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H.R. 1406, WORKING FAMILIES FLEXIBILITY ACT OF 2013

HEARING

BEFORE THE

SUBCOMMITTEE ON WORKFORCE PROTECTIONS

COMMITTEE ON EDUCATION AND THE WORKFORCE

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

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H.R. 1406, WORKING FAMILIES FLEXIBILITY ACT OF 2013

Thursday, April 11, 2013
U.S. House of Representatives
Subcommittee on Workforce Protections
Committee on Education and the Workforce
Washington, DC

The subcommittee met, pursuant to call, at 10:01 a.m., in room 2175, Rayburn House Office Building, Hon. Tim Walberg [chairman of the subcommittee] presiding.

Present: Representatives Walberg, Kline, DesJarlais, Hudson, Courtney, Bishop, and Sablan.

Also present: Representative Roby.

Staff present: Katherine Bathgate, Deputy Press Secretary; Owen Caine, Legislative Assistant; Ed Gilroy, Director of Workforce Policy; Benjamin Hoog, Legislative Assistant; Donald McIntosh, Professional Staff Member; Brian Newell, Deputy Communications Director; Krisann Pearce, General Counsel; Molly McLaughlin Salmi, Deputy Director of Workforce Policy; Alissa Strawcutter, Deputy Clerk; Juliane Sullivan, Staff Director; Alexa Turner, Staff Assistant; Aaron Albright, Minority Communications Director for Labor; Mary Alfred, Minority Fellow, Labor; Tylease Alli, Minority Clerk/Intern and Fellow Coordinator; Jody Calemine, Minority Staff Director; John D'Elia, Minority Labor Policy Associate; Daniel Foster, Minority Fellow, Labor; Brian Levin, Minority Deputy Press Secretary/New Media Coordinator; Leticia Mederos, Minority Senior Policy Advisor; Celine McNicholas, Minority Senior Labor Counsel; Richard Miller, Minority Senior Labor Policy Advisor; Megan O'Reilly, Minority General Counsel; and Michele Varnhagen, Minority Chief Policy Advisor/Labor Policy Director.

Chairman WALBERG. A quorum being present, the subcommittee will come to order. Good morning to everyone here this morning.

I want to thank our witnesses for being with us and sharing their thoughts on the legislation introduced by our distinguished colleague from Alabama, Martha Roby. Representative Roby has proven to be a strong advocate for America's workers and we are grateful for her leadership.

Today we will discuss H.R. 1406, the Working Families Flexibility Act of 2013. This important legislation would allow private-sector employees to choose paid time off, or "comp time", as compensation for working overtime hours.

For nearly 30 years public-sector workers have been able to earn comp time and it is only fair to extend the same benefit to millions of workers in the private sector who would choose that. Today's workplaces are a lot different than they were just a generation ago. Technology continues to alter the way goods and services reach consumers and cultural changes have transformed the nature of America's workforce.

According to the Bureau of a Labor Statistics, in 2011 nearly 60 percent of married families with children were headed by two working families—working parents. Roughly 66 percent of single moms and 79 percent of single dads were working.

BLS also reports that for the same year, 44 percent of all families included children under the age of 18. As a result, it has become more difficult for many parents to balance family and work, but that is only one part of the American story.

For one worker, taking home some additional income to pay an unexpected car repair bill is important. For another, leaving work early to attend a parent-teacher conference is more valuable than a few extra dollars in the bank.

Choice and flexibility will help workers meet the demands of their jobs and attend to the needs of their families. That is why I am proud to support Working Families Flexibility Act of 2013. The bill would give private sector employees a choice between cash wages and paid time off for working overtime.

This is a pro-worker, pro-family proposal that is desperately needed. With unanimous consent, I would like to yield to Representative Roby to explain the legislation in greater detail.

I would now like to yield briefly to the sponsor of the bill. Representative Roby, good to have you with us for any comments on the legislation she may have.

[The statement of Mr. Walberg follows:]

Prepared Statement of Hon. Tim Walberg, Chairman, Subcommittee on Workforce Protections

Good morning everyone. I want to thank our witnesses for being with us and sharing their thoughts on the legislation introduced by our distinguished colleague from Alabama, Martha Roby. Representative Roby has proven to be a strong advocate for America's workers and we are grateful for her leadership.

Today we will discuss H.R. 1406, the Working Families Flexibility Act of 2013. This important legislation would allow private-sector employees to choose paid time off or 'comp time' as compensation for working overtime hours. For nearly 30 years, public-sector workers have been able to earn comp time and it's only fair to extend the same benefit to millions of workers in the private-sector.

Today's workplaces are a lot different than they were just a generation ago. Technology continues to alter the way goods and services reach consumers and cultural changes have transformed the nature of America's workforce.

According to the Bureau of Labor Statistics, in 2011 nearly 60 percent of married families with children were headed by two working parents; roughly 66 percent of single moms and 79 percent of single dads were working. BLS also reports that for the same year 44 percent of all families included children under the age of 18.

As a result, it has become more difficult for many parents to balance family and work—but that's only one part of the American story. Each worker faces a unique set of challenges and responsibilities. For one worker, taking home some additional income to pay an unexpected car repair bill is important. For another, leaving work early to attend a parent-teacher conference is more valuable than a few extra dollars in the bank. Choice and flexibility will help workers meet the demands of their jobs and attend to the needs of their families.

That is why I am proud to support the Working Families Flexibility Act of 2013. The bill would give private-sector employees a choice between cash wages and paid

time off for working overtime. This is a pro-worker, pro-family proposal that is desperately needed. With unanimous consent, I would like to yield to Representative Roby to explain the legislation in greater detail.

I would now like to yield briefly to the sponsor of the bill, Representative Roby, for any comments on the legislation she may have.

Mrs. ROBY. Thank you so much, Mr. Chairman and I also would like to extend a very warm welcome to all of our witnesses, but especially our two from Alabama. It is great for you to be with us today, all of you.

Talk to just about any working mom or dad and they will tell you they need more time. It is one of our most valuable things that we have and, you know, one more hour in the day to be able to take care of responsibilities outside of work is very valuable.

Have any of you ever faced a child's disappointment when you couldn't leave work to attend a T-ball game or a school play? Have you ever wished for more time to devote to an aging parent in need of care or extra time with a newborn? Do you know what it is like to be a military mom preparing for your husband to deploy and knowing your kids are going to need that extra attention and support during those months?

We, here, cannot legislate another hour in the day, but we can help working people better balance the demands of family and work by removing unnecessary federal restrictions on the utilization of comp time in the private sector.

The Working Families Flexibility Act does not change the 40-hour workweek or how overtime pay is calculated. Those standards remain the same. However, for some workers, having extra paid time off is actually more valuable than money, and if that is the case, why should Washington stand in the way?

The law should not make it more difficult for working people to balance their time so they can see their child hit a home run or attend a parent-teacher conference. This bill leaves it up to the employee to decide when to use his or her comp time, so long as reasonable notice is given and the requested time off would not unduly disrupt the business—the same standard that is currently used in the public sector. The legislation includes numerous employee protections to ensure the use of comp time is truly voluntary.

For example, there must be a written agreement between the employer and the employee from which the employee can withdraw at any time. A worker can cash out their accrued comp time and instead receive their overtime wages within 30 days. Additionally, all existing enforcement remedies in the law are retained in the bill as a new remedy to ensure workers are not forced or coerced into choosing comp time.

Does this legislation solve every problem facing working families? No, it does not. But it does offer to make life a little easier for working Americans by helping them better balance the demands of work and family, and I encourage all of my colleagues to support the Working Families Flexibility Act of 2013.

Mr. Chairman, thank you for letting me be here, and I yield back.

Chairman WALBERG. I thank the gentlelady and I thank you for your passion on this issue. It is an issue whose time has come and

we look forward to our discussions today as we prepare to move it to the full committee.

I guess I would say that I think a number of us could use comp time today in the number of committees we have to be at at the same time. And with that leading, I would say my distinguished colleague, Joe Courtney, the senior Democratic member of this committee will be joining us shortly. He is on committee work already and will be here. We will recognize him for his opening comments, which we do want to hear at the time that he arrives.

But until then, pursuant to committee Rule 7(c), all members will be permitted to submit a written statement to be included in the permanent hearing record, and without objection, the hearing record will remain open for 14 days to allow statements, questions for the record, and other extraneous material referenced during the hearing to be submitted into the official record.

It is now my pleasure to introduce our distinguished panel of witnesses and first I will turn to Representative Roby again to introduce our first two witnesses.

Mrs. ROBY. Thank you, Mr. Chairman.

I am happy to introduce two of our witnesses here with us today both of which are from my home state of Alabama. And I would like to first introduce Juanita Phillips who is the director of human resources in the Intuitive Research and Technology Corporation in Huntsville, Alabama. She has over 24 years of experience as an HR professional in the publishing and manufacturing industries and with several federal contractors.

Next, I would like to introduce Karen DeLoach. Karen is actually from my hometown of Montgomery. We met for the first time last week. She is a bookkeeper at a local accounting firm in Montgomery where she has worked since 2006.

She has a very interesting story to tell and as a working woman who like many of us we wear a lot of different hats, and she will provide us with a first-hand account as to how the Working Families Flexibility Act of 2013 can have a positive impact on her work/life balance.

So thank you, Mr. Chairman, and thank you ladies for spending your time with us today.

Chairman WALBERG. I thank the gentlelady. Maybe we will see if the Alabama dialect is across the board with three of you in the room today. By the end of the day, we may understand it. Okay? [Laughter.]

Also, we have with us this morning Ms. Judith Lichtman who is a senior adviser at the National Partnership for Women and Families in Washington, D.C. Welcome.

And also Mr. Andy Brantley who is the president and chief executive officer at the College and University Professional Association for Human Resources in Knoxville, Tennessee. Welcome.

I appreciate the fact that our ranking member has arrived. I don't know whether you will be staying too long or not. We all have multiple committees and subcommittees to be at this morning, but we will recognize you now, Mr. Courtney, for your opening comments.

Mr. COURTNEY. Thank you, Mr. Chairman. I wore black today—in recognition of Michigan's valiant effort the other night and——

[Laughter.]

Chairman WALBERG. Go Blue.

Mr. COURTNEY. Yes, well, I did wear blue also because of the UConn women Huskies who obviously are——

Chairman WALBERG. Congratulations.

Mr. COURTNEY [continuing]. Amazing program and again, thank you for the opportunity again to offer some thoughts at the beginning of this hearing.

Mr. Chairman, this Tuesday was Equal Pay Day. I spent the afternoon at another institution, higher education in Connecticut, Conn College, speaking to the American Association of University Women talking about a meaningful economic agenda for women and families which by and large are very much deeply intertwined with working families and I heard women talk about the need for equal pay, better job opportunities, and flexibility at work so that they can deal with family issues when they arise.

I was hopeful that today would be an opportunity to continue that discussion and that we would examine legislation that gives working families greater flexibility in managing their work and family demands.

Instead, however, we are debating legislation which frankly has been recycled through this committee numerous times and never prevailed that forces workers to compromise their paycheck in order to have more time off from work. What is worse, this legislation, as I said, has been considered several times before and failed to gain any traction.

Why? Because this bill has nothing to do with promoting workplace flexibility. It is not about paying overtime. It is about saying to hourly workers already struggling to make ends meet that if you need time off to care for a sick child or attend a school concert you need to work extra hours, forgo the earned overtime pay, and then as long as it is not disruptive to your employer, you may get some time off.

But to be clear, nothing in this bill requires that the worker has access to time off when she really needs it. Working families deserve better than a bill that forces them to choose between overtime pay and the family-friendly policies they desire.

We should be looking at ways to give workers more power over their lives, not hand over hard-fought rights won by workers to their employers.

Under H.R. 1406, workers who already work overtime will not get paid for hours worked beyond the 40-hour work—40 hours per week. Instead, that the compensation will be controlled by the employer. That amounts to an interest-free loan paid for by the worker's wages.

The worker will have to wait until the end of the year to be paid for that time. In the meantime, if the firm goes out of business or declares bankruptcy, nothing in this bill requires that she is paid back.

Nothing in this legislation mandates that a single worker receive a single hour of comp time. Under current law, employers are already free to grant paid or unpaid leave to employees, and again, my predecessor in this seat, Senator Christopher Dodd, was the leader in the Family Leave Act, which, you know, really carved out

that protection. I am very proud to say that he is one of my constituents.

This bill just provides a way for employers to pay workers less in the name of workplace flexibility. It is a tired discussion. Nothing in this bill prohibits an employer from preferentially assigning overtime to workers who select to receive comp time in lieu of overtime, resulting in workers whose families must rely on overtime pay being denied access to—to additional hours of work.

This bill makes it more complicated to enforce overtime protections. Indeed, at a hearing last Congress in this subcommittee we heard from the senior vice president of human resources at IBM that tracking comp time would be a challenge for businesses. He pointed out that it is "an administrative burden that is cost ineffective."

Nothing in this bill provides more resources to the Department of Labor to enforce the measure or issue compliance assistance to businesses like IBM that may have to establish systems accounting for comp time.

Today is unfortunately a wasted opportunity. Instead of building on the momentum of the conversation around Equal Pay Day and advancing real family-friendly reforms, the majority is recycling a policy that does nothing to help working families.

Numerous proposals already exist that protect workers' wages and promote workplace flexibility. These proposals provide guaranteed family or medical leave and do not take away from critical overtime protections.

