

July 28, 2020

Committee on Labor and Employment

Legislative Office Building,
1020 N Street, Room 155
Sacramento, CA 95814

RE: California Unpaid Family and Medical Leave Expansion – Senate Bill 1383

Chairman Kalra, Vice-Chairman Flora, and Members of the Committee on Labor and Employment:

The ERISA Industry Committee (“ERIC”) is writing to the California Committee on Labor and Employment (“Committee”) to submit written testimony commenting on the expansion of unpaid family and medical leave proposed by California Senate Bill 1383 (“SB 1383”).

ERIC is the only national association that advocates exclusively for large employers on health, retirement, and compensation policies at the federal, state, and local levels. The member companies that we represent are leaders in every sector of the economy and currently provide comprehensive and generous paid family and medical leave benefit programs that support millions of workers and their families across the country, including in the state of California. Each of you and your constituents likely engage with an ERIC member company on a daily basis when you drive a car or fill it with gas, use a cell phone or computer, visit a bank or hotel, fly on an airplane, watch TV, benefit from our national defense, go shopping, dine out or at home, receive or send a package, use cosmetics, or enjoy a soft drink.

ERIC supports the recent efforts of state legislatures to secure critical family and medical leave benefits for a broader portion of their citizens. However, we believe that this goal is best served when a core of uniform standards is shared amongst the states pursuing this area of policy. Since its enactment in 1993, the federal Family and Medical Leave Act (“FMLA”) has served as that very core of uniform standards from which state paid family and medical leave insurance programs have been modelled, as well as the basis from which the most generous employer-provided paid family and medical benefit programs in the nation have been drawn and designed. In recent years, however, state lawmakers have increasingly sought to revise and alter these FMLA standards within their jurisdictions, leading to the creation of an unwieldy patchwork of different state paid leave laws and standards.

Because ERIC member companies are at the forefront of designing and providing generous paid family and medical leave benefits to their employees across the country, ERIC has a strong interest in proposals, such as SB 1383, that would stray farther from the standards

and definitions established by the FMLA and lead to an even more expanded patchwork of incompatible state and local paid leave policies. While ERIC appreciates state efforts to consolidate various overlapping sources of paid leave into a single standard, as SB 1383 attempts to do with the California Family Rights Act (“CFRA”), California Paid Family Leave Program (“PFL”), and the California New Parent Leave Act (“NPLA”), we maintain that doing so through expanding the uniform standards established by the FMLA will have a negative effect on efforts to expand access to these benefits for American workers across the country.

This concern rings particularly true in the context of the state of California, which has always been a thought leader in the area of state family and medical leave and has followed FMLA standards and definitions since they were originally adopted by the CFRA in 1993 – the same year that the FMLA was enacted. With respect to SB 1383, ERIC is particularly concerned by current provisions that would expand the definition of family member to include a domestic partner, grandparent, grandchild, sibling, or parent-in-law; and.¹

The FMLA and CFRA have both been in effect for decades and have been widely used as a standard by employers to design paid leave benefits and plan for employee absences. Under the FMLA, employers are required to provide unpaid, job protected leave for employees to care for an ill child, spouse, or parent. SB 1383 would drastically expand this definition of family member, or the qualified individuals whom employees may use leave benefits to care for, beyond the requirements of the FMLA to additionally include an employee’s domestic partner, grandparent, grandchild, sibling, or parent-in-law.

For employers operating in multiple states that provide valuable paid leave benefits to their employees across the country, any deviation from the standards of the FMLA creates additional administrative burdens that ultimately detract from the paid leave benefits that they are able to offer nationally. As standards in one state change, it forces employers to recalibrate their national employee benefits structure which in turn effects the paid leave benefits of millions of employees. A further expanded patchwork of differing state standards also creates an uneven playing field among employees working at the same company but that live or work in different states. These challenges increase when states adopt one set of standards and later seek to alter them, making compliance and employee benefit design all the more complex.

We therefore strongly encourage the Committee to amend SB 1383 to include a definition of family member that is consistent with the standard established by the FMLA and adopted by the CFRA.

Ultimately, ERIC shares your goal of increasing access to family and medical leave benefits for more California workers. However, we believe that the expansion of standards established by the FMLA and adopted by the CFRA would serve to further fragment paid leave standards across the country and complicate the existing patchwork of state paid leave policies.

¹ In addition, the legislation lowers the threshold that would trigger required employer compliance from 50 employees to 5 employees. While this provision is also inconsistent with FMLA, it is not a priority concern for ERIC since ERIC membership consists of large employers with more than 10,000 employees.

ERIC, therefore, strongly recommends that the Committee amend SB 1383 to maintain conformity between the family member definition and employee threshold standards originally established by the FMLA and currently employed by the CFRA.

ERIC appreciates the opportunity to provide comments on the proposed legislation, as well as to discuss ways in which the patchwork of existing paid leave benefits can be consolidated and coordinated to best benefit employers and employees alike.

If you have any questions concerning our comments, or if we can be of further assistance, please contact us at (202) 789-1400 or arobinson@eric.org.

Sincerely,

A handwritten signature in cursive script that reads "Aliya Robinson".

Aliya Robinson
Senior Vice President, Retirement and Compensation Policy