

**WORKPLACE LEAVE POLICIES: OPPORTUNITIES
AND CHALLENGES FOR EMPLOYERS AND
WORKING FAMILIES**

HEARING

BEFORE THE

SUBCOMMITTEE ON HEALTH,
EMPLOYMENT, LABOR, AND PENSIONS

COMMITTEE ON EDUCATION
AND THE WORKFORCE

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTEENTH CONGRESS

FIRST SESSION

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**WORKPLACE LEAVE POLICIES:
OPPORTUNITIES AND
CHALLENGES FOR EMPLOYERS AND
WORKING FAMILIES**

**Wednesday, December 6, 2017
House of Representatives,
Subcommittee on Health,
Employment, Labor, and Pensions,
Committee on Education and the Workforce,
Washington, D.C.**

The subcommittee met, pursuant to call, at 10:00 a.m., in Room 2175, Rayburn House Office Building, Hon. Tim Walberg [chairman of the subcommittee] presiding.

Present: Representatives Walberg, Wilson of South Carolina, Roe, Rokita, Allen, Lewis, Mitchell, Smucker, Estes, Foxx, Sablan, Norcross, Blunt Rochester, Shea-Porter, Espaillat, Courtney, Fudge, and Bonamici.

Also Present: Representatives Scott, Handel, and DeLauro.

Staff Present: Courtney Butcher, Director of Member Services and Coalitions; Michael Comer, Press Secretary; Rob Green, Director of Workforce Policy; Callie Harman, Professional Staff Member; Nancy Locke, Chief Clerk; Kelley McNabb, Communications Director; Rachel Mondl, Professional Staff Member and Counsel; James Mullen, Director of Information Technology; Alexis Murray, Professional Staff Member; Krisann Pearce, General Counsel; Benjamin Ridder, Legislative Assistant; Molly McLaughlin Salmi, Deputy Director of Workforce Policy; Olivia Voslow, Legislative Assistant; Joseph Wheeler, Professional Staff Member; Michael Woeste, Press Secretary; Tylease Alli, Minority Clerk/Intern and Fellow Coordinator; Kyle deCant, Minority Labor Policy Counsel; Christine Godinez, Minority Labor Policy Associate; Eunice Ikene, Minority Labor Policy Advisor; Stephanie Lalle, Minority Digital Press Secretary; Kevin McDermott, Minority Senior Labor Policy Advisor; Richard Miller, Minority Labor Policy Director; Udochi Onwubiko, Minority Labor Policy Counsel; Veronique Pluviose, Minority Staff Director; and Arika Trim, Minority Deputy Communications Director.

Chairman WALBERG. Good morning, and welcome to today's subcommittee hearing.

Today, we'll discuss workplace leave policies, related opportunities and challenges facing employers and working families in ways

in which we can encourage employers to develop or expand successful paid leave options for their employees.

This century has vastly -- has a vastly different business landscape than the last. From the advent of the gig economy to the demand for telework and other worklife policies that address employees' needs, business as usual just doesn't work for working families anymore. In response, many employers have implemented and continue to implement innovative paid leave policies.

In fact, today's workers are starting to consider these paid leave policies alongside other traditional tangible benefits, like pay raises. A 2015 study conducted by Harris Poll and Glassdoor found that nearly four in five employees would prefer new or additional benefits or perks over a pay increase.

Additional studies have validated this employment trend even more in recent years. This year, the HR Policy Association released a study that noted, and I quote: nearly 70 percent of its members find the millennials expect greater flexibility with regards to scheduling and time off.

Innovative paid leave policies are not only an important tool for businesses to attract and retain the best employees, but they also give workers across all business sectors the ability to create a better worklife balance. Time off is increasingly important to employees, whether it's used to go back to school, care for a child or a loved one, or just spend more time with the family.

Employers are responding to these changing expectations by offering employees a wider variety of benefits. In addition to providing traditional paid time off and sick leave, an increasing number of companies have added flexible work arrangement options to their employment leave policies. These arrangements may allow employees to take advantage of cutting-edge offerings like flexible hours, telecommuting, compressed workweeks, and job sharing. Importantly, these arrangements are tailored to the needs of employers' workforce.

And employers continue -- as employers continue to develop and deploy these leave policies, there has been a significant increase in new and oftentimes conflicting state and local paid leave mandates. These growing patchwork of mandates across multiple jurisdictions creates a real administrative and implementation burden, particularly on small businesses, while also increasing compliance costs for employers. For example, currently, there are eight states and over 30 localities with paid leave laws on the books. By contrast, 20 states have bans against local paid leave -- or paid sick leave laws.

As you might imagine, all these states and local laws are far from consistent. The current patchwork of leave -- paid leave laws at the state and local level can pose challenges to employers of all sizes trying to navigate them. And the mandatory nature of these laws deprives businesses of freedom to craft individualized policies to best address the needs of their employees. That doesn't help employers and it doesn't help their workers.

Today's hearing should give all of us valuable firsthand insight into the evolving topic of workplace leave policies, and I look forward to the discussion.

I now yield to Ranking Member Sablan for his opening remarks.

[The statement of Chairman Walberg follows:]

Prepared Statement of Hon. Tim Walberg, Chairman, Subcommittee on Health, Employment, Labor and Pensions

This century has a vastly different business landscape than the last. From the advent of the gig economy to the demand for telework and other work-life policies that address employees' needs, "business as usual" just doesn't work for working families anymore. In response, many employers have implemented and continue to implement innovative paid leave policies.

In fact, today's workers are starting to consider these paid leave policies alongside other traditional, tangible benefits like pay raises. A 2015 study conducted by Harris Poll and Glassdoor found that nearly four in five employees would prefer new or additional benefits or perks over a pay increase.

Additional studies have validated this employment trend even more in recent years. This year, the HR Policy Association released a study that noted "nearly 70 percent of [its] members find that millennials expect greater flexibility with regard to scheduling and time off."

Innovative paid leave policies are not only an important tool for businesses to attract and retain the best employees, but they also give workers across all business sectors the ability to create a better work-life balance. Time off is increasingly important to employees, whether it's used to go back to school, care for a child or loved one, or just to spend more time with family.

Employers are responding to these changing expectations by offering employees a wider variety of benefits. In addition to providing traditional paid time off and sick leave, an increasing number of companies have added flexible work arrangement options to their employment leave policies. These arrangements may allow employees to take advantage of cutting-edge offerings like flexible hours, telecommuting, compressed work weeks, and job sharing. Importantly, these arrangements are tailored to the needs of the employer's workforce.

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As you might imagine, all these state and local laws are far from consistent. The current patchwork of paid leave laws at the state and local level can pose challenges to employers of all sizes trying to navigate them. And the mandatory nature of these laws deprives businesses of the freedom to craft individualized policies to best address the needs of their employees. That doesn't help employers, and it doesn't help their workers. Today's hearing should give all of us valuable, firsthand insight into the evolving topic of workplace leave policies, and I look forward to the discussion.

Mr. SABLAN. Good morning everyone. And, Mr. Chairman, thank you for holding this hearing to call attention to the problem facing millions of working people who have -- who lack access to paid sick leave, paid family and medical leave, and predictable scheduling.

Here is the problem. An estimated 37 million workers, many employed in service industries and low-wage jobs, cannot earn a single paid sick day to care for themselves when they get sick or to go to the doctor. Nearly a quarter of adults have lost a job or have been threatened with job loss for taking time off because of personal illness or to care for a family -- to care for a family member or family members.

In 2016, only 13 percent of private industry employees had access to paid family leave through their employers. Lack of paid family leave policy cost workers an estimated \$20 billion in lost wages every year. Many working people lack predictable schedules as well. Approximately 41 percent of hourly workers receive their

work schedules only seven days in advance, making it difficult for workers to make a living and meet the responsibilities at home.

Increasing workplace flexibility is clearly a core economic issue. Today, I hope we will explore solutions to improve the economics for workers and employers.

There is also good news. Access to earned sick leave, sick days -- earned sick days has increased up from 61 percent of private sector workplace in 2015 to 68 percent. This favorable trend has been driven, in large part, by earned sick days, legislation recently enacted by eight states and 32 localities.

In 2016, an Obama administration executive order provided over 1 million federal contract workers with up to seven paid sick days. However, there are no federal laws providing for or requiring employers to provide employees with paid or unpaid sick days. The *Healthy Family Act*, H.R. 1516, introduced by Representative DeLauro, and which I am a cosponsor, establishes a worker's right to earn paid sick leave by providing one hour of sick leave for every 30 hours worked, up to 56 hours per year.

Paid sick days can save employers, taxpayers, and families money, while promoting healthier workplaces and communities. Workers without paid sick days are more likely to report going to work with a contagious illness, like the flu, and risk infecting others.

Parents without paid sick days are more than twice as likely as parents with paid sick days to send a sick child to school or day care. The *Family and Medical Leave Act of 1993*, FMLA, provides up to 12 weeks of unpaid, job protected leave for key family caregiving responsibilities, such as the birth and care of a newborn or the care of a family member with a serious health condition.

But the vast majority of the private sector workforce doesn't have access to paid family leave. According to the Bureau of Labor Statistics, only about 15 percent of workers have access to paid family leave through their employers. The *FAMILY Act*, H.R. 947, also introduced by Representative DeLauro, and which I also cosponsor, addresses this problem. It guarantees workers 12 weeks of paid family and medical leave financed through a social insurance program funded by both employees and employers, who each make a contribution of two-tenths of 1 percent of wages. In return, workers would receive two-thirds of their wages during eligible family leave.

Mr. Chairman, I'm also concerned about two legislative proposals that merit careful scrutiny. One proposes a paid sick leave credit of 12 to 25 percent. This may sound like an attractive inducement, but there is little evidence that this would incentivize employers who do not already have a paid sick plan to create one. In a recent Ernst & Young survey, 35 percent of small businesses did not see a tax credit as a benefit to inspire them to offer paid leave.

We also need to critically and carefully assess the *Workflex in the 21st Century Act*. This bill would allow employers to create a new qualified flexible workplace arrangement plan under the *Employer Retirement Income and Security Act*. That's ERISA. It is concerning that this plan could enable employers to avoid compliance with State and local paid leave, family leave, wage and hour, and predictable scheduling laws. We should not put downward pressure on workplace benefits that already exist or could be enacted.

I hope we can have a robust discussion today about creating minimum standards for earned sick days, family and medical leave, and flexible and predictable schedules.

I appreciate the witnesses taking their valuable time to discuss these issues with us today, and I look forward to hearing their testimony.

Thank you, and I yield back my time, Mr. Chairman.
[The statement of Mr. Sablan follows:]

Prepared Statement of Hon. Gregorio Kili Camacho Sablan, Ranking Member, Subcommittee on Health, Employment, Labor and Pensions

Mr. Chairman, thank you for holding this hearing to call attention to the problem facing millions of working people who lack access to paid sick leave, paid family and medical leave, and predictable scheduling. Here is the problem:

An estimated 37 million workers – many employed in service industries and low wage jobs – cannot earn a single paid sick day to care for themselves when they get sick or to go to the doctor. Nearly a quarter of adults have lost a job or have been threatened with job loss for taking time off because of personal illness or to care for a family members.

In 2016, only 13 percent of private-industry employees had access to paid family leave through their employers. Lack of paid family leave policy costs workers an estimated \$20 billion in lost wages each year.

Many working people lack predictable schedules. Approximately 41 percent of hourly workers receive their work schedules only seven days in advance, making it difficult for workers to make a living and meet their responsibilities at home.

Increasing workplace flexibility is clearly a core economic issue. Today, I hope we will explore solutions to improve the economics for workers and employers.

There is also good news. Access to earned sick days has increased – up from 61 percent of private sector workplaces in 2015 to 68 percent. This favorable trend has been driven in large part by earned sick days legislation recently enacted by eight states and thirty-two localities. In 2016, an Obama administration Executive Order provided over one million federal contract workers with up to seven paid sick days. However, there are no federal laws providing for or requiring employers to provide employees with paid or unpaid sick days.

The Healthy Families Act, H.R. 1516, introduced by Representative DeLauro and which I am a cosponsor, establishes a worker's right to earn paid sick leave by providing one hour of sick leave for every 30 hours worked, up to 56 hours per year.

Paid sick days can save employers, taxpayers, and families' money while promoting healthier workplaces and communities. Workers without paid sick days are more likely to report going to work with a contagious illness, like the flu, and risk infecting others. Parents without paid sick days are more than twice as likely as parents with paid sick days to send a sick child to school or day care.

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Mr. Chairman, I am also concerned about two legislative proposals that merit careful scrutiny. One proposes a paid leave tax credit of 12 to 25 percent. This may sound like an attractive inducement but there is little evidence that this will incentivize employers who do not already have a paid leave plan to create one. In a recent Ernst and Young survey, 35 percent of small businesses did not see a tax credit as a benefit to inspire them to offer paid leave.

We also need to critically and carefully assess the Workflex in the 21st Century Act. This bill would allow employers to create a new "qualified flexible workplace arrangement plan" under the Employee Retirement Income Security Act. It is concerning that these plans could enable employers to avoid compliance with state and

local paid leave, family leave, wage and hour, and predictable scheduling laws. We should not put downward pressure on workplace benefits that already exist or could be enacted.

I hope we can have a robust discussion today about creating minimum standards for earned sick days, family and medical leave, and flexible and predictable schedules.

I appreciate the witnesses taking their valuable time to discuss these issues with us today and I look forward to their testimony.

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

Chairman WALBERG. I thank the gentleman.

Pursuant to committee rule 7(c), all members will be permitted to submit written statements to be included in the permanent hearing record. And without objection, the hearing record will remain open for 14 days to allow such statements and other extraneous material referenced during the hearing to be submitted for the official hearing record.

And now it's my privilege to introduce the distinguished witnesses who are here, who will provide context to what we're discussing today. And we appreciate you being willing to address our committee this morning.

First, Ms. Angela Schaefer is vice president of human resources with Safety National of St. Louis, Missouri, and is testifying on behalf of the Society for Human Resources Management. Welcome.

Ms. Barbara Brickmeier is vice president of benefits and H.R. development at IBM Corporation, and is testifying on behalf of the U.S. Chamber of Commerce. Welcome.

The Honorable Hans Riemer is president of the Montgomery County Council in Rockville, Maryland. Welcome. It's good to have an elected official. Feel for us.

Ms. Carrie Lukas is president of the Independent Women's Forum here in Washington, D.C. Welcome.

I'll now ask our witnesses to raise your right hand and be sworn in.

[Witnesses sworn.]

Chairman WALBERG. Thank you.

Let the record reflect that the witnesses answered in the affirmative.

Before I recognize you to provide your testimony of five minutes, let me briefly explain the lighting system. It's a stoplight pattern. Green means go, yellow means start to wrap it up, you have one minute left, and red means it's time to hit the brakes and finish your sentence or your thought. But you'll have plenty of opportunity, I'm sure, to address the majority of your concerns and ideas by the questions of our committee, who will try to hold to five minutes as well for questioning. And of course, your written record is part of our record also.

So having said that, let me now recognize Ms. Schaefer for your five minutes of testimony.

**TESTIMONY OF ANGELA SCHAEFER, VICE PRESIDENT OF
HUMAN RESOURCES, SAFETY NATIONAL**

Ms. SCHAEFER. Good morning, Chairman Walberg and Ranking Member Sablan. It's an honor to be with you to discuss opportunities and challenges for employers and employees with respect to

workplace leave policies. I serve as the vice president of human resources for Safety National, an insurance carrier headquartered in St. Louis, Missouri, and I appear today on behalf of the Society of Human Resource Management, or SHRM.

Mr. Chairman, it goes without saying that we are all incredibly busy these days at home and work. Considering that 42 percent of employees have childcare responsibilities and 31 percent expect to provide elder care in the next five years, it's no surprise that more than 40 percent of men and women experience work-family conflict.

Clearly, employees today are juggling even more responsibilities between home and work, which is why today's discussion on workplace policies to support both employees and employers is so important.

Helping our employees meet their worklife needs is a top priority for Safety National. That's why we offer a generous paid time off policy that gives employees maximum flexibility over how to use their paid leave. Additionally, we provide employees with flexible schedules, daily schedule flexibility, and make-up time opportunities, all of which are outlined in my written testimony.

In addition to my company, many other employers voluntarily offer generous workplace flexibility options to support their recruitment and retention strategies. These offerings often provide a competitive advantage in the search for talent.

One of the challenges that employers, including Safety National, has encountered in offering these benefits is the fragmented set of state and local leave laws that continue to grow. This patchwork of rigid mandates, now at a total of 40, is difficult to navigate both for large multi-state employers, but also for small to mid-sized companies like mine.

Because we have employees in San Francisco, for example, which has a sick leave requirement, as does the state of California, we must ensure we are complying with both, even though the laws are overlapping and different. These compliance efforts also come at a cost to my business. For example, we had to switch to an entirely new payroll system to meet the California requirement that PTO be listed on employees' paychecks. And this was at a cost of \$76,000.

Additionally, we had to set up multiple rules in our payroll system to account for the accrual and rollover rules under the various state and local laws. Two members of my team spent almost 80 hours implementing just the PTO portion of the new system and identifying technical issues, which is a significant undertaking, considering we only have 14 employees in the state.

Multiple rules have also meant increased legal fees for my company in trying to implement and comply with these laws. This effort has been particularly time consuming and difficult, as many of these laws conflict with each other, use undefined and ambiguous terms, and require our outside legal counsel to interpret the various leave laws to ensure that our policies are in compliance.

Mr. Chairman, to make the new workplace work for employers and today's modern workforce, we can't go by the old rules. Rather than more one-size-fits-all rigid government mandates describing how and when leave must be used, SHRM and its members believe

that the United States must have a 21st century workflex policy that works for employers and employees alike.

That is why SHRM strongly supports H.R. 4219, the *Workflex in the 21st Century Act*, because it delivers on this goal. By amending ERISA, the *Employment Retirement Income Security Act*, this bill provides employers the option to offer a new workflex plan that would include both guaranteed paid leave and access to flexible work arrangement to all of its employees, including part-time employees.

Under H.R. 4219, employees benefit from paid leave, access to flexible work option, and strong employee protections that have been provided under ERISA for more than 40 years, while participating employers benefit from being able to follow a Federal framework rather than the current patchwork of State and local laws. This legislation would allow Safety National to treat employees consistently across all of our offices, and would ease the administrative burden we face within our payroll system.

Mr. Chairman, work is more flexible than ever, so workplace rules need to be too. SHRM and its members believe public policy should facilitate greater employer adoption of these valuable workplace flexibility benefits, rather than curtail an employer's ability to offer policies that meet employees' needs.

In closing, and on behalf of SHRM, we appreciate the committee's focus on this critical issue, and thank you again for this opportunity. I look forward to your questions.

[The statement of Ms. Schaefer follows:]



**Statement of Angela Schaefer, SHRM-SCP, SPHR
Vice President, Human Resources
Safety National
St. Louis, Missouri**

**On Behalf of The
Society for Human Resource Management**

**Submitted to The
U.S. House Education and Workforce Committee
Subcommittee on Health, Education, Labor, and Pensions**

**Hearing On
“Workplace Leave Policies: Opportunities and Challenges for
Employers and Working Families”**

December 6, 2017

Introduction

Good morning Chairman Walberg, Ranking Member Sablan and distinguished members of the Committee. My name is Angela Schaefer and I am Vice President of Human Resources at Safety National located in St. Louis, Missouri. I have nearly 20 years of experience in human resources, having worked in the legal industry for many years, before joining the insurance industry in 2014. Thank you for this opportunity to testify before the Subcommittee on the challenges and opportunities for employers and families regarding workplace leave policies.

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 15 years. I am active in my local SHRM chapter, the Human Resource Management Association of Greater St. Louis, and I serve on the executive committee of the Missouri State Council of SHRM.

SHRM is the world's largest human resource (HR) professional society, representing 285,000 members in more than 165 countries. For nearly seven decades, the Society has been the leading provider of resources serving the needs of HR professionals and advancing the practice of human resource management. SHRM has more than 575 affiliated chapters within the United States and subsidiary offices in China, India and United Arab Emirates.

Safety National is a versatile alternative market insurance provider that offers a broad range of risk funding products through insurance agents and brokers. Founded in 1942, Safety National is the leading provider of excess workers' compensation coverage to self-insured employers and groups nationwide, and has provided that type of coverage longer than any other company in the United States. Safety National is a wholly-owned subsidiary of Tokio Marine Holdings, Inc., a Tokyo-based global insurer that is ranked among the top 10 insurance companies in the world with a presence in over 40 countries.

SHRM appreciates the Subcommittee's examination of the opportunities and challenges facing employers and employees when it comes to workplace leave policies. SHRM and its members believe that workplace flexibility—or workflex—is a hallmark of the 21st century workplace. Shaped by shifting demographics, emerging technologies and employee needs, it is about rethinking how, when and where people do their best work. This new workplace cannot thrive with the same old, one-size-fits-all policy approach because work is more flexible than ever, so workplace rules need to be too, which is why today's discussion is so important.

In my testimony, I will share more about my business, including our leave policies and workplace flexibility offerings; outline some of the challenges organizations encounter in offering these benefits; and offer SHRM's public policy recommendations for Congress, including support for H.R. 4219, the Workflex in the 21st Century Act.

About Safety National

Safety National is an insurance carrier that provides workers compensation and other insurance coverage to employers that retain risk. We insure some of the largest private employers in the nation and hundreds of public employers. While the majority of Safety National's 456 employees work at our headquarters in St. Louis, Missouri, we also have employees working in 12 other states. Of our 456 employees, 331 are classified as exempt and 125 as non-exempt under the Fair Labor Standards Act and include underwriters, claims coordinators, client service representatives, and quality assurance analysts, to name a few.

Our stability and financial strength enable us to offer competitive salaries and exceptional employee benefits. At Safety National, we foster an inclusive and supportive work environment where employee contributions are recognized and valued. As I like to say, employees have a voice at Safety National. We regularly survey our employees and ask for their confidential opinions on a variety of workplace matters, including business processes and policies that impact them directly, such as our paid time off policies.

My company adheres to five core values: Relationships, Integrity, Teamwork, Balance and Stability. Our core values serve as the fundamental foundation of our corporate culture and drive our interactions, both internally and externally. For the last five years in which we have participated, Safety National has been recognized as a Best Place to Work by Business Insurance's employee engagement survey. Given that 75 percent of the scoring is based directly on employee responses and 25 percent is based on employer policies and procedures, I can say with confidence that we are meeting the needs of our employees.

Need for Paid Leave and Workplace Flexibility

Mr. Chairman, it goes without saying that we are all incredibly busy these days, and not just at work. Consider some of the key findings from SHRM's National Study of the Changing Workforce (NSCW), which takes a comprehensive look at employees' lives on and off the job. The recent NSCW revealed that jobs are indeed demanding, with 38 percent of employees feeling overwhelmed by their workload and 44 percent saying they have too many tasks to accomplish. It should come as no surprise that 46 percent of employees report experiencing three or more indicators of stress.

Specifically, more and more employees are identifying an increase in caregiving responsibilities, with 42 percent of all employees providing care for children under 18 and an additional 31 percent expecting to provide elder care in the next five years. The NSCW also confirmed that work-family conflict is high and not just a women's issue. In fact, men report higher levels of work-family conflict than women – 46 percent of men compared to 43 percent of women.¹

¹ National Study of the Changing Workforce (2016), Society for Human Resource Management.

Clearly, employees today are juggling ever more responsibilities between work and home, which is why many employees are requesting more flexibility at work. In fact, a recent study found that adults who are employed or looking for work value flexibility as much as they value having paid leave.² Additionally, employees rate workplace flexibility among the top three benefits offered by an employer as “very important” to their job satisfaction.³

At Safety National, our employees have made it clear to us that paid leave and workplace flexibility are critical to their ability to meet work and family demands. As a result, we listened to our employees and implemented the policies they requested, while still being able to meet the needs of our business. Here are the core Safety National workplace flexibility offerings:

Paid Time Off (PTO) – In 2016, Safety National transitioned from vacation and sick time policies to a PTO benefit. Transitioning to one bank of time has increased workplace flexibility for our employees by allowing them to decide how they use their time. Employees can take time off to take care of themselves or a sick child, or use the time for vacation. The full allotment of paid time off is available January 1 of each year, which allows employees to be able to use their time when they need it versus waiting until they have earned it, which might not align with when they need to be out of the office.

Flexible Schedule – Under this option, an exempt or non-exempt employee chooses the daily work schedule that works best for them. Workday start times begin as early as 6 a.m. up through 9:30 a.m. This flexible schedule enables employees to drop off children at daycare or school, coordinate schedules with domestic partners or spouses in an effort to ensure personal needs are met or simply avoid commuting during heavy traffic times.

Daily Workday Flexibility – This flexible work arrangement allows non-exempt hourly employees to clock in up to 15 minutes prior to or after their scheduled start time and modify the remainder of their workday to accommodate the modified start time, resulting in employees on a daily basis having flexibility as to the start of their workday. Employees no longer need to stress about arriving to work at an exact time, especially when a situation such as traffic is out of their control. Should an employee need to leave early for the day, they can start their day early and not have to use PTO.

Make-Up Time – This option allows non-exempt, hourly employees to take time off and then make up the missed time later in that same week Monday through Friday, or an employee may work extra hours earlier in the workweek to make up for time that will be taken off later in the workweek. Employees value the flexibility to schedule doctor’s appointments, run personal errands during business hours or come in late or take off early without taking PTO.

² Americans Widely Support Paid Family and Medical Leave, but Differ Over Specific Policies (2017). Pew Research Center.

³ Employee Benefits research report (2016). Society for Human Resource Management.

Employers Offer Paid Leave and Workplace Flexibility

Safety National is not the only employer stepping up to meet the work-life needs of its employees. According to national data, 99 percent of employers with 50 or more employees have some form of time off with pay for their full-time employees⁴. The National Study of Employers found an increase in the number of employers who offered telework on an occasional basis – 66 percent in 2016 compared to 50 percent of employers in 2008.⁵ Additionally, 57 percent of SHRM members report offering flextime, allowing employees to choose their work hours within limits established by the employer.⁶

HR professionals and their employers understand that paid leave and flexible work options are key to the overall job satisfaction of employees, especially as they compete for talent in an increasingly competitive marketplace. Consider, for example, that two out of five organizations cite offering more flexible work arrangements as one of the most effective recruiting strategies. Additionally, 34 percent of employees report that flexibility to balance work and life issues is the reason they stay at their organization, second only to 44 percent of employees who cite compensation as the reason they stay at their organization.⁷

To support their talent management strategy, organizations must also focus on Millennial employees who will represent 75 percent of the workforce by 2025⁸. Research shows that this generation, in particular, values flexibility over compensation, with 35 percent willing to take a 10 to 20 percent pay cut in exchange for more flexibility.⁹

Clearly, Mr. Chairman, employers who offer generous paid leave and workplace flexibility programs gain a competitive advantage as they seek to recruit and retain top talent.

Paid Leave and Workplace Flexibility Challenges

While many employers are already offering paid leave and flexible work options to help their employees navigate the demands of work and life, public policy lags behind and could do more to further incentivize employer adoption of these important benefits. Allow me to explain.

One major problem is policy fragmentation at the state and local level. To date, eight states and more than 30 localities have adopted rigid, one-size-fits-all paid sick leave laws. As a result, employers must now navigate a fragmented and sometimes

⁴ Paid Time Off, Vacations, Sick Days and Short-term Caregiving in the United States (2015).

⁵ National Study of Employers (2016). Society for Human Resource Management.

⁶ Employee Benefits research report (2017). Society for Human Resource Management.

⁷ Employee Job Satisfaction and Engagement (2017). Society for Human Resource Management.

⁸ https://www.brookings.edu/wp-content/uploads/2016/06/Brookings_Winogradfinal.pdf

⁹ FlexJob Annual Super Survey (2016). <https://www.flexjobs.com/blog/post/survey-workers-most-productive-in-the-office/>

conflicting system of state and local paid-leave mandates and flexible work requirements, causing numerous challenges for employers and employees.

