



Janet T. Mills  
GOVERNOR

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AUGUSTA, MAINE

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Testimony of Elise Baldacci, Deputy Chief of Staff to Governor Janet T. Mills  
Before the Joint Standing Committee on Labor and Housing  
Neither For Nor Against LD 1964, An Act to Implement the Recommendations of the Commission to  
Develop a Paid Family and Medical Leave Benefits Program  
May 25, 2023

Good afternoon, Senator Tipping, Representative Roeder and members of the Labor and Housing Committee. My name is Elise Baldacci, I'm the Deputy Chief of Staff for Governor Mills and I'm here to testify neither for nor against LD 1964 on behalf of the Mills Administration. My testimony will be focused on the sponsor's amendment to the bill.

The Governor wants to thank Senator Daughtry, Representative Cloutier, their staff, and the Paid Family and Medical Leave Commission for the time, effort, and energy they have invested in crafting this proposal over the course of the last several years – an effort supported by her through previous budget initiatives which funded the Commission's work.

The Governor deeply and personally understands the importance of paid family and medical leave for Maine people. She helped raise five – yes, five – stepdaughters, and she helped take care of two aging parents as well as her late husband, Stan, after he suffered a debilitating stroke until he passed away in 2014 – all while working full-time. She knows firsthand the challenges of providing care to loved ones while trying to manage your day-to-day life, including all the unexpected ups and downs that are simply facts of life. She believes there is real value in a paid family and medical leave policy for Maine.

She also recognizes that there are real impacts that the potential enactment of this proposal will have on Maine's employers, their customers, buyers, patients and clients. From family farms to corner stores and local diners to large insurance companies, national retailers, nursing homes, research and educational institutions, from people working in high rise office space in downtown Portland, to those working remotely in rural Aroostook County, the defining nature of Maine's workplace is as varied as our weather.

And while a growing number of states have enacted Paid Family and Medical Leave bills (PFML), no two states have enacted the same law. Their policies differ in who is covered, what events are covered, how the program is funded, and many other respects. For example, New Hampshire and Vermont have voluntary programs, Vermont starting with their state employees to see how the paid leave policy works before they extend it to the private sector. So, while we can look to other states to learn from their experiences, the Governor believes that any policy crafted by the Legislature must meet and balance the unique and disparate needs of Maine families and businesses.

The Governor believes the goal in crafting this legislation should be to provide as generous a statewide leave policy as possible, while recognizing the operational needs of our very diverse workforce and employment base, and recognizing too the impact of absences on co-workers, staff, administrators and employers, as well as the very substantial role state agencies may be asked to play in administering a very complex program within our limited resources.



She believes that the legislation must provide greater flexibility that accommodates as many different situations as are practical because, like so many things, we want to achieve a bill that provides the best help to working people in Maine, while avoiding to the greatest extent possible the inevitable law of unintended consequences.

To that end, we appreciate the sponsors' discussions with our office over the past several months; but we also believe that further refinements are necessary, including the policy considerations described below, and the technical considerations attached to my testimony.

- 1. Improve Hardship Exemption:** In discussing the proposed legislation with the sponsors and others, the Governor conveyed her desire to see an exemption for small businesses. The bill sponsors responded by creating a hardship exemption, which the Governor appreciates. However, the proposed hardship exemption is too complex to implement. The Governor, therefore, recommends that the Committee strengthen the proposed hardship exemption by adopting the same hardship language included in Maine's current earned paid leave law. That language states that use of leave must be scheduled to prevent undue hardship on the employer as reasonably determined by the employer, with subsequent rulemaking defining the parameters of the exemption. The current earned paid leave hardship exemption has been in effect for two years and is familiar to employers and employees. Adopting it would reduce complexity and create consistency across laws.
- 2. Revise Benefit Qualifications:** The bill proposes that a covered individual earn at least 6 times the state average weekly wage during a four-quarter base period, regardless of who the person worked for or the amount of time worked, in order to qualify for benefits. Federal unpaid FMLA and Maine's counterpart both require that an employee work for a single covered employer for one year before they are eligible for unpaid leave. New York requires that full-time employees work with a single employer for 24 weeks before they are eligible for paid family leave. Connecticut, in addition to pay thresholds, requires three consecutive months at a single employer before an employee is eligible for paid leave. We recognize that an employee paying into a system creates different expectations than unpaid FMLA, and we therefore suggest that an employee be at a single employer for 120 days, barring unforeseen emergencies, before they can take paid leave under this proposal.
- 3. Revise Wage Replacement Through New Actuarial Analysis:** We believe that this proposal should better balance the needs of employees to take time to care for themselves and their loved ones with the incentive to return to work. Presently, programs like short-term disability replace wages at approximately 66 percent, and many states have come closer to those percentages when implementing PFML laws. Massachusetts, which has a healthy PFML fund and was able to *lower* contribution rates in 2023, provides a maximum weekly benefit of 64 percent of the state average weekly wage. These replacement wages are also taxable, unlike the proposal before you. We believe the rates of wage replacements in this bill are too high to make the program sustainable and should offer an effective replacement wage closer to current short-term disability rates. We commend the Commission for producing such a comprehensive report on PFML, but there is currently no actuary on contract, and the models included in the report do not include the wage replacement rates currently being contemplated. In order to properly analyze the bill, it is imperative that an actuarial analysis be done before this bill proceeds.
- 4. Allow More Generous Benefits in Some Cases:** Finally, several large Maine businesses have graciously shared their current paid family leave policies with us. Several businesses provide a much more generous benefit (e.g., 100 percent wage replacement) but for a shorter number of weeks, often supplemented with other benefits like paid time off and short-term disability. We would like to see the private plan section amended to allow businesses and employees the choice of what amount to more generous benefits, even if not specifically included under their PFML policies.

