

ASSOCIATED INDUSTRIES OF VERMONT

REPRESENTING THE VERMONT INDUSTRIAL AND BUSINESS COMMUNITY SINCE 1920

Summary of Recommendations for Amending H.187 January 21, 2016

As noted in our testimony this morning, AIV does not support H.187 as passed by the House. Although we do not support mandating paid leave policies, the following is a summary of the possible changes and clarifications that could improve the underlying bill as discussed this morning.

Basic Principles

- **Balance.** Mandatory leave has costs for employers as well as benefits for employees, especially for smaller and newer employers, and certain business models. Without balance, such mandates can lead to lower wages, reduction in other benefits, or lower reinvestment in a company's future, all of which can hurt employees as well. Similar Vermont laws and most other states recognize this and seek balance through small business exemptions and balancing guaranteed leave and job security on the one hand leave being unpaid on the other.
- **Consistency.** Keeping definitions, standards, and principles consistent across laws, especially related statutes, is important for compliance, understanding, and expectations for both employers and employees.
- **Clarity.** Clarity is also critical – regardless of legislative intent, if the letter of the law leaves open the possibility of conflicting or contradictory interpretations and litigation risks for employers, it will have an unwarranted cost for employers and employees.

Proposed Modifications to H.187

- **Adopt the definitions of covered employers and employees from Vermont's parental and family leave law, 21 VSA §471.** Using the existing Vermont definition of employer for the purposes of family leave would exempt employers with 15 or fewer employees, which would help balance costs and benefits. This section's definition of employee (working at least 30 hours a week for one year) would also avoid the risk of confusion and conflict over independent contractors that could result from the current draft's reference to 21 VSA §341. In addition to balance, this would promote consistency and clarity.

As noted, AIV does support recommendations to exempt part time employees, which our recommendation above would also accomplish. Should the Committee decide to cover part time employees to some degree, however, we would still recommended starting with 21 VSA §471 rather than reverting to 21 VSA §341 as the baseline definition of employee.

As also noted, AIV agrees with recommendations to exempt all employees that control their own work schedules, rather than just certain health and education workers as in the current draft.

- **Exempt newly established employers for up to five years.** New companies often face significant funding challenges and risks for the first several years of their existence, and mandating paid leave benefits is an unwarranted burden and complication for such employers and their employees. By way of example, new companies in Vermont are initially awarded a special low tax rate under Unemployment Insurance.
- **Limit the maximum accrued and utilized leave to 24 hours annually and require a report on the pros and cons of increasing it to 40 hours.** This would provide greater balance and

flexibility, and would be especially important if very small businesses are not exempted. Scheduling a report on increasing the amount of leave rather than automatically increasing it as in the current draft would not necessarily change the current bill's timeline if warranted.

- **Exempt collective bargaining agreements.** A new law should not conflict with existing collective bargaining agreements, and employers and employees should be allowed to agree to alternative policies if they would mutually prefer them.

Outstanding Issues to Address

As noted this morning, the following are issues that have been raised by legal and HR practitioners that would be more clarifications than modifications.

- Clarify that if an employee exhausts qualifying paid leave (e.g., combined time off) for purposes other than sick leave, they have exhausted their accrued sick leave. For example, if an employee has 10 days of combined time off but uses all 10 days for vacation, they are not then entitled to additional days for paid sick leave.
- Clarify that an employee cannot use leave time accrued in previous years to effectively take leave time in excess of the current year's accrual limit.
- Consider allowing longer time units for accrual and utilization. For example, just because an employer calculates wages in 15 minute increments should not require that employer to track and allocate paid leave in 15 minute increments. One possible model would be Vermont's Short Term Family Leave law, which allows employers to require leave to be taken in increments up to 2 hours (21 VSA §472a).