



Rhode Island Society for Human Resource Management State Chapter

Statement of
Francesco A. DeLuca, Esq., Director of Legislative Affairs
On behalf of the Rhode Island Society for Human Resource Management State Chapter
Submitted to the House Committee on Labor

H7171 – AN ACT RELATING TO LABOR AND LABOR RELATIONS -- TEMPORARY DISABILITY INSURANCE -- GENERAL PROVISIONS

February 20, 2024

To the Honorable Members of the House Committee on Labor:

My name is Francesco A. DeLuca, Esq. I am a member of the law firm of Epstein Becker & Green, P.C., where I practice labor and employment law. Since 2023, I have had the honor of serving in the role of Director of Legislative Affairs for the Rhode Island Society for Human Resource Management State Chapter (“RI SHRM”).

RI SHRM is an affiliate of the Society for Human Resource Management, the world’s largest HR professional society representing more than 300,000 members in more than 165 countries. RI SHRM is a volunteer organization representing the interests of more than 500 human resource professionals throughout the State of Rhode Island. Our members are a cross-section of the Rhode Island economy, coming from such diverse sectors such as education, government, healthcare, hospitality and customer service, manufacturing, non-profit, professional services, small business, and technology. Through our exceptional programming and our legislative advocacy efforts over the years, we have become the trusted voice of the Rhode Island HR and business communities.

On behalf of our members, I am grateful for the opportunity to provide the House Committee on Labor with this written testimony regarding **H7171 – An Act Relating to Labor and Labor Relations -- Temporary Disability Insurance -- General Provisions.**

RI SHRM encourages employers to offer reasonable leaves of absence to employees who may temporarily need to be away from work. But H7171—which proposes to **double** the amount of leave employees may take under the temporary caregiver insurance (“TCI”) provisions of Rhode Island law—would impose unreasonable burdens on businesses, particularly small businesses. We believe the General Assembly could make three significant improvements to H7171:

First, H7171 must address the potential “stacking” of leave entitlements. Depending on the size of their employer and the reason for their leave, employees may have numerous leave

entitlements available to them, including 6 weeks per year under TCI, 12 weeks (in most cases) per year under the federal Family and Medical Leave Act (“FMLA”), and 13 weeks every two years under the Rhode Island Parental and Family Medical Leave Act (“RIPFMLA”). Under the current TCI law, employers may require employees who take TCI leave for a covered reason under the FMLA or RIPFMLA to take their TCI leave concurrently with FMLA or RIPFMLA leave. *See* R.I. Gen. Laws § 28-41-35(h), (i). But the TCI law does not clearly and expressly provide that employers may require employees who take FMLA or RIPFMLA leave for covered reason under the TCI law to take their FMLA or RIPFMLA leave concurrently with their TCI leave.¹ In other words, while the law is clear that an employer need not permit an employee to take 6 weeks of TCI leave and then 12 or 13 weeks of FMLA or RIPFMLA leave, it arguably may allow an employee to take 12 or 13 weeks of FMLA or RIPFMLA leave and then take an additional 6 weeks of TCI leave, for a total of 19 weeks away from work. Increasing an employee’s potential TCI leave entitlement by 6 weeks—which may allow an employee to be out of work for **nearly half a year**—would undoubtedly pose significant operational problems for even the largest of employers. Given the disruptive effect such a lengthy leave of absence may have on an employer’s operations, H7171 must prohibit employees from “stacking” TCI leave on top of FMLA or RIPFMLA leave by expressly providing that leave taken for any reason covered under the TCI law counts toward an employee’s TCI leave entitlement, regardless of whether the employee files an application for TCI benefits with the Rhode Island Department of Labor and Training (“RIDLT”).

