ability to take days off to care for sick family members.<sup>9</sup> While many families cannot reliably count on paid sick days, working poor families are at the highest risk. Our research team found that 76 percent of low-income working parents did not consistently have paid sick days over a 5-year period.<sup>10</sup>

#### WHY SICK DAYS ARE SUCH AN IMPORTANT PLACE TO START

The research group I lead carried out an important study to learn from working Americans about their greatest needs when it comes to caring for family members. We interviewed a representative sample of Americans across the country every day for a week to learn about work disruptions they experienced in order to meet the needs of family members. The greatest needs were in two areas: caring for the health of family members and meeting school or child care needs. Meeting the health needs of family members was a top priority for working Americans from 25- to 75-years old in our study, for men and women, and for people across every geographic region. It is important to note that the need to care for children accounted for only 42 percent of work disruptions that were related to family. Fifteen percent were to care for parents, 12 percent to care for spouses or partners, 7 percent for grandchildren, and 24 percent for other family members.<sup>11</sup> Because of the range of family needs, I fully support the definition of family coverage in the Healthy Families Act; it accurately reflects the needs and commitments of American families.

#### SICK DAYS' IMPACT ON THE HEALTH OF WORKING AMERICANS AND THEIR FAMILIES

When you look at the evidence on the importance to child and adult health of having family members involved in their care, then it should not be a surprise that this is a top priority for Americans. Parental availability is vital for ensuring children's physical health. Children sent to daycare sick with contagious diseases exacerbate

the higher rate of observed infections in daycare centers,<sup>12 13 14 15</sup> including higher rates of respiratory and gastrointestinal infections.<sup>16 17 18</sup> Children left home alone may be unable to see physicians for diagnoses, needed medications, or emergency help if their conditions worsen. Furthermore, parental care may be important for children even when substitute sick child care is available. Studies of hospitalized children have shown that sick children have shorter recovery periods, better vital signs, and fewer symptoms when their parents share in their care.<sup>19 20 21 22</sup> The presence of parents has also been found to shorten children's hospital stays by 31 percent.<sup>23</sup> Without paid sick days, working parents have little choice but to send their sick children to day care or school, have young children stay home alone, or miss needed meetings with doctors with potentially serious health consequences.

At the same time, the proportion of adults having to meet the needs of elderly and disabled adult family members while working is growing and will continue to do so as the American population ages. The percentage of the U.S. population made up of individuals aged 60 and older is estimated to increase more than 1.5 times and the percentage of the U.S. population made up of individuals aged 80 and older is estimated to double by 2050.<sup>24</sup> A wealth of research has shown that when adults receive support from family members when sick, they have substantially better health outcomes from conditions such as heart attacks<sup>25 26</sup> and strokes.<sup>27</sup> An extensive body of research also demonstrates that elderly individuals live longer when they have higher levels of social support from friends and family members.<sup>28 29</sup>

The ability of workers to address their own health needs is equally critical. Research has shown that taking the necessary time to rest and recuperate when sick encourages a faster recovery<sup>30</sup> and may prevent minor health conditions from progressing into more serious illnesses that require longer absences from work and more costly medical treatment.<sup>31 32 33</sup> If working adults are able to stay home when they are sick, they are also less likely to spread their illness to those they work with.<sup>34</sup>

Workplace policies are essential to the ability of working adults to meet both their own health needs and the health needs of their family members. Our research found that the largest determinant of whether or not American parents can care for their children when they get sick is the availability of paid sick days. We have found that parents who have paid sick days are more than five times as likely to be able to care for their children themselves when they get sick as parents who do not have paid sick days.<sup>35 36</sup>

#### IMPACT ON THE ABILITY OF AMERICANS TO GET JOBS, KEEP JOBS, AND EARN A DECENT LIVING

Without paid sick days, working families are placed at risk economically, experiencing wage and job loss when they take time off to provide care for family members.<sup>37 38 39 40</sup> Alison Earle, a senior member of our research group, and I conducted the most comprehensive longitudinal study of working poor families and job loss in the United States. We found that the ability of working poor mothers to keep a job was dramatically affected by the health of the mother and the health of her child, even after taking into account the mother's years of education, her skills, and the local environment in which she was looking for work. Having a health problem led to a 53 percent increase in job loss among low-wage mothers and having a child with health problems led to a 36 percent increase.<sup>41</sup>

We know paid sick days could make an enormous difference in the ability of adults to return to work and keep their jobs. In a subsequent study we carried out of nurses, most of whom were middle class, having sick days made all the difference in their ability to keep jobs after developing heart disease or having a heart attack. Of all the working conditions studied, paid sick days were the only benefit significantly associated with an increased likelihood of returning to work; nurses with paid sick days were 2.6 times more likely to return to work after a heart attack or angina.<sup>42</sup>

#### IMPACT ON BUSINESSES

Offering paid sick days has positive benefits for employers, including limiting the spread of infectious diseases in the workplace by letting employees stay home when sick.<sup>43 44</sup> As just one example, the spread of infectious disease at the workplace is the reason that the U.S. Centers for Disease Control and Prevention recommended that Americans with influenza—a disease that leads to 200,000 hospitalizations and over 36,000 deaths in an average year<sup>45</sup>—stay home when they are sick.<sup>46</sup> In health care and service settings, providing sick days to employees also helps protect the health of patients and customers. For example, one study found a decreased risk

of respiratory and gastrointestinal outbreaks among residents in nursing homes that provide their employees with paid sick days.<sup>47</sup>

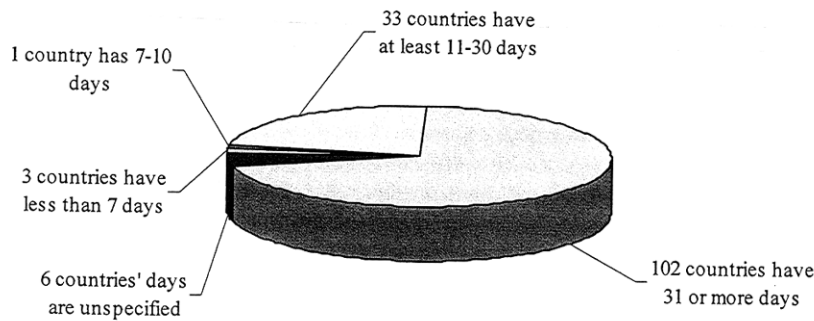
At the same time, workplaces with paid sick days experience lower job turnover rates, leading to lower recruitment and training costs and a higher level of productivity and decreased unnecessary absenteeism.<sup>48,49</sup> In addition, a recent study found that customer satisfaction and commitment to service providers were lowest when consumers viewed the employer as having a high rate of turnover.<sup>50</sup>

SICK DAYS ARE FEASIBLE AND AFFORDABLE

While there are clear economic benefits to paid sick days, it's a natural question to ask whether the United States can mandate paid sick days and still compete in the global economy. Having examined data on the public policies for working families in 177 countries around the world, we can answer this with a clear yes. One hundred and forty-five countries guarantee paid sick days. In at least 100 countries, paid sick days begin with the first day of illness.<sup>51</sup>

By global standards, the seven days proposed in the Healthy Families Act is quite modest. One hundred and two countries guarantee 1 month or more of paid sick days.<sup>52</sup>

Figure 1: Duration of Paid Sick Leave



The World Economic Forum, which brings together the top business leaders from around the world, has ranked the most competitive national economies.<sup>53</sup> All of the 20 most competitive countries, with the exception of the United States, guarantee paid sick days, and 18 of them provide 31 or more sick days with pay.<sup>54</sup> In fact, we have examined the relationship between national economic competitiveness and paid sick days and leave. Those countries which are most economically competitive are consistently more likely to guarantee paid sick days and leave for employees' own health, for the care of children's health, and to meet the health needs of other adult family members.<sup>55</sup> It makes sense. If you guarantee paid sick days, you have healthier workers and a healthier next generation—both essential to competition.

Table 1.—Ten Most Competitive Economies and Their Sick Day Policies

Country/Economy	Ranking	Any paid sick days?	Provides more than 10 paid sick days
Switzerland .....	1	Yes .....	Yes
Finland .....	2	Yes .....	Yes
Sweden .....	3	Yes .....	Yes
Denmark .....	4	Yes .....	Yes
Singapore .....	5	Yes .....	Yes
United States .....	6	No .....	No
Japan .....	7	Yes .....	Yes
Germany .....	8	Yes .....	Yes
Netherlands .....	9	Yes .....	Yes
United Kingdom .....	10	Yes .....	Yes

\* Rankings are from the World Economic Forum's *Global Competitiveness Report 2006–2007*. Information on paid sick days is taken from the *Work, Family, & Equity Index, 2007*.



## CONCLUSION

Finally, I'd like to speak for a moment on a personal note, as a doctor and as a mother. When I cared for children as a doctor, like other pediatricians, I relied entirely on the ability of parents to provide care for their children. When I discharged a child from the hospital after a serious asthma attack, the prescription and instructions for care went with the mother and father—and on the shoulders of parents rested whether the child would have a healthy recovery or return within days to the emergency room. For parents whose work let them take sick days to care for their children, whether after an asthma attack, to get a routine vaccination, or to check that the child met important developmental milestones, this was a fair responsibility to place on their shoulders. But for too many American parents, I've learned they have no chance to provide adequate care for their children—no matter how desperately they want to—because they are forced to choose between taking the needed hours to care for their children's health and earning income that is essential to that care.

As a young mother, I stood outside my son's childcare center and listened sadly to the experience of another parent. The childcare center served medical school faculty and hospital workers from every kind of job. The mother I spoke to had succeeded in leaving welfare for work and had placed her children in childcare. Like many children during their first year in childcare, hers were sick often with respiratory infections and fevers high enough that they were not allowed to go to the center. My children had the same hurdles, but I could take leave from work. Her job offered no paid sick days. At the end of the year, she was dismissed, unemployed, and falling deeper into poverty because of the days she missed when her children were sick.

After a decade and a half of our research, confirmed over and over again by the research of other groups, we know these experiences are not the exception.

In short, the United States currently lags dramatically behind all high-income countries, as well as many middle- and low-income countries when it comes to paid sick days designed to protect the health of working Americans and their families. Can the United States afford to provide paid sick days and still compete in the global economy? The answer is clearly yes. Most of the world already has legislation guaranteeing paid sick days. All the most competitive economies do. Will it make a difference to the health of American children and adults alike in need of care? An enormous one, particularly for the health and well-being of those in greatest need—low-income families and families with a child or adult with frequent illnesses or a chronic health condition.

The Healthy Families Act is superbly constructed to help meet the essential needs of working adults and their families and at the same time is readily achievable. Thank you again for holding these hearings and for taking the time to move forward on these critically important issues facing American working families. If I or my staff can be of further help to you as you continue to deliberate on these issues, please do not hesitate to contact us.

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The CHAIRMAN. Heidi.

**STATEMENT OF HEIDI HARTMANN, PH.D., PRESIDENT, INSTITUTE FOR WOMEN'S POLICY RESEARCH, WASHINGTON, DC.**

Ms. HARTMANN. Good morning, Mr. Chairman.

The CHAIRMAN. Good morning.

Ms. HARTMANN. Senator Enzi, Senator Isakson. Thank you very much for the invitation to testify here this morning. I represent the Institute for Women's Policy Research, which is a think tank focusing on issues of importance to women. I'd like to acknowledge the

work of Dr. Vicky Lovell on our staff, who has helped prepare the testimony today and who has conducted the research that I will be summarizing.

And Mr. Chairman, before I begin, I'd like to thank you for your leadership, not only on the Healthy Families Act but on so many issues important to working women. I'd like to mention especially let us say your encouragement to the Bureau of Labor Statistics to reinstate the Women Workers Data series, a data set that we used today in presenting this research. So thank you very much.

I'd also like to acknowledge Holly Fechner's contribution in crafting the Healthy Families Act. She took an idea, only an idea brought to her by some researchers back in 2000 and working with many other people along the way, including leaders of the business community and the health profession. She has drafted a well thought out law that we are able to hold hearings on today.

Since the year 2000, when we first brought that idea to your staff, IWPR has conducted research on many aspects of the Healthy Families Act, working with other researchers, members of Congress, State and municipal legislators and advocates across the country.

Today I want to just briefly summarize the most important findings and ask that the full testimony be included in the record. Our most recent research uses the brand new Confidential Data Set, the National Compensation Survey housed at the Bureau of Labor Statistics, which collects data from the nation's employers about the benefits they provide their workers.

The first and most important point is that millions of U.S. workers are without any paid sick days. Fifty-seven million workers in March of 2006, the most recent survey date, lack paid sick days. Forty-eight percent, nearly half of all private sector workers lack paid sick days. Twenty-two million women workers lack paid sick days.

When Mr. King will testify in a few moments that 75 percent of employers provide some paid days off, he is correct. They do. But that includes vacation and holidays. Having July 4th is great but it won't help you with an illness unless you happen to be sick on July 4th.

Actually, it's true that half of all workers have no paid sick days. I wanted to also stress that if any employer has the new style PTO—paid time off—the flexible leave that is becoming more common, those employers are counted in these data as providing paid sick days. If we can take a look for a moment at Figure 1 (*see Ms. Hartmann's prepared statement*), it shows the industries that have coverage for their workers with paid sick days and it goes from a high of 80 percent of workers with paid sick days and utilities and finance and insurance to a low of only 22 percent in food service. If we look at only those in that industry who actually handle the food, it's only 15 percent who have paid sick days and if we look further at a smaller group, waiters and waitresses, it's only 8 percent who have paid sick days. So 92 percent of waiters and waitresses have no paid sick days. Childcare workers—80 percent have no paid sick days. Retail sales clerks—57 percent have no paid sick days.

Dr. Bhatia will testify that from a public health standpoint, food service jobs are among the most important jobs that should be protected with paid sick days. The very workers we come into contact with every day—food, childcare, retail services—they have among the worst coverage.

Besides industry and occupation, who are the workers who most often lack paid sick days? Part-time workers, yes. Only 20 percent have paid sick days. Eighty percent don't have any. But considering all full time workers, only 62 percent have some paid sick days. That means that nearly half—40 percent—don't have any.

Low pay, yes. If we take a look at Figure 2 (*see Ms. Hartmann's prepared statement*), we see that only 20 percent in the bottom quarter have some paid sick days. Eighty percent don't have any.

The CHAIRMAN. Excuse me, do you have these charts in a smaller form? I have difficulty seeing—

Ms. HARTMANN. Yes, they should be in the testimony.

The CHAIRMAN. I have them. Thank you. One of my wonderful staff has just placed it in front of me. Thank you.

Ms. HARTMANN. Sorry. But I'd like to also call your attention not just to the bottom quartile where we can assume the lowest wage workers will have the least paid sick days but look at the second quartile from the bottom, where 40 percent don't have paid sick days and in the third quartile, 46 percent don't have paid sick days and even if you look in the highest paid quartile, 28 percent do not have paid sick days so that means nearly one-third of all workers, even in the top, don't have paid sick days. The lack of paid sick days, therefore, goes throughout the economy in virtually every sector from the lowest to the highest paid.

We also found in the new National Compensation Survey that the average worker has to wait more than two and a half months to use any sick days the employer may have on the books.

Finally, we have looked at the cost to the economy from the turnover that exists because all of these people do not have paid sick leave and the cost is actually \$31 billion a year. These are new 2006 estimates but we'll be—they are provisional. We'll make new estimates when we have a new bill and the benefits to workers would be \$22 billion. So the benefit from the gain in productivity far outstrips the cost of \$22 billion, \$31 billion gain, \$22 billion cost. So the economy as a whole gains.

In conclusion, I would like to say that workers need expanded paid sick days policies. The change will be good for our economy. It will even save employers money, \$9 billion and enacting the Healthy Families Act will therefore increase the total output in the economy and improve the operation of the U.S. economy. Thank you. If I or my staff can be of further help, please do not hesitate to contact us.

[The prepared statement of Ms. Hartmann follows:]

PREPARED STATEMENT OF HEIDI I. HARTMANN, PH.D.

Mr. Chairman and members of the committee, I am Heidi Hartmann, President of the Institute for Women's Policy Research, an independent, scientific research institute focusing on women's economic issues. Trained as a labor economist, with the Ph.D. degree from Yale University, I have studied women's employment issues for more than 30 years. I am also a Research Professor at George Washington University. I am pleased to have the opportunity to testify today on the impact of the

Healthy Families Act on workers, businesses, the general economy, and public health.

RESEARCH DOCUMENTS THE NEED AND POINTS TOWARD EFFECTIVE POLICIES

The Institute for Women's Policy Research (IWPR) has been conducting research on the adequacy of existing paid sick days policies since 2000. During this period, we have analyzed confidential data collected from employers by the U.S. Bureau of Labor Statistics to assess coverage provided voluntarily by employers; explored workers' use of paid time off policies with data collected by the U.S. Department of Health and Human Services; completed scans of medical and economics literature for data on the likely effects of expanding paid sick days programs; and worked closely with other researchers to develop valid approaches to measuring consequences workers experience when they lack adequate paid sick days. IWPR has provided data and policy analysis on this topic to Members of Congress, State legislatures, municipal governing bodies, and stakeholder groups working on the issue. We have completed non-partisan analysis at critical junctures in several campaigns for expanded paid sick days policies, including the movement in San Francisco that led to voter endorsement of a paid sick days ballot initiative in November 2006.

CURRENT PAID SICK DAYS POLICIES LEAVE TENS OF MILLIONS WITH NO COVERAGE <sup>1</sup>

Only 58 percent of the non-agricultural wage-and-salary workforce is covered by a formal paid sick days policy for which they are actually eligible (Table 1).<sup>2</sup> This leaves 42 percent—more than 57 million workers—without paid sick days. Nearly 23 million of these workers are women. Workers in the public sector have much better coverage than in the private sector. Considering the private sector alone, fully 48 percent of employees, nearly half, lack eligibility for any paid sick days.

Table 1.—Percent and Number of Workers With and Without Paid Sick Days, 2006

	Workers with paid sick days		Workers without paid sick days		Total number of workers <sup>1</sup>
	Percent	Number	Percent	Number	
Private sector .....	52	58,517,000	48	54,538,000	113,055,000
State and local government .....	87	16,735,000	13	2,501,000	19,235,000
<b>Total, private and State/local</b> <sup>2</sup> .....	<b>57</b>	<b>75,252,000</b>	<b>43</b>	<b>57,038,000</b>	<b>132,290,000</b>
Federal Government .....	100	2,709,000	0	0	2,709,000
<b>Total, private and public sectors</b> .....	<b>58</b>	<b>77,960,000</b>	<b>42</b>	<b>57,038,000</b>	<b>134,999,000</b>

Notes: Excludes agricultural, military, private household, and self-employed workers. Rows and columns may not sum to totals due to rounding.

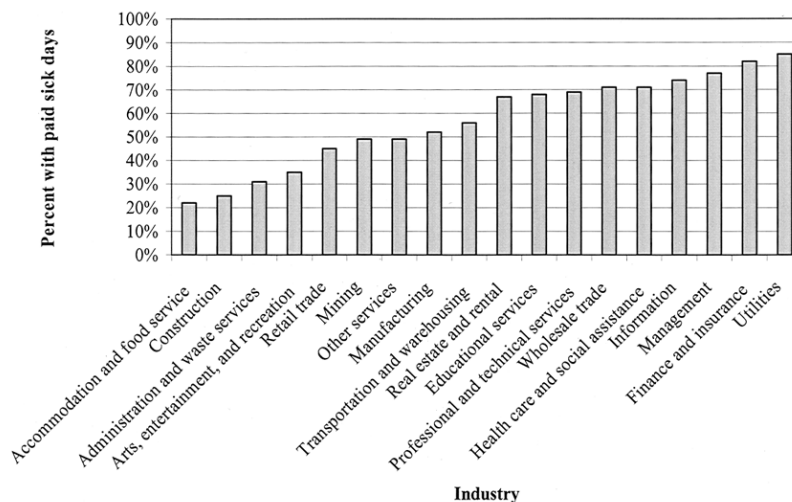
<sup>1</sup> Workforce numbers for 2006 use the Current Employment Statistics; IWPR's report *No Time To Be Sick: Why Everyone Suffers When Workers Don't Have Paid Sick Days* (Institute for Women's Policy Research, 2004) used the Current Population Survey, for the 2003 workforce.

<sup>2</sup> These numbers and percentages are comparable to those of Table 1 in the IWPR publication *No Time To Be Sick: Why Everyone Suffers When Workers Don't Have Paid Sick Days* (Institute for Women's Policy Research, 2004).

Source: Institute 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.

In some industries, coverage is notably worse than the overall average (Table 1 and Figure 1). Fewer than one-quarter of workers in the accommodation and food service industry have paid sick days (22 percent); coverage in construction is nearly as bad, at 25 percent. Employers in administration and waste services (which includes many clerical workers) and in arts, entertainment, and recreation extend paid sick days to only about one-third of their workers (31 and 35 percent, respectively). Retail trade also trails the average, with 45 percent of workers covered. Many of these industries with below average coverage are those with workers that all of us come into contact with every day: food service workers, cashiers, sales clerks. At the other end of the scale, roughly three-fourths of workers in wholesale trade; health care and social assistance; information; and management have paid sick days (71, 71, 74, and 77 percent, respectively), and more than four of every five workers in finance and insurance and in utilities are covered (82 and 85 percent, respectively).

**Figure 1. Share of private-sector workers with paid sick days, by industry, 2006**



Coverage is best in larger establishments:<sup>3</sup> Three-fourths of workers in the largest establishments (those with 5,000 or more employees) have paid sick days, while only two-fifths of workers in the smallest establishments (with one to nine workers) do (77 percent vs. 42 percent; Table 2). For all establishments covered by the FMLA, 58 percent of workers are eligible for paid sick days. For smaller establishments, with fewer than 50 employees, 42 percent are eligible for paid sick days.

**Table 2.—Worker Eligibility For Employer-Provided Paid Sick Days Policies in the Private Sector, By Establishment Characteristics, 2006**

	Percent of workers with employer-provided paid sick days
<b>Industry:</b>	
Accommodation and food service .....	22
Construction .....	25
Administration and waste services .....	31
Arts, entertainment, and recreation .....	35
Retail trade .....	45
Mining .....	49
Other services .....	49
Manufacturing .....	52
Transportation and warehousing .....	56
Real estate and rental .....	67
Educational services .....	68
Professional and technical services .....	69
Wholesale trade .....	71
Health care and social assistance .....	71
Information .....	74
Management .....	77
Finance and insurance .....	82
Utilities .....	85
All .....	52
<b>Number of Employees:</b>	
1 to 9 .....	42
10 to 24 .....	40
25 to 49 .....	44

Table 2.—Worker Eligibility For Employer-Provided Paid Sick Days Policies in the Private Sector, By Establishment Characteristics, 2006—Continued

	Percent of workers with employer-provided paid sick days
50 to 99 .....	41
100 to 499 .....	55
500 to 4,999 .....	71
5,000 or more .....	77
1 to 49 workers .....	42
50 or more (FMLA covered) .....	58
All .....	52
<b>Region:</b>	
New England .....	61
Mid-Atlantic .....	56
East North Central .....	48
West North Central .....	51
South Atlantic .....	49
East South Central .....	48
West South Central .....	49
Mountain .....	52
Pacific .....	55
All .....	52

Note: Excludes agricultural, military, private household, and self-employed workers. Rows and columns may not sum to totals due to rounding.

Source: Institute 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.

By region, paid sick days coverage ranges from a low of 48 percent in the East North Central region (which includes the States of Illinois, Indiana, Michigan, Ohio, and Wisconsin) and the East South Central region (which includes the States of Alabama, Kentucky, Mississippi, and Tennessee) to a high of 61 percent in New England (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont; Table 2).

#### LOWER-WAGE WORKERS ARE SHUT OUT OF CURRENT POLICIES

The availability of paid sick days varies enormously along job characteristics such as occupation, work hours, and wage level (Table 3). In general, professional and other white-collar workers have the best paid sick days coverage, and those in lower-level service-sector jobs are the least likely to have any paid sick days. Among occupations, paid sick days rates are the highest for lawyers, managers, and computer, math, architecture, and engineering professionals, at 84 percent, 83 percent, and 81 percent, respectively. Three of every four workers in business and financial occupations, community and social services, and life, physical, and social sciences also have paid sick days (78 percent, 77 percent, and 75 percent, respectively). At the other end of the spectrum, only one in seven food service workers has paid sick days (15 percent). Protective services and construction workers also have very low coverage, at 22 percent and 18 percent, respectively.

