

## **Paid Family and Medical Leave**

Subchapter 6-C

### **Questions and Comments from Municipalities and School Departments**

(compiled by Betsy Oulton from HR Maine Consulting on behalf of MLGHRA - Maine Local Government Human Resources Association.)

#### **Section 850-A. Definitions**

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. **Administrator.** “Administrator” means the department administering the program or an authorized 3<sup>rd</sup> party conducting any functions necessary to implement and operate the program.
2. **Authority.** “Authority” means the Paid Family and Medical Leave Benefits Authority, under section 850-O.
3. **Average weekly wage.** “Average weekly wage,” as used to establish the maximum weekly benefit amount for purposes of this subchapter, means 1/52 of aggregate total wages paid in the State for a covered individual, as reported on employer contribution reports for the calendar year, divided by the arithmetic mean of midmonth weekly covered employment reported on employer contribution reports for the calendar year in the form and manner determined by the department.

Any employer in the state of Maine? If an employee starts work at the current employer on 8-1-2023, and the employee needs leave on 12-1-2023, are the computed wages from all employers this employee worked for in the past 52 weeks?

4. **Base period.** “Base period” means the first 4 calendar quarters immediately preceding the first day of an individual’s benefit year.

Example:

Benefit year begins: 12-4-2023

Base period: Q4 2022; Q1, Q2, Q3 2023?

5. **Benefit year.** “Benefit year” means the 12-month period beginning on the first day of the calendar week immediately preceding the date on which family leave benefits or medical leave benefits commence.

Example:

Employee leave: 12-1-2023

Benefit year begins: 12-4-2023?

6. **Commissioner.** “Commissioner” means the Commissioner of Labor

7. **Contributions.** “Contributions” means the payments remitted by an employer or self-employed individual to the fund, as required by this subchapter.
8. **Controller.** “Controller” means the State Controller.
9. **Covered individuals.** “Covered individual” means a person who:

A. Earned at least 6 times the state average weekly wage in wages subject to premiums under this subchapter during the individual’s base period or elects coverage and meets the requirements of section 850-G; and

Questions: Current employer, or does this include prior employer wages?

B. Meets the administrative requirements outlined in this subchapter and any rules adopted pursuant to this subchapter and files an application for family leave benefits or medical leave benefits.

10. **Covered service member.** “Covered service member” means:

- A. A member of the United States Armed Forces, including the National Guard and the Reserves of the United States Armed Forces, who is:
  - (1) Undergoing medical treatment, recuperation or therapy or otherwise receiving outpatient treatment; or
  - (2) Otherwise on the United States Armed Forces’ temporary disability retired list for a serious injury or illness that was incurred by the member in the line of duty in the United States Armed Forces or a serious injury or illness that existed before the beginning of the member’s active duty and was aggravated by service in in the line of duty on active duty in the United States Armed Forces; or
- B. A former member of the United States Armed Forces, including the National Guard and the Reserves of the United States Armed Forces, who is undergoing medical treatment, recuperation or therapy for a serious injury or illness that was incurred by the member in the line of duty in the United States Armed Forces or a serious injury or illness that existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty in the United States Armed forces and manifested before or after the member was discharged or released from service.

11. **Department.** “Department” means the Department of Labor

12. **Domestic partner.** “Domestic partner” has the same meaning as in Title 1, section 72, subsection 2-C.

13. **Employee.** “Employee means a person who may be permitted, required, or directed by an employer in consideration of direct or indirect gain or profit to engage in any employment in the State but does not include an independent contractor.

Questions:

- Substitutes?
- Per diem fire fighters?
- On call?
- Seasonal?

- Election workers?

**14. Employer.** “Employer” means:

- A. Any person, sole proprietorship, partnership, corporation, association, or other business entity that employs employees at a location in this State;
- B. The State, including the executive, legislative and judicial branches, and a state department or agency;
- C. A county, city, town, or municipal agency;
- D. An agent of an employer, the State, or a political subdivision of the State;
- E. A public employer, as defined in section 962, subsection 7; and
- F. A tribal government that has elected coverage pursuant to section 850-G.

“Employer” does not include the Federal Government.

**15. Employment.** “Employment” means a service performed for wages.

**16. Employment Benefits.** “Employment benefits” means all benefits provided or made available to employees by an employer, including, but not limited to, group life insurance, health insurance, disability insurance, sick leave, annual or vacation leave, educational benefits, and pensions.

**17. Family leave.** “Family leave” means leave taken pursuant to section 850-B, subsection 2.

**18. Family leave benefits.** “Family leave benefits” means wage replacement paid pursuant to sections 850-B and 850-C to a covered individual while the covered individual is on family leave.

**19. Family member.** “Family member” means, with respect to a covered individual or spouse or domestic partner of a covered individual;

- A. Regardless of age, a child, including a child whose parentage has been determined under the Maine Parentage Act or any other biological child, adopted child, foster child or stepchild, or a child to whom the covered individual or spouse or domestic partner of the covered individual stands in loco parentis or a child the covered individual or spouse or domestic partner of the covered individual has under legal guardianship or any individual to whom the covered individual or spouse or domestic partner of the covered individual stood in any of these relationships when the individual was a minor child;
- B. A parent, including a legal parent, biological parent, adoptive parent, foster parent, stepparent, de facto parent or legal guardian or a person who stood in loco parentis when the covered individual or spouse or domestic partner of the covered individual was a minor child;
- C. A grandparent, including a legal grandparent, biological grandparent, adoptive grandparent, foster grandparent, step grandparent or de facto grandparent;
- D. A grandchild, including a legal grandchild, biological grandchild, adoptive grandchild, foster grandchild, step grandchild or de facto grandchild;
- E. A sibling, including a legal sibling, biological sibling, adoptive sibling, foster sibling, stepsibling, or de facto sibling;
- F. A spouse or domestic partner of a covered individual; or

- G. As designated by the covered individual in accordance with rules, an individual with whom the covered individual has a significant personal bond that is or is like a family relationship, regardless of biological or legal relationship.

