

TESTIMONY OF

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REPRESENTING

THE CONNECTICUT HOSPITAL ASSOCIATION
AND
THE GREATER BRISTOL CHAMBER OF COMMERCE

ON

“THE FAMILY AND MEDICAL LEAVE ACT:
PRESENT IMPACT AND POSSIBLE NEXT STEPS”

BEFORE

THE SUBCOMMITTEE ON CHILDREN AND FAMILIES
OF
THE COMMITTEE ON HEALTH, EDUCATION, LABOR AND PENSIONS

U.S. SENATE

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INTRODUCTION

Mr. Chairman and Members of the Subcommittee:

Good morning. My name is Kim Hostetler. I am Director, Human Resources Services, for the Connecticut Hospital Association (CHA), and in that capacity provide services and information to our member hospitals and other healthcare organizations on topics and issues relating to human resources. I also own a sole practitioner human resources consulting business, Human Resources Management Services, in Bristol CT, where I am an active member of the Greater Bristol Chamber of Commerce. I very much appreciate having the opportunity to share with you today some of the experiences with the Family & Medical Leave Act (FMLA) of members of the Connecticut Hospital Association and the Greater Bristol Chamber of Commerce.

The Connecticut Hospital Association and the Greater Bristol Chamber of Commerce represent a diverse group of employers in Connecticut who likely all supported Senator Dodd's efforts – and the efforts of his colleagues - on behalf of the promotion and passage of the FMLA. It was, in my opinion, legislation that was overdue and it has had a singularly important impact. We have seen the many positive results of the FMLA: the heartwarming stories of parents spending time with their newborns, of employees being able to spend time with a seriously ill or dying parent or child, and many, many more. As a result, we are firmly supportive of the law as it was conceived and passed. However the implementation of the law – through its complex regulations – has moved it far from its original intent, resulting in substantial unintended consequences for employers and employees alike. We would like to see relatively modest, but very important revisions made to current FMLA provisions, *especially before any further expansion is discussed.*

BACKGROUND

Founded in 1919, the Connecticut Hospital Association has been representing hospitals and

health-related member organizations for 80 years. CHA's diverse membership includes the 31 Connecticut acute-care hospitals and their related healthcare organizations, short-term specialty hospitals, long-term care facilities, nursing homes, hospices, VNAs, ambulatory care centers, clinics, physician group practices and many other organizations. CHA provides legislative and regulatory advocacy on behalf of our members by supporting initiatives that are in the interests of our members and their patients. CHA also serves as an information/ communication clearinghouse through its weekly publications and regular member meeting groups, and provides extensive educational programming for members and their staffs.

One of the groups that meet regularly at CHA to share information on issues and developments in the challenging healthcare field is the Human Resources Executives Meeting Group.

Comprised primarily of the top Human Resources (HR) executives from our hospital members as well as HR leaders from some of our other larger long term care and home care members, this group meets to get legal, legislative and regulatory updates, and to share ideas and information on developing issues and best practices. About two years ago, the topic of the FMLA and its administrative challenges initially came up. Group members confirmed that while they and their organizations have a deep and abiding commitment to the meeting the concepts, the purpose and the provisions of the Act, they face substantial, burdensome administrative requirements as a result of the Act's regulations.

At about the same time, the Greater Bristol Chamber of Commerce, under the direction of John Leone, Executive Director, was re-launching a meeting group of its own – “the Thursday Group”, a group of human resources professionals from Chamber member organizations who meet on a monthly basis on various HR-related topics. The Greater Bristol Chamber has over 1,200 individual and business members from the city of Bristol and surrounding towns of Plymouth and Wolcott whose common goal is to advance the commercial, financial, industrial and civic interests of the community. At this initial Thursday Group kick-off meeting (the group had had a lengthy hiatus and was being re-started), John asked for participants' suggestions on hot topics for upcoming meetings. Without hesitation, the first response was “*FMLA!!*”. Here again, this

group had found that while the intent of the FMLA seems simple and clear and is fully embraced by these professionals and their employers, the administration of the Act is far from simple and clear and has resulted in confusion, frustration, enormous time investment and lack of control over attendance policies.

