



Testimony of Debra L. Ness
For House Education and Labor Committee, Subcommittee on Workforce Protections
Hearing on the Healthy Families Act and the FIRST Act
June 11, 2009

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

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

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

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

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

¹ Center for American Progress, http://www.americanprogress.org/issues/2009/05/econ_snapshot_0509.html, May 2009.

The FMLA was Only a First Step

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

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

First, the FMLA does not address many workers' day-to-day health needs. FMLA coverage for illnesses is limited to serious, longer-term illnesses and the effects of long term chronic conditions. The law does not offer time off to deal with common illnesses that do not meet the FMLA standard of "serious" illness. It also does not offer time off for routine medical visits.

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

Workers Need Paid Sick Days

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

² DOL 2000 Report at 2-16.

³ *Id.* at 4-5—4-6.

⁴ Vicky Lovell, Institute for Women's Policy Research, *Women and Paid Sick Days: Crucial for Family Well-Being*, 2007.

⁵ Economic Policy Institute, *Minimum Wage Issue Guide*, 2007, www.epi.org/content.cfm/issueguides_minwage.

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

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

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

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

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

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

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

⁶ Vicky Lovell, Institute for Women's Policy Research, *No Time to be Sick*, 2004.

⁷ Kaiser Family Foundation, "Women, Work and Family Health: A Balancing Act," Issue Brief, April 2003.

⁸ Palmer S.J., *Care of sick children by parents: A meaningful role*. J Adv Nurs. 18:185, 1993.

⁹ Vicky Lovell, Institute of Women's Policy Research, *Valuing Good Health: An Estimate of Costs and Savings for the Healthy Families Act*, 2005.

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

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

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

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

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

- Heather from Cedar Crest, New Mexico explained to us: “In October, I got very sick with diverticulitis. My doctor put me on bed rest for two weeks. While I was out, my boss hounded me to come back, but I was way too sick. I told him I would be back as soon as I could. I was not receiving sick pay at all. When I did go back to work early, he fired me and told me he needed someone he could count on. I worked for this man for two years. I was shocked. Sometimes things happen and you get sick. How are you to foresee these things?”
- Noel from Bellingham, Washington wrote to us: “I had to work while having bouts of awful bronchitis and walking pneumonia. I got no time off at all even when I was in severe pain, coughing up phlegm or vomiting. Instead I had to act like I wasn't sick, and keep up the same standards and smiling face... I couldn't take unpaid days off from work because I couldn't afford to do that. I needed the money to pay for things like rent and food. When my quality of work suffered substantially from having to go to work while so sick, I was fired from my job because according to my then-supervisor, I did not create a happy environment for the customers.”

As our population ages and more workers care for elderly parents, we expect the number of workers risking their jobs to only increase. Caregiving takes a financial toll on working people, especially when they have to take unpaid time off from work. More than 34 million caregivers provide assistance at the weekly equivalent of a part-time job (more than 21 hours), and the estimated economic value of this support is roughly equal to \$350 billion.¹⁰ Among caregivers,

¹⁰ Gibson, Mary Jo and Houser, Ari, “Valuing the Invaluable: A New Look at the Economic Value of Family Caregiving.” AARP, June 2007.

98 percent reported spending on average \$5,531 a year, or one-tenth of their salary, for out-of-pocket expenses.¹¹ Those costs are compounded when they must forfeit pay to provide care.

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

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

Workers Need Paid Family and Medical Leave

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

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

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

We heard from a woman in Colorado whose experience illustrates the devastation of not receiving wages while on leave. She explained: “I needed to take FMLA when I was pregnant. My job didn’t offer paid leave when I gave birth to my daughter. Because of FMLA I was guaranteed time off when I was put on bed rest. Because it was unpaid, I had to work from my bed and go back to work before my daughter was ready for me to go back. Financially I needed

¹¹ Jane Gross, “Study Finds Higher Costs for Caregivers of Elderly,” New York Times, 11/19/07.

¹² The David and Lucile Packard Foundation, 2001. *The Future of Children: Caring for Infants and Toddlers*. Richard Behrman, ed. Los Altos, California:11(1).

to go back to work. My daughter was four weeks old and on oxygen. I had to make special arrangements for a family friend to watch her instead of the childcare facility because of her age and special needs.”

