



WHITMAN-WALKER HEALTH

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March 17, 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,

Whitman-Walker Health supports the Department of Labor's proposed rules for implementing Executive Order 13706, imposing a paid sick leave requirement of 7 days (56 hours) on federal contractors. In particular, we applaud the broad definition in Section 13.2 of the relationships which can entitle an employee to claim paid sick leave. The proposed definition recognizes that families often transcend biological and legal relationships, and is sufficiently broad and flexible to include diverse family structures. We also support the proposed broad definition of "domestic partner" in Section 13.2, and the provision of paid leave to care for the children and parents of an employee's domestic partner.

Interest of Whitman-Walker. Whitman-Walker Health is a community-based, nonprofit health center serving the greater Washington, DC metropolitan area. We offer primary health care, with a particular emphasis on the health needs of the lesbian, gay, bisexual and transgender (LGBT) community; specialty HIV care; mental health care and addiction treatment; dental care; legal services and public benefits and health insurance navigation; medical case management; and a wide range of community health services. Whitman-Walker has a particular mission to the LGBT community, and to persons living with HIV of every gender, sexual orientation, race and ethnicity. Approximately one-half of our patients and legal clients identify their sexual orientation as gay, lesbian or bisexual. Individuals who identify as transgender or gender-nonconforming comprise more than 10% of our medical patients, 20% of those receiving mental health services, and almost 20% of our legal clients. Moreover, the majority of our patients and clients are lower-income: persons whose incomes are less than 200% of Federal Poverty Guidelines comprise approximately 60% of our health care patients and 80% of our legal clients.

Because we serve thousands of lower-income individuals who struggle with serious illnesses, and their families and caregivers, we understand the importance of reasonable paid sick leave to enable people to care for their own health, and the health of their family members, without sacrificing the earnings that they greatly need. Moreover, many of our patients and legal

clients are in non-traditional family relationships, in which domestic partners, former partners, close friends, and relatives of many kinds depend on each other for caregiving and support.

Broad recognition of close relationships beyond the traditional family. Executive Order 13706 recognizes that in our diverse society employees may have caregiving and support relationships that are comparable to traditional family relationships in importance, but are outside the traditional definitions of “family”. Specifically, the Executive Order provides for paid leave not only for an employee’s own illness or care needs, but also for the illness or care needs of

a child, a parent, a spouse, a domestic partner, or any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship who ... is ... in need of care

Section 2(c)(3), [need formal cite?]. Section 13.2 of the proposed rules carries out the Executive Order’s intent by defining the critical terms as follows:

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.

81 Fed. Reg. 9592, 9659 (emphasis in original). The Notice of Proposed Rulemaking explains that the proposed language is intended to be “inclusive of non-nuclear family structures,” *id.* at 9599, and “expansive”, *id.* at 9614. We strongly support the proposed language and urge the Department to adopt it verbatim in the final rule. Any attempt to enumerate specific types of relationships covered by this “blood or affinity” standard could undermine its purpose and exclude other relationships not specifically mentioned. The emphasis on a significant personal bond, regardless of a biological or legal relationship, captures the intent of the Executive Order and reflects the reality of today’s families and caregiving networks.

The proposed Section 13.2 defines “domestic partner” as

an adult in a committed relationship with another adult. A committed relationship is one in which the employee and the domestic partner of the employee are each other’s sole domestic partner (and are not married to or domestic partners with anyone else) and share responsibility for a significant measure of each other’s common welfare and financial obligations. This includes, *but is not limited to*, any relationship between two individuals of the same or opposite sex that is granted legal recognition by a State or by the District of Columbia as a marriage or analogous relationship (including, but not limited to, a civil union).

81 Fed. Reg. at 9659 (emphasis added). This broad definition of “domestic partner,” which focuses on the functional realities of a relationship rather than its legal status, is commendable. While the category of “[i]ndividual[s] related by blood or affinity whose close association with the employee is the equivalent of a family relationship” is even broader than “domestic

partners,” the proposed Section 13.2 also takes the important step of defining “child” and “parent”, for purposes of taking paid sick leave, to include the children and parents of an employee’s domestic partner. 81 Fed. Reg. at 9658 (definition of “child”), 9660 (definition of “parent”).¹

