



**Statement of Johnny C. Taylor, Jr., SHRM-SCP  
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**Submitted to The  
U.S. House Education and the Workforce Committee  
Subcommittee on Health, Employment, Labor, and Pensions**

**Hearing On  
“H.R. 4219, the Workflex in the 21<sup>st</sup> Century Act”**

**July 24, 2018**

Good morning Chairman Walberg, Ranking Member Sablan and distinguished members of the Committee. I am Johnny C. Taylor, Jr., President and Chief Executive Officer of the Society for Human Resource Management (SHRM). I appear before you today on behalf of SHRM, the world's largest HR professional society, representing nearly 300,000 members. Our members, in turn, influence the lives of over 100 million people in the workforce — about one in three Americans. For nearly seven decades, the Society has been the leading provider of resources serving the needs of HR professionals and advancing the practice of human resource management.

Thank you for this opportunity to testify before the Subcommittee on H.R. 4219, the Workflex in the 21<sup>st</sup> Century Act. SHRM appreciates the Subcommittee's examination of this important legislation, which we believe is a paid leave and workplace flexibility (or workflex) public policy solution that works for *both* employers and employees.

Mr. Chairman, you can't find a CEO today who is not talking about people. Thanks to record-low unemployment and an accelerating economy, the "War for Talent" is now a way of life. No matter their industry, size or wealth, today's employers all share the same challenge: maintaining a high-quality workforce.

At the same time, workers are increasingly requesting flexible work arrangements that help them meet work and life demands. But outdated workplace rules and government-mandated leave requirements make it difficult for employers to provide important options for employees.

The legislation we are discussing today would bring workplace rules up to standards needed in the present-day workplace. This would make it easier for employers to offer innovative paid leave and workflex options to support employees' work-life needs, while enabling them to also meet their business goals by attracting and retaining the talent they need.

SHRM and our members are proud to support H.R. 4219, and we do so strongly. This legislation embodies SHRM's principles for a 21<sup>st</sup> century workplace flexibility policy. Here's how:

Rather than imposing another one-size-fits-all prescriptive government mandate, it makes employer participation voluntary.

Rather than providing paid leave to only some individuals, it provides paid leave and workflex options to all employees of participating employers.

And lastly, H.R. 4219 builds on existing employer practices, as some organizations are already offering innovative programs and policies to assist employees with their work-life needs.

In my testimony, I will outline challenges SHRM members encounter under current law and explain how the Workflex in the 21<sup>st</sup> Century Act is a public policy solution that, importantly, benefits both employers and employees.

### **Challenges Under Current Law**

First, let me clearly state that SHRM and its members are not opposed to paid sick leave. But the fact that 10 states and more than 30 localities have adopted varying paid sick leave requirements has proved problematic for both employers and employees. As the largest professional association for human resource professionals, SHRM hears consistently from members that the patchwork of paid sick leave laws across the country — which often conflict with one another — create an unnecessary burden on employers, especially employers operating in more than one location.

For example, many state and local sick leave mandates use different definitions of terms, different levels of leave, varying employee eligibility rules, inconsistent record-keeping and reporting requirements, and different thresholds for triggering coverage or accrual of benefits. To comply with these varying requirements, many large employers must maintain separate paid leave programs for each jurisdiction in which they operate, tailoring leave programs to meet government requirements, rather than employer or employee objectives. This complex maze of requirements prevents employers from offering uniform benefits to employees, resulting in not only added administrative costs but also employee relations challenges. These challenges grow when new laws are enacted, and when current state and local paid sick leave laws are amended.

Small employers are also negatively impacted, as many of these laws apply to organizations with as few as one to 15 employees. The rigid requirements not only add compliance costs but also prevent small firms from offering flexible solutions for sick leave. These concerns were highlighted in a recent lawsuit against the City of Austin challenging its sick leave ordinance that applies to organizations with as few as 15 employees. SHRM was pleased to join the lead plaintiff, the Texas Association of Business, as well as the National Federation of Independent Business, the American Staffing Association, and others, on this lawsuit to stop the law from taking effect on October 1, 2018.

Because states and localities continue to enact policies that micromanage how organizations provide leave benefits, employers and employees need a national solution to this complex web of leave requirements now more than ever.

### **H.R. 4219 Offers a Solution**

Rather than a one-size-fits-all, rigid government mandate that prescribes how and when leave must be used, SHRM and its members believe that the United States must have a 21<sup>st</sup> century workflex policy that works for employers and employees alike, helping them meet both organizational and work-life needs. A 21<sup>st</sup> century workflex

policy must facilitate the expansion of paid leave and workflex options regarding when, where and how work is done, while accounting for differences in work environments, employer size and industry.

The Workflex in the 21<sup>st</sup> Century Act embodies these key principles, adopting an innovative, national framework for paid leave and workflex options that benefits both employers and employees. SHRM strongly supports H.R. 4219 and applauds the leadership of Representative Mimi Walters (R-CA) in introducing this important legislation.