**Question:** How is this going to be verified? Does this mean that an employee can claim their best friend as being like family? This opens it up to saying you have a significant relation with anyone.

20. **Fund.** “Fund” means the Paid Family and Medical Leave Insurance Fund established under section 850-E.

21. **Health care provider.** “Health care provider” means an individual licensed to practice medicine, surgery, dentistry, chiropractic, podiatry, midwifery or osteopathy or any other individual **determined by the administrator** to be capable of providing health care services.

**Question:**

Includes psychological condition that involves treatment by health care provider – could include therapist?

How will the administrator determine this?

22. **Medical leave.** “Medical leave” means leave taken pursuant to section 850-B, subsection 3.

23. **Medical leave benefits.** “Medical leave benefits” means wage replacement paid pursuant to sections 850-B and 850-C to a covered individual while the covered individual is on medical leave.

24. **Program.** “Program” means the paid family and medical leave benefits program established in section 850-B.

25. **Qualifying exigency.** “Qualifying exigency” means an exigency determined pursuant to the federal Family and Medical Leave Act of 1993, 29 United States Code, Section 2612(a)(1)(E).

26. **Safe Leave.** “Safe leave” means any leave taken because the covered individual or the covered individual’s family member is a victim of violence, assault, sexual assault under Title 17-A, chapter 11, stalking or any act that would support an order for protection under Title 19-A, chapter 103. Safe leave under this subchapter applies if the covered individual is using the leave to protect the covered individual or the covered individual’s family member by:

A. Seeking an order for protection under Title 19-A, chapter 103;

B. Obtaining medical care or mental health counseling for the covered individual or for the covered individual’s family member to address physical or psychological injuries resulting from the act of violence, assault, sexual assault or stalking or act that would support an order for protection under Title 19-A, chapter 103;

C. Making the covered individual’s or the covered individual’s family member’s home secure from the perpetrator of the act of violence, assault, sexual assault or stalking or act that would support an order for protection under Title 19-A, chapter 103 or seeking new housing to escape the perpetrator; or

D. Seeking legal assistance to address issues arising from the act of violence, assault, sexual assault or stalking or act that would support an order for protection under Title 19-A, chapter 103 or attending and preparing for court-related proceedings arising from the act or crime.

**27. Self-employed individuals.** “Self-employed individual” means an independent contractor as described in section 1043, subsection 11, paragraph E, a sole proprietor, a member of a limited liability company or limited liability partnership or an individual whose net profit or loss from a business must be reported to the Department of Administrative and Financial Services, Bureau of Revenue Services and who resides in the State.

**28. Serious health condition.** “Serious health condition” means an illness, injury, impairment, pregnancy, recovery from childbirth or physical, mental, or psychological condition that involves inpatient care in a hospital, hospice or residential medical care center or continuing treatment by a health care provider.

Question:

Example – anxiety – if treated by health care provider (monitoring of ongoing medications) would be considered a “serious health condition”?

**29. Spouse.** “Spouse” has the same meaning as in Title 18-C, section 1-201, subsection 54.

**30. State average weekly wage.** “State average weekly wage” means the average weekly wage as published by the department for the State as a whole for the 12 most recently reported months.

The Department of Labor's new State Average Weekly Wage (SAWW) as of July 1, 2023, is \$1,103.71. The SAWW is the basis for calculating maximum benefits, annual adjustments, and impairment awards.

**31. Wages.** “Wages” includes, but is not limited to, salary, wages, tips, commissions, and other compensation as determined by the rule.

- Stipends?
- On-call pay?
- Insurance buy-out?

**32. Weekly benefit amount.** “Weekly benefit amount” means the amount of wage replacement paid to a covered individual on a weekly basis while the covered individual is on family leave or medical leave as provided in section 850-C.

Is this amount taxed? Federal? State? Tax free?

## **Section 850-B – Paid family and medical leave benefits program established**

The paid family and medical leave benefits program is established effective **January 1, 2026**. The program is administered by the department. In accordance with subsection 1, the department may, through contract after a competitive bidding process subject to the requirements of Title 5, section 1816-B, authorize a 3<sup>rd</sup> party to conduct claims administration.

- Does this replace the current Maine FML (unpaid)?
- Is this to be concurrent with the Federal FMLA, if eligible?

**1. Competitive bidding process.** Any competitive bidding process used by the department pursuant to this section is governed by this subsection.

- A. The minimum criteria established by the department to evaluate a proposal must include, but are not limited to cost; transparency of business operations; efficiency of business operations, quality of work related to the potential contracts issued; user experience; confidentiality and use of claimant data; software development, information technology and state ownership of software and specialized information technology; accountability; experience with providing education to the public related to claims and a cost-benefit analysis documenting the direct and indirect costs of such a contract, including qualitative and quantitative benefits that will result from the implementation of such a contract.
- B. Any 3<sup>rd</sup> party that submits a proposal must have a meaningful physical presence in the State; have no adjudicated record of substantial or repeated willful noncompliance with any relevant federal, state or local law, statute or regulation, including payment of taxes or other payments owed to a public entity; attest to compliance with all applicable local, state and federal laws, regulations and statutes, including health and safety, labor and employment and licensing laws that affect the employees, worksite or performance of the contract; complete a signed pledge of compliance provided by the State to comply with all applicable laws, statutes, and regulations; and attest that any projected cost savings may not derive from the 3<sup>rd</sup> party's failure to provide adequate wages.
- C. The requirement of Title 5, section 1825-B, subsection 7 do not apply.

