ATTACHMENT M

July 28, 2022

To the Honorable Senate and House of Representatives:

Pursuant to Article LVI, as amended by Article XC, Section 3 of the Amendments to the Constitution of the Commonwealth of Massachusetts, I am returning to you for amendment Section 80 of House Bill No. 5050, “An Act Making Appropriations for the Fiscal Year 2023 for the Maintenance of the Departments, Boards, Commissions, Institutions and Certain Activities of the Commonwealth, for Interest, Sinking Fund and Serial Bond Requirements and for Certain Permanent Improvements.”

Section 80 amends the Paid Family and Medical Leave Act (“the Act”) by expressly allowing employees to supplement their Paid Family and Medical Leave (PFML) wage replacement benefits with accrued sick and vacation time in order to collect their average weekly wage while out on leave. This significant change in law would go into effect retroactively, as of July 1, 2022. As detailed below, this proposal raises multiple concerns.

First, it would likely place a heavy administrative burden on employers. Under the PFML program, an employee’s weekly benefit amount is determined using a statutory formula and may not exceed 64 percent of the state average weekly wage. Employers would be required to calculate the difference between an employee’s weekly PFML benefit amount and their average weekly wage every time the employee utilizes PFML. This can only be accomplished by performing an individualized calculation for each employee, using metrics that employers typically do not have access to at the start of an employee’s leave. Additionally, erroneous overpayments by employers while employees are on PFML are already a challenge that require substantial resources for employers to identify and recover. This mandate would further exacerbate that issue.

Second, the Department of Family and Medical Leave (DFML), the agency that administers the PFML program, would need to implement systems changes and a modification to their processes in order to enable employers to calculate the amount of vacation or sick accrual needed to top off an employee’s PFML leave. This budget does not provide any resources to support the DFML in effectuating these changes. Further, it would be impossible for the DFML to meet the retroactive effective date of July 1, 2022.

Finally, this amendment to the Act would likely place a strain on the PFML program as eligible individuals would be incentivized to use PFML more often. The overall increased cost of the program—and subsequently, the cost to employers and employees whose contributions support the program—is difficult to estimate. Increased utilization of PFML may also cause more absences in the workplace and all the attendant costs, such as increased overtime and workplace fatigue.

Without a full understanding of the administrative, fiscal, and workplace impacts of this section, I cannot sign it. Instead, I am recommending language that directs the DFML to perform a study on the proposal.

For these reasons, I recommend that Section 80 be amended by striking out the section and inserting in place thereof the following section:-

SECTION 80. The department of family and medical leave shall conduct a study on the proposal to amend section 3 of chapter 175M of the General Laws to expressly permit employees who are taking paid family or medical leave to supplement their wage replacement benefits with any accrued sick or vacation pay or other paid leave provided under an employer policy. The department shall (i) evaluate the benefits and any disadvantages of this policy change on employers and employees; (ii) determine what operational modifications will be required for the department and employers; and (iii) provide an estimate of the implementation costs and required timeline for the department and employers. The department shall submit the results of the study by filing the same with the secretary of the executive office of labor and workforce development, the secretary of the executive office for administration and finance, the clerks of the house of representatives and senate, the joint committee on labor and workforce development and the house and senate committees on ways and means.

Respectfully submitted,

Charles D. Baker

Governor