



Intro

While we are in opposition to HB1001, we want to recognize the lengths Representative Winter has gone to seek input from the business community on this topic, and to acknowledge the importance of finding the right balance between the legitimate needs of employees to take time off for themselves or their families and the equally legitimate needs of businesses to be able to run their operations. Unfortunately, this bill does not strike the right balance.

As a result of the stakeholder process, we've come away with a much deeper understanding of the rich and varied benefits our members offer their employees.

We know that our member businesses must have a robust benefit package to support their recruitment and retention strategies because they value having access to a healthy workforce which in turn means higher productivity. To our members, developing and maintaining robust benefits packages is an essential competitive advantage, which is critical in the low unemployment environment we currently operate within.

Unfortunately, our members can't overcome the basic mandatory nature of this bill and the inherent business disruptions it entails. We have, however, worked with legislators in the past on non-mandatory leave bills and commit to doing so again in the future.

The bill does not just fund FMLA leave. It provides for leave well in excess of that provided by the FMLA.

I will share some of the specific business concerns with this bill that we have previously shared with the Rep. Winter

1. **Employees are entitled to protected leave after just 30 days working for an employer.** The bill gives employees the right to take 12 weeks of leave if he or she's been with their employer for just 30 days, so long as the employee has been in the workforce for 13 hours a week in the previous year. Under the federal FMLA, 12 months for that employer is required.

But because the work requirement is lower than federal law, it would require payment for leave not eligible under FMLA.

This would be frustrating for smaller employers especially, who could see an employee leave for weeks after training him or her for a month, and then would be required to re-instate that employee.

2. **Size of covered employers.** The bill covers employers with just 1 employee—so basically every employer. Larger employers (i.e., the 50-employee level employers covered by the FMLA) are better able to plan for and absorb the types of staffing issues that arise from FMLA leave. To require employers with say, 3 employees, to adhere to the same standards is an undue burden.
 3. **Designated family member:** The bill permits employees to designate a bonus “person” each year to be included as a “family member” for purposes of leave. We know that comes from good intentions, but it could lead to abuse.
 4. **Negligible penalties for erroneous payments:** The penalty for employees who make willful misstatements (e.g., defraud the division) are disqualified from insurance benefits for one year. That’s barely a slap on the wrist. It seems there should be bigger accountability for bad actor individuals/employees.
5. **Liability Issues**
1. Regarding the enforcement, although the bill calls for fines against employers who violate the act, *and* private right of action, it appears as if does not allow an award of attorneys’ fees to a prevailing plaintiff. We very much appreciate the elimination of attorney fees – especially one-way fees only for the prevailing plaintiff – as we believe those types of provisions are a major driver for groundless litigation against employers.
 2. Nevertheless, the bill still contains significant concerns regarding the creation of new lawsuits against employers. It still provides the private right of action for employees who take leave. Restoring an employee to an their previous position or an equivalent position can be very cumbersome, requiring the small employer to keep a position available for months for someone who may have only been a new employee.
 3. It also provides the private right of action for someone who takes, or attempts to take, leave. That means that even employees ineligible for leave can sue their employers under this bill.