April 8, 2022

The Honorable Bill Ferguson
President of the Maryland Senate
H–107 State House
Annapolis, MD 21401

Dear President Ferguson:

In accordance with Article II, Section 17 of the Maryland Constitution, I have vetoed Senate Bill 275 – *Labor and Employment – Family and Medical Leave Insurance Program – Establishment (Time to Care Act of 2022).*

While we share the goal of providing a healthy working environment and sufficient leave time for working Marylanders to care for themselves, their families, and bond with new children, Senate Bill 275 is an irresponsibly crafted, rushed piece of legislation that unfairly penalizes the hundreds of thousands of hard working men and women who own and operate small businesses in Maryland.

Previous Administration Proposals. During my administration, I have introduced two serious proposals to provide paid leave benefits to Marylanders and an invitation to engage in a productive conversation with the Legislature to reach a common sense solution. In December of 2016, I was the first Republican governor in the nation to introduce a statewide measure to expand paid leave. My plan required larger businesses to provide paid leave, incentivized small businesses with fewer than 50 employees—the definition of a small business as set by the Obama administration—to offer the benefit by providing tax benefits to help offset the costs, and had the potential to cover 100% of Maryland workers. But the legislature failed to take any action on my proposal, or even come to the table, and instead passed a confusing, unwieldy, and unfair program. Several years later, we are back in the same situation, with an even worse proposal unfairly burdening small businesses.

A New Regressive Payroll Tax. Senate Bill 275 mandates that every employer with 15 or more employees—well below the Obama administration standard—must participate in the Family and Medical Leave Insurance Program ("FMLI" or "the Program") and contribute an indeterminate amount per employee to the Family and Medical Leave Insurance Fund ("the Fund"). After two years of a devastating global pandemic, inflation reaching a 40–year high of 7.9%, U.S. banks like Goldman Sachs predicting a 35% chance of a US recession within the next year, and critical workforce shortages, a new $1.6 billion dollar regressive statewide payroll tax is the worst thing lawmakers could be imposing on our Maryland employers and employees.

No Payroll Cap Or Cost–Sharing Formula. As amended, Senate Bill 275 contains no payroll deduction cap or cost–sharing formula, and puts the onus on the Department of Labor (Labor) to determine these rates. Every single Family Medical Leave Insurance program that has been enacted has included a set payroll cap in statute to ensure reasonableness and protect the viability of the program. Further, and perhaps most egregiously, the yearly maximum benefit amount increases are attached to the Consumer Price Index (CPI). This is guaranteed to mirror the state's current issue that is also tied to the CPI: the gas tax. However, unlike the gas tax, the CPI increase has no cap and the maximum benefit will increase year–over–year with inflation. With benefit output increasing, and deposits into the fund remaining constant, the solvency of the Fund will immediately be threatened.

Flawed and Rushed Implementation Process. To determine these Program dependent rates, Labor is required to conduct multiple studies in only six months while the Department of Legislative Services (DLS) is simultaneously studying if Labor is even capable or has the capacity to implement and administer the Program. For a program that has failed to pass the legislature on several previous occasions, this rush to get to the finish line in an election year is unfortunate timing for the small businesses and employees of Maryland. Something so important deserves a thoughtful, bipartisan approach with input from industry stakeholders, and a holistic evaluation – not a piece of legislation created behind closed doors.

In addition, employees are mandated to take employer–provided leave first before utilizing the 12 weeks provided under this Program. The employee may then be qualified for an additional 12 weeks within a benefit year if the employee has both a serious health condition and the birth of a newborn. Therefore, an employee could be absent from the workplace for over 24 weeks – nearly half a year – putting an extreme burden on the employer who is mandated to hold the position for the employee until they return unless the employer can provide "cause" for the employee to be let go. "Cause" is undefined and an overly ambiguous term that could complicate an employers' compliance.

Had the General Assembly moved forward with a family leave proposal that adhered to the Obama administration's definition of small businesses, I would have been more inclined to support it. An innovative and thoughtful approach to family leave that is flexible for both the employee and employer is important to improve the quality of life in the state. However, this legislation is backed by no actuarial analysis, no viable plan for implementation, and leaves the smallest of small businesses vulnerable to insurmountable regulatory burdens. Its most pressing concern appears to be election–year politics. I cannot in good faith allow such a costly and flawed measure to take effect.

For these reasons, I have vetoed Senate Bill 275.

Sincerely,

Lawrence J. Hogan, Jr.
Governor