

H.R. 1119, THE FAMILY TIME FLEXIBILITY ACT

HEARING
BEFORE THE
SUBCOMMITTEE ON WORKFORCE PROTECTIONS
OF THE
COMMITTEE ON EDUCATION AND
THE WORKFORCE
HOUSE OF REPRESENTATIVES
ONE HUNDRED EIGHTH CONGRESS
FIRST SESSION

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HEARING ON H.R. 1119
THE FAMILY TIME FLEXIBILITY ACT

Wednesday, March 12, 2003

Subcommittee on Workforce Protections
Committee on Education and the Workforce
U.S. House of Representatives
Washington, D.C.

The Subcommittee met, pursuant to notice, at 2:09 p.m., Hon. Charlie Norwood, Chairman of the Subcommittee, presiding.

Present: Representatives Norwood, Biggert, Ballenger, Isakson, Kline, Blackburn, Owens, Kucinich, Woolsey, Payne, and Bishop.

Staff present: Molly McLaughlin Salmi, Deputy Director of Workforce Policy; Jim Paretti, Professional Staff Member; Travis McCoy, Legislative Assistant; Paula Nowakowski, Staff Director; Ed Gilroy, Director of Workforce Policy; Greg Maurer, Coalitions Director for Workforce Policy; Jo-Marie St. Martin, General Counsel; Kevin Smith, Communications Advisor; Kevin Frank, Professional Staff Member; Allison Dembeck, Executive Assistant; Linda Stevens, Chief Clerk/Assistant to the General Counsel; Deborah L. Samantar, Committee Clerk/Intern Coordinator.

Peter Rutledge, Minority Senior Legislative Associate/ Labor; and, Dan Rawlins, Minority Staff Assistant/Labor.

Chairman Norwood. A quorum being present, the Subcommittee on Workforce Protections of the Committee on Education and the Workforce will now come to order.

We are meeting today to hear testimony on H.R. 1119, the Family Time Flexibility Act. Under Committee rule 12(b), opening statements are limited to the Chairman and the Ranking Minority Member of the Subcommittee. Therefore, if other Members have statements, they may be included in the hearing record. With that, I ask unanimous consent for the hearing record to remain open 14 days to allow Members' statements and other extraneous material referenced during the hearing to be submitted in the official hearing record. Without objection, so ordered.

***OPENING STATEMENT OF CHAIRMAN CHARLIE NORWOOD,
SUBCOMMITTEE ON WORKFORCE PROTECTIONS, COMMITTEE ON
EDUCATION AND THE WORKFORCE***

I yield myself time for an opening statement. The focus of today's hearing is H.R. 1119, the Family Time Flexibility Act. I am proud to be an original co-sponsor of H.R. 1119, which, as we will hear today, offers to private sector employees a benefit which public sector employees have enjoyed for years: the ability to choose, at their option, whether to take extra paid time off in lieu of receiving overtime pay in their paycheck.

Let me say first that I imagine each employee given this choice might have a different answer, or a different approach, based on his or her own situation. But that is one of the key features of this legislation, that it gives each employee the ability to make this choice for him or herself, based on his or her personal priorities, not those of the federal government or a 1938 wage-and-hour law.

In the last Congress, this Subcommittee heard testimony about flexibility in the workplace, and specifically, on the ability of employers to accommodate the needs of their employees under the Fair Labor Standards Act of 1938.

We heard about demographic changes in the workforce, the dramatic changes in the workplace as we have moved away from a manufacturing-based economy to a professional and service-based economy, and the changes we have seen as women have grown to comprise almost half of our workforce.

We heard about the issues that matter most to today's workers: chief among them, the ability to balance work and family.

We heard about the failings of outdated provisions in the law, such as that part of the Fair Labor Standards Act that generally prohibits a private sector employer from offering paid time off to employees in lieu of overtime.

These hearings made one thing very clear: family-friendly legislation such as H.R. 1119, which provides greater options to working men and women in balancing the demands of work and

family, is an idea whose time has come.

The Family Time Flexibility Act would, for the first time, give private-sector employers the option of offering employees the choice of paid time off in lieu of cash wages for overtime hours at the employee's option.

The bill guarantees that the choice is in the hands of the employee, whether to take something extra home in the paycheck, or whether to bank paid time off for a longer vacation, a family holiday, or any other reason that they may choose.

In light of some of the misconceptions surrounding this bill, I think it is also important to state for the record what the bill does not do. The bill does not affect the 40-hour workweek, nor does it change the way by which overtime pay is calculated.

Perhaps most important, nothing in the legislation requires an employee to opt for paid time off if he or she would prefer time-and-a-half overtime pay. Indeed, we have included numerous safeguards to ensure that the choice to opt for time off or extra cash is that of the employee, and not subject to coercion or undue influence by the employer.

We will hear from several witnesses today, both as to the practical and the legal aspects of expanding workplace flexibility for working men and women. I look forward to today's testimony. I invite my colleagues on both sides of the aisle to support this important families-first piece of legislation.

**WRITTEN OPENING STATEMENT OF CHAIRMAN CHARLIE NORWOOD,
SUBCOMMITTEE ON WORKFORCE PROTECTIONS, COMMITTEE ON
EDUCATION AND THE WORKFORCE – SEE APPENDIX A**

Chairman Norwood. I now would like to yield the remainder of my time to my colleague and Vice-Chair of the Subcommittee, Representative Judy Biggert, the sponsor of the Family Time Flexibility Act.

***STATEMENT OF VICE-CHAIR JUDY BIGGERT, SUBCOMMITTEE ON
WORKFORCE PROTECTIONS, COMMITTEE ON EDUCATION AND THE
WORKFORCE***

Thank you very much for yielding time to me, Mr. Chairman. I commend you for holding this hearing, and I appreciate your support of the Family Time Flexibility Act. I would also like to thank our witnesses for coming today.

We all know that workers today face a difficult dilemma: how to balance the demands of a job with the needs of their families. We also know that this challenge has become even more

difficult as more and more American families rely on two incomes to survive.

This conflict may weigh most heavily on women, but all workers, regardless of gender, experience conflict between work and family, watching their children's soccer game, or going through the stack of papers on their desk.

The Family Time Flexibility Act will help to ease these pressures. The concept behind this bill is simple: if workers have to work overtime, they should be allowed to choose how they want to be compensated - with more money or more paid time off. For some, time is more valuable than money. Most workers just want the freedom to make that choice for themselves.

That is what this bill does; it gives them choice and flexibility.

What this bill does not do is to require employees to take compensatory time, or require employers to offer it. But where both parties can agree, an employee could begin banking his or her overtime hours to be used at a later time as paid compensatory time off. In fact, this bill contains numerous safeguards to protect the employee, and to ensure that the choice and selection of compensatory time is truly voluntary on the part of the employee.

So, again, thank you, Mr. Chairman. I look forward to working with you to pass this bill and provide workers with flexibility and important protections in a manner that will not overburden employers or jeopardize their willingness to make compensatory time available as an option.

WRITTEN STATEMENT OF VICE-CHAIR JUDY BIGGERT, SUBCOMMITTEE ON WORKFORCE PROTECTIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE – SEE APPENDIX B

Chairman Norwood. Thank you very much, Mrs. Biggert.

I yield to the distinguished Ranking Minority Member from New York, Mr. Owens, for whatever opening statement he wishes to make.

OPENING STATEMENT OF RANKING MEMBER MAJOR OWENS, SUBCOMMITTEE ON WORKFORCE PROTECTIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE

Thank you, Mr. Chairman. I want to welcome this afternoon's witnesses, especially Ms. Bravo, and thank you for taking time from your schedules to be with us.

We are here today to consider H.R. 1119, the so-called Family Time Flexibility Act. This legislation, except for its title, is identical to the comp time legislation introduced by our colleague,

Mrs. Biggert, in the last Congress, and essentially the same as H.R. 2391, which was considered and ultimately rejected in the 104th Congress, and H.R. 1, which was considered but failed in the 105th Congress.

The proponents of the legislation contend the bill enhances flexibility for working families. In fact, this legislation undermines the 40-hour week and it harms working families. Indeed, the most obvious and direct result of this legislation is to effectively result in workers providing inadequately secured no-interest loans to their employers.

Notwithstanding the rhetoric of the bill's proponents, no worker has a right to paid time off under H.R. 1119. H.R. 1119 does not provide an employee a right to ask for compensatory time off, unless the employer first agrees to offer the time off.

Where an employer offers comp time, the employer may arbitrarily decide to only offer comp time to some employees while denying it to others. Or an employer can arbitrarily deny compensatory time to a worker on some occasions, while offering it to him on others. Rather than increasing the worker's control over his or her own life, H.R. 1119 increases the employer's control over the worker's life. H.R. 1119 undermines existing pay leave policies. Under H.R. 1119, a worker may be able to earn the equivalent of a month's paid leave, 160 hours of comp time. Why should an employer give away paid leave when the employer can effectively require an employee to earn it through comp time?

Even when an employee earns comp time, H.R. 1119 does not provide a right for the employee to be able to use it. For example, assume a worker wants to use three days of accrued comp time to care for his wife, who is undergoing life-threatening surgery. Regardless of how much notice the employee provides of the intent to take leave, and notwithstanding the fact that the employee may have a statutory right to take that leave under the Family and Medical Leave Act, the employer may still deny the employee the right to use the comp time the employee has earned.

The single significant change that H.R. 1119 makes to the overtime law is to permit an employer to defer paying anything, potentially for up to a year and a month, for overtime work. In effect, employees are being asked to provide a poorly secured no-interest loan to their employer.

In industries characterized by thinly capitalized businesses, including the construction industry, the garment industry, and many seasonal industries, the promise of comp time is likely to be illusory. A random check of 69 garment contractors in Southern California in 1994 found that 73 percent maintained improper payroll records, without which fair administration of comp time would be impossible; 68 percent were not paying overtime in accordance with current law; and 51 percent were not even paying minimum wage.

Allowing such employers to offer comp time will greatly increase the complexity of enforcing the law by making it more difficult to determine whether an overtime violation has occurred. It would greatly increase the number of violations that occur as employers seek to keep pace with competitors and the temptation to defer payment for overtime work grows. Finally, it will inevitably result in more workers receiving no compensation at all for their overtime work.

The concern about potential abuse of comp time cannot be overemphasized. The overtime law is among the most commonly violated laws in the country. At the appropriate point, I will submit three different recent news reports concerning overtime violations. One concerns unemployed workers in Silicon Valley, working for free in order to brush up their skills. Another concerns a suit alleging that a major employer, Wal-Mart, regularly required workers to work off the clock.

The third report, from yesterday's ABC News web page, quotes an employment lawyer as saying that the current employment environment is the worst he has seen in 23 years of practicing law, and that among the biggest problems he sees are companies misclassifying employees in order to deny them overtime pay.

There are things that this Committee can do that would help working families. We can expand the coverage of the Family Medical Leave Act, to ensure that more workers have a right to leave in the event of a family or medical emergency. We can provide workers with the right to refuse excessive overtime, rather than being required to work excessive unsafe hours. Workers can ensure they will have the time they need to care for their families.

And finally, we can increase the minimum wage. The minimum wage has not been increased since 1997. In five-and-a-half years, inflation has wiped out the value of the last increase, and the real value of the minimum wage is approaching its lowest levels in more than three decades.

Unlike the comp time legislation, expanding family leave, providing the right to refuse excessive overtime, or increasing the minimum wage are policies that would definitely help working families.

Again, I welcome today's witnesses. I yield back the balance of my time.

Chairman Norwood. Thank you very much, Mr. Owens. And I am, as you are, eager to hear from our witnesses. So I would like to start by introducing our witnesses to the Subcommittee.

First, we have Mr. Houston Williams, who is the founder, Chairman, and CEO of PNS Inc., San Jose, CA. He will be testifying today on behalf of the U.S. Chamber of Commerce.

Next, we have Ms. Teri Martell, who is an electrician and instrumentation mechanic at Eastman Kodak Company in Rochester, NY, where she has been employed for 21 years.

Our third witness is Ms. Ellen Bravo, who is the National Director of 9 to 5, National Association of Working Women, Milwaukee, WI. Welcome.

And finally, we have Mr. John Dantico, who is Principal of Compensation/HR Consulting for the HR Group, Northbrook, IL. He is testifying on behalf of the Society for Human Resource Management (SHRM). Welcome, all.

Before the witnesses begin their testimony, I want to take a minute to remind our Members that we will be asking questions after the entire panel has testified. In addition, Committee rule (2) imposes a five-minute limit on all questions.

And with that, Mr. Williams, if you would begin, please, sir.

STATEMENT OF HOUSTON L. WILLIAMS, CHAIRMAN AND CEO, PNS INC., SAN JOSE, CA, TESTIFYING ON BEHALF OF THE U.S. CHAMBER OF COMMERCE

Good afternoon, and thank you all very much for allowing me to testify before you today. I commend you for your efforts to find ways to improve workplace flexibility, and for holding a hearing on this very important issue.

My name is Houston Williams, and I am founder, Chairman, and CEO of PNS Inc. PNS is a California-based corporation involved in providing telecommunications services and products to the telecommunication service providers and the end users of that service, to include warehouse and distribution, network and system engineering, installation, light manufacturing.

Approximately 80 percent of my workers are hourly workers subject to the overtime provision of the Fair Labor Standards Act. These employees work primarily in clerical positions and as technicians in various blue-collar positions in our warehouses, such as assemblers, drivers, rackers, jobbers, and stockers.

I am here to speak to you today on behalf of the U.S. Chamber. I joined the Chamber board of directors in June 2002, and also served as a member of its council on small business. The Chamber is the world's largest business federation, representing an underlying membership of more than three million businesses and organizations of every size and in every industry sector and region of the country. Ninety-six percent of the Chamber members are small businesses owners with fewer than one hundred employees.

I am pleased to support H.R. 1119, the Family Time Flexibility Act, and to relate how this bill would help my company and my employees. H.R. 1119 would modernize the application of the Fair Labor Standards Act to the private sector by permitting employers to offer their employees a voluntary choice of taking overtime in cash payments, as they do today, or in the form of paid time off from work.

Just as with overtime payments, paid time off would accrue at a rate of one-and-a-half hours for each hour of overtime worked. Family time arrangements permit employees to build up a bank of time that they can use to take paid time off from work when they need it, provided the time off does not unduly disrupt the employer's business.

Family time, sometimes referred to as compensatory time, is a simple common-sense solution to provide additional flexibility to help employees balance work and time for family or

other personal needs.

I would think that everyone on this Subcommittee would agree that the workforce has changed significantly since passage of the Fair Labor Standards Act 65 years ago. When the Fair Labor Standards Act was enacted, the workforce consisted mostly of men. It was not typical for households with young children to have both parents work outside of the home.

But today, a greater percentage of employees who work overtime are women. There are more dual-wage earner couples in the workforce, and there are more single mothers in the workforce. These demographic changes in the workforce are a major reason why today, many more employees view time off as valuable, and in some cases, more valuable than cash payment for overtime.

Some opponents of family time legislation argue that more mandated family leave programs are the way to balance work and family commitments. But new one-size-fits-all mandates are not the solution we need. Instead of stifling creative scheduling arrangements, we should be finding ways to encourage innovative employer-employee partnerships by giving employees and employers more options so that, together, they can find solutions to balance the needs of employees with the demands of the workplace.

Providing more options for the employees will help them find time for any number of personal commitments, including spending time with family or friends, volunteering with a non-profit organizational charity, visiting the doctor or dentist, or participating in the local community group, church, or religious organizations.

The concept of giving employees a choice to select paid time off in lieu of cash wages is nothing new. In fact, it has been an option widely available to government employees for close to 20 years, where I understand it has worked well. The time has come to give the men and women in the private sector the opportunity to choose for themselves whether to receive extra compensation or paid time off for working overtime.

Let me take a moment to describe my company and how enactment of this legislation would help me to provide more options for my employees. PNS has roughly 125 employees, down from 375 employees in mid-year 2000. Roughly 90 percent of our employee body has young families or they are of childbearing age.

PNS is a generous firm, providing full medical benefits, including family coverage, for which we do not require any employee co-payment. We also offer a 401(k) plan, five personal paid days off, and two weeks of paid vacation. These benefits apply equally to all employees, regardless of rank.

For some of my employees, additional paid time off is more valuable than additional money. More time to spend with their families, more time to do errands, and indeed, more time to enjoy the material things they have purchased with their wage.

Even though we offer good benefits, employees sometimes need additional time off to accommodate family or personal needs. To illustrate how enactment of this bill would help my employees, let me provide another example. On any given day, two or four children accompany their parents to work at our corporate headquarters. This could be for a number of reasons, such as child day care. Often times, those parents would prefer to stay home and work, and care for their children at home. But nevertheless, we allow them to bring their children to work, whereas if they had additional time, they would spend that time at home.

While I work hard to accommodate all the situations like this in our organization, i.e. allowing our employees to bring children to work if necessary, passage of this bill will allow me to offer these parents a better option: an opportunity to accumulate a bank of paid time off that could be used for unexpected emergencies like these.

Some may argue that employers support this legislation as a way to exploit their workforce. Nothing could be further from the truth. Employers are genuinely interested, in my humble opinion, in providing employees with flexibility to meet family and personal commitments. And this legislation would give me, as an employer, an additional tool to help me meet the needs of my employees.

**WRITTEN STATEMENT OF HOUSTON L. WILLIAMS, CHAIRMAN AND
CEO, PNS INC., SAN JOSE, CA, TESTIFYING ON BEHALF OF THE U.S.
CHAMBER OF COMMERCE – SEE APPENDIX C**

Chairman Norwood. Thank you very much, Mr. Williams. We appreciate your testimony.

Mr. Williams. Thank you.

Chairman Norwood. I failed to mention to you that I am always very hesitant not to let our witnesses' testimony go beyond five minutes; you make great efforts to be here. But do the best you can to try to stay within a five-minute time frame, please.

Ms. Martell, you are now recognized.

**STATEMENT OF TERI MARTELL, ELECTRICIAN AND
INSTRUMENTATION MECHANIC, EASTMAN KODAK COMPANY,
ROCHESTER, NY**

Good afternoon, Mr. Chairman, and Members of the Subcommittee. My name is Teri Martell, and I am extremely honored that I have been given this opportunity to share my views on the importance of family time, and the need for Congressional action to allow working people flexibility in their jobs.

I have two full-time jobs. I am, first and foremost, the wife of Robert Martell, who is self-employed, the mother of two sons, Donny, age 7, and Eric, age 10, and the owner of two dogs, both Labrador Retrievers. We also own our home, which requires a lot of our time. This job is 24 hours a day, 7 days a week. It is a responsibility I have chosen, it will never go away. We are a typical American family.

I am also employed as an electrician and instrumentation mechanic at Eastman Kodak Company in Rochester, New York. I have worked for Kodak for 21 years now, and am the major source of income and health care benefits for my family. My commute to Kodak Park in Rochester is 1 hour and 15 minutes away, one way. Therefore, I spend two-and-a-half hours each day on the road. Flexible work hours are part of my everyday life. My job at Kodak has allowed me to be somewhat flexible with my work hours. Most often, I work four 10-hour days, Monday through Thursday. The company has been very good to me on my work schedule.