I am proud to have joined my colleague, Rosa DeLauro, from New Haven, Connecticut, as an original cosponsor of the Healthy Families Act legislation which provides paid sick days to nearly 30 million workers.

This would make a meaningful difference for working families. I look forward to an opportunity to discuss legislation like the Healthy Families Act and the Paycheck Fairness Act that make a real difference to our nation's working families.

Thank you, Mr. Chairman, I yield back.

[The statement of Mr. Courtney follows:]

Prepared Statement of Hon. Joe Courtney, Ranking Member, Subcommittee on Workforce Protections

Mr. Chairman, this Tuesday was Equal Pay Day. I spent the afternoon at Connecticut College speaking to the American Association of University Women talking about a meaningful economic agenda for women families. I heard women talk about the need for equal pay, better job opportunities, and flexibility at work so that they can deal with family issues when they arise. I was hopeful that today would be an opportunity to continue that discussion and that we would examine legislation that gives working families greater flexibility in managing their work and family demands. Instead, we are wasting Committee time debating legislation that forces workers to compromise their paycheck in order to have more time off work. What's worse, this exact legislation has been considered several times before and failed to gain any traction. Why—because this bill has nothing to do with promoting workplace flexibility. It is about not paying overtime. It is about saying to hourly workers already struggling to make ends meet—if you need time off to care for a sick child or attend a school concert, you need to work extra hours, forgo the earned overtime pay, and then, as long as it is not disruptive to your employer, you may get some time off. But, to be clear, nothing in this bill requires that the worker has access to time-off when she really needs it.

Working families deserve better than a bill that forces them to choose between overtime pay and the family-friendly policies they desire. We should be looking at

ways to give workers more power over their lives, not hand over hard-fought rights won by workers to their employers. Under H.R. 1406, workers who work overtime will not get paid for hours worked beyond 40 hours per week, instead, that compensation will be controlled by the employer. That amounts to an interest-free loan paid for by the workers' wages. A worker will have to wait until the end of the year to be paid for that time. In the meantime, if the firm goes out of business or declares bankruptcy, nothing in this bill requires that she is paid back.

Nothing in this legislation mandates that a single worker receive a single hour of comp time. Under current law, employers are already free to grant paid or unpaid leave to employees. This bill just provides a way for employers to pay workers less in the name of workplace flexibility. It is a tired discussion. Nothing in this bill prohibits an employer from preferentially assigning overtime to workers who select to receive comp time in lieu of overtime, resulting in workers whose families most rely on overtime pay being denied access to additional hours of work.

This bill makes it more complicated to enforce overtime protections. At a hearing last Congress in this Subcommittee we heard from the Senior Vice President of Human Resources at IBM that tracking comp time would be a challenge for businesses. He pointed out that it is "an administrative burden that is cost ineffective." Nothing in this bill provides more resources to the Department of Labor to enforce the measure or issue compliance assistance to businesses like IBM that may have to establish systems accounting for comp time.

Today is a wasted opportunity. Instead of building on the momentum of conversations around Equal Pay Day and advancing real family-friendly reforms, the Republican majority is recycling a policy that does nothing to help working families. Numerous proposals already exist that protect workers' wages and promote workplace flexibility. These proposals provide guaranteed family or medical leave and do not take away from critical overtime protections. I am proud to have joined my colleague Rosa DeLauro as an original cosponsor of the Healthy Families Act legislation, which provides paid sick days to nearly 30 million workers. That would make a meaningful difference for working families. I look forward to an opportunity to discuss legislation like the Healthy Families Act and the Paycheck Fairness Act that make a real difference for our nation's working families. Thank you, Mr. Chairman.

Chairman WALBERG. I thank the gentleman and points out further good reason for us having this discussion today.

Before I recognize each of you to provide your testimony, let me briefly explain our lighting system. It is like the traffic lights. Fairly simple. When the light in front of you is green, you have 5 minutes of time to present you testimony. We have your written testimonies and if they go longer than the 5 minutes, we have that information.

When the light turns yellow, you have 1 minute. And when it is red, if you have to proceed through that red light, proceed with very much caution and finish—finish your thoughts as quickly as possible in that 5-minute period of time.

Following that, your testimonies—each member will have 5 minutes each to ask questions of you to further expand on what your testimony was about.

And so now it is a privilege to recognize Ms. Phillips for 5 minutes of her testimony.

STATEMENT OF JUANITA PHILLIPS, DIRECTOR OF HUMAN RESOURCES, INTUITIVE RESEARCH AND TECHNOLOGY CORPORATION

Ms. PHILLIPS. Good morning, Chairman Walberg, Ranking Member Courtney, and members of the committee. My name is Juanita Phillips and I am director of human resources for Intuitive Research and Technology Corporation at our corporate headquarters in Huntsville, Alabama.

I am pleased to appear before you today on behalf of the Society for Human Resource Management or SHRM of which I have been a member for nearly 20 years.

Thank you for this opportunity to testify before the subcommittee on H.R. 1406, the Working Families Flexibility Act, a bill to allow private-sector employers the opportunity to provide paid time off in lieu of cash payments for overtime if a nonexempt employee chooses this option.

And your beautiful spring weather is such a wonderful backdrop to any conversation about time away from work, so thank you for that.

Mr. Chairman, as you know, comp time has been a choice for nonexempt employees in the federal government since 1978 and public-sector employees have had it since 1985.

So the concept of giving employees the choice to select paid time off in lieu of cash wages is nothing new. By all accounts, comp time has worked well for government employees for nearly three decades and it is time to extend this benefit to private-sector employers and employees.

The workforce and workplace have undergone significant changes since the Fair Labor Standards Act was enacted in the industrial era of 1938. Twenty-first century employees face huge challenges as they pursue an optimal work/life fit today.

Consider for example that 60 percent of employees feel they do not have enough time for their children, spouses, partners, themselves managing work, personal and family responsibilities, in other words, has employees experiencing a time famine.

We are all juggling ever more responsibilities between work and home and public policy should encourage or allow employers to offer voluntary options to help employees meet work/life obligations.

That is why I am pleased to join SHRM in supporting H.R. 1406 and commend my home state representative, Mrs. Roby, for introducing this commonsense legislation to give employees choice and flexibility.

H.R. 1406 would amend the FLSA to permit the private sector to offer employees the voluntary choice of taking overtime and cash payments as they do today or in the form of paid time off from work.

Paid time off would accrue at a rate of 1.5 hours for each hour of overtime worked to a max of 160 hours of comp time per year. An employer however could choose to cash out comp time after 80 hours after providing the employee 30 days written notice and all comp time would have to be cashed out at year-end. The bill also includes several important employee protections.

Compensatory time off as a workplace option gives nonexempt employees more control over their time and can improve morale and job satisfaction and increase productivity by giving employees the option of increased flexibility.

Mr. Chairman, my company does a lot of federal government contract work, which means I have nonexempt employees working side-by-side with federal government nonexempt employees. It is incredibly difficult to explain to my employees why they cannot

take comp time while the government employees they work alongside can.

They are left wondering why this arrangement is illegal for Intuitive employees and at the same time legal and available to government employees. This defies logic to them and frankly, to me too.

My company is committed to a workplace culture that supports personal development and work/life needs of our employees which helped us to achieve a 94 percent employee retention rate in 2012.

Intuitive has received numerous best-in-class awards which speaks to our culture and programs designed to help our people navigate home and work demands.

I am very often told by employees that Intuitive is the best place they have ever worked. All of the workplace flexibility practices outlined in my written statement are voluntary. We don't have to offer these benefits at Intuitive, but we do because they work well for our employees and help us attract and retain the best.

That is why H.R. 1406's voluntary approach to comp time for employers and employees is so important. If enacted, this bill would give employers the option of offering a comp time program and employees the choice of whether to participate in the comp time arrangement.

Under current law, private-sector employers and employees are without this option and this choice, an option and choice that their government counterparts have enjoyed for more than 30 years.

Would every private-sector employer adopt a comp time program if H.R. 1406 were enacted? Given the diversity of private-sector employers, certainly not, but many would. This option is a step in the right direction.

Mr. Chairman, SHRM appreciates this committee's examination of the Working Families Flexibility Act as one important tool employers can offer to help employees address work and family needs; however, we would also welcome and encourage a broader conversation on additional ways to facilitate voluntary employer adoption of workplace flexibility programs.

Thank you again for inviting me here today, and I look forward to your questions.

[The statement of Ms. Phillips follows:]

Prepared Statement of Juanita Phillips, Director of Human Resources, Intuitive Research and Technology Corp., on Behalf of the Society for Human Resource Management

Good morning Chairman Walberg, Ranking Member Courtney, and distinguished members of the committee. My name is Juanita Phillips, and I am Director of Human Resources at Intuitive Research and Technology Corporation (INTUITIVE) at our company headquarters in Huntsville, Alabama. I am pleased to appear before you today on behalf of the Society for Human Resource Management (SHRM), of which I have been a member for nearly 20 years. I am also a member of the North Alabama SHRM Chapter and the Alabama State Council. Thank you for this opportunity to testify before the Subcommittee on H.R. 1406, the Working Families Flexibility Act of 2013.

By way of introduction, I have over 25 years of experience in HR at a publishing company, engine manufacturing company and several federal government contractors. I've served in HR roles in both collective bargaining and non-unionized environments.

SHRM is the world's largest association devoted to human resource (HR) management. Representing more than 260,000 members in over 140 countries, the Society serves the needs of HR professionals and advances the interests of the HR profes-

sion. Founded in 1948, SHRM has more than 575 affiliated chapters within the United States and subsidiary offices in China and India.

INTUITIVE is an engineering and analytical services firm begun in 1999 with one contract and two employees. Our two owners are very active leaders in the company, who sit next door and down the hall from me. We have 275 employees; all but about a dozen work within Alabama. It is not easy to get a job with INTUITIVE; we put a great deal of effort into our hiring processes, as we are not hiring a person for a specific job but are choosing someone to be part of our company. We then put a great deal of thought and planning into how we will keep those people and are very proud of our 94% retention rate. Each full-time employee has a written plan of what they would like to accomplish professionally, and I touch base with each manager quarterly to talk about progress toward those plans. In the 14 years we have been in business, we have not laid off anyone due to lack of work. We are 30% veterans, 15% disabled, 25% retired from elsewhere, and 10% co-ops, interns and student hires.

I believe our workplace flexibility practices are a major reason why INTUITIVE has been recognized with numerous "best in class" awards, which I outline later in my testimony. My company's policies and programs to support employees' work-life needs help improve engagement and morale, increase productivity, retain top performers, and, ultimately, improve business performance at INTUITIVE. As a result, we are always looking for additional opportunities to provide employees with flexibility, and the bill we are here to discuss today would do just that.

In my testimony, I will outline my strong support for H.R. 1406, the Working Families Flexibility Act of 2013, share with you some workplace flexibility practices at my company, and offer SHRM's workplace flexibility policy recommendations for Congress.

Background on Compensatory Time

In 1938, Congress passed the Fair Labor Standards Act (FLSA). Among the act's provisions was the requirement that hours of work by non-exempt employees beyond 40 hours in a seven-day period must be compensated at a rate of 1½ times the employee's regular rate of pay. In 1978, Congress passed a temporary bill, the Federal Employees Flexible and Compressed Work Schedules Act, which changed the FLSA, authorizing compensatory (or comp) time for federal employees. In 1985 the Federal Employees Flexible and Compressed Work Schedules Act was reauthorized and made permanent. At the same time, Congress amended the FLSA to expand coverage requirements to include state and local agencies and their employees. During that same year, the choice to select comp time in lieu of overtime compensation was expanded to state and local agencies and their employees.

As you can see, the concept of giving employees the choice to select paid time off in lieu of cash wages is nothing new—it has been an option widely available to federal employees for 35 years and, by all accounts, it has worked well. While the U.S. House of Representatives passed comp time legislation during the 106th Congress, the bill unfortunately stalled in the U.S. Senate. In 2003, the Committee on Education and the Workforce favorably reported comp time legislation, but the full House did not consider the proposal.

Since comp time has worked well within the public sector at the state and federal level for nearly three decades, it is troubling that Congress has not extended this same benefit to hardworking private-sector employees who contribute equally to the nation's workforce and economy. Mr. Chairman, the time has come for Congress to approve legislation to give private-sector non-exempt employees the opportunity to choose for themselves whether to receive cash wages or paid time off for working overtime.

Need for Compensatory Time

The FLSA was enacted toward the end of the Great Depression and reflects the realities of the industrial workplace of the 1930s, not the workplace of the 21st century. Regrettably, the Act itself and its implementing regulations have remained relatively unchanged in the 75 years since its enactment, despite the dramatic workforce and workplace transformations that have occurred during this time.

The increased diversity and complexity within the American workforce—combined with global competition in a 24/7 economy—is driving the need for more workplace flexibility. C-suite executives, for example, say the biggest threat to their organizations' success is attracting and retaining top talent.[1] Human resource professionals believe the best way to attract and retain the best people is to provide workplace

[1] Company of the Future Study (2010). Society for Human Resource Management and the Economist Intelligence Unit.

flexibility.[2] Moreover, a large majority of employees—87 percent—report that flexibility in their jobs would be "extremely" or "very" important in deciding whether to take a new job.[3]

Employees in the 21st century workforce face significant challenges as they pursue an optimal work-life fit. For example, a 2011 report from SHRM and the Families and Work Institute found that a growing number of employees report not having enough time for themselves or to spend with loved ones. According to Workplace Flexibility in the United States: A Status Report, women's responsibilities at work and men's responsibilities at home have increased, resulting in more feelings of work-family conflict among both male and female employees. More than 60 percent of wage and salaried employees feel they do not have enough time to be with their children, their spouses/partners, and to spend on themselves. Managing work, along with personal and family responsibilities, in other words, has resulted in a "time famine."

