



February 15, 2017

The Honorable Virginia Foxx
Chair, Education and the Workforce Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Robert C. Scott
Ranking Member, Education and the Workforce
Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Bradley Byrne
Chair, Education and the Workforce
Subcommittee on Workforce Protections
U.S. House of Representatives
Washington, DC 20515

The Honorable Mark Takano
Ranking Member, Education and the Workforce
Subcommittee on Workforce Protections
U.S. House of Representatives
Washington, DC 20515

Dear Chairwoman Foxx, Ranking Member Scott, Chairman Byrne and Ranking Member Takano:

On behalf of the National Partnership for Women & Families and the activists and supporters we represent, I write to the U.S. House of Representatives Education and the Workforce Subcommittee on Workforce Protections regarding its February 16 hearing on “Federal Wage and Hour Policies in the Twenty-First Century Economy.”

The National Partnership for Women & Families is a nonprofit, nonpartisan organization dedicated to promoting fairness in the workplace, reproductive health and rights, access to quality health care, and policies that help women and men meet the dual demands of job and family. For more than 45 years, we have worked to advance policies that create opportunities for women in the workforce and greater economic security for women and their families. The National Partnership has worked tirelessly to secure updated wage and hour protections for millions of America’s workers, new equal employment opportunity protections for federal contract employees, and vigorous enforcement of the Fair Labor Standards Act and the Family and Medical Leave Act – all of which are governed by this Committee.

America’s working families are not reaping the benefits of their labor. Wages have stagnated relative to the cost of living – and well-paying jobs that offer predictability and stability have become elusive for too many. More families are relying on women as key or sole breadwinners, making updated wage and hour standards particularly critical to the National Partnership and our supporters. As the committee considers the need for federal wage and hour policies in the 21st century, it is imperative that well-established laws that govern America’s workplaces – the Fair Labor Standards Act, the Family and Medical Leave Act, and the National Labor Relations Act – are strengthened and not undermined.

The Fair Labor Standards Act (FLSA) overtime protections are especially critical. For salaried, non-exempt workers, the long-overdue increase in the overtime pay threshold finalized last year by the Department of Labor restores overtime eligibility and protections for millions of workers, half of them women. The increase in the salary threshold addresses basic fairness and represents an important step toward fairer pay for women and people of color, who are over-represented in lower-paying jobs and

often required to work overtime hours without compensation. This Committee – and this Congress – would effectively be condoning worker exploitation and injustice by rolling back the overtime rule. We urge you to strengthen, not erode, workers’ access to overtime pay.

More generally, updated laws and standards must reflect working families’ needs, and especially the need that workers have to manage the dual demands of jobs and family. Too often, work-family conflicts are seen as individual struggles to be managed privately rather than as a common thread that connects virtually every working parent or adult child and that binds the interests of employees, employers and communities. In a survey commissioned by the National Partnership in November 2016, seven in 10 voters (71 percent) say it is likely – and 43 percent say it is “very likely” – that they or their family would face significant financial hardship if they had a serious illness, had a new child or had to care for a parent, spouse or child with a serious illness.¹ Lack of adequate family friendly policies exacerbate these concerns.

However, rather than focus on proactive, tested policies that working families need to manage the dual demands of jobs and family, including paid sick days, paid family and medical leave and fairer, more predictable schedules, we are gravely concerned that this Committee’s focus will be misplaced and that the policy changes under consideration will make working families less secure. Eroding well-established wage and hour protections will do irreparable harm. Using the language of “workplace flexibility” to undermine workers’ access to fair pay is a disingenuous, misguided disservice to the millions of U.S. workers who are working hard every day to both provide and care for their families. For women, who bear disproportionate responsibility for providing care to children and elders, and who are typically paid less than men, the harms are especially profound.

For more than 75 years, the FLSA has helped to protect the working hours and paychecks of hourly, non-exempt employees. The FLSA already permits employers to offer “flexibility” that allows workers to manage the dual demands of job and family. The FLSA’s requirement that hourly, non-exempt employees be paid time-and-a-half for every hour of work in excess of 40 hours per week was intended to spread job opportunities to more workers and create disincentives for overwork.

The FLSA currently allows employers to provide workers with flexibility and time off without compromising their right to be paid fairly for the hours they work. It already provides significant leeway to employers in accommodating the scheduling needs of workers. The types of flexibility allowable under the FLSA include:

- alternative work start and end times (either occasionally or on a more regular basis)
- compressed or variable work hours within a week (e.g., four ten-hour days and one day off, or a combination of variable-length days (either regularly or when needed to address family or personal needs))
- split shifts (e.g., for a working parent who works six hours while their child is at school and then another two hours while their child is asleep at night)
- work at multiple locations (e.g., working remotely for some or all work hours)
- time off, whether paid or unpaid.

Compensatory time in lieu of overtime pay and other “faux flex” proposals would be more than a step in the wrong direction. They set up a false dichotomy that would force workers to choose between flexibility and overtime pay when, in reality, the FLSA does nothing to prevent employers from offering both. They would place substantial power in the hands of employers – giving them the ability to offer comp time in lieu of overtime pay, the ability to determine who is eligible to work overtime hours and the ability to determine whether a worker who has banked comp time is permitted to use it. Workers simply should not

have to put in extra time beyond a 40-hour week *and* forgo pay to earn time to care for themselves or their loved ones.

To address working people's needs to care and provide for themselves and their loved ones, Congress should focus on policy solutions that have been proven effective. Congress should update and index the minimum wage, safeguard updates to the overtime pay threshold and secure collective bargaining rights. Congress should also adopt policies that will provide families with the economic security and the time that they need to care for – and provide for – their families. Sensible solutions include:

- The **Healthy Families Act** which makes earned paid sick days available to millions of workers who are not guaranteed a single paid sick day now;
- The **Schedules that Work Act** which would give workers a say in their schedules and address the instability and inflexibility that can make it next to impossible to manage basic expenses, arrange for child care, continue their education, get a second job, or pursue job training; and
- The **Family and Medical Insurance Leave (FAMILY) Act** which would create a national paid leave insurance program, modeled on the successful state programs in California, New Jersey, Rhode Island and a new program in New York, to allow workers paid time to care for a new child; care for a seriously ill family member; address their own serious health condition; or manage certain military caregiving responsibilities.

Congress must reject proposals that undermine working families' economic security and instead support higher wages, improved fair pay protections, paid sick days, paid family and medical leave insurance, and fairer, more predictable work schedules. These are the advances the nation needs and which evidence shows are effective. These are the initiatives that would help our nation's workers and their families, employers, communities and our economy.

Sincerely,



Debra L. Ness
President

1 National Partnership for Women & Families. (2016, December). *Election Analysis Suggests Voters Reward Candidates Who Advocate for Family Friendly Workplace Policies*. Retrieved 10 February 2017, from <http://www.nationalpartnership.org/research-library/work-family/memo-election-analysis-suggests-voters-reward-candidates-who-advocate-for-family-friendly-workplace-policies.pdf>