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Policy Challenges and Opportunities for Workplace Flexibility

The State of Play in 2008

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No one doubts that the makeup of our workforce has changed over the past four decades. In books such as *The Time Divide: Work, Family, and Gender Inequality* by Jerry A. Jacobs and Kathleen Gerson (2004), *The Career Mystique: Cracks in the American Dream*, by Phyllis Moen and Patricia Roehling (2004), and *Being Together, Working Apart: Dual-Career Families and the Work-Life Balance*, edited by Barbara Schneider and Linda Waite (2005), among many others, the data presented on our changing workforce are striking. More women are working today than 40 years ago, our workforce overall is aging, and more people are working past conventional retirement age (Cahill, Giandrea, and Quinn 2005; Toosi 2007; Workplace Flexibility 2010 2006b, 2007b, 2007c).

But the need to manage one's life, together with one's work, has not changed. Many workers are caring for children, parents, spouses, siblings or other loved ones—responsibilities that are basic, unrelenting, and often mundane, as well as joyful and rewarding. All workers have personal life-maintenance needs, and many workers would like to enhance their training and education or do volunteer work in the community.¹

Any observer of the American scene can also easily note that the rules, structures, and formats of the workplace are not designed to make it easy for individuals to manage their lives as well as their work (Bailyn 1993; Meiksins and Whaley 2002; Workplace Flexibility 2010 2006b, 2007b, 2007c). This is no surprise. One would reasonably expect that workplaces

would be structured to foster *work*, not designed to accommodate potential conflicts between work and other needs. And indeed, for many years those workers who might have had market power to force changes in the workplace usually had spouses at home who could deal with the daily exigencies of life and thus could remove many of the stresses of work-life conflicts.²

Times have changed and many workplaces have changed. But overall, as a society we have done a remarkably poor job of forcing or encouraging our workplaces to accommodate to the reality that most workers today will have multiple demands on their time. Workers *do* want to work. But they cannot stop the rest of their lives from happening while they do so.

Obviously, one cannot expect workplaces to lose their basic reason for existence: to produce work. But one simply has to wonder whether there is not a better way to structure our workplaces so that they will do a *better* job of reacting to the multiple demands of our workforces. And one has to wonder whether the primary mechanism by which a democratic society expresses its beliefs and values—the federal, state, and local laws passed by its representatives—might not have some role to play in helping workplaces achieve this more optimal state.

My contribution to the conversation set forth in the various chapters of this book will be to explore the policy challenges and opportunities that exist today with regard to the American workplace as it deals with its changing workforce. I will briefly describe certain advances in the policy conversation that have occurred on the national and state levels over the past five years, and I will identify key limitations and obstacles that continue to exist with regard to policy advances.

My primary focus in this chapter will be to describe an innovative experiment, called Workplace Flexibility 2010, which aims to *intervene* in the current political structure and to serve as a *catalyst* for significant, systematic, and effective policy change.

The Policy Conversation—Then and Now

One way to judge the salience of an issue with regard to its policy potential is to analyze how the issue is discussed and portrayed in the presidential election cycle. Every four years, we have a flurry of media attention on “the important issues of the day”—at least as understood by various presidential candidates.

A comparison of the policy conversations on supporting American families in the 2000 and 2004 elections with the policy conversation that has taken place during the 2008 election demonstrates a small but growing focus on how the structure of work places strains on families. The policy salience of this issue is nowhere near the salience of health care or the economy generally, but it is beginning to merit a separate and distinct focus of conversation within, at least, the Democratic presidential campaigns.

During the 2000 presidential campaign, Vice President Al Gore's policy agenda for supporting working families focused primarily on expanding access to health care and making child care more affordable through tax credits.³ As an additional side point, Gore touted his strong support for the Family and Medical Leave Act (FMLA),⁴ as well as his support for expanding the FMLA to provide workers with "more choices when confronted with the need to work overtime or when parents need to meet with their children's teachers."⁵ But that was the extent of Gore's policy focus on work-family issues.

By the 2004 election, John Kerry and John Edwards were speaking more directly to the needs of working families in terms of work-family balance—but their policy solutions still tended to focus primarily *outside* the workplace. The Kerry-Edwards "Plan to Honor Work and Family" claimed as one of its primary goals that of helping all Americans balance the competing demands of work and family.⁶ But their agenda to help Americans balance work and family focused on two major initiatives outside of work: increasing the child care tax credit (to cover \$5,000 of expenses and to make it available for moderate-income families and stay-at-home parents), and creating a large-scale after-school program for 3.5 million youths (by making some schools remain open until 6:00 p.m.).⁷ The only reference to workplace structure was a general commitment by Kerry and Edwards to expand coverage of the FMLA.⁸

By contrast, by the time the 2008 presidential primary season reached its fever pitch in December 2007, all the leading Democratic candidates had developed and presented a set of specific policy ideas governing the workplace with regard to work-life balance. While all the candidates' ideas followed basically the same template (a template that will be analyzed critically below), they reflect a commitment to engaging the federal government in changing workplace structures and rules. And they all reflect a more expansive and detailed set of ideas on the issue than had ever existed before in a presidential campaign.

For example, in October 2007, Senator Hillary Clinton announced her “Agenda for Working Families”—a “work-family agenda for our modern economy” that will support families while working “in partnership with America’s businesses to ensure that pro-family work policies and increasing workplace flexibility help improve American competitiveness and economic growth.”⁹ Clinton’s agenda included a goal of having all states institute some form of paid parental leave for employees by the year 2016. A key selling point of her proposal was that states would decide on their own how to structure the leave plans, including how the plans would be financed. The federal government would play a role through the creation of a state family leave innovation fund that would provide \$1 billion a year (with increases) to match state expenditures in such leave programs.

Clinton’s proposals also included making the federal government a model employer with a generous paid parental leave program; expanding the FMLA to cover employers with 25 or more employees, thereby giving 13 million additional American workers guaranteed unpaid family and medical leave for 12 weeks a year; guaranteeing workers at least seven days of paid sick leave per year that would be paid by their employers; providing employees with the right to request flexibility along the lines of a UK law; promoting model workplaces with grants to support new workplace flexibility programs (including a federal telecommuting initiative); and prohibiting discrimination against parents by employers.¹⁰

Shortly after Senator Clinton announced her agenda, Senator Barack Obama announced a plan that included very similar proposals. Like Clinton’s, Obama’s plan included a strategy to encourage states to adopt paid leave systems of their choice. He proposed a \$1.5 billion fund to help states with the start-up costs of such plans. Like Clinton, Obama also proposed to expand the unpaid leave provisions of the FMLA to cover businesses with 25 employees or more. He also proposed allowing workers to use their unpaid FMLA leave for elder care and for addressing domestic violence and sexual assault against themselves, their children, or their parents. Obama’s proposal allowed parents to use up to 24 hours of FMLA leave to participate in their children’s academic activities as well. Finally, Obama proposed requiring employers to guarantee seven paid sick days to their employees, prohibiting employers from discriminating against parents because of caregiving responsibilities, and expanding flexible work arrangements through education and technical assistance for businesses.¹¹

Unlike Clinton and Obama, Senator Chris Dodd presented his workplace proposals under the framework of “putting women and families first.” As the lead sponsor of the FMLA in 1993, Dodd opted for a continuation of this federal model rather than supporting states in developing their own models. Thus, Dodd’s proposal to provide paid leave expanded the FMLA to require covered employers to pay for eight weeks of paid leave when an employee cared for a sick family member or took care of a newborn or adopted child.^{12, 13}

John Edwards’s agenda for work-family balance, as it compared to his positions as part of the Kerry-Edwards campaign, paints the clearest picture of how far presidential candidates have come in terms of promoting workplace flexibility policies. It also illustrates the “arms race” of ideas in a presidential campaign. If an issue appears to have salience with the voters, no one wants to be left out of the game.

Like Clinton and Obama, Edwards opted for the creation of a national family trust to support states in the development of paid parental leave funds rather than using the FMLA framework to require employers to pay for the leave. As the third of the leading candidates to propose a version of this approach, however, Edwards was well situated to outbid his competitors. Thus, Edwards touted his plan as bolder than those of the others because he set a national goal of states having plans that actually offered eight weeks of paid leave by 2014, and his proposed fund would have provided more federal resources—\$2 billion a year—to help states meet that goal.¹⁴

Like the other candidates, Edwards also proposed expanding the FMLA to include businesses with 25 employees or more and requiring all businesses to provide employees with seven paid sick days per year. Edwards also proposed providing independent contractors and part-time workers with better access to health care and family leave benefits.¹⁵

Unlike the Democratic candidates, the Republican candidates for the presidential nomination in the 2008 primary contest had not—as of January 2008—proposed any affirmative government policies in the workplace to assist workers in managing their work and life needs. But it was difficult to imagine that, once the general election begun, the Republican nominee would not experience pressure to come up with at least some statement that indicated he was taking the work-life pressures on families across the country seriously. In August 2004, shortly before the election, President George W. Bush responded to similar pressures by proposing a policy approach that had been urged without success for

almost a decade by Republicans in Congress.¹⁶ This approach would have amended the Fair Labor Standards Act to allow nonexempt employees to choose compensatory time instead of overtime pay, thereby buying themselves some flexibility on the job.¹⁷

The broad range of ideas available to the Democratic candidates during the 2008 primary season reflects the breadth in policy proposals that had surfaced on both the state and federal levels between 2004 and 2007. This time period was a particularly fertile one for attention to work-family issues—at least in terms of policy proposals, if not in terms of actual significant movement forward.

