

Proposed by Sen. Daughtry
Proposed Sponsor's Amendment to LD 1964
Revised June 1, 2023 ~~May 24, 2023~~
Changes are in green and highlighted in yellow

**Proposed Draft Committee Amendment to LD 1964,
An Act to Implement the Recommendations of the Commission to Develop a Paid Family
and Medical Leave Benefits Program**

[changes from bill shown in red and through strikethrough]

Amend the bill by striking out the title and inserting in its place the following:

An Act to Create the Maine Paid Family and Medical Leave Benefits Program

Amend the bill as follows:

Sec. 1. 3 MRSA §959, sub-§1, ¶I, as amended by PL 2021, c. 617, §1, is further amended to read:

I. The joint standing committee of the Legislature having jurisdiction over labor matters shall use the following list as a guideline for scheduling reviews:

(2) Department of Labor in 2023;

(3) Maine Labor Relations Board in 2025; ~~and~~

(4) Workers' Compensation Board in 2025; and

(5) The paid family and medical leave benefits program established in Title 26, chapter 7, subchapter 6-C in 2029.

Sec. 2. 5 MRSA §12004-I, sub-§54-F is enacted to read:

54-F.

<u>Labor</u>	<u>Paid Family and Medical Leave Benefits Authority</u>	<u>Expenses Only</u>	<u>26 MRSA §850-O</u>
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Sec. 3. 5 MRSA §13056, sub-§4, as enacted by PL 1987, c. 534, Pt. A, §§17 and 19, is amended to read:

4. Communication with private sector. Communicate, on a regular basis, with the private sector to inform the private sector of departmental programs and services and the paid family and medical leave benefits program established in Title 26, chapter 7, subchapter 6-C and to determine the needs, problems and opportunities of the private sector;

Sec. 4. 5 MRSA §13056, sub-§5, as amended by PL 2003, c. 159, §1, is further amended to read:

5. Prepare and distribute publications. Prepare and distribute publications that:

A. Describe various business development programs within the State that are available to Maine businesses;

B. Describe the various community and economic development programs of the State; ~~and~~

C. Market the State of Maine and its communities as suitable areas for business development; and

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D. Describe the paid family and medical leave benefits program established in Title 26, chapter 7, subchapter 6-C to educate businesses within the State about the program.

Sec. 5. 26 MRSA c. 7, sub-c. 6-C is enacted to read:

SUBCHAPTER 6-C

PAID FAMILY AND MEDICAL LEAVE

§850-A. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. **Administrator.** "Administrator" means the department administering the program or an authorized 3rd party conducting any functions necessary to implement **and operate** the program.

2. **Application year.** "Application year" means 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.

3. **Authority.** "Authority" means the Paid Family and Medical Leave Benefits Authority, under section 850-O.

4. **Average weekly wage.** "Average weekly wage," as used to establish the maximum weekly benefit amount for purposes of this subchapter, means 1/52 of aggregate total wages paid in the State for covered employment, as reported on employer contribution reports for the calendar year, divided by the arithmetic mean of midmonth weekly covered employment reported on employer contribution reports for the calendar year **in the form and manner determined by the administrator.**

5. **Base period.** "Base period" means the first 4 calendar quarters immediately preceding the first day of an individual's benefit year.

6. **Benefit year.** "Benefit year" means the 12-month period beginning on the first day of the calendar week **immediately preceding the date on which family leave or medical leave benefits commence** ~~in which an individual files an application for family leave benefits or medical leave benefits.~~

7. **Commissioner.** "Commissioner" means the Commissioner of Labor.

8. **Contributions.** "Contributions" means the payments made by an ~~employee~~ **employer** or self-employed individual to the fund, as required by this subchapter.

9. **Controller.** "Controller" means the State Controller.

10. **Covered individual.** "Covered individual" means a person who:

A. Earned at least 6 times the state average weekly wage in wages subject to premiums under this subchapter during the individual's base period or elects coverage and meets the requirements of section 850-G; and

B. Meets the administrative requirements outlined in this subchapter and any rules adopted pursuant to this subchapter and files an application for family leave benefits or medical leave benefits.

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11. Covered service member. "Covered service member" means:

A. A member of the United States Armed Forces, including the National Guard and the Reserves of the United States Armed Forces, who is:

(1) Undergoing medical treatment, recuperation or therapy or otherwise receiving outpatient treatment; or

(2) Otherwise on the United States Armed Forces' temporary disability retired list for a serious injury or illness that was incurred by the member in the line of duty in the United States Armed Forces or a serious injury or illness that existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the United States Armed Forces; or

B. A former member of the United States Armed Forces, including the National Guard and the Reserves of the United States Armed Forces, who is undergoing medical treatment, recuperation or therapy for a serious injury or illness that was incurred by the member in the line of duty in the United States Armed Forces or a serious injury or illness that existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the United States Armed Forces and manifested before or after the member was discharged or released from service.

12. Department. "Department" means the Department of Labor.

13. Domestic partner. "Domestic partner" has the same meaning as in Title 1, section 72, subsection 2-C.

14. Employee. "Employee" means a person **in the State** who may be permitted, required or directed by an employer in consideration of direct or indirect gain or profit to engage in any employment but does not include an independent contractor.

15. Employer. "Employer" means:

A. Any person, sole proprietorship, partnership, corporation, association or other business entity that employs employees at a location in this State;

B. The State, including the executive, legislative and judicial branches, and a state department or agency;

C. A county, city, town or municipal agency;

D. An agent of an employer, the State or a political subdivision of the State; and

E. A public employer, as defined in section 962, subsection 7.; **and**

F. A tribal government that has elected coverage pursuant to section 850-G.

"Employer" does not include the Federal Government.

