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TESTIMONY BEFORE THE U.S. SENATE COMMITTEE ON
HEALTH, EDUCATION, LABOR, AND PENSION

HEARING ON “WORKERS SHOULD BENEFIT FROM NEW
TECHNOLOGY AND INCREASED PRODUCTIVITY: THE
NEED FOR A 32-HOUR WORKWEEK WITH NO LOSS IN
PAY”

Thursday, March 14, 2024

¹ Mr. King is a graduate of Miami University (1968) and Cornell University Law School (1971). Mr. King is a member of the District of Columbia and Ohio State Bar Associations, and his professional experience includes serving as a legislative staff assistant to Senator Robert Taft Jr. and professional staff counsel to the United States Senate Labor Committee (1971-1974), associate and partner with Bricker & Eckler (1974-1990), partner and of counsel at Jones Day (1990-2014), and Senior Labor & Employment Counsel at HR Policy Association (2014-Present). Mr. King acknowledges the assistance of Daniel Yager, his colleague at the HR Policy Association, in the preparation of his testimony.

Chairman Sanders, Ranking Member Cassidy, and Members of the Committee:

Thank you for the opportunity to again testify before the Committee. Each time I appear before this Committee, it is a special privilege as one of the first employment positions I had after graduating law school was serving as a professional staff counsel for the Committee. In that capacity, I had the opportunity to work for Senator Robert Taft, Jr., Senator Jack Javits, Senator Ted Kennedy, Senator Walter Mondale, and many other outstanding and influential members of the Senate.

This morning, I am appearing on behalf of the HR Policy Association where I serve as the Senior Labor and Employment Counsel. HR Policy is a public policy advocacy organization that represents the chief human resource officers of more than 350 of the largest corporations doing business in the United States and globally. Collectively, their companies employ more than 10 million employees in the United States – nearly 9 percent of the private sector workforce. Since its founding, one of HRPAs principal missions has been to ensure that laws and policies affecting human resources are sound, practical, and responsive to labor and employment issues arising in the workplace. My biographical information is attached to my written testimony. I respectfully request that my written testimony and the exhibits thereto be included as part of the record of the hearing.

Initially, I want to note that the Association is not opposed to 32-hour workweeks or other non-traditional workweek configurations that make operational and financial sense for employers and provide flexibility for employees. We are, however, opposed to amending the Fair Labor Standards Act (FLSA) to change the overtime requirements for nonexempt employees from 40 hours to 32 hours.² We agree with Senator Sanders' objective of holding this hearing to explore options for employees to share any "AI wealth dividend" that may occur as a result of AI-related productivity advances in the workplace. Where we part ways with the Chairman, however, is that we believe any such wealth distribution should not be mandated by government intervention, but rather traditional market forces should determine how any AI wealth dividends should be distributed. As illustrated in the following chart, productivity and employee compensation increases have generally closely tracked one another for many decades.³