This is true for Safety National. Because we have employees in San Francisco, for example, which has a sick leave requirement, as does the state of California, we must ensure we are complying with both, even though the laws are overlapping and different. These compliance efforts also come at a cost to my business.

For example, we had to switch to an entirely new Human Resource Information System (HRIS) payroll system to meet the California requirement that PTO be listed on the employee's paycheck. The cost to implement the new system was \$76,000. Additionally, this process required us to set up multiple rules in our payroll system to account for the various state and municipal laws as it relates to accruing time off and/or rolling over time from year to year. This was a significant undertaking, especially since we only have 14 employees in the state. Due to the various state and municipal rules and requirements, two of our HR team members spent almost 80 hours setting up, identifying technical issues and implementing the system. The work done by the HR team, while necessary, represented lost productivity that those employees could have spent on their regular duties in support of employees and the business. Every new state or local mandate could prompt similar needs.

Multiple rules have also meant increased legal fees for my company in trying to implement and comply with these laws. This effort has been particularly time consuming and difficult as many of these laws conflict with each other, use undefined and ambiguous terms and require our outside legal counsel to interpret the various leave laws to ensure that our policies are in compliance. Legal review must be done each time a new rule is enacted – and then annually – to make sure any changes in laws already in place have not made our policies non-compliant.

Additionally, SHRM members with worksites in some of the other states and localities with leave requirements have had to “designate” a specific number of days away from their PTO offering as “sick days” to comply with the various requirements. Employees have viewed this designation as a “take-away” from their PTO allotment as they could no longer use the leave unless the employee or their dependent was sick.

SHRM's Policy Recommendation

HR professionals like me 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 paid leave and workplace flexibility.

Rather than a one-size-fits-all, rigid government mandate that prescribes how and when leave must be used, SHRM and its members believe that the United States must have a 21st century workflex policy that works for employers and employees alike, helping them meet both work-life and organizational needs. A 21st century workflex

policy must facilitate the expansion of paid leave and workflex options regarding when, where and how work is done, while accounting for differences in work environments, employer size and industry.

That is why SHRM strongly supports H.R. 4219, the Workflex in the 21st Century Act, because it delivers on this goal. This legislation would amend the Employee Retirement Income Security Act (ERISA) to create a qualified flexible work arrangement plan as an employee welfare benefit plan under the statute.

Under this legislation, employers could *voluntarily* offer a plan that provides their employees a federal standard of paid leave and options for flexible work arrangements, such as telecommuting or compressed work schedules. This plan, in turn, would preempt all state and local paid leave requirements, providing employers much-needed relief from the compliance conundrum employers currently encounter.

Under H.R. 4219, both full- and part-time employees of employers who offer an ERISA workflex plan would receive guaranteed paid leave that exceeds all state and nearly all local mandates, while employees of nonparticipating employers would continue to be covered by state and local paid leave requirements, where applicable. Employees of participating employers would also receive guaranteed access to flexible workplace options – not currently required under these state laws – which will give many employees access to workflex for the first time. Employers who opt in would benefit from improved predictability by being able to follow the federal framework for paid leave, alleviating the complexity of the various state and local laws.

Importantly, H.R. 4219 also includes strong employee protections provided by ERISA for more than 40 years. The bill has strong anti-retaliation protections for employees seeking to exercise their rights under ERISA. If an employer were to offer a qualified flexible work arrangement plan, the employer would be prohibited from taking adverse action against any employee based on the employee's request for leave or any other benefits provided in that plan. In addition, employees would choose to participate in the flexible work options and could not be forced, coerced or made to participate as a condition of employment. Remedies available for employees are those provided by ERISA, which include equitable relief. These plans may also lose qualified plan status under ERISA, triggering potential applicable state law coverage requirements and penalties for noncompliant employers.

Mr. Chairman, this legislation would allow Safety National to treat employees consistently across all of our offices, and would ease the administrative burden we face within our HRIS/payroll system. Under this legislation, Safety National would be able to consider our employees' request for bi-weekly work schedules, which would allow employees to address their work-life needs across two weeks versus the current one week restriction. As it stands now, if an employee has a busy work week and works over 40 hours in that week, they are paid overtime. We have had employees ask if instead of earning overtime they could apply those work hours to the following week and work a

shorter schedule that second week. Current labor laws do not allow for that flexibility, so we have no option but to deny the employees' requests.

Conclusion

Thank you for holding this hearing to discuss workplace leave policy options to benefit both employers and employees. As I stated earlier in my testimony, to make the new workplace work, we can't go by the old rules. Rigid government mandates only limit an employer's flexibility to tailor workplace flexibility policies to an organization's unique workforce and business needs. Public policy should facilitate greater employer adoption of these valuable workplace flexibility benefits, rather than curtail an employer's ability to offer policies that meet employees' needs.

SHRM commends Representative Mimi Walters (R-CA) for introducing the Workflex in the 21st Century Act, and encourages members of the committee to support this important legislation. SHRM looks forward to working with members of this committee to advance H.R. 4219, which will expand paid leave and workplace flexibility options for all employees.

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

Chairman WALBERG. Thank you.
I recognize Ms. Brickmeier for your five minutes of testimony.

**TESTIMONY OF BARBARA BRICKMEIER, VICE PRESIDENT FOR
HUMAN RESOURCES AND BUSINESS DEVELOPMENT, IBM
CORPORATION**

Ms. BRICKMEIER. Good morning, Mr. Chairman, Ranking Member Sablan, and other members of the committee. I'm Barbara Brickmeier, VP for human resources and business development with IBM. I'm responsible for overseeing global benefits design and execution across IBM. I'm here today on behalf of the U.S. Chamber of Commerce to discuss the challenges facing large, multijurisdiction companies that must navigate the maze of increasingly complex, conflicting, and overlapping paid leave mandates across the country.

IBM has always supported the provision of paid leave so employees can tend to their personal needs, whether they be health related or for other reasons. Providing time off to our regular full-time and part-time employees is not only consistent with our policy, but also an important tool to use for the well-being of our employees, while attracting the most highly-talented professionals. We provide a generous paid leave policy that includes a minimum of 15 paid vacation days, up to 26 weeks of full or partially paid short-term disability, 12 weeks of paid childcare bonding leave for new parents, in addition to sick leave.

As a 50-state employer, a formidable challenge is the administrative and compliance burden created by a myriad inconsistencies in the various state and local leave laws, the speed at which new laws and amendments arise, and the sheer number and range of requirements applicable to IBM's diverse employee base around the country.

So let me be very specific. In the area of paid sick leave, by my last count, there were six states, two counties, and roughly 30 local jurisdictions with paid sick leave laws. In addition, there is a federal executive order establishing paid leave for federal contractors. Nearly all of these apply to IBM. And what frustrates us is that these federal, state, and local paid sick leave laws are all different.

They specify different levels of leave and include varying eligibility rules for employees in addition to defining covered family members in different ways. Implementation requirements such as frontloading, carryover, documentation, notification, and accrual rates may also vary. Furthermore, the laws are amended at different times, obliging us to change our leave offerings, postings, and notifications. I provided several examples of these in my written testimony. And to say the least, they present a complex obstacle course for employers, particularly multi-state employers like IBM whose populations vary from single digits in some locales to many thousands in others. I can only speculate how companies may be discouraged from voluntarily providing paid sick leave and are paid family leave to their employees because of this confusion.

So I'm going to give a terrific example which, again, follows on the San Francisco example, so a San Francisco-based IBM. We are working on a Federal contract, would be covered by up to four different paid leave laws for personal illness or that of a covered fam-

ily member, not to mention the Federal FMLA, which covers unpaid leave in similar circumstances. Specifically, an employee could be covered by Executive Order 13706, the California Healthy Workplaces, Healthy Families Act of 2014, the San Francisco Paid Leave Ordinance, and the California Paid Family Leave Law, and they all may apply. Each law varies with respect to one or more factors, such as time off amounts, covered family members, notification, reporting, and recordkeeping. While the most generous provisions would apply, identifying them and ensuring compliance necessitates significant time and resources, and might actually vary with each employee's personal circumstance.

Of course, IBM is not alone in this predicament, and we would speculate that, given our own challenges, and despite our significant resources and fairly sophisticated HR system, it must be far more burdensome and costly for smaller companies with fewer resources, leading to noncompliance or other strategies to avoid the mandates all together.

Given the proliferation of different and complex paid leave mandates at the federal, state, and local levels, IBM strongly supports a federal preemptive legislative solution, like that in H.R. 4219, the *Workflex in the 21st Century Act*. And this is an example of the way employers could opt in to a single, national paid leave police that would satisfy compliance requirements in multiple jurisdictions. Such a simplified approach would greatly reduce costs and mitigate the staggering and growing administrative complexity, while allowing us to continue offering and designing generous leave benefits for our employees that would not vary based on where they work.

Thank you again for the opportunity to testify, and I look forward to answering your questions.

[The statement of Ms. Brickmeier follows:]



Statement of the U.S. Chamber of Commerce

ON: Workplace Leave Policies: Opportunities and Challenges
for Employers and Working Families

TO: U.S. House of Representatives Committee on Education
and the Workforce, Subcommittee on Health, Employment,
Labor and Pensions

BY: Barbara Brickmeier, Vice President for Human Resources
and Business Development with IBM

DATE: December 6, 2017

1615 H Street NW | Washington, DC | 20062

The Chamber's mission is to advance human progress through an economic,
political and social system based on individual freedom,
incentive, initiative, opportunity and responsibility.

The U.S. Chamber of Commerce is the world's largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The Chamber is dedicated to promoting, protecting, and defending America's free enterprise system.

More than 96% of Chamber member companies have fewer than 100 employees, and many of the nation's largest companies are also active members. We are therefore cognizant not only of the challenges facing smaller businesses, but also those facing the business community at large.

Besides representing a cross-section of the American business community with respect to the number of employees, major classifications of American business—e.g., manufacturing, retailing, services, construction, wholesalers, and finance—are represented. The Chamber has membership in all 50 states.

The Chamber's international reach is substantial as well. We believe that global interdependence provides opportunities, not threats. In addition to the American Chambers of Commerce abroad, an increasing number of our members engage in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Good morning Mr. Chairman, Ranking Member Sablan and other Members of the Committee. I'm Barbara Brickmeier, Vice President for Human Resources and Business Development with IBM. I am responsible for overseeing global benefits design and execution across the IBM Corporation. I'm here at today's hearing, "Workplace Leave Policies: Opportunities and Challenges for Employers and Working Families," on behalf of the U.S. Chamber of Commerce to discuss the challenges facing large, multi-jurisdiction companies that must navigate the maze of increasingly complex, conflicting and overlapping paid leave mandates across the country.

At the outset, let me clearly state that IBM has always supported the provision of paid leave so employees can tend to their personal needs, whether they be health-related or for other reasons. We provide a generous paid leave policy that includes a minimum of 15 days of paid vacation; up to 26 weeks of full or partially paid short term disability; 12 weeks of paid child bonding leave for new parents, in addition to paid sick leave. Our paid leave policy extends to all full and part-time regular employees. In today's hearing, I will focus my comments not on whether employers should provide paid leave, but the problems employers are facing in trying to provide it nationwide.

IBM fully supports providing paid time off to employees who need it for health-related or other reasons. Providing time off to employees is consistent with IBM policy and practice and is easily manageable. However, an overwhelming challenge has resulted from the burden created by myriad inconsistencies in the various state and local laws, the speed at which new laws and amendments arise, and the sheer number and range of requirements applicable to IBM's operations around the country.

Let me be very specific: In the area of paid sick leave, by my last count, there were 6 states, 2 counties and roughly 29 local ordinances covering paid sick leave. In addition, there is a federal Executive Order establishing paid sick leave for federal contractors. IBM's situation with respect to this crowded backdrop of paid sick leave laws is instructive and typical of the challenge faced by large employers with multiple sites around the country that also are federal contractors, like us. In our case, with employees in all 50 states, IBM must comply with the federal Executive Order, as well as all applicable state and local laws (20 out of 29) on paid sick time and paid family leave.

It is important to be aware that these various state and local paid sick leave laws are all different. They specify different levels of leave and include varying employee eligibility rules and the minimum amount of compensation to be paid. The permissible reasons for taking leave also vary. The laws define covered family members in different ways. Significantly, the implementation requirements of the laws also can be quite different. Typically, each law has different rules regarding frontloading, carryover, documentation and notification requirements. There also are different accrual rates. Combined, it is – to say the least – a complex obstacle course for employers, particularly multistate employers like IBM.

Instead of facilitating the formulation of paid leave policies, these inconsistencies and competing requirements actually discourage companies from voluntarily providing paid sick leave and/or paid family leave to their employees. For example, it would be difficult from a compliance and administrative standpoint for IBM to implement a single, uniform paid family leave program for all U.S. employees, given varying and onerous mandates by jurisdiction. As a result of the uncoordinated patchwork of requirements that exists today, IBM and similarly situated companies are left with no choice but to provide different paid sick time and family leave benefits based on where an employee works. This is far from ideal, from an employee relations and fairness perspective and for ensuring consistent and cost-effective provision of a vital benefit.

To articulate this further, an IBM employee may be covered simultaneously by as many as four different laws addressing the amount of paid leave available for an employee illness or the illness of a covered family member (not to mention the federal FMLA, which covers unpaid leave in similar circumstances). For example, an employee working on a federal contract in San Francisco would be covered by Executive Order 13706; the California Healthy Workplaces, Healthy Families Act of 2014; the San Francisco Paid Sick Leave Ordinance; and the California Paid Family Leave Law, which have different time off, covered family members, notification, reporting and record-keeping requirements. While all of the laws dictate that the most generous provisions apply, identifying the most generous entitlement and ensuring compliance with all

applicable requirements necessitates significant time and resources to accomplish and might vary with each employee's circumstance.

In addition to new laws being passed every few months, several of the existing paid sick leave laws also have been recently amended. For example, the State of California's Paid Sick Leave law was passed on July 1, 2015 and was amended on January 1, 2017. San Francisco's Paid Sick Leave Ordinance was passed in 2007 but was amended on January 1, 2017. Washington, D.C.'s Accrued Sick Leave and Safe Leave Act was passed in 2008 and amended in 2014. Seattle's Paid Sick and Safe Time Ordinance was passed in 2011 and amended in 2016. Needless to say, each time a law is passed or amended, employers must review the new requirements to determine what steps must be taken to ensure compliance.

Many of the laws require employee notification, posting a notice, or creation of a policy. Consequently, every time a law is amended, the policy may need revising, the postings may need to be changed, and the employee notification must be revised. When an employer has employees in so many jurisdictions around the country – whether tens of thousands in some or single digits in others – the resources required to ensure continued compliance with ever changing requirements are staggering. Further, and most important, the challenge posed here is not the provision of paid time off to employees; rather, *the challenge to employers like ours is the overlapping, inconsistent requirements – procedural and substantive -- of these mandates.*

Of course, IBM is not alone in this predicament. We are aware that there are many companies and firms with offices throughout the country struggling to navigate these myriad requirements. Like IBM, many U.S. companies are subject to one or more state, local or federal contractor paid leave laws, all of which impose divergent requirements, and none of which exempts employers who already are providing substantially more generous paid leaves.

We would speculate that, given our experience with the challenge presented by these complex and conflicting paid sick and other leave mandates for a company with IBM's resources and sophisticated HR system, it must be far more burdensome and costly for smaller companies with less resources. This labyrinth of leave requirements

can literally overwhelm employers, thus leading to non-compliance or other strategies to avoid the mandates altogether.

While today's hearing is focused on describing the overall picture of paid leave mandates proliferating around the country, we are encouraged that attention is focused on the difficulties this poses for diligent employers with comprehensive benefits programs and generous paid time off packages. For the reasons explained above, IBM strongly supports a federal preemptive legislative solution, like that in H.R. 4219, the Workflex in the 21st Century Act, which would enable employers to opt in to a single, national paid leave policy that would satisfy compliance requirements in multiple jurisdictions of the country at the same time. Such a simplified approach would greatly reduce costs and mitigate the staggering and growing administrative complexity, while allowing us to continue offering and designing generous leave benefits for our employees that would not vary based on where they work.

Thank you, once again, for the opportunity to testify before you today. I look forward to answering any questions you may have.

Chairman WALBERG. Thank you.
I now recognize the Honorable Hans Riemer for your five minutes.

TESTIMONY OF HANS RIEMER, PRESIDENT, MONTGOMERY COUNTY COUNCIL

Mr. RIEMER. Good morning, Chairman Walberg, Ranking Member Sablan, and members of the committee. My name is Hans Riemer, and I'm the president of the Montgomery County Council here in Maryland. Montgomery County is an inclusive metropolitan community that is home to more than 1 million people, all of whom I represent as an at-large council member.

I'm here today on behalf of our county council and county executive to speak to you about the importance of local and State workplace laws through the lens of Montgomery County's experience adopting a local paid sick days law.

As you know, local elected officials are always on the ground in their communities and know the needs and the values of the people that they represent. I meet my constituents every day. I talk to them at the grocery store and community events.

In Montgomery County, we know that working families need real policy solutions to provide paid leave. We listen to the people in our community, and in response, the Council adopted an Earned Sick and Safe Leave Law that guarantees workers can earn up to seven days of paid time off.

In Montgomery County, our law guarantees that employees can use the sick leave they have earned to care for or treat an illness or injury. I can tell you that I have met so many people who have needed to use leave after an injury or sudden illness, such as a car crash or the flu or taking care of a child who broke an arm. Our law also guarantees employees can use leave to care for an ailing relative or to deal with medical or legal issues related to domestic violence or sexual assault. We all know families where a child has special needs or a parent or grandparent is sick, and their caregivers need a right to take at least some time to care for them.

As you can imagine, these are not events that employees can predict or schedule in advance. Without paid sick time, employees are often forced to go to work and spread the flu to their coworkers or customers, or to send their kids to school sick and infect their classmates and teachers. We all pay the price.

When the Maryland legislature passed a statewide paid sick leave law last year, we worked with legislators to ensure that our county is free to keep the stronger policy that works for us. We have also been working with our state legislators to find a way to adopt a longer-term paid family and medical leave program.

There is no one-size-fits-all solution to workplace leave policies, but there is a baseline protection that every worker in America deserves. Congress should adopt common sense policies, like the *Healthy Families Act*, the *FAMILY Act*, and the *Schedules That Work Act*, that set a standard, while allowing states and local governments to determine what additional protections make sense for them.

We strongly oppose H.R. 4219, which would undermine our paid sick days law and turn back the clock for more than 13 million

working people who have gained access to paid sick days through laws passed in eight states and 32 local jurisdictions.

H.R. 4219 does not provide paid sick days; it takes them away. H.R. 4219 takes away important rights to sick leave that local and state governments have granted to their residents, rights that were granted using sovereignty that belongs to us. The federal law would create an off-ramp for employers to evade state and local laws presently covering millions of people. The law goes against the basic tenet that if a decision can be made closer to the people without violating important principles, then that is where the decision-making power should fall.

By creating an escape hatch from state and local law, H.R. 4219 eviscerates the hard-won right to earn paid sick time that my constituents have, and puts decision-making back in the hands of their employers, who could unilaterally deny their urgent leave request. Many states have health, safety, and environmental requirements that may differ from federal law. Businesses that are large enough to operate in multiple jurisdictions have advance system to address these differences. Instead of working to undermine state and local law, let's work together to improve people's lives through a national minimum paid sick day standard and a national paid family and medical leave plan.

State and local governments have long been the laboratories of democracy, helping forge workable national standards. Congress should safeguard, not undermine, our ability to do what we think is right for our constituents.

H.R. 4219 will create confusion in the workforce, overburden and undermine local and state governments, and jeopardize the family life and public safety of millions of people. Thank you.

[The statement of Mr. Riemer follows:]



MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

HANS RIEMER
COUNCIL PRESIDENT

**Statement of the
Honorable Hans Riemer
President, Montgomery County Council**

**Testimony Before the U.S. House of Representatives
Committee on Education and the Workforce
Subcommittee on Health, Education, Labor and Pensions**

December 6, 2017

Good morning, Chairman Walberg, Ranking Member Sablan and members of the Committee. My name is Hans Riemer and I am the president of the Montgomery County Council in Maryland. Montgomery County is home to more than one million people. We are a diverse, growing and vibrant community with large and small companies in a wide variety of industries.

I'm here today on behalf of our County Council and Executive to speak to you about Montgomery County's experience adopting a local paid sick days law and to share the benefits of paid sick days for my constituents and our community.

Like I know all of you do, I meet with my constituents every day. I live and work next door to the people I was elected to represent, and I talk to them at the grocery store and the gas station and at community events. Local elected officials are always on the ground in their communities and know the needs and the values of the people they represent.

In Montgomery County we are well aware of working families' need for real policy solutions to provide paid leave and workplace flexibility. I have met working mothers who couldn't take time off from work to take care of their sick child, solidly middle class families that couldn't care for an aging parent that fell, and I met many, many hard working people who told me about going to work sick or hurt because they were afraid to lose their job. That is not healthy for anyone! We also heard from parents who could not attend a school meeting for a child with special needs, or get time off for an annual physical, or attend a court hearing to get a restraining order against a perpetrator of domestic violence.

We listened to the people in our community, and in response the Council adopted an Earned Sick and Safe Leave Law that guarantees workers can earn up to 7 days (56 hours) of paid time off. For employers with fewer than 5 employees, workers accrue at least 4 days (32 hours) of paid time off and another 3 days of unpaid sick leave. Montgomery County is one of 8 states

and 32 localities that have passed similar laws as of today. After working through the bill and listening to workers and employers large and small, we passed the bill unanimously, and our County Executive signed it and led a smooth implementation process.

In the wealthiest nation in the world, it's unconscionable that an unexpected medical problem -- cancer, or a car accident -- can trigger a downward spiral of lost wages, job loss, unemployment, foreclosure, bankruptcy, and worse. As Baby Boomers age, more and more workers are finding themselves caring not only for their children and themselves, but also for their aging parents as well. Hard working people shouldn't have to choose between caring for the parents who once cared for them and paying the bills.

Paid sick leave laws like ours are critical for the workforce, and workers, businesses and our health department are finding it works well in our County. But Maryland is a diverse state, and our County has a very high cost-of-living compared to others. When the Maryland legislature passed a statewide paid sick leave law last year, we worked with them to ensure that, while there is a new statewide floor that works across the state - our County is free to keep the stronger policy that works for us.

We have also been working with our state legislators to find a way to adopt a longer-term paid family and medical leave program - a Social Security-style program that would provide relief for employees who need extended leave, whether for a new baby, an illness, or an ailing family member. Our goal is to find a way to adopt a statewide floor that provides relief for all workers, while leaving the flexibility to address differences in workforce needs that exist in different Counties around the state. Our County, for example, may want to have a stronger family leave policy in order to more effectively compete for younger workers.

America is huge and diverse, and federal policies should work the same way. Let those of us in local and state government work with you to ensure a healthy and productive workforce while managing through concerns from employers. We are the closest to the ground. Every day, we are fielding complaints from small business owners, marketing ourselves to bigger businesses, hearing from workers and residents, helping to answer questions and fix problems. When the store on the corner closes, we find out why. We know what works for our communities.

At the same time, every worker in America deserves basic protections that ensure dignity and respect. There is no "one size fits all" solution to workplace leave policies, but there is a basic floor of protection that every worker in America deserves. Congress should adopt common sense policies like the Healthy Families Act, FAMILY Act, and Schedules that Work Act to provide a floor for workers across the country, while allowing states and local governments to determine what additional protections make sense for them.

We strongly oppose H.R. 4219, the misnamed Workflex in the 21st Century Act, which would undermine our paid sick days law and turn back the clock for more than 13 million working

people who have gained access to paid sick days through laws passed in eight states and 32 local jurisdictions across the country.

H.R. 4219 does not provide paid sick days, it takes them away. The federal law would create an off-ramp for employers to evade state and local laws presently covering millions of people. Without justification, the law goes against the basic tenet that if a decision can be made closer to the people without violating important principles, then that is where the decision making power should fall. And I am here to explain that there is absolutely no reason to enable employers to evade our state and local workplace laws. Our decisions are sound and they work just fine for our community and our employers.

By creating an escape hatch from state and local law, H.R. 4219 eviscerates the hard-won right to earn paid sick time that my constituents have and puts sole decision-making in the hands of their employers, who could unilaterally decide to offer their employees – my constituents – less certainty and predictability and deny their urgent leave requests.

H.R. 4219 would also cause confusion for local enforcement agencies, which would have to jump through hoops with the U.S. Department of Labor to determine whether the local government or DOL has jurisdiction over complaints for a particular employer. I know that would burden our enforcement agency and I would imagine it would burden DOL too.

As we were developing our sick days policy, we heard from people who - like two-thirds of people in the United States and 70 percent of low-wage workers - did not have a single paid sick day. We heard from others who were unable to take time off from work when their child or a beloved parent needed them. Some of the stories I heard echo the Society for Human Resources Management / Families and Work Institute's own research, which shows that nearly four in 10 employers say a worker's ability to take requested leave is determined in part by how and for whom they will use the time. Our paid sick days law limits that discretion for illness, health needs and domestic violence situations.

We also heard from business owners who said, "I already offer paid sick days because it's the smart as well as the right thing to do - and I think everyone should have it, too."

Our law and the other state and local laws have the same basic structure, the same basic guarantees and the same basic requirements that employers must follow. There is local variation to reflect local needs but the key elements and structures are very similar. This, by the way, is not any different than other state and international law variations that employers are quite used to dealing with. Many states have different minimum wages, along with other health, safety and environmental requirements that may differ from federal law. Businesses operate in areas where they believe they will be successful – and communities support business that comply with local laws. Businesses that are large enough to operate in multiple jurisdictions readily have the capacity to establish different business processes according to those jurisdictions.

Paid sick time is just one of the needs that my community – and, indeed, the nation has. That's why it is outrageous to me that we are debating moving backward instead of forward. Instead of debating how to improve people's lives through a national paid sick days standard, or a standard for fair work schedules or a national paid family and medical leave plan – we're debating a proposal like H.R. 4219, which would erode the basic standards we have worked for at the local level.

I urge you to spend time considering true worker leave and flexibility policies:

- A national paid sick days law like the Healthy Families Act, to guarantee workers the right to earn up to seven paid sick and safe days, very similar to the law we passed in my county;
- A national paid leave fund like the Family And Medical Insurance Leave (FAMILY) Act - which 70 percent of small businesses and more than 75 percent of voters support – and which would create a national paid family and medical leave fund to help ensure that a working parent can care for a new child and all working people can take paid time to address their own or a family member's serious health issue. I had one of those issues myself a couple of years ago, and I felt lucky to have paid leave. But luck should not have had anything to do with it.
- And the Schedules That Work Act, which would create incentives for employers to offer predictability and notice in scheduling and make it easier for working people to request flexibility that will better enable them to continue their education, find safe and affordable child care, hold a second job to support their families and plan their lives.

Cities, counties, and states have long been the laboratories for democracy and help create workable national standards. Congress should safeguard, not undermine, our ability to do what is right for our constituents. That's why I am so alarmed at H.R. 4219. Federal policies should provide a baseline for the country and an opportunity for the states and local governments to layer additional programs and policies based on the needs of their communities.

H.R. 4219 will create confusion in the workforce, overburden and undermine local and state governments, and jeopardize the public safety of millions of people. It will very likely also create more regulation for employers and disadvantage the small businesses that give our county and so many others across the country true character. H.R. 4219 does not make sense for employers, employees, or local governments like Montgomery County.

Thank you.



MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

HANS RIEMER
COUNCIL PRESIDENT

Date: December 21, 2017

To: U.S. House of Representatives
Committee on Education and the Workforce
Subcommittee on Health, Education, Labor and Pensions

Re: Corrected Testimony – December 6, 2017

Please see the attached corrected testimony for the Subcommittee on Health, Education, Labor and Pensions. The testimony has been updated to correct an error in one sentence to reflect the intended statement that both one third of the private sector workers and 70% of the lowest wage workers do not have a sick day.

