



March 23, 2016

To: House Committee on Early Childhood and Family Supports
From: Anthony K. Smith, State Director, NFIB/Oregon
Re: Oregon Small Businesses Oppose HB 3087

Chair Lively, Vice-chairs Piluso and Hack, Members of the Committee:

On behalf of nearly 7,000 Oregon small business members of the National Federation of Independent Business (NFIB) I am writing to express our strong opposition to HB 3087, a bill that would completely change how family and medical leave laws are applied in our state.

In our most-recent survey of NFIB members in Oregon, an overwhelming 95% of respondents opposed any paid family leave program that is funded by employers.

Oregon's small businesses are still struggling to incorporate recent policy choices made by the Legislature into their now ever-changing business models. Paid sick time and minimum wage increases have been particularly consequential to the short and long-term sustainability of many Oregon small businesses.

Both of those policy decisions will have direct impacts on the program that this bill would create – minimum wage increases are scheduled to occur every year for the next five years and since this proposal bases employer contributions on a percentage of the employee's wages, that contribution is likely to increase year-over-year.

Paid sick time is a benefit that employers are now required to pay to eligible employees, but this bill specifically prohibits an employer from requiring an employee to use paid sick time, paid vacation time or any other paid time off – before, or as a condition of – using the family and medical insurance benefits. Employers would essentially be responsible for funding both benefits.

As a state, we've been asking more and more of our small businesses in recent years, and I would just like to take the opportunity to point out that according to the United States Small Business Administration's 2017 Small Business Profile report for Oregon, the median income for individuals self-employed at their own incorporated businesses is \$44,147. The national average is \$49,804, over \$5,000 higher than Oregon. The State of Washington's median is on par with the national average at \$49,518 and California is over \$12,000 higher than Oregon at \$56,142.

Small business owners aren't guaranteed a minimum wage, they don't earn overtime pay, and they carry all the financial and legal liabilities associated with running the business. Still, they manage to make it work, and as a result, NFIB member-businesses employ over 60,000 Oregonians.

National Federation of Independent Business

3340 Commercial Street SE, Suite 210, Salem, Oregon 97302 | (503) 364-4450 | www.NFIB.com/OR



I would also note that 90 percent of our members have fewer than 25 employees – which is a very important number because under current law, specifically the Oregon Family Leave Act (or OFLA) employers of 25 or more employees are required to provide eligible workers with protected leave to care for themselves or family members in cases of death, illness, injury, childbirth, adoption and foster placement.

HB 3087 defines “Employer” as any person that employs one or more employees working anywhere in the state.

OFLA, as well as the federal Family and Medical Leave Act, both acknowledge that the size of the business is an important factor in determining the business’s capacity to accommodate employee leave.

When one employee is out on family leave at the big-box chain, a large employer is more likely to be able to cover the employee’s responsibilities by reassigning other workers or offering part-time employees more hours. When a small business that employs 5 people has someone out on family leave, that’s 20% of the workforce. It’s highly unlikely that the employer would be able to reassign the employee’s duties to the other 4 employees due to the hardships this would impose on these workers, so the employer would likely need to hire a replacement worker.

However, under Section 8 of the bill, after returning to work, an employee would be “entitled to be restored to the position of employment held by the employee when the leave commenced if that position still exists, without regard to whether the employer filled the position with a replacement worker.”

If employers are then forced to lay-off their replacement workers, this would likely impact the employer’s unemployment insurance, unless the employer was informed enough ahead of time to use a temp agency for the replacement.

The bottom line is that OFLA and FMLA draw important distinctions between large employers and small businesses. And if HB 3087 were to pass, that would no longer be the case. For that reason alone, irrespective of the employer contribution requirement, we urge you to oppose HB 3087.

Thank you for your consideration,

A handwritten signature in blue ink, appearing to read "Anthony K. Smith".

Anthony K. Smith
NFIB/Oregon State Director