Consider too that four in five of all employees who are married are in dual earner households and that one of every five employees currently provides elder care. There is no doubt that employees today are juggling ever more responsibilities between work and home, which is why many employees are requesting more flexibility at work. Therefore, public-policy proposals that encourage or allow employers to offer voluntary work-life options are welcomed.

H.R. 1406, the Working Families Flexibility Act of 2013

SHRM commends Representative Martha Roby (R-AL) for introducing H.R. 1406, the Working Families Flexibility Act of 2013. On a personal note, I am particularly pleased to speak in support of this bill today given its sponsor, Representative Roby, is from my home state of Alabama.

H.R. 1406 would modernize the application of the FLSA to the private sector by permitting employers to offer their employees the voluntary choice of taking overtime in cash payments, as they do today, or in the form of paid time off from work.

Just as with overtime payments, paid time off would accrue at a rate of 1½ hours for each hour of overtime worked. Employees would be able to accrue up to 160 hours of comp time per year, although an employer could choose to "cash out" the comp time after 80 hours after providing the employee with 30 days of notice. An employer would also be required to cash out any unused comp time at year's end at the higher of the regular time and a half rate at which time was earned or the final regular rate.

The Working Families Flexibility Act also includes important employee protections. For example, employees can choose whether or not to even participate in a comp time arrangement, giving employees choice and control. Under the bill, an employee must voluntarily enter into a written comp time arrangement with the employers. Any employer coercion is prohibited as is conditioning employment based on participation in a comp time program. These rights may be enforced in the same way as other rights and protections of the Fair Labor Standards Act. It is also important to note that this legislation does not affect the 40-hour workweek or change the way that overtime is calculated.

Providing this comp time option would allow employees the opportunity to build a bank of time that they can use to take paid time off when they need it, provided the time off does not unduly disrupt the business operations of the employer. If the employee chooses a comp time arrangement but later prefers to receive cash wages for overtime hours worked, the employee can discontinue the comp time program by giving the employer written notice. Compensatory time off as a workplace option gives non-exempt employees more control over their time and can improve employee morale and job satisfaction and increase productivity by giving employees the option of increased flexibility.

On a personal note, as I mentioned previously, my company is a federal government contractor, which means I have non-exempt INTUITIVE employees working side-by-side with federal government non-exempt employees. Mr. Chairman, it is incredibly difficult to explain to my employees why they cannot take comp time, while the government employees they work alongside can. Why would this arrangement be illegal for INTUITIVE's employees but not only legal but available to government employees? This defies logic to them and frankly, to me too.

Therefore, I am pleased to join SHRM and its 260,000 members in strong support of H.R. 1406 and urge this committee to advance this important legislation for consideration by the House of Representatives.

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[2] Challenges Facing Organizations and HR in the Next 10 Years (2010). Society for Human Resource Management.

[3] National Study of the Changing Workforce (2008). Families and Work Institute.

Workplace Flexibility at INTUITIVE

As I mentioned above, INTUITIVE is committed to a workplace culture that supports the personal development and work-life needs of its employees, which has helped us achieve a 94% retention rate, a rarity in our industry. As a small company (currently 275 employees), we are very creative in providing employee benefits and workplace flexibility options.

We are honored to have been named the #2 Best Small Company to Work for in the U.S. in 2011 and 2012 by the Great Place to Work Institute (⅔ of scoring based on anonymous online employee surveys), and to have been ranked #2 in the Best for Vets Award given by the Military Times Edge Magazine for 2012.

In 2012, INTUITIVE was the only company in North Alabama to be recognized for the fifth year in a row as one of the Best Places to Work in Huntsville, Alabama, (entirely based on anonymous on-line employee surveys) by the Huntsville/Madison County Chamber of Commerce, the North Alabama Society for Human Resource Management and the National Children's Advocacy Center. We also won the Family Friendly Award for Huntsville, and we have appeared in AARP's Top 50 Employers in the U.S. for Workers over 50 three years in a row.

These awards are evidence of the programs and overall approach we take at INTUITIVE to helping our people navigate home and work demands.

Having the ability to design our workplace practices in ways that support our mission and values, and that develop and fulfill our employees, is critical to us. Employers like ours want to be able to continue to manage our workplace in ways that work for us and that provide us these outcomes. It is of utmost importance to us to inspire and engage our employees. Our 94% retention rate of employees, and a greater than 1,330% increase in the number of applicants in the last few years both can be greatly attributed to our employees feeling that their work is more than just a job. In fact, the "wall words" on the wall in the HR department read:

"Nothing sells our company like the stories of engaged workers who take pride in where they work."

Here are some of the components of INTUITIVE's approach to workplace flexibility:

Flexibility—One of the key components for helping employees navigate work and home is being able to offer flexibility in work hours. Because we serve many customers that have differing approaches to work hours, we are generally able to match up candidates and employees with the type of flexibility they need. This can sometimes even be done on a temporary basis, when an employee has such a need. We have full-time and part-time positions, and a "provisional" category. This is a category for those who don't fit the other two—such as those who work full-time for periods of time and then part-time for periods of time, those who work on a couple of projects per year and don't work in between, those whose hours are sporadic, and are co-ops, interns, and student hires. We also have employees who have compressed workweeks and some who telecommute, and we offer job sharing and phased retirement. Our full-time exempt employees just have to get 80 hours in during the two-week pay period, providing them with flexibility for appointments, school activities, etc. Our non-exempt employees, even though they are full-time, do not currently have this flexibility as it is illegal under the FLSA. Employees can work better and live well when such options are available.

PTO—We offer Paid Time Off (PTO) leave, which is a combination of vacation and sick leave. The amount of PTO an employee receives is above the average in our area per Chamber of Commerce-sponsored wage and benefit surveys. Under our plan, new employees receive 15 PTO days per year accrued per pay period and available for use immediately, and employees reach 20 days of PTO at three years of service. The PTO approach to providing leave is consistent with treating employees as adults; they manage their time-off balance however they wish without keeping track of multiple banks of leave or needing excuses to suffice requirements for certain types of leave. Additionally, there are no issues over whether sick leave covers caring for a child or a relative, etc. PTO can be used for any reason, and no documentation is required. In addition, along with our monetary bonus programs, we also have the option of rewarding employees with bonuses or providing employees with additional PTO, especially those employees who have circumstances for which they may appreciate additional PTO days more than money. Overall, providing our employees PTO leave contributes positively to our professional environment.

Additional Paid Leave for the Flu—We don't want flu to be spread among employees, and so we provide unlimited paid leave to any employee who has the flu or if anyone in their household has the flu. This leave does not count against their PTO balance and we require no documentation. Because of the type of workforce we have

and because of our company culture, no one in the company abuses this practice; it works great.

Holidays—Another way we provide flexibility to our employees is that INTUITIVE makes all ten of our holidays floatable. If employees prefer to work any particular holiday, they may do so as long as their workplace is open that day and they have supervisory approval. All earned holidays simply must be used before the end of the calendar year. This approach is valuable to employees in that it provides them with flexibility for scheduling time off, and for making their holidays coincide or alternate with a working spouse's holidays, depending on their needs.

Veterans Programs and VIP Leave—I mentioned that INTUITIVE was named the #2 Best for Vets Award winner among employers, according to Military Times' Edge Magazine in 2011. INTUITIVE has a very active veterans' network within the company, and a very robust veterans program, including each new-hire vet getting to meet our VIP (Veterans Information Program) Contact Coordinator on their first day and then being connected to a veteran within the company with whom they have something in common. We have a VIP site on our employee portal page (intranet), which is dedicated entirely to information and resources for our veterans. One component of our VIP program is VIP leave, which provides up to three days off with pay per year for appointments at a VA hospital or for a family member's mid-tour return visit. Additionally, activated reservists are given the difference between their military pay and their civilian pay for up to 6 months. And we love calling our vets "VIPs."

Elder Care Benefit—Employees who are also caregivers are becoming more and more common, as some of the generations in our workplace are not only taking care of children, but are also taking care of aging loved ones. We are proud to have an elder care benefit that provides each employee with a free 45-minute consultation each year with experts in the field of elder care, and provides discounts on further services. This benefit also includes four Lunch 'n Learns annually on various elder care topics, which a spouse or family member may also attend. A Lunch 'n Learn is also provided for managers on the topic of supervising caregivers. The information shared is excellent; the resources are much appreciated, and it is a further program that assists employees with managing their personal or family life and work.

Parental Leave—Our short-term disability (provided to all full-time employees at no cost, and available for purchase by non-FT employees) provides 70% of regular pay for up to 11 weeks. That benefit covers moms, and when dads plan time off for a birth or adoption, they generally have saved enough leave for the event. When moms or dads are short we often find a performance event for which to bonus them with additional PTO. We also provide an Adoption Benefit, which is a monetary benefit upon completion of a successful adoption in which neither adopting parent is the biological parent. Due to our generous short-term disability policy and bonus practices, no one has had to rely on Family and Medical Leave Act coverage in the 14-year life of the company.

Disability Insurance—In addition to the short-term disability described above, the company provides long-term disability to all full-time employees and makes it available for purchase to non-FT employees.

Daycare—We are purposely located next door to two daycare facilities. Several of our employees use those daycare facilities because of the proximity to our facility, making their daily life a bit easier. One employee could for a time look out her window and see her son on the playground.

Along with enhancing work-life balance for everyone, our work schedule flexibility is especially attractive to retirees. We have many employees who have previously retired, but come to work for us because they have exactly the skills we need to support specific customers and still want to make a difference. Our structure allows us to be able to provide the flexibility they often want. In fact, 25% of our employees are retired from elsewhere, and 8% are using our phased retirement approach. Overall, 30% of our workforce has flexible start and stop times, 10% have a compressed workweek; and 4% work from home. We believe all of these practices contribute to our ability to attract, hire, and retain the best talent.

Mr. Chairman, all of these practices are voluntary. We don't have to offer these benefits at INTUITIVE, but we do because they work well for our employees and help us attract and retain the best people. However, if INTUITIVE's benefits were forced onto another employer in Huntsville, or across the state or the country, these benefits might not work as well for them given that every workforce is unique.

That's why this bill's (H.R. 1406) voluntary approach to comp time for employers and employees is so important. If enacted, this bill would give employers the option of offering a comp time program and employees the choice of whether to participate in the comp time arrangement. Under current law, private-sector employers and em-

ployees are without this option and this choice—an option and choice that their government counterparts have enjoyed for more than 30 years.

SHRM's Recommendations for a 21st Century Workplace Flexibility Policy

HR professionals are on the front lines of devising workplace strategies to create effective and flexible organizations. As such, SHRM and its members have given careful consideration to the role public policy can play in advancing the adoption of workplace flexibility. It is our strong belief that public policy must not hinder an employer's ability to provide flexible work options. Rather, public policy should incentivize and enhance the voluntary employer adoption of workplace flexibility programs.

We are pleased to support H.R. 1406 because it meets this important threshold. The Working Families Flexibility Act of 2013 would provide private-sector employers with an additional flexibility offering for their non-exempt employees. Would every private-sector employer adopt a comp time program if H.R. 1406 were enacted? Given the diversity of private-sector employers, certainly not, but many organizations would offer comp time to give employees more flexibility, and HR professionals believe that providing this option is a step in the right direction.

Allowing comp time in the private sector is only one part of the solution, however. SHRM and its members believe the United States must have a 21st Century workplace flexibility policy that reflects the nature of today's workforce, and that meets the needs of both employees and employers. It should enable employees to navigate their work and personal needs while providing predictability and stability to employers. Most importantly, such an approach must encourage employers to offer greater flexibility, creativity and innovation to meet the needs of their employees and their families. While the Working Families Flexibility Act of 2013 certainly meets these criteria, more needs to be done.

In 2009, SHRM developed a set of five principles to help guide the creation of a new workplace flexibility statute. In essence, SHRM believes that all employers should be encouraged to provide paid leave for illness, vacation and personal days to accommodate the needs of employees and their family members. In return for meeting a minimum eligibility requirement, employers who choose to provide paid leave would be considered to have satisfied federal, state and local requirements and would qualify for a statutorily defined "safe harbor." The principles are as follows:

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

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

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

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

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

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

• Provide employees with the predictability and stability necessary to meet personal needs.

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

• Allow leave benefits to be scaled to the number of employees at an organization; the organization's type of operations; talent and staffing availability; market and competitive forces; and collective bargaining arrangements.

• Provide pro-rated leave benefits to full- and part-time employees as applicable under the employer plan, which is tailored to the specific workforce needs and consistent with the safe harbor.

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

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

• Permit employees to choose either earning compensatory time off for work hours beyond the established workweek, or overtime wages.

• Clarify federal law to strengthen existing leave statutes to ensure they work for both employees and employers.

Conclusion

In the global, 21st century economy, workplace flexibility policies help both multinational corporations and small businesses meet the needs of their employees. At its core, workplace flexibility is about improving business results by providing employees with more control over how, when and where work gets done. H.R. 1406 would give private-sector non-exempt employees more control by giving them the option of paid time off in lieu of cash wages for overtime hours worked.

