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ON BEHALF OF THE

SOCIETY FOR HUMAN RESOURCE MANAGEMENT

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“STAY-AT-WORK AND BACK-TO-WORK STRATEGIES: LESSONS FROM

THE PRIVATE SECTOR”

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Introduction

Good morning Chairman Harkin, Ranking Member Enzi, and distinguished senators. My name is Karen Amato, and I am director of the integrated disability management, wellness and safety programs for SRA International, Inc. in Fairfax, Virginia. I appear before you today on behalf of the Society for Human Resource Management (SHRM), of which I have been a member since 2008. I am also a member of the Northern Virginia SHRM chapter (NOVA SHRM). I thank you for this opportunity to testify before the Committee on employer approaches to disability management and the general opportunities and challenges around return-to-work strategies for employers. My comments will address my experience with large employers that have faced the challenges and successes of bringing employees with disabilities back into the workplace.

I commend you both for holding this hearing on this meaningful topic. By way of introduction, I have over 21 years of experience managing disability and return-to-work programs, worksite wellness, safety programs and HR administration, as well as 36 years as a registered nurse.

SHRM is the world's largest association devoted to human resource (HR) management. Representing more than 260,000 members in over 140 countries, the Society serves the needs of HR professionals and advances the interests of the HR profession. Founded in 1948, SHRM has more than 575 affiliated chapters within the United States and subsidiary offices in China and India.

SRA International, Inc. is dedicated to solving complex problems of global significance for government clients in defense, intelligence/homeland security/special operations, health and civil agencies. SRA International, Inc. employs more than 6,500 people located in more than 50 locations around the world.

In today's economy, organizations must compete in the global market for skilled, dedicated employees, while managing their labor costs and expenses to remain competitive. HR professionals and employers must also address how to manage their business when faced with challenges such as employee absences, added workload for colleagues, and the impact on productivity and morale due to disability or illness. Proactively keeping employees at work who are experiencing impairments and transitioning employees who have experienced a disability back into the workforce has value to the employer in mitigating some of this impact while meeting the individual employee's needs. However, even employers with very comprehensive programs can experience challenges with these programs.

SHRM and the Americans with Disabilities Act

SHRM and its members have a long tradition of promoting effective practices for advancing equal employment opportunity for all people, including individuals with disabilities. SHRM strongly supports the goal of increasing the employment of people with disabilities, and believes that the Americans with Disabilities Act (ADA)

strikes the appropriate balance between the needs of individuals and employers. SHRM places a priority on developing educational materials and initiatives for HR professionals on hiring individuals with disabilities. SHRM has been a partner with the Department of Labor's Office of Disability Employment Policy for this purpose since 2006. SHRM created a Disability Employment Resource webpage that offers its members a wealth of resources, articles and links to help source, recruit, retain and develop people with disabilities. SHRM also provides training through conference programming and webcasts to its members on disability law and effective employment practices. SHRM's member organizations regularly engage in outreach efforts to civil rights and disability organizations, both as part of their current affirmative action obligations and as a sound business practice.

The ADA was enacted in 1990 to protect individuals with disabilities from discrimination in employment, public services and public facilities. The ADA prohibits discrimination against current employees and job applicants by employers that employ 15 or more individuals, and requires such employers to provide reasonable accommodations to employees who have known disabilities. The ADA defines "disability" as "a physical or mental impairment that substantially limits one or more of the major life activities of such individual." Individuals must meet this disability standard to be eligible for the ADA's nondiscrimination and accommodation coverage.

In 2008, SHRM and other employer associations reached an agreement with disability advocacy organizations to address a handful of Supreme Court holdings in the preceding decade (including *Sutton v. United Airlines* [1999] and *Toyota Motor Manufacturing Kentucky Inc. v. Williams* [2002]) that had narrowed the definition of disability under the ADA. The resulting deal led to the ADA Amendments Act (ADAAA), which was authored by you, Chairman Harkin, and passed both houses of Congress unanimously before being signed into law by President Bush in 2008.

