

## **Paid Sick Leave: Should Investing in the Workforce Be Mandatory?**

**Stuart P. Frame**

### **What is Paid Sick Leave?**



workers get paid sick leave.<sup>ii</sup>

Paid sick leave is a benefit supplied to employees: it means that they are allotted a certain amount of days every year when they can call in sick and the employer still pays them for a full day of work. Roughly 86% of U.S. workers currently receive at least some paid sick leave as a benefit from their employers.<sup>i</sup> While workers at larger businesses have more paid leave than workers at smaller firms, in every sector of the economy the vast majority of

### **Are there any notable limitations to most current paid sick leave policies?**

Most policies only cover illnesses of the employee herself. Employees who have families who are sick cannot use their paid time off.<sup>iii</sup> Many people are forced to choose between their family's health and a paycheck. While the federal Family and Medical Leave Act (FMLA) requires employers with more than fifty employees to provide up to twelve weeks of time off when a worker, or an immediate family member, has a serious illness or recently gave birth to a child, this time is unpaid. Most employees cannot afford to forgo their paychecks for this length of time.<sup>iv</sup>

### **What are the Benefits to implementing a paid sick leave benefits policy?**

Many times it is the employees in the most physically demanding jobs and the lowest paid sectors of the workforce that are denied paid sick leave. These are the very same employees who would most benefit from a mandatory paid sick leave policy. The problem is aptly described by Barbara Ehrenreich in her book: *Nickel and Dimed: On (not) Getting by in America*. Ehrenreich went undercover to find out how the low wage sectors of the American populace survive on minimum wage, an hourly

rate that covers only about half of the cost of living in most regions of the country.

In one of the most poignant sections, Ehrenreich takes a job with a maid service in Maine. Her description of the work reveal just how back-breaking it can be. But even when hurt on the job, the maids are unwilling to go to the hospital, because they cannot afford to miss a day's pay and because they live in constant fear of being replaced if the employer thinks they are worn out. .<sup>v</sup> Understandably, this kind of corner cutting only exacerbates their health problems. When one of the maids finally calls in sick after she throws her back out and can no longer stand because her feet hurt so badly, she ends up needing far more time off than she would if she had received paid sick leave when the symptoms first appeared.<sup>vi</sup>

This example outlines the primary benefit in mandating that all employers provide at least some paid sick leave to their employees: we do not want our low wage employees to have to choose between their health and welfare and a paycheck. Indeed, the congressional findings in the preamble to the "Healthy Families Act" (currently before Congress), state that "Working Americans need time to meet their own health care needs and to care for family members, including their children, spouse, parents, and parents-in-law, and other children and adults for whom they are caretakers."<sup>vii</sup> These health care needs include preventative care for both short and long term illnesses.

Allowing employees to take paid sick leave will benefit employers in a number of ways. Healthy employees tend to be more productive. Preventative care helps to catch illnesses early, reducing the need for emergency care and lowering health care costs for those that pay health insurance costs, including private businesses. Paid sick leave policies encourage sick employees to stay home, which reduces the spread of disease to the rest of the workforce.<sup>viii</sup>

### **Are there any drawbacks to mandatory paid sick leave?**

While most employers already provide some paid sick leave to their employees, those that do not have been very vocal in their opposition to new legislation. The major issue is the cost of providing paid sick time. Small business owners, already struggling in a stagnant economy, are many times paying their employees as much as they can afford. Mike Covach, a small business owner in Ohio opined that "He wasn't happy when he heard about a proposed state law that would

force him to provide paid sick leave to his workers. For every \$1 spent on wages, he already pays another 43 cents for vacation, health care and other



benefits. "Customers are squeezing us for more productivity," says Kovach, who founded City Machine Technologies in 1985. "We're investing in technology to stay competitive. Our prices are going down. There are only so many dollars here."<sup>xix</sup>

Another major concern is the potential for employee abuse of the system. "By requiring employers to provide paid sick leave, preventing them from challenging a suspect certification, and preventing them from disciplining employees who abuse leave, the HFA would encourage irresponsible employees to game the system and dump tasks on their co-workers while still receiving full pay."<sup>x</sup> Sick leave, by its very nature, provides for almost no notice when the employee will not be in. Many times, replacement workers cannot be found to complete the jobs that the employee is no longer able to accomplish. These tasks must be shouldered by coworkers or left incomplete – to the detriment of the customer.

A final argument against mandatory sick leave is that it is of little benefit to workers as a whole. Their total compensation does not rise. An employee who is given paid sick days does not end up making more money: she is just forced to take her compensation in the form of days off, whether she wants to or not.<sup>xi</sup> In most situations, employees who do not use their sick leave simply lose the days at the end of the calendar year.

