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Dear Senate Paid Leave Working Group,

Thank you for allowing me the opportunity to provide comments on the future of paid leave. NFIB is America's leading small business advocacy association representing approximately 300,000 small and independent business owners. The subject of paid-leave is a difficult issue for small business owners. At a time when 40% of small business owners report having job openings they can't fill, and 29%¹ report increased compensation, paid leave can often be a benefit that can attract workers and help to fill jobs. However, mandating leave on the smallest businesses will do nothing to give small business owners the extra resources to offer a benefit that many of them cannot afford.

Mandated leave policies, however, further complicate compliance with workforce laws for employers and raise costs on businesses. Mandated leave is not a free benefit for employees; mandated leave comes with a cost that businesses will have to shoulder and will eventually be absorbed by the employer, employees, and customers. In a small business with a finite number of resources, this translates into less money available for wage increases, health insurance and other benefits, and hiring additional employees.

Small businesses, which are the backbone of our economy, are especially vulnerable to the impact of labor mandates. Small firms typically have few administrative staff members and little human resources experience or regular access to legal counsel. Only about 12% of small businesses have a human resources (HR) professional or dedicated employee who handles personnel

¹ NFIB Research Center, *Small Business Economic Trends Survey (SBET January, 2024)*

matters.² In most small businesses, HR matters are handled by the business owner or an employee who handles back office and administrative tasks. This means that the recordkeeping and reporting requirements mandated by leave proposals will fall more times than not on the business owner. About 50% do payroll in-house.³ Adding a federal leave mandate to existing state and local labor and employment law requirements would complicate an already difficult legal and regulatory environment for small businesses and would expose these businesses to legal challenges.

Additionally, whether an employer is subject to a paid leave mandate or subject to an unpaid leave mandate, leave laws generally impose onerous recordkeeping requirements with which small businesses would need to comply, including new leave tracking, notification, documentation, and reporting requirements. Records would need to be maintained to demonstrate compliance.

When the Family and Medical Leave Act was passed, the Senate debated small business exemptions from such burdensome mandates.⁴ The Senate ultimately agreed on an exemption for small businesses with fewer than 50 employees. The Senate wisely understood that it would be more difficult for small business owners to comply with this new mandate and would potentially be more disruptive to the operations of small firms. NFIB continues to advocate for small business exemptions for any burdensome leave mandates.

Congress must focus on policies that strengthen the economy and reject mandates that increase red tape and costs for small businesses. NFIB believes that mandated leave proposals often envision a one-size-fits-all mandate that would handicap businesses' ability to attract workers at a critical time. Across the nation, small business owners are seeing a growth in sales but are stunted by not having enough workers. Finding qualified employees remains the biggest challenge for small businesses and is slowing economic growth. Owners are raising compensation and offering bonuses and benefits to attract the right employees.

² NFIB Research Center, *NFIB National Small Business Poll Business Structure* (2004), available at <http://www.411sbfacts.com/files/bizstructurepoll11.pdf>.

³ *NFIB National Small Business Poll Tax Complexity and the IRS* (2017), available at [NFIB: The Voice of Small Business - National Small Business Poll \(411sbfacts.com\)](#)

⁴ [S. Amdt.1 to S.5 - 103rd Congress \(1993-1994\) | Congress.gov | Library of Congress.](#)

The NFIB Small Business Optimism Index increased 1.3 points in December to 91.9, marking the 24th consecutive month below the 50-year average of 98.⁵ As reported in NFIB's monthly jobs report, 40% (seasonally adjusted) of all owners reported job openings they could not fill in the current period.⁶ Owners' plans to fill open positions remain elevated, with a seasonally adjusted net 16% planning to create new jobs in the next three months. As long as consumer spending holds up, small businesses will have a need for more workers.

One of the primary ways in which small businesses attract and retain talented workers is by providing innovative benefits like flexible leave policies, designed specifically to fit the needs of their employees and their businesses. The majority of small business owners already include paid leave in their compensation packages. According to an NFIB national small business poll, a majority of small business owners indicated that they already provide flexible leave. Most small employers (73%) offer paid time off (PTO) to the majority of their full-time employees, and 67% of them offer two weeks or more of leave.⁷ The number of days offered is dependent on an employee's length of service in 76% of small businesses offering the benefit.⁸

Most small business owners work hard to ensure compliance with employment and labor laws in a workplace that treats employees fairly, pays decent wages, and provides good benefits, 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 attend to caregiving

⁵ NFIB Research Center, *Small Business Economic Trends Survey (SBET January, 2024)*

⁶ *Id.*

⁷ *NFIB National Small Business Poll, Employee Compensation and Small Business* (2016), available at http://www.411sbfacts.com/files/NFIB_SBP_Emp-Compensation2017_v2.pdf.

⁸ *Id.*

or other family or personal needs without loss of pay.⁹ Flexible work arrangements like these directly correlate with increased employee satisfaction.¹⁰

In summary, expanding leave mandates has two results that impact flexibility in the workplace. Mandating one-size-fits-all policies forces small business owners to eliminate unique programs that benefit their businesses, their customers, their employees, and ultimately their communities. In addition, leave mandates increase costs for small businesses, which almost always limits the flexibility of small businesses to provide benefits that many employees already enjoy.

Small business owners understand the changing dynamics in the workplace – they are grandparents, parents, and caregivers, too – and they want to do all they can to attract and retain the best employees. But when it comes to benefits, flexibility is key for small businesses. Mandated leave laws represent a significant challenge for small business owners since flexibility is critical for a small business, and mandated leave laws are generally anything but flexible, simple to comply with, and affordable.

Small business owners can and do offer support to employees in their lives away from work, whether it's for their own care or to care for a parent, child, or other family member, but they must have flexibility in creating a policy that works for both the employees and the business.

⁹ *Workplace Flexibility: Information and Options for Small Business*, U.S. Department of Labor Women's Bureau (2015), available at https://www.dol.gov/wb/WorkplaceFlexibility_508_FINAL.pdf.

¹⁰ *Workplace Flexibility Survey – Strategic Use of Flexible Work Arrangements*, Society for Human Resource Management (2014), available at [https://www.shrm.org/hr-today/trends-and-forecasting/research-and-surveys/pages/2014-workplace-flexibility-survey-strategic-use-of-flexiblework-arrangements-\(fwas\).aspx](https://www.shrm.org/hr-today/trends-and-forecasting/research-and-surveys/pages/2014-workplace-flexibility-survey-strategic-use-of-flexiblework-arrangements-(fwas).aspx).