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Members of the City Council of Philadelphia

Dear Councilmember,

We are writing on behalf of members to inform you that Bill No. 200303 as passed out of committee remains a major concern for Philadelphia's business community. In light of the economic climate brought on by the Coronavirus pandemic, outstanding matters in the legislation present serious issues for employers fighting to recover at this critical time. Therefore, we respectfully request that no action be taken until these matters can be adequately addressed.

COVID-19 remains a historic disruption to the world as we once knew it, with both large and small businesses experiencing unprecedented financial hardships and significantly reduced revenues. Many have had no choice but to shut down permanently. Thankfully, Council and other parts of City government, our healthcare systems, essential workers, philanthropic community and public/private partnerships have given Philadelphia a chance to recover. However, as you are aware, much work remains.

Given the tremendous task facing our city, this legislation, although well meaning, could be a complex and costly impediment to recovery. Further, given the Federal aid a majority of businesses now receive to provide paid time off, and the benefit many companies already provide, we believe this legislation is unnecessarily duplicative and could be more considerate of Philadelphia's current condition.

A recent Zoom call held by the Office of Councilwoman Brooks left many previously presented questions unanswered and concerns unmet. For your reference they include:

1. Exemption of Business with Equal or Greater Paid Time Off

During the committee hearing, an amendment was adopted purporting to exempt businesses that offer equal or greater paid time off that can be used for sick time. Conversations with committee members have yielded a similar understanding of the amendment's intent. Conversely, Councilwoman Brooks maintains that only time "designated as sick time" can be used in this regard and that other available time including personal time off, administrative leave or vacation days cannot be considered. This clearly was not the amendment's intent and would ultimately render its adoption moot. As the city's large employers and many mid and small sized businesses offer an equal or greater benefit in this regard, it makes sense that they would not have to expend time and resources to meet the mandates of this Bill.

2. The Federal Government Provides a Balanced Benefit

The Families First Coronavirus Act (FFCRA) already provides emergency paid sick leave for workers while assisting companies defray the benefit's costs. For companies with 500 or fewer employees, the Act provides two weeks (80 hours) of full paid sick leave, and an additional 10 weeks of paid expanded family medical leave at two-thirds the employee's regular rate to care for a child. To pay for the benefit, the FFCRA also provides for business tax credits and other cost-mitigating measures. This Federal protection, which adeptly considers the interests of the majority of businesses in Philadelphia and their employees, is a model for measures of this kind.

3. Possibility of Lump Sum Payments

As the legislation stands, upon passage, businesses must immediately provide 14 paid sick days pursuant to the current public health emergency declaration which began in March and would be required to pay for an additional 14 paid sick days upon any subsequent declaration of emergency that would shut down the economy. This means that companies would have to pay this benefit while they are not realizing income. To require such large payments while companies are shut down is an invitation to bankruptcy.

4. Accrual Complexity

For part-time workers and for those who work for multiple companies, the Bill requires companies to work through a complex accrual scheme to determine the average wages or compensation in a 14-day period:

(1) Subject to clause (2), a number equal to the average wages or other compensation that the covered individual received per day over the 6-month period ending on the date the public health emergency was declared, multiplied times fourteen (14), including wages or compensation for any hours for which the covered individual took leave of any type; (2) If the covered individual did not work over such period, the reasonable expectation of the covered individual at the time of hiring of the average wages or other compensation that the covered individual would normally receive within a typical 14-day period.

As this is a critical component, it is tremendously necessary that the requirements are clearly delineated, understandable and actionable.

5. Retroactivity Clarification

The bill's retroactivity period it is not at all clear. A plain reading of the legislation reads a public health emergency means "*a declared or proclaimed emergency ...beginning on the earliest effective date of any such declaration or proclamation and ending on the date the last such declaration or proclamation ends...*". However, elsewhere in the bill a calculation used to determine the average wages or compensation to be paid reads "*...a number equal to the average wages or other compensation that the covered individual received per day over the 6-month period ending on the date the public health emergency was declared...*". For purposes of a business trying to determine when an employee is entitled to additional sick leave under this legislation the language regarding retroactivity is tremendously confusing.

6. **Attribution**

The Bill requires a complex and confusing calculation to determine how much of the benefit businesses are responsible for. This calculation becomes even more complex to track if an individual works for multiple businesses. The sponsor should be able to clearly answer how this can be efficiently accomplished and tracked by workers, businesses and the enforcing department.

7. **Replenishment of Public Health Emergency Leave**

More clarity is needed regarding instances where more than one declaration of, or need for use of, emergency paid sick leave occurs. Under the Bill, each time a public official declares a new “public health emergency”, businesses would have to provide 14 days of paid leave. Therefore, it is entirely possible that companies could have to pay 14 days leave for the currently declared emergency and subsequently be required to pay another 14 days leave should another declaration be made in November. How are businesses expected to plan for, and pay for, such a possibly recurring requirement?

8. **Compliance and Enforcement**

The sponsor of this legislation has yet to clearly delineate a workable grievance and enforcement process. Bill No. 200303 calls for the City’s Department of Labor to establish a centralized portable benefits system for calculating and enforcing public health emergency leave. However, the department has clearly indicated they neither have the resources nor capability to do such. As businesses want to ensure they are not unintentionally opening themselves to unfounded complaints, enactment of this legislation should include clear safeguards against unintentional and intentional abuses of process.

Philadelphia’s public and private sectors have collaboratively answered the call to maintain our city during this unprecedented pandemic. Especially at this time, our city should be known for a synergy that promotes worker protections and business recovery while incentivizing inclusive growth. Any level of one-sided overreaction could result in regressive economic consequences and a staggered recovery. On behalf of Philadelphia’s business community, we appreciate City Council’s understanding of this reality as they consider the mandates Bill No. 200303 imposes.