

H.196: Family Leave Testimony

House General, Housing & Military Affairs Committee

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We have spoken extensively with our members on this and other similar issues over the past five years through annual polling, presentations throughout the state to businesses and working with our Board and Government Affairs Committee.

While the proposal this year is different than in the past, some elements remain the same which create the same concerns for our members. Our main objections to this legislation are benefit differentiation, current treatment of benefits, the small business exemption, the payroll tax and the cumulative impact. We also have received lots of questions from employers about the details which I will share with you as well.

Differentiation

By mandating this benefit, it takes away another benefit employers offer to their employees, reducing their ability to “stand out” as an employer of distinction. Many employers seek to attract and retain good talent through their benefit packages. Standard among them are health care, leave, and retirement. Health care has already been mostly taken out of the hands of employers while leave and retirement are under consideration as a state mandated benefit. Benefits come in many different forms and not every employee needs the same things so we prefer to leave this flexibility up to the employer. The FMLA laws guarantee protections for people taking leave and while it’s not paid for, it creates a standard benefit that we can all count on.

Vermont employers currently offer paid time off policies at their own discretion and should continue to do so. They understand the benefit preferences of their employees and have a long history of maintaining the flexibility needed to meet their employees’ unique needs and situations. We hear from our members that don’t have official paid leave or combined time off policies that they make every effort to accommodate their employees’ needs.

Current Benefits and Common Practice

Many employers are strong advocates of employees’ ability to take leave for various reasons and have created a benefit package to address multiple needs for leave including paid time off, short term disability insurance, and in some cases, additional parental leave benefits.

These paid benefits work in coordination with the job protections under the Federal and Vermont Family/Parental leave laws. While the paid benefits vary based on individual circumstances, employees are often able to take advantage of multiple weeks of family leave and protect some of their income for most medically-related absences through short-term disability plans.

Many employers already provide company-paid Short Term Disability (up to 26 weeks) and Long Term Disability (after short-term disability) that provides an insurance benefit of 60% of the employee's earnings. This applies for the employee's personal disability (unable to work), including pregnancy. So, it covers some, but not all the conditions to be covered by paid family leave.

This partial wage replacement is similar to more mature insurance programs that have payouts that are designed to replace wages like unemployment insurance and workers' compensation. The goal there is not replace 100% of wages to encourage workers to get back to work as soon as possible which is the goal.

If Vermont were to enact mandatory paid family leave, employers may consider dropping the existing short-term disability coverage to offset the new tax liability presented in this proposal. The trade-offs would be:

- Some employers have calculated the cost of dropping the short-term disability benefit and paying the .5% employer payroll tax. With this change, the annual cost would still be a net cost increase.
- With the .5% employee payroll tax, individual employees would also have to pay this instead of the disability benefit which is currently provided by the company.
- Employees would then be eligible for up to 12 weeks of paid leave, but could lose coverage for expanded weeks depending on the company's supplemental disability coverage.
- It's important to understand how these two benefits would work together and whether the disability coverage would be dropped.

Therefore, it's hard to argue this would be an improvement for employees at these companies who already have substantial benefits. Instead both the employer and the employee would be paying more for this benefit and in some instances, is less than what they are currently offered.

I encourage you to take more testimony around short-term disability insurance and understand how it works and what impact there may be if this legislation passes.

Small Business Exemption

We oppose eliminating the exemption for small businesses. Vermont's current economic growth strategy is to retain these small companies and help them grow and encourage

entrepreneurs to build their businesses here. This type of mandate and cost can be an obstacle to growth especially in the early stages of forming and growing a company.

Payroll Tax

We oppose this payroll tax at any level. We believe that it impinges on the salary we offer the employees. As we expect employers to increase wages in a tight labor market, they cannot if the mandated benefits have associated costs. Essentially, this tax will be calculated as part of the overall wage and benefit package, and in some cases reduce the wage growth that could have occurred.

We are also concerned that we have seen a payroll tax or its related income tax be proposed for many new spending proposals over the last several years and we believe that the overall impact will be harmful to business and wage growth.

Finally, we need to remember that one half of a percent of compensation IS A BIG DEAL for employees and employers to contribute. Many companies have had years recently where they couldn't afford a merit increase or a COLA. Some have been able to eek out a 2% wage increase, just keeping up with inflation, but this new tax would take 25% of that small increase away.

Multi-State Employer Concerns

This will introduce a significant cost/benefit difference between employees in Vermont vs. other states, and increased administrative burden.

It is already perceived that Vermont is expensive and a difficult place to recruit sufficient number of talented employees. We see this in the 10,000 person workforce supply gap identified by the Vermont Futures Project. For many companies, the work could be done anywhere. So adding another tax can force a discussion of moving work to other locations outside of Vermont.

For these companies, they see the comparable costs of doing business in multiple jurisdictions and adding more to the Vermont side doesn't help in adding jobs and investment.

Perhaps, instead of mandating this, we celebrate and reward employers and their employees with an opt out provision because they already have these generous paid leave plans in place We encourage you to work on language that doesn't penalize employers and the employees that work for them that are doing the right thing by providing more generous plans.

Questions about Employment Practices

We have had several technical questions from HR directors and other businesses. I will pose them here and have submitted them as part of my formal testimony for the Committee to consider as you work your way through this proposal.

1. How will this paid family leave work with individuals who are out of work due to workers' compensation injuries? Will they receive benefits under both insurances?

2. Will the paid family leave run concurrently with unpaid leave through the Family Medical Leave Act if they are also eligible for FMLA? If not, is an employee then entitled to two 12 week leave periods?
3. Under section 472 (c), how is the term “benefits” being defined? We needed to address this in the Vermont Parental Leave law as well. Generally, we believe the intent is to continue health care insurance coverage and payments if applicable but what about other benefits. Does this include paid time off benefits that might accrue? Does it include 401k matching for the wages paid through this program?
4. If an employee were receiving short-term disability benefits, can the employee collect both paid family leave and short-term disability? Will they also be eligible for short-term and/or long-term disability, perhaps even extending their leave?
5. Under section 472(f), is it the intention for this period to be for 6 months with the same employer? If so, please make that clear as right now it could be interpreted to mean employed for a total of 6 months at more than one employer. Is the employer required to return the employee to work in any position when the leave has finished? Can the employment relationship be severed? Is it only after 12 months of employment that the employee would need to be returned to the same or similar position? This section is unclear to HR professionals and has garnered a lot of questions.
6. Can this leave be taken intermittently? Does the leave need to be taken in one 12-week period? For the same condition?
7. What role will the employer play in the approval process for these benefits? Who will be deciding whether leave is to be granted and for how long? The employer or the State? Will this result in another hearing process like unemployment compensation?

Cumulative Impact

- A few years ago, the Legislature recognized that the cumulative impact of mandating paid leave and increasing the minimum wage simultaneously would be too harmful to our businesses and our economy. While this may feel like a long time ago, the third of four minimum wage increases just went into effect on January 1st, with additional increase scheduled for next January. We often hear from many of our members that they are still working on implementing and absorbing many these changes which we have outlined on the *Total Impact List*.
- Instead of implementing new mandates, let’s celebrate these businesses that already offer them and educate other businesses about the benefits of retaining employees even as they need to take leave.

- We do this now. Whenever asked by a member for information on paid leave policies, we try to educate them about the benefits of offering paid leave and best practice models so that the member may consider and balance the costs and benefits for their own practices.
- In summary, we remain in support of allowing employers to offer leave and time off policies at their own discretion and that work for their business. Our members will continue to be engaged with your work on this issue