

TESTIMONY BEFORE THE UNITED STATES CONGRESS
ON BEHALF OF THE

NATIONAL FEDERATION OF INDEPENDENT BUSINESS



Statement for the Record of Elizabeth Milito
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**United States Senate
Committee on Finance**

***Exploring Paid Leave: Policy, Practice, and Impact
on the Workforce***

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National Federation of Independent Business
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Washington, D.C. 20004

Chairman Wyden, Ranking Member Crapo, and members of the Senate Committee on Finance:

On behalf of the National Federation of Independent Business (NFIB), I appreciate the opportunity to submit for the record this testimony for the Senate Committee on Finance hearing entitled, *“Exploring Paid Leave: Policy, Practice, and Impact on the Workforce.”*

My name is Elizabeth Milito, and I serve as the executive director of the NFIB Small Business Legal Center. The NFIB Small Business Legal Center is a nonprofit, public interest law firm established to provide legal resources and be the voice for small businesses in the nation’s courts through representation on issues of public interest affecting small businesses.

NFIB is the nation’s leading small business advocacy organization, advocating on behalf of nearly 300,000 small business owner members in Washington, D.C., and all 50 state capitals. NFIB’s mission is to promote and protect the right of our members to own, operate, and grow their businesses. NFIB proudly represents small businesses nationwide from every industry and sector.

NFIB members define our neighborhoods and fill our communities with character. They create local jobs and homegrown economic opportunities for small business owners and their employees alike. NFIB members are your local hardware store, the restaurant your family eats at on Friday, the neighborhood florist and barber, the mechanic who fixes your car, and the plumber, roofer, and landscaper who work on your home.

Small businesses employ nearly half the country’s private sector workforce.¹ When small businesses succeed, communities flourish. A strong, vibrant small business economy supports local tax bases, governments, and schools. It is estimated that 68 cents of every dollar spent at a local small business is reinvested into the community.² Small businesses are vital to our communities.

¹ *Frequently Asked Questions About Small Business 2023*, U.S. Small Business Administration, Office of Advocacy (March 7, 2023), available at <https://advocacy.sba.gov/2023/03/07/frequently-asked-questions-about-small-business-2023/>.

² *The Multiplier Effect of Local Businesses*, American Independent Business Alliance, available at <https://www.amiba.net/resources/multiplier-effect/>.

I describe our membership and the importance small business has on our economy to illustrate one of the key points of my testimony and what I think often gets lost in the public policy discussions here in Washington, D.C. There is no such thing as a “one-size-fits-all” policy that works for every business or every industry. Consider the varied types of small businesses you frequent – pizza parlor, auto shop, dry cleaner, hair salon – some have employees that are strictly full-time, others strictly part-time or hourly. Some have a combination of both. Perhaps others are seasonal employers. Small businesses face complex issues that are unique to them, and when solutions to perceived problems are put in place by government, policymakers too often paint business with a broad brush and fail to consider the unique structure of Main Street employers.

The number of small business owners who struggle to fill positions is at a historically high level.³ Small businesses are increasing compensation and benefits. They are providing flexibility so employees can pick their kids up from daycare or go to a doctor's appointment. However, many small business owners are staunchly opposed to one-size-fits-all inflexible and costly mandates from Washington. Just as we know from past decisions the best political intentions do not always play out as desired. Therefore, we must also examine the likely consequences to small employers from new government mandates.

NFIB has long opposed inflexible or mandated leave requirements for a variety of reasons. But today, I would like to focus on three concerns of NFIB and its members: (1) leave mandates impede flexibility, which is the key to making small businesses the “employers of choice” in our communities; (2) leave mandates impose inordinate complexity and costs on small businesses; and (3) leave mandates lead to death by a thousand mandates.

1. Small Businesses and Employee Benefits: Flexibility Makes Small Businesses the “Employers of Choice” in Our Communities

Providing paid family leave can have several benefits for businesses, including increased employee morale, loyalty, and retention, as well as improved recruitment efforts. However, ultimately, each business must weigh the costs and benefits of offering paid family leave and make their decision based on their unique circumstances and not through legislative decree. Please do not take away what's left of the flexibility we have to

³ NFIB Research Center, *Small Business Economic Trends Survey* (NFIB September SBET Survey) (October 10, 2023), <https://www.nfib.com/content/press-release/economy/small-business-optimism-dips-in-september-as-inflation-remains-top-problem/>.

accommodate our workers' needs. We hope that you will look to reduce the burden on running our business rather than adding payroll tax increases to our already rising operational costs and administrative and compliance burdens. Please consider the struggle that small businesses have been through in the last three years before putting another expensive and time-consuming mandate on us. – NFIB Member – Brattleboro, Vermont

Often the public and media link the term “employers of choice” with big corporations that offer Cadillac employee benefit programs and have seemingly endless resources to throw around, but the reality is that creating good jobs doesn’t have to be that complex or challenging. Small businesses have demonstrated time and again that being an “employer of choice” means becoming an employer that potential and existing employees want to work for. Small businesses do this by offering competitive compensation and investing in employees and their communities.

