



March 25, 2019

To: House Committee Business and Labor/Senate Committee on Workforce
From: Anthony K. Smith, State Director, NFIB Oregon
Re: Oppose HB 3031

Chairs Barker & Taylor, Vice-Chairs, and Members of the Committee,

On behalf of the thousands of small-business members of NFIB in Oregon, I would like to share with you our concerns regarding HB 3031 – and ask you to join Oregon’s small businesses in opposing this legislation.

Please keep in mind that NFIB represents small businesses in every industry of Oregon’s private sector, and although 90 percent of our members have fewer than 25 employees – and 70 percent have fewer than 10 employees, the small businesses we represent account for over 60,000 Oregon jobs.

In a recent survey of NFIB members in Oregon, an overwhelming 92 percent of respondents opposed the creation of a new state-mandated paid family and medical leave program. In conversations I’ve had with our members, they’ve reported to me that in no way do they oppose the idea of businesses providing a paid family and medical leave benefit to their workers on a voluntary basis as a way to attract and retain qualified employees, which has been especially challenging for the last two years while Oregon’s unemployment rate has been hovering just above 4 percent.

However, a voluntary benefit offered by employers looking to differentiate themselves from their competitors is very different from a new payroll tax on employers and their employees – a tax that would fund a new, one-size-fits-all, state-administered insurance program where everyone pays, with no exceptions.

You can make a good argument for why employers should pay into other insurance programs that are required by state and federal law. When an employee is injured in the course of performing work for their employer, that employee is eligible for workers’ compensation benefits. Employers fund the system on the premise that the injury would not have occurred, but for the fact that the employee was on the job, doing work for the employer.

Likewise, when workers find themselves unemployed, those workers are often eligible for unemployment benefits. Both employers and employees fund the system via payroll taxes. Employees pay-in because that’s how insurance works – you pay a little upfront, and on a



regular basis on the promise that if an adverse situation occurs, you'll have at least some degree of economic certainty while looking for another job. Employers pay into the system because separations that are eligible for the benefit are, by definition, no fault of the employee. Benefits are not paid out to an employee that is fired for cause or who voluntarily quits.

In both our workers' compensation system and our unemployment insurance system, employers pay into the system because their employees are in some way inconvenienced by an adverse action that is directly related to their job – and their relationship to the employer.

This is not the case for family and medical leave – and it's why if the Legislature decides to move forward with such a program, that the system should be 100 percent employee-funded. In none of the situations described in the bill where an individual would be eligible for the benefit is there any clear relationship between the individual's status as an employee and the personal circumstances for which the individual is taking the leave. Certainly, some of those circumstances are planned, like the birth of a child, and other circumstances are unplanned, like caring for oneself or a loved one.

In neither case, however, could any fault be placed on the employer. Absent any fault or control of the circumstances on the part of the employer, there is simply no justification for the employer paying into an insurance fund for the benefit of individuals experiencing personal challenges. For this reason, aside from any other aspects of a paid family and medical leave program, NFIB opposes HB 3031 and any other bill that requires employers to fund the system.

Equally important to the discussion surrounding how a program would be funded is how small businesses would be impacted in ways that their larger corporate competitors may not be. 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 with 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.

However, HB 3031 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 (FMLA), 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, the 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 percent of the workforce.

The smaller the business, the more likely that each employee specializes in specific duties and the less likely that other employees on staff will have the same skill sets in order to cover for the employee on leave. Small businesses, by nature of being small, are more likely to need replacement workers.

However, under Section 9 of HB 3031, 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 during the period of leave. If the position held by the employee at the time leave commenced no longer exists, the employee is entitled to be restored to any available equivalent position with equivalent employment benefits, pay and other terms and conditions of employment."

Employers would be required to maintain any health care benefits the employee had prior to taking leave for the duration of the leave and the employer would not be allowed to require an employee to use paid sick time, paid vacation time or any other paid time off before or as a condition of using family and medical leave insurance benefits. The bill specifically states that "an eligible employee is entitled to use any accrued paid sick time or other paid time off without a reduction in family and medical leave insurance benefits."

Small businesses will inevitably be forced into impossible situations where uniquely skilled employees could be on leave for months at a time, requiring them to find replacements in an economy where there is currently only 1.5 Oregonians looking for work for every job vacancy – which is only exacerbated by the fact that the employer wouldn't be able to promise the replacement worker a permanent position.

The bottom line is that OFLA and FMLA draw important distinctions between large employers and small businesses. And if HB 3031 were to pass, that would no longer be the case. For that reason alone, irrespective of the funding mechanisms being discussed, NFIB opposes HB 3031 and any other bill that changes current law by prohibiting small businesses with fewer than 25 employees from being able to hire permanent replacement employees.

In addition to the aforementioned specific policy-related objections, Oregon's small businesses are still struggling to incorporate recent policy choices made by the Legislature into their now ever-changing business models. Minimum wage increases, paid sick time, and Oregon's Equal Pay law have been particularly challenging to implement for many Oregon small businesses.



All of these policy decisions will have direct impacts on the paid family and medical leave program that HB 3031 would create – minimum wage increases are scheduled to occur every year for the next several years and since this proposal bases employer contributions on a percentage of the employee’s wages, that contribution will 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.

The Equal Pay law specifically prohibits employers from reducing salaries in an effort to be compliant, so as a result, in order to remedy any existing pay differentials, salaries had to be increased. Just like with minimum wage, every increase in payroll comes with an additional payroll tax increase under HB 3031.

As a state, we’ve been asking more and more of our small businesses in recent years. According to the United States Small Business Administration’s 2018 Small Business Profile report, the median income for individuals self-employed at their own incorporated businesses is \$50,347 – that’s the national average. The median for Oregon is just \$45,522, nearly \$5,000 per year less than the national average. As a comparison, the State of Washington’s median is on par with the national average at \$50,668 and California is nearly \$12,000 a year higher than Oregon at \$57,420.

Every new cost we impose on small business adds up and affects the owner’s ability to earn a living. They 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.

Taking into account all of these factors, and the prospect that the Oregon Legislature is also considering a \$1 billion per year tax increase on business and a Cap & Trade program that will generate new revenue to the tune of hundreds of millions per year, we ask you to vote NO on HB 3031.

Thank you for your consideration and the opportunity to submit this written testimony.

Regards,

Anthony K. Smith
NFIB Oregon State Director