Table 3.—Worker Eligibility For Employer-Provided Paid Sick Days in the Private Sector By Job Characteristics, 2006

	Percent of workers with employer-provided paid sick days
<b>Occupation:</b>	
Food Preparation and Services .....	15
Construction and Extraction .....	18
Protective Services .....	22
Personal Care and Service .....	37
Transportation and Material Moving .....	41
Production .....	41
Sales .....	46
Building services, Grounds Cleaning, and Maintenance .....	53



Table 3.—Worker Eligibility For Employer-Provided Paid Sick Days in the Private Sector  
By Job Characteristics, 2006—Continued

	Percent of workers with employer-provided paid sick days
Installation, Maintenance, and Repair Services .....	58
Arts, Entertainment, Sports .....	62
Education and Training .....	62
Healthcare Support .....	65
Office and Administrative Support .....	68
Healthcare Practice and Technical .....	71
Life, Physical, and Social Sciences .....	75
Community and Social Services .....	77
Business and Financial .....	78
Architecture and Engineering .....	81
Computer and Math .....	81
Management .....	83
Legal .....	84
All .....	52
<b>Wage Level:</b>	
Fourth (bottom) .....	21
Third .....	54
Second .....	62
First (top) .....	72
All .....	52
<b>Work Schedule:</b>	
Full-time .....	62
Part-time .....	20
Full-year .....	53
Part-year .....	26
Full-year, full-time .....	63
Not full-year, full-time .....	21
All .....	52

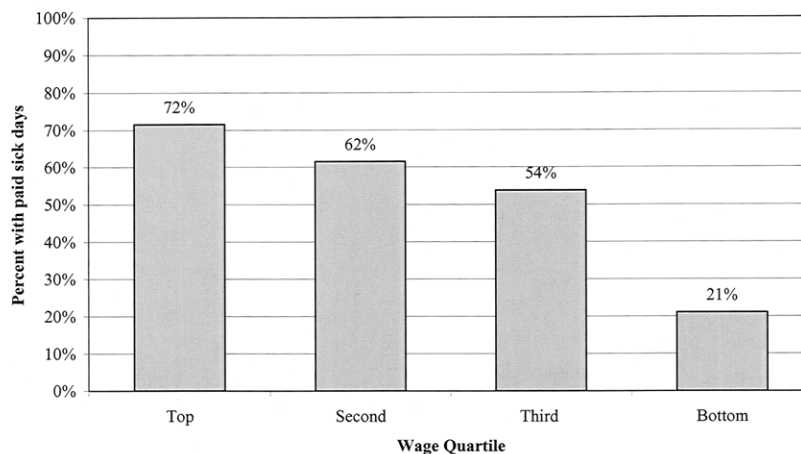
Notes: Excludes agricultural, military, private household, and self-employed workers. Rows and columns may not sum to totals due to rounding. Cutoffs for wage quartiles: first (top), \$21.66 or more; second, \$13.50 to \$21.65; third, \$9.23 to \$13.49; and fourth (bottom), less than \$9.23.

Source: Institute 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.

Full-time workers are more than three times as likely to have paid sick days as part-time workers (62 percent vs. 20 percent). While working a short week does provide some flexibility to respond to health needs, many part-timers have less than full-time hours involuntarily, and others work multiple part-time jobs in order to patch together a full-time income. (Despite the fact that 19 percent of women and 24 percent of men would prefer to work more hours than they currently do,<sup>4</sup> some firms deliberately limit workers' hours in order to avoid having them become eligible for benefits such as paid sick days.) Thus, the lack of paid sick days for part-time workers is as serious an issue as the incomplete coverage of full-time workers. Workers on part-year schedules also have very restricted access to paid sick days, with only one-quarter covered (26 percent).

Differences in paid sick days coverage by wage level are as extreme as those by occupation. At the top, nearly three-fourths of workers have access to paid sick days (72 percent; Figure 2 and Table 3).<sup>5</sup> Coverage drops to three-fifths for workers in the second wage quartile (62 percent), and then to just over half for those in the third wage quartile (54 percent). Only about one-fifth of workers in the bottom wage quartile have paid sick days (21 percent). (The wage threshold for the bottom wage quartile is \$9.23, approximately the same as the hourly wage which, if worked full-time throughout the year, would provide a poverty-line income for a family of four.)

**Figure 2. Share of private-sector workers with paid sick days, by wage quartile, 2006**



In addition to having differential access to paid sick days, workers at different wage levels are offered different numbers of paid sick days (Table 4). After 1 year on the job, workers in the top wage quartile average 10 paid sick days. Those in the second wage quartile have nearly 8 days; in the third, 7; and in the bottom, 6.5. With 10 years of job tenure, those at the top accrue nearly an additional 3 days, for a total of 12.7, while those in the bottom wage quartile have only one more paid sick day, giving them 7.5 days annually. The lowest-wage workers also have to wait longer to qualify for paid sick days than higher-wage workers: an average of 3.5 months, or nearly twice the job tenure requirement of 1.9 months offered to workers in the top wage quartile.

**Table 4.—Number of Paid Sick Days By Years of Job Tenure, and Eligibility Periods, By Wage Quartile**

Wage quartile	Number of paid sick days after:		Number of months between hire and eligibility
	1 year	10 years	
Top .....	10.0	12.7	1.91
Second .....	7.8	9.1	2.33
Third .....	7.1	8.4	3.12
Bottom .....	6.5	7.5	3.48
All .....	8.1	9.8	2.59

Notes: Excludes agricultural, military, private household, and self-employed workers. Rows and columns may not sum to totals due to rounding.

Source: Institute 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.

**WORKERS WITH PAID SICK DAYS TAKE 3.9 DAYS PER YEAR FOR THEIR OWN ILLNESSES AND 1.3 DAYS TO CARE FOR OTHER FAMILY MEMBERS**

According to IWPR analysis of the 2004 National Health Interview Survey, workers who are covered by paid sick days policies miss an average of 3.9 days of work per year for their own illness and injury (excluding maternity leave).<sup>6</sup> (Workers who lack this benefit take approximately one fewer day off for sickness per year, at an average of 3.0 days.) But, of course, individual workers vary enormously in their need for paid sick days. Zero is the most typical number of days taken off for illness: half (50 percent) of those with a paid sick days policy do not miss a single day of work because of illness in an entire year. Others—those with chronic illnesses, or medical emergencies—need more than 1 week in at least some years.

According to the U.S. Department of Labor's 2000 Family and Medical Leave Act Survey of Employees, workers take 0.33 days of FMLA-type leave to care for ill children, spouses, and parents for every day of leave taken for their own health needs. Thus, on average, we estimate that workers need 1.3 days of paid sick time per year to care for family members.<sup>7</sup> Again, this need will vary considerably by individual circumstances. For instance, parents of school-age children may need to attend to their children at home for approximately 4 days per year,<sup>8</sup> and workers with responsibility for elderly parents or disabled adult children may need more time as well.

The Healthy Families Act, as proposed in the last congressional session, would also provide time off work with pay for workers to obtain preventive and other care from doctors. This is likely to involve 3.5 hours for doctor visits per year, on average, for workers' own health needs.<sup>9</sup>

THE HEALTHY FAMILIES ACT WOULD BRING BENEFITS TO WORKERS, BUSINESSES,  
AND THE OVERALL ECONOMY

*Workers and their families.* Establishing a minimum paid sick days standard through a bill such as the Healthy Families Act, proposed in the last session, would bring immediate benefits to workers who currently lack paid sick days. They would likely take an average of one additional day off work for their own health-care needs, and thus recuperate more completely and faster from illnesses, injuries, surgery, and other medical treatments.<sup>10</sup> Their families would not suffer the lost income associated with staying home on unpaid leave when working is impossible.

The preliminary 2006 estimated benefit to workers in new sick pay under a model program proposed to the 109th Congress as the 2004 Healthy Families Act would be \$19.6 billion. This is the amount of new pay that workers who did not have sick pay before, or whose sick days were limited, would be expected to receive each year.

Children recover their health faster with parents' involvement,<sup>11</sup> and having paid time off is the primary factor in parents' decisions about staying home when their children are sick.<sup>12</sup> Thus, workers who are granted new paid sick days will experience better health outcomes for their children and, likely, lower health-care expenditures. Parents who are allowed to take their children to the doctor during work hours without missing pay may also be better able to carry out recommended treatments and routine care, such as immunizations and well-child check-ups. And family care will not cause workers to lose as much income as they now do. Now, half of working mothers, and 75 percent of low-wage working mothers, lose pay when they stay home with a sick child.<sup>13</sup> This is a costly, stressful burden to impose on families already struggling to shoulder the responsibilities of work and family.

With better paid sick days programs, families may also be able to avoid some short-term nursing home stays for elderly relatives. Over 21 million full-time workers are caregivers for aging family members.<sup>14</sup> It is not unusual for an older patient to be dismissed from a hospital as too healthy to need such a high level of medical care, but not being healthy enough to be home alone. If an adult child can take a couple days off work to provide needed care, the patient may be able to transition directly home. With nursing homes charging an average of \$158 per day,<sup>15</sup> and skilled in-home care also costly, families that can take care of their own relatives can enjoy substantial savings.

*Employers.* With improved sickness absence programs, businesses will gain in at least three ways. First, and most significant in monetary terms: Rates of voluntary turnover will drop, as workers find their current compensation package more attractive and are, therefore, less inclined to search out another job. Research shows that turnover rates will drop by between 4 and 7 percentage points, for different demographic groups of workers.<sup>16</sup> Replacing workers is very expensive: Even in the low-wage labor market, filling a vacant position and bringing a new worker up to full productivity can cost 43 percent of annual pay.<sup>17</sup> A more general rubric is that an employer must pay 25 percent of a worker's total yearly compensation (including the cost of benefits) to replace a worker.<sup>18</sup>

This benefit alone will save employers more than the total cost of additional wages, payroll taxes, and administrative expenses of the Healthy Families Act.

A second major benefit for employers is that, when at work, their workers will be healthier. That is, those who are too sick to perform at full capacity will be at home, rather than receiving their full compensation for being at work but not being productive. Savings associated with better management of workers' presenteeism will help offset new wage payments to workers who, appropriately, stay at home when they are sick.

Finally, employers will reap benefits in lower overall sickness rates when workers with contagious diseases remove themselves from the workplace and avoid passing germs to their colleagues. Thirty percent of workers report having become sick from

someone in their office during the last flu season<sup>19</sup>; many have experienced the phenomenon of a cold or flu spreading through a worksite, taking out one worker after another. This is much less likely to happen if workers can stay home when they are in a contagious phase of a disease. Employers know that presenteeism is not a good thing: More than half (56 percent) say it is a problem for them.<sup>20</sup>

The preliminary 2006 estimate of the total benefits of a bill such as the Healthy Families Act introduced in the last session of Congress is \$31.2 billion, which far outstrips the estimated total cost of \$22.3 billion.<sup>21</sup>

*Public health.* The issue of contagion has very important implications for public health, in addition to its impact on individual employers. Should a serious pandemic erupt—such as might occur if the bird flu mutated to be transmittable between humans—it will be critical that infected workers reduce their social contacts as much as possible while they are in a contagious phase. But even less serious flu outbreaks can be ameliorated by good paid sick days policies that allow workers to sensibly withdraw from worksites to avoid spreading disease. Research has shown that the incidence of disease within workplaces is lessened when workers have paid sick days.<sup>22</sup> That also means that fewer individuals are bringing germs home to their own families and friends. And that is why the Centers for Disease Control and Prevention recommend that people who have the flu stay home.<sup>23</sup>

*The economy at large.* The productivity effects of expanded paid sick days will benefit not only individual employers—they will add to overall economic productivity. Reducing total sickness absence by keeping sick workers out of offices and reducing voluntary job turnover will help to maximize workers' output. Job-protected paid sick days are especially important to women workers. Still today women workers bear the larger share of family care, and thus having the right to leave and return to their jobs, and not lose pay, is of far greater benefit to women. A bill to guarantee workers several paid sick days per year (that can also be used for family care) will lengthen and strengthen women's attachment to their jobs, enabling them to gain job seniority and improve their long-term productivity. A paid sick days bill will help women's average time on the job catch up with men's, contributing ultimately to greater pay equity between women and men.

Holding down *involuntary* job loss will also contribute to economic productivity. There is an ever-growing accumulation of anecdotal evidence about this effect, collected by worker rights organizations such as 9to5<sup>24</sup> as well as the Center for WorkLife Law at the Hastings School of Law.<sup>25</sup> As no government surveys measure this phenomenon, it is difficult to estimate the dollar value of recovered productivity that would accrue from better paid sick days policies that keep workers from being fired for missing work when they, or members of their families, are sick. As a rough estimate, using known data on the share of the low-wage workforce that lacks paid sick days (79 percent), rates of hiring in low-wage industries, and the share of low-wage new hires that replaces workers (as opposed to filling new positions), IWPR calculates that involuntary turnover related to the lack of paid sick days for low-wage workers likely costs employers nearly \$2 billion annually. This cost estimate is based on using a parameter of 3.3 percent of job loss in the low-wage labor market is involuntary due to the lack of paid sick days. The productivity impact of inadequate paid sick days policies is certainly very substantial. Productivity losses of this nature are a drain on the economy as a whole, in addition to their direct impacts on workers and employers.

IWPR's research clearly shows the need for expanded access to paid sick days and, further, that such access will bring benefits not only to workers but also to businesses and the economy overall. In fact the benefits substantially outweigh the costs, indicating that enactment of such a requirement would improve the operation of the U.S. economy. Our research also documents that workers make modest use of paid sick days policies—the most typical number of days taken off per year is zero, and workers who have paid sick days miss only one more day of work than those without. I urge the Congress to develop this legislation to address the needs of workers for paid sick days and improve overall productivity and economic growth.

If I or my staff can be of further help to you as you continue to deliberate on these issues, please do not hesitate to contact us. Thank you for holding this hearing and for the opportunity to testify.

#### METHODOLOGY

The IWPR analysis of paid sick days coverage rates begins with analysis of the March 2006 National Compensation Survey (NCS). Collected by the U.S. Bureau of Labor Statistics (BLS), this payroll survey includes more than 10,000 private-sector establishments of all sizes and 41,985 individual jobs. (Private household and military employers and the self-employed are not included.) IWPR staff conducted the

analysis of the confidential microdata set onsite at the BLS under contract with the BLS. Weighting variables calculated by the BLS allow generalization of findings to the entire U.S. private-sector workforce. The March 2006 NCS did not survey local and State governments, so participation rates for workers in those sectors are from IWPR's previous analysis of the 1996–1998 Employee Benefits Survey, the precursor to the NCS.

The NCS queries employers on numerous benefits provided to workers for which the employer incurred a cost. Regarding paid sick days benefits, it specifically collects data on whether *jobs* are covered by a policy allowing workers to stay home, with pay, when they are sick. (Thus, general paid-time-off policies that do allow this use are coded as being paid sick days programs.) Individual incumbents in those jobs may not yet have met employer-imposed eligibility thresholds related to job tenure. That is, the NCS provides data on “access” to paid sick days, but not on “participation.” To adjust for eligibility, data on the percent of workers who are new hires, taken from the BLS' Job Openings and Labor Turnover Survey, by industry, were combined with data from the NCS on the average number of days between date of hire and eligibility for paid sick days policies (78 days). In the analysis presented here, “participation” refers to the share of the workforce that has “access” to paid sick days, according to the NCS, and has also met the average eligibility threshold.

Workforce size estimates use the Current Employment Statistics payroll survey.

In estimating the 2006 benefits of the Healthy Families Act, the 2003 estimates presented in *Valuing Good Health: An Estimate of Cost and Savings for the Healthy Families Act* (Washington, DC.: Institute for Women's Policy Research, 2005) were used, with final dollar values for wages and other factors inflated to 2006 dollars using the CPI.

To estimate the costs of involuntary job loss by low-wage workers, the most likely to lack paid sick days, IWPR combined information from several sources. The size of the low-wage workforce was estimated as the lowest paid quartile, using the sources described above; 79 percent of these lack paid sick days according to IWPR analysis of the 2006 National Compensation Survey. Monthly new hires from the Job Openings and Labor Turnover Survey for Accommodation and Food Service were used to proxy new hires for the low-wage labor force as a whole. IWPR then adjusted these numbers downward to obtain an estimate of the amount of job replacement, as opposed to job growth, based on data from the BLS for those with a high school degree or less.<sup>26</sup> We estimate that 3.3 percent of all turnover in the low-wage labor market is involuntary job loss due to the lack of paid sick days. Finally, we estimate the annual compensation cost of the low-wage worker from *Valuing Good Health* (inflated to 2006 dollars) and, following that report, assume that turnover costs equal 25 percent of total annual compensation.

#### ENDNOTES

<sup>1</sup>Data presented here are from Institute for Women's Policy Research analysis of the March 2006 National Compensation Survey, which collected information on employment benefits from over 10,000 non-agricultural private-sector establishments. (Private households were not surveyed.) The survey's data on workers' “access” to paid sick days was adjusted to reflect actual participation in these programs using data on new hires from the Job Openings and Labor Turnover Survey, to account for workers who have not yet met job tenure eligibility criteria for participation in offered paid sick days programs.

<sup>2</sup>Refers to the workforce excluding Federal, military, and private household employees and the self-employed.

<sup>3</sup>These data are for establishments—individual physical business locations; the National Compensation Survey does not collect data at the level of firms. (A firm may comprise a number of individual establishments.)

<sup>4</sup>Jeremy Reynolds, “When Too Much Is Not Enough: Actual and Preferred Work Hours in the United States and Abroad,” *Sociological Forum* 19, 1 (2004): 89–120.

<sup>5</sup>The top wage quartile includes workers making \$21.66 or more per hour; second, \$13.50 to \$21.65; third, \$9.23 to \$13.49; and fourth (bottom), less than \$9.23.

<sup>6</sup>Vicky Lovell, *Valuing Good Health in San Francisco: The Costs and Benefits of a Proposed Paid Sick Days Policy* (Washington, DC.: Institute for Women's Policy Research, 2006).

<sup>7</sup>Rutgers University Center for Women and Work analysis of data from U.S. Department of Labor, *Family and Medical Leave Surveys, 2000 Update*, April 12, 2005.

<sup>8</sup>Vicky Lovell, *No Time to be Sick: Why Everyone Suffers When Workers Don't Have Paid Sick Leave* (Washington, DC.: Institute for Women's Policy Research, 2004).

<sup>9</sup> Lovell 2006.

<sup>10</sup> Anne Grinyer and Vicky Singleton, "Sickness Absence as Risk-Taking Behavior: A Study of Organizational and Cultural Factors in the Public Sector," *Health, Risk and Society* 2 (March 2000): 7–21.

<sup>11</sup> Sarah J. Palmer, "Care of Sick Children by Parents: A Meaningful Role," *Journal of Advanced Nursing* 18 (February 1993): 185–191.

<sup>12</sup> Jody S. Heymann, Alison Earle, and Brian Egleston, "Parental Availability for the Care of Sick Children," *Pediatrics* 98 (August 1996): 226–230.

<sup>13</sup> Roberta Wyn, Victoria Ojeda, Usha Ranji, and Alina Salganicoff, *Women, Work, and Family Health: A Balancing Act* (Washington, DC: Henry J. Kaiser Family Foundation, 2003). <[http://www.khpa.ks.gov/healthquest/pdfs/Balancing\\_Act\\_Issue\\_Brief.pdf](http://www.khpa.ks.gov/healthquest/pdfs/Balancing_Act_Issue_Brief.pdf)>

<sup>14</sup> National Alliance for Caregiving and AARP, *Caregiving in the U.S.* (Bethesda, MD: National Alliance for Caregiving, 2004).

<sup>15</sup> MetLife, *The MetLife Market Survey of Nursing Home & Home Care Costs* (Westport, CT: MetLife Mature Market Institute, 2004).

<sup>16</sup> Philip F. Cooper and Alan C. Monheit, "Does Employment-Related Health Insurance Inhibit Job Mobility?" *Inquiry* 30 (Winter 1993): 400–416.

<sup>17</sup> Walter E. Johnson and Dan M. Tratensek, "Employee Turnover," *Do-It-Yourself Retailing* 180 (June 2001).

<sup>18</sup> Employment Policy Foundation, "Employee Turnover—A Critical Human Resource Benchmark," *HR Benchmarks* (December 3, 2002): 1–5 <[www.epf.org](http://www.epf.org)> (January 3, 2005).

<sup>19</sup> National Foundation for Infectious Diseases, *New National Survey Shows Employees Feel Pressured to Go to Work, Despite Being Sick with Flu* <[http://www.nfid.org/pdf/docs/workplace\\_flu\\_release.pdf](http://www.nfid.org/pdf/docs/workplace_flu_release.pdf)> (February 8, 2007).

<sup>20</sup> CCH Incorporated, "Findings from the 2006 Unscheduled Absence Survey" <<http://hr.cch.com/thenews>> (January 24, 2007).

<sup>21</sup> Institute for Women's Policy Research analysis updating the findings presented in Vicky Lovell, *Valuing Good Health: An Estimate of Cost and Savings for the Healthy Families Act* (Washington, DC: Institute for Women's Policy Research, 2005) to account for inflation.

<sup>22</sup> Jiehui Li, Guthrie S. Birkhead, David S. Strogatz, and F. Bruce Coles, "Impact of Institution Size, Staffing Patterns, and Infection Control Practices on Communicable Disease Outbreaks in New York State Nursing Homes," *American Journal of Epidemiology* 143 (May 1996): 1042–1049.

<sup>23</sup> U.S. Department of Health and Human Services, *Influenza Symptoms, Protection, and What to Do If You Get Sick* <<http://www.cdc.gov/flu/pdf/symptoms.pdf>> (February 8, 2007).

<sup>24</sup> 9 to 5: National Association of Working Women, *10 Things that Could Happen to You if You Didn't Have Paid Sick Days* <<http://www.9to5.org/downloads/booklet.pdf>> (February 9, 2007).

<sup>25</sup> Joan C. Williams, *One Sick Child Away From Being Fired: When "Opting Out" is Not an Option* (San Francisco: UC Hastings College of Law, WorkLife Law, 2006).

<sup>26</sup> Daniel E. Hecker, "Occupational Employment Projections to 2014," *Monthly Labor Review* (November 2005): 70–101.

The CHAIRMAN. Thank you very much.

Rajiv.

**STATEMENT OF RAJIV BHATIA, M.D., MPH, DIRECTOR OF OCCUPATIONAL AND ENVIRONMENTAL HEALTH FOR THE SAN FRANCISCO DEPARTMENT OF PUBLIC HEALTH AND ASSISTANT CLINICAL PROFESSOR OF MEDICINE AT UNIVERSITY OF CALIFORNIA AT SAN FRANCISCO**

Dr. BHATIA. Good morning, Mr. Chairman, Senator Isakson, Senator Enzi. My name is Rajiv Bhatia. I served as the Director of Occupational and Environmental Health for the City and County of San Francisco since 1998. I also teach at the University of California. My research focus is on methods to study the health impacts of social, economic and environmental policies. It has always been important to me that health is valued with economic concerns equally. In fact, health is the reason that we promote economic concerns in the first place.

In November 2006, San Francisco became the first place in the United States to require employers to provide sick days. Sixty-one percent of the voters approved this ballot initiative, in part because of the impacts on public health. In my testimony, I want to focus on three important issues that have already been, in part, mentioned by the other witnesses here today.

First, I want to talk about the trade-offs that workers without paid sick days have to face. Second, the risk of infectious disease in the workplace and third, the economic and social costs of avoidable hospitalization.

For the tens of millions of workers that don't have paid sick days, you're asking them to make a choice between two pretty unacceptable adverse health impacts—not taking care of themselves or their children or risking eviction or hunger or potentially a loss of future economic employment. About 14.1 million households pay 50 percent of their income or more in rent. They are severely rent burdened. They have a few hundred dollars extra a month.

Twelve percent of U.S. households are food insecure and 4 percent are hungry. When a worker without paid sick days has to make a choice, they are making a choice between two pretty unacceptable health consequences.

The health impacts of these choices don't stop just with the individuals who don't have the sick days; they affect all of us. We've heard about the spread of infectious disease. Three of the most important infectious diseases that are really easily spread from person to person are influenza, stomach flu and meningitis. These diseases are spread just by touching or shaking hands or contact with the surface or sneezing—things that happen easily at workplaces or schools.

Up to 20 percent of the population gets the flu. Thirty-six thousand people die from it. These viral gastroenteritis and viral meningitis affect tens of thousands of children a year. The Center for Disease Control recommends when you have influenza, stay home from work when you're sick. Paid sick days lets Americans make a responsible choice.

The third and I think very important reason for us to provide paid sick days has to do with food service workers. We go to restaurants every day. We go to catered parties and food service workers are working here without paid sick days. They know—we know food service workers are not supposed to go to work sick but food service workers may not recognize the symptoms of a food borne illness. They may defer it to earn some extra money and they are putting—in that short period of time, they can be spreading the disease, not only just to a few people through a restaurant but thousands of people if they are working in a food processing plant.

As we know, only 15 percent of workers in the food service industry have paid sick days and this is among the lowest rate of occupations.

Finally, I want to talk about hospitalizations. There are few hospitalizations for chronic diseases that are entirely preventable with appropriate and timely care. There are 14.7 million diabetics in this country. There are 600,000 hospitalizations for diabetes. There are 30 million asthmatics with 500,000 hospitalizations every year.

Early treatment can prevent these hospitalizations and save, for example, up to \$13,000 for the hospitalization costs of asthma.

In order to get this timely caring, you not only need health insurance but you need time off. You need transportation. Sick day benefits, in my experience, have been one that helps patients get to their doctor appointments and prevents these hospitalizations. This can have tremendous social costs. It can particularly prevent and help our public safety hospitals who are caring for the majority of low income—a lot of low-income workers without paid sick days.

I want to conclude by just highlighting the significance of employment and social policies in general, on public health. The United States spends the most of the developed world on health: \$6,000 per year—15 percent of our GDP. This is over twice the spending of every other western democratic market economy in the world and our health performance is the poorest. Canada and England—we live a full year less than people in Canada and England—3 years less than Spain, Sweden and Switzerland. The fact that our health performance is poor underscores what public health professionals know—that we don't provide the social and economic and environmental conditions for good health for all Americans and that is why these other countries are outperforming us in health. I am very encouraged that you're considering the public health consequences of this law. I sincerely hope that we can have paid sick days for all Americans, not only because it's humane, because it's in the interest of public health. Thank you.

[The prepared statement of Dr. Bhatia follows:]

PREPARED STATEMENT OF RAJIV BHATIA, M.D., MPH

My name is Rajiv Bhatia. I have a Medical Doctorate from Stanford University and a Masters in Public Health from the University of California at Berkeley. I have practiced medicine since 1989 and environmental public health for the past 11 years. Since 1998, I have served as the Director of Occupational and Environmental Health for the city and county of San Francisco's Department of Public Health. I also hold the position of Assistant Clinical Professor of Medicine at the University of California at San Francisco.

