

July 28, 2020

**Committee on Labor and Employment**

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

**RE: California COVID-19 Supplemental Paid Sick Leave – Senate Bill 729**

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 COVID-19 supplemental paid leave mandate proposed by California Senate Bill 729 (“SB 729”).

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 sick 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 recognizes the severe impact that the COVID-19 pandemic has had on workers across the country and supports the efforts of state legislatures over recent years to expand access to critical paid sick leave benefits for their citizens that do not already have access to them through their employer. As states continue to respond to COVID-19, they are exploring ways in which paid leave can be used to address the effects of the pandemic.<sup>1</sup>

Because ERIC member companies are at the forefront of designing and providing generous paid sick leave benefits for their employees across the country, ERIC has a strong interest in proposals, such as SB 729, that create redundant paid leave mandates that would

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<sup>1</sup> At the federal level, lawmakers have also recognized the value of paid sick leave benefits to American workers by enacting the federal Families First Coronavirus Response Act (“FFCRA”) and the establishment of two weeks of emergency paid sick leave for workers to use in response to COVID-19. However, the federal government also recognized that large employers generally offer paid leave benefits and, thus, limited this mandate to employers with less than 500 employees.

adversely affect the ability of employers to operate in these unprecedented times. This concern rings particularly true for a food service industry that has been uniquely impacted by the current global pandemic. With respect to SB 729, ERIC is most concerned about:

- Redundancy that would be created in light of emergency paid sick leave provisions created by the FFCRA and California Executive Order N-51-20;
- The State's unwillingness to help vulnerable employers provide additional benefits; and
- Lack of coordination between paid leave benefits provided by various federal, state, and employer policies.

We encourage the Committee to consider our concerns and ensure that the well-intentioned proposal to expand access to supplemental paid sick leave does not negatively impact the thousands of California businesses struggling to stay afloat or the millions of employees and families who currently have access to robust paid sick leave benefits.

## **Comments**

### **I. Emergency or Supplemental Paid Sick Leave Benefits Are Already Available to California Workers to Use for COVID-19 Purposes**

While paid sick leave benefits play an important role in responding to a pandemic, this role has already been recognized and addressed by California Executive Order N-51-20 and the federal FFCRA, both of which provide workers in California with two weeks of paid sick leave to use for COVID-19 purposes. The current language of SB 729, which essentially seeks to codify California Executive Order N-51-20 and extend its existing supplemental paid sick leave requirements beyond the end of Governor Newsome's stay-at-home order, broadly follows the standards established by the FFCRA, including reasons for use of leave, the duration of leave provided, and the cap on total wage replacement of \$5,110.

It is important to understand that the supplemental paid sick leave established by Executive Order N-51-20 was meant to help food sector workers who are exempt from the Governor's stay-at-home order due to the essential nature of their work and who are therefore uniquely vulnerable to the impacts of COVID-19. The problem that this policy was designed to address would presumably be resolved when the Governor's stay-at-home order is lifted. There does not seem to be any reason why this particular paid leave policy needs to be extended for the duration of the state of emergency currently in effect in California.

We, therefore, encourage the Committee to avoid further redundancy and to not

extend the supplemental paid sick leave provisions of California Executive Order N-51-20 beyond the Governor's stay-at-home order which the policy was originally formulated to address and correct.

## **II. The State Should Offer Tax Credits or Other Tax Incentives to Assist Employers Already Struggling to Cope with the Impact of COVID-19**

The emergency paid sick leave created by the FFCRA did not place the massive economic cost of these paid sick leave benefits directly on employers but instead included a federal tax credit equal to incurred costs for employers to use in order to secure and provide these benefits. This credit essentially secured critical paid sick leave benefits for employees across the country while also shielding employers from the devastating financial cost of paying for these benefits on their own.

Unlike the federal FFCRA, both California Executive Order N-51-20 and SB 729 force employers to solely fund the required paid leave benefits while also coping with lost labor at the same time. In times that have fallen particularly hard on the food industry, an extension of these supplemental paid leave requirements beyond the stay-at-home order that they were designed to address would only serve to increase the existing financial strain on these employers. While SB 729 recognizes the pressures faced by workers during this pandemic, it must also recognize the pressures faced by businesses that cannot afford the financial hit of providing these supplemental paid sick leave benefits.

We therefore strongly encourage the Committee to oppose SB 729 and any other legislation that would place the costs of required supplemental paid leave benefits directly on employers. Alternatively, we encourage the Committee to amend SB 729 and include a state tax credit for employers required to provide supplemental paid sick leave and lessen the financial burden on those employers already severely impacted by the COVID-19 public health emergency.

## **III. SB 729 Does not Adequately Coordinate Supplemental Paid Sick Leave Benefits with Similar Federal, State, Local, and Employer-Provided Benefits**

Because there is a vast array of various federal, state, local, and employer-provided paid leave benefit sources available to employees today, it is important that additional state paid leave proposals coordinate with the existing patchwork and not create unnecessary administrative burdens on employers. Namely, these paid leave policies should run concurrently with federal supplemental COVID leave since they are used for the same reason. Furthermore, the failure to

coordinate these benefits can encourage abuse by allowing bad actors to string together one source of paid leave after the other.

Section 248(b)(4) of the current bill language states that “A hiring entity shall not require a food sector worker to use any other paid or unpaid leave, paid time off, or vacation time provided by the hiring entity to the food sector worker before the food sector worker uses COVID-19 supplemental paid sick leave or in lieu of COVID-19 supplemental paid sick leave”. This clause essentially prevents COVID-19 supplemental paid sick leave from running concurrently with any available employer-provided paid leave benefits, but does not address interaction with available FFCRA emergency paid sick leave benefits.

At the same time Section 248(c) of the current bill language states that “a hiring entity shall not be required to provide a food sector worker with COVID-19 supplemental paid sick leave if the hiring entity provides the relevant food sector worker . . . with a supplemental benefit, such as paid leave, that is payable for the reasons [established by SB 729]”. While this clause appears to allow required supplemental paid sick leave benefits to run concurrently with other available paid leave benefits, it is contradicted by the provision of Section 248(b)(4) and still does not address coordination with available FFCRA benefits. Consequently, the way in which these various sources of paid leave benefits interact must be clarified for both employers and employees.

We therefore strongly encourage the Committee to allow supplemental paid sick leave to run concurrently with sources of similar paid leave benefits, such as the FFCRA, and clarify the ways in which employers are able to fulfill the requirements of SB 729 using sources of paid leave benefits that are already established and available to their employees.

### **Conclusion**

Ultimately, ERIC shares your goal of securing critical supplemental paid sick leave benefits for California employees that do not have access to them during the COVID-19 public health emergency. However, we strongly recommend that the Committee oppose SB 729 in light of the benefits already provided by California Executive Order N-51-20 and the federal FFCRA. Alternatively, we strongly encourage the Committee to amend SB 729 to include a tax credit for employers required to provide supplemental paid sick leave to their employees as well as to allow this paid leave to run concurrently with overlapping sources of paid leave benefits already available to employees. The aim of paid leave proposals today should be to secure access to these benefits for those Californians most in need of them, not to create redundant mandates that would have a negative impact on state-wide employers that already offer these paid sick leave benefits through a different source.

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](mailto:arobinson@eric.org).

Sincerely,

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

Aliya Robinson  
Senior Vice President, Retirement and Compensation Policy