SHRM continues to believe that law strikes an appropriate balance between the needs of individuals with disabilities and the obligations of HR professionals under the ADA. On one hand, the ADAAA affirms that Congress intended the ADA's coverage to be broad, to cover individuals who face unfair discrimination because of a disability. On the other hand, the ADAAA also retained the ADA's individualized assessment of employees to prevent employers from being exposed to excessive liability.

Chairman Harkin, we commend you for sponsoring the ADAAA and for including SHRM in the legislative process that produced the 2008 law.

SHRM research on disability employment

SHRM has collaborated with the Cornell University ILR School Employment and Disability Institute on a research study about organizational policies and practices related to employing people with disabilities. This series of research findings also analyzes what metrics organizations track for all employees and

employees with disabilities and any barriers organizations experience with employment or advancement for people with disabilities. The survey of more than 600 HR professional respondents will be released in three parts: 1) Recruitment and Hiring, 2) Training, and 3) Retention and Advancement.

The purpose of the first, soon-to-be-released survey results is to provide new insights into the differences in HR practices in hiring and retaining individuals with disabilities and the relationship between these practices and positive employment outcomes.

The survey's key findings are:

- **Most employers have policies and practices related to the recruitment and hiring of people with disabilities** – Nearly two-thirds (61%) of organizations indicate including people with disabilities explicitly in their diversity and inclusion plan, 59% require sub-contractors/suppliers to adhere to disability nondiscrimination requirements and 57% of organizations stated having relationships with community organizations that promote the employment of people with disabilities.
- **Effectiveness of policies and practices** – Organizations believe that requiring sub-contractors/suppliers to adhere to disability nondiscrimination requirements (38%), including people with disabilities explicitly in diversity and inclusion plans (29%), and having explicit organizational goals related to the recruitment or hiring of people with disabilities (34%) were very effective practices.
- **Larger organizations are more likely to have policies and practices related to recruitment and hiring in place compared with smaller organizations.** Publicly owned for-profit organizations also are more likely to have some policies and practices related to recruitment and hiring in place compared with privately owned for-profit organizations and nonprofit organizations.¹

Key Areas for Managing the Impact of Disability in the Workplace

Although there are fundamental elements of a successful strategy in managing disability in the workplace, there is not a simple “one size fits all” solution for every employer. Employers and human resource professionals must balance pressing business objectives against common challenges associated with return-to-work strategies.

The success of the strategy will depend on the extent to which employers are able to mitigate the negative impact, while simultaneously meeting the employee's needs. The business imperatives of the employer and the abilities of the affected employee will inform determinations regarding appropriate return-to-work (RTW)

¹ Society for Human Resource Management and Cornell University ILR School Employment and Disability Institute (2012). SHRM Survey Findings: Employing People with Disabilities - Practices and Policies Related to Recruiting and Hiring Employees with Disabilities

solutions which are considered in conjunction with the employer's statutory obligations and protection of the individual's rights under the Family and Medical Leave Act (FMLA), the Americans with Disabilities Act and the Americans with Disabilities Act Amendments Act, among other regulations. However, there are a few key areas for managing disabilities in the workplace:

