

**TESTIMONY**

**NATIONAL COALITION TO PROTECT FAMILY  
LEAVE**

**Hearing on “The Family and Medical Leave Act:  
Extending Coverage to Military Families Left at Home”**

**Subcommittee on Workforce Protections**

**Committee on Education and Labor**

**United States House of Representatives**

**Room 2175 Rayburn House Office Building**

**September 18, 2007**

Chairwoman Woolsey, Ranking Member Kline, the National Coalition to Protect Family Leave appreciates the opportunity to submit testimony to the House Subcommittee on Workforce Protections for today's hearing on extending Family and Medical Leave Act Coverage to military families. We commend you for convening this hearing on such a meaningful issue to America's servicemen and women, their families, employers, and the nation they serve.

## **I. Overview**

The National Coalition to Protect Family Leave ("Coalition" or "NCPFL") is a broad-based, non-partisan group of organizations, companies and associations dedicated to protecting the integrity of the Family and Medical Leave Act ("FMLA" or "the Act").

The Coalition supports the spirit and intent of the FMLA. Coalition members recognize the challenges employees face in balancing work and family demands and their desire to feel secure in their jobs, particularly in the event they need to be absent for family or medical issues. We also understand the concerns of employers when administering the FMLA on a daily basis.

Most relevant to today's hearing, the Coalition appreciates the sacrifices of the thousands of members of the U.S. military who nobly serve in countless capacities at home and abroad, and the difficulties of simultaneously maintaining civilian employment. Few national priorities rise above providing quality care and support to the nation's servicemen and women and their families. Today's hearing provides an important forum to discuss the challenges facing our returning soldiers and their families.

The Coalition is pleased to submit this statement for the record of today's hearing because, as is explained below, the issue of military family leave is clearly a priority to the Subcommittee and the Congress. Both the House and Senate have recently voted on legislation to provide new Federal leave benefits to the families of military service members, albeit without the benefit of any prior hearings on the issue. Several important aspects of the current FMLA law and proposals to expand the Act or create a new statute for military families require careful consideration.

## **II. FMLA Challenges**

The Coalition recognizes the significant contributions the FMLA has made to the American workplace. The family leave provisions of the FMLA have been particularly successful, and employers have encountered very few challenges implementing the leave provisions as they apply to the birth or adoption of a child.

Notwithstanding the successes of the family leave portion of the FMLA, employers have experienced challenges with the "medical leave" provisions of the Act, in particular the use of incremental leave for chronic conditions. Day-to-day administration of the Act has confused both employers and employees alike. Employers have struggled with several issues, particularly what constitutes a "serious health condition" as well as with the

implications of unscheduled intermittent leave. The “intermittent leave” regulations, coupled with the vague “serious health conditions” regulations, allow employees to characterize chronic, non-serious health conditions as FMLA leave.

In March 2007, the Coalition released a survey conducted by the Society for Human Resource Management (SHRM) that found more than half (51%) of human resource (HR) professionals have faced “significant challenges” in implementing the medical leave provisions of the FMLA. Furthermore, nearly two-thirds of HR professionals have experienced problems in determining when to grant “chronic leave” under the Family and Medical Leave Act (FMLA), leading to employee morale issues and loss of productivity.<sup>1</sup> The challenges of chronic leave threaten the integrity of this important law for those employees who truly have serious health conditions. For these reasons, the Coalition has actively supported public policies that will strengthen the FMLA to ensure its availability to those employees Congress intended to cover.

Much of the confusion surrounding the medical portion of the FMLA has been the inconsistent U.S. Department of Labor (DOL) opinion letters that have undermined the original intent of the Act. Consequently, the Coalition has repeatedly urged DOL and Congress to strengthen the FMLA by clarifying the medical leave interpretations and other FMLA administrative complexities which are causing problems in the workplace.

In order to preserve the integrity of the law’s leave protections for family and medical reasons, the medical leave provisions of the Act and the corresponding regulations must be clarified to ensure that the Act benefits those employees who need it most. Relevant to the issue of today’s hearing, the Coalition believes that these issues need to be addressed before expansion of the Act or other leave mandates are considered. Furthermore, the Coalition believes a piecemeal approach to correcting FMLA shortcomings will not provide the needed clarity for the workforce.

### **III. President’s Commission on Care for America’s Returning Wounded Warriors**

In July 2007, the President’s Commission on Care for America’s Returning Wounded Warriors (“Commission”), chaired by former Senator Bob Dole and former Secretary of Health and Human Services Donna Shalala, released a report on how to better support and rehabilitate members of the U.S. Armed Forces returning from combat operations abroad. In order to provide greater support to military families, the Commission recommended that Congress should amend the FMLA to provide six months’ leave for any family member of a service member who sustained a combat-related injury and meets the other eligibility requirements in the law. The Commission surveyed injured service members and found that 33 percent of active duty, 22 percent of reserve component, and 37 percent of retired and separated service members reported having a family member or close friend who relocated for an extended period of time to be with them while they received medical care.<sup>2</sup>

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<sup>1</sup> Society for Human Resource Management, SHRM Survey Brief: FMLA (2007)

<sup>2</sup> The President’s Commission on Care for America’s Returning Wounded Warriors (2007)

#### **IV. Legislation to provide leave to military families**

The Subcommittee is faced with several legislative proposals that intend to provide leave to military families. This section examines four of the most prominent pieces of legislation:

- **Altmire/Udall amendment**

In May 2007, Representatives Jason Altmire and Tom Udall offered an amendment to H.R. 1585, the National Defense Authorization Act for Fiscal Year 2008, during its consideration before the full House. The Altmire/Udall amendment would expand the FMLA to provide leave for family members of military servicemen and women who are called to duty. Under the proposal, each individual of the family of a service member called to active duty—or who had reason to anticipate an impending call to active duty—would be entitled to take FMLA leave for any reason related to the call-up of a service member.

