

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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Before the

Subcommittee on Worker and Family Support

Committee on Ways and Means

Hearing on *"Universal Paid Leave and Guaranteed Access to Child Care"*

Thursday, May 27, 2021

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On behalf of NFIB and its members, thank you to Chair Davis and Ranking Member Walorski for inviting me to testify in today's hearing.

Introduction

NFIB is a member-driven organization that represents about 300,000 small and independent businesses. NFIB members define our neighborhoods, fill our communities with character, create local jobs, and homegrown economic opportunity for small businesses owners and their employees alike: local hardware stores, independent restaurants, florists and barbers, plumbers, paper companies, roofers, landscapers and mechanics, fitness centers, and retail boutiques. These are NFIB members.

Small businesses employ nearly half the country's private sector workforce.¹ When small businesses succeed, communities succeed. A strong, vibrant small business eco-system supports local tax bases, governments, and schools. It is estimated that 67 cents of every dollar spent at a local small business is reinvested into the community.² I trust you all recognize and value the importance of small businesses in your home districts.

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 in Washington, D.C., when it comes to labor and business issues: 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, drycleaner, 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.

¹ *Frequently Asked Questions*, Office of Advocacy, U.S. Small Business Administration (October 2020), available at [Frequently Asked Questions About Small Business, 2020 \(sba.gov\)](https://www.sba.gov/frequently-asked-questions).

² SCORE (November 2019), available at [Infographic: How Do Americans Support Small Businesses? | SCORE](https://www.score.org/infographic-how-do-americans-support-small-businesses).

I am mindful of the well-meaning sentiments behind leave mandates and sympathetic to those who have suffered the hardships that might lead to proposing leave mandates. NFIB believes, however, that inflexible and costly leave mandates inadvertently affect the livelihood of many and should be considered in the context of the impact on this country's economic environment and the flexibility many employees receive from their employers in difficult situations.

Small business owners can and do offer support to employees in their lives away from work, whether it is for their own care or to care for a parent, child, or other family member, or to incentivize an employee to get vaccinated, but they must have flexibility in creating a policy that works for both the employees and the business. Time-off for sick and family issues is currently worked out in small businesses across the country every day without government intervention. Mandates, whether paid or unpaid, drive up costs and force businesses to cut jobs.

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) small businesses' fight to survive during the COVID-19 pandemic highlighted problems with well-intentioned mandates; (2) flexibility, not mandates, is the key to making small businesses employers of choice in our communities; and (3) leave proposals generally impose inordinate complexity and costs on small businesses.

Small Business Concerns About Mandated Leave Policies

1. Small Businesses Fight for Survival During COVID-19: Problems with Well-Intentioned Mandates

In February 2020, employment rates were at historic highs and the coronavirus was still novel. Within four months, COVID-19 had economically devastated our country. It hit hardest the small businesses that are both critical to our economy's growth and vulnerable to disasters.

Whether it was a winery in Oregon, a theater in San Diego, a coffee shop in Boston, a restaurant in Michigan, a summer camp in Virginia or a hotel in New Jersey, coronavirus was devastating. According to a Harvard Business Review study, the vast majority of small businesses had less than two months of cash on hand to deal

with the pandemic's economic shocks.³ The median business with monthly expenses over \$10,000 generally did not even have enough cash to cover two weeks of their spending.⁴ As a result, the outbreak left few, if any, small businesses unscathed. Furthermore, the policy responses did not always work out as planned.

As of September 2020, Yelp had estimated that 66,000 small businesses will never reopen, and in the food-service industry alone,⁵ 110,000 businesses, or 17% of all U.S. restaurants, have closed, according to a survey from the National Restaurant Association.⁶ The Federal Reserve more recently reported that the pandemic resulted in a business closure rate about one-quarter to one-third above normal with "130,000 excess firm exits."⁷ In short, the small business half of the economy was significantly damaged by the COVID-19 pandemic.

The NFIB Research Center has conducted a series of surveys over the last 14 months assessing the impact the pandemic has had on small business owners. These surveys have shown that many small businesses are still struggling to survive.⁸ Owners continue to adjust business operations with 12% of small business owners reporting that they will have to close their doors if current economic conditions do not improve over the next six months. As the small business half of the economy emerges from the public health crisis, it is critically important that small firms have a solid foundation from which to operate and invest in their business. Relief efforts by the Administration and Congress have allowed many to remain afloat, but there is still work ahead.

