a better balance
the work and family legal center

Headquarters
250 West 55th Street, 17th Floor
New York, NY 10019
tel: 212.430.5982

Southern Office
701 Bradford Ave.
Nashville, TN 37204
tel: 615.915.2417

DC Office
815 16th Street NW, Suite 4162
Washington, DC 20005

Colorado Office
303 E. 17th Ave., Suite 400
Denver, CO 80203

abetterbalance.org | info@abetterbalance.org

Testimony Regarding the H.B. 571 Relating to Modifications to the Family and Medical Insurance Program
Submitted to the House Economic Matters Committee
February 12, 2024

Submitted by: Elena Rodriguez Anderson, Staff Attorney, A Better Balance & Cassandra Gomez, Senior Staff Attorney, A Better Balance

We are submitting this testimony on behalf of A Better Balance, a national nonprofit legal advocacy organization, which uses the power of the law to advance justice for workers, so they can care for themselves and their loved ones without jeopardizing their economic security. Through legislative advocacy, direct legal services and strategic litigation, and public education, A Better Balance combats discrimination against pregnant workers and caregivers and advances supportive policies like paid sick time, paid family and medical leave, fair scheduling, and accessible, quality childcare and eldercare. To that end, we have been helping to draft paid family and medical leave laws and helping with implementation in states throughout the country, for over a decade. A Better Balance is proud to have worked alongside partners in Maryland to advocate for the passage of Maryland's paid family and medical leave program, and we are glad to support implementation efforts to ensure that the program is implemented as strongly as intended.

We are delighted that Maryland is committed to providing an effective paid family and medical leave program to workers in the state and strongly encourage this committee to pass House Bill 571, which includes several modifications to the existing paid family and medical leave law that will help clarify and strengthen the program. In this testimony, we applaud the proposed changes to the rules on private plans, and include a suggestion that we strongly recommend to ensure that the final bill is more in line with the unemployment insurance law, as we believe is intended.

I. <u>We strongly support the amendments in relation to private employer plans.</u>

We strongly support the requirements for private employer plans as amended by H.B. 571, which will help the Department of Labor to ensure that employers who apply to use private employer plans are providing paid family and medical leave benefits that meet or exceed the state plan. Pursuant to H.B. 571, the Secretary of Labor would be charged with establishing reasonable criteria for determining which employers may meet the requirements of the program through employer-provided benefits. The example criteria specified in H.B. 571 (an employer's number of employees, capitalization, bondedness, and status as a government employer), are similar to criteria from other paid family and medical leave programs that also allow employers to fulfill their obligations under the law through a private plan. Such criteria signal that oversight by the

a better balance
the work and family legal center

Headquarters
250 West 55th Street, 17th Floor
New York, NY 10019
tel: 212.430.5982

Southern Office
701 Bradford Ave.
Nashville, TN 37204
tel: 615.915.2417

DC Office
815 16th Street NW, Suite 4162
Washington, DC 20005

Colorado Office
303 E. 17th Ave., Suite 400
Denver, CO 80203

abetterbalance.org | info@abetterbalance.org

Department will be oriented towards ensuring that an employer has the resources and capability to properly self-insure or purchase insurance that adequately supports the leave needs of its employees.

We also strongly support that H.B. 571 would permit the Department to establish fees in relation to private employer plans. Many state paid family and medical leave programs have established employer fees in relation to private employer plans, such as application fees or fees in relation to the cost of the Department's continued oversight of private employer plans. Permitting the establishment of such fees in relation to private employer plans will ensure that the Department can balance an employer's choice to operate a private employer plan as permitted by statute with the cost to the Department of assessing and overseeing private employer plans. Costs associated with program implementation, including the oversight of private employer plans, are paid for by the Family and Medical Leave Insurance Fund, which is in turn composed of contributions from employers and workers who are covered by the state plan—costs associated with private employer plans should be assumed by the employers who choose to opt into them, as the Department would be able to establish pursuant to H.B. 571.

II. We strongly encourage the Committee to further modify the definition of "covered employee" as amended by H.B. 571 to fully capture the definition of "base period" from the unemployment insurance law.

H.B. 571 would modify the definition of "covered employee" pursuant to Md. Code Ann., Lab. & Empl. § 8.3-101(d) to measure a worker's eligibility over the four most recently completed calendar quarters immediately preceding the first day of the worker's leave, rather than the 12-month period immediately preceding the first day of the worker's leave as currently included in the statute. This amendment would more closely align the paid family and medical leave program with the unemployment insurance statute, which uses a similar look back period for eligibility. While we support more closely aligning the family and medical leave program with the unemployment insurance statute in this respect, we strongly recommend modifying H.B. 571 to incorporate the full definition of "base period" from the unemployment insurance statute.

As currently proposed by H.B. 571, the definition of "covered employee" would only incorporate half of the unemployment insurance law's definition for "base period," which establishes the look back period against which benefit eligibility is assessed. *See* Md. Code Ann., Lab. & Empl. § 8-101(b)(2). However, to more closely align the paid family and medical leave program with the standard established in the unemployment insurance law, we recommend incorporating both prongs of the unemployment insurance law's definition of "base period": the first 4 of the last 5 completed calendar quarters immediately preceding the start of the benefit year*, and* the 4 most

a better balance
the work and family legal center

Headquarters
250 West 55th Street, 17th Floor
New York, NY 10019
tel: 212.430.5982

Southern Office
701 Bradford Ave.
Nashville, TN 37204
tel: 615.915.2417

DC Office
815 16th Street NW, Suite 4162
Washington, DC 20005

Colorado Office
303 E. 17th Ave., Suite 400
Denver, CO 80203

abetterbalance.org | info@abetterbalance.org

recently completed calendar quarters immediately preceding the start of the benefit year, which serves as an alternative look back period to measure a worker's eligibility. Md. Code Ann., Lab. & Empl. § 8-101(b)(1), (2).

This two-pronged definition importantly ensures that employees to have two alternative periods over which they can qualify for benefits—if the worker does not fulfill the hours worked requirement in the first 4 of the last 5 completed calendar quarters, they have another opportunity to qualify during the 4 most recently completed calendar quarters. It is also the norm among other existing paid family and medical leave programs to use a two-pronged approach, similar to unemployment insurance, so that workers can qualify for benefits over a base period or alternative base period. To ensure that Maryland's program is in line with the unemployment insurance law, and other state paid family and medical leave programs, we recommend utilizing the unemployment insurance law's full definition for "base period" within the "covered employee" definition at Md. Code Ann., Lab. & Empl. § 8.3-101(d).

III. Conclusion

We strongly support H.B. 571 with the amendment we suggested herein, and thank you for the opportunity to submit this testimony. If you have any follow-up questions, do not hesitate to contact us at erodriguezanderson@abetterbalance.org or cgomez@abetterbalance.org.

Sincerely,

Elena Rodriguez Anderson
Staff Attorney
A Better Balance

Cassandra Gomez
Senior Staff Attorney
A Better Balance