I am a dedicated and proud employee of the Eastman Kodak Company, and I have the reputation of someone who does what it takes to get the job done. Often this includes working overtime during emergencies and scheduled shutdowns on our film manufacturing machines. When this happens, I have to make a choice between work and family. And because I am the major source of my family's income, I choose to work even on my regularly scheduled days off. Saturdays and Sundays are the days when my children are off from school, and Saturdays and Sundays are typically family-time days for most American families, like ours.

Also, my children get many more days off than I do, such as Columbus Day, Veterans Day, Martin Luther King Day, teacher conferences, and in up-state New York, snow days. On these days we send them to a babysitter or my husband stays home. And because he is self-employed, he does not earn money when he has to stay home. It would be a great help to have a bank of hours to use for these situations.

Another example of needing flexibility with overtime pay and how it is paid is when the children are sick. I remember a time when my son Eric was born, I used up 11 of my 20 vacation days that year to stay home with him and take him to the doctor, just in that one year. Being a first-time mom, and needing to nurture him while he was sick was very important to me and to him, and as a working mother, it is very stressful to be at work when your children are in someone else's care. In 1993, if I had been allowed to save up some of those overtime hours, I could have used that during those emergencies. Just like Kodak needs me during machine breakdowns, my family needs me too, during health care breakdowns.

I have heard from coworkers who feel very strongly about the need for more flexible schedules, the kind that comp time would allow. These are employees who are caregivers for their aging parents. One colleague, in particular, told me of her need to balance work and family. For her, comp time would mean allowing more flexibility and spending more time with her ill parent. The ability to save overtime as comp time, and use it in times of crises when needed, and to help you cope with day-to-day challenges. Also, someone who has used up annual vacation hours may have a need for extra time later in the year. Banking comp time could offer options instead of requiring employees to choose between working and taking time off without pay to address family

needs.

Today, in my private sector job, I am not given the choice of paid time off instead of paid overtime compensation. The compensation I receive now is only of monetary value. Money is very important; it is the reason I work. But money does not solve all of my children's needs. If I were given the choice to take paid overtime, I could do so for my family when I want, and at the time I need to take it. Then I might be able to make up some of those lost family-time days or care for my sick child or parent. The decision to permit comp time instead of overtime pay should be left to my employer and me to decide, not the Federal Government.

Over the last century, the make-up of our workforce has changed dramatically. We are a blend of men and women, we are from different cultures, and have different spiritual beliefs. Because we are a diverse workforce, we all have different needs, which therefore make flexible work hours a must. The more we as caregivers, employer, and employees work together, the stronger our families, our corporations, and our nation will be.

In closing, I support the Family Time Flexibility Act. We need to give American families and the corporations they work for more flexibility in their work schedules, and how they are paid. This can only benefit our country and keep the family structure strong and cohesive. Thank you for inviting me to give my testimony today.

WRITTEN STATEMENT OF TERI MARTELL, ELECTRICIAN AND INSTRUMENTATION MECHANIC, EASTMAN KODAK COMPANY, ROCHESTER, NY – SEE APPENDIX D

Chairman Norwood. Thank you, Ms. Martell.

Ms. Bravo, you are recognized.

STATEMENT OF ELLEN BRAVO, DIRECTOR, 9 TO 5, NATIONAL ASSOCIATION OF WORKING WOMEN, MILWAUKEE, WI

Thank you so much. It is a pleasure to be here. I am Ellen Bravo, the Director of 9 to 5, National Association of Working Women. We are a national grass-roots organization that strengthens women's ability to win economic justice. We have been around for 30 years. Most of our members are low-wage workers, non-management workers. We also hear from thousands of people every year on a toll-free hot line. Our members and these callers are desperate for more time with their families and more control over their schedules.

I am here to testify against H.R. 1119, because it will provide neither of these.

More than 50 years ago, workers, after a lot of struggle, won a family time flexibility act; it's called the Fair Labor Standards Act. In response to people having to work inordinate hours, it set a limit, that said we would define the workweek as 40 hours, and there will be a price to pay, employers, if you make people work beyond that. That was meant to discourage excessive hours. It was meant to be a disincentive.

I want to talk about four situations, and see how this bill would apply. Number one is involuntary overtime. I will tell you about nurses' aides in central city Milwaukee. They have to go in a van to the nursing home because it is way far away, and there are no jobs where they live. Sometimes the nursing home says to them, "We are short-staffed. We need you to stay." They say, "We cannot, child care, blah, blah." The nursing home says, "Well, guess what? The van is not coming back for you until the end of that second shift." It's a childcare nightmare.

This bill not only would not help that situation, it will give an incentive to employers to do that more often, to require people to stay overtime if, in fact, the employer has the choice of not paying for it.

Secondly, there are people who choose to work overtime because they need the money. Denise has a 9-year-old and a 12-year-old. Those kids stay alone when she works extra hours. She hates it. But she has no choice because she makes so little money, she cannot pay her bills without it. She is afraid if this bill passes, when she chooses the overtime pay instead of comp time, the foreman simply will not choose her to get the overtime hours.

Now, you can tell her that she has that choice. In fact, in most cases, non-union, hourly workers never negotiate anything with their employers. I love to hear about situations where they do. But for many workers, it is not a reality. And if you tell her that she can take her employer to court if he treats her unfairly, she will laugh.

You heard the stories about the overtime violations right now. Workers do not have the money to get lawyers and the time to wait two years to recoup losses.

The third situation is workers who already have comp time. Lisa is a paralegal in L.A. Every day it seems the lawyers say, "Oh, we need you to stay another hour, we need you to do this." She banks all this comp time, and every time she wants to use it because she needs to take care of her family, they say, "Sorry, too busy, cannot do it now."

Come November, when her kids are in school and no one else is off, they say, "Oh, things are a little slower. Take your time," when she doesn't want it. And there are no guarantees or protections in H.R. 1119 that if a company goes bankrupt, the worker will be able to recover the comp time owed them.

The fourth situation exists right now. It is allowable flexibility. So, for example, a worker who works overtime when they want to, can save enough money so if they need to take some unpaid time, they can afford to do it. It works the same way. Nothing prevents employers from doing that right now.

Nothing prevents an employer from saying, “Oh, your kid has a play tomorrow? Take an extra day; come in early the next day. It’s not a problem within this week.” The problem is some employers do this, and they know that it works. It is a best practice to do it. It pays. Only less than 3 in 10 workers have access to that kind of flexibility, and they are more likely to be professional workers and managers.

What does that mean in real life? It means Tiffany, who tries to take her kid to kindergarten tests so that he will not have to wait a whole extra year to start kindergarten gets fired for doing it. It means Andrea, when the school calls and says, “your kid is being suspended, get over here now,” and she uses the channels and calls into work, gets a week suspension with no pay. It means that today more than ever, more elementary school kids are going to school sick because there is nobody able to stay home with them.

If you want to give more flexibility and time to families, there are plenty of things that we know of that you could do, and we urge you to do them. Expand the Family Leave Act so it covers more workers, so that they can use a few days a year for a routine school or medical appointment. Work for ways that the states can set up wage replacement funds so that people can afford to take that time. Put limits on mandatory overtime. Help set a floor for a minimum number of paid sick days, so people do not have to use their vacation when their kids are sick. Adjust the minimum wage. I do not say raise it, adjust it so it gets back the value that it has lost, and index it to inflation. And create fair pay measures so that women do not have to work extra hours because they make so little money.

This is the trick of this law. The choice for employees, which in itself is dubious, only goes into play when something that they have not chosen happens. Namely, that they are forced to work overtime, forced to be away from their families. That is why this bill gives neither time nor flexibility. Thank you so much.

WRITTEN STATEMENT OF ELLEN BRAVO, DIRECTOR, 9 TO 5, NATIONAL ASSOCIATION OF WORKING WOMEN, MILWAUKEE, WI—SEE APPENDIX E

Chairman Norwood. Thank you very much.

Mr. Dantico, you are recognized now.

**STATEMENT OF JOHN A. DANTICO, PRINCIPAL OF
COMPENSATION/HR CONSULTING, HR GROUP, NORTHBROOK, IL,
TESTIFYING ON BEHALF OF THE SOCIETY FOR HUMAN RESOURCE
MANAGEMENT (SHRM)**

Thank you, Chairman Norwood, and Members of the Subcommittee. Good afternoon. My name is John Dantico. I am a Principal of Compensation/HR Consulting, currently with the HR

Group, in Northbrook, Illinois. I appear today on behalf of SHRM, the Society for Human Resource Management.

I have a rather long and extensive consulting history, working with both private and public sector organizations. In general, I have worked with a broad range of clients, and I focus on things like base salary, productivity, sales incentives, executive compensation, organization structure, policy development, and long-term compensation planning issues. Along the way of course, I have conducted many, many employee interviews and/or interviews with employees, supervisors, and managers.

This hearing is a major step toward creating flexibility where today it is absent, yet where it is needed the most, in the workplace for the working families of this nation. The Subcommittee Members can create workplace flexibility by supporting H.R. 1119. It answers the plea of working families who continue the struggle to achieve balance, and who are continually forced to make difficult choices between the needs of family, and the requirements of an increasingly uncompromising work schedule, as we just now heard from Ms. Martell.

H.R. 1119 allows private sector employees to voluntarily offer their non-exempt employees the choice to receive compensatory time off, which is accrued at time-and-one-half the regular rate of pay, for each hour of employment worked in excess of 40 hours. It is a voluntary program. It does not federally mandate that employers adopt comp-time programs. H.R. 1119 clearly stipulates that if a non-exempt employee elects to receive compensatory time off in lieu of overtime compensation, he or she is entitled to accrue the comp time, or paid time off, at the rate at which the employee would accrue overtime: one-and-one-half times the regular rate of pay. There is absolutely no change to the fundamental requirement under FLSA.

It is unfortunate that private sector employees do not share the same benefit that their public sector counterparts have enjoyed since 1985, and perhaps even prior to that. The double standard between the public and private sector workforce simply should not continue.

An employer's comp time program must be offered in accordance with the provisions of the collective bargaining agreement. Should there not be one, an individual agreement can also be made.

Electronic mail, or an employer's payroll system, would allow an employee to select their preference of comp time or overtime, by using an automatic check-off feature within for example, an automated software program.

The plan would operate over a 12-month period, and the employer and the employee define the period as either a calendar year, a fiscal year, or some other consecutive 12-month period to begin as soon as the employee becomes eligible, which is, essentially, after the employee has worked at least 1,000 hours continuously with that particular employer.

There are cash-out provisions, and these allow some staggered comp-time programs, which, in turn, allow employers to better manage payouts of the unused comp time. For example, if an employer has 200 non-exempt employees hired at different times, and all have elected to accrue

comp time, and the employer has designated the official start date of all comp time programs to be the completion of the requisite hours of service, let us say 1,000 hours, the cash-out of the unused comp time is naturally staggered, and would occur at different points throughout the year.

The employer is also prohibited from making a comp time program a condition of employment. Non-exempt employees would not be subject to termination should they choose to decline an offer of comp time. Again, there are no mandates here.

Newly hired employees would be advised of the comp time option and the eligibility requirements. This could be by notice, or by bulletin board, and probably would involve meetings with supervisors and managers if there were current employees and/or new employees.

Under H.R. 1119, no more than 160 hours of comp time during a 12-month period are allowed. The employer is required to cash out any unused comp time 31 days after the end of a 12-month period. Requiring the cash-out 31 days after also protects employers from incurring insurmountable long-term economic liability.

The provision provides an additional protection for employees, to ensure that they are compensated in overtime cash wages or paid time off. Any unused comp time is cashed out at the highest regular rate. H.R. 1119 applies the same provision to termination, voluntary or involuntary.

There is also a provision that the employer can pay for hours banked in excess of 80. The employees can make requests. My experience is when employees have an option; they have the opportunity and capacity to make decisions that, in fact, are best for them at that particular time.

To wrap up, consistency among the various laws that apply to the workplace is absolutely essential. H.R. 1119 creates consistency with the regulations governing public sector employees' use of comp time. And as to the argument about insufficient remedies, that is rather nonsensical. There are plenty of provisions in FLSA right now, and this does not destroy any of those in one way or another.

Thank you very much for listening. SHRM appreciates this Subcommittee's efforts on behalf of working families. I will be pleased to answer any questions, and thank you, once again.

WRITTEN STATEMENT OF JOHN A. DANTICO, PRINCIPAL OF
COMPENSATION/HR CONSULTING, HR GROUP, NORTHBROOK, IL,
TESTIFYING ON BEHALF OF THE SOCIETY FOR HUMAN RESOURCE
MANAGEMENT (SHRM) – SEE APPENDIX F

Chairman Norwood. Thank you, Mr. Dantico, and I apologize for mispronouncing your name.

I just want to remind the Subcommittee I am going to limit myself to five minutes for questions, as the rules call for, and ask all of you to do the same if possible.

Thanks to all four of you for your testimony. In your own way, all four of you have convinced me even more that this is the correct thing to do for the working families of this country. It's as if all of you had been talking to our staffs that enjoy compensatory time and love it, and would not have it any other way. And I am certain they must have helped convince all four of you that this is the right thing to do.

Ms. Martell, let me first say that we are especially glad to have you here today. And you are to be commended for the job you are doing balancing all of your different responsibilities, from being a breadwinner, to a wife, to a mother, and indeed even a Lab owner. I know you are busy.

You spoke very eloquently about being a mother, and keeping the family strong and cohesive. And I do not think there is any Member of this Subcommittee who would not totally agree 100 percent with that.

My question to you is fairly simple. Why would you choose paid time off under the Family Time bill, instead of just simply more money in your pocket?

Ms. Martell. Well, because money does not make up some of that lost time with my children. Love and the quality time spent with my children are more important than money.

Say I have to work Saturday and Sunday this week and I did not see them all weekend, and here comes Veterans Day, which I normally have to work. And if I have that choice to stay home with them that day and try to make up some of that lost time, I would do so. Right now, to do that, I have to use my vacation.

Chairman Norwood. So you understand that in this bill, under your present circumstances, that would be your choice.

Ms. Martell. Absolutely.

Chairman Norwood. You could work overtime, but you could choose to take Veterans Day, or whatever time you liked.

Now, you understand in this bill that if, God forbid, something should happen in your family, and your entrepreneurial husband no longer had a job, you could continue to work for Kodak, and you could continue to work overtime. But at that point it would be your choice, perhaps, to take the money, rather than the time off.

Ms. Martell. Yes. You know, your needs and your wants change with time, depending on your circumstances. Over the last 60 years the workforce has changed. There are more women in the workforce, and people like me, that have to balance family and work. I choose to sometimes have that quality time with my children. Money does not always do it.

Chairman Norwood. Sometimes it is odd about legal language. My understanding of this bill is that clearly you get the choice. And I would not be willing to support it if that were not the case. But you get to make the determination, as my staff does, based on the needs of your family.

Mr. Williams, in your testimony, you spoke at some length about the benefits that you currently offer to your employees: fully paid health care, vacation and personal days off, a 401(k) plan. As an employer do you think being able to offer paid time off, such as the bill before us offers, would be perceived as a benefit by your employees? Would your employees or potential employees value it?

Mr. Williams. Mr. Chairman, I think they would absolutely see that as a benefit. Today, we do not have that flexibility to allow them to bank time. And often times, our employees will use all of their vacation during the summer, and paid personal days off. And usually at the beginning of the school year parents have programs to attend, there are teacher in-service days, and I can go on and on and on, that disrupt the babysitting activities for folks, and they need time off. And often times when they do take time off it is without pay. I would like to see them have the opportunity to bank that time and prepare for that eventuality, just as we do in our medical plan.

Chairman Norwood. I see the caution light is on. And in the spirit of camaraderie, I am going to stop now and recognize Mr. Owens for five minutes.

Mr. Owens. As a courtesy to my colleagues, I want to ask if one of them has to leave early and would like to go first in questioning.

An important question here is do you have choice, as an employee? Is that a prerogative of the employer? Nowhere in this legislation do we see the right being granted to the employee to choose when to take leave.

Are you aware that comp time does not provide paid leave, Ms. Martell? You are being paid for the overtime you work, and not for the leave. The only thing H.R. 1119 does is permit employers to delay paying you for overtime. Do you think that helps workers in any way?

Ms. Martell. If I was going to be delayed in being paid?

Mr. Owens. Yes.

Ms. Martell. I would be delayed being paid with time off.

Mr. Owens. You do not get paid in your paycheck for the time off, you do not get the overtime pay.

Ms. Martell. Right.

Mr. Owens. But later on, if an employer wants to give you time off, they will give you time off when they are ready.

Ms. Martell. When I am ready for it.

Mr. Owens. No, when they are ready. The law does not give you the right to take it when you are ready. That is at the discretion of the employer.

Ms. Martell. I understand that you would be able to bank up to 160 hours of comp time in a year.

Mr. Owens. You could, but you get it off at the discretion of the employer, you cannot choose.

Ms. Martell. At Kodak I believe I could choose.

Mr. Owens. Well, you would be lucky. And you can be lucky; you can have a good employer who is generous, and so forth. But right now, the Wage and Hour Act says you have to be paid overtime after you work 40 hours.

Ms. Martell. Right, as it stands now.

Mr. Owens. You get the pay, and it comes in your next paycheck.

Ms. Martell. Yes, it does. Right now, that is absolutely how it happens. I get paid the next week for the overtime I worked last week.

Mr. Owens. But you understand you will not have any law to back you up.

Ms. Martell. Right now?

Mr. Owens. No. If this provision goes through, H.R. 1119, you will not have any law to back you up on your overtime and your choice. You cannot take it when you are ready. There is nothing in this legislation now that says you can take it when you are ready to take it.

Ms. Martell. I guess I do not fully understand what you are getting at. The way I understand it, I could bank my overtime hours at time-and-a-half. If it was a Saturday, say, I would get paid time-and-a-half, and I would take that when I needed it as my own personal day, at my leisure. It is my choice.

Mr. Owens. No, it is not. The law would not give you that choice.

Ms. Martell. So you are saying my company would say, "Okay, December 24th."

Mr. Owens. It is up to them, not you. I just want to let you know you do not have a right to take it when you want it.

Mr. Williams, how does overtime law stifle creative scheduling? You know, you made it appear that it did. Beyond delaying when you must pay workers for their overtime, what can you do under H.R. 1119 that you cannot do now? You could do creative scheduling now. What does

H.R. 1119, in terms of creative scheduling add?

Mr. Williams. In the State of California, there are limitations on creative scheduling. Creative scheduling to me means for example, my employees can choose to work on a particular project four 10-hour days. And that project happens to be a public project. I can't work four 10-hour days on a public project in the State of California. I just cannot do that.

Mr. Owens. Well, that is California law, this would not override California law and give you the right to do anything that California law prohibits you from doing now. This bill would not help. It would not override California law.

Mr. Williams. But on other than public projects, I could allow for much more flexible scheduling in support of my employees. They would determine how many hours they want to bank, and when they want to use those hours.

Mr. Owens. You have that power right now.

Mr. Williams. I have that power right now?

Mr. Owens. Yes.

Mr. Williams. But I would like to have a situation, as we try to do in almost every situation with our employees; we try and give them as much flexibility in our schedule as possible.

Mr. Owens. Let me just take a minute to go back in history to H.R. 1, which passed the House of Representatives but never passed the Senate, and was very similar to this bill, almost identical.

I contended then that it would hurt a great deal of people who were low wage earners. Minimum wage people would be greatly hurt, and wage earners in general, people who are not on a salary, at a certain level. The popularity of comp time is greatest as you go up the ladder, in terms of level of wages.