Second, H7171 must consider the unique difficulties small employers would face if employees could take up to 12 weeks of TCI leave. Small employers are the backbone of Rhode Island’s economy. From 2021 to 2022, employers with fewer than 20 employees “represented **92.0 percent** of all employers in the state and employed over one quarter (**26.9%**) of the workforce.” RIDLT, Lab. Mkt. Info. Div., *Rhode Island Employment Trends and Workforce Issues 2021–2022* (Apr. 2023), <https://dlt.ri.gov/media/13416/download?language=en> (emphasis added). Recognizing the unique burden small employers face when employees take lengthy leaves of absence, the FMLA applies only to employers with 50 or more employees, and the RIPFMLA applies only to employers with at least 50 full-time employees. *See* 26 U.S.C. § 2611(4)(A)(i); R.I. Gen. Laws § 28-48-1(2), (3). In its current form, H7171 would require small employers to provide employees with 12 weeks of leave per year (i.e., the exact same amount available to employees of large employers under the FMLA), or 24 weeks of leave in a two-year period (i.e., almost double the amount available to employees of large employers under RIPFMLA). The FMLA and RIPFMLA recognize the reality that small businesses cannot, and should not, bear the financial and operational costs associated with such lengthy leaves of absence. The TCI law should do the same and not expand TCI leave beyond 6 weeks per year for employees of companies with fewer than 50 full-time employees.

Finally, H7171 must use a clearer definition of “care recipient.” H7171 would allow an employee to take TCI leave to care for a “care recipient” and vaguely defines that term as “a person for whom the employee is responsible for providing or arranging health or safety related care.” But it does not provide a definition of “responsible” or give any indication as to what “responsible”

¹ Arguably, the provision of the TCI law requiring that “[t]emporary caregiver benefits shall be in accordance with the [FMLA] and the [RIPFMLA]” provides employers with this right, but the law could be clearer on this point. *See* R.I. Gen. Laws § 28-41-35(i).

might mean in this context. The following example highlights the issues this absence of clarity creates:

Smith lives alone, and his sister, who usually assists him with scheduling and bringing him to medical appointments, is on vacation out of state. While Smith's sister is away, he asks his neighbor, Jones, who has never played any role in providing or arranging Smith's health- or safety-related care, to assist him in scheduling and bringing him to his medical appointments. Jones agrees. Smith does not provide Jones with authorization to discuss his confidential medical information with his healthcare providers or to make any decisions relating to his care. During one of Smith's appointments, his medical providers determine that he must be hospitalized for three weeks. Under the current definition of "care recipient," Jones appears to be entitled to TCI leave to care for Smith during his hospitalization.

It seems unlikely that the General Assembly intended to allow Jones, who is by and large a stranger to Smith's medical care, to take TCI leave in this scenario, but the current version of H7171 ostensibly allows him to do so. To avoid these types of unintended consequences, RI SHRM proposes that H7171 define "care recipient" as "an individual with respect to whom the employee serves as a 'personal representative' within the meaning of 45 C.F.R. § 164.502(g)."² Although it would be less clear than the definition proposed above, RI SHRM alternatively submits that revising the definition of "care recipient" to qualify "responsible" with "on a day-to-day basis"—much like how the TCI law currently defines "[p]ersons who stand in loco parentis" as "those with **day-to-day** responsibilities to care for and financially support" another individual, see R.I. Gen. Laws § 28-41-34(11) (emphasis added)—represents a substantial improvement over H7171's current definition because it limits TCI leave to those individuals who provide care to another individual on a regular basis and have an ongoing interest in that individual's well-being.

Managing leave entitlements is difficult for employers of all sizes, and small employers face unique difficulties when employees are away from work for extended periods of time. The changes we propose above will help reduce these challenges, while providing employees with a reasonable amount of job-protected leave.

² 45 C.F.R. § 164.502 is part of the U.S. Department of Health and Human Service's Health Insurance Portability and Accountability Act Standards for Privacy of Individually Identifiable Health Information, which is commonly referred to as the "Privacy Rule."

Thank you for your time and consideration, and please feel free to contact me to continue this important conversation.

Respectfully submitted by:

/s/ Francesco A. DeLuca

Francesco A. DeLuca, Esq.
Director of Legislative Affairs
Rhode Island Society for Human Resource Management State Chapter (RI SHRM)
ri.shrm.legislative@gmail.com
(401) 965-5775