

Congress of the United States
Washington, DC 20515

April 11, 2008

The Honorable Elaine L. Chao
Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210

**Re: Proposed rule on “The Family and Medical Leave Act of 1993,” issued by the
Department of Labor on February 11, 2008**

Dear Secretary Chao:

We are submitting these comments regarding the Department of Labor’s (Department’s) proposed regulations on the Family and Medical Leave Act of 1993 (FMLA or the Act). We have addressed the proposals concerning the new military family leave provisions in a separate letter.

We believe that many of the proposals described in the Notice of Proposed Rulemaking (NPRM) compromise employees’ rights, unduly restrict their ability to take leave, and place substantial burdens on workers that are inconsistent with Congress’s original intent in passing the FMLA.

The first stated purpose of the Family and Medical Leave Act was: “to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity...” (P.L.103-3). Since it was enacted in 1993, the FMLA has enabled more than 60 million people to be productive workers and responsible family members and assisted families in times of crisis.

We believe that the ability to balance work and family is essential to employees, to the productivity of individual employers, and also to the competitiveness of our nation. The Act was designed to provide maximum flexibility to employees when family and medical needs arise and to offer job protection so that employees can care for their family knowing that their job will be waiting for them when they return. Too many hardworking people are still left out of the law’s protections, and we strongly believe that employees’ access to family and medical leave should not be narrowed.

As Senator Dodd explained at the House Subcommittee on Workforce Protections Hearing on September 18, 2007, “The Family and Medical Leave Act (FMLA) declared a simple principle: employees should never be forced to choose between the jobs they need and the families they love.” Yet, this is what many of the Department’s proposals in fact do. We believe that the combined effect of these changes is to unfairly burden workers seeking to exercise their rights under the Act.

While we have a number of specific concerns about the Department's proposed rule changes for the administration of the FMLA, our fundamental concern is that the Department has embarked on these changes without first collecting sufficient objective, high-quality data to make sound policy choices. Instead, the Department suggests that it was guided largely by nearly decade-old data on the impact of the Act (the most recent government survey conducted on FMLA was in 2000) and anecdotal responses from various stakeholders to the Department's Request for Information on FMLA in 2006 (RFI). The Department also notes that it gave considerable weight during the RFI process to comments supplied by a major employer stakeholder group, including a survey which appears to be a non-representative sample of human resource administrators. This data is manifestly inadequate, and cannot justify changes in the Department's interpretation or administration of the Act, particularly when the combined effect of those changes is exponentially more harmful to employees than any one provision alone.

The Department has been contemplating revisions to its FMLA regulations for many years, despite its own concession that, for the most part, the law is working well. There was ample time to commission a high-quality survey in order to understand the Act's current impact. Instead, the Department has chosen to rely on outdated, anecdotal, or industry-supplied data. It is our strong belief that the government should only make changes to well-established interpretations of the law when these changes are supported by timely and sound scientific evidence. This is particularly true for statutes like the FMLA that protect critical workplace rights.

We cautioned the Secretary about this lack of data when we submitted our comments in February of 2007 to the RFI, and we suggested at the time that the Department gather objective data before contemplating changes to the FMLA regulations. The Department has not taken this step, and we are deeply concerned by the Department's decision to move forward with policy changes to the FMLA without adequate information.

Summary of Comments

Family and medical leave has been used successfully by at least 60 million employees since the enactment of FMLA. For 15 years, the FMLA has allowed employees to be productive workers and responsible family members and assisted families in times of crisis. We believe that the ability to balance work and family is essential to employees, to the productivity of individual employers, and also to the competitiveness of our nation. The Act was designed to provide maximum flexibility to employees when family and medical needs arise and to offer job protection so that employees can care for their family knowing that their job will be waiting for them when they return. We believe that too many hardworking people are still left out of the law's protections, and that employees' access to family and medical leave should not be narrowed.

We believe that the Department's proposed changes, taken as a whole, will impair the rights of employees, limit employees' entitlement to leave, and create additional hurdles for employees struggling to balance their work and family life. The proposed rule shifts the delicate balance

between employees and employers that was carefully crafted in the law, by tipping the balance toward employers.

Discussion:

I. The Department's proposed regulations restrict an employee's entitlement to FMLA leave.

The overall impact of the proposed rules is to narrow an employee's ability to exercise their rights to leave under the FMLA by making it easier for employers to deny leave and constricting some of the flexibility inherent in the statute.

Employees' use of accrued paid leave while on FMLA leave would be limited. Since the inception of the FMLA, the ability to substitute paid leave for unpaid FMLA leave has been of critical importance, particularly to low-wage workers. In fact, as the Department noted in its Report on the RFI, the most common reason workers cite for not taking FMLA leave is the inability to afford a loss of pay. The current regulatory scheme provides that employees seeking to substitute paid sick days for their FMLA leave must follow the employer's usual restrictions on paid sick days. Current law, however, does *not* require workers to follow an employer's usual leave restrictions if they are seeking to substitute other forms of paid leave (vacation days, PTO, etc.) for their FMLA leave. Instead, workers can freely substitute paid vacation or personal leave for unpaid FMLA leave. The NPRM would allow employers to impose restrictions on all types of leave substitution, making it more difficult for workers who cannot afford to take unpaid leave to invoke their rights under the Act. For example, if an employer requires two days notice for any vacation time, then an employee could not substitute vacation time for FMLA leave to care for a sick mother before the two day waiting period. DOL's proposal contradicts Congressional intent by limiting an employee's ability to substitute paid leave:

“The purpose of section 102(d) [substitution of paid leave] is to provide that specified paid leaves, which have accrued but have not yet been taken, may be substituted for the unpaid leave under the act in order to mitigate the financial impact of the wage loss due to family and temporary medical leaves.” S. Rep. No. 103-3, at 28 (1993).

In effect, the Department's recommendation on substitution of paid leave would create the financial burden that the provision was intended to alleviate. Low-wage workers would be impacted disproportionately as they are less likely to be covered by job-protected leave policies and can least afford to go without wages when taking leave to care for a family member, a new child or their own personal illness.

An employee could be denied leave for minor departures from an employer's required notice procedures. Current FMLA regulations require an employee who is requesting leave to

follow the usual notification procedures of the employer or risk discipline. However, FMLA leave can not be delayed or denied solely because the employee deviates from the required

procedures in notifying his or her employer. The Department, however, seeks to change this interpretation and allow employers to delay or deny leave if an employee does not follow proper notification procedures. A worker who departs from these procedures could be subject to discipline for an unexcused absence. While the Department proposes to make an exception for “unusual circumstances” -- such as when an employee must be taken to the emergency room and their spouse calls the wrong supervisor to notify the employer – this exception alone is not sufficient to protect workers’ rights. We disagree with this revision to the current regulations.

In considering the FMLA, Congress recognized that workers who are in need of FMLA leave are facing difficult family circumstances. Therefore, the law was designed to provide flexibility for workers seeking to invoke their rights under the Act. It is clearly established that a request for FMLA leave should not be improperly denied based on technicalities or minor procedural deficiencies.

Employees would be allowed to waive FMLA rights. We disapprove strongly of the Department’s proposal to allow employees to waive their FMLA rights retroactively without approval by the Department of Labor or the courts. While the Department claims that it has taken this position since the inception of the FMLA, in fact, when the Department published its FMLA regulations in 1995, it made quite clear in its preamble that it had carefully considered the comments urging the allowance of waivers, but “concluded that the prohibition against employees waiving their rights constitutes sound public policy under the FMLA, **as is also the case under other labor standard statutes such as the FLSA.**” [emphasis supplied]. The preamble did make an exception, but only in the case of an early buy-out offer from the employer.