**2. Family leave eligibility.** A covered individual is eligible for family leave for any of the following reasons:

- A. To bond with the covered individual's child during the first 12 months after the child's birth or the first 12 months after the placement of the child for adoption or foster care with the covered individual;  
**Any time during those 12 months? Intermittent? 1 week per month?**
- B. To care for a family member with a serious health condition;
- C. To attend to a qualifying exigency;
- D. To care for a family member of the covered individual who is a covered service member;
- E. To take safe leave; or
- F. Any other reason set forth in section 843, subsection 4.

**3. Medical leave eligibility.** A covered individual with a serious health condition that makes the covered individual unable to work is eligible for medical leave.

Can an employer require light duty, if available?

4. **Maximum leave requirements.** The following requirements apply.
  - A. A covered individual is not eligible for more than 12 weeks of family leave in a benefit year.
  - B. A covered individual is not eligible for medical leave for more than 12 weeks in a benefit year
  - C. A covered individual may not take more than 12 weeks, in the aggregate, of family leave and medical leave under this subchapter in the same benefit year.

This section does not prevent a covered individual from taking medical leave that is immediately followed by family leave when the medical leave is taken during pregnancy or recovery from childbirth and is supported by documentation from a health care provider.

- Does this mean someone CAN get more than 12 weeks?
- Is this for all types of medical leave or just pregnancy medical leave?

5. **Intermittent leave requirements.** Leave permitted by this section may be taken by an employee intermittently in increments of not less than 8 hours or on a reduced leave schedule otherwise agreed to by the employee and the employer. The taking of leave intermittently or on a reduced leave schedule pursuant to this subsection may not result in a reduction in the total amount of leave to which the covered individual is entitled under this subchapter.

- Does the employer have to allow for intermittent leave due to a birth of a child? This is up to the employer under current FMLA law.
- In this section does this mean that if an employer allows (as it must under Federal FMLA) for an employee to take 4 hours of leave every work day - 4 hours a day for 120-days – 480 hours of FMLA leave, but the State law only allows 8 hours per day to be count that at the end of the 120 days of Federal FMLA they could still take 12 weeks or 60 8-hour days as allowed under this state law?

6. **Weekly benefit.** While on family leave or medical leave pursuant to this subchapter, a covered individual receives a weekly benefit amount as provided in section 850-C.

How do employees pay their portion of benefits if we can't require them to use accruals? Do they have to pay directly? Who manages that?

7. **Notice to employer.** Absent an emergency, illness, or other sudden necessity for taking leave, an employee shall give reasonable notice to the employee's supervisor of the employee's intent to use leave under this subchapter. Use of such leave must be scheduled to prevent undue hardship on the employer as reasonably determined by the employer. If an employer fails to provide notice as required under section 850-I, the employee's obligation to provide notice under this subsection is waived.

What happens if more than 1 person needs leave at the same time which would essentially shut down a whole department creating an undue hardship?

8. Right to benefits; accrual. The taking of family leave or medical leave may not affect an employee's right to accrue vacation time, sick time, bonuses, advancement, seniority, length of service credit or other employment benefits, plans or programs. During the duration of an employee's family leave or medical leave, the employer shall continue to provide for and contribute to the employee's employment-related health insurance benefits, if any, at the level and under the conditions coverage would have been provided if the employee had continued working continuously for the duration of leave.
  - Currently, some employer leave policies do not allow for accruals while out on unpaid leave. Since this is paid leave, employers are now required to accrue?
9. Treatment of self-employed individuals. Subsection 8 does not apply to a self-employed individual taking family leave or medical leave under this subchapter or to a person who is no longer an employee who was an employee when that person began taking family leave or medical leave under this subchapter.
10. Collective bargaining; employer policy; greater or additional rights. This chapter does not:
  - A. Obviate an employer's obligations to comply with any employer policy, law or collective bargaining agreement that provides for rights to leave greater than or additional to those provided by this subchapter;
  - B. In any way curtail the rights, privileges, or remedies of any employee under any collective bargaining agreement or employment contract;
  - C. Allow an employer to compel an employee to exhaust rights to any sick, vacation or personal time prior to or while taking leave under this subchapter; or
  - D. Require a public employer, as defined in section 962, subsection 7, or employee of a public employer that is a party to a collective bargaining agreement in existence on the effective date of this subchapter to apply any of the rights and responsibilities under this subchapter until the existing collective bargaining agreement expires.
    - Employers are not allowed to require employees to use their accrued sick, vacation, or personal time?
    - If an existing CBA doesn't expire until 7-1-2026, does this mean those employees are not eligible for paid family and medical leave benefits until it expires? Do they still utilize Maine FML or Federal FML?
    - When is the effective date of this subchapter?
11. Concurrent with leave under state and federal law. Leave taken under this subchapter runs concurrently with leave taken under the federal Family and Medical Leave Act of 1993, 29 United States Code, Section 2611, et seq., and under subchapter 6-A. Employees may take leave under this subchapter while ineligible for leave under the federal Family and Medical Leave Act of 1993 in the same benefit year.



- What about Maine FML?
- If an employee hasn't met the Federal FMLA requirements, they are still eligible for this leave?

12. Employer policy may not waive employee rights. An employer policy adopted or retained on or after the effective date of this subsection may not diminish an employee's right to benefits under this subchapter. Any agreement by an employee to waive the employee's rights under this subchapter is against public policy and is void and unenforceable.

