

Meeting of the Paid Family and Medical Leave Benefits Authority
Tuesday May 7, 2024 9:00am Frances Perkins Room, 45 Commerce Drive, Augusta, ME

Authority members in attendance:

- Maria Fox (Chair)
- Samuel Hight (Vice-chair)
- Jay Naliboff
- Christopher Washburn
- Sarah Conroy
- Michelle Corry
- Ranae L'Italien
- Jenni Tilton-Flood
- Benjamin Grant
- Kim Smith
- Bob Kerry (designee of Joan Cohen)
- Douglas Cotnoir
- Tina Bonney
- David Barber (remote)

Staff in attendance:

- Director Luke Monahan
- Deputy Director Reggie Parson (remote)
- Program Manager Sarah Brydon
- AAG Nancy Macirowski
- Communications Director Jessica Picard
- Management Analyst II Safiya Khalid
- Management Analyst II AJ Sevigny (remote)

Chair Fox welcomed attendees and opened the meeting. Vice-chair Hight made a motion to approve the minutes of the March 12, 2024. The Authority voted unanimously to approve them as distributed.

Chair Fox invited each Authority member to spend up to five minutes sharing their frame of reference and expertise, as well as any priority areas of focus or concern they would like to bring forward as it relates to rulemaking.

Vice-chair Hight, speaking from the perspective of self-employed people, shared the following:

- Desire for fairness for both employees and employers
- Concerns about perceived “good businesses” subsidizing perceived “bad businesses”
- Family member definition is very broad
- Potential for fraud is a concern
- Impact to small businesses is a concern
- Health Care Provider clarity (i.e., who can fill out the certification forms necessary to approve leave benefits)

Authority Member Smith, the Deputy Commissioner of the Department of Labor, emphasized that the goal is a balanced program with fair outcomes.

Authority Member Naliboff, speaking on the interests of pregnant people and new parents, said the program must be honest and fair, particularly given the stress experienced by a family when a new child is added to it.

Authority Member Washburn, speaking from the perspective of leave of absence benefits in an employment setting, shared the following:

- Communication with all constituents will be very important
- There is still a lot to clarify, but Maine's rulemaking progress to date is better than what he's seen from previous states who have rolled out PFML programs
- Community members have commented on the fact that the definition of a family member is quite broad

Bob Kerry, speaking on behalf of Authority Member Cohen, talked about the importance of creating a level playing field for all Mainers, whether they are receiving benefits through the PFML fund or through an equivalent plan (or "private plan"). He also referenced the Massachusetts PFML program's use of a checklist for reviewing private plans, and indicated this would be a useful approach to use after the rule is finalized.

Authority Member Conroy, speaking from the perspective of eldercare settings, shared the following:

- Employers will want to fully understand how ME PFML interacts with other programs (e.g., short-term disability coverage, paid leave in other states)
- ME PFML has the potential to be a vehicle to increase employee retention, which is good for both employees and employers
- Solvency of the fund is very important
- Clarity of definitions is very important

Authority Member Tilton-Floor, speaking from the perspective of agricultural and seasonal employment and heritage industries, shared the following:

- Dairy farms rarely have more than a few employees, and often those employees are family members
- Agricultural employers often don't have HR/payroll staff or processes in the same way other employers do – it will be important to think about how to get farms and farmers on board with the administrative components of ME PFML.
- Agricultural employers will be concerned about how to remain productive when employees take leave from work
- Having FAQs available in multiple languages already is much appreciated because it is particularly important in the agricultural sector

Authority Member L'Italien, speaking on the perspective of childcare settings, shared the following:

- The definition of family member is important and is perceived differently in various communities
- The program must be easy, clear, and fair, both for employees and for the employer HR staff who will need be involved when ME PFML is taken

- Childcare is often a first job for an employee
- ME PFML can be an effective tool for staff retention and recruitment

Authority Member Bonney, speaking from the perspective of employers with fewer than 50 employees, shared the following:

