

NYNEX CORPORATION

THOMAS E. BURNS

**CORPORATE DIRECTOR OF BENEFITS
AND COMPENSATION**

House Committee on Education and the Workforce

Subcommittee on Oversight and Investigations

June 10, 1997

**TESTIMONY OF THOMAS E. BURNS
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Mr. Chairman and members of the subcommittee, I am Thomas E. Burns, Corporate Director of Benefits and Compensation at NYNEX Corporation. NYNEX is a telecommunications and information management company with 67,000 employees and 74,000 retirees worldwide. As you may know, NYNEX is in the process of merging with Bell Atlantic. After the merger is completed, the new company, called Bell Atlantic, will have over 135,000 employees.

NYNEX would like to thank you, Mr. Chairman for the opportunity to testify on the Family and Medical Leave Act (FMLA). NYNEX is fully supportive of the goals of the FMLA. NYNEX has been a leader in providing family-friendly employee benefits. We are proud to have been recognized by Working Mother magazine as one of the 100 Best Companies for Working Mothers. As you may know, the Working Mother 100 comprises the country's most innovative and forward-looking firms in support of working families. NYNEX was selected because of its generous work and family benefits, which far exceed the requirements of the FMLA. For example:

- Our **Care for Newborn Children Leave** program allows employees to take up to 12 months of leave to care for newborn, adopted or foster children. This is 40 weeks more than required under the FMLA.
- The **Gradual Return to Work** program allows employees to return to work on a reduced schedule after the birth of a child and receive full credit service.
- The **Sickness Disability Benefit Plan** provides up to 52 weeks of salary continuation for each illness.

- **Family Care Leave** allows employees to take up to 24 months of leave during a 10-year period to care for a seriously ill family member.
- **Education Leave** allows employees to take up to 24 months of leave and receive up to \$10,000 a year in tuition.
- NYNEX provides **Benefit Continuation** and **Guarantee of Job Reinstatement** when employees take Sickness and Disability Leave, Care for Newborn Children, Gradual Return to Work, Family Care and Education Leave.
- NYNEX also provides **Personal Leave** of up to 12 months; and,
- **Civic Leave** which allows employees to take up to 24 months off to participate in activities such as working for a charitable organization, holding public office or serving in the Peace Corps or Vista.

We're proud of our initiatives. During the FMLA debate, NYNEX was supportive of the goals of the legislation. The company has long recognized that employees need flexibility to balance their work and family lives. Families need help coping with medical emergencies without fear parents will lose their jobs. Since the provisions of the FMLA reflected NYNEX policies, we had no reason to anticipate we would have any problems with the law. Unfortunately, we were sadly mistaken.

Since FMLA was enacted¹, NYNEX-NY has experienced a **42% increase** in the percentage of incidental absences (1992 - 1995) despite a reduction in workforce of 7,000 employees. Incidental absences are absences of seven days or less, for employees' own illnesses. As a result, annual costs of incidental absences increased 41%. Costs increased from **\$21 million to \$30 million** in 3 years.

NYNEX has also experienced a dramatic increase in the duration of these absences. For example, in 1989, on average employees were absent 2.84 days per year. That figure increased to 5.02 days in 1994 after FMLA went into effect.

NYNEX has always paid employees while they were out sick and at the same time, to meet customer needs, it has required employees to meet reasonable standards of attendance. NYNEX provides an "essential service" - -phone service - - and must operate 24 hours a day, seven days a week. Attendance is one of our top priorities. In the past, we have achieved a balance between our generous benefits and the attendance policies necessary to maintain essential services. Let me emphasize that this increase in incidental absences is in company-paid absences - - meaning absences, for the employee's own illness- - not absences for employees to take care of

sick family members or new children. NYNEX has not seen an increase in the frequency or duration of “family” leave. We have only seen a dramatic increase in incidental company-paid absences.

Two things have happened since the enactment of the FMLA. First, the definition of “serious health condition” has enabled practically all absences to qualify for the FMLA. Second, NYNEX can no longer use its Absence Control Plan to monitor absences if an employee successfully qualifies for FMLA.

NYNEX pays employees whenever they are out sick. We do not have a “sick bank” that issues a certain number of “sick days” to employees. Instead, we have *unlimited sick leave*. If an employee is sick, we want that individual to stay home from work until he or she has recuperated. At the same time, we will keep track of absences. We have established standards for punctuality and attendance. Before FMLA, these standards were generally met by employees. Since FMLA went into effect, however, the Absence Control Plan is useless.

The definition of “serious health condition” was intended to cover only truly serious illnesses. During the Congressional debate, we heard numerous accounts of life-threatening illnesses suffered by employees and their relatives. The definition adopted by Congress was vague and overly broad. This loose definition led to a liberal interpretation by the Department of Labor. Under the regulations, a variety of ordinary sicknesses are classified as “serious health conditions.”

The definition says that if a condition is serious enough to keep an employee out sick for a total of three days and requires “continuing treatment by a health care provider” it is covered under the FMLA. We have found that basically any illness is now covered by the law. Once an employee is covered by the FMLA, the Absence Control Plan cannot be used. The company loses all control.

There is some irony to our situation. As one of Working Mother's finest, we have provided exceptional family-friendly benefits. We have been held up by supporters of the FMLA as a company that should be admired and emulated. What is ironic is that we are being punished by the FMLA for being too generous. If we did not pay employees when they are out sick, we would not have this problem. The law wants us to continue paying, but it has stripped us of our ability to maintain control in an extremely competitive environment.

When NYNEX negotiated its benefit plans with the unions in the proFMLA environment, family-friendly benefits were affordable based on historic rates of absence. These benefits are no

longer affordable. Other employers will have the benefit of our experience with the law. If they are considering adopting paid sick leave, they will be deterred as they hear more and more accounts from employers, such as NYNEX, of the unintended consequences of the FMLA.

NYNEX urges Congress to adopt two technical changes that will be consistent with both the spirit and the letter of the law. First, Congress should examine the definition of “serious health condition.” This hearing is an excellent first step in this process. We hope it will lead to the passage of legislation that will streamline the definition and ensure the definition reflects the true spirit of the law.

Second, NYNEX urges Congress to amend the law to provide relief for employers with paid sick leave programs. The law should be amended to say employers offering paid leave to employees under a collective bargaining plan may require employees to choose between the paid company leave or the unpaid FMLA leave. If an employee chooses the paid company leave, he or she will abide by the company’s policies.

Companies such as NYNEX, with sick leave benefits far more generous than the unpaid leave provided by the FMLA, should be permitted to retain the framework which makes such benefits feasible for the company to institute and maintain. One of the goals of the FMLA was to encourage employers to provide leave policies more generous than the law. This goal will never be achieved unless problems with the FMLA are addressed and remedied by Congress.

Mr. Chairman, let me conclude by again saying how pleased NYNEX is to participate in this hearing. Thank you for this opportunity to discuss NYNEX’s views on the FMLA. We look forward to working with you in the months ahead.

I would be happy to answer any questions.

¹President Clinton signed the Family and Medical Leave Act on February 5, 1993. The law became effective for private sector employees on August 5, 1993. In the case of a collectively bargained agreement, the law became effective February 5, 1994.