

Legislative Round Up

56th Legislature, Second Session

Monday, January 22, 2024

Day Six

Welcome to the Legislative Roundup, your update on the most important news from the Legislature



PFMLA is back, and 1 bill is better for business

Perhaps no legislative proposal is of more concern to small business owners than the prospects of a paid family and medical leave act that could further disrupt the day-to-day challenges of staffing and operating a business, which includes coping with rising costs and juggling myriad other regulations and taxes. It is important to note that the Chamber supports measures that help our workforce -- great employers require great employees, after all -- but there is an essential balance to be struck for both to thrive.

It bears pointing out that 90% of businesses in New Mexico have 20 or fewer employees. And these small businesses lack the human resource capacity to readily cover for absent employees or manage complex administration. Small businesses are often literally "mom-and-pop" operations, skilled in the service they provide to their customers but lacking the infrastructure of a big corporation or a government agency that has the resources of in-house lawyers, accountants and human resources managers as well as larger workforces with greater flexibility to accommodate employee absences.

A great deal of what makes New Mexico such a desirable place in which to live, do business and raise a family is the long tradition of family owned businesses that so richly contribute to our unique, diverse culture. And, sad though it is, these small businesses often run on shoestring

budgets - add another tax, more paperwork, employees taking extended leaves, and these businesses could suffer irreparable harm. Our businesses are still feeling the hangover effects of the pandemic, the subsequent economic uncertainty and low workforce participation rates.

Two quite different approaches to paid family medical leave will be heard Wednesday morning in the House Health and Human Services Committee, House Bill 6 and House Bill 11.

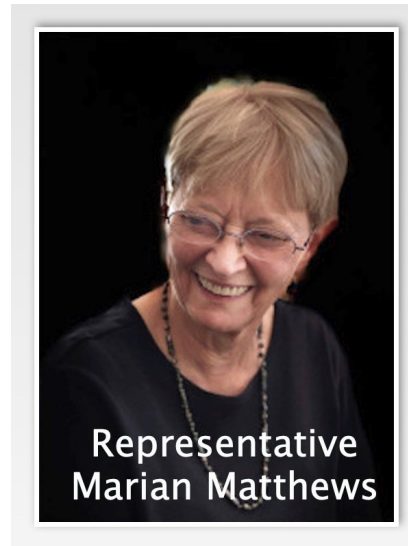


Rep. Christine Chandler (D-Los Alamos, Sandoval and Santa Fe) and Rep. Linda Serrato (D-Santa Fe) are co-sponsoring HB 6, which is a mirror image of SB 3 introduced by Senate President Pro Tempore Mimi Stewart (D-Bernalillo) and is, in most important ways, identical to legislation introduced in the last session. This 33-page bill is complex, so we're reducing it to the key elements at the core of our strong opposition:

- **Irreparable Disruption:** Granting 12 weeks of paid leave for a sweepingly broad number of reasons is unworkable for small businesses. Factor in this 12 weeks can be taken in 8-hour increments, and you've got a logistical and record-keeping nightmare. Our small businesses find it difficult enough already to hire qualified people. Consider a small business offering skilled nursing or hospice care. There's a shortage of these workers, which means there's little possibility of obtaining temporary replacements. Allowing an employee to miss 25% of the year is a mountain too tall for many small businesses to climb. Moreover, employees aren't required to inform or work with employers to schedule leave, meaning a business owner could be totally surprised when a worker doesn't show up.
- **Overbroad Reasons:** The reasons for which leave can be taken are far too broad, going way beyond significant family emergencies or needs such as child birth, adoption or serious illness. Safe leave in particular leaves the door open for fraud and abuse – employees can request 12 weeks of leave by simply signing a note they themselves write claiming they're experiencing stalking. Stalking and domestic violence are serious, and it's unfair to true victims to reward false claims. Even medical leave, where the requirement of a doctor's note seems to set a clear standard, presents issues. This leave can be taken for the employee to care for someone who's not actually a family member; there only needs to be "affinity" between the employee and the affected person. We think legislation like this should limit the allowable reasons for leave to significant family members and events that can be defined and verified - such as maternity leave.
- **New Taxes:** All employees and employers are required to participate in the program and pay the required taxes (except for employers with fewer than five employees - their employees, however, must still pay into the fund). Big employers like the state, colleges and universities, government entities and big corporations that can afford to have their own plans can be exempted from the program. This means imposition of a new tax on both workers and employers -- even if those workers don't want to participate in such a program. It's a classic case of "the government knows best."
- **Fund Insolvency:** There is great uncertainty about the fiscal integrity of the fund established to pay these employee benefits, with looming escalating tax increases to employees and employers to keep the fund solvent. In last year's analysis of SB 11, the Legislative Finance Committee determined the fund was likely to face a \$330 million deficit, requiring substantial tax increases to ensure solvency. With leave allowed for

virtually any reason, there's little doubt the program will be over utilized/misused/abused, resulting in constant tax increases.