I want to thank the committee for recognizing that having paid sick days can have important public health consequences. In November 2006, San Francisco became the first place in the United States to require employers to provide paid sick days. Sixty-one percent of the voters approved this ballot initiative and the law took effect February 5, 2007.

In part, San Franciscans passed this law understanding its importance to health. I believe that there are a number of important public health reasons to provide paid sick days. These include:

1. Enabling workers to take the time off needed to manage and/or recover from an illness and care for ill family members.
2. Protecting co-workers and the public from infectious disease.
3. Reducing the social and economic costs of avoidable hospitalizations.

When most people are ill, they need and want to take the time off to access health care or simply to recuperate. Sick children need to stay home from school and need their parents or caregivers to take care of them. While not all people who are sick would choose to stay away from work or school, paid sick days allow workers to make this important choice without sacrificing other equally important needs.

For the 66 million workers without paid sick days benefits, an illness in the family means having to make an extremely difficult choice. Should they take unpaid time off from work to care for themselves or their children; or, should they go to work sick or send their children to school sick? For low-income workers, not going to work for even a few days may mean not having enough money to pay the rent or buy food. Some workers may also be insecure in their jobs, not knowing whether an absence from work may translate into the loss of a job. These workers must consider unemployment, hunger, and eviction when making a choice about staying



home to take care of themselves or a family member. Such competing pressures mean that workers without paid sick days are more likely to go to work sick or let their children go to school sick. In fact, research tells us that parents who had paid sick days were 5.2 times as likely to care for their children when they were sick.<sup>1</sup>

The health impacts of these difficult choices are not limited to workers and their families. Going to work or school with an infectious disease can mean transmitting it to others. Several common infectious diseases are transmitted in workplaces, schools, and other public institutions through casual contact. For example, influenza virus is spread mainly from person to person through coughing or sneezing. Or people may become infected by touching something with flu viruses on it and then touching their mouth or nose. Every year in the United States, 5 percent to 20 percent of the population gets the flu; more than 200,000 people are hospitalized from flu complications; and, about 36,000 people die from flu.

Viral gastroenteritis, often called the “stomach flu,” is contagious and spread through close contact with infected persons.<sup>2</sup> Rotavirus, the most common cause of severe diarrhea among children, results in the hospitalization of approximately 55,000 U.S. children each year.<sup>3</sup>

About 90 percent of cases of viral (“aseptic”) meningitis, which causes inflammation of the tissues that cover the brain and spinal cord, are caused by viruses known as enteroviruses which are also spread through casual contact. In the United States, there are between 25,000 and 50,000 hospitalizations due to viral meningitis each year.

For all these common diseases—influenza, stomach flu, viral meningitis—infection can be prevented by allowing a sick worker to stay away from their workplace and by keeping sick children home from school. In fact, the U.S. Centers for Disease Control Web site provides the very common sense recommendation to people with influenza: “*stay home from work and school when you are sick.*” All things being equal, having paid sick days enables all Americans to follow our Federal public health recommendations.

The public health importance of keeping sick employees out of the workplace is far more significant for some occupations. For occupations such as health care workers, child care providers, and people who handle food, there is the potential for a sick worker to transmit an infectious disease to many, many people. In the case of food handlers or food service workers, there is the potential for transmission to hundreds or thousands of others. The spread of foodborne illness by an infected worker can happen at a catered party or at a neighborhood restaurant, but it can also happen in food processing plants and result in outbreaks of illness nationally. Overall, foodborne diseases cause approximately 76,000,000 illnesses, 325,000 hospitalizations, and 5,000 deaths in the United States each year.<sup>4</sup>

Of course, people with foodborne illnesses who work in the food industry should not be going to work. In reality, we rely on workers to recognize the illness and their employers to self-enforce requirements that protect the public. A worker may recognize a symptom but may not associate it with a foodborne illness.<sup>5</sup> It takes time and often a visit to the doctor to find out that you have a foodborne illness. A food worker may not want to take unpaid time to obtain a diagnosis or may defer care until the symptom worsens, in the meantime, potentially infecting co-workers and patrons. A recent published review of foodborne Hepatitis A outbreaks in the United States demonstrated that in many cases the infected food handler either did not seek medical care or delayed getting medical care.<sup>6</sup> Unfortunately, only 15 percent of workers in the food service industry have paid sick days—the lowest rate

<sup>1</sup>Heymann SJ, Toomey S, Furstenberg F. Working parents: what factors are involved in their ability to take time off from work when their children are sick? *Arch Pediatr Adolesc Med.* 1999;153(8):870–4.

<sup>2</sup>Viral gastroenteritis is caused by a variety of viruses including rotaviruses, noroviruses, adenoviruses, sapoviruses, and astroviruses.

<sup>3</sup>Centers for Disease Control 2006.

<sup>4</sup>Mead PS, Slutsker L, Dietz V, McCaig LF, Bresee JS, Shapiro C, Griffin PM, Tauxe RV. Food-Related Illness and Death in the United States. *Emerging Infectious Diseases.* Centers for Disease Control and Prevention, Atlanta, Georgia, USA Pathogens responsible for foodborne illnesses include the Norwalk viruses, the Hepatitis A virus, Salmonella typhi, Shigella species, Staphylococcus aureus, and Streptococcus pyogenes.

<sup>5</sup>Signs or symptoms in persons who handle food may include diarrhea, vomiting, open skin sores, boils, fever, dark urine, or jaundice.

<sup>6</sup>Fiore A. Hepatitis A transmitted by Food. *Clinical Infectious Diseases* 2004;38:705–15.

among major groups of industries.<sup>7</sup> Paid sick days would help a food service worker get a timely diagnosis and help them stay away from work until they recover.

Providing paid sick days is also a strategy that can be employed to reduce the burden of chronic diseases, which are responsible for a growing share of national health care costs. Many of the admissions to our hospitals for chronic diseases such as asthma, hypertension, and diabetes are entirely preventable with timely and effective outpatient and primary care.<sup>8</sup> Many of these hospitalizations occur in working age adults and among children. In 2004, there were almost 200,000 hospitalizations for childhood asthma alone.<sup>9</sup> Early treatment of a flare-up of asthma in a doctor's office or clinic can prevent deterioration to the point where hospital care is required. In California, a single hospitalization for asthma costs over \$13,000.<sup>10</sup> Getting timely primary care requires not only access to services and a way of paying for services, but also transportation, time, and the ability to leave work. A paid sick day benefit removes one of key barriers that people face in utilizing timely primary care.

If we look at the patterns of hospitalizations in States and cities across the United States, we see that such preventable hospitalizations are more common in areas with a high proportion of low-income households. Lower-income workers are also the least likely to have paid sick days benefits. Providing paid sick days for all workers is a common-sense solution that addresses health disparities and reduces the strain on public hospitals that provide our safety net of services to low-income individuals.

I would like to conclude my testimony by highlighting the significance of employment policies such as paid sick days for the health of all Americans. According to the Organization for Economic Cooperation and Development, the United States spends more on health care services than any other country in the world. We spend \$6,102 per person, amounting to 15 percent of our GDP.<sup>11</sup> Despite spending double that of countries we consider peers, life expectancy in the United States is a full year less than in Canada and England and 3 years less than Spain, Sweden, and Switzerland. These startling facts on our performance in health underscore what public health professionals are acknowledging more and more. Health is largely a function of our day-to-day living and working conditions. One of the most important roles our government can play is to help ensure that day-to-day living and working conditions support health. One reason these other countries may be outperforming with respect to health is that they have paid attention to ensuring a minimum set of healthy working conditions.

I am proud that San Francisco has led the Nation in providing paid sick leave to workers. Paid sick leave is a humane policy; and it is also a practical and cost-effective public health policy to reduce disease transmission, avoid unnecessary hospitalization, and help bring health care costs down. For these many reasons, I hope that you will consider providing a minimum number of paid sick days to workers throughout the country.

The CHAIRMAN. Thank you.  
Mr. King.

**STATEMENT OF G. ROGER KING, PARTNER, JONES DAY,  
COLUMBUS, OH**

Mr. KING. Thank you, Mr. Chairman, Senator Enzi, Senator Isakson. I do want to note on a personal basis, it's very, very heartfelt that I'm back here with this committee. I had an opportunity to work with Senator Kennedy and his staff in the 1970s, as he noted, with Senator Javits and Senator Taft and it was a great experience. Senator, thank you for your warm welcome.

The CHAIRMAN. Thank you very much.

<sup>7</sup>Based on analysis of 2006 data by Vickie Lovell. Institute for Women's Policy Research. Washington, DC.

<sup>8</sup>Billings J, Anderson GM, Newman LS. Recent findings on preventable hospitalizations. *Health Affairs* 1996 Fall;15(3):239-49.

<sup>9</sup>Akinbami LJ. The State of Childhood Asthma, United States, 1980-2005. *Advance Data* Number 381 December 12, 2006.

<sup>10</sup>California Office of Statewide Health Planning and Development 2006. Available at: <http://www.oshpd.cahwnet.gov/oshpdKEY/hospitalcharges.htm>.

<sup>11</sup>Organization for Economic Cooperation and Development Health Data 2006. Available at: [http://www.oecd.org/document/16/0,2340,en\\_2825\\_495642\\_2085200\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/16/0,2340,en_2825_495642_2085200_1_1_1_1,00.html).

Mr. KING. There can be no question that paid leave is important. My practice, over 30 years, has been working with employers from all different phases of industry throughout this country. I don't know of one employer that would come here today and argue many of the points that have been made except perhaps the economics.

The employer community in this country is committed to paid leave. Seventy-five percent, as noted, of the employers in this country provide one form or another of paid leave and they do so on a voluntary basis. That's something we should not lose sight of. There is a commitment and there will continue to be a commitment. It makes good business sense to recruit workers, retain workers, reduce turnover, to increase productivity, to prevent the spread of illness in the workplace—those are all very legitimate and I commend the panel here this morning for their intellectual and emotional commitment to this concept.

It's one we all can agree on. There is no question about that. But as those of us that worked in the legislative arena know, it doesn't stop there. It's not that easy and I'd like to go through some concerns from the employer perspective, a very legitimate stakeholder in this discussion.

We've heard from the worker perspective and that's quite important, no question. But this is what I hear as I travel the country and talk to employers. First, we would respectfully submit on behalf of many in the business community that the legislative branch and executive branch need to fix FMLA and they need to do it now. You'll get a much more receptive audience among employers in this country if you address that question. FMLA is a great statute. As Chairman Kennedy mentioned, many years were devoted to hearings and study on that particular legislation. Bipartisan support for it. Well accepted by the employer community, well accepted in this country but it needs attention now. It needs to be looked at. We have rules and regulations that are conflicting and many of those rules and regulations don't work. In the intermittent leave area particularly, we have tremendous problems. So those need to be addressed.

Again, I would submit, if we can get over that hurdle, we'll have a much more receptive business audience or employer audience, if you will, for additional mandated leave.

The second point I would note is on the metrics or the cost of this legislation. I note the testimony from the George Washington Institute of \$22.3 billion. I would submit to this committee that's a serious underestimate of the cost of this proposed legislation. If you do some sample or quick math, the statement has been made here this morning that there are 57 million workers in this country that do not have one form or another of paid leave. I question that because as noted, vacation leave is folded into PTO. It is available for people who do have illness. But put that aside for a moment. If you take the metric of 57 million workers times 56 hours in a given year times approximately \$25 an hour and that's what it costs when you're fully loaded with all benefits and with all compliance costs, you're talking somewhere in terms of \$79.8 billion—or more. That's a substantial cost. And the arguments that are being made here is that smaller employers don't offer this. Well, that varies. But let's assume that premise is correct. You're putting a tremen-

dous financial burden on the employers in this country that have the least ability to pay for it. That's something we need to talk about. The cost of this legislation is and would be considerable.

The third point I would carry back to this committee from various employers of various sizes is that employers are overwhelmed with the cost of compliance with various Federal, State and local laws. Many of these laws are conflicting. Many of them overlap. They are hard to follow and the stealth cost, if you will, simply engaging in appropriate compliance, is very, very difficult. As I've noted in my prepared remarks and I would like those included in the record, if I might, we have situations under the present FMLA situation where we have FMLA, the Americans with Disabilities Act and State Workers Compensation statutes forming what I would deem and many of my colleagues have deemed the Bermuda Triangle of Compliance. It's very difficult. If we were to have the HFA, the Healthy Families Act, the Fair Labor Standards Act and the FMLA Act, State Workers Compensation statutes and many now local and State regulations on top of that in the leave area, we're in another Bermuda Triangle of Compliance. It's exceedingly difficult. That's something that needs to be thought about in some great detail.

With respect to the legislation itself and having been a member of the staff of this committee and having drafted legislation, I understand how difficult it is draft legislation in this area or any other area—exceedingly difficult. But I must tell you that in reviewing the proposal, Mr. Chairman, that was put in the last Congress, there are many, many difficulties from just a sheer mechanics perspective, let alone a policy perspective.

Let me share just a few of those. First, there is no minimum requirement for nexus with the workplace. As I read this statute, you could start on Monday and be entitled to paid leave on Tuesday. Under FMLA, you have to have at least a year of employment and 1,250 hours. Senator Enzi mentioned the basic qualification situation. Under FMLA, we have at least 50 employees before coverage begins. Here, it's 15. Further, this statute would permit, in theory, an employee to work for various employers throughout the year and qualify for paid leave for each of those employment situations. Further, paid time off as mentioned, a well now accepted concept in our Nation's benefit structure but paid sick leave has really folded into that particular paid time off approach. You have traditional vacation, you have paid sick leave, you have personal leave, you have any number of different types of leave. Our employers that have paid time off like that in compliance with the equivalency requirements of the statute—I think it's debatable. Further, many of those particular paid leave off time scenarios don't pay the person that does not show up for work add-ons, like shift pay, differential pay, night shift pay. Are those to be added on? I don't know. That would be in addition to the figure I shared with this committee.

The definition of family. I agree in part, it's quite broad but it goes way beyond that. It talks about someone that has an infinity with others living in a particular work and family environment. I don't know what that means. Does it mean if people go to college that are friends and live in the same apartment or same dorm

room, that they're covered? I would hope not. I think that goes well beyond what we're talking about here.

Further, we have questions about part-time and full-time. One of the problems with the basic figures that we're talking about here are many part-time workers do not have this type of coverage. I would concede that. But those are entry-level positions. Often people working while they're going to college, often working while they are in an educational environment and by definition, a part-time employee has time off during the week to address many of the needs that you've heard here today.

I could go on but I've listed in great detail concerns about this legislation in my prepared testimony. Finally, I want to close with—one of my biggest frustrations when I worked on the Hill and also as a member of the business community and I do consider myself in that broad definition. Witnesses come here and just testify against things. That doesn't really help. I think there are some definite areas here that we could reach an agreement on or at least ought to have that kind of dialogue.

One, we ought to look at the Fair Labor Standards Act and again examine comp time. If we had some flexibility for workers, mothers and others, to have some time off on work week one and make it up in work week two, that would be of tremendous help. So far, we've not been able to have that dialogue on the Fair Labor Standards Act reform. We should.

Second, tax credits for employers, particularly small employers that perhaps do not have the financial resources to address paid leave. We ought to look at that.

Third, public health. I agree. Public health is exceedingly important. Perhaps we ought to look at additional funding for public health clinics, particularly that offer after hours or evening hours access. I have found in my experience working with employers that workers that can get to a public health clinic after they have left work can have tremendous treatment and health in preventive disease areas.

Further, we should have more money, I would submit, in the elderly daycare and child daycare programs, tremendously important for employers in this country.

Further, one concept I'd share with this committee that is catching on, relatively new, is the old office health nurse is back. This nurse or other health practitioner comes into the workplace, works with employees, works with workers to address their health needs. Tremendous cost benefit analysis.

But in the end game, if you will, what we're really talking about here is health insurance reform, health care reform in this country. The employer community cannot bear all of that cost. This committee is well aware of that. But that's the dialogue we really need to have.

Thank you very much.

[The prepared statement of Mr. King follows:]

## PREPARED STATEMENT OF G. ROGER KING\*

Good morning Chairman Kennedy, Senator Enzi, and members of the Senate Health, Education, Labor, and Pensions Committee. My name is G. Roger King, and I am a partner in the Jones Day law firm. Jones Day is an international law firm with 2,200 lawyers practicing in 30 offices located both in the United States and throughout the world. We are fortunate to count more than 250 of the Fortune 500 employers among our clients. I have been practicing labor and employment law for over 30 years and I work with employer clients located in various parts of the country with varying workforce numbers. I have been a member of various committees of The Society for Human Resource Management (SHRM) and The American Society of Healthcare Human Resources Association (ASHHRA) and I also participate in the work of other trade and professional associations that are active in labor and employment matters. My testimony today is based on my personal and professional experience.

In the previous Congress, Chairman Kennedy with the co-sponsorship of other Members of this Body introduced two virtually identical bills the provisions of which I understand are the subject matter of today's hearing—S.932 and S.1085. Both of these bills have been captioned the "Healthy Families Act" ("HFA") and have as their fundamental objective the requirement that any private or public sector employer in the country with 15 or more employees provide at least 7 paid days (or 56 hours) of sick leave annually to their employees. It is my further understanding that the committee's objective today is to discuss the potential effects of the requirements of the HFA on workers, employers, the economy in general and on public health.

Initially, I believe six fundamental policy and structure observations are appropriate to review regarding the HFA:

- First, based on well-established data, employers in this country are not opposed to the concept of paid leave for their workers and have an excellent record in providing such leave on a voluntary basis. Indeed, numerous studies and analyses have conclusively established that 75 percent of the country's employers provide, in one form or another, paid leave including paid sick leave. (U.S. Department of Labor, Bureau of Labor Statistics, the 2006 Employee Benefits Survey). This system of voluntary compliance, which includes collectively bargained policies and procedures, has worked exceptionally well and should not be disturbed. To the extent that positions or employers do not provide paid sick leave, such positions often are entry level in nature or constitute initial or part-time employment. Frequently, human capital market forces quickly respond to such situations with workers leaving or progressing out of such entry level positions to higher paid positions and jobs that do offer paid leave.

- Second, given the above-noted employer commitment to the paid leave concept, and a high percentage of employers providing such leave—including paid leave for sick time—a fundamental question that should be asked by this committee is whether the HFA or a similar legislation is needed. I would submit the answer to such a question is in the negative. Employers in this country are already burdened by numerous Federal, State and local regulations which result in millions of dollars in compliance costs. These mandated, and largely unfunded, "cost of doing business" requirements in certain instances not only hinder and impede the creation of new jobs, but also inhibit our Nation's employers from competing globally. Simply stated, a compelling case needs to be established before any additional regulations and statutes are imposed upon our Nation's employers in this area.

- Third, enactment of the HFA would create a second "Bermuda benefits triangle" for employers with FMLA, HFA and corresponding and often conflicting State laws forming such a triangle. Employers already face the difficult Bermuda compliance triangle composed of the American With Disabilities Act (ADA), FMLA and various State workers compensation statutes.<sup>1</sup> The potential overlap of all of the above statutes will pose considerable practical/operational and legal burdens on the employment community in this country. Such additional administrative burdens, and the cost of same, including loss of productivity and ability to compete with offshore em-

\* Mr. King wishes to acknowledge the assistance of his associate Rebekah Bennett, a member of the Jones Day Labor & Employment Group in preparing this testimony.

<sup>1</sup> See, e.g., Chapman, Russell D., Garay, Joyce-Marie, *Avoiding the "Bermuda Triangle": Navigating the ADA, FMLA and Workers' Comp Void*, Compensation & Benefits Review, Vol. 34, No. 3, 58-67 (2002); Bell, Christopher G., *The ADA, FMLA, and Workers' Compensation: The Bermuda Triangle of Employment Law*, SHRM Legal Report (1997).

ployers, must be addressed before the Congress proceeds with consideration of the HFA.

- Fourth, the fundamental mechanics and metrics included in the HFA regarding “equivalency” and the requirement that employers provide annually 7 paid days of sick leave, would appear to be fundamentally flawed and raise serious policy, practical and expense concerns. To begin with, the term or phrase “sick leave” is a term or concept that is no longer used by a substantial number of employers in this country. Paid sick leave has been replaced or folded into comprehensive leave programs such as paid time off (“PTO”) and other similar leave policies and procedures. This approach combines traditional paid sick leave days, vacation days and other paid leave time (e.g., personal days, attendance incentive pay, etc.) into a consolidated or comprehensive paid leave program. Under this approach, a worker is given the option of when to take such paid leave time and may choose to do so within general constraints for any reason for which he or she chooses, including taking leave for personal or family illness situations. The “equivalency” provision of the HFA raises serious questions as to how such PTO and analogous programs would deem to be “equivalent” to the 7-day paid sick leave requirement of the HFA. Indeed, the cost of regulatory staff and time associated with such “equivalency” reviews no doubt would be considerable as would be the cost of the inevitable litigation that will arise from such determinations. Consider the following hypotheticals:

- An employer has a paid time-off program that provides employees with 20 paid days off which an employee may use as he or she wishes (encompassing paid vacation leave, sick leave and personal days). The program has no separate “category” for sick leave. Does this program meet the “equivalency” test?
- An employer has a paid time-off program that provides full-time employees (those who work 40 or more hours per week) with 20 paid days off, but does not provide a similar benefit for part-time employees (defined as those employees who work less than 40 hours per week). How will this program have to be adjusted to meet the “equivalency” test?
- An employer has a paid time-off program that includes 20 paid days off, which includes vacation days, personal days, and attendance incentive days which can be used by an employee for illness situations. The employer also provides employees with 5 paid sick days per year. Does this employer have to add 2 paid sick days annually to meet the “equivalency” test?
- An employer provides employees with 5 paid sick days per year along with other paid leave time and permits exempt employees to accrue compensation time for hours worked over 40 in a given work week. Does this employer have to add 2 paid sick days annually to meet the “equivalency” test?
- An employer provides, at no cost to employees, a short term and/or a long term disability plan that provides paid sick leave time to employees. Is the employer in compliance with the HFA’s “equivalency” requirement?

• Fifth, while employers in this country have embraced the spirit and the concept of the Family Medical Leave Act (FMLA) and are committed to its continuation, this statute and its implementing regulations need to be fixed before any other federally mandated leave requirements are enacted. Notwithstanding FMLA’s laudable policy objectives and the high degree of acceptance that it has achieved with employers it simply does not work well in a number of areas. Further, certain of the regulations implementing FMLA are in particular need of renewed scrutiny and redrafting. It has been well-documented in proceedings both in this committee and in committees of the Other Body that FMLA in its current regulatory enforcement state is confusing, subject to abuse and a source of considerable litigation. As this committee is well aware, The U.S. Department of Labor (DOL) has presently pending a request for information (RFI) regarding a number of issues with respect to the regulations that implement FMLA. I submit that this committee may be well informed by many of the comments that the DOL will receive in response to its RFI. Specifically, I would urge this committee to review the following issues that have arisen with respect to FMLA compliance:

- (1) Definition of what constitutes a “serious health condition”;
- (2) The use (and abuse) of intermittent leave;
- (3) The inadequacy of notice and certification before a leave period begins;
- (4) The time period to measure eligibility for FMLA leave;
- (5) The time in which a worker is eligible to commence FMLA leave;
- (6) Employer communication with health care providers and verification of “serious health condition” claims; and
- (7) Impact on attendance incentive programs.

Intermittent leave is one area that particularly deserves this committee's attention. Two different regulations, the regulation permitting intermittent leaves when there is no planned and scheduled medical treatment on the day of the absence and the regulation embracing chronic conditions as covered "serious health conditions," intersect to create one of the biggest problems for employers in terms of day-to-day operations. Together, these regulations allow an employee to have unscheduled absences of up to 60 single work days per year or approximately 25 percent of all workdays for conditions that may not be a serious health condition. This means that an employee could be absent for 1.2 days every single week in a calendar year or a consecutive 12-month period. Additionally, intermittent leave could be taken in as little as 10- or 15-minute increments with the potential, therefore, for an employee to take off a portion of his or her workday everyday in the calendar year or in a consecutive 12-month period. Further, if the employee manages to work 1250 hours in the previous 12 months, the employee will be eligible to continue this cycle.

Problems arising from other FMLA compliance issues as noted above have also resulted in considerable litigation. One example of such litigation is the recent case *Rucker v. Lee Holding Co., d/b/a Lee's Auto Mall*, 471 F.3d 6 (1st Cir. 2006). In this case, the Court of Appeals for the First Judicial Circuit ruled that an employee could meet the 12-month FMLA eligibility requirement by combining separate periods of employment, including the employee's current employment period together with a prior period of employment with such employer that was separated by a period of 5 years. The underlying regulation that is applicable to such issues—29 C.F.R. 825.110—lacks clarity and has provided the result noted above which from any perspective is neither practical nor workable.

- Sixth, to the extent that the HFA is premised on the concept of "presenteeism" [a relatively new term used to describe workers who remain on the job, or come to work, but who are not as productive as usual due to stress, depression, injury, or illness], I would submit that additional analysis and research needs to be undertaken regarding this workplace issue. For example, the most frequently cited illnesses on which the presenteeism studies' cost estimates are based are depression (approximately \$36 billion), and other chronic conditions such as back problems, arthritis, headaches, and stress (approximately \$47 billion). An employee's inability to work productively because of depression or arthritis is unlikely to be resolved by 7 days of paid sick leave. Further, the *Journal of Occupational and Environmental Medicine* reports that family health-related work absence accounted for only 6 percent of all health-related productivity loss.<sup>2</sup> The same article also states that because costs vary significantly by worker characteristics, intervention needs vary by specific subgroups. Additionally, if lost productivity is a true cost of presenteeism, employers will no doubt conduct their own cost-benefit analysis and will, if appropriate, adjust their leave policies to correct for lost productivity. This will ensure that employers receive the full benefit of enacting such a program (without offsetting such a benefit with compliance and recordkeeping costs associated with the HFA). Finally, to the extent presenteeism is a problem in the work place there are other solutions. For example, many employers already provide employees with alternatives to working 5-day weeks and 9-to-5 schedules. Specifically, many employers permit employees to telecommute, provide flexible work arrangements, and compensation time. These alternatives are more likely to effectively address the chronic conditions (headaches, arthritis, etc.) that impact presenteeism issues.