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

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

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

- 91.5 percent of adults older than 65 years old are living with at least one chronic condition, and 76.6 percent have at least two.²⁰
- 77.3 percent of adults between the ages of 55 and 64 are living with at least one chronic condition, and 57 percent have at least two.²¹
- 58.2 percent of adults between the ages of 35 and 54 are living with at least one chronic condition, and 33.4 percent have at least two.²²

¹³ Families and Work Institute, Highlights of the 2002 National Study of the Changing Workforce, 2002.

¹⁴ AARP Public Policy Institute, *Update on the Aged 55+ Worker*, 2005.

¹⁵ Family Caregiver’s Alliance: Caregiving and Retirement: What Happens to Family Caregivers Who Leave the Workforce (2003).

¹⁶ AARP, *How Employers Can Support Working Caregivers*, July 30, 2007, http://www.aarp.org/states/nd/articles/how_employers_can_support_working_caregivers_1.html (accessed June 9, 2009).

¹⁷ The definition of “chronic condition” can vary, however, generally, a chronic health condition is one of long duration, often slow progression, and is generally incurable. Chronic conditions limit what an individual can do in his or her normal life. Conditions such as heart disease, asthma, cancer, diabetes, arthritis, and depression are clear examples of chronic conditions.

¹⁸ *Eroding Access among Nonelderly Adults with Chronic Conditions: Ten Years of Change*, (Kaiser Family Foundation) (2008).

¹⁹ The State of Aging and Health in America 2007, CDC/Merck Company.

²⁰ Machlin, S, Cohen, J, Beauregard, K. Health Care Expenses for Adults with Chronic Conditions, 2005. (May 2008).

²¹ Machlin, S, Cohen, J, Beauregard, K. Health Care Expenses for Adults with Chronic Conditions, 2005. (May 2008).

- 36.4 percent of adults between the ages of 18 and 34 are living with at least one chronic condition, and 14.4 percent have at least two.²³
- 26 percent of adults below the age of 19 are living with at least one chronic condition, and 6 percent have at least two.²⁴

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

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

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

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

In 2007, Washington State became the second state to enact a paid parental leave program. Washington's program will provide \$250.00 per week for five weeks to new parents who are staying home with their child. Although not as expansive as California's, Washington's program also covers more workers than the FMLA and provides job-protected leave for employees who work in establishments with more than 25 employees. The FIRST Act would allow Washington

²² Machlin, S, Cohen, J, Beauregard, K. Health Care Expenses for Adults with Chronic Conditions, 2005. (May 2008).

²³ Machlin, S, Cohen, J, Beauregard, K. Health Care Expenses for Adults with Chronic Conditions, 2005. (May 2008).

²⁴ Anderson, Gerard. Chronic Conditions: Making the Case for Ongoing Care (2007).

State to begin the implementation of its program as the state, given the current budget crisis, has been unable to secure funding for the start up costs of the program.

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

Where We Stand Compared to Other Countries

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

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

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

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

Businesses Benefit from Paid Leave Policies

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

Paid sick days policies also help reduce the spread of illness in workplaces, schools and child care facilities. In this economy, businesses cannot afford "presenteeism," when sick workers come to work rather than stay at home. "Presenteeism" costs our national economy \$180 billion

²⁵ Jody Heymann, et al., Project on Global Working Families and the Institute for Health and Social Policy at McGill University, *The Work, Family, and Equity Index: How Does the United States Measure Up?*, 2007, <http://www.mcgill.ca/files/ihsp/WFEI2007.pdf> (accessed June 9, 2009).

²⁶ Jody Heymann, et al, Center for Economic and Policy Research, *Contagion Nation: A Comparison of Paid Sick Day Policies in 22 Countries*, May 2009, www.cepr.net/index.php/publications/reports/contagion-nation:-a-comparison-of-paid-sick-day-policies-in-22-countries/

²⁷ Employment Policy Foundation 2002. "Employee Turnover – A Critical Human Resource Benchmark." HR Benchmarks (December 3): 1-5 (www.epf.org, accessed January 3, 2005).

annually in lost productivity. For employers, this costs an average of \$255 per employee per year and exceeds the cost of absenteeism and medical and disability benefits.²⁸

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

Conclusion

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

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

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

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

²⁸ Ron Goetzal, et al, *Health Absence, Disability, and Presenteeism Cost Estimates of Certain Physical and Mental Health Conditions Affecting U.S. Employers*, Journal of Occupational and Environmental Medicine, April 2004.