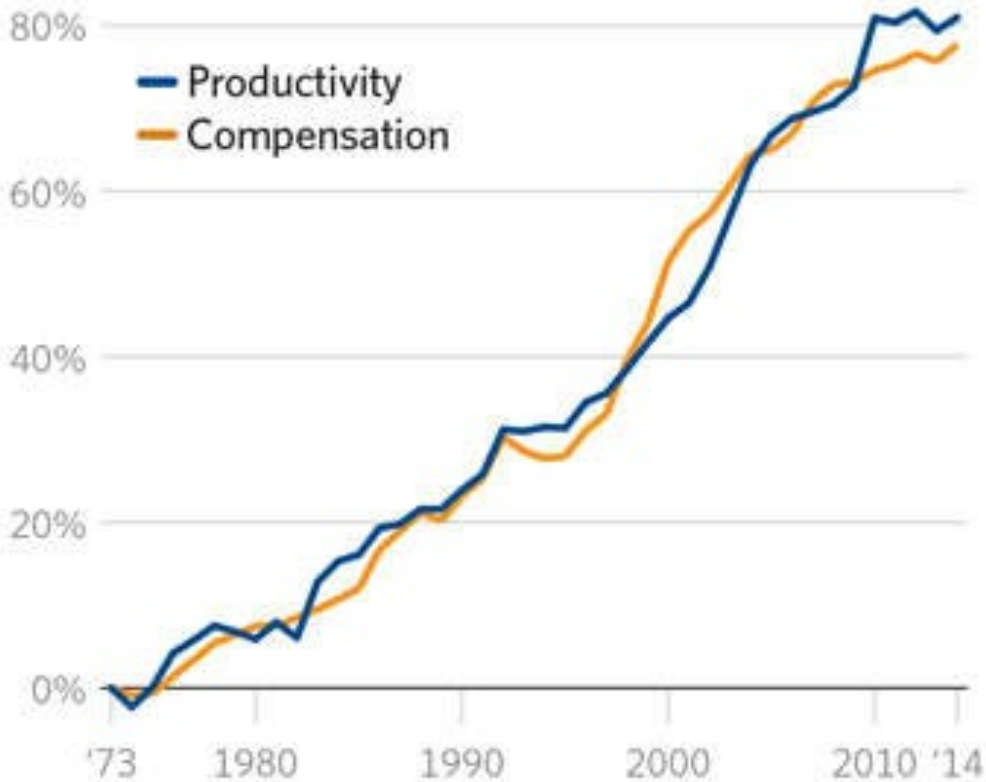
² The Association opposes HB 1332, which would phase-in changes to the FLSA 40-hour overtime workweek standard to a 32-hour standard.

³ *Deciphering the Fall and Rise in the Net Capital Share: Accumulation or Scarcity?*, Matthew Rognlie, Massachusetts Institute of Technology (Spring 2015). www.brookings.edu/wp-content/uploads/2016/07/2015a_roggnlie.pdf. *The Link Between Wages and Productivity Is Strong*, Michael Strain, Economic Strategy Group (Feb. 4, 2019). <https://www.economicstrategygroup.org/publication/the-link-between-wages-and-productivity-is-strong>. *Does Productivity Growth Still Benefit Working Americans?*, Stephan Rose, Information Technology & Innovation Foundation (June 13, 2007). <https://itif.org/publications/2007/06/13/does-productivity-growth-still-benefit-working-americans/>. *Workers' Compensation: Growing Along with Productivity*, James Sherk, The Heritage Foundation (May 31, 2016). www.heritage.org/jobs-and-labor/report/workers-compensation-growing-along-productivity.

CHART 1

Productivity and Compensation Track Similarly

PERCENTAGE CHANGE



Note: Productivity and compensation are adjusted for inflation using the implicit price deflator for non-farm businesses.

Source: U.S. Department of Labor, Bureau of Labor Statistics, and Haver Analytics, "Labor Force Statistics from the Current Population Survey," Employment to Population Ratio (25-54 years old) and "Productivity and Costs," non-farm business sector.

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Accordingly, there is no need for government intervention in this area.

Finally, we commend the Committee for initiating a discussion about potential amendments to the FLSA. Given the considerable change in the workplace since the FLSA was enacted in 1938, there certainly is a need for Congress to do a review of this statute. Such a review would be particularly helpful for all stakeholders, given the fact that the statute has been subject to conflicting interpretations by the Wage and Hour Division of the U.S. Department of Labor and the courts. In fact, this statute is one of the most frequently litigated statutes in the federal courts. For example, in 2023, there were 5,532 court filings involving the FLSA, and according to a report by the Seyfarth Shaw law firm, many of these lawsuits involved complex and “novel and creative claims and Supreme Court/appellate level battles...over long-accepted standards.”⁴ Reduction in such costly litigation and often conflicting interpretations of the FLSA should be addressed by Congress.

