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**MEMORANDUM**

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**TO:** Members of the Senate  
**FROM:** Alida Kass, Chief Counsel  
**SUBJECT:** Senate Bill 785  
**DATE:** December 16, 2015

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The New Jersey Civil Justice Institute is a statewide, bipartisan coalition of the state's largest employers, small businesses, and leading trade associations advocating for a fair and predictable civil justice system in New Jersey. On behalf of our members, **we respectfully oppose S-785.**

Although proponents of the bill focus on allowing employees to stay home when they are sick, the legislation would do much more than that. Indeed, employers who already offer more generous paid sick leave to their employees than would be mandated under the bill are nevertheless opposing this legislation.

The reason is largely because the broad statutory entitlement to paid sick leave, compounded by the incentivized-litigation enforcement mechanism, would deprive those employers of the flexibility to administer their leave policies in a way that deters abuse and is consistent with the needs of their businesses.

Where feasible, employers already try to accommodate the reality that everyone gets sick and occasionally needs to care for a family member. When implemented on a voluntary basis, the employer is able to offer accommodation where possible, while retaining the flexibility necessary to make those accommodations work for the specific circumstances of their business. So, for example, if an employee is habitually "sick" the Friday before long weekends, a discretionary sick leave policy would permit that practice to be addressed informally. Similarly, if an employee needs to take time off, the employer can modify assignments to ensure that necessary work is done.

That flexibility would be eliminated by the very aggressive liability provisions that have been included in this bill.

Under this bill, an employee who does almost anything related to paid sick leave, including simply informing any person about the availability of paid sick leave, gets a 90 day window during which any adverse employment action is presumed to be retaliatory. The burden would then be on the employer to prove in court that the action was unrelated to the employees' sick leave-related activity. But it is not at all clear that reassignments to meet business demands

would even be lawful under this legislation, since “retaliatory action” is defined to include even an unfavorable work reassignment.

The expansive scope of potential liability is compounded by the severe penalties that attach to violations of this legislation. Plaintiffs are entitled to actual damages plus an equal amount of punitive damages, plus attorney fees and court costs. Protections apply even where an employee mistakenly alleges violations of the act, if the allegation is made in good faith.

These very aggressive liability provisions mean that whatever litigation results from this legislation would represent only its most obvious ramifications. Many claims would settle immediately because of the potential costs of double damages and one-way fee-shifting for attorney fees. And more broadly, the most significant impact - the costs resulting from the lost flexibility in managing employees, just to avoid potential claims – would not be reflected in the dockets at all, but in higher prices and inconvenience to consumers.

The shift from voluntary policies to statutory entitlement will necessarily entail some lost flexibility for employers who already offer sick leave. However, the sponsors’ core objectives could be achieved while preserving significant employer discretion. This bill instead would create an entitlement to leave for a broad range of health-related purposes, with scant protection for employers to manage timing or abuse, enforced by incentivized litigation.

***On behalf of our members, we respectfully request a NO vote on S-785.***