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## SB 404 -Labor and Employment – Healthy Working Families Act – Verification Hearing before the Senate Finance Committee, February 20, 2020

### Position: Oppose

The Public Justice Center (PJC) is a not-for-profit civil rights and anti-poverty legal services organization that seeks to advance social justice, economic and racial equity, and fundamental human rights in Maryland. Our Workplace Justice Project aims to ensure that our state’s low-wage workers receive fair and full payment for their labor and other basic protections. The PJC **opposes SB 404 and urges an unfavorable report.**

**1. SB 404 Undermines the Purpose of the Healthy Working Families Act (HWFA) by Allowing Employers to Deny an Employee Their Earned Leave the Very First Time They Need to Use It.**

- ✓ The HWFA recognizes that sickness and domestic violence are unpredictable. For that reason, the HWFA does not permit an employer to require verification or deny leave the very first time an employee calls out sick. SB 404 would change that and weaken the HWFA. It would allow an employer to unilaterally demand (via notice at the time of hire) that an employee who takes *any* leave between their 107 and 120<sup>th</sup> day of employment verify that the leave is for a legitimate purpose even if it is the first time that employee needs to use their earned leave.
- ✓ Worse yet, SB 404 would empower employers to deny an employee their earned sick or safe leave between the 107<sup>th</sup> and 120<sup>th</sup> day –again, even if it is the first time they have used leave—for failure to provide the verification demanded.
- ✓ Allowing employers to deny an employee their earned sick and safe leave for lack of verification the very first time they seek to use it – or any time they seek to use it during a random 13-day window – will sow confusion, chill the legitimate use of leave, and undermine the intent of the HWFA.

**2. SB 404 is Unnecessary and Unworkable.**

- ✓ SB 404 is unworkable. Employees frequently will not have verification at the very instant they need to take leave. The HWFA recognizes this, and for that reason only permits a denial of leave where an employee fails to provide verification for past leave and then *subsequently* seeks to take leave for the same reason.

- ✓ By way of example, an employee is a domestic violence survivor who flees to a friend's house with her kids in the middle of the night. She calls the employer the next morning to say she can't work, but because she is on her 110<sup>th</sup> day of employment and does not have verification right then, the employer denies the leave. The employee is now in a bind because she cannot produce verification immediately. She must then choose between her personal safety, going to work, or not going to work and possibly losing pay or losing her job.
- ✓ Information obtained from various Maryland Public Information Act requests does not suggest that employees are abusing leave between the 107<sup>th</sup> and 120<sup>th</sup> day such that employers require additional power to deny leave.

### **3. SB 404 Would Upset Carefully Crafted Legislative Compromises, Create Inconsistencies, and Increase Administrative Burdens.**

- ✓ The HWFA already reflects compromises worked out over several years to protect employers' concerns regarding leave abuse. Employers may require verification after just *two consecutive shifts*, -- e.g., working "a double" in the restaurant industry. The law further allows an employer to request verification of any leave taken between the 107<sup>th</sup> and 120<sup>th</sup> days of employment, provided that the employee and employer mutually agreed to that policy at the time of hire. Where an employee fails to supply verification in either case, the employer is empowered to deny a *subsequent* leave request for the same reason.
- ✓ Maryland's law is already more business-friendly than most other jurisdictions, which only permit an employer to request verification after *3 days*, rather than just 2 shifts. And no other jurisdiction grants additional power to employers between 107 and 120 days. Maryland employers' power to deny sick or safe leave on just the second or third attempt to take earned leave is already more restrictive to employees and business-friendly than other jurisdictions.
- ✓ SB 404 would create inconsistencies and additional administrative burdens. It would permit an employer to deny even the first instance of leave if verification is not provided for 13 particular days of employment, -- i.e., between the 107<sup>th</sup> and 120<sup>th</sup> days. Meanwhile, for all other days, an employer may only deny a *subsequent* request for sick or safe leave if the employee has already missed two consecutive shifts for the same reason and failed to provide verification. Employers will have to track -- for each employee -- whether they seek to use *any* earned leave during the 13 days between each person's 107<sup>th</sup> and 120<sup>th</sup> days of employment, whether they have provided the required verification for any leave during that particular 13-day period, and if not, whether the leave was denied and whether the employee worked their shift or will be docked their pay. Separately, the employer will track absences not within that 13-day period and monitor verification and leave denial of *subsequent* leave requests for the same reason.