



Policy solutions that work for low-income people

August 14, 2018

The Honorable Tim Walberg
Chairman, Subcommittee on Health, Employment, Labor, and Pensions
Committee on Education and the Workforce
U.S. House of Representatives
2176 Rayburn House Office Building

The Honorable Gregorio Kilili Camacho Sablan
Ranking Member, Subcommittee on Health, Employment, Labor, and Pensions
Committee on Education and the Workforce
U.S. House of Representatives
2176 Rayburn House Office Building

Dear Chairman Walberg, Ranking Member Sablan, and Members of the Committee:

The Center for Law and Social Policy (CLASP) strongly opposes H.R. 4219, the “Workflex in the 21st Century Act.” This bill will hurt workers by taking away critical benefits and labor protections rather than providing any new meaningful workplace benefits or flexibilities.

CLASP is a national organization that works to improve the lives of low-income people by developing practical yet visionary strategies for reducing poverty, promoting economic opportunity, and addressing barriers faced by people of color. We advocate for and conduct research and analysis on improving jobs, including through paid sick days, paid family and medical leave, and fair scheduling. We also work with community and government partners to promote effective implementation and enforcement of labor standards.

The economy is improving and growing, but low-wage workers are struggling. Most low-wage jobs pay poverty wages (less than \$11.70 per hour) and offer limited or no benefits, such as employer-provided health care or paid leave. Furthermore, many low-wage workers face unstable work schedules that make it difficult to arrange child care, take a second job, participate in a job training program, or manage their finances month to month. However, the passage of paid sick days and fair scheduling laws across the country are making a difference in low-wage workers’ lives. In just the past three years, the lowest-wage workers have made small but meaningful gains in accessing paid sick time. These critical gains will be threatened by the passage of H.R. 4219.

H.R. 4219 will hurt low-wage workers by undermining state and local labor standards

This bill will allow businesses to circumvent state and local paid sick days and fair scheduling laws that currently guarantee workers these critical protections. Under H.R. 4219, employers alone would be able to decide whether workers can take paid sick days and when these workers could take sick days. This means that even if a worker has a need for a sick day, the employer could deny them this leave. Employers would also decide what constitutes a predictable or flexible schedule

and would not need to take a worker's needs or request into account.

Access to paid sick days can be the difference between a low-wage worker maintaining their job and livelihood and their family falling into poverty. Workers who lack paid sick days are three times more likely to experience poverty.¹ Research has shown that a lack of paid sick days and fair schedules has a significant and damaging effect on low-wage workers who are often asked to make painful trade-offs between their job and caring for a sick loved one. Many low-wage workers, especially mothers, lose their jobs due to a lack of paid sick days or are passed over for promotions or raises because they need flexible schedules.² Access to state and local paid sick days and fair scheduling laws have made a difference in the lives of low-wage workers.

H.R. 4219 provides no new labor standards protections for workers

Most state and local paid sick days and fair scheduling laws have enforcement provisions to ensure employers comply with the laws. This means the enforcement agencies have the capacity to adequately investigate complaints and collect penalties to help the workers who have been wrongfully denied their rights under these laws. H.R. 4219 establishes a new voluntary "workflex" option under the Employee Retirement Income Security Act of 1974 (ERISA). The Employee Benefits Security Administration (EBSA) within the U.S. Department of Labor is responsible for enforcing ERISA. However, it is well established that EBSA does not have adequate resources to enforce the obligations that currently exist under ERISA. Therefore, adding an additional program under ERISA, without any language legislating additional enforcement funds, would only add to the enforcement workload, thus leaving workers without adequate protections.

Even at the state and local level, when workers are denied paid sick days or fair schedules, the restitution process can be long and arduous. In the meantime, workers real lives and economic security are severely impacted. For example, a recent story from Minneapolis illustrates the hardships workers face when denied paid sick days.³ A gas station attendant had to wait three months for a settlement after he had been wrongly denied his paid sick leave. The worker was not only denied his sick leave after he made the request, he lost his job and was eventually evicted from his apartment due to the loss of income. The city of Minneapolis, which has a paid sick days ordinance, reached an \$11,000 settlement agreement for the worker, but it had already cost him a tremendous amount.

H.R. 4219 offer no new flexibilities to workers

The legislation offers no new rights to flexible work schedules that are not already available under existing law. The Fair Labor Standards Act (FLSA) already provides employers significant flexibility to offer their workers a wide range of flexible scheduling options. To the contrary, the "biweekly work program" under H.R. 4219 threatens workers' overtime rights when they work more than 40 hours in a workweek.

There are legislative options for working families that would actually protect and strengthen job quality. These policies should be considered and adopted:

- **The Healthy Families Act** (H.R. 1516/S. 636) would ensure millions of workers have access to earned sick days.
- **The Family and Medical Insurance Leave (FAMILY) Act** (H.R. 947/S. 337) would create a national paid leave insurance program, modeled on the successful programs in five states

and the District of Columbia, allowing workers to take paid leave to care for a new child, seriously ill family member or for their own serious illness.

- ***The Schedules That Work Act*** (H.R. 2942/S. 1386) would ensure workers have the right to request more flexible or predictable work schedules.
- ***Increasing the minimum wage*** and ***eliminating the tipped sub-minimum wage*** (a lower minimum wage currently set at \$2.13) would benefit and potentially lift millions out of poverty.

Low-wage workers and their families need critical workplace benefits such as paid sick days and fair schedules. However, H.R. 4219 will not provide these additional benefits and will only hurt rather than help low-wage workers.

Sincerely,

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¹ Patricia Stoddard-Dare, LeaAnne DeRigne, Linda Quinn, and Christopher Mallett, "Paid Sick Leave Status in Relation to Government Sponsored Welfare Utilization," *American Journal of Orthopsychiatry* 88 (2018), <http://dx.doi.org/10.1037/ort0000318>.

² Liz Ben-Ishai, *Wages Lost, Jobs at Risk*, CLASP, 2013, <https://www.clasp.org/sites/default/files/publications/2017/04/2015-02-03-FMLA-Anniversary-Brief-3.pdf>.

³ Dylan Thomas, "Sick time violation earns worker \$11,000 settlement," *Southwest Journal*, January 15, 2018, <http://www.southwestjournal.com/news/2018/01/sick-time-violation-earns-worker-11000-settlement/>.