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HEARING ON

“H.R. 1406, THE WORKING FAMILIES FLEXIBILITY ACT”

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Introduction

Good morning Chairman Walberg, Ranking Member Courtney, and distinguished members of the committee. My name is Juanita Phillips, and I am Director of Human Resources at Intuitive Research and Technology Corporation (*INTUITIVE*) at our company headquarters in Huntsville, Alabama. I am pleased to appear before you today on behalf of the Society for Human Resource Management (SHRM), of which I have been a member for nearly 20 years. I am also a member of the North Alabama SHRM Chapter and the Alabama State Council. Thank you for this opportunity to testify before the Subcommittee on H.R. 1406, the Working Families Flexibility Act of 2013.

By way of introduction, I have over 25 years of experience in HR at a publishing company, engine manufacturing company and several federal government contractors. I've served in HR roles in both collective bargaining and non-unionized environments.

SHRM is the world's largest association devoted to human resource (HR) management. Representing more than 260,000 members in over 140 countries, the Society serves the needs of HR professionals and advances the interests of the HR profession. Founded in 1948, SHRM has more than 575 affiliated chapters within the United States and subsidiary offices in China and India.

INTUITIVE is an engineering and analytical services firm begun in 1999 with one contract and two employees. Our two owners are very active leaders in the company, who sit next door and down the hall from me. We have 275 employees; all but about a dozen work within Alabama. It is not easy to get a job with *INTUITIVE*; we put a great deal of effort into our hiring processes, as we are not hiring a person for a specific job but are choosing someone to be part of our company. We then put a great deal of thought and planning into how we will keep those people and are very proud of our 94% retention rate. Each full-time employee has a written plan of what they would like to accomplish professionally, and I touch base with each manager quarterly to talk about progress toward those plans. In the 14 years we have been in business, we have not laid off anyone due to lack of work. We are 30% veterans, 15% disabled, 25% retired from elsewhere, and 10% co-ops, interns and student hires.

I believe our workplace flexibility practices are a major reason why *INTUITIVE* has been recognized with numerous "best in class" awards, which I outline later in my testimony. My company's policies and programs to support employees' work-life needs help improve engagement and morale, increase productivity, retain top performers, and, ultimately, improve business performance at *INTUITIVE*. As a result, we are always looking for additional opportunities to provide employees with flexibility, and the bill we are here to discuss today would do just that.

In my testimony, I will outline my strong support for H.R. 1406, the Working Families Flexibility Act of 2013, share with you some workplace flexibility practices at my company, and offer SHRM's workplace flexibility policy recommendations for Congress.

Background on Compensatory Time

In 1938, Congress passed the Fair Labor Standards Act (FLSA). Among the act's provisions was the requirement that hours of work by non-exempt employees beyond 40 hours in a seven-day period must be compensated at a rate of 1 ½ times the employee's regular rate of pay. In 1978, Congress passed a temporary bill, the Federal Employees Flexible and Compressed Work Schedules Act, which changed the FLSA, authorizing compensatory (or comp) time for federal employees. In 1985 the Federal Employees Flexible and Compressed Work Schedules Act was reauthorized and made permanent. At the same time, Congress amended the FLSA to expand coverage requirements to include state and local agencies and their employees. During that same year, the choice to select comp time in lieu of overtime compensation was expanded to state and local agencies and their employees.

As you can see, the concept of giving employees the choice to select paid time off in lieu of cash wages is nothing new – it has been an option widely available to federal employees for 35 years and, by all accounts, it has worked well. While the U.S. House of Representatives passed comp time legislation during the 106th Congress, the bill unfortunately stalled in the U.S. Senate. In 2003, the Committee on Education and the Workforce favorably reported comp time legislation, but the full House did not consider the proposal.

Since comp time has worked well within the public sector at the state and federal level for nearly three decades, it is troubling that Congress has not extended this same benefit to hardworking private-sector employees who contribute equally to the nation's workforce and economy. Mr. Chairman, the time has come for Congress to approve legislation to give private-sector non-exempt employees the opportunity to choose for themselves whether to receive cash wages or paid time off for working overtime.

Need for Compensatory Time

The FLSA was enacted toward the end of the Great Depression and reflects the realities of the industrial workplace of the 1930s, not the workplace of the 21st century. Regrettably, the Act itself and its implementing regulations have remained relatively unchanged in the 75 years since its enactment, despite the dramatic workforce and workplace transformations that have occurred during this time.

