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House File 5363 (Frazier)

Dear Chair Xiong and House Workforce Development Members,

The National Federation of Independent Business (NFIB) represents more than 10,000 small businesses across Minnesota. Our mission is to promote and protect the right of our members to own, operate, and grow their businesses.

NFIB appreciates the opportunity to outline some concerns with HF 5363. While this bill makes modest improvements to some elements of Paid Family and Medical Leave (PFML), HF 5363 also creates additional uncertainty and burdens for small employers:

- **Sec. 14:** Removes language requiring the Minnesota Department of Employment Economic Development (DEED) to notify an applicant and employer(s) when an application is submitted, and financial eligibility is determined. This language is important because the PFML law does not guarantee an employer will receive advance notice of leave from an employee. Massachusetts requires the state to notify employers within five business days of the submission of a PFML claim.
- **Sec. 23:** Removes the 480-hour cap on intermittent leave within a 12-month period. Intermittent leave poses a unique workforce management challenge for small employers, most of whom are not subject to or familiar with these requirements under the federal Family and Medical Leave Act (FMLA). This reasonable limit on use of intermittent leave in a 12-month period still leaves options for the employee and creates more certainty for an employer trying to fill shifts and keep doors open.
- **Sec. 25:** Modifies reinstatement requirements but still leaves small employers vulnerable to an unworkable standard. The reinstatement rules in Minnesota's PFML law are based on FMLA regulations, which apply only to employers with more than 50 employees. **FMLA regulations were not designed for small businesses.**

Other state PFML programs have utilized a more flexible reinstatement standard (MA) or exempted small employers from the FMLA-style reinstatement rules altogether (WA: <50 employees). This section is also inconsistent with existing reinstatement requirements in state law (e.g., *Minn. Stat. 181.942*).

- **Sec. 28:** Requires an employer with a private plan to cover claims from former employees for up to 26 weeks following separation from employment or until they find a new job, regardless of whether the qualifying event occurred before or after separation from employment. This is an unfair and unprecedented burden that may put the private plan option out of financial reach for small employers. Qualifying events that occur post-employment should be the responsibility of the state plan.
- **Sec. 38:** Replaces the complex small business PFML Tax rate but needs further clarification to meet the intent of reducing the financial burden for small employers.
- **Sec. 41:** Requires the annual PFML Tax rate adjustment to be published by November 15 each year. This is far too late in the year for most small businesses, as it comes after they've established their budgets for the following year and leaves them vulnerable to large increases in the PFML Tax. Further, it comes after the beginning of open enrollment for employee benefits for most businesses – too late for businesses to adjust benefits to keep pace with changes in the PFML program.

Per statute, the statewide average weekly wage (SAWW) must be published by July 1 of each year (*Minn. Stat. 176.011*). SAWW plays a key role in the total cost of PFML.

Publishing the PFML Tax rate no later than August 30 of each year gives DEED ample time to determine the new rate and gives small employers an opportunity to balance their budgets and make any necessary benefit adjustments. Lawmakers can look to the statutorily imposed date for public release of individual and small group health insurance rates as an example of a deadline that enhances transparency for workers and businesses (*Minn. Stat. 62A.02*).

Above all, HF 5363 fails to address the biggest problems that small businesses will face from the PFML Mandate: unmanageable workforce challenges and a new payroll tax that will escalate until it hits the 1.2% cap.

Lawmakers must do more to control the cost and burden of PFML, starting with reducing the maximum annual leave to 12 weeks, capping the payroll tax at lower rate, and requiring DEED to annually adjust benefit payment amounts to fit under the cap (ME, DE).

Sincerely,



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