Unfortunately, however, mandated leave proposals often envision a one-size-fits-all mandate that would handicap businesses’ ability to attract workers at a critical time. Across the nation, small business owners are seeing a growth in sales but are stunted by not having enough workers. Finding qualified employees remains the biggest challenge for small businesses and is slowing economic growth. Owners are raising compensation and offering bonuses and benefits to attract the right employees.

The NFIB Research Center showed the [Small Business Optimism](#) Index decreased half of a point in September to 90.8.⁴ September’s reading marks the 21st consecutive month below the 49-year average of 98.⁵ Business owners remain pessimistic about future business conditions, which has contributed to the low optimism they have regarding the economy. Forty-three percent of owners reported job openings that were hard to fill, up three points from August and remaining historically high as owners can’t hire enough workers due to few

⁴ NFIB Research Center, *Small Business Economic Trends Survey* (NFIB September SBET Survey) (October 10, 2023), <https://www.nfib.com/content/press-release/economy/small-business-optimism-dips-in-september-as-inflation-remains-top-problem/>.

⁵ *Id.*

qualified applicants. Finding qualified workers is the number-one-cited problem for small business owners, surpassing all other issues including inflation.⁶

One of the primary ways in which small businesses attract and retain talented workers is by providing innovative benefits like flexible leave policies, designed specifically to fit the needs of their employees and their businesses. The majority of small business owners already include paid leave in their compensation packages. According to an NFIB national small business poll, a majority of small business owners indicated that they already provide flexible leave. Most small employers (73%) offer paid time off (PTO) to the majority of their full-time employees, and 67% of them offer two weeks or more of leave.⁷ The number of days offered is dependent on an employee's length of service in 76% of small businesses offering the benefit.⁸

Most small business owners work hard to ensure compliance with employment and labor laws in a workplace that treats employees fairly, pays decent wages, and provides good benefits, but their informal and unstructured nature and more limited financial resources require greater flexibility in creating policies and solutions. Indeed, small businesses are leaders in flexible working arrangements, a key benefit for many of their employees.

Studies have shown that small businesses are more likely to allow employees to change starting and quitting times, work some regular paid hours at home occasionally, have control over when to take breaks, return to work gradually after childbirth or adoption, and take time off during the workday to attend to caregiving or other family or personal needs without loss of pay.⁹ Flexible work arrangements like these directly correlate with increased employee satisfaction.¹⁰

⁶ *Id.*

⁷ *NFIB National Small Business Poll, Employee Compensation and Small Business* (2016), available at http://www.411sbfacts.com/files/NFIB_SBP_Emp-Compensation2017_v2.pdf.

⁸ *Id.*

⁹ *Workplace Flexibility: Information and Options for Small Business*, U.S. Department of Labor Women's Bureau (2015), available at https://www.dol.gov/wb/WorkplaceFlexibility_508_FINAL.pdf.

¹⁰ *Workplace Flexibility Survey – Strategic Use of Flexible Work Arrangements*, Society for Human Resource Management (2014), available at [https://www.shrm.org/hr-today/trends-andforecasting/research-and-surveys/pages/2014-workplace-flexibility-survey-strategic-use-of-flexiblework-arrangements-\(fwas\).aspx](https://www.shrm.org/hr-today/trends-andforecasting/research-and-surveys/pages/2014-workplace-flexibility-survey-strategic-use-of-flexiblework-arrangements-(fwas).aspx).

In summary, expanding leave mandates has two results that impact flexibility in the workplace. Mandating one-size-fits-all policies forces small business owners to eliminate unique programs that benefit their businesses, their customers, their employees, and ultimately their communities. In addition, leave mandates increase costs for small businesses, which almost always limits the flexibility of small businesses to provide benefits that many employees already enjoy.

2. Small Businesses and Mandated Leave: The Complexity of Compliance and Unforeseen, Unintended, and Hidden Costs

As a small business, we have always strived to offer the best benefits that we can for our employees, which include 5 paid holidays, and up to 10 vacation days, not to mention health insurance, a SIMPLE IRA plan, etc. With the current economic climate, it is difficult to offer competitive wages and benefits and still keep the business profitable. Adding another mandated benefit will just make that even more difficult, not to mention the time it will take to track the proposed PTO which is different than our current system. We are already extremely flexible with our employees and have given a lot of grace through the pandemic and the many challenges that it has created. – NFIB Member – Decatur, Illinois

Small businesses depend on predictability to stay competitive. Mandated leave policies, however, further complicate compliance with workforce laws for employers and raise costs on businesses. Mandated leave is not a free benefit for employees; mandated leave comes with a cost that businesses will have to shoulder and will eventually be absorbed by the employer, employees, and customers. In a small business with a finite number of resources, this translates into less money available for wage increases, health insurance and other benefits, and hiring additional employees.

