

STATEMENT OF
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SUBCOMMITTEE ON CHILDREN AND FAMILIES
COMMITTEE ON HEALTH, EDUCATION, LABOR AND PENSIONS
UNITED STATES SENATE

HEARING TITLED: “THE COST OF BEING SICK: H1N1 AND PAID SICK DAYS”

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Good morning Chairman Dodd, Ranking Member Alexander, and Members of the Committee. I am pleased to join you and share the regards of Secretary Solis.

The vision of the Department of Labor (DOL) is *good jobs for everyone*. One important component of this vision is ensuring workplace flexibility for family and personal care-giving. While much has been done to help prepare for a public health emergency like the current 2009 H1N1 pandemic, the Administration believes that more must be done to help protect the economic security of working families who often must choose between a pay check and their health and the health of their families.

Today I will address current Federal leave law and regulations as they pertain to the private sector, the challenges which arise during times of widespread illness, such as H1N1, and the Administration’s support for paid leave and increased workplace flexibility policies such as the proposal introduced earlier this year by Senator Kennedy, the Healthy Families Act.

Current Federal law does not mandate that employers provide paid leave to their workers. Rather, the only Federal law on leave, the Family and Medical Leave Act (FMLA), requires employers with 50 or more employees to provide unpaid leave to eligible workers under a limited set of circumstances. Under FMLA, covered and eligible employees are entitled to take up to twelve workweeks each year of job-protected, *unpaid leave* for the “serious health condition” of the employee or of the employee’s son, daughter, spouse or parent where the reason for the leave meets the strict requirements of the FMLA. In many instances of leave needed in response to a widespread public health emergency, such as the 2009 H1N1, the FMLA will simply not provide protections. An estimated 60 percent of the workforce is covered and eligible for *unpaid leave* but only when the leave is for reasons that qualify pursuant to the strict FMLA standards.

Other Federal laws and programs generally do not provide much assistance to workers needing job security and income when they are sick or need to take time off to care for family members.

Unemployment Insurance (UI) and Disaster Unemployment Assistance (DUA) do not cover workers who may lose their jobs and are not “able and available to work” (with a limited exception under DUA for workers injured by a disaster). During a pandemic, individuals who are laid off because their work site is closed or because business has declined due to an outbreak would be eligible for regular UI as long as they are able to, available for, and actively seeking work. The UI program does not cover individuals who are sick, are caring for someone who is sick, are caring for well children dismissed from school, or are otherwise not available and actively seeking work.

Individuals ineligible for regular UI who lost their jobs as a direct result of a major disaster declared due to severe pandemic flu and individuals who are unemployed because they contract the flu and are unable to work might qualify for DUA. However, individuals who are unemployed because they are caring for sick family members, are caring for children whose schools have been closed, or are quarantined, are generally not “able and available” and would not be eligible for DUA. DUA would also not be payable to individuals whose unemployment is only indirectly related to the severe pandemic flu outbreak and is only available if there is a disaster declaration.

In 2008, the Bureau of Labor Statistics (BLS) surveyed private sector employers about their leave policies. While approximately seven in ten employees received paid leave to attend jury duty and funerals, only 61 percent of private sector employees were offered sick pay for their own illness or injury. Thirty-seven percent of employees were offered paid time off for personal reasons, and eight percent were offered paid leave for family reasons. Federal, State and local government employees’ access to paid and unpaid leave is greater than private sector employees’ for all types of leave.

A variety of factors are associated with the availability of paid leave. In its March 2008 National Compensation Survey, the BLS found that the availability of paid leave increases with income. Eighty-three percent of the highest-paid workers (wages in the top 10th percentile and above) had access to paid sick leave, compared to just 23 percent of the lowest paid workers (bottom 10th percentile). In addition, 54 percent of the highest paid workers were able to access paid leave for personal reasons compared to 17 percent of the lowest paid workers.

Low-wage workers have less access to paid leave, and thus are more likely to go to work even if they are sick or their child is sick. Only 49 percent of low-wage workers have access to paid sick leave or personal leave or family leave or vacation¹. Particularly vulnerable are the 3.7 million working adults in households with children under 14 years old and no other adult or older child to share child caring responsibilities. Single parents and low-wage workers can find it challenging to stay home even for a few days.