Ms. Bravo, do you know anything about how this would impact on minimum wage workers, or people at the lowest end of the wage scale?

Ms. Bravo. People who have the lowest pay also have the lowest amount of power, and therefore would be least likely to be able to get comp time when they needed it, to be covered if it were denied them, to do anything about a violation.

A good employer who wants flexibility right now can say, "If you need to take some unpaid time, and you have earned enough money from overtime to pay for that, that's fine with me. I will help you schedule it." A good employer right now can be more generous in how much paid time off, or can be generous about flexibility within a week of when you start and end your day, just like Teri has four 10-hour days, or letting somebody come in later, leave early, et cetera. There is no limit right now on that kind of flexibility. Employers have that right.

This, unfortunately, puts all the power in the hands of the employers. The employer decides whether to force you to work overtime in the first place. The employer decides whether to offer comp time. The employer decides when you can take it, whether to agree to let you take it when you want to, and the employer decides whether to cash it in.

Mr. Owens. Thank you very much. I am out of time. I just want to note that the person on minimum wage working 40 hours a week, provided they work all year long, et cetera, on the job, makes less than \$12,000 a year. So many of those people are dependent on overtime pay in cash in order to be able to make ends meet for their families. Thank you.

Mrs. Biggert. [Presiding] Thank you, Mr. Owens.

Mr. Dantico, it is my understanding, that under the Family Time Flexibility Act, there are new protections added to the law to ensure that the choice and use of compensatory time by the employee is truly voluntary, and that employers would be prohibited from requiring employees to use accrued compensatory time solely at the convenience of the employer.

Employees may use accrued compensatory time within a reasonable time after making a request, and this is the test, so long as its use would not “unduly disrupt” the operations of the business. Now, that is not even true with vacation. An employer can turn down vacation, and they are not required to meet that standard. Is that your understanding? Is there a difference?

Mr. Dantico. Yes, particularly your reference to vacation. There is no question. I would agree.

Mrs. Biggert. Mr. Williams, can you think of a situation where an employee came to you and asked for family leave and you said no?

Mr. Owens brought up the case of someone that had a family member in the hospital, and they were going to have to spend three days with them. Would there be time at which you as an employer would refuse that employee that time off?

Mr. Williams. It would be extremely difficult for us to refuse employees time off. There is one situation I can imagine we could find ourselves in where we might refuse an employee. We have a project-oriented environment, and we have a time schedule to work within in terms of what the client wants us to get done. We would still try to do everything we could to allow individuals on that task team to take time off if they need it. But that is about the only situation I can think of where I would turn down an opportunity for someone to take comp time off.

Mrs. Biggert. In any event, the employee would have the right to go to the Department of Labor and use any of the means there are to remedy a situation.

Mr. Williams. Absolutely. Yes, ma'am.

Mrs. Biggert. Have employees in your company ever said that they had been forced to work overtime?

Mr. Williams. I have no documentation or recollection of any of my employees complaining that they have been forced to work overtime.

Mrs. Biggert. Okay. Ms. Martell, have you ever felt that you have been forced to work overtime?

Ms. Martell. Never, never.

Mrs. Biggert. Can you think of any situation where you might ask for time off and it might be reasonably refused and you would not be able to take it?

Ms. Martell. I do not think I have ever run into that situation. I have never been refused vacation time; I have never been told I could not take a day off for any reason.

Mrs. Biggert. Okay. And what would you do if you were?

Ms. Martell. If I was told that I could not take a day off?

Mrs. Biggert. Yes.

Ms. Martell. Well, at Kodak we have our human resource department. I could go talk to one of the HR professionals. We have a couple of different avenues I could pursue about a refusal of time off. We have an ombudsman office for concerns like that, and we also have a council of employees to resolve that.

Mrs. Biggert. Thank you.

Mr. Dantico and Mr. Williams I'll ask you both the same question.

Mr. Dantico, in your testimony, you indicated that where federal employees enjoyed flexible schedules by way of comp time, the operation increased productivity and reduced absenteeism. Could you expound on that?

Mr. Dantico. That is my understanding from different articles and people I have talked to in different government capacities. I could not cite an immediate reference right at this point in time.

I would like to add one thing, though. The gist of the conversation tends to center on choice by the employee. Granted, there are some "bad apple" employers in this world, but fortunately there are very few. However, there is a situation you run into, particularly when you are a consultant. When you talk to a supervisor who says, "We have been through a heck of a crunch. My folks want a little time off; they do not want the cash. I am handicapped." So it is not just a one-way street. The employer, in many cases, wants the handcuffs off in order to help the employee, perhaps not unlike what we just heard about Kodak.

Mrs. Biggert. Thank you very much for adding that. In fact, we all talk about "R&R", and everybody needs it.

Mr. Williams, could you address that quickly? Would this reduce absenteeism or increase productivity, if employees did have the opportunity to take more time off?

Mr. Williams. I feel that it really would. Based on friends that I have working in the Post Office, and other arms of the Federal Government, they swear by it. They are there every day, and from my observations they take great pride in taking their 30 days off, going to Hawaii, and taking their family with them.

So, yes, I would think it would encourage people to come to work, because they know they would have that flexibility.

Mrs. Biggert. Thank you.

Mr. Owens. I ask unanimous consent to enter into the record three articles that I referred to in my opening statement.

Mrs. Biggert. Without objection, so ordered.

Mr. Bishop is recognized for five minutes.

Mr. Bishop. Thank you, Madam Chair, and thanks to all of you for coming before us this afternoon.

One of the concerns I have about this piece of legislation is the potential for employers to discriminate against their employees with respect to those to whom they will grant overtime and those that they will not.

If a company has 10 employees, and eight of them are willing to work overtime for compensatory time, and two of them are not, I think the potential for the eight receiving preferential treatment in the awarding of overtime is relatively high. And because of that potential, it seems to suggest that the enforcement mechanisms that would be required to protect workers need to be well in place.

This is a question for either Mr. Dantico or Mr. Williams. The Labor Department's Wage and Hour Division is already under funded. The budget for next year, fiscal year 2004, has been cut by \$10 million from the fiscal year 2003 budget, in terms of enforcement. And my question to both of you is do you agree that this legislation will require an enhanced level of enforcement, and do you believe that the budget that is proposed for fiscal year 2004 is adequate to support that enforcement?

Mr. Dantico. Mr. Bishop, I cannot comment on the budget adequacy, but I can tell you that I have worked with companies, I am from the Chicago area, and I have suggested that companies call the Department Wage and Hour Division. And in recent years I have been able to get answers, I do not know if my clients can, within a day or two. And that often clears up a problem.

Now, in terms of actual enforcement, I do not know if there is a need for additional enforcement. You still have to keep records. That has not changed.

Mr. Bishop. Would you not agree that the potential for abuse is heightened by this legislation? And would you not agree that if that abuse were there, that greater enforcement would need to be in place?

Mr. Dantico. I cannot answer. I really do not know.

Mr. Bishop. Mr. Williams?

Mr. Williams. I could not agree to that, Mr. Bishop. But we have existing guidelines and rules under the Fair Labor Standards Act that allow employees to be protected, and I think those resources would be available to them under this new legislation, as well.

Mr. Bishop. So you do not believe that there is a temptation here for employers to choose those employees who will take compensatory time?

Mr. Williams. No, I do not.

Mr. Bishop. Okay.

Mr. Williams. In most of our environment, we maintain lists that say, "Here are the people that will take the overtime," and we take care of everybody, up and down the list. The higher you get on the overtime list, you fall back to the bottom and give everybody else an opportunity to take overtime in the event that they want to take it. So, they have option to take it, or they have an option to turn it down. And they are not penalized.

Mr. Bishop. My fear is that not all employers are as enlightened as what you just described. But I applaud you for having that type of approach for your workers.

I have another question for you, Mr. Williams. I believe you are here representing the U.S. Chamber of Commerce.

Mr. Williams. That is correct.

Mr. Bishop. This piece of legislation has been proposed as something that would help working mothers. I am married to a working mother, who spent the 24 years during which we have had children working full-time, and I have two daughters who, someday, will be working mothers. So I am very interested in that.

One of the concerns that I have is that we are making it more difficult for working mothers. The fiscal year 2004 budget cuts money for after-school care by 40 percent. And my question is what is the U.S. Chamber of Commerce position on such a draconian cut in such an important area?

Mr. Williams. I do not know the up-to-date position on that issue, Mr. Bishop.

Mr. Bishop. Thank you. I yield back the rest of my time.

Mrs. Biggert. The gentleman yields back.

The gentleman from Minnesota, Mr. Kline, is recognized for five minutes.

Mr. Kline. Thank you, Madam Chair.

There has been, at least in my own mind, some confusion over what this time is that you buy by working overtime. And it seems to me, as a sort of simple way of thinking about it, that it is like buying vacation time, except that it is super-vacation time or vacation time that your employer is, in fact, going to provide.

So, if you work overtime, Ms. Martell, and you bank these hours, do you think of that as vacation time, for example?

Ms. Martell. I would think of it as personal time. I would like to think vacation time is vacation time, and my banked comp time is more like personal time.

In the public sector, some companies and school districts there are personal days. We do not have personal days. But I would almost look at comp time as being a personal day to take care of my household, and a day to take care of my children when they do not have school.

I know people at work that like to golf, and they would love to have more opportunities to golf. Up in New York, we do not have the longest summers. And people that like to boat would do that then. I work with a lot of people that would like to bank comp time to use it at their leisure. So in my mind I would call it a personal day.

Mr. Kline. Thank you. I am from Minnesota. And I know something about restricted golf days.

[Laughter.]

We are still waiting for that first blade of green grass.

Ms. Martell. That is right.

Mr. Kline. I guess my point is that with vacation time, when you want to take that time, it is something you discuss with your employer. Not every employee at Kodak, or anyplace else, can take all their time off at once, but you do not have any difficulty working out that time off with your employer, is that right?

Ms. Martell. No, not at all.

Mr. Kline. Okay. Thank you very much.

Mr. Dantico, a concern has been raised here and in the past about the bill's provision that employees may take paid family time off, so long as it does not "unduly disrupt the operations of the employer." You have tremendous credentials and experience. In your experience, have you ever known this to be a significant problem?

Mr. Dantico. A significant problem, no. You cannot just do it; you have to run a business. So there are obviously some natural obstacles to decisions of that nature.

The Department of Labor has regulations on this, and there are court cases on it. Essentially, we already have a body of decisions that pretty well govern what that statement means, and it is pretty narrowly construed.

Mr. Kline. It is not a disruption in the public sector now, for example?

Mr. Dantico. Well, the public sector has been dealing with it for seven-plus years, and I certainly have not heard any outcries. Their commitment to their customers, us, is certainly no different than customers in the private sector, and the obligations thereto.

Mr. Kline. So you would agree then, I assume, based on your testimony and your answers to questions here, that this Act would, in fact, give flexibility to employees and employers and it would not be disruptive to the employer. Is that right?

Mr. Dantico. Yes. That would be my statement, and scheduling vacations fits right into that. To me the payout has not changed, you just simply have a choice: cash or time off. I do not want to make it any more difficult than that.

Mr. Kline. So simply put, in your judgment, this does, in fact, add to flexibility for the employee?

Mr. Dantico. Oh, without question, yes. My earlier comment about supervisors wanting to be able to do something but being handicapped happens all too many times.

Mr. Kline. Thank you. I yield back.

Mrs. Biggert. The gentlewoman from California, Ms. Woolsey, is recognized for five minutes.

Ms. Woolsey. Thank you, Madam Chairman. I know about work schedules and overtime from two personal perspectives. First, from my professional experience of 20 years as a human resources professional consultant, and a human resources manager, and second, as a working mother. I worked full-time and raised four children. So I know what this is about.

And as a human resources professional I would tell my clients that if they would take care of their employees so that the employees could take care of their families, then that family would work hard for them, would be loyal. And one way to do that would be to provide real flextime for the needs of the employee and the employee's family.

And I have to tell you that if my colleagues on the other side of the aisle wanted this to be possible, they would be more concerned about working families, and would make sure, as the majority party, that they make comp time truly voluntary, and not have a flexible schedule.

Ms. Martell, what would happen to your schedule? I mean, how disruptive would it be if one week Kodak said you worked three days and you worked five days the next week, and the next week you worked two, and then you worked six, because you would be getting your comp time, it would be banked. What would you do if that happened, because that is possible under this bill?

Ms. Martell. I suppose if I worked for a company like that, I might be looking for another job.

Ms. Woolsey. Well, there you go.

Ms. Martell. But my company does not do that.

Ms. Woolsey. See I am assuming that all of you know good employers or work for good employers, or represent good employers. But you know, there is a reason for the National Labor Relations Board, and that is because not all employers are that good. So we need to protect. And what we are trying to protect against is using employees. So I guess I should ask some questions, shouldn't I?

Ms. Bravo, have you ever heard of a law that would prevent an employer from giving time off?

Ms. Bravo. None. Zero. Right now, those supervisors you care about, tell them to call me, I will tell them how to do it. It is really easy.

The problem is if any of you believe that this flexibility is not an issue, come sit on the 9 to 5 hot line for one day or one week. You want to meet someone who was told they could not take time off when their loved one was in the hospital? Come to us. You want to meet someone who was fired while they were in the hospital? Come to us.

My husband was a factory worker for 18 years. Many times he had to work forced overtime. The problem is that people cannot choose when to work overtime, that they are required to do it in the first place, and to be away from their families. Then we try to figure out, "Well, what will we do to compensate for that?"

Let us make it so that they do not have to be forced. That is where they need choice.

Ms. Woolsey. We know that every business cannot have people saying "willy nilly", "I am going to show up this day, I am not tomorrow." I mean, there has to be some scheduling, and of course, it has to be around the business's needs.

But when you bank comp time, if using that comp time is based on not unduly disrupting the business, when does it say that that comp time is available for when an employee really needs it? And why should it be for when it is really needed? It should be when the employee wants to

take it. They have worked for it; it is theirs. They need to take it when they schedule it.

And this bill does not make that possible. It is a step backwards. I was part of the system for 20 years. I know it absolutely. And we should not be supporting it until we make it right. We can make it right, so it works for the employee, as well as the employer. And it will be fair, all the way around. Then it will be more flexible.

So, Mr. Dantico, why don't you if you can, tell us about creating flexibility for families, when, indeed, they can only take it when it is in the best interest of the business? How does that work for the family?

Mr. Dantico. Well, I don't know that I would phrase it quite that way. The situations I run into are where the supervisor is simply handicapped and cannot give the time off.

There are always scheduling problems, and overtime exists. It is a characteristic of business that things go up and down. If the employee needs the cash, they can get it through this bill, basically get their overtime pay, if they wish.

In terms of the employee trying to take the time when they need it, if you have a halfway decent employer, the employee is going to ask, and most employers are going to allow the employee, with a reasonable amount of notice, to take the time off when they need it.

Ms. Woolsey. But how do you have reasonable notice if your kid breaks his arm, and you have to get up and leave?

Mr. Dantico. I would simply call in and say, "I cannot do it," and forego the pay for the day. That is what happens. There would be no such thing as a bill that can cover all those situations.

Ms. Woolsey. But why are we fiddling around with something that works now?

Thank you.

Mrs. Biggert. The gentleman from Georgia, Mr. Isakson, is recognized for five minutes.

Mr. Isakson. Thank you, Madam Chair.

I would like to personally acknowledge that I am very proud to have Eastman Kodak in my district. It is a great company, and Ms. Martell, I know you are from New York, but we are delighted to have your facility in Atlanta, and appreciate what you do.

I guess this is a comment that maybe begs a question. I am a co-sponsor of this bill, so I am for it. Ms. Woolsey does not sound like she is convinced yet. But I do want to make a statement.

There are bad people, there are bad employers, there are bad employees, there are criminals, there are speeders, and there are all kinds of things in the world. If we did not allow ourselves to do anything for fear that there was a bad person, we would never do anything. That is my first

comment. Second, I thought the Department of Labor and the National Labor Relations Board were the people in charge of seeing to it that working lives were not violated in the first place.

But I do want to tell you all something about running a business. Overtime is a good thing, because it means you have got a lot of business. It means your customers are either increasing their orders, or they are doubling up on an order, or service. It means you are doing business. And if you are doing business, it means you are employing people. And if you are employing people, it means you are paying them. And if they have families, it means children are fed, they have clothes, and they have an education.

So, I understand the arguments on the other side, but we just cannot castigate the demand for business of a businessman or businesswoman or a corporation that is providing meaningful employment to families. Had I not been in business, I could not have sent my kids to college. I could not have enriched their lives. And I worked a lot of long hours to do that.

So, business is not a bad thing, overtime is a symptom of a very good thing, and that means that you have a lot of business. But I acknowledge that there are bad actors, and I acknowledge that is why we have the National Labor Relations Board, but I just wanted it to be said that all businesses are not bad.

I think most businesses care more about their employees than the owners care about themselves, because without their employees, they would not even have a business. And I know of many occasions where corporations and businesses have gone out of their way to accommodate a tragedy, whether it is a broken arm in the back yard on the swing set, or whether it is a diagnosis of cancer, or whether it is a tragic death.

So, while we are castigating business in a general broad-brush manner, because somebody might not get off because their child broke their arm, which I think would be a very rare occasion, let us remember children are being fed, clothed and educated because businesses are providing jobs and income and health insurance. And that is a good thing.

While overtime is tough if you are working it, the truth of the matter is, if you are doing overtime, then you are doing a good job, your business is up, you are going to have more employees and more income for those employees and that is not a bad thing. So, I just felt like the other side of the story needed to come out a little bit.

Ms. Bravo.

Ms. Bravo. Thank you. I just wanted to add I certainly know there are good employers. I have written a book on job-family challenge; I have cited a lot of good employers, Kodak being one of them.

The problem is the good employers do not need a law to be flexible. They can do it right now. This law will not transform bad employers into good employers. We need laws that set a floor and that protect against abuses, and we need to make sure that we are not cutting the budgets

of the agencies that enforce the law, which unfortunately, right now, is what is happening.

Chairman Norwood. Would the gentleman yield?

Mr. Isakson. Yes, sir, Mr. Chairman.

Chairman Norwood. I would like to follow up on that just a little bit. Does everybody agree that the employers can do that now? What I mean by that is if an employee works 44 hours or 48 hours in one week, I do not think employers have a choice about what they can do; they have to pay time-and-a-half.

Ms. Bravo. Yes. Oh.

Chairman Norwood. Well, my question is, is that right or wrong? Are you saying they don't have to pay time-and-a-half?

Ms. Bravo. Yes, they have to pay time-and-a-half. On the other hand, if the employee says, "Gee, next week, I would like to take a day off after working so much," there is nothing to prevent them from saying, "Sure, go ahead." And now that I have banked the extra money, I can afford to take the time off, if that is what I choose to do. And you can work with me to do that.

Chairman Norwood. But it is also equally important that the employer and the employee can agree. I know the U.S. House of Representatives has been way ahead on this, by the way. We passed it in the 104th and the 105th Congresses. The happy news is we have a better Senate. We are liable to get this done, and the employer and the employee ought to be able to make this kind of decision without any help from us.

I yield back.

Mr. Isakson. Oh, I think you are doing well, Mr. Chairman.

[Laughter.]