16. Employment. "Employment" means a service performed for wages.

17. Employment benefits. "Employment benefits" means all benefits provided or made available to employees by an employer, including, but not limited to, group life insurance, health insurance, disability insurance, sick leave, annual or vacation leave, educational benefits and pensions.

18. Family leave. "Family leave" means leave taken pursuant to section 850-B, subsection 1.

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19. Family leave benefits. "Family leave benefits" means wage replacement paid pursuant to sections 850-B and 850-C to a covered individual while the covered individual is on family leave.

20. Family member. "Family member" means, with respect to a covered individual or spouse or domestic partner of a covered individual:

A. Regardless of age, a child, including a child whose parentage has been determined under the Maine Parentage Act or any other biological child, adopted child, foster child or stepchild, or a child to whom the covered individual or spouse or domestic partner of the covered individual stands in loco parentis or a child the covered individual or spouse or domestic partner of the covered individual has under legal guardianship or any individual to whom the covered individual or spouse or domestic partner of the covered individual stood in any of these relationships when the individual was a minor child;

B. A parent, including a legal parent, biological parent, adoptive parent, foster parent, stepparent, de facto parent or legal guardian or a person who stood in loco parentis when the covered individual or spouse or domestic partner of the covered individual was a minor child;

C. A grandparent, including a legal grandparent, biological grandparent, adoptive grandparent, foster grandparent, stepgrandparent or de facto grandparent;

D. A grandchild, including a legal grandchild, biological grandchild, adoptive grandchild, foster grandchild, stepgrandchild or de facto grandchild;

E. A sibling, including a legal sibling, biological sibling, adoptive sibling, foster sibling, stepsibling or de facto sibling;

F. A spouse or domestic partner of a covered individual; or

G. 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.

21. Fund. "Fund" means the Paid Family and Medical Leave Insurance Fund established under section 850-E.

22. Health care provider. "Health care provider" means an individual licensed to practice medicine, surgery, dentistry, chiropractic, podiatry, midwifery or osteopathy or any other individual determined by the administrator to be capable of providing health care services.

23. Medical leave. "Medical leave" means leave taken pursuant to section 850-B, subsection 2.

24. Medical leave benefits. "Medical leave benefits" means wage replacement paid pursuant to sections 850-B and 850-C to a covered individual while the covered individual is on medical leave.

25. Program. "Program" means the paid family and medical leave benefits program established in section 850-B.

26. Qualifying exigency. "Qualifying exigency" **means an exigency determined pursuant to the federal Family and Medical Leave Act, 29 United States Code, Section 2612(a)(1)(E)** means a need arising out of a covered individual's family member's active duty service or notice of an impending call or order to active duty in the United States Armed Forces, including, but not limited to, providing for the care or other needs of the military

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~~member's child or other family member, making financial or legal arrangements for the military member, attending counseling, attending military events or ceremonies, spending time with the military member during rest and recuperation leave or following return from deployment or making arrangements following the death of the military member.~~

27. Safe leave. "Safe leave" means any leave taken because the covered individual or the covered individual's family member is a victim of violence, assault, sexual assault under Title 17-A, chapter 11, stalking or any act that would support an order for protection under Title 19-A, chapter 103. Safe leave under this subchapter applies if the covered individual is using the leave to protect the covered individual or the covered individual's family member by:

A. Seeking an order for protection under Title 19-A, chapter 103;

B. Obtaining medical care or mental health counseling for the covered individual or for the covered individual's family member to address physical or psychological injuries resulting from the act of violence, assault, sexual assault or stalking or act that would support an order for protection under Title 19-A, chapter 103;

C. Making the covered individual's or the covered individual's family member's home secure from the perpetrator of the act of violence, assault, sexual assault or stalking or act that would support an order for protection under Title 19-A, chapter 103 or seeking new housing to escape the perpetrator; or

D. Seeking legal assistance to address issues arising from the act of violence, assault, sexual assault or stalking or act that would support an order for protection under Title 19-A, chapter 103 or attending and preparing for court-related proceedings arising from the act or crime.

28. Self-employed individual. "Self-employed individual" means **an independent contractor defined in section 1043, subsection 11, paragraph E**, a sole proprietor, a member of a limited liability company or limited liability partnership or an individual whose net profit or loss from a business must be reported to the Department of Administrative and Financial Services, Bureau of Revenue Services and who resides in the State.

29. Serious health condition. "Serious health condition" means an illness, injury, impairment, pregnancy, recovery from childbirth or physical, mental or psychological condition that involves inpatient care in a hospital, hospice or residential medical care center or continuing treatment by a health care provider.

30. Spouse. "Spouse" has the same meaning as in Title 18-C, section 1-201, subsection 54.

31. State average weekly wage. "State average weekly wage" means the average weekly wage as published by the administrator for the State as a whole for the 12 most recently reported months.

32. Wages. "Wages" means actual compensation paid to an employee for the performance of services **include, but are not limited to, salary, wages, tips, commissions, and other compensation as determined by rule. For a self-employed individual who elects coverage under section 850-G, "wages" include, but are not limited to, "self-employment income" as defined by 26 U.S.C. section 1402(b)**

33. Weekly benefit amount. "Weekly benefit amount" means the amount of wage replacement paid to a covered individual on a weekly basis while the covered individual is on family leave or medical leave as provided in section 850-C.

