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May 24, 2017

Testimony on SB 299-A – Sick Time Revisions Submitted by Kate Newhall, Family Forward Oregon

Thank you for the opportunity to provide this testimony on SB 299-A and amendments to Oregon's paid sick time law. We appreciate the work that has been done on SB 299-A to get us from a place of opposition to neutral. We believe these changes address all of the issues that have been discussed frequently and in multiple workgroups since the passage of sick time in 2015. As you know, Family Forward worked with many others to pass a strong and inclusive paid sick time law for Oregon workers. This law is meant to ensure that workers are able to take paid time off when they or a family member are ill. This as an important public health measure and is a basic right to which all workers should be entitled.

We worked hard to craft a law that works well for employers and employees alike have been open to truly technical changes, but have been opposed to any changes to the new sick time law that roll back or eliminate sick time protections for any worker in Oregon. This has been a care balance and a subject of much discussion over the past few years.

While we do not object to the changes contained in SB 299-A and the proposed –A4 amendments, we want to be clear in the limitations these changes are placing on employee's access to paid sick time in several important instances.

Temporary locations in the Portland city limits

In Section 1, changes to the definition of an employer located in the city of Portland (the only city with a population exceeding 500,000 in the state), we understand the intent is to exclude from this definition locations that are truly temporary in nature and not regularly operating within the city limits, like farm stands. We are however, concerned, that without some sort of time limitation on what counts as "temporary" this provision could be abused. This is an issue that came up in rulemaking in 2016 and generated much discussion. We were not opposed to excluding locations that are truly temporary in nature from this definition, but wanted to make sure that a hard time limit was put on what can count as a "temporary location;" during rulemaking, we suggested a 2-month time limit on which locations could be considered temporary. We remain concerned that without a set time limit, this provision could be abused and locations that are not truly temporary in nature will be used to avoid Portland's lower employer size threshold.

Exemption for LLC owners and their family members

In Section 2, the new language related to LLC members broadens the original exemption from sick time for business owners and their parents, spouses and children. When originally discussed, we did not envision this exemption extending to more than just one

family or business owner. Extending this exemption to LLC's will have the effect of exempting additional employees from sick time protections, but we believe setting an ownership percentage threshold prevents this provision from being abused by an employer adding an infinite number their employees as LLC partners. We support Rep. Holvey's amendment to increase this threshold to 15% ownership in the LLC.

Piece-rate employees and wages due for sick time

Section 2 makes changes to the wage piece-rate employees must be paid while out on sick time and will lower the wage due to many of these employees for sick time. It has been argued that the legislative intent around piece-rate workers was that they get paid minimum wage when out on sick time time. This is only partially accurate in my mind. It's important to note that when legislators were having conversations around what a piece-rate worker should be paid when they take sick time, we all assumed that piece-rate workers didn't actually have a regular rate of pay and wanted to ensure they were getting some wage while out on sick time. We didn't realize at that time that under minimum wage and overtime law, even a piece-rate worker has a "regular rate of pay" and this standard had already been well established in wage and hour law: the regular rate of pay for these workers is the average wage they earned during hours worked below 40 hours in a 7-day period. This is the rate that must be used to determine overtime wages and this is the rate that must meet or exceed state minimum wage law. By limiting piece-rate employees to only making minimum wage while they are out on sick time, they will be paid a wage lower than their regular rate of pay.

Limitations on equivalent PTO policies

Section 3 amends provisions related to an equivalent PTO policy that is used to satisfy sick time requirements. We don't object to these changes, but want to note that it may mean certain workers with a combined PTO and sick time policy might not actually get 40 hours of job protected sick time to use. This is easiest to illustrate with an example: if an employer gives 60 hours of combined PTO, sick, and vacation policy and an employee uses 40 hours in the beginning of the year for a vacation, that employee will have no job protection for sick time for the remainder of the year. We do concede that this was the legislature's original intent in enacting the paid sick time law.

Last, we don't have any objections to the rewording done in Section 2 and ORS 653.606(1)(a) and (b), but don't think it actually changes anything in how the law applies or how much sick time a worker can accrue. We don't have any objections to the changes in Section 4 and to the definition of "payroll" for purposes of worker's compensation law.

Thank you for the opportunity to share our thoughts on SB 299-A. As one of the driving coalition partners behind the new sick time law, we want to make sure that law remains strong and, at the same time, that technical corrections are addressed. While we don't necessarily agree that these are all truly technical changes, we do support their adoption and are hopeful that we have addressed all of the issues raised by opponents in these conversations without seriously compromising workers' ability to take paid sick time.