I yield back the balance of my time.

Mrs. Biggert. The gentleman yields back.

I request that a press release from the U.S. Department of Labor dated December 18, 2002, entitled, "Labor Department Enforcement Reaches 10-Year High: Wage and Hour Division Recovers \$175 Million for Workers" be put in the record. This is about the \$175 million in back wages collected for 263,593 workers in fiscal year 2002, the largest amount collected by the Department in 10 years.

Without objection, so ordered.

The gentleman from New Jersey, Mr. Payne, is recognized for five minutes.

Mr. Payne. Thank you very much.

Ms. Martell, you are very fortunate. Kodak is a very reputable company, and I am not surprised that things work well there.

However, I think that laws are not usually made for the good guys; they are usually made for people who violate the laws. And I think we have heard about this rosy picture of employers. However, it took a lot of laws to bring bosses into line. They had women and children who worked 12 hours a day. They had doors locked, the great fire in Chicago, where IOGW women were burned at the terrible fire.

So the reason that government is best which governs least is if you had all good guys, if everybody was like Kodak, you would not need these laws. But you should go to some of the side streets in my town, or over in New York City. You do not have the Kodak-type employer. I am glad that everybody on the other side only knows good people. I know bad people, people that abuse people, people that take advantage of people, people who are strong and powerful who take advantage of the weak people.

Now, if I was a boss and I said to four of you, "I want you to take comp time," and three of you said, "Okay," and the other one said, "No, I cannot take it," that fourth person would be a guy that I put on the list as "non-cooperative," "a problem." When any kind of advantage or promotion would come up, I would say that is a less-than-cooperative individual, you know, we asked for comp time and they said no.

I think that also, the whole question of overtime as it relates to comp time is if you have people that will take the comp time and not ask for overtime pay, you are going to do away with overtime as we know it. And the time is only going to be given when the corporation feels it can afford to give the time. And I think it was made very clear by Mr. Owens early on that it is less flexibility for the worker. They are telling you when they want you to work overtime, and you have a right to do it or not.

However, you have got to ask when you can take the comp time, and they have the right to deny you the comp time. So it is not more flexibility, it is actually less flexibility for the worker. And anyone that tries to paint this as more flexibility because the employer, the boss, does not have to give you the time off when you decide you want the time off, whereas you have a right to deny overtime, but you do not have a right to get your comp time. So that is not equal footing.

And so, I just think that if you had a good employer like Kodak, from what I know about Kodak and how you have talked about it, you could do all the things now without this law at Kodak. You shake your head. They would not give you time off if you needed to take some time off?

Ms. Martell. If I wanted comp time, no.

Mr. Payne. Well, what makes you think you are going to get it under this law?

Ms. Martell. Because I am going to have a choice.

Mr. Payne. A choice of what?

Ms. Martell. I am going to have a choice to either get paid that time-and-a-half, or I am going to have the choice to take that comp time.

Mr. Payne. Well, that is when you have got it banked. I am talking about next week, when you want the time off. You cannot take the comp time before you earn it, next week, not now.

You have a right not to work overtime, and therefore, do not make any additional money, or work overtime and do not get paid. I am talking about next week; you decided to take off to go see your daughter in the play at school.

Ms. Martell. See, I believe the company I work for, I could do that.

Mr. Payne. See, that is what I am saying.

Ms. Martell. Should we punish the good companies and the employees that work for those good companies? Or should we be going after the companies that are forcing others to work?

Mr. Payne. Oh, well, like I said initially, the only reason that we put in laws is you would not need traffic lights if everybody just stopped and looked around, made sure another car was not coming, and then went.

I mean, all kinds of things are put in because of the one that breaks the law, the one that is incorrigible, and it is the same thing with business. I just contend that there are measures in the current system, and I think that it is unnecessary, and I would hope that it is defeated. I yield back.

Mrs. Biggert. Thank you. In closing, let me just say that we have worked on this bill for a long time, and it has been in several of the Congresses, and we have tried to address the issues from the other side of the aisle.

One of the things is that this has worked in the public sector for over 20 years. And we have heard from the firefighters, we have heard from the FOB, the police union, and they seem to like it. Any time that we ask an employee what they would like, they would like to have the flexibility. And it is voluntary. If it does not work for an employee, they can cash in and go back to the overtime pay. It is not a rigid situation at all, and the public sector likes it.

There is also a sunset provision in here for five years. If it does not work, then we will review it then and change it. But from what we have heard, it is flexible for the company to offer it. There are certain situations where a company will not offer this because they know that in their type of business that it is not going to work. But once they decide to offer comp time, any

employee has the choice of either taking comp time or time off or overtime pay.

So, I would think that we would continue this discussion, and I really thank both the witnesses and the Members for their valuable time and participation.

Mr. Owens. Madam Chair?

Mrs. Biggert. Yes?

Mr. Owens. Madam Chair, I just wanted to say that when H.R. 1 was offered years ago, I did offer an amendment on the floor to take care of the concerns of those people who were making twice minimum wage. It exempted them from this, and allowed people who are professionals, who seem to look at it more favorably, to go ahead, and I will be offering an amendment again.

I hope, in your wisdom and compassion, we can work together on that amendment.

Mrs. Biggert. We will take a look at it. I have not seen it. Thank you.

If there is no further business, the Subcommittee stands adjourned.

Whereupon, at 3:35 p.m., the Subcommittee was adjourned.

***APPENDIX A - WRITTEN OPENING STATEMENT OF CHAIRMAN
CHARLIE NORWOOD, SUBCOMMITTEE ON WORKFORCE
PROTECTIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE***

**OPENING STATEMENT
THE HONORABLE CHARLIE NORWOOD
CHAIRMAN, SUBCOMMITTEE ON WORKFORCE PROTECTIONS
SUBCOMMITTEE HEARING ON
H.R. 1119, THE "FAMILY TIME FLEXIBILITY ACT"
March 12, 2003**

The focus of today's hearing is H.R. 1119, the "Family Time Flexibility Act."

I am proud to be an original cosponsor of H.R. 1119, which as we will hear today offers to private sector employees a benefit which public sector employees have enjoyed for years: the ability to choose, at their option, whether to take extra paid time off in lieu of receiving overtime pay in their paycheck.

Let me say first that I imagine each employee given this choice might have a different answer, or a different approach based on his or her own situation – but that is one of the key features of this legislation: that it gives each employee the ability to make this choice for him or herself, based on his or her own personal priorities – not those of the federal government or a 1938 wage-and-hour law.

In the last Congress, this Subcommittee heard testimony about flexibility in the workplace, and specifically on the ability of employers to accommodate the needs of their employees under the Fair Labor Standards Act of 1938.

We heard about demographic changes in the workforce, the dramatic changes in the workplace as we have moved away from a manufacturing-based economy to a professional and service-based economy, and the changes we have seen as women have grown to comprise almost half of our workforce.

We heard about the issues that matter most to workers today: chief among them, the ability to balance work and family.

We heard about the failings of outdated provisions in the law, such as that part of the Fair Labor Standards Act that generally prohibits a private-sector employer from offering paid time off to employees in lieu of overtime.

These hearings made one thing very clear: family-friendly legislation such as H.R. 1119, which provides greater options to working men and women in balancing the demands of work and family, is an idea whose time has come.

The Family Time Flexibility Act would, for the first time, give private-sector employers the option of offering employees the choice of paid time off in lieu of cash wages for overtime hours, at the employee's option.

The bill guarantees that the choice is in the hands of the employee, whether to take something extra home in the paycheck, or whether to bank paid time off for a longer vacation, a family holiday, or any other reason they choose.

In light of some of the misconceptions surrounding this bill, I think it's also important to state, for the record, what the bill does *not* do.

The bill does not affect the 40-hour workweek.

Nor does it change the way by which overtime pay is calculated.

Perhaps most important, nothing in the legislation requires an employee to opt for paid time off if he or she would prefer time-and-a-half overtime pay – indeed, we have included numerous safeguards to ensure that the choice to opt for time off or extra cash is that of the employee, and not subject to coercion or undue influence by the employer.

We will hear from several witnesses today, both as to the practical and legal aspects of expanding workplace flexibility for working men and women. I look forward to today's testimony, and invite my colleagues on both sides of the aisle to support this important, families-first piece of legislation.

I yield the remainder of my time to my colleague and Vice Chair of the Subcommittee, Rep. Judy Biggert, the sponsor of the Family Time Flexibility Act.

***APPENDIX B - WRITTEN STATEMENT OF VICE-CHAIR JUDY BIGGERT,
SUBCOMMITTEE ON WORKFORCE PROTECTIONS, COMMITTEE ON
EDUCATION AND THE WORKFORCE***

The Honorable Judy Biggert
Subcommittee on Workforce Protections
Hearing on H.R. 1119
“Family Time Flexibility Act”
March 12, 2003

Thank you very much for yielding time to me, Mr. Chairman. I commend you for holding this hearing, and I appreciate your support of the Family Time Flexibility Act. I also would like to thank our witnesses for coming today. Most of you have traveled some distance to testify on this legislation. We recognize that you have busy schedules too, and we appreciate that you've taken the time to provide us with your testimony.

We all know that workers today face a difficult dilemma: how to balance the demands of a job with the needs of their families. We also know that this challenge has become even more difficult as more and more American families rely on two incomes to survive.

This conflict may weigh most heavily on women, but all workers – regardless of gender – experience conflict between work and family, watching their child's soccer game or going through that stack of papers on their desk.

The Family Time Flexibility Act will help to ease these pressures by providing the flexibility that working parents need to spend quality time with their families. The concept behind this bill is simple: if workers have to work overtime, they should be allowed to choose how they want to be compensated – with more money or more paid time off. For some, time is more valuable than money. Most workers just want the freedom to make that choice for themselves.

That's what this bill does.

What this bill does NOT do is **require** employees to take compensatory time or **require** employers to offer it. But where both parties can agree, an employee could begin banking his or her overtime hours to be used at a later time as paid compensatory time off. In fact, this bill contains numerous safeguards to protect the employee, and to ensure that the choice and selection of compensatory time is truly voluntary on the part of the employee.

Finally, as the Chairman has noted, this bill does **not** change the way that overtime is calculated and it has **no** impact on the traditional 40-hour workweek.

So again, thank you Mr. Chairman, and I look forward to working with you to pass this bill and provide workers with flexibility and important protections in a manner that won't overburden employers or jeopardize their willingness to make compensatory time available as an option.

***APPENDIX C - WRITTEN STATEMENT OF HOUSTON L. WILLIAMS,
CHAIRMAN AND CEO, PNS INC., SAN JOSE, CA, TESTIFYING ON
BEHALF OF THE U.S. CHAMBER OF COMMERCE***

**Testimony of Houston L. Williams
Chairman and CEO, PNS, Inc.
On Behalf of
U.S. Chamber of Commerce
Before the Subcommittee on Workforce Protections
of the
Committee on Education and the Workforce
United States House of Representatives
March 12, 2003
Hearing on:
H.R. 1119
The Family Time Flexibility Act**

Good morning Mr. Chairman and distinguished members of the Subcommittee. Thank you for inviting me to testify before you today. I commend you for your efforts to find ways to improve workplace flexibility and for holding a hearing on this important issue.

My name is Houston Williams and I am the founder, Chairman and CEO of PNS Inc.

PNS is a California based corporation involved in providing telecommunications services and products to telecommunications industry service providers, and end users of these services, nationally (i.e. warehousing/distribution/network and system engineering/installation and light manufacturing). Approximately 80 percent of my employees are hourly workers subject to the overtime provisions of the Fair Labor Standards Act (FLSA). These employees work primarily in clerical positions, as technicians, and in various blue-collar positions in our warehouse, such as assemblers or drivers.

I am here to speak with you today on behalf of the U.S. Chamber of Commerce. I joined the Chamber's Board of Directors in June 2002 and also serve as a member of its Council on Small Business. The Chamber is the world's largest business federation, representing an underlying membership of more than three million businesses and organizations of every size and in every industry sector and region of the country. Ninety-six percent of the Chamber's members are small businesses with fewer than 100 employees.

I am pleased to support H.R. 1119, the Family Time Flexibility Act and to relate how this bill would help my company and my employees.

H.R. 1119 would modernize the application of the Fair Labor Standards Act to the private sector by permitting employers to offer their employees the voluntary choice of taking overtime in cash payments, as they do today, or in the form of paid time off from work. Just as with overtime payments, paid time off would accrue at a rate of one and one half hours for each hour of overtime worked. Family time arrangements permit employees to build up a bank of time that they can use to take paid time off from work when they need

it, provided the time off does not unduly disrupt the employer's business.

Family time, sometimes referred to as compensatory time, is a simple, common sense solution to provide additional flexibility to help employees balance work and time for family or other personal needs. I would think that everyone on this committee would agree that the workforce has changed significantly since passage of the Fair Labor Standards Act 65 years ago. When the FLSA was enacted, the workforce consisted mostly of men. It was atypical for households with young children to have both parents work outside of the home. But today, a greater percentage of employees who work overtime are women, there are more dual-wage earner couples in the workforce, and there are more single mothers in the workforce. These demographic changes in the workforce are a major reason why today many more employees view time off as valuable or more valuable than cash payments for overtime work.

Some opponents of family time legislation argue that more mandated family leave programs are the way to balance work and family commitments. But new one-size-fits-all mandates are not the solution we need. Instead of stifling creative scheduling arrangements, we should be finding ways to encourage innovative employer-employee partnerships by giving employees and employers more options so that together they can find solutions to balance the needs of employees with the demands of the workplace. Providing more options to employees will help them find time for any number of personal commitments, including spending time with family or friends, volunteering with a nonprofit organization or charity, visiting the doctor or dentist, or participating in local community group, church, or religious organizations.

The concept of giving employees the choice to select paid time off in lieu of cash wages is nothing new. In fact, it has been an option widely available to government employees for close to 20 years where, I understand, it has worked well. The time has come to give the men and women in the private sector the opportunity to choose for themselves whether to receive extra compensation or paid time off for working overtime.

Now let me take a moment to describe my company and how enactment of this legislation would help me to provide more options for my employees.

PNS has roughly 125 employees, down from 375 employees in mid-year 2000. Roughly 90% of our employee body have young families or they are of child bearing age. PNS is a generous firm, providing full medical benefits including family coverage for which we do not require any employee co-payments. We also offer a 401k plan, five personal paid days off and two weeks of paid vacation. These benefits apply equally to all employees regardless of the employees' rank. For some of my employees, additional paid time off is more valuable than additional money. More time to spend with their families, more time to do errands, and, indeed, more time to enjoy the material things they purchase with their wages, the hard earned fruits of their labor. People are different and have different priorities in life.

Even though we offer good benefits, employees sometimes need additional time off to accommodate family or personal needs. For example, it is common for employees to use

vacation time during the summer when their children are out of school. Sometimes, their remaining personal days may not be enough to address needs later in the year such as parent teacher activities and doctor visits. While our employees know that they can request additional unpaid time off, this is not a perfect solution for employees because it reduces their pay and can make it more difficult for employees to make ends meet.

To illustrate how enactment of this bill would help my employees, let me provide one example. On any given day two to four children accompany their parents to work. This could be for any number of reasons, such as a problem with their child's day care. Often times, those parents would prefer to stay home from work to care for their children rather than bring them to work, where the children have little to do. However, if an employee has used up all of his or her vacation time and personal days, then they are faced with the prospect of taking unpaid leave and taking a cut in pay that week to care for their child. While I work hard to accommodate these situations through a flexible policy of allowing my employees to bring children to work if necessary, passage of this bill would allow me to offer these parents a better option -- an opportunity to accumulate a bank of paid time off that could be used for unexpected emergencies like these. Given the opportunity, I think many employees would choose to use paid compensatory time for situations such as this rather than bringing their children to work or taking unpaid time off.

Some may argue that employers support this legislation as a way to exploit their workforce. Nothing could be further from the truth. Employers are genuinely interested in providing employees with flexibility to meet family and personal commitments and this legislation would give me, as an employer, an additional tool to help me meet the needs of my employees. Would this change in law be earth shattering? No. But it is a common sense step in the right direction to help employers create a more satisfied workforce. Furthermore, it is hard to see how employees would be at risk with all of the bill's many employee protections. For example, employees can choose whether or not to participate in the program at all. Any employer coercion is prohibited as is conditioning employment based on participation in a family time program. These rights may be enforced in the same way as other rights and protections of the Fair Labor Standards Act.

Likewise, employees may discontinue their participation in a family time program at any time and may "cash out" any accrued family time and receive cash payments instead. Employees are also free to use any accrued family time so long as the use of the time does not unduly disrupt the employers business -- the same standard applicable to government employees. To further protect employees, family time could only be offered pursuant to a written agreement between the employer and employee that is entered into knowingly and voluntarily.

These provisions provide significant protection to employees. But, could some employer somewhere somehow find a way around these protections? Perhaps. But I think, as an employer myself, this will be very rare and it does not follow that because this is a remote possibility, Congress should deny hundreds of thousands of employees in the private sector the option of choosing family time in lieu of cash payments for overtime work.

Furthermore, the bill is drafted as an experiment: it sunsets after five years. Congress must

affirmatively reauthorize the program or it will expire. Any problems that develop in implementation of family time can be revisited in such a reauthorization.

Given the compelling need for more employees to have more flexibility in the workplace, the worst thing Congress can do is to do nothing.

Thank you for your time and interest in this important matter. I would be glad to answer any questions you might have.

***APPENDIX D - WRITTEN STATEMENT OF TERI MARTELL,
ELECTRICIAN AND INSTRUMENTATION MECHANIC, EASTMAN KODAK
COMPANY, ROCHESTER, NY***

**TESTIMONY OF TERI MARTELL
ELECTRICIAN, EASTMAN KODAK COMPANY**

**Wayland, New York
Regarding The Family Flexibility Act
Before the Committee on Education and The Workforce
Subcommittee on Worker Protections
U.S. House of Representatives
March 12, 2003**

Good afternoon Mr. Chairman and members of the Subcommittee. My name is Teri Martell. I am extremely honored that I have been given this opportunity to share my views on the importance of "Family Time" and the need for Congressional action to allow working people flexibility in their jobs.

I have two full time jobs. I am first and foremost the wife of Robert Martell who is self-employed, the mother of two sons, Donny, age 7 and Eric, age 10, and the owner of two dogs, both Labrador Retrievers. We also own our home, which requires a lot of our time. This job is 24 hours a day, 7 days a week. It is a responsibility I have chosen and will never go away. We are a typical American family.

I am also employed as an Electrician and Instrumentation Mechanic at Eastman Kodak Company in Rochester, New York. I have worked for Kodak for 21 years now and am the major source of income and health care benefits for my family. My commute to Kodak Park in Rochester is 1 hour and 15 minutes, one way. Therefore, I spend 2 ½ hours each day on the road. Flexible work hours are part of my everyday life. My job at Kodak has allowed me to be somewhat flexible with my work hours. Most often I work 4–10 hour days Monday through Thursday. The company has been very good to me in my work schedule.

I am a very dedicated and proud employee of the Eastman Kodak Company. I have the reputation of someone who does what it takes to get the job done. Often this includes working overtime during emergencies and scheduled shutdowns on our film manufacturing machines. When this happens I have to make a choice between work and family. Because I am the major source of my family's income, I choose to work even on my regularly scheduled days off. Saturday and Sundays are the days my children are off of school. Saturday and Sunday are typically "family time days" for most American families like ours.