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§850-B. Paid family and medical leave benefits program established

~~The paid family and medical leave benefits program is established effective January 1, 2026. The program is administered by the department. The department may, through contract after a competitive bidding process, authorize a 3rd party to conduct any functions necessary to implement the program. Any 3rd party acting under a contract to conduct any functions of the program must have a meaningful physical presence in the State.~~

The paid family and medical leave benefits program is established effective January 1, 2026. The program is administered by the department. In accordance with subsection 1, the department is not required but may, through contract after a competitive bidding process subject to the requirements of title 5, chapter 155, section 1816-B, authorize a 3rd party to conduct claims administration.

1. Competitive bidding process. The requirements of title 5, chapter 155, section 1825-B, subsection 7 do not apply to a competitive bidding process used by the department to contract for claims administration of the program. Any competitive bidding process must meet the following requirements.

A. If a competitive bidding process is used, the criteria established by the department to evaluate proposals relating to claims administration must include, but are not be limited to, transparency; cost; efficiency of operations; quality of work related to the potential contracts issued; user experience; confidentiality and use of claimant data; software development, information technology, and State ownership of software and specialized information technology; accountability; public education experience; and a cost-benefit analysis documenting the direct and indirect costs of such a contract, including qualitative and quantitative benefits that will result from the implementation of such contract.

B. Any 3rd party that submits a proposal in a competitive bidding process to conduct claims administration of the program must have a meaningful physical presence in the State; have no adjudicated record of substantial or repeated willful noncompliance with any relevant federal, state, or local statute or regulation, including payment of taxes or other payments owed to a public entity; attest to compliance with all applicable local, state, and federal laws, including health and safety, labor and employment, and licensing laws that affect the employees, worksite, or performance of the contract; complete a signed pledge of compliance provided by the State to comply with all applicable laws, regulations, and statutes; and attest that any projected cost savings may not derive from the 3rd party's failure to provide adequate wages.

24. Family leave eligibility. A covered individual is eligible for family leave for any of the following reasons:

- A. 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;
- B. To care for a family member with a serious health condition;
- C. To attend to a qualifying exigency;
- D. To care for a family member of the covered individual who is a covered service member;
- E. To take safe leave; or

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F. Any other reason set forth in section 843, subsection 4.

3-2. Medical leave eligibility. A covered individual with a serious health condition that makes the covered individual unable to ~~work~~ perform the job functions for the position held by that covered individual is eligible for medical leave.

4-3. Maximum leave requirements. The following requirements apply.

A. A covered individual is not eligible for more than 12 weeks of family leave in an application year.

B. A covered individual is not eligible for medical leave for more than 12 weeks in an application year.

C. A covered individual may not take more than ~~46~~ **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.

5-4. Intermittent leave requirements. Leave permitted by this section may be taken by an employee intermittently in increments of not less than 8 hours or on a reduced leave schedule otherwise agreed to by the employee and the employer. The taking of leave intermittently or on a reduced leave schedule pursuant to this subsection may not result in a reduction in the total amount of leave to which the covered individual is entitled under this subchapter.

6-5. Weekly benefit. While on family leave or medical leave pursuant to this subchapter, a covered individual receives a weekly benefit amount as provided in section 850-C.

7-6. Notice. In any case in which the necessity for leave under this subchapter is foreseeable, an employee shall provide notice to the individual's employer not less than 30 days before the date the leave is to begin. If the necessity for leave is not foreseeable or providing 30 days' notice is not possible, the employee shall provide notice as soon as practicable.

8-7. Right to benefits; accrual. 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.

9-8. Treatment of self-employed individuals. Subsection 7 does not apply to a self-employed individual taking family leave or medical leave under this subchapter or to a person who is no longer an employee who was an employee when that person began taking family leave or medical leave under this subchapter.

10-9. Collective bargaining. This subchapter does not:

A. Obviate an employer's obligations to comply with any employer policy, law or collective bargaining agreement that provides for rights to leave greater than or additional to those provided by this subchapter;

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B. In any way curtail the rights, privileges or remedies of any employee under any collective bargaining agreement or employment contract; or

C. Allow an employer to compel an employee to exhaust rights to any sick, vacation or personal time prior to or while taking leave under this subchapter.

11-40. Concurrent with leave under state and federal law. Leave taken under this subchapter runs concurrently with leave taken under the federal Family and Medical Leave Act of 1993, 29 United States Code, Section 2611, et seq., and under subchapter 6-A. Employees may take leave under this subchapter while ineligible for leave under the federal Family and Medical Leave Act of 1993 in the same application year.

12. Employer policy may not waive employee rights. An employer policy adopted or retained after the effective date of this subchapter may not diminish an employee's right to benefits under this subchapter. Any agreement by an employee to waive the employee's rights under this subchapter is against public policy and is void and unenforceable.

§850-C. Payment of benefits

1. Waiting period for medical leave. Medical leave benefits are not payable during the first 7 calendar days of the leave, except that an employee may use accrued sick or vacation pay or other paid leave provided under a collective bargaining agreement or employer policy during the first 7 calendar days of the leave.

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 75% **70% up to the maximum weekly benefit.**

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 recommend adjusting the maximum benefit amount in order to maintain the solvency of the fund at a level of at least the annual amount stated in section 850-E, subsection 3.**

4. Prorated benefit. If a covered individual takes family leave or medical leave on an intermittent or reduced leave schedule, the weekly benefit amount must be prorated as determined by the administrator.