My company and employers across the country would appreciate the option of allowing for comp time as a way to help employees better meet their work-life needs. For over 30 years, comp time has had a successful track record for federal employees and it's time to extend this benefit choice to employees in the private sector.

SHRM remains committed to working with the Subcommittee and Members of Congress to ensure employers can continue to provide workplace flexibility strategies in a manner that does not threaten existing benefits or create unnecessary and counterproductive regulations. We believe it's time to pursue a new approach to this issue absent of rigid, unworkable mandates which result in unfavorable unintended consequences. It's time to give employees greater flexibility and to give employers more predictability.

Thank you. I am happy to answer any questions you may have.

Chairman WALBERG. Thank you.

Before we introduce the next witness, today is quite a busy day for many members, myself included, and I have another committee I have to go defend a bill on right now.

So I ask unanimous consent that Representative Roby, a member of the committee and the sponsor of the bill, H.R. 1406, serve as the chair at today's hearing in my absence.

No objection being heard, I thank Representative Roby.

Mrs. ROBY [presiding]. I didn't bang it.

Next, I would like to recognize Mrs. DeLoach for 5 minutes.

STATEMENT OF KAREN DELOACH, BOOKKEEPER

Ms. DELOACH. Thank you. Good morning, Chairman Walberg, now Chairwoman Roby and distinguished members of the committee.

My name is Karen DeLoach. I am very grateful for the opportunity to convey my testimony today. I only hope that it proves

helpful in your determination about the Working Families Flexibility Act of 2013.

It is great to live in a country where our government officials want to hear the voice of "Jane Q. Public," I have friends in parts of the world where that is not allowed. With that being said, I will move to the heart of my story.

I was raised with a strong work ethic and a focus on the importance of family. I became a part of the workforce when I was 17 years old, and I have worked for nearly all of the last 31 years. I married in 1984, and we soon moved from Georgia to Alabama.

I was married for nearly 7 years and had three children in that marriage. Due to multiple problems that we could not work out, we divorced. I was then a single mother of three for the next 7 years.

In 1992, my annual income was approximately $18,000.00, and by the grace of God, our family of four survived from paycheck to paycheck and miracle to miracle. Because I was the only parent available for the children, I exhausted my sick and vacation time every year.

Fifteen years ago, I married a wonderful man who had three children of his own, two of them were still in college. My husband, James, is a professor at a local university. He teaches finance, primarily to adults who want to further their education to attain promotions with pay increases.

I appreciate that my husband sees this as a way to help entire families have better lives, and I respect him for his contribution to our community. All of our children are adults now, some with children of their own. We have six grandchildren, and we look forward to the time that we get to spend with them.

So, now I come to mention the Working Families Flexibility Act and how I perceive that it could be a positive step for employees in the private sector.

You may wonder why compensatory time could matter to an empty-nester who seems to be in pretty good health. Why would I need more time off from work than the paid, sick, and vacation time that my employer agreed to allow annually?

Well, I have learned in the last several years that there can still be many unforeseen needs in addition to any planned break from the routine. One such case involves my youngest sister and her family, who live in Montgomery.

My brother-in-law's family owns Central Alabama Greenhouse, a small business, and 14 years ago yesterday, they were blessed with the birth of their first-born child, Katie. My niece is a vivacious young lady who was born with special needs. They make numerous trips to Children's Hospital in Birmingham for routine checks and sometimes more serious things.

My sister must have someone who is capable of operating Katie's feeding tube to travel with her for these appointments. Because the greenhouse business can have very busy seasons, her husband can't always go with her and I like to be available to go with her anytime that she calls because that is important to me.

It was actually that sister and brother-in-law who introduced me to the accounting firm where I now work. I started working at Diamond, Carmichael, Gary, Patterson and Duke, in September of

2006. They are a great establishment to work for and willing to be flexible about my time, as flexible as the law will allow them.

I am in hopes that this bill passes and allows my employer to offer greater flexibility to the employees.

In the summer of 2007, after listening to a presentation on missions at my church, I was overwhelmingly compelled to go on and participate in international missions. During the summer of 2008, I went on my first mission trip to Nicaragua.

We brought reading glasses as well as some household items to families in remote areas. More important than the material things that we brought, was the time that we spent with the people there.

People were free to talk about their problems, and I was able to encourage them, pray with them, and tell them how Jesus Christ had changed my life.

I have gone back to Nicaragua each year many times to unfamiliar areas, working with local pastors bringing shoes, clothes, and other items to them, and I still see that the time spent playing with the children or listening to mothers talk about their concerns about their family and the future that they might have matters more to them than any objects.

I am thankful that I have the opportunity to go and serve, even if it means taking time off without pay. Working as a bookkeeper means that certain times of the year, like tax season are much busier than others.

If I work overtime in April, for example, I would rather take that time—that overtim—in time later in July say when I am going to be going on a mission trip rather than to have extra money in April and then in July to have to go without any pay for a week.

Mission trips are a wonderful way to serve others and to learn about different cultures in the world. I was raised to believe that it is important to assist others. In my community, I am a volunteer on the Elmore County Juvenile Conference Committee.

The EJCC was formed to help youth in our community who have gotten into trouble with a first offense/non-violent crime. Our district court judge, Maura Culberson, refers eligible cases to the committee.

We learn specifics about the young people as they come through our program and we use those things to—I am sorry—to help them and their parents engage in new behaviors that will help change the course of their lives for a brighter future.

The EJCC develops constructive sanctions that are tailored to families' needs. We have an annual luncheon and training session which takes half the day in the spring time and this year I wasn't able to stay for the entire day because I didn't have enough vacation time saved up.

Right now, committee members, you have the ability to empower families across the nation with freedom of choice. You could afford me the freedom to choose whether I want to take my overtime pay in days or dollars.

In the last 3 years, my mother, my brother, my father-in-law, and one of my sons-in-law have all passed away; some at relatively early ages. I am not getting any younger and neither is the rest of the world, so time is precious to me. I would greatly appreciate

the option to work—at work to choose between being compensated in the dollars or the days, as I have said.

In closing, given the public sector has utilized in this plan for nearly 30 years and continues to keep it in place leads me to think that our government already deems this a viable plan.

Since the bill includes a provision whereby it would cease to exist after 5 years unless Congress extends it or makes itpermanent, I believe that comes with its own safety valve of sorts. This bill offers flexibility; not a mandate.

Thank you for your time today and for the freedom to express my personal story.

[The statement of Ms. DeLoach follows:]

Prepared Statement of Karen Steinhauer DeLoach, Bookkeeper, Diamond, Carmichael, Gary, Patterson & Duke, P.A. CPAs

Good Morning, Chairman Walberg and distinguished members of the committee, my name is Karen DeLoach. I am very grateful for the opportunity to convey my testimony today. I hope that it proves helpful in your determination about the Working Families Flexibility Act of 2013. It is great to live in a country where our government officials want to hear the voice of "Jane Q. Public", I have friends in parts of the world where this is not the case. With that being said, I'll move to the heart of my story.

I was raised with a strong work ethic and a focus on the importance of family. I became a part of the workforce when I was seventeen years old, and I have worked for nearly all of the last thirty-one years. I married in 1984, and we soon moved from Georgia to Alabama. I was married for nearly seven years and had three children in that marriage. Due to multiple problems that we could not work out, we divorced. I was then a single mother of three for the next seven years. In 1992, my annual income was approximately $18,000.00 per year. By the grace of God, our family of four survived from paycheck to paycheck and miracle to miracle. Because I was the only parent available for the children, I exhausted my sick and vacation time every year.

Fifteen years ago, I married a wonderful man who had three children of his own, two of them still in college. So we are a blended family, a very well blended family. My husband, James, is a professor at a local university. He teaches Finance, primarily to adults who want to further their education to attain promotions with pay increases. I appreciate that my husband sees this as a way to help entire families have better lives, and I respect him for this contribution to our community. All of our children are adults now, some with children of their own. As a matter of fact, we have six grandchildren now, and we happily look forward to the time that we get to spend with them.

So, now I come to the mention of the Working Families Flexibility Act and how I perceive that it could be a positive step for employees in the private sector. You may wonder why compensatory time could matter to an empty-nester who seems to be in pretty good health. Why would I need more time off from work than the paid sick and vacation time that my employer agreed to allow annually? Well, I've learned in the last several years that there can still be many unforeseen needs in addition to any planned break from the routine. One such case involves my youngest sister and her family who live in Montgomery. My brother-in-law's family owns Central Alabama Greenhouse, which is a small business. Fourteen years ago, yesterday, they were blessed with their first-born child, Katie. My niece is a vivacious little girl who was born with special needs. They make numerous trips to Children's Hospital in Birmingham for routine checks and sometimes more serious things. My sister must have someone who is capable of operating Katie's feeding tube, to travel with them for these appointments. Because the Greenhouse business can have very busy seasons, her husband cannot go to all of the appointments. I want to be available for those times when my sister asks me for help, because they are so important to me.

It was actually that sister and brother-in-law who introduced me to the accounting firm where I now work. I started working at Diamond, Carmichael, Gary, Patterson and Duke, (then with fewer partners) in September of 2006. They are a great establishment to work for and are willing to be flexible about my time, but only as flexible as the law allows. I am in hopes that this bill passes and allows my employer to offer greater flexibility to the employees. From August 2011 through Octo-

ber 2012, I worked full time to help my church, East Memorial Baptist, before returning to Diamond, Carmichael where I am still employed.

In the summer of 2007, after listening to a presentation on missions at church, I felt strongly that I must get involved. I was overwhelmingly compelled to go and participate in international missions. During the summer of 2008, I went on my first mission trip to Nicaragua. We brought reading glasses as well as some household items to families in remote areas. More important than the material things that we brought, was the time that we spent with people there. People were free to talk about their problems, and I was able to encourage them, pray with them and tell them how Jesus Christ has changed my life. I have gone back to Nicaragua each year, many times to unfamiliar areas, working with local pastors and bringing shoes, clothes, and other items to them. I still see that the time spent playing with children, or encouraging mothers who are worried about the futures of their children are more precious to them than objects. I am thankful that I have the opportunity to go and serve, even if it means taking time off without pay. Working as a bookkeeper means that certain times of the year, such as the quarterly payroll tax return months, are much busier than other times of the year. If I work overtime in April, for example, I would like to have the option of choosing to reserve that time to be taken off from work as compensatory time rather than making extra money in April and then taking leave without pay in June or July, when participating in missions.

Mission trips are a wonderful way to serve others and to learn about different cultures in the world. I was raised to believe that it is important to assist others. In my community, I am a volunteer on the Elmore County Juvenile Conference Committee (or EJCC). The EJCC was formed to help the youth in our community who have gotten into trouble with a first offense/non-violent crime. Our District Court Judge, Maura Culberson refers eligible cases to the committee. We hope to learn something about the young people who come through our program in order to help them and their parents engage in new behaviors that will help change the course of their lives for a brighter future. The EJCC develops constructive sanctions that are tailored to the family's needs. Although the monthly committee meetings are held during the evening, there is an annual luncheon and training session which takes one half of a work day each March. This year, I did not attend the full session because I had not yet accrued the vacation time needed to do so.

Now, I come to the part of my testimony that reveals more about what drives this issue home for me. In 2009, I got a phone call from my sister-in law in Columbus, GA. She told me that there was an emergency at the hospital. My older brother, Jay, had respiratory failure while in the E.R. admissions office. While they were able to revive him, he had to be intubated * * * that is put on a respirator. He was only fifty years old at the time, and through the combination of a congenital heart defect and decades of cigarette smoking, his body was rapidly shutting down, one system at a time. My sister and I dropped everything and went directly to the hospital, an hour and a half away. Our father traveled over five hours to be at his side. My brother was in the ICU for one full month. When someone is in ICU, the visiting hours are extremely limited and yet I knew that I needed to be there as much as possible for my brother. Waking up connected to a respirator was horrifying for him. He was scared and he needed family to be there. His wife was overwrought with emotion and could not handle this on her own. The hospital had called for the palliative care specialist to come in because they believed that he would not leave that hospital alive. I believe that seeing family present in the room with him, praying for him, singing to him and encouraging him all helped turn things around for my brother in 2009. At this time, I could not tell you how much time I missed from work; I only know that my sister and I alternated days in the hospital with Jay and he was able to walk again, breathe again and live at home again. In June of 2012, our brother passed away. No amount of money would have been worth missing the chance to be there for my brother in his time of need.

Right now, committee members, you have the ability to empower families across the nation with the freedom of choice. You could afford me the freedom to choose to use my overtime as leave time, while my coworker can still choose overtime pay, if she likes.

In the last three years, my mother, my brother, my father-in-law and one of my sons-in-law have all passed away, some at relatively early ages. I am not getting any younger, and neither is the rest of the world so yes, I say again, time is precious to me. I would greatly appreciate the option at work to choose between being compensated in dollars or days.

Given that the public sector has utilized this plan for nearly thirty years and continues to keep it in place leads me to think that our government already deems this a viable plan. Since the bill includes a provision whereby it will cease to exist after

five years unless Congress extends it or makes it permanent, I believe that it comes with its own 'safety valve' of sorts. This bill offers flexibility not a mandate.

Thank you for your time today and for the freedom to express my personal story.

Mrs. ROBY. Thank you.

Next I recognize Mrs. Lichtman for 5 minutes.

