



The ERISA Industry Committee

Driven By and For Large Employers

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March 25, 2019

House Committee on Business and Labor

900 Court St. NE

Salem, Oregon 97301

RE: Oregon Paid Family and Medical Leave Program – House Bill 3031 and House Bill 3385

Ladies and Gentlemen:

The ERISA Industry Committee (“ERIC”) is writing to the Oregon House Committee on Business and Labor (“Committee”) to comment on Oregon House Bill 3031 (“HB 3031”) and House Bill 3385 (“HB 3385”) proposing the establishment of a state-administered paid family and medical leave insurance program.

ERIC is particularly concerned about the lack of state preemption of local and municipal paid leave ordinances, the expanded definition of family member, and the lack of employer flexibility to create private programs that are best tailored to the needs of their workforce. We encourage the Committee to consider our comments and concerns and amend these bills to ensure that employers are able to comply with the proposed program and also able to continue to provide generous paid family and medical leave benefits to their employees.

ERIC’s Interest in the Proposed Legislation

ERIC is the only national association that advocates exclusively for large employers on health, retirement, and compensation policies at the federal, state, and local levels. ERIC’s members provide comprehensive paid leave programs that benefit millions of workers and their families. ERIC has a strong interest in proposals, such as HB 3031 and HB 3385, that would affect its members’ ability to continue to provide quality and uniform paid leave benefits to their employees.

ERIC shares the same goal of increasing employee access to paid family and medical leave benefits; however, we strongly encourage the adoption of legislative language that minimizes administrative and compliance burdens on large employers who already provide paid leave benefits to their employees and that does not hinder large employers’ ability to design their own leave benefits to best meet the needs of their business and workforce while satisfying the intent of Oregon’s proposed law.

We appreciate the opportunity to provide comments on the proposed legislation, as well as to discuss ways in which burdensome administrative impacts can be minimized for large employers who already offer generous paid family and medical leave benefits to their employees.

Comments

I. The State Program Should Preempt Local and Municipal Regulation of Paid Family and Medical Leave

Since the implementation of the federal Family and Medical Leave Act (“FMLA”) nearly three decades ago, employers have been able to refer to a uniform, consistent set of standards when complying with federal family and medical leave requirements. As states continue to propose the creation of new paid family and medical leave programs, the uniform compliance standards established by federal law has given way to a patchwork of state standards, creating significant compliance burdens for large employers operating across multiple states. At the same time, a number of municipalities have passed, or considered, their own paid family and medical leave ordinances. This creates an even more convoluted patchwork of conflicting laws that makes it extremely difficult for employers to comply.

An effective state paid family and medical leave program should preempt local and municipal ordinances, providing employers with a single standard with which to comply while operating within a state. Currently, HB 3385 contains a provision relating to state preemption of local paid leave ordinances, however HB 3031 does not. We therefore encourage the Committee to include the preemption language found in HB 3385 in any bill proposing the creation of a state program.

II. Definition of Family Member Should Match the Federal FMLA Definition

The federal FMLA has been in effect for decades and has been widely used as a standard by companies to design leave benefits for their employees. Under the FMLA, employers are required to provide unpaid leave for employees to care for an employee’s child, spouse, or parent. HB 3031 and HB 3385 both use definitions of family member, or the qualified individuals whom employees may use leave benefits to care for, that extend beyond the requirements of the federal FMLA.

The definitions currently included in HB 3031 and HB 3385 would result in a compliance burden for employers operating across multiple states as different states implement programs that recognize different definitions of family member. We therefore encourage the Committee to amend the bills to include a definition of family member that is consistent with the definition provided by the federal FMLA.

III. Duration of Leave Should not Exceed the Length Provided by the Federal FMLA

The federal FMLA provides for employee access to 12 weeks of unpaid family and medical leave. The current standards set forth in HB 3031 and HB 3385 would not only go beyond the requirements of the FMLA by providing paid family and medical leave to employees, but would extend well beyond federal duration requirements, providing for a cap at 32 weeks and 18 weeks respectively. The 32 weeks of capped leave time provided for in HB 3385, for example, would create the potential for employees to spend significantly more time in a calendar year on leave than at work.

These periods of leave are extraordinarily long and would require the constant use of temporary staff that often lack the training and expertise of permanent employees. Employers simply cannot be expected to operate with employees taking leave for these expansive durations. We, therefore, strongly encourage the Committee to limit the duration of leave provided by a state paid family and medical leave program to the 12-week standard established by the federal FMLA.

IV. The State Program Should be Funded by Employee Contributions Only

ERIC and its member companies understand the importance of allowing paid time off to employees to care for a newly born or adopted child as well as to help care for an ailing family member. While employees are able to take this time off, however, employers will often be left without important staff for weeks or months at a time. During leave, employers will often have to find short-term replacements for their employees on leave in order to make up for the loss of productivity associated with an employee taking extended leave. Because of this, employees should be solely responsible for the funding of the state paid family and medical leave insurance program as they are the individuals that will be receiving wage replacement while on leave from work.

V. The State Program Should Provide a Waiver for Employers That Are Already Providing Equivalent Paid Family and Medical Leave Benefits to Their Employees

Employers already offering paid family and medical leave benefits to employees that are equal to or more generous than those required by the state program should be granted a waiver from required participation in and contribution to the state program. Many large companies design their paid family and medical leave benefits to meet the overall compensation and employee benefits goals of the company, and are tailored to their industry, competitive environment, and the needs of their workers. As a result, ERIC member companies do not utilize a one-size-fits-all model for paid family and medical leave programs.

We believe that eliminating employer flexibility to create and operate employer-provided paid family and medical leave programs would ultimately reduce or eliminate the access that Oregon employees would have to employer-provided paid family and medical leave programs that are generally more generous than the standards provided by a state program. Currently, HB 3385 contains a process by which employers can be granted a waiver from participation in the state program. However, HB 3031 does not contain such a provision. We therefore encourage the Committee to include a waiver in any state program for employers that already provide a paid family and medical leave benefit to their employees that is equivalent to, or more generous than, the requirements of the proposed paid family and medical leave program.

Conclusion

Ultimately, ERIC shares your goal of increasing access to paid family and medical leave benefits for Oregon employees. However, we believe that allowing for local regulation of paid family and medical leave, limiting employer flexibility in the creation of paid leave programs best suited to their workforce, and drastically extending the standards and definitions beyond those used by federal law, would serve to detract from the overall goal of increasing employee access to paid family and medical leave throughout the state.

Therefore, legislation for the implementation of a state paid family and medical leave program should take into serious consideration the array of challenges and burdens that employers are to face when attempting to comply with the requirements of the proposed program. In comparing the proposals contained in both of these bills, it is clear that HB 3031 proposes a far more aggressive expansion of paid leave standards than is proposed by HB 3385, or any proposals currently being considered by other states. While the current language contained in HB 3385 proposes far more achievable paid leave benefit standards, it too reaches beyond many programs that have been enacted or even proposed in other states. While ERIC supports efforts to expand access to important paid family and medical leave benefits, state programs must also ensure that catastrophic burdens are not placed on employers that would ultimately detract from the benefits that such a program seeks to achieve.

ERIC appreciates your consideration of our concerns. If you have any questions concerning our comments, or if we can be of further assistance, please contact us at (202) 789-1400 or arobinson@eric.org.

Sincerely,

A handwritten signature in cursive script that reads "Aliya Robinson".

Aliya Robinson
Senior Vice President, Retirement and Compensation Policy