[The differences in eligibility parameters and leave amounts between the FMLA and our state Family and Medical Leave Act, passed in 1990, make administering FMLA programs particularly complex in Connecticut. However, given the state's tendency to follow federal guidelines in many key areas, we welcome positive and constructive modifications at the federal level.]

The purpose of the Family and Medical Leave Act, as defined by Congress in the text of the Act, is:

- (1) 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,
- (2) to entitle employees to take reasonable leave for medical reasons, for the birth or adoption of a child, and for the care of a child, spouse, or parent who has a serious medical condition; and
- (3) to accomplish the purposes described in paragraphs (1) and (2) *in a manner that accommodates the legitimate business interests of employers* [emphasis added].

The problems involving the FMLA that I have experienced first hand internally at CHA, with CHA members, with Chamber members, and with other clients, stem primarily from the fact that the current regulations have moved far from item (3) above. There seems to be little accommodation for the truly legitimate business interests of employers, and there have clearly been what I hope are unintended negative consequences for employers and employees alike.

I – like so many others - have had many reasons and occasions to appreciate the value of the Family & Medical Leave Act, many of them personal. I am fortunate to still have both parents,

and having had my dad in the hospital over this past Father's Day, reinforced for me the likelihood of my having to - at some point in the not-too-distant future - deal with a serious medical condition of a parent. And during the past 15 months, I was grateful to have been able to take necessary time off to be with one of my daughters as she underwent emergency surgery, and earlier this year, with my 41-year old husband who had a heart attack and underwent cardiac surgery. And while I work for an organization, like many, that was gracious in providing me with whatever time off I needed, I well recognize the value of having that necessary time protected in cases where employers may not be as flexible or generous. My experiences, I know, are similar to those of my colleagues in CHA member institutions and Bristol Chamber members.

Like many of them, I have been an avid supporter of "family-friendly" programs, policies and organizations for many years. At CHA we have various flex hours, reduced hours, telecommuting and job sharing arrangements currently operating successfully. In my capacity as a HR professional, I - like most of my colleagues - have promoted and enjoyed the role of employee advocate and ombudsman. I have also been an active member of the Board of Directors of Family Services of Central Connecticut (FSCC) for many years, serving as Board Chair for the past four years. Family Services is a 104-year old agency providing social and behavioral health services throughout thirteen (13) communities in central Connecticut by providing services and advocacy on behalf of families and their members. As part of our mission to strengthen families and individuals and build caring communities through services and advocacy, we abide by the principles of the FMLA though we are not covered by its provisions. One of our most significant projects during the past two years has been the Employment Success Program, a welfare-to-work initiative operated collaboratively throughout the state under the auspices of the Connecticut Council of Family Service Agencies. Its purpose is to assist people who are leaving the welfare rolls to achieve economic independence by identifying barriers to employment, developing family plans and budgets, and providing referrals to specific services. This successful "safety net" program is now in its third year.

I have included this background in order to illustrate and underscore that my perceptions about, and perspective on the FMLA, have been shaped by experiences well beyond my role as an employer representative. Like so many people, I find the literature and commentary currently being written in support of the FMLA compelling - *but the critical information that is missing from those articles or "sound bites" is the reality of how FMLA in its current form has impacted our organizations and workplaces in ways none of us expected, planned or want.*

DIFFICULTY IN IMPLEMENTING THE ACT

The FMLA seems straightforward and simple: employees are provided protected, secure time off from work to deal with serious medical or family issues. But, as the expression goes, the devil is in the details – or, more specifically, the devil is in the regulations! The primary issues in our experience, for organizations trying to administer leaves under the FMLA correctly, are:

- the very broad definition of “serious health condition”
- the uncontrolled use of intermittent leave
- the 2-day notice requirement, and
- the interference of FMLA with attendance control policies in questionable cases.

In addition, the inability of employers to count FMLA designated time for purposes of determining perfect attendance award eligibility is counterintuitive and perceived by employers and employees alike as unfair.

