ERIC | THE ERISA INDUSTRY COMMITTEE
Shaping benefit policies before they shape you.

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January 28, 2021

Senate Finance Committee
3 East
Miller Senate Office Building
Annapolis, Maryland 21401

RE: Maryland Paid Family and Medical Leave Insurance Program Proposal – Senate Bill 211 – ERIC Letter of Opposition Unless Amended

Chairwoman Delores G. Kelley and Members of the Senate Finance Committee:

The ERISA Industry Committee ("ERIC") is writing to the Maryland Senate Finance Committee ("Committee") to submit written testimony in opposition of the paid family and medical leave insurance program proposed by Maryland Senate Bill 211 ("SB 211") unless amended. 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 leave benefit programs that support millions of workers and their families across the country, including in the state of Maryland. 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 has a strong interest in proposals, such as SB 211, that would adversely affect our member companies' ability to continue to provide quality and uniform paid leave benefits to their employees.

ERIC supports the efforts of state legislatures to expand access to critical paid family and medical leave benefits for their citizens. Because ERIC member companies are already designing and providing substantial paid leave benefits for their employees, one of our primary aims is to ensure that employers providing generous, voluntary benefits are able to continue to do so and that the requirements of state programs do not negatively impact the benefits that their employees ultimately receive. We therefore applaud the inclusion in SB 211 of a program exemption for employers that already provide paid family and medical leave benefits to their employees.

However, as the patchwork of state policies in this area continues to expand, several aspects of proposed state programs pose major concerns for employers and threaten the generous paid leave benefits currently enjoyed by their employees. With respect to SB 211, ERIC is particularly concerned about:

- The need for clarification of employer exemption processes and standards;
- The lack of relief from administrative burdens for exempt employers;
- The lack of state preemption of local and municipal paid leave ordinances;
- The program's source of contribution funding;
- The program's divergence from federal FMLA standards, including:
    - The expanded definition of family member;
    - The duration of leave provided by the proposed program; and
    - The proposed program's employee benefit eligibility requirements.

We encourage the Committee to consider our concerns and ensure that the well-intentioned proposal to expand access to paid leave does not negatively impact the millions of families who already enjoy paid family and medical leave benefits from their large, multistate employers.

Comments

I. Equivalent Plan Exemptions Should Provide Clear Employer Processes and Relieve Employers from Administrative Burdens in Addition to Contributions

The greatest source of paid family and medical leave benefits today is the range of private employer plans that voluntarily offer valuable benefits to millions of employees in Maryland and across the country. As states attempt to provide broader access to these popular benefits, it is critical that state lawmakers recognize the enormous success that employers have had in designing these benefits efficiently and administering them effectively. Marylanders that already have access to these successful employer plans should not be penalized by any new state action in this space.

While the proposed Maryland paid family and medical leave program proposed by SB 211 does include language exempting certain employers from participation in and contribution to the state program, the draft text remains concerningly vague as to what process will grant this exemption and what standards will constitute an equivalent employer plan. For the many employers who already offer private paid leave benefits and want to retain the flexibility needed to best meet the needs of their employees, clear standards and procedures must be established by state lawmakers to give compliance efforts. We therefore encourage the Committee to consider the complexity of these employer exemption processes and amend SB 211 to establish concise and quantitative minimum standards for employers to meet.

Furthermore, while the bill grants qualifying employers and employees an

exemption from the required program contributions, it remains silent as to the effect of a granted exemption on other burdensome administrative requirements placed on employers by the state program. Many of the counterproductive challenges that similar state programs place on employers do not stem from the direct cost of contributions to fund a state program, but rather from the redundant recordkeeping and reporting requirements that employers are often forced to comply with, regardless of whether they independently offer equivalent benefits. These unnecessary costs do not exist in a vacuum, and ultimately detract from the resources that otherwise would have been put into reinforcing employees' benefits. We therefore encourage the Committee to amend SB 211 and stipulate that an exemption granted to an equivalent employer plan also exempt the employer from redundant or unrelated administrative burdens.

