

Maine's Paid Family Medical Leave Act

Presented by:

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Agenda

- Definitions
- Eligibility
- Contributions & Benefit Claims
- Benefits & Funding
- Other notes

Overview of the Law

- LD 1964 will impact all Maine employers regardless of size.
- LD 1964 will impact all Maine employees, including full-time, part-time, and seasonal workers, sole proprietors, independent contractors, and student workers.
- The benefit will be funded through a payroll tax estimated to be approximately \$360 million in addition to the program's \$25 million in start-up funding.
- Employers with more than 15 employees will pay for 50% of costs, and employees the remaining 50%.

Overview of the Law (continued)

- Businesses with fewer than 15 employees appear not to be required to pay anything, but their employees will still pay their 50% share of the premium as if their employer were a larger entity.
- To be eligible, an employee must earn at least six times the state's average weekly wage over the previous four quarters (roughly \$6,000 in earnings).
- An employee is entitled to PFML and job protection if the employer has employed them for at least 120 days.
- Private plans are authorized under the bill. They must be substantially equivalent to the requirements of the state-based plan. Contingent on rulemaking.

Overview of the Law (continued)

- Employers cannot deny use of leave under this provision, must retain the position, continue payment of benefits, and pay benefits to the hired replacement.
- Employees found to have engaged in fraud or misuse—which would include the collection of benefits obtained under false pretenses—would be barred from receiving additional benefits for a period of one year.
- LD 1964 offers the most generous PFML benefits in New England. Maine will be the only Northern New England state to require employers to contribute through taxes to the entire program.

Definitions

- Application Year: The 12-month period beginning on the first day of the calendar year in which an individual files an application for family leave benefits or medical leave benefits.
- Family Member: Includes child, parent, spouse, grandparent, grandchild, sibling and
 - *“As shown by the covered individual, any other individual with whom the covered individual has a significant personal bond that is or is like a family relationship, regardless of biological or legal relationship.”*

Eligibility

- To bond with the covered individual's child during the first 12 months after the child's birth or the first 12 months after the placement of the child for adoption or foster care with the covered individual;
- To care for a family member with a serious health condition;
- To attend to a qualifying exigency;
- To care for a family member of the covered individual who is a covered service member;
- To take safe leave; or
- Any other reason set forth in section 843, subsection 4. [Maine's current FMLA statute)

Contributions & Benefit Claims

- Contributions:
 - Begin January 1, 2025
- Benefit Claims:
 - Begin May 1, 2026

Amount of Leave

3 maximum leave requirements. The following requirements apply:

- A covered individual is not eligible for more than 12 weeks of family leave in an application year.
- A covered individual is not eligible for medical leave for more than 12 weeks in an application year.
- A covered individual may not take more than 12 weeks, in the aggregate, of family leave and medical leave under this subchapter in the same application year.

This subsection does not prevent a covered individual from taking medical leave that is immediately followed by family leave when the medical leave is taken during pregnancy or recovery from childbirth and is supported by documentation from a health care provider.

Benefits During Leave

- The taking of family leave or medical leave may not affect an employee's right to accrue vacation time, sick time, bonuses, advancement, seniority, length of service credit, or other employment benefits, plans, or programs.
- During the duration of an employee's family leave or medical leave, the employer shall continue to provide for and contribute to the employee's employment-related health insurance benefits, if any, at the level and under the conditions coverage would have been provided if the employee had continued working continuously for the duration of leave.

Funding the Fund

- Beginning January 1, 2025, for each employee, an employer shall remit to the fund premiums in the form and manner determined by the administrator. Premiums must be remitted quarterly.
- Beginning January 1, 2025, the premium amount may not be more than a combined rate of 1.0% of wages.
- An employer with 15 or more employees may deduct up to 50% of the premium required for an employee by subsection 3 from that employee's wages and shall remit 100% of the premium required by subsection 3 to the fund.

Pay During Leave – Part 1

(2). Determination of weekly benefit amount. The weekly benefit amount paid to employees and self-employed individuals on family leave or medical leave is 90% of an employee's or self-employed individual's average weekly wage calculated over the past 4 quarters, except for any bonus pay calculated as follows:

A.) The portion of the covered individual's average weekly wage that is equal to or less than 50% of the state average weekly wage must be replaced at a rate of 90%; and

B.) The portion of the covered individual's average weekly wage that is more than 50% of the state average weekly wage must be replaced at a rate of 66% up to the maximum weekly benefit.