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Before we begin our discussion this morning, I believe it is important that we level set the parameters of our conversation. It is my understanding that the Chairman’s intent for holding this hearing today is to discuss scenarios where employees do not perform work for their employers for more than four days in a workweek, work no more than 32 hours in such workweek, and continue to receive the same amount of pay they would have received in a traditional 40-hour workweek setting.⁵ Senator Sanders has not to date provided specific details regarding his thoughts with respect to the 32-hour workweek and the corresponding requirement that employees suffer no decrease in wages. One could assume, however, that he is only considering nonexempt employees in his thinking – if he is also contemplating exempt employees in any proposal in this area, substantial amendments would have to be made to the FLSA.⁶ Finally, it is my understanding that the Chairman believes, consistent with the above objectives, that the FLSA should be amended to require employers to pay overtime to nonexempt employers after 32 hours of work in a workweek. As I understand it, the rationale for such initiatives is to assist nonexempt employees to receive part of any “AI wealth dividends” that certain employers may receive from utilizing AI-related workplace technology. My testimony is predicated on the above understandings.

⁴ 2023 FLSA Litigation Metrics and Trends, www.jdsupra.com/legalnews/2023-flsa-litigation-metrics-trends-477793/.

⁵ The title of this hearing only states that employees would not suffer a reduction in pay they are currently receiving by working a 40-hour workweek and then moving to a 32-hour workweek. I am assuming, however, that Senator Sanders would also take the position that employees in a 32-hour workweek schedule situation would receive the same level of benefits. This is an important point as the U.S. Department of Labor, Bureau of Labor Statistics has concluded employee benefits account for approximately 29.4 percent of an employee’s total weekly payroll costs to private sector employees.

⁶ *US workers deserve a break. It’s time for a 32-hour working week*, Bernie Sanders, The Guardian. www.theguardian.com/commentisfree/2023/may/04/us-workers-bernie-sanders-32-hours-working-week.

The 40-Hour Workweek and the FLSA

A good beginning point for our discussion is a brief review of the origin of the 40-hour workweek and the enactment of the FLSA. The origin of the 40-hour workweek in the United States is generally attributed to Henry Ford, who, in the 1920s, instituted a new work schedule for the auto workers in his plants. Mr. Ford changed his employees' work schedules to provide for two days off each workweek yet maintained a schedule consisting of five eight-hour workdays – the 40-hour workweek. Thereafter, President Franklin Roosevelt, as part of his “New Deal” reform initiatives, made proposals to require overtime to be paid over a certain number of hours worked in a workweek. The overtime provisions that President Roosevelt was seeking were intended to reduce the number of hours worked by an employer’s current workforce and create jobs for the substantial number of unemployed workers in the country at that time.⁷ President Roosevelt’s initiatives ultimately resulted in the enactment of the Fair Labor Standards Act in 1938. The statute, initially in its overtime requirements, established a 44-hour standard, with phase-in provisions ultimately moving the overtime provision to a 40-hour standard in 1940. (See attachment 1).

The potential AI wealth dividend

Various studies and pilot projects have provided convincing evidence that the adoption of AI technology in the workplace can result in positive outcomes for all stakeholders.⁸ For example, in a recent study, Goldman Sachs concluded that AI could raise global GDP by seven percent.⁹

Understanding of the impact of AI in the workplace, however, is in the embryotic stages of development, with widely varying analyses. Some predictions have concluded that there is a substantial potential for considerable job loss because of the implementation of such new technology – other studies, however, present glowing predictions of enhanced opportunities for employers and employees alike. Accordingly, given the numerous labor relations policy issues presented by AI, we agree with Chairman Sanders that this issue should be given significant attention, and we commend the Committee for initiating this discussion. As noted above, however, where we part ways with Senator Sanders is this proposal to have intervention by governmental entities to distribute any potential “AI wealth dividend.” Employers should be given considerable flexibility and latitude on how to run their businesses. Entrepreneurial innovation, including the implementation of reduced workweek schedules, should be encouraged and incentivized but not mandated by government intervention.