The reason for this principle is clear. Private settlement of claims on either a prospective or retroactive basis undermines Congress’s objectives in imposing minimum labor standards, such as those established in the FMLA. Under the Fair Labor Standards Act (FLSA) employees cannot waive their rights under the Act, such as overtime or minimum wages. The FMLA is modeled after the FLSA, and the legislative history of FMLA makes clear that the provisions of the FMLA are based on the same principles as child labor laws, minimum wage and safety and health laws. See *Taylor v. Progress Energy, Inc.*, 415 F. 3d 364 (4th Cir. 2005), *on rehearing, reaffirmed and reinstated at* 493 F. 3d 454(2007) (FMLA was enacted to set a minimum labor standard for family and medical leave and at the time of its enactment was analogized to child labor, occupational health and safety, and FLSA law). To maintain the integrity of the FMLA and other minimum labor standards, it is imperative that the Department reject waivers in FMLA cases. As the Court in *Taylor* wrote: “Without the non-waiver provision, unscrupulous employers could systematically violate the FMLA and gain a competitive advantage by buying out FMLA claims at a discounted rate.”

An employee’s leave rights could be undermined unless the Department clarifies its methodology for calculating the relationship between FMLA leave and overtime. We are pleased that the Department has proposed no substantive changes to the treatment of overtime under the rules. The Department, however, does state that it wants to clarify when overtime not

worked by an employee may be counted against that employee's FMLA entitlement. We agree with the Department's statement that if an "employee would be required to work the overtime hours were it not for being entitled to FMLA leave," then those hours that were required but not worked may be counted against the employee's FMLA entitlement. Contrary to the Department, however, we believe that the relevant distinction is between voluntary overtime and mandatory overtime. For example, if an employee would be required to work overtime except for the fact that the employee has a serious health condition that limits her to working 8 hours a day or 40 hours a week, then her employer could count any overtime hours the employee was required to but did not work as FMLA leave. But, if the same employee did not have to report for overtime, if that overtime is voluntary, then the overtime hours the employee was free to decline cannot count as FMLA leave. We suggest that the Department clarify that the relevant test is whether the employee is required to work overtime. By making this clear, the Department will ensure that employees are not charged for FMLA leave they did not take.

An employee may be forced to take an entire shift as FMLA leave when only a small increment of leave is needed for FMLA reasons. The Department also seeks guidance about how to handle situations in which a worker using intermittent leave or working a reduced leave schedule cannot join his or her shift once it has started because of the nature of the employer's business (i.e., train conductors, pilots, flight attendants, etc.) The Department asks whether, in these circumstances, the employer should be allowed to designate the entire shift as FMLA leave and count it against the worker's FMLA annual entitlement. The Department's professed rationale for this approach is that – unless the entire shift is counted as FMLA leave – workers could face discipline for missing the rest of the scheduled shift. We strongly disagree with the Department's suggestion that workers might be unprotected after they miss part of their shift because of FMLA leave. The Act is clear that an employee cannot suffer any adverse employment action or other negative consequences for taking FMLA leave. The Act is equally clear that workers should not be required to take FMLA leave in amounts greater than necessary and erode their 12 week leave entitlement unnecessarily. Accordingly, we believe that the Department's 1994 Opinion Letter from the Wage and Hour Division addressing this issue sets forth the correct interpretation -- that the employee can only be charged for the hours used for FMLA purposes, and not the entire shift. We also note that, in seeking to change its opinion, the Department relies on anecdotal evidence about possible abuse of intermittent leave. The Department should not create an exception for certain industries when it has offered no real evidence that the current regulations cannot adequately address these limited circumstances.

An employee's eligibility for FMLA leave after non-consecutive periods of employment will be limited. The Department's proposal to set a five year limit on non-consecutive periods of employment places an unnecessary burden on employees that have taken time out of the workforce and returned to the same employer. The 12month period specified in the FMLA was not intended to be continuous. Establishing a time limit is arbitrary and unnecessary, and would disproportionately impact women who leave the workforce to raise children and may return to the same employer years later. There is no compelling reason for the Department's proposed change. To the extent that employers might face problems with verifying eligibility or past employment for any employment record longer than three years, the burden to prove previous employment is on the employee, negating any inconvenience for the employer. This rule

preserves the balance between workers' rights and employers' ease of administration, and should be preserved.

II. The Department's proposal not only infringes on FMLA rights, but goes so far in some recommendations as to infringe on other key workplace rights.

The FMLA was written as a minimum employment standard. Much like the Fair Labor Standards Act and other important labor statutes, the FMLA was designed to provide a basic right to qualifying employees. We are concerned about the infringement on an employee's FMLA rights in the proposed rules, but also very concerned about the infringement on other workplace rights of the employees.

Employees will be forced to sacrifice their medical privacy by allowing their employer to have direct contact with their health care providers. The proposed rules would allow an employer to directly contact an employee's health care provider with questions about the employee's medical certification for FMLA leave. Under the current regulations, it is the employer's health care provider, and not the employer, who can directly contact an employee's doctor to authenticate or clarify a medical certification. We are concerned that this change will discourage employees from using FMLA leave in order to preserve the privacy of their medical information.

The proposed regulations provide no limitation on who can contact the health care provider on behalf of an employer – a co-employee or immediate supervisor could be the employer's point of contact. Many employees will no doubt be deterred from exercising their FMLA rights because they will be justifiably concerned about others in their workplace learning their (or their family's) private medical information. This concern will be even greater in small businesses.

The FMLA does not contain privacy protections and the Department states that privacy rules under the Health Insurance Portability and Accountability Act (HIPAA) will provide the necessary safeguards for employee medical information. While it is true that under the new rules an employee must authorize his employer to contact his health care provider, failure to authorize such a discussion could result in an incomplete medical certification and a denial of FMLA leave. In many cases, the employee will have no choice but to sign a HIPAA authorization. The proposed rules give no guidance or impose no limitations on how broad this authorization can be. Further, the proposed regulations do not ensure that the scope of the HIPAA authorization is narrow and will limit the employer to medical information that is required for FMLA purposes. There is nothing in the regulations to prevent the discussion from expanding beyond the information that is necessary and required to clarify the medical certification. This is especially true given that the medical certification form now allows for the inclusion of a diagnosis, which was not previously required.

In addition, the employer is not a qualified medical provider and may not understand the conversation with a medical provider. As the Department recognizes, clarification of a medical certification requires communication with an employee's health care provider regarding the substance of the medical condition. An employer does not know what information is sufficient

to substantiate a serious health condition or even the appropriate questions to ask in order to get sufficient information. Without such expertise the employer could improperly delay or deny the request for FMLA leave based on an erroneous understanding of the serious health condition involved.

We believe the proposed changes force employees to give up their right to medical confidentiality in order to exercise their statutory right to job-protected medical leave. The Department offers no basis for this change other than anecdotal evidence from employers that the existing rules resulted in cost and delay. We believe this evidence is an insufficient basis for asking employees to sacrifice the privacy of their medical information.

