



April 25, 2016

Robert Waterman, Compliance Specialist
Wage and Hour Division, U.S. Department of Labor
Room S-3510, 200 Constitution Avenue NW
Washington, DC 20210

Re: Proposed Department of Labor (Wage and Hour Division) Rule on Establishing Paid Sick Leave for Federal Contractors (RIN 1235-AA13)

Dear Mr. Waterman,

The National Center for Lesbian Rights (NCLR) strongly supports the Department of Labor's (DOL) proposed rules for implementing President Obama's Executive Order regarding paid sick leave and federal contractors (RIN 1235-AA13). NCLR is an organization committed to advancing the civil and human rights of lesbian, gay, bisexual, and transgender (LGBT) people and their families through litigation, legislation, policy, and public education. As litigators and advocates for LGBT individuals and families, NCLR knows firsthand the harmful impact of policies that fail to recognize the diversity of families in our country and support the well-being of families. For this reason, we support policies—including DOL's proposed paid sick leave regulations—that support a diverse range of family types.

In particular, we applaud the proposed family definition, which recognizes that families often transcend biological and legal relationships. We urge DOL to use the following language it proposed without modification: "Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship means any person with whom the employee has a significant personal bond that is or is like a family relationship, regardless of biological or legal relationship." Rather than enumerating the types of relationships that meet this "blood or affinity" standard, it should remain broad and flexible to recognize diverse family structures.

Far too many workers, especially Hispanic, American Indian, Alaskan Native, and low-wage earners,¹ are forced to choose between a paycheck and the health of a family member or their own health. Fortunately, an increasing number of cities and states across the country have passed laws ensuring that workers have the right to earn paid sick time, and research shows that these laws are working well. The proposed Executive Order and implementing rule will build on this progress and extend this critical right to an estimated 828,000 employees of federal contractors, more than half of whom do not receive any paid sick time.

We fully support DOL's proposed definition that an "individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship" means "any person with whom the employee has a significant personal bond that is or is like a family relationship, regardless of biological or legal relationship." In response to DOL's request for input, we strongly support the proposed language and believe no specific limitations are necessary. In fact, any attempt to enumerate and limit the types of relationships covered by this "blood or affinity" standard could undermine its purpose and exclude certain family relationships. DOL's emphasis on a significant personal bond, regardless of a biological or legal relationship, captures the essence of this standard and reflects the reality of today's families. Moreover,

¹ Only 46% of Hispanic workers and 53% of American Indian or Alaskan Native workers have access to paid sick leave compared to 60% of the total workforce. 33% of full-time workers below \$15,000 have access to paid sick leave compared to 86% for those making \$65,000 or more. Institute for Women's Policy Research, *Briefing Paper: Paid Sick Days Access and Usage Rates by Race/Ethnicity, Occupation, and Earnings* (February 2016), http://www.iwpr.org/publications/pubs/paid-sick-days-access-and-usage-rates-vary-by-race-ethnicity-occupation-and-earnings/at_download/file.

DOL's example of a worker who has provided, for five years, unpaid care to an elderly neighbor captures the important relationships covered by a flexible definition.

DOL's proposed family definition reflects that American families come in all shapes and sizes, rather than conforming to a nuclear model. More than 18% of Americans—57 million people—live in multi-generational family households, a twofold increase since 1980.² This figure is higher among communities of color; approximately 25% of Latino/as and Blacks, and 27% of Asians, live in a multigenerational household in the United States.³ According to the U.S. Census Bureau, approximately 20% of households with children include nonrelatives or family members other than a parent or sibling, and 4.3 million children live with an extended relative (*not* including parents, siblings, children, grandparents, aunts, uncles, nephews, nieces, brothers-in-law, and sisters-in-law).⁴

DOL's proposed family definition will also help to support LGBT workers and their families in a number of ways. First, LGBT individuals have been shown to rely more on close friends, or “chosen family,” in an emergency than their non-LGBT peers.⁵ LGBT-identified older adults in the U.S. are twice as likely as non-LGBT-identified seniors to live alone and more than four times as likely to be childless.⁶ Therefore, LGBT older adults are less likely to have family support when they need care and often rely on “families of choice” or support networks that comprise close relationships that are the equivalent of family.⁷

