



August 2, 2018

Mr. Alphonso B. David
Counsel to the Governor
Executive Chamber, Room 225
New York State Capitol
Albany, New York 12224

RE: Gubernatorial Veto of S.8380-A (Funke) / A.10639-A (Morelle)

The undersigned organizations are writing to urge a gubernatorial veto of S.8380-A (Funke) / A.10639-A (Morelle). This legislation would add bereavement leave to the state's already expansive Paid Family Leave (PFL) law which — once fully implemented — will provide employees up to twelve weeks of paid leave each year.

While we are empathetic to the intent of this bill, as drafted it would authorize virtually unlimited leave for bereavement. It would allow use of the full amount of annual paid leave available to an employee — eventually up to twelve weeks per year — in response to the death of a family member (defined as a child, parent, grandparent, grandchild, spouse or domestic partner).

Unlike PFL's provisions for new child bonding, which requires leave to be taken within twelve months of a birth or adoption, the bill as written appears to allow bereavement leave to be taken at any time after the death of a family member, seemingly with no restrictions. If fact, the bill seems to allow for bereavement leave related to deaths occurring prior to the effective date of this amendment, and seems to allow for bereavement leave in any year, or even in every year, after the death of a family member.

The Business Council's recommendations for reasonable parameters on any expansion of PFL to bereavement were rejected by both the Senate and Assembly sponsor. These included limiting bereavement leave to several weeks, to be used within 180 days of a family member's death. Additionally, we recommended that any bereavement leave provision allow for documentation to include a death certificate (as proposed in this bill) or any other form of proof acceptable to the carrier. If this bill were signed, benefits for bereavement leave could be denied if a death certificate was not submitted to the employer within 30 days of the commencement of leave, which may not be feasible in certain instances, resulting the possibility of denied claims under the PFL statute.

We are particularly concerned that the Legislature is proposing a dramatic expansion of the Paid Family Leave Act that has only been in effect for just over six months, and before any usable data is available regarding utilization or costs. Employers, the state, insurers and employees are still working to understand and implement the current law. Carriers have raised concerns about the ability to apply actuarial calculations to the open-ended benefit proposed in this legislation, raising concerns about the viability of remaining in the state's DBL market (the PFL law mandates that any carrier providing disability benefits must also provide PFL benefits.)

Since this legislation would authorize bereavement leave starting in the 2020 policy year, the administration and Legislature should, at minimum, review at least one full year of utilization data before considering any significant program changes.

As a final point, bereavement leave would rarely be scheduled in advance so, combined with the intermittent unscheduled nature of PFL, employers could ultimately be faced with up to 60 days of unscheduled absence annually by each full time employee. As PFL applies to employers of even one employee, small business in particular will have immense challenges in managing staffing levels to meet customer needs.

Moreover, the New York State Department of Labor is preparing to issue final regulations that would add substantial costs to employers forced to "call-in" workers to cover these unscheduled, job protected absences. The combined impact on small businesses — the vast majority of New York employers — would be dramatic.

Bereavement leave is a benefit already provided by more than 90 percent of all employers (source: SHRM 2018 Benefits Survey). According to that survey, the typical allowable leave is 4 days. Employers understand that to

attract and retain the best talent available they need to be there for their employee's in their time of need and will continue to do so without another burdensome government mandate.

For these reasons, members of New York State's employer community respectfully recommend a veto of S.8380-A (Funke) / A.10639-A (Morelle).

The Business Council of New York State, Inc. • Buffalo Niagara Partnership
The Business Council of Westchester • Capital Region Chamber of Commerce
Cheektowaga Chamber of Commerce • Chemung County Chamber of Commerce
Cortland County Chamber of Commerce • Dutchess County Regional Chamber of Commerce
Food Industry Alliance of NYS, Inc. • Greater Binghamton Chamber of Commerce
Greater Rochester Chamber of Commerce • Hudson Valley Gateway Chamber of Commerce
The Life Insurance Council of New York • Manhattan Chamber of Commerce
National Federation of Independent Business of New York • Niagara USA Chamber
North Country Chamber of Commerce • Orleans County Chamber of Commerce
Putnam County Chamber of Commerce • Queens Chamber of Commerce • Rockland Business Association
Tioga County Chamber of Commerce • Unshackle Upstate