### **Section 850-C. Payment of benefits**

1. **Waiting period for medical leave.** Medical leave benefits are not payable during the first 7 calendar days of the leave, except that an employee may use accrued sick or vacation pay, or other paid leave provided under a collective bargaining agreement or employer policy during the first 7 calendar days of the leave.
  - Unlike WC, the 7-day waiting period does not get picked up, if out for more than 14 days, correct?
  - Employers can't require employees to use accrued sick leave for the waiting period?
2. **Determination of weekly benefit amount.** The weekly benefit amount paid to employees and self-employed individuals on family leave or medical leave is calculated as follows:
  - A. The portion of the covered individual's average weekly wage that is equal to or less than 50% of the state average weekly wage must be replaced at a rate of 90%; and
  - B. The portion of the covered individual's average weekly wage that is more than 50% of the state average weekly wage must be replaced at a rate of 66% up to the maximum weekly benefit.

Example?:

Employee AWW = \$800.00

50% of **Maine's AWW \$1,103.00**/2= \$551.50 (2023 – changes annually)

So, would it be  $\$800.00 - \$551.50 = \$248.50 \times 66\% = \$164.01$

$\$551.50 \times 90\% = \$496.35$

**Total: \$660.36**

Why wouldn't you take 52 weeks prior earnings with a maximum of the SAWW – similar to WC calculations?

3. Maximum benefit amount adjustment. The maximum weekly benefit amount calculated under subsection 2 is the state average weekly wage. By January 1<sup>st</sup> of the

year in which claims begin being processed and annually thereafter, the department shall take into consideration of the authority to adjust the maximum weekly benefit amount as necessary, and the adjusted maximum weekly benefit amount takes effect on January 1<sup>st</sup> of the year following the adjustment. The authority shall recommend adjusting the maximum benefit amount in order to maintain the solvency of the fund at a level of at least the annualized amount described in section 850-E, subsection 3.

**Explain further – Does this mean the weekly benefit amount doesn't follow the SAWW on a yearly basis?**

4. Prorated benefit. If a covered individual takes family leave or medical leave on an intermittent or reduced leave schedule, the weekly benefit amount must be prorated as determined by the department.
5. Reduction of benefit. The weekly benefit amount must be reduced by the amount of wages or wage replacement that a covered individual receives for that period under any of the following while on family leave or medical leave:
  - A. A government program or law, including, but not limited to, unemployment insurance under this Title and workers' compensation under Title 39-A other than for compensation received under Title 39-A, section 213 for an injury that occurred prior to the family leave or medical leave claim, or under other state or federal temporary or permanent disability benefits law; or
  - B. A permanent disability policy or program of an employer

**How does this affect short term disability, sick leave banks?**

**WC is tax free money – how does this offset work?**

**Why would someone receive this benefit if they are receiving unemployment?**

#### **Section 850-D. Applications and claims for benefits**

1. **Procedures and forms.** The administrator shall establish reasonable procedures and forms for filing claims for family leave benefits and medical leave benefit under this subchapter and shall specify what supporting documentation is necessary to support a claim for benefits, including any documentation required from a health care provider for proof of a serious health condition and any documentation required by the administrator with regard to a claim for safe leave or qualifying exigency leave.
2. **Filing of application.** An individual may file an application for family leave benefits or medical leave benefits no more than 60 days before the anticipated start date of family leave and medical leave and no more than 90 days after the start date of family leave and medical leave. The administrator shall waive the 90-day filing deadline for good cause. The administrator shall institute forms and procedures that are not unduly burdensome to an individual claiming benefits.
3. **Notification of employer.** The administrator shall notify the relevant employer within 5 business days of a claim being filed pursuant to this subchapter.

**Again, if more than 1 employee is applying for leave at the same time in the same department creating an undue hardship, how is that handled?**

4. **Confidentiality.** Any medical or health information required under this section must be treated as confidential and may not be disclosed except with permission from the covered individual who provided it unless disclosure is otherwise required by law. Nothing in this section may be construed to compel a health care provider to provide any information for certification that would be in violation of Section 1177 of the federal Social Security Act, 42 United States Code, Section 1320d-6.
5. **Ineligibility.** A covered individual is not eligible to receive family leave benefits or medical leave benefits if the administrator finds, through a process established by rule, that the covered individual, for the purpose of obtaining these benefits, has willfully made a false statement or misrepresentation regarding a material fact, or has willfully withheld a material fact concerning the facts required to be certified pursuant to this section. The department shall establish a process by rule for the determination of eligibility under this section, including a grievance process for a covered individual determined to be ineligible.

How will the administrator investigate? What is the process? If someone fraudulently requests and receives leave, will the employer be notified, and can the employer discipline up to and including termination?

#### **Section 850-E. Paid Family and Medical Leave Insurance Fund**

1. **Fund established.** The Paid Family and Medical leave Insurance Fund is established to carry out the purposes of this subchapter. The fund is administered by the Treasurer of State. Any sums received under this section are not considered revenue of the State but must be held in trust for the exclusive benefit of covered individuals eligible for family leave benefits and medical leave benefits under this subchapter and for the administration of this subchapter by the department. Funds may not be expended by the department as required by this subchapter to pay family leave benefits and medical leave benefits to covered individuals eligible to receive benefits and to pay the administrative costs of the administrator.
2. **Deposits in fund.** The fund consists of:
  - A. Contributions collected pursuant to section 850-F together with any interest earned thereon;
  - B. Property or securities acquired through the use of money belonging to the fund together with any earnings of such property or securities;
  - C. Fines and penalties collected under this subchapter; and
  - D. Any other money received from any source, including grants, gifts, bequests, or money specifically designated to be credited to the fund.
3. **Annualized amount.** The fund must maintain an annualized amount as determined by an annual study by a qualified actuary that examines the program's recent and expected future claims experience, administrative expenses, and target fund requirements

What if the fund can't maintain this amount? Will the employer and employee be required to contribute more than 1%?
4. **Administrative costs.** The costs of administering the program by the administrator may not exceed 5% of the amount deposited under subsection 2 for each fiscal year following

the initial year family leave benefits and medical leave benefits are paid. Money may not be commingled with other state funds and must be maintained in a separate account.