Definition of “Serious Health Condition”

The FMLA was intended to cover “serious health conditions” which implied that hospitalization, extended lengths of treatment or serious chronic conditions would be covered by the law, and that employees would be allowed time away from work to attend to their family’s needs, a laudable goal. However, our experience demonstrates that some employees seek to use

this time for conditions well beyond what a reasonable person would define as serious health problem. Extremely broad Department of Labor regulations and guidance on the definition result in employers being required to certify all kinds of mild or minor conditions as FMLA-protected, including such things as bad colds, ingrown toenails, simple outpatient procedures not contemplated by the Congress which do not require extensive recovery times, vague diagnoses of “depression”, “stress”, or “back pain”. The conclusion of many employers is that the loose definition currently in use makes the Act a target for abuse. Many CHA members and Chamber members have experienced the situation where an employee facing disciplinary action promptly brings in a doctor’s form verifying an often-vague condition requiring immediate time off. This is extremely frustrating to employers, but it is equally disturbing to coworkers who are left with the work. One of the biggest frustrations I hear from supervisors is their inability to effectively address employee concerns about a coworker whose manipulation of well-intentioned leave provisions leaves them with extra work and additional stress.

Intermittent Leave

The FMLA legislation envisioned allowing employees to attend periodic, intermittent appointments for medical problems, physical therapy, or family member medical appointments, or take necessary time off intermittently for serious chronic conditions, and have this time protected as FMLA leave time. Unfortunately, instead of keeping records of this leave in one-half day increments - a reasonable approach - the Department of Labor has required employers to allow leave time (and account for it) in the shortest increments of time tracked by their payroll systems, which can be as little as single minutes. This has created a world of administrative problems which can be rectified by simply changing the law to specify that FMLA leave time can be taken in increments of as little as one-half days.

Here again, the opportunity for abuse is rampant. Many organizations can point to chronic attendance abusers being able to virtually always produce a doctor’s statement to cover periodic absences. [One of the things we have learned with Family Services’ Employment Success

Program is that there are clearly some people who, when faced with the loss of one entitlement benefit (in this case, Temporary Assistance to Needy Families (TANF)), will attempt to collect on another (such as workers' compensation, disability or leaves), and our Primary Service Workers must be vigilant to ensure that employers, who are being asked to help people with this transition from welfare to work, are not penalized by an unplanned increase in cost due to worker's compensation costs, etc.] The lesson here is that there seems to always be a small group of employees who will attempt (and generally succeed) in taking advantage of the loose and vague provisions of FMLA as it is currently defined. While there will always be people who look for all the angles, misuse benefits and abuse privileges, we need not make it as easy for them as we have.

Two Day Notice Requirement

The law provides employers two days to designate employee absences as FMLA time off once the employer knows the leave is needed for an FMLA required reason. However, in many organizations, determining if absence is FMLA time most frequently occurs when time records are submitted for payroll processing - generally once a week or once every other week; the result is that the employer representative responsible for providing FMLA notice doesn't learn of the situation until well after the two day notice period has expired, and the employer cannot correct these entries retroactively.

Perfect Attendance Awards

The time an employee takes away from work under the Family Medical Leave Act may not be counted for the purpose of perfect attendance awards. An employee who has taken three months off under FMLA – or missed 38 days intermittently due to a chronic condition - may still be eligible for a perfect attendance award. Coworkers find this impossible to understand. Morale is affected when those rewarded for perfect attendance are recognized together with colleagues who no one has seen in months. The law states “the taking of leave shall not result in

the loss of any employment benefit accrued prior to the date of the leave”. Employment benefits are defined as “all benefits provided or made available to employee by an employer”, and the Department of Labor has interpreted that to mean attendance awards. But the benefits contemplated in the law are “group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions” - clearly Congress was concerned about the loss or reduction of significant health and welfare benefits. To include perfect attendance programs – when attendance is the *essence* of the program – seems to go beyond Congressional intent. Not only is such an interpretation unfair to employees who do have perfect attendance, but it is also unfair to employees missing time for equally compelling reasons that may not qualify for FMLA (such as having to take a day for the funeral of a family member). We are not suggesting that absences covered by FMLA be counted for attendance control purposes or for performance evaluation, but only in the single instance of attendance award programs where it would make so much sense to employees and employers alike.

EMPLOYER COMMENTS ON FMLA ADMINISTRATION

In preparing for this testimony, I solicited current feedback from some of my colleagues at Connecticut manufacturers, hospitals and other businesses that belong to the Greater Bristol Chamber of Commerce or the Connecticut Hospital Association. I have included the comments of those people I spoke with just last week. They represent a wide range of small to large employers in different industry sectors, primarily healthcare and manufacturing. Their comments reinforce and confirm the issues discussed above.

