



Testimony of Debra L. Ness
Before the House of Representatives Education and Labor Committee
Hearing on Protecting Employees, Employers and the Public:
H1N1 and Sick Leave Policies
November 17, 2009

Good morning Chairman Miller, Ranking Member Kline, members of the Committee and my distinguished fellow panelists. Thank you for inviting us to talk about the policies our nation's workers urgently need during this H1N1 flu emergency. Chairman Miller, you've been a consistent champion on a broad range of issues that support working families, including paid sick days. Your leadership during this national H1N1 emergency has caused media and the public to acknowledge the connection between giving workers the chance to earn paid sick days and stopping the spread of H1N1.

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 on behalf of a broad coalition of 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, MomsRising.org, the Leadership Conference on Civil Rights, the AFL-CIO and SEIU, the Family Values @ Work Consortium, the National Organization for Women and dozens of other organizations. *Together, we urge Congress to quickly pass legislation that guarantees working people paid, job-protected time off from work to recover from illness and to care for a sick child or family member—especially during this national H1N1 flu emergency.*

Workers Need Paid Sick Days During this H1N1 Flu Emergency

In recent months, much attention has focused on the H1N1 virus and the best ways to contain it—and with good reason. H1N1 is a novel flu virus that experts predict may result in many more illnesses, hospitalizations and deaths this year than would be expected in a typical flu season.¹ Forty-eight states had “widespread flu activity” as of Oct. 31, according to the Centers for Disease Control and Prevention (CDC).² The CDC recorded nearly 18,000 hospitalizations and nearly 700 deaths related to H1N1 flu between Aug. 30 and Oct. 31.³ The virus is now so widespread that the CDC and World Health Organization are no longer keeping track of the number of individual cases. Officials estimate that if 30 percent of the population contract the virus, it could mean approximately 90 million people in the U.S. could become ill, 1.8 million

1 U.S. Dept. of Health and Human Services, “About the Flu,” <http://pandemicflu.gov/individualfamily/about/index.html>

2 Centers for Disease Control and Prevention, 2009-2010 Influenza Season Week 42 ending October 24, 2009, <http://www.cdc.gov/flu/weekly/>

3 CDC, 2009 H1N1 Flu U.S. Situation Update, 10/2/09, <http://www.cdc.gov/h1n1flu/updates/us/>.

may need to be hospitalized, and approximately 30,000 could die.⁴ As a result, President Barack Obama declared the H1N1 flu outbreak a national emergency, allowing hospitals and local governments to quickly set up alternate sites for treatment and triage procedures, if needed, to handle any surge of patients.⁵

Week after week, government officials urge sick workers to stay home and keep sick children at home to prevent the spread of the H1N1 virus. Commerce Secretary Gary Locke said that “if an employee stays home sick, it’s not only the best thing for that employee’s health, but also his co-workers and the productivity of the company.”⁶ Health and Human Services Secretary Kathleen Sebelius said that “one of the most important things that employers can do is to make sure their human resources and leave policies are flexible and follow public health guidance.”⁷

The CDC has also issued recommendations: “People with influenza-like illness [must] remain at home until at least 24 hours after they are free of fever...without the use of fever-reducing medications.”⁸ In addition to the guidance for workers, officials have stated that schools and child care providers will need to rely on parents to keep children at home if they are feverish.⁹ This is excellent advice, as far as it goes, but unfortunately, taking this advice isn’t an option for millions of workers. They may want to do the right thing and do all they can to prevent the spread of the H1N1 virus. But for many, doing their part means risking their paychecks and even their jobs, because they lack job-protected paid sick days.