II. The State Program Should Preempt Local and Municipal Regulation of Paid Family and Medical Leave

Since the implementation of the federal Family and Medical Leave Act ("FMLA") nearly three decades ago, employers have been able to refer to a uniform, consistent set of standards when attempting to comply with federal family and medical leave requirements. As states continue to propose the creation of new paid family and medical leave programs, the uniform compliance standards established by federal law have given way to a patchwork of varying and conflicting state standards, creating significant compliance burdens for large employers operating across multiple states. At the same time, many municipalities have passed, or considered, their own paid family and medical leave ordinances. This creates an even more convoluted patchwork of conflicting laws that makes it extremely difficult for employers to comply.

An effective state paid family and medical leave program should preempt local and municipal ordinances, providing employers with a single standard with which to comply while operating within a state. SB 211 does not currently contain a provision to preempt local paid leave ordinances. We therefore encourage the Committee to amend SB 211 to include the following preemption language:

> 1: It is the intent of the legislature to ensure uniformity in any paid leave program. As such, a local governmental body shall not adopt, enforce, or administer an ordinance, local policy, or local resolution establishing any paid leave program. Any such existing program is subordinated to this statute.
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> 2: "Local governmental body" means any local government or its subdivision, including, but not limited to, a city, village, township,

> county, or educational institution; a local public authority, agency, board, commission, or other local governmental, quasi-governmental, or quasi-public body; or a public body that acts or purports to act in a commercial, business, economic development, or similar capacity for a local government or its subdivision.
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> 3: The provisions of section 1 shall not prevent a local government body from establishing any leave program covering its own employees provided that such program is not construed to cover contractors or subcontractors working on behalf of the local government body.

III. The State Program Should be Funded by Employee Contributions Alone

As previously stated, ERIC applauds the inclusion of a program exemption for employers, such as ERIC member companies, that already provide generous paid family and medical leave benefits to their employees. However, it is important to also consider the impact that the proposed funding structure of SB 211 will have on employers that cannot currently afford to provide voluntary paid family and medical leave benefits and would therefore be required to participate in the Maryland paid family and medical leave insurance program.

While paid family and medical leave benefits provide critical security for employees to care for a child, loved one, or themselves in times of need, employers do not similarly receive support from a state program when their employees take family and medical leave. While an employee is out on leave, employers must hire temporary staff and/or add overtime for remaining workers to make up for the absence and are forced to take the financial loss that comes with these staffing adjustments. As the employees taking paid family and medical leave are ultimately receiving the benefits provided by a state insurance program, that program should be funded by employee contributions alone in order to ensure solvency of the program fund that provides their wage replacement during leave.

If employers interested in enrolling their employees in the state insurance program are forced to foot half of the bill without receiving a supporting benefit when their employees are on leave, their ability to operate as a business and provide other valuable employee benefits could be greatly diminished. We therefore strongly encourage the Committee to remove the requirement that employers equally split the program's contribution costs with employees and instead allow employers participating in the state insurance program to deduct the full amount of contributions paid to the program from the wages paid to employees.

IV. The Proposed Program Should Adhere to the Standards and Definitions Established by the Federal FMLA

The federal FMLA has been in effect for decades and has been widely used as a standard by employers to design and provide valuable and efficient paid leave benefits for their employees. When state program standards diverge from those established by the FMLA, they further expand the complex patchwork of state paid family and medical leave policies and make it harder for multistate employers to administer generous and uniform paid leave benefits to the entirety of their employees. In order to maximize access to these critical benefits, we encourage the Committee to amend SB 211 to conform to the following FMLA standards and definitions.

a. Definition of Family Member Should Match the Federal FMLA Definition

Under the FMLA, employers are required to provide unpaid leave for employees to care for an employee's child, spouse, or parent. SB 211 currently uses a definition of family member, or the qualified individuals whom employees may use leave benefits to care for, that extends beyond the requirements of the federal FMLA to additionally include an employee's grandparents, grandchildren, and siblings.