⁷ *The Fair Labor Standards Act (FLSA): An Overview*, Congressional Research Service (updated March 8, 2023). www.crsreports.congress.gov-r42713 and *The Cons of a 4-Day Workweek*, Nirvi B., People Hum (Feb. 13, 2024). www.peoplehum.com/blog/cons-of-a-4-day-workweek. See also *Fair Labor Standards Act of 1938: Maximum Struggle for a Minimum Wage*, Jonathan Grossman, U.S. Department of Labor. <https://www.dol.gov/general/aboutdol/history/flsa1938>.

⁸ See *Generative AI Can Boost Productivity Without Replacing Workers*, Katia Savchuk, Stanford Business (Dec. 11, 2023). www.gsb.stanford.edu/insights/generative-ai-can-boost-productivity-without-replacing-workers.

⁹ *Machines of Mind: The Case for an AI-powered Productivity Boom*, Martin Neil Baily, Erik Brynjolfsson, and Anton Korinek, Brookings Education (May 10, 2023). www.brookings.edu/articles/machines-of-mind-the-case-for-an-ai-powered-productivity-boom/.

Workers Desire Flexibility

Workers today are asking that their employer provide as much flexibility as possible for when, where, and how work is to be performed.¹⁰ Many employees today want to work remotely or in hybrid situations and set their own hours of employment. They seek flexibility for more family time, increased opportunities to engage in social and academic activities, and to achieve a better work-life balance. Given these well-established findings that employees in the workplace today are requesting more flexibility, what is the rationale to mandate any rigid type of workweek? For this reasons and other concerns outlined below – and perhaps other policy, economic, and legal reasons – the Association submits that the Committee should consider the following issues in its deliberations regarding the merits, or lack thereof, for a 32-hour workweek and a corresponding requirement that employers not reduce employees’ wages and benefits in any potential change from a 40-hour workweek.

- **Worker shortage concerns**

“We have a lot of jobs, but not enough workers to fill them. If every unemployed person in the country found a job, we would still have nearly 3 million open jobs.”¹¹ Employers from construction, to healthcare, to the service industry currently cannot find enough employees. These shortages of employees are well-documented.¹² For example, one recent study concluded that an estimated 501,000 additional workers are needed in the construction industry on top of the normal job pace of hiring in 2024. The same study concluded, in 2025, that the construction industry will need to bring in nearly 454,000 new workers, on top of new hiring, to meet industry demand.¹³ Thousands of positions in hospitals, clinics, and long-term care facilities also cannot be filled, including projections by the Bureau of Labor Statistics that the country will face a

¹⁰ *Survey: U.S. Employees Prioritize Workplace Flexibility as a Key Component of Compensation*, The Conference Board, PR Newswire (Nov. 13, 2023). www.prnewswire.com/news-releases/survey-us-employees-prioritize-workplace-flexibility-as-a-key-component-of-compensation-301986497.html. “According to a new survey from The Conference Board, a majority [of employees] now consider workplace flexibility a basic element of competitive compensation—one that can make or break a company’s ability to attract and retain talent.” See also *Mandating the 4-day Workweek Is a ‘one-size-fits-none’ Policy*, Brent Orrell, US News and World Report (Oct. 19, 2021). <https://www.aei.org/op-eds/mandating-the-4-day-workweek-is-a-one-size-fits-none-policy/>. “Data from a recent American Enterprise Institute survey shows that workers value flexibility in employment above virtually any other consideration: Workers want a better balance between their work and family lives, and they are willing to sacrifice financially, as much as \$30,000 per year in salary, in order to get it.”

¹¹ *Understanding America’s Labor Shortage*, Stephanie Ferguson, U.S. Chamber of Commerce (Feb. 13, 2024). www.uschamber.com/workforce/understanding-americas-labor-shortage.

