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February 20, 2015

VIA EMAIL AND REGULAR UNITED STATES MAIL

Senator Burke Harr
Chairperson
Business and Labor Committee
Nebraska State Capitol
Lincoln, Nebraska 68509

RE: LB 493 entitled Adopt Healthy Safe Families and Workplace Act

Dear Senator Burke Harr:

This correspondence is on behalf of the Society of Human Resource Management Nebraska State Council. My name is Chad Richter, Shareholder at Jackson Lewis, PC, located in Omaha, Nebraska. I also serve as Legislative Director for the SHRM Nebraska State Council.

On behalf of the SHRM Nebraska State Council, we are writing this letter in opposition to Legislative Bill 493 introduced by Senator Nordquist on January 20, 2015, and currently before the Business and Labor Committee. On February 9, 2015, the Business and Labor Committee received testimony regarding this proposed bill. This correspondence is in follow-up to this oral testimony.

As you know, this bill would require businesses that employ four or more individuals to provide employees a minimum of one hour of paid sick and "safe-time" for every 30 hours worked, up to 40 hours per year. While approximately seventeen cities in the United States currently have some form of a paid sick leave program, only two states namely California and Connecticut have a paid sick leave mandate that is in effect. This bill will have significant consequences for employers and Human Resource professionals attempting to provide paid sick leave to employees as further outlined below.

This bill would deny employers the flexibility to design a benefits package that works best for their business and its employees. A paid sick leave mandate as proposed in this legislation could actually have the reverse affect whereby some employees actually lose benefits as employers may reduce their benefit offers to match the new state standard. This bill would also require increased burdens on employers. These burdens are further compounded for small employers that only employ a small number of workers in their organization. Small employers that employ under 50 employees comprise the largest population of employers in the State of Nebraska.

The bill would require additional tracking systems, employer monitoring obligations, new hire notification obligations and increase the potential for litigation as a result of inadvertent mistakes and errors. Disability leave management is already one of the most complicated areas for human resource professionals. Some organizations must navigate through the Bermuda triangle of disability leave management legislation including the Family and Medical Leave Act, Americans with Disabilities Act, state workers' compensation legislation, and the like. Under this proposed bill, employers will, in addition to federal and other state legislation, have to track leave in the smallest increment permitted under their payroll system, ensure new hire notifications are provided and distinguish between the type of medical information employers are permitted to receive in comparison to other federal and state law.

The proposed legislation is further complicated by the lack of information an employer can receive regarding an employee's medical condition justifying the need for leave. Employers already struggle in curtailing fraud and abuse under the FMLA and other disability leave management legislation. This bill will further complicate matters by limiting the type of medical documentation an employer can receive justifying their need for paid sick leave benefits. Employers, often times, also need additional medical information in an effort to fully understand whether the employee can perform the essential functions of the position as required under the Americans with Disabilities Act. Under the proposed bill, employers would be limited in obtaining specific and relevant medical documentation justifying their need for paid leave that would also assess an employee's ability to perform the essential functions of their position.

The bill is also extremely vague with regard to an employer's existing paid time off benefit programs. The bill currently provides that an employer is not required under this proposed legislation to offer this benefit if their existing paid time off program is "sufficient to meet the accrual requirements for paid sick and safe time under this section which may be used for the same purposes and under the same conditions." However, the bill is silent if the employer's existing paid time off benefit is broader than the proposed bill. We specifically request modification to the existing language in Section 3 (6) of the bill to ensure that the employer's paid time off policy only must include, at a minimum, the use and accrual language identified in

this proposed bill in order to avoid having to provide additional sick and safe time leave already provided by the employer.

Lastly, provided this bill advances, which we oppose, we believe the language in Section 3 (7) of the bill should be modified. The current proposed language provides that nothing in this section shall be construed as requiring payment for accrued but unused paid sick leave at the time of separation. We propose more specifically addressing in the bill that all paid time off benefits provided by an employer that permit, at a minimum, the type of leave contemplated in the bill do not have to pay an employee for unused but accrued leave upon separation. This will provide more clarity that employers with existing PTO programs that also permit paid leave as provided under this bill, do not have to provide payment for accrued but unused PTO at termination.

In summary, SHRM Nebraska State Council is opposed to this bill in its current form. Provided you have any questions regarding this correspondence or our opposition to LB493 on behalf of SHRM Nebraska State Council, please do not hesitate to contact me.

Thank you for your attention to this matter.

Chad Richter
Legislative Director
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