### **Have there been any legislative attempts to enact mandatory paid sick leave in the United States?**



The most noteworthy legislative attempt to enact mandatory paid sick leave is the Health Families Act, H.R. 2460, a bill currently before Congress that, if passed, will require all businesses employing more than 15 employees to provide at least 7 days of paid sick leave to them every calendar year.<sup>xiii</sup> The act is allows employees to use this time whenever they are ill, but also when an immediate family member falls ill. Additionally, employees begin accruing paid sick leave from the first day of their employment.

Employers are no longer allowed to deny the benefit to employees who are defined as being in the probationary period for the first few months of their employment.<sup>xiii</sup> The bill was referred to a committee for revisions on May 18, 2009. There is no indication of when the bill will be reported by the committee to the house for a general debate and vote.<sup>xiv</sup> The bill has 110 sponsors in the House and 20 in the Senate.<sup>xv</sup>

Currently, no states have implemented mandatory sick leave policies. There are a handful however, who currently have bills before the state legislature. "Legislatures weighing paid sick leave include Connecticut,

Florida, Maine, Maryland, Massachusetts, Minnesota, Missouri, Montana, North Carolina, Ohio, Pennsylvania, Vermont and Virginia”<sup>xvi</sup> San Francisco implemented a city wide policy in February 2007, which mandates that employers must provide their employees with at least 8 paid sick days a year,<sup>xvii</sup> The New York City Council is considering a similar bill called the Earned Sick Leave Bill, under which employees can earn up to 9 paid sick days a year, which they accrue by the hour, 1 hour for every 30 hours they work. However, employers with 10 or fewer employees would only have to provide 5 sick days a year.

## Recommendations

The benefits of implementing a sick leave policy allotting employees seven days a year clearly outweighs the negatives to employers. No one should be forced to make the choice between their health and paying rent for the month. While it may be prudent to qualify the sick leave grant with some sort of medical verification to employers that the employee is, in fact, sick – to combat the potential harm of employees gaming the system – a small amount of misuse is a price worth paying for the undeniable benefits that employees will reap under a system like the one described in the Healthy Families Act.

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<sup>i</sup> U.S. Department of Labor, Bureau of Labor Statistics, "Employee benefits Survey, Table 21, at <http://www.bls.gov/ncs/ebs/benefits/2008/ownership/civilian/table21a.htm> (January 7, 2009)

<sup>ii</sup> James Sherk, The Heritage Foundation: Leadership for America, *Mandatory Paid Sick Leave Need Not Cut Worker's Pay*, available at <http://www.heritage.org/Research/Reports/2009/01/Mandatory-Paid-Sick-Leave-Need-Not-Cut-Workers-Pay> (Jan. 7, 2009) (last visited April 14, 2010).

<sup>iii</sup> Dennis Cauchon, *Taking U.S. Pulse on Paid Sick Leave*, USA Today, Nov. 12, 2007, available at [http://www.usatoday.com/news/nation/2007-11-11-Sickleave\\_N.htm](http://www.usatoday.com/news/nation/2007-11-11-Sickleave_N.htm)

<sup>iv</sup> James Sherk, The Heritage Foundation: Leadership for America, *Mandatory Paid Sick Leave: The Heritage Foundation 2009 Labor Boot Camp*, available at [http://www.heritage.org/Research/Reports/2009/01/Mandatory-Paid-Sick-Leave-The-Heritage-Foundation-2009-Labor-Boot-Camp#\\_ftn1](http://www.heritage.org/Research/Reports/2009/01/Mandatory-Paid-Sick-Leave-The-Heritage-Foundation-2009-Labor-Boot-Camp#_ftn1) (Jan. 15, 2009).

<sup>v</sup> Barbara Ehrenreich, *Nickel and Dimed: On (not) Getting By in America*, 110 (Henry Holt & Co. 2002)

<sup>vi</sup> See generally, *Id.* at

<sup>vii</sup> "Healthy Families Act", H.R. 2460 §2 (111<sup>th</sup> Cong. May 18, 2009).

<sup>viii</sup> Healthy Families Act, *supra* note 6, at §2. See also, Time to Care: New York State Paid Family Leave Coalition, *About the Campaign: The Problem & The Solution*, available at <http://www.timetocareny.org/About.htm> (last visited 4/14/10).

<sup>ix</sup> Cauchon, *supra* note 3.

<sup>x</sup> Sherk, *supra* note 4.

<sup>xi</sup> *Id.*

<sup>xii</sup> "Healthy Families Act" *supra* note 6, at §5.

<sup>xiii</sup> *Id.*

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<sup>xiv</sup> Govtrack.us, *A Civic Project to Track Congress*, available at <http://www.govtrack.us/congress/bill.xpd?bill=h111-2460> (last visited April 20, 2010).

<sup>xv</sup> Steven Greenhouse, *White House Endorses Paid Sick Leave Bill*, New York Times, Nov. 11, 2009, available at <http://economix.blogs.nytimes.com/2009/11/11/white-house-endorses-paid-sick-leave-bill/>

<sup>xvi</sup> Cauchon, *supra* note 3.

<sup>xvii</sup> *Id.*

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