Also, my children get many more days off than I do, such as Columbus Day, Veterans Day, Martin Luther King Day, Teacher Conferences, and in upstate New York, snow days. On these days we send them to a babysitter or my husband stays home. Because he is self-employed he does not earn money when he has to stay home. It would be a great help to have a bank of hours to use for these situations.

Another example of needing flexibility with overtime pay and how it is paid is when the children are sick. I remember when my 10 year old, Eric, was born, I used up eleven of my twenty vacation days to stay home with him or take him to the Doctor just that first year. Being a first time mom and needing to nurture him while he was sick was very important to him and to me. As a working mother, it is very stressful to be at work when your children are in someone else's care. In 1993, if I had been allowed to save up some overtime hours, I could have used that time during those emergencies. Just like Kodak needs me during machine breakdowns, my family needs me too, during healthcare breakdowns.

I have heard from co-workers who feel strongly about the need for the more flexible schedules—the kind that comp time would allow. These are employees who are caregivers of their aging parents. One colleague in particular told me of her need to balance work and family. For her, comp time would mean allowing more flexibility in spending more time with her ill parent. The ability to save overtime as comp time and use it in times of need is crucial when crisis occurs but also to cope with day-to-day challenges. Also, someone who has used up annual vacation hours may have a need for extra time later in the year. Banking comp time could offer options instead of requiring employees to chose between working and taking time off without pay to address family needs.

Today, in my private sector job, I am not given the choice of paid time off instead of paid overtime compensation. The compensation I receive now is only of monetary value. Money is very important and the main reason I work. But money does not solve all the needs of my children. If I were given the choice to take paid overtime, I could do so for my family when I want or need to take time. I might then be able to make up some of those lost "family time days," or care for my sick child or parent. The decision to permit comp time instead of overtime pay should be left to me and my employer to decide—not the federal government.

Over the last century the make up of our workforce has changed dramatically. We are a blend of men and women. We are from different cultures and have different spiritual beliefs. Because we are a diverse work force, we all have different needs, therefore making flexible work hours a must. The more we as caregivers, employers, and employees work together, the stronger our families, our corporations and our nation will be.

In closing, I support the "Family Time Flexibility Act." We need to give American families and the Corporations where they work more flexibility in their work schedules and how they are paid. This can only benefit our country and keep the family structure strong and cohesive. Thank you for inviting to me to give my testimony today.

***APPENDIX E - WRITTEN STATEMENT OF ELLEN BRAVO, DIRECTOR, 9
TO 5, NATIONAL ASSOCIATION OF WORKING WOMEN, MILWAUKEE,
WI***

**Testimony Ellen Bravo, Director
9to5, National Association of Working Women
231 West Wisconsin Avenue, Suite 900
Milwaukee, WI 53203-2308**

**Subcommittee on Workforce Protections
House Committee on Education and the Workforce
March 12, 2003
Hearing on Family Time Flexibility Act**

Thank you for the opportunity to testify before this committee. I am the Director of 9to5, National Association of Working Women. 9to5's mission is to strengthen the ability of women to win economic justice. For nearly 30 years we have worked with women, mostly low-wage, non-management workers, on issues including family-friendly policies, fair pay, an end to discrimination, equity for part-time and temporary workers, and reforming TANF to have a goal of ending poverty rather than ending the safety net.

Our members, along with the thousands of women and men who call our toll-free hotline, are desperate for more time with their families and more control over their schedules. That's why I'm here today to oppose the so-called Family Time Flexibility Act, which would make it harder for workers to gain either time or flexibility.

More than 50 years ago, after enormous struggle, workers won passage of a family time flexibility bill. It was called the Fair Labor Standards Act. Because workers had been burdened by inordinate work hours, the new law put a 40-hour-a-week limit on how much employers could require employees to work and a price on hours over that amount. The overtime provision was meant to make it more difficult, and therefore less likely, that employers would force workers to take extra time away from their families. It was a **disincentive** to excessive hours.

Today reform is urgently needed. Too many workers, like Cathy on Long Island, face mandatory overtime. Cathy's employer has a child care center on site. When she resisted staying an extra hour every day because her mother was dying, Cathy's manager reminded her that her child was in the center and that it stayed open until 6:00. Cathy explained about her mother's situation. "Well," said the manager, "how long is this thing with your mother going to last?"

HR 1119 does nothing to address the problem of mandatory overtime. In fact, by making it possible for employers **not** to pay for overtime and instead offer comp time at some later date convenient for the employer, this bill provides an **incentive** to require workers to endure long hours on the job.

On its face, HR 1119 anticipates this problem by declaring that employees, not employers, can choose whether or not to take comp time or pay. This ignores the reality that most

workers have no say in their hours or working conditions. A few years ago, a pro-employer research group estimated that employers were violating overtime law to the tune of \$19 billion a year. Many Wal-Mart workers have claimed they were routinely forced to work "off the clock" – a problem we hear about on 9to5's toll-free hotline from workers at companies large and small. If current law isn't being enforced, why should we feel confident that this provision won't be abused as well – particularly at a time when funding for employment law enforcement is being scaled back.

This bill also won't help workers who need to work overtime because they need the cash. Denise in Milwaukee, for example, works as many overtime hours as she can. Her children, ages 9 and 12, often spend time alone. Denise hates that reality – but her low pay doesn't cover the bills without the extra time. She fears a switch to comp time. The foreman chooses who gets those overtime assignments – and if she doesn't agree to time off instead of pay, Denise knows she simply won't be chosen. Again, although HR 1119 appears to anticipate – and penalize – such discrimination, low-wage workers are not in a position to endure costly and protracted litigation, let alone the fear of additional reprisal, to vindicate their rights.

What Denise needs is a higher minimum wage – not an erosion of the Fair Labor Standards Act's overtime pay protections.

Many workers who already have comp time complain about not being able to take it when they need it. Lisa, a paralegal in LA, for example, is asked to stay late nearly every night. But whenever she asks for the comp time, she's told the firm is "too busy." Come November, when her kids are in school and no one else is off, Lisa is told to take some time. Most of her accrued comp time she never sees.

Cash overtime is something an employee is free to use at will. Accrued comp time, on the other hand, loses its value to the employee any time the employer retains discretion to deny the leave. Employees who bank significant amounts of comp time also depend on their employers to stay in business long enough either to cash them out or grant them leave to take time off. There are no bankruptcy protections in HR 1119 that would guarantee that employees will be owed all they are entitled to in pay for unused comp time. And coming up short on the ability to cash out fully or to cash in on the opportunity to use comp time is a particular danger in small, thinly capitalized businesses, which are present in increasing numbers in this economy.

I want to go back to what the FLSA was meant to accomplish. By penalizing employers who required excessive hours from their employees at exploitative wages, the FLSA sought to take away the advantage of producing goods "under conditions detrimental to the maintenance of the minimum standards of living necessary for health and general well-being." As President Roosevelt said, these objectives are designed to "protect workers unable to protect themselves from excessively low wages and excessively long hours."

The overtime provisions of the Act were intended to promote a national "hours of work" rule. Despite the fact that Americans already work longer hours than their counterparts in most industrialized nations, Section 7 of the Act acts as an effective brake on further

increases in the length of the workweek for covered workers today. According to a recent study, those workers exempt from the FLSA's overtime protections work over twice as many overtime hours as those who are non-exempt. A full 44% of workers exempt from the premium pay requirement (most executives and supervisors, certain administrative and professional employees, and outside salespeople) work in excess of 40 hours per week, while only 20% of those employees who are covered by the statute's mandatory overtime pay provisions work longer than 40 hours.

During the debates six years ago on this very same issue, the National Federation of Independent Businesses acknowledged that many small businesses supported a comp time bill because it gave them "something . . . [to] offer in exchange" for forced overtime. In many instances, employers can simply require co-workers to absorb the job responsibilities of the absent employee. Let's name this bill what it is: the Employer Flexibility and Overtime Protection Act. Workers will have **less time and less flexibility** if Congress amends the FLSA to provide for comp time in lieu of overtime.

Nothing stops employers from offering flexible schedules right now. Best practice employers know it makes sense if your child has a school play on Thursday to let you come in early or stay late the day before to make up the time.

Yet most employers do not offer flexible schedules – despite their supposed concern about their workers. According to the Bureau of Labor Standards statistics, only 28.8% of workers had schedules that allowed them to vary their work hours. However, managerial and professional employees -- those exempt from the FLSA's overtime provisions -- are the primary beneficiaries of such schedules. In those categories, 42.6% had such flexibility, compared to a paltry 14.6% of "operators, fabricators, and laborers." Statistics about the provision of paid leave, sick time to care for oneself or for someone else, the carryover of various forms of leave from year to year, as well as estimates about the availability of such alternatives as compressed time, indicate that "there is little evidence . . . that employers are using the flexibility available to them under existing law in scheduling work without incurring overtime liability." (David J. Walsh, "FLSA/Comp Time Controversy: Fostering Flexibility or Diminishing Worker Rights," 20 Berkeley Journal of Employment and Labor Law, 74, 94-97, 1999.) The failure of employers to take advantage of the flexibility already available to them calls into serious question the real motivation for the push to substitute comp time for overtime pay.

What does this lack of allowable flexibility on the part of employers mean? It means that Tiffany in Milwaukee lost her job because she wanted to take her son for a test to allow him to enter kindergarten. It means that Andrea in Boston was suspended for a week without pay because she called her supervisor to say she was summoned to her son's school when he got in trouble there. It means that more elementary school children are going to school sick because their parents aren't allowed to stay home with them, and more high school students are missing school because they're needed to stay home with a sick sibling or cousin.

If you want to support more time and flexibility for workers, we urge you to support the following efforts:

Expansion of FMLA: Several years ago I was privileged to serve on the bipartisan Commission on Leave appointed by Congress to study the impact of the FMLA on employers and employees. Our study found that the FMLA has virtually no negative effects on employers, while it has clear benefits for workers and their families. Simply by lowering the coverage threshold to employers with 25 employees would add 13 million employees to the number covered by the Act. Giving employees just 24 hours a year to take their children or elderly parents to regular doctor's appointments, or go to parent-teacher meeting, would give families meaningful flexibility that most do not have now. Other expansions, such as letting parents use their own sick leave to care for sick children, or allowing victims of domestic violence to use FMLA leave for making vital arrangements for legal protection or shelter, would also be significant steps toward giving families the flexibility they need.

Unfortunately, most families cannot afford to take full advantage of the unpaid leave that the FMLA now provides. In the long run, families need some form of paid leave -- some guarantee that flexibility will not come at so high a cost as to be meaningless. Our Commission found that one in five low-wage workers who took leave supported themselves by going on public assistance. When the study was updated in 2001, that figure went up to one in four. Nearly four in five workers who needed leave but didn't take it cited lack of pay as the reason. Despite the enormous differences in opinions on that Commission, we unanimously agreed to encourage states to experiment with forms of wage replacement during leave.

Other measures that would help include:

- Limits on mandatory overtime
- A minimum number of paid sick days for routine illness, which workers may use to care for a personal illness or a sick family member.
- A higher minimum wage, indexed to inflation.
- The Fair Pay Act and Paycheck Fairness Act, which would remove gender and race discrimination as criteria in compensation.

As Lonnie Golden has stated in an article entitled, "The Time Bandit: What U.S. workers surrender to get greater flexibility in work schedules:"

A major first step toward creating a more family-friendly workplace would be to foster more flexibility and less volatility in the timing of work hours. Today's time-crunched families would benefit greatly from more work-hour flexibility (the ability of employees to adjust the length or timing of their work week), and less work-schedule volatility (the degree to which the length or schedule of work hours varies unpredictably at the employer's discretion). These changes will require a fundamental restructuring of workplaces, managerial practices, and labor markets in order to allow the 21st century

workers to better balance the competing demands on their time.

Golden's analysis shows that comp time does virtually nothing to address the need for greater work-hour flexibility and less work-schedule volatility. The employee who needs to take tomorrow off to care for a sick relative or attend a meeting at school is unlikely to be able to make a request for comp time on such short notice and, in any event, cannot be assured that she will receive permission to take her leave at that time. By the same token, a comp time system cannot counteract the unpredictable shifts that an employer may insist upon as to the length or scheduling of work hours.

According to Golden, current access to flexible work schedules among full-time workers is more likely to occur 1) among those who work no less than 50 hours per week rather than those who work the standard 40 hours, and 2) in conjunction with more scheduling volatility. Indeed, Golden concludes that in the absence of "fundamental changes in the way the number and timing of work hours are determined in workplaces," substituting comp time for overtime pay "would be more apt to increase rather than reduce the average overtime for affected workers and over-employment of the already most-overburdened workers."

The problem goes beyond flexibility. One purpose of the 40-hour work week is to keep employees from overworking current employees and failing to hire additional workers. In a time of economic stagnation, we don't need a measure that discourages hiring new workers, nor one that would amount to a pay cut for those who depend on time and a half overtime payment.

Conclusion

Workers want more time with their families and more control over that time. HR 1119 would make it harder for them to have either. It would increase overtime hours by reducing the disincentives carefully placed into law more than 50 years ago.

Contrary to the claim that the overriding objective of this legislation is to provide flexibility for workers, it is employers who ultimately retain all relevant control. For workers, any supposed flexibility is more illusory than real. Employers decide, unilaterally, whether or not to require extra hours in the first place, and whether or not to offer a comp time option. Employers decide, unilaterally, whether to allow comp time when requested; if the employer says no when he should have said yes, the burden falls on his employees to file a lawsuit and prove the employer broke the law. Employers are free to cash out a worker's comp time, unilaterally; an employee who had planned on taking time off is powerless to stop the employer from liquidating the time.

We urge you to oppose this measure and to support instead the variety of policies I've listed that would give workers the genuine flexibility they urgently need.

***APPENDIX F - WRITTEN STATEMENT OF JOHN A. DANTICO,
PRINCIPAL OF COMPENSATION/HR CONSULTING, HR GROUP,
NORTHBROOK, IL, TESTIFYING ON BEHALF OF THE SOCIETY FOR
HUMAN RESOURCE MANAGEMENT (SHRM)***

Testimony of John A. Dantico
SPHR, CCP
HR Group
Principal, Compensation/HR Consulting
Northbrook, Ill.
Before
The House Education and the Workforce Committee
Subcommittee on Workforce Protections
March 12, 2003

Chairman Norwood and members of the subcommittee, good afternoon, my name is John Dantico SPHR, CCP, Principal of Compensation/HR Consulting for the HR Group, Northbrook, IL. I hold a Masters of Business Administration (MBA) from Columbia University and a Bachelor of Science (B.S.) degree from the Technological Institute of Northwestern University. I hold two professional certifications—Senior Professional in Human Resources (SPHR) and Certified Compensation Professional (CCP). I am a member of the Compensation and Benefits Committee of the Society for Human Resource Management (SHRM). I appear today on behalf of SHRM.

SHRM is the world's largest association devoted to human resource management. Representing more than 170,000 individual members, the Society serves the needs of HR professionals by providing the most essential and comprehensive set of resources available. As an influential voice, SHRM is committed to advancing the human resource profession to ensure that HR is an essential and effective partner in developing and executing organizational strategy.

I have extensive consulting experience with both private and public sector organizations and have completed numerous client engagements concerned with base salary, productivity, sales incentives, executive compensation, organization structure, HR policy development, and long-term compensation planning issues. In addition, I have tremendous experience with conducting multiple client meetings with HR Departments, and have personally interviewed numerous employees—totaling in the hundreds—most of whom have asked specific questions regarding comp time agreements/programs. I've served very diverse industries during my tenure with the HR Group such as, manufacturing, banking and financial services, insurance, telecommunications, mining, software development, pharmaceuticals and scientific research, aerospace products and distribution, association management, and convenience store and retail operations.

For many years employers and employees have been bound within the constraints of a rigid depression era law, the Fair Labor Standards Act (FLSA) of 1938. This hearing is a major step toward creating flexibility where it is absent, yet where it is needed the most—in the workplace for the working families of this nation.

Since the 1940s, working families have made ongoing attempts to strike a balance between

family priorities and work obligations. I am confident that we can agree that working men and women shouldn't be forced to choose one over the other. Under H.R. 1119, non-exempt employees would be given the option to voluntarily choose to accrue compensatory time off in lieu of overtime compensation. It is a long overdue step in allowing employees a choice in determining what is best for their personal circumstance.

Creating a working environment conducive to work/family balance is essential for any employer to remain competitive in an increasingly global economy. Not surprisingly there is an outcry from employees desperate for flexibility and innovative approaches to balance the day-to-day demands of career and family. Employers have responded to those demands by offering various flexible scheduling options like telecommuting, compressed work schedules, and flextime. But these options do not go far enough. This subcommittee has the opportunity to stimulate a more flexible and fluid workplace, which, in turn, increases morale and encourage smore productive employees. H.R. 1119 benefits the employee, the employee's family, the employer, the company, and the economy.

There is no question that the workplace of the twenty-first century is incomparable to the workplace of the 1930s or 1940s. For example, in the year 2000 females comprised 61% of the workforce compared to 24% in 1940. The Employment Policy Institute (EPI) found that in 2001 roughly 5.4 million non-exempt workers had children under the age of 18. During the same period earners who were single working mothers tripled from 4.5% in 1940 to 11.9% in 2000. In addition, several surveys have found that since the mid 1970s more dual earner families became more prevalent than traditional single earner families. Finally, the Bureau of Labor Statistics (BLS) has estimated that 71.4 million employees are classified as non-exempt under the FLSA, with women making up more than 60% of this figure and struggling with balance issues on a day-to-day basis.

My opening remarks suggest that together—this subcommittee, employees and employers—can create workplace flexibility by supporting H.R. 1119, the Family Time Flexibility Act. H.R. 1119 answers the plea of working families who continue the struggle to achieve balance and who are continually forced to make difficult choices between needs of family and the requirements of an increasingly uncompromising work schedule.

The Family Time Flexibility Act addresses these concerns and many more. H.R. 1119 allows private sector employers to voluntarily offer their non-exempt employees the choice to receive compensatory time off which is accrued at time and one half the regular rate of pay for each hour of employment worked in excess of 40 hours. H.R. 1119 is a voluntary program in which an employer may offer a comp time program to non-exempt employees in lieu of overtime compensation. If enacted, H.R. 1119 does not federally mandate that employers adopt comp time programs.

H.R. 1119 clearly stipulates that if a non-exempt employee elects to receive compensatory time off in lieu of overtime compensation, he or she is entitled to accrue the comp time or paid time off at the rate in which the employee would accrue overtime—one and one half times the regular rate of pay. An employee electing to accrue comp time, accrues it at 1.5 hours for one hour of overtime worked. When the banked time is requested it is utilized hour for hour. The employee accrues the time just as overtime would be earned. The only

difference is that compensation is granted to the employee in the form of paid time off. The benefit is the same. There is no change to the fundamental requirement under the FLSA that the employer is required to pay overtime at the rate of one-and-one-half times the employee's "regular" rate of pay for any hours worked over 40 over a seven consecutive day period.

Eligible employees are those employed by employers in the private sector and do not include employees of a public agency. *Part 29 in the Code of Federal Regulations Section 553.21* already grants employees of a public agency the option to choose compensatory time off in lieu of overtime compensation.

