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BIPARTISAN SOLUTIONS TO WORK AND FAMILY BALANCE CHALLENGES

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America is the world's most entrepreneurial nation, giving tremendous opportunities to our own citizens and attracting business leaders from around the world who locate in the United States to realize the benefits of our dynamic labor force. Yet as recent cover stories in *Businessweek* and *Fortune* magazines indicate, American workers increasingly feel stressed about trying to balance their work and family commitments, and value working arrangements that can help them find balance.

When Americans talk about "workplace flexibility," different ideas come to mind. Employees think about flexible jobs that allow them to be productive at work while allowing them time to meet their family and community obligations. Employers, on the other hand, think of the relatively low regulatory burden U.S. labor laws impose and of the productive flexibility of the workforce.

This dichotomy of viewpoints is one reason why there has long been an impasse between left and right on work and family balance issues. The Family and Medical Leave Act (FMLA) became law in 1993 despite significant opposition. While some of its medical provisions could be improved, by and large the law has not had the negative consequences its opponents predicted. Likewise, the Bush Administration updated the nation's overtime regulations in 2004 despite significant opposition. Like FMLA, the new overtime regulations have not had the dire consequences that critics predicted. Yet these changes took many years to enact because of bitter opposition.

The lessons of FMLA and the overtime regulations demonstrate that any attempted changes in this policy area are likely to generate significant polarization, and that bipartisan ideas stand the best chance of success. Given the current political climate, any proposed changes in the area of work and family balance will need to be an improvement over the status quo for both workers and businesses in order to make any real progress in Washington. One-sided approaches that improve life for workers, but add cumbersome and costly burdens on

small and large businesses, will make little progress. On the other hand, politicians would be unwise to ignore voters' concerns about the need to better balance their work and family obligations.

Businesses and the market are making progress in providing flexibility for workers. What America needs is to maintain its workforce flexibility while enhancing the ability of workers to balance their work and family commitments. Government can help in several areas:

ENCOURAGE TELEWORK

Government should do more to provide incentives for workers to be productive from home. Technology is making it possible for many workers to work remotely. The mom who is able to be home at 3:30 when her child returns from school because she used her home computer to write a memo she emailed to the office; the engineer who conducts research over the internet while at an offsite meeting and then faxes the research to her colleagues; the architect who uses his hand-held Blackberry to review a proposal from home and then is able to attend his son's baseball game because he doesn't have to commute 45 minutes to get the memo to the office are all examples of how technology can allow workers in many occupations to better balance their obligations. The development and distribution of telework technology has the potential to reduce commute times, traffic congestion and car emissions, improve worker morale, help with continuity planning in case of a national emergency, and increase opportunities for the disabled in the workplace. Of course, not all industries are naturally conducive to telework. There are many manufacturing and customer service industries where physical presence in the office, warehouse or plant is required. However, nearly 40 percent of jobs are now telework compatible. An appropriate role for government would be to provide tax incentives and recognition to workers who use telework and to businesses that invest in remote technologies and allow their employees to take advantage of them. Senator Rick Santorum's "Telework Tax Incentive Act," which provides a \$500 credit to either employees or employers

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for the cost of telework equipment, as well as the bipartisan “Telecommuter Tax Fairness Act,” introduced by Representatives Shays, Davis and DeLauro and their Senate counterparts, and Senator Brownback’s “Parents Tax Relief Act,” all are good ideas that encourage telework.

SUPPORT PART-TIME WORK THROUGH CITIZEN-CENTERED HEALTH BENEFITS

The recent Social Security debate has drawn attention to a number of problems America faces as a result of the decreasing number of workers in the workforce supporting an ever increasing number of retirees. The result of this imbalance will be continued fiscal challenge for the nation. While immigration may help alleviate the problems caused by an aging population, current law does not permit a sufficient number of *skilled* workers that our economy needs the most. Ironically, America has large numbers of highly skilled, highly motivated workers, many of them women or seniors, who desire to contribute to the U.S. economy if they could only find part-time work. Many parents, particularly women with significant skills, sit on the sidelines of the U.S. economy because they cannot find part-time work to allow them to meet their family responsibilities. Moreover, the fastest growing segment of the population is seniors. Many seniors would prefer easing out of the workforce and staying involved rather than moving from full-time work to retirement.

Government should provide incentives for companies to offer part-time work and phased-retirement. One place for government to begin helping is through citizen-centered health benefits.

Both employers and employees would realize benefits if America shifted responsibility for providing health care insurance from employers to citizens. In the post-WW2 era, businesses began offering health benefits in order to attract workers. Placing the responsibility for benefits with businesses no longer makes sense in an era where workers switch jobs with increasing frequency, and where American businesses consistently list rising health care costs as one of the primary challenges to their making a profit and staying in business.