On the federal level, three separate bills garnered attention. Chief among these was the Healthy Families Act, introduced initially in 2004 and in each subsequent Congress, in both the Senate and the House of Representatives.¹⁸ The Healthy Families Act requires all employers with at least 15 employees to provide seven days of paid time off for employees to care for their own illness or for the illness of a family member.¹⁹ An employee who works for 30 hours or more per week receives all seven days, while employees who work less than 30 hours a week receive a prorated number of paid days off.²⁰

While the Healthy Families Act focuses on sick days, a proposal connected to more traditional FMLA leave, the Family Leave Insurance Act, has also been introduced in the Senate.²¹ This bill, introduced in 2007, requires employers already covered under the FMLA (that is, employers with at least 50 employees) and their employees to pay equal premiums into a federally administered fund. The employers are required to pay up to eight weeks of paid leave for employees who take time off for FMLA-covered reasons—care for a newborn or adopted child, care for one's own serious health condition, or care for the serious health condition of a covered family member—and the fund then reimburses the employers for the money expended.²²

Also, in 2007, the Working Families Flexibility Act was introduced in both the Senate and the House of Representatives.²³ This act allows an employee who works for an employer with at least 15 employees to request a change with regard to his or her scheduling, place of work, or number of hours worked. The employer must meet with the employee to discuss the request and must provide a written response to the request.²⁴ An employer is permitted to refuse the request as long as it provides a reason for doing so—such as a loss of productivity or the effect of the change on the employer's ability to meet customer demand.^{25, 26}

While none of these bills achieved legislative success in the first session of the 110th Congress, hearings were held on the Healthy Families Act on February 13, 2007.²⁷ In addition, in January 2008 Congress passed an expansion of the FMLA to allow family members who were caring for wounded service members to take up to 26 weeks of unpaid, job-guaranteed leave.²⁸ And in June 2008, the House of Representatives passed a bill that would grant federal employees up to four weeks of paid parental leave after the birth or adoption of a child, or the taking in of a foster child.²⁹ The bill also authorized the Office of Personnel Management to extend the authorized period of paid leave by an additional four weeks. Under the bill, federal employees could continue to use accrued vacation time as part of their leave, but would no longer have to demonstrate medical need to use sick leave to care for a new child.³⁰

The activity on the federal level followed on the heels of coordinated activity on the state level over the previous years. In 2003, the Multi-State Working Families Consortium, an organization of labor and community coalitions, started in 8 states and now encompasses 11. The consortium pools resources and information to support the introduction of state or local bills to guarantee paid family leave insurance, paid sick days, and other work-family supports.³¹ The National Partnership on Women and Families also works with states and localities to develop and support such legislation.³²

While success in enacting these bills on the state and local level has been uneven, a few have passed and others are moving through the process. In 2002, California was the first state to expand its state disability insurance program to provide for six weeks of partial paid leave for employees who take time off to care for a newborn or adopted child or to care for a family member with medical needs.³³ The funds for the new program come from payroll premiums assessed against employees.³⁴

In 2007, the state of Washington created a similar program, although restricted to time taken off to care for a newborn or adopted child.³⁵ The program passed without any final funding mechanism, but with instructions to a task force to recommend a funding mechanism to the legislature for its approval.³⁶ In January 2008, the task force issued its final report and recommended that the program be funded through the state's general fund for at least the first four years of implementation (Washington State Joint Task Force 2008). These recommendations were adopted into law as part of the supplemental budget passed by the legislature and signed by Governor Christine Gregoire in early 2008.³⁷

In addition, on May 2, 2008, New Jersey's governor signed legislation that extended the state's temporary disability insurance (TDI) system to provide up to six weeks of partial wage replacement to employees who take time off to care for a newborn, newly adopted or foster child, or family member with a serious health condition. Eligible employees receive up to two-thirds of their wages, up to a maximum of \$524 per week. This cap increases annually with the cost of living and is financed by a tax on employee wages.³⁸

Similar bills have been proposed, and are being pursued, in New York and Illinois. The proposal in New York expands the state's existing TDI program but does so by amending the definition of "disability" in the state workers compensation law to include family leave. This change in definition permits employees to get up to 12 weeks of partially paid leave for family care. As under the existing law for disability, eligible employees can get up to half of their wages, but the amount is capped at \$170 per week.³⁹ Although employers and employees jointly fund the existing TDI program, the bill imposes the new "family-care cost" solely on employees.⁴⁰ The bill has passed the New York Assembly, but has not been voted on by the state Senate.⁴¹

The proposal in Illinois would create a new family leave insurance program that would provide up to four weeks of partial wage replacement to employees who are caring for a newborn or newly placed adopted or foster child, a family member with a serious health condition, or their own serious health conditions. The program would be funded by both employers and employees and eligible employees could get up to 67 percent of their wages (up to \$380 per week).⁴² This bill failed to make it out of committee within the necessary timeframe.⁴³

In addition to these paid leave proposals in these states, in which the costs are primarily borne by the employees (with the exception of Illinois, for the moment), there has also been a move toward requiring paid sick days, with the costs to be borne by employers. In 2006, San Francisco became the first locality to require employers to provide some paid sick time to their employees. Employers with more than 10 employees are required to allow their employees to earn up to 72 hours of paid sick time, while employers with fewer than 10 employees are required to allow their employees to earn up to 40 hours of paid sick time.⁴⁴

In March 2008, the District of Columbia followed San Francisco's lead and became the second jurisdiction to mandate that employers provide paid sick leave to workers. The amount of leave an employee earns depends

on the number of hours worked and the size of the business, and ranges from three days for full-time workers at businesses with 24 or fewer employees to up to seven days for full-time employees at workplaces of 100 or more.⁴⁵

In 2007 and 2008, 11 states (Connecticut, Maryland, Massachusetts, Minnesota, Missouri, Maine, Vermont, Florida, North Carolina, Pennsylvania, and Illinois) considered bills that would require employers to provide a set number of paid sick days.⁴⁶ Most of these bills are similar in scope and structure to the San Francisco and D.C. plans. Each proposal includes requirements for calibrated paid time off based on the number of people employed by the organization, the number of hours worked by the employee, and the number of days the employee has been on the job.⁴⁷

Finally, another recent trend has been to advocate for laws prohibiting discrimination against caregivers in the workplace. In 2007, the California legislature passed a bill prohibiting employers with at least five employees from discriminating against employees on the basis of “familial status.”⁴⁸ The bill defined having “familial status” as “being an individual who is or who will be caring for or supporting a family member.”⁴⁹ To prevail in an action brought under this proposed law, an employee would have to show disparate treatment, a hostile work environment, constructive discharge, or another adverse effect of discrimination because of his or her familial status.⁵⁰ The bill passed both chambers of the California legislature on primarily party-line votes (with Democrats voting in favor of the bill), but was vetoed by Republican governor Arnold Schwarzenegger.⁵¹ Bills protecting caregivers from employment discrimination have also been introduced in New Jersey, New York, Florida, Pennsylvania, and New York City, but have not been enacted.⁵²

Jennifer Glass, in this volume, notes that government can respond to a market failure on the part of employers to provide work-life supports either by mandating employers to provide such supports or by providing such supports directly through government programs. The legislative efforts on the state and federal levels over the past several years and the campaign rhetoric of Democratic candidates in the 2008 election reflect an amalgam of these approaches. These proposals include some direct requirements for employers to pay for a limited number of sick days.⁵³ With regard to more extensive time off, however, these approaches lean toward government mandating that employees, and sometimes employers, pay into a system that will provide paid time off.⁵⁴ Three of

the Democratic presidential candidates wanted the states to decide how to fund paid time off, with the federal government providing support solely for administrative and start-up costs.

The Obstacles to Policy Reform

For all the campaign promises, the introduction of bills, the chatter on the Internet, the rallies held, and the onesies sent in support of various bills,⁵⁵ we have not seen significant change in the policy arena. Perhaps it is only a matter of time until the various legislative efforts described herein become law—or perhaps time by itself will not be enough.

In this volume, Glass argues that both political parties have conspicuously failed to “fully endorse and legislatively push for protections of caregivers in the work force.” She offers the view that the “most cynical interpretation is that both major political parties have avoided government regulation or government provision for family care because of their dependency on key business constituencies to finance their campaigns.”

Glass later refines her argument by postulating that the biggest reason for legislative inaction is “the triumph of neoliberal thinking in federal and state governments” which has as its highest priority “the expansion of the economy and growth in profits.” This is a problem because “federal mandates for paid leaves, scheduling flexibility, part-time benefit parity, and other policies might shrink profits, depress wage growth, and hamper new job creation.” All this would clearly be contrary to the goals of neoliberal governance.

But Glass’s main argument is that the existing evaluation research is simply not sufficiently developed, nuanced, and targeted enough to make the case for such forms of governmental intervention. She clearly thinks that policies such as “paid leaves, scheduling flexibility, [and] part-time benefit parity” would be good for society as a means of sharing responsibility for the costs of human reproduction, from which we all benefit. Assertions about the negative impact of federal mandates on profits, wage growth, and new job creation are, she notes, “subject to empirical scrutiny, and the results should become the evidentiary basis for how policy should be implemented.” Yet the existing policy evaluation research, argues Glass, simply cannot provide sufficient reassurance to employers that they will not be hurt financially or operationally by such requirements.⁵⁶

I think Glass correctly highlights the significant limitations of the current body of policy-evaluation research on the approaches described previously, and I welcome her argument for the shift that must occur in our normative thinking about what society owes to those who shoulder the responsibilities of caregiving. But I want to add a few points with regard to the obstacles I believe exist in achieving policy reform in this arena.

I do not believe it is correct to say that neither political party has pushed for legislative reforms for caregivers in the workplace. To the contrary, based on the mere number of bills introduced on the state and federal levels over the past years, it seems fair to say that members of the Democratic party view this issue as one in which they would like to make their mark and engender some real advances.

But it is also true that successful enactment of these proposals has been difficult to achieve. The reason for that is correctly articulated by Glass: businesses are rationally not interested in having the government dictate to them how to run their workplaces, and they are particularly wary of any dictates that might impose undue financial or operational costs on their businesses. In light of that reality, legislators are loath to impose obligations that might backfire economically on their small-, medium-, and big-employer constituencies. And while providing supports directly through government programs might relieve employers of those obligations, that approach raises the specter of programs that will need to be supported through general taxes.