The increased diversity and complexity within the American workforce – combined with global competition in a 24/7 economy – is driving the need for more workplace flexibility. C-suite executives, for example, say the biggest threat to their

organizations' success is attracting and retaining top talent.¹ Human resource professionals believe the best way to attract and retain the best people is to provide workplace flexibility.² Moreover, a large majority of employees – 87 percent – report that flexibility in their jobs would be “extremely” or “very” important in deciding whether to take a new job.³

Employees in the 21st century workforce face significant challenges as they pursue an optimal work-life fit. For example, a 2011 report from SHRM and the Families and Work Institute found that a growing number of employees report not having enough time for themselves or to spend with loved ones. According to *Workplace Flexibility in the United States: A Status Report*, women's responsibilities at work and men's responsibilities at home have increased, resulting in more feelings of work-family conflict among both male and female employees. More than 60 percent of wage and salaried employees feel they do not have enough time to be with their children, their spouses/partners, and to spend on themselves. Managing work, along with personal and family responsibilities, in other words, has resulted in a “time famine.”

Consider too that four in five of all employees who are married are in dual earner households and that one of every five employees currently provides elder care. There is no doubt that employees today are juggling ever more responsibilities between work and home, which is why many employees are requesting more flexibility at work. Therefore, public-policy proposals that encourage or allow employers to offer voluntary work-life options are welcomed.

H.R. 1406, the Working Families Flexibility Act of 2013

SHRM commends Representative Martha Roby (R-AL) for introducing H.R. 1406, the Working Families Flexibility Act of 2013. On a personal note, I am particularly pleased to speak in support of this bill today given its sponsor, Representative Roby, is from my home state of Alabama.

H.R. 1406 would modernize the application of the FLSA to the private sector by permitting employers to offer their employees the *voluntary* choice of taking overtime in cash payments, as they do today, or in the form of paid time off from work.

Just as with overtime payments, paid time off would accrue at a rate of 1 ½ hours for each hour of overtime worked. Employees would be able to accrue up to 160 hours of comp time per year, although an employer could choose to “cash out”

¹ Company of the Future Study (2010). Society for Human Resource Management and the Economist Intelligence Unit.

² Challenges Facing Organizations and HR in the Next 10 Years (2010). Society for Human Resource Management.

³ National Study of the Changing Workforce (2008). Families and Work Institute.

the comp time after 80 hours after providing the employee with 30 days of notice. An employer would also be required to cash out any unused comp time at year's end at the higher of the regular time and a half rate at which time was earned or the final regular rate.

The Working Families Flexibility Act also includes important employee protections. For example, employees can *choose* whether or not to even participate in a comp time arrangement, giving employees choice and control. Under the bill, an employee must **voluntarily** enter into a written comp time arrangement with the employers. Any employer coercion is prohibited as is conditioning employment based on participation in a comp time program. These rights may be enforced in the same way as other rights and protections of the Fair Labor Standards Act. It is also important to note that this legislation does not affect the 40-hour workweek or change the way that overtime is calculated.

Providing this comp time option would allow employees the opportunity to build a bank of time that they can use to take paid time off when they need it, provided the time off does not unduly disrupt the business operations of the employer. If the employee chooses a comp time arrangement but later prefers to receive cash wages for overtime hours worked, the employee can discontinue the comp time program by giving the employer written notice. Compensatory time off as a workplace option gives non-exempt employees more control over their time and can improve employee morale and job satisfaction and increase productivity by giving employees the option of increased flexibility.

On a personal note, as I mentioned previously, my company is a federal government contractor, which means I have non-exempt *INTUITIVE* employees working side-by-side with federal government non-exempt employees. Mr. Chairman, it is incredibly difficult to explain to my employees why they cannot take comp time, while the government employees they work alongside can. Why would this arrangement be illegal for *INTUITIVE's* employees but not only legal but available to government employees? This defies logic to them and frankly, to me too.

Therefore, I am pleased to join SHRM and its 260,000 members in strong support of H.R. 1406 and urge this committee to advance this important legislation for consideration by the House of Representatives.

Workplace Flexibility at *INTUITIVE*

As I mentioned above, *INTUITIVE* is committed to a workplace culture that supports the personal development and work-life needs of its employees, which has helped us achieve a 94% retention rate, a rarity in our industry. As a small company (currently 275 employees), we are very creative in providing employee benefits and workplace flexibility options.

