



June 11, 2019

To: House Committee on Rules
From: Anthony K. Smith, NFIB Oregon State Director
Re: Oppose HB 2005

Chair Holvey, 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 2005 – 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-administered 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.

One could make a valid 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 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 no justification for the employer paying into the fund. The proposed amendments seem to acknowledge this for employers with fewer than 25 employees, and NFIB recognizes this as a welcome development in the conversation surrounding this measure, however, our organization still represents hundreds of Oregon businesses with more than 25 employees.

These businesses would be responsible for paying this new payroll tax – at a rate that they cannot influence based on “good” performance, like having safety training programs (which decrease workplace accidents and impact workers' comp rates) or having human resources policies in place that reduce employee turnover (which impact unemployment insurance rates.)

Additionally, the cost to state and local governments could have dire consequences for public budgets, and taxpayers will ultimately bear the burden of paying for the public employers' portion of the payroll tax via income taxes and/or local property taxes – so even small employers with fewer than 25 employees (that are “exempt” from directly paying the employer portion of the payroll tax) will indirectly pay into the system. For these reasons, aside from any other aspects of a paid family and medical leave program, NFIB opposes HB 2005.

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. Ninety 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, the amendment to HB 2005 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 a 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 10 of the amendments, 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.

“For employers that employ fewer than 25 employees, if the position held by an eligible employee when a period of the employee’s leave commenced no longer exists, an employer may, at the employer’s discretion based on business necessity, restore the eligible employee to a different position with similar job duties and with the same employment benefits and pay.”

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 are 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 2005 were to pass, that would no longer be the case. For that reason alone, irrespective of the funding mechanisms being discussed, NFIB opposes HB 2005 on the basis that it prohibits small businesses with fewer than 25 employees from being able to hire permanent replacement employees.

As a state, we've been asking more and more of our small businesses in recent years. 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.

Considering these factors, and the fact that the Oregon Legislature has already passed a \$1 billion per year tax increase on business, we ask you reject these new payroll taxes by voting NO on HB 2005.

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

Regards,

Anthony K. Smith
NFIB Oregon State Director