

**TESTIMONY OF PATRICK WOODCOCK
PRESIDENT AND CEO OF THE MAINE STATE CHAMBER OF COMMERCE
PROPOSED RULES FOR MAINE’S PAID FAMILY & MEDICAL LEAVE PROGRAM
JUNE 10, 2024**

Commissioner Fortman, Director Monahan, and Deputy Director Parson, my name is Patrick Woodcock, and I am President and CEO of the Maine State Chamber of Commerce. Thank you for allowing comments to address the proposed rules for the Paid Family and Medical Leave law that was passed in 2023. The Maine State Chamber of Commerce and the entire business community look forward to collaborating with the Maine Department of Labor to make a PFML program work for employers and employees alike. While the Maine State Chamber has many concerns with this proposed rulemaking, which we will submit in writing before the July 8th deadline, I would like to raise three major concerns during the timeframe allotted today.

One of the major concerns the Maine Chamber of Commerce has with the proposed rules is the place Private Plans have within these proposed rules, specifically the Private Plan timeline in relation to declarations and contributions. Within the proposed rules, Private Plan declaration would start on January 1st, 2026, with plan approval by the Maine DOL being no earlier than April of 2026. The impact of that timeline is catastrophic for employees and employers who were not anticipating being subject to these contributions given the legislative discussions, the process in other states, and based on the basic logic that this program would not be punitively funded by those very employers and employees who have developed their own paid family and medical leave program.

Specifically, the result from this proposal is that for 16-20 months, both employers and employees will pay into a fund that they will not receive the benefit of if the employer elects to seek a private plan from the start. The fiscal burden on these businesses and employees can result in millions of dollars in tax. The Chamber requests that in order to alleviate the unnecessary burden, the Maine DOL rules mirror what Massachusetts, Connecticut, and Oregon developed in implementing their programs. In all three states, there was a period during the implementation that allowed “declarations,” effectively an assertion from an employer to opt out before contributions started. We suggest that Maine follow suit, having private plan declaration start prior to January 1, 2025 and ideally on October 1st, 2024 to allow employers and employees alike to avoid a tax for a plan they may never receive benefit.

The second concern the Chamber has is that the proposed Rules outlining the Undue Hardship provision are not only in contradiction with the statute, but nearly impossible to prove. The statute states “Use of such leave must be scheduled to prevent undue hardship on the employer as reasonably determined by the employer.” As outlined in the proposed rules, the Department now gives the final ruling on what is considered undue hardship for a business. The plain reading of the statute is that it is the business that makes this determination – not the DOL. We recommend that DOL completely overhaul this section to be compliant with the law. Specifically, there should be enumerated reasons for businesses to be able to reasonably assert

hardship, including, but not limited to, 1) Specialized Role at the Company; 2) Ability to Find Substitute Employee if Unemployment Rate at or below 5 percent in the County of the employee; and 3) Seasonal Worker from June-August.

The third concern the Chamber is raising today are the issues within Section VII, which involves the notification. Based on the proposed rules, there is only a notification to the employee of the acceptance or denial of benefits and does not include the employer. This opens up the potential for miscommunication and potential fraud if there is not transparent communication to both the employee and employer. Ideally, this notification would come from the 3rd party administrator, which would ensure the benefit has been accepted and is legitimate. In conjunction, proposed language also states the department “may” demand repayment by the employee if there is misuse, abuse, or fraud of the program. There should be repayment of any fraud of the program to protect the integrity of the program. The DOL should include clear and concise guidelines to notify employers along with employees and make repayment back into the fund mandatory.

As stated previously, the Maine State Chamber of Commerce and the rest of business community want to be collaborative in this rulemaking process to ensure both employers and employees can utilize methods of leave that accommodate the childcare and medical care of family and loved ones. We do think that Maine can successfully implement a PFML that works for those employees and works for the Maine business community.