An employee would be required to provide more detailed information when notifying an employer of their need for FMLA leave. The Department has proposed to increase an employer's access to information about an employee's (or their family member's) medical condition for both foreseeable and unforeseeable leave events. In the case of foreseeable leave, employees would be required to explain why they were unable to provide at least 30 days notice for a foreseeable event and only the employer decides whether the reason is justifiable. For both foreseeable and unforeseeable leave, an employee would be required to indicate that he or she is unable to perform the functions of the job, the anticipated duration of the absence and whether the employee or family member intends to visit a health care provider or is receiving continuing treatment. These enhanced requirements open the door to probing questions from the employer which employees are required to answer to secure their leave. We believe that both circumstances put employees at a disadvantage and improperly infringe upon their medical privacy. Current regulations do not require any of this information when an employee notifies an employer of their need for leave. We strongly urge the Department to reconsider both provisions.

An employee's collective bargaining rights could be in jeopardy due to the elimination of language related to these rights. The proposed regulations delete both language and an example clarifying that an employer cannot enforce an FMLA notice requirement that is stricter than the terms of a collective bargaining agreement, state law or the employer leave policy. The Department deletes this language because the example used to illustrate this principle in the current regulations is "confusing." We have no objection to the deletion of the example, but we see no reason for the deletion of language that makes it clear that employers must comply with collective bargaining agreements and employer plans that provide greater benefits than the FMLA. Congress intended that nothing in the FMLA should be construed to discourage employers from adopting policies more generous than required under the Act. Indeed, the Senate report that accompanied the bill's passage specified that the FMLA does not "diminish an employer's obligations under any collective bargaining agreement or employment benefit plan or plan providing greater leave rights than those established under the [A]ct." S. Rep. No. 103-3, at 4 (1993). The regulations should continue to stress an employer's duty to comply with such agreements and plans.

III. The proposed regulations place additional burdens on employees as they try to exercise their FMLA rights.

The Department's proposed regulations create additional burdens for employees seeking to invoke their rights under FMLA. While the law was designed to provide protection and flexibility to workers in times of family or medical need, we believe that the provisions described below have the effect of making it more difficult for employees to exercise their FMLA rights.

Employees will be burdened with expanded notice requirements. Overall, the proposed rule changes concerning employee and employer notification requirements appear to shift more burden onto employees, upsetting the balance that Congress intended by making it more difficult for workers to take FMLA leave. We are very concerned that the Department is proposing rule changes that constrict an employee's access to protected leave without a foundation of current, sound scientific data to direct the change. We are also concerned that the incremental changes around both employer and employee notification requirements collectively undermine the delicate balance intended in the statute.

New notice requirements will restrict employees from using leave for unforeseeable emergencies. Congress clearly intended that workers would be able to use FMLA leave in situations where the need for leave is unforeseeable. The Senate Report accompanying S. 5 in 1993 (S.Rept. 103-3), indicates that, while advanced notice for foreseeable leave is reasonable in many cases (i.e., 30 days notice for planned medical treatment, adoption, or child birth), other unforeseeable events arise that cannot be fit into standardized notification requirements.

Such 30-day advance notice is not required in cases of medical emergency or other unforeseen events like a premature birth, or sudden changes in a patient's condition that require a change in scheduled medical treatments. Similarly, parents who are waiting to adopt a child are often given very little notice of the availability of the child. In these situations, it is often impossible for an employee to give 30 days advance notice.

Section 102(e) is intended to require 30 days advance notice of the need for leave to the extent possible and practical. Employees who face emergency medical conditions or unforeseen changes will not be precluded from taking leave if they are unable to give 30 days advance notice (emphasis added). (S.Rept. 103-3 at 28)

The Department's proposal to strike the "two-day" notice rule for all cases of foreseeable leave and most cases of unforeseeable leave is contrary to the spirit of the law in our view. In using the phrase 'to the extent possible and practical,' Congress clearly pointed to a need for flexibility, rather than strict or standardized notice requirements. Instead of adhering to this flexible approach, the Department's new regulations restrict the use of FMLA leave for unforeseeable events, which is neither practical nor consistent with Congressional intent. NOTE: (I believe this is covered in the cite above.)

Employer notice requirements are weakened, which shifts additional burden to employees. While we agree that requiring written notice from employers to employees detailing the reason(s) why leave is not designated as FMLA is a necessary step to improving communication

between both parties, we do not believe that the extension of the designation period from two to five days preserves a balanced relationship between labor and management, especially in light of changes made to employee notification requirements.

The Department concluded that a two-day "grace" period for notifying employers of the need to take FMLA leave both in foreseeable and unforeseeable events was too lengthy, yet at the same time, they decided that two days was too short a time period for employers to determine whether or not requested leave could be designated as FMLA leave. In the proposed rule, the Department states that the RFI comments indicated that the "current two-day time frame was too restrictive" and proposes an extension to "within five business days of receiving sufficient information from the employee to designate the leave as FMLA leave." The extension for employer notification would burden employees with additional waiting time for the approval of their leave, causing undue stress and potentially preventing workers from taking needed steps to protect their health or address a family member's medical crisis. This clearly undermines the intention of the law to assist workers in times of family crisis. Further, the Department only cites employer comments in its justification for expansion. This proposal is another case where changes are based on nothing more than anecdotal commentary rather than sound data. We urge the Department to reconsider any changes that expand the leave designation period for employers.

Employees would be burdened with unnecessary medical appointments for exercising their FMLA rights, which will drive up health care costs. In addition to burdensome notice requirements, the proposed regulations contain a number of changes that will increase the number and frequency of medical visits for employees who exercise their right to job-protected leave.

- The current regulations define a "chronic serious health condition" as requiring "periodic visits for treatments." The new definition now requires two or more visits to a health care provider annually.
- The proposed regulations define "a serious health condition needing continuing treatment" to require incapacity for three or more days and two or more treatments within a 30-day period; a time frame set by the Department rather than in accordance with medical necessity.
- Employers will now be allowed to request new medical certifications from employees every six months, even if the employee's health care provider has already indicated that the employee's condition will last for more than six months and the employee's circumstances have not changed. Thus, an employee who is successfully managing a chronic condition like diabetes will have to go to the doctor for a recertification to confirm that the condition still exists.
- The proposed regulations impose a new certification requirement for an employee who works in a position with safety concerns and who uses intermittent leave. The employer can require a "fitness for duty" certification from this employee every 30 days.

These additional doctor's visits required for employees to both qualify for FMLA leave and return to work after FMLA leave will make it more difficult for employees to take leave. Employees will have to bear the cost of these additional medical visits – both the financial costs (either directly or through insurance co-pays) and the lost time from work. These additional doctor's visits will also add to the health care costs of employers. Employers and other employees will have to bear the burden of covering the absence of a co-worker who loses time for an appointment that is not medically necessary. Finally, these unnecessary appointments will tax the resources of overburdened health care providers.

We intended the FMLA to allow employees the opportunity to take job-protected family and medical leave without unduly burdening their employers and other employees. By requiring additional and unnecessary medical appointments to use FMLA leave, the proposed regulations burden not just the employee who needs FMLA leave, but may also burden their employer, other employees, and health care providers.

IV. We agree with several of the Department's recommendations in the proposed regulations.

We applaud the Department's decision not to make substantial changes to the definition of serious health condition or require employees to take intermittent leave in larger blocks of time. We also support the revisions that the Department has proposed clarifying that "light duty" time does not count against an employee's FMLA allotment and increasing the amount of information about family and medical leave rights that employers must provide to their workers.