Thank you,

A handwritten signature in black ink, appearing to read "Hans Riemer", with a long horizontal flourish extending to the right.

Hans Riemer



MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

HANS RIEMER
COUNCIL PRESIDENT

CORRECTED
Statement of the
Honorable Hans Riemer
President, Montgomery County Council

Testimony Before the U.S. House of Representatives
Committee on Education and the Workforce
Subcommittee on Health, Education, Labor and Pensions

December 6, 2017

Good morning, Chairman Walberg, Ranking Member Sablan and members of the Committee. My name is Hans Riemer and I am the president of the Montgomery County Council in Maryland. Montgomery County is home to more than one million people. We are a diverse, growing and vibrant community with large and small companies in a wide variety of industries.

I'm here today on behalf of our County Council and Executive to speak to you about Montgomery County's experience adopting a local paid sick days law and to share the benefits of paid sick days for my constituents and our community.

Like I know all of you do, I meet with my constituents every day. I live and work next door to the people I was elected to represent, and I talk to them at the grocery store and the gas station and at community events. Local elected officials are always on the ground in their communities and know the needs and the values of the people they represent.

In Montgomery County we are well aware of working families' need for real policy solutions to provide paid leave and workplace flexibility. I have met working mothers who couldn't take time off from work to take care of their sick child, solidly middle class families that couldn't care for an aging parent that fell, and I met many, many hard working people who told me about going to work sick or hurt because they were afraid to lose their job. That is not healthy for anyone! We also heard from parents who could not attend a school meeting for a child with special needs, or get time off for an annual physical, or attend a court hearing to get a restraining order against a perpetrator of domestic violence.

We listened to the people in our community, and in response the Council adopted an Earned Sick and Safe Leave Law that guarantees workers can earn up to 7 days (56 hours) of paid time off. For employers with fewer than 5 employees, workers accrue at least 4 days (32 hours) of

paid time off and another 3 days of unpaid sick leave. Montgomery County is one of 8 states and 32 localities that have passed similar laws as of today. After working through the bill and listening to workers and employers large and small, we passed the bill unanimously, and our County Executive signed it and led a smooth implementation process.

In the wealthiest nation in the world, it's unconscionable that an unexpected medical problem -- cancer, or a car accident -- can trigger a downward spiral of lost wages, job loss, unemployment, foreclosure, bankruptcy, and worse. As Baby Boomers age, more and more workers are finding themselves caring not only for their children and themselves, but also for their aging parents as well. Hard working people shouldn't have to choose between caring for the parents who once cared for them and paying the bills.

Paid sick leave laws like ours are critical for the workforce, and workers, businesses and our health department are finding it works well in our County. But Maryland is a diverse state, and our County has a very high cost-of-living compared to others. When the Maryland legislature passed a statewide paid sick leave law last year, we worked with them to ensure that, while there is a new statewide floor that works across the state - our County is free to keep the stronger policy that works for us.

We have also been working with our state legislators to find a way to adopt a longer-term paid family and medical leave program - a Social Security-style program that would provide relief for employees who need extended leave, whether for a new baby, an illness, or an ailing family member. Our goal is to find a way to adopt a statewide floor that provides relief for all workers, while leaving the flexibility to address differences in workforce needs that exist in different Counties around the state. Our County, for example, may want to have a stronger family leave policy in order to more effectively compete for younger workers.

America is huge and diverse, and federal policies should work the same way. Let those of us in local and state government work with you to ensure a healthy and productive workforce while managing through concerns from employers. We are the closest to the ground. Every day, we are fielding complaints from small business owners, marketing ourselves to bigger businesses, hearing from workers and residents, helping to answer questions and fix problems. When the store on the corner closes, we find out why. We know what works for our communities.

At the same time, every worker in America deserves basic protections that ensure dignity and respect. There is no "one size fits all" solution to workplace leave policies, but there is a basic floor of protection that every worker in America deserves. Congress should adopt common sense policies like the Healthy Families Act, FAMILY Act, and Schedules that Work Act to provide a floor for workers across the country, while allowing states and local governments to determine what additional protections make sense for them.

We strongly oppose H.R. 4219, the misnamed Workflex in the 21st Century Act, which would undermine our paid sick days law and turn back the clock for more than 13 million working

people who have gained access to paid sick days through laws passed in eight states and 32 local jurisdictions across the country.

H.R. 4219 does not provide paid sick days, it takes them away. The federal law would create an off-ramp for employers to evade state and local laws presently covering millions of people. Without justification, the law goes against the basic tenet that if a decision can be made closer to the people without violating important principles, then that is where the decision making power should fall. And I am here to explain that there is absolutely no reason to enable employers to evade our state and local workplace laws. Our decisions are sound and they work just fine for our community and our employers.

By creating an escape hatch from state and local law, H.R. 4219 eviscerates the hard-won right to earn paid sick time that my constituents have and puts sole decision-making in the hands of their employers, who could unilaterally decide to offer their employees – my constituents – less certainty and predictability and deny their urgent leave requests.

H.R. 4219 would also cause confusion for local enforcement agencies, which would have to jump through hoops with the U.S. Department of Labor to determine whether the local government or DOL has jurisdiction over complaints for a particular employer. I know that would burden our enforcement agency and I would imagine it would burden DOL too.

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- And the Schedules That Work Act, which would create incentives for employers to offer predictability and notice in scheduling and make it easier for working people to request flexibility that will better enable them to continue their education, find safe and affordable child care, hold a second job to support their families and plan their lives.

Cities, counties, and states have long been the laboratories for democracy and help create workable national standards. Congress should safeguard, not undermine, our ability to do what is right for our constituents. That's why I am so alarmed at H.R. 4219. Federal policies should provide a baseline for the country and an opportunity for the states and local governments to layer additional programs and policies based on the needs of their communities.

H.R. 4219 will create confusion in the workforce, overburden and undermine local and state governments, and jeopardize the public safety of millions of people. It will very likely also create more regulation for employers and disadvantage the small businesses that give our county and so many others across the country true character. H.R. 4219 does not make sense for employers, employees, or local governments like Montgomery County.

Thank you.

Chairman WALBERG. Thank you.
And now, Ms. Lukas, we recognize you for your five minutes.

**TESTIMONY OF CARRIE LUKAS, PRESIDENT, INDEPENDENT
WOMEN'S FORUM**

Ms. LUKAS. Chairman Walberg and Ranking Member Sablan, thank you for the opportunity to be here this morning and talk about this important issue. I'm representing the Independent Women's Forum, a nonprofit dedicated to developing and advancing policies that enhance people's freedom, choices, and opportunities.

IWF employs nearly 20 workers, almost all of whom are women. And as the person responsible for overseeing the budget, I know firsthand the impact that leave benefits have on a small business or an organization like ours.

Like most employers, IWF works hard to support our employees who need time off for personal reasons, like the birth of a child or another family issue. We also try to be fair to those employees who don't need time for extended leave. I'm also the mother of five children, so I appreciate the importance of being able to take time off from work firsthand.

I encourage you, as you consider potential reform and action in regards to paid leave, I'd encourage you to keep the following in mind: Our workplaces and our workforce are increasingly diverse. Growing numbers of workers are participating in the gig economy, which means that they are working for themselves as a contractor rather than for a traditional employer. A growing number of workers are also telecommuting. Families are changing too, as more women become sole or primary breadwinners, and more people are remaining childless.

These trends should caution us against creating a one-size-fits-all leave policy that ignores that a worker without children working in a traditional business is likely to have very different preferences for leave benefits than a self-employed single parent. We also need to consider that businesses able to offer telecommuting options can provide different leave benefits than a restaurant or hospital that needs sufficient in-person staff.

Ignoring these difference and creating a mandate or a government-entitlement program will impose real costs on workers in the form of reduced workplace flexibility, less hiring, and in particular, less opportunities for women of child-bearing age. This isn't just a theoretical risk. I got to live in Europe for seven years, and while these countries offer extensive paid leave benefits for families with children, women pay a considerable price in terms of workplace opportunities.

The National Bureau of Economic Research found that EU countries have boosted their female labor force participation rate, but the women there were mostly working part time and in lower paid positions. While 14 percent of American female workers are managers compared to 15 percent of American men, just 5.9 percent of European female workers are managers compared to 22 percent of European men. So clearly, there is a disconnect there.

Advocates for sweeping government action often painted a very grim picture of working in the United States, claiming that 12 percent of workers, something like that, have only -- that only that

share has paid leave benefits. But fortunately, that's an inaccurate picture of how businesses here function. Just because employers seldom offer specific family leave benefits doesn't mean that workers generally don't have access to paid time off for family needs.

The Census Bureau studied women having their first child and found that 56 percent of full-time working mothers used paid leave following the birth of that child, 42 percent use unpaid leave, 10 percent had disability leave. And this all adds up to more than 100 percent since some use more than one bucket of leave.

These numbers suggest that there certainly are many workers who would appreciate more time off and could use more paid leave benefits, but it also tells us that most businesses and employers do voluntarily offer leave, and which is a reason to avoid upending the employment contracts of all 160 million working Americans, many of whom are happy with their current compensation arrangements.

I would encourage that policymakers' goals should be to help make it easier for workers to prepare for time away from work and for businesses to provide leave benefits, but without discouraging hiring and innovative work relationships. For example, the government could consider creating savings account system, much like a 401(k) or an ESA, that would enable workers to save tax free for time off from work. Employers and charities could also contribute to these accounts, and the government could consider augmenting saving to encourage participation and particularly to help those with lower incomes.

However, I think it's important to keep in mind that the best way to ensure that workers have the benefits they need is for there to be a growing economy with plentiful job opportunities and rising compensation so that they can find positions that make the most sense for themselves.

Thank you for your time, and I look forward to your questions.
[The statement of Ms. Lukas follows:]

**Testimony to the U.S. House of Representatives
Subcommittee on Health, Employment, Labor, and Pensions
Committee on Education and the Workforce
Carrie Lukas
President, Independent Women's Forum
December 6, 2017**

Chairman Walberg and Ranking Member Sablan, thank you for the opportunity to be here and talk about this important issue.

Today, I'm representing Independent Women's Forum, a nonprofit dedicated to developing and advancing policies that enhance people's freedom, choices, and opportunities.

IWF employs nearly 20 workers, almost all of whom are women. As the person responsible for overseeing the budget, I know first-hand the impact that leave benefits have on a small business or organization like ours. Like most employers, IWF works hard to support our employees who need time off for personal reasons like, the birth of a child or another family issue, as well as those employees who don't need extended leave.

I am also the mother of five children, so I know the importance of being able to take time away from work for outside obligations.

As you consider potential reforms related to paid leave, I would encourage you to keep the following in mind.

The Needs of Women and Businesses Are Diverse

Our workplaces and our workforce are increasingly diverse. Growing numbers of workers are participating in the "gig economy," which means they are working for themselves or as a contractor rather than for a traditional employer. A growing number of workers are also telecommuting. Families are changing, too, as more women become sole or primary breadwinners, and more people are remaining childless.

These trends should caution us against creating a one-size-fits-all leave policy that ignores that a worker without children working in a traditional business is likely to have very different preferences for leave benefits than a self-employed

single parent. We also need to consider that businesses able to offer telecommuting options can provide different benefits than a restaurant or hospital that needs sufficient in-person staff.

The Cost of One-Size-Fits-All Government Solutions

Ignoring these differences and creating a mandate or government entitlement program will impose real costs on workers in the form of reduced workplace flexibility, less hiring, and in particular, less opportunities for women of childbearing age.

These are not just theoretical risks. As I saw first-hand while living in Europe for seven years, while these countries offer extensive paid-leave, women pay a considerable price in terms of workplace opportunities. The National Bureau of Economic Research (NBER) found that EU countries have boosted their female labor force participation rate, but women there were mostly working in part time and lower paid positions. While 14 percent of American female workers are managers (compared to 15 percent of men), just 5.9 percent of European female workers are managers (compared to 12.2 percent of European men).

Most Employers Voluntarily Provide Leave and Want to Help

Advocates for sweeping government action often paint a very grim picture of working in the United States, citing a 2015 Department of Labor study that claims only 12 percent of workers have paid family leave benefits.

Unsurprisingly, that's an inaccurate picture of how businesses here function. Just because employers seldom offer specific family leave benefits does not mean that workers generally don't have access to paid time off for family needs.

The Census Bureau studied women having their first child and found that 56 percent of full-time working mothers used paid leave, 42 percent used unpaid leave, 10 percent used disability leave (this adds up to more than 100 percent since some used more than one form of leave). The 2016 National Study of Employers found that 99% of businesses with more than 50 workers offered some form of paid time off to employees.

These numbers suggest that while there are many workers who would appreciate more paid time off, most businesses do voluntarily offer leave benefits, which is a reason to avoid upending the employment contracts of 160

million working Americans.

**Consider Policies To Help Workers and Businesses Provide for Leave,
Without Sacrificing Flexibility**

Policymakers' goal should be to help make it easier for workers to prepare for time away from work and for businesses to provide leave benefits, but without discouraging hiring and innovative work relationships.

For example, the government should consider creating a savings account system, much like 401ks or ESAs, that enable workers to save tax-free for time off from work. Employers and charities could also contribute to these accounts, and the government could consider augmenting savings to encourage participation and particularly to help those with lower incomes.

However, the best way to ensure that workers have the benefits they need is for there to be a growing economy, which offers plentiful job opportunities and rising compensation.

Thank you for your time and I look forward to your questions.



Family Leave Policies

from Independent Women's Forum's
Working for Women Report

THE WAY IT CAN BE

We want women to have work opportunities that provide compensation packages that meet their individual needs. We want people to be able to take time off when they need to—for their own health concerns or to care for family members. We want people to be able to save

for their own needs, while also providing a safety net for those who simply do not have the resources to plan ahead and save for themselves. We need to modernize policy to bring this vision to life.

THE CHALLENGE WE FACE TODAY

Americans want workers to have the leave time that they need when they are sick, have a family member who needs care, or are welcoming a child into the family. When they hear about people who lose their jobs because of an illness, or a new mother having to return to work just weeks after giving birth, they are justifiably concerned.

Yet before crafting one-size-fits-all policy solutions, it is important to define the actual problem to be addressed. Alarming headlines often suggest that our country is akin to Zimbabwe in its failure to support female workers. Unsurprisingly, these alarmist claims paint an inaccurate picture of the American workplace. Most fundamentally, just because

the United States does not statutorily mandate that companies must provide paid sick leave or maternity leave does not mean that most companies fail to offer such benefits, or that most workers lack paid leave time.

In fact, reality is far more encouraging. The Bureau of Labor Statistics (BLS) National Compensation Survey shows that 75 percent of civilian full-time workers have paid sick leave, 74 percent have paid personal leave, 65 percent have paid vacation, 13 percent have paid family leave, and 88 percent have unpaid family leave. Not surprisingly, full-time workers are more likely to have more paid benefits than those working part-time, and those with higher incomes are also more likely to have paid

benefits. Still, the BLS finds that roughly one-third of part-time workers also have access to paid leave.

Those working for larger companies are also more likely to have benefits than those working for smaller establishments. For example, the 2014 National Study of Employers (a survey of 1,051 employers, all with 50 employees or more) found that most employers offer parental leave, and a majority offer at least some paid leave. Larger employers surveyed (those with more than 1,000 employees) were most likely to offer some paid parental leave, with 70 percent of such companies providing this benefit. Even among the smallest companies in the survey (those with between 50-99 employees), a majority (56 percent) provided paid leave following the birth of a child.

Focusing on one category of leave, such as maternity or family leave, overlooks how companies attempt to provide employees with flexibility for using paid leave benefits. Even when businesses do not offer a specific family leave benefit, they often allow workers to use sick leave, personal leave, or vacation time to attend to family matters, such as following the birth of a child.

For instance, the Census Bureau studied the experience of women having their first child and found that roughly 70 percent of these women worked during pregnancy (a percentage which fell to slightly under 60 percent in the month preceding the birth), and that three months after the birth, 59 percent of the women who worked during pregnancy had returned to work, and 79 percent were working by their child's first birthday.

These working mothers reported using a variety of leave options: 56 percent of fulltime working mothers used paid leave, 42 percent used unpaid leave, 10 percent used disability leave,

19 percent quit their job, while nearly 5 percent reported being let go (the number totals more than 100 percent because women often used more than one type of leave). Part-time workers were more likely to quit (37 percent reported quitting their jobs) and had fewer benefits: 20 percent used paid leave, 46 percent used unpaid leave, and just 2 percent had disability leave. Policymakers should not conclude from these data that all American women enjoy sufficient leave time or have adequate payreplacement following the birth of a child. Certainly some women face real pressures and could use additional support. However, policymakers should recognize that most employers value their employees and want to retain them (rather than face the cost of replacing them), so provide leave as part of their compensation package, especially for full-time workers.

Policymakers should also consider how a government mandate or government-administered paid leave program would disrupt current employment contracts and benefit packages and would result in lower cash wages, potentially leaving many workers worse off than before. For example, one legislative proposal, the "Family and Medical Insurance Leave Act," or FAMILY Act, would, in effect, do to benefit packages what the Affordable Care Act (or ObamaCare) did to health insurance. The FAMILY Act, sponsored by Senator Kristin Gillibrand (D-NY), would create a new federal entitlement program under which qualified workers would be guaranteed 60 days of family and medical leave per year. When on leave, workers would receive two-thirds of their average pay from the federal government. This new entitlement would be funded with a dedicated payroll tax and administered through the Social Security Administration.

Proponents claim this program would solve the problem of those who lack sufficient paid leave. Some women with less-generous leave packages

may benefit from this arrangement; however, it would also disrupt the employment contracts of the majority of working Americans who already have leave benefits. As was the case with ObamaCare, this proposed federal entitlement would encourage businesses currently providing paid leave programs—including more generous leave packages—to cease doing so. Companies and employees would also be less likely to seek mutually beneficial arrangements, such as part-time and work-from-home options, during periods of leave.

The costs of this proposal would go far beyond the new payroll tax. Women would also face lower wages and fewer employment opportunities as businesses seek to comply with the new mandate. Knowing that any worker could take up to three months of paid leave creates a significant new risk for employers. While the federal government (i.e., taxpayers) would pick up the direct costs of workers' wages during their absence, businesses would still have to identify and train replacement workers, or shift work to other existing employees, which can be particularly difficult for small businesses.

Women would shoulder most of the unintended consequences of the new leave regime. Women, particularly of childbearing age, are more likely to take extended medical leave. As a result, employers may be reluctant to hire these women. This is particularly unfair to women who do not want or are unable to have children: The expectation that they may use this leave benefit may unfairly hamper their career prospects.

These are not just theoretical risks. European countries offer women extensive paid-leave time, but European women pay a considerable price in terms of workplace opportunities. Professors at Cornell University, Francine D. Blau and Lawrence M. Kahn, writing for the National Bureau of Economic Research (NBER),

found that European countries have been able to boost their female labor force participation rate by enacting family leave mandates and other benefits, but that women were mostly working in part-time and lower paid positions. Data show that European women are far less likely than their American counterparts to be in managerial positions. In fact, 14 percent of American women workers are managers (compared to 15 percent of American men), while just 5.9 percent of European women workers are (compared to 12.2 percent of European men).

NBER also published a study by María F. Prada and Graciana Rucci of the InterAmerican Development Bank, and Sergio S. Urzúa of Cornell University, on the effect of a law in Chile that required employers with twenty or more female workers to provide childcare. They concluded that the starting wages of women hired by affected employers was between 9 and 20 percent less than female workers hired before the mandate went into effect.

Spain's provision requiring that companies must provide all workers with children under age 7 the option of reduced hours was meant to help women balance work and family, yet a study published by IZA, an international research institute, and written by Daniel Fernández Krantz of IE Business School and Nùria Rodríguez-Planas of IZA, IAE-CSIC, found that it harmed women's economic prospects. Women were more likely than their male colleagues to lose their jobs, less likely to be promoted, and had reduced wages. Women with lower incomes and in less skilled positions were most likely to suffer from these unintended consequences.

These examples illustrate an important, though often overlooked, point. Government mandates not only disrupt existing employment arrangements and impede women's professional advancement generally, but they especially harm

the economic prospects of women who are most vulnerable: those with lower incomes and who are not currently working. This concept applies to mandates for paid leave, childcare, hours and other arrangements.

Advocates of paid leave mandates often suggest that benefit mandates will help alleviate poverty. However this overlooks that most people living in poverty are there not because of low wages or a lack of paid benefits, but (in part due to harmful regulations and poor educational systems) because they do not have jobs—particularly full-time, year round positions. In fact, in 2012, 74 percent of households with children under the poverty line were home to no full-time worker. Government benefit mandates would not only fail to help this population, but by raising the cost of employment, would make it more difficult for them to find the jobs that

are the key to real economic progress. Americans understand and are concerned about how a paid leave entitlement program or mandate could unintentionally harm vulnerable Americans. In fact, according to research by the Independent Women’s Forum, when women learn that the poor may be hurt the most, their support for proposed government mandates drops precipitously.

A one-size-fits-all paid leave program may seem like a boon for parents, but it would backfire on many by failing to recognize the divergent circumstances of different families and by reducing economic opportunity. Policymakers can find better ways to make it easier for businesses to offer paid leave benefits and to help people prepare financially for periods of leave.

POLICY SOLUTIONS

Create Savings for Leave Time in Personal Care Accounts: Americans are encouraged to save pre-tax dollars in a variety of different accounts, for purposes that policymakers recognize are critical needs, such as healthcare costs (health savings accounts), education (such as 529 education savings accounts) and flexible spending accounts (to defray certain healthcare and childcare costs). Personal leave from work is also a critical need, and people ought to be able to save tax-free so that they can accrue resources that will sustain them during such absences from work.

Policymakers should allow people to place pre-tax dollars into a Personal Care Account (PCA), which could then be drawn upon to replace or supplement income during periods of leave eligible under the Family and Medical Leave Act. Workers could be allowed to save tax-free up to the equivalent of 12 weeks of

pay, capped at a maximum of \$5,000 each year, which would then be available for periods of leave. If unused before reaching retirement age (as defined under the Social Security Act), the PCA would then be treated as an IRA. Policymakers also ought to allow individuals to make up contributions for years that they were unable to set money aside, in order to help workers who have inconsistent earnings or face unemployment. To avoid this savings mechanism becoming a “tax shelter” for the more affluent, policymakers can cap the total amount that a worker can accumulate in their savings account to no more than \$30,000.

Washington ought to allow employers also to contribute to employees’ PCAs the way they can contribute to 401K plans or Health Savings Accounts. This would help smaller companies that are unable to afford and administer fully paid family leave benefits to have a way to help

their employees. Additionally, non-profits could be established by generous individuals as well as larger corporations as part of their social corporate responsibility efforts to help set up and fund PCAs for lower-income workers, in order to help provide leave benefits for those facing the biggest financial challenges. Many generous individuals and foundations are interested in helping people during times of childbirth or illness and would support such a cause.

Unlike other top-down paid leave proposals, the existence of such savings options would be less of a financial strain on businesses and less likely to affect employers' expectations for their employees and therefore to reduce women's economic opportunities. It also would not discourage employers from offering paid leave, since workers could still fully enjoy any

paid leave benefit offered, and can preserve the money in their accounts for their retirement.

Provide Tax Credits for Businesses

Offering Leave: Another approach—that some states like Virginia are exploring—is to make it easier for small businesses to provide paid leave time through tax law. Smaller businesses are, understandably, less likely to currently provide leave time, since they have fewer resources and face a greater challenge in shifting work to other employees during a period of absence. Lawmakers could help defray these costs and challenges by creating tax credits for these businesses (which could phase out at different employment levels) to help offset the financial burden these benefits create.

For references, visit
www.workingforwomenreport.com

WASHINGTON POST

I Live In A Country With Paid Family Leave. It's No Magic Bullet.

by Carrie L. Lukas

May 11, 2016

Americans often hear about Europe's superior benefits systems. Where I live in **Germany**, women receive 14 weeks of fully paid maternity leave and an additional 12 months of partially paid support. The upsides of such a policy are clear: Women have ample time to recover from birth and bond with their babies. Yet there are also real drawbacks, which include and go far beyond the expense for taxpayers and businesses.

Women in the European Union are **more likely** to work part-time and in lower-paid positions and are less likely to be managers than American women. Women hold **43 percent** of managerial positions in the United States, but less than 30 percent in Germany. Research confirms that other European **employment mandates and family-friendly programs**—such as the right to work part-time and the mandatory provision of child care—make women more expensive to employ and result in lower take-home pay and fewer job opportunities.

I've seen up close what this means for women living here. While many certainly enjoy their time off from work, I've also heard complaints about how these policies affect careers. A married friend without children worries that her boss hesitates to give her more responsibility because he thinks she'll inevitably disappear for a lengthy leave. Another friend—the head of her department—is frustrated with having to hold a position for an employee taking a second year-long leave. She works extra hours to train a temp while the woman on leave posts pictures from the park on Facebook and shares plans for another child.

America has been wise to avoid creating a one-size-fits-all paid leave system for our diverse workforce of about 150 million people. While we want all workers to be able to take off when it's needed, people have different preferences for how to handle absences and different priorities for compensation. Many employees value paid leave benefits (which is why most **American business** voluntarily offer some paid leave benefits). But some workers would rather have larger paychecks and fewer benefits. That should be their right. Moreover, some businesses can't afford to offer paid leave benefits to all workers, and forcing them to do so would require job cuts or closures. Companies need and deserve flexibility too.

This flexibility made it possible for the Independent Women's Forum, the small nonprofit organization that I help manage, to hire a woman just three months before her due date. We offered some paid time off so she could adjust to motherhood, but asked that she be available by phone and email to help us function while she was on leave. Such negotiations and the development of flexible, win-win relationships wouldn't take place if a one-size-fits-all law were enforced.

This doesn't mean that nothing can be done to help more workers prepare for leave or to help those who struggle financially when they need to take time off. Policymakers can start by making it easier for people to save on their own for periods of leave and encourage Americans to assist those with lower incomes who lack paid leave benefits through tax incentives or private charity. The Independent Women's Forum recently released a **report** calling for the creation of "personal care accounts" (PCAs), which would allow workers to save pretax income to be used when they take time off for situations eligible under the Family and Medical Leave Act. Saving in advance could help workers who lack paid leave benefits replace income when they need to take time off from work.

Of course, workers living paycheck-to-paycheck can't save on their own. Policymakers can help them by using tax breaks to encourage businesses to open and contribute to PCAs for these workers and to offset the costs of other leave benefits. For example, Virginia considered **legislation** that would have given small businesses that provided paid leave benefits for workers taking leave after the birth of a child a tax credit to help offset these costs. This could make it easier for more businesses to offer such benefits. Private charities could also help by setting up and funding PCAs for workers with lower incomes.

Undoubtedly, PCAs won't ensure that everyone has the time off that they need. Yet in discussions about paid leave policy, it's important to recognize that there is no magical solution that will help everyone without also harming others by eroding job opportunities and reducing take-home pay. Sweeping mandates and government paid leave entitlement programs are sometimes presented as magic solutions, but only because they ignore those women who would miss out on higher pay or better jobs, or would be priced out of the job market entirely. Policymakers can best help people by giving both workers and companies flexibility.

Mr. ROE. [Presiding.] I think there's been a change in the chair, you might have noticed. Mr. Walberg had to go and vote. He had a markup.

At this time, I would like to recognize the chairman of the full committee, Dr. Foxx, for five minutes.

Mrs. FOXX. Thank you, Chairman Roe.

And I want to thank all of our witnesses for being here today. This is an important issue that I think will get increasing attention across our country.

Ms. Schaefer, employers have many reasons for offering various types of benefits packages, including health retirement, paid leave to employees. Would you briefly explain why employers offer paid leave policies to their employees and how this practice aids in attracting and retaining the best workers?

Ms. SCHAEFER. Thank you for your question. Yes. It's important overall to employee engagement, just the fundamental employee engagement. It leads to reduced absenteeism and tardiness. It reduces turnover. It increases our ability to recruit and retain, as you mentioned.