Employees of a public agency which is a State, a political subdivision of a State, or an interstate governmental agency may receive, in accordance with this subsection and in lieu of overtime compensation, compensatory time off at a rate not less than one and one-half hours for each hour of employment for which overtime compensation is required by this section.

This benefit was granted to employees of public agencies in 1978 through the Federal Employees Flexible and Compressed Work Schedules Act acknowledging that flexible schedules are an essential benefit to federal employees. The program substantially increased employee productivity, reduced absenteeism, and allowed employees to make a personal choice between paid time off and overtime compensation. The Federal Employees Flexible and Compressed Work Schedules Act was passed as a trial program. It was reauthorized in 1982 and made permanent in 1985. During that same year, the choice to select compensatory time off in lieu of overtime compensation was expanded to state and local agencies and their employees.

Unfortunately private sector employees do not share the same benefit that their public sector counterparts have enjoyed since 1985. H.R. 1119 is legislation 20 years overdue. This form of discrimination between the public and private sector workforce should not continue.

An employer's comp time program must be offered in accordance to provisions of a collective bargaining agreement between the employer and the labor organization and/or certified representative. If employees are not represented by a labor organization, the law allows an employer and an employee to enter into a voluntary agreement. Long established law such as the National Labor Relations Act and the Railway Act governing the recognition and certification of labor organizations representing private sector employees. A voluntary agreement must be in writing or by other verifiable record. The agreement can be affirmed in a number of different ways. One is through electronic mail. Another is through an employers payroll system that allows an employee to select their preference of comp time or overtime by utilizing an automatic check-off feature within the program.

In addition, the program operates over a 12-month period. Together, the employer and employee will define that period as either a calendar year, fiscal year, or designate 12-months in some other fashion. The employer and the employee may designate the 12-month period to begin as soon as the employee becomes eligible—through the hours of service requirement under this Act—to receive the comp time.

The hour of service requirement stipulates that an employee may not agree to receive comp time unless the employee has worked at least 1,000 hours of continuous employment with the employer during a 12-month period prior to the date of agreement or receipt of comp time. Many employers maintain electronic payroll systems or outsource their payroll processing and the human resource department must track hours worked by all non-exempt employees in order to pay overtime. Thus, most employers have the resources and abilities to notify non-exempt employees when they become eligible to accrue comp time. What triggers the employee's 12-month period? As mentioned, the completion of 1,000 hours worked during a preceding 12 months. Considering the cash out provisions of the legislation, which will be discussed in depth further into my testimony, staggered comp time programs will allow employers to better manage pay outs of unused comp time. For example, if an employer has 200 non-exempt employees—hired at different times—all have elected to accrue comp time, and the employer has designated the official start date of all comp time programs to be the completion of the requisite hours of service, the cash out of unused comp time is naturally staggered and would occur at different points throughout the year.

Required hours of service represent a practical and reasonable balance between the employee's need to become comfortable with his or her new employing organization and their personal financial situation. It satisfies the employer's need to gain some assurance that the employee contemplates remaining with the organization for at least the near term future. The concept of an eligibility "window" is well established in the Family Medical Leave Act (FMLA). In fact SHRM would be more comfortable if H.R. 1119 were made consistent with its Senate counterpart, S. 317, and the 1,250 hour window as interpretations of the FMLA have led to a firm basis for ascertaining eligibility.

An employer is prohibited from making a comp time program a condition of employment. Therefore, a non-exempt employee would not be subject to termination should the employee chose to decline an offer of comp time. As previously stated, an employer is not statutorily bound by H.R. 1119 to grant its non-exempt employees compensatory time off. The employer may choose to do so in an effort to increase morale, productivity, and reduce turnover and absenteeism. Public sector comp time programs have proven to do just this. So should the private sector. The time is now for private sector comp time programs.

Newly hired employees would be advised of the comp time option and the eligibility requirements, if made available to similarly situated persons in the work unit. By means of printed notice, employers would advise the new employee at the time of hire that nonexempt employees have the option of being compensated in the form of paid time off or in the form of overtime compensation, providing that the employee indicates participation by signature. Similarly, current employees would be advised by means of a personal memo and/or a "bulletin board" notice, along with a formal meeting with their

respective supervisor/manager to explain the comp time option and answer individual questions.

Employees are limited to accrue no more than 160 hours of compensatory time off during a 12-month period. An employee may not accrue more than 160 hours in a calendar year or a 12-month period agreed to by the employer and the employee. Subsequently, the employer is required to cash-out any unused compensatory time off by January 31 of the following year. This provision safeguards both employees and employers. In the case of the employee, the cash out provision requires employers to compensate at one and one half times the employee's regular rate of pay for unused comp time from the previous year, ensuring that if the employee is unable to use the banked hours as paid time off that he or she is compensated monetarily for overtime hours worked.

Requiring an employer to cash out 31 days after the end of the comp time policy/plan year protects employers from incurring insurmountable long term economic liability. Regardless of form—paid time off or overtime compensation—the non-exempt employee will be compensated for hours worked beyond 40 in a given work week or work period. The cash out provision provides an additional protection for employees to ensure that they're compensated in overtime cash wages or paid time off. Any unused comp time is cashed out at the employee's highest regular rate—at the time the hours were earned or at the end of the 12-month period. H.R. 1119 applies the same provision to termination—voluntary or involuntary.

Case law from the public sector exists on this issue in *Edward Christensen, et al., Petitioners v. Harris County et al.* No. 98-1167 decided by the U.S. Supreme Court in 2000. Harris County, the employer, began directing its employees who had chosen to accrue comp time to utilize their banked time. Harris County believed that the county was in a position to incur substantial economic liability should their employees decide to cash out their banked comp time. The employees brought action and the U.S. Supreme Court granted cert. The court held:

Fearing the fiscal consequences of having to pay for accrued compensatory time, Harris County adopted a policy requiring its employees to schedule time off in order to reduce the amount of accrued compensatory time. Employees of the Harris County Sheriff's Department sued, claiming that the FLSA prohibits such a policy. The Court of Appeals rejected their claim. Finding that nothing in the FLSA or its implementing regulations prohibits an employer from compelling the use of compensatory time, we affirm.

Similarly, H.R. 1119 establishes a protection in that it allows an employer the choice to cash out any unused comp time during the 12-month period for hours banked in excess of 80. It also limits the employee's yearly accrual to 160 hours and requires a cash out 31 days after year's end. The employer would be statutorily required to provide employees with 30 days notice prior to the cash out.

Employees of public organizations are generally allowed to accrue up to 240 hours of comp time (or up to 480 hours in some situations). The 160 hour limit for the private sector is the equivalent of four weeks of work, or, on average, one day off every thirteen work days. A sufficient amount of paid time off for the employee and at the same time effectively limits excessive liabilities, which could be incurred by the employer — especially a small employer.

An employer has the option to discontinue the comp time program by giving employees 30 days notice. Similarly, H.R. 1119 requires that an employee notify the employer in writing of their desire to terminate the comp time agreement. The employee may terminate at any time. In addition, an employee has the option to request in writing that all monetary compensation be provided at any time for all unused comp time. The employer is required to comply within 30 days. As an HR professional, it has been my experience that when an employer offers a voluntary benefit to employees, the flexibility provides employees the opportunity to make decisions best for them at any time.

At the request of the employee to use comp time as paid time off during any given work week, the employer would be required to grant an employee's request within a reasonable period after the employee has made the original request. Under the law, a request must be granted to the employee so long as the request for use of comp time does not unduly disrupt the operations of the employer. This standard is similar to that in the regulations promulgated by the Department of Labor (DOL) governing the public sector's use of comp time.

The employer does have the option to deny the request, though they would then be required by law to prove that the use of comp time would unduly disrupt the operations of the business or entity. Various courts have issued rulings regarding the unduly disrupt standard. An employer is required to prove that an employee's absence would have been more than a mere inconvenience. Rather, the employer must show that the business or entity would have suffered harm beyond problems associated with scheduling time for other employees to cover the shift of the individual using banked comp time as paid time off.

Court cases regarding public sector comp time have also shown that the "unduly disrupt" standard is narrow and does not allow the employer to control the employee's use of comp time. In *Heaton v. Missouri Department of Corrections*, 43 F.3d 1176, 1180 (8th Cir., 1994), the Court of Appeals determined that banked comp time "essentially is the property of the employee." The court held that the unduly disrupt limitation on the employee's right to use comp time does not allow the employer to control the use of the employee's comp time or to force the employee to use comp time when the employee does not want to use it. Moreover, regulations issued by the Department of Labor (29 U.S.C. 207(o)) define unduly disruptive as follows: When an employer receives a request for comp time off, it shall be honored unless to do so would be unduly disruptive to the (agency's) operations. Mere inconvenience is an insufficient basis for denial of a request for comp time off. For an (agency) to turn down a request from an employee for comp time off it should reasonably and in good faith anticipate that it would impose an unreasonable burden on the (agency's) ability to provide services of acceptable quality and quantity for the (public)

during the time requested without the use of the employee's services.

Consistency among the various laws that apply to the workplace is essential to the HR professional and to employers. The provisions of H.R. 1119 create consistency with the regulations governing the public sector employees' use of comp time. In addition to enacting H.R. 1119, if Congress were to examine streamlining the various employment and labor laws so that they are consistent with one another in their application to the workplace and to the employees, that goal would go a long way in aiding the compliance efforts of HR professionals and business owners.

The remedies currently prescribed by Section 16 (a) and (b) of FLSA include a requirement for the employer to pay the employee for any unpaid overtime and an additional amount as liquidated damages plus lost wages. There may also be fines up to \$10,000 and violators may be subjected to six months imprisonment. Further, the courts may allow an award for attorney's fees as well as the costs of action. Consequently, the employee is not unreasonably precluded from pursuing legal action against an employer. Section 4 Notice to Employees 30 days after the date of enactment the Secretary of Labor shall revise materials and provide regulation.

The remedies provision of H.R. 1119 has been criticized. The point that I made earlier in terms of keeping laws consistent apply to the remedies provision of this legislation. In previous hearings on the issue, the remedies were such that employees would lack sufficient motivation to enforce their rights. Nonsense. The remedies provisions of H.R. 1119 do not differ from the unpaid overtime penalties under the FLSA. In fact, the number of FLSA class action suits being filed has just surpassed class action suits filed with regard to employment discrimination. Employees are not afraid of seeking retribution.

Compensatory time off programs offer an innovative approach for both employers and employees in answering the many demands placed on them by family obligations and work commitments. Working families are continually faced with making tough choices. Employers who offer comp time programs are able to deliver a workable and truly flexible paid time off option. Under a comp time agreement the non-exempt employee has access to paid leave, leave that the employee earned. Control is in the hands of the non-exempt employee to utilize that paid time off as the employee deems appropriate. There are no requirements as to how or for what reason the employee takes paid time off. Comp time gives employees options that other federally mandated leave programs like the FMLA aren't able to.

Thank you for listening. SHRM appreciates this subcommittee's efforts on behalf of working families. We trust this basic right of flexibility will become law soon.

I would be pleased to answer any questions you may have.

Respectfully Submitted,

John A. Dantico.

***APPENDIX G – SUBMITTED FOR THE RECORD, STATEMENT OF
CONGRESSWOMAN LYNN C. WOOLSEY, SUBCOMMITTEE ON
WORKFORCE PROTECTIONS, COMMITTEE ON EDUCATION AND THE
WORKFORCE***

REP. LYNN C. WOOLSEY
OPENING STATEMENT
HEARING ON H.R. 1119, THE FAMILY TIME
FLEXIBILITY ACT

March 12, 2002

MR. CHAIRMAN, I KNOW ABOUT WORK SCHEDULES
AND OVERTIME FROM TWO PERSPECTIVES. FIRST,
FROM MY PROFESSIONAL EXPERIENCE AS A
HUMAN RESOURCES/PERSONNEL ^{Professional} MANAGER FOR
OVER 20 YEARS.

AND, SECOND, AS A WORKING MOTHER.

I'VE RAISED FOUR CHILDREN - NOW FOUR

WONDERFUL ADULTS.

*while working
full time*

**I KNOW WHAT ITS LIKE TO HAVE A JOB AND TRY
TO FIND THE TIME TO GO TO A PARENT/TEACHER
CONFERENCE OR A CHILD'S PLAY/OR SPORTING
EVENT. I KNOW WHAT IT MEANS TO GET THAT
PHONE CALL EARLY IN THE MORNING THAT THE
BABYSITTER IS SICK AND WON'T BE COMING THAT
DAY.**

**BELIEVE ME, I KNOW HOW IMPORTANT IT IS FOR
WORKING PARENTS TO HAVE FLEXIBLE WORK
SCHEDULES.**

**BUT THIS BILL BEFORE US TODAY (H.R. 1119) IS NOT
ABOUT FLEX-TIME FOR WORKERS. IT IS ABOUT
MORE FLEXIBILITY FOR EMPLOYERS.**

**AS A HUMAN RESOURCES PROFESSIONAL, I KNOW
HOW THIS CAN WORK. LIKE MANDATORY
OVERTIME, COMP TIME CAN BECOME JUST AS
MANDATORY BECAUSE IT ALLOWS THE
EMPLOYER TO RESTRICT THE USE OF COMP TIME
TO THE EMPLOYER'S SCHEDULE -- WHEN IT WILL
NOT "UNDULY DISRUPT" THE BUSINESS.**

**LET ME TELL YOU WHAT THAT MEANS -- PLAIN
AND SIMPLE -- THE BOSS WILL STAY THE BOSS,
NOT ONLY IN DECIDING ON WHO WORKS
OVERTIME AND WHEN, BUT OVERTIME PAY VS.
COMP TIME AND ALSO WHEN COMP TIME CAN BE
USED. THAT IS FLEX TIME FOR THE EMPLOYER!**

IF MY COLLEAGUES ON THE OTHER SIDE OF THE AISLE ARE SO CONCERNED ABOUT WORKING FAMILIES, THEY SHOULD USE THEIR INFLUENCE AS THE MAJORITY PARTY TO MAKE COMP TIME TRULY VOLUNTARY AND GET A BILL TO THE PRESIDENT THAT WILL REALLY HELP FAMILIES BALANCE WORK AND FAMILY.

I KNOW WHAT CHALLENGES ARE FACING WORKING MOMS AND FAMILIES TODAY. AND I KNOW THAT, IN ORDER FOR THINGS TO WORK AT HOME, PARENTS NEED REAL FLEXIBILITY IN THE WORKPLACE. "THE FAMILY TIME AND FLEXIBILITY ACT" COMPLETELY FAILS TO GIVE WORKING PARENTS WHAT THEY NEED TO IMPROVE THEIR LIVES AND I URGE MY COLLEAGUES TO OPPOSE IT.

APPENDIX H – SUBMITTED FOR THE RECORD, “LABOR DEPARTMENT ENFORCEMENT REACHES 10-YEAR HIGH,” ESA NEWS RELEASE, U.S. DEPARTMENT OF LABOR, 12/18/02

April 11, 2003 [DOL Home](#) > [Newsroom](#) > [News Releases](#)

News Release

ESA News Release: [12/18/2002]

Contact Name: Yvonne Ralsky

Phone Number: (202) 693-4676

Labor Department Enforcement Reaches 10-Year High

Wage and Hour Division Recovers \$175 Million for Workers

WASHINGTON—The U.S. Department of Labor announced today that \$175 million in back wages collected for 263,593 workers in FY 2002 is the largest amount collected by the department in 10 years. The Employment Standards Administration's Wage and Hour Division achieved a 33 percent increase over FY 2001 in back wages as well as increases in the number of concluded cases and enforcement hours.

"Strong enforcement and compliance assistance programs are working to restore more wages and to protect the rights of more workers," said U.S. Labor Secretary Elaine L. Chao. "The figures released today demonstrate a trend of more investigations and fewer violations in America's workplaces. We would like to see that trend repeated in other areas. This means our investigators are on the job inspecting more workplaces across the country, while employers are demonstrating responsibility to their employees."

The Wage and Hour Division made a focused compliance assistance effort in child labor this year. In this area, targeted investigations increased and the number of violations decreased. In addition to child labor investigations, the Wage and Hour Division continued to target enforcement efforts in low-wage industries such as garment manufacturing, agriculture and health care. These low-wage industries all saw increases in back wages collected. Nearly \$6 million in back wages was collected for garment workers alone, and the number of garment workers receiving back wages increased by more than 50 percent. The amount of back wages for agriculture workers increased by 30 percent, and the number of health care workers receiving back wages was up 20 percent.

"Our job is to make sure all workers get paid and get paid properly," said Victoria A. Lipnic, Assistant Secretary for the Employment Standards. "We focus time and resources in industries with vulnerable worker populations."

Overall, enforcement of the Fair Labor Standards Act resulted in \$143 million in back wages for 241,568 workers.

Wage and Hour's Family and Medical Leave Act enforcement activities also increased substantially. More than \$3.7 million in back wages for violations of the FMLA, a 25 percent increase over the previous fiscal year, were collected in FY 2002. The number of investigations of complaints of refusal to grant FMLA leave, termination and discrimination rose, and the number of employees affected by investigations increased by nearly 30 percent.

#

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APPENDIX I – SUBMITTED FOR THE RECORD, “SUITS SAY WAL-MART FORCES WORKERS TO TOIL OFF THE CLOCK,” GREENHOUSE, STEVEN, THE NEW YORK TIMES, 6/25/02

www.nytimes.com

The New York Times
ON THE WEB

June 25, 2002

Suits Say Wal-Mart Forces Workers to Toil Off the Clock

By STEVEN GREENHOUSE

After finishing her 10 p.m. to 8 a.m. shift, Verette Richardson clocked out and was heading to her car when a Wal-Mart manager ordered her to turn around and straighten up the store's apparel department.

Eager not to get on her boss's bad side, she said, she spent the next hour working unpaid, tidying racks of slacks and blouses and picking up hangers and clothes that had fallen to the floor. Other times after clocking out, she was ordered to round up shopping carts in the parking lot.

Some days, as soon as she walked in a manager told her to rush to a cash register and start ringing up purchases, without clocking in. Sometimes, she said, she worked for three hours before clocking in.

"They wanted us to do a lot of work for no pay," said Ms. Richardson, who worked from 1995 to 2000 at a Wal-Mart in southeast Kansas City. "A company that makes billions of dollars doesn't have to do that."

But she and 40 other current and former Wal-Mart workers interviewed over the last four months say Wal-Mart has done just that, forcing or pressuring employees to work hours that were not recorded or paid. Federal and state laws bar employers from making hourly employees work unpaid hours. Wal-Mart's policies forbid such work. But many current and former workers and managers said an intense focus on cost cutting had created an unofficial policy that encouraged managers to request or require off-the-clock work and avoid paying overtime.

Accusations like these are at the heart of a wide-ranging legal battle between Wal-Mart and employees or former employees in 28 states. In class-action and individual lawsuits, workers assert that these practices have helped Wal-Mart undersell the competition, push up profits and become the world's largest retailer.

In the process, these lawsuits contend, the company has cheated Wal-Mart employees and workers at its warehouse-store division, Sam's Club, out of hundreds of millions of dollars a year.

Wal-Mart officials insist that the off-the-clock phenomenon is minimal considering that the company has 3,250 stores and a million employees in the United States. The officials say the company, based in Bentonville, Ark., has a strong policy against such work, a policy that is spelled out in the handbook distributed to every employee.

