



November 10, 2009

The Honorable George Miller  
Chairman  
Education and Labor Committee  
House of Representatives  
355 Dirksen Senate Office Building  
Washington, DC 20515

Dear Chairman Miller:

On behalf of the National Small Business Association (NSBA), I am writing in opposition to the *Emergency Influenza Containment Act of 2009* (H.R. 3991). The impetus behind this legislation is not sensible and lacks understanding of the complex dynamics of small businesses.

NSBA is the nation's oldest small-business advocacy group representing employers in every state. As an organization, we represent all sectors and industries of the U.S. economy from retail to trade to technology—our members are as diverse as the economy which they fuel. More than one in two people in the U.S. private workforce—an estimated 70 million—work for or run a small business, according to data from the U.S. Small Business Administration Office of Advocacy and U.S. Census Bureau. Small business comprises 99.7 of all U.S. private employers, or 29.6 million businesses, and creates more than half of U.S. gross domestic product.

H.R. 3991 would require employers who send employees home, or tell them to stay home due to symptoms of a contagious illness, or because they have been in close contact with a person who has a contagious illness, to pay the employees sick leave for each workday the employee is out of work, up to a maximum of five workdays during a 12-month period. The bill would apply to any employer with more than 15 employees, and to all full and part-time employees. The Act would take effect 15 days after it is signed into law and would expire in two years.

There is no doubt that H1N1, or swine flu, is a potential threat to our nation's small businesses. The Centers for Disease Control and Prevention have acknowledged that flu activity is widespread in 48 states. The CDC also notes a significant increase in flu-related hospitalizations and deaths thus far this year vis-à-vis this time last year. Despite the clear signs of a pending pandemic that emerged in spring 2008, our public health infrastructure remains incapable of handling the current needs of our society. Only certain individuals are eligible for H1N1 vaccination, and even those are often waiting hours in line to get vaccinated. While vaccination production and distribution have improved in recent weeks,

individuals outside of the “high-risk” populations – many of which work for small businesses – remain vulnerable.

Similar to any other flu season, small-business employers are sensitive to the threats of H1N1. In fact, the old cliché of small-business owners and their employees being a family is never truer than in times of an employee’s ill-health. An employer’s greatest asset is their employees, and it doesn’t take a public health official to tell a small-business owner that the flu can spread and cripple their business. There are pragmatic approaches to address the threats presenting by H1N1, but H.R. 3991 is not the answer.

With so much economic pressure on the shoulders of our nation’s small businesses, it is unfathomable that Congress would consider legislation mandating additional costly requirements on small businesses. H.R. 3991 comes on top of 10 percent unemployment rates and economic challenges that, in combination with mandated sick leave, pose dire consequences for the job-creation role of small businesses. Moreover, the vast majority of employers voluntarily offer generous paid leave benefits. According to the Department of Labor, 82 percent of private employers currently offer some form of paid leave to their workforce.

While there is clearly a need to offer support and preparation for the pending flu season, there are more suitable and efficient public policies to pursue rather than mandated sick leave. First, greater focus and attention should be paid to the education and preparation for flu season. Publicizing personal hygiene best practices and other public health related information can go a long way to prevent the spread of H1N1 in the workplace. NSBA has been working to provide this kind of critical information to our members via our Web site for the past several months.

NSBA recently provided comments to a Senate work group on workplace flexibility, and is strongly supportive of their efforts to develop consensus-based, bipartisan solutions that work for both employers and employees. Part of NSBA recommendations focused on flexible working arrangements, such as flexible scheduling and paid time off (PTO). Flexible scheduling can ease the burden of unpredictable illness of employees and family members, and PTO can undermine the potential for abuse of dedicated paid sick leave policies, such as H.R. 3991.

NSBA looks forward to the opportunity to work with you so as to explore policy options and educate small-business owners, their employees, and their families in preparation for the pending flu season.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd McCracken". The signature is stylized with a large, sweeping initial "T" and "M".

Todd O. McCracken  
President