Working people need *paid time off* from their jobs to recover from the H1N1 flu and care for sick family members—and prevent further spread of the virus. Yet, the reality is that nearly half (48 percent) of private-sector workers lack paid sick days.¹⁰ The same is true for nearly four in five low wage workers—the majority of whom are women.¹¹ Women also are disproportionately likely to lack paid sick days because they are more likely than men to work part-time, or to cobble together an income by holding more than one part-time position. Only 16 percent of part-time workers have paid sick days, compared to 60 percent of full-time workers.¹²

Especially during this epidemic, workers with caregiving responsibilities in particular have an urgent need for paid sick days. The highest H1N1 virus attack rate is among 5- to 24-year olds,

4 The President’s Council of Advisors on Science and Technology. “Report to the President on U.S. Preparations for 2009 -- H1N1 Influenza”, 8/7/09, www.whitehouse.gov/assets/documents/PCAST_H1N1_Report.pdf

5 New York Times, “Obama Declares Swine Flu a National Emergency”, [6 Associated Press, “Government enlists employers’ help to contain flu,” 8/19/09.](http://www.nytimes.com/aponline/2009/10/24/health/AP-US-Obama-Swine-Flu.html?scp=3&sq=obama%20national%20emergency%20swine%20flu&st=cse, 10/24/09.</p></div><div data-bbox=)

7 HHS News Release, 8/19/09, www.hhs.gov/news/press/2009pres/08/20090819a.html

8 CDC, Recommendations for the Amount of Time Persons with Influenza-Like Illness Should be Away, www.cdc.gov/h1n1flu/guidance/exclusion.htm

9 Center for Infectious Disease Research & Policy, Univ. of Minn., www.cidrap.umn.edu/cidrap/content/influenza/swineflu/news/aug0709schools3.html

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

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

12 Vicky Lovell, Institute for Women’s Policy Research, No Time to be Sick, 2004.

many of whom need to stay home from school when sick—often with a parent to care for them.¹³ That’s why the lack of paid sick days is particularly challenging for working women—the very people who have primary responsibility for most family caregiving. In fact, almost half of working mothers report that they must miss work when a child is sick. Of these mothers, 49 percent do not get paid when they miss work to care for a sick child.¹⁴

Our Failure to Establish a Paid-Sick-Days Standard is Putting the Public Health at Risk During the H1N1 Emergency

Our nation’s failure to provide a minimum standard of paid sick days is putting our public health at risk. Many of the workers who interact with the public every day are without paid sick days. Only 22 percent of food and public accommodation workers have any paid sick days, for example. Workers in child care centers and nursing homes, and retail clerks disproportionately lack paid sick days.¹⁵ Because the lack of paid sick days forces employees to work when they are ill, their coworkers and the general public are at risk of contagion.

Research released this year by Human Impact Partners, a non-profit project of the Tides Center, and the San Francisco Department of Public Health, found that providing paid sick days to workers will significantly improve the nation’s health. This groundbreaking study found that guaranteeing paid sick days would reduce the spread of pandemic and seasonal flu. More than two-thirds of flu cases are transmitted in schools and workplaces. Staying home when infected could reduce by 15 to 34 percent the proportion of people impacted by pandemic influenza.

The Human Impact Partners analysis also found that if all workers had paid sick days, they would be less likely to spread food-borne disease in restaurants and the number of outbreaks of gastrointestinal disease in nursing homes would reduce. The researchers provided evidence that paid sick days may be linked to less severe illness and shorter 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. They also found that parents with paid time off are more than five times more likely to provide care for their sick children.

Recent data on the impact of the H1N1 virus in Boston, Mass. shows that the outbreak has hit certain mostly low-income communities harder than other communities. The Boston Public Health Commission reported that more than three in four Bostonians who were hospitalized because of H1N1 were black or Hispanic.¹⁶ Boston’s experience is not unique. Communities of color all across the country face similar health disparities and they may be due, in part, to the fact that low-wage workers are less likely to have paid sick days.

Beyond the H1N1 Emergency

While the need for paid sick days may seem particularly compelling during the H1N1 emergency, the reality is that working families struggled without paid sick days prior to this

13 CDC, Novel H1N1 Flu: Facts and Figures, www.cdc.gov/h1n1flu/surveillanceqa.htm.

14 Kaiser Family Foundation, “Women, Work and Family Health: A Balancing Act,” Issue Brief, April 2003.

15 Vicky Lovell, Institute for Women’s Policy Research, No Time to be Sick, 2004.

16 Cases of swine flu higher among city blacks, Hispanics, Stephen Smith, Globe Staff, August 18, 2009

http://www.boston.com/news/local/massachusetts/articles/2009/08/18/cases_of_swine_flu_higher_among_bostons_blacks_hispanics?mode=PF

emergency, and they will continue to struggle after this emergency unless Congress takes action. Paid sick days aren't just about protecting the public's health—they are also about protecting the economic security of millions of workers and their families. 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 told 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.”