Small businesses, which are the backbone of our economy, are especially vulnerable to the impact of labor mandates. Small firms typically have few administrative staff members and little human resources experience or regular access to legal counsel. Only about 12% of small businesses have a human resources (HR) professional or dedicated employee who handles personnel matters.¹¹ In most small businesses, HR matters are handled by the business owner

¹¹ NFIB Research Center, *NFIB National Small Business Poll Business Structure* (2004), available at <http://www.411sbfacts.com/files/bizstructurepoll11.pdf>.

or an employee who handles back office and administrative tasks. This means that the recordkeeping and reporting requirements mandated by leave proposals will fall more times than not on the business owner. About 50% do payroll in-house.¹² Adding a federal leave mandate to existing state and local labor and employment law requirements would complicate an already difficult legal and regulatory environment for small businesses and would expose these businesses to legal challenges.

Additionally, whether an employer is subject to a paid leave mandate or subject to an unpaid leave mandate, leave laws generally impose onerous recordkeeping requirements with which small businesses would need to comply, including new leave tracking, notification, documentation, and reporting requirements. Records would need to be maintained to demonstrate compliance.

When the Family and Medical Leave Act was passed, the Senate debated small business exemptions from such burdensome mandates.¹³ The Senate ultimately agreed on an exemption for small businesses with fewer than 50 employees. The Senate wisely understood that it would be more difficult for small business owners to comply with this new mandate and would potentially be more disruptive to the operations of small firms.

As we have observed, the best way to increase employee compensation is through economic growth where employers must boost compensation to retain and attract employees. Congress must focus on policies that strengthen the economy and reject mandates that increase red tape and costs for small businesses.

3. Death by a Thousand Mandates

I am a small business with 3 employees. I would like to have a 4th employee but because of the high taxes I already pay, I cannot afford to. I could easily afford a 4th employee with the taxes I pay now. Instituting ... paid leave and the tax to pay for it would really hurt my business – maybe even having to go down to 2 employees. That would make it harder for me

¹² NFIB National Small Business Poll Tax Complexity and the IRS (2017), available at [NFIB: The Voice of Small Business - National Small Business Poll \(411sbfacts.com\)](https://www.nfib.com/resources/polls/nfib-national-small-business-poll-tax-complexity-and-the-irs).

¹³ [S. Amdt.1 to S.5 - 103rd Congress \(1993-1994\) | Congress.gov | Library of Congress.](https://www.congress.gov/103/legislation/amendments/1)

*and I would probably consider dissolving my business. – NFIB Member –
Little Falls, Minnesota*

Efforts to expand labor mandates never stop. For small business owners, it's nearly impossible to keep up with the unprecedented number of changes in the past few years.¹⁴ A federally mandated leave program will further complicate the patchwork quilt of labor laws that are problematic and confusing for employers and create unintended consequences for workers, businesses, and for the economic environment.

Understanding and complying with the complexity of a new mandate is expensive, both in terms of time and money. According to the Small Business Administration, workplace compliance costs small businesses 36% more per employee than it costs large businesses.¹⁵

Additionally, any new mandates would fall on businesses during an unprecedented surge of regulatory costs and burdens imposed by the current Administration. In a little over two and a half years in office, this Administration's regulatory agenda has saddled businesses with more than \$436 billion in new final rule costs and more than 220 million paperwork hours.¹⁶ If there ever was a time for Congress to not increase mandates and red tape for small businesses, that time is now.

Federally mandated leave would add another benefit to the growing list of expenses that employers must absorb. In recent years, leave laws have passed in a dozen states.¹⁷ Some of these state initiatives were funded via payroll deductions, only to later be modified to be strictly employer funded. Many enacted paid leave mandates additionally incorporate private right of action language, which opens small employers up to an increased threat of litigation.

¹⁴ National Conference on State Legislatures, *Paid Sick Leave* (July 21, 2020), available at <https://www.ncsl.org/labor-and-employment/paid-sick-leave>.

¹⁵ *The Impact of Regulatory Costs on Small Firms*, SBA Office of Advocacy (2010), available at <https://www.sba.gov/sites/default/files/The%20Impact%20of%20Regulatory%20Costs%20on%20Sm>.

¹⁶ Dan Goldbeck, *Billion-dollar Week Trend Continues Apace: October 10-13*, American Action Forum (October 16, 2023), <https://www.americanactionforum.org/week-in-regulation/billion-dollar-week-trend-continues-apace-october-10-13/>.

¹⁷ National Conference on State Legislatures, *Paid Sick Leave* (July 21, 2020), available at <https://www.ncsl.org/labor-and-employment/paid-sick-leave>.

A federally mandated leave program will put small businesses at a competitive disadvantage in attracting and retaining employees. In today's economic environment, not only are employers competing to attract workers, but the competition amongst states for employers and jobs is fierce. Businesses in states with mandated leave programs will not fare well.

Conclusion

Small business owners understand the changing dynamics in the workplace – they are grandparents, parents, and caregivers, too – and they want to do all they can to attract and retain the best employees. But when it comes to benefits, flexibility is key for small businesses. Mandated leave laws represent a significant challenge for small business owners since flexibility is critical for a small business, and mandated leave laws are generally anything but flexible, simple to comply with, and affordable.

Small business owners can and do offer support to employees in their lives away from work, whether it's for their own care or to care for a parent, child, or other family member, but they must have flexibility in creating a policy that works for both the employees and the business.

On behalf of all the small-business owners of the NFIB, thank you for focusing on this important issue and inviting me to appear before the committee.