³ *A Way Forward for Small Businesses*, Harvard Business Review (April 13, 2020), [A Way Forward for Small Businesses \(hbr.org\)](https://hbr.org/2020/04/a-way-forward-for-small-businesses)

⁴ *Id.*

⁵ *Yelp Economic Impact Report* (September 2020), available at [Yelp: Local Economic Impact Report \(yelpconomicaverage.com\)](https://www.yelp.com/economic-coverage)

⁶ National Restaurant Association press release *Restaurant Industry in Free Fall; 10,000 Close in Three Months* | National Restaurant Association (December 2020).

⁷ *Business Exit During the COVID-19 Pandemic: Non-Traditional Measures in Historical Context*, The Federal Reserve (April 2021) ("Taken together along with some prudent guesswork, our sector-level results suggest economywide excess establishment exit—that is, exit above and beyond pre-pandemic rates—was likely below 200,000 establishments during the first year of the pandemic, implying an exit rate about one-quarter to one-third above normal."), available at [Business Exit During the COVID-19 Pandemic: Non-Traditional Measures in Historical Context \(federalreserve.gov\)](https://www.federalreserve.gov/econres/bankers/20210408-business-exit-during-the-covid-19-pandemic-non-traditional-measures-in-historical-context).

⁸ *NFIB Covid Small Business Survey 17* (April 23-28, 2021), available at [Covid-19-17-Questionnaire.pdf \(nfib.com\)](https://www.nfib.com/covid-19-17-questionnaire.pdf).

The best path for small businesses to recover is to get as many Americans vaccinated as possible, and quickly, so Main Street can fully reopen. In the meantime, some small businesses may continue to need economic assistance such as the Employee Retention Tax Credit. The Paycheck Protection Program was extremely popular with small business owners with 73% of NFIB members receiving a PPP loan in 2020.⁹ Outside of some initial implementation and funding concerns, the PPP was very effective in helping small employers maintain payroll as well paying for other eligible expenses that were critical in business operations.

But there have also been COVID-19-related federal programs that have made life more difficult for small business owners. The paid sick and family leave mandate enacted within the *Families First Coronavirus Response Act*, and specifically targeted at small business owners, was challenging for many small business owners. Nearly half of small employers have had employees take COVID-19-related sick leave or family leave, however, only 41% of those have claimed the available tax credit to reimburse those expenses.¹⁰ The terms and conditions of the mandate are complicated, and the credit is difficult to claim for many small employers who have to navigate both programs themselves. Moreover, the IRS continues to experience delays in processing employer reimbursement for FFCRA leave.¹¹

The effects of the COVID-19 pandemic are ongoing. While some businesses have largely recovered from the initial decline, others continue to lag.¹² Whether business closures become permanent, will depend in part on policy responses. At a time when small businesses are confronted with the worst pandemic in more than 100 years, Congress should not saddle them with a costly new mandate that will further damage the fragile economic recovery.

2. Small Businesses and Employee Benefits: Flexibility Makes Small Businesses Employers of Choice in Our Communities

The term employer of choice is often associated with big corporations that have access to Cadillac employee benefit plan, but the reality is that it does not have to be that complex or challenging. Small businesses have demonstrated time and

⁹ [Covid-19-17-Questionnaire.pdf \(nfib.com\)](#).

¹⁰ *NFIB Covid Small Business Survey 17* (April 23-28, 2021), available at [Covid-19-17-Questionnaire.pdf \(nfib.com\)](#)

¹¹ [IRS Statement about Form 7200 Payments | Internal Revenue Service](#).

¹² *The Effects of COVID-19 Pandemic on Small Businesses*, U.S. Small Business Administration (March 2021), available at [The Effects of the COVID-19 Pandemic on Small Businesses \(sba.gov\)](#).

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, offering bonuses and benefits to attract the right employees.