STATEMENT OF JUDITH LICHTMAN, SENIOR ADVISOR, NATIONAL PARTNERSHIP FOR WOMEN AND FAMILIES

Ms. LICHTMAN. Good morning. I am Judith Lichtman—I am Judith Lichtman, senior advisor at the National Partnership for Women and Families, a nonprofit, nonpartisan advocacy group that has fought for every major policy advancing and helping women and families.

As you know, people today are struggling to meet the demands of job and family and to make ends meet. In most families all adults work. Women comprise half of the workforce and our earnings are essential.

Women also remain the primary caregivers for most families, which is why we urgently need lawmakers to take the next step on the road to a family-friendly nation, but H.R. 1406 is not the next step. It is really a U-turn that would leave us heading in the wrong direction.

Instead of building on the success of FMLA, state and local paid sick days laws, and a fair minimum wage, this so-called flexibility bill offers forced choices and false promises.

It pretends to offer time off, but instead gives workers a pay cut without a guarantee of time off when they most need it. It sets up a false dichotomy between time and money at a time when working families urgently need both.

Proposals identical to 1406 have been introduced before but fortunately have not become law. That is good news because it would undermine the Fair Labor Standards Act, which for 75 years has required that hourly, nonexempt employees be paid time and a half if they work more than 40 hours per week.

1406 would reduce workers' control over their time and their paychecks. 1406 allows employers to offer comp time in lieu of overtime although it requires quote/unquote—"An agreement by an employee to accept comp time." An employee could easily feel obligated to agree to comp time.

An employee who doesn't accept comp time could be penalized with fewer hours, bad shifts, and loss of overtime and because it is cheaper to provide comp time than to pay overtime wages, there is an incentive for employers to hire fewer people and rely on overtime hours, paid for in future comp time, to get work done.

As we all well know, you can't pay the rent or buy groceries with comp time.

1406 would mean fewer jobs. It could mean greater scheduling instability, uncertainty, and unpredictability, higher childcare costs, and lower wages.

It would permit employers to defer compensation for unused comp time for as long as 13 months, creating an interest-free loan for employers and hardship for workers.

The so-called flexibility offered by 1406 is really a mirage. It would give employers, not employees, the flexibility to decide when and even if comp time can be used.

It offers no remedy if an employee is not allowed to use accrued comp time except to ask that the time be cashed out. Employees simply should not have to put in work beyond a 40-hour workweek and forgo pay to earn time to care for themselves and their loved ones.

We ask you to reject 1406. It is deeply flawed and would cause real harm to workers at a time when the nation's working families urgently need workplaces that are more fair and family-friendly, this bill is an empty promise.

It is a cruel hoax that would take the country in the wrong direction. We must not require workers to subsidize their own time off with lower wages and more time on the job, as H.R. 1406 does. Instead, we should adopt national policy solutions patterned on those with a proven record of success in cities and states.

Instead of wasting time on smoke and mirrors, I urge you to support the Healthy Families Act, which makes earned sick days available to millions;; paid family and medical leave insurance modeled on successful campaigns, programs in California and New Jersey;; expand access to FMLA for more workers for more reasons, so parents really could take time off to attend parent-teacher conferences; The Fair Minimum Wage Act; the Paycheck Fairness Act to help those gender-based wage gap measures to encourage fairer and more predictable work hours.

Those are the advances that the nation needs. Those are the initiatives that Americans support. Those are the best next step for our nation's workers and our families, employers, communities, and the economy.

I thank you all very much for the opportunity to testify today. We look forward to working with you to adopt policies that are truly family-friendly.

Thank you.

[The statement of Ms. Lichtman follows:]

Prepared Statement of Judith L. Lichtman,
National Partnership for Women & Families

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

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

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

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

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

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

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

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

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

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

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

H.R. 1406 would leave workers with neither pay nor time. Let me tell you about a woman the National Partnership and our colleague organization, Family Values @ Work, met in 2011 when we convened discussion groups to examine the challenges facing workers to inform the U.S. Department of Labor's National Dialogue on Workplace Flexibility.

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

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

We heard from workers with similar stories all over the country, and their experiences shine a bright light on why H.R. 1406 is so deeply flawed. It would give workers less control over both their time and their paychecks. It does not guarantee the time off that workers need, regardless of their opportunity or ability to work overtime hours. And for the growing segment of workers whose challenges stem from

the opposite problem—working too few hours involuntarily with too little predictability—this proposal would do absolutely nothing to assure access to either the pay or the paid time off they need to meet their family responsibilities.[3]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

the employer to deny the request entirely if the employee's use of comp time would "unduly disrupt" operations.

This means that a mother who asks to take comp time to stay home with her toddler because her child care provider is sick has no guarantee that she'll be able to use the time she's earned and banked. And there is no guarantee that a son's request to use a week of comp time to help his aging parent relocate to a nursing home will be granted. Just as workers like Rosa, a hotel housekeeper, are denied the use of vacation leave they have earned for important family events like a daughter's communion,[7] so too will workers be denied the use of the comp time they have earned through long hours on the job.

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

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

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

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

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

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

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

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

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

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

False Assumptions Have Impeded Our Progress

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

fute these false assumptions so we can move beyond them and consider the policy solutions working people need.

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

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

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

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

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

Paid sick days and paid family and medical leave would boost incomes and the economy and would, in many cases, lead to cost-savings over time for employers.

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

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

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

The Fair Minimum Wage Act (H.R. 377/S. 84) would increase wages for 30 million workers, most of them women. Nearly 28 percent of those who would see a wage increase are parents; more than 17 million children have a parent who would benefit. A rise in the minimum wage would increase consumer spending, stimulating the economy. By the third year, when the minimum wage reaches $10.10 per hour, the Fair Minimum Wage Act would generate more than $32 billion in additional economic activity and approximately 140,000 jobs.[16]

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

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

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

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

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

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

The Healthy Families Act is a much more effective solution than H.R. 1406 in providing workers with the time they need to care for their loved ones and themselves. It guarantees employees the ability to use that time off while respecting employers' needs for stability in their business operations. For restaurant workers who cook our food, childcare workers who tend to our children and care workers who support the frail elderly, the Healthy Families Act would be a step forward while H.R. 1406 would be a step in the wrong direction. At a time when more than half of parents do not have even a few paid sick days they can use to care for an ill child[22] and tens of millions of workers have family eldercare responsibilities,[23] we need the real solutions the Healthy Families Act would provide.

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

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

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

In addition to paid sick days to cover short-term needs, nearly all working men and women will need time away from their jobs at some point to care for a new child or seriously ill loved one or to address their own serious health condition. Tens of millions of workers cannot afford to take the time they need without some wage replacement,[26] and H.R 1406 would do nothing to address this urgent need. It does not even offer a guarantee that an expecting parent who planned carefully for time

away from work to welcome a new child to the family—or a sister who wants to help a sibling through cancer treatment—would be able to take banked comp time to meet those needs. Despite rhetoric to the contrary, H.R. 1406 would not even ensure that a parent who wanted to use banked comp time to attend a parent-teacher conference would have that leave request granted.

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

Only 11 percent of private sector workers have designated paid family leave through their employers,[27] and fewer than 40 percent have personal short-term disability insurance through an employer-sponsored plan.[28] Only about 50 percent of first-time mothers can cobble together any form of paid leave, whether sick or vacation days, disability insurance, or something else. That number has been stagnant for a decade. Fewer than 20 percent of women with low levels of formal education have access to paid leave—and that number has not increased since 1961.[29]

Adopting a national paid family and medical leave insurance program, similar to successful state programs, would: increase families' financial stability; promote better health outcomes for children, elders and caregivers; generate new tax revenues; and reduce burdens on the social safety net. In the year following a birth, new mothers who take paid leave are 54 percent more likely to report wage increases and 39 percent less likely to need public assistance than mothers who do not. Fathers who take paid leave are also less likely to need public assistance.[30] Paid leave also safeguards the income and retirement security of workers with eldercare responsibilities who might otherwise have to drop out of the workforce. On average, a worker who is 50 years of age or older who leaves the workforce to take care of a parent will lose more than $300,000 in wages and retirement income.[31]

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

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

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

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

The FMLA's promise of job protection should also be extended to address more circumstances. For example, H.R. 1406's sponsor and others have talked about comp time as the solution to a parent's need to attend a parent-teacher conference. A much more useful policy solution, and one that would help many more parents and

children, is a "small necessities" expansion of the FMLA so that workers could take up to 24 hours per year to attend school meetings, parent-teacher conferences and other essential educational activities. Separately, victims of domestic violence should be able to use FMLA leave to seek legal, medical and relocation services.

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

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

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

Conclusion

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

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

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

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Mrs. ROBY. Thank you, Mrs. Lichtman. I apologize for mispronouncing your name before.

Ms. LICHTMAN. That is okay. Not a problem.

Mrs. ROBY. Mr. Brantley, you are recognized for 5 minutes.

STATEMENT OF ANDY BRANTLEY, PRESIDENT AND CEO, COLLEGE AND UNIVERSITY PROFESSIONAL ASSOCIATION FOR HUMAN RESOURCES

Mr. BRANTLEY. Good morning, distinguished members of the subcommittee. Thank you for holding the hearing today and for the opportunity to testify on this important issue.

I am privileged to be the president and chief executive officer of the College and University Professional Association for Human Resources, otherwise known as CUPA-HR.

Prior to joining CUPA-HR, I led HR organizations for the University of Georgia, Davidson College, and the University of North Carolina at Asheville.

CUPA-HR serves as a voice of higher education human resources professionals representing more than 16,000 HR professionals across the country at over 1,900 colleges and universities both private and public. Higher education employs, over 3.7 million workers nationwide.

We applaud the chairman and the subcommittee for holding this hearing and the leadership of Representative Martha Roby of Alabama for introducing the Working Families Flexibility Act of 2013.

As an entity, higher education institutions are extremely complex. They may be comprised of teaching hospitals, research facilities, agricultural operations and more, all of which compliment extensive academic program offerings.

As a result, colleges and universities are often not only the largest employers in many communities, but also the largest employers in their state; employing a very skilled, very diverse workforce of faculty and staff.

Colleges and universities strive to offer competitive benefits for employees and to sponsor work/family and work/life programs that support employee needs away from the workplace.

I have several examples from my past that illustrate this point. To meet the needs of the University of Georgia employees we provided a wide range of paid leave policies for all of our employees. Additionally, we offered employees the choice of receiving compensatory time or overtime pay for working in excess of 40 hours.

Based on my conversations with the University staff, compensatory time was an important and valued option at UGA. I am sure that is still the case and I have heard the sentiment echoed by many of my CUPA-HR members and colleagues who work at public universities.

While some employees used compensatory time to deal with catastrophic occurrences or family crises, more often than not, non-

exempt employees at UGA used compensatory time to meet the everyday work/family and work/life challenges.

One employee from our college of veterinary medicine used compensatory time to run the little errands that often needed to get done in balancing work and family challenges including visits to the doctor for her children.

By using accumulated compensatory time, this employee was able to allow sick leave to accumulate to be used for those times when her children really were sick and were not able to go to daycare.

In 1996, the city of Atlanta hosted the Summer Olympics. Several of the Olympic events were held in and around Athens, which required the campus to be closed. In the months preceding the Olympics, our nonexempt staff accumulated comp time to offset the time there that they would be unable to work because of the games.

This allowed employees to keep their accrued leave intact and, in some cases, prevented staff from having to go on leave without pay because they did not have enough accumulated leave time.

While neither of these examples is extraordinary in its application, each clearly demonstrates the flexibility that is provided through a compensatory time program. I can recall several examples from Davidson College where the use of comp time would have been extremely helpful to employees. Here is one example:

During the 2000 calendar year an extremely hard-working catering assistant who typically worked overtime on a weekly basis was diagnosed with cancer. Time off for chemotherapy and then radiation treatments quickly consumed all of his accrued vacation and sick leave and forced this employee into long-term disability status.

If Davidson had been permitted to offer this employee the choice of receiving pay or comp time, this particular individual while still able to work, may have chosen to receive comp time to extend the period of time he was able to remain in a full pay status with the college.

This is just an example of the kinds of situations that arrive on private campuses each week. I am not saying that comp time is the answer for everyone, but the use of comp time can provide needed flexibility.

During a conversation just last week, the chief HR officers at two private universities echoed the sentiment I have just shared with you; HR regularly receives requests for greater flexibility that cannot be granted due to the FLSA.

Based on my personal experience leading HR organizations and my conversations with CUPA-HR members, the requests for comp time frequently come from single parents and those dealing with catastrophic illness. Comp time is just one more way for us to assist those employees during tough times when they need a little more flexibility.

From my perspective, having worked in both public and private university human resources operations and as president of the association representing HR in higher ed, I believe employees at private campuses should be afforded the same flexibility that their public-sector counterparts enjoy.

Mr. Chairman, thank you so much for the opportunity to comment and to offer CUPA-HR support for the Working Families Flexibility Act. I will be happy to answer any questions. Thank you.

[The statement of Mr. Brantley follows:]

Prepared Statement of Andy Brantley, President and Chief Executive Officer, College and University Professional Association for Human Resources

Good morning, Mr. Chairman and distinguished members of the Subcommittee. Thank you for holding this hearing today and for the opportunity to testify on this important issue. I am Andy Brantley, president and chief executive officer of the College and University Professional Association for Human Resources, known as CUPA-HR. Prior to joining CUPA-HR seven years ago, I was associate vice president for human resources for the University of Georgia (UGA) in Athens, Georgia. Before my arrival at UGA in January 2001, I served as the assistant vice president for business administration and director of human resources at Davidson College, a private college in Davidson, North Carolina.