For example, I recently hired someone in my department, and one of the reasons she came to us was because of our flexible work policies. And for the employees, it's important so that they be able to make the decisions about how they are taking their time off.

Mrs. FOXX. Thank you.

Ms. Lukas, when confronted with government mandates, how do employers typically respond? And how do small businesses compensate for the additional costs of complying with mandates? What impact do these mandates have on job creation?

Ms. LUKAS. Well, certainly, I think we all know kind of the basic economic lesson that when costs go up, you're able to buy less of something. And that's what happens when you increase mandates and increase the cost of employing someone, increase the risks associated with employing someone. Employers are more likely to look for ways to hire fewer workers and then to pay workers less.

And we've seen, over the recent decades, that the cost of compensation largely or one of the reasons why they've stalled or our wages have stalled is because there's so much of -- our compensation is now in the form of benefits. So another mandate would increase that trend or further that trend.

Mrs. FOXX. Thank you very much.

Ms. Brickmeier, historically, much of the paid leave discussion has focused on women. Why is this paid leave issue not just a women's issue?

Ms. BRICKMEIER. Well, I don't believe it is just a women's issue. Men need to take off time as well. The nature of the family is defined very differently for different individuals, something that IBM holds very dear, that people have personal lives, which is defined by them. And we need to respect and encourage them to pursue those personal goals and obligations, because that makes them a more healthy and productive employee.

I can give you an example. We recently increased our child bonding leave for all new parents. And our male and our female employees, as well as adoptive parents, now get 12 weeks off with pay. And we find that more and more of our new dads are taking that

time off, because they realize that child rearing, having responsibility for their families is as important to them as it is to their wives or their partners.

Mrs. FOXX. Thank you very much. It certainly sounds as though IBM has a very generous paid leave program. It would be a great place to work.

As you mentioned, in September 2015, President Obama issued an executive order requiring federal contractors to provide their employees up to seven days of pay sick leave per year. How has this requirement in particular affected IBM's paid leave program? Do you have an idea -- you alluded to it before, but do you have an idea how much time IBM spent to ensure it was in compliance with this particular requirement? And even though IBM was already offering more than required under the executive order, could you talk a little bit about the cost of reporting that occurred as a result of the mandate?

Ms. BRICKMEIER. Certainly. So we decided to apply the mandate to 100 percent of our employees, because the way that it is written, it's very difficult to distinguish who's covered. Because I think the threshold is 20 percent or something of your time. It's very hard for us to determine who those are. So we're applying it to 100 percent of our population. We literally spent about nine months of my time, my team's time, inside counsel, outside counsel, and our HR system in making those modifications for tracking, because we didn't have a sufficient tracking system, and communicating it to employees.

And again, the confusion about what they do, how they track it, why do they have to track it, it can go into actual hours of tracking, which our employees are not used to, because the majority of our employees are professional. They don't track their time down to the hour, nor do they expect to have to track it. So that's somewhat of a burden to them as well as to their managers.

Mrs. FOXX. Thank you very much. I yield back.

Mr. ROE. I thank the gentlelady for yielding.

The ranking member of the full committee, Mr. Scott, you're recognized for five minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Riemer, are you aware of any tax -- whether or not the tax credit in the bill is sufficient to entice businesses to actually provide this kind of leave if they are not doing it already? Have you seen any, around the country, any program where that would be sufficient?

Mr. RIEMER. Thank you, Congressman. Again, it's really an honor to be here.

You know, the incentive for employers, in my view, in H.R. 4219 is to get out of state and local requirements that establish rights for their employees to provide leave. And if you are, you know, an employer that wants to provide leave, then -- and not every employer is necessarily a high-road employer, but if you are an employer that does, then, you know, you would not have a challenge. You would not be typically required to provide more leave, according to these state and local laws. You may have to adjust your business processes.

But in my view, the real incentive is to opt out of state and local law. I don't know that the tax provision will necessarily provide much additional encouragement.

Mr. SCOTT. Okay. In your local bill, have you had complaints about the legislation?

Mr. RIEMER. It's been operating now for almost a year, and we believe it's a success. You know, we worked very closely with our employers, and we heard from many employers, like IBM, as -- not IBM itself, but employers that offered real leave packages. And we made sure that our law would not, you know, cause an employer to want to diminish its benefits. And if they offer better benefits, then they are really -- you know, our law wouldn't be a conflict. So --

Mr. SCOTT. Have any businesses moved out of the county because of this law?

Mr. RIEMER. We are continuing to attract new employers. Our economy is strong, our unemployment is a historic low. New companies are moving out of other jurisdictions and locating in Montgomery County.

Mr. SCOTT. And if there were a Federal exemption, what would happen to your law?

Mr. RIEMER. Our law would be essentially, you know, hollowed out. You know, any employer could just simply evade the requirements of our law, which are really just a baseline. You know, our law is not a very generous policy. It's just a baseline policy of 7 paid sick days for the employee. And any employer could just simply avoid it by opting into this provision.

Mr. SCOTT. Thank you.

Ms. Schaefer, if there's no local or state law in a particular area, does this bill require a business to do anything?

Ms. SCHAEFER. Thank you for your question. So to make sure I understand the question, if there's not currently a leave law, does H.R. 4219 require the employer to do something?

Mr. SCOTT. Right.

Ms. SCHAEFER. Okay. It's voluntary. And so if the employer opts in --

Mr. SCOTT. The answer is no, it does not require the business to do anything?

Ms. SCHAEFER. No.

Mr. SCOTT. Okay. Now, if there is a local law and, say, as I understand it, you have to have up to 249 -- 50 to 249 employees, you have to have 15 days off, and that would include paid holidays. So if you have nine vacation days and six holidays, do I understand this that you would not have to require any sick leave at all?

Ms. SCHAEFER. I don't have the answer to those specifics.

Mr. SCOTT. It appears that if there is no state law, you don't have to do anything. If there is a state law, you can have worse benefits and exempt yourself from the better benefits on the local law. Is there any employee, under 4219, who would actually be better off?

Ms. SCHAEFER. They would not receive less than what they are already receiving.

Mr. SCOTT. Excuse me?

Ms. SCHAEFER. The employees would not receive less than the leave they're --

Mr. SCOTT. No, no. That's the whole point of exemption. If you have a plan and the local law requires more generous benefits, you would be exempted from the local law and you would be able to get away with worse benefits. That's what the exemption means. Is that right?

Ms. SCHAEFER. That's not my understanding.

Mr. SCOTT. Hans, can you talk about what exemption means?

Mr. RIEMER. Thank you. Well, the Montgomery County law establishes a right. So you might accrue a certain benefit, but you have a right to use that benefit under certain circumstances, like your illness, the illness of a family member.

Mr. SCOTT. But if it's exempted under federal law, the only thing you would have to do would be to comply with the Federal law, you wouldn't have to comply with the more generous benefits. That's the whole point of the exemption.

Mr. RIEMER. That's right. The employee does not have a right to use that benefit.

Mr. SCOTT. Because it got exempted.

Mr. Chairman, I ask unanimous consent that a letter from the American Sustainable Business Council in opposition to H.R. 4219 be entered into the record.

Chairman WALBERG. [Presiding.] Hearing no objection, it will be entered.

[The information follows:]



AMERICAN
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The Honorable Virginia Foxx
Chairman
Committee on Education and the Workforce
U.S. House of Representatives
Washington, DC 20515

The Honorable Robert "Bobby" Scott
Ranking Member
Committee on Education and the Workforce
U.S. House of Representatives
Washington, DC 20515

December 6, 2017

Dear Chairperson Foxx and Ranking Members Scott;

The American Sustainable Business Council (ASBC) urges you to oppose H.R. 4219, misleadingly named the "Workflex in the 21st Century Act." This misguided, complicated and confusing proposal would eviscerate state and local progress for high-road businesses and working families, erode existing legal protections, and threaten local democracy. It would allow low-road corporations to evade state and local laws, creating a giant loophole that would mean uncertainty for workers and an uneven playing field for responsible companies.

ASBC is a growing national coalition of businesses and business organizations committed to advancing policies that support a vibrant and sustainable economy. ASBC represents over 250,000 businesses and more than 300,000 business professionals, including industry trade associations, local and state chambers of commerce, microenterprise, social enterprise, green and sustainable business, local and community-rooted business, women and minority business leaders, and investors.

H.R. 4219 would undermine state and local progress and preempt the effectiveness of state and local innovation – undermining democracy and local control. Forty locations in the United States, including eight states, have or will soon have paid sick days laws in place. Earned sick days keep employees healthier, because they will come to work ill if they can't afford to lose the day's pay. Employees who work while sick are less productive, more likely to have accidents and make mistakes; all of which cost businesses money. If they have an infectious illness, they are also likely to infect coworkers, and customers, which further hurts productivity and could potentially trigger an epidemic. It just makes sense to have ill employees stay away from the workplace until they are no longer contagious.

By giving employees the ability to stay home and recover without losing needed pay, companies ensure that their workers can come back ready to be productive. And the value employees place on earned sick days make companies that provide them less prone to costly turnover, and far more competitive. Largely as a result of these laws, more than 13 million working people have gained new access to paid



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sick days, dramatically improving private sector access with especially large gains for lower-wage workers.

H.R. 4219 may take away paid sick days guarantees for these 13 million people and impede progress in other locations. Nationally, nearly one-third of the private sector workforce – at least 37 million workers – do not currently have the right to earn paid sick days. H.R. 4219 is an attack on democracy, local governance and innovation. Neither state governments nor the federal government should undermine the ability of voters or their elected representatives to pass public health and safety laws, including laws that establish workplace protections. States and localities have a long history of serving as laboratories, spearheading public policies that lead to national standards. H.R. 4219 would thwart such state and local innovation and undo local election outcomes.

High-road employers can, do, and should comply with state and local laws. State and local paid sick days and fair scheduling laws are structured similarly to one another and largely have the same key components. Multi-city and multi-state employers are already accustomed to complying with differing state and local laws in various areas, including zoning, wage and hour, business licenses and taxes, and keeping paperwork for local authorities. The answer for corporations seeking to simplify compliance is to create company-wide policies that match the strongest standards in effect, not to undermine those standards altogether.

H.R. 4219 would disadvantage responsible and especially small businesses. This is a proposal written at the behest of and for the benefit of low-road corporations, allowing them to buy their way out of compliance with state and local laws. It would hurt the communities and customers that responsible, high-road businesses serve and give low-road, race-to-the-bottom businesses further advantages in the marketplace.

We urge you to reject H.R. 4219. High-road businesses know that businesses succeed when working families have paid time to care for themselves and their loved ones and flexibility in their job. But this proposal is unworkable, unfair and inequitable. It would not guarantee either paid time off or flexibility. Better solutions, such as a real national paid sick days guarantee and real fair scheduling proposals, exist. Providing employees with paid time off isn't just the right thing to do; it's a smart business decision. ASBC strongly encourages you to help pass real legislation in support of earned sick days, reject the H.R. 4219 sham, and help our business sector be healthier, too.

Sincerely,

David Levine
CEO & Co-founder
American Sustainable Business Council

Mr. SCOTT. Thank you. My time's up.

Chairman WALBERG. I thank the gentleman. His time has expired.

I apologize for having to leave occasionally here to vote in Energy and Commerce, but I now recognize myself for five minutes of questioning.

We've heard a great deal about the piecemeal State and local paid leave mandates that, while well-meaning, affect these laws on America's businesses in somewhat negative way. I'd like to make one point about this. It's certainly not the human resources professionals that are not capable of keeping up with all these mandates. You're entirely capable of keeping up with these mandates. The point is that you should not have to navigate this patchwork of mandates because they're counterproductive.

And to that point, Ms. Schaefer and Ms. Brickmeier, would your companies' commendable paid leave policies look different if they didn't need to be structured in such a way to ensure compliance with a multitude of mandates? And I guess I'd add would they be more or less generous?

Ms. BRICKMEIER. I'd like to start. So I think the answer to that is it depends on what the individual State mandates are. And our intent would always be to design a paid leave policy covering a lot of different employee situations that meets the needs of our employees by listening to our employees and doing something that's consistent across the country.

So if you're an IBMer in New York, you're an IBMer in California, Texas, Minnesota, Oklahoma, you're all entitled to the same thing, and our workforce is mobile. So it's also important for them to have the same thing, regardless of where they work. So our policy is generous, and I would agree that in some cases it would go beyond the mandates, and we would continue to do that. In other cases, it might be below, and we might need to particularly tweak it for that locale. But I'm not sure if we would have the most generous provision apply to all of our employees.

And I think the most difficult part of this is the compliance. So not really the intent of the policies, which are admirable; it's the compliance, and it's really getting down to the recording, notification, the constant change, and the confusion that this causes.

Chairman WALBERG. Okay. Thank you.

Ms. Schaefer.

Ms. SCHAEFER. Most of our employees, 456 of them -- I'm sorry. Most of our employees are based in St. Louis, Missouri, where there aren't any of these extra leave laws. And so I would not expect that we would reduce our benefits right now. We are just trying to make sure that we are in compliance with the other State and local laws.

Chairman WALBERG. So compliance is the issue, just trying to keep up, make sure that you don't run amok at some point in time?

Ms. SCHAEFER. Exactly.

Chairman WALBERG. Unintentionally, but nonetheless.

Ms. SCHAEFER. Correct.

Chairman WALBERG. Listening to your testimonies, it's clear that you all have a lot of information, and know what will work and, not just for your companies, but your employees. It's been sug-

gested that local officials are better suited to establish paid leave or sick leave requirements because they live and work next door to the people.

However, rather than working next door, so to speak, there's a key entity that works directly with the people who are impacted, and that's employers, who are closer and better able to listen and respond to the needs of their employees when it comes to paid leave. They can provide innovation and flexibility that the government, even a local government, cannot.

Ms. Schaefer and Ms. Brickmeier, why are you, as H.R. professionals, better attuned to the paid leave request of your employees than the local, State, or even Federal Government?

Ms. SCHAEFER. I'll start.

Chairman WALBERG. Ms. Schaefer.

Ms. SCHAEFER. Thank you for the question. We are listening to our employees. Our employees are explaining to us what they need in their leave policies. We do regular employee engagement surveys where there are two questions. One asks what the company is doing well, the other is what we can improve on. And those are narrative responses, and we get a lot of great feedback there. And then over the last three years, we've done regular touch-base surveys with our employees so they can give us the specific feedback.

An example is when we implemented our make-up time policy, we were hearing that there were some hiccups, things weren't going as smoothly as we intended. And so we reached back out to our managers and supervisors and the employees to find out what it was that was causing issues, and then we were able to act on that and make changes.

Chairman WALBERG. Thank you.

Briefly, Ms. Brickmeier.

Ms. BRICKMEIER. Yes. So very similar to what Ms. Schaefer has said, we listen to our employees, we try -- we react. We've been quite generous, as I've indicated. It's also important to know that our employees live in every state, and so it's important for us to understand what's going on in that state to what's prevalent. And also in our industry, it's highly competitive. Our talent base is highly competitive, and we want to make sure we that offer them what they intend to use, what they need.

And in devising new types of leaves, for example, now we are looking at something that's more specific to family illness leave, in addition to our parental bonding leave. And it's been very confusing, because we can listen to what our employees want, but then we have to think about these 30 other ordinances that might conflict with that.

Chairman WALBERG. What that means. Okay. Thank you. My time has expired.

I now recognize my friend, the ranking member, Mr. Sablan.

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

Let me start with Council Member Riemer. Well, first, let me congratulate you on becoming president of the Montgomery County, Maryland Council yesterday. Congratulations. And thank you very much for joining --

Mr. RIEMER. Thank you.

Mr. SABLAN. -- and testifying today.

Can you tell us the importance of having a federal standard?

Mr. RIEMER. Yeah. Thank you.

Mr. SABLAN. Please.

Mr. RIEMER. Well, first of all, I think that many state and local governments are compelled to act because there is no federal standard for sick leave. If Congress were to create a right for employees to have seven days of paid sick leave that could be used at the right of the employee for care of themselves or their family member, then you may not have a need for state and local governments to act where Congress is not acting. The challenge is the legislation that we are discussing does not establish that right to sick leave. But if Congress were to create a federal strong sick leave policy and a federal family leave policy and so on, it would have fewer state and local governments feeling the need to enhance upon that federal protection.

Mr. SABLAN. And this is for an employee, it doesn't matter on the gender.

Mr. RIEMER. Correct.

Mr. SABLAN. Thank you. In your testimony, you stated that after passage of legislation, you continue to see economic growth in your county. And Ranking Member Scott has alluded to this earlier, but can you tell us more about that, that growth?

Mr. RIEMER. Yes. Well, Montgomery County is a very -- has a very strong economy. We are fortunate to have many large companies and many small companies. And since we have passed sick leave legislation, we've been delighted to see Marriott, a global headquartered company, move into Bethesda downtown, when they could have moved to Virginia or Washington. We've seen companies moving out of Washington into Montgomery County, so we have a very strong environment. Our unemployment rate is, you know, in the low single digits.

So this has not caused any restriction of our economic growth, and to the contrary, we're seeing tremendous progress in Montgomery County.

Mr. SABLAN. I ask you for that and I'll ask you another question, because earlier, Ms. Lukas justified calling, you know, this -- any effort to provide some kind of federal standard calling it actually in her testimony, and I quote, "government-entitlement program," and when actually one of the proposals is to be funded responsibly by small employee and employer payroll contributions of 2 cents per \$10 in wages, or less than \$1.50 per week for a typical worker. So it is not an entitlement program. It is where the employee and the employer should contribute to.

Walk us through the impacts of what would happen in Montgomery County if the federal bill were to pass preempting your paid sick days leave laws.

Mr. RIEMER. Thank you. Well, I believe that if this H.R. 4219 were to pass, that any employer that really wanted to offer a less generous benefit package, provided it still met the minimal standard of the law, which is vague as far as what the worker is entitled to, in my view, would be able to opt in to the federal standard and opt out of the state and -- of the local standard.

And so when I look at the federal legislation, there is no clear right that the employee has to take leave. They must get employer

approval, and that may or may not be granted. So I think it would be a strong incentive for employers to opt out of our stronger law, and the residents of our community would essentially lose the right that we had granted to them through our democratic process.

Mr. SABLAN. Yeah. Because I've looked all over, and let me ask you if you've ever seen a proposal in any state, local, county, federal -- in the federal governments here where, you know, comparing what is being discussed today or at any time, the experienced of paid leave, and comparing what we're discussing today with Europe and saying like, you know, where in France, you get 156 weeks, 26 paid for the first child; in Germany, 156 weeks, 52 paid for either parent; Finland, 158 working days for either parent. You can't compare that and insist that's the reason women of child-bearing age are a lower number of, you know, just one brush stroke, a lower number of management.

I think I'm out of time. Mr. Chairman, thank you. I yield back.

Chairman WALBERG. I thank the gentleman.

Now I recognize Dr. Roe for his five minutes of questioning.

Mr. ROE. Thank you, Mr. Chairman.

And first of all, Mr. Riemer, thank you. I think the best government is local government. That's the way I started as a city commissioner and local Mayor, dealt with these things, also was in small business. So there are very different needs of a large multi-State business than there are small businesses and individual localities. I completely see that.

And I guess, Ms. Lukas, I'm going to start with you. Do you believe that these paid leave mandates discourage job creation, and how so, if they do?

Ms. LUKAS. Well, certainly, anything that raises the cost of employing a worker will discourage someone from hiring another worker. I am concerned, especially as I'm sure this committee has been focused on, the future of work and how we're moving increasingly towards looking for automation. A lot of jobs are going to be able to be displaced to take that human element out of it entirely. And I do think that's a reason to pause and to want to make sure that before we encourage more outsourcing or try to push people outside of a normal employer-employee relationship if it isn't worth giving people more freedom and flexibility.

Mr. ROE. You made -- Ms. Lukas, you wrote an article in The Washington Post comparing mandated paid leave in Europe to the United States. You wrote about hiring a pregnant woman -- very near and dear to my heart, I'm an obstetrician -- prior to her due date. And would you please share the story with the committee and explain why this would not be possible under a federally mandated paid leave system?

Ms. LUKAS. Well, you know, it's interesting; in my opening remarks, I mentioned that I employ 20 women right now, and three of them are pregnant. So this is an issue that at IWF comes up quite a lot. We seem to have a lot of babies. The reason that we have -- I've been very comfortable hiring people who are pregnant or likely to become pregnant, is we have paid leave, we don't have nearly as generous -- we're a small organization with a small budget, so we don't have nearly as generous policies as the big companies here.

But we also have a conversation with this understanding, that, yes, some workers are going to take time off for a couple of weeks after following the birth of a child, but then I hope that they -- we kind of work out that they can be available on the phone or to answer quick questions. And there's this back and forth where, you know, there's -- we try to provide a lot of support and flexibility, but then our employees are also very willing to provide support and to make those efforts to support us.

And I do worry that when we move towards something where there's a certain regulation, you get this many days off, you're not allowed to talk to an employee during those times, that it moves towards -- you're cutting off conversations between two humans, two individuals, many of whom sympathize with each other. So that's my concern. And I do think Europe is an extreme example, but we may inch in that direction. Certainly, people, this is -- it has implications for women in particular.

Mr. ROE. Thank you.

Ms. Brickmeier, sometimes the burdens that legislation will impose on businesses are not fully understood. Obviously, when they're played out, they do show themselves. This in turn leads up to hurting workers. Can you give more detail about what burdens the emerging State and local paid leave mandates impose on businesses and their workers? For example, what are the costs of a law like California's both in the short and the long-term?

Ms. BRICKMEIER. So I think that the cost to the employee is really not understanding what they might be entitled to or what their options are. It's very difficult to communicate with employees, particularly about H.R. matters. They don't often read what we give them to -- you know, what we give them to read. We post things. They don't read those.

And so it becomes very difficult for any one individual to determine what it is that they're eligible for and how to plan their life around it, as it's very difficult for us and our H.R. team to understand that, because in the example of San Francisco, it may vary based on the employee circumstance because of different covered family members, for example, for which you could take paid time off to help them with an illness might vary. So that's a difficulty from the employee standpoint.

I also think the tracking that's required, we needed to modify our system. That detracted money and time that we might have spent on other things that could aid our business and our employees. I'd much rather be spending time designing and executing on benefit programs and paid leave that can enhance our employee engagement than on compliance, on things that I'm not sure add a great deal of value.

Mr. ROE. One quick question for all -- and you may not have time to answer it -- is what would it matter if you just had days off? You didn't have to be -- have a cold one day, or some day you needed to do something in your life, and you have to say, well, I'm sick that day when you're really not. Not a vacation day. If you want to just take a day off. And hold that thought because my time is out.

Chairman WALBERG. Mr. Espailat, you're recognized for five minutes.

Mr. ESPAILLAT. Thank you so much.

My question goes to Council Member Riemer. Setting a national standard for workplace leave policy, like you have in Montgomery County, and in New York state, seems like a good idea to many, but none of the Republican plans that are out there seem to have this as their goal.

Specifically, I would like to ask you two things, Mr. Riemer. As I mentioned, New York has a strong sick leave policy on the books that are making an incredible positive impact for families and the economy, I think. As someone who is on the ground working on this issue, can you talk about the rights that Montgomery County sick leave law provides to workers? And what can they use leave for? And do you provide any rights that this particular legislation, H.R. 42, the Workflex bill, will deny to your constituencies?

Mr. RIEMER. Thank you, Congressman. I really appreciate the question. Montgomery County's law grants workers the right, in Montgomery County, to use the leave that they accrue to care for or treat their own illness or illness of a family member, to use that time as well if they have an instance of domestic violence or sexual assault where they need to take time off. That is a right that they have. It's at their discretion.

Now, if it's an extended illness, they may need medical certification, but it's at their discretion. As I read H.R. 4219, what I see is that it's more of a loophole for the employer than a right for the employee. And the employer really can refuse the request for leave if, you know, that employer determines that they would like to do that. And, of course, the employer can deduct from that total leave allowed for holidays and other things like that. So the worker could easily end up, really, with very little paid sick days, without even the right to claim it when they really need it.

Mr. ESPAILLAT. My other questions are, why will providing a tax credit to businesses, such as proposed by H.R. 3595, be ineffective in creating -- or encouraging businesses to create new workplace leave policies?

Mr. RIEMER. Thank you, Congressman. You know, first of all, I'm pleased that we're talking about leave as a good business policy, right? It's nice to hear companies talking about why they must offer strong leave programs in order to compete for the best workers. Communities have the same need as well. States, local governments want to have benefit policies to strengthen their workforce. My feeling is that the tax incentive is sort of a touch of a feather, as far as the incentive that it creates for a company that is in real need of attracting a strong workforce. The company has its own economic imperative to offer leave in order to attract great workers. The tax benefit is just kind of icing on the cake. I don't know that it will compel additional companies to offer leave programs.

Mr. ESPAILLAT. And currently, hourly minimum wage for tip workers is \$2.13 per hour. How could we make sure tip workers receive benefits closer to their actual wages?

Mr. RIEMER. Well, that's a great question. Certainly, allowing workers -- tip workers to accrue leave based on hours worked rather than the wages paid, as the sick leave law, you know, would do, is important. We've grappled with the rights of tip workers around

minimum wage policy. That's an important reason why you want to allow States and local governments to set their own law.

Mr. ESPAILLAT. And finally, how will creating a national standard for workplace leave policy help businesses who operate in your county? You said that you have small businesses there, large businesses, the economy that's pretty strong, and others organize their benefits they provide for their employees. How will it help create a workplace leave policy that will help businesses? What has been your experience in the county?

Mr. RIEMER. We've heard from many employers who said to us, we want to provide these benefits for our workers. You know, we're a restaurant, we're a cafe, we're a small business. We want to provide these. Unfortunately, we're competing with employers who do not want to provide them. And so we're carrying a cost that they don't have to carry. And that is not a level playing field.

So a federal standard will protect businesses that want to do the right thing from low-road employers. I think that is a real benefit. It will also just establish the rules of the road, and then business processes will adjust. Software companies, payroll companies, will make changes to their system so no particular employer is going to have to pay for it in the first place.

Mr. ESPAILLAT. Thank you so much, Mr. Riemer.

Mr. RIEMER. Thank you, Congressman.

Mr. ROE. I thank the gentleman for yielding.

Mr. Allen, you're recognized for five minutes.

Mr. ALLEN. Thank you, Mr. Chairman, and thank you for having this important hearing.

I guess my first question would go to Ms. Lukas. Obviously -- well, you take healthcare, for example. Healthcare was created during World War II, and because there was tremendous competition for employees and companies needed a way to attract those employees, so they gave them healthcare benefits. Now the government mandates healthcare, and it is a royal mess.

In my experience in the business world, when hiring people, they want to look at workplace flexibility, they want to look at paid leave, they want to look at all these things. And if a company is going to compete for those employees, obviously they want to offer the right kind of package with the right kind of compensation to attract that employee to come to work for them. That's the way it should work.

With the government mandating benefits, what is that going to do, as far as trying to attract the best, brightest employees out there? I mean, it kind of takes one equation out, does it not?

Ms. LUKAS. Absolutely. And I do think that this idea that there is a minimum standard that everyone must have, that rather than having an extra \$10 in your paycheck, that you'd rather have an extra hour of leave, is really us making a decision for free people that I don't think we need to make. I think that there are people who would prefer to have benefits and have leave time, and that's why a growing number of companies are offering, voluntarily offering different leave packages and additional flexibility. But moving to that one-size-fits-all standard is going to erode wages, take-home pay, and really take away freedom and flexibility from workers.

Mr. ALLEN. Mr. Brickmeier, this one-size-fits-all, could you address that in your competition for the top, the brightest talent out there? I mean, obviously you're looking at those types of things that would attract that kind of talent. What are some things that you're doing?

Ms. BRICKMEIER. Exactly. And that is the issue with mandates, is they forget that one size does not fit all. Well, we like to have national policies, and we do, for our employees so that they know, regardless of where they work, they'll be entitled to the same types of protections and enjoy the same types of programs and benefits that we provide to everyone. They won't have to consider taking a new opportunity for advancement by moving across the country or even across the state or jurisdictional line because their benefits or their leave programs may be different.