In addition to the above outlined concerns and issues, HFA as drafted in the last Congress presents numerous ambiguities and questionable policy and legal conclusions. Certain of these policy and legislative drafting issues include the following:

#### SECTION 2: FINDINGS

##### *Discrimination*

- Subsections 13 through 15 discuss the gender stereotypes associated with family caretaking responsibilities. It is debatable that the HFA would assist in any meaningful manner the present regulatory scheme and related statutes that prohibit gender stereotyping. For example, employers are already subject to civil rights laws, such as Title VII of the Civil Rights Act of 1964, that effectively address these issues. For example, an employer that penalizes men who take leave for caretaking purposes, or denies men such leave while granting women a similar accommodation

<sup>2</sup>Stewart, Walter F., Ricci, Judith A., Chee, Elsbeth, Morganstein, David, *Lost Productive Work Time Costs from Health Conditions in the United States: Results from the American Productivity Audit*, *J. Occup. Environ. Med.*, vol. 45, no. 12, pp. 1234–1246 (2003).



are in violation of Title VII, which specifically prohibits evaluating employees by assuming or insisting that they match a certain gender stereotype.<sup>3</sup>

#### SECTION 4: DEFINITIONS

##### *“Applicant”*

- Why is an applicant contained in the definition of “employee” in section 4? Are applicants for employment to be covered by this legislation? If so, on what basis? How would an applicant for employment qualify for HFA leave and how much paid leave time would an applicant be entitled to receive?

##### *“Covered Employee”*

- How long does an employee have to be employed to be covered by this legislation? If applicants are covered, presumably there is no minimal employment period. Seemingly, an employee or applicant could start work on Monday and be eligible for some number of paid leave days on Tuesday.<sup>4</sup> In contrast, under FMLA an employee is required to be employed by an employer for 12 months and have at least 1,250 hours of service with such employer before the employee is eligible for the act’s benefits and coverage. 29 U.S.C. §2611(2)(A). The FMLA approach would appear to be a more appropriate eligibility requirement.

##### *“Employer”*

- The definition of “employer” under the HFA includes entities that employ 15 or more employees for each working day during each of 20 or more calendar work weeks in the preceding calendar year. By contrast, before FMLA is applicable, an employer must employ at least 50 employees within 75 miles of a worksite. 29 U.S.C. §2611(2)(B)(ii). Why should the HFA be applicable to business entities that are quite small and may have difficulty in being compliant? The FMLA definition of “employer” would appear to be more appropriate.

#### SECTION 5: PROVISION OF PAID SICK LEAVE

- This section mandates that 7 days of sick leave with pay shall be annually provided for employees working 30 or more hours per week and that a pro rata number of days of paid sick leave be available with pay on an annual basis for employees working less than 30 hours per week or 1,500 hours throughout the year involved. The financial impact of such an unfunded mandate on employers should be carefully and thoroughly researched. Although, as noted above, many employers in this country provide paid leave in excess of such 7-day requirement, employers with workforces in the 15–50 category may experience financial difficulty in complying with such requirement. Further, even those employers that have the resources to be compliant may experience considerable additional costs of compliance if the HFA is enacted, especially depending on how the HFA “equivalency” test is applied.

##### *Full-Time Employee Definition*

- Why is the definition of full-time employees under the HFA at 30 hours per week when the traditional work week in this country is 40 hours? Indeed, this is the definition generally utilized under the Fair Labor Standards Act. Further, the HFA’s requirement of providing paid sick leave for employees working less than 30 hours per week, even on a pro rata basis, is inconsistent with many employer leave plans and would appear to be unreasonable in many employment settings. For example, is there a minimum number of hours that an employee must work to qualify for HFA coverage? Presumably, an employee could work only 1 hour a week and still qualify for fractional paid leave benefit. Would an employee working for multiple employers be entitled to more than 7 paid sick leave days annually? How would employees working multiple part-time jobs be treated under the HFA?

##### *Definition of Pay*

- The HFA does not define the word “pay” in either section 4 or section 5. Does this term include all types of compensation associated with a given work day even though the employee would not be present and working? For example, would it in-

<sup>3</sup>See *Price Waterhouse v. Hopkins*, 490 U.S. 228, 251 (1989) (“As for the legal relevance of sex stereotyping, we are beyond the day when an employer could evaluate employees by assuming or insisting that they matched the stereotype associated with their group, for ‘[i]n forbidding employers to discriminate against individuals because of their sex, Congress intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes.’”) (internal citations omitted).

<sup>4</sup>It is not clear under section 5(b)(1) how much “accrual” an employee is required to receive in a given calendar quarter.

clude such compensation as incentive pay, differential pay, specialty pay, weekend bonus pay, night shift differential, bonus pay, and other similar compensation arrangements that generally only result in an employee receiving such additional compensation if and when such an employee appears for and completes a work day? Does the term “pay” include all benefits that would otherwise be applicable from working such day? For example, would the employee receive accrual credit for pension and other like benefits when a mandated paid sick leave day situation arises and the employee does not work on such day? Stated alternatively, many employer paid sick leave and PTO plans only pay an employee on leave their straight time hourly rate without payment of differentials or other compensation tied directly to the employee working his or her shift. Arguably, under the HFA this approach may not meet the equivalency requirement and such employers, therefore, would be required to increase the amount of compensation an employee would receive while on paid sick leave. There is obviously considerable ambiguity in this area and there is mandated in this section of HFA alone the potential to place millions of dollars of additional paid leave expenses on our Nation’s employers.

#### *Intermittent Use*

- The calculation of how the paid sick leave system would work is particularly troubling. Section 5(c), the calculation section, would permit paid leave to be on an hourly basis or in the smallest “increment that the employer’s payroll system uses to account for absences or use of leave.” This literally could be in minute increments as many employers track absences in such minute incremental amounts. Indeed, as discussed above, this concept is already a tremendous problem area under FMLA.

#### *Use Standards*

- Section 5(d) is extremely broad in defining when a worker could qualify for sick leave and would no doubt result in considerable disagreement and potential litigation. For example, an absence resulting from obtaining medical diagnoses or care, or preventive medical care is very broad and is in need of considerable additional specificity. Again, this is a problem area under FMLA which has an analogous open-ended definition of “serious health condition.” 29 CFR § 825.114.

#### *Definition of Family*

- Equally troubling under section 5(d) is the potential for use of the mandated paid sick leave for an individual that has an “affinity whose close association with the employee is the equivalent of a family relationship.” What does this mean? This phrase is obviously susceptible to a very broad inclusion of a variety of individuals. Does it include frequent visitors to a household? Does it include domestic partners? Does it include “friends” living together, for example, while away at college?

#### *Scheduling*

- Section 5(e) would only require an employee to make a “reasonable effort to schedule leave.” This open-ended and minimal requirement of notice to an employer for unscheduled leave will pose significant practical and operational problems.

#### *Foreseeability*

- Section 5(f) regarding notification procedures is similarly deficient as it only requires oral and written notice 7 days in advance of any leave that is foreseeable. This period is too short and will pose considerable problems for many employers. By contrast, FMLA requires in most instances 30 days advance notice for qualified foreseeable leave. 29 U.S.C. § 2612(e)(1).

#### *No Dispute Resolution Mechanism*

- The HFA contains no mechanism for an employer to question or challenge a certification that an employee may receive to qualify for the required paid leave. By contrast, under FMLA, employers may require the employee to obtain a second medical certification from a health care provider selected by the employer. 29 U.S.C. § 2613.

#### *Certification*

- Section 5(f) requires certification only if the employee takes leave for more than 3 consecutive work days. This very “loose” standard will no doubt impede the employer’s ability to curb abuse. Further, under section 5(f)(2) an employee is given up to 30 days before a certification would need to be provided to an employer. This period is too long. Finally, section 5(f)(2)(B)(ii) states that:

“A health care provider shall make reasonable efforts to limit the medical facts described in clause (i)(III) that are disclosed in the certification to the minimum necessary to establish a need for the employee to utilize paid sick leave.”

What does this mean? It would appear to severely limit an employer's ability to use the certification requirements (such as they are) to prevent abuses of paid sick leave.

#### *Equivalency*

- The section 5(g) "equivalency requirement" in addition to the problems noted above, also contains a mandate that "an employer may not eliminate or reduce leave in existence on the date of enactment" of the HFA. This edict would appear to contradict other sections of the HFA that will require employers to substantially modify their leave policies to become compliant with the HFA.

- Further, section 5(g)(2) is troubling as it states:

"An employer may not eliminate or reduce leave in existence on the date of enactment of this Act, regardless of the type of such leave, in order to comply with the provisions of this Act."

As noted above, does this subsection prohibit even minor adjustments to an employer's current leave programs? For example, would an employer that has a paid time-off program that does not specifically identify sick leave be prevented from changing in any manner how this paid time-off system works, including the eligibility and accrual levels associated with such plan?

#### *Enforcement Authority*

- Section 8 of the HFA provides the Department of Labor with broad investigative and enforcement authority. What will be the cost of such enforcement and oversight? Does the Department have the resources to carry out these new obligations?

- This section also provides for private lawsuits for lost wages and benefits, reinstatement and other equitable relief, and attorney fees for a prevailing employee. Given the numerous ambiguities in the HFA, this section would appear to be an open invitation for considerable litigation, including class action lawsuits that already are causing our Nation's employers to pay millions of dollars in unnecessary legal fees and costs.

#### *Effect on Other Laws (No Preemption)*

- Section 10 of the HFA is an "anti-preemption" provision and would permit State and local laws to co-exist with, or supersede, the provisions of the HFA. If the Congress does proceed to enact further mandated leave legislation, either paid or unpaid, considerable attention must be directed to the question of whether there should be uniform national standards. The varying and often conflicting State statutes and regulations regarding leave pose significant administrative costs for employers and can result in confusion and potential error. Neither employers nor workers are well-served with such a difficult regulatory scheme. The approach taken with respect to ERISA preemption should be given serious consideration.

#### *Effect on Existing Employment Benefits*

- Section 11(a) of HFA states that its provisions shall not be read to diminish the "obligation of an employer to comply with any contract, collective bargaining agreement, or any employment benefit program or plan that provides greater paid sick leave rights to employees in the rights established under this right." Subsection B states "the rights established for employees under this Act shall not be diminished by any contract, collective bargaining agreement or any employment benefit program or plan." The above subsections read together with section 5(g)(2)—the Equivalency Section—would appear to unduly "lock in" current employer leave program provisions and make any change of same unlawful, including in collective bargaining settings. This approach is too rigid and will restrict both employers and unions in collective bargaining from having any flexibility in making even minor adjustments in benefit plan provisions.

#### *Encouraging More Generous Leave Policies*

- Section 12 of the HFA makes the following interesting policy statement:

Nothing in this Act shall be construed to discourage employers from adopting or retaining leave policies more generous than policies that comply with the requirements of this Act.

- Unfortunately, if the HFA is enacted based on the experience of many employers under FMLA, and the problems outlined above that can be anticipated with the enactment of the HFA, employers of all sizes may be discouraged from implementing any additional improvements in their paid leave programs—assuming after paying for their additional paid leave costs, administrative expenses, and litigation costs associated with the HFA that they would even have any resources left to make such improvements. Indeed, in many instances it may be that the added administra-

tive and litigation costs and other compliance expenses associated with the HFA will drain any resources that otherwise would have been available for paid leave benefit improvements.<sup>5</sup>

Mr. Chairman, Senator Enzi, and other members of the committee, thank you for permitting me to share my views with you this morning. I would be happy to answer any questions that you might have.

The CHAIRMAN. Very good. Thank you for your suggestions and ideas. I'm always—this is always a subject matter that I find enormously compelling because I—shortly after I entered the Senate, I found out that my son had osteosarcoma in this leg and he had to have it amputated and he had to get a treatment up in Boston and he had to go two and a half days every 3 weeks for 2 years. I never showed up for work here in the United States Senate. Never showed up. Talked to Mike Mansfield and said, I'm outta here on these Fridays. You have an important vote and need my vote, this is it but I'm gone.

I think if I hadn't gone, the people of Massachusetts would generally have thrown me out and they probably should have. But I never had to worry about missing a paycheck all during that time. And yet, I always remember these parents being in those rooms where other children who were getting treatment and what they were facing every time, every few weeks, they were going to miss a day or two being with their children.

We ought to be able to work this out. I mean, this is about—I don't buy into this. Maybe there are abuses in certain areas—abuses in a lot of areas around here about the exploitation on this. It's difficult for me to buy those arguments easily.

I'm interested in these health—we're doing a good deal of talk on our committee about how we're going to try and save resources and how we're going to find common ground and the preventative aspect stands out as one of the ones that everyone sort of agrees on and you talk about a preventive aspect of this kind of thing. We can all get into all of our various parts of things which we think can be done in terms of preventive care, boy, this is certainly one of them, if you're talking about education. You're talking about schools, you talked about teachers and what's happening in schools all over this country, particularly my part of the country and colder areas. New England, what happens to a number of children that are missing each day from these kinds of health challenges that Dr. Bhatia has mentioned.

Let me just—I'd like to ask, on the public health, the Center for Disease Control. I'd like to try and keep it this on what they say, what the real type public health, what the Center for Disease Control say about children. I mean, we know that children recover a

<sup>5</sup>Ironically, the testimony in a number of congressional hearings has documented how, as a result of the FMLA, some employers are moving toward eliminating their more generous pre-FMLA programs and other companies are being urged by consultants not to adopt programs more generous than the FMLA. See Senate Testimony of Deanna R. Gelak, SPHR on behalf of the FMLA Technical Corrections Coalition and the Society for Human Resource Management, July 14, 1999, p. 22. For example, Thomas E. Burns, corporate director of compensation and benefits, NYNEX Corporation, New York, N.Y., testified before the U.S. House Subcommittee on Oversight and Investigations, at the June 10, 1997 hearing, (page 14) that "NYNEX Corporation's sickness disability benefit plan provides up to 52 weeks of paid salary continuation for each illness. Since the FMLA was enacted, NYNEX has experienced a 42 percent increase in the percentage of incidental absences from 1992 to 1995, despite a reduction in the workforce of 7,000 employees. Incidental absences are those of 7 days or less for an employee's own illness."

lot faster. I remember 40 percent, I don't what it is but it's a lot faster when they are with a parent. We all know that. We know there are going to be a certain number of children that are going to get sick over the course of this year. We know that—pretty predictable in terms of the flu and the rest of these. What is the Center for Disease Control and our State agencies say about the public health implications of this, Doctor? I'll ask Dr. Bhatia first.

Dr. BHATIA. The public health implications—

The CHAIRMAN. Well, take first of all, the CDC. You quoted some studies in the CDC and then if you can, tell us about the various public health. Another area I'm very interested in is the pediatricians' talk about this. Jody, you might talk about that a little afterwards about what the doctors—so we try and keep this, to the extent that we can—on what those that are the trained medical professionals feel about this issue as a public health issue, as a preventative issue. What's in the best interests of children? They have a pretty good—we've got to worry about our employers certainly but we also have children and family members that are important to give consideration to as well.

Dr. BHATIA. So I don't think it's just the CDC. I think there is a pretty wide consensus that when there is a contagious disease, you try to avoid contact. In an adult situation, perhaps you can say, okay, adults shouldn't be shaking hands—but with kids, you can't control that situation. So it's not—the CDC is pretty clear with certain infectious diseases, don't go to school. Don't go to work. That is their official recommendation. It's on their Web site, it's on their fact sheets. These recommendations are also made by physicians. They are so commonly made—I don't think that they are published anywhere as recommendations. They are codified in our school districts. Our school districts tell parents, if you have a child with a fever, don't bring that child to school. Stay home 24 hours after the last time the child has fever and I think that most parents would like to follow these recommendations but as I was saying, I think that there is a number of competing pressures—work pressures, economic pressures that are also health issues that are making many people have to make tradeoffs between one adverse public health consequence, not following those public health—their doctor's recommendations and risking hunger or risking eviction. These are diseases that affect tens of millions of people every year, several times a year and these are fairly clear recommendations.

I want to mention one other thing about the tradeoffs. The tradeoffs cause stress and I think research has shown increasingly that stress is, in itself, is a factor that operates biochemically to affect diseases, ranging from obesity to infectious disease. So not only are these kids not getting—having the time to get better from their infectious diseases, not only are they spreading them, they are being put—their families and them are being put at greater risk of infectious diseases and other illnesses because of the stress that is ensuing.

The CHAIRMAN. And finally, if Jody could talk about the pediatricians, not only on the stress but it's the stress on the employer, too. They are worried about their child at home that's sick, in terms of productivity and where they're going.

Dr. HEYMANN. Thank you, Mr. Chairman. Let me give a series of numbers here, both about adults and children. I think one very striking one about adults is influenza. So these are Center for Disease Control numbers. Influenza leads to 200,000 hospitalizations a year, over 36,000 deaths in an average year and we know very clearly what the recommendations are. You get sick, you should stay home.

We also know that it's infectious after people have symptoms, that they are coughing and sneezing on people, they're spreading it at the workplace and what happens commonly, if people don't have paid sick days, is they go to work sick. This is an enormous dollar cost, by the way. They spread it to others at work. Those folks are home some of the time. When they're not home, they're at work. Presentism—not at full capacity but the health costs are enormous.

When it comes to children, there are several things we should be aware of. When children are sent to childcare sick, which they are and they are so commonly that if you ask daycare teachers, they'll tell you about the Tylenol sign. That's when the children have a little pink collar because the parents have given the child Tylenol to mask the fever before sending them to the childcare center and the little child dribbles out the pink Tylenol onto their shirt but then they go there and what happens is, at noon, the fever goes up. The Tylenol has worn off. The child has diarrhea, vomiting, spreads it to the other kids and we know this leads to three and four times the rate of infections among children in these centers.

When parents are present, in contrast, even in serious illnesses like hospitalizations, the hospital stays are decreased by 31 percent. That's an enormous amount of cost savings.

I guess the last thing I want to mention on these health numbers, which is included in my prepared remarks and I hope that will also be included in the written testimony, is thinking about these other countries that are doing it. Why? Because I think it does go to this core issue of can we afford to do it? For sure, if 19 out of 20, all but us in the most competitive economies are providing paid sick days. Our companies are as good. We can make this work, too. It is noteworthy that those top economies are also higher ranked in terms of their health outcomes.

Thank you.

The CHAIRMAN. Debra, I'll come back. My time is 2 minutes over here. I'll come to you in just a minute. Don't forget what you were going to say.

Senator Enzi.

Senator ENZI. Thank you. You know, we talk about the stress of the employee who has these problems. I don't want you to think that the employer isn't under any stress. Everything that we've talked about here are things that most of the businessmen that I know would love to be able to give to their employees. They think it is essential. They just haven't figured out how to pay for it. The hearing is extremely helpful. There will be some people out there that will be introduced to this concept that haven't been before and they'll make some adjustments. And it will make a difference.

Now as far as the legislation itself, there are a lot of unintended consequences that I think would happen if we were to go ahead

and pass this because I don't think we have any concept of what those businessmen, the ones between 50 and 500 employees are going through with their decisions and this affects all of them but a lot of them above that, 75 percent of them above that provide this benefit already. I was kind of surprised that 25 percent of big businesses don't. But I'm more worried about the small businesses and how they get along and I know that some people in small business, to try and figure out the dilemma of how to handle this, have said, I'm going to go ahead and pay my people sick leave and I'm going to pay it on every paycheck. I'm going to show it on that paycheck as paid sick leave. They don't have to have any excuses for taking sick leave off. Hopefully they take that money, they save it for when they do have something but it's a way that they can have the money for it but it's also a way that when they think maybe they're sick—they know they got paid for it so maybe they'll determine whether they really need to come to work or not.

Now, of course, we all hope that nobody comes to work really sick but I can tell you that the employers do because they don't have anybody to fill in for them.

I'm an accountant and I had a little trouble with some of the numbers in this bill. We usually talk about 40 hours but this drops down to 30 hours for qualification and then 20 hours for pro-ration and I was trying to figure out—20 hours is two-thirds of 30 hours but when you multiply that by 7 days the employer has to come up with some minutes that he has to work out there, I also noticed that you could take this in 1-hour increments or smaller increments if people keep track of their time on that basis and I think a lot of people keep track of it in 6-minute increments. So I guess we're giving people permission to have 6 minutes worth of being sick. That's the way it will work out and somebody will have to do all the record keeping on it.

Mr. King, you mentioned some of the lack of clarity in the bill's equivalency provisions coupled with the requirement that existing leave policies be frozen. Do you have any opinion as to what employers would be advised to do with their existing leave problems and entitlements were this bill likely to be enacted?

Mr. KING. Senator Enzi, I can refer the committee to the experience in employer area after FMLA was enacted. Many employers, including very large Fortune 500 employers, said the cost of compliance is such that we will not increase or add on to our current benefit package. And that has been the experience with many. The costs on the margin here to comply can be considerable so I think that what you will see if legislation such as this were enacted, would be less resources (a) available for paid leave and (b) a great reluctance on many employers' part to put more money in this area, which is counterproductive.

I might note in reference to the public health discussion also, certainly employers agree with virtually everything that has been said here regarding the CDC. We don't want sick workers coming to our place of business. That's not good for productivity. It's not good for clients or customers. Many employers have flex time situations where they permit a different hour for the person to come in or a different day. Many of our employers in this e-age we live in, this electronic age we live in, permit employees, workers to work from

their home. They telecommute. There are many things that can and should be done in this area.

This legislation, Senator, has a lot of areas that just from a pure mechanical legislative drafting perspective, as I mentioned, needs attention.

Senator ENZI. Thank you. Actually I think you were very kind on that. I think there are a lot of attorneys across this country that would say to the small businessmen, cancel your paid time off. You're going to have to make it up for sick leave and we don't know where the sick leave is going to go after this. Those who are providing more than 7 days sick leave will be encouraged to cut back to 7 days of sick leave and the advice they will be given is, blame Congress. They said that was adequate sick leave, so cut it back.

Mr. KING. Senator, if I may, I hear that all the time and what you also may see is vacation banks or other paid leave time being decreased to meet the mandate of the statute. So I think you are correct in your analysis.

Senator ENZI. I think maybe some attorneys would worry about their liability if they didn't give some advice like that but I guess they don't worry about liability or they'd be doctors.

I have questions for all of you and most of them have some more levels of detail in them that I'd like to have so I'll provide those in writing because I am interested in whether it is your intention that we cover cosmetic things, like Botox and teeth whitening and there were some comments about nursing home costs in there and I'm wondering if you think we ought to shift the cost of nursing homes over to employers, also the cost of friends? I don't know why we picked 7 days. It could be 14 days. In the presentism study that was cited, flex time among Federal workers increases morale. On the presentism study—I've got a lot of questions on how those numbers were derived. I've got some questions on these other countries that have the lower rates, what their employee compensation is to begin with and what their rate of unemployment is. I've got some questions about flex time, of course, because we allow Federal employees to do that because it increases morale and we know that it does but we deny private employers from doing that same thing. I have whole lists of questions here that I'd like to have answered and so I hope that you'll respond in writing to these as you get them. Thank you.

The CHAIRMAN. Senator Sanders.

Senator SANDERS. Thank you very much, Mr. Chairman and thank you for holding this important hearing. My apologies for not being here earlier. I was over at a Veterans Committee meeting and what was interesting and one of the aspects of the discussion at the Veterans Committee meeting was the pride that everybody, including the Bush Administration, took in the quality of care that our veterans are receiving at the VA and I found it rather amusing, Mr. Chairman, after all the attacks on big government, how government can't do anything, we have everybody saying that the Veterans Administration is providing cost effective, high quality care to our veterans. Maybe that's a lesson that we might want to think about when we keep attacking the government and how it can't do anything. The importance of this hearing, I think, and I'm going to



ask Dr. Heymann a question in a moment and I think we have to do this a lot, Mr. Chairman.

You know, I hear people saying, America, we're No. 1. We're No. 1. Well, if you look around the world in terms of how we treat our children and how we treat our working families, we're not No. 1. We're way, way, way on the bottom and I think we need more discussion to ask why countries in Scandinavia, in Europe can virtually eliminate childhood poverty while we have the highest rate of children poverty in the world.

I think, Mr. Chairman, we should be asking why, in this country, millions of workers go to work today and you know what? They have zero—zero vacation time or 1-week vacation time when all over the world, people are guaranteed 3, 4, 5 weeks of paid vacation. So when people talk about us being No. 1, yeah, we have the most unfair distribution of wealth and income of any major country on earth. We're No. 1 there.

[Applause.]

Senator SANDERS. We have the highest rate of childhood poverty of any country on earth, we're No. 1 there. But maybe—maybe the Chairman is going to quiet you down, so let's—I'll save him the—  
The CHAIRMAN. Gently, gently.

[Laughter.]

Senator SANDERS. But the real issue is how we can be No. 1 in protecting the needs of working families and our kids and I would hope—I would hope that that is where we strive to be No. 1.

Senator Enzi has very appropriately pointed out the problems facing small businesses. He's absolutely right, certainly in the case of the State of Vermont. We know that. But we also know that in the tax bill that the President has just presented to the Congress, guess what? The Walton family that owns Wal-Mart is going to get \$32 billion in tax relief. While we have the highest rate of childhood poverty in the industrialized world. Maybe we should start changing those priorities.