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5. Reduction of benefit. The weekly benefit amount must be reduced by the amount of wages or wage replacement that a covered individual receives for that period under any of the following while on family leave or medical leave:

A. A government program or law, including, but not limited to, **unemployment insurance under this Title and** workers' compensation under Title 39-A other than for permanent partial disability incurred **compensation received under Title 39-A, section 213 for an injury that occurred** prior to the family leave or medical leave claim, or under other state or federal temporary or permanent disability benefits law; or

B. A permanent disability policy or program of an employer.

§850-D. Applications and claims for benefits

1. Procedures and forms. The administrator shall establish reasonable procedures and forms for filing claims for family leave benefits and medical leave benefits under this subchapter and shall specify what supporting documentation is necessary to support a claim for benefits, including any documentation required from a health care provider for proof of a serious health condition and any documentation required by the administrator with regard to a claim for safe leave or qualifying exigency leave.

2. Filing of application. An individual may file an application for family leave benefits or medical leave benefits no more than 60 days before the anticipated start date of family leave and medical leave and no more than 90 days after the start date of family leave and medical leave. The administrator shall waive the 90-day filing deadline for good cause. The administrator shall institute forms and procedures that are not unduly burdensome to an individual claiming benefits.

3. Notification of employer. The administrator shall notify the relevant employer within 5 business days of a claim being filed pursuant to this subchapter.

4. Confidentiality. Any medical or health information required under this section must be treated as confidential and may not be disclosed except with permission from the covered individual who provided it unless disclosure is otherwise required by law. Nothing in this section may be construed to require a covered individual to provide as certification any information from a health care provider that would be in violation of Section 1177 of the federal Social Security Act, 42 United States Code, Section 1320d-6.

5. Ineligibility. A covered individual is not eligible to receive family leave benefits or medical leave benefits if the administrator finds, through a process established by rule, that the covered individual, for the purpose of obtaining these benefits, has willfully made a false statement or misrepresentation regarding a material fact or has willfully withheld a material fact concerning the facts required to be certified pursuant to this section. The administrator shall establish a process by rule for the determination of eligibility under this section, including a grievance process for a covered individual determined to be ineligible.

§850-E. Paid Family and Medical Leave Insurance Fund

1. Fund established. The Paid Family and Medical Leave Insurance Fund is established to carry out the purposes of this subchapter. The fund is administered by the Treasurer of State. Any sums received under this section are not considered revenue of the State, but must be held in trust for the exclusive benefit of covered individuals eligible for family leave benefits and medical leave benefits under this subchapter and for the administration of this subchapter by the administrator. Funds may not be expended, released, appropriated or otherwise

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disposed of for any other purpose and must be expended by the administrator as required by this subchapter to pay family leave benefits and medical leave benefits to covered individuals eligible to receive benefits and to pay the administrative costs of the administrator.

2. Deposits in fund. The fund consists of:

A. Contributions collected pursuant to section 850-F together with any interest earned thereon;

B. Property or securities acquired through the use of money belonging to the fund together with any earnings of such property or securities;

C. Fines and penalties collected under this subchapter; and

D. Any other money received from any source, including grants, gifts, bequests or money specifically designated to be credited to the fund.

3. Annualized amount. The fund must maintain an annualized amount **determined by an annual study by a qualified actuary that examines the program's recent and expected future claims experience, administrative expenses and target fund requirements** ~~of not less than 140% of the previous fiscal year's expenditures for family leave benefits and medical leave benefits paid and for the administration of the program by the administrator.~~

4. Administrative costs. The costs of administering the program by the administrator may not exceed 5% of the amount deposited under subsection 2 for each fiscal year following the initial year family leave benefits and medical leave benefits are paid. Money may not be commingled with other state funds and must be maintained in a separate account.

5. Payment of benefits. The administrator shall expend money from the fund to provide weekly family leave benefits and medical leave benefits under section 850-C. Family leave benefits and medical leave benefits must be paid from the fund to covered individuals eligible for benefits. ~~An employer's bankruptcy or noncompliance with this subchapter does not interfere with an employee's ability to collect family leave benefits and medical leave benefits under this subchapter.~~ Family leave benefits and medical leave benefits paid from the fund to such an employee may be recovered through bankruptcy proceedings or from the noncomplying employer. The administrator shall institute administrative and legal action to recover family leave benefits and medical leave benefits paid through the fund.

6. Report. Beginning October 1, 2026 and annually thereafter, the administrator shall publish a report providing the following information concerning the program for the previous fiscal year:

A. The total **claims made and the percentage of total claims and** the total eligible claims **and the percentage of eligible claims**;

B. The percentage of eligible claims attributable to medical leave;

C. The percentage of eligible claims attributable to family leave for the serious health condition of a family member;

D. The percentage of eligible claims attributable to family leave other than for the birth, adoption or fostering of a child;

E. The percentage of eligible claims attributable to family leave for the birth, adoption or fostering of a child;

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F. The percentage of eligible claims attributable to family leave for a qualifying exigency;

G. The percentage of eligible claims attributable to family leave for a covered service member;

H. The claimant demographics by age, gender identification, average weekly wage, occupation and the type of leave taken;

I. The percentage of claims denied and the reasons for the denials;

J. The average weekly benefit amount paid for all claims and by the type of leave taken; and

K. The family member for whom family medical leave was taken to care for the family member's serious medical condition;

L. The processing time for initial claims processing and determination;

M. The average length of time between an application and receipt of benefits;

N. The average leave duration for each purpose of leave; and

O K. Any changes in gross benefits paid compared to the previous fiscal year.

The administrator shall submit the annual report required by this subsection to the department, the authority and the joint standing committee of the Legislature having jurisdiction over labor matters.

§850-F. Premiums

1. Authorized. Payroll premiums must be paid in order to finance the payment of family leave benefits and medical leave benefits under this subchapter and administration of the program.

2. Employer to remit premiums to fund. Beginning January 1, 2025, for each employee, an employer shall remit **employer contribution reports and** to the fund premiums in the form and manner determined by the administrator. **Employer contribution reports and premiums** Premiums must be remitted quarterly.