As a possible way out of this morass, Glass notes the potential of the California model, in which employees pay all the costs of the program, with regard to paid family leave. But business associations have not been any more sympathetic to that approach. Associations of California businesses vigorously opposed California's expansion of the state's temporary disability insurance program in 2002 to include paid family leave, despite the fact that all premiums for the program would be paid by employees.⁵⁷ The same was true with regard to opposition from businesses to the New Jersey law and to the pending New York bill, both of which finance the expansions of those states' temporary disability programs to cover family leave solely through employee-paid premiums.⁵⁸

The practical arguments made by these business associations are that the funds come from employee salaries that are paid by the employers, and hence, there may be pressure over time to increase those salaries to offset the premium costs. In addition, businesses are concerned about the indirect costs of setting up and implementing these systems.⁵⁹ The

ideological argument of these groups is even more straightforward, although they do not often state it as bluntly: businesses should be permitted to decide how to run their operations most effectively without intervention by the government.⁶⁰

The groups advocating the various forms of legislation described in the first part of this chapter do not really believe that the established trade associations of businesses will ever support these policy approaches. Rather, they believe there are some (or even many) “good-guy” businesses that believe these policies do make sense, and these are the businesses that need to be surfaced and highlighted in the political debate so they can be heard in the public domain.⁶¹

I think advocacy groups pushing for paid sick leave, paid family leave insurance, caregiver nondiscrimination laws, and the right to ask for flexible work arrangements (to summarize just the key approaches of the bills and proposals described above) are correct to assume that established business associations will not support any of these policy ideas in their current forms. But these efforts certainly fall within the tried and true approaches of traditional government regulation and will, therefore, presumably play out with the usual alignments of our political process and according to the usual way of doing business.

Under this usual way of doing (political) business, advocates tend to write the strongest piece of legislation they can to address an identified need—usually legislation that regulates businesses to require certain working conditions or that creates a government program to provide the needed benefit. The established trade associations of businesses then invariably oppose the proposed legislation as costly and burdensome. If the political will and votes exist to make the legislation even close to possible passage, the advocacy groups and their legislative allies make enough changes in the bill to gather whatever many remaining votes are needed for passage.⁶² Once the bill passes, advocacy groups throw a victory party (regardless of how much the bill has been modified) and business associations moan and groan about how the state (or federal) government is creating a terrible environment in which businesses are being forced to operate.⁶³

These are the understood and accepted obstacles to passing legislation along the lines of the policy ideas outlined above. But can one play the game differently? Is it possible to make normative change in the workplace, including change that uses and is supported by public policy, in a way that does not replicate these traditional political fights? If one were able to come

up with a different way of doing political business, might the result be even better and more effective policy ideas? Read on for this utopian vision.

The Workplace Flexibility 2010 Enterprise

Reshaping Political Expectations

The Workplace Flexibility 2010 Enterprise began in 2003 with a substantial grant from the Alfred P. Sloan Foundation.⁶⁴ The goal of the project was to research all existing and potential legal supports or hindrances to workplace flexibility, and subsequently, to develop policy ideas that would work well for both business and employees.⁶⁵

A defining commitment of the enterprise—from its inception—was to search for public policy approaches that would work well for both employers and employees. This key element required *reshaping the political expectations* of those involved in this enterprise. Anyone who has toiled in the field of labor and employment policy and law, including me, simply expects as a normal course of doing business that employer and employee groups will resist each other's public policy efforts. Either group might win or lose in any particular fight, and hence, a bill might advance, be stalled, or be modified, but the expectation is that there *will* always be a fight.

This was certainly the case in 2003, when Workplace Flexibility 2010 came into existence. In the 10 years prior to that time, the policy debate in Washington had addressed only a small and cramped subset of workplace flexibility issues, and legislative action on those issues had itself stalemated.

On the Republican and business side, the primary legislative objective of business trade associations had been to modify the Fair Labor Standards Act (FLSA) to allow employers to offer nonexempt employees compensatory time off in lieu of receipt of time-and-a-half pay for time worked over 40 hours in a given week. Such legislation would have also allowed employers to offer nonexempt employees the ability to “bank” credit hours for compensatory time (even hours that were not worked overtime) and allowed employers to institute a two-week/80-hour schedule, instead of the current one-week/40-hour schedule mandated by the FLSA for purposes of overtime pay.⁶⁶

Legislation to amend the FLSA along these lines was first introduced in 1995, was considered actively by Congress in 1997, and was considered

again by Congress in 2003.⁶⁷ Congress was closely divided on each occasion and the debate was largely along partisan lines, with Republicans and business associations supporting the bills and Democrats, unions, and progressive family groups opposing them. The legislation came closest to enactment in 1997 but was ultimately stalled by a veto threat by President Bill Clinton and by two successful filibusters mounted by Democratic senators.⁶⁸ The legislation has never moved successfully to passage.

On the Democratic, union, and progressive family front, the agenda over the previous 10 years had focused primarily on expanding FMLA to provide pay for such leave, to expand the number of employees covered under the law, and to expand the reasons for which FMLA leave could be taken.⁶⁹ None of these bills had moved forward in the Republican-controlled Congress during that decade. In 2003, when Workplace Flexibility 2010 came into existence, the focus of the union and progressive family groups had shifted to pursuing paid family leave bills on the state level (following the successful example of California in 2002) and to pushing for a more narrowly tailored federal bill that would require all businesses to provide seven paid sick days for their employees. Business trade associations vigorously opposed both these state and federal efforts.⁷⁰

In 2003, those of us envisioning Workplace Flexibility 2010 observed two significant problems with the political picture of the time. First, the discussion on workplace-flexibility issues was remarkably cramped. It was as if there were a “diet of ideas” in Washington, with discussion occurring only on comp time instead of overtime pay or on requiring businesses to pay for family or sick leave. But changing the workplace in a sweeping and normative manner—which seemed to us the *only* way to truly make a difference in how workers would manage their work and lives together—could not possibly be achieved with just those two ideas on the table.

Second, the debate itself was stalemated. Given that a supermajority was required in the Senate for almost any substantive piece of legislation to pass (Feldblum and Appleberry 2006), it was hard to move anything forward that had the clear and stated opposition of any powerful interest group—be it that of employers or employees.

In this atmosphere, an enterprise that was devoted to developing a broad range of public policies that would work well for both employers and employees was going against the grain. Nevertheless, Workplace Flexibility 2010 has a deep philosophical commitment to this approach, with its roots in both pragmatism and ideology.

At a matter of pragmatism, it is more likely that public policy will be enacted if business trade associations are not vigorously opposing the relevant legislation. But the deeper pragmatic concern, on our part, was that we were seeking a *broad-ranging vision* of public policy that would cut across many categories and laws (e.g., labor, benefits, taxes, government programs, and so on). To enact such truly sweeping and normative reform, business support seems even more essential.

On the ideological level, our commitment is more complicated, yet equally important. The policy conversation for us in the area of workplace flexibility feels different from the policy conversation that needs to take place, for example, in the context of employment laws prohibiting discrimination.⁷¹ In an antidiscrimination context, there are “bad actors” that the law is designed and intended to sanction and deter. Those who support such laws believe there is simply no good reason to treat someone adversely in the workplace simply because of the person’s race, sex, religion, disability, sexual orientation, or gender identity. While one might want to engage business in thinking through how to best *prohibit* such discrimination, there is no legitimate reason to engage business in figuring out how to continue facilitating such discrimination.

But workplace flexibility issues feel different. In this arena, we are considering basic workplace standards that will allow time off for employees, but that will also ensure the work still gets done (see, for example, the description below of short-term, episodic, and extended time off as aspects of workplace flexibility). We are also considering innovative partnerships between employees and employers about *how* work gets done (see, for example, the description below of flexible work arrangements as an aspect of workplace flexibility). With regard to both of these areas, it seems appropriate to find out *why* employers are not offering workplace flexibility now. How much of it is financial, how much is operational, and how much is simply old ways of doing business? How much is ingrained in how a business views its workforce for financial purposes, as described by Lambert, and how much is ripe for change, as described by Moen, Kelly, and Chermack (both in this volume)?

Given this reality, it seems appropriate to engage businesses in thinking through *solutions* to the needs of today’s workforce. The demographic data is clear that the workforces will continue to require an effective means of managing their work and their lives. If a business’s financial plan requires it to ignore those demands affirmatively (as some of Lambert’s work suggests), then that is an important fact to bring to the surface.

Conversely, if making workplace flexibility the norm of a business's workplace enables a business to function more effectively, that fact is important to bring to the surface as well. The key is that we will never *know* what the best solutions might be if we do not engage businesses in a truly open, candid, and frank conversation about their needs and the needs of their workers.

From its inception, therefore, Workplace Flexibility 2010 entered the policy arena with the expectation of facilitating a reasonable and productive conversation between employees and employers in the development of public policy. That expectation has been greeted with mild to severe skepticism, even scorn, over the past years. But after five years of Workplace Flexibility 2010 operating on the Washington policy scene—sponsoring briefings, producing reports, and holding meetings—this much is clear: advocates and policymakers across the political spectrum know that we are *serious about* and *committed to* this set of *reframed political expectations*. And, what is most gratifying for us is that many of them seem quite intrigued by the possibilities that this different frame of mind might offer for the development of policy.

Reframing Policy Terminology

Language is powerful in Washington. In 2002, terms such as “comp time,” “paid leave,” and “intermittent leave” all carried meanings laden with political weight. They did not simply describe a specific need experienced by employees; rather, they telegraphed specific views as to the appropriate role that government should play in meeting those needs.

