

TESTIMONY OF ATTORNEY PETER GOSELIN
OPPOSING SENATE BILL 184, AN ACT CONCERNING THE DEFINITION
OF EMPLOYER IN THE FAMILY AND MEDICAL LEAVE ACT

Honorable chairpersons and members of the committee, my name is Peter Goselin and I am an employment lawyer in private practice here in Hartford. I am here today to speak in opposition to Senate Bill 184, AN ACT CONCERNING THE DEFINITION OF EMPLOYER IN THE FAMILY AND MEDICAL LEAVE ACT, in its present form. In the interests of full disclosure, I should state that I am plaintiff's counsel in the matter that is presently pending before the Connecticut Supreme Court that motivated the Connecticut Department of Labor to seek the amendment to the Connecticut Family and Medical Leave Act referenced in S.B. 184.

The bill as proposed by the Department of Labor would make a single and unfortunate change in the Connecticut Family and Medical Leave Act, which is to insert into the current definition of "employer," that is, "a person engaged in any activity, enterprise or business who employs seventy-five or more employees," the concluding phrase "in this state." If this change is made, it will protect certain large corporations employing thousands of employees in a manner that the Connecticut legislature only intended to afford to smaller employers. This would be a bad outcome for Connecticut employees and for small businesses. However, a more careful legislative approach could address the DOL's concerns while providing real protection to smaller employers.

When Connecticut legislators enacted the CT FMLA in 1997, they stated their intent to protect smaller businesses by limiting the new law's enforcement to employers with at least 75 employees. The Department of Labor interprets the statute very differently: as shielding large employers that happen to have fewer than 75 employees employed within the boundaries of the state. My client, Joaquina Velez, challenged that interpretation and Judge Cohn of the Superior Court agreed with us that the Department's interpretation of the statute

is incorrect. The Department and the employer have both appealed, and the case pending before the Connecticut Supreme Court. [Joaquina Velez v. Commissioner, Connecticut Department of Labor, et al., SC18683/SC18684]

To date, there are three “small businesses” that the DOL's interpretation has protected. They are Boise Cascade (the largest paper company in the world), United Airlines (at last count it had over 86,000 employees), and – in my case – Related Management, a real estate management company headquartered in New York City, which has stipulated in litigation that it has at least 1,000 employees. The proposed language of S.B. 184 would codify that bad result and would treat some of the world's largest corporations as “small businesses” here in Connecticut.

There is an alternative. In litigation, we are often forced to argue in black and white. But the DOL's concerns – as well as those of my client and other working people like her, as well as true small businesses in Connecticut – would be better addressed in a different way. For example, you could amend §31-kk(4) to define an employer as “a person engaged in any activity, enterprise or business who employs at least seventy-five or more employees, *of whom at least twenty-five or more are employed within the state.*” In doing so, you would be ensuring that employers who must comply with the CT FMLA have at least a certain number of employees within the state and therefore presumably have the human resources needed for compliance. But you would not be allowing employers with hundreds or thousands of employees to pose as small businesses.

I respectfully urge you to reject S.B. 184, but if an amendment is needed, to please do so in a way that protects small businesses and employees.