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TESTIMONY OF E. MARTIN DAVIDOFF, CPA, Esq. BEFORE THE SENATE BUDGET & APPROPRIATIONS COMMITTEE ON FAMILY TEMPORARY LEAVE TAX

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Thank you very much for the opportunity to testify before this Committee. My name is E. Martin Davidoff. I practice as a Certified Public Accountant and a tax attorney in Dayton, New Jersey. In addition to being a member of my state-wide professional associations, I am a member of the NFIB, and a national officer of the American Association of Attorney-Certified Public Accountants (AAA-CPA).

"When the United States entered World War II, the U.S. government turned to ordinary Americans and asked of them extraordinary service, sacrifice, and heroics..."

Some of you may recognize this as a quote from Tom Brokaw's book, *The Greatest Generation*. My parents were part of that generation, a generation learned to save money to get them through the normal cycle of life. Those costs were significantly higher then, as there were fewer government programs to provide for our citizens housing, food, health, and welfare. And, when *The Greatest Generation* needed money to get them through a period of non-working, to care for a loved-one, they went to their savings. After all, that is what our society had trained them and us to do, "save for a rainy day".

By taxing our citizens on their earnings and to give them back, essentially, their savings for those rainy days, makes little sense. Let's do the math.

First of all, the legislation proposes to add a 0.1% tax on employees. And, the assessment is based not on the usual New Jersey Department of Labor wage base (\$26,600 in 2007), but it is computed using the significantly higher Social Security Wage base (\$97,500 in 2007). This razzle-dazzle with the wage base appears to be an attempt to hide the very costly nature of this legislation and, it will add significant complexity to the computation of one's payroll taxes due to the New Jersey Department of Labor. However, it should be noted that the 0.1% tax is merely an initial rate, which will be adjusted each year by the actual costs. The legislation provides no cap whatsoever. So, let's just say that the average cost is 0.2% and that an employee is making an average of \$75,000 per year. Over a 40-year career, that individual will have paid in \$6,000 into the system. Let us assume for the moment that every individual in the state takes advantage of this program once in their lifetime (frankly, I suspect it will be far less). The current benefit rate is \$502 per week. Over 12 weeks, the maximum benefit will be \$6,024. It all seems hardly worth it. And, let's look at the costs:

- The employer has to withhold the tax and turn it over to the state. In so doing the computations are more complicated in that employers will be computing the TDI tax using two different wage bases;

- Payroll software companies will be required to reprogram their systems significantly due to the dual wage bases.
- Employees will have to give 30 days notice to take advantage of this program with respect to birth or adoption. And if the notice is not provided properly, the employee could lose two weeks of benefits.
- An employee who may be fully capable of working after the birth or adoption of a child now has an economic disincentive to go back to work. How does that make sense? The reality is that the employees who may deserve this the most (those who are the most dedicated and responsible) are likely to take the least advantage of such programs.
- The State and employers will have to educate their employees of the availability of the program and will have to explain the additional tax being withheld on the pay of employees.
- Employers will have to establish policies on how to integrate the state family temporary disability benefits to their existing programs for paid time off (sick, vacation, and personal days). This will most likely require such employers to engage the services of an attorney or benefits consultant. As it is, the maze of laws faced by an employer is overwhelming.
- There are special rules regarding intermittent leave that must be absorbed and understood by the administrators, employers, and employees.
- The employee will be required to supply a certification by a health professional. The certification must meet the statutory language which describes the content in seven paragraphs and over 120 words. And, imagine the regulations that will be written to further interpret the legislation and provide samples of certifications and examples of acceptable and unacceptable certifications. And that will just be one small segment of the regulatory process.
- The State can require that the family member submit to a medical examination by a physician or even a “public health nurse” as a condition to receiving benefits. And, such examinations can be as often as once a week! The legislation, thankfully, requires that the examination be held at a reasonable place. Unfortunately, it does not tell us whether a “reasonable place” is reasonable to the State, the examiner, or the patient. Let me reiterate that it may be a public health nurse, whatever that is, who decides whether or not someone can get their benefits under this program!
- Leave qualifying to receive benefits can be taken under this legislation, with respect to a birth or adoption, at any time within a year after the date of birth or placement for adoption. So, does this mean a birth mother can get her normal disability benefits under current law (usually up to four weeks before birth and six weeks after birth) AND take another 12 weeks?
- Costs of administration under the legislation includes:

“cost of an outreach program to inform employees of the availability of the benefits and the cost of issuing annual reports on usage rates, reasons for leave, benefits paid, demographics of participants, and other relevant information as determined by the commissioner.”

Taken together, these costs are overwhelming to the public and to individual. Wouldn't it be simpler to just encourage our citizens to save money to cover these costs? And, doesn't anyone realize the greater lack of privacy as the government gathers all of this information?

In my opinion, this bill does nothing but take money from people and set rules on how to give it back to them. Along the way, it reallocates funds from those of great pride and work ethic to others. Along the way, the government will retain a significant percentage to administer the program, educate employees of its existence, and issue reports.

And, let's face it, if you are facing a severe health problem for a loved one, \$6,024 is not going to make the difference. And, your first instinct is not going to fill out forms to get \$502 per week. Rather, you are going to attend to that loved one and focus on them. And, if the problem is extreme, there are numerous programs, public and private, that can assist.

I consider myself a good employer. I have been in business for over 25 years and half of my current employees have been with me over 7 years. Among them, they have experienced pregnancies, births, leaves of absences, illnesses, college trips, extended visits to grandchildren, divorces, marriages....all of the aspects of life. With these excellent employees, I have chosen to be flexible and generous. Why? Certainly not because the State told me so. Rather, I viewed them as essential to my business's success. They were team players. They were loyal and valuable to the business.

I provide a set of fringe benefits to my employees and wages at a level to attract and maintain their services with my firm. Why? In part to be competitive with other employers; in part because I want to share the benefits of my success that they have helped build; and in part because I don't want them to worry about whether they can afford the next medical procedure.

I view our freedoms in this country and our system of free enterprise as essential components to the American way of life. My employees have the freedom to work for me, or not. I have the freedom to hire them, or not. And, every time that the State of New Jersey taxes or regulates that employment relationship, it places a drag on our economy and the economic growth of our nation.

The United States Jaycees has a line in its Creed that reads:

We believe...that economic justice can best be won by free men through free enterprise.

I ask you to think about that line and the words "free men through free enterprise". I believe that those are important words to live by. The freedom to make one's own decisions is paramount. I don't need, we don't need, the State of New Jersey to impose its view on how we should put aside money for life. Personal savings for family emergencies was good enough for the Greatest Generation, why isn't it good enough for us?

I would like to thank the Committee for holding these hearings to secure public input.