¹² *Why America Has a Long-Term Labor Crisis, in Six Charts*, Laura Weber and Alana Pipe, The Wall Street Journal (Sept. 25, 2023). www.wsj.com/economy/jobs/labor-supply-economy-jobs-charts-3285a5b7. *Report: As US Economy Grapples with Nearly 11 Million Unfilled Jobs, Immigration Reform is Critical*, Committee for Economic Development of The Conference Board (CED), PR Newswire (Mar. 21, 2023). www.prnewswire.com/news-releases/report-as-us-economy-grapples-with-nearly-11-million-unfilled-jobs-immigration-reform-is-critical-301777423.html. *Immigration Reform: A Path Forward*, Stephen Yale-Loehr, Randel Keith Johnson, Theresa Cardinal Brown, and Charles Kamasaki, Cornell University Law School (Oct. 5, 2023). www.lawschool.cornell.edu/wp-content/uploads/2023/10/Cornell-immigration-white-paper-10-5-23.pdf.

¹³ *ABC: 2024 Construction Workforce Shortage Top Half a Million*, (January 31, 2024). www.abc.org/News-Media/News-Releases/abc-2024-construction-workforce-shortage-tops-half-a-million.

shortage of 195,400 nurses by the year 2031 and that the number of job openings for home and personal health aids will increase 37 percent by 2028.¹⁴

The adoption of a 32-hour workweek would increase, in many instances, the number of positions an employer would need to fill to meet client and customer demands, with no corresponding strategy for how these shortages should be addressed. Consider, for example, a refinery that operates on a 24/7 basis and uses four crews. Such an employer hypothetically has four people for every position, and the employees take turns filling a job during a 40-hour workweek. If each crew were forced to change to a 32-hour workweek, the employer would have to hire an additional crew. This would be a 25 percent increase in staffing with corresponding payroll increments. The only other solution this employer would have would be to significantly increase overtime for the existing crews, assuming the workers in question were willing to work the additional hours and such overtime did not present safety issues.

- **Congress should not set private employers' wage structures**

The second part of Senator Sanders' change in the law (after the 32-hour overtime amendment to the FLSA) would require employers not to reduce the wages (and presumably benefits) for employees who are moved from a 40-hour workweek to a 32-hour workweek. The impact of this approach is to force employers to change their wage structure – they would be required to provide a certain level of pay for employees, who then would be working reduced hours. This approach would require congressional action. Even assuming Congress had the constitutional authority under the Commerce Clause or pursuant to some other constitutional theory to proceed in this manner, this is bad public policy. Governmental entities should not intervene in the employers' basic entrepreneurial rights to run their businesses, including the establishment of wage structures.

- **FLSA overtime provisions were not enacted to be wealth distribution mechanisms**

As stated above, the overtime provisions of the FLSA were enacted in 1938 to incentivize employers to create more jobs and to discourage employers from providing more hours of work to their existing workforce. Yet, the Chairman's proposal would attempt to utilize the Fair Labor Standards Act to distribute potential "AI wealth dividends" from employers to employees by government intervention. While we agree that employees should benefit from any AI wealth dividend, we do not agree that government intervention is the proper way to achieve this objective. Traditional market-related forces, with an underlying minimum wage safety net, should determine the rate of pay for private sector employees. When employers fail to reward their employees with increased wages for increased productivity gains, such employers will not be able to recruit or retain employees – they will lose their employees to competitors. Traditional market forces should determine how any AI wealth dividend is to be distributed. Indeed, various

¹⁴ *U.S. is Suffering a Healthcare Worker Shortage. Experts Fear it Will Only Get Worse.* Alexandra O'Connell-Domenech, The Hill (Sept. 28, 2023). www.thehill.com/changing-america/well-being/prevention-cures/4225960-the-us-is-suffering-a-healthcare-worker-shortage-experts-fear-it-will-only-get-worse/.

studies substantiate that historically productivity gains and increases in employee compensation are closely linked.¹⁵

- **Implementation of a 32-hour workweek with corresponding requirement that no employees suffer any loss of wages is a “backdoor” or “workaround” to the establishment of a new federal minimum wage**

