



April 30, 2021

The Honorable Sarah McBride
Delaware State Senate
411 Legislative Avenue
Dover, DE 19901

Dear Senator McBride:

Thank you for taking time, on multiple occasions, to discuss your proposal to extend paid, family, and medical leave, to employees working in Delaware. The realities of life and work are ever present, and employers are always trying to balance their workforce and competitive needs against the backdrop of economic factors and life events. The subject you have taken on is very complicated and gets exponentially more challenging as smaller businesses are brought into the discussion. Many of these businesses do not have full time, dedicated human resource managers, or benefits policy experts.

The State Chamber has a broad and very diverse membership and our position on comprehensive changes to business operations, like you are proposing, takes time to develop. We represent small, medium, and large businesses around the state, who specialize in services like law, medicine, banking, or accounting, and manufacturers, retailers, construction companies, poultry producers, aircraft specialty manufacturers, and countless others. It takes time for us to develop a thoughtful position on policy proposals of this scope, and that work will continue as additional insights are discovered and views are considered. We will share that growing body of feedback to you, and we appreciate the deliberative approach you have taken with us and others.

As of today, here is a summation of the issues and concerns that have been raised with us:

Eligibility. There are over 57,000 licensed businesses in Delaware, and just over 56,000 with fewer than 50 employees. While some smaller businesses offer elements of the benefits you wish to extend to a greater number of working Delawareans, we believe it would be wise to start with companies employing 35 or more, with at least three consecutive years of positive growth and steady finances. If the most “financially fit” businesses can adapt to these changes after a few years, you could consider lowering the headcount threshold after more is learned.

We also believe any proposal should exempt “startup” or new businesses for three to five years. Starting any new business endeavor is incredibly challenging and takes risks and plenty of hard-to-find capital. We don’t believe it is your intention to stifle innovation or layer on an expense that is one more factor that leads companies to close for good. Therefore, we would welcome the opportunity to work with you to develop meaningful and measurable financial tests.

Another concern is the broad definition of a covered family member. The proposal states “any individual with whom a covered individual has a significant or personal bond that is like a family relationship, regardless of biological or legal relationship” would be eligible. What is defined as a significant personal bond? Will documentation be required for this?

Domestic violence is a terrible thing and we do not wish to unduly burden anyone already suffering. However, employees should have to submit proof of an adjudicated result, restraining order, PFA court order, or similar documentation to be eligible. We worry the language is too broad, and open to interpretation.

Benefits and Protections. We would like to study the impacts of policies that permit 12 weeks of paid leave and assess the experienced usage. It seems logical that if an employee is eligible for 12 weeks of paid leave, they might take all 12 weeks because there is no incentive to return to work if after six weeks, for example, their situation has been resolved and rejoining the workplace is reasonable.

The job protection threshold is low. This proposal guarantees that employees with only 90 days of service will receive benefits and reinstatement upon return. We believe that an employee should be employed for 12 months or have at least 1,250 hours of service in 12 months before being eligible. Making this adjustment would eliminate any challenge that might arise from seasonal or temporary hires. Employers spend a lot of time, money and resources in hiring and training. Under this proposal, employers could lose a newly hired employee before they've even completed their training. Therefore, not only would the employer have to re-hire and train someone new, but they would have to pay the employee on leave. This is a sizeable ask for many businesses both small and large whose resources are already stretched thin. Additionally, flexibility should be given to employers who intend to eliminate positions. If an employees' job is being eliminated due to lack of work, the employer should have the right to terminate the employee and provide severance and treat this circumstance as if the employee were not on leave.

The benefit amount, 80% of an employee's average weekly wage is high. President Biden's proposed Family Act only provides 66.67% of an employee's wages as paid FMLA. Although there is a cap of \$900 per week, lower wage earners may make use of this leave and it could result in a high usage rate.

The bill does not address if an employee would be eligible for paid leave while out on workers compensation. Workers' compensation covers employees from their first day of employment so there's likely to be overlap. Under workers compensation, an injured worker is entitled to receive 66 2/3rds of his/her average weekly wage up to a state maximum.

There needs to be an employer notice provision for any leave. Employees should have to provide 30 days advance notice of the need for leave unless it's some type of documented emergency.

Implementation. We believe there should be a gradual implementation. Other states like New Jersey phased in the number of eligible leave weeks to help employers adjust. We believe it would be best to start with 6 weeks the first year, 8 weeks the second, 10 weeks the third and 12 weeks after the fourth year of enactment.

Again, thank you for taking the time to meet with us and our members. We appreciate your approach; hope you will consider our views and continue to welcome new feedback as insights emerge.

Sincerely,



Michael J. Quaranta
President

Representing Delaware's Business Community Since 1837

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