As a general suggestion, we urge the Committee to consider what might be left to rulemaking. For example, the employee and employer contribution split could be fleshed out in rulemaking. The rules can then consider the appropriate payments for self-employed individuals, small businesses, and other size businesses with the ability to be flexible with contributions as the fund matures.

We appreciate that the bill allows the Department of Labor to contract with a third party to run the program. We firmly believe that the best path forward, based on both our departmental capacity and the experience in other states, is for a third-party administrator with experience in this unique area to fulfill this responsibility. Even so, the Legislature should be mindful of the substantial impact on the Maine Department of Labor, including oversight, contributions collections, appeals, rulemaking, contract development and scoring proposals, all of which will result in a General Fund impact.

I cannot end without adding that the Governor, while supportive of paid family and medical leave, also remains concerned about the imposition of added costs on Maine people – regardless of whether that cost is considered a fee-based service or payroll premium, as proponents argue, or a wage tax, as opponents argue.

However, those concerns must be measured against the prospect of a referendum that would likely result in a payroll tax implemented through a blunt policy – one not responsive to the interests of Maine’s economy, Maine’s workforce, or our thousands of small businesses. Therefore, she would prefer to see a proposal that is thoughtfully and responsibly crafted through a public legislative process, taking into account the complicated nature of this subject and the diverse viewpoints, and responding to the needs of all stakeholders – even if that process is not completed this year.

The Governor believes that when it comes to complicated public policies like this one there is always middle ground. We are committed to finding a balance, with the advice of an actuary, that guarantees the best results for working families in Maine in a way that is financially stable over the long term and that does not create a hardship for the co-employees, employers, customers, and clients who depend on continuity and stability in our workforce and economy.

To conclude, the Governor supports the concept of a paid family and medical leave policy, but she opposes some specific provisions that are problematic in light of the above concerns. She urges the Committee to revise the legislation accordingly and to proceed deliberately in its consideration, taking the time needed to hear and balance the needs of both Maine people and the businesses that employ them.

Thank you for your consideration, and I would be happy to answer any questions.

Technical concerns and questions:

Administration	<p>References to the Administrator, the Authority, and the Department need more clarity.</p> <p>850-A sub-§1 defines the Administrator as the “...department administering the program or an authorized 3<sup>rd</sup> party conducting any functions...”</p> <p>850-A sub-§12 defines the Department as the Department of Labor.</p> <p>There are references throughout the bill that give the Administrator authority and require the Administrator to perform certain functions, including determining eligibility, dictating payment procedures and reporting requirements, and conducting rulemaking. A 3<sup>rd</sup> party could determine eligibility, but the other functions are inherently governmental. It is assumed that these functions would be performed by a department, but the language could conceivably allow for them to be contracted out. If performed by a department, it seems possible that a department other than Labor could be included, since Department and Administrator are defined differently. There could possibly be two state departments involved with the program.</p>
Funding	<p>Funding would be required for implementation costs in advance of contribution receipts.</p> <p>PFML contributions will first be due in April 2025. Between enactment of the LD and April 2025, there is implementation work that will be required for which no funding has been identified. This includes: rulemaking; RFP development, issuance and award; employer contributions and reporting system requirements development and implementation; outreach and education; and, depending on the operational model, development of a claim taking and payment system. This could range from \$30 million to \$87 million for the 20 months before contributions begin, again depending on the model selected. A General Fund transfer, revenue bond issuance or combination of the two are the likely funding mechanisms.</p>
5 MRSA §12004-I, sub §54-F 5 MRSA §13056, sub §4	<p>The amendment tasks the Department of Economic and Community Development with the take of communicating the program to the private sector and distributing publications on the program. This function is better suited to the Department of Labor.</p>
25 MRSA 850-A sub-§4	<p>Average weekly wage references employer contribution reports but does not include a requirement for such reports “in the form and manner determined by the administrator.”</p>
850-A sub-§11	<p>Employee: Recommend clarifying that an employee must be engaged in any employment “in the State.” Otherwise, there appears to be no restriction to Maine workers. Also, independent contractors should be clarified to be “as defined in section 1043(11)(E).” The definition for Self-employed individuals already includes the restriction to “in the State.”</p>
850-A sub-§15	<p>Employers: The language is silent on tribal governments.</p>
850-A sub-§20(G)	<p>Affinity care: An employee should choose one designated individual per year.</p>