Second, the proposed rule will benefit LGBT employees who are raising children. Research suggests that LGBT parents may be less able to afford unpaid time off from work to care for a child's health needs. Nationwide, same-sex couples raising children are twice as likely to be living near the poverty line than different-sex couples raising children, and single LGB adults raising children are three times more likely than their non-LGB counterparts to be living near the poverty line.⁸ The need for paid sick time to care for a child is even more pronounced among LGB parents of color; for example, Black, Latino/a same-sex couples are more likely to be raising children and struggling financially than white LGB couples.⁹ Additionally, nearly 10% of transgender individuals with a household income of less than \$20,000 have one or more dependents.¹⁰

Third, LGBT workers are also caring for a broader set of family members than just children. According to a nationwide survey of LGBT adults between the ages of 45 and 64, LGBT respondents were more likely to have both provided care to—and received care from—an adult friend or relative in the past six months due to a health issue.¹¹ The survey also underscored the importance of a broad family definition to the LGBT community; 42% of LGBT respondents said that they would depend on close friends in an emergency,

² Richard Fry & Jeffrey S. Passel, *In Post-Recession Era, Young Adults Drive Continuing Rise in Multi-Generational Living*, Pew Research Center (July 17, 2014), <http://www.pewsocialtrends.org/2014/07/17/in-post-recession-era-young-adults-drive-continuing-rise-in-multi-generational-living/>.

³ *Ibid.*

⁴ Rose M. Kreider & Renee Ellis, *Living Arrangements of Children: 2009*, U.S. Census Bureau (June 2011), pp. 21-22, 24.

⁵ *See, e.g., Still Out, Still Aging: The MetLife Study of Lesbian, Gay, Bisexual, and Transgender Baby Boomers*, MetLife Mature Market Institute & American Society of Aging (March 2010), pp. 13-15.

⁶ Robert Espinoza, *The Diverse Elders Coalition and LGBT Aging: Connecting Communities, Issues, and Resources in a Historic Moment*, Public Policy & Aging Report, Vol. 21, No. 3 (Summer 2011), p. 9.

⁷ *Still Out, Still Aging: The MetLife Study of Lesbian, Gay, Bisexual, and Transgender Baby Boomers*, MetLife Mature Market Institute & American Society of Aging, (March 2010), pp. 13-15.

⁸ Gary J. Gates, *LGBT Parenting in the United States* (Feb. 2013), The Williams Institute, p. 1.

⁹ Movement Advancement Project, Family Equality Council & Center for American Progress, *LGBT Families of Color: Facts at a Glance* (Jan. 2012), pp. 2-3.

¹⁰ Jaime M. Grant & et al, *An Injustice at Every Turn: A Report of the National Transgender Discrimination Survey 92* (2011), http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_full.pdf.

¹¹ *Still Out, Still Aging: The MetLife Study of Lesbian, Gay, Bisexual, and Transgender Baby Boomers*, MetLife Mature Market Institute & American Society of Aging (March 2010), pp. 13-15.

compared to 25% of the general population.¹² The proposed rule, and its broad family definition, will provide significant support to many LGBT employees.

Fourth, access to paid sick time can also help to address LGBT health disparities. Studies show that LGBT older adults are more likely to delay health care and suffer from chronic health conditions than non-LGBT older adults.¹³ In addition, research has shown that LGBT people generally have a higher risk of cancer than the population at large. For example, lesbians and bisexual women have a higher risk than heterosexual women of developing breast, ovarian, and endometrial cancers.¹⁴ The ability of LGBT workers to take paid sick time for personal or family health needs can lead to earlier detection and care of cancer. According to the U.S. Centers for Disease Control, workers without paid sick time are less likely to see a doctor and get screened for colorectal, breast, and cervical cancer.¹⁵

In addition to helping LGBT workers and their families, the proposed rule will also benefit people who are living with HIV/AIDS (PLWHA). If PLWHA are unable to take time off to attend medical appointments and recover from illness, their health and economic security are jeopardized. Maintaining one's health is essential for minimizing the negative health outcomes for PLWHA and reducing their chance of transmitting HIV to another person.¹⁶ Paid sick time also influences the ability of workers to care for loved ones living with HIV/AIDS. With the HIV/AIDS population continuing to age—as of 2012, nearly 25% of people living with HIV in the U.S. are age 55 or older—working family members caring for loved ones with HIV/AIDS will face additional eldercare demands.¹⁷ The proposed paid sick time rule will provide essential support to workers caring for a loved one with HIV/AIDS.