This legislation builds on the solid foundation of the Employee Retirement Income Security Act (ERISA). As you know, ERISA was enacted more than 40 years ago to enable organizations to offer uniform employee benefit plans across the country. H.R. 4219 modifies ERISA to allow employers the opportunity to *voluntarily* offer a new workflex plan that provides their employees with a federal minimum standard of paid leave and options for flexible work arrangements, such as telecommuting or compressed work schedules. In return, employers that opt to participate in the ERISA-covered workflex plan would be able to provide uniform paid leave, instead of navigating the current labyrinth of state and local paid sick leave requirements.

Under H.R. 4219, both full- and part-time employees of employers who offer an ERISA workflex plan would receive guaranteed paid leave that exceeds all state and nearly all local sick leave mandates, while employees of nonparticipating employers would continue to be covered by state and local paid leave requirements, where applicable. This means that no employee would lose paid leave under this bill. Employees would either receive the guaranteed paid leave when the employer opts into the provisions of the Workflex in the 21<sup>st</sup> Century Act or continue to receive the state or local required leave.

Not only is the paid leave under H.R. 4219 more generous than most of the current leave mandates, it is also more flexible for employees, allowing them to take paid time off for a range of purposes, including if they or a loved one is ill. Under state and local leave mandates, leave can only be taken for certain qualifying reasons, meaning an employee's need for time off may not "trigger" coverage under the law. Under H.R. 4219, employees can take paid leave for any reason at any time, provided it does not impede business operations. Allowing the leave to be taken unless it "unduly disrupts operations" is a reasonable standard that is currently used in federal employment law, many of the state-mandated leave laws and virtually all workplaces.

In addition to receiving flexible paid leave under this legislation, employees of participating employers would also receive guaranteed access to flexible workplace arrangements — options that are not currently required by law. This provision of H.R. 4219 distinguishes it from other public policy proposals aimed at supporting employees and working families. While other proposals focus only on paid leave, the Workflex in the 21<sup>st</sup> Century Act provides for both generous paid leave and flexible work options, both of which are highly coveted offerings sought out by most, if not all, employees. In

fact, a 2017 study found that adults who are employed or looking for work value flexibility as much as they value having paid leave.<sup>1</sup> Additionally, employees rate workplace flexibility among the top three benefits offered by an employer as “very important” to their job satisfaction.<sup>2</sup> Clearly, employees value flexibility options as they juggle ever more responsibilities between work and home, and under this bill, many employees will gain access to workflex for the first time.

As mentioned earlier, H.R. 4219 amends the ERISA statute to allow employers to offer this new workflex plan. Using this well-established statute means that the bill also includes the strong employee protections afforded under the statute, including anti-retaliation protections for employees seeking to exercise their rights under ERISA.

For example, an employer offering a workflex plan under the bill would be prohibited from taking adverse action against any employee based on the employee’s request for leave or any other benefits provided in that plan. In addition, employees would choose to participate in the flexible work options and could not be forced, coerced or made to participate as a condition of employment. Remedies available for employees are those provided by ERISA, which include equitable relief. Another employee protection built into the bill is that employer noncompliance may cause a plan to lose its qualified status under ERISA, which would trigger potential applicable state law coverage requirements and penalties. The Progressive Policy Institute noted the “important worker protections” included in H.R. 4219 in its letter of support for the bill and noted “it would yield economic and societal benefits for both employers and workers, creating a ‘win-win’ solution that merits the support of pro-growth progressives.”<sup>3</sup>

The Workflex in the 21<sup>st</sup> Century Act has also garnered strong support from the employer community, including the SHRM-led coalition Employers for Flexibility, which represents large and small employers across diverse industries and sectors advocating for a voluntary, credible and comprehensive national workplace flexibility policy. H.R. 4219 has been endorsed by the College and University Professional Association for Human Resources, the HR Policy Association, the National Association of Manufacturers, the National Retail Federation, the National Association of Wholesaler-Distributors, the National Association of Women Business Owners, the Retail Industry Leaders Association, and the U.S. Chamber of Commerce.

Mr. Chairman, thank you for holding this legislative hearing on H.R. 4219. As I stated earlier in my testimony, the current patchwork of state and local paid leave laws has proved problematic for both employers and employees. Currently, no one’s needs are being met. We need a nationwide solution — not another mandate — that works for everyone. That’s why SHRM strongly supports H.R. 4219: It works for both employers and employees. Employers gain predictability and flexibility through a federal

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<sup>1</sup> Americans Widely Support Paid Family and Medical Leave, but Differ Over Specific Policies (2017). Pew Research Center.

<sup>2</sup> Employee Benefits research report (2016). Society for Human Resource Management.

<sup>3</sup> [https://walters.house.gov/sites/walters.house.gov/files/PPI\\_workflex.pdf](https://walters.house.gov/sites/walters.house.gov/files/PPI_workflex.pdf)

framework, and employees gain guaranteed paid leave and workflex options. SHRM urges members of this Committee to support this balanced legislation.

Thank you and I look forward to your questions.