Consider this example. Hypothetical employer X presently pays its nonexempt employees \$20.00 an hour, and its employees work a traditional 40-hour workweek, receiving a total gross weekly pay of \$800.00. Per the Chairman’s approach, if employer X moves from the traditional 40-hour workweek to a 32-hour workweek, it would be required to provide its employees the same total weekly compensation of \$800.00. Accordingly, such employees would then be making \$25.00 an hour, a \$5.00 an hour increase or a 25 percent increase over their previous hourly rate. Granted, this is not a direct establishment of a new federal minimum wage, but it certainly is a workaround method of establishing minimum wages for employees in a potential transition from a 40-hour workweek to a 32-hour workweek. Minimum wage adjustments should be considered separately from Senator Sanders’ proposal.

- **Payroll cost impact on employers**

As illustrated above, the imposition of a 32-hour workweek can result in incremental payroll costs – when incremental benefit costs are added, the figure is even higher. The amount of work an employer needs to have completed in a workweek does not change in most instances if an employer converts to a 32-hour workweek, but under Senator Sanders’ proposal, an employer will need to hire more employees or pay significant overtime for existing employees to meet its work requirements. Indeed, the Association notes that a rule presently pending at the Department of Labor would increase the compensation threshold of when employees are to be paid overtime.¹⁶ When you combine an employer’s potential need to pay more overtime with the impact of such a proposed overtime rule requirement with the requirement by Senator Sanders that employees receive the same amount of pay and benefits for a reduced number of hours in a workweek, a potentially unsustainable increase in payroll expenses will be placed on many employers.

- **Inflationary impact**

Even if an employer could successfully navigate a way to reschedule its workforce and pay the added costs associated with a 32-hour workweek, such added costs would, in virtually every instance, have to be passed on to consumers. Inflation is already a major problem in this country

¹⁵ *Id.*

¹⁶ *New Proposed Overtime Regulation Is Wrong Rulemaking at Wrong Time*, Marc Freedman, U.S. Chamber of Commerce (Sept. 14, 2023), www.uschamber.com/employment-law/new-proposed-overtime-regulation-is-wrong-rulemaking-at-wrong-time. “The new proposed regulation first published on September 7, 2023, will raise the salary threshold, below which an employee is non-exempt (or eligible to earn overtime) by more than 50% from the current \$35,568/year (\$684/week) to \$55,068/year (\$1,059/week). The proposed rule also includes an automatic escalator clause to reset it every three years.”

and has taken a substantial toll, particularly on working class families.¹⁷ For this reason alone, the imposition of a 32-hour workweek is not a sound policy option.

- **Operational Coverage**

The imposition of a 32-hour workweek will force many employers to make difficult operational decisions. If an employer wishes to minimize overtime expenditures and not incur the cost of hiring additional workers, it may have to limit the number of hours of its operations. This may be obtainable in certain manufacturing settings (provided the same production output can be accomplished in a 32-hour vs. a 40-hour schedule) but will not be obtainable by other employers. For employers that must operate on a 24/7 basis (e.g., hospitals), they cannot close and the imposition of a 32-hour workweek is not practical. In such settings, significant increases in payroll costs will occur. Other employers, especially those in retail and hospitality, could reduce their hours of operation, but in doing so, they could face substantial negative customer/client reactions. For example, what if a hotel decided to only be open for four days in a week? Exercising such option not only may be financially unsound, but also not operationally viable. The employer could hire more workers and/or pay its existing workers more overtime, but again, proceeding with either option would undoubtedly result in significant increases in the cost of doing business.

- **Scheduling disruption and interference with non-union and unionized employer operations**

Many employers in this country have long-established scheduling systems that are well-accepted in the workplace. This is particularly true for employers such as hospitals and other employers that must operate on a 24/7 basis. Imposing a 32-hour workweek would adversely impact such operations and present significant scheduling issues. In unionized settings, employers and unions would be forced to renegotiate collective bargaining agreements, many of which have embraced the 40-hour workweek for decades.