- *Since the FMLA was put into effect, we had only one claim a year, if any. However we have had 8 incidents in 1999, and there is another one due to begin in early August. As an employer of about 150 people, these incidents have severely crippled us at times, so I can only imagine the devastating effect they would have had on a smaller employer. We must lobby*

hard to have specific, easy to understand regulations in order to administer this act properly. Leaving so much to the individual and subjective interpretation places employers in a tenuous position and leaves them wide open to heavy fines, etc. We are not lawyers and do not have “legal minds”. I’m sure every employer is willing to comply; all we ask for is a fighting chance.

- *We’ve faced a lot of frustrations. In my experience in HR as well in my previous career as an employment attorney, I’ve seen intermittent leave be the hardest thing for managers to deal with. There are certainly issues of abuse, particularly with stress-related claims. If the legislation is extended to cover smaller employers, compliance will be extremely difficult. Smaller employers are not sophisticated enough to manage the notice and tracking requirements. Expansion will open them up to lawsuits. In many instances these smaller employers already have remarkably generous policies due to a paternalistic environment.*

- *We currently have one of those classic cases: a marginal employee who’s had attendance problems for years. As we began the documentation process for disciplinary action, she produces a doctor’s note with multiple conditions including asthma and migraines. The documentation states in part that the physician has treated her for migraine headaches and she will “need to take time off as required”. 75% of her absences are on Mondays, Fridays or the day before or after a holiday. Her absences have a big impact on her three-person department. A requirement that people missing time intermittently need to get medical certification each time in order to qualify the time as FMLA would be helpful. What do you do with controllable conditions – like ulcers for example – if the employee doesn’t follow the treatment regimen and experiences periods of incapacity as a result? Why should the employer and the employee’s coworkers have to pay? Other employees have a legitimate reason to be stressed out – they think management’s crazy for not addressing these issues! FMLA needs to balance the needs of the employer with the rights of the employee. Don’t prevent the employer from being able to run the business – that doesn’t help anyone in the*

long run.

- *We see employees abusing FMLA as a way of getting time off that they wouldn't otherwise be able to have. One of our examples is a long-service employee whose husband has a tax business. For the past 8 years or so, she's taken several weeks of vacation at tax time to help him. This past season, we were faced with unusually high census and time off requests that could not be accommodated temporarily. So this year she requested FMLA instead, saying her mother was depressed and the depression had interfered with her activities of daily living, so she would benefit by having her daughter with her... Our prevailing concern with FMLA is that it's so loosely defined. We have specific and critical staffing requirements, especially in certain areas. We find that the more constraints there are on employees' ability to take time off, the more FMLA requests there are. During acute staffing shortages when we have to temporarily suspend paid time off, we absolutely see an increase in FMLA usage. Usage also increases during the summer. Another example we have is an employee in our physical design group. It's a three-person department and she's the least senior person. Since she has not able to get the summer vacation schedule she wanted, this is the third year in a row that she's gone to Romania during the peak vacation period on a family leave instead to care for her mother because of a problem with the regular care-provider... We also have an attendance control policy and inevitably, that last absence (that would have resulted in disciplinary action) will be parlayed into FMLA time. The most common intermittent cases we see are asthma, back problems and depression or anxiety. We've had a half dozen employees who have been disciplined at work for something and then come to work with a doctor's note excusing them from work because of the stress from the disciplinary action!*

- *The more I learn about it, the broader it is – it seems like every situation applies! The coordination with workers' compensation is tricky (due to differences in how vacation time is applied). We've got about 80 employees and I spend an hour a week on attendance issues. There's more time involved when you have suspected abuse. We have one employee who's*

playing it right on the edge – tracking every minute of available time and using it; doctors' certification forms have specified dental work, allergies, back problems... Then there are the other people you feel bad for: we have a long-service good employee whose wife has cancer and the owner would prefer to give him as much time off as he needs rather than limit it to our FMLA policy. We had also discussed introducing attendance rewards to discourage the use of unnecessary unscheduled time off, but given the current situation where FMLA time can't be considered, we decided not to proceed because it's a fairness issue. The two-day notice requirement is a big issue for us.