- Disability Impacts the Entire Family: Work is important to people and is a large part of what defines them. Prolonged absence from work impacts the family not only financially, particularly in single parent homes; but it also affects employees' emotional well-being. Experienced professionals recognize that the longer employees are out of work due to disability, the more likely they are to become disconnected from the employer and the benefits they receive from working. Intervening to help employees stay at work or transition back into the workplace quickly following a disability not only improves their recovery, it also enhances their self-image and reduces stress on their families. It also enhances their commitment to their employer as an employer of choice. It has become apparent that there are opportunities for large employers to take proactive steps that will better position them to retain disabled employees on the job. According to a report by the Government Accountability Office, an injured or disabled worker who remains out of work for more than six months has only a 50% chance of returning to work at all.²
- Proactive Interventions and Prevention Reduce Disability Claims and the Bottom-Line Impact: Early intervention to recognize and respond to an employee's needs for workplace modifications from the first day of hire through the entirety of the employee's tenure helps mitigate the impact of current and future impairments on their ability to be a productive worker. Anticipating, identifying and providing accommodations to new hires such as equipment, assistive technology, interpreters, and flexible scheduling makes onboarding smooth and the employee is more-quickly engaged and productive. Proactively responding to employee's requests for workplace modifications based on their health concerns, and working together to identify reasonable solutions and confirming the effectiveness of the accommodation can increase productivity and often avoids absence and disability through reduction of their symptoms or impact of their impairment. Modifications may include equipment, technology, assistive devices or services, flexible scheduling, and teleworking.

As evidenced in a Mercer study and Towers Watson/National Business Group on Health study, employers can determine the value of this cost

² U.S. Government Accountability Office, Health, Education and Human Services Division (1996). Return-to-Work Strategies From Other Systems May Improve Federal Programs. <http://www.gao.gov/assets/160/155504.pdf>.

avoidance by measuring their cost of total disability as a percentage of payroll against readily available benchmark data.^[2]

- Early Return-to-Work Programs Work: Providing supportive services (some large employers may have return-to-work coordinators or case managers) to the employee throughout their absence keeps them engaged and connected with the organization and provides earlier opportunities to transition back into the workplace. Large employers and human resource professionals who engage the qualified, but impaired employee and the manager in a flexible, interactive process are most successful with providing effective workplace accommodations. Of course, this process is fluid and may require additional evaluation and adjustments, and it means that employers must have the dedicated staff capable of managing the process. Bringing employees back to work in a productive capacity where it's medically possible, through provisions such as light duty work, workplace modifications, flexible work arrangements, teleworking and procurement of equipment make it less likely they will transition to long-term disability. For the employer, the ability to return trained, skilled employees back to the workplace can avoid recruitment and replacement costs and reduce direct and indirect costs of absence and disability. Organizations who offer these programs have to be vigilant to comply with the relevant federal and state employment laws.
- Success of the Integrated Disability Model (IDM): Going beyond stay-at-work and return-to-work programs, the integrated disability model broadens this reach by engaging the best of an employer's benefits, along with its departments and disciplines to support and meet an employee's need to remain productive, as well as to meet the demands of their job. SHRM outlines this integrated model in a number of its publications and programming it provides to HR professionals. The model indicates that participating departments may include HR partners, benefits, health and wellness, safety, risk management, diversity and philanthropy. Providing a comprehensive approach to fostering a healthy, inclusive and caring environment that is responsive to employees' needs can positively affect the employee's productivity and well-being. Large employers can offer a variety of support including counseling through work-life balance programs such as employee assistance programs, wellness programs, ergonomic evaluations, parental and adoption leave and resources, safety evaluations, job accommodations, and opportunities to participate in charity work and diversity groups to enhance the workplace environment.

Employers also need to evaluate trends from health care, disability and workers' compensation claims to design wellness and workplace safety programs that provide employees with tools for engagement to mitigate risk.

^[2] Towers Watson National Business Group on Health (2012). Staying at Work Report, 2011-2012; and Mercer (2010). Survey on the Total Financial Impact of Employee Illnesses, 2010.

- Training: Supervisors' and employees' actions toward others with impairments can have a bearing on whether an organization is successful in supporting people with disabilities. Employees and supervisors should be trained in how to respond to employees who raise concerns about their health and workplace difficulties. They must be aware of internal resources and how to connect the employee to them. Workforce diversity training for employees enhances how employees with impairments are treated in the workplace. Training on proper body mechanics and proper use of equipment and technology associated with workplace accommodations will hasten an employee's productivity and avoid frustrations. Offering sensitivity training to employees for such things as behavior around service animals, buddy systems and support for colleagues with disabilities is helpful.