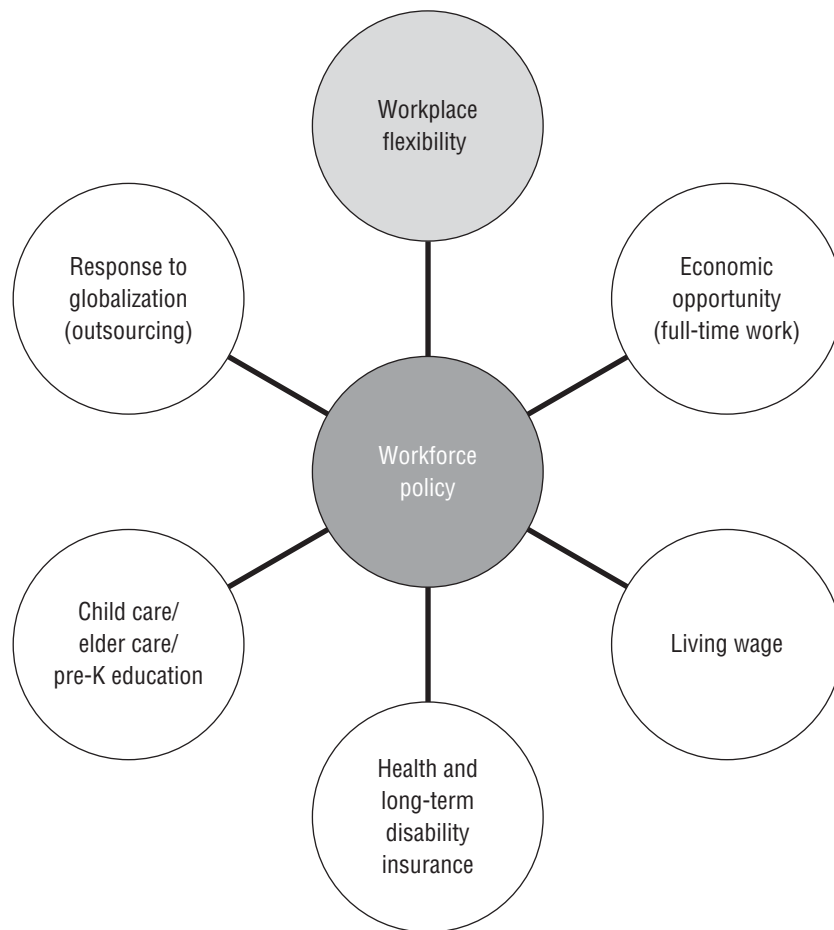
One of our first goals at Workplace Flexibility 2010, therefore, was to develop a new set of *policy terms*. We wanted to develop language and terms that would not signal one position or another in the current policy debate.⁷²

Developing new policy terms also helped communicate to policymakers that Workplace Flexibility 2010 had a targeted, and hence limited, focus for policy analysis. Many contributors to this volume, and in this arena generally, talk about the need for “work-life policies” or “work-family policies.” They include within that term policies such as paid sick leave, paid family leave, child care and elder care, and preschool education (Glass, this volume). In addition, as one can easily imagine, the size of one's paycheck and simply having a steady paycheck also critically affect the quality of one's work-life management.

This is all true. For Workplace Flexibility 2010, however, our attention has consistently been focused on policies *inside the workplace* that affect work-life management. Policies that take place outside of the workplace are understood by us to be critical components of any holistic public policy, but they are not the focus of our attention. (See figure 14.1.)

For Workplace Flexibility 2010, therefore, “workplace flexibility” does not include issues such as child care, elder care, preschool education, or a living wage. We make this distinction partly to communicate that even

Figure 14.1. Workplace Flexibility as a Component of Workforce Policy



if workplace flexibility were to become a standard of the American workplace, it would not be a panacea unless other pieces of the work-life puzzle were addressed as well. But we do so also to telegraph to policymakers and advocates in Washington our clear and targeted focus: those structures and policies *within the workplace* that make it easier or harder for people to manage their work and life demands.

Having staked out this particular arena as our target, we then proceeded to analyze the needs, obligations, and responsibilities of employees to develop and categorize the elements of what we term “workplace flexibility.” We had, as our starting point, a definition that had been developed in 2003 by several grantees of the Alfred P. Sloan Foundation, including this author, in conjunction with the foundation’s project officer, Kathleen Christensen:⁷³

- the ability to have flexibility in the scheduling of full time hours;
- the ability to have flexibility in the number of hours worked; and
- the ability to have career flexibility with multiple points for entry, exit, and reentry into the workforce.

As conversations continued around that definition, it also came to include a fourth component:

- the ability to address unexpected and ongoing personal and family needs.

Although not incorporated into the definition itself, conversations around this definition consistently reflected a background assumption: that meeting workplace flexibility needs in an *effective* manner would necessitate taking into account the concerns and requirements of *both* workers and employers. This was not a naïve rose-colored view of the world. All of us involved in crafting this definition understood that the needs and requirements of employers and employees would sometimes conflict. But we went into the process of defining workplace flexibility with a commitment to taking into account the needs of both employers and employees to the greatest extent possible.

The Sloan definition of workplace flexibility represented a significant step forward in marking the contours of the policies—either governmental policies or voluntary policies of employers—that might help workers manage their work and their lives. Workplace Flexibility 2010 then moved that definitional conversation one step further by developing new

policy terms that *mapped* the Sloan definition onto an existing policy conversation—but without conveying, through those policy terms, any expectations of *how* such needs would be met through public policy.

Workplace Flexibility 2010 approached this mapping project by systematically and carefully analyzing the data that existed with regard to the needs experienced by workers and then mapping those needs against federal (and some state) laws and proposed laws that had relevance to those needs.

Based on that analysis, we identified, categorized, and defined *three new policy terms* to capture what was covered under the Sloan definition of workplace flexibility:

- flexible work arrangements,
- time off, and
- career maintenance and reentry.⁷⁴

The first two components of the Sloan definition of workplace flexibility—the ability to have flexibility in the scheduling of full-time hours and flexibility in the number of hours worked—are encompassed in our policy term “flexible work arrangements” (FWAs).

We define an FWA as any arrangement that alters the time, or place, or both that work is conducted regularly in a manner that is as manageable and predictable as possible for both employees and employers.

FWAs include flexibility in the scheduling of hours worked, such as with alternative work schedules (e.g., nontraditional start and end times, flex time, and compressed workweeks) and shift and break schedules. It also includes flexibility in the amount of hours worked, such as part-time work, job shares, part-year work, and phased retirement schedules. Finally, it includes flexibility in the place of work, such as at home, at a satellite location, or in two different locations based on the time of year.⁷⁵

Predictability with regard to when hours are worked is an issue of particular importance to many lower-wage workers (Waters Boots and Danziger 2008). Lower-wage workers are more likely to work in industries and occupations in which schedules are set weekly or. Many of these lower-wage workers have very little advance notice of their schedules, requiring them to cobble together child care and other arrangements at the last minute. In addition, while lower-wage workers often desire more hours to earn more income, unscheduled mandatory overtime can be a significant problem. Thus, the FWAs that many lower-wage workers need entail more predictability and control over when they work.

The reasons a worker may wish for an FWA are manifold. One worker may want an FWA because that will allow him to provide better care to an elderly parent or a spouse, while another may want an FWA because there are no funds available for child care or elder care. Yet another worker may want an FWA so that she can attend a weekly class, a weekly Bible session, or a weekly volunteer engagement. And a third worker may want an FWA because that will better address his medical conditions. The definition of an FWA does not itself presuppose any reason for the need or desire for the flexibility.

The fourth part of the Sloan definition of workplace flexibility—the ability to address unexpected and ongoing personal and family needs—is encompassed in our policy term “time off.” Within that category, we have conceptualized and named three different types of time off that are necessary to deal with unexpected or ongoing personal and family needs: short-term time off, episodic time off, and extended time off.

“Short-term time off” and “episodic time off” both refer to time off taken in short increments. short-term time off (STO) is designed to address the ordinary predictable and unpredictable needs of life. Episodic time off (EPTO) is used to address a *recurring* predictable or unpredictable need for time off from work.

STO and EPTO may be needed for different reasons and those reasons will dictate the amount of time needed. For example, with regard to STO, the reason might be the illness of a worker herself, and the STO needed might be three consecutive days. Or the reason might be the illness of the worker’s child, and the STO needed might be one day. The reason might be a plumbing emergency at home, the need to go to a court hearing, or a scheduled parent-teacher conference, and the STO required might be anywhere from one to six hours.

All workers—men and women, caregivers and noncaregivers—will presumably need some amount of STO during the course of a year. Even if life does not deal these individuals any significant blows, they will presumably get sick at some point, and if they do not have someone else to deal with other mundane aspects of life, they will need time away from work to address those needs.

What distinguishes EPTO from STO is the *episodic* nature of the time off needed, and in many cases, the additional amount of time needed. For example, a worker who suffers from a chronic health condition or cares for a family member with a chronic condition might need to be absent episodically from work. That episodic time off might be predictable—

for example, scheduled chemotherapy appointments for oneself or scheduled doctor visits for a family member. Or the episodic time off might be unpredictable—for example, a child with unanticipated asthma attacks who has to be taken to the hospital or a worker with migraine headaches that flare up unexpectedly.

A defining aspect of EPTO is that it is needed most by individuals to whom life has already dealt some blow. These workers do not have ordinary headaches on an infrequent basis; they have intense, recurring headaches that make them unable to function during that time. They do not have a child with the general run-of-the-mill set of illnesses; they have a child with a life-threatening chronic illness. What this also means is that the amount of time off that such individuals need is often greater than that needed by the average person who has not been dealt such life blows.

Sometimes the life blow will have a perceived end point—for example, a parent with a terminal illness who requires episodic care. Other times, the end point will be quite far in the future (e.g., until a child grows to adulthood) or may even occur past the point that the individual stops working if the condition affects the individual herself.

These definitions of STO and EPTO convey no information on how *much* STO or EPTO is appropriate to give to workers. Nor do they convey how *public policy* should be crafted to ensure that the STO and EPTO needs of workers are met while simultaneously ensuring that employers will get the necessary work done. Instead, what these terms do is simply *name* a category of need.

“Extended time off” (EXTO) refers to time off taken in long increments. EXTO can be either predictable or unpredictable. For example, EXTO might be required to care for a newborn or a newly adopted child—events that have a generally anticipated timeframe. It might also be required to serve in the military or to receive advanced training and education—events that usually have some degree of lead time associated with them. But EXTO might also be required after a worker or a worker’s family member suffers an unexpected accident. In that case, the timing of the EXTO will be impossible to predict and the amount of EXTO needed might be hard to judge as well.

EXTO is needed both by those workers to whom life has dealt some blow—for example, a worker who has an accident or who has a family member with extended caregiving needs—as well as by those who may have sought the change in their life situation—for example, a worker who has a new child.

The need for STO, EPTO, and EXTTO is not tied to whether an individual is working full-time or working on an FWA (including working part-time). Presumably, someone with an FWA can better deal with STO and EPTO needs that are predictable. Indeed, data indicates that effective FWAs reduce employees' use of STO and EPTO (Bond and Galinsky 2006; CCH Inc. 2007; Corporate Voices 2005). But an FWA, including part-time work, will not always address STO, EPTO, and EXTTO needs.

