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DEPARTMENT OF BUDGET AND MANAGEMENT

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SENATE BILL 275 Labor and Employment - Family and Medical Leave Insurance Program - Establishment (Hayes and Benson)

STATEMENT OF CONCERN

DATE: March 24 2022

COMMITTEE: House Economic Matters

SUMMARY OF BILL:. SB 275, as amended, establishes the Family and Medical Leave Insurance (FMLI) Program in the Department of Labor to provide partial wage replacement to employees who take leave to care for a newborn, attend to the serious health condition of the employee or a family member, or other qualifying exigencies that pertain to a family member that is a service member; establishes the Family and Medical Leave Insurance Fund as a special, nonlapsing fund; requires, *beginning October 1, 2023, employees, employers, and self-employed individuals to contribute up to .75% of wages to be shared between employees (75%) and employers (25%); allows, beginning January 1, 2025, employees to submit a claim for benefits of up to 12 weeks for family and medical leave and an additional 12 weeks for the care of a newborn child, adoption, or foster care placement*; establishes an initial weekly benefit amount of at least $50 and not more than $1,000 to be subsequently increased by the CPI; *requires the Department of Labor to promulgate regulations by June 1, 2023; requires the Department of Labor to conduct an actuarial study on the cost to maintain the solvency of the FMLI Fund and the cost to the State for paying the employer share for community providers funded by the Behavioral Health Administration (BHA) and Developmental Disabilities Administration (DDA), the findings and recommendations of which shall be provided to the Senate Finance Committee and House Economic Matters Committee by October 1, 2022; expresses legislative intent that, effective January 1, 2023, the State pay the employer share of the wage tax for BHA and DDA community providers; expresses legislative intent that, effective January 1, 2023, the State pay the employee share for private employees who make less than $15 per hour until June 30, 2026*. Effective June 1, 2022.

EXPLANATION: The Department's Office of Personnel Services and Benefits is charged with administering the Statewide Personnel System for executive branch agencies, with the exception of the Department of Transportation (MDOT) and University of Maryland System (UMS). State employees are currently protected under FMLA and enjoy significant amounts of leave that are not typically provided in the private marketplace, <u>which makes a FMLI Program for State employees redundant.</u>

The State is appropriately focused on providing competitive salaries and enhancing its telework policy, both of which are important to employees. To this end, the FY 2023 Budget allocates $820 million for salary enhancements.

That being said, the sustainability of any FMLI Program needs to be carefully evaluated and examined by an actuarial analysis. Further, there is sufficient evidence from the experience of other states' that there are implementation and solvency challenges with FMLI programs that need to be avoided.

- DBM cautions against any rush to implementation without a thorough analysis <u>before</u> Program details are determined.
- Imposing **a new billion dollar statewide wage tax** on Maryland employers and employees is significant during a normal economy.
- Imposing a wage tax during a period of critical workforce shortages, record inflation, and a global health pandemic, as well as the uncertainty associated with a war in Ukraine and a newly-elected Administration is risky and deserves the scrutiny that a broad-based Commission and fact-based evaluation can provide.

- **Senate amendments to SB 275 add new funding mandates to the State Budget**, including (i) the employer share of the wage tax for BHA and DDA community providers and (ii) the employee share of the wage tax for private sector workers who earn less than $15 per hour.
    - There is a "cliff" effect in Jan 1, 2025 for the low-wage worker when the minimum wage increases from $14 per hour to $15 per hour and employees have a $2-$3 weekly payroll tax deducted from their $40 gross pay increase. Political pressure to continue the State funding mandate for low-income workers is unlikely to recede.
    - <u>**Requiring the State to pay the wage tax for private employees is precedent-setting.**</u>
- Contrary to the intent of a FMLI Program as an insurance program, **these new funding mandates create a substantial financial burden on the State (in addition to the State's costs for its own employees) and transform the Program into a social program.**

CURRENT PAID LEAVE FOR STATE EMPLOYEES

- *Annual Leave* - 10 to 25 days annually, dependent upon seniority. Leave can carry over from year to year up to a maximum of 75 days. Can be used for any purpose.
- *Personal Leave* - 6 days annually (7 during a Leap Year). Can be used for any purpose.
- *Compensatory Leave* - earned by employees who do not receive overtime payments. Can be used for any purpose.
- *Sick Leave* - 15 days annually. Can be used for an illness/disability or medical appointment of the employee or a member of the employee's immediate family. Leave can carry over from year to year with <u>no limit</u>.
- *Parental Leave* - Up to 60 days of leave to care for a newborn child, but must first exhaust available annual or personal leave. State employees who are jointly responsible for the child may each be eligible for the 60 days of leave.
- *COVID Leave* - 10 days annually.
- *Leave Bank* - State employees may donate annual, personal and/or sick leave to other employees who have a serious and prolonged medical condition and who have exhausted all their leave.
- *Leave Donation Program* - State employees may donate annual, personal and/or sick leave to other employees who have a serious and prolonged medical condition and who have exhausted all of their leave.
- *Accident Leave & Temporary Total Disability (TTD)* - Paid leave granted to an employee as a result of a work-related accident. The leave is paid at ⅔ the employee's normal pay. Accident leave may be extended up to a year, after which the employee may continue to be paid ⅔ under TTD.
- *Holiday Leave* - 12 holidays annually (13 during an election year).

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