

June 10, 2021

**Senate Labor Committee**

State House Annex, Committee Room 6  
125 West State Street, Trenton, New Jersey

**RE: New Jersey Supplemental COVID-19 Paid Sick Leave Proposal – Senate Bill 3827 –  
ERIC Letter of Opposition**

Chairman Fred H. Madden and Members of the Senate Labor Committee:

The ERISA Industry Committee (“ERIC”) is writing to the New Jersey Senate Labor Committee (“Committee”) to submit written testimony in opposition of the supplemental COVID-19 paid sick leave requirements proposed by New Jersey Senate Bill 3827 (“SB 3827”). 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 New Jersey. 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 3827, that would place unnecessary burdens on vulnerable businesses and adversely affect our member companies’ ability to continue to provide quality and uniform paid leave benefits to their employees. We recognize the severe impact that the COVID-19 pandemic has had on workers across the country and support 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.

Because ERIC member companies are at the forefront of designing and providing generous paid sick leave benefits for their employees across the country, we have a strong interest in proposals, such as SB 3827, that create redundant paid leave mandates that would adversely affect the ability of employers to operate during these unprecedented times.

With respect to SB 3827, ERIC is particularly concerned about:

- The creation of redundant and unnecessary employer paid leave requirements
- The lack of financial support for employers required to provide and fund additional leave benefits
- The retroactive applicability of these employer requirements and lack of

coordination with similar paid leave benefits

Due to the redundant paid leave benefits that this legislation would create and the unnecessary financial burdens it would place on vulnerable employers, ERIC urges the Committee to oppose SB 3827. Alternatively, we strongly encourage the Committee to make substantial amendments to the current bill to alleviate the substantial burdens that the proposed policy would create for employers.

We encourage the Committee to consider our concerns and ensure that the well-intentioned proposal to provide supplemental paid sick leave does not negatively impact the ability of businesses to continue operation and drive economic recovery from the current pandemic.

## **Comments**

### **I. Supplemental Paid Sick Leave Benefits Are Already Available to New Jersey Workers to Use for Purposes Related to COVID-19**

New Jersey currently has one of the most robust paid leave policy regimens out of any state in the country, including state policies ensuring earned sick leave, paid family leave insurance, and temporary disability insurance. As the pandemic arose in 2020, many of these paid leave benefit sources were available to employees to use in response to COVID-19. To ensure that employees were not left without paid leave protection, state lawmakers broadened this utility even further last year via NJ S2304, which explicitly allowed employees in the state to use their earned sick leave to tend to circumstances arising from the ongoing pandemic.

Because of this amended law, New Jersey employees have now had access to the very same COVID-19 paid sick leave benefits as those proposed by SB 3827 for well over a year, all through use of existing state earned sick leave requirements. Today, SB 3827 proposes to create redundant and unnecessary paid leave requirements that would place enormous costs on vulnerable employers while doing little to change the actual support that employees in the state have access to when confronted with a COVID-19 related need.

Placing redundant and unnecessary paid leave requirements on already vulnerable employers would diminish their ability to recover from the current pandemic and would ultimately jeopardize the access to paid sick leave benefits already enjoyed by millions of New Jersey employees. ERIC therefore strongly encourages the Committee to consider the patchwork of generous paid leave benefit sources already available to employees across the state and to ultimately oppose the requirements proposed by SB 3827.

## **II. If This Proposal Moves Forward, The State Should Offer Tax Credits or Financial Support to Assist Employers Already Struggling to Cope with the Impact of COVID-19**

When Congress created national emergency paid sick leave requirements to address COVID-19 in early 2020 through the Families First Coronavirus Response Act (FFCRA), the massive economic cost of providing the required benefits was not placed directly on employers but was instead offset through a federal tax credit equal to the costs incurred by employers. Notably, the FFCRA's emergency paid sick leave requirements only applied to employers with 500 or fewer employees, meaning that only these small employers were eligible for the supporting federal tax credits. This credit essentially secured critical paid sick leave benefits for the employees of small employers across the country while also shielding those employers from the devastating financial cost of paying for these benefits on their own.