The broad approach to “family” in the proposed rules reflects that American families come in all shapes and sizes, rather than conforming to a nuclear model. In 2012, more than 18% of Americans – approximately 57 million people – live in multi-generational family households, a twofold increase since 1980.² This figure is higher among communities of color; in 2012, about 25% of Hispanic and Black Americans, and 27% of Asian Americans, lived in multigenerational households.³ According to the U.S. Census Bureau, in 2009 about 20% of households with children included nonrelatives or family members other than a parent or sibling, and 4.3 million children lived with nonrelatives or with relatives and nonrelatives.⁴ In addition, the number of Americans who cohabit rather than marry is at a historic high. In 2012, approximately 20% of Americans ages 25 and older – approximately 42 million people – had never married, an increase from 9% in 1960.⁵ In addition, nearly a quarter (24%) of never-married young adults ages 25 to 34 were living with an unmarried partner.⁶

The Department’s broad approach also will help to support LGBT Americans, who are more likely to rely more on close friends – “chosen family” – in an emergency than are non-LGBT persons. 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.⁷ Therefore,

¹ We interpret the requirement that domestic partners “share responsibility for a significant measure of each other’s common welfare and financial obligations” as sufficiently broad to encompass relationships in which one partner is the exclusive or primary “breadwinner” and the other the primary “homemaker” – whether the relationships are different-sex or same-sex.

² Richard Fry and Jeffrey S. Passel, *In Post-Recession Era, Young Adults Drive Continuing Rise in Multi-Generational Living*, Pew Research Center (July 17, 2014), available at <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 and Renee Ellis, *Living Arrangements of Children: 2009*, U.S. Census Bureau (June 2011), pp. 21-22 & Table 3, available at <http://www.census.gov/content/dam/Census/library/publications/2011/demo/p70-126.pdf>.

⁵ Wendy Wang and Kim Parker, *Record Share of Americans Have Never Married*, Pew Research Center (September 24, 2014), available at <http://www.pewsocialtrends.org/2014/09/24/record-share-of-americans-have-never-married>.

⁶ *Ibid.*

⁷ 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, available at <https://www.sageusa.org/files/PPAR-article-R-Espinoza.pdf>.

LGBTQ older adults are less likely to have family support when they need care and often rely on “families of choice” or support networks that are comprised of close relationships that are the equivalent of family. 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.⁸ The survey also underscored the importance of a broad family definition to the LGBTQ community; 42% of LGBT respondents said that they would depend on close friends in an emergency, compared to 25% of the general population.⁹

The proposed rules also will benefit LGBT employees who are raising children – including children of their domestic partners with whom they may not have a legally recognized relationship. Research suggests that LGBT parents may be less likely 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 LGBT adults raising children are three times more likely than their non-LGBT counterparts to be living near the poverty line.¹⁰ The need for paid sick time to care for a child is even more pronounced among LGBT parents of color; for example, black and Latino/a LGBT couples are more likely to be raising children and struggling financially than white LGBT couples.¹¹

We also support the explanation in the Notice that an employee that seeks paid time off to care for an individual that the employee considers to be family, need not disclose intimate details of the relationship, so long as the employee identifies the individual and explains that a close relationship exists. 81 Fed. Reg. at 9616. Allowing employers to make detailed inquiries into whether an asserted relationship is sufficiently “family-like” would undermine the broad intent of the Executive Order and the proposed regulations. Moreover, it might endanger the privacy of LGBT employees and subject them to discrimination or harassment from biased co-workers or employers.

⁸ *Still Out, Still Aging: The MetLife Study of Lesbian, Gay, Bisexual, and Transgender Baby Boomers*, MetLife Mature Market Institute and American Society of Aging (March 2010), pp. 13-15, available at <https://www.metlife.com/assets/cao/mmi/publications/studies/2010/mmi-still-out-still-aging.pdf>.

⁹ *Ibid.*, p. 17.

¹⁰ Gary J. Gates, *LGBT Parenting in the United States* (Feb. 2013), The Williams Institute, p. 1, available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Parenting.pdf>.

¹¹ Movement Advancement Project, Family Equality Council & Center for American Progress, *LGBT Families of Color: Facts at a Glance* (Jan. 2012), pp. 2-3, available at <http://www.lgbtmap.org/file/lgbt-families-of-color-facts-at-a-glance.pdf>.

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Conclusion. Thank you for the opportunity to comment on this proposed rule. We look forward to passage of this rule and its recognition of the diversity of American families. Please let me know if we can be of assistance in any other way.

Sincerely,

A handwritten signature in cursive script that reads "Daniel Bruner".

Daniel Bruner, JD, MPP
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