CUPA-HR serves as the voice of human resources in higher education, representing more than 16,000 human resources professionals at over 1,900 colleges and universities across the country, including 92 percent of all United States doctoral institutions, 77 percent of all master's institutions, 57 percent of all bachelor's institutions, and nearly 600 two-year and specialized institutions. Higher education employs over 3.7 million workers nationwide, with colleges and universities in all 50 states.

Representing both public and private colleges and universities, CUPA-HR is well positioned to discuss the use of compensatory time in the public sector and its possible application to the private sector. We applaud the Chairmen and the Subcommittee for holding this hearing and the leadership of Representatives Martha Roby of Alabama for introducing the "Working Families Flexibility Act of 2013." As I understand it, the act would give private employers, including private colleges and universities, the opportunity to offer non-exempt employees the choice of compensatory time off instead of overtime pay in situations where the employee is eligible for overtime.

As an entity, higher education institutions are extremely complex organizations. They may be comprised of teaching hospitals, research facilities, agricultural operations and more, all of which compliment extensive academic program offerings. As a result, colleges and universities are often not only the largest employers in many communities, but also the largest employer within a state; employing a very skilled, very diverse workforce of faculty and staff. Most colleges and universities strive to be progressive employers, offering or attempting to offer generous benefits packages and innovative policies that make our campuses desirable places to work. In fact, they are often considered to be an employer of choice in a community.

To meet the diverse needs of our faculty and staff, colleges and universities strive to offer competitive welfare and healthcare benefits to employees and to sponsor work-family/life programs that support employee needs away from the workplace. Educational institutions offer these work-family/life policies and welfare benefits as a way to recruit and retain a highly skilled, quality workforce. These policies and benefits constitute our leading, competitive edge over the for-profit sector for employees, since higher education institutions typically offer a lower compensation package than for-profit organizations. However, being very comprehensive organizations, colleges and universities realize that flexibility in the workplace is fundamental in trying to meet the needs of the employee and mission of the institution. This is especially true as employees try to balance the competing pressures of work, family and personal needs.

I have several examples from my own past that illustrate this point. The University of Georgia has an enrollment of more than 32,000 students. As a comprehensive land-grant and sea-grant institution, UGA offers baccalaureate, master's, doctoral and professional degrees in the arts, humanities, social sciences, biological sciences, physical sciences, agricultural and environmental sciences, business, environmental design, family and consumer sciences, engineering, forest resources, journalism and mass communication, education, law, medicine, pharmacy, social work, and veterinary medicine. At the time of my employment at UGA, we had more than 17,000 faculty, staff and students on the payroll each month to operate our programs and achieve our educational mission. Our workforce was diverse as were the needs of

our employees. UGA was and still is the largest employer in Athens and one of the largest in the state.

To meet the needs of our employees, UGA provided a wide range of paid leave policies to all our employees. These policies included sick and vacation leave, as well as short- and long-term disability leave policies with pay. We also offered a number of unpaid leave policies that enabled the employee to substitute accrued paid leave for unpaid leave. The university also offered its employees several alternative work arrangements including flextime, compressed workweek, job sharing, 9- or 10-month work schedules and telecommuting arrangements.

Additionally, we offered employees the choice of receiving compensatory time or overtime pay for working in excess of 40 hours. As you are well aware, under the Fair Labor Standards Act, known as the FLSA, public employers, including colleges and universities, have the ability to choose compensatory time or overtime pay to compensate employees for hours worked in excess of 40 hours per week. Each time an employee at UGA worked more than 40 hours in a week, he or she had the option of receiving overtime pay, or with supervisor's approval, compensatory time off. Based on my conversations with university staff, compensatory time was an important and valued option at UGA. I am sure that is still the case and have heard the same sentiment echoed over the years by the many CUPA-HR members who work in public universities that offer employees the option of compensatory time off.

While some employees used compensatory time to deal with catastrophic occurrences or family crises, more often than not, non-exempt employees at UGA used compensatory time to meet the everyday challenges presented in balancing work-family issues. One employee on our campus at the College of Veterinary Medicine used compensatory time to do the "little errands" that often need to get done in balancing work-family, including visits to the doctor for her children. Although a visit to the doctor can be brief, to a parent who is working it requires picking the child up from daycare, taking the child to the doctor's office, getting a prescription filled at the pharmacy, returning the child to daycare, and then returning to the office. By using accumulated compensatory time, this employee is able to allow sick leave to accumulate and be used for those times when her children are not well enough to go daycare.

In 1996, the city of Atlanta hosted the Summer Olympics. Several of the Olympic events were held in and around Athens, which required the campus to be closed. With UGA closed, faculty and staff were unable to work and were forced to use their accrued leave time to avoid being in a leave-without-pay status. In the months preceding the Olympics, our non-exempt staff accumulated compensatory time to offset the time they would be unable to work because of the games. This allowed employees to keep their accrued leave intact and in some cases, prevented staff from having to go on leave without pay because they did not have much accumulated annual leave.

While neither of these examples is extraordinary in its application, each clearly demonstrates the flexibility that is provided through a compensatory time program. Unfortunately, only public sector colleges and universities can offer these programs. Private colleges and universities are prohibited from offering these programs to their employees. While private institutions offer a variety of work-life policies, situations arise on a campus in which the employee would benefit if the institution had the ability to offer compensatory time off instead of pay in overtime situations. I can recall several examples while at Davidson College where the use of compensatory time would have been extremely helpful to employees. Let me provide you with two examples:

The Davidson College admissions office staff work long hours during December and January, earning overtime pay. On several occasions, non-exempt employees in the admissions office have asked about the possibility of receiving compensatory time instead of overtime pay. Several members of the staff wished to accumulate compensatory time to use later during the spring—after the completion of the stressful admission process. As Davidson's director of human resources, I had no option but to instruct the vice president of admissions to continue the payment of overtime.

During the 2000 calendar year, an extremely hard-working catering assistant who worked overtime on a weekly basis at the college was diagnosed with cancer. Time off for chemotherapy and then radiation treatments quickly consumed all of this employee's vacation and sick leave and forced the employee into a long-term disability status. If Davidson College had been permitted under the FLSA to offer this employee the choice of receiving pay or compensatory time for hours worked beyond 40, this particular individual, while still able to work, may have chosen to receive compensatory time to extend the period of time he was able to stay in a full pay status with the college.

This is just a sampling of the kinds of situations that arise on private campuses each week, cases in which the ability of someone to accumulate compensatory time would be beneficial to employees. I am not saying compensatory time will be the answer for everyone. But while I was at Davidson, employees regularly requested greater flexibility in work arrangements to better cope with pressing family, personal and professional development needs. The use of compensatory time can provide that flexibility.

Recently, a senior HR officer at another private university relayed to me that:

We regularly get requests from our hourly wage staff or their managers responding to staff questions to consider comp time in lieu of overtime pay, often in the context of workplace flexibility. Work schedule flexibility can be a challenge for hourly staff, in that their work is frequently more dependent on workplace presence with particular schedules. So in times when excess time is worked, the option to provide comp time when schedules can be flexed gives the wage earner more flexibility. It can make a difference in the work-life balance, in ways such as, "I have an hour of overtime this week, can I take time off later in the next week to leave work early or take time during the day to take care of personal tasks?" It may mean that the employee uses less of his or her sick leave or personal days if some flexibility for comp time is provided within a pay period rather than a pay week.

Similarly, another CUPA-HR member, who is also a senior HR officer at a private university, told me:

Private institutions would appreciate the same comp time benefit as that offered to public entities. Because we do not have this flexibility, we often find ourselves unable to accommodate special requests when an employee knows they need to be out a few hours one week and would like to make up the hours another time so as not to have to use hours from a paid leave account that they are saving for something else. For our university, there are annual events such as commencement where the workload is heavy the week of commencement and very light in the weeks following. The availability of comp time in these situations could work to the benefit of employees and employer alike. While we have a generous paid leave plan, it just makes sense to give employees compensable work flexibility depending upon their needs and the needs of the institution. Managed responsibly, it is a win-win.

Based on my personal experience as an HR officer and my conversations with CUPA-HR members, the request for comp time frequently comes from single parents. Second in frequency is from those who are dealing with catastrophic illness. Higher education institutions generally have very generous paid leave benefits. But comp time is one more way to assist and support employees during a tough time in their personal lives when they want to work but require a little more flexibility.

As the associate vice president for human resources at UGA, offering employees the choice of compensatory time or pay for overtime situations meant some extra administrative duties for my staff and other departments of the university—keeping track of time earned, explaining to employees their option of choosing compensatory time versus overtime pay, and scheduling the time off. Even with the additional recordkeeping requirements and paperwork burden placed on the university's administrative staff, I was pleased that UGA provided employees the option to choose between accruing compensatory time or receiving overtime pay. We offered this choice not only for altruistic reasons, but it helped UGA meet its academic mission. CUPA-HR members from public universities have similar sentiment, regularly informing me that, while tracking and paperwork poses challenges, they are pleased to be able to offer compensatory time to their employees.

From my perspective, having worked for both a public and a private university in human resources and as the president of an association representing HR in higher education, I believe employees at private universities should be afforded the same flexibility that their public sector counterparts enjoy to help meet their own work-family needs by allowing all employees the opportunity to have the choice between compensatory time and overtime pay.

Mr. Chairman, thank you again for the opportunity to comment and offer CUPA-HR's support to the Working Families Flexibility Act. I will be happy to answer any questions from you or other members of the Committee.

Mrs. ROBY. Thank you very much.

We will now go to Mr. Hudson, for 5 minutes.

Mr. HUDSON. Thank you, Madam Chairwoman.

And I thank you all for being here today. It is a very enlightening testimony. A special hello to our friends at Davidson College.

I live right down the road. My alma mater UNC-Charlotte plays them in a lot of sports, so I appreciate that.

I would love to direct my question to Ms. DeLoach. I am interested in sort of the employer perspective on this. Do you think employers will see this as a benefit that can be used to attract employees to a business that can offer this type of flexibility?

Ms. DELOACH. Yes, I do. I think that it would be another perk that they could offer. Employers now—my employers offer a certain amount of vacation and sick time. That is at their discretion to make that available to anyone they employ.

If they could add the comp time, I just think it would make it that much more attractive. It is an option, just another option for them, and I think that in all fairness, I think they should be allowed to offer that.

Mr. HUDSON. So, in your opinion you think employers would like to have this as something they could offer.

Ms. DELOACH. Yes I do. I actually have spoken with my employer about it. I had a situation come up, specifically with the mission trip. We nearly butted heads about it because I didn't even realize that—when this came up I didn't realize it was illegal and I asked, "can I work ahead before I go? Can I work some more when I get back?"

"Yes, you can, but we are going to pay you overtime if you go over 40 hours in that week and if you don't have any available leave time" They couldn't change it in midstream and say will now we are going to award you 3 weeks' vacation.

It was already policy that was set in motion and so I didn't get to do it the way that I thought sounded logical. I have friends that work for the state and I knew that they talked about comp time and I just thought it would be nice to be able to do something like that, having no idea that it could be illegal.

So I think they would love to be able to offer that. They have got more than one employee there who would enjoy that. We have got people who have family members they need to take care of, not just their children, one who has a sibling that she is the guardian for. Things may arise.

She has just started working there and she couldn't have accrued vacation time yet to be able to take that time, and these things don't always arise where you could say it is going to happen within the same week. If it doesn't happen within the same week, then you can't just work it out and have your pay stay the same.

Mr. HUDSON. That makes sense. What other conversations have you had with your other coworkers? Are there other examples of some of your coworkers who had similar experiences where they would have benefited from this?

Ms. DELOACH. Well, yes. And actually, this particular coworker came to me when we were talking about this bill with a concern about it. She has a daughter and, you know, would love to be able to use that time that way but then she had a concern that her husband is an electrician and the overtime that he makes, in dollars, is important to their family and it is kind of a regular thing so they depend on it.

She wanted to know if this comes into play is it going to limit his overtime pay that he gets and I said, "read the bill." It is the

option of the employee. He can say whether he wants to have pay for that or hours for that. She could still have her hours and he could still have the dollars and that would work for that family in particular.

Mr. HUDSON. Great. Well, thank you so much for your testimony.

And Madam Chair, I appreciate your work on this bill and I am proud to be a supporter of this legislation.

Thank you. I yield back the balance of my time.

Mrs. ROBY. Thank you, Mr. Hudson.

Mr. Courtney, you are recognized for 5 minutes.

Mr. COURTNEY. Thank you, Madam Chairman and you look pretty good with a gavel up there. I am sure Judge Roby, your father, would be proud to see you in that position.

Ms. Lichtman, again, when we are talking about—as someone who was an employer for 27 years and had a workforce that had issues, you know, that requiredtime off, again, if an employee goes to employer and says you know, "I have got X, Y, Z issue that I need to spend some time away from work," I, as an employer, had those conversations. There is nothing that is illegal about having—as an employer giving that person that time off as a matter of law.

I mean, that really is existing law that permits employers to do that. It may—there may be policies within a specific firm, but that is certainly nothing that is dictated by federal law that says, "No, I am sorry I can't give you that time off."

Ms. LICHTMAN. That is absolutely right. The Fair Labor Standards Act today would allow employers and employees to negotiate for exactly that kind of flexibility and there is nothing illegal about it.