Ultimately, large, multistate employers are able to design, voluntarily provide, and solely fund, generous paid leave benefits because of uniform administration of employee benefit programs across the country, regardless of where their employees live. The expanded definition currently used by SB 211 would result in the creation of an even further fragmented patchwork of state paid leave standards and add to the already massive compliance burdens faced by employers operating across multiple states. We encourage the Committee to amend SB 211 to include a definition of family member that is consistent with the definition established under the federal FMLA.

b. Duration of Leave Should Not Exceed the Length Provided by the Federal FMLA

The federal FMLA provides for employee access to 12 weeks of unpaid family and medical leave. The current standards set forth in SB 211 would not only go beyond the requirements of the FMLA by providing *paid* family and medical leave to employees, but would allow employees to take leaves of absence beyond federal duration requirements, providing for up to 12 weeks of paid parental and family leave *and* up to an additional 12 weeks of paid personal medical leave if an employee experiences a qualifying need after already exhausting their available 12 weeks. The potential use of up to 24 weeks of paid leave in a calendar year by employees under SB 211 would impose significant operational, staffing, and financial burdens on employers left without support for the duration of the 24-week period.

Extending the duration of leave beyond FMLA standards would also serve to further complicate the current patchwork of state paid leave laws and expand the compliance challenges faced by employers. As each state creates its own unique standards and requirements independent of those established by other state programs or the federal FMLA, employers are not only burdened with tailoring their employee benefits to comply with the new program in that state, but must also restructure their national benefits to ensure that their employees receive equitable benefits across the country. A further fragmented state patchwork would be counterproductive to the overarching goal of providing valuable paid family and medical leave benefits to more American workers. We therefore strongly encourage the Committee to limit the duration of paid leave provided by a state paid family and medical leave program to the 12-week total standard established by the federal FMLA and followed by the majority of states active in this policy area.

c. Employee Eligibility Should Match Requirements Established by the Federal FMLA

The federal FMLA requires that an employee must work for an employer for 12 months as well as a minimum of 1250 hours over the 12-month period preceding the date on which an employee's leave is to begin in order to be eligible for the leave provided by the FMLA. As currently drafted, SB 211 would lower this hours-worked requirement to 680 hours in the preceding 12-month period for an employee to be eligible for paid leave benefits under the state program. Additionally, the current language also seems to remove the requirement that an employee be employed during this 12-month period, leaving only the total hours-worked stipulation. This lowered standard would effectively expand benefit eligibility to include a large portion of recently hired, temporary, and part-time workers while placing even greater staffing burdens on employers and requiring them to restructure practices regarding hiring and employee benefits.

Furthermore, this reduction in employee eligibility represents yet another shift away from the national standards established by the federal FMLA, leading to an even more complicated state patchwork of paid family and medical leave standards for employers to follow. We therefore strongly encourage the Committee to amend SB 211 to conform employee eligibility standards to the 1250 hours worked requirement established by the federal FMLA and make clear that an employee must be employed by the covered employer for 12 months before becoming eligible.

Conclusion

Ultimately, ERIC shares your goal of increasing access to critical paid family and medical leave benefits for Maryland employees. We also strongly support the program exemption provided by SB 211 for employers, like ERIC member companies, that already provide generous paid leave benefits to their employees. At the end of the day, the aim of this legislation is to secure paid leave benefits for more Marylanders, not to penalize employers that are already providing these benefits to their employees and paying for them solely on their own.

While the provided exemption is a major step in the right direction, we believe that maintaining administrative requirements for exempt employers, allowing for local or municipal regulation of paid family and medical leave, sourcing contributions from employers, and expanding standards and definitions beyond those used by federal law, would negatively impact the ability of employers to provide paid leave benefits to their employees and unintentionally serve to detract from the overall goal of providing high quality paid leave benefits to a greater portion of employees throughout the state, as well as the country. Therefore, SB 211, as well as any other legislation proposing the creation of a state paid family and medical leave program should take into serious consideration the array of challenges and burdens that employers will face when attempting to comply with the requirements of the proposed program, as well as the impact that those burdens will have on the paid leave benefits ultimately available to employees.

ERIC appreciates the opportunity to provide comments on the proposed legislation, as well as to discuss ways in which administrative and compliance burdens can be minimized for large employers that already offer generous paid family and medical leave benefits to their employees.

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,

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