

Meeting of the Paid Family and Medical Leave Benefits Authority

Tuesday June 25, 2024 9:00am Frances Perkins Room, 45 Commerce Drive, Augusta ME

Authority members in attendance:

- Maria Fox, Chair
- Samuel Hight, Vice-chair (remote)
- Ranae L'Italien
- Douglas Cotnoir
- Brianna Gutierrez (remote)
- Michelle Corry
- David Barber
- Sarah Conroy
- Christopher Washburn
- Tina Bonney
- Jenni Tilton-Flood
- Kimberly Smith
- Joan Cohen
- Benjamin Grant

Staff members in attendance

- Director Luke Monahan
- Program Manager Sarah Brydon
- AAG Nancy Macirowski
- Management Analyst II Safiya Khalid

Chair Fox welcomed attendees and opened the meeting. Authority Member Washburn made a motion to approve the minutes of the June 11, 2024 meeting, seconded by Authority Member Grant. The Authority voted unanimously to approve them as distributed.

The Authority discussed the topic of private plan substitutions. Authority members expressed concern about solvency of the public fund, and under what circumstances and on what timeframe employers should be able to opt out of making premium contributions to the public fund.

Authority Member Cotnoir made a motion to submit as a formal comment that the Department, within its rulemaking authority, should reconsider the ramp-up period, allowing employers to apply for approval of private plans sooner than January 1, 2026, provided that they must continue to make their contributions into the program until they have a private plan that has been approved and is active, seconded by Authority Member Barber. The motion passed with Authority Member Smith abstaining.

The Authority discussed the topic of fraud. Director Monahan explained that PFML fraud experienced by other states has much more often been identity theft via organized crime, and has much less often been an individual claimant misrepresenting their individual situation. To the extent

language is perceived as too permissive, that would require statutory changes. The Authority agreed to take up possible recommendations on potential statutory changes at a later time.

The Authority discussed the topic of employees who may receive most of their pay in cash and get a paycheck with a very low – or \$0 – dollar amount. Authority Member Corry said this is common in the hospitality industry. Director Monahan clarified that the definition of wages includes tips and the Department’s intent is to align with the State UI definition of wages. Colorado’s PFML program is also a potential source of guidance on a way to deal with this because they’ve dealt with zero or near-zero checks for other reasons as well (e.g., employees out of work on disability claims).

The Authority discussed the topic of family members and potentially recommending the addition of a definition of the term “family member” to the rule. Chair Fox made a motion to submit a comment to propose adding to the rule that “family member” means, with respect to a covered individual or spouse or domestic partner of a covered individual, any of the relationships identified in 26 M.R.S. Sec. 850-A(19), including those with an affinity relationship as defined in rule, seconded by Authority Member Tilton-Flood. The motion passed with Authority Member Smith abstaining.

The Authority discussed the topic of affinity relationships. Several Authority Members spoke on the need to balance providing proof of a valid need for appropriate leave on one hand, with the often urgent need for approval of unforeseeable leave without administrative barriers on the other hand. Authority Members expressed an expectation that more clarity would be helpful for both employees and employers. Authority Members further expressed a desire to make leave available to employees providing care to people in their lives who may not fit into traditional family member relationships, and acknowledged that the need for certification proof of that person’s serious health condition, and the 12-week leave amount, will serve as limitations (and the same is true for leave to care for defined family members).

Authority Member Tilton-Flood made a motion to submit as a formal comment the recommendation that the rule remove the limitation of one affinity member relationship individual per year, add a requirement for an attestation regarding the existence of an affinity relationship, and use the following definition:

- a) “Affinity relationship” means a significant personal bond between a covered individual and another individual that is a family relationship that is not otherwise identified in 26 M.R.S. Sec. 850-A(19), such as a cousin, or that, when examined under the totality of the circumstances, is like a family relationship, regardless of biological or legal relationship.
- b) The bond described in subsection (a) of this section may be demonstrated by, but is not limited to, the following factors, with no single factor being determinative:
 - a. Shared personal financial responsibility, including shared leases, common ownership of real or personal property, joint liability for bills or beneficiary designations
 - b. Emergency contact designation of the employee by the other individual in the relationship or the emergency contact designation of the other individual in the relationship by the employee
 - c. The expectation to provide care because of the relationship or the prior provision of care

- d. Cohabitation and its duration and purpose
- e. Geographic proximity
- f. Any other factor that demonstrates the existence of a family-like relationship

Authority Member Cohen expressed hesitation about a “totality of the circumstances” approach to the definition, in the context of potential appeals, and indicated that the Bureau of Insurance would recommend requiring objective evidence of a family-like relationship in order to reduce the possibility of fraud or misuse of program benefits. Authority Member Barber expressed hesitation about removing the limitation of one individual per year. The motion passed with Authority Members Barber and Cohen voting no, and Authority Member Smith abstaining.

The Authority discussed the topic of the method by which to determine which employers fall under the 15-employee threshold for the purpose of determining premiums. Authority members weighed the approach of looking at whether there are 15 employees on a company’s payroll on a particular day versus using the number of weeks that company had 15 employees on their payroll over the course of a 12-month period, acknowledging that there is no approach that would be advantageous to everyone. Authority Member Bonney made a motion to submit a comment recommending that the determination of whether an employer has 15 or more employees should be made depending on whether that employer had 15 or more employees during at least 20 weeks in the 12-month period ending on September 30 of each year, seconded by Authority Member Tilton-Flood. The motion passed with Authority Members Cohen and Smith abstaining.

The Authority discussed the fact that it must conduct a meeting in Q3 2024 but agreed to adjourn without finalizing a meeting date because scheduling of subsequent meetings can be done by email. The Authority voted unanimously to adjourn at 11:15am.