5. **Payment of benefits.** The administrator shall expend money from the fund to provide weekly family leave benefits and medical leave benefits under section 850-C. Family leave benefits and medical leave benefits must be paid from the fund to covered individuals eligible for benefits. An employer's bankruptcy or noncompliance with this subchapter does not interfere with an employee's ability to collect family leave benefits and medical leave benefits under this subchapter. Family leave benefits and medical leave benefits paid from the fund to such an employee may be recovered through bankruptcy proceedings or from the noncomplying employer. The administrator shall institute administrative and legal action to recover family leave benefits and medical leave benefits paid through the fund.
6. **Report.** Beginning October 1, 2026, and annually thereafter, the administrator shall publish a report providing the following information concerning the program for the previous fiscal year;
  - A. The total claims made, the total eligible claims and the percentage of total eligible claims out of total claims made;
  - B. The percentage of eligible claims attributable to medical leave;
  - C. The percentage of eligible claims attributable to family leave for the serious health condition of a family member;
  - D. The percentage of eligible claims attributable to family leave other than for the birth, adoption or fostering of a child;
  - E. The percentage of eligible claims attributable to family leave for the birth, adoption or fostering of a child;
  - F. The percentage of eligible claims attributable to family leave for a qualifying exigency;
  - G. The percentage of eligible claims attributable to family leave for a covered service member;
  - H. The claimant demographics by age, gender identification, race, ethnicity, average weekly wage, occupation, and the type of leave taken;
  - I. The percentage of claims denied and the reasons for the denials;
  - J. The average weekly benefit amount paid for all claims and by the type of leave taken;
  - K. The category of family member for whom family medical leave was taken to care for the family member's serious medical condition;
  - L. The time for initial claims processing and determination;
  - M. The average length of time between an application and receipt of benefits;
  - N. The average leave duration for each purpose of leave; and
  - O. Any changes in gross benefits paid compared to the previous fiscal year.

The administrator shall submit the annual report required by this subsection to the department, the authority and the joint standing committee of the Legislature having jurisdiction over labor matters.

## Section 850-F. Premiums

1. **Authorized.** Payroll premiums must be paid in order to finance the payment of family leave benefits and medical leave benefits under this subchapter and administration of the program.
2. **Employer to remit employer contribution reports and premiums.** Beginning January 1, 2025, for each employee, an employer shall remit employer contribution reports and premiums in the form and manner determined by the administrator. Employer contribution reports and premiums must be remitted quarterly.
3. **Premium amount.** The following provisions govern the premium amount.
  - A. Beginning January 1, 2025, the premium amount may not be more than a combined rate of 1.0% of wages.
  - B. Annually, for the 2028 calendar year and each calendar year thereafter, not later than October 1<sup>st</sup>, the department shall set the premium for the coming calendar year based on a percentage of employee wages and at the rate necessary to obtain a total amount of premium contributions in order to maintain the solvency of the fund at a level of at least the annualized amount described in section 850-E, subsection 3, plus an amount equal to 100% of the cost of administration of the payment of those benefits during the previous fiscal year, less the amount of net assets remaining in the fund as of June 30<sup>th</sup> of the current calendar year. If, for the 2028 calendar year or any calendar year thereafter, the premium rate adjustment pursuant to this subsection is an increase and results in the difference between the rate of the upcoming calendar year and the current calendar year equaling more than 0.1% of wages paid, the department shall submit a report regarding fund solvency and factors contributing to rate settings to the joint standing committee of the Legislature having jurisdiction over labor matters.

How high can this premium go? Is there any limit?

4. **Self-employed individuals.** The following provisions govern self-employed individuals
  - A. A self-employed individual who elects coverage under section 850-G shall pay up to 50% of the premium required by subsection 3 on that individual's income from self-employment.
  - B. A self-employed individual who elects coverage under section 850-G shall remit the premium amount required by this subsection directly to the administrator, in the form and manner required by the commissioner by rule.
5. **Employers.** The following provisions govern employers.
  - A. An employer with 15 or more employees may deduct up to 50% of the premium required for an employee by subsection 3 from that employee's wages and shall remit 100% of the combined premium contribution required by subsection 3 to the fund.
  - B. An employer with fewer than 15 employees may deduct up to 50% of the premium required for an employee by subsection 3 from that employee's wages and shall remit 50% of the premium required by subsection 3 to the fund.
6. **Limit on wages to determine premiums.** Premiums are required up to the contribution and benefit base limit established annually by the federal Social Security Administration

for purposes of the federal Old-Age, Survivors, and Disability Insurance Program limits pursuant to 42 United States Code, Section 430.

What does this mean?

Does this mean we have to tax the employee on this insurance, like we do now if their life insurances exceed \$50k, on the % we pay into the plan for them?

