CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

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September 14, 2020

Ms. Laurie Todd-Smith
Director, Women's Bureau
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Via Electronic Submission: www.regulations.gov

RE: Request for Information; Paid Leave (RIN 1290-ZA03)

Dear Ms. Todd-Smith:

The U.S. Chamber of Commerce (Chamber) appreciates the Women's Bureau conducting the Request for Information (RFI) to solicit input on how best to address the issue of ensuring employees have paid leave so that they can attend to various personal matters.

Many of the Chamber's members operate in multiple states and localities, and many of these have told us of the difficulties they are having complying with the various, and growing, state and local based paid leave mandates and programs. These companies are having trouble working with the many inconsistent administrative elements that comprise managing a paid leave benefit. These problems occur with both paid sick leave (PSL) and paid family leave (PFL) benefit programs. Attached are two tables showing how the different state and local leave mandates and programs have very different specific administrative features.

Based on the comments from our members, the Chamber believes that if any permanent federal paid family leave program is enacted (as distinguished from the leave benefits included in the Families First Coronavirus Relief Act), the *overwhelming priority* is to provide employers the opportunity to opt into a nationally structured program that relieves them of having to comply with the patchwork of state and local programs. By making this an option for employers, those employers who are comfortable with the state or local programs that cover them, such as those employers who do not operate in multiple jurisdictions, may remain in those programs.

Other key principles the Chamber believes should be reflected in any federal paid family leave benefit, if one is enacted, are:

- **Employee Funded**—Several states, such as California, New Jersey, Rhode Island, and (most likely) Connecticut, fund their PFL programs exclusively through mandatory employee payroll deductions. The employee payroll deductions are collected by the

employer each pay period and ultimately remitted to the administering agency, usually on a quarterly basis. A future federal PFL program should follow this model for multiple reasons.

First, employers will need to absorb significant PFL implementation costs. These costs include, but are not limited to, policy drafting, setting up payroll deductions, employee and manager training, integration with existing company policies, employee absenteeism due to use of the PFL, recordkeeping, and remitting collected premiums to the administering agency. Thus, employers should not have to cover the costs of the PFL premium as well. Second, and relatedly, many employers already incur the cost of maintaining their company-provided PFL and/or short-term disability programs. Requiring them to also fund some or all of a state PFL program would force them to pay for the same employee benefit twice. This unreasonable double payment standard could encourage many such employers to drop their existing company paid leave programs, which often times are more generous than state PFL programs.

- **FMLA Model—**Existing state and local PFL programs impose a number of standards—employer coverage, employee eligibility, amount of benefits, qualifying events, covered family members—that far exceed comparable standards under the federal FMLA. By broadening their requirements so far beyond those imposed by the FMLA, employers subject to state and local PFL laws are left absorbing hefty costs and administrative burdens in order to comply. To this end, any future federal PFL proposals should largely (although not entirely) follow the existing FMLA model, including, but not limited to, the following points:
    - Employer Coverage—The Issue: Small businesses face unique compliance challenges, particularly with regard to operational disruptions, which is why the FMLA only applies to employers who employ 50 or more employees for at least 20 workweeks in the current or preceding year. However, most existing PFL laws will cover an employer if it has one or more individuals in employment in the relevant jurisdiction, thereby imposing substantial financial and operational burdens on small businesses across the PFL jurisdictions.
        - Recommendation: Any future federal program should set an employer coverage threshold that is friendly to small businesses. The threshold should be no less than employing 50 employees for at least 20 workweeks in the current or preceding year, as exists under the FMLA.

    - Employee Eligibility—The Issue: Existing PFL laws contain a variety of employee eligibility criteria, many of which include low annual earnings thresholds, hours worked requirements, and/or length of employment requirements. These criteria cover many individuals, including new hires, seasonal employees, and certain part-time employees, who are not currently eligible for leave under the FMLA. Employers that employ large part-time populations, depend on influxes of seasonal employees during peak months, and/or experience high employee turnover, will face extensive and widespread administrative and financial challenges if employees who currently do not reach the FMLA eligibility threshold are entitled to federal or state PFL benefits.

- Recommendation: Any future federal program should impose an employee eligibility standard that, at a minimum, requires employees to meet the hours worked, length of employment, and worksite eligibility standards under the FMLA, namely that the employees (1) have worked for that employer for at least 12 months, (2) have worked at least 1,250 hours during the 12 months prior to the start of the FMLA leave, and (3) work at a location where at least 50 employees are employed at the location or within 75 miles of the location. Further, any future federal PFL program also should require that an individual satisfy a minimum earnings threshold based on his or her earnings during the current or prior year in order to be eligible to receive federal PFL benefits.

- Length of Benefits—The Issue: Four of the existing 10 PFL laws permit employees to receive PFL benefits during more than 12 weeks in a 12-month period (i.e., the federal FMLA threshold), with the maximum annual amount of PFL benefits being afforded in Massachusetts (26 weeks of combined family leave and medical leave) and Washington State (18 weeks of combined family and medical leave). A number of other PFL laws where the annual weekly benefit amount is less than or equal to the FMLA's 12-week standard do not permit employees to use PFL for their own serious health condition. Instead, employees often can receive benefits for such absences through a separate state program (i.e., disability insurance benefits), which increases the aggregate amount of time off an employee can take in a year beyond the FMLA threshold. Excessive amounts of time off impose considerable costs and complications on employers and employees not on leave.
  - Recommendation: Any future federal PFL program should provide eligible employees with no more than 12 weeks of benefits in a 12-month period.

- Qualifying Events—The Issue: State and local PFL benefits are available for family and medical issues that far exceed bonding with a new child, as well as other covered absences under the FMLA.
  - Recommendation: Any future federal PFL program should limit qualifying events to those permitted under the FMLA.

- Covered Family Members—The Issue: Many PFL laws define "family member" significantly more broadly than parent, child, and spouse (i.e., the federal FMLA standard). Common additional covered individuals include parents-in-law, siblings, grandparents, and grandchildren. However, and notably, the New Jersey, Connecticut, and Oregon PFL laws also provide employees with PFL benefits when they are absent to care for the serious health condition of an individual whose close association with the employee is equivalent to a family relationship.
  - Recommendation: Any future federal PFL program should largely limit covered family members to the categories of individuals who are considered family members under the FMLA—parent, child, and spouse, although adding grandparents to that list should be considered.

- Job Protection—The Issue: Not all state PFL programs explicitly guarantee that a worker can return to his or her job.
    - Recommendation: A future federal or state PFL program should be specific about a worker's right to return to his or her job after taking leave.

The Chamber offers its assistance to the Women's Bureau for any future efforts in developing a recommended approach to a federal paid family leave benefit.

Sincerely,

Marc Freedman
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Employment Policy Division