So being able to assess the needs of our workforce, which are primarily professional, exempt employees, we give a lot of flexibility and recognition of the fact that they are professional, they do work when needed, and they can take time off when needed. So we've designed an approach that really meets our workforce needs, we listen to our workforce, we respond as appropriately. And you can see in my testimony that we're always changing our programs and, in fact, mostly adding to them. And we also have to keep in mind what's happening in our business and the technology space.

For example, for our maternity and paid leave for women, we want to give families the time off that they need, but we also want them to come back to work.

Mr. ALLEN. Right.

Ms. BRICKMEIER. And that's a strong motivator for us to design programs that accomplish those two goals.

Mr. ALLEN. Right. Well, you know, as a Member of Congress, I had no idea so many people had so many problems with the federal government. Our office spends enormous amounts of time dealing with all these mandates out there and, frankly, the people are sick of them. In fact, they would like more flexibility to work out these agreements with their employers and to provide the kind of freedom and flexibility they need versus some government-mandated policy.

To give you an example, I had someone that needed to donate a kidney to his sister. He's an hourly employee, and he had to be out for six weeks. And he got six weeks of paid leave. And that decision was made by our executive group. So, you know, we have that kind of flexibility in the workplace.

I believe that, obviously, you know, we need to address this, and we need to come up with a solution, because there are bad actors out there, no question about it, but I think the workforce will take care of that.

My time is up, and I yield back.

Mr. ROE. I thank the gentleman for yielding.

Ms. FUDGE, you're recognized for five minutes.

Ms. FUDGE. Thank you very much, Mr. Chairman. And thank you all so much for being here today.

I think we all realize that we live in a time where corporate profits and income and equality are higher than they have ever been.

We are about to pass a tax bill that's going to continue to make the rich richer and the poor poorer.

Council President, let me just ask this question to you. As you were talking with people about your Earned Sick and Safe Leave Law, was there anyone -- let me ask it this way. How many people ask you to reduce their pay so they could have a day off?

Mr. RIEMER. I don't recall anyone saying that.

Ms. FUDGE. Not one?

Mr. RIEMER. No.

Ms. FUDGE. Okay. Were they really looking for something that would allow them to live decent, to have a decent wage, and to be able to take care of their families?

Mr. RIEMER. We heard from so many of our community members who experienced injury, whose children have special needs, who have an aging parent, and they need to take some time off, and they need the right to do that. And that's what we established for them.

Ms. FUDGE. Thank you so much.

Ms. Schaefer, I want to be clear, is it your argument that workers should make a choice between pay and the ability to take a sick day?

Ms. SCHAEFER. No, it is not.

Ms. FUDGE. So what is it that you were saying?

Ms. SCHAEFER. We are offering employees the flexibility. And H.R. 4219 --

Ms. FUDGE. But that flexibility depends upon whether they get paid for a day off? Explain to me.

Ms. SCHAEFER. No, it's compensable leave. And so the employee is able to decide when they take the time.

Ms. FUDGE. So the employer cannot say to them, no, you can't take this day because I need you to do this.

Ms. SCHAEFER. No. And that is current right now.

Ms. FUDGE. You're saying no?

Ms. SCHAEFER. Right now, employers and employees have the discussion.

Ms. FUDGE. So the answer is yes, not no?

Ms. SCHAEFER. Can you repeat your question?

Ms. FUDGE. You said no when I asked you that. So are you saying it is?

Ms. SCHAEFER. Can you repeat your question, please?

Ms. FUDGE. I got your answer. Thank you very much.

Council President, what can Congress do to help you and other States and municipalities make the work situation better?

Mr. RIEMER. Thank you for that question. Again, I'll say I think a strong Federal policy establishing a real right for workers to paid sick days, to family leave, a Social Security-type program, so that workers can have access to a benefit in the event of the birth of a child in the family or, you know, an extended illness. That would be enormously helpful for local communities and state communities all across the country.

And then those local communities that feel that they need to enhance upon that, to build upon that strong federal floor may yet seek to do so. But establishing the basic protection would be the appropriate role for Congress.

Ms. FUDGE. You know, it's interesting to me. I understand clearly that they are different standards and different industries or in different sectors, but what I have found is that the people who are hurt the most by not having paid sick leave are the poorest people. Most people who work in industries that are well paid either have it or can afford it. It is only those who cannot afford it that we are punishing by this.

Mr. Chairman, I yield back.

Mr. ROE. I thank the gentlelady for yielding.

Mr. Rokita, you're recognized for five minutes.

Mr. ROKITA. I thank the chairman. I thank the witnesses for their testimony this morning.

Ms. Schaefer, I'd like to pick up with you in the discussion that we're having. How many state and local paid leave mandates must Safety National continue to monitor and comply with?

Ms. SCHAEFER. I'm counting. It is at least five.

Mr. ROKITA. At least five. Are there different mandates for paid sick leave versus paid family leave?

Ms. SCHAEFER. Yes.

Mr. ROKITA. Can you walk through a few of those differences?

Ms. SCHAEFER. Well, there's one getting ready to be enacted in January, actually, in New York. So, for example, we're working through that with our legal counsel to really understand what our obligations are there.

Mr. ROKITA. Okay. Any others or -- what are some of the differences between paid sick leave and paid family leave?

Ms. SCHAEFER. So the sick leave would be specific to certain situations for the employee. And then paid family leave, it would go to -- it'd be extended to other individuals within the family.

Mr. ROKITA. But what's the difference in the mandates? I mean, how wide does it swing from the --

Ms. SCHAEFER. In H.R. 4219?

Mr. ROKITA. The different mandates for paid sick leave versus paid family leave across the country.

Ms. SCHAEFER. I would have to have SHRM respond to you for that.

Mr. ROKITA. Yeah, okay. I appreciate it. I'll get in some more detail about how complicated this is really going to be, or what your current situation is.

Ms. Brickmeier, thank you. I know companies like IBM who are operating in multiple jurisdictions face significant challenges in complying with all different state and local paid leave laws. So same kind of question. But one response I've heard to that problem is that the company can simply comply to the most stringent one, the most stringent mandate, and therefore be covered. You kind of touched on this in your testimony, but go into more detail about why you think this isn't the best idea.

Ms. BRICKMEIER. Well, I think I was referencing perhaps to San Francisco --

Mr. ROKITA. Yeah.

Ms. BRICKMEIER. -- where most of the laws, although I can't speak with specificity, would say that if there's multiple laws that apply or mandates apply, the most generous might apply to an employee. And my point there was that because these mandates have

so many different layers of responsibilities and obligations, even down to the number of days and what family members might be covered, a sibling might be covered in California but not in some other state, for example, a grandparent and maybe not, you would actually have to look at the employee's personal situation, which to me is a little bit intrusive to ask about those details. In many cases, the employer has no right to ask those questions, but you might have to in order to determine what would apply for that individual.

The other thing I mentioned, which was the executive federal order, that we decided to apply it to all United States because we could not in any one day distinguish who was working on a Federal contract.

Mr. ROKITA. Okay. Thank you very much.

Ms. BRICKMEIER. You're welcome.

Mr. ROKITA. Ms. Lukas, going to you now.

You know, as a committee, we have focused, Mr. Chairman, our efforts on the need to bring many antiquated labor laws, like the *Fair Labor Standards Act*, FLSA, and the *National Labor Relations Act*, the NLRA, and other laws into the 21st century.

How can Congress empower and encourage employers to continue offering these generous policies without mandating policies? Am I asking for the moon or is --

Ms. LUKAS. Sure. No. I mean, I think there's ways that we've discussed -- or the Independent Women's Forum has written about ways that you can use the Tax Code to encourage additional savings programs to help people who don't have leave laws. But also I think you're on to something in trying to focus on moving beyond the *Fair Labor Standards Act*, which has a pretty antiquated definition of worker and employee, which is becoming really out of touch as we move towards this world where so many people are telecommuters and gig employees, and we no longer have this, you know, 9 to 5 working in a factory or an office space with one boss. So I think the kind of taking a fresh look at those laws could be useful.

And if I can just say one quick thing. There's been some discussion about this, the real importance of what we're talking about here is really where, I think, many people are concerned about people with low income. And we're talking about the -- I think that's really, when you look at who's lacking paid leave benefits, I think that's who everybody recognizes that that is a problem. But I would just caution that I think -- when I worry about, when I think about the problems created by paid leave laws and mandates, that's who I'm worrying about. It's because I do think that it's the person we don't see. You went to see somebody who's an employee who's getting the benefit, you don't see the person who's then going to be priced out of a job. And that's a real problem and a real possibility, particularly for those with lower incomes. And anybody who's looked at a budget before knows that there is a tradeoff in benefits.

When somebody goes away for six weeks for maternity leave, a small organization like mine, I can't just wipe my hands and keep paying them. I've got to pay somebody else. That's money I have to come up with.

Mr. ROKITA. Thank you. I can see my time is expired, Mr. Chairman.

Mr. ROE. I thank the gentleman for yielding.

Ms. Blunt-Rochester, you're recognized for five minutes.

Ms. Blunt Rochester. Thank you, Mr. Chairman and Ranking Member. And I'd like to thank the panel for this discussion.

I had the opportunity to serve as State personnel director in the state of Delaware. I'm a former SHRM member. I lived in China, was a SHRM member there as well, and so I understand the complexities of trying to balance recruitment, retention, productivity of your employees with the cost of your ERP and trying to maintain that and -- so I understand that.

And I guess one of the first questions I have is really trying to get from your perspective, Ms. Schaefer and Ms. Brickmeier. We talked about one size fits all, but I guess my question is, to have a national standard, to me, doesn't mean one size fits all. It means you've got a baseline, and then as an employer, depending on where I live in the country or where, what my budget is, that I can give more benefits than that.

So can you just confirm for me -- because that's my understanding -- that by us having a standard, that doesn't mean we necessarily have to have one size fits all? Would you say that's correct?

Ms. SCHAEFER. So the H.R. 4219 bill doesn't discriminate employers based on industry. Rather, we are identifying them based on size. So that's --

Ms. Blunt Rochester. But do you understand my question? If we have a standard across the country similar to what has been done in Montgomery County, that doesn't mean that as an employer I can't give more?

Ms. SCHAEFER. That's correct.

Ms. Blunt Rochester. Okay. Thank you.

And then my other question is really, I noted, Ms. Lukas, that you said in your testimony that, "99 percent of businesses with more than 50 workers offer some form of paid time off to employees," end quote. And that that's from SHRM's own Families and Work Institute's 2016 National Study of Employers.

I couldn't find that number, but I found some other interesting ones. Only 39 percent of employers with 50 or more employees give employees at least five days to care for a mildly-ill child. Only 58 percent of women receive some pay during maternity leave. Fifteen percent of spouses or partners receive any paid time off following the birth of their child.

So given all of that, Council Member Riemer, can you talk a little bit about, until Congress does act with a proposal that can provide this kind of workplace leave policies, how are workers coping with the current policies?

Mr. RIEMER. Well, those employees that are fortunate enough to work at a company that wants to offer generous benefits, they're probably doing okay.

Ms. Blunt Rochester. Right.

Mr. RIEMER. The rest of the employees are making impossible choices. They're showing up at work sick. They're infecting their co-workers and their customers. They're sending their children to

work sick. They are leaving their family members alone and unattended when they would like to be with them. And they're not coping well.

Ms. Blunt Rochester. Can you talk about the process that you went through in your community as you drafted the legislation and how it took into account the needs of your constituents, just what the process was?

Mr. RIEMER. We had legislation introduced at the Council and we had a public hearing with dozens of community members participating. Then we had a legislative process of nearly a year, multiple committee meetings, and then full council deliberations in action. It was a very thorough process. And then we gave up to 15 months after enactment of the law to work out the operational implementation issues. So it was a very deep engagement.

Ms. Blunt Rochester. I also want to just say that I'm glad that we're having this conversation. It's probably, you know, again, next to pensions, probably one of the most important things that we need to look at. I focus a lot on the future of work, and particularly we talked about people who are middle income and lower income and just all of the changes that are going to be happening.

When I look at the future of work, because of that, that's one of the concerns that I have about not having baselines. And I also lived in China, so I know when you don't have baselines, even for things like OSHA, it impacts us. There are best practices out there. And as a matter of fact, you know, we know that there are some great, great programs out there. So I just want to thank you.

And I yield back.

Chairman WALBERG. I recognize, initially, now my friend from the Marianas, Mr. Sablan.

Mr. SABLAN. Mr. Chair, I ask unanimous consent to permit Representative Rosa DeLauro to be recognized and participate in today's hearing.

Chairman WALBERG. Without objection, the gentlelady, who does not serve on the committee but has legislation dealing with our concerns, is allowed to sit on the committee.

Mr. SABLAN. Thank you.

Chairman WALBERG. And will be allowed to ask questions at the end of questioning.

Mr. SABLAN. Thank you very much.

Chairman WALBERG. Now I recognize the gentlelady from Georgia, Mrs. Handel.

Mrs. HANDEL. Thank you, Mr. Chairman. Thank you.

And to the witnesses today, I apologize for missing your oral testimony, but I did have an opportunity to read through the written testimony yesterday. So thank you very much for sharing that with us.

I wanted to start with Ms. Lukas, if I might, given the exchange that we just had about the percentage of companies that are or are not offering these types of benefits. It strikes me that just because something is not mandated, it does not mean that a company is not willing to or already voluntarily offering a lot of these different paid sick and paid family leave.

I was wondering, given that we have a scenario in the European Union where this type of thing is mandated, here in the United

States, what do you see as the impact, potential negative effect on workers in this country if we were to do a blanket mandate of this nature, and especially on working women?

Ms. LUKAS. Yeah. You know, and it's interesting, because I do think that we've got such an exciting time for women in having so many workplace opportunities, we're encouraging women to lean in. And I do think that we, you know, we hear a lot about the benefits of what happens in Europe, with, you know, obviously, there's something wonderful about taking months off after the birth of a child. But there are some negative aspects of it that I think are often overlooked.

And that includes that there's a lot of women who do feel pigeonholed. Not everybody wants to take off six months after work to spend that much time at home with their newborn, but these expectations for women certainly do create kind of a lean-out mentality. And then there are many fewer women in Europe who are serving in leadership positions. Their labor force participation rate is relatively high, but a lot of that is part-time work or lower-paid work. So there are real consequences to this.

And I would say that, also, I think that it's important to recognize that not everybody is a mom. And especially there's not a lot of folks who aren't parents who don't want this, and, of course, they may have other aspects. But we all know that there is something, and we need to be respectful of this idea, of what happens when somebody takes off work that somebody else has to pick up that work. And there are some full-time workers who end up resenting the extra burdens that they face when these generous, especially in Europe, these generous leave packages.

Mrs. HANDEL. Okay. Thank you.

Moving to Ms. Schaefer, in your testimony, you noted some research that millennials, in particular, value flexibility over compensation, with 35 percent of millennials being willing to take a 10 to 20 percent pay cut in exchange for flexibility and these broader leave policies. Have you personally seen this trend throughout your 20 years of experience? And can you tell us a little bit about that?

Ms. SCHAEFER. Yes. Thank you for your question. I have. And currently, at Safety National, 27 percent of our workforce falls into the category of millennials, and that's exactly what they're asking for, is that flexibility. And because we are listening and working with them, we're able to meet the needs of the business as well as the needs of the employees.

Mrs. HANDEL. Okay. Great. So it strikes me that what we need to be focused on is ensuring that we have a robust, free market flexibility approach to all of this.

My second question, also for you, Ms. Schaefer, as we discuss paid leave today, I have heard it referred to, frankly, as both a policy and a benefit. So how would you see it? Is it a benefit? Do most people come in to the workforce assuming that there's some sort of benefit in that area or do they see it more as a policy or as a part of their package, if you will?

Ms. SCHAEFER. Right. In my experience, it's a benefit, so very much so.

Mrs. HANDEL. Great. Thank you.

Mr. Chairman, I yield back. Thank you so much.

Chairman WALBERG. I thank the gentlelady.

And now I recognize my friend from Oregon, Ms. Bonamici.

Ms. BONAMICI. Thank you very much, Mr. Chairman. And I apologize for leaving. I have a Science Committee at the same time. So thank you for holding this hearing. Thank you to our witnesses, all for being here.

You know, it's pretty clear that our workplace policies have not really kept pace with the changing workforce, and I think we all agree with that. Everyone who is here today testifying and all the members recognize it in different ways. And because we know that paid leave is good for families and businesses, policymakers will continue to address this issue.

I thank you, Mr. Riemer, for explaining that from your perspective.

My state of Oregon has been a national leader in passing legislation to provide workers with paid sick days and predictable schedules. And Oregonians have been able to earn and use job-protected sick time to care for themselves or for a family member. For nearly two years, our paid sick days law allows workers to earn 40 hours of sick time a year that can be used for their own immediate family member or for preventive care. The law also allows paid sick time to be used for domestic violence survivors to obtain services, a really important aspect there, and almost half a million workers benefit from this law. And that makes Oregon a better place for families to live and work.

And importantly, these policies, as Mr. Riemer explained, help businesses recruit and retain good, loyal employees. And that decreases turnover and costs associated with hiring and retraining. Simply put, a healthy, happy workforce is good for business.

And Susan is a woman in Portland who experienced great hardship before the law passed, taking care of herself in an illness. She had worked in a grocery store for 15 years, and she did not have sick time until the third day of an illness, and only then with a note from her doctor. She explained that she had to go to work sick all the time because she couldn't afford to take unpaid days, even to go to the doctor. When she absolutely had to stay home, she had to decide which bill she could pay. She's a mother who also needed sick time to be home with her kids when they were sick. In fact, her employer of 15 years wrote her up for taking too many unpaid sick days, and she was terrified about losing her job. So these are the harsh realities of life without paid or protected sick time for low-wage workers, especially around the country.

So we've heard from members on the other side of the aisle about H.R. 4219, which does not solve the problem, because that's voluntary. We know that states and local jurisdictions will continue to address their needs of their constituents, like Susan. And that's what Oregon did.

Unfortunately, this 4219 will eliminate and undermine sick leave policies for workers in Oregon and around the country who are lucky enough to live in a state or a jurisdiction that has implemented paid sick time, and it will stifle innovation and state legislatures and local governments. The reason states and local governments are acting is because the federal government has not.

So if we really want to help workers and families, we should be talking about the *Healthy Families Act*, which I know our colleague, Congresswoman DeLauro, will talk about. And also the *FAMILY Act*, for paid family leave. That's what we should be discussing today. And until we set that federal standard, State and local governments need to be able to act.

So I know, President Riemer, you talked about your law being in place since October of 2016. And can you talk a little bit about how your businesses have responded? How is the community affected? And what are some of the -- have you seen negative effects? And what are some of the positive effects?

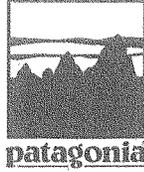
Mr. RIEMER. Thank you, Congressman. I really enjoyed your comment there. We think our law's been a big success. We are not hearing from employers that it has been an undue burden for them to make the minor adjustments in their payroll system that it takes to track. And we certainly are hearing from employees that they appreciate the rights that have been granted to them by our local government's law.

And we know that we had to work closely with our major employers to help establish that nothing that we did in our law would, you know, require them to change their policy. And that was important to us because we really appreciate our large employers, and we want them to thrive and prosper in our community. And if they're offering better than the requirement, we don't want to disrupt that.

Ms. BONAMICI. Thank you. And when I'm in Oregon, I participated several years in a wonderful event called When Work Works. And we have many small businesses come forward. Because oftentimes, you hear that these policies are a burden on small businesses, and they talk about how it actually helps them with recruitment, with retention.

And, Mr. Chairman, before I close, I want to ask unanimous consent to enter into the record a letter from Patagonia's vice president of Human Resources and Shared Services. The letter explains the outdoor retailer's investments in their employees and how they have seen it help both their employees and their bottom line.

Chairman WALBERG. Hearing no objection, it will be entered.
[The information follows:]



December 5, 2017

The Honorable Tim Walberg, Chairman
 The Honorable Gregorio Kilili Camacho Sablan, Ranking Member
 Subcommittee on Health, Employment, Labor and Pensions
 Committee on Education and the Workforce
 2176 Rayburn House Office Building
 Washington, D.C. 20515

Dear Chairman Walberg and Ranking Member Sablan,

It is my understanding that your Subcommittee will be holding a hearing on December 6th that will address the challenges and opportunities facing America's working families and their employers. In advance of that hearing, I wanted to provide you with some perspective from Patagonia on these important issues.

Patagonia employs 2200 employees that range from retail workers to scientists to managers and we have operations and 32 retail stores in the U.S. We offer generous family-affirming benefits, are profitable and also support strong public policies. We embrace state and local policy innovations and do not need or support others who seek to evade state and local laws that strengthen working families.

In the United States today, the status quo is terrible for most of American workers and their families. It is also bad for business. Up to 35% of working women who give birth never return to their jobs. The cost of replacing employees can range from 16% to 200% of a worker's salary, depending on seniority. If this seems like a shocking economic inefficiency, consider that American businesses provide paid family leave to just 15% of U.S. workers.

Often, we bend our lives in order to meet the responsibilities of our jobs, which provide the financial means to support ourselves and our families. But employers rarely bend to meet the needs of families in return. Very few employers offer the essential benefit of high-quality, on-site child care. When personal and family illness strikes, federal law requires some employers to provide job protected unpaid leave through the Family and Medical Leave Act, but that law only applies to about 60% of the workforce. Even access to basic paid sick time is rare: nearly one-third of private-sector workers do not have even a single paid sick day to use when they are ill or need to see a doctor.

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States and localities have begun to address these gaps, and we celebrate that progress. But, in too many cases, American workers are forced to choose between meeting financial needs for their families or properly caring for loved ones in other critical ways, like caring for a newborn or dealing with a family emergency. At Patagonia, we believe creating a workplace that supports family life is the right thing to do. But it's also the right decision economically for our company.

To support our families, Patagonia provides company-paid health care and sick time for all employees. After nine months of employment, our company provides paid maternity and paternity leave; access to onsite child care for many employees and financial support for those who do not have access.

Our corporate policies include:

- 16 weeks of fully paid maternity leave
- 12 weeks of fully paid paternity leave
- 12 weeks of fully paid leave for adoptive mothers and fathers
- 12 weeks of fully paid family medical leave for an employee or family member who has a serious illness or medical condition
- \$10,000 in adoption assistance
- Funding for a family member or caregiver to accompany a new nursing mother and baby on business travel

Patagonia's management team does not view these as employee perks, but investments in people that pay off — financially and in other ways. The proof is in the data. At Patagonia, employee engagement has translated directly into business success — profits have tripled in recent years, allowing us to reinvest in our mission. Family-affirming policies reduce turnover costs, including lost productivity while a position is vacant, plus recruitment, relocation, and training time. At our company, this can range from 20% of annual salary for a non-managerial employee, to 150% for a director or vice president.

At Patagonia, over the past five years we've seen nearly 100% of moms return to work after maternity leave. Turnover for parents who have children in our on-site childcare program runs 25% less than for our own general employee population.

Too often, private companies that support their own workers with generous policies as we do, will stop there — touting their own benefits. But our workers have spouses, parents, adult children and other loved ones who need care — and, unfortunately, family-supporting benefits in their jobs are too rare. That's why we believe so strongly in public policies. Our home state of California was the first in the nation to adopt a paid family leave program, and both the state and numerous California cities have paid sick days laws. These state and local innovations are

among a growing number of paid leave and paid sick days policies that are passing nationwide and we support and honor that state and local innovation.

Paid leave helps families tremendously, and does not harm employers. Under California's paid family leave program, the average length of leave has doubled, with the greatest benefit accruing to women of color and in lower-wage jobs. Studies also show that employees who feel supported by their companies tend to be more engaged in their work, and engaged workers are more productive. In California, nearly 90% of businesses surveyed about the effects of the California paid leave program reported either a positive effect or no noticeable effect on productivity. Studies of paid family leave laws in New Jersey and Rhode Island and paid sick days laws in a growing number of states and cities show similar results.

We fully support California and other states and localities that guarantee all workers paid family and medical leave and paid sick time and are hopeful that even more will soon adopt similar policies. Our successful business model demonstrates that employers do not need "safe harbor" from state and local laws in order to be highly profitable. We live with complex laws in a number of other contexts and can do so in this one as well.

We also support strong national policies and strongly urge Congress and other U.S. employers to do the same. For example, here are three things U.S. employers and federal legislators can do to encourage strong families, healthier kids and a competitive skilled workforce:

1. **Support the FAMILY Act (H.R. 947)**, which creates a national standard for paid family and medical leave to help reduce costs and level our competitive playing field while allowing workers to meet their health needs and caregiving responsibilities. The FAMILY Act was first introduced in the House by Congresswoman DeLauro and in the Senate by Senator Gillibrand nearly four years ago and each year it has gained new support in Congress and in the private sector — yet it hasn't been voted on by legislators. We strongly urge Members of this Committee and all federal elected officials to act soon to pass the FAMILY Act and make paid family leave a law in our country. We firmly believe workers in the United States should be able to take the time they need when serious family or medical needs arise — no matter where they live or where they work.
2. **Every company with 200 employees in one place or more should seriously consider the introduction of high-quality, on-site child care.** This allays the anxiety for all new parents and is the next best thing to having them within eyesight or earshot. Good child care is expensive, but at Patagonia we estimate that we earn back over 90% of our paid subsidy for our on-site child care program (a big reason we recently expanded the program from our California headquarters to our 600-employee distribution center in Nevada as well). Independent studies show similar returns on this kind of investment for other companies.
3. **Consider a diverse but holistic package of family-affirming policies, including a national paid sick days law like the Healthy Families Act (H.R. 1516), fair scheduling protections,**

like the Schedules That Work Act (H.R. 2942), flex time, private space for lactation, adoption assistance, travel support programs for nursing mothers, and childcare subsidies for companies that don't provide on-site care.

Yes, there are financial costs inherent in building a family-affirming workplace, but the benefits, financial and otherwise, pay off this investment year after year. At Patagonia, we've seen first-hand the power of a workplace that prioritizes families. We believe it's time for real action by Congress and American businesses to help our families successfully meet their challenges.

Sincerely,

A handwritten signature in black ink, appearing to read "Dean Carter", with a long horizontal flourish extending to the right.

Dean Carter

Vice President of Human Resources and Shared Services

Ms. BONAMICI. Thank you, Mr. Chairman. And I yield back.

Chairman WALBERG. I thank the gentlelady.

And now I recognize the gentleman from South Carolina, Mr. Wilson.

Mr. WILSON of South Carolina. Thank you very much, Chairman Tim Walberg, for your leadership. And your service means so much to the people of Michigan and South Carolina and all of the United States. Thank you.

Ms. Schaefer, how have workplace leave policies changed over the last 10 years? Do you think the economy, over the last eight years, has affected the employers' ability to provide leave policies and flexibility to employees?

Ms. SCHAEFER. Yes, I do think the economy has had an impact. I can only speak from my experience with my current employer and that it is a business decision when it comes to the leave offerings that we're able to make.

Mr. WILSON of South Carolina. And with a growing economy, as we're seeing and can anticipate, particularly with the tax cuts that will enable businesses to create jobs, that should have a very positive impact.

Ms. SCHAEFER. I'm not able to speak to that specifically.

Mr. WILSON of South Carolina. Well, hey, I see it in the State I represent, and just to see the consumer confidence at record levels, to see, as I have actually had the opportunity to have a discussion with President Trump, about the increase in the stock market from the day that he was elected to where we are today; 5,000 points, 23 percent. I'm just so enthusiastic for the growth of our economy and job opportunities for the American people.

Ms. Lukas, can you talk about the tradeoffs that come with government mandates? How do these mandates impact job opportunities and overall employee compensation?

Ms. LUKAS. Yes. You know, I think that everybody knows who's had a budget, when you look at the cost of somebody that you're hiring, you have to look not just only at the dollars that they're going to get in their take-home pay, but you have to look at how much you have to spend in taxes, payroll taxes, and benefits. And so as we increase benefits, that's an additional cost that employers have to factor in. It means lower compensation or fewer jobs that you're going to be able to offer.