What I wanted to ask Dr. Heymann is—and I think you've already gone over this—is the United States No. 1 in paid sick leave?

Dr. HEYMANN. Unfortunately, the United States is very far down the list on paid sick leave and you mentioned other family priorities. In fact, it's very far down the list overall. We've heard a lot about the FMLA today but it's unpaid leave. I'll mention that that leaves us near the bottom. We have data on 173 countries—168 of these provide for paid leave for women at childbirth. Who doesn't? The Sudan, Liberia, Swaziland, Papua New Guinea and the United States of America. That's it.

Now when it comes to the paid sick days, 145 provide paid sick days and as I mentioned, 100 of these—it's from day one, for over 100 of these, it's at least a month. Seven days is quite few by those measures.

In terms of Senator Enzi's question about unemployment, which is an important one, the answer is that many of these countries have lower rates of unemployment and when you look at the relationship between the duration of their paid sick days and unemployment, which we have, for all countries, there is absolutely no relationship there. The only relationship is the competitiveness. When we do this against the Competitive Index from the World

Economic Forum, the top quarter of competitive countries offer the most paid sick days. The bottom quarter offers the least paid sick days. We don't think that's a coincidence. It's because having a healthier workforce is a competitive advantage, as is having better educated children.

Thank you.

Senator SANDERS. You raised the Family and Medical Leave Act and I remember how hard we had to struggle to pass that and yet, if you don't have money, it doesn't do you any good because you've got to go work to pay the bills. How many countries in the world—well, you just told us. In that regard and I would hope that everybody recognizes that when your child becomes ill, your parents become ill, you want to be able to spend time with them. That's kind of pretty basic. And yet, we provide zero guarantee, zero pay for low-income workers, many of whom can't even take advantage of that Leave Act, is that correct?

Where do we rank internationally in terms of providing health care to all of our people?

Dr. Heymann.

Dr. HEYMANN. Why, I think we know unfortunately again, compared to most industrialized countries, we're very far down that list.

Senator SANDERS. What about maternity leave?

Dr. HEYMANN. Maternity leave, we're basically at the bottom.

Senator SANDERS. What about vacation time for American workers?

Dr. HEYMANN. Vacation time—137 countries around the world guarantee paid annual leave. We don't guarantee any.

Senator SANDERS. Mr. Chairman, we've got a lot of work to do. The United States should not be at the bottom of the international community in terms of benefiting its workers.

[Applause.]

The CHAIRMAN. [Pounding gavel to restore order.] Thank you, thank you. Please.

Senator Isakson.

Senator ISAKSON. Thank you, Mr. Chairman. Dr. Heymann, I want to make sure I heard what you said a minute ago. You said the—you talked about the top quarter of the most competitive and the bottom quarter and the correlation was, the bottom quarter didn't have paid sick leave and the top quarter did. Is that correct?

Dr. HEYMANN. So what I said is, we looked at duration of sick leave and quality of sick days and the most competitive countries are the ones providing it and you can look at it both across the countries. The other way we looked at it, is we took this World Economic Forum list—the list put together by top business leaders and we said, what about the top 20 countries? And I'll just give you some of the top 10: Switzerland, Finland, Sweden, Denmark, Singapore, United States, Japan, Germany, Netherlands, UK. That's the top 10 in rank order. Everybody but the United States guarantees paid sick days in that list and the United States is falling in competitiveness. We're now ranked No. 6. We used to be ranked No. 1 and I think that's about a chronic under investment.

Senator ISAKSON. Doctor, thank you. The reason, before I lose my train of thought here.

Dr. HEYMANN. I'm sorry.

Senator ISAKSON. The reason I asked that question is—and you sort of noted it at the end of your answer. The people that are at the bottom don't have required annual sick leave, except, in the top 10 is the United States that doesn't have any required sick leave, which is the point I want to get to, is something that Mr. King alluded to. While the United States does not have mandatory, minimum number of paid sick leave days, it is true that a significant portion of the United States of America's employers voluntarily have benefit programs for sick leave for their employees, I think. I know Ms. Ness said that 57 percent had paid sick leave and 43 percent don't or something like that and then Mr. King said 75 percent had it. I think the difference is formal policy versus informal policy, is that not correct?

Dr. HEYMANN. That's—if I could answer—is it okay if I answer that?

Senator SANDERS. Sure.

Dr. HEYMANN. Senator, I think it is important and valid question and in fact, again, of those top ten, just to take as an example, they all, except for the United States, have higher rates of paid sick days, even when you include informal policy as well as formal policy. While there is informal policy in the United States, it covers half of the private sector and importantly, I've heard from many employers that among those employers who do provide it, they're having a hard time because they are competing against other companies down the street that aren't. Among those who would like to provide it, many of them feel that putting it in the law would give them a level playing field.

But in direct answer to your question about those other top competitive economies, they all have higher percentages of employees receiving paid sick days than we do.

Senator ISAKSON. My point is that I respect all the things that Senator Sanders said but this is a great country and America does a lot of things voluntarily that it doesn't get a lot of credit for and so does American business and the point of my whole statement is, Mr. King makes a very valid point. And that is, we need to look at—no one is opposed to what is being talked about today. That's the first thing but it's how you—the devil is in the details and every time you deal with these issues and isolated mandates based on circumstance, they accumulate. And to some pretty unbelievable mandates on business and the question about re-looking at the Family Medical Leave Act as you address this area of sick leave is tremendously important. Second, the reason—in a positive sense, not a negative sense and I think Mr. Sanders' recognition of the importance of small business is critical—I ran a small business for 22 years before I came here and many times, Federal mandates for minimums become maximums and ceilings because you don't have the flexibility as an employer to do what's right for the employee.

And as bad as many employers are categorized and castigated by statements that really are taken out of context and inappropriate. The fact of the matter is that any good business person that runs a business and owns it is very compassionate about their employees because they have no business without their employees. And I'm making a speech here rather than a statement but—I want ev-

erybody to understand—it really bothers me a lot when we take out after this country as being so bad about everything when we’re so great about everything, much of it voluntarily and on our volition and not because some government mandated that it happens so as we—and I appreciate all your testimony. I think this is a great thing for us to look at and improve because I care about the plight of every worker but let’s look at it in the context and the perspective of all the—and this is not a question for you, necessarily, Doctor. It’s a speech I’m making right now and I apologize for that but we need to look at these things in the context of all of them and not let them stack and accumulate.

Last point—

Dr. HEYMANN. Would it be all right to mention one thing from a small business perspective in response to this?

Senator ISAKSON. As long as you don’t take all the rest of my time.

Dr. HEYMANN. Okay, I’ll be very brief. Senator Kennedy mentioned Dancing Deer. They are a small business. We did a case study of them because they treat their employees well. They right now don’t have paid sick days. They’d like to have them very much because this kind of law will mean that they can compete with other bakeries while offering it. So I think there really is an important perspective. In no way does the fact that some companies don’t offer it now means they are not good companies. It means that the public policy can help them as well, as we’ve heard.

Senator ISAKSON. Well, Chairman Kennedy, if you would or have your staff, I want to ask you a point of information later on, on the accumulation provision in the bill. It appears to me—it says it allows accrual of sick leave days but no more than 7, which leads me to believe that you can accumulate 7 in 1 year and roll those forward and add them to the 7 in the next year, so it could go as high as 14, the way it’s worded. And I think we need to take a look at that because that would have an unintended consequence that I don’t think the Senator intends to do.

The CHAIRMAN. That’s right. Thank you.

Senator Brown.

Senator BROWN. Thank you very much, Mr. Chairman. Last month, Senator Kennedy led the fight here in this Senate for a higher minimum wage. Opponents to the minimize wage said that it will make business—it will put some people out of work, it might even put some businesses out of business. It will put minimum wage workers, low-income workers out of work, that it will overall hurt the economy all over the country.

Our answer to that and Senator Kennedy’s answer and the answer of many of us was that to look at those States which had higher minimum wages, state-imposed minimum wages and found that in fact, those States, by and large, are more prosperous States than those without higher minimum wages. We’re hearing the same kind of argument and opposition to this proposal—that this will make America less competitive as a nation. Both Ms. Hartmann and Dr. Heymann, if you would, answer to that with a little more specificity. Ms. Hartmann mentioned in her testimony and I apologize for being late and having to leave. I have other hearings I have to do today but replacing workers is very expensive. Even

in the low-wage labor market, filling a vacant position and bringing a new worker up to full productivity can cause 43 percent of annual pay. I would like Ms. Hartmann to expand on that a bit and Dr. Heymann, if you would expand on the competitiveness, why, in fact, the United States—you've made clear we stand out as a country that doesn't do this while others do—but why, in fact, this would make us, if you would, delineate in this global economy, why this will make us more productive, faster growing and a better, stronger economy and Ms. Hartmann, if you start.

Ms. HARTMANN. Thank you very much for the question. Basically, what we found in doing this research is that turnover rates differ between companies where workers do have paid leave and where they don't and that differential and turnover means that when a company puts in paid leave, they can expect their turnover to fall. We value that turnover with a number that comes from the Employment Policies Foundation, which is a business think tank. So we used their number of 25 percent rather than the 45 percent that we mentioned in the testimony. So we low-balled, if anything, the estimates, which are savings from reducing turnover and what we found was that the savings from reducing turnover outweigh what you would actually pay the workers for leave. The reason my numbers differ from Mr. King's is that we look at the amount of leave that people would actually use so in the economy as a whole, again, if you have paid sick leave now, you use only one more day of sick leave per year than if you have unpaid leave. So the amount of increase that you would get is small and we measured that increase as a cost and the cost of providing that money to workers is substantial—it's \$20 billion but the cost of the reduced turnover and adding to it, the reduced spread of flu in the workplace, we get a savings of \$32 billion. So on that, there is about a \$9 billion difference. So anything that economists can say, where the gainers can pay the losers and then have a surplus—that's considered Fredo optimal. It's considered that you are increasing total output in the economy so it's basically a net gain for the society because we can actually gain more than we lose. So all the points that Mr. Enzi and others have made are very valid but you also have to look at it from the point of view of society as a whole and if you can do any change, which saves the economy more money than it would spend, then all economists would say, do it.

[Applause.]

Senator BROWN. Dr. Heymann, if you would address the issue of making us more competitive.

Dr. HEYMANN. Sure. On a national level, there are really three things that make an enormous difference in making us—any country competitive, including us. One, is the education of the population. Second, is the health of the population and the third is the training and skills that are specific to the job. And in that last one, I want to mention, we've done a study of very successful companies across the country and around the world from Alabama to Connecticut, from China to Ireland to Norway to South Africa. Our competitors, as well as our local companies, including manufacturers of clothing to bricks to call centers and all of the CEOs, human resource people at every level talk about the same thing. If you can keep your employees on the job, active, there a long time, there is

so much job specific knowledge that the productivity goes up markedly. So this gets back to what I think Heidi was saying in terms of turnover rates and what we know from our own work, paid sick days reduce turnover dramatically among those who have been sick. So that kind of training retention—big impact on a company by company basis and long-term impact for the country. The other areas—health—the population health numbers are just striking. What makes the biggest difference in health long term are the prevention measures. We know this from really countless studies and the countries that have this kind of policy in place have much better health outcomes.

Finally, development of children. Paid sick days makes parents five times as likely to care for their kid's health. When their kids are healthy, their development is better, their education is better. That really is a tremendous long-term investment and we know the statistics bear this out on the countries. Thank you.

Senator BROWN. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Allard.

Senator ALLARD. Thank you, Mr. Chairman. I guess—from my own background, I come from a small business person's attitude but in addition to that, many of us represent small businesses that are in rural areas. One of the problems that you have, as a small businessman, is you have an employee who is trained to do one specific function for that business. If they don't show up for work, the business can't take care of its clients or its customers or whoever is utilizing that and it creates a hardship for the business owner, who by the way, is a hardworking American. Many times, small business people put in more hours than anybody on the payroll because they know that when they're not there, the business doesn't function.

So I have a concern about those particular types of businesses and I guess I look at it from a total compensation package. I think the comment that says that well, if you're looking at the total compensation, some types of employees prefer different types of benefits from the business than other types of employees. It depends on where they are in their work cycle. It depends on what type of community they are in and those types of things and it seems to me that when we have mandates, we take away that flexibility.

I have a question for Mr. King. Has any effort been made to analyze on a local basis, how this may impact small communities, for example. If you have a business that provides one particular type of service to a small community, I guess if the person who wants the service has to drive 60 miles, that's not anything that's going to help that local community. So has any study been done on that?

Mr. KING. Senator, not to my knowledge and that's a real problem. This legislation, as introduced in the last Congress, covers small businesses with 15 employees, which is a dramatic difference from FMLA that goes to 50. So that's a very real concern and one other point I would just make in the attack on the business community to a certain extent here. We don't disagree with turnover data. We don't disagree with all of the things that have been said. Paid leave is very desirable. The flexibility question is a very real one. This country, by the way, Senator Sanders, and the business community has billions of dollars of benefits—billions of dollars. If

someone did an economic analysis, a true economic analysis, the amount of money that the business community in this country voluntarily provides—I'd like to see where we rank. I would say we're probably No. 1 by far in pure dollars. But Senator, you're absolutely right. The practical impact on the small business person is very real and to my knowledge, it's not been thought out.

Senator ALLARD. Doctor—how do you pronounce your—

Dr. BHATIA. Dr. Bhatia.

Senator ALLARD. Bhatia.

Dr. BHATIA. If I may and I know that San Francisco is just one place but we've passed a number of mandates in the past few years. They include a living wage, a minimum wage and now sick days and soon to be universal health care requirement. One of my responsibilities is ensuring food safety for the 6,000 restaurants and we track the openings and closings of the restaurants, their size, their employees and we've been asked by the local business association, restaurant association, what effect is this having on openings and closings and over the past 8 years that I've been doing this and in the course of these mandates, there has been no change in the openings and closings of these restaurants. These restaurants—6,000 small business—mostly small businesses appear to be running about the same that they always have. So that's just one anecdotal experience from one place.

Senator ALLARD. I wonder if that explains why more California businesses are moving to Colorado.

[Laughter.]

Dr. BHATIA. Well, I don't think our 6,000 restaurants, the small businesses of San Francisco, the small markets, are moving to Colorado.

Senator ALLARD. That's right. Thank you, Mr. Chairman.

The CHAIRMAN. Just thank you all very much. We'll have other questions. Debra—and I wanted to just finally and I just have a question of you on the implementation of this legislation and your reaction to your own kind of studies about having supported other kinds of protections for workers, whether you feel that this a zero sum game, that if they advance this, they're going to get cut back on some of the other benefits. What's your own kind of experience? But on the implementation, how complex do you think this would be?

Ms. NESS. Well, I don't think there is any evidence that this is a zero sum game or that providing paid sick days, a minimum number of paid sick days, has proven to be economically challenging to countries that do it or businesses in this country that do it. There are many who do and do it because it makes a lot of sense and they have managed to do it without a great deal of administrative difficulty.

I hate for us to think about the ability to take time when you're sick or to get preventive health care as a privilege or a benefit. It seems to me that we should be thinking of this as a minimum labor standard.

Earlier on we were talking about the public health benefits and we focused primarily on children. I would say we also urge adults to get preventive health care all the time. We tell them to get mammograms. We tell them to get colonoscopies. But yet if they

don't have the days off to do that, I don't know any place you can do that on weekends or evening hours. We know that there are people in this country now that have not just one but two and increasingly three chronic conditions and that's going to get worse and the costs of that are huge to our healthcare system. Five percent of the population is responsible for 50 percent of our health care costs yet we know people being able to take a little bit of time out to get the preventive care they need can keep them from reaching the point where they need extensive hospitalizations or more expensive healthcare down the road and from a personal point of view, people who don't get that care—they spiral downward very fast. It's not just they miss a day or two of work. They get sicker. They potentially lose their job. They potentially lose their health insurance if they were lucky enough to have it. And for those people, the costs are enormous. We now know that about 50 percent of all bankruptcies are probably a result of medical bills triggered by illness. So I hope we can get a place where we think of this as a minimum labor standard. Thank you.

The CHAIRMAN. Thank you.

[Applause.]

Ms. HARTMANN. Senator Enzi, I'd like to congratulate you for your leadership with the Work for Us Investment Act and one of the things you did in that act was highlight the importance of pay and equity between women and men and one of the things that paid sick leave would do, would actually improve pay equity between women and men because it would reduce turnover on the job and women still bear the brunt of leaving work because of illness. When you look at the unemployed, something like 40 percent of women say that they left their last job and now can't find work for family reasons. So if you have a paid sick day or two to tide you over so you don't have to lose your job, you will be able to increase your seniority on the job. You'll increase your productivity on the job and that will raise your wage. So I think that this minimum labor standard should really be seen as something that will help redress the imbalance between men and women in the labor market and really raise women's pay and I'd just like you to be aware of that because I know this is a very important issue for you.

[Applause.]

Senator ENZI. If we really want to increase or decrease that gap, we're going to have to get more women to do non-traditional jobs and we're going to have to get more people to move out to Wyoming, where we have a lot of those jobs that are very good jobs that they could do and they'd get paid \$60,000 to \$80,000 a year for them and get paid medical leave and get—I'm told, vacation.

The CHAIRMAN. Where is this magnificent place?

[Laughter.]

Senator ENZI. This is in Gillette, Wyoming and every time I make this kind of announcement, we get one or two more people that come out there and take advantage of it. But most people don't want to leave whatever kind of a job with whatever kind of a benefit because they are afraid of change. I'm a little disappointed that today we haven't talked about the pressing issue of getting health insurance for more employees. Of course, when we do the paid medical leave, that will drive up some of the business costs and



every time the costs go up by 1 percent, 100,000 people get dropped out of the insurance market because small business can't afford it. And that's from some very good studies. So I don't know whether they would consider this part of the cost, if they'd say, okay, you can get off to go take care of it but we're not going to pay for it anymore. That would be a huge disadvantage. So somehow, we've got to figure out how to solve all of these problems and I don't think we're going to be able to do it with a big government one-size-fits-all mandate when we're talking about such a diverse economy. I do know that when we were talking about the economy that we talk about how it goes up when the minimum wage goes up and it will go up when this happens and I don't necessarily doubt those statistics. But it doesn't go up in every business and when a business goes out of business, the people that own the business and the people that work for that business really feel like the economy has gone to hell. That's the economy that they're interested in, where they work, the job that they have, the job they understand, the job that they like going to every day. When that disappears, the economy is bad. So I hope we'll do some more discussion on small business and health insurance and of course, I have the small business health plan proposal that would have allowed businessmen to group together to get some lower prices, largely reducing administrative costs. Hopefully some of those ideas will move along yet and solve some problems for small business and their employees.

The CHAIRMAN. You can see we have a full agenda here and not uniformity of agreement on most of these issues. If there is any further, we'll leave this open. You've been very, very helpful. We'll leave the record open for additional questions. We're very thankful to our witnesses. It's been very informative and valuable and we're grateful to you.

The committee stands in recess.  
[Additional material follows.]

## ADDITIONAL MATERIAL

## PREPARED STATEMENT OF SENATOR HARKIN

For the past few decades, people have been throwing around the term “family values” here in Washington. But the policies that have been passed in that name often reflect anything but valuing families. I am proud to cosponsor this bill because it represents two of my highest priorities: respect for workers and their families, and workplace wellness.

First, I think it is time for us to take a whole new view of labor policy. For the last several years, we have been moving in the direction of concession. We have been told that in the name of profit, in the name of competitiveness, that we have to force workers to give up the rights that past generations have fought and died for. We’ve seen overtime rights eroding. We have seen pensions evaporating out from under workers—while the executives keep their deferred compensation. We’re rewarding record workplace productivity with more mandatory overtime and lower wages. Yet, CEOs are getting paid a record 400 times the wages of the average worker. We keep moving in the wrong direction.

This bill is a step in the right direction. This bill says parents should have the right to take their sick child to the doctor. Workers should have the right to take care of their own health and well-being without worrying about losing pay or losing their job. I hope that we can begin to think again about the working men and women of this country as human beings with basic needs and basic rights, like the right to take a day off when they are sick.

Unfortunately, a whopping 50 percent of private sector workers, and 76 percent of low-income workers don’t have paid sick leave. These are people who have to work long hours, increasingly during nights and weekends, just to survive.

As witness Jody Heymann has found, the United States is behind the curve in providing sick leave. She found that 139 countries provide paid leave for short- or long-term illness—with 117 of those providing a week or more annually.

I know some of the witnesses have talked about this, but I really want to underscore the cruel irony that low-wage workers, who are least likely to have paid sick leave—and their kids are sick more often. It isn’t surprising that kids health outcomes are better when a parent can spend time helping them to get better. If we value families, we shouldn’t force parents to choose between job responsibilities and taking care of their sick children.

As I said earlier, this is also a public health issue. I find it amazing that companies don’t see their own interest in encouraging sick employees to stay home, and avoid infecting coworkers or customers. But amazingly, 78 percent of food service workers do not have paid sick days. In one hotel in Nevada, a worker who didn’t have paid sick time went to work with a stomach virus and infected 600 customers and 300 employees.

As you know, wellness and illness prevention have been a top priority for me for many years. Americans spend an unbelievable \$1 trillion every year on health care. Three quarters of that cost is accounted for by chronic diseases like heart disease, cancer, and diabetes that, in many cases, are preventable. We can save hun-

dreds of billions of dollars on unnecessary hospitalization, treatment, and disability, but only if we make the up-front investment in prevention and allow our workers to take time off to get essential preventative screenings and assessments. We also know that one of the best, most common sense measures to preventing illness is keeping people with communicable illness at home until they are well again.

Mr. Chairman, families are feeling more pressure every day to try to make ends meet with more responsibilities heaped on them. Rosa Pederson, from Fort Dodge, Iowa is working and raising a toddler. She writes, "We're all supposed to be supermen. We're supposed to price compare health services and know which practices are proven most effective. We're supposed to actively manage our funds in a way that consistently beats the market. We're supposed to work our way through school and get through in 4 years. We're supposed to . . . save more and spend more while making less." Add to that having to show up to work even when you're sick, or to find a way to manage your child's sickness while still working full-time or more—or worse—you or your child is sick because someone else at work couldn't take a sick day. It is easy to see how families suffer.

#### PREPARED STATEMENT OF SENATOR CLINTON

I would like to thank Chairman Kennedy and Ranking Member Enzi for holding this important hearing on the Healthy Families Act. I am a proud cosponsor of this legislation that would provide workers with 7 paid days of sick-leave, giving parents time off from work to go to the doctors' office with their child, aging relative, or to address their own health needs.

Throughout my career as a lawyer, mother, First Lady and Senator, I have sought solutions to the difficult challenges that working parents face.

That is why I am looking forward to re-introducing my "*Choices in Child Care Act of 2007*" to meet the child care needs of working families. My bill provides a modest and important option for families who have none; it gives them the chance to stay at home with their infants when there is no childcare available to them. This is the critical next step to ensure low-income families welcoming children in their lives are afforded more economic security than they would have otherwise.

I am also looking forward to re-introducing my "*Paycheck Fairness Act*" in March. This bill would prevent, regulate, and reduce pay discrimination for women across the country by taking critical steps to empower women to negotiate for equal pay, to create strong incentives for employers to obey the laws that are in place, and to strengthen Federal outreach and enforcement efforts.

With this month marking the 14th anniversary of the Family and Medical Leave Act, we can celebrate how far we have come in terms of providing benefits for the hardest working families in this country. But we must also recognize the challenges Americans face in balancing work and family life today. The time has come, with the new 110th Congress, to give parents additional resources and options in helping them address these challenges.

Thank you.

## PREPARED STATEMENT OF SENATOR BROWN

We are here today to discuss a very simple piece of legislation. The Healthy Families Act will guarantee millions of Americans the basic right to care for a family member or recuperate from an illness without worrying if they will be able to pay the rent that month. In my State of Ohio, 42 percent of workers—2,232,125 workers in total—have no paid sick days. These people are forced to choose every day between their jobs and the health of themselves or a family member. This is a decision no American should have to make. A single parent should not have to worry about losing their job simply because they need to take their ailing child to the doctor.

Paid sick leave improves overall health, lowers healthcare costs and makes good business sense. Experts agree that the ability to take time off and go to the doctor lowers the likelihood of chronic illness and ultimately the cost of healthcare. This benefits productivity and prevents ill workers from spreading their sickness to co-workers. The ability to stay home when you are sick is critical.

This legislation would provide paid sick days for an employee's medical condition, doctor's appointment or other preventative treatment. It would also provide prorated leave for part-time employees and require employers to post notice of the availability of sick leave. This is crucial to thousands of Ohioans and middle class Americans who are just trying to work hard and take care of their families. I thank the Chairman for holding this hearing and drawing attention to the plight of so many Americans. I fully support this bill and encourage my colleagues to do the same. The time for mandatory paid sick leave is long overdue and millions of working Americans deserve better.

## STATEMENT OF DANCING DEER BAKING CO.

Employers, families and our economy depend on the existence of a healthy workforce. I commend Senator Kennedy for his leadership in seeking paid sick days for employees around the Nation.

At Dancing Deer Baking Company we have always sought to ensure that our employees can have the time to address their own and their families' health needs. We also provide all employees with short- and long-term disability insurance as a secondary safety net. Full time non-exempt employees at our company receive a minimum of 15 days per year in their first year of employment as paid time off (which can be used for any reason, including not coming to work because of the flu) which they start accruing immediately upon employment with us. It makes good business sense and good people sense to put structures in place to help people live more balanced, healthier lives.