The NFIB Small Business Optimism Index rose to 99.8 in April, an increase of 1.6 points from March.¹³ The Optimism Index has increased 4.8 points over the past three months since January but a record 44% of owners reported job openings they could not be filled.¹⁴ Finding qualified workers is the number-one-cited problem for small business owners, surpassing taxes and regulations.¹⁵

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. According to an NFIB poll, a majority of small business owners already provide flexible leave. Most small employers (73%) offer paid time off to the majority of their full-time employees, and 67% of them offer two weeks or more of leave.¹⁶ The number of days offered is dependent on an employee’s length of service in 76% of small businesses offering the benefit.¹⁷

Most small business owners work hard to ensure compliance with employment and labor laws, 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.

¹³ Small Business Economics Trends | NFIB (April 2021)

¹⁴ Jobs Report and Jobs Data from the NFIB Small Business Research Center | NFIB (April 2021)

¹⁵ SBET-Apr-2021.pdf (nfib.com) (April 2021).

¹⁶ *NFIB National Small Business Poll, Employee Compensation and Small Business* (2016), available at http://www.411sbfacts.com/files/NFIB_SBP_Emp-Compensation2017_v2.pdf.

¹⁷ *Id.*

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.¹⁸ Flexible work arrangements like these directly correlate with increased employee satisfaction.¹⁹

In summary, expanding leave mandates has two results that impact flexibility in the workplace. Mandating uniform leave policies for all employers cuts off an avenue through which small business owners can shine through unique programs that benefit their businesses, their customers, their employees, and ultimately their communities. In addition, leave mandates increase costs for small employers, which almost always limits the flexibility of small businesses to provide benefits that many employees already enjoy.

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

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. Understanding and complying with the complexity of a new mandate is expensive, both in terms of time and money. In a small business with a finite number of resources, this translates into less money available for wage increases, health insurance, and hiring additional employees.

According to the Small Business Administration, workplace compliance costs small businesses 36% more per employee than it costs large businesses.²⁰ 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 professional or dedicated employee who handles

¹⁸ *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.

¹⁹ *Workplace Flexibility Survey – Strategic Use of Flexible Work Arrangements*, Society for Human Resource Management (2014), available at [https://www.shrm.org/hr-today/trends-and-forecasting/research-and-surveys/pages/2014-workplace-flexibility-survey-strategic-use-of-flexible-work-arrangements-\(fwas\).aspx](https://www.shrm.org/hr-today/trends-and-forecasting/research-and-surveys/pages/2014-workplace-flexibility-survey-strategic-use-of-flexible-work-arrangements-(fwas).aspx).

²⁰ *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%20Small%20Firms%20\(Full\).pdf](https://www.sba.gov/sites/default/files/The%20Impact%20of%20Regulatory%20Costs%20on%20Small%20Firms%20(Full).pdf).

personnel matters.²¹ In the vast majority of small businesses, all HR matters are handled by the business owner 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.²²

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.

Moreover, whether an employer is subject to a paid leave mandate or subject to an unpaid leave mandate, many of the federal proposals would impose onerous recordkeeping requirements with which small businesses would need to comply, including leave tracking, notification, documentation, and reporting requirements. For instance, the *Healthy Families Act*, which would offer up to seven days a year of paid sick leave for a variety of reasons, would require that records be maintained for at least three years to demonstrate compliance with numerous requirements. Leave tracking would be very challenging for the 50% of NFIB's members who do payroll in-house.

In 2015, NFIB's Research Center conducted a study to determine the economic impact of the *Healthy Families Act*. Assuming passage and implementation of then-H.R. 932 in 2016, the economic model forecast that the sick leave mandate could result in 430,000 jobs lost over a ten-year period.²³ The cumulative real output lost during this period was estimated to be \$652 billion.²⁴ Job losses at small firms would have accounted for 58% of all jobs lost, and small firms would bear 50% of lost output.²⁵

Another bad proposal for small business is the *Building an Economy for Families Act*, which promises up to 12 weeks of paid leave for all of the leave-taking reasons in

²¹ *NFIB National Small Business Poll Business Structure* (2004), available at <http://www.411sbfacts.com/files/bizstructurepoll11.pdf>.