Since the advent of the FFCRA, states considering supplemental COVID-19 paid leave measures have continued to recognize the importance of providing financial support to vulnerable employers during these unprecedented times in order to avoid adding to the compliance costs they are already burdened with. Maryland lawmakers recently recognized this reality in their design of HB 581, which enacted supplemental paid sick leave requirements while at the same time stating that employers would only need to comply if further state or federal funds were also provided to offset the additional costs imposed on employers. This same determination was made even more recently by Massachusetts lawmakers through their enactment of HB 3702, which went a step further in this regard by creating a \$75 million fund to provide financial support to employers not otherwise eligible for FFCRA tax credits.

Unlike the FFCRA and similar state supplemental paid sick leave policies, the paid sick leave requirements proposed by SB 3827 would place the considerable cost of providing these additional benefits directly on employers already financially vulnerable due to the pandemic. While SB 3827 does adopt many of the standards and definitions used by the FFCRA to allow qualifying employers to make use of the employer tax credits provided by the FFCRA, this financial support is only available to employers with 500 or fewer employees that were included in the federal law. This means that larger employers throughout the state with more than 500 employees would be forced to provide the additional paid leave benefits proposed by SB 3827 out of pocket, representing an enormous financial burden for businesses throughout the state.

While SB 3827 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 at this time. We therefore

strongly encourage the Committee to oppose SB 3827 and any other legislation that would place the costs of required supplemental paid sick leave benefits directly on employers. Alternatively, we encourage the Committee to amend SB 3827 and include a state tax credit or direct financial support fund 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. Supplemental Paid Sick Leave Benefit Requirements Should Not Apply Retroactively to the Beginning of 2021 and Must Coordinate with Existing Employer Supplemental Paid Sick Leave 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 or costly administrative burdens on employers. Namely, these paid leave policies should run concurrently with federal emergency paid sick leave established under the FFCRA, as well as supplemental paid sick leave benefits provided by employers voluntarily, since they are used for the same reason. The failure to coordinate these benefits can encourage abuse by allowing bad actors to string together one source of paid leave after the other.

As currently drafted, SB 3827 would apply retroactively to the beginning of 2021 and require all employers in the state to reimburse employees for unpaid time off that they may have taken to address an issue arising from COVID-19. This provision is intended to prevent certain employees who have already encountered a COVID-19 related issue but would end up placing enormous financial burdens on employers of all sizes. Essentially, employers would not only be required to make substantial retroactive payments across their workforces but would also be required to track down and note every case of employee leave that may qualify for payments.

Furthermore, this retroactive applicability may force many employers that had already provided supplemental COVID-19 paid sick leave voluntarily to provide further redundant benefits if the previous employer benefit was somewhat different from the new requirements proposed by SB 3827. For example, if an employer voluntarily provided supplemental paid sick leave to an employee in early 2021 that was narrower than the leave proposed by SB 3827, that employee would then have been able to take unpaid COVID-19 leave that would now be reimbursable under SB 3827.

Under a situation such as this, an employee would be able to use 2020 earned sick leave benefits, employer-provided supplemental paid sick leave benefits, 2021 earned sick leave benefits, and finally the retroactive benefits proposed by SB 3827 in response to separate COVID-19 circumstances. This possibility opens the door for abuse of these benefits and opens

employers up to considerable financial liability during an already unprecedented economic landscape.

As currently drafted, SB 3827 does not adequately coordinate the proposed requirements with existing supplemental paid sick leave benefits, and leaves the door open for widespread overlap and redundancy between similar benefit sources. We therefore strongly encourage the Committee to oppose this legislation. In the alternative, we strongly encourage the Committee to remove the retroactive provision from SB 3827 and allow the proposed requirements to run concurrently with supplemental paid sick leave benefits already available under federal law and employer-provided benefits to run concurrently with sources of similar paid leave benefits.

### **Conclusion**

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 provide these same paid sick leave benefits through a different source.

Ultimately, ERIC shares your goal of securing critical paid sick leave benefits for New Jersey employees facing an issue related to the COVID-19 public health emergency. However, in light of the substantial paid leave benefits already in effect throughout the state, the lack of financial support for employers expected to comply with the proposed requirements, and the inclusion of problematic retroactive applicability, we strongly recommend that the Committee oppose SB 3827. Alternatively, we strongly encourage the Committee to amend SB 3827 to include a tax credit for employers required to provide supplemental paid sick leave to their employees, remove the retroactive provision, and coordinate the proposed requirements with the range of similar paid leave benefits already available to employees in New Jersey.

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,



Aliya Robinson  
Senior Vice President, Retirement and Compensation Policy