We are honored to have been named the #2 Best Small Company to Work for in the U.S. in 2011 and 2012 by the Great Place to Work Institute (2/3 of scoring based on anonymous online employee surveys), and to have been ranked #2 in the Best for Vets Award given by the Military Times *Edge Magazine* for 2012.

In 2012, *INTUITIVE* was the only company in North Alabama to be recognized for the fifth year in a row as one of the Best Places to Work in Huntsville, Alabama, (entirely based on anonymous on-line employee surveys) by the Huntsville/Madison County Chamber of Commerce, the North Alabama Society for Human Resource Management and the National Children's Advocacy Center. We also won the Family Friendly Award for Huntsville, and we have appeared in AARP's Top 50 Employers in the U.S. for Workers over 50 three years in a row.

These awards are evidence of the programs and overall approach we take at *INTUITIVE* to helping our people navigate home and work demands.

Having the ability to design our workplace practices in ways that support our mission and values, and that develop and fulfill our employees, is critical to us. Employers like ours want to be able to continue to manage our workplace in ways that work for us and that provide us these outcomes. It is of utmost importance to us to inspire and engage our employees. Our 94% retention rate of employees, and a greater than 1,330% increase in the number of applicants in the last few years both can be greatly attributed to our employees feeling that their work is more than just a job. In fact, the "wall words" on the wall in the HR department read:

"Nothing sells our company like the stories of engaged workers who take pride in where they work."

Here are some of the components of *INTUITIVE*'s approach to workplace flexibility:

Flexibility – One of the key components for helping employees navigate work and home is being able to offer flexibility in work hours. Because we serve many customers that have differing approaches to work hours, we are generally able to match up candidates and employees with the type of flexibility they need. This can sometimes even be done on a temporary basis, when an employee has such a need. We have full-time and part-time positions, and a "provisional" category. This is a category for those who don't fit the other two – such as those who work full-time for periods of time and then part-time for periods of time, those who work on a couple of projects per year and don't work in between, those whose hours are sporadic, and are co-ops, interns, and student hires. We also have employees who have compressed workweeks and some who telecommute, and we offer job sharing and phased retirement. Our full-time exempt employees just have to get 80 hours in during the two-week pay period, providing them with flexibility for appointments, school activities, etc. Our non-exempt employees, even though they are full-time, do

not currently have this flexibility as it is illegal under the FLSA. Employees can work better and live well when such options are available.

PTO – We offer Paid Time Off (PTO) leave, which is a combination of vacation and sick leave. The amount of PTO an employee receives is above the average in our area per Chamber of Commerce-sponsored wage and benefit surveys. Under our plan, new employees receive 15 PTO days per year accrued per pay period and available for use immediately, and employees reach 20 days of PTO at three years of service. The PTO approach to providing leave is consistent with treating employees as adults; they manage their time-off balance however they wish without keeping track of multiple banks of leave or needing excuses to suffice requirements for certain types of leave. Additionally, there are no issues over whether sick leave covers caring for a child or a relative, etc. PTO can be used for any reason, and no documentation is required. In addition, along with our monetary bonus programs, we also have the option of rewarding employees with bonuses or providing employees with additional PTO, especially those employees who have circumstances for which they may appreciate additional PTO days more than money. Overall, providing our employees PTO leave contributes positively to our professional environment.

Additional Paid Leave for the Flu – We don't want flu to be spread among employees, and so we provide unlimited paid leave to any employee who has the flu or if anyone in their household has the flu. This leave does not count against their PTO balance and we require no documentation. Because of the type of workforce we have and because of our company culture, no one in the company abuses this practice; it works great.

Holidays – Another way we provide flexibility to our employees is that *INTUITIVE* makes all ten of our holidays floatable. If employees prefer to work any particular holiday, they may do so as long as their workplace is open that day and they have supervisory approval. All earned holidays simply must be used before the end of the calendar year. This approach is valuable to employees in that it provides them with flexibility for scheduling time off, and for making their holidays coincide or alternate with a working spouse's holidays, depending on their needs.