- **Employee loss of work**

Mandating a 32-hour workweek, with a requirement that employees maintain their current compensation, may cause employers to eliminate certain positions. Alternatively, employers may split numerous full-time positions into part-time positions to minimize overtime costs, thereby overall decreasing employee wages. Such an approach may directly conflict with concerns often voiced by employees in the workplace today that they cannot get enough hours of work from their employer and are, therefore, forced to work for more than one employer to meet basic costs of living expenses. Simply put, a 32-hour workweek may, in many situations, result in either job elimination or an increase in part-time work, thereby adversely impacting the overall compensation of employees.

¹⁷ Pursuant to a report issued by the US Bureau of Labor Statistic, inflation rose again for the 12 months ending in February to 3.2 percent. The same report indicates that core inflation – which excludes volatile food and energy prices – rose 3.8 percent for the 12 months ending in February. <https://www.bls.gov/news.release/cpi.nr0.htm>.

- **Will there be a potential adverse impact on Social Security, Medicare, and state payroll tax-funded programs?**

What impact would a 32-hour workweek have on mandatory tax payments by employees and employers to the Social Security and Medicare trust funds? As noted above, some employers may be forced to eliminate positions or reduce payroll expenses by creating new part-time positions if a 32-hour workweek is mandated. Such deductions in overall payroll tax contributions certainly must be considered. Granted, some employers, however, may be forced to hire more workers or pay more overtime hours, thereby balancing out any eliminated positions or increased part-time positions, but AI may also result in a net reduction in total employee and employer payroll tax payments. Even minimal reductions in payroll tax contributions by employers to the Social Security and Medicare trust fund (and state unemployment-funded systems) could have significant adverse effects on such funds that are already on the brink of financial insolvency.

- **Increase in employer benefit costs or reduction in benefit coverage**

Employee benefit costs for private sector employees is 29.4 percent of an employer's total payroll cost.¹⁸ Pursuant to Senator Sanders' proposal, requiring employers to maintain the same level of pay and benefits for a reduced number of hours worked will, accordingly, increase the hourly benefit cost for each employee. Further, as noted above, certain employers may either eliminate positions or reduce the number of hours that employees work in a given workweek to accommodate the 32-hour a week schedule. Moving employees to part-time positions may result in such employees receiving a lesser amount of healthcare insurance benefit coverage or no benefit coverage altogether. If this occurs, there will be an adverse impact on our nation's healthcare delivery system. This issue should be considered when analyzing the potential impact of a 32-hour workweek.

- **Increased employee stress, related workplace safety issues, and product/service quality**

While the proponents of a reduced workweek extoll the virtues of a 3-day weekend and increased time off, the reality in most workplaces is that the same amount of work would still need to be done over a shorter number of hours. This pressure to produce the same amount of product or provide the same level of services can, as noted by many studies,¹⁹ lead to more stress on workers that negates partially or completely the benefit of more time off. Employee workplace safety concerns may also increase if safeguards are not put in place for the increased productivity required in a reduced workweek. Finally, requiring the same level of production or services could also result in employees "rushing" to finish a job or project or otherwise not maintaining the same quality of work as previously provided in a 40-hour workweek.

¹⁸ U.S. Bureau of Labor Statistics, Employer Costs for Employee Compensation Summary, (Dec. 15, 2023).

¹⁹ *Employers Beware – A 4-Day Workweek Creates A Multitude Of Problems (Here's a long list of them)*, Dr. John Sullivan (April 11, 2022). <https://drjohnsullivan.com/articles/employers-beware-4-day-workweek-creates-problems/>.

- **“One size does not fit all”**

As noted by many commentators, a 32-hour workweek does not work for many types of employers. This is especially true for employers who must provide services to the public on a 24/7 basis or run a production operation, such as a refinery, without interruption. The only way employers could adjust to a 32-hour workweek would be to pay significant overtime to existing employees or hire additional workers (if they can even be found) to cover the lost shift hours of their current workforce. Accordingly, in addition to the overwhelming desire by employees for more flexibility in the workplace, accommodations would need to be made for certain industries and employers if a 32-hour workweek were mandated.

