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January 22, 2025

Representative Marc Mihaly, Chair
House Committee on General and Housing
Vermont State House, Room 31
115 State Street
Montpelier, VT 05633-5301

H.33 (Rep. Headrick)

Dear Chair Mihaly and Members of the General and Housing Committee,

The National Federation of Independent Business (NFIB) represents nearly 1,000 small businesses in Vermont. Our members operate in every industry - from family farms to main street shops - and are typically very small, with 80% employing fewer than 20 people. They are the economic backbone of communities across the Green Mountain State.

We write to share concerns with H.33, which proposes an expansion of the state's unpaid leave mandate and new reporting obligations. Small employers share the goal of helping employees in times of joy, need, and crisis, but portions of H.33 seek to impose standards that could cause workplace disharmony and increase litigation risk for small businesses.

While the bill preserves existing exemptions for very small employers, it is important to highlight that other complex workplace regulations define small business at a much higher employee threshold.¹ These thresholds recognize that additional requirements impose an outsized impact on small businesses, with studies finding that government regulations cost small employers (< 50 employees) 20% more than larger employes (> 100 employees).²

Small employers are highly sensitive to time off and leave obligations because of the cost and difficulty in finding replacement workers. While some employers can afford to overstaff to accommodate employee absences without otherwise impacting the business, most small employers cannot. They hire based on need and customer demand, and absences shift workloads onto owner-operators and other employees.

Definition of Family. H.33 broadens the definition of family member in ways that will be unfamiliar to many Vermont employers. Most notably, the "significant personal bond"

¹ For example, the federal Family and Medical Leave Act (FMLA) exempts employers with > 50 employees and the Affordable Care Act (ACA) defines a small business as < 50 employees. The U.S. Small Business Administration sets 500 employees as the general delineator between large and small, with industry specific thresholds ranging from 100 employees on the low-end to 1,500 employees on the high end.

² Crain and Crain, "The Cost of Federal Regulation to the U.S. Economy, Manufacturing and Small Business," *National Association of Manufacturers*, October 2023.

category of family member for the purpose of family leave has the potential to divide workplaces and pit employees against employers. This section forbids an employer from requiring evidence to verify the existence of such a relationship. It is unclear how an employer or the state would ensure this category is used appropriately.

Recognizing non-traditional familial relationships is an understandable goal, but the inclusion of *"in loco parentis"* goes a long way toward addressing established non-biological and non-legal relationships without causing confusion or discord in the workplace.

Expanded Leave Length. H.33 establishes new categories of leave (bereavement, qualifying exigency) that expand allowable uses within the existing 12-week allowance and adds a new category (safe leave) with its own 12-week allowance, doubling the amount of leave each employee can take in a twelve-month period to 24 weeks.

Small employers in Vermont are struggling with an acute workforce shortage. Labor costs and labor scarcity are the number one challenge for nearly a third of small businesses.³ Our members do everything they can to help employees in times of crisis but need laws that give them the flexibility to work out leave arrangements that work for both parties.

Leave Utilization Reporting. H.33 directs the Department of Labor to establish a mandatory reporting and tracking system for leave utilization. We are concerned about the paperwork burden this imposes on small employers, many of whom cannot afford to use sophisticated payroll and human resources systems.

Further, this section seemingly requires an employer to track personal details such as family structure and sexual orientation. Collecting and reporting this information may force interactions that employees and employers view as uncomfortable and unwanted, and it could cause small employers to run afoul of state and federal anti-discrimination laws by collecting information they otherwise would not or could not compel from an employee.⁴

Thank you for the opportunity to comment and for considering our members' perspective.

Sincerely,



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³ Small Business Economic Trends (SBET), *NFIB Research Center*, January 2025

⁴ See, e.g., U.S. EEOC, "[Pre-Employment Inquiries and Gender](#)," ("*Questions about an applicant's sex (including sexual orientation, gender identity, and pregnancy), marital status, medical history of pregnancy, future child bearing plans, number and/or ages of children or dependents, provisions for child care, abortions, birth control, ability to reproduce, and name or address of spouse or children are generally viewed as not job-related and problematic under Title VII unless a defense or exception applies.*"); VT Fair Employment Practices 21 V.S.A. § 495