- It can be difficult to run a business, and HR topics can be among the most difficult to manage
- Businesses in Maine must handle seasonality throughout the year
- ME PFML must be easy to administer and communicate about
- Some employers are concerned about staff coverage when an employee goes out of work

Authority Member Grant, speaking from the perspective of union populations governed by employment contracts, shared the following:

- The program should be easy to navigate – not overly complex and intimidating
- It will be important to have clear guidance on how private plans will work and how ME PFML will integrate with existing leave programs that are in contracts today

Authority Member Cotnoir, the state controller, spoke about the importance of fiscal controls, accountability, and transparency. As the state controller he is focused on how the DOL interacts with the Authority and how the ME PFML program will interact with beneficiaries. He also voiced that rules need to be clear and understandable, and balanced between a principles-based approach and a prescriptive approach.

Chair Fox, speaking from the perspective of an employment lawyer representing employee interests, shared the following:

- If a third party administrator is selected for claims administration, there is a need to be mindful of CT Paid Leave's experience as the only state so far using that model -- there is a perception that they have a higher rate of denials than in other states, so there is an interest in reviewing the terms and accountability mechanisms in any eventual contract for claims administration
- Need to get clarity on the meaning of the phrase "undue hardship," how to count 15 employees, how to handle part-time and seasonal workers
- ME PFML must be easy to engage with, consistent, and fair
- Enforcement mechanisms, particularly as they relate to job protection -- need be fair to all employers and make sure all employers are compelled to follow the law

Authority Member Corry, speaking from the perspective of the hospitality industry, shared the following:

- The definition of employee needs to be clear – the hospitality industry presents circumstances involving part-time and seasonal employees, employees on temporary work visas, etc.
- The definition of undue hardship and the definition of family members need to be clear
- Applicants making false statements to obtain benefits – community members have questioned whether disqualification will be an effective deterrent
- Community members have questioned whether five business days is soon enough for a formal notification of an employee's claim to be sent to an employer, and whether employees will provide sufficient advanced notice ("reasonable notice" is vague)

- Concerns about multiple employees being absent from the same employer at the same time
- Need clarity on whether employers will be able to “top up” an employee’s pay to make them whole
- There is a perception that Colorado’s paid leave program has been having issues with trying to get money back from employers relative to private plans
- There is a perception that Massachusetts has done a good job with respect to how employers remit contributions and we should follow their lead

Authority Member Barber, speaking from the perspective of an employer with more than 50 employees, shared the following:

- Some large employers will want to use a private plan to meet their obligations under the ME PFML law, and they will need to know when they can move forward with that
- It can be difficult to replace an employee when they’re out, particularly if they have specialized skills
- We should use best practices from other states as much as possible
- Complexity of the program: skepticism about the state being able to set up the infrastructure to administer the program successfully in a short period of time, preference for using a company that has processes in place rather than starting from scratch on our own

Chair Fox led the group in a general discussion and Director Monahan provided the following clarifications:

- Draft rules will hopefully be out in a couple weeks, so Authority members can review them in advance of the next Authority meeting
- Private plan substitutions and exemptions: the statute does not include a start date for this -- there will be oversight to make sure approved private plans are in compliance with the law
- Rulemaking activity: there will be a public hearing and public comment period -- the rule is minor technical, not major substantive, and does not go back to the legislature
- Contributions portal RFP process is ongoing
- Communications vendor contract is being negotiated
- Claims administration RFP to be drafted this fall and put out this winter -- will include privacy/cybersecurity considerations
- Solvency of the fund: intend to have an actuarial study done next year in order to have two quarters of contribution data to work with -- \$25M in start-up funding and contributions remitted are the only funding sources
- Some areas are clearly laid out in statute (e.g., family members, calculation of benefits) so there isn’t a lot of flexibility
- Ensuring appropriate ease of access to benefits is important, and will be the focus of guidance and process documentation so rules are not overly prescriptive
- Contribution rate will be 1% at least until 2028, at which time an actuarial review will determine if it can be adjusted down based on solvency of the fund

Vice-chair Hight made a motion to adjourn. The Authority voted to adjourn by a unanimous show of hands.