- **Changes to paid time off and other benefits tied to hours worked**

If an employer calculates paid time off benefits based on hours worked, moving to a 32-hour work week would result in fewer paid time off hours being earned. Other benefits tied to hours worked would also be reduced. It is not clear how Senator Sanders’ approach would accommodate such benefit plans. These are but a number of benefit issues that would have to be addressed if the Chairman’s approach were to be enacted.²⁰

- **Is increased productivity possible?**

A shortened workweek may not permit a worker to increase their productivity. For example, on an assembly line, no matter how well the worker performs, the line speed could remain unchanged. This would mean working 20 percent fewer days/hours would translate to 20 percent less productivity per person.²¹

Also, consider in warehouse situations that there may be a physical limit on how many items employees can pick per hour or how many delivery locations a driver can serve in a given day. These are a few examples of where workers have little or no ability, as a practical matter, to increase their productivity.²²

- **Short-term success – Long-term failure**

Many articles and studies have concluded that the employee appreciation and support for a shortened workweek exists only for a short period of time. Such studies have concluded that the initial positive reaction by employees can fade very quickly, with corresponding morale, operational, and financial problems facing employers that move to a shortened work week.²³

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²⁰ *Shortening the Workweek: Pros and Cons*, Indeed for Employers. www.indeed.com/hire/c/info/shorter-work-week.

²¹ *The 32-Hour, 4-day Workweek: A Win-Win or a Risky Move?*, James Dillingham (Dec. 19, 2023). www.industryweek.com/talent/compensation-strategies/article/21279606/the-32-hour-4-day-workweek-a-win-win-or-a-risky-move.

²² *The Impact of Working a 4-Day Week*, Amy Fontinelle, Investopedia (Nov. 13, 2022). www.investopedia.com/the-impact-of-working-a-4-day-week-5203640.

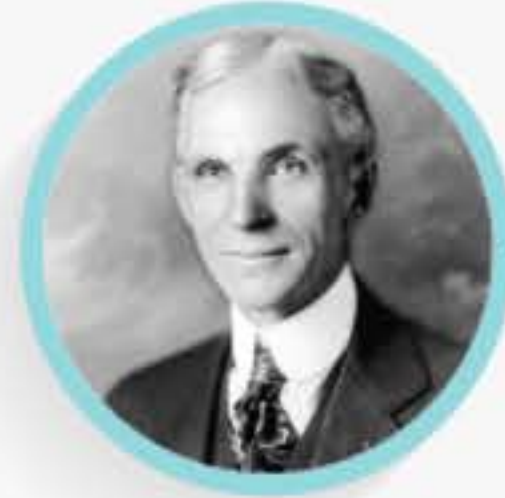
²³ *The Cons of a 4-Day Workweek*, Nirvi B., People Hum, Feb. 13, 2024. www.peoplehum.com/blog/cons-of-a-4-day-workweek.

Mr. Chairman, Ranking Member Cassidy, and Members of the Committee, this concludes my testimony. I am happy to respond to any questions or comments you may have.

20TH CENTURY MILESTONES ON THE PATH TO THE 40-HOUR WORKWEEK

1914

Henry Ford shifts from nine-hour to eight-hour days, though employees still work six days a week.



1918

Congress passes the Adamson Act, named after William Adamson, a U.S. Representative from Georgia, establishing an eight-hour workday for all interstate rail workers to avoid a strike.



1924-26

Ford moves to a five-day workweek, closing his factories on weekends. He believed that if workers had more leisure time, they would buy more products, including his cars.



1938

President Franklin D. Roosevelt signs the Fair Labor Standards Act (FLSA), which mandates a federal standard for a 44-hour workweek. The law also requires a minimum wage and overtime pay for those working more than 44 hours a week.



1940

The FLSA is updated to lower the federal standard to 40 hours a week.