However well-intentioned, the Altmire/Udall amendment is concerning to Coalition members. First, the amendment was constructed with such broad language that family members of soldiers could use the FMLA benefit for virtually any activity, including potentially those unrelated to a loved one's military assignment. Second, the amendment would allow leave on an unscheduled and intermittent basis, despite the uncertainty that dispensing intermittent leave poses to employers. Consequently, the Altmire/Udall amendment would add to current FMLA administration challenges.

Members of Congress deserved the opportunity to explore the potential effect of these aspects of the Altmire/Udall amendment on the FMLA and how the amendment would interact with other federal and state leave statutes. However, prior to its consideration, the amendment was not reviewed by the committee of jurisdiction, the Committee on Education and Labor. The Coalition has consistently sought clarifications to the FMLA's confusing and conflicting implementing regulations to ensure the integrity of the Act. Due to the complexity of FMLA administration, until a comprehensive review is completed, the Coalition cannot support an effort like the Altmire/Udall amendment to expand the FMLA.

- **Support for Injured Servicemembers Act (Woolsey)**

Subcommittee Chairwoman Lynn Woolsey and Full Committee Chairman George Miller introduced the Support for Injured Servicemembers Act (H.R. 3481) on September 6, 2007. Similar legislation (S. 1975) was introduced by Senators Christopher Dodd and Hillary Rodham Clinton in the U.S. Senate. The bill would amend the FMLA to provide a total of 26 workweeks of leave during any 12-month period to any the spouse, son, daughter, parent, or next of kin of a member of the U.S. military. Thus, the intent of the bill is to provide new rights of employees who are family members of service members, not directly to service members.

H.R. 3481 would allow leave to be taken in the event that an eligible family member is involved in caring for the service member. The legislation covers any relative of a military member who is receiving any kind of medical treatment or is otherwise in medical hold or on the temporary disability retired list related to a combat-related injury or serious illness. All FMLA job service and eligibility requirements would apply to employees eligible for leave under H.R. 3481. The legislation also includes a section that provides the same leave benefit to civil service employees.

It appears that the legislation would allow the leave benefit to be taken on an intermittent basis. As under the FMLA, employees would need to meet a 1,250-hours worked requirement as a condition of eligibility to take leave under H.R. 3481.

The Coalition believes the bill is written very broadly. The legislation's sole requirement to earn FMLA leave is that an eligible employee provides "care for the servicemember." This is a very vague standard for leave, particularly in light of the tremendous administrative problems and resulting litigation the FMLA currently causes for employers. Such a benefit, particularly if accessible on an intermittent frequency, would be tremendously difficult for employing organizations to administer on a day-to-day basis.

- **Military Family and Medical Leave Act (Issa)**

A similar approach to the Woolsey/Miller bill is the legislation introduced by Representatives Darrell Issa and Nick Rahall entitled the Military Family and Medical Leave Act (H.R. 3391) on August 3, 2007.

Like the Woolsey/Miller bill, H.R. 3391 would also directly amend the FMLA and grant 26 leave weeks in a 12-month period to a spouse, son, daughter, or parent of a service member with a serious health condition. Thus, the Coalition is concerned about the expansive and vague leave benefit contained in the Issa proposal. One minor difference is that, unlike the Woolsey bill, H.R. 3391 would not cover service members on the temporary disability retired list. H.R. 3391 also does not include a section specifically covering civil servants.

- **Obama amendment**

During Senate consideration of H.R. 976, the Children's Health Insurance Program Reauthorization Act of 2007, Senator Barack Obama offered Senate amendment 2588 that would allow for 52 weeks leave for a family member to care for service member with combat-related injury.

For purposes of establishing who is eligible for leave under the amendment, the legislation defines a "family member" as a spouse, child (natural, step, adopted, and illegitimate), parent, person in loco parentis, or sibling of a recovering service member. The term "in loco parentis" means a person who has stood in loco parentis for a period of

at least one year before the member entered military service, and only one father and one mother figure, respectively, may be recognized under the bill relative to any one service member. It is unclear whether “spouse” might include domestic partners. The term “children” would include adult children, regardless of whether they are incapable of self-care.

Unlike the FMLA or the Woolsey or Issa bills, the Obama amendment includes no length of service or hours worked requirement. Also unlike the FMLA, the Obama amendment does not require leave to be taken during a one year period. Thus, it is unclear if an eligible employee would have to take all 52 weeks of leave in a single period under the Obama amendment, or if leave can be taken intermittently or on a reduced schedule basis.

The Coalition believes these aspects of the Obama amendment deserve to be thoroughly scrutinized. However, just as the House considered the Altmire/Udall amendment without the benefit of a legislative hearing on the legislation, the Senate voted on the Obama amendment without any committee review.

## **V. Conclusion**

Madam Chair, and distinguished members of the Subcommittee, thank you for considering the views of the National Coalition to Protect Family Leave. The Coalition and its membership strongly supports members of the U.S. Armed Forces and their families, and we are hopeful that you will incorporate the Coalition’s views as you consider legislation to address the existing Federal leave benefit. We look forward to a continuing dialogue with you on these important issues.