Veterans Programs and VIP Leave – I mentioned that *INTUITIVE* was named the #2 Best for Vets Award winner among employers, according to Military Times' *Edge Magazine* in 2011. *INTUITIVE* has a very active veterans' network within the company, and a very robust veterans program, including each new-hire vet getting to meet our VIP (Veterans Information Program) Contact Coordinator on their first day and then being connected to a veteran within the company with whom they have something in common. We have a VIP site on our employee portal page (intranet), which is dedicated entirely to information and resources for our veterans. One component of our VIP program is VIP leave, which provides up to three days off with pay per year for appointments at a VA hospital or for a family member's mid-tour return visit. Additionally, activated reservists are given the

difference between their military pay and their civilian pay for up to 6 months. And we love calling our vets “VIPs.”

Elder Care Benefit – Employees who are also caregivers are becoming more and more common, as some of the generations in our workplace are not only taking care of children, but are also taking care of aging loved ones. We are proud to have an elder care benefit that provides each employee with a free 45-minute consultation each year with experts in the field of elder care, and provides discounts on further services. This benefit also includes four Lunch ‘n Learns annually on various elder care topics, which a spouse or family member may also attend. A Lunch ‘n Learn is also provided for managers on the topic of supervising caregivers. The information shared is excellent; the resources are much appreciated, and it is a further program that assists employees with managing their personal or family life and work.

Parental Leave – Our short-term disability (provided to all full-time employees at no cost, and available for purchase by non-FT employees) provides 70% of regular pay for up to 11 weeks. That benefit covers moms, and when dads plan time off for a birth or adoption, they generally have saved enough leave for the event. When moms or dads are short we often find a performance event for which to bonus them with additional PTO. We also provide an Adoption Benefit, which is a monetary benefit upon completion of a successful adoption in which neither adopting parent is the biological parent. Due to our generous short-term disability policy and bonus practices, no one has had to rely on Family and Medical Leave Act coverage in the 14-year life of the company.

Disability Insurance – In addition to the short-term disability described above, the company provides long-term disability to all full-time employees and makes it available for purchase to non-FT employees.

Daycare – We are purposely located next door to two daycare facilities. Several of our employees use those daycare facilities because of the proximity to our facility, making their daily life a bit easier. One employee could for a time look out her window and see her son on the playground.

Along with enhancing work-life balance for everyone, our work schedule flexibility is especially attractive to retirees. We have many employees who have previously retired, but come to work for us because they have exactly the skills we need to support specific customers and still want to make a difference. Our structure allows us to be able to provide the flexibility they often want. In fact, 25% of our employees are retired from elsewhere, and 8% are using our phased retirement approach. Overall, 30% of our workforce has flexible start and stop times, 10% have a compressed workweek; and 4% work from home. We believe all of these practices contribute to our ability to attract, hire, and retain the best talent.

Mr. Chairman, all of these practices are voluntary. We don’t have to offer these benefits at *INTUITIVE*, but we do because they work well for our employees

and help us attract and retain the best people. However, if *INTUITIVE*'s benefits were forced onto another employer in Huntsville, or across the state or the country, these benefits might not work as well for them given that every workforce is unique.

That's why this bill's (H.R. 1406) voluntary approach to comp time for employers and employees is so important. If enacted, this bill would give employers the **option** of offering a comp time program and employees the **choice** of whether to participate in the comp time arrangement. Under current law, private-sector employers and employees are without this option and this choice – an option and choice that their government counterparts have enjoyed for more than 30 years.

SHRM's Recommendations for a 21st Century Workplace Flexibility Policy

HR professionals are on the front lines of devising workplace strategies to create effective and flexible organizations. As such, SHRM and its members have given careful consideration to the role public policy can play in advancing the adoption of workplace flexibility. It is our strong belief that public policy must not hinder an employer's ability to provide flexible work options. Rather, public policy should incentivize and enhance the voluntary employer adoption of workplace flexibility programs.

We are pleased to support H.R. 1406 because it meets this important threshold. The Working Families Flexibility Act of 2013 would provide private-sector employers with an additional flexibility offering for their non-exempt employees. Would every private-sector employer adopt a comp time program if H.R. 1406 were enacted? Given the diversity of private-sector employers, certainly not, but many organizations would offer comp time to give employees more flexibility, and HR professionals believe that providing this option is a step in the right direction.

Allowing comp time in the private sector is only one part of the solution, however. SHRM and its members believe the United States must have a 21st Century workplace flexibility policy that reflects the nature of today's workforce, and that meets the needs of *both* employees and employers. It should enable employees to navigate their work and personal needs while providing predictability and stability to employers. Most importantly, such an approach must encourage employers to offer greater flexibility, creativity and innovation to meet the needs of their employees and their families. While the Working Families Flexibility Act of 2013 certainly meets these criteria, more needs to be done.