Mr. COURTNEY. So the only legal issue here is really whether or not at that same employee who, you know, the following week maybe works 45 hours, you know, whether I can go back and say, "Well, remember that day you took off last week? You know, I am not going to pay you time and half for the extra hours you worked this week."

And I mean, that is really the issue here about whether or not that request for comp time should be traded off in terms of denying people their time and a half that the Fair Labor Standards Act presently protects. Isn't that correct?

Ms. LICHTMAN. I think that is absolutely right, Congressman. And like a lot in life, the question is who decides and under 1406, the employer decides and that directly undermines the 75-year-old Fair Labor Standards Act, which gives both employers and employees the kind of flexibility so that they can—and especially the employee—can figure out what is it that they need at any given time, the time or the money. 1406 undermines that very flexibility that the Fair Labor Standards Act intended.

Mr. COURTNEY. So moving forward, I mean, and again, we just celebrated the 20th anniversary of the Family Medical Leave Act, again, Senator Dodd's hallmark bill——

Ms. LICHTMAN. We did.

Mr. COURTNEY [continuing]. Again, bipartisan lawmakers have come together and talked about ways that we can sort of build on that success. Again, there is a lot of good ideas out there to try and

accommodate issues like we just heard, you know, where employees are doing good things and, you know, want to have that flexibility.

What are some of those ideas which would get there without sacrificing people's overtime?

Ms. LICHTMAN. There are some tried and now true public policies that have worked. I talked about the Healthy Families Act, paid sick days, which exists in your state of Connecticut and many cities across this country.

Certainly expanding family and medical leave so that more people could take it for more reasons, including taking it off so that parents could go to parent-teacher conferences or to help a family member; expanding it to more family members like siblings, so that a worker could help a sibling or a grandparent or a grandchild.

Certainly increasing the minimum wage, passing the Paycheck Fairness Act, we have begun a very important discussion about paid family leave insurance to the extent that family and medical leave in these past 20 years have been used 100 million times, and when people don't use it they say they don't use it because they say they can't afford to take it.

So looking at states like New Jersey and California and building in a system of insurance so that employers could—employees could actually earn the time for paid leave is a very, very important public policy that we know works.

Mr. COURTNEY. Thank you. I mean, again, that really I think is really where this discussion ought to be, because you know as the Equal Pay Act celebration or commemoration—I couldn't call it celebration,—observance the other day clearly showed women still are earning roughly about 75 percent of their male counterparts in equivalent work, and this bill does nothing to narrow that gap.

I would argue that in fact you are almost putting at risk ofgoing backwards, and so we—flexibility is a critical item. Again, as somebody who was an employer for 27 years, I have first-hand experience with that, but there is a better way to get there than this measure.

And with that, I yield back, Madam Chairman.

Ms. LICHTMAN. Thank you.

Mrs. ROBY. Dr. DesJarlais, you are recognized for 5 minutes.

Mr. DESJARLAIS. Thank you, Madam Chairman, and certainly I commend you on your work on this important issue in this age of ever-expanding federal government that seems to intrude more and more into our lives.

I think that there is a real frustration among the private sector when the federal government tells them what is best for them yet doesn't live by the same rules.

Mr. Brantley, I am happy to welcome a fellow Tennessean to the panel today and I think you have a real unique perspective and are very familiar with the use of comp time in the public sector.

Is there any reason why private-sector universities and colleges should be treated differently than their public-sector counterparts for the purpose of comp time?

Mr. BRANTLEY. Thank you, Representative DesJarlais. There absolutely should be no distinction whatsoever and the examples that I provided in my testimony comparing both the experience at Da-

vidson College, a private employer, versus the University of Georgia, clearly emphasize that there really should be no difference.

The examples that some of my colleagues at the table here also provided in terms of the difference in the public sector whether it be federal government or whether it be state entities being allowed to provide comp time when their colleagues and friends at private institutions and private employers are not able to do so. So absolutely no difference whatsoever.

Mr. DESJARLAIS. Okay. Opponents of legislation often suggest that it is a no-cost way for employers to avoid paying overtime. Do you agree?

Mr. BRANTLEY. I do not agree that it is a no-cost way to not pay overtime as an employer.

If you think about it from the standpoint of public institutions, public employers, there is truly a cost every time someone is not at work whether that person is not at work due to comp time or whether that person is not at work due to illness, vacation, etcetera.

There is also clearly an administrative burden that is required of employers. Our opinion on this is that it is another tool in the toolbox. It is another way for us to emphasize to our employees our flexibility, our concern for them and their unique needs, and our ability to help them meet unique needs on an ongoing basis.

Mr. DESJARLAIS. In the—in past debates on this issue, concerns have been raised with the bill's provision that an employee may take paid time off so long as it does not unduly disrupt the operations of the employer. In your experience, has this been any significant problem?

Mr. BRANTLEY. Absolutely not, and if you think about employers such as Mr. Courtney, my hope would be that most employers would have the same approach that he would have in terms of working collaboratively with their employees to find times that were amenable for both an employee and the employer.

In my experience also, employees are committed to their organizations so they know the ebb and flow of the work and are going to work with their employer in terms of requesting that time off, in terms of meeting their unique needs, but also clearly understanding the challenges faced by their employers.

Mr. DESJARLAIS. Ms. Lichtman's testimony states that H.R. 1406 brand of comp time is designed to benefit employers only. I am assuming that you don't agree with that?

Mr. BRANTLEY. Absolutely not, and I think some of the examples that I just provided clearly emphasize that this is definitely not something that benefits employers as much as it benefits employees and our ability to provide more flexibility for their unique needs.

Mr. DESJARLAIS. Do you think that this legislation would undermine the 40-hour workweek?

Mr. BRANTLEY. Absolutely not. In fact, there are examples now in the private sector where employers who offer overtime then come to their employees weeks later and say your workweek is shorter this week because we paid more overtime and we are at the limit for our budget for compensation so your workweek this week is less than it was a few weeks ago.

Our contention with this is very clearly that nonexempt employees want the same opportunity to have a level paycheck that their exempt counterparts have on a weekly basis.

Mr. DESJARLAIS. Thank you.

That is all I have. I yield back.

Mrs. ROBY. Thank you.

Mr. Bishop, you are recognized for 5 minutes.

Mr. BISHOP. Thank you, Madam Chair, and thank you for holding this hearing.

And thank you to our panel for their testimony. I have to confess that I have a very hard time being objective about this issue. It is a very personal issue for me because I believe that I sit here today as a result of paid overtime.

My father worked 70, 80, 90 hours a week—I am not exaggerating—week in and week out because he wanted his five kids to have an opportunity that he never had, which was to go to college.

And he didn't work overtime because he didn't love his family, didn't work overtime because he didn't love spending his time with his family, he worked overtime because the way he wanted to express his love was, as I say, to give us an opportunity that he never had, and he had that opportunity because the law provided him with that opportunity.

And so I worry about something that would undermine a practice that is, was vital not just to my family but to tens of thousands of families in terms of getting ahead in providing a decent life.

Mr. Brantley, not to make you work overtime, you just answered a lot of questions, but I want to pose for you a potential circumstance that is one of the things that gives me pause about this legislation and very candidly, what gives me pause about this legislation, among other things, is that if an employer has overtime needs and has multiple employees who wish to address that overtime, it would seem to me the temptation for the employer to assign the overtime to that employee who is willing to take compensatory time as opposed to cash is pretty pronounced.

So let's take Davidson College. Now I know Davidson College is pretty well-endowed, but I would imagine that they have to worry about every dime that they spend.

Let's say graduation is on a Sunday. Let's say that you need 10 custodians to work graduation and let's say 15 custodians say that they are willing to put in the overtime; 10 of them say they are willing to do it for compensatory time, five of them say they are willing to do it, but they want cash payment.

Now I would think that the temptation for the director of physical plant or the VP for administrative affairs or financial affairs would be to give the overtime to the 10 who are willing to do it for compensatory time as opposed to cash. Am I right?

Mr. BRANTLEY. No.

Mr. BISHOP. No?

Mr. BRANTLEY. I disagree. I think one of the things with this legislation that I think is really important is that first of all, I come from a family that lived paycheck to paycheck. So I have a father that also worked significant overtime and part of that allowed me

to be able to attend college and allowed me to have some of the benefits that I have today.

If we take the Davidson College example, thinking about what is happening on campus at that point in time, having the opportunity to pay overtime to employees that want to have the overtime because you do need staffing the following week versus that group of employees that would prefer to have the comp time when you might not need to have——

Mr. BISHOP. Stop right there. You do need employees the following week and there is absolutely nothing in this legislation that would allow the person who is taking compensatory time to say, "I am taking next week off," because the employer schedules when the compensatory time takes place.

Mr. BRANTLEY. Absolutely.

Mr. BISHOP. And look, I used to run a college, okay? We were very, very good at being not-for-profit, okay? And if we had had to make that decision, it would have been incredibly tempting for us to schedule the overtime for the custodian who says I am willing to take time and a half as opposed to the custodian who says I want my time and a half in cash.

So—and so my concern is that we are going to discriminate—given how tight choices are and how much every dollar has to be watched, we are going to discriminate against employees who want what they have earned. They want cash.

And my further concern is that when those who are willing to take the compensatory time want to take it, the employer may say, "awful sorry, we have got a big order this month. We got to get that order out and you can't go."

You know, Ms. DeLoach, I think what you do—and I say this with all sincerity—admirable and—and the missions that you go on, I mean I think that is truly admirable and I say this with all sincerity, but there is nothing in the bill that would require your employer to say that if you need the second week of July off to go on your mission that they are going to schedule that.

So, I mean, again, it takes the control—one thing that an employee has—I am sorry, I know I am running out of time—one thing the employee has is he knows if he works he is going to get paid.

Whereas in this circumstance, he or she may work and they may not get paid when they want to get paid. That is the concern that I have and if we can build in some protections, maybe I am willing to have a little more of an open mind about this.

But anyway, I thank you all very much for your testimony.

And Mr. Chairman, thank you for indulging me. Thank you.

Chairman WALBERG [presiding]. Thank you. It was worth it hearing that you might have some openness to that. [Laughter.]

Mr. BISHOP. I withdraw that statement. [Laughter.]

Chairman WALBERG. I should have left it well enough alone.

Let me recognize Mr. Sablan, for 5 minutes of questioning as I get back into the flow here.

Mr. SABLAN. Yes, thank you very much, Mr. Chairman.

And good morning, everyone.

Let me just ask some questions—let me—under the Fair Labor Standards Act, a person, an employee gets paid time and a half.

Ms. Lichtman, may I ask you this. You get paid time and a half for overtime.

Ms. LICHTMAN. That is right.

Mr. SABLAN. And I am assuming that when a company needs an employee to work overtime, and the employer decides, "Hey, I need for you to stay an extra few hours"——

Ms. LICHTMAN. That is right.

Mr. SABLAN [continuing]. And you get paid time and a half.

Ms. LICHTMAN. Time and a half, over your regular order of work be at 40 hours.

Mr. SABLAN. Yes, yes I understand. Now under the bill, under H.R. 1406, where an employee would work overtime and in lieu of that get an hour for every hour worked. That is the proposal under 1406.

Ms. LICHTMAN. What I understand is that it would be at time and a half but it would be for the hours you worked.

Mr. SABLAN. Okay, so it is——

Ms. LICHTMAN. But it would be comp time and not paid.

Mr. SABLAN. It would be comp time. All right. So let me get this. A company, an employer needs for an employee to stay back and do extra work for some big order or something and that employer, employee is expected to do that. That is their job, I mean working for a good company. But then when they need to take time off they need permission also from that same employer.

Ms. LICHTMAN. They do indeed. As to the timing and how long they can take and it is not necessarily, as Congressman Bishop was suggesting a minute ago, based on the employee's needs at all but as to the interest of the employer.

So the very flexibility to the employee that this 1406 holds out is not a real promise because it is not up to the employee to say when they need it, can they take it.

Mr. SABLAN. All right. And under—for public sector employees and now they take the leave the following week, the following pay period.

Ms. LICHTMAN. Well, the Ninth Circuit Court of Appeals said that it is reasonable for an employer in the public sector to say that you have up to a year—and the employer decides—and the Ninth Circuit said that was fine flexibility in the public sector.

I think we should remember about the public sector as long as we want to talk about equity between the private and public sector that the whole reason that public-sector comp time was put in place was because public sector employers said they didn't have the money, and as a cost-saving, the very thing we don't want to do here, as a cost-savings to employers to state and local governments they should be allowed to provide comp time. So the whole notion of public-sector comp time was to save public-sector employers money.

Mr. SABLAN. All right, but—so—let me then ask, employers may already provide work hour flexibility to employees——

Ms. LICHTMAN. They certainly may.

Mr. SABLAN [continuing]. Under the Fair Labor Standards Act.

Ms. LICHTMAN. They certainly may, you are right.

Mr. SABLAN. So we don't really need another piece of legislation to tell employers that they could do this.

Ms. LICHTMAN. Well, I think——

Mr. SABLAN. Good employers would obviously want to work well with their employees, right? I mean, that is how you get employees to produce more.

Ms. LICHTMAN. It is why I characterize this in rather stark terms as a sheep in—as a wolf in sheep's clothing, because I think indeedthe purpose of it gives employers a great deal more flexibility, both about the time that an employee can have and when they can take it.

Mr. SABLAN. Yes, and at a time when we want government off everybody's back, we really don't need legislation like this to put in another layer of government regulation on employees and employers.