7. **Use.** The premiums collected under this subchapter must be used exclusively for the payment of family leave benefits and medical leave benefits and the costs of administration of the program.
8. **Approved private plan.** An employer with an approved private plan under section 850-H is not required to remit premiums under this section to the fund.
9. **Failure or refusal to make premium contributions.** An employer that fails or refuses to make premium contributions as required in this section must be assessed 1.0% of its total annual payroll for each year it so failed to comply in addition to any amounts previously owed, or fraction thereof, in addition to the total amount of family leave benefits and medical leave benefits paid to covered individuals for whom it failed to make premium contributions. The rate of assessment imposed by this subsection must be adjusted annually consistent with subsection 3, paragraph B.

Will there be any sort of grace period, or appeal process?

10. **Self-employed individual who elects coverage and fails or refuses to make premium contributions.** A self-employed individual who elects coverage under section 850-G and who fails or refuses to make premium contributions for at least 2 quarters as required in this section may be disqualified from family leave benefits and medical leave benefits. The self-employed individual's disqualification terminated upon:
  - A. The self-employed individual's remittance of all previously owed premium contributions as required in this section; and
  - B. Following remittance as required by paragraph A, the self-employed individual's remittance of premium contributions as required in this section for an additional number of quarters equivalent to the number of quarters for which the self-employed individual failed or refused to make premium contributions.

#### **Section 850-G. Elective coverage**

1. **Self-employed individual.** A self-employed individual, including an independent contractor, sole proprietor, or partner, may elect coverage under this subchapter for an initial period of not less than 3 years. The self-employed individual shall file a notice of election in writing with the commissioner, as required by the department. The election becomes effective on the date of filing the notice. As a condition of election, the self-employed individual must agree to supply any information concerning wages that the department considers necessary.
2. **Withdrawal from coverage.** A self-employed individual who has elected coverage may withdraw from coverage within 30 days after the end of the 3-year period of coverage,

or at such other times as the commissioner may prescribe by rule, by filing written notice with the commissioner. A withdrawal may not take effect sooner than 30 days after filing the notice.

3. **Individual no longer self-employed.** An individual who has elected coverage under this section and is no longer a self-employed individual must be excused from that individual's obligations under this section, as the department prescribes by rules.
4. **Tribal government.** A tribal government may elect to be covered under this subchapter, or to terminate coverage, in the same manner as provided in this section, subject to such procedures as the department may require by rule.

#### **Section 850-H. Substitution of private plans.**

1. **Application for approval of private plan.** An employer may apply to the department for approval to meet its obligations under this subchapter through a private plan. In order to be approved, a private plan must confer rights, protections and benefits substantially equivalent to those provided to employees under this subchapter, including, but not limited to:
  - A. Allowing family leave and medical leave to be taken for all purposes specified in section 850-B, subsections 2 and 3;
  - B. Providing family leave benefits and medical leave benefits to a covered individual for a maximum number of weeks substantially equivalent to the maximum number of weeks required in section 850-B, subsection 4 in a benefit year;
  - C. Providing a wage replacement rate for all family leave benefits and medical leave benefits that is substantially equivalent to the amount required by section 850-C, subsection 2;
  - D. Providing a maximum weekly benefit for all family leave benefits and medical leave benefits that is substantially equivalent to the amount specified in section 850-C, subsection 3;
  - E. Allowing a covered individual to take intermittent leave as authorized by section 850-B, subsection 5;
  - F. Imposing no additional conditions or restrictions on family leave benefits and medical leave benefits, or on family leave and medical leave taken in connection with those benefits, beyond those explicitly authorized by this subchapter or rules adopted pursuant to this subchapter;
  - G. Allowing any employee covered under the private plan who is eligible for family leave benefits and medical leave benefits under this subchapter to receive benefits and take family leave and medical leave under the private plan; and
  - H. Providing that the cost to employees covered by the private plan may not be greater than the cost charged to employees under section 850-F.
2. **Additional requirements.** In order to be approved as meeting an employer's obligations under this subchapter, a private plan must also comply with the following provisions;
  - A. If the private plan is in the form of self-insurance, the employer must furnish a bond to the State with a surety company authorized to transact business in the State, in the form, amount and manner required by the department;

- B. The plan must provide coverage for all employees of the employer throughout the employee's period of employment with that employer; and
  - C. If the plan is in the form of a 3<sup>rd</sup> party that provides for insurance, the forms of the policy must be issued by an insurer authorized to do business in the State.
- 3. Withdrawal of approval.** The department shall withdraw approval for a private plan granted under subsection 1 when terms or conditions of the plan have been violated. Causes for plan termination include, but are not limited to, the following;
- A. Failure to pay family leave benefits or medical leave benefits;
  - B. Failure to pay family leave benefits or medical leave benefits timely and in a manner consistent with this subchapter;
  - C. Failure to maintain an adequate surety bond under subsection 2, paragraph A;
  - D. Misuse of private plan money;
  - E. Failure to submit reports or comply with other requirements as required by the commissioner by rule; or
  - F. Failure to comply with this subchapter or the rules adopted pursuant to this subchapter.
- 4. Rights retained.** An employee covered by a private plan approved under this section retains all applicable rights otherwise provided under federal and state law.
- 5. Appeal.** A contested determination or denial of family leave benefits or medical leave benefits by a private plan is subject to appeal before the department and a court of competent jurisdiction as provided in section 850-K.
- 6. Violations.** Employers offering private plans that violate this section are subject to a fine of \$100 per violation. The department shall transfer any fines collected pursuant to this subsection to the fund. The department by rule shall establish a process for the assessment and appeal of fines under this subsection.
- 7. Cost of administration.** The department shall annually determine the total amount expended by the department for costs arising out of the administration of private plans. An employer offering a private plan pursuant to this section shall reimburse the department for the costs arising out of the private plan in the amount, form and manner determined by the department by rule. The department shall transfer payments received pursuant to this subsection to the fund.
- 8. Rules.** The department shall adopt rules in accordance with section 850-Q regarding the determination of what constitutes a private plan that may be approved under this section.