In 2009, SHRM developed a set of five principles to help guide the creation of a new workplace flexibility statute. In essence, SHRM believes that all employers should be encouraged to provide paid leave for illness, vacation and personal days to accommodate the needs of employees and their family members. In return for meeting a minimum eligibility requirement, employers who choose to provide paid leave would be considered to have satisfied federal, state and local requirements

and would qualify for a statutorily defined “safe harbor.” The principles are as follows:

Shared Needs – SHRM envisions a “safe harbor” standard where employers voluntarily provide a specified number of paid leave days for employees to use for any purpose, consistent with the employer’s policies or collective bargaining agreements. A federal policy should:

- Provide certainty, predictability and accountability for employees and employers.
- Encourage employers to offer paid leave under a uniform and coordinated set of rules that would replace and simplify the confusing – and often conflicting – existing patchwork of regulations.
- Create administrative and compliance incentives for employers who offer paid leave by offering them a safe-harbor standard that would facilitate compliance and save on administrative costs.
- Allow for different work environments, union representation, industries and organizational size.
- Permit employers that voluntarily meet safe harbor leave standards to satisfy federal, state and local leave requirements.

Employee Leave – Employers should be encouraged voluntarily to provide paid leave to help employees meet work and personal life obligations through the safe-harbor leave standard. A federal policy should:

- Encourage employers to offer employees some level of paid leave that meets minimum eligibility requirements as allowed under the employer’s safe-harbor plan.
- Allow the employee to use the leave for illness, vacation, personal and family needs.
- Require employers to create a plan document, made available to all eligible employees, that fulfills the requirements of the safe harbor.
- Require the employer to attest to the U.S. Department of Labor that the plan meets the safe-harbor requirements.

Flexibility – A federal workplace leave policy should encourage maximum flexibility for both employees and employers. A federal policy should:

- Permit the leave requirement to be satisfied by following the policies and parameters of an employer plan or collective bargaining agreement, where applicable, consistent with the safe-harbor provisions.
- Provide employers with predictability and stability in workforce operations.
- Provide employees with the predictability and stability necessary to meet personal needs.

Scalability – A federal workplace leave policy must avoid a mandated one-size-fits-all approach and instead recognize that paid leave offerings should accommodate

the increasing diversity in workforce needs and environments. A federal policy should:

- Allow leave benefits to be scaled to the number of employees at an organization; the organization's type of operations; talent and staffing availability; market and competitive forces; and collective bargaining arrangements.
- Provide pro-rated leave benefits to full- and part-time employees as applicable under the employer plan, which is tailored to the specific workforce needs and consistent with the safe harbor.

Flexible Work Options – Employees and employers can benefit from a public policy that meets the diverse needs of the workplace in supporting and encouraging flexible work options such as telecommuting, flexible work arrangements, job sharing and compressed or reduced schedules. Federal statutes that impede these offerings should be updated to provide employers and employees with maximum flexibility to navigate work and personal needs. A federal policy should:

- Amend federal law to allow employees to manage work and family needs through flexible work options such as telecommuting, comp time, flextime, part-time, job sharing and compressed or reduced schedules.
- Permit employees to choose either earning compensatory time off for work hours beyond the established workweek, or overtime wages.
- Clarify federal law to strengthen existing leave statutes to ensure they work for both employees and employers.

Conclusion

In the global, 21st century economy, workplace flexibility policies help both multinational corporations and small businesses meet the needs of their employees. At its core, workplace flexibility is about improving business results by providing employees with more *control* over how, when and where work gets done. H.R. 1406 would give private-sector non-exempt employees more *control* by giving them the option of paid time off in lieu of cash wages for overtime hours worked.

My company and employers across the country would appreciate the option of allowing for comp time as a way to help employees better meet their work-life needs. For over 30 years, comp time has had a successful track record for federal employees and it's time to extend this benefit choice to employees in the private sector.

SHRM remains committed to working with the Subcommittee and Members of Congress to ensure employers can continue to provide workplace flexibility strategies in a manner that does not threaten existing benefits or create unnecessary and counterproductive regulations. We believe it's time to pursue a new approach to this issue absent of rigid, unworkable mandates which result in unfavorable unintended consequences. It's time to give employees greater flexibility and to give employers more predictability.

Thank you. I am happy to answer any questions you may have.