"Off-the-clock work is an infrequent and isolated problem, which we correct whenever we

become aware of it," said William Wertz, a Wal-Mart spokesman. "It is Wal-Mart's policy to pay its employees properly for the hours they work."

Mr. Wertz said managers who required or requested off-the-clock work were subject to disciplinary action, including dismissal.

Two years ago, Wal-Mart paid \$50 million to settle a class-action suit that asserted that 69,000 current and former Wal-Mart employees in Colorado had worked off the clock.

But legal papers and interviews with workers suggest that the off-the-clock problems go far beyond Colorado. In depositions and in interviews with The New York Times, Wal-Mart employees in 18 states described these types of off-the-clock work:

*Former employees at stores in California, Louisiana, New York, Ohio, Oregon and Washington said that many evenings when their stores closed, managers locked the front door and prevented workers -- even those who had clocked out -- from leaving until everyone finished straightening the store. Workers said these lock-ins, which aim to prevent theft, forced many employees to work an hour or two unpaid and enraged parents whose school-age children worked at Wal-Mart. Wal-Mart officials acknowledged that employees were sometimes locked in but said the policy was to pay workers for every hour they were.

*Employees at stores in six states said managers ordered them to clock out after their eight-hour shifts and then continue working.

"We worked off the clock pretty much every shift," said Shannon Snyder, who worked two years ago stocking the health and beauty aids department at a Wal-Mart in Paso Robles, Calif. "The manager said if our jobs were not finished, we had to clock out and finish our jobs so no overtime would show up."

*Some employees said they frequently took it upon themselves to clock out after their regular shift and then return to work, with their managers' knowledge and approval. They said they feared that if they did not finish their daily tasks before going home, they would be written up or fired.

"You have to accomplish your job for that day," said Charlotte Johnson, who worked at Wal-Marts and Sam's Clubs in Georgia, Oklahoma and California for a decade before retiring this year. "If you don't finish it, you're more or less in hot water with your manager."

*A dozen Wal-Mart workers, including four in the payroll department, said managers deleted hours from employee timecards to avoid paying overtime. Wal-Mart officials said the company strictly forbade this practice and disciplined managers who did it.

Several current Wal-Mart employees said that despite the lawsuits, the problems continue. Alan Peto, who works at a Sam's Club in Las Vegas, said he worked off the clock several times each week while overseeing the electronics and hardware departments several years ago.

"They give you a lot of work to do, and there is no possible way to do that in the seven and a half or eight hours you've been assigned," he said. "So you feel pressure to clock out and do what you need to do."

Rewarding the Cost-Cutter

Although company policy prohibits off-the-clock work, Wal-Mart has created a system of rewards and punishments that critics say gives managers strong incentives to demand such work.

Under one bedrock policy, described in a deposition by a senior payroll executive, store managers are ordered to keep payroll costs below a target that headquarters sets for every store. If a store misses its target, several former executives said, the store manager faces a reprimand and sometimes demotion or dismissal.

Another policy strongly discourages overtime pay. A Wal-Mart handbook says managers are not to schedule workers for overtime, and several former store managers said the district and regional managers above them continually warned of a "zero tolerance" policy toward overtime, except during the busy holiday season. These former managers said managers were frequently reprimanded when they allowed workers to clock more than 40 hours in a week, enabling the workers to receive time-and-a-half pay.

Most hourly Wal-Mart workers earn less than \$8.50 an hour, which amounts to \$17,680 a year for a full-time worker.

Jon Lehman, who retired last October after working for the company for 17 years, including several as a store manager in Kentucky, said Wal-Mart warned managers repeatedly against going over budget or paying overtime.

"You got to hit the payroll budget they set for you, but if you're over, they discipline you," Mr. Lehman said in an interview. "People get demoted all the time for that. I've seen it happen numerous times to friends of mine. I've also seen store managers demoted for paying overtime."

When asked whether managers had been demoted for paying overtime, Rob Phillips, a company spokesman, responded, "Managers are evaluated, not on the fact of payment of overtime rates, but rather on how the business is managed."

Wal-Mart gives store managers another incentive to squeeze down labor costs by pegging annual bonuses to the profits of individual stores, a system rare among big retailers. The company declined to provide compensation figures, but according to depositions and interviews, many store managers have a base salary of \$52,000, with bonuses often running \$70,000 to \$150,000.

Many analysts say Wal-Mart's push to minimize costs is the fiercest in the industry, and holding down labor costs -- including fighting off unionization at its stores -- is at the heart of Wal-Mart's effort to be the nation's low-cost retailer.

By many measures the nation's largest corporation, Wal-Mart has grown into a colossus, with \$220 billion in annual sales, through a business model that goes well beyond holding down labor costs. It uses its size to buy in bulk and to pressure suppliers to keep prices down. It builds stores where real estate is cheap. It obtains many goods from low-wage manufacturers overseas. Its computerized inventory system and distribution network are considered the best and most cost-efficient among retailers.

These efforts have paid off. Wal-Mart's operating costs are 16.6 percent of sales, below the retail industry average of 20.7 percent and well under those of other giant retailers, like Sears Roebuck, whose costs are 24.9 percent of sales.

"It's just ingrained in them to be very focused on controlling costs in all areas of their business all the time," said Sally Wallick, a retailing analyst at Legg Mason, an investment firm. "And in their business, small cuts can make a big difference."

Wal-Mart officials played down the extent of unpaid work by saying that employees often came forward to complain only after calling toll-free numbers that lawyers had established to seek information about off-the-clock work.

"Off-the-clock work is not prevalent at Wal-Mart despite the determined efforts of a few plaintiffs' attorneys to make it seem so," Mr. Wertz said.

But lawyers and union officials say that not only is the practice prevalent at Wal-Mart but that the complaints against the company are far greater than at competitors like Target, Sears or Kmart.

Frank Azar, a Colorado lawyer involved in more than a dozen lawsuits against Wal-Mart, said that more than 5,000 workers have contacted his and other law firms to complain of off-the-clock work at Wal-Mart.

To defend against such accusations, Wal-Mart officials have put forward dozens of employees who said they had never done off-the-clock work or been asked to do it.

Julie Rice, sales coordinator at a Sam's Club in Beavercreek, Ohio, said in a deposition that she had been compensated for "every minute of work" she had done for Wal-Mart. Dianne Huston, a cashier in Zanesville, Ohio, testified that she was never asked to work off the clock and that she was "not allowed to do anything off the clock."

Company officials note that few people have filed complaints about off-the-clock work with federal and state regulators.

But John Fraser, who ran the Federal Wage and Hour Administration for 11 years before retiring last year, said it was unlikely that the small number of complaints indicated anything about the pervasiveness of unpaid work at Wal-Mart. Workers, he said, are often reluctant to complain to the government, fearing they might lose their jobs if investigators contact their employer.

Mr. Fraser noted that even though few workers had filed complaints against Food Lion, the supermarket chain, the Labor Department, in an investigation a decade ago, found pervasive off-the-clock violations.

Retailing analysts, lawyers and Wal-Mart officials say it is hard to estimate the potential liability to the company in all these cases. Wal-Mart's defenders estimate liability could run several million dollars, while plaintiffs' lawyers say the cost could reach several billion.

In a recently certified class-action suit in Texas on behalf of more than 200,000 current and former Wal-Mart workers, statisticians estimate that the company underpaid its Texas workers

by \$150 million over four years by not paying them for the many times they worked during their daily 15-minute breaks. That \$150 million estimate does not include other types of unpaid work. The statisticians, who analyzed time records from 12 Wal-Mart stores, found that the Texas employees averaged at least one hour of unpaid work each week from working through breaks.

In another lawsuit, involving just one store in Gallup, N.M., lawyers said, Wal-Mart agreed to a \$400,000 settlement, coming to more than \$2,500 a worker, after 120 workers complained of widespread unpaid work. Wal-Mart said that store was an isolated problem caused by a rogue manager.

Punch Out, Keep Cooking

Every morning at 6, Liberty Morales arrived at Wal-Mart No. 2066 in Houston to stock the store's restaurant with hot dogs, buns, chips and soft drinks. She said it was often two hours before she clocked in.

At 5 on many afternoons, Ms. Morales said, the store's payroll manager phoned to tell her to clock out. But she did not go home; the store manager, she testified in a deposition in the Texas lawsuit, ordered her to keep running the restaurant for another hour or two because nobody else could do it.

"They would call me and say, 'You need to clock out,'" Ms. Morales said in an interview. "I knew I had to go back and work after clocking out. There was no way the grill could continue operating with no one there to run it."

Ms. Morales said she knew better than to resist the demands because she had heard that those who complained were often fired, given fewer hours or put on overnight shifts. "I put up with it because I needed to work," said Ms. Morales, a 28-year-old mother of three who worked for Wal-Mart from 1996 to 2000.

Like many Wal-Mart workers, Ms. Morales has only a high school education and limited job skills, giving her few options better than Wal-Mart's.

She earned \$9.50 an hour and usually worked 50 to 55 hours each week. Occasionally, she said, the store manager paid her time-and-a-half for a few hours, "but most of the weeks, I didn't get overtime."

Managers, she said, often announced on the intercom, "There will be no overtime this week."

"The store manager and the personnel manager would say if we went over 40 hours, our time would be erased," said Ms. Morales, who said she quit because she felt overworked and underpaid.

Workers in other parts of the country told similar stories. Georgie Hartwig, who worked at a Wal-Mart north of Spokane, Wash., said her manager upbraided her one week because her timecard showed that she had worked a fraction more than 40 hours -- 36 seconds more, to be precise.

Colby LaGrue, who was in charge of the unloading operations at a Wal-Mart store outside

New Orleans, said the store manager told him not to clock in during his first hour or two, which he spent talking with managers about what needed to be done each night.

Mr. LaGrue, who worked at Wal-Mart from 1990 to 1999, recalled episodes when, at the end of a shift, his managers were upset because the trucks had been unloaded but merchandise remained strewn around the back of the store.

"They would tell me to have the workers punch out and then call them back to get the stuff off the floor," Mr. LaGrue testified in a deposition in a Louisiana lawsuit.

"It was like a plantation," Mr. LaGrue said.

How to 'Get It Done'

The official policy that Wal-Mart provides its store managers is clear: "It is a violation of the law and Company policy to work off the clock or for a Supervisor or Manager to request Associates work off the clock."

But eight former managers said in interviews that headquarters set their store's payroll and staffing levels so low that it was nearly impossible to run their stores properly unless some employees worked more than 40 hours a week.

"Store managers told me to lean on people to get them to work off the clock," said Judy Danneman, who worked for Wal-Mart from 1989 to 2001 and was an assistant store manager at four of its Florida stores. "Everyone knew there was a lot of off-the-clock work going on."

If there was one dictate for store managers, it was not to exceed the payroll amount assigned them. In a deposition in the Colorado lawsuit, Radonna Perrin, one of the top payroll directors for Wal-Mart stores, said every store had to send headquarters a daily report that told whether the store exceeded its payroll limit, which was usually 8 percent of sales.

"They threatened to write up managers if they didn't bring the payroll in low enough," said Joyce Moody, who worked as a Wal-Mart manager in Alabama and Mississippi. "There were some managers who were demoted back to hourly associate for this."

Several managers said they saw little that was improper in demanding off-the-clock work because they had done it themselves when they were hourly employees who were eager to get ahead. Several employees said they felt so much a part of the Wal-Mart family that they were happy to do extra, unpaid work.

But Robert Eckert, a former assistant manager at five stores in California, said it was assistant managers who were squeezed most often. Each Wal-Mart has one store manager and two to six assistant managers.

"They tell you that working off the clock is against the law, is not allowed by Wal-Mart, and then they tell you to get the job done," Mr. Eckert said. "But they didn't give you the budget to get the job done."

As an assistant manager from 1996 to 1999, he said, he got the job done without requiring off-the-clock work by putting in 75 hours a week himself. But he said many managers who wanted

to lead a normal life felt compelled to bend the rules.

"The Wal-Mart system is hurting the assistant manager who wants to have a family, wants to be an honest person, wants to get the job done," said Mr. Eckert, who said he quit Wal-Mart because he was unhappy with how it treated its managers and other employees. "The assistant manager is put in a position of, if I want to go home to my wife and family, I have to put pressure on someone to work off the clock."

The Creative Timecard

As an assistant in a Wal-Mart's payroll department, Dorothy English said she was often asked to do startling things.

The store manager and several lower managers often ordered her to delete hours from employees' timecards, she testified in her deposition in the Louisiana lawsuit. If an employee had clocked 43 hours in a week, Ms. English said, her supervisor often asked her to delete three hours.

Other times, she said, when an employee worked through several 15-minute breaks, helping push that employee over 40 hours, her boss asked her to edit the timecard so it would show the worker had taken those breaks.

"It was a routine thing," she said in an interview. "I told them this wasn't right, but they said, 'This is how we keep people to 40 hours.'"

To delete time from cards, she used Wal-Mart's computer, which allows managers to edit the times that punches are recorded.

"Sometime people would ask, 'Where are my three hours?' " Ms. English said. "Then the managers would have to give it to them. But if people waited too long, you didn't get it. If you snooze, you lose."

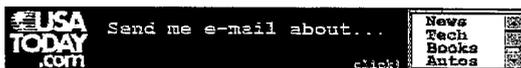
In depositions, the store manager and payroll manager of Ms. English's Wal-Mart in Clearview, La., denied doctoring timecards. Wal-Mart officials insist that this practice is rare, saying the company disciplines and even fires managers found to have improperly deleted time.

But interviews and depositions pointed to additional cases of timecard manipulation in California, Colorado, Florida, New York, Oklahoma, Oregon and Washington.

Carolyn Thiebes, a former payroll manager at several Wal-Marts in Oregon, said she was often pressured to delete overtime. Ms. Thiebes, who has sued Wal-Mart over off-the-clock work, said in an affidavit that she sometimes edited time for legitimate reasons, such as when a worker forgot to clock back in after lunch.

But she added, "Many of the changes were made simply to reduce the amount of time associates would be paid for."

APPENDIX J – SUBMITTED FOR THE RECORD, “MANY LAID-OFF SILICON VALLEY TECHIES WORK FOR FREE TO BRUSH UP ON SKILLS,” SWARTZ, JON, USA TODAY



Many laid-off Silicon Valley techies work for free to brush up on skills

By Jon Swartz, USA TODAY

SAN FRANCISCO — Laid-off tech worker Henry Fan accepted a job offer last month from a Silicon Valley start-up — a rarity in the job-starved tech market.

But it had a catch: Fan, 32, had to work for free.

During the Internet boom, tech start-ups had to offer big salaries and stock options to recruit workers. Now, amid big layoffs and not much hope of a tech turnaround soon, a growing number of Silicon Valley tech workers are working for free, recruiters and employers say.

"Many unemployed are leaping at the opportunity for any type of work," says Patti Wilson, a career counselor in Silicon Valley. Half of the 1,500 people on her e-mail list — most of whom are in tech — have recently expressed interest in working for free, she says.

The surplus of tech workers could make it tougher for paid employees to get raises and may eventually depress salaries, says Mark Zandi, chief economist of Economy.com.

Some free workers hope to become paid workers when the economy turns — or to cash in on stock options if their companies go public. Others use the time to fill in training gaps. "The last thing you want to show a prospective employer is a resume with a two-year gap between jobs," says Neel Kumar, 33. Laid off in July, the software developer has worked part time for free since October at a start-up. "It gives me a chance to ... increase my knowledge," he says.

Software firm eSelf was deluged with more than 200 resumes in two days last year after it advertised unpaid training for three months. Trainees were given no guarantee of jobs.

SeaBridge Software is trying to lure employees with stock options — but no wages. The 22-person firm hopes to get more venture funding, with which it could pay employees, or eventually go public.

Rob Tribble, 55, a former Netscape executive, now works at a small start-up with a handful of others — most working for free.

Grim job prospects offer little choice. Unemployment is way up, and Santa Clara County will have 955,000 jobs this year, down 100,000 from the peak in early 2001.

Zandi says average hourly wage growth for tech workers is at its lowest since the mid-1990s. "A lot of workers are holding on to paid jobs. It beats the alternative," he says.

College students and those with little experience in all types of industries have for years worked

for free as interns to make good impressions on prospective employers. During the tech boom, though, workers were so sought after that companies such as IBM and Hewlett-Packard hired college students before they graduated.

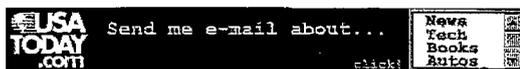
For some skill sets, they still do, but it is less common, the companies say.

Fan is an experienced software developer. He was laid off this year by Web-hosting firm Exodus Communications. While he works for free, he interviews for paid work.

Find this article at:

http://www.usatoday.com/money/industries/technology/2003-02-26-valley_x.htm

Check the box to include the list of links referenced in the article.



***APPENDIX K – SUBMITTED FOR THE RECORD, “ALL IN A DAY’S
WORK,” VALENTI, CATHERINE, ABC NEWS.COM***

abcNEWS.com

WHY?

abcNEWS
ON DEMAND

All in a Day's Work

Layoffs, Cost Cuts Lead to Overworked, Dissatisfied Workers, Say Experts

By Catherine Valenti

abcNEWS.com

March 11

Longer hours, nonexistent or small pay increases and the constant fear of losing jobs has led to a nation of stressed-out and dissatisfied workers. (PhotoDisc)

— For the first time in his life, worries about job security are keeping 36-year-old software engineer Al Gidden up at night.

Working overtime with no pay raise in sight has become the norm in Gidden's industry, and he says even though he has 15 years of experience in his field, he worries about being able to find a job if he were laid off. He says he copes by working hard and being grateful for his job.

"All the employers of late are very blunt about one thing: You will work the hours needed to get a project done, even if it means nights and weekends," he says. "You complain, they hear you and are honest that they do not care."

Tech worker Lawrence Petras tells a similar story. He's been working 12- to 14-hour days without overtime pay just to keep up in his field, with the threat of termination never far from his mind.

"The implications that have been made are that they can hire three people for what I make," he says. "I work hard so I don't end up on the street."

The wave of downsizing that has gripped corporate America in recent years is being felt acutely by workers. Longer hours, nonexistent or small pay increases and the constant fear of losing their jobs has led to a nation of stressed-out and dissatisfied workers, say many career counselors and economists.

"In the '90s, employees had the upper hand and they abused it" by demanding too many perks, says Richard Bayer, chief operating officer of the Five O'Clock Club, a New York City-based career counseling networking group. "Now the pendulum has really swung the other way and the employers really have the upper hand."

They Can't Get No Satisfaction

Since the recession began in March of 2001, employers have announced more than 3 million job cuts, says Chicago-based outplacement firm Challenger, Gray & Christmas. U.S. companies slashed 308,000 jobs in February alone, marking the largest increase in job losses since November 2001, when companies cut 327,000 jobs following the attacks on the World Trade Center and Pentagon.

Amid this daunting job climate, workers are finding that they have few options to move on if they're unhappy with their current situation. Knowing this, many employers are demanding more from their workers and offering little in return.

This trend has led to a rise in worker dissatisfaction, say experts. Only 51 percent of the 5,000 people surveyed last year said they were satisfied with their jobs, compared with 59 percent in 1995, according to The Conference Board, a New York-based business research firm.

Though it has not updated its survey recently, Conference Board economist Ken Goldstein says he suspects worker dissatisfaction is at an even higher level now.