Ms. LICHTMAN. Well, there is a very little enforcement here so if an employee either has been denied comp time, there is very little in this legislation that would allow the Labor Department to enforce H.R. 1406. It is a major problem in here in that it is missing any kind of enforcement mechanism except it allows individual employees, salariedsalary-workers workers to go to court and sue.

Mr. SABLAN. All right, thank you.

And, you know, as a delegate, Mr. Chairman, the smart way for us delegates from the territories is to keep silent actually on as many issues as we have to but——

[Laughter.]

Ms. LICHTMAN. I hope not.

Mr. SABLAN. No, but I feel strong enough—strongly enough about this that I remain behind and ask questions. If employees were given the right to take that time when they want to, because employers require them to work those extra hours, if they are also, employees, are given the right to decide when they want to take that time off before having to need permission, then like Mr. Bishop said, maybe I will be open to a little bit more conversation also, but right now, the way it is written, I don't think it is fair. Thank you.

Thanks, Mr. Chairman.

Chairman WALBERG. I thank the gentleman. It is not fair to not take involvement and make expressions of ideas. We are glad that you do.

Mr. SABLAN. Thank you. I have a meeting with you later and I want to be pleasant to you right now. [Laughter.]

Chairman WALBERG. I am always pleasant accept after the U of M game the other night. [Laughter.]

Mr. Brantley, those opposed to this legislation argue it would undermine the 40-hour workweek. Based on your experience with comp time at the public institutions, do you agree?

Mr. BRANTLEY. Mr. Chairman, I disagree. Based on my experience working at two different public institutions, there was never a circumstance where comp time could in any way have been construed as undermining of the 40-hour workweek.

Chairman WALBERG. Nothing was undermined in the work—in the employee worker relationship——

Mr. BRANTLEY. No.

Chairman WALBERG [continuing]. As a result of this.

Mr. BRANTLEY. Absolutely not.

Chairman WALBERG. Okay. Thank you.

Ms. Phillips, your company seems to be doing all of the right things, at least that is what you have told us and I am trusting you on that one.

When it comes to workplace flexibility practices, by and large, I think most employers are trying to do the right thing; not all, but most. You were pretty clear about the need for providing employers with options and flexibility and having a voluntary approach to comp time.

Could you elaborate on why it is so important for policymakers to avoid a one-size-fits-all requirement or set of requirements for employers with respect to flexible work options?

Ms. PHILLIPS. Well, I think that in my experience over the years of working in a lot of different industries and with different companies, what works well in one workplace/workforce does not always work well in another, and I think that the success of a—especially small company such as mine, and many small companies that I have been around—is being able to design the workplace to have the benefits and the programs that matter a lot to those employees.

That is how we attract people. That is how we keep them. They find a place to work that they love and we are able to help them develop themselves and be paid well and have good benefits and it is a—you know, it is a great arrangement for all of us.

An example of how something won't fit one place when it does another is for example we do unlimited leave if you have the flu. It does not count against your leave balance. We do not require any documentation.

Chairman WALBERG. Please stay away, right?

Ms. PHILLIPS. Please stay away. That is right or if anybody in your household, anybody you are around has the flu, don't come to work. It doesn't come out of your balance or anything and you get paid.

Nobody abuses that. That doesn't work in every environment. I have been in the manufacturing environment before, in a publishing environment. That would not work everywhere, but that works really well in my environment.

So I think companies need the ability to do what works well for them and not have a piece of legislation that says you have to do it this way because then in order for us to comply we have got to meet those specific details and that makes us bring down what we do when the effort is to bring up companies that are not doing well at those things.

I think that if we tout the ways this works well and other companies try to do those things, we would all be a lot further down the road toward providing a flexible workplace for our workforces.

Chairman WALBERG. Okay. Your testimony also highlights the many ways that your company helps employees navigate home and work demands. I am especially interested to hear your experience with scheduling issues. Do you often find it necessary to refuse requests for time off, whether paid or unpaid?

Ms. PHILLIPS. Never. The work that we do is more designed around the individual and what they do for a customer. So that is very different from a workplace that has an assembly line to run.

In our world, scheduling is pretty much in a personal way and we have customers that work an alternate workweek. We have customers that may take every Friday off and do four 10s.

We have people that have altered schedules. We have people that go back and forth between schedules as it works for them. All of that works for us as long as it is well communicated, well-planned, works with the customer because of all of the variety we have, we can arrange all sorts of things like that.

On the——

Chairman WALBERG. Do you find though in a context with certain employees it is a source of disruption?

Ms. PHILLIPS. I am sorry, say that again.

Chairman WALBERG. In the context of your sphere of reference as well as well as your personal situation, do you find that it is a source of disruption with certain employees of though at times? A disruption of the operations?

Ms. PHILLIPS. No, because it is so individually-based. We are engineers, we are analysts. We are taking care of a project or a design and they are able to manage their work around that and we don't want to interfere with that. So no, what we don't find any disruptions with that.

You know, in terms of amount of time that people work, we don't honor people that work a lot of hours. You know, I have worked places where people talked in the hall about so-and-so was here till midnight like that is the most of loyal, wonderful person and we see that as not good at all.

If people turn in too many hours then our managers are called in and asked why because it could mean a lot of things. It could mean their manager isn't managing them.It could mean they are busy in too many meetings all day and having to do their work in the evening. It could mean now we are doing something that was not in the statement of work in our contract with that customer. We need to know about that. It could mean we need an additional person. It ususally means something not good.

We don't think it is in the best interest of the person to work too much. We don't think it is in the best interests of their family for them to work all the time or the customer or the company. So if people work too many hours, you know, we have got questions as to why because it is built around an individual work.

Chairman WALBERG. Thank you.

My time is expired. I now recognize Mrs. Roby.

Mrs. ROBY. Thank you.

And I want to thank all of the witnesses today for your time spent here with us to weigh in on all of the issues surrounding the proposed bill. I think we have learned a lot from each of you today and so again, I appreciate that.

I want to talk about one thing because it has come up several times and I think it is something that is important about this bill. This bill is completely voluntary on the part of the employee.

The employee can either take comp time and I know it has been suggested that the employer would then use that and reward the comp time employees that have the voluntary written agreement in lieu of the employee who wishes to receive cash payments and that this accrued sick time is a better idea.

But I want to ask you, Mrs. DeLoach, in your, in your current position as a nonexempt employee, do you get to just demand from your employee or excuse me, your employer when you take vacation time?

Ms. DELOACH. No, I do not.

Mrs. ROBY. Right.

Ms. DELOACH. I fill out a request and they have to—the partners have to review it and make sure that it is going to work with the schedule.

Mrs. ROBY. Right. So if you were to—you have to request from your employer—and that goes to my point exactly is that this idea of unduly disrupt is not a new idea in the workforce.

In fact, it is the same standard that is applied and I want Ms. Phillips to weigh in on this—that is the same standard that is applied it to the public employees that already enjoy the ability to use compensatory time. Is that not correct?

Ms. PHILLIPS. That is correct.

Mrs. ROBY. And so this idea that this is going to be, you know, some coercive device is actually incorrect because the way that it works currently in working environments whether it is private employees that seek to use vacation days per their agreement with their employer or in the public sector where the Fair Labor Standards Act currently allows for compensatory time and Mr. Brantley, I would love for you to weigh in on this notion just once again that the employer is going to deny it every time and only allow it when it works for them because that is not necessarily true with vacation days or sick leave.

Mr. BRANTLEY. I couldn't agree more and reflecting back on a comment that I shared earlier, most employees have the sense of what their employer is trying to achieve, what the goals of the employer are.

Same thing from the employer perspective is that the employer does acknowledge those employees and their diverse needs, the things that happen every single day, the catastrophic things that go beyond what a leave balance might give that employee the opportunity to partake in or to participate in that continues their salary.

It is all about balance. It is all about flexibility. It is all about choice and the bottom line is, at the end of today, it is about our commitment as employers to our employees and meeting them where they are.

Mrs. ROBY. Right, and I will go back again to Ms. DeLoach, you were asked a question, "is this a benefit to you?" The employer wants to provide opportunities to keep their employees happy.

It keeps up morale and productivity and to suggest that this is construed more in a negative sense than it is in the positive, again, this already happens to the public sector.

It is not like this is some new thing and in fact, the protections in this bill far exceed those for the public employee and even providing time and a half in hours versus the 1 hour allowed in the law currently for the public sector. So if you want to expand on that, and then Ms. Phillips I will give you an opportunity as well.

Ms. DELOACH. I do. I would like to say that one of the reasons is that I have remained where I am working is that the people that I work for have integrity and that means a lot to me.

And whether an employer does or doesn't have integrity right now they could be taking advantage of employees in other ways. What is going to keep them from doing that? Their conscience? That would be a good one. And if not that, then fines, penalties, audits, lawsuits.

The same measures that employees who are upset about being taken advantage of in other areas would be available to someone who feels like their employer is abusing the issue of comp time.

I just don't see—I don't see why this is creating problems particularly when it has been running for nearly 30 years in another sector. If it is a big bad monster I don't understand why it hasn't already been—had its head chopped off.

Mrs. ROBY. If it is good for one, why is it not good for another?

Ms. DELOACH. Exactly.

Mrs. ROBY. Thank you.

My time is expired. I yield back.

Chairman WALBERG. I thank the gentlelady, and I thank you for introducing this legislation.

I would like to thank the witnesses for being here. I wish I could have heard your testimonies. I did have the opportunity to read all of them and I appreciate that. It is a discussion that certainly is worth undertaking.

I understand that the ranking member does not have a closing comment, and I will just keep mine very brief as well. To say that again, this is a proposal with the best intentions, and I am glad that Chairman Kline has asked us to bring it up for hearing today to begin our discussions because frankly, we need to do all we can to foster a workplace and a work environment that gives credit to good employers and good employees and offer more opportunities for flexibility to say not only do we work together, but we respect each other and we will provide opportunities that meet specific needs of yourself, your family, your health, your society, your school, whatever.

And again, as it has worked in the public sector, this is written in such a way that it is even more voluntary with greater protections and enhancements as well, and so I hope that we can come to agreement on this and make it work in the private sector as well because frankly, we have too much disruption and we need more coming together.

Having said that, I will now relinquish my time for closing remarks, the remainder, to the sponsor of this bill, Mrs. Roby.

Mrs. ROBY. Thank you again, Mr. Chairman, and thank you for holding this very important hearing today. You know, one thing that hadn't been mentioned as much today is the long history that this notion has in the House of Representatives.

It has been introduced in many congresses and I think what we can take from that is what we have gained. All of the concerns that you heard from my Democratic colleagues, we have addressed to those in this bill, and I want to take a moment to run through a few of those that are worth noting because our greatest challenge in moving forward with this is the misinformation associated with

this bill having been introduced in past conferences and the changes and protections that are included in this current piece of legislation that do provide the employee those protections.

It has been suggested that this bill is unnecessary because current law already offers some flexibility in the employees' work schedule and while there are a number of available options, workers aren't able to work additional hours in one week and accrue paid time off, paid time off to be used at a later date.

And even if an employee and an employer agree, the employer—if the employer were to agree to such a request, he or she could be sued and fined by the Department of Labor if there is a problem and that certainly is not what we want.

We have heard the bill fails to adequately protect employees despite the fact that it includes numerous employee protections. For example, the decision to receive comp time is completely voluntary.

Workers can withdraw from a comp time agreement whenever they choose and as I noted earlier, all existing protections in the Fair Labor Standards Act are maintained. All of them. Including the 40-hour workweek and how overtime is currently calculated.

Additionally, paid overtime. It is up to the employee to decide when to use his or her comp time as long as he or she provides reasonable notice—and we—we have heard this concern numerous times—and the request time does not unduly disrupt the business. Again, not a new notion in current bodies of law.

I would note that this is the same standard that is used in the public sector as well and I haven't heard today our colleagues suggest that this doesn't work for government employees.

This bill also ensures all existent enforcement remedies including action by the Department of Labor. I know it was stated earlier that it was just to file a lawsuit but this actually includes action by the Department of Labor.

They are available to workers if an employee fails to pay cash wages or unreasonably refuses to allow the employee to use the comp time, which again is a concern that we have heard.

It is time that we take a law that was written during the Great Depression and bring it into this century. We have to trust workers to make decisions for themselves. The federal government should not stand between a worker and the flexibility needed to care for a family.

And I appreciate all of the concerns stated today by my colleagues and these concerns, like I mentioned at the beginning, have been expressed for years in opposition to the bill. And this legislation recognizes those concerns and includes specific provisions.

So our colleagues that we heard, if these certain protections were included in the bill that they might be willing to work with us, well, we should take them at their word because we have provided adequate protections for the arguments of the past.

And as I noted in my opening remarks, we don't necessarily believe that this is a perfect solution to all of the challenges facing working families. Will it allow every individual to balance family and work?

Probably not, but the Working Families Flexibility Act is simply one step that we here in the House of Representatives in this committee can take to help families thrive in today's economy.

And I want to just again thank all of the witnesses for being here today.

And thank you, Mr. Chairman, for including me in this important hearing.

I yield back.

Chairman WALBERG. I thank the gentlelady.

I thank each of the members of the committee, those who were here and those that are gone, as well as those are still here.

It has been a busy day, but I am glad we have taken attention to this issue, and I sincerely thank each of the witnesses for being involved in this morning with us. You have been a great help.

There being no further business before the committee, the committee stands adjourned.

[Whereupon, at 11:22 a.m., the subcommittee was adjourned.]