- *We have about 300 employees and have had employee morale problems due to some chronic abusers. The conditions include bronchitis and stress. The abusers are always able to produce a doctor's note.*

- *We just don't track FMLA time under 7 days – it's too much effort. It's a lot to track! There is the potential for some real problems with FMLA, but we've kept close tabs so far. There is a tendency for FMLA usage to go up during summer vacation time. We have a lab employee who has twice gone to the Philippines on vacation and has stayed an extra, unauthorized, unscheduled week after receiving a certification statement about a medical condition from a local physician – her brother! The two-day notification requirement is an unbelievably huge issue. I probably spend 10-15 hours a week on FMLA and short-term disability administration. We did reduce our short-term disability benefit, not necessarily as a result of FMLA, but it now is in line with FMLA: employees used to be eligible for STD at six months, now they are not eligible until after a year.*

- *We aren't sure we have the systems to track it appropriately despite a new Human Resource Information System - we are concerned that it will still involve significant hand tabulation. It's a lot of work and resources. We routinely have not been qualifying FMLA leaves - we just don't have the systems to track the time. Just this morning we were working on a flow chart*

for our managers because a narrative explanation of what they need to do, say, provide, track, and report is too difficult to retain and understand.

- *We are finding first that it is very unclear what qualifies as a serious medical condition. Second, it is extremely difficult to get supervisors to focus on the administrative responsibilities associated with FMLA given their other more critical and pressing responsibilities. And third, the paperwork process and tracking is very burdensome, as is the amount of time we spend trying to communicate and explain the leave provisions to employees. It is also extremely difficult to integrate FMLA with workers' compensation and sick leave programs. My sense is that benefits have been reduced as a result of FMLA - where we used to provide 6 month leaves, we now provide 12 or 16 weeks. FMLA sounds so simple, but it's not!*

- *We've seen several instances where employees seem to be "stretching" the meaning of FMLA - especially employees taking time to provide "emotional care" for adult children, but in each questionable case, we have checked with our attorneys who recommend erring on the side of caution. It seems as though each time a situation comes up, it involves a long discussion and the use of outside counsel. Clarifying what's covered and what isn't would be a big help. We have had several people go out on leave to avoid disciplinary action. We are always fairly certain that they will not be returning - and they never have - but they ride out the full leave allocation, collecting whatever benefits they can (the cost of which, for all practical purposes, is impossible to recover). We switched to a PTO (combined paid time off program) at the beginning of this year. At the same time, we announced a new attendance control policy to help curb what we knew was an incident rate of unplanned absence well above industry norms. Of course we explained that FMLA-qualified absences would not count in absence tracking. Since then, we have seen a jump in FMLA use by at least 25-50% - it's nonstop! We do as much work researching eligibility, verifying qualifying conditions, etc. for the frivolous requests as we do for legitimate leave requests. Our biggest issue is intermittent*

leave. Being able to track it in increments of a half-day at least would be better. The two-day turnaround requirement on notice is impossible! There is inevitably a delay and a week or two passes which cannot be included as part of the FMLA time. That happens quite frequently and does not seem consistent with the intent of the law. We are now facing a constant stream of FMLA requests. It has forced us to ask questions of our employees about the reasons for their absence that we didn't need to ask before. Our greatest usage of FMLA time used to be for maternity leaves; not anymore! As employees become more savvy about the opportunities of FMLA, we're seeing all kinds of requests. Lately two of us have been spending about a quarter of our time each week on this. I know it's only a matter of time before people figure out even new ways to game the system - like coming in late and making up the difference at the end of the shift when shift differential is provided. Also, we recently had a case where an employee had been off for sixteen weeks, but when we sent her paperwork regarding termination since she was still unable to return at the end of the leave, she denied ever receiving the original notice and we couldn't prove she had, so we had to provide another 16 weeks. Now we send **everything** by certified mail! (And by the way, that employee never came back...)