The lack of paid leave and other workplace flexibilities has significant impacts on the nation’s workforce. This lack of access to paid leave forces many workers to choose between taking care

¹ Low-wage workers are defined as workers earning less than \$7.25 an hour in March 2008. Iris S. Díaz and Richard Wallick, "Leisure and illness leave: estimating benefits in combination," *Monthly Labor Review*, February 2009, Vol. 132, No. 2.

of their health and the health of their families and paying their bills. This is made even more troublesome when the illness is contagious, like seasonal and pandemic influenza, given that the consequences of employee's decisions to go to work when ill or to send a sick child to school can adversely affect many others.

Flu activity is now widespread in 48 states. According to the CDC, of all visits to doctors nationally, the proportion that are for influenza-like-illness continues to increase steeply and is now higher than what is seen at the peak of many regular flu seasons. In addition, flu-related hospitalizations and deaths continue to rise nation-wide and are above what is expected for this time of year.

In the context of the current 2009 H1N1 pandemic, FMLA job protections may be available to relatively few workers who need leave. For example, healthy workers who stay at home to care for their healthy children while schools are closed would not be covered. Additionally, FMLA leave would only be available if the covered and eligible employee's or family member's medical condition meets the definition of a "serious health condition." For example, where the individual with 2009 H1N1 is not hospitalized, the employee or family member would have to receive in-person treatment from a health care provider within seven days of the onset of incapacity and have a second in-person treatment visit within 30 days or otherwise meet continuing regimen of treatment requirements for the illness to qualify as a "serious health condition," a requirement that may be difficult to meet if public health officials recommend that the majority of sick individuals not seek medical treatment absent complications. Moreover, even where an employee's leave is covered by FMLA, this law does not address the problems associated with employees lacking access to pay while on leave. Even in the rare instances when the illness is serious enough to meet these qualifications, this law does not help those who cannot afford to take time off because their employer does not offer paid leave or if they have used whatever paid leave they have. It also does not help those who need to care for their extended family members.

Employer-provided workplace flexibilities could help workers who need time off during a pandemic -- as well as in ordinary times. However, according to BLS, private industry employers offer formal flexible workplace arrangements² to only five percent of workers. Like paid sick leave, eligibility for flexible work arrangements is higher for full-time workers than part-time and increases with income.

Given the lack of Federal laws regarding paid leave, five states have used temporary disability insurance programs to provide income to workers who experience non-occupational illnesses or injuries. California and New Jersey have implemented paid leave programs in addition to their temporary disability insurance programs. In addition, several cities have passed ordinances requiring certain employers to provide paid sick leave to their employees, though these plans were established many years ago – not necessarily in response to current conditions.

The scope of the current 2009 H1N1 public health emergency demonstrates the need for paid leave and flexible workplace policies. The goal of the U.S. Government and its state and local

² Flexible workplace arrangements are "the ability to work an agreed-upon portion of a work schedule at home or some other approved location, such as a regional work center."

partners to date has been to slow the spread of a pandemic and mitigate its social and economic impact through the use of antivirals and non-pharmaceutical interventions, often referred to as community mitigation strategies. The Federal Government adopted community mitigation as Federal policy in 2007.³

On August 19, 2009, Secretary Solis joined the Secretaries of Health and Human Services, Commerce and Homeland Security in issuing a letter announcing the Centers for Disease Control and Prevention's (CDC) updated guidance to employers on how to respond to the 2009 H1N1 pandemic. CDC notes in their guidance that businesses and other employers play a key role in protecting employees' health and safety, as well as in limiting the negative impact of influenza outbreaks on the individual, the community, and the nation's economy. I would like to share a few highlights from this guidance that are most relevant to the question before the Subcommittee today.

First, the guidance recognized that all employers must balance a variety of objectives when determining how best to decrease the spread of influenza and lower the impact of influenza in the workplace. They should consider and communicate their objectives, which may include one or more of the following: (a) reducing transmission among staff, (b) protecting people who are at increased risk of influenza related complications from getting infected with influenza, (c) maintaining business operations, and (d) minimizing adverse effects on other entities in their supply chains.