In addition, we, like the Department, believe that an employer should not have a right to ask if another family member is available to care for a sick family member when considering an employee's request for FMLA leave. We also agree with the recommendation that the employer be required to provide a written description of any deficiency in certification of FMLA leave and that an employee be given adequate time to correct any deficiency.

Finally, we agree with the Department's proposal regarding revisions to the designation of a public agency. The Department concluded that instead of relying on the Census of Governments to determine if two governmental units should be counted as a single employer for FMLA purposes that the Census should only be one such factor. We concur as this is consistent with the FLSA, on which the FMLA is modeled, and a more practical and consistent method for determining what constitutes one public agency. We believe that this recommendation will help to clarify conflicting court rulings and provide FMLA protection for additional public employees intended to be covered by the Act.

Conclusion

The Family and Medical Leave Act has been successful in allowing employees to be both productive at work and care for their needs at home, and has created a minimal burden on most employers. We are concerned that the Department's proposed regulations tip the balance of the

FMLA toward employers and make it more difficult for employees to exercise their rights under the Act. As we mentioned in our response to the Department of Labor's Request for Information in 2007 and reiterate in this letter, we believe that the Department should collect comprehensive, updated data on all of the important issues it raised in the RFI before attempting to promulgate regulations on any aspect of the law and its administration.

We look forward to working with the Department, employees, employers and all stakeholders to ensure that any regulatory changes to the FMLA uphold and strengthen employee rights and are consistent with the intent of the statute.

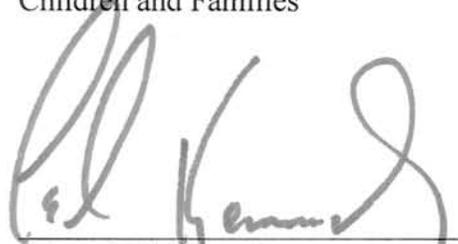
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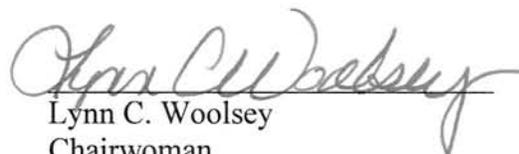
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Chairman
Senate Subcommittee on
Children and Families



George Miller
Chairman
House Committee on Education
and Labor



Edward M. Kennedy
Chairman
Senate Committee on Health,
Education, Labor and Pensions



Lynn C. Woolsey
Chairwoman
House Subcommittee on
Workforce Protections



Patty Murray
Chairwoman
Senate Subcommittee on
Employment and Workforce Protections

The Honorable Elaine Chao
April 11, 2008 Response to FMLA NPRM



TOM HARKIN
United States Senator



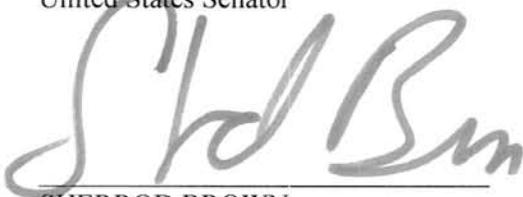
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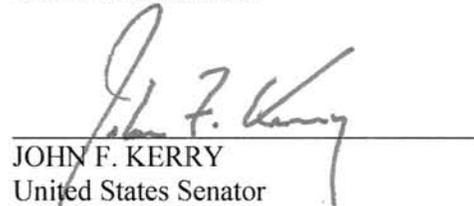
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DANIEL K. AKAKA
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United States Senator



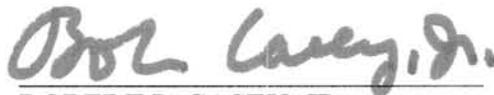
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ROBERT P. CASEY, JR.
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JOHN LEWIS
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Member of Congress



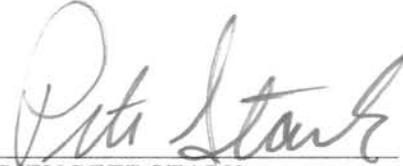
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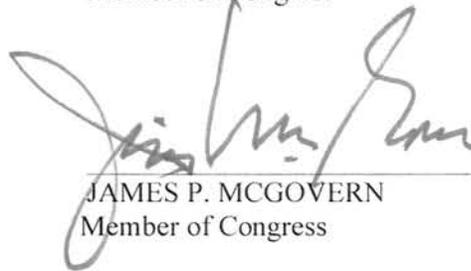
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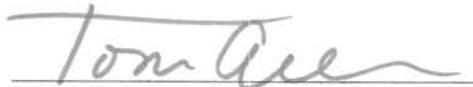
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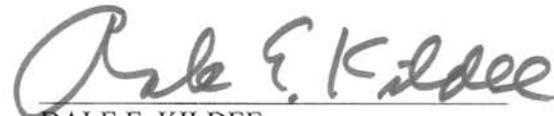

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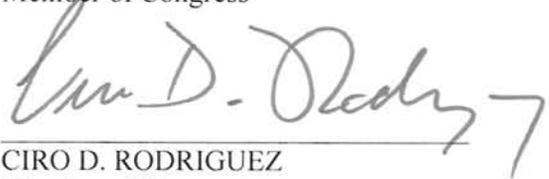
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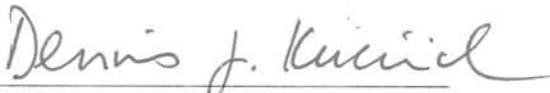
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Congress of the United States
Washington, DC 20515

April 11, 2008

VIA FACSIMILE: 202-693-6111

The Honorable Elaine Chao
Secretary of Labor
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20515

Re: Proposed rules on “The Family and Medical Leave Act of 1993,” issued by the Department of Labor on February 11, 2008 (Military Family Leave Provisions), 73 Fed. Reg. 7876, 7925-7933 (Feb. 11, 2008).

Dear Secretary Chao:

We are submitting the following comments regarding the Department of Labor’s (DOL) proposed regulations on the new military family leave provisions of the Family and Medical Leave Act of 1993 (FMLA), as contained in Public Law 110-181. It is our intention to address the proposed rules to the FMLA more generally in a separate letter.

These new provisions, which constitute the first expansion of the FMLA since its enactment 15 years ago, are designed to make it easier for workers with family members in military service to balance their work and family lives during these particularly demanding times without the fear of losing their jobs. The statutory language is to be read expansively to provide needed assistance to those families who have made and continue to make immense sacrifices for our country.

The new military family leave provisions should not be incorporated into the existing or proposed regulatory scheme for the FMLA. Employees who are eligible for military family leave represent a small subset of individuals who qualify for FMLA leave, and when they do, they face unique circumstances arising from a family member’s deployment, return from active duty, or a serious injury. While in many instances, military family leave regulations may parallel existing regulations, a separate set of rules, set forth in the Code of Federal Regulations, is necessary.

In addition, it is essential that DOL implement the military family leave regulations as an interim final rule at the earliest possible date. We are already hearing about instances in which employees are being denied military family leave arising from the deployment of their family members. These workers simply cannot wait for a protracted period of implementation. In 1993, DOL issued an interim final rule for the initial FMLA regulations. Today, DOL needs to do the same with respect to the military family leave regulations.