- *As familiarity with FMLA increases, I'm sure usage will increase. I'd like to see the definitions a lot more clearly positioned. As we become more aggressive in scheduling and monitoring time off, I know this will become an issue.*

- *Our feeling here is that FMLA is abused by those people who are inclined to abuse such programs. Getting a doctor to sign a bogus claim just isn't that difficult.*

- *It's a nightmare! We've had five nurses out in our OB (Obstetrics) at once- it's a killer! You can't hire experienced nurses off the street, our per diem pool isn't large enough to cover our FMLA needs and temps are not a viable option. The result is more work for the current staff. We have been concerned at times about being so short-staffed - employees worry too. So far*

we haven't had to shut down services, but it's been a challenge. We have an asthmatic Respiratory Therapist who missed 58 days last year. She went out again this year and when we said, no, you have no more time, she went to an attorney. It's gotten ugly. We've seen several questionable requests for long leaves in the summertime. One we recently challenged with a second opinion and determined it was unfounded. Others have shown a pattern of requesting leaves each summer. We recently had a pharmacist with a vague stress claim who took 30 days of leave and told all her coworkers about her Florida travel plans for her leave time, resulting in a messy employee relations issue. The physician community is part of the problem. Trying to get straight answers is difficult. We can't staff a 7-day, 24-hour operation this way. Most of our cases are for legitimate and necessary reasons, but the abuses are very hard on the organization. Prior to 1993, we could deal more effectively with chronic attendance abusers. Now it's impossible.

- *In our experience, FMLA has become fraught with fraud issues. We're dealing with one right now. An employee was facing disciplinary action and got a physician to sign him out. The physicians are part of the problem - they'll write almost anything. Intermittent leave is posing a real problem in some instances. For those cases where employees need a reduced schedule to accommodate chemotherapy or other such treatments, the process and scheduling is simple. But more frequently our cases are like this recent one: we started preparing disciplinary action for a Physical Therapist due to a variety of problems, including patient complaints. The next day he brings in a doctor's note saying he needs a leave for a vague stomach/thyroid problem - and this is the second time this has happened with him. People who understand the system can play it. The patient is the doctor's customer, so doctors are generally accommodating whenever they can be. In healthcare the problem is exacerbated by the extensive personal relationships employees have with the physicians. We also have sophisticated employees... In my experience, healthcare employers also tend to be more generous with employees who may not technically qualify for FMLA - they provide it anyway. Most of our leaves are maternity which are generally simply to certify and track, but we've*

had abuse there too. We have one case right now of a pregnant employee in Billing who is constantly late. She no longer wants to work, but she wants the delivery paid for, so she's hanging on and working as little as possible. Her coworkers are angry since it causes a direct hardship on them.

We definitely see a correlation between employees facing disciplinary action and the use of FMLA. I can think of 5 or 6 cases in the last couple months. They included leaves for breathing problems, elective foot surgery, repetitive motion disorder, and thyroid problems. Just the tracking and monitoring alone of FMLA, disability and workers' compensation could be a full-time job here. And the notification process is extremely cumbersome. Our managers have life and death things to worry about - literally! FMLA notice is low on the list...

- *We have found a number of issues. They primarily involve the non-routine situations. The employee who needs the full 12 or 16 weeks for an illness or injury is easy. Intermittent leave, though, is not clear. We have employees out intermittently for asthma problems, for example - do they need to be out for a full day or do they need to be using their inhaler? We have a lot of issues around intermittent leaves for conditions that aren't really serious. Why does a diabetic whose sugar is off need to take the whole day? And the psych claims are impossible! We are now considering implementing an automatic second opinion. We've got a person out for mild depression right now who is claiming she's in a hostile environment - she's also in the middle of a course of disciplinary action... On the intermittent leave side, if the condition is serious enough for someone to miss a day of work, if they want it counted as family medical leave time, it is serious enough for them to get a doctor's note. There is a group that takes inappropriate advantage of the FMLA provisions. It's become a morale issue for other employees. Employees have complained to their managers and don't understand why something can't be done. We certainly have a few people that seem to take the summer off too. You can always get a doctor's note. I would bet that our FMLA usage is higher in spring and summer. In the past we simply have not had the resources to follow-up on these cases. We've just accepted employees' requests. The combination with ADA, workers' comp, etc. is*

extremely complex. We still make mistakes. We need to continually train our supervisors. Sometimes we are losing months of tracking at a time because notice wasn't provided on a timely basis. So we're providing the protected time off, but the clock never officially starts. We just recently lost the ability to count a leave from April through last week! I'd like to see more onus placed on the employee for notification. The amount of time we spend on FMLA administration is growing. It takes at least a quarter of a person just to do an average job - that's just the every day stuff of notification and reporting, not taking the time to question and follow up. Because of FMLA, we reduced the overall amount of time an employee can be out before being terminated from 12 months to 8 months.