- **Bloated Bureaucracy:** A very bloated new state bureaucracy is created to administer the program, requiring substantial up-front appropriations to get the plan started. Ultimately, the plan itself must pay back the startup costs and then assume all the costs of administration and benefit payout. Given the wide-open leave policy, it's likely thousands of leave requests will need to be processed every month, resulting in the need for more and more staff, more and more costs, more and more tax increases. This could be a fiscal trainwreck in the making. Keep in mind that this proposed program is far bigger than either the unemployment insurance or workers compensation programs. It's massive. It's costly. And it is built on the backs of small businesses and their employees.



In last year's debate, Rep. Marian Matthews (D-Bernalillo) genuinely expressed considerable concern about the financial integrity of the proposed legislation and effects on small businesses. This prompted her to develop her own legislation, HB 11, which is a substantial departure for the better from the approach taken in HB 6. Here are some key points from this 30-page bill, a bill we can support so long as subsequent amendments don't undermine its key provisions:

- **Reduced Leave Time:** The length of leave is reduced from 12 weeks to 6 weeks. Moreover, the leave benefit cannot be stacked on top of other benefits such as workers compensation or unemployment insurance. This helps protect employers from overly long leaves as well as constrain potential fraud and abuse.
- **Leave Only for Significant Events:** The reasons that an employee may take leave are limited to specific and verifiable major events such as birth or adoption of a child or serious illness in the employee's immediate family - all of which require proof and documentation. Employees must consult with their employer to schedule leave in a mutually acceptable manner (when practicable), and employers can deny 8-hour increments of leave, thus encouraging the use of such leave for longer-term, significant events. There are substantial penalties for fraud and abuse. This approach aligns with our thinking, targeting the scope of permissible leave. In doing so, program costs are more constrained and the volume of leave requests is administratively more manageable.
- **No New Tax on Businesses:** HB 11 is silent on whether employees can choose to purchase this "insurance" plan or whether employees are mandated to participate in the plan. Which approach is taken makes a big difference in the fiscal analysis. Our understanding is this bill was modeled after Connecticut's program, which requires mandatory employee participation. Whether they are opt-in or mandatory, employees alone pay for the costs of programs in New Hampshire, Virginia, Arkansas, Tennessee, Alabama, Texas and Florida (14 other states require mandatory participation).
- **Smaller Bureaucracy:** A smaller bureaucracy would likely be necessary as compared to HB 6. In HB 11, the plan is to be overseen by an appointed board (authority) that will hire a director, and all administrative costs must be paid for from the fund itself without separate appropriation by the Legislature for start-up costs. Encouraging employees and

employers to schedule mutually convenient leave times as well as giving employers the ability to deny small increments of leave should also result in fewer complaints being filed by both employees and employers, further reducing staff time needed to evaluate complaints. The narrower scope of the bill should result in easier administrative guidelines and less time pursuing fraudulent claims as the reasons for leave are specific and verifiable. In short, a more streamlined program equals less bureaucracy.

- **Less Risk of Fund Insolvency:** The more limited scope of the plan to significant events should result in lower, more predictable usage and, therefore, less risk of fund insolvency and the need for routine employee and employer tax increases. It's far more sensible to start with a targeted, more predictable program that stands a chance of success than to launch an ark of bureaucracy with every kind of animal aboard.

Long Way to Go and A Short Time to Get There...



So the line goes from the old Smokey and the Bandit flick - and it's certainly the case with this legislation. It's our understanding that the House majority leadership wants to see one compromise bill emerge that can be sent to the Senate. That's an understandable goal ... what's less understandable is how that will be achieved with two bills so different in concept and application. That seems an especially steep hill to climb in a 30-day session. Stand by; there are a lot of miles to go before we reach the end of this story.

