Maine State Chamber of Commerce Update on L.D. 1964, "An Act to Implement the Recommendations of the Commission to Develop a Paid Family Medical Leave Benefits Program." June 2023

On June 1, 2023, the Joint Standing Committee on Labor and Housing approved, along party lines, an amended version of L.D. 1964, "An Act to Implement the Recommendations of the Commission to Develop a Paid Family Medical Leave Benefits Program." The committee was presented with yet a third version of the bill, the contents and changes of which were not shared with the business community in advance.

The bill itself is complex, and also incomplete. Many changes that were supposed to have been included in the final draft amendment were not, including language regarding the determination of the tax split between employers and employees.

Below is a brief analysis of the draft as we know it. We expect there will be a final language review by the committee, so some unknowns may be clarified. Regardless, the final product is a disappointment to the Chamber. We put legitimate options on the table during the public hearing for a more workable paid family medical leave program - one that works for both employees as well as employers. Those options were rejected by the sponsors, advocates, and committee, and the concerns of the business community were ignored.

<u>As a result, the Maine State Chamber remains opposed to L.D. 1964.</u>

<u>Impact</u>

- The bill will impact all employers regardless of size.
- It will impact all employees, including full time, part time, seasonal, sole proprietors, independent contractors, student workers.
- Definition of family
  - Includes "de facto" - grandparents, grandchildren, child, sibling.
- "Affinity relationships" are included – someone with whom you have a relationship like a family member but are not. During language review, an amendment is expected that would limit an individual to select one affinity relationship per year.
- Wages - what constitutes "wages" will be determined by rule.
- Duration of leave
  - Maximum amount of leave is 12 weeks in a 12-month period.
  - Intermittent leave is permitted but only in 8-hour increments.
- Benefits continuation for absent employee - of all types; bonuses, seniority, earned paid leave accrual, health insurance – all types of benefits appear to be required to be paid for and continued by the business.

<u>Eligibility</u>

- Earns at least 6 times the states average weekly wage over the previous 4 quarters (roughly $6000 in earnings)

Benefits

- Tied to State average Weekly wage (SAWW)
    - If individuals average weekly wage is equal to or **less than 50% 0f SAWW**, wages are replaced at a rate of **90%**
    - If an individual's average weekly wage is equal to or **more than 50% of SAWW**, wages are replaced at a rate of **66%**. High wage earners pay more into fund but receive less benefits – possibly even less than they may receive now under their existing plan if that plan fails to meet the definition of a qualified private plan. Most will not unless they meet the plan under L.D. 1964 ***exactly.***

Payroll tax

- Structure is unclear.
- Amendment as voted yesterday continues to require employers with more than 15 employees to pay for 50% of costs, and employees the remaining 50%. Businesses with fewer than 15 employees appear not to be required to pay anything, but their employees pay 50% of premium.
- However, sponsors indicated amended language would be submitted that sends the process to determine the premium tax split to major substantive rulemaking to be conducted by the Maine Department of Labor.
- Because the rules would be considered "major substantive," they would need to come back to the Labor and Housing Committee in 2024 for final approval. Those rules could also be changed by the committee.

Private plans

- Are authorized under the bill.
- However, they must be substantially equivalent to the minimum standards of the state-based plan.
- Thus, similar existing private plan – even plans that offer higher benefits for a shorter period (4 weeks full benefits without employee contributions, fully paid for by the employer) ***would not qualify*** under the bill.
- Ultimately, the plan authority will decide how private plans will qualify based on rule making.

Notice

- Employees seeking leave must notify their employer at least 30 days in advance.
- Amendment included "hardship" language under the Notice section.
- But "hardship" only extends to the "use of the leave must be scheduled to prevent undue hardship on the employer." Undue hardship is not defined.
- Cannot deny use of leave under this provision, must retain position, continuance of benefits, plus hire replacement and pay them benefits as well.

Restoration to previous position

- An employee is entitled to PFML and to job protection if they have been employed at the employer for at least 120 days.
- An employee is NOT entitled to job protection if they access PFML with 120 days of employment with the employer.

Fraud/misuse

- 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.***
- Free to apply next year.
- It is the plan administrator's decision to seek repayment – but it is not required in the bill.

Tax implications

- Benefits are not subject to state taxes.
  - Meaning those low wage earners receiving the full 90% of wages ***will essentially be made whole*** under the amendment.
- Unclear as to federal tax implications.

Benefit authority

- 13-member board
- Appointed by the Governor
- 3-year terms
- Tasked with oversight of the program, including solvency, benefit structure and taxation levels to maintain solvency.

Claims payment

- Amendment has payments beginning 5/1/26
- Except that the Benefit Authority is authorized to conduct an actuarial study in February of 2026 to insure adequacy of funding. If inadequate, additional taxes and time are allowed for a period of 3 months.

Unknowns

The cost of the program

Despite pointed questions from committee members, sponsors were unwilling or unable to provide a cost estimate of the entire PFML program as created under L.D. 1964. While a state fiscal note appears to require $25 million over two years as startup, that only covers the administrative portion of the program on the state side.

Despite dozens of pricing proposals conducted by the PFML Commission during their work, they never once priced the version contained in the amended L.D. 1964. Thus, there is no cost estimate - ***no actuarial study*** - for legislators, employers, the governor, or employees to know how much L.D. 1964 will cost taxpayers.

Best estimate based on the work done during the Commission is $300-$350 million.

The program will be funded through payroll taxes. But we have no idea how those taxes will be split. From a planning purpose, that is a big problem for businesses who will be mandated to pay for a portion of the program. How are they to craft an accurate business plan for 2024-25 without knowing their portion of the obligation?

Impacts every business

Until L.D. 1964, Maine's smallest businesses had been exempted from family medical leave requirements. LD 1964 changes that.

- Will need to deal with absenteeism and impact on business.
- Will be administratively burdensome – most small businesses lack HR departments or even a person devoted to this purpose.
- Nothing in the bill to assist a business of any size with the issue of absenteeism or helping with hiring replacement workers.
- Businesses of any size cannot find full-time workers now. How will they find replacement workers knowing the job is over in 12 weeks?

Once again, Maine as an outlier

- Among the most generous benefits in New England
- Only Northern New England state to require employers to contribute through taxes, to the entire program.