850-B sub-§2	<p>Medical leave eligibility states that the condition makes the “individual unable to perform the job functions for the position held” and has been interpreted in other states that the individual must be employed. §1 for family leave does not contain this same language and therefore the person could be not working. An individual may be in between jobs and have the required wages to otherwise qualify for medical leave benefits. Individuals lose eligibility for unemployment benefits if they are unable to work or look for work. Medical leave is used in other states to provide income when this occurs.</p> <p>Further, the employer may have other work available that could be performed by the individual, but as written the individual would not have to accept the other work.</p>
850-B sub-§3	<p>Medical leave followed by family leave is allowed during pregnancy and childbirth and with health care provider documentation. Does this mean that 24 weeks is allowed in this instance?</p>
850-C sub-§1	<p>Waiting period is established for medical leave. Family leave does not have a waiting week. Is the intent to have different benefit eligibility for the two components?</p>
850-D sub-§4	<p>The confidentiality provisions should not apply to employers, especially to an employer’s human resources department.</p>
850-M sub-§4	<p>Family leave benefits and medical leave benefits are exempt from state income taxes under the bill. Similar benefits, including unemployment compensation, are taxed, and the justification for the exemption is unclear.</p>

Leave Laws in Title 26, Maine Revised Statutes

- 26 MRS 636 Family Sick Leave (2005)  
25+ employees  
40 hrs for 12 mo. period  
Er may require notice or verification of illness
- 26 MRS 637 Earned Paid Leave (2019)  
10+ employees in the "usual & regular course of business for more than 120 days in any calendar year"  
1 hr for every 40 hrs worked in 1 year employment  
reasonable notice required; scheduled to prevent undue hardship on Employer as reasonably determined by Er
- 26 MRS 638 Leave for Appointments for Veterans (2019)  
No employee threshold  
Requires notice to Er "as soon as reasonably possible"
- 26 MRS 809-810 Absence for Emergency Response (2005, 2109) (firefighters, EMS, search & rescue)  
No employee threshold  
Employee shall make every effort to immediately notify the Er
- 26 MRS 811 Leave for Reserve Training or Military Service (2001) (National Guard)  
No employee threshold  
Requires "prior reasonable notice"
- 26 MRS 814 Family Military Leave (2005)  
15+ employees  
Employee who has been employed by same Er x 12 mos and employed for at least 1,250 hrs over 12 mos.  
Up to 15 days family military leave per deployment  
At least 14 days' notice if more than 5 days leave; otherwise, "advance notice as is practicable;"  
Employee shall consult with Er to attempt to schedule leave so as to not unduly disrupt operations of Er
- 26 MRS 821-822 Leave of Absence for Legislators (1983--)  
5+ employees  
Written notice before filing as candidate required  
Exemption for "unreasonable hardship"

26 MRS 843-848 Family Medical Leave (1987, 1999, 2007, 2021)

15+ employees

Employee employed by same employer for 12 consecutive mos.

10 work weeks in any 2 years

At least 30 days' notice unless prevented by medical emergency

Er may require certification from a doctor

26 MRS 850

"Safe Leave" for DV victims (1999)

No employee threshold

Exceptions for "undue hardship" to Er, or request not communicated to Er within reasonable time under circumstances, or leave is impractical, unreasonable or unnecessary based on facts made known to Er

26 MRS 875

Leave for Caregivers & Persons Affected by Extreme Public Health Emergency (2005, 2021)

No employee threshold

Allows "reasonable and necessary leave," with or without pay

Exceptions for "undue hardship" to Er, or request not communicated to Er within reasonable time under circumstances