



Senate Labor and Industry Committee

January 28, 2020

SB 580: PA Family & Medical Leave Insurance Program

Good morning, Chairman Bartolotta, Chairman Tartaglione, and members of the committee. My name is Rebecca Oylar, and I am the Legislative Director for the National Federation of Independent Business (NFIB) in Pennsylvania. NFIB is the premier small business advocacy organization with about 13,000 members in Pennsylvania and approximately 300,000 members nationwide. We appreciate your allowing us to be here today to speak on behalf of Pennsylvania's small businesses on SB 580, which would establish a family and medical leave insurance program in Pennsylvania.

SB 580 would tax all workers in the state to fund a paid family and medical leave program, providing up to 12 weeks, and in certain cases related to birth or adoption, up to 20 weeks a year. Every employee and every business, even those with one or two employees, would be required to comply.

Small employers make up an enormous segment of the state's business community. More than 99% percent of Pennsylvania's businesses are small. These businesses are responsible for almost half of the private sector workforce, and they create two out of every three *new* jobs. They are truly the engine of economic growth in the state and in their local communities.

But because of their size, small businesses are highly sensitive to government rules, particularly those that affect the relationships they have with their employees, as SB 580 would. NFIB believes that too little consideration has been given to the downsides of this proposal. Compliance will have costs, and small businesses and their employees will be particularly hard-hit. We appreciate the opportunity to bring these costs to light today. I will focus on two main areas: 1) loss of needed flexibility for small businesses and their employees and 2) costs incurred by small businesses that need to manage without one an employee for an extended period of time.

The vast majority of small business owners treat their employees like their extended family. They work hard to do what is right, but their informal and unstructured nature and more limited financial resources require greater flexibility in creating policies and solutions. Along these lines, small businesses are leaders in providing flexible working arrangements, a key benefit for many workers who choose to work for a small employer.

Our first concern with the bill is that it will limit the value of the workplace flexibility that benefits many small businesses and their employees. In a small business, *every* employee is essential, and owners want to keep them happy. Studies have shown that small businesses are more likely than larger employers to offer flexible work arrangements, such as: allowing employees to return to work gradually after childbirth or adoption, changing starting and quitting times, working from home occasionally, and taking time off during the workday to attend to important personal needs without loss of pay.¹ Many of these flexible work arrangements

¹ <http://familiesandwork.org/downloads/2014NationalStudyOfEmployers.pdf>

increase employee satisfaction, keep workers connected to their livelihood, and in fact, already provide paid leave.

Mandating that all employees pay a tax toward the state paid leave program ensures that they will feel they have to take advantage of the system when they can, even if they may be able to work out a flexible arrangement with their employer that meets the needs of both parties.

Further, advocates maintain that, because the tax to fund the new program is levied only on workers and not directly on businesses, employers would have no additional costs. This is simply not the case for small businesses, which will incur many indirect costs. When their employees feel they must take leave, small businesses will have to deal with their absence.

Most small businesses with just a few employees will need to hire a replacement for an employee who takes leave for 12 to 20 weeks. This is especially true for employees whose jobs are specialized or require specific credentials. For example, if a construction business has a worker with a special safety certification to operate heavy equipment, it may be possible for the owner who has that credential to fill in for a short time, but probably not for 12 weeks.

And if a replacement is not available, small business owners may struggle to keep the doors open and the lights on with one or more employees out. Unlike big businesses, small employers have more trouble shifting staff resources when a worker is out, and they are less likely to be able to manage added costs. As a result, this bill would put small businesses at a competitive disadvantage.

Businesses that are seasonal or have a workload that varies throughout the year would be hard-pressed to manage if their employee's leave comes at an inopportune time. For example, a landscaping business with a full spring schedule and only a few workers will have trouble keeping up and may lose customers and struggle to make payroll if they can't find a skilled replacement for a worker on leave. The problem is exacerbated by the fact that employees can take leave intermittently, which will make it especially hard for small businesses to plan ahead and cover needed hours.

Finding and training a short-term replacement will be costly and likely very difficult. Paying a temporary worker is one thing, but under the proposal, employers will need to continue to cover employee benefits for the worker out as well. There are also indirect costs, including staff productivity time lost when other team members have to cover for the employee, finding a replacement, and training and bringing new hires up to speed. These costs are not insignificant to small businesses with small margins.

Across the nation, finding qualified workers is small businesses' number one problem. NFIB's Small Business Economic Trends December 2019 report found that 53% of small businesses are actively trying to hire, but 94% of these businesses reported "few or no qualified applicants" for their positions.² Most of these are businesses trying to recruit for full-time positions. Temporary positions are even harder to fill.

And as discussed above, SB 580 exacerbates this problem by entitling all workers to the same one-size-fits-all leave solution and cutting off an avenue through which small business owners can attract workers with unique and flexible programs that benefit their businesses, their customers, and their employees.

² <https://www.nfib.com/surveys/small-business-economic-trends/>

And while the program would benefit some, not every employee will appreciate the mandatory paycheck deduction needed to fund it. Some workers may prefer to have the cash or flexible work arrangements that some businesses could offer, but whether or not they ever use the state-provided leave, they still must pay for it. And if a co-worker is out on leave for an extended time, and they have to pick up the slack, it could impact employee morale and result in burnout.

NFIB also has fiscal concerns with creating a new, large government entitlement program that expands the reach of state regulation in matters best left to the private sector. It will increase small business compliance costs and liability for inadvertent errors. And it seems likely that the program's cost estimates are overly optimistic. If paycheck deductions prove insufficient to cover the cost or benefits are increased, the state will be forced to expand contributions. This is what happened this year in New Jersey, where maximum employee contributions increased six-fold to cover expanded benefits. The burden would then fall on the backs of employers, employees, and every tax-paying Pennsylvanian.

Lastly, we think it is essential to point out that for workers, levying a 0.588% tax on income to fund the program would mean 20% more out of every paycheck going to Harrisburg. Twenty percent may not seem a lot, but if the General Assembly were debating a 20% increase in the Personal Income Tax today, pushback would likely make it a nonstarter. Pennsylvanians need to be aware of the costs and debate the tradeoffs here, understanding that this is a tax increase on every working citizen for the benefit of some. Even worse, the bill hands over authority to a state agency, which can unilaterally increase the tax to implement and expand the program as it sees fit forever into the future.

Given the substantial costs imposed on workers and businesses by the bill and the ability for the program to escalate and result in further cost increases far into the future without approval of the General Assembly, the pros and cons of this proposal must be thoroughly considered.

On behalf of the small-business men and women of the NFIB, thank you for focusing on this important issue and allowing us to appear before the committee. I would be happy to answer questions.