A national paid sick days law that sets a minimum standard is important because it means that employees do not have to choose between coming to work sick or staying home and losing a day's wages—or a job. National data indicates about half of private sector employees do not have paid sick days. That's an incomprehensible statistic, until you break it down and look at the granular, person-by-person implications. What you find is that health issues and family care issues are often the final straw that throws families into crisis. We see this in our work in the community targeted at ending family homelessness; Our "Sweet Home Project" provides funds that help homeless families (the majority of whom are the working poor) move to healthy, economically stable lives.

A national paid sick days law creates a level playing field for all businesses. Personally, I believe that we have a competitive advantage from our benefits policies, but many small businesses struggle with this issue. I believe that creating a level playing field with respect to incentives and requirements for "doing the right thing" is a good idea for all.

It is encouraging that the committee is holding hearings on paid sick days. We hope that a bill will move through both Chambers and be on the President's desk. Paid sick days should be a non-partisan issue. A healthy nation is a productive nation.

Founded in 1994 as a local bakery, Dancing Deer has advanced to the national stage through creativity, hard work and a maniacal attention to quality, detail and customer satisfaction. As we learned what and who did and didn't work organizationally, we developed a philosophy for the business. If people are happy, it shows in the food. Dancing Deer currently has approximately 70 full-time employees; The Company's policies are tailored to the inner city employee base. Dancing Deer has a low hourly requirement for full-time benefits (just 24 hours per week) and a flexible PTO (paid time off) policy, which allows single parents access to health care, and other benefits while managing family commitments.

For more information contact: Ursula Liff; (617) 442-7300 ext. 210; Ursula.liff@Dancingdeer.com; 77 Shirley Street, Boston, MA 02119.

THE MEDICAL LEGAL PARTNERSHIP FOR CHILDREN,  
BOSTON, MA 02118,  
February 12, 2007.

Hon. EDWARD KENNEDY,  
317 Russell Senate Building,  
Washington, DC. 20510.

DEAR SENATOR KENNEDY: We are a group of pediatricians who work among the most underserved populations in Boston, Massachusetts. Collectively we work at Boston Medical Center and the South End Community Health Center. We strongly support the Healthy Families Act because we believe the Healthy Families Act could be one of the most powerful treatments we have for children.

As pediatricians, we support the well-being of the children and families with whom we work. Within the fabric of the family and the larger community, we seek to keep kids healthy. When there is a medicine, therapy, or treatment that will shorten the course of an illness or improve the health outcomes for children, we advocate for its use and make these recommendations to our patients and families. As physicians, we see what the research literature tells us: that children stay sick longer when their parents cannot be home to care for them.<sup>1</sup> This is where we see the tremendous potential of the proposed legislation. As pediatricians seeking the best treatment and outcomes for our patients, we need to ensure that paid sick-time is available and accessible for all children and families, especially those without other resources. On a daily basis in the course of our practice, we are confronted with the many reasons that a parent would need the benefits of the Healthy Families Act.

Children aged 5 to 17 year's old miss an average of more than 3 days of school per year for health reasons.<sup>2</sup> Younger children have higher rates of illness than those who are school age.<sup>3</sup> The American Academy of Pediatrics recommends preventative medical care for children to stay healthy. It is of utmost importance that parents be present at these visits to give critical information to pediatricians about their children. The following examples clearly illustrates the importance and impact that the Healthy Families Act could have on children.

"L" is a school-aged child of a single working mother. His performance in school was fine until the third grade when his schoolwork started to deteriorate. He was starting to show signs of learning disabilities and Attention Deficit Hyperactivity Disorder (ADHD). L came with his grandmother to his yearly physical exam and a number of behavior-related visits, L's mother was unable to come to these appointments because of her fear of losing her job if she missed work, and without his mother's direct input, we had great difficulty understanding the scope and extent of the problem. It took many follow-up calls to schedule a time where his mother could bring him in for an appointment and subsequently make a treatment plan which has dramatically helped L's school performance. This was not because L's mother did not want to help her son—it was because she was forced to make the

<sup>1</sup>Jody Heymann, *The Widening Gap: Why America's Working Families Are In Jeopardy & What Can Be Done About It*, Perseus Book Groups, p. 115 fig. 61. New York, NY, 2000.

<sup>2</sup>Vicky Lovell, *No Time to be Sick: Why Everyone Suffers When Workers Don't Have Paid Sick Leave*, Institute for Women's Public Policy Research, May 2004, p. 3.

<sup>3</sup>Virginia Fried, Diane Makuc, and Ronica Rooks, *Ambulatory Health Visits by Children: Principal Diagnosis and Place of Visit*, U.S. Department of Public Health and Human Services, DHHS Pub. No. 98-1798, Hyattsville, MD, 1998.

unthinkable choice of keeping her job or bringing her child to important doctor appointments.

Another story we would like to share with you is about “B.” B is a school-aged child with asthma. Because of the nature of her illness, she is admitted to the hospital a few times a year. Staying in the hospital is a scary situation for most people, especially children. Parents are allowed to stay with their children while hospitalized, however, this is not possible if the parent needs to be at work every day. That was the case with B. Her mother could not take time off of work to stay with B, and could only visit before and after work. Children like B who are alone in the hospital often tell us that they are afraid to sleep at night so they try to stay awake as long as possible. This stress prolonged B’s recovery and impacted her hospital stays. We believe such occasions—which are all too frequent—might be avoided if parents could be with their children throughout their hospitalization, without fear of economic consequences. Paid sick time would allow more parents to be at their child’s side during both illness and recovery—promoting recuperation, reducing stress on the family, and saving money for the health care system. We know that hospital stays are reduced by 31 percent if a parent is present in the children’s care.<sup>4</sup> By supporting the Healthy Families Act, you support minimizing expensive hospital stays for children, and getting parents back to work more quickly.

These brief vignettes reflect the unthinkable choices our families are forced to make—go to work, or tend to my child’s medical needs? Studies show that sick children have shorter recovery periods, better vital signs, and fewer symptoms when their parents participate in their care.<sup>5</sup> Regardless of socioeconomic status, parents who received paid leave are five times more likely to be able to care for their sick children.<sup>6</sup> And, this comes back to our essential point: *The Healthy Families Act helps children get better quicker and families get back to work.*

*For these reasons we offer our strongest support for the funding and passage of The Healthy Families Act.<sup>7</sup>*

ROBYN RISEBERG, MD,  
JACK MAYPOLE, MD,  
LAUREN SMITH, MD, MPH,  
MEGAN SANDEL, MD, MPH.

*The authors are all affiliated with the Medical-Legal Partnership for Children at Boston Medical Center.*

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CHILDREN’S HOSPITAL BOSTON,  
BOSTON, MA 02115,  
February 13, 2007.

Hon. EDWARD M. KENNEDY,  
Chairman,  
Committee on Health, Education, Labor, and Pensions,  
U.S. Senate,  
Washington, DC 20510.

DEAR SENATOR KENNEDY: On behalf of Children’s Hospital Boston and the children and families we care for, I want to thank you for introducing the Healthy Families Act.

As the Medical Director of the Cerebral Palsy Program at Children’s Hospital Boston, I work with families all the time who are trying to balance work responsibilities with caring for their child with complex health care needs. Arranging the time off for medical appointments is a major source of stress. It is important for employers to give families flexibility to meet the health care needs of their child in a timely manner. Children need to have their parents present for emergencies as well as for management of their chronic health concerns. Affording families paid sick days also can reduce the spread of disease in child care settings, schools and at work.

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<sup>4</sup> See, Jody Heymann.

<sup>5</sup> See, Jody Heymann.

<sup>6</sup> See, Jody Heymann.

<sup>7</sup> Boston Medical Center & South End Community Health Center; 617-414-7430; jack.maypole@bmc.org, robyn.risenberg@bmc.org, Lauren.Smith@bmc.org, Megan.Sandel@bmc.org.

This legislation eases some of the tough choices that families have to make to meet the competing demands of their family and professional lives. I appreciate your work on this important issue.

Sincerely,

Laurie Glader, M.D.

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STATEMENT OF JEFF LEVI, PH.D., EXECUTIVE DIRECTOR, TRUST FOR AMERICA'S HEALTH (TFAH)

TFAH SUPPORTS THE HEALTHY FAMILIES ACT; SICK AND FAMILY LEAVE MEASURES IN BILL WOULD BE CRITICAL FOR CONTAINING A POSSIBLE PANDEMIC FLU OUTBREAK

“People shouldn’t have to choose between protecting the health of their families and a paycheck during a crisis. The sick and family leave measures proposed in the Healthy Families Act, as introduced by Senator Edward Kennedy (D-MA), are important for ensuring that all Americans, regardless of their economic status, could take time off when they are sick or to care for family members. But the proposed sick and family leave policies are also essential for containing the spread of infectious disease and limiting the risk of illness during public health emergencies.

Currently, 59 million workers in the United States do not have paid sick leave. Eighty-six million workers do not have paid sick leave that they can use to care for immediate family members. Three out of four ‘low-wage’ workers have no sick leave at all.

One of the biggest current threats to our Nation’s health is a possible pandemic flu outbreak. The Centers for Disease Control and Prevention (CDC) is proposing that individuals who might become ill during a pandemic should stay home from work until they are fully recovered (an estimated 10 days), and that household members of those who are sick should also stay home while the individual is sick until it is clear that the household member has not become ill, which is known as voluntary home quarantine. The CDC has also suggested that schools could potentially close for 12 weeks during a pandemic, leading parents and guardians to struggle with managing child care issues during that time frame.

Compliance with public health recommendations will be critical during the first wave of a pandemic, when vaccines would not yet be widely available. The minimum 7 days of paid sick leave a year that employees could use to meet their own medical needs or care for sick family members would allow people to meet most of the minimum requirement for recuperation and family care during a pandemic. TFAH also encourages employers to plan for a possible pandemic, and create tiered sick leave plans to allow for more time off during a public health crisis, when designated by the U.S. Secretary of Health and Human Services.”

*Trust for America’s Health is a non-profit, non-partisan organization dedicated to saving lives by protecting the health of every community and working to make disease prevention a national priority.* <<http://www.healthyamericans.org>> <<http://www.pandemicfluandyou.org>>

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RESPONSE TO QUESTIONS OF SENATORS KENNEDY AND ENZI BY DEBRA NESS

QUESTIONS OF SENATOR KENNEDY

*Question 1.* Would you please comment on why you think the provision of paid sick days is needed, and why reliance solely on voluntary benefits is insufficient?

Answer 1. Currently, no Federal law guarantees paid sick days, and working families must rely on voluntary workplace policies. Consequently, nearly half (48 percent) of private-sector workers—and nearly four in five low-wage workers (79 percent)—lack even a single paid sick day.<sup>1</sup> Two in five low-income working parents (41 percent), with household incomes below twice the poverty level, do not have any paid time off at all: no paid sick time, no paid vacation and no paid personal days.<sup>2</sup> As a result, working people are forced to choose between taking care of their own health or a sick child or family member, and losing their pay—or even losing their

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<sup>1</sup> Institute for Women’s Policy Research, analysis of March 2006 National Compensation Survey.

<sup>2</sup> Katherin Ross Phillips, *Getting Time Off: Access to Leave among Working Parents* (Policy Brief B-57), Urban Institute.

job. An ordinary illness like the flu, can have devastating economic consequences for a struggling family. Clearly, reliance on voluntary benefits is not enough.

Our existing labor laws are outdated and don't take into account the increasing numbers of working mothers and dual-earning families. The Healthy Families Act would establish a basic labor standard for paid sick days, much like the minimum wage does. From a business perspective, a basic labor standard levels the playing field for all businesses. While some may argue that businesses that provide paid sick days voluntarily are at a competitive disadvantage, a minimum standard would eliminate the perception of disadvantage.

*Question 2.* The Healthy Families Act covers only businesses with 15 or more employees, which is also the threshold set in the ADA and Title VII. Would you please comment on why you think 15 employees is an appropriate threshold, and why you think that businesses of that size are likely to be able to readily provide paid sick leave?

Answer 2. I believe the 15-worker threshold is appropriate as it tries to cover as many workers as possible, while mitigating the burden of compliance for businesses.

As the smallest of businesses grow and reach the 15-worker threshold, they begin to seek assistance from human resource managers or employment lawyers. At this size, businesses must understand and comply with the requirements of the ADA and Title VII. They are also required to display State and Federal posters that inform workers about workplace discrimination. By adopting this 15-worker threshold, the Healthy Families Act ensures that its compliance standards for small businesses are simplified.

*Question 3.* Could you please comment on whether or not the Healthy Families Act's notice and medical certification provisions are reasonable and workable?

Answer 3. The Healthy Families Act requires employers to post a notice describing leave available to workers under the act as well as pertinent information regarding the leave in conspicuous places or in employee handbooks. This is a reasonable and workable provision for employers. Most employers subject to the provisions of the Healthy Families Act already must comply with other posting requirements including minimum wage, FMLA, ADA, discrimination and safety and health standards. Therefore, they have the management and human resources capacities in place to accommodate the Healthy Families Act's minimal posting requirements. Furthermore, the posting requirements under the act are intentionally minimal so not to place an undue burden on businesses, even if it may impose a challenge to workers seeking additional information.

The Healthy Families Act requires that workers provide their employer with medical certification for leave longer than three consecutive work days. This provision is reasonable for employers because it balances the need for certification, which would alleviate employer concerns of abuse, against the desire to not overburden human resources professionals with unnecessary paperwork or accounting tasks, which may occur with a more-frequent certification provision.

The medical certification provision is reasonable for workers as it requires certification only for leave longer than three consecutive work days. For low-wage workers, a more-frequent certification requirement would create a barrier likely preventing them from taking a paid sick day. Two in five low-wage working people (41 percent), with incomes between \$20,000 and \$40,000 a year, were uninsured for at least part of 2005, the year the study was conducted.<sup>3</sup> For low-wage workers without health insurance, the cost of a simple doctor's visit to obtain certification would present a financial hardship.

*Question 4.* The Healthy Families Act sets 7 paid sick days as a minimum required national standard. Why do you think this is an appropriate minimum? How does it compare with the standards set by other countries?

Answer 4. The 7 paid sick days labor standard established by the Healthy Families Act is really a minimum number of days. Among the 52 percent of private-sector workers who currently have access to paid sick days, the leave available to them varies from 8 to 11 days in smaller firms, and 11 to 21 days in larger firms.<sup>4</sup> The Federal Government guarantees their workers 13 paid sick days a year.<sup>5</sup> By comparison, the Healthy Families Act establishes a standard of 7 days—significantly lower than what is currently offered to half the workforce in the private sector and

<sup>3</sup>Sara R. Collins, *Gaps in Health Insurance: An All-American Problem*, Commonwealth Fund, 2006.

<sup>4</sup>Bureau of Labor Statistics, 1996–1997 data (most recent available).

<sup>5</sup>United States Federal Government, USA Jobs: the Official Job Site for the United States Federal Government Web site, <http://www.usajobs.gov/ei61.asp>.



Federal Government workforce—to set a minimum standard for paid sick days. Much like the minimum wage, the Healthy Families Act is intended to set a floor for the number of paid sick days.

The United States lags behind other countries in paid sick day standards. Globally, 145 countries provide paid time off for short- or long-term illnesses, with 127 providing a week or more annually. More than 79 countries provide sickness benefits for at least 26 weeks or until recovery. Additionally, 37 nations provide some type of paid time for working parents when a child is ill.<sup>6</sup>

*Question 5.* The Healthy Families Act provides that paid sick leave can be used to care for “a child, a 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.” Could you please comment on why it is important to provide this scope of coverage? How is the act’s definition of family member similar to other laws and how other countries are defining family for purposes of short-term leave?

*Answer 5.* The scope of coverage ensures the needs of all families, including blended, joint and non-traditional families, are adequately addressed. Twenty-nine percent of children are being raised outside the traditional two-parent family.<sup>7</sup> In addition, as Baby Boomers retire, more working families are caring for elderly parents and relatives. An estimated 34 million people provide care for older family members.<sup>8</sup> As the definition of “family” continues to evolve, it’s clear that our workplace policies too must change to fit the needs and realities of our families. Today’s families deserve the same peace of mind and opportunities to care for the members of their families as traditional families of past generations.

Unlike the proposed Healthy Families Act, many older Federal workplace laws, such as FMLA, are not as inclusive in their scope. Leave under the FMLA allows workers to care for spouses, children (step and biological) and parents, but does not permit the care of same-sex partners or grandchildren.

San Francisco’s paid sick day legislation, which passed in 2006, provides for a broader scope of coverage. Workers may provide care to “other persons” including a child, parent, legal guardian or ward, sibling, grandparent, grandchild, spouse, registered domestic partner under any State or local law, coworker or “designated person” of their choosing.

Other countries have broader definitions of family member to accommodate the needs of today’s families or family-like relationships. For example, in the United Kingdom, all “employees” have the right to “reasonable” time off work to help family members or friends who depend on them for assistance in an emergency, including a parent, wife, husband or child, or someone who lives with the employee as part of their family. A dependent can also be someone who “reasonably” relies on the employee for help if they are ill, or has an accident or when their normal care arrangements have broken down, such as a neighbor or friend with a disability.<sup>9</sup>

In Canada, workers can take “compassionate care” leave to care for a child; spouse or common-law partner; parent or their spouse; grandchild or their spouses; sibling; son/daughter-in-law, father/mother-in-law; uncle/aunt or their spouse/partner; niece/nephew or their spouse/partner; former foster parent; or current/former foster child. Workers can also take “compassionate care” leave to care for a gravely ill person who considers you like a family member, such as a close friend or neighbor.<sup>10</sup> In Australia, paid “carer’s leave” allows workers time off to provide care to a member of the worker’s immediate family or household.<sup>11</sup>

*Question 6.* A statement was made at the hearing that some employees do not need paid sick days because they could use flextime when they become ill or need medical care. Would you please comment on whether flextime is a workable substitute for paid sick days?

*Answer 6.* Flex-time is not a suitable substitute for paid sick days. Some suggest that flex-time policies would allow workers to switch the time of their work when they are sick or when their child is sick. However, in most cases, flex-time does not give workers the option to choose their work hours. For these workers, their hours of work are at the discretion of their employers, and they don’t have the guarantee

<sup>6</sup>Jody Heymann, et al., *The Work, Family, and Equity Index, How Does the United States Measure Up?*, 2007.

<sup>7</sup>U.S. Census Bureau, *Living Arrangements of Children: 2001*, July 2005.

<sup>8</sup>National Alliance for Caregiving/AARP, *Caregiving in the U.S.*, NAC/AARP, 2004.

<sup>9</sup>Trades Union Congress, *Time off for Families*, <http://www.tuc.org.uk/tuc/families.pdf>.

<sup>10</sup>Government of Canada, Service Canada Web site, <http://www1.servicecanada.gc.ca/en/ei/types/compassionate—care.shtml#family>.

<sup>11</sup>Australian Government, Employment & Workplace Relations Services Web site, <http://www.workplace.gov.au/workplace/Programmes/WorkFamily/Carersleave.htm>.

that they will have time off when they need it most, when they are sick or when they must care for an ill family member.

The majority of private-sector workers who would benefit most from paid sick days legislation are in the food service, hotel and retail industries. Additionally, majorities of child care and nursing home workers also would benefit from the Healthy Families Act. These occupations are customer-service oriented and are among the least flexible since they have specific hours of operation and structured worksites. Even with flex-time provisions in place, these workers would have little or any control over when they choose to work.

*Question 7.* Mr. King claimed that employers will have difficulties complying with the Healthy Families Act because of existing compliance requirements under the FMLA and workers' compensation laws. Do you agree, why or why not?

Answer 7. Mr. King's argument that adding the Healthy Families Act to existing compliance requirements will increase employers' "practical/operational and legal burdens" is exaggerated. First, the Healthy Families Act applies to businesses with 15 or more workers. As businesses reach the 15-worker threshold, they seek out human resource managers or employment lawyers to help them with compliance. Therefore, by adopting this threshold, the added burden on compliance is minimal.

Second, the notification requirements for this and other compliance requirements are intentionally minimal, so not to burden employers. The Healthy Families Act's requirement to post a notice in a conspicuous place and in employee handbooks is a very minor charge. Mr. King also asserts that Healthy Families Act compliance would create additional administrative burdens, comparing it to the FMLA. However, the greatest potential administrative load created by the Healthy Families Act would arise only after a worker has taken leave for more than 3 consecutive days. At that point, the employer may require a certification issued by a health care professional. Requesting and reviewing certification would take little time and money. In fact, a survey of similar FMLA medical certification requirements found that it took 39 percent of surveyed employers less than 10 minutes per case to request and review certification, and an additional 21 percent less than 30 minutes.<sup>12</sup>

Finally, Mr. King's assertion that the Healthy Families Act and its administrative requirements would hamper employers' ability to compete with offshore businesses is unsubstantiated. The businesses that are the least likely to provide paid sick days, such as in the food service, hotel, retail, child care and nursing home industries, are the least likely to have offshore competition. Businesses in these industries provide direct services to customers in structured, established worksites, which cannot be outsourced.

*Question 8.* King argued that compliance with the Healthy Families Act will be administratively burdensome on employers. Given that so many employers in the United States and around the world already provide paid sick days, do you see compliance with these additional requirements as a problem for employers? Why or why not? What, if any, administrative procedures would the act add to typical payroll procedures?

Answer 8. The vast majority of employers in the United States guarantee paid time off to their workers,<sup>13</sup> as do employers around the globe. These workplaces have administrative practices in place to track time off. The Healthy Families Act targets the employers that don't offer the most basic workplace standard to their workforce: paid sick days. For these employers, the Healthy Families Act ensures that they are minimally burdened.

The administrative recording requirements of the Healthy Families Act are in accordance with the Fair Labor Standards Act. To minimize any potential undue burden on employers, the Healthy Families Act states that paid sick time provided may be accrued as determined by the employer as long as it is less than a quarterly basis. The act also allows for leave to be counted on an hourly basis—or in the smallest increment that the employer's payroll system uses to account for absences. Both of these provisions of the act would place a minimal administrative or procedural load on the business.

*Question 9.* King asserted that employers will likely reduce benefits in response to the act's paid sick days requirement. Would you please comment on why that may or may not be the case?

<sup>12</sup> WorldatWork, *FMLA Perspectives and Practices* survey, April 2005, <http://www.worldatwork.org/pub/E157963FML05.pdf>.

<sup>13</sup> Society for Human Resource Management, *2006 Benefits*, Survey Report, 2006, Table G-1.

Answer 9. The argument that establishing a basic labor standard of paid sick days would result in an offsetting reduction of fringe benefits, including the receipt of health insurance, a partially-paid insurance premium, pension coverage or access to job training, is not new. It has been used most commonly against increases in the minimum wage, another basic labor standard. However, research has found no strong evidence that an increase in the minimum wage causes a reduction of fringe benefits or decline in working conditions.<sup>14</sup>

The Healthy Families Act is a *basic labor standard* that would guarantee to more working people paid time off and job protection when they are sick or need to care for an ill family member. For the businesses that already provide paid sick days for their workers, a basic labor standard such as this would level the competitive playing field by requiring all businesses to guarantee paid sick days. When workers are guaranteed a minimum number of paid sick days, employers benefit as healthier workers are more productive and the spread of illness in the workplace is reduced.

Without paid sick days, ill workers have no alternative but to go to work sick and risk spreading illness to coworkers and customers, lowering the overall productivity of the workplace. More than half (56 percent) of human resources executives report that “presenteeism”—the practice of coming to work even when sick—is a problem in their companies. Studies have shown that “presenteeism” costs our national economy \$180 billion, or an average of \$255 per worker per year, in lost productivity annually. This productivity loss exceeds the cost of absenteeism and medical and disability benefits.<sup>15</sup>

Businesses that don’t offer their workers paid sick days may also be making themselves more vulnerable to illness-related costs, bad publicity and lawsuits. The recent surge in “stomach-flu” food-borne outbreaks in restaurants and on cruise ships is alarming the restaurant industry in particular. According to Restaurant News, the industry’s own publication, the frequent outbreaks are a “near-indictment of prevailing sick-leave practices.”<sup>16</sup> Nearly half of “stomach flu”-related outbreaks (largely caused by the norovirus) are linked to ill food-service workers,<sup>17</sup> who are the least likely to have paid sick days.

A single food-borne outbreak could cost a restaurant up to \$75,000 in direct costs, including clean up, re-staffing, restocking, settlements and regulatory sanctions. For a chain restaurant with several locations within a metropolitan area, the negative publicity resulting from a single food-borne outbreak can be devastating to the entire chain. The indirect loss of business resulting from a single food-borne outbreak at one establishment can total up to \$7 million for all the restaurants in the chain within the metropolitan area.<sup>18</sup>

#### QUESTIONS OF SENATOR ENZI

*Question 1.* In your written testimony, you state that paid sick leave will reduce “presenteeism” and therefore be good for businesses. The study you cited found that the most productivity-reducing conditions were depression and other mental illnesses, hypertension, heart disease, and arthritis. Considering that the mandate will reduce employer income margins by about \$1,000 per employee, I think anyone can see that employers will have to look for a way to pay for this, and that way may be reducing healthcare benefits. For example, one could increase co-pays, reduce or eliminate prescription drug coverage, or worse. Can you see that employees with a mental illness, hypertension, heart disease, or arthritis—all of which are often treated with prescription drugs and none of which typically require time off—could be negatively impacted by this mandate?

Answer 1. Studies have shown that both employers and workers would benefit significantly from the savings associated with the Healthy Families Act.

I am not aware of the origin of the estimated \$1,000 cost per employee cited in the above question. According to a cost-benefit analysis of the Healthy Families Act, costs associated with the bill were much less, at just \$3.04 per worker per week, calculated for all wage and salary workers. The low cost of the Healthy Families

<sup>14</sup> Kosali Ilayperuma Simon and Robert Kaestner, “Do Minimum Wages Affect Non-Wage Job Attributes? Evidence on Fringe Benefits,” *Industrial & Labor Relations Review* 58, (Issue 1 2004), Article 3.