Can an employer require employees to use their accrued sick leave in a private plan?  
Will MMEHT IPP plan be considered? If so, employees who currently don't have IPP will have to undergo medical examinations and some will not be eligible.

#### **Section 850-I. Notice**

- 1. Posted notice.** An employer shall post in a conspicuous place on each of its premises a workplace notice provided or approved by the department providing notice of benefits available under this subchapter. The department shall issue the workplace notice in English, Spanish, French, Somali, and Portuguese and any other language that is the primary language of at least 2,000 residents of the State. The employer shall post the



workplace notice in English and each language other than English that is the primary language of 3 or more employees of that workplace, if such notice is available from the department.

2. **Written notice.** An employer shall issue to each employee not more than 30 days from the beginning date of the employee's employment the following written information provided or approved by the department in the employee's primary language:
  - A. An explanation of the availability of family leave benefits and medical leave benefits provided under this subchapter, including rights to reinstatement of employment and continuation of health insurance;
  - B. The employee's contribution amount and obligations under this subchapter;
  - C. The name and mailing address of the employer;
  - D. The identification number assigned to the employer by the administrator;
  - E. Instructions on how to file a claim for family leave benefits or medical leave benefits;
  - F. The mailing address, e-mail address and telephone number of the administrator; and
  - G. Any other information deemed necessary by the administrator.
3. **Failure to comply.** An employer that fails to comply with this section commits a civil violation for which must be assessed, for a first violation, a civil penalty of \$50 per employee and \$150 per employee for each subsequent violation. The employer has the burden of demonstrating compliance with this section.

#### **Section 850-J. Employer requirements; return to work from family or medical leave**

1. **Restoration to position upon return to work.** Except for an employee who has not been employed for at least 120 days, an employee who exercises the right to family leave or medical leave under this subchapter is entitled, upon return from that leave, to be restored by the employer to the position held by the employee when the leave commenced or to be restored to an equivalent position with equivalent employment benefits, pay and other terms and conditions of employment.

An employee can take this leave on their second day of employment? If it is determined that the employer needs this position filled, can they? Does the employee who is on leave employed under 120 days get terminated?
2. **Retaliation prohibited.** An employer may not discharge, fire, suspend, expel, or discipline, through the application of attendance policies or otherwise, or threaten or in any manner discriminate against an employee for the exercise of any right to which the employee is entitled under this subchapter or with the purpose of interfering with the exercise of any right to which the employee is entitled under this subchapter.

Can an employer extend an employees' probationary period if they are on leave during the probationary period?
3. **Enforcement; violation.** The department shall take enforcement action against an employer for a violation of this section.

#### **Section 850-K. Appeals**

1. **System for appeals.** The department shall establish a system for appeals in the case of a denial of family leave benefits or medical leave benefits. In establishing the system,

the department may use any procedures or appeals mechanisms established under chapter 13.

2. **Judicial review.** Judicial review of any decision with respect to family leave benefits or medical leave benefits must be permitted in a court of competent jurisdiction after a party aggrieved by the decision has exhausted all administrative remedies established by the department.
3. **Information related to appeals; confidentiality.** The department shall implement procedures to ensure confidentiality, to the maximum extent permitted by applicable laws, of all information related to any claims filed or appeals made under this subchapter.

### **Section 850-L. Disqualification of covered individual**

1. **False statement; misrepresentation.** A covered individual is disqualified from family leave benefits and medical leave benefits for one year if the individual is determined by the department to have willfully made a false statement or misrepresentation regarding a material fact, or willfully failed to report a material fact, to obtain benefits under this subchapter.  
*Wouldn't the employer have the right to terminate their employment? Does this mean that if they were terminated and work for another employer, they would still be disqualified for one year?*
2. **Erroneous payment.** If family leave benefits or medical leave benefits are paid erroneously or as the result of willful misrepresentation or a claim for family leave benefits or medical leave benefits is rejected after benefits are paid, the department may seek repayment of benefits from the recipient. **The department shall exercise discretion to waive in whole or in part, the amount of any such payments if the recovery would be against equity and good conscience.** *How will this be determined?*

### **Section 850-M. Tax treatment**

1. **Federal tax.** If the federal Internal Revenue Service determines that family leave benefits or medical leave benefits under this subchapter are subject to federal income tax, the department shall advise an individual filing a new claim for family leave benefits or medical leave benefits, at the time the individual files the claim, that;
  - A. The federal Internal Revenue Service determines that benefits are subject to federal income tax;
  - B. Requirements exist pertaining to estimated tax payments;
  - C. The individual may elect to have federal income tax deducted and withheld from the individual's payment of benefits in the amount specified in the United States Internal Revenue Code of 1986; and
  - D. The individual is permitted to change a previously elected withholding status.  
*Will this be incorporated in the forms the Administrator will create?*

2. **Conformity to Internal Revenue Service procedures.** The department shall follow all procedures specified by the federal Internal Revenue Service pertaining to the deducting and withholding of income tax.
3. **Rules.** The department, in consultation with the Department of Administrative and Financial Services, Bureau of Revenue Services, shall adopt rules regarding federal and state tax treatment and related procedures regarding family leave benefits and medical leave benefits and the sharing of necessary information between the department and the Bureau of Revenue Services.

State income tax? Isn't the fund already a state income tax?

### **Section 850-N. Data collection and technology**

The administrator shall use state data collection procedures and technology to the extent possible to integrate the program with existing state policies.