Summary of Comments: These military family leave provisions are critical to servicemembers and their families. As such, they should be interpreted broadly and consistent with the intent to

help military families balance their work and family lives. In addition, DOL should implement the military family leave regulations at the earliest possible time.

Discussion

1. The 26-week leave should be read broadly to apply once per servicemember, per injury and also to allow the eligible employee the maximum opportunity to take leave.

The extension of FMLA leave for those caring for injured servicemembers has often been referred to a “one-time entitlement,” but leave would be available *once per servicemember, per injury*. Thus, if the same covered servicemember suffers two different injuries, the family member of the covered servicemember could take up to 26 weeks of leave during two different 12-month periods. In addition, if an employee is the family member of two different covered servicemembers who both suffer serious injuries or illnesses, the employee could take up to 26 weeks of leave at least once for each covered servicemember. While this rule could entitle an employee to multiple entitlements, we believe that these instances will be rare. Nevertheless, when such heartbreaking circumstances arise, leave should be available. There is certainly nothing in the statute that prevents the “once per servicemember, per injury” interpretation or that prevents a worker from caring for multiple servicemembers during the *same* period of military family leave.

In order to provide the maximum opportunity for loved ones to care for injured servicemembers, at the employee’s option the 12-month period should begin when the employee first utilizes military family leave, even if the employer calculates the 12-month period for standard FMLA leave on a different basis. In addition, the employee should have the right to choose whether the leave counts as standard FMLA leave or military family leave, as well as the right to change the designation retroactively.

The military family leave provisions also allow employees to use their entitled leave on an intermittent or reduced scheduled basis, which should be treated in the same manner as the current regulations for standard FMLA leave, although in a distinct set of rules. Temporary transfers for leave taken to care for an injured servicemember, as well as for a “qualifying exigency,” could be permissible as long as employees’ rights are protected in a manner similar to the current regulations.

2. The definitions under the military family leave provisions should be interpreted flexibly and expansively.

Family Members and “Next of Kin”: The intent of Congress in stating which family members are eligible for leave to care for an injured servicemember was to create an expansive and flexible legislative scheme—one that would be responsive to the unique needs of injured servicemembers and their families. In fact, this measure implements one of the key recommendations of the Dole-

Shalala Commission on Care for America's Returning Wounded Warriors, which had underscored the need for a "more flexible system of benefits for addressing the multiple needs of families – especially those who must take on a major, long-term care-giving role." Commission Report, p.19.

To ensure that servicemembers would receive the care they need while recovering from often complex and debilitating injuries, Congress provided an expanded list of family members who are eligible for leave under the statute. Specifically, the legislation extends leave not only to a specific list of family members that includes parents, spouses, and children, but also adds "next of kin," so that a servicemember does not fall through the cracks simply because he or she is without a parent, a spouse and a child.¹

In applying this list, however, Congress did not intend for the definition of "next of kin" to be tied to varying state interpretations or a burdensome certification process, as this would further complicate and prolong the process that a servicemember and his or her next of kin must navigate before the employee takes military family leave. In fact, in testimony regarding this legislation, members of Congress highlighted the need to reform the Department of Defense (DOD) and Veterans Affairs (VA) systems that too often require servicemembers to "navigat[e] a maze of bureaucracy to receive benefits." Testimony of Senator Hillary Clinton before the House Subcommittee on Workforce Protections (Sept. 18, 2007).

Most of all, the intent of Congress was for the servicemember, and not the government, to choose the family member who is in the best position to serve as his or her next of kin. As Senator Dodd testified before the U.S. House Subcommittee on Workforce Protections on September 18, 2007, "[f]or the first time this bill offers FMLA leave not just to parents, spouses and children, but to next-of-kin including siblings. Families—not the government—should decide for themselves who takes on the work of caring for their injured loved ones. This legislation recognizes that fact and it's a major accomplishment."

There are myriad ways to achieve this goal, including a simple attestation by the servicemember designating his or her "next of kin." However, whatever approach DOL chooses, a servicemember should not be compelled to select a "next of kin" who lives far away, is estranged from the servicemember, or who is not equipped to tend to the servicemember. *See, e.g.*, Testimony of Rep. Darrell Issa before the House Subcommittee on Workforce Protections (Sept. 18, 2007) (describing how studies have shown that the "time and presence" of family members "directly corresponds to the improvement of individual health" in patient recovery and that

¹ After consulting with the Department of Defense (DOD), DOL proposed a list of family members who might come within the meaning of "next of kin." This is a strong starting point. However, DOL should also include in the definition of "next of kin" those individuals recognized by the Department of Defense as the servicemember's "Committed and Designated Representative" (CADRE).

“supportive relatives” are “essential in improving the health of an individual”). The servicemember, of course, should be permitted to change the designation of his or her “next of kin” if the circumstances of the first-designated “next of kin” change for any reason.

DOL raised the meaning of “next of kin” in the context of leave to care for an injured servicemember. The same textual and policy arguments also apply to the meaning in the “qualifying exigency” section, and, accordingly, we recommend that the same interpretation should be given to the phrase in both sections.

“Serious Injury or Illness” and Proximity of Time: Leave under the military family leave provisions is available when a family servicemember has a serious injury or illness “incurred” while in the Armed Forces, in the “line of duty” and “on active duty.” Finally, the injury or illness must be such that it “may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating.” 29 U.S.C. § 2611(19) (as amended by Pub. L. 110-181).

DOL has asked whether employees can take military family leave if the servicemember’s injury or illness is incurred in the line of duty but does not manifest itself until after the member has left military service. The answer is an unqualified “yes.” Many servicemembers are returning with “invisible injuries” or latent conditions that are difficult to identify or diagnose, or have delayed symptoms, such as traumatic brain injury, post-traumatic stress disorder and conditions associated with exposure to toxic or hazardous substances. Congress certainly did not intend to disqualify injuries that servicemembers incurred in the line of duty, simply because those injuries did not develop or were not diagnosed until after they left the service. Instead, we were acutely aware that wounded warriors often need “substantial support” from their families “for long periods of time, and some permanently,” Statement of Chairwoman Lynn Woolsey before the House Subcommittee on Workforce Protections (Sept. 18, 2007), and we did not intend to place arbitrary barriers in the path of a family member seeking leave.

DOL should not place a temporal proximity requirement between a covered servicemember’s illness or injury and treatment, recuperation or therapy for which care is required. For a service member who incurs his or her illness while in the military and is diagnosed after he or she leaves the service, the determination of whether the injury “may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating” should be made with respect to his or her status at the time of the original injury. In other words, the relevant question is whether the servicemember, at the time of diagnosis or treatment, might not be able to perform the duties that he or she had when he or she was on active duty, in light of the diagnosed injury or illness.

DOL also asks whether it is appropriate to define the terms “son” or “daughter” differently for the purpose of all of the military family leave provisions. Yes, it is appropriate and, in fact, crucial for the Department to do so. As DOL itself commented, it is absurd to extend leave only to those sons or daughters of injured servicemembers who are under the age of 18 or “incapable of self-care.” Moreover, Congress demonstrated its intent for the terms “son,” “daughter,” and “parent” to have

unique meanings under the military family provisions of the FMLA, because it designated the “employee” as the “son, daughter, [or] parent” of “a covered service member,” whereas the originally enacted FMLA provisions *inversely* designate the “employee” as a person who takes leave to “care for [his or her] . . . “son or daughter, or parent.” 29 U.S.C. § 2612(a)(1)(C) (2006); *id.* § 2612(a)(3) (as amended by Pub. L. 110-181).