3. Premium amount. The following provisions govern the premium amount.

A. Beginning January 1, 2025, the premium amount may not be more than a combined rate of 1.0% of wages.

B. Annually, for the 2028 calendar year and each calendar year thereafter, not later than October 1st, the administrator shall set the premium for the coming calendar year based on a percentage of employee wages and at the rate necessary to obtain a total amount of premium contributions equal to 140% of the benefits paid during the previous fiscal year plus an amount equal to 100% of the cost of administration of the payment of those benefits during the previous fiscal year, less the amount of net assets remaining in the fund as of June 30th of the current calendar year. If, for the 2028 calendar year or any calendar year thereafter, the premium rate adjustment pursuant to this subsection is an increase and results in the difference between the rate of the upcoming calendar year and the current calendar year equaling more than 0.1% of wages paid, the administrator shall submit a report regarding fund solvency and factors contributing to rate setting to the joint standing committee of the Legislature having jurisdiction over labor matters.

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4. Self-employed individuals. The following provisions govern self-employed individuals.

A. A self-employed individual who elects coverage under section 850-G shall pay 50% of the premium required for an employee by subsection 3 on that individual's income from self-employment.

B. A self-employed individual who elects coverage under section 850-G shall remit the premium amount required by this subsection directly to the administrator, in the form and manner required by the commissioner by rule.

5. Employers. The following provisions govern employers.

A. 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.

B. An employer with fewer than 15 employees may deduct up to 50% of the premium required for an employee by subsection 3 from that employee's wages and shall remit 50% of the premium required by subsection 3 to the fund.

6. Limit on wages to determine premiums. Premiums are required up to the contribution and benefit base limit established annually by the federal Social Security Administration for purposes of the federal Old-Age, Survivors, and Disability Insurance program limits pursuant to 42 United States Code, Section 430.

7. Use. The premiums collected under this subchapter must be used exclusively for the payment of family leave benefits and medical leave benefits and the costs of administration of the program.

8. Approved private plan. An employer with an approved private plan under section 850-H is not required to remit premiums under this section to the fund.

9. Failure or refusal to make premium contributions. An employer that fails or refuses to make premium contributions as required in this section must be assessed 1.0% of its total annual payroll for each year it so failed to comply in addition to any amounts previously owed, or fraction thereof, in addition to the total amount of family leave benefits and medical leave benefits paid to covered individuals for whom it failed to make premium contributions. The rate of assessment imposed by this subsection must be adjusted for the 2028 calendar year and annually thereafter consistent with subsection 3, paragraph B.

10. Self-employed individual who elects coverage and fails or refuses to make premium contributions. A self-employed individual who elects coverage under section 850-G and who fails or refuses to make premium contributions for at least 2 quarters as required in this section may be disqualified from family leave benefits and medical leave benefits. The self-employed individual's disqualification terminates upon:

A. The self-employed individual's remittance of all previously owed premium contributions as required in this section; and

B. Following remittance as required by paragraph A, the self-employed individual's remittance of premium contributions as required in this section for an additional number of quarters equivalent to the number of quarters for which the self-employed individual failed or refused to make premium contributions.

§850-G. Elective coverage

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1. Self-employed individual. A self-employed individual, including an independent contractor, sole proprietor or partner, may elect coverage under this subchapter for an initial period of not less than 3 years. The self-employed individual shall file a notice of election in writing with the commissioner, as required by the administrator. The election becomes effective on the date of filing the notice. As a condition of election, the self-employed individual must agree to supply any information concerning wages that the administrator considers necessary.

2. Withdrawal from coverage. A self-employed individual who has elected coverage may withdraw from coverage within 30 days after the end of the 3-year period of coverage, or at such other times as the commissioner may prescribe by rule, by filing written notice with the commissioner. A withdrawal may not take effect sooner than 30 days after filing the notice.

3. Individual no longer self-employed. An individual who has elected coverage under this section and is no longer a self-employed individual must be excused from that individual's obligations under this section, as the administrator prescribes by rule.

4. Tribal government. A tribal government may elect to be covered under this subchapter, or to terminate coverage, in the same manner as provided in subsections 2 and 3, subject to such procedures as the administrator may require by rule.

§850-H. Substitution of private plans

1. Application for approval of private plan. An employer may apply to the administrator for approval to meet its obligations under this subchapter through a private plan. In order to be approved, a private plan must confer all of the same rights, protections and benefits provided to employees under this subchapter, including, but not limited to:

A. Allowing family leave and medical leave to be taken for all purposes specified in section 850-B, subsections 1 and 2;

B. Providing family leave benefits and medical leave benefits to a covered individual for the maximum number of weeks required in section 850-B, subsection 3 in a benefit year;

C. Providing a wage replacement rate for all family leave benefits and medical leave benefits of at least the amount required by section 850-C, subsection 2;

D. Providing a maximum weekly benefit for all family leave benefits and medical leave benefits of at least the amount specified in section 850-C, subsection 3;

E. Allowing a covered individual to take intermittent leave as authorized by section 850-B, subsection 4;

F. Imposing no additional conditions or restrictions on family leave benefits and medical leave benefits, or on family leave and medical leave taken in connection with those benefits, beyond those explicitly authorized by this subchapter or rules adopted pursuant to this subchapter;

G. Allowing any employee covered under the private plan who is eligible for family leave benefits and medical leave benefits under this subchapter to receive benefits and take family leave and medical leave under the private plan; and

H. Providing that the cost to employees covered by the private plan may not be greater than the cost charged to employees under section 850-F.