The third aspect of the Sloan definition of workplace flexibility—the ability to have career flexibility with multiple points for entry into, exit from, and reentry into the workforce—is captured by our policy term “career maintenance and reentry.” This form of flexibility addresses the needs of employees who need to or choose to leave the workforce completely for a period of time but who plan to or need to reenter the workforce later. As Kathleen Christensen from the Sloan Foundation often comments, the “off ramps” from the workplace are very accessible and easy to traverse, but it is the “on ramps” that need to be made more accessible and more effective. And the effectiveness of those on ramps may be enhanced by whatever forms of career maintenance are available to those who have exited the paid workforce for some increment of time.

Categorizing, conceptualizing, and defining the policy components of workplace flexibility in this manner has enhanced Workplace Flexibility 2010's analysis in several ways. First, it has allowed us to work systematically through the access and utilization that exists with regard to different aspects of workplace flexibility across job categories and across income levels. This has provided us with a rich and nuanced picture of the varying degrees of need that exist across the American workforce.⁷⁶

Second, we have been able to analyze the range of laws that impact these various components of workplace flexibility in a systematic and rigorous manner. From 2005 through 2007, with the help of a legal working group made up of seven leading management-side lawyers and seven leading employee-side lawyers, we critically analyzed existing and proposed laws that might support or hinder these various components of workplace flexibility.⁷⁷

Third, and of key importance, this approach has allowed us to identify differential policy approaches that might fit the various categories and concomitantly, the different policy obstacles that might arise for each one.

In her contribution to this volume, for example, Glass observes that “there may be an economic rationality in the resistance of some

employers to family policy and workplace flexibility. Does this mean that employers will forever be an impediment to work-family policies and programs?”

But why should we lump all “work-family policies and programs” together? Once we separate them into the components described above, we are able to analyze them more clearly. For example, we can ask whether the best way to respond to a market failure in the provision of FWAs through a traditional approach of regulation or mandate, or whether a completely different policy approach might work better. Similarly, we can ask whether businesses not providing paid time off now will suddenly do so if provided with market incentives, or whether a more regulatory policy approach is needed to achieve that goal.

Separating out the components of “work-family policies and programs” allows us to ask more targeted and rigorous questions. With that, we can better understand the depth of opposition to different policy approaches and begin to leverage the policy opportunities that do exist in this area.

Refining the Policy Obstacles and Leveraging the Policy Opportunities

If all employers provided every component of workplace flexibility to their employees, there would be no need for public policy in this arena. Workplace flexibility would be the ordinary, normal standard of the American workplace and our job would be done.

That is, obviously, not the state of play today. But it is important to differentiate *what* components of workplace flexibility are not being provided by *which* employers to better understand possible opposition to various policy alternatives.

A significant segment of today’s workforce does not have access to paid STO, EPTO, or EXTTO. This may be because they work in an industry in which such access is limited or because they are part-time workers who are not provided these forms of flexibility.⁷⁸ These employers have presumably made a classic cost-benefit business judgment and have decided that they either cannot or need not offer these forms of workplace flexibility. These are not employers who are seeking to compete for labor talent through offering access to such flexibility. Rather, these are employers who are focused on reducing their labor costs. And these are

employers who are going to resist strongly any government mandate to provide these forms of flexibility.

There are also many employers who do offer paid STO, EPTO, and EXTO through various employer programs (Workplace Flexibility 2010 2006b, 2007a, b). These are employers who have also made a classic cost-benefit business judgment and have decided that it advances their business interests to offer these forms of flexibility. Indeed, most of these employers do not even think of STO, EPTO, and EXTO as workplace flexibility.⁷⁹

But as a matter of ideology, one can expect most of these businesses to oppose a government mandate that requires other employers to offer such flexibility. These businesses trust that the market will ensure that employers who can afford to offer such flexibility and who need to do so to compete effectively, will in fact do so. And if businesses choose not to offer these components of flexibility—either because they cannot afford them or because they are under no market pressure to do so—many businesses (including those who do offer such time off) believe it is not the role of the government to regulate those other businesses.

In addition, many of these employers have had experiences with the FMLA, particularly its intermittent leave provisions, that have left them wary of government requirements to provide a benefit—even a benefit that they are already providing.⁸⁰ Thus, unless businesses receive something in return for accepting a governmental mandate to provide something they are already providing, it is difficult to imagine why these employers would support such a requirement.

Among employers that offer paid STO, EPTO, and EXTO and who are interested in competing for and retaining labor talent, the desire to develop effective FWAs is often quite strong (Corporate Voices 2005). Indeed, the Alfred P. Sloan Foundation's National Initiative on Workplace Flexibility is comprised of several efforts to support and encourage such voluntary efforts on the part of employers.⁸¹

But those employers do not necessarily see why government should be involved in this enterprise. They are interested in offering FWAs because it makes sense to them as a business strategy, and they view this arena as something to be negotiated between employers and employees, without interference by the government.

Segmenting the components of workplace flexibility, however, can also provide us the opportunity to imagine creative and effective policy opportunities. Of key importance—it makes it easier for us to imagine a *range* of ways in which government and public policy might have an

impact on the availability of, access to, and uptake of various forms of workplace flexibility. By focusing objectively on what we can learn from employers that are offering different components of workplace flexibility, and those that are not, we can develop and target different policy ideas.

At Workplace Flexibility 2010, we have conceptualized five categories of action through which government and public policy might advance workplace flexibility.

- The government can *remove or lower existing legal hurdles* to providing various forms of flexibility. For example, changes to the tax code could make it easier for employers to offer FWAs to employees who are past retirement age and who want to continue working a reduced-hours schedule.
- The government can *support and enhance efforts* on the part of employers who are considering offering workplace flexibility. This could be done through tax changes, outright grants, or awards, and each of these might be targeted to states, to all employers, to some employers, or to employees.
- The government can *exemplify optimal efforts* on the part of those offering workplace flexibility. This could be done through public awareness and education and through the government as a model employer.
- The government can *set minimum standards* that would be required of all or of some employers and that would be enforced by the *government*.
- The government can *establish minimum rights* for all or some employees that would be enforced by *individuals*.

Each of these policy approaches—or some combination of these approaches—might work better for different components of workplace flexibility. By ensuring that the *full* range of government's role is carefully considered for *each* component, we stand the best chance of developing the most thoughtful and workable public policy for advancing workplace flexibility overall.

But how does one ensure that thoughtful and workable ideas actually come to the fore for each component of workplace flexibility? At Workplace Flexibility 2010, we believe this will require a strategic and smart process, a strong commitment from new constituency groups, and a heavy dose of moral outrage from our fellow citizens. With such a tripartite

effort, we believe we can leverage the policy opportunities that currently exist in this area. The key policy *opportunity* that exists right now is that people *want* change—they *want* workplaces to work better.

Let's begin with the first prong of the tripartite effort: a strategic and smart process. We discovered, over the 18 months that our legal working group met, that it was possible to have a reasonable conversation about the various components of workplace flexibility if we created a safe "rhetoric-free zone." The safety aspect of the zone was assured by the rules of the group: comments could not be repeated for attribution to a particular person and everyone was expected to listen carefully and respectfully to alternative points of view. And by designating (and running) the meetings as rhetoric-free zones, we found that group members were able to stretch their minds to carefully consider ideas to which they were not intuitively drawn.

Our positive experiences continued with our phased retirement working group, which met in an information and discussion phase from November 2005 through December 2007, and has continued in a policy development stage from May 2008. As with the legal working group, we carefully balanced representation from employer and employee perspectives in the group. In addition, given the technical nature of the issues being considered, we included actuaries, economists, and consultants.⁸²

As this book goes to press, the phased retirement working group is considering possible proposals for enhancing phased retirement for both employers and employees. We have no idea whether or to what extent members of the group will choose to endorse the specific policy ideas that Workplace Flexibility 2010 will develop. But we know we have gained significantly already from the balanced and thoughtful conversations of the group regarding the challenges in developing effective phased retirement programs that work well for both employers and employees.

Building on the successes of the legal working group and the phased retirement working group, Workplace Flexibility 2010 launched a national advisory commission on workplace flexibility (the NAC) in April 2008. The NAC is composed of approximately 30 individuals representing a broad range of interests and viewpoints—including high-level former political players, former labor and business advocates, current business executives, and work-family researchers. The NAC members are responding to specific policy ideas being developed by Workplace Flexibility 2010 on each component of workplace flexibility. If possible, the NAC members will come to a consensus on some or all of those ideas. But

regardless of whatever formal consensus might be achieved through this process, what each member of the NAC will have contributed is participation in an enterprise of thoughtful dialogue and exchange in the hopes of creating the best public policy ideas possible to advance each component of workplace flexibility.⁸³

The second prong of the tripartite effort will be to engage the passions of new constituencies beyond the existing employer and employee groups that currently dominate the policy conversation. If workplace flexibility becomes a standard of the American workplace, that outcome will support and facilitate a range of necessary caregiving for oneself, as well as for one's children, parents, spouses, siblings, and friends. In light of that fact, a large number of constituency groups that care passionately about caregiving should care passionately about advancing workplace flexibility. These include groups that focus on health, disability, children, aging, and family. (And the last should clearly include groups that have a broad and diverse view of the meaning of family—from conservative to progressive family groups.)

But workplace flexibility is not only needed for caregiving. It is needed and appreciated by those who want to volunteer in their communities, to meet their religious needs, to schedule a phased retirement, to deal with a public emergency, or to make our environment greener. Thus, there are yet additional constituency groups that should care passionately about making workplace flexibility a standard of the American workplace: faith-based, volunteer, emergency-preparedness, transportation, and environmental groups.

Workplace Flexibility 2010 has made it a priority to reach out to this broad range of groups and to engage them in conversations about workplace flexibility. Many of these groups have been receptive to the argument that they should care about policy ideas to advance workplace flexibility, because their constituencies and their causes would benefit from workplace flexibility being a standard of the American workplace. Building on this engagement, Workplace Flexibility 2010 will be working with groups across these issue areas as we move forward, soliciting their views and reactions as we develop our specific policy ideas.

And finally, perhaps the third aspect of the tripartite effort will be the one that moves us over the finish line. We need some *moral outrage against the status quo*.