"The perception out there is there just aren't a lot of jobs opening up," says Goldstein, "Which means that if you are in a job, dissatisfied, getting stale and feeling stuck, the idea that there aren't many alternatives is probably souring people on their own jobs."

Morale Boosters

This conundrum is posing a problem for employers and employees alike, say experts. While many companies are demanding more but giving little in return, others are looking for low-cost ways to boost morale and make sure they hold on to their employees once the economy does turn around.

A recent Challenger survey showed that the recession has had more of an impact on workers than Sept. 11, corporate scandals or 401(k) losses. But CEO John Challenger says he sees some companies offering low-cost perks such as flexible work schedules, on-site day care, telecommuting opportunities and more acknowledgments of employee performance to retain workers.

"I do think companies are looking for ways to keep morale up in hard times," says Challenger. "But they have to be cost conscious about it."

Sean Johnson, the creative director of a small advertising agency in Erie, Pa., has seen his tiny staff of seven shrink to three as many of the firm's manufacturing clients cut back on their marketing budgets. But Johnson says he's trying to keep morale steady by keeping people's hours normal.

"One thing I have not done is pushed extra hours on people," he says. "I can't expect them to go overboard."

The biggest problem for Johnson he raises. Where he normally gives his hourly staff raises of \$3 to \$4 an hour, he can only afford to give them around \$1 to \$1.50 more. But fortunately, he has not had to cut benefits.

Overtime Offenders

Still, others say that not all employers are being so generous. New York City-based labor and employment lawyer Steven Sack, who has written 18 books on employment law, including *The Employee Rights Handbook: The Essential Guide for People on the Job*, says the current environment is the worst he's seen in 23 years of practicing labor law.

The biggest problems Sack sees are companies not paying severance or firing people before they're due for a bonus. Another problem is that so-called nonexempt, or hourly workers, are being classified as exempt workers, salaried professionals who do not get overtime pay.

This misclassification cheats hourly workers out of overtime pay that is rightfully theirs. For example, this past fall, Golden, Colo.-based bagel company Einstein Brothers Bagels had to pay \$495,930 in back overtime wages to more than 400 assistant managers in 27 states, after misclassifying assistant managers as exempt from overtime pay.

"It's a very disheartening thing from my perspective," says Sack.

How to Cope

Amid corporate cost cuts, having one person doing the job of several has become a common complaint in the workplace these days. It's often not easy to keep up on the job when your workload is getting heavier and heavier. But experts say there are some ways to cope.

- **Try to stand out:** Learn what the company's priorities are and try to get more involved in that area. "If the company is moving in a certain direction, [employees] want assignments that make them more valuable to the company," says Richard Bayer, chief operating officer of the Five O'Clock Club, a New York City-based career counselling networking group.
- **Set Limits:** We all like to be team players, but sometimes saying no to an assignment is necessary to stave off burnout, says John Challenger, CEO of Challenger, Gray & Christmas.
- **Take Care of Yourself:** It's easy to slide into bad habits like smoking or overeating when you're stressed out, but staying healthy is important for employee morale. "It's a time when you have to be self-protective," says Challenger.
- **Look Around:** If you're really unhappy, there are always other jobs, even in a down economy. Always keep tuned into your network of former colleagues and friends at other companies to hear of other opportunities. Bayer says half of his group's

members are employed people looking for other jobs.

■ **Know Your Rights:** A recession is a time when employers may try to take advantage of employees, especially when it comes to paying overtime for nonexempt employees. If you suspect this is happening to you, consult the U.S. Department of Labor, says New York City-based labor and employment lawyer Steven Sack.

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***APPENDIX L – SUBMITTED FOR THE RECORD, LETTER TO CHAIRMAN
NORWOOD, FROM R. BRUCE JOSTEN, U.S. CHAMBER OF
COMMERCE, MARCH 31, 2003***

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

R. BRUCE JOSTEN
EXECUTIVE VICE PRESIDENT
GOVERNMENT AFFAIRS

1615 H STREET, N.W.
WASHINGTON, D.C. 20062-2000
202/463-5310

March 31, 2003

The Honorable Charles W. Norwood
Chairman
Subcommittee on Workforce Protections
House Committee on Education and the Workforce
2181 Rayburn House Office Building
Washington, DC 20515-6100

Dear Chairman Norwood:

On behalf of the U.S. Chamber of Commerce, I would like to express our support for the "Family Time Flexibility Act," HR 1119, which we understand the Subcommittee is to consider on April 3, 2003. The legislation, introduced by Representative Biggert, would simply amend the Fair Labor Standards Act (FLSA) to allow private sector employers to offer their workers a voluntary choice between overtime wages or extra paid time off. This is a choice that has been available in the public sector for years where it has worked well. Just as with overtime payments, paid time off would accrue at a rate of one and one half hours for each hour of overtime worked.

HR 1119 is a simple, common sense solution to provide employers some additional flexibility in today's workplace to help employees balance work and family responsibilities or other personal needs. Dual income earners are now common in the workforce, in contrast to when the FLSA was enacted in 1938, and occasionally the law needs to be changed to reflect new realities. This legislation takes that step. Incredibly, current law flatly prohibits private sector employers and employees from agreeing to extra paid time off in lieu of overtime wages, no matter how informed and voluntary that choice may be.

Many employers and employees will use the choices permitted under this bill, and many will not. It is the voluntary nature of the legislation that is its strength. Opponents will argue that this bill somehow undermines an employee's right to overtime wages. Nothing could be further from the truth. HR 1119 contains numerous protections, including strong enforcement provisions, to ensure that an employee's choice of overtime wages or extra paid time off is truly voluntary. Notably the bill also "sunset" after five years. Because an affirmative act of

Page Two

Congress will be necessary to extend the program there will be ample opportunity to revisit and correct any problems that might arise.

Again, we urge your support for this simple, but important, legislation.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Bruce Josten". The signature is written in a cursive style with a long horizontal flourish at the end.

R. Bruce Josten

cc: Members of the Subcommittee on Workforce Protections

***APPENDIX M – SUBMITTED FOR THE RECORD, LETTER TO
CHAIRMAN NORWOOD, FROM DAN DANNER, NATIONAL FEDERATION
OF INDEPENDENT BUSINESS (NFIB), APRIL 1, 2003***



April 1, 2003

The Honorable Charles Norwood
 Chairman
 Subcommittee on Workforce Protections
 Committee on Education and the Workforce
 2181 Rayburn House Office Building
 Washington, DC 20515

Dear Chairman Norwood:

On behalf of the 600,000 members of the National Federation of Independent Business (NFIB), I want to express strong support for H.R. 1119, the "Family Time Flexibility Act," which will be marked up in your subcommittee this week. This legislation removes obstacles in federal law, which prohibit private sector employers from providing increased flexibility to their employees by offering the choice of taking time-and-a-half compensatory time as payment for overtime.

Nowhere is this flexibility needed more than in a small business. Currently, the Fair Labor Standards Act (FLSA) prevents employers and employees in a small business from establishing a work environment that best fits that particular business and the individual situation of each employee.

A recent survey of NFIB members indicated that an overwhelming number of small business owners favor reform of FLSA to allow for more flexibility in the workplace. H.R. 1119 addresses this by giving employers the ability to enter into a flexible agreement with employees to enable them to take compensatory time off in lieu of overtime pay. In other words, if an employer offers compensatory time, employees could choose to have their overtime compensation in the form of cash or paid time off equal to a rate of time-and-a-half if they prefer. This choice is similar to what public sector employees have enjoyed with success for many years.

I want to commend you for your leadership on this issue, and I trust that your colleagues will follow your lead by voting in favor of this important legislation. NFIB looks forward to working with you to pass this much needed legislation.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan Damer", with a long, sweeping underline.

Dan Damer
 Senior Vice President
 Public Policy

cc: The Honorable Judy Biggert
 The Honorable Cass Ballenger
 The Honorable Pete Hoekstra
 The Honorable Johnny Isakson
 The Honorable Ric Keller
 The Honorable John Kline
 The Honorable Marsha Blackburn

03-95

FOR IMMEDIATE RELEASE

NEWS CONTACTS:
 Scot Montrey (202) 637-3099
 Sandy Boyd (202) 637-3133

**NAM LAUDS SUBCOMMITTEE VOTE FOR FAMILY TIME
 FLEXIBILITY ACT**

Boyd: Today's Employees Value, Deserve More Flexibility

WASHINGTON, D.C., April 3, 2003 – The National Association of Manufacturers today praised the Workforce Protections Subcommittee of the House Committee on Education and the Workforce for approving the Family Time Flexibility Act (H.R. 1119), a bill that would allow employers and working families the same overtime compensation options that have worked well for decades in federal, state and local governments.

“Federal law on overtime was written in the Great Depression for a predominately male, blue collar workforce,” said NAM Human Resources Policy Assistant Vice President Sandy Boyd. “Today’s employees and their workplaces are vastly different, and it’s time the law reflected the new realities. Many workers place a premium on flexibility and want, not to mention deserve, more options than current law allows.”

The bill would allow employees – only by mutual agreement with their employers – to take “comp. time” off, at the same rate of time-and-a-half as those who receive traditional overtime pay. “The key to this system is that it’s completely voluntary on both sides – neither employers nor employees can be forced into comp time agreements,” Boyd said. “Those who prefer the old system won’t have to give it up, but those who place a greater value on flexibility as they balance work and family will have additional means of doing so.”

Boyd offered particular praise for Committee Chairman Charlie Norwood (R-GA) and Rep. Judy Biggert (R-IL), the lead sponsor of the bill.

The National Association of Manufacturers is the nation's largest industrial trade association. The NAM represents 14,000 members (including 10,000 small and mid-sized companies) and 350 member associations serving manufacturers and employees in every industrial sector and all 50 states. Headquartered in Washington, D.C., the NAM has 10 additional offices across the country.

The NAM's mission is to enhance the competitiveness of manufacturers and improve American living standards by shaping a legislative and regulatory environment conducive to U.S. economic growth, and to increase understanding among policymakers, the media and the general public about the importance of manufacturing to America's economic strength.

Be sure to visit our award-winning web site at www.nam.org for more information about legislative, policy and workplace developments affecting manufacturers, employees and the economy.

-NAM-

***APPENDIX N – SUBMITTED FOR THE RECORD, LETTER TO CHAIRMAN
NORWOOD, FROM SUSAN R. MEISINGER, SOCIETY FOR HUMAN
RESOURCES MANAGEMENT (SHRM), APRIL 3, 2003***

April 3, 2003

The Honorable Charles Norwood
Chairman, Subcommittee on Workforce Protections
United States House of Representatives
2452 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Norwood:

On behalf of the Society for Human Resource Management (SHRM), I am writing in support of the April 3, 2003 scheduled subcommittee mark up of H.R. 1119, "the Family Time Flexibility Act" introduced by Vice-Chair of the Subcommittee on Workforce Protections, Rep. Judy Biggert (R-Ill). SHRM is the world's largest association devoted to human resource management. Representing more than 170,000 individual members, SHRM is committed to advancing the human resource profession to ensure that HR is an essential and effective partner in developing and executing organizational strategy.

The pervasiveness of technology along with recent social, economic, and demographic change has placed significant demands on employees' personal time. As such, work-life balance has become a major concern for employers and employees alike. A working environment that provides flexibility for employees has been proven to increase efficiency, productivity, and morale. As a result, a flexible workplace increases employee retention and prevents unwarranted turnover.

SHRM supports H.R. 1119, because it allows non-exempt (hourly) private sector employees to choose between compensatory time off and overtime compensation, the same flexibility currently enjoyed by the public sector. Employees place a high premium on their personal time and often times value time over cash compensation. Both these provisions would give non-exempt employees voluntary access to work-life balance. In addition, this legislation eases restrictions placed on the workplace by the Fair Labor Standards Act (FLSA), a rigid depression-era law that's unable to address the workplace of the twenty-first century.

Enactment of H.R. 1119 is an important step in providing employees and employers with additional tools that assist in striking a balance between work and home. Again, SHRM supports approval of this vital piece of family friendly legislation. Should you require additional information regarding H.R. 1119, please contact Sarah F. Pierce at (703) 535-6030.

Sincerely,

Susan R. Meisinger, SPHR
President and Chief Executive Officer

Cc: Members of the Subcommittee on Workforce Protections

***APPENDIX O – SUBMITTED FOR THE RECORD, LETTER TO CHAIRMAN
NORWOOD, FROM DANIELLE RINGWOOD, ASSOCIATED BUILDERS
AND CONTRACTORS, INC. (ABC), March 28, 2003***



March 28, 2003

The Honorable Charles Norwood
Chairman, Subcommittee on Workforce Protections
Committee on Education and the Workforce
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Norwood:

On behalf of Associated Builders and Contractors (ABC), and its more than 23,000 contractors, subcontractors, suppliers, and construction-related firms from across the country, I am writing in support H.R. 1119, "The Family Time Flexibility Act" introduced by Rep. Judy Biggert (R-IL).

ABC supports this common sense reform of the Federal Labor Standards Act (FLSA) which would provide our members with the ability to create a flexible workplace for their employees. The FLSA, which was enacted in 1938, currently acts as a barrier, as it prohibits employers from offering workers the choice of paid time off as compensation for working overtime -- a flexibility the public sector has long enjoyed. The demographics of the work force and the societal pressures influencing it have changed dramatically since the bill's enactment, yet the FLSA has remained static, and not at pace with these changes.

With employers and employees increasingly looking for ways to juggle workplace demands with personal needs, it is essential that we modernize the law to allow as much scheduling flexibility as possible. The construction industry, which currently faces a severe shortage of qualified skilled workers, would welcome the flexibility provided in H.R. 1119 as a way to attract and maintain good employees.

As the debate over H.R. 1119 unfolds, ABC commends your efforts to address this important family-friendly issue, as it is an important step in providing employees and employers with tools that assist in striking a balance between work and home.

Respectfully submitted,

Danielle Ringwood

Danielle Ringwood
Director, Legislative Affairs

CC: Members of the House Education and Workforce Subcommittee on Workforce Protections

APPENDIX P – SUBMITTED FOR THE RECORD, LETTER TO REPRESENTATIVE, FROM LEE CULPEPPER AND ROB GREEN, NATIONAL RESTAURANT ASSOCIATION, APRIL 7, 2003



April 7, 2003

Committee on Education and the Workforce
U.S. House of Representatives
Washington, DC 20515

Dear Representative:

On behalf of the National Restaurant Association, the leading trade group for the nation's 870,000 restaurant locations and 11.7 million employees, we are writing in support of H.R. 1119, the Family Time Flexibility Act, sponsored by Rep. Judy Biggert.

H.R. 1119 recognizes that a majority of America's working men and women want more choice and flexibility in setting their schedules at work. The legislation allows employers to offer their employees the voluntary choice of selecting paid compensatory time off instead of overtime wages when working more than 40 hours a week. Current law, unchanged since the 1930's, prohibits private sector employees from even being offered that choice, though it has been available to public-sector employees for years.

The makeup of America's workforce has changed substantially since the 1930's. Flexible work arrangements were not a priority 65 years ago during the Depression; women did not work outside of the home in significant numbers and contemporary issues such as child care and two-income households were not contemplated. H.R. 1119 would not eliminate or change the payment of overtime compensation or the traditional 40-hour work week, but does provide significant protections for employees against abuses by an unscrupulous employer.

The concept of changing federal law to allow paid leave for family-related matters is being embraced by working men and women around the country. The Family Time Flexibility Act gives employees more power and control over their lives without imposing additional mandates on employers, building on a policy that has been tested and tried for many years by government employees.

We urge you to support H.R. 1119 when it comes before the Education and the Workforce Committee.

Sincerely,

A handwritten signature in black ink, appearing to read "Lee Culpepper".

Lee Culpepper
Senior Vice President
Government Affairs and Public Policy

A handwritten signature in black ink, appearing to read "Rob Green".

Rob Green
Vice President
Federal Relations

***APPENDIX Q – SUBMITTED FOR THE RECORD, LETTER TO
CHAIRMAN, RANKING MEMBER AND MEMBERS OF THE
SUBCOMMITTEE ON WORKFORCE PROTECTIONS, FROM THE UNION
OF ORTHODOX JEWISH CONGREGATIONS OF AMERICA, APRIL 2,
2003***



800 Eighth Street, N.W. Suite 318 Washington, DC 20001 Tel: 202-513-6484 Fax: 202-289-8936

**UNION OF ORTHODOX JEWISH
CONGREGATIONS OF AMERICA**
Institute for Public Affairs

April 2, 2003

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The Institute for Public Affairs is the non-partisan public policy research and advocacy center of the Union of Orthodox Jewish Congregations of America, the nation's largest Orthodox Jewish umbrella organization founded in 1898.

National Headquarters
11 Broadway
New York, NY 10004



Hon. Charlie Norwood
Chairman

Hon. Major Owens
Ranking Member

Hon. Judy Biggert
Vice Chairman

and Members of the Subcommittee
On Workforce Protections

U.S. House of Representatives
Washington, DC 20515

VIA FACSIMILE

To the Chairman, Ranking Member &
Members of the Subcommittee,

We write to you today on behalf of the Union of Orthodox Jewish Congregations of America—the nation's largest Orthodox Jewish umbrella organization representing nearly 1,000 congregations nationwide - to urge your support for the Family Time Flexibility Act (H.R. 1119).

This act is an important step toward giving greater tools to individuals and their families so that they can more easily balance their obligations at work with their commitments at home. In particular, we would like to highlight how this legislation would address the needs of religious citizens in the United States whether Orthodox Jews or members of other faith communities.

Too often, religious employees in this country - where the free exercise of religion is guaranteed by the First Amendment of our Constitution - are faced with an impossible choice between their career and their conscience. Circumstances can arise wherein a religious person is required by the dictates of his or her faith to refrain from work and devote a specific day or portion thereof to G-d. For Jews, this occurs on a weekly basis on the Sabbath which commences at sunset on Friday and ends at sunset on Saturday and on other occasions such as the holy days of Passover or Yom Kippur. Other faiths have their days, whether on a weekly basis or less frequently throughout the year, when their

members are asked to put aside their daily chores and focus on their relationship with G-d.

While many employers properly and sensitively accommodate the religious needs of their employees through flexible scheduling, some do not. The absence of any flexibility in the work schedules of employees may force them to choose between putting food on the table and their fidelity to the faith at the center of their lives. This bill will serve as an important first step toward eliminating the need for these difficult choices by providing a new set of options for employers and employees to utilize in working out religious accommodation arrangements.

By providing workers with the opportunity to work overtime hours and accrue compensatory time to be used later, religious workers will be able to accrue time in advance of their holy day(s) and use the time to ensure that they may be faithful to their G-d and their traditions as well as good employees. The ability to create flexible working schedules through bi-weekly schedules and flexible credit hour programs also helps to achieve this goal.

Of course, this legislation would not only benefit this nation's religious workers, but all those who have important commitments outside of the workplace - whether they be child care, elder care or an improved quality of life for today's busy families. We have focused here on the issues and needs of the religious community that may not have garnered the same attention as those of working families.

In closing, the Family Time Flexibility Act is an important step toward accommodating the needs of the religious citizens in our workforce. While we believe that this is only a first step in accommodating religious workers, it is an important first step. We urge your support of this important legislation.

Sincerely,



Rabbi T. Hersh Weinreb



Nathan J. Diamant

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