

COMMENTARY

A Business Isn't a Babysitter

Are two of our Los Angeles city councilmembers trying to chase businesses out of the city?

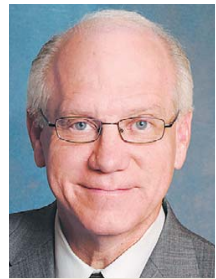
This was my question – and apparently that of several others – upon hearing that Nury Martinez and David Ryu proposed that all businesses in the city be required to grant up to 18 weeks of parental leave to new mothers – for up to 100 percent of their pay.

That would be way up from current California law, which requires employers give new mothers six weeks off with up to 60 or 70 percent of their pay.

It's the kind of proposal that, if made into an ordinance, may be the kind of last straw that could push businesses out of the city of Los Angeles and into such places as Burbank and Thousand Oaks – which already are home to the two largest companies in Los Angeles and Ventura counties. For that matter, businesses could go to Calabasas,

Glendale, Santa Clarita and Westlake Village – and discover why so many of our area's sizable companies now are headquartered there.

I'm not the only one wondering whether this stringent maternal leave policy would motivate businesses to exit. Here's a condensed and edited mashup of comments from readers of the Los Angeles Times' initial article about the proposal:



ONE MORE THING

Charles Crumpley

• This is four weeks payroll that a business has to pay someone who is not working. This might be OK for a big, thriving corporation but there are a lot of small mom and pop businesses that are barely making it.

• Businesses will have three choices: 1) Move. 2) Not hire women likely to give birth. 3) Raise

What's truly astounding is how out of touch (Nury) Martinez and (David) Ryu are. Enhanced parental leave is the kind of employee benefit offered by large, prosperous companies. But the bulk of the businesses in the San Fernando Valley are exactly the opposite.

prices. So far, L.A. businesses have chosen option 3. (Go out to dinner and find out).

• What a good idea to find another reason for businesses to leave the city limits and head for anywhere they get a better reception.

What's truly astounding is how out of touch Martinez and Ryu are. Enhanced parental leave is the kind of employee benefit offered by large, prosperous companies, as the first commenter above pointed out. But the bulk of the businesses in the San Fernando Valley are exactly the opposite. They mostly are mid-sized and smaller, and many of them are struggling. They are the ones that'd be whacked the hardest by this. Martinez and Ryu should know that, since they represent parts of the Valley.

But shockingly, Martinez and Ryu rationalized it this way in their press release: "Companies with increased paid parental leave benefits saw fewer employees leave the company, such as at Google,

where the rate at which new mothers left the company was cut in half when additional paid parental leave was provided."

Well, maybe that's true, and I'm sure it is great for Google and behemoths like it. But, Martinez and Ryu, just where is the company in the Valley – or anywhere in the city of Los Angeles – that can be compared to Google?

Look, every reasonable person surely agrees that parents should have time to bond with their babies. No doubt about that. But figuring out how to do that is a responsibility of the parents, the ones who had the baby. Reasonable people can sure disagree that a city should burden companies with that obligation. Businesses are not babysitters.

It's early in the process, and the proposal likely will go through some changes. Maybe small businesses and nonprofits will be exempt. And perhaps a special employee tax will pay the salaries of the mothers on extended maternity leave. Such things will help. But the ordinance would still be wrong.

Why? For one thing, many companies can "get by" for a few weeks but not 18 weeks; they'd have to hire a temporary worker. What do you do with that replacement when the mother returns? And if the company doesn't hire a temp, is it fair for the remaining workers who are burdened with filling in?

For that matter, would it be fair to make childless employees pay a special tax to cover the salaries of their child-bearing colleagues? And such an ordinance would incentivize workers to game the system: what new mother wouldn't be tempted to take the 18 weeks of full salary before quitting to be a stay-at-home mom? And, as one commenter said, would it incentivize companies to bypass hiring women of childbearing age?

This entire proposal creates more unfairness and problems than it solves. Maybe it would be best to leave parenting responsibilities to the parents and leave businesses out of it.

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Please Sen. Hertzberg, Kill PAGA

By TOM MANZO

The California Posse Comitatus Act of 1872, a law straight out of the Wild West, could soon be no more. State Sen. Robert Hertzberg's press secretary said Hertzberg directed his staff to "take a look into bills that were still on the books that were antiquated or no longer needed. This one definitely fits the bill, and it also happens to be that the senator has a history of supporting or passing laws that minimize unnecessary fines and charges against Californians."

This is great news, Senator. We have something else that's very familiar and also in desperate need of coming off the books.

It's called the Private Attorney General Act or, more commonly, PAGA. And when it comes to excessive fines, it takes the cake. Civil penalties on PAGA cases are 2,430 times the actual alleged damages. PAGA deputizes "each and every" current and former "aggrieved employee" in California to sue companies on behalf of the state. To prevail, the aggrieved employee need only show that a violation occurred, not that he or she was actually harmed by the violation.

Under PAGA, any labor law violation – and California has many; the Labor Law Digest is over 1,100 pages – can be enforced by the deputized employee and their attorney. And the fines can be enormous for minor violations. For example, if your company's start time is 6:30 a.m. and everyone wants to take lunch at 12 p.m., that means everyone is taking their lunch more than 5 hours

past their starting time, in violation of the labor code. That alone could cost a company millions of dollars. If you give an employee a gift card or bonus and they work overtime, if you didn't add the value of the gift or bonus in their base pay, that means you shorted them in the overtime rate. You could be off by pennies but the penalties could cost you millions.

With so many new labor laws being passed each year, it is almost impossible to keep up with. That alone makes any business vulnerable to predatory trial attorneys. You could have a paycheck with the wrong employee ID number or missed comma on a company name and it is a labor law violation that, under PAGA, could cost you millions.

And PAGA suits are increasing. More than 35,000 PAGA notices have gone out since 2004. However, since many PAGA complaints get settled quickly, before the notice goes out, there could have been double the number, or maybe 70,000 PAGA complaints initiated in that span.

Law firms have realized this is a huge payday for them and are getting rich at the expense of the employee and employer. Take a look at a recent PAGA lawsuit against Uber. In the end, drivers were paid \$1.08 each while the trial attorneys took in over \$2.6 million.

A recent Detroit Free Press article states that across Michigan, police departments have enlisted civilians to work alongside licensed officers to patrol communities and even assist cops with arrests. But these armed civilians are largely unsupervised. The state agency responsible for police licensing

and training is not regulating these reserve officers, and it has no idea how many such unlicensed volunteers there are statewide. This lack of oversight continues despite numerous incidents of questionable or even illegal conduct by reserve officers in recent years.

Deputizing employees in California to enforce labor laws is no different than the posse of the Wild West and what is going on in Michigan.

Here's a question: If so many employers are unaware of PAGA, how is it so many employees are?

The answer is that trial attorneys are seeking them out. Trial attorneys are throwing picnics in parks, offering referral fees, running ads in Facebook, with promises of a big payday for the employee. Of course, the employee never sees that big payday, only the attorney. Most of the cases are settled in mediation and the trial attorneys' cut is not negotiable while the penalties and wages owed are. PAGA has created a multi-billion-dollar cottage industry that continues to grow with more complex labor laws. California is the only state with such a law and it is being so severely abused by the trial attorneys that it needs to be repealed.

So please, Sen. Hertzberg, since you have a history of supporting laws that eliminate unnecessary fines against Californians, take a look at killing PAGA.

Tom Manzo is founder and president of California Business & Industrial Alliance, a pro-business organization in Sunland that has sued the state, claiming that PAGA is unconstitutional.

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