Individuals in our society are beginning to realize that the structures of the workplaces are not individual problems that should be solved

individually. The increase in public conversation around these issues, as evidenced by the description of the policy conversation above, reflects the glimmers of understanding that the lack of workplace flexibility is a societal problem and a societal responsibility.

But the complacency in America today is still striking. Why do we think it is legitimate that people do not have access to the STO, EPTO, and EXTO that they need? Why do we think it is acceptable that employers feel no responsibility to affirmatively structure jobs so that they are amenable to FWAs, if possible? Why are we happy living in a society that does not put effort and resources into helping people reenter the workforce after stints of caregiving or after exiting the workforce for other reasons?

The status quo is *unacceptable*. We can do better.

Looking to the Future

The goal of Workplace Flexibility 2010 is to have workplace flexibility be a standard of the American workplace. We want it to be the norm, not the aberration.

In a world in which workplace flexibility is the norm, the aberration will be the 55-year-old man who does *not* take a week off when his elderly mother takes a turn for the worse. In a world in which workplace flexibility is the norm, the aberration will be the 32-year-old father of two who does *not* have a flexible work arrangement. And in a world in which workplace flexibility is the norm, children will be taken to doctors, toilets will get fixed, and elderly parents will get cared for with less anguish than occurs today.

This type of normative change will require an attitude of mutual responsibility and accountability on the part of both employees and employers. Employers will have to be cognizant of the need to take into account the lives of workers and have practices and policies to reflect that. And employees will have to be fully committed to helping the work get done even with the optimal utilization of workplace flexibility.

Throughout it all, government can be a true partner in supporting, enhancing, and undergirding these efforts—with a thoughtful and workable set of public policies. The question is whether we can overcome the policy obstacles and craft that set of policies. A strategic and smart process that allows for the development of creative ideas, a strong commitment from new constituency groups, and a heavy dose of moral outrage—perhaps that tripartite effort will bring us to a successful conclusion.

NOTES

1. See Workplace Flexibility 2010 (2006b, 2007b, 2007c). See also Anna Bahney, "A Life between Jobs," *New York Times*, June 8, 2006, <http://travel.nytimes.com/2006/06/08/fashion/thursdaystyles/08vaca.html> (accessed December 29, 2007). According to the U.S. Census Bureau, the number of married-couple households in which both spouses are employed and handling child care has increased 20 percent between 1980 and 1990 and an additional 10 percent between 1990 and 2000 (U.S. Census Bureau 2008, unpublished data).

2. In 1970, almost two-thirds of married couples 18 to 64 years of age included one spouse at home, available to handle many of the families' routine and emergency needs. By 2000, 60 percent of married couples had both spouses in the workforce (Jacobs and Gerson 2004, 43).

3. Al Gore for President 2000 web site, "On the Issues: Children and Families," reprinted <http://www.4president.us/issues/gore2000/gore2000children.htm> (accessed December 27, 2007).

4. The Family and Medical Leave Act (FMLA), enacted in 1993, provides certain employees who work for employers with at least 50 employees the right to receive up to 12 weeks of unpaid, job-protected time off to care for a newborn or adopted child, for their own serious health condition or for the serious health condition of a covered family member. See 29 U.S.C. § 2601 et seq.

5. Al Gore for President 2000 brochure, "Al Gore's Record as Vice President," reprinted <http://www.4president.org/brochures/gore2000brochure.htm> (accessed December 27, 2007).

6. John Kerry for President 2004 web site, "John Kerry 2004: On the Issues," reprinted <http://www.4president.us/issues/kerry2004/kerry2004economy.htm> (accessed December 27, 2007).

7. John Kerry for President 2004 web site, "John Kerry 2004: On the Issues," reprinted <http://www.4president.us/issues/kerry2004/kerry2004economy.htm> (accessed December 27, 2007).

8. John Kerry for President 2004 web site, "John Kerry 2004: On the Issues," reprinted <http://www.4president.us/issues/kerry2004/kerry2004economy.htm> (accessed December 27, 2007).

9. Hillary Clinton for President 2008 web site, "Hillary Clinton's Agenda for Working Families: Helping Parents Balance Work & Family," October 16, 2007, press release, <http://www.hillaryclinton.com/news/release/view?id=3743> (accessed December 27, 2007).

10. Hillary Clinton for President web site, "Hillary Clinton's Agenda for Working Families: Helping Parents Balance Work & Family," October 16, 2007, press release, <http://www.hillaryclinton.com/news/release/view?id=3743> (accessed December 27, 2007).

11. Obama for America campaign web site, "Family," <http://www.barackobama.com/issues/family/> (accessed December 27, 2007).

12. Chris Dodd President 2008 web site, "Our Families, Our Future: Putting Women and Families First." <http://chrisdodd.com/issues/women/> (accessed December 27, 2007).

13. In addition to Clinton, Obama, and Dodd, Senator Joe Biden and Governor Bill Richardson both supported some form of paid family leave. Biden for President web site, 2007, "Joe Biden: Standing with American Workers," <http://www.joebiden.com/issues?id=0019> (accessed December 27, 2007, now inactive); Bill Richardson for President web site,

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2007, "Addressing Issues of Importance to Women," <http://www.richardsonforpresident.com/issues/women/> (accessed December 27, 2007).

14. John Edwards for President web site, "Edwards Announces Bold Plan for Paid Family and Medical Leave," November 13, 2007, press release, <http://johnedwards.com/news/press-releases/20071113-paid-leave/> (accessed December 27, 2007). It was interesting to watch the promised federal funds for a trust of this kind move from \$1 billion in Clinton's October 16, 2007, announcement, to \$1.5 billion in Obama's November 11, 2007, announcement, to \$2 billion in Edwards's November 13, 2007, announcement.

15. John Edwards for President web site, "Edwards Announces Bold Plan for Paid Family and Medical Leave," November 13, 2007, press release, <http://johnedwards.com/news/press-releases/20071113-paid-leave/> (accessed December 27, 2007). Take Care Net, a coalition of groups and individuals, surveyed all Presidential candidates in 2007 with regard to their positions on a range of proposed policies. Almost all of the Democratic candidates responded; none of the Republican candidates responded (<http://www.takecarenetsurvey2007.pdf>, accessed December 31, 2007).

16. See, for example, *Working Families Flexibility Act of 1996*, HR 2391, 104th Cong.; *Working Families Flexibility Act of 1997*, HR 1, 105th Cong.; *Family Friendly Workplace Act of 1997*, S 4, 105th Cong.; *Working Families Flexibility Act of 1999*, HR 1380, 106th Cong.; *Family Friendly Workplace Act of 1999*, S 1241, 106th Cong.; *Workplace Flexibility Act of 2001*, S 624, 107th Cong.; *Working Families Flexibility Act of 2001*, HR 1982, 107th Cong.; *Family Time Flexibility Act of 2003*, HR 1119, 108th Cong.; and *Family-Friendly Workplace Act of 2007*, HR 6025, 110th Cong.

17. White House, Office of the Press Secretary, "Fact Sheet: America's Workforce—Ready for the 21st Century," <http://www.whitehouse.gov/news/releases/2004/08/20040805-6.html>, August 5, 2004, press release (accessed December 31 2007).

18. In 2004, in the 108th Congress, the bills were S 2520, introduced by Senator Ted Kennedy, and HR 4575, introduced by Congresswoman Rosa DeLauro. In 2005, in the 109th Congress, the bills were S 932, introduced by Senator Ted Kennedy, and HR 1902, introduced by Congresswoman Rosa DeLauro. In 2007, in the 110th Congress, the bills were S 910, introduced by Senator Ted Kennedy, and HR 1542, introduced by Congresswoman Rosa DeLauro.

19. See *Healthy Families Act of 2007*, S 910, 110th Cong., § 4(3)(B) for the definition of a covered employer, § 5(a) for the definition of provision of paid sick leave.

20. *Healthy Families Act of 2007*, S 910, 110th Cong., § 5(a)(2). See the National Partnership for Women and Families web site for ongoing updates on the Healthy Families Act (<http://www.nationalpartnership.org>, accessed September 4, 2007).

21. *Family Leave Insurance Act of 2007*, S 1681, 110th Cong. S 1681 was introduced by Senators Christopher Dodd and Ted Stevens.

22. The amount of paid leave is pegged to the employee's salary, with employees who make lower salaries receiving a greater percentage of their salaries in paid leave.

23. *Working Families Flexibility Act*, S 2419, 110th Cong., introduced by Senator Ted Kennedy, and HR 4301, 110th Cong., introduced by Congresswoman Carolyn Maloney.

24. *Working Families Flexibility Act*, S 2419, 110th Cong., § 3 and § 4(b)(A)-(B).

25. *Working Families Flexibility Act*, S 2419, 110th Cong., § 4(b)(C).

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26. Britain instituted a “right to request flexibility” policy in 2003 as part of the Work-Life Balance Campaign. The British experience with this approach serves as a model for legislation in the U.S. Karen Kornbluh, “The Joy of Flex,” *Washington Monthly*, December 2005, <http://www.washingtonmonthly.com/features/2005/0512.kornbluh.html> (accessed August 8, 2008).

27. A video of the testimony and a copy of the written transcript from the U.S. Senate HELP Committee’s February 13, 2007, hearing on the Healthy Families Act are available at http://www.help.senate.gov/Hearings/2007_02_13/2007_02_13.html (accessed September 4, 2008).

28. *National Defense Authorization Act for Fiscal Year 2008*, HR 4986, § 585; Jerry Geisel, “Congress Approves Bill to Expand FMLA for Military Families,” *Business Insurance*, January 23, 2008, http://www.businessinsurance.com/cgi-bin/news.pl?post_date=2008-01-23&id=12062 (accessed January 23, 2008).

29. *Federal Employees Paid Parental Leave Act of 2008*, HR 5781, 110th Cong.

30. President Bush threatened to veto the proposal, calling it “costly” and “unnecessary.” Executive Office of the President, “HR 5781—Federal Employees Paid Parental Leave Act of 2008,” June 17, 2008, Statement of Administration Policy, <http://www.whitehouse.gov/omb/legislative/sap/110-2/saphr5781-r.pdf> (accessed August 11, 2008).