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The administrator may adopt rules in accordance with section 850-Q regarding the determination of what constitutes a private plan that may be approved under this subsection.

2. Additional requirements. In order to be approved as meeting an employer's obligations under this subchapter, a private plan must also comply with the following provisions:

A. If the private plan is in the form of self-insurance, the employer must furnish a bond to the State with a surety company authorized to transact business in the State, in the form, amount and manner required by the administrator;

B. The plan must provide coverage for all employees of the employer throughout the employee's period of employment with that employer; and

C. If the plan is in the form of a 3rd party that provides for insurance, the forms of the policy must be issued by an insurer approved by the State.

3. Withdrawal of approval. The administrator shall withdraw approval for a private plan granted under subsection 1 when terms or conditions of the plan have been violated. Causes for plan termination include, but are not limited to, the following:

A. Failure to pay family leave benefits or medical leave benefits;

B. Failure to pay family leave benefits or medical leave benefits timely and in a manner consistent with this subchapter;

C. Failure to maintain an adequate surety bond under subsection 2, paragraph A;

D. Misuse of private plan money;

E. Failure to submit reports or comply with other requirements as required by the commissioner by rule; or

F. Failure to comply with this subchapter or the rules adopted pursuant to this subchapter.

4. Rights retained. An employee covered by a private plan approved under this section retains all applicable rights otherwise provided under federal and state law.

5. Appeal. A contested determination or denial of family leave benefits or medical leave benefits by a private plan is subject to appeal before the administrator and a court of competent jurisdiction as provided in section 850-K.

6. Violations. Employers offering private plans that violate this section are subject to a fine of \$100 per violation. The administrator shall transfer any fines collected pursuant to this subsection to the fund. The administrator by rule shall establish a process for the assessment and appeal of fines under this subsection.

7. Cost of administration. The administrator shall annually determine the total amount expended by the administrator for costs arising out of the administration of private plans. An employer offering a private plan pursuant to this section shall reimburse the administrator for the costs arising out of the private plan in the amount, form and manner determined by the administrator by rule. The administrator shall transfer payments received pursuant to this subsection to the fund.

§850-I. Notice

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1. Posted notice. An employer shall post in a conspicuous place on each of its premises a workplace notice provided or approved by the administrator providing notice of benefits available under this subchapter. The administrator shall issue the workplace notice in English, Spanish, French, Somali and Portuguese and any other language that is the primary language of at least 2,000 residents of the State. The employer shall post the workplace notice in English and each language other than English that is the primary language of 3 or more employees of that workplace, if such notice is available from the administrator.

2. Written notice. An employer shall issue to each employee not more than 30 days from the beginning date of the employee's employment the following written information provided or approved by the administrator in the employee's primary language:

A. An explanation of the availability of family leave benefits and medical leave benefits provided under this subchapter, including rights to reinstatement of employment and continuation of health insurance;

B. The employee's contribution amount and obligations under this subchapter;

C. The name and mailing address of the employer;

D. The identification number assigned to the employer by the administrator;

E. Instructions on how to file a claim for family leave benefits or medical leave benefits;

F. The mailing address, e-mail address and telephone number of the administrator; and

G. Any other information deemed necessary by the administrator.

3. Failure to comply. An employer that fails to comply with this section commits a civil violation for which must be assessed, for a first violation, a civil penalty of \$50 per employee and \$150 per employee for each subsequent violation. The employer has the burden of demonstrating compliance with this section.

4. Notice to employer. An employee shall give at least 30 days' notice to the employer of the anticipated starting date of leave, the anticipated length of leave and the expected date of return or shall provide notice as soon as practicable if the delay is due to exigent circumstances or for reasons beyond the employee's control. If an employer fails to provide notice as required under this section, the employee's obligation to provide notice under this subsection is waived. **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 leave must be scheduled to prevent undue hardship on the employer as reasonably determined by the employer.**

§850-J. Prohibited practices **Requirements upon return to work from family or medical leave**

1. Retaliation prohibited. **Except as provided in subsection 3, paragraph A, it** ~~It is unlawful for an employer to retaliate by discharging, firing, suspending, expelling or disciplining, through the application of attendance policies or otherwise, or threatening or in any manner discriminating against an employee for exercising any right to which the employee is entitled under this subchapter or with the purpose of interfering with the exercise of any right to which the employee is entitled under this chapter.~~

2. Change in status. **Except as provided in subsection 3, paragraph A, an** ~~An employer may not make any negative change in the seniority, status, employment benefits,~~

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~~pay or other terms or conditions of employment of an employee who applies and qualifies for family leave benefits or medical leave benefits under this subchapter.~~

~~**3. Position restoration; exemption for small employers. Except as provided in paragraph A for an employer with fewer than 15 employees, an employee who exercises the right to family leave or medical leave is entitled, upon return from that leave, to be restored by the employer to the position held by the employee when the leave commenced or to be restored to an equivalent position with equivalent employment benefits, pay and other terms and conditions of employment.**~~

~~**A. An employer with fewer than fifteen employees may:**~~

~~(1) During a period of family leave or medical leave from work for which family leave benefits or medical leave benefits may be paid under this subchapter, terminate employment of the employee taking the leave only for cause; and~~

~~(2) Deny restoration of an employee's position of employment under this subsection if:~~

~~(a) The denial is necessary to prevent substantial and grievous economic injury to the operations of the employer;~~

~~(b) The employer notifies the employee of the intent of the employer to deny restoration of the employee's position of employment at the time the employer determines the economic injury would occur; and~~

~~(c) If the family leave or medical leave has already begun in a case of leave from work for which family leave benefits or medical leave benefits may be paid under this subchapter, the employee elects not to return to employment after receiving notice of the employer's intention to deny restoration of the employee's position of employment.~~

1. Restoration to position upon return to work. Except for an employee who has not been employed for at least 120 days, an employee who exercises the right to family leave or medical leave under this subchapter is entitled, upon return from that leave, to be restored by the employer to the position held by the employee when the leave commenced or to be restored to an equivalent position with equivalent employment benefits, pay and other terms and conditions of employment.

