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Senate File 3787 (Pappas)

Dear Chair McEwen and Senate Labor Committee Members,

The National Federation of Independent Business (NFIB) represents over 10,000 small businesses across Minnesota. Our mission is to promote and protect the right of our members to own, operate, and grow their businesses.

NFIB Minnesota appreciates the opportunity to comment on SF 3787, which increases penalties and makes other changes to last year's Earned Sick & Safe Time Mandate.

Both before and since the mandate's enactment, we have received a steady stream of complaints from small employers. The most common concerns are:

Workforce Management: Small employers do not have a reserve of workers to call on when an employee calls out without notice. Without the practical ability to enforce advance notice or documentation requirements, small employers are left with few tools to ensure ESST is being used properly. This is particularly acute in industries that are customer-focused and time-sensitive, such as licensed care, retail, hospitality, and manufacturing.

Financial Impact: Many small employers report that ESST is exacerbating underlying issues, as labor costs and labor quality are the top problem for one in three small businesses. A small business owner in Hastings who employs five full-time staff and twenty part-time employees estimates ESST will cost over \$10,000 this year, while leaving the business shorthanded and unable to provide promised care to customers.

Late Guidance. Despite ESST taking effect on January 1, 2024, the Minnesota Department of Labor and Industry did not publish initial guidance for employers until late October 2023. Further substantive guidance was added less than 30 days before implementation. This left many small employers scrambling over the fall and winter to figure out how to comply with the often-ambiguous statutes that govern the mandate.

Based on feedback from small business owners across our state, we urge lawmakers to relieve the burden and strike a better balance on the ESST Mandate.

Covered Employees: The state should follow the example of Vermont by exempting:

- part-time employees who work less than 18 hours per week, since part-time employees have the opportunity to be made whole by picking up additional shifts to offset a sick day.
- seasonal employees employed by an employer for 20 weeks or fewer in a 12-month period, provided employees become eligible if they work over 20 weeks in that period.
- minors under the age of 18 years old.

In addition, the law should exempt employees who are related to an owner by blood or marriage. Small, family-run businesses manage time off differently than large corporations.

Balanced Notice Requirements. Small employers are required to provide notice of ESST rights under threat of significant penalty. Employees are under little to no obligation to provide advance notice of ESST use that is “unforeseeable.” Employers should be allowed to require advance notice of at least two hours prior to a scheduled shift to receive paid ESST.

Similarly, employers should be permitted to require documentation for ESST use starting on day one and employees should be required to submit documentation in a timely manner to receive paid ESST.

Prorated Hours for Midyear Starts. For employers who frontload hours, allow them to prorate frontloaded hours based on the days remaining in a benefit year when an employee starts in the middle of a benefit year. This change would allow employees who start midyear to receive frontloaded hours and saves employers who frontload the burden of tracking accrued hours for a short period of time.

New Employee Trial Period: Allow employers to impose a waiting period on ESST use during the first 90 days of employment. Of the 15 states with ESST Mandates, 11 allow a trial period of 90 days or longer: AZ, CA, CT, MD, MA, MI, OR, RI, WI, WA.

Financial Relief: Most state ESST Mandates (AZ, CT, MD, MA, MI, NY, OR, RI) provide relief to small employers in the form of outright exemptions, requiring unpaid time off, or reducing the number of paid hours. Minnesota’s ESST law should be amended to require small employers with less than 50 employees to pay half the regular rate of pay for ESST hours and allow those businesses to restrict carry over without paying out for unused hours.

Sincerely,



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