<sup>15</sup> Ron 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).

<sup>16</sup> Peter Romeo, “NRA Virus Confab Frames Contagious Workers as Leading Food Safety Threat,” *Restaurant News* (7/27/07).

<sup>17</sup> Centers for Disease Control and Prevention, *Norovirus Outbreak Associated with Ill Food-Service Workers*, 1/2006.

<sup>18</sup> Norman G. Marriott, *Principles of Food Sanitation* (An Aspen Publication: 1999).

Act is far outweighed by the benefits associated with the bill. The total savings associated with the bill, calculated for all wage and salary workers, is \$4.26 per week—clearly higher than its cost. The costs and benefits are higher if calculated for only workers covered by the HFA: the per-worker per week cost of \$5.98 is significantly less than the savings of \$8.38 per worker per week.

In addition, providing paid sick days to workers could result in health care cost savings for employers. Health care costs will decline because workers will be able to use the paid sick days to take care of their own health and the health of family members without being penalized by a cut in pay or disciplined. Workers would be more likely to access preventative care for themselves and family members, including regular physicals, vaccinations and screenings for diseases such as cancer, diabetes and heart disease. This could lead to reduced health care costs in the long run, and even a reduction in employer-paid insurance premiums.

*Question 2.* What was the methodology used in the “presenteeism” study? Who conducted it? Has the study, its methodology or its findings been subjected to any kind of academic peer review or professional validation? If so, who has conducted this review or validation and where are the findings reported? How was the \$180 billion savings estimate calculated?

Answer 2. The study, “Health, Absence, Disability, and Presenteeism: Cost Estimates of Certain Physical and Mental Health Conditions Affecting U.S. Employers,” was conducted by a group of researchers affiliated with the Cornell University Institute for Health and Productivity Studies, led by researcher Ron Goetzel, Ph.D. It was published in the *Journal of the American College of Occupational and Environmental Medicine* in April of 2004, a highly-regarded scientific publication that contains clinically-oriented research articles to guide physicians, nurses, and researchers. The journal maintains a rigorous peer review procedure. Each article is reviewed, using a double-blind procedure, by a group of academics in the field.

Goetzel et al. calculated the direct and indirect costs of productivity loss associated with 10 common health conditions, using administrative data sources (insurance claims regarding medical care, employee absenteeism, and short-term disability payments) as well as employee self-reported data on presenteeism. Researchers found that presenteeism losses accounted for 61 percent of the total cost of the 10 selected health conditions—higher than medical costs in most cases.

The American Productivity Audit (APA) calculated that presenteeism costs \$180 billion in lost productivity each year. The APA is a survey of nearly 30,000 workers that aims to put a numeric value on the effects of health conditions on work. The survey measures lost productive time, in both hours of work and dollars, related to health.

*Question 3.* What is the direct labor cost to the private sector of the paid leave mandate contained in the *Healthy Families Act*? How was that cost calculated? What individual(s) or organization(s) calculated these direct private sector costs, what was the methodology utilized, and has the study, calculation and/or estimate been fully peer-reviewed?

Answer 3. Dr. Vicky Lovell of the Institute for Women’s Policy Research<sup>1</sup> estimated the total costs and benefits of taking leave under the Healthy Families Act using several data sources and analytical methods. Lovell estimated that the HFA’s annual cost would be \$20,235,900 for wages paid to workers taking HFA-provided paid sick days, payroll taxes, and administrative expenses. This number breaks down to \$5.98 per HFA-covered worker per week. These costs, however, are far outweighed by the benefits of implementing the Healthy Families Act. According to Lovell’s analysis, the total savings associated with the HFA would be \$8.38 per HFA-covered worker per week. The sources of the costs and savings identified by Lovell’s analysis are outlined below.

- *Costs of the Healthy Families Act*

Lovell’s analysis measured the costs associated with the HFA. Lovell calculated how many workers would be affected were the HFA to be enacted. Lovell used the numbers of workers who meet the HFA eligibility criteria, the number of workers who currently have no paid sick days or are not allowed to use their leave for ill children or to attend doctor visits, and the number of workers who currently have fewer paid sick days than provided by the HFA and would have access to additional paid sick days under the HFA.

<sup>1</sup>Dr. Lovell and the Institute for Women’s Policy Research are both well-respected for their quantitative techniques and original research, as well as their efforts towards research dissemination and citizen education.

Lovell used data from a variety of sources, including the National Health Interview Survey, to calculate how many paid sick days workers would take if the law were enacted, for their own medical needs, for family care, for doctor visits, and for maternity leave and corresponding time for new mothers' partners.

Next, Lovell utilized data on how much workers earn, the cost of legally mandated payroll taxes, the cost of administrative expenses, and the cost of replacing workers on HFA leave, should employers elect to hire a temporary worker during the leave. Again, the cost of the HFA, paid by employers, is estimated at \$5.98 per HFA-covered worker per week.

- *Savings from the Healthy Families Act*

The savings associated with allowing workers to take paid sick days to care for their own illness or family members' illness are difficult to quantify. For the purposes of the analysis, Lovell estimated only the quantifiable aspects of the bill, including its health-related benefits, and then suggested other benefits that should be included in the analysis when the necessary data becomes available. Therefore, the analysis did not include all the possible benefits that may be associated with the bill.

- *Savings from Reduced Presenteeism*

The first cost savings Lovell identified was the savings associated with wages that businesses currently pay to sick workers on the job but with diminished productivity ("presenteeism" costs). Lovell calculated the number of HFA-eligible workers who do not have paid sick days, as well as the cost of wages to sick workers with low productivity, the costs of the hourly wages of these workers, and the associated payroll taxes. Lovell found that the HFA would save \$41,571,500 annually in wages that would have been paid to sick workers on the job who are less productive due to illness.

- *Savings from Reduced Turnover*

Second, Lovell calculated the cost savings associated with reduced turnover. Lovell cited research that concluded having paid sick days reduced workers' voluntary turnover by 5.58 percentage points for married men, by 3.61 percentage points for married women, 5.75 percentage points for single women, and 6.43 percentage points for single men. If all employers offered paid sick days, voluntary turnover would reduce as workers considering a job change would have the same option of paid sick days at their current job as at a potential job—with the exception of firms with fewer than 15 workers.

Access to paid sick days also affects involuntary turnover by decreasing job termination related to unauthorized absences from work by sick workers or workers caring for sick family members. There are no data for estimating the savings associated with involuntary turnover, however, and Lovell's estimates did not include these savings.

Turnover-related costs, which include expenses such as the cost of recruiting a new worker, low productivity of new workers, training, and human resources processing time for exit and entry, can be expensive for businesses, up to 25 percent of a worker's total compensation.

Lovell's formula for calculating the costs associated with the HFA included the number of HFA-eligible workers who currently do not have paid sick days, the reduction in turnover associated with providing paid sick days, the cost of turnover, workers' hourly wages, and wages as a percent of total compensation (necessary for calculating the cost of turnover). Using this formula, Lovell estimated that the savings associated with reductions in turnover total \$25,840,000 annually.

- *Savings from Reduced Spread of Flu*

Third, Lovell calculated the cost savings associated with the reduced spread of the flu within workplaces, due to reductions in absences and lowered productivity. Lovell used flu-related data to calculate savings, because the flu is highly contagious and accounts for a large proportion of illness-related worker absences. Lovell's analysis, which included both employers' wage costs and workers' medical costs, found that the savings due to reductions in the spread of the flu in workplaces would total \$738.5 million annually if the HFA were enacted.

- *Savings from Reduced Short-Term Nursing Home Stays*

Fourth, Lovell added the cost savings associated with reduced short-term nursing home stays if workers were given the flexibility under the HFA to provide informal care for disabled, elderly, and medically-fragile relatives. Lovell found that the savings from reductions in short-term nursing home stays would total \$225 million annually.

- *Conclusion: The HFA Yields Savings for Stakeholders, Particularly Employers*

Lovell outlined the distributed costs and savings to stakeholders under the Healthy Families Act. While the costs of the bill would be paid for by employers,

employers reap the large majority of the estimated net savings, \$2.40 per HFA-covered worker per week, which accrues to employers, workers, families, and taxpayers.

*Question 4.* What is the indirect cost to the private sector of the paid leave mandate contained in the *Healthy Families Act*? How was that cost calculated? What individual(s) or organization(s) calculated these indirect private sector costs, what was the methodology utilized, and has the study, calculation and/or estimate been fully peer-reviewed?

Answer 4. See answer for Question 3 for a complete answer to this query.

*Question 5.* Do you believe that the bill's 15 employee coverage threshold is appropriate? Why shouldn't the threshold be 50 employees? Why shouldn't the threshold be 2 employees?

Answer 5. We believe the 15-worker threshold is appropriate as it tries to cover as many workers as possible, while mitigating the burden of compliance for businesses.

As the smallest of businesses grow and reach the 15-worker threshold, they begin to seek assistance from human resource managers or employment lawyers. At this size, businesses must understand and comply with the requirements of the ADA and Title VII. They are also required to display State and Federal posters that inform workers about workplace discrimination. By adopting this 15-worker threshold as well, the Healthy Families Act ensures that its compliance standards for small businesses are simplified.

*Question 6.* Do you believe that the bill's entitlement of 7 paid sick days is appropriate? Why shouldn't the entitlement be 3 paid sick days? Why shouldn't the entitlement be 14 paid sick days?

Answer 6. We believe a guarantee of 7 days per year is a reasonable minimum number of paid sick days employers should provide to workers. The intent of the Healthy Families Act is to establish a basic labor standard, much like the minimum wage. From this point, employers can offer additional days as appropriate for their workforce.

Among the 52 percent of private-sector workers who currently have access to paid sick days, the time available to them varies from 8 to 11 days in smaller firms, and 11 to 21 days in larger firms.<sup>2</sup> The Federal Government guarantees their workers 13 paid sick days a year.<sup>3</sup> By comparison to a large portion of the private sector and our government, the Healthy Families Act's minimum standard of 7 days is significantly lower.

On average, workers currently miss about four and a half days of work per year to recover from illness or address health needs.<sup>4</sup> With all adults working in 70 percent of today's families,<sup>5</sup> and a stay-at-home parent no longer the norm, working people need additional days to care for ill family members. The 7-day standard accommodates the very basic health needs of working people and their families. School-age children miss at least 3 school days per year due to health reasons.<sup>6</sup>

While the 7-day standard is intended to set a minimum standard for paid sick time, the reality is that the overwhelming majority of workers will not take the maximum number of the days they are guaranteed. An analysis of the 2003 National Health Interview Survey (NHIS) showed that when constrained to 7 days of work loss, workers offered paid sick days miss only 1.8 days annually on average due to illness and injury, excluding maternity leave. Workers who are not provided with paid sick days miss an average of 1.3 days annually, and the average for all workers is 1.6 days.<sup>7</sup>

*Question 7.* As I am sure you are aware, under the Fair Labor Standards Act, Federal workers can enter into voluntary arrangements with their employers to establish flex-time schedules, i.e. 80 hour bi-weekly schedules, as a means to better balance work, personal and family life. Would you be in favor of extending this to workers in the private sector? What is [are] the reason[s] for your view?

<sup>2</sup>Bureau of Labor Statistics, 1996–1997 data (most recent available).

<sup>3</sup>United States Federal Government, USA Jobs: the Official Job Site for the United States Federal Government Web site, <http://www.usajobs.gov/ei61.asp>.

<sup>4</sup>Vicky Lovell, *Valuing Good Health: An Estimate of Costs and Savings for the Healthy Families Act*, 2005, [www.iwpr.org/pdf/B248.pdf](http://www.iwpr.org/pdf/B248.pdf).

<sup>5</sup>Williams, Joan. *One Sick Child Away from Being Fired*. University of California, Hastings College of Law. Undated. Boushey, 2008. Analysis of U.S. Census Bureau, Current Population Survey, Annual Social and Economic Supplements, Tables F14, F13, F10, and FINC03.

<sup>6</sup>Vicky Lovell, *No Time to be Sick*, Institute for Women's Policy Research, May 2004.

<sup>7</sup>Lovell, 2005, "Valuing Good Health."

Answer 7. Flex-time is not a suitable substitute for paid sick days. Some suggest that flex-time policies would allow workers to switch the time of their work when they are sick or when their child is sick. However, in most cases, flex-time does not give workers the option to choose their work hours. For these workers, their hours of work are at the discretion of their employers, and they don't have the guarantee that they will have time off when they need it most, when they are sick or when they must care for an ill family member.

The majority of private-sector workers who would benefit most from paid sick days legislation are in the food service, hotel and retail industries. Additionally, majorities of child care and nursing home workers also would benefit from the Healthy Families Act. These occupations are customer-service oriented and are among the least flexible since they have specific hours of operation and structured worksites. Even with flex-time provisions in place, these workers would have little or any control over when they choose to work.

Flex-time schedules that establish an 80-hour 2-week work period would hurt millions of working families by giving them less control over their daily schedules and serve as a pay cut. The Fair Labor Standards Act established a 40-hour work week to enable working people to spend more time away from work and with their families, and discourage employers from requiring excessive overtime by making overtime more expensive. Undermining the 40-hour work week would result in employers requiring more people to work more overtime. For example, under an 80-hour 2-week work period, workers who work 50 hours in 1 week would not receive any overtime pay. Workers who rely on time-and-a-half overtime pay under a 40-hour work week may need to get a second job to make ends meet, which would put additional stress on working families that are already stretched thin. For employers, maintaining a 40-hour work week that provides for overtime pay beyond 40 hours ensures that they recruit and retain talented, dedicated workers.

*Question 8.* Please provide the committee with a copy of the study which you cite in footnote 23 of your testimony.

Answer 8. Please see attached for the full text of the report.

**[Editor's Note: Due to the high cost of printing, previously published materials will not be reprinted. The above report can be found in committee files or by contacting the American College of Occupational and Environmental Medicine.]**

RESPONSE TO QUESTIONS OF SENATORS KENNEDY, ENZI, AND COBURN  
BY JODY HEYMANN, M.D., PH.D.

QUESTIONS OF SENATOR KENNEDY

*Question 1.* Would you please comment on why you think the provision of paid sick days is needed, and why reliance solely on voluntary benefits is insufficient?

Answer 1. The Healthy Families Act is crucial because of the transformation that has occurred in the workplace and in American families. Today, the clear majority of working Americans are caring for children, or disabled or elderly family members. According to the Bureau of Labor Statistics, 70 percent of mothers with children under 18 are in the workforce. At the same time, between 25 percent and 35 percent of working Americans are currently providing care for someone over 65. According to the Census Bureau, 2 in every 7 families report having at least one member with disabilities. The ability of Americans to provide essential health care for their families while working depends enormously on the availability of paid sick days.

Yet, in the absence of a Federal mandate on paid sick days, the private sector has not filled the gap. Nearly half of private sector workers have no paid sick days at all. An even larger percentage lack the ability to take days off to care for sick family members. While many families cannot reliably count on paid sick days, working poor families are at the highest risk. As *The Widening Gap*, a book reporting a series of national studies on American working families, notes, 76 percent of low-income working parents do not consistently have paid sick days. Moreover, despite greater caregiving demands, working women are less likely than men to have paid sick days.<sup>1</sup> While voluntary adoption of paid sick day policies has covered some Americans, the only way to address these gaps for all Americans is through Federal legislation.

*Question 2.* Is additional research needed to determine who lacks paid sick days in America, whether paid sick days would make a difference, and whether the United States can remain competitive while requiring paid sick days? Do you think there has been adequate research to demonstrate the need for paid sick days?

Answer 2. The research evidence on sick days is by now thoroughly comprehensive. The benefits of paid sick days for individual and family health are clear. From as far back as 1965, studies of hospitalized children have shown that sick children have shorter recovery periods, better vital signs, and fewer symptoms when their parents are available to provide care.<sup>2,3,4</sup> Numerous studies from 1972 onward have indicated that sending children to day care sick with contagious diseases increases the rate of observed infections in day care centers,<sup>5,6,7,8</sup> including respiratory and gastrointestinal infections.<sup>9,10,11</sup> Research on both families and child care providers makes clear that when parents lack paid sick days they are far more likely to send sick children to both child care and school.<sup>12,13</sup> I led the research team that carried out the first primary data collection to look at the impact of paid sick days on the ability of parents to care for children when they are sick. This peer-reviewed research by Heymann, Toomey and Furstenberg found that parents with paid sick days are five times as likely to be able to care for sick children at home and are also more likely to provide preventive health care.<sup>14</sup>

Since 1993, a wealth of research has also shown that when sick adults receive support from family members, they have substantially better health outcomes from conditions such as heart attacks<sup>15,16</sup> and strokes.<sup>17</sup> In addition, elderly individuals live longer when they have higher levels of social support from friends and family members.<sup>18,19</sup> Studies have also demonstrated that taking time off from work to rest and recuperate when sick encourages a faster recovery<sup>20</sup> and may prevent minor health conditions from progressing into more serious illnesses that require longer absences from work and more costly medical treatment.<sup>21,22,23</sup>

In 1996, a Pediatrics article by Heymann, Earle, and Egleston detailed the first study to examine how many paid sick days families might need, using the National Medical Expenditure Survey to look at illness in a national sample and the NLSY to make estimates of paid sick leave availability across America.<sup>24</sup> The study found that one in more than a third of families, family members were sick enough to stay home from school or work for 2 weeks or more each year. However, the study also found that millions of Americans lacked paid sick days. The wide gaps between what Americans need in sick days and what employers provide have thus been clear for over a decade. The impact of meeting sick needs on success at work is also clear. Other researchers have found that without paid sick days, working families who take time off to provide care for family members are prone to both wage and job loss.<sup>25,26,27</sup> In 2000, results from the first nationally representative daily diaries survey to gauge how often working Americans disrupt work for family members, published in *The Widening Gap*, revealed that the leading reason for disruptions is health.<sup>28</sup> A peer-reviewed study by Earle and Heymann, published in 2002, used over a decade of longitudinal data to look at job loss and found that, after controlling for a wide range of human capital factors and social conditions, ill health and the poor health of children are leading determinants of job loss.<sup>29</sup> Moreover, an article by Earle, Ayanian, and Heymann, published in the *Journal of Women's Health* in 2006, demonstrated the importance of paid sick days in improving the return to work among adults with major health problems, finding that nurses are more than twice as likely to return to work after a heart attack or angina if they have paid days.<sup>30</sup>

Policy options have also thoroughly been explored. Since 2004, Institute for Women's Policy Research (IWPR) has been publishing pieces on the availability of paid sick days in the United States and the affordability of remedying the gap. Their studies in Massachusetts and California have likewise shown the importance of paid sick days and their ready feasibility. Since 2004, the National Partnership for Women and Families has documented state by state the general shortage of provisions available for private sector employees to take paid time off from work in order to care for their own health, as well as for the health of their families. In 2004, The Project on Global Working Families conducted the first studies to look at the global availability of paid sick days and leave<sup>31</sup> and, in 2006, how provision of paid sick days is related to the ability of countries to compete economically.<sup>32</sup> This second study published in the *Journal of Comparative Policy Analysis* found that the more economically competitive countries are more likely to provide paid sick days and leave.

This is only a fraction of the research that has been conducted on sick days. As a researcher, it would be easy to call for more research, but the reality is we know enough for Congress to act.

*Question 3.* The Healthy Families Act covers only businesses with 15 or more employees, which is also the threshold set in the ADA and Title VII. Would you please comment on why you think 15 employees is an appropriate threshold, and why you



think that businesses of that size are likely to be able to readily provide paid sick leave?

Answer 3. Providing sick days to employees is feasible for businesses of all sizes. While absences due to illnesses can be challenging, businesses already deal with these absences. In companies that provide paid sick days, employees are not even absent a day more a year on average than in companies which do not provide sick days.<sup>33</sup> The real difference is that it's paid and your job is protected. Moreover, we know from practical experience that the smallest companies in the United States are able to provide paid sick days and remain economically competitive. In businesses with only one to nine employees, 42 percent of employees are currently eligible for paid sick days. Lastly, countries around the world have ensured paid sick days for firms of all sizes. Thus, limiting this benefit to businesses with more than 15 employees is a conservative approach.

*Question 4.* Could you please comment on whether or not the Healthy Families Act's notice and medical certification provisions are reasonable and workable?

Answer 4. Clearly, there are some health care needs that working Americans have flexibility in scheduling. Examples of these include routine checkups and annual preventive medical tests. While employees will face some constraints due to the health care system in scheduling these, it makes sense that they should make a reasonable effort to schedule these at a time that is not unduly disruptive to work. Other health care needs, such as caring for a sick child, addressing one's own serious acute illness, or caring for a dying parent, clearly cannot be scheduled. The Healthy Families Act has been drafted to require employees to make the important effort to meet schedulable health care needs while trying to minimize any unnecessary impact on work.

*Question 5.* The Healthy Families Act sets 7 paid sick days as a minimum required national standard. Why do you think this is an appropriate minimum? How does it compare with the standards set by other countries?

Answer 5. A national standard of 7 guaranteed paid sick days is a minimum compared to international norms. At least 136 countries provide a week or more of paid sick days annually.<sup>34</sup> All of the most economically competitive countries, with the exception of the United States, guarantee paid sick days, and 18 of the top 20 provide 31 or more sick days with pay.

*Question 6.* The Healthy Families Act provides that paid sick leave can be used to care for "a child, a 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." Could you please comment on why it is important to provide this scope of coverage? How is the act's definition of family member similar to other laws and how other countries are defining family for purposes of short-term leave?

Answer 6. The definition of family used in the Healthy Families Act comes from the regulations covering Federal employees issued after passage of the Federal Employees Family Friendly Leave Act of 1997. (See 5 CFR § 630.201.) Just like Federal employees, Americans have a wide range of close family relationships, and it is crucial for legislation to honor American families in all the ways they care for each other.

*The Widening Gap* reports evidence from a study that asked working Americans in every State across the country when they had to disrupt work to care for a family member. While care for children accounted for 42 percent of work disruptions that were related to family, 15 percent were to care for parents, 12 percent to care for spouses or partners, 7 percent for grandchildren, and 24 percent for other family members. This should not come as a surprise to us. When a grandparent is caring for a grandchild whose parents are serving in the military, they need to be able to take time from work to care for that grandchild. When an American is caring for an aging aunt who has no children and becomes gravely ill, the niece or nephew may be the only person available to provide care. These are only two of a number of crucial circumstances that need to be covered. It will be important to have specific guidelines on the interpretation of this clause, but this is best done in regulation, not in law, to ensure that it covers American families well as their circumstances change.

Recognition of the breadth of family commitments is shared by many other countries. Just to cite a few examples of countries that ensure leave to care for sick family members: Austria's coverage includes all persons in need of care living in the same household; New Zealand similarly includes people who depend on the employee for care. Nor is a full understanding of family limited to high-income countries. El Salvador, for example, covers spouses, ascendants, descendants, and others who depend economically on the worker.

*Question 7.* A statement was made at the hearing that some employees do not need paid sick days because they could use flextime when they become ill or need medical care. Would you please comment on whether flextime is a workable substitute for paid sick days?

Answer 7. Flextime is not a workable substitute for paid sick days. Currently, most flextime programs require substantial advance notification which makes it unworkable for covering unexpected illnesses. Even when flextime is available with little notice—a far less common circumstance—it is not an adequate substitute for paid sick days. For example, employees who have been sick for a week cannot readily make up 40 hours of work at a different time while simultaneously caring for their health and their family.

*Question 8.* Mr. G. Roger King, who testified at the hearing, claimed that employers will have difficulties complying with the Healthy Families Act because of existing compliance requirements under the FMLA and workers' compensation laws. Do you agree, why or why not?

Answer 8. Employers should not have difficulty complying with the Healthy Families Act while complying with the FMLA and the workers' compensation laws. In fact, half of the private sector already provides paid sick days, as noted above. These companies are successfully ensuring their employees can care for their health, and are able to do this without conflict with the FMLA or workers' compensation laws. Paid sick days may be used to cover both common health problems—these are not covered by the FMLA, and so there is no overlap at all—and serious illness. In the case of serious illness, nothing in the FMLA prohibits paying employees, so ensuring they are paid under the Healthy Families Act for 7 days will not create any compliance difficulties.

*Question 9.* Mr. King argued that compliance with the Healthy Families Act will be administratively burdensome on employers. Given that so many employers in the United States and around the world already provide paid sick days, do you see compliance with these additional requirements as a problem for employers? Why or why not? What, if any, administrative procedures would the act add to typical payroll procedures?

Answer 9. An employer that does not currently provide sick days will need to develop a system for granting requests for sick days and keeping track of the number of sick days taken and remaining for the year. Those procedures, however, can easily be integrated into existing payroll procedures, as has already been done by employers for half of all private sector employees.

*Question 10.* Mr. King asserted that employers will likely reduce benefits in response to the act's paid sick days requirement. Would you please comment on why that may or may not be the case?

Answer 10. As currently written, the act clearly prohibits employers from reducing benefits in response to the act's passage. Any employers that reduce benefits in response to the act if it passes would violate the law.

#### ENDNOTES

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## QUESTIONS OF SENATOR ENZI

*Question 1.* In your written testimony you said that the Healthy Families Act is “superbly constructed.” By that, do you mean that it is the bill supporters’ intention to cover cosmetic procedures such as botox injections or teeth whitening?

Answer 1. Currently, American mothers who stay home to care for an infant with a 104 degree fever are being fired. Sons who seek to address the health needs of elderly parents are having to choose between neglecting their own mothers and fathers and losing jobs. To avoid losing pay, millions of Americans are going to work every month sick and spreading infections to their coworkers and those they come into contact with at work. Restaurant workers need paid sick days so they don’t spread disease to all those they serve, and health care workers need paid sick days so they don’t spread illness to their vulnerable patients. The Healthy Families Act is indeed well constructed to begin to meet these crucial needs and to have a substantial positive impact on public health at an affordable cost.