The result would be equally meaningless in the case of “qualifying exigencies.” Children under 18 will rarely be servicemembers, as the minimum age for enlistment in the United States military is 17. Likewise, children over the age of 18 who are incapable of self-care are unlikely to be found medically qualified to perform military duties. Therefore, DOL should define “son” or “daughter,” when referring to an “employee [who is] on active duty” within the meaning of § 2612(a)(1)(E) or to the family member of a “covered servicemember” within the meaning of § 2612(a)(3), to include adult children. Alternatively, DOL should define “next of kin” to include adult children in either § 2612(a)(3) or § 2612(a)(1)(E), or both.

Qualifying Exigency: To be consistent with Congressional intent, DOL should adopt a standard that reflects an expansive definition of the term “qualifying exigency.”

By placing the word “qualifying” before “exigency” in the statute, we did not intend for the range of qualifying exigencies to be an unduly small or narrow subset of the needs that may result from a family member being called to active duty. Instead, the provision was intended to address the diverse demands that are placed on employees whose family members are deployed. Thus, as we describe below, the Secretary should set forth a standard for determining what broad and diverse categories of exigencies will qualify for leave under Section 102(a)(1)(E) of the FMLA. When the Secretary sets forth this standard in the final rule, the Secretary should also include a non-exhaustive list of the specific kinds of exigencies covered by section 102(a)(1)(E) of the FMLA.

We agree with DOL that the statute does contemplate a level of nexus between the servicemember’s active duty service (or call to active duty) and the qualifying exigency. Indeed, it requires the qualifying exigency to “aris[e] out of the fact that the spouse, or a son, daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty).” However, Congress intended for “arising out of” to be construed broadly and wanted to avoid imposing a strict degree of nexus that other language, such as “because of,” would have suggested. A servicemember’s deployment creates a broad range of needs that “aris[e] out of” the deployment, but are not necessarily “because of” or specifically “caused” by the deployment.

In describing the “qualifying exigency” leave, Chairman Miller noted that its purpose is to address both situations in which new types of demands are created and situations in which the same types of demands are increased in the absence of the servicemember. 153 Cong. Rec. H5336 (daily. ed. May 17, 2007). The regulations should not defeat this purpose by imposing a strict or burdensome test, such as one asking whether the employee would have needed leave to address the specific

circumstance in question “but for” the deployment of the employee's family member. For example, if prior to a call to active duty, a husband and wife share certain child- and household-related responsibilities—such as attending parent-teacher conferences or taking the children to the doctor—the deployment to Iraq of the wife would not necessarily be the “but for” cause of the husband’s need to leave work to undertake each of these activities on every particular occasion. However, the husband's need for leave for any of these activities would clearly “arise out of” the wife’s deployment. Thus, instead of a “but for cause”—or even a “proximate cause” test—the nexus test should be whether the servicemember’s active duty status contributes or increases the type of qualifying exigencies that the employee experiences.

Additionally, the “qualifying exigency” provision should encompass the diverse demands placed on workers whose family members are deployed, be they “routine, everyday life occurrences” or “items of an urgent or one-time nature.” As Chairman Miller said in support of this provision, “[t]hese deployments and extended tours are not easy on families, and two-parent households can suddenly become a single-parent household with one parent left alone to deal with paying the bills, going to the bank, picking up the kids from school, watching the kids, providing emotional support to the rest of the family. You have got to deal with these predeployment preparations. 153 Cong. Rec. H5336 (daily ed. May 17, 2007; *see also* Statement of Rep. Tom Udall, (153 Cong. Rec. E1076 (daily ed. May 17, 2007) (“From raising a child to managing household finances to *day-to-day events*, [emphasis added] families have to find the time and resources to deal the with the absence of a loved one.”); Statement of Rep. Jason Altmire, 153 Cong. Rec. H15325 (daily ed. Dec. 12, 2007) (“What this legislation does is allow family members of our brave men and women...time to see off, to see the deployment, or to see the members . . . when they come back and to use that . . . to deal with the economic issues, and get the household economics in order.”).

Accordingly, a “qualifying exigency” should not be limited to a narrow subset of needs that may result from a family member being called to active duty. Nor should it differentiate between medically or non-medically related reasons.

Critically, any standard for “qualifying exigency” leave should make clear that a “qualifying exigency” can take place before, during or for a reasonable time after deployment, and it should identify broad categories of reasons that require an employee’s attention and absence from the workplace.

Thus, we urge DOL to develop a standard that encompasses broad categories, but not a *per se* list. Any approach should encompass leave for at least the following categories: (1) military events and meetings; (2) childcare and childcare arrangements; (3) counseling for self, family and children; (4) legal, financial and other critical household obligations; and (5) family needs and obligations related to the servicemember’s departure, return or period of leave, including taking an extended period of leave (such as a few weeks) to be with the servicemember directly before, after, or between deployments.

We have developed a handful of examples—including a few real-life stories—that illustrate these broader categories. They are by no means exhaustive, but instead illustrate what types of needs are likely to arise as a result of a family member's deployment:

Military events and meetings: A servicemember receives orders activating him or her for an upcoming deployment. Prior to and up to 90 days following the deployment, the military will likely provide a number of deployment briefings or screenings aimed at providing servicemembers and their families with information related to the deployment, as well as mental and physical health screenings. Family members should be authorized to take leave to attend, because participation is critical for them to understand the deployment and identify any mental or physical problems that the servicemember may experience.

Childcare and childcare arrangements: A single parent receives orders activating him or her for an upcoming deployment. Plans have been made in advance for the servicemember's parents to take care of the child during the deployment. The grandparent should be permitted to utilize leave to address childcare issues, including enrolling the child in a new school, participating in school functions, arranging for and attending counseling for the child, as well as transporting the child to and from school and other appointments for the benefit of the child, such as trips to doctors, speech therapists, tutors and afterschool activities.

Counseling for self, family and children: A servicemember deploys to Iraq, leaving behind a wife, children, and parents. This deployment places a significant mental strain on each of these individuals, and these family members should be permitted to use leave to attend mental health counseling, alone or as a group.

Legal, financial and other critical household obligations: A servicemember receives orders activating him or her for an upcoming deployment. Prior to deploying, the servicemember and his family will need to address financial, legal or other matters of a routine or one-time nature, such as preparing a will, refinancing a mortgage or designating a power of attorney. The family member should be permitted to utilize leave time to handle these matters. In addition, if anything of a financial or legal nature arises during or after deployment, the family should also have leave to address these matters as well.

For the category of **family needs and obligations when the servicemember is departing, returning, or is on leave**, we would like to provide real life illustrations of why this leave is so important.

Olga Sanchez is from Big Springs, Texas and was an employee of Wal-Mart for 24 years. In 2004, her husband—a National Guard member—was deployed to Iraq for a year, and in 2007, her youngest child, who is in the Army, was ordered to Iraq. Olga needed 6 days off from work to travel to see her son off from his departure point in Savannah, Georgia. Despite providing weeks

of advance notice, her request was denied because her employer told her that no personal leave was allowed during the 45 days before inventory was to be taken in the store. Olga wanted to support her son and did not know when she would see him again. In order to take the time off, she was forced to quit her job. With “qualifying exigency” leave, she would not have had to choose between her job and her obligations to her son, who was leaving for a combat zone in support of his country.