31. For a list of states and bills under consideration, see <http://www.9to5.org/familyvaluesatwork/consortium.php> (accessed August 11, 2008). Three major groups involved in the Multi-State Working Families Consortium are the 9to5 National Association of Working Women, the NJ Time to Care Coalition, and the Labor Project for Working Families.

32. See http://www.nationalpartnership.org/site/PageServer?pagename=ourwork_pl_PaidLeave (accessed August 11, 2008).

33. Cal. Un. Ins. Code § 3301(a)(1). The legislation was enacted in 2002. Employee withholding began in January 2004 and benefits became available in June 2004.

34. Cal. Un. Ins. Code § 984.

35. Washington General Sess., 2007, Laws ESSB 5659, § 2 (2).

36. Washington General Sess., 2007, Laws ESSB 5659, § (6).

37. Washington General Sess., 2008, Laws ESHB 2687, §§ 227, 722.

38. New Jersey General Assembly, 2008, S. 786. 213th New Jersey Leg., Reg. Sess.

39. New York State Assembly, 2007, A. 9245 § 5(1)(B). New York Leg. Sess.

40. New York State Assembly, 2007, A. 9245. New York Leg. Sess.

41. The bill was delivered to the State Senate on June 22, 2007, but was not acted upon.

42. State of Illinois, 2007, HB 1683. 95th General Assembly.

43. The bill was re-referred to the Rules Committee on March 23, 2007. Bill Status of HB 1683, http://www.ilga.gov/legislation/BillStatus_pf.asp?DocNum=1683&DocTypeID=HB&LegID=30506&GAID=9&SessionID=51&GA=95 (accessed September 4, 2008).

44. San Francisco, California, 2007, Administrative Code ch. 12 W.

45. Council of the District of Columbia, 2008, *Accrued Sick and Safe Leave Act of 2008*, A17-0324.

46. State of Connecticut General Assembly, 2007, *An Act Mandating Employers to Provide Paid Sick Leave to Employees*, SB 601, January session; State of Maryland General Assembly, 2007, *Healthy Families and Healthy Workplaces Act*, HB 832/SB 828, 423rd Reg. Sess.; Massachusetts General Court, 2007, *An Act Establishing Paid Sick Days*, S 1073, 185th General Court, Reg. Sess.; State of Minnesota, 2007, *Healthy Families/Healthy Workplaces Act*, S.F. 1324/H.F. 1334, 85th Leg. Sess., Reg. Sess.; State of Missouri, 2007, *Healthy Families/Healthy Communities Act*, SB 637, 94th General Assembly, Reg. Sess.; State of Vermont, 2007–2008, *An Act Relating to Paid Sick Days*, H 337, Reg. Sess.; Washington, D.C., 2007, *Paid Sick and Safe Days Act of 2007*, Leg. B17-0197; Maine State Leg., 2007, *An Act to Care for Working Families*, LD 1454, 123rd Leg.; Florida State Leg., 2007, *Healthy Workers, Healthy Families Act*, SB 2192/HB 763, Reg. Sess.; General Assembly of North Carolina, 2007, *An Act to Establish Paid Sick Days to Ensure All Employees in North Carolina Can Address Their Own Health Needs and the Health Needs of Their Families*, HB 1711, Sess. 2007; General Assembly of Pennsylvania, 2007, *Healthy Families, Healthy Workplaces Act*, HB 1155, Sess. of 2007.

47. A review of the proposed legislation reveals the variety of approaches taken considering whether and to what extent to require small employers to provide paid time off, the maximum amount of paid time off that employers must provide per year, and the number of days an employee must work before becoming eligible. The proposals in Maryland, Minnesota, Missouri, and the District of Columbia allow small employers to provide fewer days of paid time off than large employers. Proposals in Massachusetts and Vermont require small employers to provide the same amount of paid time off as large employers. The Connecticut proposal exempts small employers (with fewer than 25 employees) entirely. And although all the state proposals require employees to accrue paid time off through working, they vary in how much total time off may be accrued per year. Most of the state proposals require large employers (defined, in all but Connecticut, as having 10 or more employees) to allow employees to accrue between 5 and 7 days off per year (Connecticut, Maryland, Minnesota, and Missouri), while the proposal in Washington, D.C., requires employers with 6 or more employees to permit employees to accrue up to 10 days per year. The proposals in Massachusetts and Vermont allow employees to accrue up to 7 days of paid time off per year, regardless of employer size. The state proposals (Maryland, Minnesota, and Missouri) with separate requirements for small employers (fewer than 10 employees) require small employers to provide up to approximately 3 days of paid time off per year, while the Washington, D.C., proposal requires small employers (fewer than 6 employees) to provide up to 5 days of paid time off per year. Concerning the number of days an employee must work for an employer to be eligible for paid time off (also known as job-tenure requirements), some of the bills permit paid time off as soon as it is accrued (Maryland, Massachusetts, Vermont), while others impose job-tenure requirements (Connecticut—120 days, Minnesota and Missouri—90 days, Washington, D.C.—60 days).

48. SB 836, 2007 Leg., 1st Sess. (Ca.).

49. “Caring for or supporting” means providing supervision or transportation; providing psychological or emotional comfort and support; addressing medical, educational, nutritional, hygienic, or safety needs; or attending to an illness, injury, or mental or physical disability. A “family member” is a child (a biological adopted or foster child; a stepchild; a legal ward; a son or daughter of a domestic partner; or a child to whom the person stands in loco parentis), parent (a biological, adoptive, or foster parent; a step-parent; a legal guardian; or another person who stood in loco parentis to the person when the person was a child), spouse, domestic partner, parent-in-law (parent to spouse or domestic partner), sibling, grandparent, or grandchild (SB 836, § 3).

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50. Senate Judiciary Committee Bill Analysis of SB 836, 2007 Leg., 1st Sess., at 10 (Ca.).
51. Arnold Schwarzenegger, SB 727 Veto Message, October 13, 2007, <http://gov.ca.gov/pdf/press/2007bills/SB%20727%20Veto%20Message.pdf> (accessed September 4, 2008).
52. For New York, see Bill Text Assembly 3214, 230th Leg., Reg. Sess. (N.Y. 2007) and Bill Analysis Assembly 3214 (banning employment discrimination based on “family responsibilities,” defined as the legal responsibility to care for a child); for Florida, SB 2628, 109th Legis., Reg. Sess.; and for Pennsylvania, HB 280, 2007 Legis., Reg. Sess. (both prohibiting employment discrimination based on “familial status,” defined as a caregiver having someone under 18 years old living with him or her, or his or her designee). For New Jersey, see Bill Text Assembly 2255, 212th Legis., Reg. Sess. (banning discrimination based on “familial status”). For New York City, Int. 565, 2007 Reg. Sess. (banning employment discrimination based on an individual’s “actual or perceived status as a caregiver,” defined as a person who is contributing to the ongoing care of a person in a dependent relationship with the caregiver).
53. The San Francisco law, the Healthy Families Act, and the bills requiring sick days pending in six states and the District of Columbia would all require that costs for time off be paid by the employer.
54. The California law funds its paid family leave program solely with employee premiums. The proposed New Jersey and New York laws follow the same model. By contrast, the proposed federal Family Leave Insurance Act and the proposed Illinois law fund the program through equal contributions from employers and employees.
55. MomsRising has encouraged a creative campaign of sending baby onesies with a message to legislators considering the bills described in this section. See <http://www.momsrising.org/powerofonesie/> (accessed January 1, 2008).
56. As Glass explains, the existing research cannot provide reassurance on the issues that matter most to employers: whether “work-family flexibility will not hurt them competitively either domestically or globally,” whether “work-family policies . . . will lessen rather than expand managerial problems with coordination and control over labor process (including retention of trained workers, coverage of all hours of operation, and customer or client service continuity),” and whether work-life policies “will be cost effective as employees age rather than create escalating numbers of beneficiaries and expenditures.”
57. Miguel Bustillo, “Paid Leave Bill Ignites Emotions,” *Los Angeles Times*, July 29, 2002, A1; Rebecca Vesely, “Paid Family Leave Could Become Reality in California,” *Women’s E-News*, August 29, 2002, <http://www.womensenews.org/article.cfm/dyn/aid/1021/> (accessed September 4, 2008); Mary Ann Milbourn, “California Paid Family Leave Legislation Moves Closer to Passage,” *Orange County Register*, August 28, 2002. (“Many business interests, including the California Chamber of Commerce, criticized the law as a ‘job killer’ that would particularly hurt small businesses.”)
58. For opposition in New Jersey, see, for example, Joan Verplanck, President, New Jersey Chamber of Commerce, testimony before the Senate Budget and Appropriations Committee regarding paid family leave S-2249, May 24, 2007; and Jim Leonard, Senior Vice President, New Jersey Chamber of Commerce, statement on paid leave, December 11, 2007, <http://www.njchamber.com/News/dec%2007%20pfl%20statement.asp> (accessed September 4, 2008). For opposition in New York, see, for example, NFIB/New York State Capitol Update, “Gov. Spitzer Pushes Mandated Family Leave Proposal,” June 8, 2007, http://www.nfib.com/object/IO_33781.html (accessed September 4, 2008); Thomas R.

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Minnick, Vice President, Human Resources, the Business Council of New York State Inc., testimony before New York Senate Committee on Labor, June 5, 2007, <http://www.bcny.org/inside/labor/2007/familyleavetestimony060507.pdf> (accessed September 4, 2008). For opposition in Illinois, where premiums would be funded by both employers and employees, see, for example, NFIB, "Paid Leave and Employee Termination Issues in Illinois," March 7, 2005, http://www.nfib.com/object/IO_20820.html (accessed September 4, 2008).

59. See, for example, Justin Marks, "Paying for Family Leave," *State Legislatures Magazine*, February 2003, <http://www.ncsl.org/programs/pubs/slmag/2003/203leave.htm> (accessed January 8, 2008). Some businesses are also concerned that once a system for funding is set up, they might be required to pay into the fund down the line. See NFIB, "Paid Leave and Employee Termination Issues in Illinois," March 7, 2005, http://www.nfib.com/object/IO_20820.html (accessed September 4, 2008).

