



Testimony on SB 479 – Pennsylvania Family and Medical Leave Act
Senate Labor and Industry Committee
April 17, 2018

Good afternoon, Chairman Ward, Chairman Tartaglione, and members of the committee. I am Rebecca Oyler, Legislative Director of Pennsylvania's office of the National Federation of Independent Business (NFIB). NFIB is Pennsylvania's leading small business organization, representing 14,000 small and independent businesses in the Commonwealth and 350,000 nationwide. NFIB members represent virtually every sector in Pennsylvania's economy.

Small employers make up an enormous segment of Pennsylvania's business community. Nearly 98 percent of businesses employ 100 or fewer workers. These businesses create two out of every three new jobs and are responsible for half of the private sector workforce.

Thank you for the opportunity to testify today on SB 479, which would create a Pennsylvania Family Medical Leave Act, providing six weeks of unpaid job-protected leave for employees to provide care for siblings, grandparents, and grandchildren. From the standpoint of Pennsylvania employers, SB 479 would expand the requirements of the federal Family Medical Leave Act related to eligibility and the amount of leave provided to new categories of employees.

We appreciate the reasons the the bill has been proposed and are sympathetic to those who have suffered the hardships that led to proposing this law. However, NFIB believes that this bill will inadvertently affect the livelihood of many Pennsylvanians and should be considered in the context of its impact on Pennsylvania's economic environment and the flexibility many employees are already provided by their employers in difficult situations.

There are four reasons NFIB asks that SB 479 be reconsidered.

First, businesses depend on predictability and uniformity to stay competitive. Special labor mandates, like state-specific changes to the requirements of FMLA complicate compliance with workforce mandates for employers.

Small businesses, which are the backbone of our state and local economies, are especially vulnerable to the impact of labor and leave mandates. Small business owners typically have few administrative staff members and little human resources experience or regular access to legal counsel. And yet, they already contend with antidiscrimination laws, family, medical, and other protected leave laws, wage-hour laws, privacy laws, workplace safety laws, and labor laws. They often struggle to decipher the overlapping, sometimes even conflicting, federal, state, and local laws.

Adding Pennsylvania-specific requirements to the federal FMLA law complicates an already difficult legal and regulatory environment for small businesses and exposes these businesses to legal challenges. Of course, despite their best efforts to do so, failure to comply with these laws can result in fines and

penalties, which can be crippling for small businesses. Even the threat of a lawsuit can lead to a costly settlement that threatens a business.

Second, understanding and complying with the complexity of these mandates is expensive, both in terms of time and money. According to the Small Business Administration, workplace compliance costs small businesses 36% more per employee than it costs large businesses.

The federal Family Medical Leave Act is already almost uniformly cited by employers as the most onerous requirements with which they must comply because of its administrative complexity and complicated tracking, notification, and documentation requirements. As an example, verifying that an employee is entitled to FMLA leave is already complicated for the employer (as well as the employee). It involves interaction with a doctor (verification of serious health condition) as well as documentation of the employee's relationship with the covered parent, child, or spouse (marriage or birth certificate). (There are many other problematic administrative burdens in the FLMA; documentation is most relevant to this discussion.)

SB 479 will add several layers of complexity to this process. Documents proving a grandparent, grandchild, or sibling relationship are more difficult to provide. But even more worrisome is the need for the employer to verify that such individual has no living spouse, child over 17, or parent under 65 years of age. It is unclear how this can be documented. Although we understand and appreciate the reasoning for this requirement, it may be nearly impossible for a small business owner and his or her employees to comply with this in a legally compliant manner.

Third, SB 479 may handicap businesses' ability to attract workers at a critical time. Across the nation, small business owners are showing unparalleled confidence in the economy, as NFIB's Small Business Optimism Index continues at record high numbers, with the number of small business owners reporting "Now is a Good Time to Expand" registering at 32%, one of the highest levels in the history of the survey.¹

Many businesses are hiring and expanding, with 52% currently hiring or trying to hire, and 31% planning to raise wages to attract and retain talented employees, the highest in more than 28 years. However, finding qualified workers is the number-one-cited problem for small business owners, surpassing taxes and regulations, which have held the top two spots for years.²

One of the primary ways in which small businesses attract and retrain talented workers is by providing innovative benefits like flexible leave policies, designed specifically to fit the needs of their employees and their businesses. The vast majority of small business owners treat their employees and customers like their extended family. They work hard to do what is right, but their informal and unstructured nature and more limited financial resources require greater flexibility in creating policies and solutions. Indeed, small businesses are leaders in flexible working arrangements, a key benefit for many of their employees.

Studies have shown that small businesses are more likely to allow employees to: change starting and quitting times, work some regular paid hours at home occasionally, have control over when to take breaks, return to work gradually after childbirth or adoption, and take time off during the workday to

¹ <https://www.nfib.com/surveys/small-business-economic-trends/>

² <http://www.nfib.com/foundations/research-center/monthly-reports/jobs-report/>

attend to caregiving or other family or personal needs without loss of pay. Small businesses are equally as likely as larger employers to allow employees to take time off to provide elder care (76%).³ Many of these flexible work arrangements increase employee satisfaction and, in fact, provide paid leave, rather than unpaid leave, which FMLA requires.

Expanding leave mandates, such as SB 479 does, has two results that impact flexibility in the workplace. Mandating uniform leave policies for all employers cuts off an avenue through which small business owners can shine through unique programs that benefit their businesses, their customers, and their employees. In addition, as discussed above, leave mandates increase costs for small employers, which almost always limits the flexibility of small businesses to provide benefits that many employees already enjoy.

Fourth, labor mandates like SB 479 put Pennsylvania at a competitive disadvantage for attracting and retaining businesses and jobs. In today's economic boom, not only are employers competing to attract workers, but the competition amongst states for employers and jobs is fierce. So far, Pennsylvania has not fared well in this contest among the states. Despite being the 6th largest economy in the nation, it ranks 48th in creating new jobs. Unemployment remains high at 4.8% compared to the national average of 4.1%.

The poor economic environment in Pennsylvania creates a comparative disadvantage that is reinforced by mandates like SB 479, creating yet another barrier for businesses looking to keep and create jobs. Pennsylvania needs to take proactive steps to make the commonwealth more attractive to job-creators, not less, to ensure that every worker has an opportunity for success.

In summary, while we understand and appreciate the reason the bill was introduced, NFIB believes amending the FMLA is a federal debate. Our representatives in Washington may decide that this 25-year-old statute needs updating, perhaps modernized and improved. But, even when well-intended, state expansions that create a patchwork quilt of labor laws are problematic and confusing for employers and create unintended consequences for workers, businesses, and for the economic environment as a whole.

On behalf of the small-business men and women of the NFIB, thank you for focusing on this important issue and allowing us to appear before the committee. I would be happy to answer questions.

³ <http://familiesandwork.org/downloads/2014NationalStudyOfEmployers.pdf>