Susan Lyons, of Flagstaff, Arizona, suffered a similar problem with her employer, Sam’s Club. In her case, Susan’s only child had just completed her tour of duty in Iraq and was able to come back to Arizona for a short period of leave before returning to her base in Germany. Months in advance, Susan asked for two days off to see her daughter. She even arranged for other employees to fill in for her, if necessary. Her request was denied because of a blackout period on personal leave during the holiday season. Susan persisted in requesting the necessary time off. She received written discipline during this period arising from her desperate push for leave. She was ultimately only granted one of the two days that she needed, but instead she took both days anyway, without approval. Qualifying exigency leave should be available for family members of servicemembers to take leave for a brief period of time between deployments, as in Susan’s case, or before and after deployments in the case of many other military families. We ask our military families to shoulder a heavy emotional burden for their country. Requests for time off to be with their loved ones should not be occasions for more worry or trauma.

In both of these cases, family members of servicemembers, who had been deployed to war, risked their jobs to see their loved ones. One family member was forced to quit her job to meet this need. The other was disciplined in the process. Their requests for six days or two days of leave were more than reasonable. “Qualifying exigency” leave should cover these situations.

3. The notice provisions should provide maximum flexibility eligible for the employee, while minimizing disruption to the employer.

Congress intended the employee notice provisions of the military leave regulations to provide the same or greater flexibility for employees as under the current FMLA statutory and regulatory provisions. *See* Commission Report at 19 (underscoring the need for a “restructured, more flexible system of benefits for addressing the multiple needs of families -- especially those who must take on a major, long-term care-giving role.”); Senator Dodd at Sept. 18 hearing, p. 1 (explaining that “no one is more deserving of FMLA protections than those who risk their lives in the service of our country”); *see also* Senator Clinton at Sept. 18 hearing, p.1 (goal of legislation is to “strengthen” the FMLA for wounded warriors). Although employers should receive as much notice as is practicable under the circumstances, including 30 days of notice when feasible, in many instances of military family leave it will not be feasible for employees to provide 30 days of notice, or even a few hours of notice.

A serious injury or illness of a servicemember may require immediate attention and leave for an employee. By the same token, a spouse with a deployed servicemember may need leave immediately to address a childcare problem. In these circumstances, 30 days notice would not be possible. This was certainly true for Sarah Wade, who testified at the House Workforce Subcommittee hearing on September 18, 2007 about caring for her husband Sgt. Ted Wade who had been severely wounded in Iraq. Sarah described how when she was notified of Ted's injury, she and Ted's parents had to fly immediately to Germany to care for him. For both types of military leave, the regulations should preserve a distinction between foreseeable and unforeseeable leave to provide the employees with maximum protection of their rights to exercise their leave entitlement.

4. The certification process should not be unduly burdensome but should provide employers who request certification with essential information

Certification for Injured Servicemembers: Certification for leave to care for injured servicemembers should be provided by a healthcare provider. Most servicemembers with serious service-related injury will be receiving care in the DOD or VA systems. However, many will be receiving treatment from their own healthcare provider, particularly if they were diagnosed after leaving active duty.

Also, delays in the provision of service at DOD and VA could undermine the intent of the law in providing family assistance to those who need it most. Therefore, as one possible approach, we propose that the DOD or the VA be required to provide a certification within a certain, short period of time. We hope and anticipate that these agencies' physicians will be able to make a decision quickly in the vast majority of cases. Where the servicemember has passed through the DOD or VA disability evaluation systems, we anticipate that the agencies' physicians will be able to rely on those evaluations in making certification decisions.

Nonetheless, should the DOD or the VA physicians fail to provide certification by the close of the period set out in the regulations, the servicemember should be allowed to have a private doctor provide the certification. Members of the Reserve and National Guard are more likely to receive care from private healthcare providers than are other servicemembers. We therefore recommend that in cases of Reserve or National Guard members, a private healthcare provider could provide the first option for certification. As with the normal FMLA process, the private doctor would be guided by the standards set out on the certification form.

As under current law, only a healthcare provider designated by the employer should be permitted to verify the certification. DOL should create a form for a covered servicemember's injury or illness in consultation with DOD and VA. A single form could be utilized by DOD, VA and

private healthcare providers to certify illnesses or injuries that qualify the servicemember as a “covered servicemember.”

Certification For “Qualifying Exigencies”: Certification in the case of an exigency would consist of activation orders or letters from a commanding officer and a simple personal statement, not an affidavit, from the employee stating the reason for the leave and that the leave arises from the deployment or return of the servicemember. An employer could request additional information if it suspects that the employee is misusing the leave entitlement. The official DOD notification of deployment should be sufficient certification and need not be clarified, authenticated or validated by the employer. Timing requirements on certification for qualifying exigency leave should be as soon as practicable, given the potential for short-notice deployment and return of servicemembers.

One simple model for a certification form in qualifying exigency cases would be similar to the existing medical certification form. The form could be divided into three sections. The first section would have information on the provider of services, which in appropriate cases, would indicate basic identifying information and describe the services he or she performed for the employee. The second section would be similar to third page of the existing Form WH-380 for the employee to provide a personal statement on the tasks being performed and how these services are related to the family member’s active service in the Armed Forces. The third section would be similar to the fourth page of Form WH-380, providing a brief description of the broad categories and illustrations of the types of “qualifying exigencies” that are set forth in DOL regulations.

5. The regulations on the “relationship to paid leave” should be sufficiently flexible so that employees can use paid leave and FMLA leave simultaneously whenever possible.

DOL should model the military family leave regulations after the current FMLA regulations on substitution of paid leave, which specifically prohibit any restrictions on the use of a worker’s vacation or personal leave. Since the inception of the FMLA, the ability to substitute paid leave for unpaid FMLA leave has been a critical factor in the ability to use leave. In fact, as DOL noted in its Report on its Request for Information, the most common reason for not taking leave is the inability to afford it. The need to use paid leave is even greater for military families. Indeed, studies have shown that military families have worse employment outcomes and lower wages than their civilian counterparts, and after years of war, military spouses are finding it increasingly difficult to balance work and family demands. *See* Testimony of Jessica Perdew, Deputy Director of Government Relations, National Military Family Association before the House Subcommittee on Workforce Protections (Sept. 18, 2007).

Olga Sanchez’s story is illustrative of why the current regulations on substitution of paid leave should control leave taken for “qualifying exigencies.” If the current FMLA regulations on substitution of paid leave were to apply identically to military family leave, Olga would have been allowed to use her leave—in conjunction with paid leave—to see her son off to war regardless of her company’s policy that workers cannot take leave during the inventory season. Any other rule

would be nonsensical. Because under the military family leave provisions, Olga would be entitled to the leave anyway, albeit on an unpaid basis, there is no reason to prevent her from taking paid-vacation time for the leave, especially when she had saved up her leave for this very purpose. We passed the military family leave provisions to assist those workers who are making great sacrifices for our country. Making the substitution of paid leave flexible, as outlined in current regulations, is absolutely essential and consistent with the letter and spirit of the statute.

6. Other issues regarding military family leave

Maintenance of Health Benefits: We agree with DOL that an employer should be able to require that an employee support the claim that he or she failed to return to work due to a continuation, recurrence or onset of a serious health condition of a servicemember. The healthcare provider of the servicemember, in most cases the DOD or VA physician, can provide this certification. However, any regulation should make clear that an employee should not be required to reimburse the employer if he or she fails to return because of a continuation, recurrence or onset of the serious health condition for these reasons.