²² *NFIB National Small Business Poll Tax Complexity and the IRS* (2017), available at [NFIB: The Voice of Small Business - National Small Business Poll \(411sbfacts.com\)](http://www.nfib.org/~/media/Files/PDFs/2017/10/320-NFIB-Mandatory-Paid-Sick-Leave.pdf)

²³ *The Economic Impact of H.R. 932 and Mandatory Paid Sick Leave on U.S. Small Businesses*, NFIB Research Foundation (2016), available at <https://www.remi.com/wp-content/uploads/2017/10/320-NFIB-Mandatory-Paid-Sick-Leave.pdf>.

²⁴ *Id.*

²⁵ *Id.*

the *Family and Medical Leave Act* along with an expanded set of family relationships for caregiving. The plan currently has no identifiable funding source, would apply to all employees regardless of their employer's size and employee tenure on the job, and places management of the new program with the Treasury Department. Undoubtedly, funding for this new federal entitlement program would come from new taxes on employers.

The *Family and Medical Insurance Leave (FAMILY) Act*, is yet another proposal that would impose costs that could sink small businesses. The Act would create a national insurance program for paid family medical leave and would rely on an independent trust fund under the Social Security Administration to collect money and administer benefits. All employers would be required to pay into the fund, regardless of their size. All workers, including part-time ones and self-employed individuals, would be included.

Small businesses with thin profits, like restaurants and family farms, may be unable to absorb that cost and uncertainty of funding a new federal entitlement program. In fact, a recent analysis from the Congressional Budget Office, determined the *FAMILY Act* would create yet another unfunded federal entitlement program that fails to meet the majority of workers' needs - most notably, those of lower-income employees.²⁶ According to the CBO, employers would reduce workers' wages to cover the new tax. NFIB is also concerned that since CBO estimates that the program will run at a \$228 billion deficit over a ten-year period that Congress may seek to increase the payroll tax on small employers further to attempt to reduce this deficit. The *FAMILY Act* is simply unaffordable for small businesses and employees.

NFIB is a member-driven organization. Through NFIB's ballot process, members dictate NFIB's positions on federal and state policy matters. And NFIB members have consistently opposed federal and state leave mandates like the *FAMILY Act* for good reason: leave mandates impose new costs on U.S. employers that would lead to reduced profitability, lost sales and production, and lost jobs. When balloted in 2019, 93% of NFIB members opposed increasing the payroll taxes on both employers and employees to fund paid family and medical leave.

As the economy recovers from COVID-19's economic fallout, NFIB recommends that Congress adopt the principle of "do no harm." Proposals such as those to more

²⁶ *Budgetary Effects of H.R. 1185, the FAMILY Act*, The Congressional Budget Office (2020), available at [H.R. 1185 \(cbo.gov\)](https://www.cbo.gov/publications/2020/05/1185).

than double the federal minimum wage to \$15 per hour, impose paid leave mandates, and create new federal enforcement actions on small businesses will make it even harder for Main Street to recover. Making it more expensive to operate a business will only serve to hamper the ability of small firms to survive the pandemic. Congress exempted small employers, who employ fewer than 50 employees located within 75 miles of a worksite, from the *Family and Medical Leave Act of 1993* for sound policy reasons. We encourage you to consider the impact any mandated leave proposals may have on small businesses, just as Congress did in 1993 when it chose to exclude the smallest employers from the FMLA.

Instead of imposing paid leave mandates on Main Street, Congress should consider approaches for small business that include targeting existing tax credits for paid leave and childcare to be more generous for small employers, considering proposals that would allow for more flexible work arrangements under federal wage and hour laws, and consider other innovative ideas that would make providing paid leave more affordable and accessible for small employers, thereby incentivizing rather than mandating.

Conclusion

Small business owners get the changing dynamics in the workplace – they are parents and caregivers, too – and they want to do all they can to attract and retain the best employees and, therefore, small businesses offer flexible, mutually beneficial arrangements that allow employees time off when necessary in a predictable, fiscally responsible way. When it comes to benefits, flexibility is key for small businesses. Mandated leave laws represent a significant challenge for small business owners since mandates are generally anything but flexible, simple to comply with, and affordable.

Small business owners have taken the brunt of the pain when it comes to the pandemic. What they need right now is the ability to fill open jobs and create new ones to help get the country's economy back on track. Now is not the time to saddle small businesses with a costly new mandate that will further damage the fragile economic recovery.

On behalf of all the small-business owners of the NFIB, thank you for inviting me to appear before the committee.