You know, when we have, at my small organization, when somebody goes off for leave for six weeks, I can't just push that off onto somebody, all the responsibilities off to somebody else, so I have to hire another person. And that's money that I won't have to give other raises or for other uses.

So there's a real economic tradeoff with that. It doesn't mean that benefits are a mistake, but you do have to factor them in when you are doing a budget, especially if you're a small organization.

Mr. WILSON of South Carolina. And thank you very much of your presidency of the Independent Women's Forum.

Ms. LUKAS. Thank you.

Mr. WILSON of South Carolina. Making a difference on behalf of the people of our country.

Ms. LUKAS. Thank you.

Mr. WILSON of South Carolina. Ms. Brickmeier, some have suggested that businesses that are large enough to operate in multiple jurisdictions readily have the capacity to establish different business processes according to their jurisdictions. You've noted that IBM spends a great deal of time complying with ever-changing state and local mandates. Do you agree with the statement that if a business is large enough to operate in more than one state or locality, they should accept this patchwork of paid leave mandates as a result? Why not?

Ms. BRICKMEIER. Well, no, I don't accept that. As a premise, we might have to accept it if the mandates are there, and they certainly are there now. But what we're really advocating for is, just like we have in healthcare with ERISA preemption, which has worked remarkably well since the 1970s, since it's been enacted, we're advocating for something very similar to that where local mandates would apply, unless a company opts in to a national standard.

Mr. WILSON of South Carolina. Thank you very much. And in your testimony, you note that IBM provides a generous paid leave policy that includes a minimum of 15 days paid vacation, up to 26 weeks of full or partially paid short-term disability, 12 weeks of paid child bonding leave for new parents, in addition to paid sick leave. Does IBM provide this leave to keep up with any particular state or local mandate? And how is this mandate administered across the country?

Ms. BRICKMEIER. So all of the things that you referenced were independent of any mandates, right? We've had these policies for many, many years. They are developed based on our workforce and our industry. And as I said, we just added the 12-weeks parental leave, and that was purely on our own volition, based on the needs of our workforce and wanting to keep parents in the workforce once they take time off with their kids.

But as we think about expanding that, our employees have asked for different types of paid leave, which we're considering. But we actually might have to consider something different, maybe say no, or think about different designs, because we have to figure out how they fit in with certain mandates. And particularly in New York state, which we have a lot of people in, and it was mentioned that there's a mandate coming in on January 1, and as was also stated, we only have so much budget, so many compensation dollars to manage our workforce and to be able to meet our business commitments, and so there would have to be tradeoffs.

Mr. WILSON of South Carolina. Thank you all for being here today.

Thank you, Mr. Chairman, for your leadership.

Chairman WALBERG. I thank the gentleman for your kind words. I gotta figure out what I owe you.

Mr. WILSON of South Carolina. Just do a good job. That's it.

Chairman WALBERG. I now recognize my friend and a proud Harley rider from New Jersey, Mr. Norcross.

Mr. NORCROSS. Thank you, Mr. Chairman and Ranking Member, for putting this committee hearing together, focusing on something that every one of us experience -- sick time, family time -- and just

to have a discussion on today's environment and how tough it is to balance what we do every day.

I was a single dad. It was tough. I had help from my parents and was able to do it, but it's trying to make things work. So for each of you coming and sharing your experience, we appreciate it.

Obviously, there's a huge difference. There's large corporations like IBM who have a very generous policy. An \$80 billion a year company has resources to do this. But we also understand that the businesses have to take into account both sides of the equation. And that's one of the things I'm trying to look at when we start looking at the 4219. We're all talking about helping those workers successfully raise a family and manage life, yet it becomes voluntary.

Thirty-seven million workers today have no sick time. Thirteen percent of private industry, you cannot earn sick time. So if we're trying to create a foundation and that employers will do the right thing, I'm confused on how you try to put these numbers together. If employers are going to do the right thing in balance, why only 13 percent make this available? And that's the tough part that we're trying to reconcile here.

Ms. LUKAS, you said that you don't think -- or I'm paraphrasing -- for workers, it's a good idea for them to have these benefits. They'd rather have an extra \$10 in their pocket. I think they'd rather have both, quite frankly, but we understand that balance.

Ms. LUKAS. An ideal world, certainly.

Mr. NORCROSS. Yeah. Show me where that world is. I think we'll all move there.

Ms. LUKAS. Of course.

Mr. NORCROSS. One of the trends that has been happening, particularly in healthcare, is paid time off, which, in concept, doesn't go into why you're taking the day off. You're just out.

So when we're looking at these, Ms. Schaefer, how do you balance PTO versus sick time and family leave, particularly with regards to the tax credit piece that we're looking here?

Ms. SCHAEFER. So the paid time off, as you know, can be used for any reason. And so if an employee is, in fact, sick or needs to take care of a sick child, they don't have to report that to us; they're just saying that they need to take time off.

Mr. NORCROSS. So how are you going to address that to get the tax credit? You're now going to have to set in a new policy and mandates that say, if you're taking a sick day off, we need to verify that versus a vacation day or mental health day. How are you going to do that?

Ms. SCHAEFER. The employees would be able to take the time. We wouldn't be requiring them --

Mr. NORCROSS. So then you can't get the tax credit. You would forego the tax credit rather than answer that question?

Ms. SCHAEFER. I would have to have SHRM follow up with you on that.

Mr. NORCROSS. Okay. How would IBM handle this? Do you have PTO?

Ms. BRICKMEIER. I know what you're referring to, and we've been looking at that as well. And it's absolutely correct. Right now, we don't ask any questions for incidental sick time, paid time off, vaca-

tion. It's yours. You can take it as you wish. And I think it's very intrusive to have to ask these questions. These are very personal questions.

But you're absolutely right. If there were a tax credit for certain days off, we would then have to add another compliance burden to ourselves and ask very difficult questions of our employees. But that's correct.

Mr. NORCROSS. I would assume you expect, if you're going to get tax credit, which means taxpayers' money, they have a right to understand what this is being used for.

Ms. BRICKMEIER. I understand that, yes.

Mr. NORCROSS. So Ms. Lukas, do you have any thoughts on this? This creates another mandate if you want the tax credit.

Ms. LUKAS. Yeah. I mean, I think there is a concern. Sorry. I think there is a concern. I do think that we need to try to allow businesses and employees to work out the different benefit packages that make sense for them, and I worry about creating some favored pools of leave over others. I prefer it to be more broad.

Mr. NORCROSS. If that's going on and employers want to do the right thing, how do you explain only 13 percent?

Ms. LUKAS. Well, you know, I think your 13 percent -- I think it's hard to -- often there's a lot of different statistics out there. And I like looking at the Census Bureau to see people, how they report their experiences with employers, because a lot of employers have one bucket of leave that they can use for something like family leave.

Mr. NORCROSS. This is what we were talking about, right, the different pockets.

Ms. LUKAS. Yes. And so it does show that the --

Mr. NORCROSS. So let's say 25 percent.

Ms. LUKAS. Yes.

Mr. NORCROSS. That means 75 percent aren't doing it.

Ms. LUKAS. No. But I think when it comes to full-time workers, that it's well over 50 percent of first-time mom's report having some paid time off from work.

Mr. NORCROSS. Some paid time off.

Ms. LUKAS. Yeah. I mean --

Mr. NORCROSS. So if they gave them an hour, that would qualify?

Ms. LUKAS. Sure. You know, and I do think, you know, when I heard the story of the --

Mr. NORCROSS. We're out of time.

Ms. LUKAS. Sorry.

Mr. NORCROSS. I'm sorry. So I appreciate your testimony.

I yield back.

Chairman WALBERG. I thank the gentleman.

I recognize the gentlelady from New Hampshire, Ms. Shea-Porter.

Ms. SHEA-PORTER. Thank you very much. And, Mr. Chairman, I ask unanimous consent to enter into the hearing record a statement from the National Treasury Employers Union in support of paid parental leave legislation for federal workers. And I add my voice in support of this and other legislation to establish robust and common sense paid leave policies for all workers, public and private sector.

Chairman WALBERG. Hearing no objection, it will be entered.
[The information follows:]



Statement for the Record

Anthony M. Reardon, National President

National Treasury Employees Union

For

**“Workplace Leave Policies: Opportunities and Challenges for Employers and
Working Families”**

House Education and Workforce Committee

Subcommittee on Health, Employment, Labor and Pensions

December 6, 2017

Chairman Walberg and Ranking Member Sablan: Thank you for allowing me to offer a statement for your hearing today on Workplace Leave Policies. As National President of the National Treasury Employees Union, I represent over 150,000 federal employees in 31 agencies across the government. 128 countries currently provide paid and job-protected parental leave to employees, with 16 weeks being the average length of provided leave. 75% of the Fortune 100 companies offer a paid parental leave program to new mothers. Sadly, the federal government has no paid parental leave policy for its workers.

It's not for lack of effort or advocacy. NTEU has worked with Representative Carolyn Maloney, a long-time champion of this movement, since 2003 to provide paid parental leave for federal employees. Legislation twice passed the House, but received no action in the Senate following bill introduction. When we started this movement, we wanted the federal government to be a leader in providing this benefit. Now, we are lagging behind the private sector, and federal agencies are finding it increasingly difficult to attract younger workers, who see this benefit as a crucial and standard part of their compensation.

In general, it takes female federal workers over 3 years to save enough sick leave to cover the period of incapacitation after pregnancy (6-8 weeks on average) – and that's without taking a single day of sick leave during those three years. Pregnancies also generally require at least 14 doctor's appointments, so not taking sick leave is almost impossible. Some of my members report that they have worked while being sick themselves because all of their leave was used up on the birth of their child. And, if an employee has a sick family member and uses up sick leave for that situation, then she has nothing left to use upon the birth of a child.

While the Family and Medical Leave Act (FMLA) allows 12 weeks of leave for the birth or adoption of a child, it is unpaid leave. Few federal employees can afford to take weeks of unpaid leave. The FMLA has been a terrific first step, but we believe that no federal employee should be forced to choose between a paycheck and caring for the newest member of the family. We hope you agree.

Research has shown that the federal government could significantly reduce the departures of young female employees by offering paid parental leave. We could save millions in turnover costs through such a program, and human resource professionals know that all employers, public or private, experience significant costs through turnover. In addition, paid parental leave can lead to increased productivity, better morale and reduced absenteeism. We encourage you to work with Rep. Maloney to achieve passage of this legislation, allowing the federal government to establish common-sense paid parental leave .



Lorelei Salas
Commissioner

Statement of Lorelei Salas, Commissioner of the New York City Department of Consumer Affairs

Liz Viadeck
Deputy Commissioner,
Office of Labor Policy and Standards

Submitted to the House Education and Workforce Committee Subcommittee on Health, Education, Labor and Pensions

Jill Maxwell
Legal Director, Office of Labor Policy and Standards

Hearing on "Workplace Policies: Opportunities and Challenges for Employers and Working Families"

Steven M. Ettannani
Senior Advisor, Policy and Public Affairs

The New York City Department of Consumer Affairs ("DCA") strongly urges Congress to work with local and state governments and heed grassroots efforts that have led to enhanced labor standards, like local paid sick leave laws. Federal labor standards should operate, as many already do, by creating baseline rights that may be supplemented by greater protections provided by state and local governments.

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New York City has demonstrated that local government's role in labor law enforcement is essential to promoting individual financial security and improving family and public health without sacrificing a vigorous and growing economy.¹ DCA, particularly its Office of Labor Policy and Standards ("OLPS"), has first-hand knowledge of this as it is charged with implementing and enforcing New York City's workplace laws, developing innovative policies to raise job standards, and providing a central resource to help working New Yorkers assert their rights under local, state, and federal law.

Since the New York City Paid Sick Leave Law took effect in April 2014, OLPS has received more than 1,350 complaints, closed more than 1,150 cases, secured nearly \$4.7 million in relief for more than 20,000 workers, and assessed close to \$2 million in fines through settlements with businesses. Despite robust enforcement, 85 percent of employers surveyed in 2015 and 2016 reported that compliance with the law did not increase costs,² and more than 94 percent reported that the law had no effect on productivity.³ Some even reported that productivity increased.⁴ Similarly, 96 percent of employers reported no change in customer service as a result of the new law, and more than three percent saw an

¹ NEW YORK CITY, OFFICE OF THE MAYOR, "TWO YEARS AFTER MAYOR DE BLASIO EXPANDS PAID SICK LEAVE TO ONE MILLION NEW YORKERS, CITY'S ECONOMY STRONGER THAN EVER," April 1, 2016, available at <http://www1.nyc.gov/office-of-the-mayor/news/318-16/two-years-after-mayor-de-blasio-expands-paid-sick-leave-one-million-new-yorkers-city-s-economy>.

² EILEEN APPELBAUM & RUTH MILKMAN, NO BIG DEAL: THE IMPACT OF NEW YORK CITY'S PAID SICK DAYS LAW ON EMPLOYERS 3, 21 (2016), available at <http://cepr.net/images/stories/reports/nyc-paid-sick-days-2016-09.pdf>.

³ EILEEN APPELBAUM & RUTH MILKMAN, NO BIG DEAL: THE IMPACT OF NEW YORK CITY'S PAID SICK DAYS LAW ON 4, 23, and 24 (Table 13B) (2016), available at <http://cepr.net/images/stories/reports/nyc-paid-sick-days-2016-09.pdf>.

⁴ EILEEN APPELBAUM & RUTH MILKMAN, NO BIG DEAL: THE IMPACT OF NEW YORK CITY'S PAID SICK DAYS LAW ON EMPLOYERS (2016), available at <http://cepr.net/images/stories/reports/nyc-paid-sick-days-2016-09.pdf>.

increase; less than one percent reported a decrease in customer service.⁵ Employee retention was steady.⁶

Notwithstanding New York City's success in strengthening workers' rights in tandem with a growing local economy, there is plenty of work left to do. Even in localities where there is already a right to paid sick leave, employers of the most vulnerable workers are still falling short of what the law requires.⁷ The Community Service Society's (CSS) research shows, for example, that New York City's Paid Sick Leave Law has significantly increased low-income workers' access to paid sick leave, but that a sizable percentage of vulnerable low-income workers still cannot use this benefit and many do not even know that they are entitled to it. The percentage of low-income workers in New York City without paid time off has dropped from 53 percent of eligible low-income workers surveyed by CSS in 2013, to 38 percent of eligible low-income workers in 2016. And yet, many vulnerable low-income workers still lack access to this critical right: 43 percent of eligible low-income Latino workers, 48 percent of immigrant low-wage workers, 65 percent of low-income part-time workers, and 61 percent of low-income restaurant and retail workers report that they still do not have paid sick leave.⁸ Even with this progress, there is still a need for increased and targeted enforcement of this important right.

CSS' research underscores the complexities of serving our nation's most vulnerable individuals, particularly when it implicates their livelihood. As Congress, and this Committee in particular, continues to study workplace policies it should recognize that the federal government has an important role to play in supporting local enforcement needs and should not consider policies that would dilute or repeal progressive local labor laws, or exacerbate the power imbalance between employers and employees such as by shifting away from employees their ability to control their work schedules and time off.

One piece of legislation being debated in Congress that is particularly troubling is H.R. 4219, the "Workflex in the 21st Century Act" ("H.R. 4219" or the "bill"). H.R. 4219 undermines local labor standards that are tailored to maintain robust local economies by removing local control that benefits workers and businesses. The bill purports to require paid time off comparable to state and local paid sick leave laws, but in fact replaces meaningful rights to paid time off, which are the product of grassroots democratic processes, with individual employers' own parameters for when and how employees can use time and what employees will be paid when they use the time. Accordingly, we urge Congress to reject the bill.

1. H.R. 4219 Creates Merely an Illusion of Required Paid Time Off

H.R. 4219 would allow employers to opt-in to provide a minimum number of paid days off to employees per year, setting no parameters for how such paid days off are requested, used, or paid. Employers who opt-in to this model can easily dilute the paid time off they provide in whatever ways they may conceive that discourage employees from requesting or using the paid time off, except in the most narrow circumstances. For example, an employer may discipline employees for using the time off,

⁵ EILEEN APPELBAUM & RUTH MILKMAN, NO BIG DEAL: THE IMPACT OF NEW YORK CITY'S PAID SICK DAYS LAW ON EMPLOYERS (2016), available at <http://cepr.net/images/stories/reports/nyc-paid-sick-days-2016-09.pdf>.

⁶ EILEEN APPELBAUM & RUTH MILKMAN, NO BIG DEAL: THE IMPACT OF NEW YORK CITY'S PAID SICK DAYS LAW ON EMPLOYERS (2016), available at <http://cepr.net/images/stories/reports/nyc-paid-sick-days-2016-09.pdf>.

⁷ U.S. BUREAU OF LABOR STATISTICS, NEWS RELEASE: EMPLOYEE BENEFITS IN THE UNITED STATES MARCH 2017 from <https://www.bls.gov/news.release/pdf/eb2.pdf>.

⁸ NEW YORK CITY DEPARTMENT OF CONSUMER AFFAIRS, STATE OF WORKERS' RIGHTS IN NEW YORK CITY (2017), p. 28.

impose unlimited advance notice requirements which prevent employees from any unforeseeable use, such as for sudden illness, or impose a requirement that the employees only use their time in increments of one full day. Additionally, the bill is silent about how much an employee must be paid for the time off—employers could decide to pay significantly less than what the employee would make if she was working, effectively discouraging any use of her time off but doing so in compliance with H.R. 4219.

By contrast, paid sick leave laws in local and state jurisdictions are the product of thoughtful analysis of the standards needed to make the right meaningful in our own jurisdictions. In New York City, employers must pay employees who use sick leave what they would have earned had they worked. They are prohibited from disciplining employees for valid uses of paid sick days and can only require advance notice of the need to use sick time that is practicable under the circumstances. This reflects the reality of sick time: workers cannot plan when they or their family member will be sick. And when they get sick, they can focus on getting well without fear that they will lose their job or pay.

2. H.R. 4219 Supplants Strong Local Standards with a Weak National Standard

Employer plans that comply with H.R. 4219 would preempt local laws. As such, the bill threatens to strip workers in New York City and over 40 other jurisdictions of the protections provided by local paid sick leave and fair scheduling laws and substitute them with time and leave policies *unilaterally chosen by the employer*. Employers' policies that may comply with H.R. 4219 are almost certain to be less favorable to workers than the rights provided by local and state laws. Replacing state and local laws under the guise of easing business operations ignores the positive impact state and local laws have had on individual financial security and public health. This approach also overlooks that businesses that are large-enough to operate in multiple jurisdictions are usually sophisticated enough and have sufficient resources to understand and comply with the different laws in those jurisdictions. For example, multi-jurisdictional companies already account for differing local payroll taxes depending on where they operate and employ individuals.

By supplanting local jurisdiction over paid sick leave and scheduling laws, H.R. 4219 threatens to weaken all labor standards. State and local labor law enforcement can create a culture of compliance with even those labor laws that the locality might not have jurisdiction to enforce. For example, OLPS is conducting directed paid sick leave investigations of home health care agencies. OLPS chose this industry because of the predominately immigrant woman and woman of color workforce and the prevalence of labor law violations in the industry. While these investigations are in their early stages, we anticipate that they will demonstrate OLPS' ability, in collaboration with other government agencies, to achieve compliance with labor laws that is broader than the paid sick leave law.

3. H.R. 4219 Takes Away Local Control that Benefits Workers and Employers

New York City strikes an important balance between making sure labor laws help workers *and* the businesses they work for by tailoring laws and enforcement to the unique needs and characteristics of the local economy. We can respond quickly to problems on the local level that can take decades to remedy through national consensus.⁹ The access that diverse stakeholders have to local lawmakers is

⁹ See, e.g., 79 FR 18737 (Apr. 3, 2014).

greater than at the state or federal level and facilitates a rich, transparent democratic process where the ultimate result accounts for a variety of viewpoints.

New York City's Paid Sick Leave Law is the product of this process. During the bill's drafting, key stakeholders—businesses, large and small, and workers—had and took advantage of their access to lawmakers to shape the final legislation. Later, during the rulemaking process, stakeholders' comments were carefully but promptly considered and incorporated into the final rules. During the initial implementation of the law, we prioritized educating businesses about the Law's requirements through trainings and an extensive public education campaign—a direct response to businesses that thought the Law was complex. OLPS also created a variety of tools to help employers comply, including sick leave tracking forms and employee authorizations that time used was for sick purposes. OLPS's current enforcement of the Paid Sick Leave Law responds to the specific circumstances of a particular worker or business. OLPS can quickly address a retaliatory termination due to a worker's use of sick time and have succeeded in getting workers their jobs back almost immediately. OLPS can also directly target investigations at industries and employers in NYC that have an established track-record of labor law violations through directed investigations.

4. Enforcing H.R. 4219 is Confusing and Leaves Workers and Employers without Clear Standards

Enforcement of H.R. 4219 will be confusing, and the confusion will be compounded in jurisdictions that have paid sick leave and scheduling laws. Unlike plans currently regulated by ERISA (and that trigger preemption for federal law), H.R. 4219 envisions certain minimum standards with which a time and leave plan must "substantially comply." Workers will not know what they are entitled to—their employer's plan or rights under local law—until a determination is made as to whether the employer's plan "substantially complies" with H.R. 4219. Lawyers, enforcement agencies, and courts, let alone workers, will have difficulty answering this threshold question.

In jurisdictions that have paid sick and scheduling laws, localities will need to assess the applicability of their own laws by determining whether the employer's policy "substantially complies" with H.R. 4219. If the policy meets the minimum standards under H.R. 4219, the policy would be enforced under ERISA for covered employees and the locality would not have jurisdiction. But if the policy does not meet the minimum standards, or certain employees at a workplace were not covered by it, the local law is not preempted and would apply. The chaos created by H.R. 4219 means that workers do not know what they are entitled to, and employers cannot be sure about what their obligations are. It makes virtually inevitable inconsistent application across different employers and increased litigation as parties dispute the applicability of local law. Again, this scheme operates to put state and municipal enforcement at odds with federal enforcement of labor laws. Federal laws should – and generally do – provide the opposite incentives: for all levels of government to work in partnership with each other to combat chronic non-compliance with labor laws.

5. H.R. 4219 Ignores Local Business to the Advantage of Large Corporations

Paid sick days are good for business because they increase worker productivity and retention. But many small businesses—those who operate on the thinnest margins—can only afford to offer paid sick

days if their competition does as well.¹⁰ When jurisdictions like New York City require that all employers within the jurisdiction provide time off for employees' most basic needs – to heal after illness or to care for a loved one – it helps to level the playing field between small and large business.

In sum, rather than make workplaces more inclusive, and provide recognition of the realities faced by both workers and employers in today's economy, H.R. 4219 erodes gains in ensuring that the most vulnerable workers, and those who are often most financially insecure, have access to employment. New York City is committed to supporting these workers by ensuring fair, safe workplaces for all. Federal legislation should set strong national baselines while allowing cities and states to do better, like H.R. 1516, the "Healthy Families Act", which would establish a federal paid sick days standard, and H.R. 2942, the "Schedules that Work Act", which provides fair scheduling protections. These laws would meaningfully ensure that working people can count on the pay—and paid time off—they need to support themselves and their families.

¹⁰ BALLANTYNE, AMANDA. GIVE SMALL BUSINESS OWNERS AN EVEN BREAK, PASS A MINIMUM STANDARD FOR PAID SICK LEAVE. https://www.huffingtonpost.com/entry/give-small-business-owner_b_9635872.html (last visited Dec. 5, 2017).

Ms. SHEA-PORTER. Thank you.

So the Bureau of Labor Statistics said that -- Mr. Norcross also said -- 32 percent of private sector's employees cannot earn a single day. Thirty-two percent. So as we're talking about all this, we know that 1 in 3 Americans cannot earn a single day. This is particularly important to me right now because my daughter had a preemie baby. And because of her good company and because of her husband's good company, they were able to be at the hospital and be there together. And what a difference that made.

And so as I think about all those people that we're talking about, one-third of Americans can't have a single day off. This is what we should be focused on. And yet I have not heard the panel express, for the most part, the recognition that we're not doing right by the workers of this country. And I hope that we'll hear more advocacy about this.

So I would like to ask each one of you to just say yes or no, please, about the *Healthy Families Act*, H.R. 1516, Representative Rosa DeLauro sitting here, and thank you for this bill.

This bill requires employers to employ at least 15 employees to provide employees with up to seven paid sick days, which can also be used to take time off to address domestic violence. Employees would earn one hour of paid sick time for every 30 hours. So they would just get one hour of sick time, up to seven paid sick days. Do you support that and does your organization support that?

Ms. SCHAEFER. SHRM does not support that.

Ms. SHEA-PORTER. Thank you.

How about you, Ms. Brickmeier?

Ms. BRICKMEIER. I would have to say we have no opinion on the bill at this time.

Ms. SHEA-PORTER. That's interesting. And --

Mr. RIEMER. Strongly support that. Thank you.

Ms. SHEA-PORTER. Thank you. And --

Ms. LUKAS. No, we do not support that.

Ms. SHEA-PORTER. No. Okay. So when we're talking about all of these people who don't have coverage, three out of four of you said that you don't support just seven sick paid days.

May I ask each one of you if you have seven sick paid days or more, please? Yes or no.

Ms. SCHAEFER. We don't have sick time. We have a general paid time off bank.

Ms. SHEA-PORTER. But more than seven days?

Ms. SCHAEFER. Yes.

Ms. SHEA-PORTER. Thank you.

Ms. BRICKMEIER. Yes.

Mr. RIEMER. Yes.

Ms. LUKAS. Yes.

Ms. SHEA-PORTER. Isn't that wonderful. I'm so glad that you do. And you know what, everybody sitting here has time off too. Isn't that great? How are we leaving one-third of American workers and their families behind?

So I ask each one of you there sitting to think about what you just said, that you have it, and yet you're comfortable sitting here saying, no, we don't support that.

Ms. Brickmeier, I was impressed by your testimony, because you were talking about how difficult it is for IBM to comply with all of these regulations right now. And I'm going to quote: "An overwhelming challenge has resulted from the burden created by myriad inconsistencies in the very State and local laws, the speed at which new laws and amendments arise, and the sheer number and range of requirements applicable to IBM's operations around the country."

And, of course, IBM is a massive company that's able to do work around the world, so I'm sorry it seems like such a burden. But here is the thing that I find interesting. Let me be very specific -- this is you again. "In the area of paid sick leave, by my last count, there were six states" -- that's 6 out of 50 -- "2 counties, and roughly 29 local ordinances covering paid sick leave."

Is that really that overwhelming for IBM, a big company, to work with just six states, two counties, and roughly 29 local ordinances that cover paid sick leave? Is that really a problem?

Ms. BRICKMEIER. Well, it did take us nine months to figure out -- and the executive order as well -- to figure out the jurisdictions, who was eligible, what the rules were, and then compare and contrast them.

Ms. SHEA-PORTER. Okay. Thank you.

Ms. BRICKMEIER. So it's not just what you said. It's all the combination and permutations.

Ms. SHEA-PORTER. All right. Thank you. But it still seems amazing to me.

And, Ms. Lukas, you said 99 percent of businesses with more than 50 workers offer some form of paid time off. Are you aware -- and this is Treasury Department -- that 96 percent of employers have fewer than 50 workers?

Ms. LUKAS. Absolutely. And those workers and those companies have a very different situation and costs that they have to consider and make budgets.

Ms. SHEA-PORTER. Right. So we're still leaving more workers behind. The suggestion by the number sounds like their covered, but we're leaving them behind.

And my final point, because we're running out of time here, is that you said we should enable workers to save tax-free for time off, right?

Ms. LUKAS. Uh-huh.

Ms. SHEA-PORTER. Do you know what the minimum wage is in this country?