The H1N1 outbreak has come during a painful recession, and both have exacerbated the need for paid sick days. I don't need to tell you that the economic crisis has been devastating for working families. More than 11.6 million workers have lost their jobs, and millions more are underemployed. In October, the unemployment rate was 10.2 percent—the highest level since December 1983. The unemployment rate for African Americans was 15.7 percent, the rate for Hispanics was 13.1 percent, and the rate for whites was 9.5 percent in October 2009.¹⁷ For many families that once relied on two incomes, this crisis has meant managing on one income or no income at all. As a result, families are not only losing their economic stability, but their homes: one in nine mortgages is delinquent or in foreclosure.¹⁸

Five out of six workers (84 percent) say the recession and the scarcity of jobs are creating more pressure to show up for work, even when they are sick.¹⁹ Workers are understandably anxious about their job security, and many are unable to take any risk that might jeopardize their employment—even if they are stricken with H1N1. Especially now, when so many workers are suffering terribly, we must put in place a minimum labor standard so taking time off for illness doesn't lead to financial disaster. Workers have always gotten sick and always needed to care

17 U.S. Bureau of Labor Statistics, Economic News Release, Employment Situation Summary, Nov. 6, 2009, <http://data.bls.gov/cgi-bin/print.pl/news.release/empstat.nr0.htm>

18 Center for American Progress, www.americanprogress.org/issues/2009/03/econ_snapshot_0309.html, March 2009

19 Angus Reid Strategies for Mansfield Communications online survey of 1,028 workers, conducted 9/10 – 9/12/09. Margin of error: +/- 3.1% points.

for children, family members and older relatives—and they have always managed to be productive, responsible employees. But without a basic labor standard of paid sick days, families’ economic security can be at grave risk when illness strikes.

In addition, as our population ages, more workers are providing care for elderly parents. When working people have to take unpaid time off to care for a parent, spouse or sibling, they face often-terrible financial hardship. More than 34 million caregivers provide assistance at the weekly equivalent of a part-time job (more than 21 hours per week), and the estimated economic value of this support is roughly equal to \$375 billion²⁰—a huge contribution to the health and well-being of their families. Caregivers contribute more than time; 98 percent reported spending on average \$5,531 a year, or one-tenth of their salary, for out-of-pocket expenses.²¹ Yet, many lose wages each time they must do something as simple as taking a family member to the doctor.

Businesses Benefit from Paid Sick Days 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, their commitment, productivity and morale increases, and 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 much 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.²²

As mentioned previously, paid sick days policies also help reduce the spread of illness in workplaces, schools and child care facilities. In this economy, and during this time of a national health emergency, businesses cannot afford “presenteeism,” which occurs when, rather than staying at home, sick employees come to work and infect their co-workers, lowering the overall productivity of the workplace. “Presenteeism” costs our national economy \$180 billion annually in lost productivity. For employers, this costs an average of \$255 per employee per year and exceeds the cost of absenteeism.²³ In addition, paid sick days policies help level the playing field and make it easier for businesses to compete for the best workers.

Already, many savvy employers have responded to the H1N1 outbreak by expanding or improving their paid sick days policies. For example, Medtronic Inc. has reacted by granting all its employees, including hourly workers, three additional paid sick days. Best Buy has instructed its managers to send employees home if they arrive at work sick, and to pay them for the remainder of the day, even if they do not have any sick time.²⁴ Texas Instruments, Inc. has relaxed its sick days policy, allowing workers to take as many days as they need to recover, by

20 Ari Houser and Mary Jo Gibson, AARP Public Policy Institute, “Valuing the Invaluable: The Economic Value of Family Caregiving, 2008 Update.”

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

22 Employment Policy Foundation 2002. “Employee Turnover—A Critical Human Resource Benchmark.” HR Benchmarks (December 3): 1-5.