Successful Strategies for an Effective Disability Management Program

Since the U.S. Equal Employment Opportunity Commission promulgated the final regulations of the ADA in March 2011, the expansion of the definition of disability provides a broad scope of protection to persons with many types of impairments. In my experience, successful strategies for an effective disability management program include:

- On-site case management/RTW coordinator: This type of support provides individual assessment and intervention based on specific impairments through collaboration with the employee, supervisor, healthcare provider and insurance carriers as appropriate.
 - Ensure continual follow-up to support RTW success
 - Explore creative alternate jobs or current job modifications
 - Research and deliver appropriate accommodations
 - Remain connected to the employee by providing support throughout their absence and into the RTW process
 - Contract with external resources when needed (i.e. a life skills coach)
 - Teams that include nurse case manager, return-to-work coordinator and/or wellness coordinator are better positioned to manage an integrated disability management program
- Define policies and jobs: Employers must ensure that their programs have specific written guidelines for transition-back-to-work programs, light duty and regular duty job descriptions, and formalized training to new tasks and processes to ensure consistency. Formal policies such as flexible workplace, teleworking and compressed work-week provide documentation and oversight for large employers.
- Incentivizing work and employee engagement: Large employers, who continue as reasonable health and welfare benefits, as well as other programs, such as employee assistance programs and back-up care, minimize

an employee's concerns. Employees may be provided voluntary continued access to employer resources (such as the intranet and communications) while on medical leave, if approved by the healthcare provider. Providing a transitional RTW pecuniary incentive allowing work to supplement disability benefits for a defined period of time protects the employee's pre-disability income while transitioning to work part-time. If the disability policy does not allow supplemental benefits during a transition back to work this will negatively impact the willingness of the employee and the physician to engage in an early return-to-work program.

- Provide creative accommodations: Often it can be a simple solution such as a keyboard tray to reduce carpal tunnel symptoms that enhances the employee's ability to perform their job. Some solutions are complex, may require expert assistance and substantial and expensive changes to the worksite in order to accommodate the employee. Accommodations can include defined flexible work schedules, ergonomic workstations, voice activated computer systems, lighting adjustments, specialty equipment, technology, mobility devices or relocating the work within reach.

Accommodation challenges can occur based on the nature of the work. Organizations employing white collar workers have more opportunity to offer light duty and workplace accommodations to employees with disabilities, as they typically have less physically demanding job functions that need to be addressed. Organizations with a workforce consisting of mostly blue collar workers tend to have limited availability for light duty positions and a greater challenge when providing accommodations that address the employee's ability to perform physically challenging job requirements.

- Establish workplace flexibility strategy: By providing workplace flexibility policies and programs, employers can help all employees better meet their work-life needs. Workplace flexibility policies, such as flexible scheduling and telecommuting, can help employees with disabilities perform their job functions.

SHRM has engaged in a significant effort to educate HR professionals and their organizations about the importance of effective and flexible workplaces. On February 1, 2011, SHRM formed a multi-year partnership with the Families and Work Institute (FWI). This partnership combines the research and expertise of a widely respected think tank specializing in workplace effectiveness with the influence and reach of the world's largest association devoted to human resource management. By highlighting strategies that enable people to do their best work, the partnership promotes practical, research-based knowledge that helps employers voluntarily create effective and flexible workplaces that fit the 21st century workforce and ensure a new

competitive advantage for businesses. Although FWI is an independent non-advocacy organization that does not take positions on these matters, and the position of SHRM should not be considered reflective of any position or opinion of FWI, I'd like to briefly mention one of the key elements of the SHRM/FWI partnership, the *When Work Works* program, because it seeks to educate and showcase employers who are meeting the needs of our 21st century workforce. The centerpiece of the initiative has been the Alfred P. Sloan Award for Excellence in Workplace Effectiveness and Flexibility, a nationally recognized award for organizations that are using workplace flexibility as part of their business practice.