Ms. LUKAS. Yes. I -- but that doesn't -- I mean --

Ms. SHEA-PORTER. So how, if you're supporting that, because I know a lot of people in my district, in my community, who work two jobs just to feed their children and get a little roof over their heads. They don't have any money to save to put into the tax-free account for time off. So do you still think that's a solution?

Ms. LUKAS. I think it's the start of a solution. It is very hard to find jobs for and to find a way to get low income workers, the minimum wage workers, paid time off without displacing them from their jobs. Because I worry very much about them losing their jobs, not just about the benefits that they have --

Ms. SHEA-PORTER. Okay. Let's say that they're fortunate enough to earn \$10 dollars an hour. Okay. It's \$400 a week, and that's \$1,600 a month, and they have to pay taxes out of that. \$1,600 a month. Rent where I am is about \$1,000. You have a couple of kids, that's it.

So even though that sounds good, I am just imploring you to look at that again and recognize that that is not real. That is not possible.

Chairman WALBERG. I thank the gentlelady.

Ms. SHEA-PORTER. Thank you very much.

Chairman WALBERG. Your time is expired.

Ms. SHEA-PORTER. I yield back. Thank you.

Chairman WALBERG. And I'm pleased to offer an opportunity for 5 minutes of questioning to the gentlelady from the Appropriations Committee, who comes over to our subcommittee. We're glad to have you today. Welcome for five minutes.

Ms. DELAURO. Thank you very much, Mr. Chairman. And thank you both, Mr. Chairman and Ranking Member, for allowing me to participate in this hearing today.

I just want to make one very, very quick point. You all have talked about the number of sick days that you have. Let me just tell you that the United States Congress, we have an infinite amount of sick days. We can get sick for several weeks. Our kids can get sick for several weeks. Our parents can get sick for several weeks. I know this personally. My mom passed away this summer. I spent six weeks with her. My pay was not docked. I did not lose my job.

When I was sick with ovarian cancer and had to leave for 2-1/2 months as a staff member to a United States Senator, my job was there. He said go, get well. It will be there. That should not be just the prerogative of all of you with your seven days, or probably more, or Members of the United States Congress to have that kind of an effort.

Let me just try to correct the record, if I can, in two or three points, and then I'll ask a question.

And, Ms. Lukas, your IWF research says here: Universal paid leave will force businesses to provide paid family and medical leave benefits.

This is not what the *FAMILY Act* does. It creates a fund with shared contributions. It is social insurance, employers, employees pay-in. The *FAMILY Act*, *Healthy Families Act* is not a mandate. There is nothing that prevents employers from offering more generous benefits above the baseline.

My colleague pointed out an estimated -- that's National Partnership for Women and Families -- estimated 37 million private sector workers cannot earn a single paid sick day, does nothing to be able to help them.

And I also read all of the testimony, so I'm sorry I wasn't here for it, but I read all of them. And I just want to make a couple of things in correcting the record, Ms. Lukas. And I'll say this: I think some of the -- you're right, there are various statistics, but I think some of these statistics were cherry-picked.

But let me talk about actual numbers that came from the same study that you quoted. Only 39 percent of employers with 50 or

more employees allow employees at least five days to care for a mildly-ill child. Only 6 percent of the total population of employers with 50 or more employees offer full pay during maternity leave. Thirty-nine percent offer partial pay. Eleven percent say it depends on the situation. Forty-two percent offer no pay at all. Fifteen percent of spouse, partners receive any time -- they don't receive any time paid off -- paid time off following the birth of their child. Less than half the workforce, 47 percent, allow all or most employees to take time off during the workday to attend an important family or personal needs without the loss of pay. Full 25 percent of companies do not comply with FMLA requirements for unpaid leave. This is DOL research.

Just one more -- this is outrageous that we do not understand the lives that families are leading today. And I just --

I will ask a question of Ms. Birckmeier -- Brickmeier, I apologize -- with regard to IBM, you have a generous package. You do have a generous package. I applaud you for all of that. Why, then, you exceed these baselines? Why wouldn't -- why wouldn't it -- why won't you not embrace national paid sick days law or a national paid family and medical leave fund?

In essence, what this piece of legislation does, if you take a hard look at it, it is voluntary. There is minimum amount of compensation. Employers decide whether or not the employee can go. There are six arrangements. If you don't fit into this little box, then you're on your own. There is no compliance with state and local -- and there may or may not be overtime pay. It's ludicrous what's been described as overtime pay.

Why, Ms. Brickmeier, would you not embrace national paid sick days? As my colleague from New Hampshire pointed out, we're looking at several states, some localities. The structure of these is all the same. All the same. It is not the kind of patchwork that some would like to say it is.

Chairman WALBERG. Five seconds left.

Ms. DELAURO. In my view, it would allow people to walk around State and local laws that we have today, and maybe that's what people want.

Chairman WALBERG. The time is expired, but briefly respond to that.

Ms. DELAURO. Ms. Brickmeier?

Thank you very much.

Ms. BRICKMEIER. Okay. So I can't comment specifically on the bill that you're representing, but I would take issue with the fact that the local, state mandates are the same, because they're not. And as I said, what I'm really here to advocate for is a federal preemption for those companies who are multijurisdiction, who decide to opt out and have something at the federal level for all of their employees, as opposed to having to comply with the patchwork of bills that -- or mandates that could be very significantly different and are amended.

Ms. DELAURO. A national policy would not be a patchwork.

Chairman WALBERG. Thank you for the question and the response. The time has expired.

And before I offer the ranking member closing comments, I have a letter in support of H.R. 4219 from the Progressive Policy Insti-

tute that I ask unanimous consent to insert in the record, without objection.

Hearing none, the letter is inserted.

[The information follows:]



1200 New Hampshire Ave., NW
Suite 575 | Washington, DC 20036
Tel 202 525 3926
Fax 202 525 3941

December 5, 2017

Attn: House Education and Workforce Committee
Subcommittee on Health, Employment, Labor, and Pensions
Re: PPI Letter of Support for H.R. 4219, the Workflex in the 21st Century Act

To Members of the Subcommittee:

To balance the demands of work, family, and the curveballs life throws at us, the Progressive Policy Institute (PPI) has long supported flexible work arrangements for workers, including paid parental, family, and medical leave, flex-time and telecommuting. Not only do such arrangements help workers balance work and family, they are also good for companies. Today's knowledge economy puts a premium on flexible and collaborative workplaces in which workers and employers work together to innovate, boost productivity, respond to rapid market shifts and keep themselves on the leading edge of global competitiveness.

The policy questions we face are these: What's the best way to balance the needs of employers and workers and maximize their joint ability to innovate and compete? How should lawmakers construct paid leave and workplace flexibility policies that foster a common commitment to company success?

PPI believes H.R. 4219, the Workflex in the 21st Century Act, strikes this balance in very creative ways. The legislation grants both part-time and full-time employees the paid leave and workflex benefits they need, like compressed and predictable work scheduling and telework, while providing employers with the flexibility they need to administer these benefits.

For employers looking to attract a talented workforce, the legislation creates a voluntary program of compensable leave based on employment size and the amount of time an employee has spent with the company. Under this voluntary approach, employers would be obliged not only to provide generous leave but also to offer their employees more flexible work arrangements. In return, companies could avoid rigid, one-size-fits-all mandates that make it difficult to create the nimble, responsive workplaces today's economy demands.



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This proposal would not relieve any company of the responsibility to offer paid leave; companies that don't opt-in would continue to be subject to state mandates. What's more, this legislation provides greater guaranteed paid leave than is provided under any current state law and more than nearly all local laws, while also incorporating workflex options and important worker protections.

In contrast to this balanced and collaborative approach, top down mandates alone are unduly rigid and fraught with potential for labor-management conflict. And, as a practical matter, this does not seem like an auspicious time politically for passing a federal paid leave mandate. Even if that were not the case, however, PPI would still favor the collaborative approach proposed by the Workflex in the 21st Century Act. It would yield economic and societal benefits for both employers and workers, creating a "win-win" solution that merits the support of pro-growth progressives.

Sincerely,

A handwritten signature in black ink that reads 'Will Marshall'.

Will Marshall
President
Progressive Policy Institute

Chairman WALBERG. Mr. Sablan, your closing comments.

Mr. SABLAN. Thank you very much, Mr. Chairman.

And I would really like to thank the witnesses for taking time to discuss this important subject with us today.

I'm reminded of two things, if I may. One, the district I represent, the law -- the law of the government, minimum wage is at \$3.05 an hour today. And the federal government -- Congress stepped in and raised the minimum wage in incremental steps. And next year, it would be at \$7.25 an hour. But the government, the law there still is at \$3.05. It shows absolutely no desire to increase it. And they paid a very famous lobbyist millions and millions of dollars to fight the Federal Government from implementing increasing minimum wage for workers.

Another thing I would like to -- as I remember my dad who worked, and when he retired he had over 2,000 hours of sick leave, and he gets, I think, 13 hours a year -- I mean 13 days a year, and he had over a year of sick leave, because he doesn't get sick and so he doesn't call off.

But anyway, workers don't need another false promise. They should not have to choose between caring for themselves or a loved one and earning a paycheck. We have heard today about innovative solutions to this issue that's being developed at the state and local level. But Congress must act to guarantee minimum workplace protections for all working people, while not preempting State and local government.

Mr. Chair, I would like to submit to the record three letters: One from over 100 groups opposing H.R. 4219, the *Workflex in the 21st Century Act*; another letter urging Congress to pass the *Healthy Families Act*; and a third letter is from momsrising.org.

Chairman WALBERG. Without objection. And hearing none, they will be entered.

[The information follows:]

December 5, 2017

Dear Members of Congress:

The undersigned organizations urge you to oppose H.R. 4219, misleadingly named the “Workflex in the 21st Century Act.” This misguided, complicated and confusing proposal would eviscerate state and local progress for working families, erode existing legal protections, threaten local democracy and jeopardize public health. It would allow large corporations to evade state and local laws, creating a giant loophole that would mean uncertainty for workers and an uneven playing field for smaller companies.

I. H.R. 4219 would undermine state and local progress and preempt the effectiveness of state and local innovation – undermining democracy and local control.

Forty locations in the United States, including eight states, have or will soon have paid sick days laws in place. Largely as a result of these laws, more than 13 million working people have gained new access to paid sick days, dramatically improving private sector access with especially large gains for lower-wage workers.¹ H.R. 4219 may take away paid sick days guarantees for these 13 million people and impede progress in other locations. Nationally, nearly one-third of the private sector workforce – at least 37 million workers – do not currently have the right to earn paid sick days.²

H.R. 4219 would stall or reverse state and local progress on paid sick days and fair work schedules. A growing body of research shows that paid sick days laws support working families' economic security,³ individuals' ability to access health care⁴ and the public's health.⁵ Fair scheduling laws do the same, by granting working people the predictability and input into their work schedules that they need to go to medical appointments, arrange child care, advance their education, and care for their families. Paid sick days and fair scheduling standards co-exist with – and often boost – economic and business growth.⁶

H.R. 4219 is an attack on democracy, local governance and innovation. Neither state governments nor the federal government should undermine the ability of voters or their elected representatives to pass public health and safety laws, including laws that establish workplace protections. States and localities have a long history of serving as laboratories, spearheading public policies that lead to national standards. H.R. 4219 would thwart such state and local innovation and undo local election outcomes.

II. H.R. 4219 would create uncertainty, unpredictability and inequities for working families.

H.R. 4219 is not a “paid leave” law, as its proponents claim. Real paid sick time laws provide predictability and a guarantee of dedicated time, ensuring that workers can use the paid sick time they earn to care for themselves and their loved ones when short-term illnesses or preventive care needs arise. H.R. 4219 would give corporations the unilateral option to deny workers the ability to use their time, thus eliminating these guarantees. The paid time off requirements in the bill that proponents claim are “generous” are no more than – and in many cases less than – what companies are offering now.⁷ Once employers

subtract up to six federal holidays from those minimum requirements, as H.R. 4219 allows, employees would be left with as few as six guaranteed paid days off for illness, vacation and personal time. This is nowhere near the time needed for paid family and medical leave – extended time to care for a new child or a serious personal or family illness.

H.R. 4219 would eliminate the certainty and flexibility that real paid sick time and fair scheduling laws provide. H.R. 4219 would deny protections that ensure people have a voice in their work schedules and enough notice of work hours to plan the rest of their lives. It would rob employees of their rights under state and local laws to earn paid sick days and use them as needed – and it would give their employers the power to decide when, whether, for what reason and at what cost employees can use paid time off. Tellingly, according to survey data from the Society and Human Resource Management’s (SHRM’s) affiliate, *the Families and Work Institute*, “38 percent of employers report that supervisors consider employees’ reasons for requesting paid time off when deciding whether they will be allowed to take the requested time off. *So, in over a third of workplaces, employees’ ability to use their paid time off is affected by how or for whom they plan to use it.*”⁸ (Emphasis in original) Right now, many employers do not allow employees to use their sick time to care for a sick family member or to get a physical. H.R. 4219 would allow those practices to continue.

By eliminating important guarantees, H.R. 4219 would disproportionately harm women and families. Many paid sick days laws guarantee workers the right to earn paid “safe” time to deal with the aftermath of domestic or sexual violence. Many also include definitions of family that reflect the diversity of family structures in our country. Fair workweek laws recognize that working people need advance notice of their work schedules, and that people have the right to compensation when employers change schedules at the last minute. These laws set common sense baseline standards that benefit workers and their families, public health and the economy. H.R. 4219 would eliminate these guarantees at employers’ discretion.

H.R. 4219 would eliminate non-retaliation protections for workers who need to take sick time or request work schedules that work for their lives. Paid sick time laws provide guarantees that workers will not face adverse consequences at their jobs for taking paid sick time. This is important because, in the private sector, as of 2011, half (49 percent) of employees reported being subject to an employer’s disciplinary absence control policies.⁹ Many fair scheduling laws similarly protect working people from retaliation for requesting particular work schedules. H.R. 4219 would eliminate protections against this type of retaliation and do nothing to stop employers from disciplining workers who have unpredictable illness-related absences or need to modify their work schedules to accommodate caregiving responsibilities, a second job or other important obligations.

III. Large companies should not be able to write their own rules.

Employers can and should comply with state and local laws. State and local paid sick days and fair scheduling laws are structured similarly to one another and largely have the same key components. Multi-city and multi-state employers are already accustomed to complying with differing state and local laws in various areas, including zoning, wage and hour, business licenses and taxes, and keeping paperwork for local authorities. The answer for

corporations seeking to simplify compliance is to create company-wide policies that match the strongest standards in effect, not to undermine those standards altogether.

H.R. 4219 would disadvantage small businesses. This is a proposal written at the behest of and for the benefit of large corporations, allowing them to buy their way out of compliance with state and local laws. It would hurt the communities and customers that small businesses serve and give larger businesses further advantages in the marketplace.

We urge you to **reject H.R. 4219**. Working families *do* need paid time to care for themselves and their loved ones and flexibility in their jobs, but this unworkable, unfair and inequitable proposal would not guarantee either one. Better solutions, such as a real national paid sick days guarantee and real fair scheduling proposals, exist. True champions of working people across the country will not be fooled by the H.R. 4219 sham.

Sincerely,

9to5, National Association of Working Women
 A Better Balance
 AFL-CIO
 American Association of University Women (AAUW)
 American Civil Liberties Union
 American Federation of State, County and Municipal Employees (AFSCME)
 American Federation of Teachers
 Autistic Self Advocacy Network
 BreastfeedLA
 California Partnership to End Domestic Violence
 Casa de Esperanza: National Latin@ Network for Healthy Families and Communities
 Center for Law and Social Policy (CLASP)
 Center for Popular Democracy
 Center for WorkLife Law
 Coalition of Labor Union Women
 Coalition on Human Needs
 Communications Workers of America (CWA)
 Community Service Society of New York
 Daily Kos
 Demos
 Economic Opportunity Institute
 Economic Policy Institute Policy Center
 The Epilepsy Foundation
 Equal Justice Center
 Equal Rights Advocates
 Faith in Public Life
 Family Values @ Work
 Farmworker Association of Florida
 Food Chain Workers Alliance
 Futures Without Violence
 Greater New York Labor-Religion Coalition
 Human Rights Campaign

Innovation Ohio
Interfaith Worker Justice
Jewish Women International
Jobs With Justice
Labor Project for Working Families
The Leadership Conference on Civil and Human Rights
Legal Aid At Work
Main Street Alliance
Maine Women's Lobby
Make it Work
Mi Familia Vota
Minnesota NOW
MomsRising
Movement Advancement Project
NAACP
National Alliance for Caregiving
National Alliance to End Sexual Violence
National Asian Pacific American Women's Forum (NAPAWF)
National Association of Social Workers
National Center for Transgender Equality
National Council of Jewish Women
National Council of Jewish Women - California
National Employment Law Project
National Employment Lawyers Association
National Institute for Reproductive Health
National Network to End Domestic Violence
National Organization for Women
National Partnership for Women & Families
National Physicians Alliance
National Physicians Alliance - New York Chapter
National Resource Center on Domestic Violence
National Treasury Employees Union
National Women's Law Center
NEAT - the National Equality Action Team
New Jersey Policy Perspective
New Jersey Time to Care Coalition
New Ventures Maine
New York Paid Leave Coalition
Ohio Domestic Violence Network
Organize Florida
People For the American Way
People's Action
Public Justice Center
Sargent Shriver National Center on Poverty Law
SEIU 32BJ
Service Employees International Union (SEIU)
South Florida AFL-CIO
South Florida Interfaith Worker Justice
UltraViolet

Unitarian Universalist Women's Federation
 United Auto Workers (UAW)
 URGE: Unite for Reproductive & Gender Equity
 Women Employed
 Women's Law Project
 Working Families Party
 YWCA San Francisco & Marin
 YWCA USA

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- 1 National Partnership for Women & Families. (2017, November). *Paid Sick Days – State, District and County Statutes*. Retrieved 1 December 2017, from <http://www.nationalpartnership.org/research-library/work-family/psd/paid-sick-days-statutes.pdf>
- 2 U.S. Bureau of Labor Statistics. (2017, July 21). *National Compensation Survey: Employee Benefits in the United States, March 2017* (Table 6). Retrieved 1 December 2017, from <https://www.bls.gov/news.release/pdf/ebs2.pdf>
- 3 Gould, E., & Schieder, J. (2017, June 28). *Work sick or lose pay? The high cost of being sick when you don't get paid sick days*. Economic Policy Institute Publication. Retrieved 1 December 2017, from <http://www.epi.org/publication/work-sick-or-lose-pay-the-high-cost-of-being-sick-when-you-dont-get-paid-sick-days/>. Smith, T.W., & Kim, J. (2010, June). *Paid Sick Days: Attitudes and Experiences*. National Opinion Research Center at the University of Chicago for the Public Welfare Foundation Publication. Retrieved 1 December, from <http://www.nationalpartnership.org/research-library/work-family/psd/paid-sick-days-attitudes-and-experiences.pdf>
- 4 DeRigne, L., Stoddard-Dare, P., & Quinn, L. (2016, March). *Workers Without Paid Sick Leave Less Likely to Take Time Off For Illness or Injury Compared to Those with Paid Sick Leave*. *Health Affairs*, 35(3). Retrieved 1 December, from <https://www.healthaffairs.org/doi/abs/10.1377/hlthaff.2015.0965>. Miller, K., Williams, C. & Yi, Y. (2011, October 31). *Paid Sick Days and Health: Cost Savings from Reduced Emergency Department Visits*. Institute for Women's Policy Research Publication. Retrieved 1 December 2017, from <https://iwpr.org/publications/paid-sick-days-and-health-cost-savings-from-reduced-emergency-department-visits/>
- 5 Asfaw, A., et al. (2012, September). *Paid Sick Leave and Nonfatal Occupational Injuries*. *American Journal of Public Health*, 102(9), e59–e64. Retrieved 1 December 2017, from <http://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2011.300482>; Drago, R., et al. (2010, January 31). *Sick at Work: Infected Employees in the Workplace During the H1N1 Pandemic*. Institute for Women's Policy Research Publication. Retrieved 1 December 2017, from <http://www.iwpr.org/publications/pubs/sick-at-work-infected-employees-in-the-workplace-during-the-h1n1-pandemic>
- 6 National Partnership for Women & Families. (2017, January). *Paid Sick Days: Low Cost, High Reward for Workers, Employers and Communities*. Retrieved 1 December 2017, from <http://www.nationalpartnership.org/research-library/work-family/psd/paid-sick-days-low-cost-high-reward.pdf>
- 7 Society for Human Resource Management. (2017). *SHRM Customized Paid Leave Benchmarking Report*. Society for Human Resource Management Publication. Retrieved 1 December 2017, from <https://www.shrm.org/resourcesandtools/business-solutions/documents/paid-leave-report-all-industries-all-fes.pdf>
- 8 Matos, K., Galinsky, E., & Bond, J. T. (2017). *National Study of Employers*. Society for Human Resource Management, Families and Work Institute and When Work Works Publication. Retrieved 1 December 2017, from <http://whenworkworks.org/downloads/2016-National-Study-of-Employers.pdf>
- 9 Miller, K., Drago, R., & Wilkams, C. (2011). *Paid Sick Days and Employer Penalties for Absence*. Institute for Women's Policy Research Publication. Retrieved 1 December 2017, from <https://iwpr.org/publications/paid-sick-days-and-employer-penalties-for-absence/>

December 5, 2017

Dear Members of Congress:

We, the undersigned organizations, urge you to support the Healthy Families Act (H.R. 1516/S. 636), which would create a national paid sick and safe days standard.

The Healthy Families Act would guarantee working people the ability to earn up to seven paid sick days a year to recover from short-term illnesses, access preventive care, care for a sick family member or seek assistance related to domestic violence, sexual assault or stalking. Without paid sick days, workers are forced to make impossible choices when illness strikes: stay home, lose pay and risk their jobs; or go to work sick, jeopardize their health and spread illness to their co-workers and communities. Paid sick and safe days help keep families financially secure, workplaces and communities healthy and productive, and businesses and the economy strong.

Forty locations in the United States, including eight states, have or will soon have paid sick days laws in place. These laws have helped to dramatically expand paid sick days coverage to more than 13 million workers who did not previously have paid sick time. A strong, growing body of evidence from jurisdictions that have had laws in place for years shows that paid sick days benefit workers and families. These studies also show virtually no adverse effects – and some positive effects – on businesses and local economies.¹

Despite substantial increases in access to paid sick days as a result of new laws, approximately one-third of the private sector workforce in the United States – at least 37 million people – cannot earn paid sick days to use when they get sick.² Millions more cannot earn time to care for a sick child or family member.³ Lower-wage workers, workers of color and hourly workers are least likely to have access to paid sick time.⁴

Unpaid, unprotected days off have stark consequences for working families. For a family without paid sick days, just 3.3 days of lost pay due to illness are equivalent to an entire month of health care, on average, and 4.5 days are equivalent to an entire month of food.⁵ Nearly one-quarter of U.S. adults (23 percent) report they have lost a job or have been threatened with job loss for taking time off work due to illness or to care for a sick child or relative.⁶

Paid sick days make business and economic sense. When sick workers are able to stay home, the spread of disease slows and workplaces are both healthier and more productive. Paid sick days also reduce “presenteeism,” the productivity lost when employees work sick, which is estimated to cost our national economy approximately \$160 billion annually (\$219.8 billion after adjusting for inflation) and surpasses the cost of absenteeism.⁷ Paid sick days also reduce workplace injuries: Workers who earn paid sick days are 28 percent less likely than workers who don’t earn paid sick days to be injured on the job – with an even greater difference among workers in high-risk occupations.⁸

Grave public health consequences can result when workers do not have paid sick days. Workers in jobs that require frequent contact with the public, including those in food

preparation and service, personal home care and child care, are among the least likely to have paid sick days and the most likely to be unable to afford to take an unpaid day away from work.⁹ Without paid sick days, workers are forced to take unpaid leave or work sick. Workers without paid sick days are more likely to report going to work with a contagious illness like the flu.¹⁰ This puts workers, customers and businesses in danger.

Ensuring all workers can earn paid sick days would significantly reduce health care expenditures. People without paid sick days are more likely to seek treatment at an emergency department because they can't take time off to get care during regular business hours.¹¹ If all workers had paid sick days, 1.3 million emergency room visits could be prevented each year, saving \$1.1 billion annually. More than half of these savings — \$517 million — would accrue to taxpayer-funded health insurance programs, such as Medicare, Medicaid and the State Children's Health Insurance Program.¹² Workers with paid sick days are more likely to get regular cancer screenings and preventive care,¹³ holding down health care costs and improving long-term health.

Paid sick days enable working parents to care for their children when they are sick — shortening recovery time and reducing community contagion. Unfortunately, more than half of working parents are unable to earn at least five paid sick days to use to care for a sick child.¹⁴ Parents without paid sick days are nearly twice as likely as parents with paid sick days to send a sick child to school or day care.¹⁵ When parents have no choice but to do so, children's health and educational attainment is put at risk — as is the health of classmates, teachers, school staff and child care providers.

Women are disproportionately affected by the nation's lack of paid sick days, which jeopardizes the economic stability of families increasingly dependent on women's wages. Women make up nearly half the workforce¹⁶ and nearly two-thirds of U.S. mothers are breadwinners or co-breadwinners for their families.¹⁷ Yet, overwhelmingly, mothers still have primary responsibility for selecting their children's doctors, accompanying children to appointments and getting them recommended care.¹⁸ Moreover, nearly four in 10 employed mothers (39 percent) say they alone must miss work when a sick child needs to stay home, compared to 3 percent of working fathers. Among these mothers, 60 percent are not paid when they take that time, up significantly from 45 percent in 2004.¹⁹

Like paid sick days, paid "safe" days are critical for workers' productivity, security and well-being. Ninety-six percent of employed survivors of domestic violence say they experience problems at work related to the violence.²⁰ And one-quarter to one-half of domestic violence survivors report losing a job in part due to the violence.²¹ Because survivors of domestic violence are at increased risk of harm during and shortly after separating from an abusive partner,²² it is essential that they be able to find shelter, file restraining orders, attend court dates or receive counseling to prevent further abuse and continue working.

The Healthy Families Act would strengthen workers and families, businesses and the economy. It would guarantee workers across the country the right to earn paid sick and safe days no matter where they live, bringing the rest of the United States in line with the states and cities that have passed these laws and much of the rest of the world.

We urge you to demonstrate your strong commitment to our nation's working families by supporting the Healthy Families Act. Thank you.