A better system would make individuals the owners of their health care insurance, much like their car insurance, through mandatory self-insurance. Government could help individuals based on their ability to pay. Such a system would increase individual control, lower system-wide costs, allow businesspeople to spend more time running their businesses, and increase workplace flexibility by allowing workers to change jobs, or work part-time, without having to worry about losing their health insurance if they switch employment.

MODERNIZE LABOR LAW

Most federal employment law was written for the industrial age. The primary statute governing wages and working conditions for Americans, the 1938 Fair Labor Standards Act (FLSA), was written during the Great

Depression, at a time when unemployment rates hovered around 30 percent. Thus, the law refers to “overtime penalties” that employers must pay—time and a half for each hour worked above the daily eight hours. FLSA mandated overtime pay and limited hours to encourage employers to hire more workers, reducing unemployment. Today, overall unemployment is not the problem and as *Businessweek* magazine’s October 3, 2005 and *Fortune* magazine’s December 5, 2005 cover stories indicate, America faces a different kind of “overtime” challenge today. Not only blue collar, but increasingly, middle class and upper middle class white collar workers, are working more hours than they would like.

Thus, overtime lawsuits are now the fastest growing employment lawsuits in America, and outdated work rules are at the heart of the phenomenon. FLSA distinguishes between two types of workers: “managers” (professionals and administrators) and “blue-collar” workers. In the economy of the 1930’s, this distinction made sense. Managers often worked in offices, were paid salaries and were ineligible for overtime, while workers who made products on the factory assembly line were eligible for overtime. Today, however, a minority of workers fit the model of the industrial age. In the 21st century, the explosion of the service sector has created more positions where workers produce products, while having professional skills or while managing some part of a project. The distinction between managers and factory workers has blurred, making it difficult for businesses to determine who is entitled to overtime. Many employers misclassify workers, who sue to recover overtime, forcing the courts to determine who’s eligible and who isn’t. Rather than nip around the margins, labor law should be fundamentally updated for 21st century workers and families. The Department of Labor’s revised regulations of 2004 were a good start, but the statutes and regulations should be updated even further. In the 21st century economy, artificial distinctions between workers and managers, hourly and non hourly workers, could be eliminated. A worker’s eligibility for overtime could be determined by something other than outdated job classification, and workers could be allowed to take their earned overtime in cash or time off from work to spend more time with family. Strict penalties should discourage employers from pressuring workers to take time off instead of cash. However, workers should be allowed to earn more time off than they can today, to have more control over how they receive their overtime and there should be significantly simpler rules and eligibility requirements. This direction would provide workers with work flexibility in a way that strengthens the economy.

USE THE BULLY PULPIT

Americans would benefit from a conversation about life choices, limits, and flexibility. Most of the discussion within advocacy circles about work and family balance is about policy proposals, as well it should be. However, policy alone will not completely solve the problem. Even if reforms gave Americans significantly more time away from work requirements, many Americans would use their free time to find more ways to labor. We have trouble saying “no.” We want it “all,” and do not like to

set boundaries on our lives. Technology and policy can help reduce some of the pressures felt by some workers, but neither is a cure-all. Particularly for many middle and upper middle class families, one factor in the work/family problem is philosophical. Many people are addicted to consumption and do not mind sacrificing the welfare of their families and the quality of their lives to get what they want. That is not good for our communities or our country. It was thought in the 1950's that time-saving technology would make it possible for future Americans to accomplish a day's work by noon and to have much more leisure time. However, we have allowed technology to add work and we have continued to drive ourselves to produce more and more and to fill up the time we have. Technology and telecommuting provide critical solutions, but these solutions only work if Americans have the discipline to put down their Blackberries and turn off their computers during family times. It is what Celinda Lake and Kellyanne Conway refer to as "techno-etiquette." Policy discussions about quality of life should include a broader conversation about the choices Americans make about the quality of their lives.

Moreover, engaging in a conversation about choices and quality of life could make employees feel more comfortable asking for more flexibility in their jobs. Many employers would be willing to allow some flexibility in working arrangements or for workers to take time for a family event, if they are asked. Employers' surveys consistently show that it is the lack of notice that creates the biggest problems for employers who have to scramble when people do not show up, as well as for other employers who have to cover for the absent ones. To borrow from the well-known AFLAC commercials, the discussion might ensure—"flexibility, employees should ask about it at work." Employees would be surprised at how often such requests would be granted. Government can use the bully pulpit to express the idea that employees who need time should request it and that employers should be applauded for granting it. Government should help employers and employees realize that they should not be afraid to discuss how working schedules can be molded to best meet the needs of both parties.