STATEMENT IN SUPPORT OF SB 304
MARYLAND HEALTHY WORKING FAMILIES ACT – ENFORCEMENT – DELAYED IMPLEMENTATION

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Thank you for allowing me to speak in favor of SB 304. The question on the table is not whether mandatory paid leave is wise or appropriate. That has been decided. The issue is employers simply could not be set to comply in 30 days.

As you know, HB1 is a complex and technical piece of legislation. For weeks now, all I have doing is working with companies to try to come into compliance. I have prepared a primer on the law and presented three webinars on the topic, with another scheduled. Ensuring compliance with the law is challenging, and the penalties for non-compliance are severe. Quite simply, employers need more time to get it right.

We are dealing with clients that provide leave right now and yet cannot get their systems altered in time to comply. Our smaller clients who have not previously provided leave have no systems or resources in place - they cannot comply without additional time.

All of my clients – even those that already provide sick leave or paid time off (PTO) that can be used for sick and safe leave purposes – are having to review and revise their policies to meet the requirements of the law. The policies typically do not grant leave to all those employees who are eligible for sick and safe leave, such as part-time or less than half-time employees. Many policies are limited to full time employees only. In addition, the policies may not meet the accrual rates and amounts set forth in HB1. Also, sick leave policies may not allow the use of sick leave for safe leave purposes, and may not allow the use of sick leave for grandparents, grandchildren and siblings. Moreover, no fault attendance policies need to be revised to exclude sick and safe leave callouts, which are protected by HB1.

More problematically, employers must also revamp their systems to calculate the accrual of sick and safe leave and track the usage of sick and safe leave.

First, employers must ensure their systems to track hours worked and calculate leave accrual. This is complicated in several ways. Trying to set up time tracking systems to permit accrual of 1 hour of leave for each 30 hours of work by February 11 was not workable for many, even companies that already have systems for tracking time. It is not a standard tracking mechanism. In addition, if employers want to use HB1's special accrual rules that exclude weeks where an insufficient number of hours are worked, additional calculations and coding are required. Moreover, some employees are not paid hourly and hours are not typically tracked – such as

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piece rate, day rate, and commission-only employees. Employers must figure out how to calculate hours worked for these employees.

Second, employers must calculate the employee's hourly rate in order to pay out the sick and safe leave. Again, this is a problem for employees who are not paid hourly or a salary – such as the piece rate, day rate, and commission-only employees. Additionally, some employees receive shift differentials or weekend differentials that may need to be calculated into the rate.

Third, HB1 requires employers to track the use of sick and safe leave. Employers who will be using PTO to cover their sick and safe leave obligations typically track PTO generally and do not track PTO specifically used for sick and safe leave purposes. This new requirement must be coded into leave tracking systems.

If the employer did not previously provide PTO or sick leave, all of this tracking and calculating is new, and the appropriate systems must be developed and implemented.

Another major problem is that many employers use outside payroll vendors, like Paychex or ADP. My clients have informed me that these vendors are not ready to implement the law. The vendors are having to develop client-specific coding based on each company's particular workforce – what leave they are using (PTO, sick leave, sick and safe leave), what accrual rules they are using, what rates and differentials employees are paid. And the vendors have to do it for all their Maryland clients. It did not get done by February 11.

Some of my clients have union issues, which is another major problem. While HB1 states that those collective bargaining agreements (CBAs) that were entered into before June 1, 2017 are not affected, I have several clients who entered their CBA after that date, or are currently in negotiations on an expired contract. They have to come into compliance now. However, their sick leave provisions, which do not meet the requirements of HB1 are governed by the CBA. Under the National Labor Relations Act, they cannot unilaterally make changes to comply with the law – any changes must be negotiated with and agreed to by the union. This could not be accomplished by February 11.

In addition, many local governments and public institutions like school systems have a fiscal year that starts on July 1. Their budgets are limited and set for the year. They face the additional issue of an unexpected, unbudgeted expense.

Also employers must train their managers to comply with HB1. They need to be trained on when and how sick and safe leave applies. They also need to be trained on when they can and cannot discipline for unscheduled callouts, since sick and safe leave callouts are protected. Additionally, they need to be trained on how to ensure SSL is properly recorded on timesheets – particularly where other types of leave are being use to cover SSL (like PTO or sick).

In conclusion, there was not enough time to get it right. There was not time for DLLR to give employers guidance on what they needed to do. My clients need more time and more guidance. I urge the House to pass SB 304 in order to give employers the time they need to ensure compliance with the law.