Sincerely,

9to5, National Association of Working Women
A Better Balance
AFL-CIO
American Association of University Women (AAUW)
American Civil Liberties Union
American Federation of State, County and Municipal Employees (AFSCME)
American Federation of Teachers
The Arc of the United States
Autistic Self Advocacy Network
BreastfeedLA
California Partnership to End Domestic Violence
Casa de Esperanza: National Latin@ Network for Healthy Families and Communities
Center for Law and Social Policy (CLASP)
Center for Popular Democracy
Center for Public Policy Priorities
Center for WorkLife Law
Coalition for Social Justice
Coalition of Labor Union Women
Coalition on Human Needs
Communications Workers of America (CWA)
Community Service Society of New York
Daily Kos
Demos
Economic Opportunity Institute
The Epilepsy Foundation
Equal Justice Center
Equal Rights Advocates
Faith in Public Life
Family Values @ Work
Farmworker Association of Florida
First Focus Campaign for Children
Florida Institute on Research and Education (FIRE)
Food Chain Workers Alliance
Futures Without Violence
Human Rights Campaign
Innovation Ohio
Interfaith Worker Justice
Jobs With Justice
Labor Project for Working Families
The Leadership Conference on Civil and Human Rights
Legal Aid At Work
Main Street Alliance
Maine Women's Lobby

Make it Work
 Mi Familia Vota
 Minnesota NOW
 MomsRising
 Mothering Justice
 Movement Advancement Project
 NAACP
 National Alliance for Caregiving
 National Alliance to End Sexual Violence
 National Asian Pacific American Women's Forum (NAPAWF)
 National Association of Social Workers
 National Center for Lesbian Rights
 National Center for Transgender Equality
 National Council of Jewish Women
 National Employment Law Project
 National Employment Lawyers Association
 National Institute for Reproductive Health
 National Network to End Domestic Violence
 National Organization for Women
 National Partnership for Women & Families
 National Physicians Alliance
 National Physicians Alliance - New York Chapter
 National Resource Center on Domestic Violence
 National Women's Law Center
 NEAT - the National Equality Action Team
 NETWORK Lobby for Catholic Social Justice
 New Jersey Policy Perspective
 New Jersey Time to Care Coalition
 New York Child Care Coalition
 New York Paid Leave Coalition
 Ohio Domestic Violence Network
 PathWays PA
 Pennsylvania Council of Churches
 People For the American Way
 People's Action
 Public Justice Center
 Sargent Shriver National Center on Poverty Law
 SEIU 32BJ
 Service Employees International Union (SEIU)
 South Florida Interfaith Worker Justice
 SWPA National Organization for Women
 U.S. Breastfeeding Committee
 UltraViolet
 Unitarian Universalist Women's Federation
 United Auto Workers (UAW)
 URGE: Unite for Reproductive & Gender Equity
 Women Employed
 Women's Law Project
 Working Families Party

Young Invincibles YWCA USA

- 1 National Partnership for Women & Families. (2017, January). *Paid Sick Days: Low Cost, High Reward for Workers, Employers and Communities*. Retrieved 30 November 2017, from <http://www.nationalpartnership.org/research-library/work-family/psd/paid-sick-days-low-cost-high-reward.pdf>
- 2 U.S. Bureau of Labor Statistics. (2017, July 21). *National Compensation Survey. Employee Benefits in the United States, March 2017* (Table 6). Retrieved 30 November 2017, from <https://www.bls.gov/news.release/pdf/ebs2.pdf>
- 3 Ibid.
- 4 Xia, J., Hayes, J., Gault, B., & Nguyen, H. (2016, February 17). *Paid Sick Days Access and Usage Rates Vary by Race/Ethnicity, Occupation, and Earnings*. Institute for Women's Policy Research publication. Retrieved 30 November 2017, from <https://iwpr.org/wp-content/uploads/wpallimport/files/iwpr-export/publications/B356.pdf>
- 5 Gould, E., & Schieder, J. (2017, June 28). *Work sick or lose pay? The high cost of being sick when you don't get paid sick days*. Economic Policy Institute publication. Retrieved 30 November 2017, from <http://www.epi.org/publication/work-sick-or-lose-pay-the-high-cost-of-being-sick-when-you-dont-get-paid-sick-days/>
- 6 Smith, T.W., & Kim, J. (2010, June). *Paid Sick Days: Attitudes and Experiences*. National Opinion Research Center at the University of Chicago for the Public Welfare Foundation publication. Retrieved 4 September 2017, from <http://www.nationalpartnership.org/research-library/work-family/psd/paid-sick-days-attitudes-and-experiences.pdf>
- 7 Stewart, W., et al. (2003, December). *Lost Productive Health Time Costs from Health Conditions in the United States: Results from the American Productivity Audit*. *Journal of Occupational and Environmental Medicine*, 45. Retrieved 30 November, from <http://www.nationalpartnership.org/research-library/work-family/psd/lost-productive-work-time-american-productivity-audit.pdf> (Unpublished calculation based on \$225.8 billion annually in lost productivity, 71 percent due to presenteeism). Inflation calculation for 2017 dollars based on calculation of \$160.32 billion in 2002 dollars using U.S. Inflation Calculator available at <http://www.usinflationcalculator.com>
- 8 Astaw, A., et al. (2012, September). *Paid Sick Leave and Nonfatal Occupational Injuries*. *American Journal of Public Health*, 102(9), e59-e64. Retrieved 30 November 2017, from <http://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2011.300482>
- 9 See note 4.
- 10 See note 6.
- 11 Ibid.
- 12 Miller, K., Williams, C., & Yi, Y. (2011, October 31). *Paid Sick Days and Health: Cost Savings from Reduced Emergency Department Visits*. Institute for Women's Policy Research publication. Retrieved 30 November 2017, from <http://www.iwpr.org/publications/pubs/paid-sick-days-and-health-cost-savings-from-reduced-emergency-department-visits/>
- 13 Peigins, L.A., Soman, A., Berkowitz, Z., & White, M.C. (2012, July 12). *The lack of paid sick leave as a barrier to cancer screening and medical care-seeking: results from the National Health Interview Survey*. *BMC Public Health* 12(520). Retrieved 30 November 2017, from <http://www.biomedcentral.com/content/pdf/1471-2458-12-520.pdf>
- 14 Smith, K., & Schaefer, A. (2012, June). *Who Cares for the Sick Kids? Parents' Access to Paid Time to Care for a Sick Child*. Carsey Institute at the University of New Hampshire publication. Retrieved 30 November 2017, from <https://carsey.unh.edu/publication/who-cares-sick-kids-parents-access-paid-time-care-sick-child>
- 15 See note 6.
- 16 U.S. Bureau of Labor Statistics. (2017, November 3). *Table A-1. Employment status of the civilian population by sex and age*. Retrieved 30 November 2017, from <https://www.bls.gov/news.release/empsit.t01.htm>
- 17 Glynn, S. J. (2016, December). *Breadwinning Mothers Are Increasingly the U.S. Norm*. Center for American Progress publication. Retrieved 30 November 2017, from <https://www.americanprogress.org/issues/women/reports/2016/12/19/295203/breadwinning-mothers-are-increasingly-the-u-s-norm/>
- 18 Ranju, U., & Salganicoff, A. (2014, October). *Balancing on Shaky Ground: Women, Work, and Family Health*. Kaiser Family Foundation publication. Retrieved 30 November 2017, from <http://files.kff.org/attachment/balancing-on-shaky-ground-women-work-and-family-health-data-note>
- 19 Ibid.
- 20 Ridley, E., et al. (2005, October). *Domestic Violence Survivors at Work: How Perpetrators Impact Employment*. Maine Department of Labor and Family Crisis Services publication. Retrieved 30 November 2017, from http://www.maine.gov/labor/labor_stats/publications/dvreports/survivorstudy.pdf
- 21 U.S. General Accounting Office, Health, Education, and Human Services Division. (1998, November). *Domestic Violence Prevalence and Implications for Employment among Welfare Recipients* (GAO/HEHS-99-12). Retrieved on 4 September 2017, from <http://www.gao.gov/archive/1999/he99012.pdf>
- 22 Campbell, J. C., Webster, D., Kozlowski-McLain, J., et al. (2003). *Risk Factors for Femicide in Abusive Relationships: Results From a Multisite Case Control Study*. *American Journal of Public Health*, 93, 1089-1097. Retrieved 30 November 2017, from <http://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.93.7.1089>

MomsRising.org

December 5, 2017

The Honorable Virginia Foxx, Chair
House Committee on Education and the Workforce
2176 Rayburn House Office Bldg. Washington, DC 20515

The Honorable Bobby Scott, Ranking Member
House Committee on Education and the Workforce
2176 Rayburn House Office Bldg. Washington, DC 20515

The Honorable Tim Walberg, Subcommittee Chairman
House Education & Workforce Subcommittee on Health, Employment, Labor, and Pensions
2176 Rayburn House Office Bldg. Washington, DC 20515

The Honorable Gregorio Kilili Camacho Sablan, Subcommittee Ranking Member
House Education & Workforce Subcommittee on Health, Employment, Labor, and Pensions
2176 Rayburn House Office Bldg. Washington, DC 20515

Dear Committee Chair Foxx, Subcommittee Chairman Walberg, Committee Ranking Member Scott, Subcommittee Ranking Member Sablan, and Members of the Subcommittee:

On behalf of MomsRising and our one million members nationwide, I submit this letter for the record in connection with the December 6th hearing on "Workplace Leave Policies: Opportunities and Challenges for Employers and Working Families," being heard by the Education and Workforce Subcommittee on Health, Employment, Labor, and Pensions.

MomsRising strongly opposes H.R. 4219, misleadingly named the "Workflex in the 21st Century Act." This proposal would set a dangerous precedent by undermining the democratic process through which voters, as well as state and local governments, passed meaningful paid sick days laws in forty locations, including eight states.

H.R. 4219 would enable employers to evade state and local paid sick days laws, in exchange for offering non-guaranteed time off, which will in turn threaten the security of paid sick time that more than 13 million people have gained access to thanks to the innovation and leadership of local governance. It would give corporations the power to decide when, whether, for what reason and at what cost employees can use paid time off.

Proponents of H.R. 4219 wrongly claim that it is a "paid leave" proposal, but it is in fact merely an attempt by corporate interests to preempt state and local laws that

boost working families. The bill allows employers to subtract up to six federal holidays from the minimum PTO requirements it outlines, leaving workers with as few as six paid days off for illness, vacation and personal time. Six days is nowhere near enough time for paid family and medical leave – paid time off to welcome a new child or care for a seriously ill family member.

We urge you to reject H.R. 4219 and instead, support The Healthy Families Act (H.R. 1516) and The FAMILY Act (H.R. 947) – legislation that would respectively offer meaningful and guaranteed access to paid sick days and paid family & medical leave.

Sincerely,

Kirstin Rowe-Finkbeiner
Executive Director/CEO & Co-Founder
MomsRising.org • MamásConPoder.org

CC: Members, Committee on Education and the Workforce

Mr. SABLAN. Thank you.

And, Mr. Chairman. I urge this Committee to take up the policies that are based on the successes of the state and local level, like the *Healthy Families Act*, the *Schedules That Work Act* and the *FAMILY Act*; solutions that would actually help workers and their families succeed.

And if I may, I urge -- I'm actually a little happy that we have -- we may actually have an ally in the White House that is supporting some kind of forward movement on family leave.

So, Mr. Chairman, thank you for holding today's hearing, and thank you -- really, thank you very much for being here today.

Chairman WALBERG. Well, I thank the gentleman. And you're absolutely right. And I think that's why these hearings are taking place.

And, Ms. DeLauro, delighted to have you here today. If you could just get some passion about your legislation, it would go a long way.

I want to thank the witnesses for being here too. You've taken your time. You've prepared. It's no easy answer, but, hey, it's the best way to live in America. No easy answers. We have got the choices an opportunities that go on.

And this is just another of our hearings, and I think it is because we have questions in this area and we have needs. The questions such as can employers be trusted to make good paid time off decisions for both themselves and their employees? Or can we develop productive paid time off legislation that fosters good relations between employees and employers, while not violating our constitutional federalism in regards to the state and local primacy? And that is an important question to consider.

While no one local or state paid time-off policy may be a back-breaker for a national or a global business, we certainly ought to at least consider how we can keep from unnecessary encumbrments that take away options and creativity and sensitivity to the flexibility of needs of human beings that are different and their situations that are different.

In the end, the robust competition today that we see, I certainly see in my Seventh District of Michigan, competition for qualified employees is probably the strongest motivator for employers to put paid time off policies, as well as many other policies in play in order to compete for employees in this workforce. And so it's good that we are now having these discussions in the marketplace, in the House, in the Senate, in the White House, as has been mentioned, truthfully, and both sides of the aisle.

And I want to commit myself to continue this toward the best solution that we can find that meets the needs of growing economy, growing options for employees and employers, growing as best care as we can give in their ever-developing process in the marketplace. And certainly something that we wrestle with rightly so on the Education and Workforce Committee, because they go hand in hand, and we want to produce growth.

So thank you for attention to this hearing today. We will look forward to the future. And with no other testimony or issues before the subcommittee at this time, it stands adjourned.

[Additional submission by Ms. Bonamici follows:]



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December 15, 2017

The Honorable Tim Walberg, Chairman
The Honorable Gregorio Sablan, Ranking Member
US House Education and Workforce Committee
Subcommittee on Health, Education, Labor, and Pensions
2176 Rayburn House Office Building
Washington, DC 20515

Re: Testimony for Hearing on Workplace Leave Policies: Opportunities and Challenges for Employers and Working Families

Dear Chairman Walberg, Ranking Member Sablan, and Members of the Committee:

On behalf of the Human Rights Campaign's nearly 3 million members and supporters nationwide, I submit written testimony pursuant to the subcommittee's hearing on Workplace Leave Policies: Opportunities and Challenges for Working Families, held on December 6, 2017. As the nation's largest organization working to achieve equal rights for the lesbian, gay, bisexual, transgender, and queer (LGBTQ) communities, HRC believes that LGBTQ people and all Americans should have access to health care, including time to meet their own health care needs and those of their families. Therefore, we urge the subcommittee to consider and pass the Healthy Families Act (H.R. 1516), a critical bill which would provide workers the opportunity to earn a minimum of seven paid sick days (56 hours) per year to care for themselves or their families. We oppose legislation which would undermine paid sick leave for workers, such as the misnamed Workflex in the 21st Century Act (H.R. 4219).

The United States is the only industrialized nation that offers no paid medical leave for working families. This policy is unconscionable and misguided – it subjects workers and their families to terrible consequences merely for being sick, including unemployment and bankruptcy; it undermines the health of workers and their families; it penalizes low income workers; and it disadvantages American businesses, all while having a negative impact our economy. In 2003, the American Productivity Audit found that 'presenteeism'—the practice of employees coming to work despite illness—costs \$180 billion annually in lost productivity.¹ Studies published in the Journal of Occupational and Environmental Medicine, Journal of Management Studies, and the Harvard Business Review show that presenteeism is a larger productivity drain than either absenteeism or short-term disability. These costs will continue to increase due to the aging population of the US.

¹ Stewart et al., *Lost Productive Work Time Costs From Health Conditions in the United States: Results From the American Productivity Audit*, 45 Journal of Occupational and Environmental Medicine 1234 (Dec. 2003).



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The Bureau of Labor Statistics reports that about 40 million workers, nearly 40% of the country's private-sector workers, do not have paid sick leave.² Among private-sector workers earning wages in the lowest 25th percentile, only 29% are offered paid sick leave by their employers. Lack of paid sick leave can have an especially negative impact on low-income workers, who may be less able to access alternatives and lack other employment options. Lack of paid sick leave also negatively affects public health, leading to the spread of infectious disease and presenting obstacles to preventive care. Workers without paid sick leave are likely to go to work sick, and parents without sick leave are unable to care for their children, forcing them to attend school while sick.³

As with other working Americans, paid sick leave is a critical issue for LGBTQ people and their families. Studies show that in America, nearly 4% or more than 12 million people identify as LGBTQ,⁴ an estimated 3 million LGBTQ people have had a child, and as many as 6 million people have an LGBTQ parent.⁵ LGBTQ individuals and couples form families through adoption, birth, and surrogacy. Like other working families, in the absence of paid leave makes it impossible for many LGBTQ people to take time to care for themselves and their children.

The lack of paid sick leave has an even greater negative impact on LGBTQ people in poverty, and LGBTQ communities, particularly LGBTQ people of color, are more vulnerable to poverty than the general population.⁶ Due to systemic discrimination in employment, education, and housing, transgender people are more likely to live in poverty or live paycheck to paycheck than compared to the general population.⁷ Without paid leave many transgender people are forced to forgo lifesaving gender affirming care and treatment. Similarly, many parents and spouses of transgender individuals seeking transition-related care are forced to choose between caring for their loved one and keeping their livelihoods.

² US Bureau of Labor Statistics. *Employee benefits in the United States, March 2012, Table 6. Selected paid leave benefits.* Available at <http://www.bls.gov/news.release/ebs2.nr0.htm>.

³ Gould E, Filion K, Green A, *The Need for Paid Sick Days*, EPI Briefing Paper #319 (June 29, 2011), available at <http://www.epi.org/files/temp2011/BriefingPaper319-2.pdf>.

⁴ Gates, GJ, *How Many People Are Lesbian, Gay, Bisexual, and Transgender?*, The Williams Institute (Apr. 2011), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-How-Many-People-LGBT-Apr-2011.pdf>.

⁵ Gates GJ, *LGBT Parenting in the United States*, The Williams Institute (Feb. 2013), available at <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Parenting.pdf>.

⁶ See Badgett ML, Durso LE, Schreebaum A, *New Patterns of Poverty in the Lesbian, Gay and Bisexual Community*, The Williams Institute (June 2013), available at <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGB-Poverty-Update-Jun-2013.pdf>.

⁷ See James SE, Herman JL, Keisling M, Mottet L, Anafi M, *The Report of the 2015 U.S. Transgender Survey*, National Center for Transgender Equality (2016), available at <http://www.transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf>.



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Moreover, gay and bisexual men and transgender women, particularly in communities of color, continue to be disproportionately impacted by the HIV epidemic.⁸ There is still no cure for the disease, and access to care is essential to ensure that individuals living with HIV/AIDS are able to live longer, healthier lives. Without paid leave, individuals living with HIV and their caregivers are often forced to navigate an incomplete safety net— choosing between receiving or giving critical care and a paycheck.

For LGBTQ people, lack of paid sick leave is compounded by the pervasive discrimination they encounter in the provision of health care. According to an in-depth survey concerning health care discrimination against LGBTQ people and people living with HIV, more than half of all respondents reported that they have experienced at least one of the following types of discrimination in care: being refused needed care; health care professionals refusing to touch them or using excessive precautions; health care professionals using harsh or abusive language; being blamed for their health care status; or health care professionals being physically rough or abusive.⁹ LGBTQ people of color and people with lower socioeconomic status experience even higher levels of discriminatory and substandard care. Many members of the LGBTQ community have a “high degree of anticipation and belief that they w[ill] face discriminatory care” which ultimately causes many people to not seek the essential care. For many transgender and gender-nonconforming people there is even greater likelihood of negative treatment from health care professionals.¹⁰ Lack of paid sick leave adds another challenge to the already numerous barriers to health care services for LGBTQ people.

Congress is best positioned to address these issues by creating a baseline of paid sick leave for the nation. Under the Healthy Families Act, paid sick time could be used by employees to care for themselves, or to care for a child, a parent, a spouse or “any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.” While the legislation does not explicitly name same-sex partners or spouses, this inclusive language makes leave available for the American family in all of its diverse forms, including those in the LGBTQ community. Paid sick leave will relieve workers from having to make harrowing decisions between caring for

⁸ U.S. Dept. of Health and Human Services, *HIV.gov, U.S. Statistics*. (Dec. 5, 2017), available at <https://www.hiv.gov/hiv-basics/overview/data-and-trends/statistics>.

⁹ Lambda Legal, *When Health Care Isn't Caring, Lambda Legal's Survey on Discrimination Against LGBT People and People Living with HIV* (2010), available at http://www.lambdalegal.org/sites/default/files/publications/downloads/whcic-report_when-health-care-isnt-caring_1.pdf (explaining that “almost 56 percent of lesbian, gay or bisexual (LGB) respondents had at least one of these experiences; 70 percent of transgender and gender-nonconforming respondents had one or more of these experiences; and nearly 63 percent of respondents living with HIV experienced one or more of these types of discrimination in health care. In almost every category, transgender and gender-nonconforming respondents reported higher levels of discrimination by health care providers.”).

¹⁰ Grant JM, et al., *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, National LGBTQ Task Force and National Center for Transgender Equality (2011), available at http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf.



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themselves or a loved one and losing necessary income, or even losing their job altogether. The bill would also benefit employers that suffer revenue losses due to lost productivity.

While Congress has not yet acted to protect workers and their families, 8 states and at least 32 local jurisdictions have passed laws requiring employers to provide at least some paid sick leave. Although Congress can and should create a baseline level of paid sick leave for the country, it must not undermine these community-established workplace health laws with a mandated one-size-fits-all approach. We strongly oppose H.R. 4219, the so-called Workflex in the 21st Century Act. This ill-considered bill would allow businesses to invalidate these state and local paid sick time requirements, undermine federal and state overtime requirements, and do little, if anything, to provide workers and their families with meaningful paid sick leave.

We thank the subcommittee for considering the critically important issue of paid sick leave in America. Paid sick leave is an essential component of health care – it makes our workplaces healthier and safer, it supports workers and their families, it benefits the economy, and it has even greater significance for vulnerable populations like LGBTQ people. As a society we must ensure that workers and their families can take time to receive health care and take care of each other without facing negative consequences such as unemployment or bankruptcy. We believe that, over time, more states and localities will understand this is the right thing to do and pass paid sick leave requirements. Congress can and should facilitate this process and support American workers and their families by passing the Healthy Families Act.

Sincerely,

A handwritten signature in cursive script that reads "David Stacy".

David Stacy
Government Affairs Director
Human Rights Campaign

[Questions submitted for the record and their responses follow:]

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May 3, 2018

Angela Schaefer
 Vice President of Human Resources
 Safety National
 1832 Schuetz Road
 St. Louis, MO 63146

Dear Ms. Schaefer:

Thank you again for testifying at the December 6, 2017, Subcommittee on Health, Employment, Labor, and Pensions hearing on "Workplace Leave Policies: Opportunities and Challenges for Employers and Working Families."

Please find enclosed additional questions submitted by a Committee member following the hearing. Please provide a written response no later than May 25, 2018, for inclusion in the official hearing record. Your response should be sent to Olivia Voslow of the Committee staff. She can be contacted at (202) 225-7101.

We appreciate your continued contribution to the work of the Committee.

Sincerely,

Tim Walberg
 Chairman
 Subcommittee on Health, Employment, Labor, and Pensions

Enclosure

Questions for the Record
Hearing: "Workplace Leave Policies: Opportunities and Challenges for Employers and Working Families"
December 6, 2017

Ranking Member Scott (VA)

1. Ms. Schaefer, below is an excerpt of your testimony from the December 6th hearing regarding the SHRM-endorsed bill *Workflex in the 21st Century Act* (H.R. 4219):

"Mr. Scott. Okay. Now, if there is a local law and, say, as I understand it, you have to have up to 249 -- 50 to 249 employees, you have to have 15 days off, and that would include paid holidays. So if you have 9 vacation days and 6 holidays, do I understand this that you would not have to require any sick leave at all?

Ms. Schaefer. I don't have the answer to those specifics.

Mr. Scott. It appears that if there is no State law, you don't have to do anything. If there is a State law, you can have worse benefits and exempt yourself from the better benefits on the local law. Is there any employee, under 4219, who would actually be better off?

Ms. Schaefer. They would not receive less than what they are already receiving.

Mr. Scott. Excuse me?

Ms. Schaefer. The employees would not receive less than the leave they're --

Mr. Scott. No, no. That's the whole point of exemption. If you have a plan and the local law requires more generous benefits, you would be exempted from the local law and you would be able to get away with worse benefits. That's what the exemption means. Is that right?

Ms. Schaefer. That's not my understanding."

- a. In the first question (above), I outlined a scenario regarding the potential impact to employees involving an employer with 50 to 249 employees who adopts a qualified plan under H.R. 4219. The bill states that for the plan to be "qualified", the employer would have to provide a minimum of 15 "compensable leave" days for employees with 5 years or more of service. The bill also allows employers to deduct from those 15 days, 6 days of paid holidays, and the employer could provide the 9 remaining days as paid vacation days. The question above is whether the employer would have to provide paid sick days in addition. In response, you testified that you did not have the "answer to those specifics". With the benefit of time to review this question, is it your testimony that that beyond the 15 days provided in this scenario, employers in a qualified plan would not have to provide paid sick leave required by a local law?
- b. With regards to the final question (above), you testified that it was not your "understanding" that if an employer adopts a qualified plan under H.R. 4219 with the minimum required level of compensable leave, and the local law requires more

generous benefits, then the employer could provide worse benefits than the employees could receive pursuant to a local law. What in this legislation guarantees that workers would not result in getting worse benefits than provided under state or local laws?

- c. A Society for Human Resource Management (SHRM) fact sheet on the *Workflex in the 21st Century Act* (issued on Nov 2, 2017) states "...under this legislation, this ERISA-covered plan would pre-empt state and local paid leave and workflex laws." However, your testimony suggests that state and local laws would apply, and workers would not receive a lesser paid leave benefit than is provided under a state or local law. Do you wish to modify your testimony to clarify that employees could receive a lesser paid leave benefit due to the pre-emption provisions in H.R. 4219?
2. If an employer maintains a workflex plan in a state which enacted a paid family or medical leave insurance system (e.g. California, New Jersey and Rhode Island), would those benefits required by state law fall under the definition of "compensable leave" under the H.R. 4219?
3. SHRM's web site states that H.R. 4219 is "based on concepts originally developed by SHRM." Please describe whether SHRM recommended levels of compensable leave in H.R. 4219? Were the recommended levels included in the text of the bill? If not, how did they differ from what was included?
4. Section 802(a)(1) of H.R. 4219 contains a table which sets forth minimum leave requirements based on employer size and employee tenure.
 - a. What was the basis for the periods of minimum leave set forth in this table?
 - b. Was this based upon evidence that these allocations represent the appropriate duration of paid leave and sick days for the workers in the typical companies of these sizes?
5. Under section 802(c) of H.R. 4219, the employer can "...determine whether the use of compensable leave at the time requested by an employee would unduly disrupt the operations of the employer; and determine whether an employee may use compensable leave in full-day or partial-day increments." Under these provisions, does an employer have the ultimate discretion to determine when an employee can take the compensable leave offered? Does the employee have discretion to take compensable time when she needs it? If so, where is that right granted in the text of the bill?
6. Under H.R. 4219, when an employee takes compensable leave, does the legislation designate what percentage of their daily rate of pay they would receive? Does it require 100% of the pre-tax daily rate, or can an employer pay less? Is there a minimum percentage of regular pay that must be paid for leave to be deemed "compensable leave" as part of a qualified plan?



June 21, 2018

The Honorable Tim Walberg
Chairman
Subcommittee on Health, Employment, Labor and Pensions
U.S. House of Representatives
2176 Rayburn House Office Building
Washington, D.C. 20515

Re: May 3, 2018 Letter addressing Ranking Member Scott's Questions for the Record

Dear Chairman Walberg,

Thank you for the opportunity to clarify my remarks from the December 6, 2017 hearing that examined "Workplace Leave Policies: Opportunities and Challenges for Employers and Working Families." I enumerated my responses to reflect Ranking Member Scott's questions.

1A) Under H.R. 4219, a participating employer would be required to provide employees with a minimum standard of compensable leave to be used for any reason they choose to use it—sick, vacation or personal reasons. SHRM believes employees should determine how to utilize their compensable leave that best fits the needs of their work, family and personal obligations.

1B) The compensable leave required of participating employers under this proposal far exceeds all state mandated sick leave, even for the smallest employers of 0-50 employees with less than five years' experience. Under state and local paid sick leave requirements, employees only utilize their sick leave for three or four qualifying instances. H.R. 4219 provides access to guaranteed leave to be utilized under any circumstances that best fits the needs of the employee.

1C) Ranking Member Scott, your question appears to pertain to those states and localities that have mandated paid sick leave laws. In the situation where an employer is covered under a state or local paid leave law, an employee is either covered by those state and local laws or by a participating employer's plan. Under no circumstance, do those employees lose access to paid sick leave.

2) No. H.R. 4219 does not preempt the four states' parental paid leave programs you reference in your question.

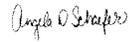
3) SHRM was part of a stakeholder group that worked with Representative Walters that reflected different industries and different sized organizations that operate throughout the country. The amount of compensable leave outlined in the bill was drawn not only through this input, but from SHRM's research of their members' paid time offerings.

4) As stated above, the table sets forth the amount of leave consistent with SHRM survey data as well as the Bureau of Labor Statistics and interested stakeholders. The amount of compensable leave increases with employee tenure, consistent with the data and other traditional employer policies.

5) Under the bill, the employer has limited discretion to deny use of leave by an employee. The legislation adopts the "unduly disrupt" standard that has been codified in the Family and Medical Leave Act, which states the employee "(A) Shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employer..." This is also the same standard in the U.S. House of Representatives introduced Healthy Families Act and in many state and local leave laws currently in place.

6) Under the legislation, it is intended that the employee will receive the same level of pay as they would if they worked that day.

Respectfully Submitted,



Angela D. Schaefer, SHRM-SCP

[Whereupon, at 12:07 p.m., the subcommittee was adjourned.]