Second, the guidance noted that during an influenza pandemic, ***all* people with influenza-like illness should stay home** and away from the workplace. If the severity of illness increases, employers should be ready to implement additional measures and public health officials may recommend a variety of methods for increasing the physical distance between people (called social distancing) to reduce the spread of disease. These could include school dismissal, child care program closure, canceling large community gatherings, canceling large business-related meetings, spacing workers farther apart in the workplace, canceling non-essential travel, and utilizing work-from-home strategies for workers who can conduct their business remotely.

CDC recommends that people with influenza-like illness remain at home until at least 24 hours after they are free of fever (100° F [37.8°C]), or signs of a fever without the use of fever-reducing medications to reduce the number of people infected. In most cases, this means staying home 3 to 5 days.

CDC has asked employers to allow sick workers to stay home without fear of losing their jobs and to develop other flexible leave policies to allow workers to stay home to care for sick family members or for children if schools dismiss students or child care programs close.

While the Federal Government has been working diligently to provide guidance and implement community mitigation strategies, these strategies often do not help address the economic conditions facing families without leave.

³ See [Community Strategy for Pandemic Influenza Mitigation](#) (CMG)

For example, during a severe pandemic, compliance with community mitigation measures, including home isolation, quarantine and school closures (particularly extended school closures), would have a negative economic impact on many workers and their families. As I mentioned previously, a significant number of workers do not have access to sufficient paid or unpaid job-protected leave, nor do many have access to other workplace flexibilities, such as telework, which would allow them to stay home when sick or when exposed to someone who is sick (self-quarantine), to care for a family member who is sick, or to care for a child dismissed from school.

Staying home from work in compliance with community mitigation will cost workers income because they are on unpaid leave -- or could cost them their jobs if they are laid off because they cannot come to work. These issues are of particular concern for low wage, part-time and otherwise vulnerable workers. Such single parents and low-wage workers will find it particularly challenging to care for a child dismissed from school for an extended period of time during a severe pandemic.

The economic cost to working families associated with the lack of paid leave is significant not only during times of influenza pandemics. These are decisions that working families must make daily – choices between keeping their jobs and taking care of their health and the health of their children.

In addition, paid leave represents a relatively small share of total compensation costs. In its June 2009 Employer Costs of Employer Compensation survey, BLS calculated the costs of paid leave borne by employers. All types of paid leave for private industry add up to 6.8 percent of total compensation costs, or \$1.85 per employee hour out of \$27.42. BLS also reports employer costs for paid leave across different occupational groups. Workers in the highest paid category—management and professional—earn a total of \$48.96 per hour and their paid leave equals 8.4 percent of total compensation. The lowest paid occupational group—service workers—earn on average \$13.15 per hour, only slightly more than 25 percent of the rate for management and professional. Paid leave for this group accounts for only 4.2 percent of their total compensation.

The Healthy Families Act offers an important opportunity to provide workers with economic security by assuring that they have the ability to stay home if they are sick without fear of losing their jobs or being forced to go to work sick because they cannot afford to stay home. We support this bill and look forward to working with you on it as it moves through the legislative process.

As mentioned, the vision for the Department of Labor is *good jobs for everyone*. And one of the key components of a good job is having workplace flexibility for family and personal caregiving. We believe that work-life balance includes policies such as paid leave, flexible work schedules and teleworking, employee assistance programs, childcare, and eldercare support. Jointly with our colleagues in the Cabinet, DOL is working to improve work-life policies, and efforts are underway to see how we can better meet the needs of modern working families.

Finally, an important part of helping families stay healthy and ensuring employers have a productive workforce is health insurance reform. Health insurance reform can relieve the burden

of rising health care costs on small businesses, increase accessibility for young adults, increase transparency and accountability in the insurance industry, empower consumers, lower costs, reform the delivery system, improve the quality of care, simplify the administrative bureaucracy, and give consumers more knowledge and more bargaining power. We encourage the Senate to pass health insurance reform.

In conclusion, it is clear that while much has been done to help prepare for a national health emergency like 2009 H1N1, more is needed to help protect the economic security of working families who must choose between a pay check and their health and the health of their families. That is why the Administration supports the Healthy Families Act and other proposals that advance workplace flexibility and protect the income and security of workers. I appreciate your time today, and I am happy to answer any questions you may have.