

Meeting of the Paid Family and Medical Leave Benefits Authority  
Tuesday June 11, 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
- David Barber
- Kim Smith
- Joan Cohen
- Douglas Cotnoir
- Tina Bonney
- Brieanna Gutierrez
- Benjamin Grant (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

Chair Fox welcomed attendees and opened the meeting. Authority Member Barber made a motion to approve the minutes of the May 7, 2024, seconded by Authority Member Naliboff. The Authority voted unanimously to approve them as distributed.

Chair Fox invited the Authority members to consider whether this and future meetings should be recorded. After a brief discussion, Authority Member Tilton-Flood made a motion to record meetings, seconded by Authority Member Cotnoir. The Authority voted unanimously in favor of recording meetings.

AAG Macirowski reminded the Authority that discussion during the meeting is not considered public comment but, because the Authority does have an advisory role, the Authority could take a vote on a topic and that would be considered to be a formal comment.

The Authority discussed the topic of determining the size of an employer's employee population (head count as of October 1: all employees whether temporary, seasonal, full time or part time). The group discussed the possibility of an employer with fewer than 15 employees paying the 0.5% premium for employees instead of deducting it from employees' wages. That's permissible, but all employees within a company need to be treated the same way.

The Authority discussed the topic of Affinity Relationships for the purpose of leave to care for a family member. An Affinity Relationship could be a person who is “like a family member,” or it could be a person who is a family member but not on the list of covered family members under the law. An employee taking leave to care for someone with whom they have an affinity relationship must designate one such person per year. The term “Affinity Relationship” is in the rule and not in the statute. AAG Macirowski indicated that the rule could refer back to the statute for the sake of additional clarity.

The Authority discussed the topic of wages. Vice Chair Hight asked about wages for self-employed individuals who have elected coverage – what if a person in this situation had losses through depreciation and therefore has a tax return showing no income? Would the individual have to pay themselves a salary? Authority Member Smith confirmed that this is a question that will need to be figured out. The Authority also talked about elected coverage, what to do if employment status changes, and the need of avoid adverse selection.

The Authority discussed the topic of healthcare providers that can certify an employee’s need for leave or an employee’s family member’s need for care. Director Monahan clarified that the program will use the same definition of healthcare provider that is in use for federal FMLA.

The Authority discussed the topic of undue hardship. Vice Chair Hight indicated that this is addressed well in the rule. The Authority had a discussion about the potential timeline for the claim process: application can be 60 days before or 90 after a leave start date; the employee should give the employer 30 days notice for foreseeable leave; when a claim is created the Department will let the employer know within 5 days; the employer then has 10 days to raise undue hardship or another concern. Giving an employer more than 10 days has the potential to slow down the process and lead to longer wait times for employees to get their benefits. An employer will also have the option to waive their 10 days and let the claim proceed sooner.

The Authority discussed benefits stacking and top-up payments. On benefits stacking, Director Monahan explained that the PFML team can’t dictate the way federal FMLA and ME FMLA function, but we can control how ME PFML runs. We can set the expectation for concurrent leave as long as a scenario meets all requirements. On top-up payments, yes, employers can provide what would be called “supplemental” wages and the employee’s Weekly Benefit Amount will not be reduced for that.

The Authority discussed the fact that in section 850(b)(5) the statute says intermittent leave may not result in a reduction of the total amount of leave. There was some concern that this could be interpreted in a way where an employee’s intermittent leave would not count against their overall entitlement. There will be more discussion on this and whether it may need to be addressed in future legislation, but in the meantime that potential interpretation would yield an absurd result so the employee’s entitlement would be reduced as appropriate.

The Authority discussed private plans and the timing of when employers will be able to get substitution applications approved that will exempt them from paying premium contributions. Director Monahan explained that the rule on this could change and there are fairness arguments on either side. It’s very difficult to predict the financial impacts on both premiums and benefit payments related to employers opting out of the public fund, and solvency of the public fund is an important consideration. Authority Member Bonney asked if employers might opt out and choose

to offer this benefit before May 1, 2026. Authority Member Cohen pointed out that there are no plans being offered in Maine right now that meet the PFML standard.

The Authority set its next meeting for June 25 9:00am – 11:00am.

Authority Member Corry made a motion to adjourn the meeting, seconded by Vice Chair Hight. The Authority voted unanimously to adjourn.