When Work Works is a nationwide initiative to bring research on workplace effectiveness and flexibility into community and business practice. Since its inception in 2005, *When Work Works* has partnered with an ever-expanding cohort of communities from around the country to:

- 1) Share rigorous research and employer best practices on workplace effectiveness and flexibility.
 - 2) Recognize exemplary employers through the Sloan Award for Excellence in Workplace Effectiveness and Flexibility.
 - 3) Inspire positive change so that increasing numbers of employers understand how flexibility can benefit both business and employees, and use it as a tool to create more effective workplaces.
- Comprehensive Wellness Programs: Employers can provide comprehensive wellness programs to support employees in maintaining or improving their health. On-site fitness and pedometer programs, weight management programs, smoking cessation programs, health screenings, health coaching and CPR training are just a few initiatives that enhance team building and overall health.

Consider an employee who is diagnosed with a neurologically degenerating disease such as Parkinson's disease. A marketing and sales company was able to bring this employee, who was a data analyst, back to work following a few weeks of total disability by providing a scooter and a larger monitor for visual deficits. As the employee's disease progressed and he experienced hand tremors and slurred speech, he requested that he continue to work and additional accommodations were provided to include a special keyboard and writing tools. The employee was able to successfully continue to work for 6 ½ years, before he was no longer able to perform the essential functions of the job. Had this employee worked as a back hoe operator for a construction company, the only light duty work the employer may have been able to provide was a traffic flagger, which would have required standing on the street. The employee's impairment would have precluded him from this and he would have remained on total disability.

Large Employer Challenges

As I noted earlier in my testimony, there are several legal and regulatory challenges that an employer must navigate in offering a disability management program. These primary challenges include the following:

- Impact of Individual State Benefits: There is an administrative burden on employers who have employees that work in multiple states with paid disability and family leave benefits in terms of increased communications, tracking and the potential overlap in benefits and conflicts between federal and state law. Human resource professionals must have a general understanding of the various state disability benefits and ensure their employees are informed of the process for applying for these benefits. If the employer has private disability insurance, the employees should be informed of the process if state benefits will offset the employer's disability benefits. Employers have the added responsibility of completing paperwork for both the state and private disability carrier, and coordination of a partial return-to-work requires collaboration between all stakeholders. Navigating the bureaucratic requirements can be confusing to an employee; they will look to the employer for guidance and understanding.

In addition, for state paid family leave benefits, employers must inform employees of their rights as well as the process for applying for benefits. For example, if an employer employs both a husband and wife, both may be entitled to paid benefits for the same event. In this case, the employee with the disability would be eligible for state disability and the spouse may be eligible for paid family leave. In some cases, ongoing reports of need for paid family leave will be required from the spouse.

- FMLA and ADA: Intermittent FMLA continues to pose administrative challenges for large employers in terms of being able to ensure appropriate staffing to meet the needs of the business on a day to day basis and ensure they have the current information and updates to provide the appropriate approvals. Other employees may request similar workplace equipment and modifications, unaware that an accommodation for a disability was made. For those on light duty, concerns arise surrounding the impact the employee's future FMLA leave may have on staffing needs and how the organization can manage its work requirements in the long term. Extension of leave beyond FMLA requirements, protected by the ADA, may involve a prolonged absence.

As employers navigate the many laws that govern the employment of people with disabilities, there is much to understand and many resources to explore. Employers who have been successful in providing early RTW programs and workplace accommodations have been able to improve their bottom line while helping their employees. Employers would benefit from increased education on

successful models for RTW strategies and information-sharing with regard to resources for managing workplace accommodations.

Conclusion

Again, I thank the Committee for listening to my perspective on employer opportunities and challenges in return-to-work strategies for employees with disabilities.

I am happy to answer any questions you may have.

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