23 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.

24 Next test: Flu 101, Suzanne Ziegler, Minneapolis Star Tribune, September 23, 2009

www.startribune.com/lifestyle/health/60463767.html?elr=KArksi8cyaiUo8cyaiUiD3aPc:_Yyc:aUU

granting them the option of borrowing against future leave.²⁵ These businesses and many others know that it is in their best interest to make sure that they do not have masses of sick workers on the job. They know that paid sick days must be part of their operating plans if they are going to keep their doors open and their businesses thriving during these difficult economic times when H1N1 flu is spreading.

The Nation Needs Policies that Allow Workers to Meet their Job and Family Responsibilities

Our nation has a proud history of passing laws that 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 a few days to recover from contagious illness, or care for a family member who needs them. Now is the time to protect our communities and put family values to work by adopting policies that guarantee a basic workplace standard of paid sick days.

At present, no state requires private employers to provide paid sick days. The cities of San Francisco, the District of Columbia and Milwaukee have passed ordinances requiring that private employers provide paid sick days. This year, more than 15 cities and states have considered paid sick days laws to ensure that this basic labor standard becomes a right for all workers. This is a national movement now, and we expect it to expand to more than 25 campaigns next year. But illness knows no geographic boundaries, and access to paid sick days should not depend on where you happen to work. That's why a federal paid sick days standard is so badly needed.

Like the minimum wage, there should be a federal minimum standard of paid sick days that protects all employees, with states and individual employers given the freedom to go above the federal standard as needed to address particular needs of their residents or workers.

Working people need a basic labor standard of sick time that is:

- Paid;
- Job protected;
- Accessible to workers at *their* discretion (by notifying the employer verbally or in writing);
- Available for workers to use to care for themselves or a child or parent; and
- Up to seven days (or 56 working hours).

These key principles are included in the Healthy Families Act. The legislation guarantees workers the right to determine whether they need to take a paid sick day, provides strong job protections, and lets workers take paid time off to care for a sick child or parent.

²⁵ Sick Time: Employers Gear Up for Swine Flu, Betsy McKay and Dana Mattioli, Wall Street Journal, November 2, 2009

<http://online.wsj.com/article/SB20001424052748704746304574508110025260366.html>

These core principles are supported not only by advocates, but also by members of the House of Representatives and the Senate. They are reflected not only in the Healthy Families Act, but in proposed legislation in more than a dozen states, including California.

These core principles may never be more important than they are during this national H1N1 emergency. To that end, we support emergency legislation for the duration of the H1N1 epidemic that contains these core principles and addresses the unique circumstance of this H1N1 emergency.

Because of the dangers posed by H1N1 and its ability to spread quickly in a community, in addition to the principles outlined above, we would support legislation to *fully protect workers and the public health* by:

- Enabling workers to take paid sick time during closure of a workplace or a child's school or care facility due to a contagious illness;
- Covering all sizes of employers and all types of employees, so that no workplace or worker is left vulnerable to the H1N1 virus; and
- Establishing a Dept. of Labor and Dept. of Health and Human Services toll-free telephone call center and website to enable workers to report violations, which the government would investigate and resolve, working with the employer.

Such emergency legislation would be effective immediately upon passage, and it would sunset in two years.

Congress should waste no time in passing paid sick days legislation so that working people can earn paid time off and help prevent the spread of illnesses, without jeopardizing their economic security. This year's public health crisis is the H1N1 virus but, in reality, millions of working people face the heart-wrenching decision of whether to send a feverish child to school and collect a paycheck, or stay home with her and lose pay. Or they must choose whether to go to work sick and get paid, or stay home to recover and fall behind on the rent.

Chairman Miller and members of the Committee, I thank you for the opportunity to participate in this important discussion, and we look forward to working with you to ensure that America's workers have a basic right of paid sick days. We sincerely appreciate your efforts in recent weeks to highlight this critical issue. Like you, we share the desire to promptly pass both emergency and long-term, permanent legislation that will protect the public health and is feasible for both employers and workers. And we look forward to working with you.