Stopping Catalytic Converter Theft

It's been a long day at the office. All you want to do is jump into the family minivan and beat a path home. You fire up old reliable and suddenly it sounds like a scene from the "Days of Thunder" movie. Gadzooks! What the?! Yep, your catalytic converter has been sawed off by thieves who'll attempt to resell the precious metal-laden, anti-smog device literally anywhere in the world. It's a lucrative business for well organized theft rings that can remove a converter in 60 seconds or less using simple hand-held tools.

New rules at both the state and local levels are requiring metal recycling companies to record and report on catalytic converter purchases so law enforcement can better track down the thieves. That's great, but more is needed. As J.D Bullington, Chamber lobbyist, said to the House Judiciary Committee this afternoon in support of HB 43, "These metals (in catalytic converters) are more valuable than gold!" Indeed they sometimes actually contain gold or other rare minerals such as platinum, rhodium or palladium, which creates big incentives for thieves to keep on stealing.



One of the best ways for recyclers to identify the source of a converter is if the vehicle identification number (VIN) is etched into the device itself. This can greatly assist law enforcement in identifying the vehicle from which the converter was stolen, which, in turn, can help in tracking down the criminals involved. That's where HB 43, sponsored by Rep. Bill Rehm (R-Bernalillo) comes into play. The bill seeks to appropriate \$400,000 to the state Auto Theft Authority (a part of the State Office of Insurance) to purchase etching equipment that, in turn, can be lent out to both local law enforcement agencies and auto repair shops that will offer VIN etching at no cost to consumers. This afternoon, the House Judiciary Committee approved the measure (as amended) on a bipartisan 9-1 vote. The next step is the House Appropriations and Finance Committee.



Currently, the Auto Theft Authority runs a similar program, in cooperation with law enforcement agencies, to etch VIN numbers into car windows, which aids in tracking stolen vehicles. Typically, local law enforcement agencies sponsor community events to offer this service, which could now perhaps also include catalytic converter VIN etching. Rehm reported that the Los Angeles Police Department has had great success with a similar program that includes painting "LAPD" in fluorescent orange on converters. The whole idea is to create a deterrent to theft. If thieves see the bright orange and a VIN number, perhaps they'll just move on - not unlike displaying home security systems signs on a house (not as good as a snarling Rotweiler but, hey, they're tough to attach to a converter). We think HB 43 just makes common sense and is a concrete step that can be taken to help reduce thefts.

Around the Roundhouse

Prove it Works First



Every year, the Legislative Finance Committee staff performs agency reviews and scrutinizes whether money being spent is actually getting desired results. However, just about everyone acknowledges that once a buck is put into an agency's base budget there's about as much chance of prying it back as yanking a juicy bone from the jaws of a snarling terrier. So, how do lawmakers know whether funding a new or expanded program is a good investment of taxpayer dollars?

The LFC has come up with an innovative idea. It's called the Government Accountability Trust Fund - shorthand as the "gate" fund. If enacted, agencies seeking to expand or start a program would work through an application process to seek four-year pilot funding. The program's progress would be closely evaluated and measured to obtain evidence-based knowledge of what works and what doesn't. Good programs would likely be baked into base budgets, and bad ones would be nipped in the bud. Initially, a trust fund of \$663 million would be established from "new money" for appropriation in future years.

Additionally, \$300 million would be available this year (\$75 million being expended per year over the next four years) to launch the effort. As far as anyone knows, this would be a first-of-its-kind plan. It will be interesting to see how the governor responds to this idea and whether there's enough traction to move it through the Legislature this year. For certain, getting a better handle on "bang for the buck" is an idea whose time has definitely arrived.

Signing Off from Santa Fe



As you can see from tonight's Legislative Roundup, the Legislature is off and running, and the pace will only accelerate as each day passes. We already know that some committees will be meeting over the weekend. Tomorrow, the House will reconvene at 11 a.m. and the Senate at 11:30. We're gearing up for what will no doubt be a very lengthy and contentious hearing on the two proposals to enact a Paid Family and Medical Leave Act. Chamber President and CEO Terri Cole will testify for the Chamber on behalf of the businesses we represent. We'll be there to report the news and views and what the probable next steps will be. Until then, thanks for joining us and have a wonderful evening.

The Legislative Roundup, published during the New Mexico Legislative Session by the Greater Albuquerque Chamber of Commerce, provides information on local and state public policy and business issues that affect you.

For questions, please email D'Val Westphal at dwestphal@greaterabq.com.



Working to make our city and state a great place to start and grow a business and a safe, exciting place to work and raise a family.

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