A “blood or affinity” standard would not be difficult to implement and is unlikely to be abused. The strongest proof of this fact is that the federal government, which employs more than 2 million civilian workers, has successfully implemented “blood or affinity” language in its own personnel policies for nearly 50 years.¹⁸ “Blood or affinity” language has been used in the context of funeral leave since 1969, for voluntary leave transfers since 1989, and for sick leave generally since 1994.¹⁹ The repeated expansion of this language underscores the fact that it has worked well. In addition, the U.S. Office of Personnel Management has addressed the definition of family in at least two final rule makings since 1994, and it has chosen not to narrow this “blood or affinity” language or enumerate the types of relationships included under the standard.²⁰

¹² Ibid., p. 17.

¹³ Movement Advancement Project, Services & Advocacy for GLBT Elders, & Center for American Progress, *LGBT Older Adults and Health Disparities* (September 2010), <https://www.lgbtmap.org/file/lgbt-older-adults-and-health-disparities.pdf>.

¹⁴ See, e.g., S.L. Dibble, S.A., Roberts, S.A. & B. Nussey, *Comparing Breast Cancer Risk Between Lesbians and their Heterosexual Sisters*, *Women's Health Issues*. (Mar.-Apr. 2004), 14(2), pp. 60-68; M. Miller, A. Andre, J. Ebin & L. Bessonova, *Bisexual Health: An Introduction and Model Practices for HIV/STI Prevention Programming* (2007), National LGBTQ Task Force, Fenway Community Health & BiNet USA, pp. 4, 41, 108; National LGBT Cancer Network, *Cancer and the LGBT Community*, <http://www.cancer-network.org/cancer-information/cancer-and-the-lgbt-community/>.

¹⁵ Lucy A. Peipins, et al, *The Lack of Paid Sick Leave as a Barrier to Cancer Screening and Medical Care-Seeking: Results from the National Health Interview Survey*, *BMC Public Health* (January 2012), available at <http://www.biomedcentral.com/1471-2458/12/520>.

¹⁶ Center for Disease Control and Prevention, *Initiation of and Adherence to Treatment as Prevention* (April 15, 2013), <http://www.cdc.gov/hiv/prevention/programs/pwp/art.html>.

¹⁷ *HIV Among People Aged 50 and Over*, Division of HIV/AIDS Prevention, National Center for HIV/AIDS, Viral Hepatitis, Sexual Transmitted Diseases and Tuberculosis Prevention, Centers for Disease Control and Prevention (Oct. 2015), <http://www.cdc.gov/hiv/group/age/olderamericans/index.html>.

¹⁸ “Overview,” *Data, Analysis & Documentation: Federal Employment Reports*, U.S. Office of Personnel Management (last visited February 26, 2016), <https://www.opm.gov/policy-data-oversight/data-analysis-documentation/federal-employment-reports/#url=Overview>.

¹⁹ *Funeral Leave*, Fed. Reg., Vol. 34, No. 163 (August 26, 1969); *Absence and Leave; Voluntary Leave Transfer Program*, 54 Fed. Reg. 4749-01 (January 31, 1989); *Absence and Leave; Sick Leave*, 59 Fed. Reg. 62266-01 (December 2, 1994); 5 C.F.R. § 630.201.

²⁰ See, e.g., *Absence and Leave; Definitions of Family Member, Immediate Relative, and Related Terms*, 75 Fed. Reg. 33491 (June 14, 2010).

We also commend DOL for including a broad definition of domestic partner and committed relationships. The number of people in the United States who cohabit rather than marry is at a historic high. As of 2012, approximately 20% of Americans ages 25 and older—or 42 million people—have never married, an increase from 9% in 1960.²¹ In addition, nearly a quarter (24%) of never-married young adults ages 25 to 34 are living with an unmarried partner.²² However, we have concerns regarding the requirement that domestic partners share responsibility for a significant measure of each other’s financial obligations. For many couples, there is only one partner earning income for both members of the couple; the regulations should be clear that such couples are not excluded from the definition of domestic partners or committed relationship solely because only one partner earns income upon which they both depend.

Thank you for the opportunity to comment on this proposed rule. We look forward to passage of the rule and its proposed family definition, which will ensure that employees of government contractors do not have to choose between a paycheck and a personal or family health matter, regardless of whether the worker’s family is nuclear or non-nuclear. If promulgated, this rule will honor the dignity and diversity of families in all of their shapes and sizes.

Sincerely,

National Center for Lesbian Rights

²¹ Wendy Wang & Kim Parker, *Record Share of Americans Have Never Married*, Pew Research Center (September 24, 2014), <http://www.pewsocialtrends.org/2014/09/24/record-share-of-americans-have-never-married/>.

²² *Ibid.*