### **Section 850-O. Paid Family and Medical Leave Benefits Authority. (see pages 334-336)**

### **Section 850-P. Implementation**

Contributions must begin January 1, 2025 to provide funds for the fund. The administrator shall begin processing claims on May 1, 2026, except that, by February 1, 2026, the authority shall conduct an actuarial study to ensure the solvency of the fund in order to begin processing claims on May 1<sup>st</sup>. If additional contributions are required based on the results of the actuarial study, the authority, through a majority vote, may require a one-time suspension of claims payments of no longer than 3 months.

Earlier, it states the program begins 1-1-2026. Is it 1-1-2026 or 5-1-2026? When do employees begin the application process?

If claims payments are suspended, does the employer have to pay the employees?

What will be the most an employer and employee will be required to pay to keep the fund solvent? How is this determined?

The administrator shall establish reasonable procedures and forms for filing claims for benefits under this subchapter and shall specify that supporting documentation is necessary to support a claim for benefits, including documentation required from a health care provider for proof of a serious health condition.

### **Section 850-Q. Rulemaking**

The department shall adopt rules as necessary to implement this subchapter. Initial rules necessary for implementation of this subchapter must be adopted by the department by

January 1, 2025. Rules adopted pursuant to this subchapter are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**Section 850-R. Effect of existing employer benefits for family and medical leave**

This subchapter may not be construed to prohibit an employee entitled to receive benefits for family leave or medical leave under a collective bargaining agreement or employer policy from also receiving benefits under this subchapter as long as the employee is otherwise eligible for benefits under this subchapter.

## **Paid Family Medical Leave Questions and Concerns:**

Is there any reimbursement from the State if the contributions come from the Town?

Application Year – does the first day mean January 1<sup>st</sup>?

If an employee files for Paid leave on December 15<sup>th</sup>, are they only eligible for 2 weeks? If the application year starts the first day of the calendar year it would seem they would have to refile on January 1<sup>st</sup> the following year?

When can an employee start using this benefit? From date of hire?

Employee definition - does this include part-time, temporary, seasonal, and per diem employees? Stipend employees such as Call Division FF?

How are the wages computed for part-time employees?

Why are private employers who offer equal paid leave benefits able to get a waiver when public employers, who have very generous leave benefits, are not?

We already have the Family Medical Leave Act- and our town policy is they have to use their accrued sick and /or vacation time in order for it to be paid. So, with this Act- we would be paying them for the 12 weeks- without them having to use their accrued time off?

How will this paid leave coordinate with:

- Short-term disability insurance payment
- If they collect Social Security or a pension while working
- Collecting Unemployment

How and when will the employer be notified as to the extent of time the employee will be out of work?

What if the employer has light duty work available for an employee with a non-work-related illness or injury?

Employees MAY request concurrent sick, vacation, personal, comp. time?

Employees still receive short term disability benefits?

Employees still receive benefits for a sick leave bank?

Can new employees take state FMLA, return, and qualify for company FLMA with no time limit for employment?

Includes all wages including OT - up to certain %?

Does the employee have to work for the requisite number of weeks with **any** Maine employer or **their** current employer?

Will any type of employee be exempt from the leave tax?

Some people have heard different start dates, is it 1/1/2026 or "when the fund has enough money"?

Pertaining to 19. Section G of the law- If employers are responsible for determining eligibility how do we confirm this information? Anyone can claim they have a personal bond that is like a family relationship. Other close individuals? Best friend, neighbor?? How is this validated?

Are married couples who are employed for the same employer required to share their time similar to FMLA?

If we are not privy to the reasoning behind their leave or their circumstances- how can we then know if this qualifies them under Federal at the same time?

Can't use accrued time at same time? Can't enforce, but can offer?

Hardship provision for too many out at one time? Override or delay for public safety?

How and when is employer notified?

Will there be retroactive pay, the employee has an emergency and is out before approval?

Does the employee fill out the Maine Paid Family and Medical Leave application, plus the Federal FML paperwork concurrently?

How will this impact to sick leave banks? Can state FMLA be secondary?

Includes psychological condition that involves treatment by health care provider – could include therapist?

If reduced leave is agreed upon by employee and employer, how will this be agreed upon and approved by the Administrator?

Will there be state tracking for trends of employees?

If we have Union Contracts in place come 1/1/25, can I assume that there will be no contribution from either the employee or employer until the new contract period?

Will staff be able to continue to use their benefit time for FMLA & get paid from this insurance? I could not find anything that stated if they could not but who knows what the application process will look like.

Do we have to w/h Mainepers on this benefit?

### **School Questions:**

If a school employee begins paid leave during the school year, are they entitled to receive continued paid leave if they are not working in the summer?

If they experience a medical condition in the summer, does paid leave start once school begins?

Will schools be able to pay as you go as we do for Unemployment Insurance Tax?

### **Additional Questions**

Can new employees take state FMLA, return, and qualify for company FLMA with no time limit for employment?

Includes all wages including OT - up to certain %?

How to offset high earners for full salary?

Can't use accrued time at same time? Can't enforce, but can offer?

Hardship provision for too many out at one time? Override or delay for public safety?

How and when is employer notified?

Retro if employee emergency and out before approval?

Per diem – temporary included?

“Other close individuals” – bestie rule – how validated?

Do employees have to enroll if taking FMLA or optional?

How will this impact to sick leave banks? Can state FMLA be secondary?

Includes psychological condition that involves treatment by health care provider – could include therapist?

If agreed on by individual and employer, may be in the form of reduced leave? How approved/agreed?

Will there be state tracking for trends of employees?

