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Mandatory Paid Sick Leave Invites Misuse That Harms Co-Workers and Customers

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The Healthy Families Act (HFA, S. 910), sponsored by Senator Ted Kennedy (D-MA), would require businesses employing 15 or more workers to provide them with at least 7 days of paid sick leave a year. Employers' experience with the Family and Medical Leave Act (FMLA) shows that this legislation would invite abuses that ultimately harm workers and customers. Because employers cannot discipline employees for misuse of leave,

- Some workers have used FMLA to excuse tardiness and to skip work.
- Co-workers face the burden of covering for shirking employees who misuse their leave.
- Customers suffer unpredictable delays and shortcomings in service.

Congress should not exacerbate the problem of leave abuse by requiring companies to provide paid sick leave and preventing them from disciplining employees who abuse the system.

The Healthy Families Act. Few oppose allowing workers to take time off work to recover from illness or allowing parents to tend to sick children. Today, the vast majority of businesses provide their workers with some form of paid sick leave: 74 percent of companies provide paid sick leave, while 82 percent provide other paid vacation days that workers can use to care for a sick relative.¹

Senator Kennedy's bill would make this widespread and voluntary practice mandatory. The legislation would require businesses employing 15 or more workers to provide at least 7 days of paid sick

leave per year and would prevent companies from disciplining employees who abuse this leave. This would radically change the current system of voluntarily provided sick leave by encouraging widespread misuse.

Like the FMLA, the HFA would make it difficult for employers to verify that workers taking sick leave are actually sick. The act would allow workers to take up to 3 days of leave without any medical certification that the leave is necessary.²

For absences exceeding three consecutive work days, workers would need a doctor's certification. However, the HFA does not allow employers to challenge a doctor's certification, even when they strongly suspect that it is fraudulent. Under the FMLA, employers have found that workers who are not injured can usually find a doctor who will certify that they have a chronic condition, such as back pain, that requires time off work.³

Encouraging Abuses. By requiring employers to provide paid sick leave, preventing them from challenging a suspect certification, and preventing them from disciplining employees who abuse leave, the HFA would encourage irresponsible employees to game the system and dump tasks on their co-workers while still receiving full pay.

This paper, in its entirety, can be found at:
www.heritage.org/research/labor/wm1450.cfm

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Such abuses are widespread under the FMLA. Like the FMLA, the HFA would allow workers to use “intermittent leave” to take sick leave on an hourly basis. With the FMLA, this has resulted in shirking workers obtaining certifications that they have chronic conditions, such as headaches or back pains, that can recur at any time. After this certification, they can take time off work at will.

One large manufacturing company has found that almost half of all their FMLA leave has been intermittent leave of a few hours at a time and that workers often use the leave to avoid discipline for showing up to work late or to take leave days after they are denied requests for vacation days.⁴ Other companies have found that workers use FMLA leave to avoid working undesirable shifts or to take Mondays or Fridays off and enjoy a three-day weekend.⁵ Verizon has found workers who were taking FMLA leave for back pains but who were nonetheless well enough to fly to Disney World for a family vacation.⁶

Requiring employers to provide paid sick leave would facilitate more abuse and encourage irresponsible employees to treat sick leave as permission to skip work whenever they want. Currently, with most companies providing sick leave voluntarily, supervisors can monitor its use and discipline employees who misuse it. Under the HFA, employers’ hands would be tied, and abuses would multiply.

Abuse is rampant in countries that require mandatory paid sick leave. In Sweden, for example, the

government pays sick workers 80 percent their salary while on leave for an indefinite period of time. At any given moment, 10 percent of Sweden’s workers are on sick leave, and over three-fifths tell pollsters that they take the leave when they have no health problems.⁷

Co-Workers and Customers Harmed. The biggest losers under HFA would not be businesses but the customers and co-workers of dishonest employees. When a worker takes intermittent leave or takes off work without providing advance notice, employers may not be able to find a replacement worker on short notice. Instead, two-thirds of employers respond by reassigning the absent worker’s tasks to the conscientious employees still working.⁸ Workers who misuse sick leave thus force responsible co-workers to cope with a heavier workload.

Sometimes, however, jobs cannot be re-assigned and replacements cannot be found on short notice. In these cases, the job goes undone—to the detriment of customers. In just one month, intermittent FMLA leave use forced one Verizon office to leave over 8,900 customer calls unanswered.⁹ According to the Fairfax County, Virginia, government, several of its school bus drivers misuse intermittent leave to avoid calling in absences or arriving at work on time, leaving children waiting on the streets for their buses. The drivers’ abuse of FMLA leave causes these students to arrive at school late, unless their parents are able to drive them to school before

1. Society for Human Resource Management, Survey Report: 2006 Benefits, 2006, Table G-1.
2. S. 910, The Healthy Families Act, § 5 (f)(2)(A)(i).
3. Public comment of the Manufacturer’s Alliance in response to a request for information on the Family and Medical Leave Act from the Employment Standards Administration, Wage and Hour Division, of the Department of Labor, Document ID: ESA-2006-0022-0553.
4. *Ibid.*
5. *Ibid.*
6. Public comment of Verizon Wireless in response to a request for information on the Family and Medical Leave Act from the Employment Standards Administration, Wage and Hour Division, of the Department of Labor, Document ID: ESA-2006-0022-0549, at www.regulations.gov.
7. Warren Hoge, “Sweden’s Cradle-to-grave Welfare Starts to Get Ill,” *The New York Times*, September 25, 2002, page A3.
8. Commission on Family and Medical Leave, *A Workable Balance: Report to Congress on Family and Medical Leave Policies*, April 1996, at http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1002&context=key_workplace.
9. Public comment of Verizon Wireless.

work.¹⁰ Customers—in this case, schoolchildren—lose when workers misuse their sick leave.

Conclusion. Workers should be able to take time off work when they are sick, but the Healthy Families Act is not the right way to give workers this flexibility. Most employers already provide sick leave voluntarily, and the HFA would prevent them from disciplining employees who abuse leave. The

experience with the FMLA and in other countries shows that policies like HFA encourage some employees to skip work, forcing their co-workers to cover for them and customers to accept delays and lower-quality services. Congress should not act to make this problem worse.

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10. Public comment of Fairfax County Public Schools in response to a request for information on the Family and Medical Leave Act from the Employment Standards Administration, Wage and Hour Division, of the Department of Labor, Document ID: ESA-2006-0022-0550, at www.regulations.gov.