*Question 2.* Vacation time has demonstrable effects on employee morale, and productivity. Would you favor mandating paid vacation time for all private sector employees?

Answer 2. As you correctly note, vacation time has important benefits for both employees and employers. Moreover, it is readily affordable. One hundred thirty-seven countries guarantee paid annual leave.<sup>1</sup> The majority of the most competitive countries globally guarantee paid annual leave. That having been said, the bill under consideration addresses a far more urgent need—paid sick days. Whether or not we have consensus on other legislation, paid sick days are crucial to public health, the health of employees and their families, to the long-term economic productivity of the country, and to the welfare of all Americans.

*Question 3.* What is the direct labor cost to the private sector of the paid leave mandate contained in the Healthy Families Act? How was that cost calculated? What individual(s) or organization(s) calculated these direct private sector costs, what was the methodology utilized, and has the study, calculation and/or estimate been fully peer-reviewed?

Answer 3. Please see answer 4.

*Question 4.* What is the indirect cost to the private sector of the paid leave mandate contained in the Healthy Families Act? How was that cost calculated? What individual(s) or organization(s) calculated these indirect private sector costs, what was the methodology utilized, and has the study, calculation and/or estimate been fully peer-reviewed?

Answer 4. In response to questions 3 and 4: During the testimony, you received cost estimates from Heidi Hartmann. The details on these estimates including methodology are publicly available through the Institute for Women’s Policy Research. In carrying out these estimates, they have received input from a wide range of researchers in the field.

The bigger question is what do we know about the affordability of paid sick days? First, half of all employees in America currently work for businesses which provide paid sick days. These businesses have been able to successfully compete both locally and globally while providing paid sick days. This is true of firms of every size category, from the smallest to the largest. The problem is that the lack of a Federal mandate has left nearly half of American workers in the private sector with no paid sick days. Countries around the world have shown they can compete while mandating paid sick days. All of the most competitive countries, with the exception of the United States, guarantee paid sick days. In short, we have excellent evidence that it is affordable.

*Question 5.* Do you believe that the bill’s 15 employee coverage threshold is appropriate? Why shouldn’t the threshold be 50 employees? Why shouldn’t the threshold be 2 employees?

Answer 5. Providing sick days to employees is feasible for businesses of all sizes. While absences due to illnesses can be challenging, businesses already deal with these absences. In companies that provide paid sick days, employees are not even absent a day more a year on average than in companies which do not provide sick

<sup>1</sup>Heymann J., A. Earle, & J. Hayes. (2007). *The Work, Family, & Equity Index: How Does the United States Measure Up?* Boston/Montreal: Project on Global Working Families. Available online at: <http://www.mcgill.ca/files/ihs/WFEI/Final2007.pdf>.

days.<sup>2</sup> The real difference is that it's paid and your job is protected. Moreover, we know from practical experience that the smallest companies in the United States are able to provide paid sick days and remain economically competitive. In businesses with only one to nine employees, 42 percent of employees are currently eligible for paid sick days. Lastly, countries around the world have ensured paid sick days for firms of all sizes. Thus, limiting this benefit to businesses with more than 15 employees is a conservative approach.

*Question 6.* Do you believe that the bill's entitlement of 7 paid sick days is appropriate? Why shouldn't the entitlement be 3 paid sick days? Why shouldn't the entitlement be 14 paid sick days?

Answer 6. A national standard of 7 guaranteed paid sick days is a minimum compared to international norms. At least 136 countries provide a week or more of paid sick days annually.<sup>3</sup> All of the most competitive countries, with the exception of the United States, guarantee paid sick days, and 18 of the top 20 provide 31 or more sick days with pay.

*Question 7.* As I am sure you are aware, under the Fair Labor Standards Act, Federal workers can enter into voluntary arrangements with their employers to establish flex-time schedules, i.e. 80 hour bi-weekly schedules, as a means to better balance work, personal and family life. Would you be in favor of extending this to workers in the private sector? What is [are] the reason[s] for your view?

Answer 7. There is a range of alternative work schedules that can help employees balance work, personal, and family life that are already possible for all employers in the United States to offer, including flexible work hours and part-time schedules as examples. Some countries go further and have laws requiring employers to make flexible hours schedules available to their workers. The United Kingdom has a law that facilitates flexibility by providing working parents with the right to request flexible schedules in order to care for children. A law in New South Wales, Australia, gives employees in companies with more than five people the right to have reasonable accommodations made, including flexible scheduling, in order to allow them to care for any immediate family member in need of care. Laws in the Netherlands and Germany give employees the right to request a reduction or extension in the number of hours worked. While these laws only require companies to consider requests and to enact them if feasible, I would be happy to put you in touch with other experts on these new approaches to flexibility.

#### QUESTIONS OF SENATOR COBURN

*Question 1.* In your review of other countries and their government-mandated leave policies, how many of the countries had Federal constitutions like the U.S. Constitution which limits the role of the Federal Government unless specifically authorized to act?

Answer 1. Congress has passed labor legislation on a wide variety of important issues that range from prohibitions on child labor, to ensuring occupational safety, to passing a minimum wage. All of these have been accomplished while respecting the American Constitution. The Healthy Families Act is quite similar to the minimum wage and other legislation that has already been passed to ensure basic decent working conditions for Americans. With respect to other countries, as 145 countries ensure paid sick days or paid sick leave, these represent the full range of constitutional and non-constitutional systems—including Federal Governments, as well as governments that are not based on a Federal system—and the full political and economic spectrum.

*Question 2.* Section 5(d)(3) of S. 932—the Healthy Families Act—introduced by Senator Kennedy in the 109th Congress sets out that leave can be used for the “purpose of caring for a child, a 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.* . . .” (emphasis added) Please explain what situations and who Section 5(d)(3) could encompass.

Answer 2. The definition of family used in the Healthy Families Act comes from the regulations covering Federal employees issued after passage of the Federal Em-

<sup>2</sup>Lovell V. (2005). *Valuing Good Health: An Estimate of Costs and Savings for the Healthy Families Act*. Washington, D.C. : Institute for Women's Policy Research. Available online at: <http://www.iwpr.org/pdf/B248.pdf>.

<sup>3</sup>Heymann J., A. Earle, & J. Hayes. (2007). *The Work, Family, & Equity Index: How Does the United States Measure Up?* Boston/Montreal: Project on Global Working Families. Available online at: <http://www.mcgill.ca/files/ihsf/WFEIFinal2007.pdf>.

ployees Family Friendly Leave Act of 1997. (See 5 CFR § 630.201.) Just like Federal employees, Americans have a wide range of close family relationships, and it is crucial for legislation to honor American families in all the ways they care for each other.

*The Widening Gap* reports evidence from a study that asked working Americans in every State across the country when they had to disrupt work to care for a family member. While care for children accounted for 42 percent of work disruptions that were related to family, 15 percent were to care for parents, 12 percent to care for spouses or partners, 7 percent for grandchildren, and 24 percent for other family members. This should not come as a surprise to us. When a grandparent is caring for a grandchild whose parents are serving in the military, they need to be able to take time from work to care for that grandchild. When an American is caring for an aging aunt who has no children and becomes gravely ill, the niece or nephew may be the only person available to provide care. These are only two of a number of crucial circumstances that need to be covered. It will be important to have specific guidelines on the interpretation of this clause, but this is best done in regulation, not in law, to ensure that it covers American families well as their circumstances change.

Recognition of the breadth of family commitments is shared by many other countries. Just to cite a few examples of countries that ensure leave to care for sick family members: Austria's coverage includes all persons in need of care living in the same household; New Zealand similarly includes people who depend on the employee for care. Nor is a full understanding of family limited to high-income countries. El Salvador, for example, covers spouses, ascendants, descendants, and others who depend economically on the worker.

*Question 3.* Section 5(e) of S. 932—the Healthy Families Act—introduced by Senator Kennedy in the 109th Congress, sets out that “An employee shall make a *reasonable effort* to schedule leave under paragraphs (2) and (3) of subsection (d) in a manner that does not unduly disrupt the operations of the employer.” (emphasis added) Please explain what the term “reasonable effort” could encompass.

*Answer 3.* Clearly, there are some health care needs that working Americans have flexibility in scheduling. Examples of these include routine checkups and annual preventive medical tests. While employees will face some constraints due to the health care system in scheduling these, it makes sense that they should make a reasonable effort to schedule these at a time that is not unduly disruptive to work. Other health care needs, such as caring for a sick child, addressing one's own serious acute illness, or caring for a dying parent, clearly cannot be scheduled. The Healthy Families Act has been drafted to require employees to make the important effort to meet schedulable health care needs while trying to minimize any unnecessary impact on work.

*Question 4.* Are you aware of any States or localities (other than San Francisco) that are considering legislative action to address this issue?

*Answer 4.* Numerous States and localities—from Maine to Montana, from Maryland to Massachusetts, to the city of Madison, Wisconsin, among many others—have or are considering legislative action on paid sick days or paid family leave, because of the current vacuum that has been left at the Federal level. Yet, an increasing number of companies are noting that it will be far easier for them to comply if this is addressed at a Federal level with more uniform standards. Until these basic needs are met by Federal legislation, it makes sense that State and local governments will and should pass legislation to protect the health of their residents. At the same time, the best solution, both for ease of administration for companies and for ensuring a level playing field for all Americans, is Federal passage.

RESPONSE TO QUESTIONS OF SENATORS KENNEDY, ENZI, AND COBURN  
BY RAJIV BHATIA, M.D., MPH

QUESTIONS OF SENATOR KENNEDY

*Question 1.* The Healthy Families Act covers only businesses with 15 or more employees, which is also the threshold set in the ADA and Title VII. Would you please comment on why you think 15 employees is an appropriate threshold, and why you think that businesses of that size are likely to be able to readily provide paid sick leave?

*Answer 1.* As a public health physician, I believe providing paid sick leave has benefits to employees, employers, society, and government with regards to economic well being as well as physical and mental health. As sickness does not discriminate based on the number of employees in a business, all employees, irrespective of the

size of the business need and should have the ability to access paid sick days. With regards to feasibility, San Francisco's paid sick day law requires all employers to provide sick leave to all employees regardless of the size of the business. Smaller businesses are allowed to cap the accrued leave to 40 hours while all other businesses may cap accrued leave at 72 hours. Businesses of all sizes are currently complying with this law in San Francisco. Internationally, businesses in countries that require universal paid sick leave benefits appear to be competitive and successful.

*Question 2.* Mr. King asserted that employers will likely reduce benefits in response to the act's paid sick days requirement. Would you please comment on why that may or may not be the case?

*Answer 2.* It is not clear specifically which benefits Mr. King is referring to. In theory, some employers may conceivably reduce benefits that they already provide (e.g. vacation) in order to provide paid sick days leave. I don't believe many employers would reduce existing benefits for two reasons. First, I believe the number of employers which provide substantial benefits without providing paid sick day benefits is relatively small. In general, the provision of diverse benefits appears to be correlated positively. For example, employers who provide vacation benefits also provide sick day benefits. Employers who do not provide paid sick days also do not provide vacation and other benefits. Second, sick leave benefits are not comparable to other benefits in that they are not utilized uniformly by all employees. Typically, vacation benefits are used or accrued. Health care insurance benefits are paid by the employer irrespective of utilization of care. Paid sick days are utilized only when there is an illness or need for care. In a particular time period, paid sick leave benefits are typically not utilized completely by all employees who have them. Many employees may utilize little or no sick leave. Only a minority of employees have chronic or acute care needs requiring full utilization of all leave. I believe few employers would be likely to reduce an existing benefit (like vacation) for all employees as a trade-off for a new benefit whose utilization may vary substantially among employees.

#### QUESTIONS OF SENATOR ENZI

*Question 1.* Your testimony about the public health value of mandating sick leave referenced infectious diseases such as influenza, stomach flu, and viral meningitis that are indeed very dangerous for the general population. I am concerned that the Healthy Families Act as introduced last Congress would cover many more far less compelling cases. The paid leave mandated under this bill could be applied for any "absence resulting from obtaining professional medical care." As a Doctor, you know that "professional medical care" could apply to numerous cosmetic health procedures and a host of other plainly elective options. Under this bill, an employee, working for a small employer, could choose to have a teeth-whitening procedure done in the middle of the work day. This employee would have to be paid for the time away from work, and the employer would have to find a replacement employee to fill in for the absence with very little notice. Do you think this type of sick leave utilization is appropriate? If not, why doesn't the bill restrict sick leave to medically necessary conditions and procedures?

*Answer 1.* In my testimony, I articulated the benefits with regards to both acute infectious diseases as well as more chronic diseases. There are additional potential benefits of paid sick days mediated through the care and prevention of chronic diseases, prevention of cancers, and treatment of functional disabilities; and care for children. Sick leave would be appropriate for some elective procedures however, it may be appropriate to limit paid sick leave for procedures that do not have a medical necessity, a preventative health purpose, or a functional benefit. With regards to elective procedures, I would personally make the distinction between (1) elective procedures that prevent or ameliorate an existing or potential functional disability (knee surgery to improve or preserve the range of motion of the knee); (2) elective procedures that screen for or prevent more serious preventable conditions (colonoscopy for colon cancer); and (3) elective procedures that has no relationship to a disease or disability (e.g. cosmetic surgery for purely aesthetic purposes). With regards to this latter sub-category of elective procedures (3), paid sick days would not appear to have a compelling public health benefit.

*Question 2.* Do you believe sick leave should be limited to full day increments? How small should the allowable time increments be?

*Answer 2.* I do not believe that sick leave should be limited to full day increments. Full day increments do not correspond to common health care needs in a variety of circumstances. For example, for some disease conditions, an individual may need frequent but brief appointments with his or her physician, appointments with a

physical therapist, or appointments for laboratory work. In these situations the medical care could be short (e.g. 1 hour). Thus, an employee could take sick leave to attend a routine medical appointment and also potentially work for the majority of a workday. This is advantageous for both employees and employers.

*Question 3.* Assuming that employer resources are not limitless, from a public health perspective, do you think employer benefit dollars are best spent on providing accessible and affordable health insurance or on paid sick leave programs for employees?

*Answer 3.* I do not view the two types of benefits comparable with regards to type of benefit or fiscal implications for employers; therefore, it is not possible for me to evaluate the tradeoffs suggested by the question. Health care insurance benefits are typically paid as insurance premiums and there is no rebate to employees for healthy employees who do not utilize resources in any premium period. In contrast, there is variable utilization of paid sick day benefits and potential employer benefits on productivity, employee retention, and health care costs. Furthermore, paid sick leave and health care insurance benefits are complimentary. Health insurance can prevent some illness among employees and reduce the need for paid sick days. Paid sick days had potential to increase the utilization of primary and preventive care and reduce the utilization of more expensive therapeutic and hospital care, thus reducing the health care cost burden borne by employers collectively.

#### QUESTIONS OF SENATOR COBURN

*Question 1.* Section 5(d)(3) of S. 932—the Healthy Families Act—introduced by Senator Kennedy in the 109th Congress sets out that leave can be used for the “purpose of caring for a child, a 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. . . .” (emphasis added) Please explain what situations and who Section 5(d)(3) could encompass.

*Answer 1.* In my opinion, typical situations could include care for an individual who is suffering from, under evaluation for, or under treatment for an illness, disease, injury, or infirmity, whether permanent, temporary, acute, or chronic. I believe the subjects being cared for could include: a child, stepchild, foster child, or adopted child; parent or step-parent; spouse; grandparent or grandchild; domestic partner; or a sibling.

*Question 2.* Section 5(e) of S. 932—the Healthy Families Act—introduced by Senator Kennedy in the 109th Congress, sets out that “An employee shall make a *reasonable effort* to schedule leave under paragraphs (2) and (3) of subsection (d) in a manner that does not unduly disrupt the operations of the employer.” (emphasis added) Please explain what the term “reasonable effort” could encompass.

*Answer 2.* In my opinion, a *reasonable effort* on the part of the employee could encompass the following: conferring with the employer to learn when medical appointments may be least disruptive; scheduling routine or preventative medical care on a day or at a time of day that is least disruptive to the employee’s business if care is available at that time; scheduling more immediate or acute health care needs at a time of day least disruptive to the employer’s business if care is available; providing the employer timely advanced notice of routine or preventative care. Caring for a family member with an acute or emergency health condition, of course, cannot be scheduled in advance, but notice should be provided to the employer as soon as practicable.

*Question 3.* Are you aware of any States or localities (other than San Francisco) that are considering legislative action to address this issue?

*Answer 3.* I understand that in the United States, the States of California, Connecticut, Vermont, Washington, and Massachusetts currently have pending legislation to provide paid sick days to employees, and initial work on policy development is underway in several others.

#### RESPONSE TO QUESTIONS OF SENATORS ENZI AND COBURN BY G. ROGER KING

##### QUESTIONS OF SENATOR ENZI

*Question 1.* I know that many large employers voluntarily offer their employees paid Family and Medical Leave Act time in an effort to remain competitive. In your experience working with employers who are covered by FMLA, is there a higher likelihood of abuse among employees who have access to paid vs. unpaid leave? Can you offer any suggestions as to why this may be the case?



Answer 1. There is the potential for abuse among employees who have access to paid vs. unpaid sick leave. This is likely because certain employees who receive paid sick leave often view this leave as an “entitlement” or part of their compensation, rather than a benefit that is to be used only when necessary. As evidence of this, some clients who have traditional sick leave programs have advised us that they see an increase of sick leave on Mondays and Fridays or around national holidays or traditional vacation periods (i.e., Christmas or Independence Day). Some employees will take “mental health” days and call in “sick” when they are not actually ill. The problem with using sick leave in this manner is that the leave is often unscheduled and thus creates staffing issues and considerable increased expenses for employers.

Human Resources professionals and clients have advised us that when sick leave and vacation leave are provided as two separate benefits, employees use sick leave because they have it. When employers switch to using a paid time off (“PTO”) leave bank system they usually find that utilization of unscheduled time off changes drastically. Instead of using unscheduled “sick days,” employees will save their time and use it for planned vacation and truly needed time off.

*Question 2.* It appears that Section 5(g)(2) of the bill would freeze all leave policies upon enactment, and would effectively bar a covered employer from ever changing those policies in the future. Moreover, under Section 5(g) were those existing policies not deemed to be “equivalent” it would appear that the mandated leave called for under the bill would be *in addition* to that which an employer was voluntarily providing. Is that a fair reading of Section 5(g)? Could this wind up punishing employers that currently provide paid leave? Do you believe the bill language is clear as to the meaning of “equivalent”?

Answer 2. I agree with your reading of 5(g)(2) of the bill (which states that an employer may not eliminate or reduce the leave that it offers at the time the bill is enacted in order to comply with the HFA). As discussed in my written testimony, this edict would appear to contradict other sections of the HFA that will require employers to substantially modify their leave policies to become compliant with the HFA. Further, Section 5(g)(2) is troubling as it states “an employer may not eliminate or reduce leave in existence on the date of enactment of this Act, regardless of the type of such leave, in order to comply with the provisions of this Act.” As noted above, does this subsection prohibit even minor adjustments to an employer’s current leave programs? For example, it is unclear under the bill as currently written whether an employer that has a paid time-off program<sup>1</sup> that does not specifically identify sick leave would be prevented from changing in any manner how this paid time-off system works, including the eligibility and accrual levels associated with such plan. The “equivalency” provision of the HFA raises serious questions as to how such PTO and analogous programs would deem to be “equivalent” to the 7-day paid sick leave requirement of the HFA. Indeed, the cost of regulatory staff and time associated with such “equivalency” reviews no doubt would be considerable as would be the cost of the inevitable litigation that will arise from such determinations.

#### QUESTIONS OF SENATOR COBURN

*Question 1.* In your testimony you mentioned the problems that have arisen with FMLA. Please discuss some of the litigation trends related to FMLA and whether you consider the Healthy Families Act as another bill that could spur similar litigation?

Answer 1. If the HFA is enacted based on the experience of many employers under FMLA, employers of all sizes may be discouraged from implementing any additional improvements in their paid leave programs—assuming after paying for their additional paid leave costs, administrative expenses, and litigation costs associated with the HFA that they would even have any resources left to make such improvements. Indeed, in many instances it may be that the added administrative and litigation costs and other compliance expenses associated with the HFA will

<sup>1</sup>The term or phrase “sick leave” is a term or concept that is no longer used by a substantial number of employers in this country. Paid sick leave has been replaced or folded into comprehensive leave programs such as paid time off (“PTO”) and other similar leave policies and procedures. This approach combines traditional paid sick leave days, vacation days and other paid leave time (e.g., personal days, attendance incentive pay, etc.) into a consolidated or comprehensive paid leave program. Under this approach, a worker is given the option of when to take such paid leave time and may choose to do so within general constraints for any reason for which he or she chooses, including taking leave for personal or family illness situations.

drain any resources that otherwise would have been available for paid leave benefit improvements.

As an employment attorney, I have seen the following issues in FMLA litigation that would likely arise with similar frequency under the Healthy Families Act:

- (1) The use (and abuse) of intermittent leave;
- (2) The inadequacy of notice and certification before a leave period begins;
- (3) Impact on attendance incentive programs;
- (4) Litigation costs associated with compliance;
- (5) Potential class claims (such as those that are currently plaguing employers in the wage and hour arena).

Intermittent leave is one area that particularly deserves this committee's attention. Two different regulations, the regulation permitting intermittent leaves when there is no planned and scheduled medical treatment on the day of the absence and the regulation embracing chronic conditions as covered "serious health conditions," intersect to create one of the biggest problems for employers in terms of day-to-day operations. Together, these regulations allow an employee to have unscheduled absences of up to 60 single work days per year or approximately 25 percent of all workdays for conditions that may not be a serious health condition. This means that an employee could be absent for 1.2 days every single week in a calendar year or a consecutive 12 month period.

Additionally, intermittent leave can be taken in as little as 10 or 15 minute increments with the potential, therefore, for an employee to take off a portion of his or her workday everyday in the calendar year or in a consecutive 12 month period. Further, if the employee manages to work 1,250 hours in the previous 12 months, the employee will be eligible to continue this cycle.

Similar concerns will arise with the Healthy Families Act if employees use the 7 days of paid leave intermittently. The use of intermittent paid leave will subject small employers (those not covered by the FMLA) to similar scheduling and coverage issues as those employers currently covered by the FMLA and will serve to exacerbate the already difficult situation faced by employers who are covered under the FMLA. The impact of unnoticed intermittent sick leave on a small employer could be devastating to production and/or operations.

*Question 2.* Section 5(d)(3) of S. 932—the Healthy Families Act—introduced by Senator Kennedy in the 109th Congress sets out that leave can be used for the "purpose of caring for a child, a 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. . . ." (emphasis added) Please explain what situations and who Section 5(d)(3) could encompass.

*Answer 2.* This is, in my estimation, one of the fundamental definitional flaws in the act. This phrase is susceptible to a very broad inclusion of a variety of individuals. It could be construed to include frequent visitors to a household, a nanny or other domestic help, domestic partners, friends who live together as roommates—the list is potentially limitless. The potential litigation that might arise from this definition will likely further increase employers' burden in complying with the act.

*Question 3.* Section 5(e) of S. 932—the Healthy Families Act—introduced by Senator Kennedy in the 109th Congress, sets out that "An employee shall make a *reasonable effort* to schedule leave under paragraphs (2) and (3) of subsection (d) in a manner that does not unduly disrupt the operations of the employer." (emphasis added) Please explain what the term "reasonable effort" could encompass.

*Answer 3.* This open-ended and minimal requirement of notice to an employer for unscheduled leave will pose significant practical, financial, and operational problems. The term "a reasonable effort" is entirely subjective and most employers will be unwilling to challenge any notice provided by an employee, even if that notice comes too late for the employer to cover the employee's absence.

*Question 4.* Are you aware of any States or localities (other than San Francisco) that are considering legislative action to address this issue?

*Answer 4.* Yes. Currently there are State efforts to enact legislation similar to that of San Francisco's in Maine, Maryland, Massachusetts, Michigan, Montana, Wisconsin, Vermont, and Washington and municipal efforts in Madison, Wisconsin and Washington D.C. Also, the Federal Government and all State governments currently provide paid sick leave to their workers. Seven States (California, Connecticut, Hawaii, Maine, Minnesota, Washington, and Wisconsin) provide that workers who have paid sick days must be permitted to use them to care for family members. Many of these initiatives are quite recent and largely untested. For example, it is interesting to note that numerous problems have arisen regarding the San

Francisco ordinance in this area and this new law has therefore been delayed in its implementation.

QUESTIONS OF SENATOR KENNEDY TO HEIDI HARTMANN, PH.D.

*Question 1.* Please explain how you arrived at the estimated cost of the Healthy Families Act, and address Mr. King's statement that the act would cost employers approximately \$80 billion a year.

*Question 2.* The Healthy Families Act covers only businesses with 15 or more employees, which is also the threshold set in the ADA and title VII. Would you please comment on why you think 15 employees is an appropriate threshold, and why you think that businesses of that size are likely to be able to readily provide paid sick leave?

*Question 3.* The Healthy Families Act sets 7 paid sick days as a minimum required national standard. Why do you think this is an appropriate minimum? How does it compare with the standards set by other countries?

*Question 4.* A statement was made at the hearing that some employees do not need paid sick days because they could use flextime when they become ill or need medical care. Would you please comment on whether flextime is a workable substitute for paid sick days?

*Question 5.* Mr. King asserted that employers will likely reduce benefits in response to the act's paid sick days requirement. Would you please comment on why that may or may not be the case?

**[Editor's Note: Responses to the above questions were not available at time of print.]**

[Whereupon, at 11:42 a.m., the hearing was adjourned.]