2 3. Enforcement; violation. The administrator **department** shall take enforcement action against an employer for a violation of this section.

§850-K. Appeals

1. System for appeals. The administrator shall establish a system for appeals in the case of a denial of family leave benefits or medical leave benefits. In establishing the system, the administrator may use any procedures or appeals mechanisms established under chapter 13.

2. Judicial review. Judicial review of any decision with respect to family leave benefits or medical leave benefits must be permitted in a court of competent jurisdiction after a party

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aggrieved by the decision has exhausted all administrative remedies established by the administrator.

3. Information related to appeals; confidentiality. The administrator shall implement procedures to ensure confidentiality, to the maximum extent permitted by applicable laws, of all information related to any claims filed or appeals made under this subchapter.

§850-L. Disqualification of covered individual

1. False statement; misrepresentation. A covered individual is disqualified from family leave benefits and medical leave benefits for one year if the individual is determined by the administrator to have willfully made a false statement or misrepresentation regarding a material fact, or willfully failed to report a material fact, to obtain benefits under this subchapter.

2. Erroneous payment. If family leave benefits or medical leave benefits are paid erroneously or as the result of willful misrepresentation or a claim for family leave benefits or medical leave benefits is rejected after benefits are paid, the administrator may seek repayment of benefits from the recipient. The administrator shall exercise discretion to waive, in whole or in part, the amount of any such payments if the recovery would be against equity and good conscience.

§850-M. Tax treatment

1. Federal tax. If the federal Internal Revenue Service determines that family leave benefits or medical leave benefits under this subchapter are subject to federal income tax, the administrator shall advise an individual filing a new claim for family leave benefits or medical leave benefits, at the time the individual files the claim, that:

A. The federal Internal Revenue Service has determined that benefits are subject to federal income tax;

B. Requirements exist pertaining to estimated tax payments;

C. The individual may elect to have federal income tax deducted and withheld from the individual's payment of benefits in the amount specified in the United States Internal Revenue Code of 1986; and

D. The individual is permitted to change a previously elected withholding status.

2. Withholding of federal income tax payments. If an individual elects to have federal income tax payments withheld from the individual's family leave benefits or medical leave benefits payments, the administrator shall deduct and withhold the amount specified in the United States Internal Revenue Code of 1986 in a manner consistent with the requirements in Title 36. Amounts deducted and withheld from benefits must remain in the fund until transferred to the federal taxing authority as a payment of income tax.

3. Conformity to Internal Revenue Service procedures. The administrator shall follow all procedures specified by the federal Internal Revenue Service pertaining to the deducting and withholding of income tax.

4. Benefits not subject to state income tax. Family leave benefits and medical leave benefits received pursuant to this subchapter are not subject to state income tax.

5. Rules. The administrator, in consultation with the Department of Administrative and Financial Services, Bureau of Revenue Services, shall adopt rules regarding tax treatment and related procedures regarding family leave benefits and medical leave benefits and the

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sharing of necessary information between the administrator and the Bureau of Revenue Services.

§850-N. Data collection and technology

The administrator shall use state data collection procedures and technology to the extent possible to integrate the program with existing state policies.

§850-O. Paid Family and Medical Leave Benefits Authority

The Paid Family and Medical Leave Benefits Authority, established in Title 5, section 12004-I, subsection 54-F, shall advise the administrator on the implementation and administration of the program in accordance with this subchapter.

1. Membership; appointments. The authority consists of the following **15** ~~14~~13 members:

A. **Twelve** ~~Eleven~~ members appointed by the Governor:

(1) One member with expertise in issues affecting labor and independent contractors;

(2) One employer with more than 50 employees;

(3) One member with expertise in issues related to paid family leave benefits and paid medical leave benefits;

(4) One employer with 50 or fewer employees;

(5) One member who is self-employed;

(6) One member who is an employer in the hospitality industry;

(7) One member with expertise in **treating** issues affecting maternity and postpartum care;

(8) One member with expertise in agriculture, or a seasonal workforce, or a heritage industry;

(9) One member with expertise in issues affecting elder care;

(10) One member who is an employed **with expertise in child care and early childhood development;**

(11) One member with expertise in employment law representing employee interests;

~~(10) One member who is an actuary with expertise in paid family leave benefits and paid medical leave benefits; and~~

~~(11) One member who is a representative of insurance carriers in the State;~~

B. The commissioner or the commissioner's designee; ~~and~~

C. The controller or the controller's designee; **and**

D. The Commissioner of the Department of Professional and Financial Regulation or the commissioner's designee; **and**

E. One employee of the Department of Health and Human Services with expertise in foster care and adoption designated by the Commissioner.

2. Terms. Members of the authority serve 3-year terms. When a vacancy occurs, the Governor shall fill the vacancy by appointing a member from the same category as the

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member who vacated the authority, and that new member continues to serve for the remainder of the term.

3. Chair; election of board officers. The members of the authority shall annually elect one of its members as chair and one of its members as vice-chair. The chair is responsible for scheduling at least 4 authority meetings a year and for preparing the agenda for each meeting.

4. Quorum. A majority of the authority members constitutes a quorum.

5. Staffing of authority. The administrator shall provide administrative and staff support to the authority. Administrator staff shall attend all meetings of the authority.