Instructional Employees: In the context of military leave, we believe that the provisions related to instructional employees should mirror the current regulations for FMLA. However, we reiterate our position that the military leave provisions should be implemented by a separate set of regulations.

Separate Notice and Education System: In keeping with our suggestion that military family leave provisions have distinct regulations, we also urge DOL to create a separate notice and education system for military family leave. Separate notices and posters for the workplace should be created as well as a broader education system, such as incorporating information on the new provisions into employee orientation. While incorporating the overview of the military leave provisions into the basic description of the FMLA is essential, DOL must also develop distinct notice and information tools for these new circumstances surrounding FMLA leave.

Penalty Provisions: With respect to enforcement of the new military family leave provisions under Section 107, we agree with DOL's proposal to incorporate a reference to the 26 weeks of leave into 29 C.F.R. § 825.400(c) to make it clear that an eligible employee could recover actual monetary damages for up to 26 weeks. When the Department enforces the new military family leave provisions, we hope that it will partner with military family advocates and worker representatives to identify individual violations and common problems, and to protect the rights of military families.

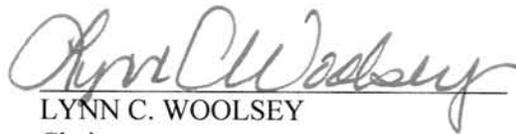
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In conclusion, the new military family leave provisions should be read in the broadest possible way to help those families who are sacrificing the most for this country. We look forward to working with DOL to ensure that these expansions are consistent with the letter and spirit of the FMLA.

Sincerely,



CHRISTOPHER J. DODD
Chairman
Subcommittee on Children and Families



LYNN C. WOOLSEY
Chairwoman
Subcommittee on Workforce Protections



HILLARY RODHAM CLINTON
Member of Congress



GEORGE MILLER
Chairman
Committee on Education and Labor

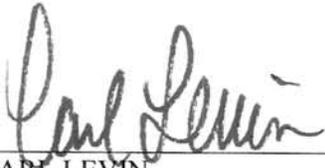


EDWARD M. KENNEDY
Chairman
Committee on Health, Education, Labor, and Pensions



JASON ALTMIRE
Member of Congress

The Honorable Elaine Chao
April 11, 2008



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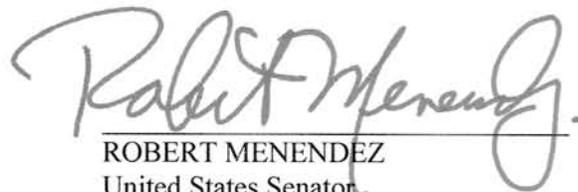
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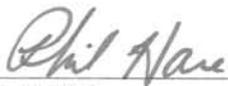
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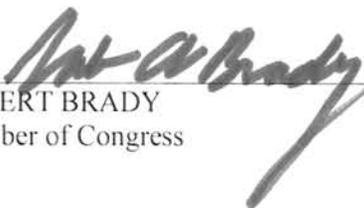
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Member of Congress

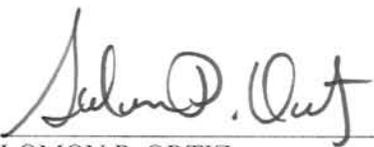


JANICE D. SCHAKOWSKY
Member of Congress

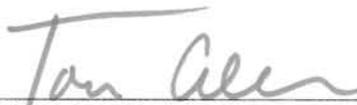


CAROL SHEA-PORTER
Member of Congress


ROBERT BRADY
Member of Congress


SOLOMON P. ORTIZ
Member of Congress

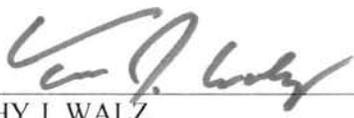

DONALD M. PAYNE
Member of Congress


THOMAS H. ALLEN
Member of Congress


MAZIE K. HIRONO
Member of Congress


TIMOTHY H. BISHOP
Member of Congress


SILVESTRE REYES
Member of Congress


TIMOTHY J. WALZ
Member of Congress


PETER J. VISCLOSKY
Member of Congress


ZACHARY T. SPACE
Member of Congress


DALE E. KILDEE
Member of Congress

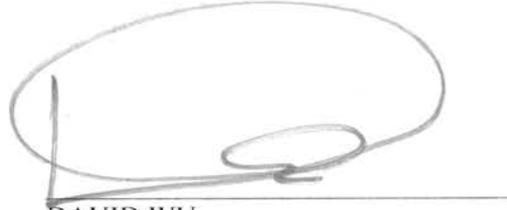

ROBERT C. "BOBBY" SCOTT
Member of Congress


RUSH D. HOLT
Member of Congress


MICHAEL H. MICHAUD
Member of Congress



JAMES L. OBERSTAR
Member of Congress



DAVID WU
Member of Congress



LOIS CAPPS
Member of Congress



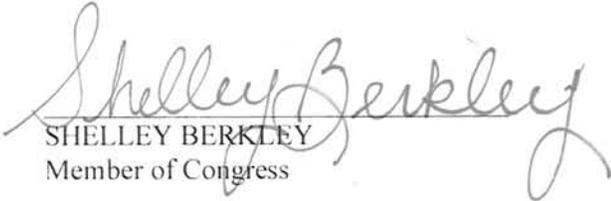
JOHN A. YARMUTH
Member of Congress



CHAKA FATTAH
Member of Congress



DAVID LOEBSACK
Member of Congress



SHELLEY BERKLEY
Member of Congress



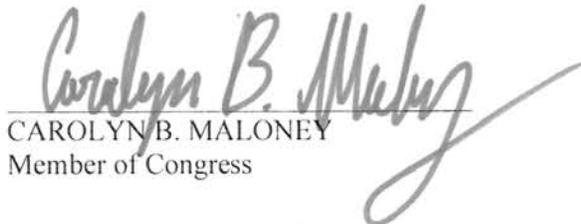
CIRO D. RODRIGUEZ
Member of Congress



JOE COURTNEY
Member of Congress



DENNIS J. KUCINICH
Member of Congress



CAROLYN B. MALONEY
Member of Congress



HENRY A. WAXMAN
Member of Congress



MICHAEL F. DOYLE
Member of Congress



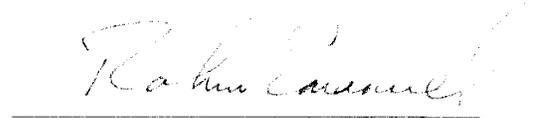
GWEN MOORE
Member of Congress

The Honorable Elaine Chao

April 14, 2008

ADDENDUM to Comments on Proposed rules on "The Family and Medical Leave Act of 1993," issued by the Department of Labor on February 11, 2008 (Military Family Leave Provisions), 73 Fed. Reg. 7876, 7925-7933 (Feb. 11, 2008), submitted by Members of the United States Congress on April 11, 2008


BOB FILNER
Member of Congress


RAHM EMANUEL
Member of Congress


WM. LACY CLAY
Member of Congress

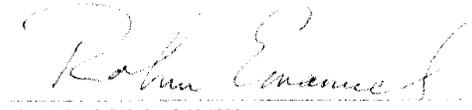
The Honorable Elaine Chao

April 14, 2008

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