Pay During Leave – Part 2

(3.) Maximum benefit amount adjustment. The maximum weekly benefit amount calculated under subsection 2 is 120% of the state average weekly wage.

By October 1, 2026, January 1st of the year in which claims begin being processed and annually thereafter, the commissioner authority shall adjust the maximum weekly benefit amount as necessary, and the adjusted maximum weekly benefit amount takes effect on January 1st of the year following the adjustment.

The authority may adjust the maximum benefit amount in order to maintain the solvency of the fund at a level of at least 140% of the benefits paid in the preceding year.

Notes on Retaliation

Prohibits Retaliation. Section 850-J

Under the current statute there are no hardship exemptions or exemptions for small employers. The Hardship language in the bill reads as follows:

From Section 850-B

7. Notice to employer. Absent an emergency, illness or other sudden necessity for taking leave, an employee shall give reasonable notice to the employee's supervisor of the employee's intent to use leave under this subchapter. Use of such leave must be scheduled to prevent undue hardship on the employer as reasonably determined by the employer. If an employer fails to provide notice as required under section 850-I, the employee's obligation to provide notice under this subsection is waived.

FAMILY MEDICAL LEAVE ACT PROPOSAL COMPARISONS
MAY 2023

Topic	LD 1964 Sen. Daughtry & Rep. Cloutier	2022 Task Force Recommendations	Maine People's Alliance Initiative
Annual Tax Projection	TBD	\$400M+	\$300M (OFPR Fiscal Note)
Collection & Program Start Dates	Collection: 1/1/25 Program: 5/1/26		Collection: 1/1/25 Program: 7/1/26
Small Businesses (14 employees & under)	Included	Included	Included
Part-time, Seasonal, Temporary Employee Exemptions	None	None	None
Solo Practitioner	Opt-in for minimum 3-year period; pay 50% of premium	Opt-in	Opt-in
Family Members Covered	"Family" as described in existing unpaid FMLA statute + "affinity"	"Family" as described in existing unpaid FMLA statute + "affinity"	"Family" as described in existing unpaid FMLA statute + "affinity"
Employee/Employer Share of Financing	0.7-1.0% to 2028 (50:50 split; no tax on small employers). 2028 and beyond, tax adjustable to ensure solvency of Fund	25%-50% (small employers exempt)	0.86% to 2028 (50:50 split; no tax on small employers). 2028 and beyond, tax adjustable to ensure solvency of Fund

FAMILY MEDICAL LEAVE ACT PROPOSAL COMPARISONS
MAY 2023

Wage Replacement State Average Weekly Wage (SAWW)	90% if > 50% of SAWW 75% if 50% or < than SAWW	90%	95% if > 50% of SAWW 65% if 50% or < than SAWW
Benefit Cap (SAWW)	100%	120%	100%
Leave Duration	12 weeks total in aggregate	12 weeks for either family or medical, 16 total	12 weeks or either family or medical, 16 total
Waiting Period (Medical only)	7 days	7 days	7 days
Taxable Wage Cap	Social Security (\$160,200 in 2023)	No	No
Private Plan Option	Yes	Yes	Yes
Program Administration	Defaults to private (includes fiduciary duty)	Private or MDOL	Maine DOL

Paid Family and Medical Leave Benefits Authority

- David Barber of Cape Elizabeth for Appointment to Paid Family and Medical Leave Benefits Authority
- Benjamin K. Grant of Portland for Appointment to Paid Family and Medical Leave Benefits Authority
- Barrett Gray of Stonington for Appointment to Paid Family and Medical Leave Benefits Authority
- Samuel J. Hight of Skowhegan for Appointment to Paid Family and Medical Leave Benefits Authority
- Christopher K. Washburn of Windham for Appointment to Paid Family and Medical Leave Benefits Authority
- Michelle Corry of Scarborough for Appointment to Paid Family and Medical Leave Benefits Authority

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- Dr. Jay Naliboff, M.D. of Chesterville for Appointment to Paid Family and Medical Leave Benefits Authority
- Jenni Tilton-Flood of Clinton for Appointment to Paid Family and Medical Leave Benefits Authority
- Sarah Conroy of Lewiston for Appointment to Paid Family and Medical Leave Benefits Authority
- Ranae L'Italien of Sidney for Appointment to Paid Family and Medical Leave Benefits Authority
- Maria Fox, Esq. of Portland for Appointment to Paid Family and Medical Leave Benefits Authority

Questions?

Thank You!