6. Meetings. The authority shall meet at least quarterly each year. Additional meetings may be held as necessary to conduct the business of the authority. At least once per year, the authority and the administrator shall convene a meeting to solicit public comment on any issues related to paid family leave benefits and paid medical leave benefits and on the experiences of employers and employees with the program.

7. Duties. The authority:

A. Shall monitor the program on an ongoing basis to ensure the program's efficacy and performance, including its fiscal accountability and its financial solvency;

B. Owes a fiduciary duty to the program and shall monitor and issue recommendations regarding the program's financial solvency;

~~C. B.~~ Shall propose changes to or advise the administrator on the laws, rules, administrator policies and other significant issues related to paid family leave benefits and paid medical leave benefits;

~~D. C.~~ Shall provide policy oversight and recommendations on the administration and structure of the program;

~~E. D.~~ Shall review and make recommendations to the commissioner related to the relationship between the administrator and the employers and employees participating in the program and any education and outreach needs of the program;

~~F. E.~~ Shall solicit and consider public comment on the administration of the program; and

~~G. F.~~ May introduce legislation to the Legislature.;

H. Shall consider and make recommendations on how to support employers with implementation of the program and maintaining stability of the labor workforce for employers; and

I. May review all contracts regarding the program, including its administration and financial solvency.

§850-P. Implementation

Contributions must begin January 1, 2025 to provide funds for the fund. The administrator shall begin processing claims beginning **May 1, 2026** ~~January 1, 2026~~, except that, by February 1, 2026, the authority shall conduct an actuarial study to ensure the solvency of the fund **in order to begin processing claims on May 1** ~~at a level of at least 140% of the benefits paid in the preceding year~~. If additional contributions are required based on the results of the actuarial study,

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the authority, through a majority vote, may require a one-time suspension of claims payments of no longer than 3 months.

The administrator shall establish reasonable procedures and forms for filing claims for benefits under this subchapter and shall specify what supporting documentation is necessary to support a claim for benefits, including documentation required from a health care provider for proof of a serious health condition.

§850-Q. Rulemaking

The administrator shall adopt rules as necessary to implement this subchapter. Initial rules necessary for implementation of this subchapter must be adopted by the administrator by January 1, 2025. Rules adopted pursuant to this subchapter are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

§850-R. Effect of existing employer benefits for family and medical leave

This subchapter may not be construed to prohibit an employee entitled to receive benefits for family leave or medical leave under a collective bargaining agreement or employer policy from also receiving benefits under this subchapter as long as the employee is otherwise eligible for benefits under this subchapter.

Sec. 6. Staggered terms. Notwithstanding the Maine Revised Statutes, Title 26, section 850-O, subsection 2, of the initial members appointed to the Paid Family and Medical Leave Benefits Authority pursuant to Title 26, section 850-O, subsection 1, paragraph A, the members appointed pursuant to subparagraphs (1), (3) and (5) must be appointed to a term of one year; the members appointed pursuant to subparagraphs (2), (7), (8) and (11) must be appointed to a term of 2 years; and the members appointed pursuant to subparagraphs (4), (6), (9) and (10) must be appointed to a term of 3 years.

SUMMARY

As amended, this This bill implements a paid family and medical leave benefits program based on the recommendations of the Commission to Develop a Paid Family and Medical Leave Benefits Program established by the 130th Legislature. The program provides up to 12 weeks of family leave and up to 12 weeks of medical leave to eligible covered individuals. No more than **12** ~~16~~ weeks of family leave and medical leave in the aggregate may be taken in a 12-month period. An individual is eligible for leave under the program after earning at least 6 times the state average weekly wage in the preceding 4 calendar quarters prior to submitting an application or if the individual is self-employed and has elected to be part of the program.

The maximum weekly benefit amount is capped at ~~120%~~ of the state average weekly wage. The weekly benefit amount is ~~90% of the covered individual's average weekly wage~~ **calculated in a manner to ensure that an individual receives wage replacement at a rate of 90% for the portion of the covered individual's average weekly wage that is equal to or less than 50% of the state average weekly wage and at a rate of 75% 70 % for that portion of the covered individual's average weekly wage that is more than 50% of the state average weekly wage up to the maximum weekly benefit.**

Covered individuals are required to file claims for benefits in accordance with rules adopted by the department administering the program and to provide certification that they qualify for family leave or medical leave.

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The bill establishes the Paid Family and Medical Leave Insurance Fund to support the program. The funds for administrative costs and payment of benefits come from payroll contributions of no more than 1% of wages shared by employers and employees, except that employers with fewer than 15 employees are not required to make employer contributions to the program. The bill also authorizes employers to provide these benefits through a private plan as long as the benefits for family and medical leave provided to their employees are the same as provided in the program. ~~Employers with fewer than 15 employees are not subject to the bill's requirements related to retaliatory practices and job restoration if complying with the requirements will cause significant difficulty or expenses to the employer.~~ **Except for an employee who has not been employed for at least 120 days, an employee is entitled to the same position or an equivalent position upon return to work from family and medical leave.**

The bill establishes the Paid Family and Medical Leave Benefits Authority to advise the administrator on the implementation and administration of the program **and provides that the authority owes a fiduciary duty to the program.**

The bill requires payroll contributions to begin January 1, 2025 and benefit claims to be processed beginning **May 1, 2026** ~~January 1, 2026~~.

The bill authorizes the Department of Economic and Community Development to conduct outreach with businesses about the paid family and medical leave benefits program.

The bill requires the program to be reviewed under the State Government Evaluation Act in 2029.