60. See, for example, New Jersey Business and Industry Association, "Paid Family Leave Bill Impacting All Employers Is Back! Act Now to Stop It!" [http://www.votervoice.net/core.aspx?Screen=Alert&IssueID=12789&SessionID=\\$AID=175:SITEID=-1:VV_CULTURE=en-us:APP=GAC\\$](http://www.votervoice.net/core.aspx?Screen=Alert&IssueID=12789&SessionID=$AID=175:SITEID=-1:VV_CULTURE=en-us:APP=GAC$) (accessed January 29, 2008, now inactive).

61. See, for example, Bravo (2007), describing the concept of "identity theft" in which big business associations are not legitimately speaking for all businesses.

62. For example, in California, the paid family leave provision began with contributions from both employers and employees. It was only after the bill was changed to require contributions solely from employees that it passed. See Labor Project for Working Families (2003, 8–9). In Washington State, the paid family leave provision began with coverage for leave for a newborn or adopted child, as well as for one's own medical needs or those of a family member. It also required financial contributions from both employees and employers (State of Washington Leg., 2007, SB 5659). The enacted version dropped coverage of medical needs and punted completely on the financing mechanism; see Curt Woodward, "WA Paid Family Leave Becomes Law, Financing Uncertain," *Seattle Times*, May 8, 2007, http://seattletimes.nwsource.com/html/localnews/2003699128_webfamilyleave08.html (accessed September 4, 2008). In New Jersey, paid family leave was originally intended to cover 12 weeks without an exception for small businesses (NJ Assembly, 2000, No. 1577, *An Act Providing Family Disability Leave Benefits and Revising Various Parts of the Statutory Law*, 209th Sess.). The amount of time was reduced to 10 weeks, and that bill was passed by two committees before stalling (New Jersey General Assembly, 2007, *An Act Concerning Family Leave and Amending and Supplementing P.L. 1989, c. 261 A. 2437*, 212th New Jersey Leg., Reg. Sess.). The current bill provides for 6 weeks of paid leave. A small business exemption is still being considered.

63. The president of the Association of Washington Business criticized the proposed state paid family leave legislation as a costly, complex, and inefficient mandate. See Don Brunell, "Paid Family Leave Threatens Washington Employers," *Puget Sound Business Journal*, April 6, 2007, <http://seattle.bizjournals.com/seattle/stories/2007/04/09/editorial5.html> (accessed September 9, 2008). After the Washington legislature passed the legislation, the National Federation of Independent Business continued to urge its members to contact their state representatives to eliminate the program. See NFIB, "Family Leave in Washington," 2007, http://www.nfib.com/object/IO_32057.html (accessed September 4, 2008). In California, businesses bemoaned passage of the law. See Alan J. Liddle, "Industry Slams California's Move to Pioneer 55%-Paid Family Leave," *Nation's Restaurant News*, October 7, 2002, reprinted http://findarticles.com/p/articles/mi_m3190/

is_40_36/ai_92724138 (accessed September 4, 2008). And when the Governor of California, Arnold Schwarzenegger, vetoed two bills that would have expanded the family leave provision, he stressed the need to preserve an acceptable business environment in the state. See SB 727 Veto Message, October 13, 2007, <http://gov.ca.gov/pdf/press/2007bills/SB%20727%20Veto%20Message.pdf> (accessed September 4, 2008).

64. I received a small grant from the Alfred P. Sloan Foundation in summer 2002 to review all laws that might have an impact on workplace flexibility. As part of that review, I looked at all the bills that had been introduced in Congress over the previous 10 years addressing issues of workplace flexibility. Based on that review, I recommended the establishment of a new enterprise that would not yet have taken any positions on existing or proposed legislation. The Alfred P. Sloan Foundation funded an initial form of that enterprise, in November 2003, as the D.C. Workplace Flexibility Policy Initiative. After various modifications, that initiative became Workplace Flexibility 2010 in June 2004.

65. As an enterprise fully funded by the Alfred P. Sloan Foundation from 2004 until 2008, Workplace Flexibility 2010 is prohibited from lobbying. In other words, Workplace Flexibility 2010 does not support any specific piece of legislation in Congress, does not suggest any legislative proposals to Congress, and does no grassroots lobbying on any piece of legislation. With funds provided by the Sloan Foundation, Workplace Flexibility 2010 is limited to the development of policy ideas for general dissemination.

66. See bills in note 16.

67. See bills in note 16.

68. 143 *Cong. Rec.* S5406 (statement of Sen. Coverdell); 143 *Cong. Rec.* S 4508, S 4514 (Cloture Motion); 143 *Cong. Rec.* S 5290, S 5291 (Cloture Motion).

69. U.S. Congress, 1997, HR 191, 105th Cong.; 2001, *Family and Medical Leave Fairness Act and Time for Schools Act*, S 18, 107th Cong.; 2001, HR 1312, 107th Cong.; 2001, HR 2287, 107th Cong.; 2001, *Family and Medical Leave Enhancement Act*, HR 2784, 107th Cong. Several bills were also introduced to provide paid leave for federal employees or to provide states with grants for pilot programs providing paid leave. See, for example, U.S. Congress, 2000, *Federal Employees Paid Parental Leave Act*, HR 4567, 106th Cong.; and 2001, *Family Income to Respond to Significant Transitions Insurance Act*, HR 226, 107th Cong. In addition, during the Clinton presidency, a successful regulatory effort was made to allow states to use their unemployment compensation funds to allow for paid leave under the FMLA: Birth and Adoption Unemployment Compensation Rule, 20 C.F.R. Pt. 604 (2000), published at 65 Fed. Reg. 37210 (June 13, 2000). Members of the business community opposed this effort, arguing that it was a poor use of the unemployment compensation fund. See, for example, Wisconsin Manufacturers and Commerce, "Human Resources Committee Report MB," December 29, 2002, <http://www.wmc.org/display.cfm?ID=201> (accessed September 4, 2008). The economy worsened before any state chose to take advantage of the program and in October 2003, the Bush administration's Department of Labor rescinded the regulations. See 2003, *Unemployment Compensation—Trust Fund Integrity Rule: Birth and Adoption Unemployment Compensation, Removal of Regulations*, Final Rule, 68 Fed. Reg. 58,541.

70. See, for example, National Association of Manufacturers, "Family and Medical Leave Act (FMLA)," 2008, http://www.nam.org/s_nam/sec.asp?CID=390&DID=388 (accessed September 3, 2008). ("Numerous bills have been introduced to expand the FMLA for various purposes and to lower the threshold to employers with over 25 employees. The NAM opposes these bills.")

71. I had been actively involved in the development, drafting and negotiation of the Americans with Disabilities Act of 1990, which prohibits (among other things) discrimination on the basis of disability in employment (see Feldblum 2003). I have also been actively involved in the development, drafting and negotiation of the Employment Non-Discrimination Act, a bill that would prohibit discrimination on the basis of sexual orientation and gender identity in the workplace.

72. In 2002, the term “workplace flexibility” itself was also strongly associated, inside Washington political circles, with a single policy approach of providing compensatory time instead of overtime pay. But we made the deliberate decision to name our enterprise Workplace Flexibility 2010, with the explicit objective of shifting the public understanding of that term to encompass a broad range of employee *needs*, rather than one policy approach.

73. The basic contours of the definition were first developed by Kathleen Christensen, Anne Harrison Clark, and this author in 2002. They were then refined and agreed upon, through further conversations in 2003, with Ellen Galinsky of the Families and Work Institute, Marcie Pitt-Catsouphes of Boston College, and Patti Giglio of PSG Communications.

74. The identification and categorization of these new policy terms took place between 2004 and 2006, through the efforts of this author, Sharon Masling, Barbara Cammarata, and Katie Corrigan. We initially conceptualized workplace flexibility as consisting of six components: short-term time off, episodic time off, flexible working arrangements, reduced hours, extended time off, and career exit and reentry. In 2007, we reorganized these components into the three major categories set forth in the text.

75. For a more detailed description of FWAs, see Workplace Flexibility 2010 (2006a).

76. It was obviously a challenge for our policy researcher, Dr. Jean McGuire from Northeastern University, to compile data with regard to completely new terms that had not been used in any previous literature. Nevertheless, since the terms overlapped in some respects with other existing terms (e.g., sick leave, intermittent leave under the Family and Medical Leave Act, maternity and paternity leave, disability leave, etc.), Dr. McGuire and her team rose to the challenge and developed a set of fact sheets for each policy component. See Workplace Flexibility 2010 (2006b, 2007b, 2007c).

77. A number of the documents prepared during this process are available at <http://www.workplaceflexibility2010.org/> (accessed September 4, 2008).

78. See Workplace Flexibility 2010 (2006b, 2007b, 2007c) for extensive data on access to STO, EPTO, and EXTTO.

79. For example, a report issued by Corporate Voices for Working Families on “flexibility” in 2005 focused solely on FWAs (Corporate Voices 2005). Many of the companies surveyed probably offered some forms of paid STO, EPTO, and EXTTO, but these were not captured in the analysis. Through Workplace Flexibility 2010’s extensive education and engagement with the work-family field of researchers, we have been able to make some inroads into the scope of the definition of workplace flexibility. For example, a report issued by Corporate Voices for Working Families in 2006 on flexibility for low-income workers did discuss the need for STO, EPTO and EXTTO (Corporate Voices 2006).

80. For a description of concerns raised by employers regarding the intermittent leave provisions of the FMLA, see Workplace Flexibility 2010 (2007a).

81. See <http://www.law.georgetown.edu/workplaceflexibility2010/docs/SloanInitiative.pdf> for description of the National Initiative on Workplace Flexibility. See

<http://www.law.georgetown.edu/workplaceflexibility2010/funding.cfm> for links to employer-focused efforts within the initiative (both accessed January 28, 2008).

82. Phased retirement seemed to be a particularly promising route for our consensus-based enterprise, given that the AARP and the Society for Human Resource Management had just published a joint paper titled “Phased Retirement and Flexible Retirement Arrangements: Strategies for Retaining Skilled Workers” (2006). The report concluded that “employers cannot solve the challenges posed by shifting demographics and projected talent shortages on their own. The creation of alliances between employers, policymakers, human resource experts, and employees 50+ can help business forge innovative solutions that meet their core values and mission” (14).

83. See <http://www.law.georgetown.edu/workplaceflexibility2010/nac.cfm> for description of the National Advisory Commission on Workplace Flexibility (accessed September 4, 2008).

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