- *Limiting intermittent leave to increments of at least a half-day makes practical sense. Tracking and monitoring are difficult. We've done a less than stellar job because we don't have the staff to handle it. We did have the use of FMLA used as a threat in a recent downsizing situation. Tightening the definition of serious medical condition would absolutely help. Our staffing is so thin as it is, that to lose an unnecessary hour is a hardship; the only reason tracking in full or half day increments is better is that it is more reasonable to track and uses the leave time faster. The current regulations go beyond Congress's intentions.*

These experiences and difficulties with FMLA administration are not unique to Connecticut organizations. I have included with this testimony a variety of written comments from healthcare colleagues across the country are facing similar challenges, which I would appreciate being included as part of the written record of this hearing.

SUMMARY

I believe that correcting these administrative problems can result in employment policies which are more fair to all employees and which still achieve the intent of the original FMLA legislation.

As you continue your deliberations on the present impact and possible next steps of the FMLA,

I would like to request your consideration of the following points and suggestions:

- The definition of “serious health condition” must be clarified and tightened up. Perhaps for all conditions other than chronic health conditions, the current definition of serious health condition which includes a minimal period of incapacity (time away from work) of “more than three consecutive calendar days”, could be changed to 14 days, or minimally, seven days. This would still protect any serious conditions, but would eliminate the need to designate and track questionable situations like minor injuries, earaches, headaches or flu.
- Given the difficulty for both employers and employees in meeting the two-day notice requirement, change the law to allow employers three weeks, rather than two days, to retroactively designate absences as FMLA leave time and provide written notice. This change alone would simplify the administration of this program immensely.
- Require that intermittent leave be offered and tracked in increments of not less than one-half day.
- Because of the inherent unfairness of exempting FMLA time from attendance program consideration, clarify that employers may record FMLA leaves as absences for purposes of perfect attendance awards only (the only “employee benefit” that could be so affected by FMLA use).
- Require employees taking intermittent leave to provide a medical provider certification for each occurrence. While getting a “doctor’s note” for every day missed may seem like an unnecessary burden, the employee taking intermittent leave now has no responsibility in the process – the onus is completely on the employer to deal with the absence. There is virtually no system of checks or controls. Once an employee has an open-ended certification from a medical provider indicating that time off should be taken as required, there is no incentive to

minimize absences and avoid abuse.

- Clarify the eligibility parameters to say 12 continuous months of employment. Given the unusual and varied staffing arrangements used by healthcare providers (and now employers in other industries as well), including sporadic on-call work and summer/after-school jobs, it is difficult to determine whether an employee with a history of these kinds of short-term assignments has met the eligibility requirement.
- Remove the FMLA restriction that prohibits the use of certain providers for second opinions. In any case where employer has reason to doubt the validity of the medical certification, the employer may require a second opinion. But the health care provider used for that second opinion cannot be employed on a regular basis by the employer. That provision is in conflict with ADA, disability, and workers' compensation provisions. Use of regular company doctors for second opinions would be easier, quicker, more practical and reasonable.
- Simplify the verification process by untying employers' hands: currently an employer may ask a healthcare provider, *with the employee's or family member's permission*, to contact the employee's health care provider to clarify information in the medical certification or confirm that it was provided by the healthcare provider. Why should that require the employee's permission? Why require the additional expense of using a healthcare provider to simply verify the certification?
- Please consider any expansion initiatives with great care. In the absence of clear and compelling data showing a widespread need not already being met by employers who need to have progressive policies in place to attract and retain the workers they need, expansion legislation should not be passed.

Thank you again for the opportunity to participate in this morning's hearing. I so strongly believe in the worth of the FMLA and the values it was built on, that I find it both ironic and tragic that the first words I often hear colleagues using in describing their experiences with FMLA are "it's a nightmare!" The current paperwork and record-keeping morass and the potential for misuse and abuse and its resulting employee interpersonal relations impact can and must be addressed before further expansion is considered.

Thank you.